A Bankruptcy History of Manias & Panics

—in 70 pages + appendices —

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Abstract

Fraud and irrationality are often blamed for financial manias and panics. Investor euphoria can unleash social and technological breakthroughs, but the subsequent failures can destroy value and radicalize the political sphere. Are these events random, idiosyncratic, or driven by some force? The *ex-post* answers —be they monetary, criminal, or international contagion— have a profound impact on the role of government in society, but have questionable predictive power. The history of bankruptcy law is intertwined with that of crises and banking law, and —as illustrated using over 30 case studies— is a consistent cause, accelerant, and reaction of financial manias and crises.

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A. Introduction

Responding to technology and history, the evolution of business structures and bankruptcy laws act as causes and accelerants to financial panics and contagion of business failures. Without appropriate legal technology to solve collective action problems in the presence of asymmetric information, market failures arise in the form of systemic runs on money from banks and other creditors. In reaction to financial instability, the government's three branches and the private market develop solutions to restart access to financing, alleviate failures, and reset the cycle.

Following crises, conventional wisdom blames fraud in cyclical over-under regulation. The following does not question that overvaluation, high money market rates, and fraud cause panics. However, instigating events that lead creditors to become sensitive to information regarding contractual impairments, suggests these are not broadcast randomly but reactive to jurisdictional bankruptcy processes. While it's not possible to quantify the effect of each bankruptcy process relative to all of the other effects, the following narratives hopes to shed more light on its role through history.

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B. History

a. Origins

i. Lowlands' Panics of 1575 and 1638

Although Roman practices —such as the *cessio bonorum*, which permitted debtors to escape imprisonment by ceding their wealth— continued to be practiced, Medieval Europe added a moralistic level of shame and violence to disincentivize the process.[1] This contrast starkly with later Roman law, which eliminated the death sentence for debtors and allowed for creditor preferences.[2] While the Civil law countries of France, Spain, and Italy continued early Rome's precedent of *pro rata* distribution of debtors' assets amongst creditors, insolvency laws of the Hanseatic League —a confederation of Germanic merchants along the northern coast of Europe—allowed for preferences.[3]

However, starting with local ordinances and then mandated by Charles V in 1540 to check 'heresy' across his vast domain —spanning from Spain to Austria and from Italy to the Lowlands— the domestic preference was outlawed.[4] Despite the strictness of Spanish bankruptcy law,[5] Charles' son, Philip II, defaulted on his short-term debts in 1557, 1560, 1575, and 1596 — forcing creditors to call in loans from 'lesser' debtors and converted short-term debts into long-term loans.[6] Although only the lender had a right of action against the borrower under Civilian law, in 1571, the lords of Antwerp extended this right to holders of bills of exchange as an added measure of security.[7] However, Phillip's 1575 default made it impossible to transfer money between Spain and Antwerp, precipitating a mutiny and ending with the *Sack of Antwerp* by the *Spanish Fury*. Following the butchery, the Lowlands waged an *Eighty Years' War* against the Empire for independence.[8]

Around this time, the *Calvinist Reformation* around Antwerp and the surrounding Lowlands began to shed the Medieval Catholic shame that had been fused unto Roman bankruptcy.[9] While France and England sought to abolish the ancient practice of sanctuary cities for debtors, free cities in the Lowlands continued to offer refuge.[10] Moreover, the religion worked to aid debtors —many caused by the Spanish defaults— against the strict Spanish law. The elders of the *Dutch Reformed Church* in Amsterdam —often former merchants themselves— played an active role in resolving 247 commercial insolvencies between 1578 and 1650.[11] As the War continued, the Lowlands enshrined principles surrounding preference, rights of bill holders, and insolvency in the *Antwerp Customs of 1582* to aide in commercial endeavors. The *Customs* explicitly stipulated that the rules applied to all merchants regardless of their origin, supporting creditors from other Low Countries, France, and Germanic jurisdictions.[12] Refugees from Antwerp brought their principles to Amsterdam and established a similar law in 1617.[13]

Amsterdam's main commercial operations were the *Dutch East India Co* ("VOC") —chartered in 1602 to trade with Asia— and the *Dutch West India Co.* ("GWC"). The latter, founded in 1621, established New Netherlands in 1624—spanning from present day Delaware to New York's Albany in the Americas. After the development of derivatives for VOC shares, in 1608, an investor shocked the price by shorting the stock. The government responded by outlawing all formal futures trading in 1610.[14] As a trading hub, a myriad variety and quality of coins circulated with independent values relative to ideal imaginary money.[15] To support trade, in 1609, Dutch merchants created the *Amsterdamsche Wisselbank* (*Bank of Amsterdam,* "AWB") —an exchange bank facilitating settlement common in Early Modern Europe— to value debased specie and issue a stable paper unit of account.[16]

In developing as a commercial power, the government continued to refine creditor preferences in bankruptcy and in 1627 thought it necessary to reform the system with greater inspection under a judicial body.[17] However, as commercial prosperity and financial innovation advanced this reform was put on hold. After Grotius published his theory on ownership-based seller's liens in 1631, public thinking about chattel mortgages evolved. As creditor protection on non-possessory movables increased relative to land and immovable

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property, unpaid sellers' dues increased in seniority.[18] Despite legal uncertainty following the 1610 edict, active commodity futures markets developed by 1636 without bankruptcy constraints to restrict investors —as margins were not required[19]— using only reputation as security.[20]

While repeated interactions enforce compliance, mostly non-professionals became involved in the *Tulipomania* incident. Professionals, meanwhile, had little incentive to short over-valued assets as contracts were unenforceable. By appealing to Prince Frederick, buyers of futures contracts could legally renege without having to declare formal bankruptcy.[21] On the other hand, in 1635, the Amsterdam government fostered the creation of separate enforceable contracts by supporting the use of the Antwerp-styled bearer bills —negotiable bills of exchange— by expressly holding the assignor of a bearer bill liable for payment.[22]

The Tulip price-boom began in mid-November of 1636 as planting obscured as yields and genetic-variation from Dutch speculators until the bulbs sprouted the first week of February 1637.[23] However, starting on February 2nd, 1637, contract prices sagged as word of a trading suspension spread, and three days later, prices collapsed as trading was officially suspended.[24] Rather than enforce contracts, the government interpreted these as 'bets' and annulled all obligations.[25] Most of the losses fell on growers and —although total bankruptcies doubled in Amsterdam between 1635 and 1638— there were fewer than 60 that year.[26]

By 1638 Grotius realized that market sales resulted in fewer rights for pledges relative to the default sales contract. Municipalities subsequently began to regulate the process.[27] In 1643, the government established the *Chamber of Desolate Estates* to handle insolvency, transferring responsibility from Aldermen to commissioners. Annual bankruptcies increased to between 100 and 200 bankruptcies a year in Amsterdam and after amendment in 1659, the process spread to neighboring jurisdictions (see Exhibit 1.[28]) For centuries, new bulbs prototypes in Holland continued to command high prices —and continue to do so for many private market prototypes—before capitalism pushes the price down.[29]

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ii. England's Economic Crises of the 1620s and 1630s

Like much of Europe, the English adopted the early Roman view of credit as fraudulent[30] and instituted harsh insolvency laws for *pro rata* distribution of assets to protect the sanctity of debt contracts.[31] England's first bankruptcy law was established under Henry VIII as an involuntary process against fraud in 1542.[32] Unlike the more brutal practices of France and Germany,[33] the law was only '*quasi-criminal*.'[34] While there was never a *Lex Mercatoria*— an international insolvency regime[35]— English Common law courts considered the mercantile customs of the Hanse and Dutch in matters concerning trade and allowed traders to assign debts.[36] Under Queen Elizabeth I, London's money market developed as England increasingly raised capital from Antwerp, exposing it to Spanish defaults.[37] By 1570, to support credit and trade, bankruptcy was an involuntary process solely for merchants to disincentivize fraudulent conveyances.[38]

Following the defeat of the Spanish Armada in 1588, England's economy was depressed.[39] Several options existed for insolvency relief. Chief Justice of the Common Pleas Sir Coke (1628) described over 100 courts in the 17th century. One of these, the pre-Roman *Stannaries Court*, allowed tin mining partnerships around Cornwall to borrow and invest with limited liability —outside of Common law's jurisdiction for centuries with limited political interference from London.[40]

Another option followed Roman custom. Since at least the 1590s, large debtors sought relief from the Common law in the *Equity Court of Request* in the name of humanity by filing petitions to the *Privy Council*.[41] If successful, the Chancellor issued an injunction for a judicial confirmation of majority arrangements to force dissenting minority creditors into the composition. These '*Bills of Conformity*' allowed for discharge, but pitted the Chancellor against the commissioners as representatives of debtors the creditors, respectively.[42] Still, this practice supported risk taking.

Although ventures with permanent capital thrived in England—such as the *Russia Co*— during the depression, a new type of temporary firm was incorporated in 1600, the *Governor & Co of Merchants of London Trading into the East Indies*, or the *East Indies Co*. ("EIC").[43] While EIC had monopoly trading rights, the firm issued *terminable stocks* for each voyage with the ability to liquidate at will as a committee.[44] Stockholders funded annual voyages from 1601 until 1613, when EIC became a joint-stock—continuing to not be a subscription of permanent capital— but a series of call options on individual adventures[45] that remarkably sold at par consistently since 1601 through the depression.[46]

For most of the Kingdom, however, debt relief was impossible. The Elizabethan *Poor Law of 1601* capped the foundation for Anglo-American poor relief.[47] While export controls kept grain prices stable, these Acts supported the development of the wool industry as job creation in the 16th century.[48]

During an Irish rebellion of 1601, England replaced the country's intrinsically valuable coinage with debased tokens —cutting off outside financing for the rebels and saving finances for itself— under penalty of law as it had many times before. However, when a creditor, Gilbert, rejected the tender of £100 in the debased coins, Common law developed the substantive reasons for the enforcement of monetary obligations on a nominal basis in the case of *Gilbert v. Brett* (1604).[49] Before Amsterdam's solution to debased specie and imaginary money was AWB, England created nominalism by fiat. Evidence suggests that the use of coin to credit was higher during the first two decades of the 17th century than other periods between 1540 and 1660.[50]

Following the Elizabethan debasements, King James I, oversaw a new commercial platform. A new bankruptcy law —*1 Jac. I, c. 15, (1604)*— introduced the formal 'examination' of the bankrupt's affairs and gave commissioners power to assign debts due to creditors and jurisdiction over estates of the deceased.[51] Moreover, the Act protected creditors by stipulating that only Parliament could grant special privileges.[52] *Bills of Conformity*, however, came under attack after 1609 for causing delays, the Common law courts obtained *de facto* authority to annul these bills in 1614.[53] It's days were numbered.

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To export higher margin woolen products,[54] several monopolistic clothiers were incorporated between 1607 and 1619 and centralized production.[55] As with other companies of the time, these had militaristic aspects and citizens petitioned against their methods.[56] Similarly, the *Virginia Co* —chartered in England's American colonies *in 1609*— installed a brutal military regime in 1611, forcing civilian settlers to plant crops, build fortifications, and grow in number to support themselves.[57]

While England did not set up an exchange bank, it's *Merchant Adventurers Co* used banks in Amsterdam and elsewhere as they exported English wool across Europe.[58] Following the dissolution of Parliament in 1614, a proclamation was issued forbidding the export of unfinished cloth, and as the *Merchant Adventurers' Co* declared their inability to carry on the export trade on such terms, a charter was granted, in February 1615, transferring their privileges to the new company promoted by Alderman Cockayne as the old firm was dissolved. [59]

However, a silver drain emerged in England as it failed to calibrate specie exchange rates with AWB, reducing the circulating medium and making English exports —cloth— relatively more expensive. [60] These effects were exacerbated by EIC's continued export of silver for trade in Asia[61] and by debasements and technological advancements of Europe's silver miners in central Europe as the *Thirty Years' War* started in 1618.[62] As the War progressed, Holland developed a domestic linen trade and by 1650 —using capital from AWB — controlled 90% of Europe's trade outside of the continent.[63]

Within the cloth trade, linen dealers —alternatively referred to as drapers or merchant tailors— acted as intermediaries in the international cloth value chain —with as much leverage as shipowners between 1540 and 1660.[64] While industry level bankruptcy data aren't available for the 17th century, linen dealers accounted for a large percent of bankruptcy filings in the 18th century (see Exhibit 1.[65]) In 1616, two Scotch linen dealers in the Hanseatic cities of Hamburg and Elbing —holding over £80 K of capital on English credit— collapsed, precipitating a wave of clothiers failures across London, Suffolk, and beyond.[66] Alderman Cockayne was ousted for losing less than 2% of this amount and the old *Merchant Adventurers' Co* was back by January 1617.[67] Although clothiers had petitioned for a new bankruptcy process it was not possible as no bills passed during the *Addled Parliament* between 1614 and 1621.[68] Instead, James granted company monopolies to his creditors and favorites, further eroding the trade balance.[69]

Meanwhile, the Scottish Parliament addressed the issue of nonpossessory secured transaction by formalizing the doctrine of reputed ownership.[70] Following Roman Civil law, French and English bankruptcy law considered 'secret' liens to be fraudulent attempts at preference unless they were publicly recorded — a onerous process even today.[71] The *Bankruptcy Act of 1621* —which only applied to deeds executed during simple insolvency[72]— used Common Law to draft a test as part of a pro-creditor platform.[73] Importantly, the Act did not nullify the 'secret' transaction or mandate recording, instead leaving it to the courts to determine whether their nature within two narrow categories.[74] Moreover, the law did not attach significant shame to the Roman process— at least relative to subsequent revisions.[75]

The collapse of Central European linen prices fueled English and Dutch smuggling into England —driving down the value of English goods further.[76] As a result of the intertwined monetary and commercial crises, England's value of gold relative to silver increased by nearly 20% (see Exhibit 1.[77]) The *Merchant Adventurers Co* sold half of its 1612 volume and others fared worse as the depression spread throughout the textiles trade.[78] The English government prohibited companies from dismissing employees or raising prices.[79] Many of these companies soon shuttered, leaving the region without employment opportunities and sequestered capital as hundreds of looms fell into disuse.[80] By 1622, inventories remained as clothier bankruptcies tore down regional economies.[81]

Two years of abundant harvests kept food prices low, but devasted farmers —who could not export under prevailing rates of exchange— closing off opportunities for unemployed clothiers— closing off alternative employment avenues in the cloth producing regions.[82] In the midst of crisis, the *Privy Council* set up a

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commission to review the causes — they blamed the monopolistic companies, the poor quality of the finished product, and to the overall deadness of trade — and recommend an alternative strategy.[83] This precedent became the basis of English mercantilism.[84]

As *Bills of Conformity* continued to be political tools, in 1621 Parliament prohibited the judicial confirmation of majority arrangements among creditors. English bankruptcy law emerged as a liquidation-only institution.[85] Although forced compositions became acts of bankruptcy, arrangements were allowed under unanimous subscription and, for another twenty years, under the *Privy Council's* direct guidance.[86] As judicial arrangements were mostly outlawed in England, the production of inside credit became riskier to the holdout problem.

Parliament's attention then turned to bankruptcy reform. The *Bankruptcy Act of 1623 —21 Jac. I, c.19—* increased the efficacy and number of involuntary filings against debtors as the doctrine of reputed ownership based on the earlier Scotch law.[87] This feature became the most striking feature separating Anglo-American secured transaction law from Civilian practices.[88] Simple non-payment became subject for bankruptcy.[89] While the corporal punishment of the original draft was not enacted[90] and prison sentences were reduced from 6 to 2 months, the Act developed punitive measures against fraud and legalized forced entry into debtors' homes.[91]

Following the failures of *scriveners* —proto-bankers holding money in trust[92]— the Act extended the eligibility of bankruptcy to liquidate these for nonpayment.[93] The *Privy Council*, meanwhile, continued to discharge debts —at least for the politically connected— and litigation for this relief represented the majority of the *Council* work.[94] While EIC was still able to raise capital for voyages, the *Virginia Co* collapsed by 1624 —as it required large and frequent capital injections—forcing the State to take over the Colonies in the Americas.[95]

As the Americas trade accelerated, King Charles granted territories —for the present-day States of North and South Carolina and Georgia in 1629, Maryland in 1632— and immigration grew so great that it required regulation in 1637.[96] With the increase of trade, only four bankruptcy commissions were issued in London's vicinity between September 1630 and March 1631.[97] Still, the *Privy Council* settled jurisdiction over claims to the bills of exchanges, assigning contracts made beyond the sea to the *Court of Admiralty* and the Common law courts for domestic bills in 1632. This helped develop legal assignability of inland bills, although they were not negotiable and remained limited to traders.[98]

Although the courts supported the King's divine judgement after he imprisoned debtors to the Crown without charges, Parliament responded with the *Petition of Right* in 1629. The King could no longer force loan and imprisoned those who refused without formal charges.[99] Hitherto, goldsmiths stabilized the exchange rates by melting heavy coins and exporting them to Holland when profitable. Charles ended this process and revived older practice of a royal monopoly on the exchange of gold and silver.[100] In light of this, some goldsmiths began to accept deposits of money and plate in trust, although the *Royal Mint* in the *Tower* was increasingly used as a repository.[101] Frustrated by Parliament, the King dissolved the body for over a decade[102] and accessed credit by taxing indirectly —increasingly issuing monopoly patents on commodities[103]— as well as directly — commanding all communities to procure and fit an armada.[104]

These taxes did not bode well for the economy as the dominant textile industry continued its long-term decline. Almost exactly repeating the policies that led to crisis in the 1620s,[105] the Privy Council urged manufactures to protect employment as inventories accumulated and expanded the *Merchant Adventurers Co's* monopoly. However, German domestic production had improved since the previous crisis while the English industry faced an oversupply of labor and clothiers' assets were increasingly tied up in bad debts due from various merchants.[106] Rather than allowing the currency to depreciate, King Charles issued proclamations against the export of specie and the private minting of copper and tin tokens.[107] By 1638 there were over 150 bankrupts across England— not counting ineligible yeoman who filled debtors' prisons.[108] That year the government appointed a commission, which issued a report recommending protectionism, lower taxes,

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regulation of labor, and —for general trade— a speedier bankruptcy process that is more fair to bills of exchange.[109]

While England continued implementing a brutal bankruptcy process and ever-increasing taxation, Scotland had experienced relative prosperity through 1638. That year, the *National Covenant* was signed to defend Presbyterianism against the advances of King Charles I.[110] Scotland's approach to bankruptcy and religion upheld the sanctity of contracts without compromising fairness or humanity. The following year, the Scots' revolt against England commenced.

As creditor wrangled over funds in courts filled with default proceedings, tax collection fell.[111] Facing imminent insolvency, King Charles I's requested loans from Parliament, the *Corporation of the City of London*, the Pope, Spain, France and Genoa — but all refused.[112] Since bankers kept merchant's deposits at the *Exchequer* for security (until then),[113] the King dissolved the Parliament and then seized the gold in June 1640 to raise his own army — precipitating a banking crisis.[114] That fall, Ireland joined in the revolt against the Crown. In their quest to join the 'civilized', many Irish lost their estates to English merchants through bankruptcy.[115] As in Scotland, the economic issues fanned religious and racial backlash against the English.

In desperation, Charles reconvened Parliament later that year. Although the *Privy Council* continued to provide debt relief after the reform of *Bills of Conformity* in 1621, with the Act of *16 Car. 1, c.10,* in 1641, Parliament eliminated the *Council's* jurisdiction over private litigation — expiring the *Court of Requests*.[116] Parliament required courts to issue writs of *habeas corpus* on behalf of prisoners 'without delay' and abolished the *Star Chamber*, which had become associated with arbitrary exercises of power and other abuses.[117] Similarly, the House of Commons continued rejecting alternative creditor-debtor dispute resolutions.[118] However, as jurisdiction of the courts and judicial officers was not clear, the infringements on personal liberty continued.[119]

An account from 1642 describes a drastic fall in English business and judicial activity[120] and revolts against the Crown started in August. Through the Civil War, the annual average of bankruptcy commissions was 25— with a peak of 38 in 1643, including that of the linen-dealer Winstanley who later became a communist icon[121]—until the King was executed in early 1649 after Parliament's army defeated his.[122]

Under Lord Protector Cromwell, the *Interregnum Parliament* passed England's first insolvency statute providing for the release of imprisoned debtors in 1649.[123] While this Act authorized *habeas corpus* for anyone whose imprisonment resulted from breach of contract or bad debt, Cromwell continued to authorize exceptions as he judged.[124] Since the *Privy Council* appointed the *Commissions of Trade* to investigate the mercantile depression in 1622, temporary commissions were followed by Parliamentary control during the *Interregnum*, until the first *Board of Trade* was created in 1650. When the Committee —headed by Cromwell's son— met in 1655, for the first time, brought merchants into full membership to consult the government on economic policy, establishing *mercantilism*.[125] Without compositions, bankruptcies spiked —68 in in 1652.[126]

In Sir Wolstenholme's case, an active EIC stockholder and managing committee member, four years after he became bankrupt in June 1646, a commission was issued in July 1650 and maintained in 1653 —even though it could not be established that he obtained "*the greatest part of his living by buying and selling*."[127] Both traders and investors in trade were liable to involuntary bankruptcy. Since EIC was first chartered, investors purchased joint-stock for voyages —which could be liquidated or merged— but inefficient, until Parliament endowed EIC with its first permanent joint-stock charter (modeled on VOC) in 1657.[128]

After the King looted the Mint in 1640, goldsmiths supported the Cromwell and multiplied during the *Interregnum.*[129] The industry transformed into investment banking as the goldsmiths served as a repository for gold and their notes as secure negotiable instruments.[130] The creation and growth of these checks was a cause and product of the assimilation of mercantile laws concerning promissory notes into the Common law courts that crystalized between 1648 and 1666.[131] While the bankruptcy tool assisted absconding debtors, the informal

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Goldsmith Co. guild created an apprenticeship process to foster the trust that underpinned clearing and acting as lenders of last resort for one another.[132]

Following the *Restoration* of England's monarchy in 1660, after years of hesitation in the Sir Wolstenholme case, the *Act Declaratory Concerning Bankrupts of 1662* specifically excluded the stock members of EIC, the *Guinea C*o, and the *Royal Fishing Trade* from liability under the bankruptcy statutes.[133] Hence, shareholders in these 3 companies were only liable for the amount unpaid on his shares, while those in unincorporated companies or syndicates continued to be subject *pro tanto* to the law of bankruptcy.[134]

During the Commonwealth, the market price of gold continued rising as the mint price remained unchanged —so less metal was coined as specie was exported— until 1663, when Parliament allowed for the re-export of foreign coin and bullion to guard against the export of English coin, which remained illegal. This was the first time since the 14th century that exportation of gold and silver of any sort was legal without a royal license and a step in the direction of a *laissez faire* financial system.[135] See Exhibit 1.

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iii. England's Panics of 1666, 1686, & 1695

Unlike England — which took back territorial control in favor of free trade after the *Virginia Co* failed in 1626— the GWC maintained control and attempted to privatize colonization offering land in exchange for settlement, but failed as it retained its monopoly of the lucrative fur trade.[136] As in Europe, there was a general lack of specie currency in her American colonies, so Dutch and English colonists started to use wampum a medium of exchange for trade between indigenous communities and merchants in Europe in the 1620s.[137] It was not 1636, that wampum became legal tender in English and Dutch colonies. That year, New England conquered the indigenous Pequot and, by gaining control of their resources, were able to underwrite their colonization expenses, access credit in London, and manipulate prices against their indigenous and Dutch enemies in the Americas.[138]

Likely insolvent already from other operations, the *Dutch West India Co.* ("GWC") opened up the fur trade to private traders in 1639 with a commitment to transport them.[139] To their chagrin, this provoked farmers in the colonies to join the trade and large waves of entrepreneurial traders pretending to be farmers.[140] Without AWB to standardize quality, taxes and other penalties were assigned on low-grade wampum in a 1641 and then again in 1650.[141] Similarly, indigenous tribes devoted time away from their normal subsistence activities.[142] As in its mother country, New Netherlands did not imprison debtors[143] but enforced punishment to maintain credit and secure the payment of accounts in order to preserve the commerce of the colony.[144]

By 1657, the depreciated wampum led to massive inflation and additional laws passed to control food prices and settle debts.[145] As the English colonies had more access to silver, they devalued the wampum in 1658 and by 1662 eliminated its legal tender.[146] The combined effects on GWC exacerbated its insolvency. Although New Netherlands informed GWC of England's desire for New Netherlands, GWC failed to send reinforcements, believing English colonists would not aid King Charles II and give up the religious freedoms offered by the Dutch.[147] They were wrong, and the Duke of York soon acquired the territory of present New York, Pennsylvania, and New Jersey — establishing arbitration and judicial insolvency processes and replacing liberal Dutch credit policies with debt imprisonment.[148]

Trade soon fell as England went to war with Holland in 1664 —and the crisis grew as London suffered its final *Great Plague*.[149] Inspired by the tools of the goldsmiths and the ability of joint-stock companies to raise capital, Cashier Downing of the Exchequer set out to revolutionize public borrowing in the face of this calamity. Unlike the Exchequer's tally of *pro* debts —which gave legal claim to specific revenues as the lender's name was written on it— the tally of *sol*, while more easily assignable, was not popular as it required an Exchequer warrant for repayment, instead of a firm guarantee. To improve the attractiveness of the negotiable tally of *sols* —relative to the popular goldsmith notes— in 1665 the repayment order was sequenced to guarantee automatic repayment.[150] Though legal tender for the payment of public and private dues, tallies were transferable only by endorsement and, unlike specie currency, paid interest.[151]

Moreover, the addition of free minting 1666 opened coinage to individuals and set England on a *duo-metallist parallel* standard.[152] Along with the 1663 Act, the gold guinea was introduced for trade and acceptance by the Exchequer at a free exchange rate to the silver schillings already circulating as money. With the mint ratio in favor of gold in England and Spain, and in favor silver in France, gold came into England and silver drained into England's Colonies in the Americas and France, setting them on a silver based bimetallic standard. By the end of the century, the schillings that remained in England depreciated drastically against the guinea as profiteers clipped an average of 48% of the original content, leaving people to create their own money.

As trade had to pass through the London, which was ravaged by the *Plague*, trade decreased and by August 1666 bills of exchange stopped discounting. The following month, the *Great Fire of London* brought the country to its knees.[153] The War climaxed in 1667 as the Dutch Fleet arrived in London's Thames River and won command of the North Sea.[154] Merchants ran on goldsmiths, resulting in a universal suspension of cash

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payments as banks with deposits of £1.2 M failed, bringing down merchants with them.[155] As the depression worsened, the government reacted by appointing Parliamentary committees and a new Board of Trade, the *Council of Trade*.[156] EIC Governor Sir Child blamed monopolistic practices —advocating Dutch mercantilism instead—and a lengthy bankruptcy process that tied up the little credit available in England.[157] As a result, the 1649 insolvency act was amended in 1670 under *Acts 22 & 23 Car. II, c.20*, switching adjudication of contested oaths from a jury trial to the court, and while a creditor could insist on continued detention of the debtor, they had to pay a weekly subsistence fee.[158]

Critical of goldsmiths, Sir Child advocated for adoption of Dutch mercantile laws concerning bills of exchange and his testimony assisted Cashier Downing in secured a tax on goldsmiths' loans to incentivize their purchase of Exchequer's tallies.[159] Although goldsmiths had issued notes for decades, they became 'numerous' only circa 1670 —for a brief period following the 1667 crisis— implying that there was greater trust after goldsmiths' acquired the government liabilities.[160]

Despite promises to avoid repeating the mistakes of his father, King Charles II amassed heavy debts following the *Restoration*.[161] Like his father, he defaulted in 1672 and looted the merchants' gold when he decided to *Stop the Exchequer.[162]* England united with France against Holland —leading to Dutch occupation of New York in 1673— but as, Parliamentary financing became more difficult, Charles arranged a treaty under the terms that the Dutch relinquish New York (and GWC was downsized.[163])

Over 30% of the funds came from a single goldsmith, Sir Vyner, but his customers were prohibited from suing him, and he carried on until 1684.[164] As depositors lost trust in goldsmiths notes,[165] the banks defaulted on their obligations to merchants and the widows and orphans who depended on the interest of this capital were left destitute.[166] Although the King promised to resume payment in a year, he then defaulted on that and paid no interest through 1676.[167] At that time, the Crown's debts to bankers, their heirs, and assignees was reorganized through the *Letters Patent* decree.[168] Yet, instead of saving the industry, there was a net exit of 13 goldsmith bankers, 6 of which failed through bankruptcy in 1678.[169] In 1679, Parliament closed the loopholes of the 1641 *Habeas Corpus Act* by clarifying the jurisdiction of courts and judicial officers and —although it did not enlarge the types of confinements for which the writ could be issued[170]—it survived for 150 years and was called the Second Magna Carta as judges increasingly held confinement to be illegal.[171]

Pamphlets touting the benefits of a national credit bank circulated for years, but it was difficult to convince creditors to part with funds that the king had access to.[172] As the *Corporation of the City of London* —along with a fund for orphans and widows that it managed — had advanced gold to the Crown to the point of insolvency,[173] in 1682 the Corporation launched the *Bank of the City of London* ("BCL")—to create credit collateralized by inventory to prevent downsizing and selling at a loss.[174] Similar projects were organized by merchants and the *Royal Fishing Trade* —which had engrafted a bank unto its bankruptcy-remote charter, thus extending limited liability to shareholders.[175] By 1683, the Crown defaulted on the *Letters Patent*, for although it had been ratified by the House of Lords, it was never presented to the House of Commons, and so not passed into law.[176] Most of the £2 M of liabilities stored with goldsmith and scrivener bankers that vanished in bankruptcy over the 25 years after 1669[177] was lost during the banking crisis that ensued.[178]

BCL survived by depleting the *Orphans' Fund* that it managed,[179] while the other credit schemes failed. Captain Blackwell, —a promoter of the *Royal Fishing Trade* credit scheme— left London for the Massachusetts and briefly instituted his scheme there — but after the valuable charter had expired.[180]

Since its foundation, AWB had functioned as a depository. The success of the Dutch allowed the government to begin extracting specie capital from the institution without paying interest in 1683 — creating fiat money— to support VOC's trading activities and engage in stabilizing open market operations.[181] Over the next 2 years, VOC parlayed this bullion to India in an attempted to monopolize the textile trade.[182] Not to be outdone, EIC invested in Indian factories while promoting textiles domestically—by distributing free

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merchandise to the Crown.[183] EIC's 1683 charter reaffirmed its monopoly trading rights and granted seizure rights — making it both plaintiff and judge in the same cause.[184]

While numerous acts promoted supply of low-priced wool as production helped the manufacturer keep spinners and weavers employed, farmers were allowed to export grain only below a domestic price in gold that was stable for a century until the cap was lifted in the 1670s.[185] As the domestic industry continued to focus on textiles, the importation of cheaper textile from India pushed wool prices to their lowest in a century (see Exhibit 1). The export of cloth had been the domain of the regulated *Levant Co*, which struggled to maintain the joint-stock EIC.[186] and resulting in massive economic dislocation and poverty.[187]

Following the death of King Charles II in February 1685, his brother James II became King —but first had to put down a rebellion by his half-brother. News of *Monmouth's Rebellion* —which focused on the south west region devasted by the textile trade—triggered a run on banks in London, and while few failed, BCL collapsed.[188] Rather than question about specie export, the arguments developed the middle phase of mercantilism — protectionism of domestic industry against imports[189]— and Parliament immediately placed duties on the imported textile.[190] However, the government continued to protect EIC's monopoly against free market 'interlopers' —in court, with a new charter, and with the use of force[191]— but unofficial trade increasingly pushed the company into insolvency and the balance of trade against England.[192]

In 1687, a diving expedition headed by Captain Phipps raised 32 tons of gold and other treasure from a Spanish ship, and upon return to England, inspired emulators. While Phipps, like previous adventurers since the Elizabethan privateers, organized as a partnership, the new ventures floated to raise capital for passive investment as joint-stock companies, even when basing their ideas on patented inventions with intangible benefits, without a debt cushion against bankruptcy.[193] Creditors were hesitant to advance large funds to these —or partnerships in general— as in case of the bankruptcy of any partner, the stock in the others would be liable for seizure.[194] While charters were extended for limit liability—to smelters and the like—stockholders in the increasingly popular joint-stocks were liable in unlimited amount, proportional to their shares in the equity of the company under Common law.[195] As the domestic industry diversified, EIC's importation of Indian textiles resumed.[196]

With the *Glorious Revolution* of the following year, Queen Mary and William of Orange ascended the throne. The bankers scorned in 1683 petitioned the Exchequer for payment of arrears and, after a lengthy trial, the court voted in their favor —establishing that the Crown's creditors could claim money by petition of right— for, as Judge Mansfield noted, no longer had the Crown contracted for all position of the public money in his individual capacity as, since the *Revolution*, Parliament appropriates supplies.[197] The reorganization of these liabilities debt became England's first *National Debt* (which was later amortized in the *South Sea Co*. in 1720.[198])

The Monarchs also supported Dutch-finance for addressing the scarcity of money. The State sanctioned its first lottery—with the interest-paying blanks circulating as a medium of exchange for over a decade[199]— and granted a royal charter to the *Governor & Co of the Bank of England* ("BOE") —on condition of a loan to the government in the form of its own banknotes— floated on June 1694 as part of *Tunnage Duty Act— 5&6 Will. & Mar. c20*.[200] Monied creditors across England, Holland, and Switzerland purchased shares —providing more funds than goldsmiths dared to extend, but in doing so became a Whiggish institution— and so its charter was only for 10 years to require regular extension.[201] That year, the *Orphans' Fund* that had collapsed with BCL the previous decade was reorganized to prohibit lending to the government.[202] By 1695, in 7 years since the *Glorious Revolution*, the number of unincorporated joint-stock enterprises increased by 5 times.[203]

While the exchange rates continued to float, it collapsed in 1695,[204] the *Exchequer* was instructed to cap the exchange rate between schillings and the guineas at 30:1 and down to 22:1 as all schillings were re-coined for full silver content.[205] The following year, the House of Commons in favor of establishing a land bank to establish a fund of credit on a non-metallic basis by issuing unconvertible notes collateralized by the value of

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property.[206] While BOE assisted extended resources in implementing this process, concern the land bank would compromise BOE, started a run in May 4th and BOE suspended.[207]

To protect the circulating medium, BOE added an interest rate to Exchequer bills, but international trade collapsed.[208] During the *Panic of 1696* riots broke out as English tallies (short-term public debt) fell to a 40% discount over 70% of the joint-stock companies failed.[209] In January 1697, BOE was induced to adopt an engraftment —which transferred the tallies' discount to BOE stock and steadied the market in tallies and other unfunded debts— by distributing its reserve profits and subscribed for a temporary stock capital addition payable in up to 80% tallies.[210] This financing act —*8 & 9 Will. III, c.20*— extended limited liability for BOE's shareholders and shielded them from involuntary bankruptcy.[211]

Following the *Revolution*, EIC's insolvency was no longer tenable and was forced to forfeit its charter in 1693 after failing to pay taxes.[212] Scotland and England were united by Crown and not by Parliament and after repeated attempts at commercial union, the Scottish Parliament received King William's blessing to establish joint-stock companies to combine colonizing and commercial operations in 1693.[213] Founded in 1695, the *Bank of Scotland* ("BOS") and, for the export of Scottish goods, the *Co of Scotland Trading to Africa & the Indies* ("COS") started the following year.[214] Unlike BOE, BOS was forbidden from financing the government and granted a monopoly over public banking —but with 12x less capitalization.[215] Although shareholders of both BOS and COS had limited liability, BOS was forbidden to trade while COS had a perpetual trading monopoly and was not forbidden to bank.[216]

In England, by 1696, EIC and other merchants successfully petitioned Parliament to prohibit COS from raising capital in England.[217] COS, however, already had idle funds and began deploying them —first by lending to shareholders and then by starting and then by issuing notes. As doubt's emerged about BOS' future, creditors began cashing in notes and a liquidity crisis emerged. BOS called on its (small) capital subscriptions and for aide from BOE, but the latter was in the midst of its own crisis.[218] Within a year, the Scottish economy was damaged as both COS and BOS were shaken and —although COS invested what was left of its capital to start a colony of Darien— EIC saw to it that venture failed.[219] The collapse of COS and a weak BOS unleashed economic depression that lasted for years.[220] Following the numerous bankruptcies,[221] Scotland's *Act of 1696*, which distinguished the afore synonymous *insolvency* from *bankruptcy*,[222] while strengthening the shame provision for the latter.[223] By 1707, Scotland had little choice but to unite with England and Ireland to form Great Britain.[224]

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iv. Panic of 1720

Unlike England —which had abolished forced compositions and death penalty in 1621— France incorporated the judicial arrangements into a revolutionary commercial code based on Italian tradition preserved in Lyon under the *Commercial Ordinance of 1673*.[225] Lyon's quarterly fairs served as clearinghouses for bills of exchange[226] and the *Ordinance* incorporated Dutch principles to foster credit creation.[227] The *Ordinance* created the *Admiralty Court* for maritime matters —distilling doctrines created in the Mediterranean over the ages regarding negotiable paper[228]— and *Consular* courts, which covered all other matters relating to trade.[229] The *Ordinance* created accounting and reporting requirements for merchants and brokers[230] to prevent insolvency concealment[231] — such as the non-payment of a bill of exchange or some other promissory notes.[232] Each obligations was recorded and notarized by semipublic officials, which served as a decentralized credit system for France instead of banks.[233]

Peers adapt at detecting fraud headed the *Consular Courts*[234] and adjudicated based on *intent* following French law dating back to the 16th century. Debtors were between *faillites* —innocent traders with temporary setbacks— and *banqueroutes* —criminal speculators.[235] The latter was equated to theft and, like thieves, fraudulent bankrupts were subject to the death penalty.[236] The *Ordinance* did not establish jurisdiction for the law between the courts, allowing for competition between them.[237] In between the two extreme judicial processes, the *Ordinance* created a platform for debt renegotiation and discharge[238] by embracing and embraced Civil law contracts assigning benefits for creditors negotiated before a notary.[239] The latter —the *cessio bonorum* Civil law insolvency procedure based on the 15th century Italian law —freed the debtor from bodily constraint upon a court order agreed on by all or 75% of the creditors.[240] Although, all insolvent debtors were subject to the collective procedures in principle, in practice the rules applied to traders.[241] Unlike England, which precisely defined acts of bankruptcy, abscondment was the only act that drew the same effects in France.[242]

BOE transformed the English monetary system out of the metal age and the realm of credit.[243] The success of BOE even provoked France to issue a new type of money to finance the *Treasury* in 1701.[244] Although English inland trade was conducted on credit since the 16th century, [245] it was informal until the legal developments allowed negotiability with non-traders for inland bills (1698)[246] and bills obligatory (1704).[247] Despite this, holders' eligibility for and preference in bankruptcy proceedings remained unclear. While, the English Parliament established voluntary bankruptcy code, based on the French *Ordinance,* for compositions in 1697, only a single case was decided before it was repealed several months.[248]

As bankruptcies became more common in the turbulent times and legally acceptable, an English linen draper and his business partner concocted a scheme to defraud creditors and abscond the country.[249] The international manhunt and frustration of creditors about getting information from debtors led to England to adopt a bankruptcy process that differentiated between fraud and misfortune with under *Acts 4 & 5 of Anne* in 1705.[250] These Acts did not reintroduce the *Bills of Conformity* limited to the Chancellor, but empowered commissioners to issue *Certificates of Conformity*[251] —offering a discharge from prebankruptcy debts for merchants and traders in return for supplying information for the benefit of creditors— until sunsetting in 1709.[252] This precedent splintered Anglo-American law from Continental Europe, [253] which continued to follow the Roman tradition of bankruptcy as a creditor device for collection with contempt for impaired contracts into the 20th century.[254] While the act introduced the concept of capital punishment for fraudulent bankruptcy to England, a tidal wave of petitions resulted in an amendment requiring consent of 80% creditors, decreasing filings by 1707.[255] Moreover, farmers, graziers, and receivers of taxes were free from and not entitled to bankruptcy.[256] Still, the level of filings following the Statues of Anne structurally increased (see Exhibit 1.)

Meanwhile, the *Sword Blade Bank* ("BB") which won a Parliamentary bid to start a land bank and issue paper in exchange for army debentures in 1702,[257] accrued enough capital and set off a run on BOE in 1708, after

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which Parliament granted BOE a banking monopoly and barred all corporations from issuing notes (and limiting them to checks and other promissory notes.[258]) With BOE fragile, the Exchequer issued additional lottery loans — paying over 8% interest for several years.[259]

Although BB would survive as a bank in the shadows, one of the original trading companies illustrates the dearth of alternatives for unprofitable chartered joint-stocks. There was Common law right of action was recognized and, if one existed, it could only be granted by the act of Parliament.[260] A pre-*Glorious Revolution* slave trading company whose stock traded at £173 at the end of the 1680s, *Royal African Co.* ("RAC"), was insolvent for over a decade —it's stock traded below £3 between[261]— before Parliament reorganized it through an Act — after which it continued to linger on until a new strategy in 1720.[262]

Following high bankruptcy petition levels, the discharge privilege of the *Statues of Queen Anne* were extended until 1716 and then allowed to expire.[263] Although filings doubled between 1719 and 1720, bankruptcies remained comparatively low relative to earlier as well as to subsequent waves.[264] Part of the reason may be that the new bankruptcy act*, 5 Geo. I,* enacted in 1719, reintroduced discharge and capital punishment and added an allowance for fair bankrupts.[265] Prior to the Act, several creditors might block discharges, but the Act empowered bankrupts to testify directly on their own behalf without requiring debts to be due before petition — but both features were prohibited later by amendment.[266]

The French *Ordinance of 1673* was amended in 1702 stating that all transfers and transports on the goods of merchants who become bankrupt, will be void if they are not made at least 10 days before publicly known bankruptcy.[267] Moreover, the insolvent's home —which usually included his place of work— became an inviolable sanctuary.[268] Unlike the English imprisoned debtors, France charged creditors for sustaining the insolvent in prison.[269] This sanctuary did not extend to the commercial city of Lyon —from whence the *1673 Ordinance* developed— and instead advanced supervised receiverships during periods of moratoria.[270]

Amidst a famine in 1709, the French King defaulted on his debt, sparking a financial panic as leading banking houses fell and ending the French monetary experiment[271] as BOE was thriving and financing new companies.[272] One of these was founded by the family of BB's leaders.[273] Based on the engrafted stock concept used by BOE, the *South Sea Co.* ("SSC") converted depreciated government debt into trading company stock.

France was in crisis over government debt as the indebted *Sun King*, Louis XIV, died in 1715.[274] Prior to his death, merchant courts were given jurisdiction over *faillites* as well as all civil *banqueroutes* proceedings for a 9-month period — which was systematically reintroduced as an emergency measure[275]— and additional amendments were made in the summer of 1718.[276] However, judicial arrangements were still the preferred option as over 80% of insolvencies between 1714 and 1717 settled without cessation of activities or liquidation — although by 1716 the Monarch's repertoire of bankruptcy procedures was limited.[277] The French *Panics of 1708 & 1715* correspond to peaks in notarized bankruptcy settlements (see Exhibit 1.[278]) John Law recommended to the French Regent to, as with SSC, form the *Compagnie d'Occident*, and in August 1717, the firm sold equity subscriptions backed by a government trading monopoly and depreciated government obligations.[279]

With the *Act of 1717*, English metal money was at par as the legal tender exchange value of the guinea was fixed at 21 shillings.[280] As England's parallel currency experiment ended, John Law built upon his earlier land bank theory of creating paper currency superior to silver in France,[281] Law's *System* combined aspects of BOE and SSC and, after several centuries, has come to underpin modern monetary economics.[282] Under the auspices of the French Regent, the *System* fused the *Compagnie d'Occident* together with the French national debt, *Mint*, trading firms, and assorted banks into a quasi-central bank, the *Mississippi Co.*[283]

As the operation was contingent on former bondholders exercising options on the shares of the *Mississippi Co*, Law lowered interest rates to raise stock prices, thus monetizing the debt and depreciating the currency in

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1719 — see Exhibit 1.[284] This set off an investment boom across Europe and more ambitious debt for equity swaps conversions.[285]

In London, BB began replicating Law's tactics through SSC, only without entanglement with England's Mint while BOE remained their 'mortal enemy.'[286] Still, BOE lent freely to stockholders to increase its share price.[287] Without a bankruptcy options, RAC followed the example of SSC and BOE by lending funds to equity holders at low rates to drastically increase its valuation.[288] The *Hudson's Bay Co.* sat out most of the boom but planned to issue smaller fractional shares for cash, although few others did.[289] Similarly, the courts supported risk taking. The 1718 decision in *Bromfield v. Wytherley* overturned earlier thinking, concluding that solvent trustees and executors were entitled to keep profits from risks they took using money in trust.[290]

By April 1720, SSC won a contract against BOE to take over England's national debt (that originated from the earlier *Stop of the Exchequer*.[291]) Unlike the *Hudson's Bay Co* planned sale of fractional shares or the business partnerships with unlimited liability,[292] the *6 Geo. 1* financing act for SSC reassured limited investors they were limited partners in subscription shares that acted as compound call options — with clear exercise costs and liability limited to the value of the share.[293] This was similar to BOE's structure and, as with BOE, SSC's debt was secured on government debt —just like that of EIC and the *Mississippi Co*.[294] Moreover, as with EIC, BOE, Exchequer Bills, and select other companies, as long as members' failure only came from their interest in the companies, the holder was free from the threat of bankruptcy and the security was not subject to foreign attachment — while the status of shareholders in similar corporations was questionable.[295] Over the next several months, perhaps 190 joint-stock ventures were launched with capital of £200 M were launched across Europe as winnings from France and England were scattered— the most attractive industries being trade and marine insurance.[296]

In France, Law supported shares of the *Mississippi Co.* by allowing conversion only into depreciating livres and not specie, as well as several deflationary decrees —including demonetizing specie coinage and cutting the nominal value of notes and shares in May 1720, but were lifted shortly after under public pressure — in order to stem the capital outflow that was feeding SSC in England and other ventures across Europe.[297] However, on July 6, the *Banque Royale* suspended. This shifted speculation from shares in the *Mississippi Co* to the bank' notes, as French livres were sold in favor of gold.[298]

In June, as a result of selling additional shares on subscription, SSC pumped £4.75 M more into the market, running the total to £11.4 M since April.[299] To limit the mushrooming bubbles that competed for capital with SSC, the Parliament passed the famed *Bubble Act of July 1720* —which limited joint-stock corporations to activities specifically stated in their charters. [300] An exception was made for marine insurance, prior to which had been underwritten on the side by several merchants with unlimited liability and so dominated by the Dutch.[301] While the goal was to provide and more secure recovery of losses from a single joint-stock corporation than from many individual underwriters separately.[302] The act eventually caused a lemons problem that sank these firms.[303]

Similarly, in the short term, the law destabilized the market and as SSC's stock price fell. While the English invested SSC winnings banks and real estate,[304] the French continued to see SSC shares for gold as livres depreciated, further inducing the Dutch to sell SSC collateral and recalling advances.[305] As investors across Europe sold SSC shares, the English pound depreciated as investors flocked to the safety of gold and the reserve currency of AWB.[306]

BOE subscribed to support SSC's share price, but before this settled, the goldsmiths and private bankers who advanced on SSC stock ran on SSC's bank, BB, which suspended on September 24th.[307] The run subsequently spread to BOE, which continued to use its capital to support SSC through purchases of subscriptions and bonds.[308] As SSC shares were backed by the government liabilities that they sought to reply, a bankruptcy of SSC would be a akin to national bankruptcy and so, in 1721, King George I issued a general pardon, while

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land owners were allowed to reorganize.[309] Although the law was modified to make SSC's Caswell the first member of the House of Commons to be declared bankrupt, BB resumed and continued operated for decades.[310] While SSC's Treasurer Knight unsuccessfully absconded, the President of SSC's South American trading post pawned his belongings to avoid bankruptcy and became a renowned physician.[311]

Despite the increase in circulation that negotiability allowed, it remained unclear if holders of promissory notes were eligible for bankruptcy and what standing they had as creditors in the counterparty's bankruptcy.[312] So the *Bankruptcy Act of 1721 —7 Geo. I.* — allowed all merchants who sold on credit and used bills of exchange or other promissory notes payable at a future day for goods, delivered to such as after become bankrupt, shall be admitted to prove upon the bankrupt's estate. However, bill holders such as bankers, brokers, and factors were not explicitly made liable for bankruptcy until, *5 Geo. II.* granted authority in 1731.[313] This act also overturned the previous act's provision that contingent liabilities be provable after the court questioned the possibility of such proof.[314]

Law tried to save his vision, but by October shares were demonetized and a receiver was appointed after Law was made to leave, while the various companies under the holding company were in receivership.[315] In 1724, France established an exchange to float its debt to foreign investors making future default and reorganization—due to Law— not possible.[316] In 1725, France devalued the livre as the *Mississippi Co.* finally liquidated, starting a severe crisis.[317]

It was only during this period that French (and English) bankruptcy levels increased to the high levels experienced before the mania and insolvency accommodation following the *Panic of 1720* (see Exhibit 1). Since SSC was separate from BOE, the integrity of the latter was maintained and it continued financing England with paper currency, although Parliament imposed limits on stock jobbing in 1734 and while the *Bubble Act* remained in force —requiring Parliamentary approval for negotiable joint-stock endeavors— and leaving all others to the laws of partnership.[318] However, in France, as John Law's *System* also controlled both the *Banque Royale* and the *French Mint*, the collapse of the *Mississippi Co.* enveloped the entire French financial system in fraud, limiting trust innovation and destabilizing the social system.[319]

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v. Panic of 1763

Although municipal exchange banks existed across the Hanseatic League over the 15th and 16th centuries,[320] the *Kipper- und Wipperzeit* competitive debasements of 1619–23 —from which England's economy collapsed— led merchants in found the *Bank of Hamburg* (1619)[321] and the *Public Bank of Nuremberg* (1621).[322] Particularly for the former, the Dutch played a key role in supporting development to cement trade across the Empire.[323]

The *Peace of Westphalia* in 1648 ended the Hapsburg Spanish Empire's *Eighty Years' War* with the Dutch and *Thirty Years' War* with the French and northern Europe. Under the compact, sovereignty lay with the State — not the empire or dynasty— as the building block of European order, free to choose its own domestic structure and to monopolize power with respect to its territory and citizens.[324] Within the Holy Roman Empire, the debts of a territory were regarded as debts of the sovereign, and the Emperor increasingly granted lengthier moratoria to principalities for debts accrued in times of war.[325] The economic crisis that started in the 1620s resulted in nobilities' numerous bankruptcies had expanded into a social one and the State devolved deeper into abolitionism to maintain order.[326]

Although Dutch international bankruptcy arbitrations functioned outside of the State's jurisdiction until, the 1666 theories of de Somoza for a better bankruptcy process gradually led Germanic States to establish a judicial process within their territorial control.[327] Some were former members of the Hanseatic League that wrote down existing customs — Sweden (1734)[328] and Hamburg (1753) [329] — while other inland States adopted the Dutch *Wechselstrenge* (holder in due course) to give life to their economies — Frankfurt (1666), Gotha (1670), Breslau (1672), Eisenach (1702), Saxony (1724), Bavaria (1753). [330]

The 1722 Prussian bankruptcy law stipulated the publication of the cadastral register and mortgage law revisions in 1750 established a debt seniority ranking —securing a privileged status for debt registered in first position and qualifying land as collateral for loans— leading to an influx of credit.[331] Similarly, the *Swedish National Bank* issued inconvertible bank notes to finance the *Age of Freedom* — loans increased every year from 1745 to 1762 and, in 1756, loans to private persons accounting for 54%— collateralized by merchants' partly finished commodities.[332]

During the *Seven Years' War*, government war financing took precedence over credit management. England borrowed heavily from Amsterdam.[333] Prussia debased its currency in 1756 and raised the credit limit for debtors above the traditional threshold of 50%.[334] Similarly, Sweden, debased its coins and increased paper currency to finance loans to the Crown — which increased to over 50% as the inconvertible currency massively depreciated.[335] The war also stimulated commerce in the Port of Hamburg —which had stable bank money due to the *Bank of Hamburg* and the 1753 pro-mercantile bankruptcy law— connecting markets in Prussia and Amsterdam,[336] where along with other members of Hanseatic League, these countries financed their war effort using Amsterdam's market for accommodation bills.[337] These bills were secured with contingent claims and liabilities with the strict legal provisions for the transfer and negotiability of the bills — endorsement and *Wechselstrenge*.[338] While Hamburg's merchants complained for decades that the bankruptcy law allowed for concealment of debts through bills of exchange, the process continued to be carried out before a general court (until 1816) as the jurisdiction feared losing business.[339] This lack of oversight may have led the bankers to associate and monitor one another — as well as band together to protect weaker members. Once a commission opened, however, assignees immediately collected and classified the debtor's estate.[340]

As the war came to an end, Prussia and Sweden withdrew the old debased money from circulation and minted new money in Amsterdam funded using accommodation bills, unleashing deflationary from the temporarily reduced money supply.[341] Similarly, Sweden contracted bank lending and, like Prussia, contracted with the Dutch for new coinage.[342] As commodity prices fell, the inherent instability of accommodation bills cracked as short-term debt could no longer be rolled over.[343] There were limited economic effects after several bankers —*De Neufvilles* and *Arend Joseph*—that lent to the Prussian government failed in Amsterdam —and not enough

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incentive for the Dutch government or private bankers to save them— until a group of banks in Hamburg protested for preference.[344] Unsubstantiated anti-Semitic rumors blamed *Arend Joseph* for the failure of *De Neufvilles*— claiming he escaped to the sanctuary city of Culemborg— although such cities permitted debtors, not thieves, homosexuals, or others judged to be criminal.[345]

Although *De Neufvilles* eventually paid out over 60% in 36 years, the Hamburg banks could not stand a protracted bankruptcy process.[346] Where endorsement and *Wechselstrenge* formerly offered security, now Hamburg banks were asked to 'pay twice' for the same bill —once to the (now failed) Amsterdam banker, and once to the owner of the bill— fueling distressed selling to meet obligations stemming from the accommodation bills.[347] While the *Bank of Hamburg* ran out of capital supporting banks, the governments of Hamburg or Amsterdam helped.[348] To preserve their own liquidity, Amsterdam brokers protested virtually all incoming bills drawn by Hamburg counterparties, forcing 100 to close down, spreading the contagion to other countries.[349]

While Hamburg banks tried to protest incoming Prussian bills, the latter military power warned that the city was liable and he would attack if need be.[350] With few other options, Hamburg merchants organized began discounting goods using admiralty bills and as the 1753 bankruptcy process proceeded, directors realized that the panic was worse than thought.[351] Similarly, the *Bank of Hamburg* liberalized lending (and several years later suspended withdrawals before switching to silver bullion over gold as the basis for deposits.[352])

As other commercial centers sought the safety of gold, BOE and London private bankers extended credit and delayed presenting bills for payment to Amsterdam —to protect England's key credit source while also taking over Dutch trade and finance in the Baltic.[353] Moreover, in settling bankruptcy disputes that arose out of the ordeal, England extended the same protections it offered its own citizens to the Dutch.[354] The equality of international debtors that made Holland the center of commerce was now fully alive in England. Although Holland denied the bankruptcy process to many bankers, failures subsided as German bankers recalled their bills of exchange.[355]

There were initially fewer failures in Prussia as the government issued a payments standstill on outstanding bills —violating *Wechselstrenge* — as well as bailing-out local creditors.[356] Although Prussia created a special bankruptcy court to help insolvent merchants affected by the failures in Amsterdam and Hamburg stay in business,[357] the country entered a deep depression as foreign and local credit extension dried up.[358] After passing a 3-year general moratorium on all outstanding debts in 1765, the private bankers that survived the 1763 Panic failed within a year.[359] At the end of the moratorium in 1768, many estates had to be liquidated — and land was no longer suitable collateral for investment — but industrial production finally increased and the special bankruptcy court was disbanded.[360] Within a decade, Prussia fixed the mortgage market by creating *Landschaften* —government sponsored entities with joint-liability—financed by the issuance covered bonds (that could circulate as money only in Prussia) and secured by strict liquidation upon nonpayment of interest.[361]

Following the collapse of the Swedish banking system,[362] a new government adopted deflationary policies in 1766[363] and over the following years revised bankruptcy to be an easy, fast, and debtor friendly voluntary process.[364] The toxic combination of these policies accelerated bankruptcy filings and precipitated the coup d'état of 1772 that overthrew parliamentary government and ended Sweden's *Age of Freedom* (See Exhibit 1.[365])

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vi. Panic of 1772

Before BOE in England, Scotland's first chartered bank, the *Bank of Scotland* ("BOS"), had a monopoly over banking —prohibiting private banks with over 6 partners— until it was recharged in 1716, due to suspicion of Jacobite sympathies following the union of the English and Scottish kingdoms in 1707.[366] While BOS was prohibited in lending to the government, over the next few years, holders of the Scottish national debt organized as a company to protect their claims, and the *Royal Bank of Scotland* ("RBS") received a charter in 1727— the same year that BOS included a clause giving it the option to suspend convertibility of notes into specie.[367]

In the 1720s, following Scotland's Darien debacle but prior to the advent of country banks in England, British private bank notes circulated most extensively in Ireland.[368] As in Scotland, these early banks were partnerships situated inland and established by landed gentry to facilitate the remittance of landlord rents.[369] Not only did these partnerships extend unlimited liability to the partners, but bankers' unsettled estate were made liable at the time of death to all the bank debts. After a string of deaths, one incomplete will in 1733 required a liquidation that resulted in several bank failures and a major contraction.[370]

Unlike the private banks, during the *Panic of 1745* the Scottish chartered banks used the clause that gave them the option to suspend convertibility of notes into specie — which saved the banks during the Jacobite rebellion in Scotland.[371] Following the uprising, normalcy returned and the *British Linen Co.* ("BLC") was chartered in 1746 to develop Scotland's linen industry. By 1750, BLC began financing itself by issuing circulating notes.[372] To encourage production of export, Parliament extended a bounty,[373] which fostered the rise of industry. As the Scottish linen trade blossomed, so did the Irish industry, supported by and further fueled the development of Irish banks.[374] When the bounty was removed in 1755, the linen trade collapsed (See Exhibit 1.[375]) While the land based banks survived, those with the mercantile community collapsed.[376] As there was no Irish bankruptcy law, Parliament passed an Act of in 1756 —*29 Geo. II, c. 16*— prohibited bankers from engaging in trade as merchants.[377]

In Scotland, private banks began forming in 1761.[378] Unlike the *chartered* public banks with limited liability, the banks were partnerships, wherein each partner had unlimited liability with restricted ability to sell the shares.[379] However, as Scotland's chartered banks did not have a banking monopoly, Scottish private banks —unlike their Irish predecessors—were able to have over 6 partners— and so could tap greater capital in times of crisis.[380] After Scotland's chartered banks used the clause again during the *Panic of 1763*, the private banks successfully lobbied to abolish the option clause and made all bank notes protestable by summary diligence by the *1765 Bank Act*.[381]

A network of Irish and Scottish bankers — connected by BOE —spread to London, Paris, and Amsterdam[382] and employed Dutch-style chains of bills to generate credit.[383] The *Douglas, Heron & Co of Ayr* ("DHA") started in 1769 and unlike the other private banks supported by merchant capital, was founded by politically-connected, land owning nobility.[384] While the linen industry blossomed with the assistance of BLC —and by some estimate was overproducing by 1769[385]— BLC's lack of sales success led the company to solely focus on banking.[386] Despite the loosely worded 1756 Act, Irish merchants specialized in bill exchange facilitated credit creation.[387]

The growth of the linen industry led to additional investment in infrastructure to support export and urban development— including turnpikes, canals, and other public works.[388] About a third of Colonial American debt had been extended by the Scottish credit machine— and by 1769 Scotland imported more tobacco from the colonies than England, before exporting to Holland and France.[389] In 1770, Scottish banks agreed to clearing principles as security mechanism —providing for summary diligence on nonpayment of banknotes — but instead of establishing limits DHA acquired several smaller banks.[390] Over the next year, DHA

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increasingly relied on short term financing from BOE to clear its notes.[391] By late 1771, Scotland's chartered banks sought to regulate DHA.[392]

After the fall of John Law's *Mississippi Co* in 1720, France's East India trade monopoly —the *Compagnie des Indes* ("CDI")— reorganized and by 1750 rivaled the EIC.[393] However, England's victory in the *Seven Years' War* in 1763 led to a battle over the indebted CDI's future as France lost territorial privilege in India.[394] While CDI's wholesale cotton price increased from 1764 to 1767, it fell sharply from 1767 to 1768 —inciting failures of linen drapers and spreading outward as bankruptcies reached unprecedented levels (See Exhibit 1.[395]) By 1770, CDI's monopoly was revoked and its shares became government obligations as the firm was liquidated.[396]

By 1771, Scottish linen production and exports reached a climax before prices fell (See Exhibit 1.[397]) In Ireland, following the failure of a wine importer cum bill broker, Parliament enacted the nation's first bankruptcy law —a replica of the English law— to fill inside credit by merchants.[398] Similarly in Scotland, after a rush of bankruptcies of note issuers and linen dealers —which benefited preferred creditors— there was a desire to reform the process.[399] While earlier Scottish legislation supported a race of diligence, in 1772 passed its first statutory law of distribution —the *Sequestration Act of 12 Geo. III. c. 72*).[400] To limit preferences, the law treated all transactions within 30 days of the date of sequestration *pari passu* —unlike English law which first required an act of bankruptcy— and so not distinguishing between bona fide transactions or those in contemplation of bankruptcy.[401] Unlike the English law, this act continued to be open to all debtors —which elicited charges of overapplication in 1772[402] (and eventually a narrowing in 1783.[403]) However, the Act's particular emphasis was on creating equality between self-liquidating commercial bills of exchange for specific transactions —with a definite maturity and secured by all parties— and the single-name inland bills popular in England by extending summary diligence to them.[404] While the *Sequestration Act* may have disrupted trading arrangements funded by short term chains of bills,[405] the quickened liquidations helped avoid a prolonged depression.[406]

By early 1772, bankruptcies of drapers and manufacturers in Holland accelerated.[407] Seeing the Dutch-style chains of bills as speculation, BOE attempted to put a halt by selectively refusing to discount bills of exchange drawn on Dutch and Scottish bankers.[408] One of these bankers, Fordyce —a Scot in London— had been unsuccessfully shorting EIC in transactions with Dutch bankers and covering up his losses using chains of bills.[409] Without the ability to discount with BOE or claim voluntary bankruptcy, Fordyce attempted to circumvent English bankruptcy by paying out preferred parties and absconding to France on June 10th. Immediately after he absconded, a commission of bankruptcy was issued, and notice was printed in the *Gazette* requiring surrender to the commissioners —which was subsequently extended— before he finally appeared at Guildhall on September 12th.[410]

While Fordyce's connection with DHA is unclear, over 50% of DHA's liabilities were from London correspondents [411] and news of Fordyce's flight increased suspicion of Scotch bank notes as BOE continued to discount selectively.[412] DHA attempted to quell the run and applied for loans, but turned down the offers as too expensive.[413] After another round of failures on June 24th, DHA suspended and promised to pay 5% interest on its notes after 26th June —illegal in terms of the *1765 Bank Act* but an attractive alternative to the *Sequestration Act* passed the previous month.[414] Glasgow's *Merchant Banking Co* followed suite and added that its 70 partners had enough capital to cover liabilities.[415]

Following DHA's failure, BOE intervened —extending a bridge loan to *Glyn & Halifax*— and although at least 13 Edinburgh shuttered, DHA, Glasgow's *Merchant Banking Co*, and other banks that suspended resumed payment.[416] While the illiquid unlimited liability of the banks' shareholders decreased contagion, this only helped the banks that had many partners to tap.[417] Several banks that could not pay back, were resolved through fast compositions with creditors rather than sequestration.[418] DHA did enter bankruptcy and repaid

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creditors 100% over several decades as ownership of estates changed due to the partners' underlying capital being land based.[419]

As the creditor retrenched during the crisis, Colonial debtors were caught in a crunch, exacerbated by a worsening exchange rate.[420] While Parliament continued to pass temporary acts to assist insolvent debtors in 1769 and in 1772,[421] pamphleteers increasingly pleaded against imprisonment to the courts and Parliament.[422] However, the *Privy Council* continued to disallow insolvency and bankruptcy statues passed in the Americas over this period to protect British merchants.[423]

Prior to English colonization, Bengali India employed an active credit market to add elasticity to the money supply[424] with a system of lenders of last resort and a bankruptcy process.[425] However, as EIC gained dominance, the creditors were taxed into failure—forcing them to contract loans— and along with diminishing the credit market, specie mints were shifted for export to Europe — unleashing a money famine that warped into a devastating agricultural famine.[426] Since EIC negotiated to pay the Exchequer a fixed annual amount in order to keep dividends to support a high stock price, the crisis in Bengal brought EIC to insolvency.[427]

As EIC's debts to the Exchequer and BOE increased, BOE was no longer interested in supporting EIC's high dividends and the speculation it elicited.[428] Although Fordyce had failed to short the stock through June, news of EIC's condition spread, its stock price collapsed in the fall — particularly hurting the houses of *Clifford & Son* and *Ter Borch* in Amsterdam which tried propping up the price.[429] Resolution of these failed firms was carried out via commissions of merchants.[430] Although, Amsterdam merchants organized a cooperative fund to discount bills and extend short term loans it was small and soon disbanded.[431] Many other institutions of all sizes were liquidated and losses were estimated at £10 M as entire communities of bankers were obliterated.[432]

From Fordyce's failure to May 1773, EIC's dividend fell by half and stock price by 33% as £17 M of unsold tea rotting in English warehouses — convincing Parliament to grant EIC a £1.4 M bailout and removed the British custom from EIC tea destined for North America to effectively compete on price with smuggled Dutch tea.[433] While Adam Smith contrasted the liberal reward of labor that the British Constitution protected for North America with the stifling oppression that EIC inflicted in the East Indies,[434] Edmund Burke questioned the security afforded to taxpayer creditors for bailing out the enterprise.[435] To the Colonists, this *Tea Act* presaged a tax on America that would lead to enslavement by the oppressive EIC.[436] Frustrated and angry at England for imposing "*taxation without representation*", Colonists dumped EIC tea into the harbor in what came to be known as the *Boston Tea Party*. Following England's response with the punitive *Intolerable Acts*, the *War for American Independence* created the United States of America — aided by France and Holland.

As England's debts from the *Seven Years' War* and EIC's financial problems fueled the *American Revolution*, so did the nationalization of CDI and war debts —exacerbated by the *American Revolution*—fuel instability in France.[437] While the 1702 amendment of the *1673 Ordinance* made the home a refuge for insolvent debtors, this freedom was revoked for Paris in 1773[438] —to add stability to the financial system.[439]

Following the *Panic of 1772*, the Dutch changed the bankruptcy law in 1777 —the first time in over a century— becoming a voluntary process open to all debtors wherein the all assets were sequestered and managed by the *Insolvency Chamber* itself.[440] There was a sharp drop in the filings afterward (see Exhibit 1.) By 1779, VOC began defaulting on loans to AWB and the opening of the Dutch East Indies —following Holland's defeat by the British in 1784— required further subsides as contemporary Dutch bankruptcy law did not provide for potential insolvency of entities 'too big to fail' such as VOC.[441] While AWB began lending to municipal government during the War,[442] private investors increasingly lent to France.[443] By 1790, AWB depreciated its vaulted notes.[444]

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France continued to issue debt and in 1788,[445] following a run on the *Caisee d'Escompte* ("CE"),[446] the State defaulted on its debt.[447] Unlike the English Parliament, separate assemblies of French nobility and clergy made law, but rather than declare bankruptcy, the King called the *Estates General* —an assembly of commoners to address the financial crisis—allowing for the Third Estate to rise.[448] Within a year, Parisian revolutionaries freed debtors imprisoned at *La Force* —but not the criminals of other prisons— before freeing the political prisoners at the *Bastille* and inciting the *French Revolution* in 1789.[449] However, the refuge aspect of the 1702 amendment was not enforced in Lyon, which may have softened the shock as Lyon became the site of a counter-revolutionary uprising against the *National Convention* in 1793.[450] Following a slave revolt, France's 1794 *National Convention* granted general emancipation through the Empire.[451]

Within a year, French armies occupied Holland and incited the *Batavian Revolution of* 1795.[452] As in France, sanctuary cities for debtors were abolished as new laws claimed to extend asylum to all.[453] Holland's Golden Age and the Guilder's status as the reserve currency were history.

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b. New Beginnings

i. Bondage and the Constitution

The plantation system was part of a going concern with an income stream. English law stabilized the landed class by protecting real property from creditors unless land was explicitly offered as security through formal recording. In case of default, the law burdened creditors with procedural costs of obtaining Common law court judgments and a foreclosure decree in the Court of Chancery, which in turn gave preference to landed inheritance over debt satisfaction in its proceedings — leaving creditors with only chattel property to seize.[454] Unlike merchants, plantation owners were protected from bankruptcy by 1723.[455]

Until the 18th century, the vast majority of colonists in the Colonies were white indentured servants.[456] Without much capital of their own to establish plantations, American Colonists obtained inside credit by running up arrears from English merchants.[457] In times of stress, however, there was little relief for insolvent debtors as the English Board of Trade disallowed Colonial laws.[458] To deal with this dilemma, in a series of laws starting in 1705, Virginia maintained slaves as realty but exempted them from new recording requirements for land and complicated the docking of entails to reduce the possibility of breaking up plantation estates.[459]

The Colonists' legal fiction that lands, houses, and slaves were not assets and hence not liable for the payment of debts enraged English merchant creditors —themselves liable for involuntary bankruptcy— and obtained the right to recover their debts from plantations in 1732.[460] With the Act of *5 Geo. II. c. 7,* Parliament abolished the distinction between real, chattel, and slave property in relation to the claims of creditors, institutionalizing the administration of slave auctions to satisfy the payment of plantation debt.[461] While the primary form of credit for yearly financing of supplies furnishing plantations were liens on standing crops —unrecorded property rights that arose through operation of law— these were increasingly used as collateral for legal tender notes.[462]

The monetization of tobacco incentivized production, but the quantity and quality deflated the currency.[463] Faced with rising debts in real terms, the Colonists responded by depreciating their commodity-based legal tender currency to discharge English debts, leading to Parliament's Act of *24 Geo II. c. 53* in 1751 to restrain paper bills of credit.[464] However, as the Colonies were drawn into the *French & Indian War* — the American theater of the worldwide *Seven Years' War*— Parliament turned a blind eye to the Colonies' ever-increasing depreciation and use of paper credit.[465] While England passed temporary acts to assist insolvent debtors in 1755 (amended in the next session), in 1761 (amended later that year), and in 1765,[466] the *Privy Council* continued to disallow insolvency and bankruptcy statues passed in the Americas over this period to protect British merchants.[467] Despite —or because— of these experiences, Virginia was among the last of the Southern States to develop a banking system in 1804 (outside of tobacco warehouse receipts.[468])

The liquid tobacco derivatives —including liens on standing crops and receipts for warehoused product— were not a stable source of long-term credit. On the other hand, the plantation itself was a going concern and its financial obligations could not be liquidated without a collapse of the broader system. As the *Act of 1732* allowed plantations to be liquidated, slavery continued in British Colonies in North America and the West Indies. Where estates continued to be protected against creditors —as in Brazil under Civil law— there was less necessity for slavery to develop.[469] Similarly, slavery was outlawed several years after the *Act of 1732* was abolished for British Colonies following the *American Revolution*.[470] In United States, slaves became the most important security for cash advances and credit facilities furnished on open accounts.[471] As a result, their price fluctuated highly, mirroring that of money (see Exhibit 11.)

Like slaves were bonded to the agrarian system of tobacco production, planters were bonded to the interwoven mercantilist system of tobacco export.[472] Following the *Revolution,* the debts of Southern States accounted for over 80% of debts due to Great Britain in 1786.[473] In describing them, Jefferson said: "*These*

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debts had become hereditary from father to son for many generations, so that the planters were a species of property annexed to certain mercantile houses in London."[474] Despite the 1783 *Treaty of Paris* to repay this debt, the Southern States continued to hold preference for domestic creditors against the British, in violation of the customary international law.[475] Instead of overturning the remedial *Act of 1732*, State legislatures reinforced the regime and lowered the shield against estates to increase credit flow and reject the English aristocratic ideology.[476]

In 1789, the United States ratified its *Constitution* as the Supreme law of the land. The pertinent stipulations for credit law are Congress' enumerated legislative powers (Article I, §8) and the *Contract Clause* (Article I, §10). The former grants Congress the *Power of the Purse* —taxation citizens, spending money, and sole authority "*to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures... to provide for the punishment of counterfeiting the securities and current coin of United States*" — as well as authority "*to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes [that is the Commerce Clause, and] To establish a... uniform laws on the subject of bankruptcies*[477] *throughout the United States*." The latter expressly prohibits the States from using or creating any currency other than that created by Congress: "*No State shall... coin money, emit bills of credit, make anything but gold and silver a tender in payment of debts...*"

The framer of the bankruptcy clause came from a planter from the patrician South, Mr. Pinckney (F-SC). He proposed it as a part of commercial regulation to protest bills of exchange, but a delegate from mercantile New England, Mr. Sherman (PA-CT), feared this power would lead to capital punishment.[478] The English bankrupt law of the time continued to hang debtors convicted of evading creditors or allow them to die in prison until the 19th century.[479] As the *First* (1789) and *Second* (1792) *Congresses* entitled the *United States Government* to preference in recovery of debts from insolvents,[480] there was little appetite following the *Revolution* to instill the government with the power to involuntarily adjudicate bankruptcy on citizens.[481]

Around this time the classic division in American politics between the Hamiltonian[482] centralized, commercial nation and the Jeffersonian[483] decentralized, agricultural republic formed. While Americans sympathetic to capitalism supported the promotion of credit, Republicans saw this as aiding speculation instead of real property.[484] Along these lines, bankruptcy legislation, national banks, and later the gold standard, came to serve as lightning rods in the symbolic politics of national definition.[485]

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ii. First Bank of the United States and Bankruptcy Act of 1800

As in prior years, between 1784 and 1787, English country banks and linen drapers financed domestic canals using chains of accommodation bills—until a bankruptcy commission against one draper collapsed the network.[486] Following a lull, starting in 1791, Parliament increasingly approved greater canal construction and other public utilities.[487]

Colonial State debts were federalized after the *Revolution*. To service this national debt and extend credit, *United States Treasury* ("UST") Secretary Hamilton led the establishment of the *First Bank of the United States* ("FBUS") in 1791 modeled on BOE.[488] FBUS allowed existing holders of government debt to convert into new bonds and sought to raise $8 M of capital in a public security offering; investors paid $25 per 'scrip' —a call option on a share— and, for a full share, an additional $400 — a quarter to be paid in specie and the remainder in the new bonds.[489]

FBUS and developments in England incited the United States' first investment boom in 1791 into internal improvement, e.g., canals, turnpikes, mining (see Exhibit 16.[490]) This domestic and international investment —especially after the Virginia Supreme Court held in *Jones vs. Walker* that British merchants were not entitled to debt repayment[491]— pulled capital out of Southern States and depreciated the currency and depressing the economy.[492]

While Secretary Hamilton suspected a bubble and warned speculators, credit continued to expand, and so he sharply curtailed discounts.[493] Investors —notably William Duer — and new ventures crashed,[494] but Hamilton was prepared to act as a lender of last resort to support mercantile needs.[495] As the bubble burst and panic spread, Hamilton normalized the markets by using the *Sinking Fund Commission* to purchase securities on the open-market purchases and advocating for other banks to offer loans collateralized by US debt securities.[496] Secretary of State Jefferson grouped this incident in with the French *Mississippi Co.* and the English *South Sea Co.* scandals of the 1720s.[497] That May, Congress enacted the <u>*Debtors' Prison Relief Act of 1792*</u> ("DPRA") to help debtors.[498] The intervention staved off a recession and led to the founding of what became the *New York Stock Exchange* ("NYSE"). Still, without a bankruptcy process, creditors could not force collection and debtors could not earn discharge following the collapse, and so representatives proposed bills once before the *Panic*, twice after — in November 21 and December 6 of 1792— and annually thereafter.[499] As all of the proposed legislation contemplated the seizure and sale of a bankrupt's lands, Jefferson vehemently opposed this process for the agricultural South from 1792 onward.[500]

In England, as initial subscriptions were followed by calls in early 1793, liquid funds were transformed into a less liquid state.[501] Following England and France began warring in January, a string of merchants dealing with the American trade were commissioned bankrupts —one after BOE rejected discounts.[502] During this European conflict, it seems unlikely that the American trade would be disproportionally affected unless English creditors expected a collection mechanism. In any case, bankruptcies spread through country banks' vast correspondent network, and reached unprecedented volume (see Exhibit 1.[503]) The bankruptcy process' public nature of the *Gazetting* likely spread panic and overstated the problem.[504] As BOE began running out of options, it issued Exchequer bills for the first time since its founding and ended the *Panic of 1793*.[505] The European conflict, however, was only beginning.

In the United States, land sales —by individual States and by Congress designed to grow the *Sinking Fund*[506]— were undertaken by the *Financier of the American Revolution*, Robert Morris —who formerly advocated for land sales as the *United States Superintendent of Finance* prior to the UST— and many others.[507] Morris' European creditors were retracting, raising the price of credit and leading to creative solutions that helped both the land companies and Americans — land company money.[508] Congress, eager to service its debt, revised its land scheme to sell large tracts for a minimum of $2 per acre but offered only a year of credit, locking out small buyers.[509]

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As the flow of gold to Britain reversed with the return of confidence in the French currency, BOE increasingly rationed bill discounts to country banks —and their farmer clients to sell grain at a loss.[510] Similarly, this credit contraction made rolling over short-term debt in the United States more expensive.[511] This loss of credit combined with the lack of creditor rights regarding the underlying real estate turned into a run on Morris' notes with business failures becoming epidemic by December 1796.[512] Unlike chartered banks, Robert Morris and other organizers of land companies had unlimited liability[513] and, in often unsuccessful events to avoid life imprisonment for debt, liquidated properties.[514] When rumors of an invasion precipitated a panic and compelled BOE to suspend payments altogether at the end of February 1797 —a massive shock to the international system— and extended discounts to English bankers for the first time.[515] As if anything else was needed, the following month, FBUS' *Sinking Fund's* public land sales were changed to require evidence public debt.[516] The market for public land in the United States collapsed.[517]

Even after the circuit court in 1793 and the Supreme Court in 1796 overruled the Virginia court's ruling in *Jones vs. Walker*, British creditors continued to encounter obstacles to the recovery of their debts. With the signing of the *Jay Treaty of 1794*, these debts were referred to an arbitration commission in the Spring of 1797.[518] Although Congress amended DPRA June 6, 1798, Southern interests defeated the *Bankruptcy Bill of 1798* after heated debate.[519] By this time Virginia had found a new creditor.

In 1790, the *Bank of Hamburg* ("BOH") eliminated coin deposits in favor of silver bullion —and its liabilities circulated as '*virtual coins*.'[520] Following the fall of Holland in 1795, trade moved to Hamburg and deposits to BOH.[521] This strengthened the virtual silver coins relative to the gold-based English pound and as BOE continued to restrict convertibility.[522]

The inflow of capital stimulated trade —particularly of Virginian tobacco, which tripled in price— until the protracted winter of 1798-9, pushed the merchants into insolvency.[523] Without the ability to discount bills at BOH, Hamburg's strict bankruptcy law began fire selling collateral — dropping prices and doubling the discount rate for other traders in April.[524] By September, a banking crisis erupted and spread deflation internationally.[525] BOE's discounts of West Indies bills in 1800 represented 9% of total portfolio — 150% that of bankers' bills.[526]

As the German states had become the second largest market for American goods— deflation spread Virginian tobacco.[527] Since earlier in the year, the *Jay Treaty* arbitration commission had dissolved after two years of operation by the withdrawal of the American members.[528] Without its own banking and distribution infrastructure, Virginia was dependent on British tobacco marketing,[529] but was cut off from BOE discounts.[530] In January 1800, Congress amended DPRA, but as tobacco factor failures accelerated, it became difficult to transfer money from one city to another.[531] Split along geographic lines, a new bill passed in the House on February 21st and the *Bankruptcy Act of 1800* ("BA00") was enacted into law on April 4th.[532]

BA00 was modeled on English law; only creditors could initiate proceedings and only against mercantile —including bankers— debtors owing over $1,000.[533] There were few filings, but —after nearly 3 years' incarceration— Robert Morris obtained a discharge, entitling him to release from debtor's prison.[534] The Supreme Court decided that this was not a judicial operation[535] and BA00 was repealed two years later after Jefferson ascended to the presidency and concentrated power.[536]

Stays under State law appealed to the conservative ideology of agrarian Republicans as it preserved the old order during panics, whereas bankruptcy laws help clear away debris after commercial overexpansion.[537] Southerner gentry, like Jefferson —could survive insolvency for decades without liquidating estates and slaveholdings[538]— blamed BA00 for allowing mercantile interests to dissolve Southern plantations through attachments on real property[539]— and continued to fight bankruptcy reforms for decades.[540]

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FBUS continued operating as UST's fiscal agent until its charter expired in 1811.[541] As there was no central bank when the *War of 1812* broke out the following year, UST had to finance the war with Treasuries.[542] In August 1814, Washington, D.C. was invaded and State banks suspended specie payments and, as notes across ceased to trade at par, commerce broke down.[543] While the issuance of legal tenders was proposed in 1814, the House refused to consider the option.[544]

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iii. English Panics of 1810, 1814, and 1818

Following suspension in 1797, BOE continued to restrict convertibility throughout the *Napoleonic Wars* (1803-15). This permission to inflate —along with BOE's banking monopoly on banking with over six shareholders— promoted the development of specialist country banks, many of whom remitted taxes for the government.[545] These tax receivers retained quarterly collections for about six weeks and were protected by the *Extent-in-aid* —giving the Crown debtor a prior lien on the resources of a third party debtor, by permitting the Crown debtor to demand peremptory payment, on pain of seizure of the third party debtor's belongings and imprisonment— and so a useful insurance policy for the country banker.[546]

The *Spanish Revolt of 1808* incited a trading boom, but instead of allowing it to subside, BOE unleashed inflation through massive discounting.[547] As net exports dropped, deflation spread through bills of exchange across the country banks —accelerated by precautionary bankruptcy commissions— and eviscerating credit for trade and agriculture in the *Crisis of 1810-1812*.[548]

While there were political and investigational reasons for Parliament to issue temporary acts —including for bankruptcy and insolvency— the expiration and uncertainty of this practice fueled commercial angst for a permeance and consolidation beginning in the 1790s.[549] There were no insolvency bills for 13 years until 1794, after which there were 12 such bills and amendments until 1813.[550] Similarly, there were at least 6 bankruptcy acts over this period —including the prioritization of Crown debts and expulsion of bankrupts from Parliament and the House of Commons.[551]

Prior to 1813, merchants used arrests as a means of enforcing debt payment, and so arrests declined when credit was tight.[552] The collapse of corn prices following the *Crisis of 1810*, thrust Parliament to enact a permanent insolvency bill, creating the *Court for Relief of Insolvent Debtors* to give jail release —in a process resembling the bankruptcy procedure, but without debt discharge.[553] The effect was a drastic increase in imprisonment and related charges, such as larceny.[554] In Parliament, Earl Stanhope continued to decry imprisonment for debt as '*the White Slave Trade*' and pushed Parliament for a revision and consolidation of bankruptcy legislation in 1814.[555] Towards the end of 1814, the agricultural weakness and mercantile destabilization unleashed a wave of bank failures in the *Panic of 1814*, which mutually reinforced the depression through credit contraction over the next two years.[556]

The *Treaty of Paris* in 1815 brought peace and, instead of resuming convertibility, the government reduced spending.[557] In 1816, to aid credit, Parliament reincarnated 17th century statues: the pre-reputed ownership doctrine[558] *Bankruptcy Act of 1604*[559] and an *Act to Regulate Farming Stock*.[560] As deflation returned, the loss of government revenue incentivized country bankers to procure *Extents-in-Aid* and push mercantile businesses and other bankers into bankruptcy on a grand scale.[561] The cycle of liquidation of bankers and businesses led to the *Panic of 1818* and regulation of the government tax receivers.[562]

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iv. Second Bank of the United States and the American Panic of 1819

The *War of 1812* ended with the *Treaty of Ghent* in 1814 and the *Treaty of Paris* the following year, sparking the *Panic of 1815* in the United States.[563] As the Government did not want taxes to be paid in the depreciated banknotes of the State-chartered banks,[564] Congress chartered the *Second Bank of the United States* ("SBUS") in 1816 and, with the *Currency Resolution*, forbade the Federal payments in unredeemable banknotes.[565] However, Rep. Webster (F-NH) questioned the features of a peacetime bank[566] and argued that banknotes traded uniformly (away from gold.[567]) This depreciation, resumption of trade, and unlimited liability of shareholders caused failures of manufactures in New England.[568]

Without a Federal option, Massachusetts' courts began to manipulate the composition doctrine of Common law —through assignments of property in trust for the benefit of creditors— as an alternative to federal bankruptcy.[569] Unlike the chattel mortgages of the Southern States, since 1640 Massachusetts regulated the conveyance of property through deeds that obtained preference from separate recorded titles.[570] As Massachusetts allowed banks to sell pledges but limited the amount of personality held directly, in 1811, Boston's *State Bank* adopted the deed of trust —which operated like a chattel mortgage except ownership of the nonpossessory secured transaction lay with a trustee, the bank's cashier, instead of the secured party— and other banks continued this process.[571] Massachusetts (1808) and Pennsylvania (1816) are the first States to experiment with limited liability.[572] These jurisdictions were conducive for the first two savings banks ("SB")[573] started in 1816 in Boston and Philadelphia. They were organized as trusteeships[574] operating on behalf of depositors with clear ownership claims.[575]

New York, since 1786, issued charters that automatically liquidated after five years —approximating unlimited liability— and so businesses preferred the well-defined legal partnership structure.[576] The self-liquidation served as a supervisory mechanism by limiting the ability to take on credit. While there was an appetite for uniform bankruptcy, but no progress in the House,[577] Congress amended DPRA in 1817.

Despite Congress' warnings about resumption, banks continued to issue notes.[578] From 1815 until 1818, bank notes across the country generally approached uniform price fluctuation with that of SBUS' Headquarters, Philadelphia, and away from gold.[579] By then, a negative balance of trade swelled as exports of Southern cotton fell in value while manufacturing imports increased.[580]

In 1817, Congress instituted resumption,[581] but some of SBUS' branches were poorly managed.[582] Following accusations of fraud in SBUS' Baltimore branch in February of 1818, Maryland —to promote its own banknotes— challenged the constitutionality of SBUS and legislated taxes on SBUS.[583] By this time SBUS had extended credit and was drained of liquidity by July —to satisfy the Federal governments' need to pay $2 M abroad, the first installment of the *Louisiana Purchase*.[584] Foreign debts were payable in gold, and as UST's repository, SBUS, was responsible as a default would be disastrous.[585] As SBUS tightened monetary policy in August and banks suspended convertibility[586] and Congress ordered an investigation of SBUS.[587]

The follow year, the Supreme Court asserted Federal dominance over the States. On February 2nd, Chief Justice Marshall described a corporation as "*an artificial being, invisible, intangible, and existing only in contemplation of law*" in *Dartmouth College*, denying New Hampshire the right to modify a charter.[588] Within two weeks, the Court overturned New York's bankruptcy law in *Sturges v. Crowninshield* —ruling that the power to regulate this process was exclusively federal, even if Congress declined to exercise it.[589] Then on March 6th, 1819, In *McCulloch v. Maryland*, Supreme Court Chief Justice John Marshall voided Maryland's tax on SBUS as unconstitutional and declared that Congress could establish SBUS under the doctrine of implied powers.

As the next installment of the *Louisiana Purchase* approached, SBUS's new President Cheves again curtailed lending to accumulate specie.[590] State banks passed the deflation to their customers and the public blamed SBUS.[591] When the *Panic of 1819* struck, it was most severe in the West —where SBUS stopped extending

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credit to clear inter-State bank note trade and the government stopped accepting them as legal tender for land sales.[592] Shortly after enacting a law revoking bank charters upon suspension, Maryland relieved banks of obligation to redeem notes for money brokers[593] — but the bank contraction and insolvency applications increased until 1822.[594] Without Federal bankruptcy *Sturges* prevented State modification of pre-existing debts and reduced the extension of inside-credit, exacerbating cascading insolvencies of the *1819 Panic*.[595] Since 1783, this is the first time a net decline in the number of banks is recorded (Exhibit 7.)

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v. English Panic of 1825

Deflation spread following BOE's resumption in 1819.[596] To stimulate the depressed state of rural agriculture following, the government contemplated issuing of £5 M in 1822, but retreated after country bankers expressed that the problem was not their inadequate capital but the farmers' insufficient security.[597] Still, as BOE eased monetary policy and aided fiscal policy by purchasing Exchequer bills, a significant portion of banks increased lending.[598] News of successful mining investments in Latin America stimulated private credit into 624 mining ventures by 1824.[599] The English legal system promoted this development as bankruptcy primarily protected credit extended to international trade while joint-stock companies function as call options that incentivized short-termism.[600] Instead of incorporating under charters from Parliament or the Crown, joint-stock companies organized under a *Deed of Settlement* —which vested the property into trust and divided it into transferable shares— but the uncertain legality and unlimited liability did little to promote trust as the investor base grew.[601]

Although Lord Chancellor Eldon passed several bankruptcy bills through Parliament dealing with technical administration in 1822, he sanctioned drafters to prepare a bill for the standardization that merchants demanded.[602] The need to consolidate was met with a desire to control the joint-stock boom, resulting in a completely revised bankruptcy bill in 1824, and, after receiving the Royal Assent, the *Bankruptcy Act of 1825— 6 Geo. IV c.16* enacted in May and came into operation in September.[603] The Act broadened the description of productive domestic traders eligible for bankruptcy[604] —allowing, for the first time, voluntary petitions[605] and for a majority of creditors to push through a composition even if up to a tenth refused[606]— while limiting liability of involuntary bankruptcy to shareholders of incorporated companies with charters.[607]

Moreover, while liberal Tory ministers continued a policy of nonintervention with respect to joint-stocks, Lord Chancellor Eldon —in *Kinder v. Taylor* on 29 March, 1825— concluded that the disputes of shareholders in failed joint-stocks were not entitled to judicial aid.[608] As many socially useful companies were now illegal, this judgment instigated demand to repeal the *Bubbles Act* on July 5th.[609]

In early 1825, BOE switched to contractionary policy as net imports increased and its bullion fell.[610] In June, following a petition from a country bank noteholder who received BOE-notes instead of the specie he demanded, Parliament concluded that BOE-notes were not legal tender and all bankers must be prepared to pay specie for their notes.[611] Within a month banks began to refuse to discount merchants' bills and bankruptcy commissions were taken out against weak country banks.[612]

By October, the *Bankruptcy Act of 1825* was operational and, combined with the tightening, collapsed overseas trade financing and the London money market to precipitate the *Panic of 1825*.[613] As voluntary petitions increased, bank debts collapsed and pulled them into involuntary procedures (see Exhibit 1.) By the end of the year, BOE intervened and reinflated the markets.[614] Following the mass liquidation and credit decrease, the economy collapsed into a depression.[615] Still, of the total 624 joint-stock companies projected, funds of £17.6 M were actually advanced to 245— and over 92% of those funds were to 127 mine, gas, and insurance companies that still existed in 1827.[616] Parliament blamed the 1825 disaster on BOE's monopoly — in the branched bank model of Scotland, by contrast, only a single bank failure since before 1816— and, by the *Act of 1826*, allowed for branching and joint-stock banks spread.[617]

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vi. American Panic of 1825

By 1821, the depression was over. While calls for stability through a Federal process continued,[618] Congress gave relief to the unlimited liability land companies by reorganizing contracts with the Relief for Public Land Debtors Act.[619] States legislatures passed debtor relief and creditor remuneration laws.[620] While Massachusetts continued to impose direct liability on shareholders of manufacturing companies,[621] New York pioneered corporate limited liability (see Exhibit 16)[622] and chartered the *Farmers' Fire Insurance & Loan Co,* with power to perform trust business in 1822.[623] In 1824, the Supreme Court confirmed the trust fund doctrine protecting creditors in corporate insolvency, as Massachusetts and Pennsylvania courts held earlier.[624] In the legislature, Senator Webster (F-MA) proposed a federal bankruptcy process, but failed.[625] SB trusts grew from 10 in 1820 to 35 by 1830, primarily in Massachusetts (see Exhibit 12.)[626]

Although the *1720 Bubbles Act* had been extended to England's Colonies in 1741, it was ignored in the States, and the model that the framers adopted was the statutory corporation, rather than the unincorporated company or partnership. Incorporation, by special acts of the State legislatures, was granted far more readily than in England.[627] As the United States revolted before this repeal and kept Common law, American corporation law developed on mandatory corporate rules rather than the contractual partnership principles.[628]

In 1824, some of the frenzy from London spilled; while New York limited charters, it still exceeded prior years' issuance by 30 joint-stock insurance companies between 1824 and 1825[629] —one fewer than all financial charters granted since 1817; changes before and after 1825 show a stark elevation of manufacturing charters, likely funded by the insurance capital float (see Exhibit 16.) Contemporaries were baffled by the practice and saw this use of debt as capital obscene.[630] The immediate success of New York's Erie *Canal*[631] led New Jersey to charter the *Morris Canal & Banking Co* ("MCBC") in 1824 to build an artificial waterway between the Hudson and Delaware rivers, connecting the coal mines of Pennsylvania, the iron forges of Morris County, and the ports of New York City. BOE's deflation in 1825[632] decreased the value of investments, unleashing a scandal involving several NYSE-listed insurance companies that hypothecated MCBC stock, but later acquitted.[633] This wave of failures stressed the equity Court of Chancery, delaying resolution.[634]

With political deadlock over bankruptcy, the Supreme Court clarified that States' bankruptcy laws were legal. In *Ogden v. Saunders* (1827) —argued by Clay and Webster— the Court decided that State bankruptcy laws applied to debts contracted after the passage of the law, and that States could discharge the debts of only their citizens.[635] The ruling was a bargain between Republican judges that wanted to retain State bankruptcy laws and Federalists judges wanting to abolish them; the Republicans agreed to sacrifice the New York law if the rest were not deemed unconstitutional and so allowed State law to continue.[636] As Congressional and State legislatures reformed debtor prisons, State courts and legislatures passed laws for bankruptcy-like assignments based on Colonial precedents.[637]

New York's *Revised Statues* enacted bankruptcy legislation to pursue claims against corporations in 1828. The Attorney General, with credible evidence that a corporation was performing activities outside of its charter could petition the Court of Chancery, which in turn was given visitatorial jurisdiction—the power to halt operations, inspect books, and hold directors personally liable for misappropriated funds—overturning an 1817 New York case law that it had no such jurisdiction. For banks, if stockholders and creditors brought evidence of insolvency, the Court could liquidate the concern.[638] As bank charters continued expiring and the strict law yielded no new applications,[639] in 1829, New York Governor Van Buren criticized the charter system in general[640] —while absolutely supporting private banking over a system of State bank branches[641]— started deposit insurance.[642] The *Safety Fund Law* created a coinsurance system among its member banks —with central oversight— exempting chartered banks from the *Revised Statutes'* presumption that insolvencies were fraudulent and personal liability for stockholders in the case of fraudulent bankruptcy. In 1830, the State repealed these terms for all firms.[643]

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While Colonial-era chattel mortgages extended insolvent plantation owners a redemption in an equity court for a reasonable period after default, following the *Panic of 1819*, slave State courts sold real estate at auction without recognizing any right of redemption and without requiring that a minimum amount of the appraised value be obtained by means of the sale.[644] Instead, pledges —or conditional sales— of slaves as collateral and with the right to repurchase later extended credit to plantations throughout the 1820s.[645]

Prior to the development of skilled labor in New England, temporary imprisonment was more of a 'fresh start' option than the seizure of land.[646] In 1830, Massachusetts, Maryland, New York, and Pennsylvania imprisoned 3 to 5x more people for debt than for other crimes —up to 23% of the population of Boston, some owing pennies.[647] While Kentucky was first to outlaw the practice in 1821, Congressional and State legislatures —including New York and Massachusetts— reformed debtor prisons significantly from 1830 to 1832.[648]

Concurrently, the development of industry allowed the Northeastern States reformed chattel mortgages—a century after those of the Southern States for land and slaves.[649] To eliminate the 1831 *Swift v. Thompson* decision and reestablish order for lending on machinery, the legislatures of Massachusetts, New Hampshire, and Connecticut passed their first chattel mortgage acts in 1832 requiring a public filing of for validity against third parties, followed by New York in 1833 and Rhode Island in 1834.[650] Meanwhile, as Pennsylvania courts rejected conditional sales as security devices, the bailment lease was recognized following the 1831 *Myers v. Harvey* decision.[651] With secured lending for movable property, there was less of an economic rationale for imprisonment.

Between 1825 and 1830 bank stock prices diverged: SBUS shares increased by 25% while the *Smith-Cole Index of New York Bank Stocks* fell by about as much and grew quickly after 1830 (see Exhibit 7.) The association of SBUS with the *Panic of 1819* and eastern financial interests led the agrarian interests in the West and South to oppose rechartering. In 1832, President Jackson vetoed the recharter of SBUS, and the following year, diverted federal funds into pet State banks by executive order; killing SBUS, President Jackson started a short panic and the Free Banking Era.[652] [653]

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c. Reorganization

i. Free Banking and Panic of 1837

After Nicholas Biddle took over in 1822, SBUS created a domestic bill of exchange market —increasing from $6 M in 1820 to $70 M by 1833— by acting as a central clearing party for interregional payments.[654] Detractors argued that these bank drafts circulating as currency did not conform to negotiability requirements.[655]

Following the failure of local banks and SBUS, there was a strong need for money in Cincinnati, Ohio.[656] Institutional trusts (which were rare before the Civil War) emerged to fill this void.[657] In 1830, *New York Life Insurance & Trust Co* became New York's second trust and in 1834, the *Ohio Life Insurance & Trust Co* ("OLIT") adopted banking powers to trusts,[658] and together reformed the speculative practices of commercial banks to move capital into the agricultural sector, particularly in the Midwest.[659] It played a major role in the *Panics of 1853* and *1857*.

Without a Federal bankruptcy law to impair contracts, in 1833 the Supreme Court in *Grover v. Wakeman* relaxed strict rules and sustained the voluntary use of assignment for the benefit of creditors contracts, whereby the insolvent (assignor) transfers legal and equitable title, as well as custody and control of its property, to a third party (assignee) in trust, to apply the proceeds of sale to the assignor's creditors.[660] To add stability and help trade, Congress changed the mint ratio with the *Coinage Act of 1834* to incentivize depositors to turn gold bullion into coinage and limit the melting down silver coinage. This helped silver coinage become the medium of exchange in smaller transactions during a period of net-inflows of both gold and silver.[661] After shuttering SBUS, President Jackson paid off the Federal debt in 1835 —the Nation's first and only time— and began selling federal lands in the Northwest, spurring asset inflation.[662]

New York's *Great Fire of 1835* destroyed property as well as the belief that joint-stock fire insurance companies —around since Colonial times, were stores of value[663] and protected against 'foreign' competition— when a wave of failures followed the conflagration.[664] With the aid of Federal debt relief,[665] instead of a depression, companies adopted New York's limited liability structure introduced in 1821.[666] While limited liability was already available to banks,[667] this type of partnership allowed for joint-stock investment companies to increase credit and equity.[668] To limit insolvency, New York enumerated the activities of chartered banks and prohibited them from issuing any bill or note unless payable on demand without interest, which impeded their ability to issue letters of credit and accept bills.[669] Along with chattel mortgages, entrepreneurs now had new financing options. Following the first railroad to incorporate in 1826, there were 40 by 1832 and 43 in 1836 alone (see Exhibit 16.)

While BOE lent out its capital to England, in the United States paper circulation was financed by bank notes —whose charters were in turn controlled by legislated political will[670]— and without a liquid government debt market to aid corporate financing, the United States' equity market quickly outgrew England's.[671] SBUS exercised system oversight, its closure was a license for all States to incorporate more banks.[672] As Indiana's Constitution prevented private banks, the State authorized a system of insured State banks in 1834 that could regulate capital ratios and dividend payouts.[673] By 1836, Michigan became the fourth State with deposit insurance under the private system of New York and Vermont.[674]

While bill of exchange of choice in BOE's centralized system was the single-named unsecured promissory note,[675] prudential charters in the United States' distributed system prohibited these and so banks were limited to using the double-named trade acceptance, a pledge for a specific transaction —with a definite maturity and secured by all parties and settled in commercial centers, such as New York or Boston.[676]

The depth of New York's money market attracted trade acceptances from factors —commercial agents— who intermediated[677] on behalf of *King Cotton*,[678] among the growers in the Deep South, textile producers in New England, and exporters along the coast bound for European markets. Although Louisiana produced less

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cotton than neighboring Mississippi, the Port of New Orleans dominated exports, growing from 30 to 50% between 1830 and 1860 (see Exhibit 11.)

The cotton trade acceptance was a collateralized plantation mortgage[679] — legal due to well-developed property rights for land and slaves as parts of a going concern[680] — and underwritten by factors upon the credit of accommodation endorsers for additional security.[681] In the 1840s, Louisiana chartered 3 public mortgage banks, financed with English capital[682] and the State's liabilities, they helped Louisiana become the Nation's third most indebted State by 1841.[683] While the trade acceptances persevered their value even in a rare case when it took over a decade to liquidate a planation.[684]

SBUS had provided central clearing and market making for accommodation bills. After its expiry, it became unclear if exchange — *Wechselstrenge*, or as the practice was known in America, *kiting*— of negotiable paper in the ordinary course of business was pledged as collateral security for advances of credit or liquidated obligations.[685] As the *Constitution* prohibits States from impairing contractual obligations, the assignments for benefit process preferences debts endorsed by signatures. Secretary of State Webster later described this issue as "*assign[ing] his property for the benefit of his creditors, he classifies his creditors, and puts endorsers into the first class... The preference of one creditor to another, both debts being honest, is allowed by the general rules of law; but is not allowed by bankrupt laws. And this right of preference is the foundation on which the structure rests;*" which was summarized as "*accommodation signatures were usually procured by arrangements for preferences which were indefeasible in the absence of a bankruptcy act.*"[686] While kiting increased capital for merchants and revenue for banks, the latter risked overdrawn accounts in case the former defaulted.[687]

As specie reserves fell reduced from trade imbalances,[688] Congress passed a set of laws in 1836 to reduce its own risk and to redistribute wealth — draining specie from New York.[689] Money supply and asset valuations again contracted in August 1836 as BOE decreased credit.[690] Similarly, contracts indexed to the price of corn and cotton were deflated through overproduction.[691]

Upon the death of Chief Justice Marshall on July 6th, 1835 cases were held over in the Supreme Court — including the obligation of contract case *Charles River Bridge v. Warren Bridge* ("CRB")— until Congress confirmed Chief Justice Taney in March 1836.[692] Then, on February 14th, 1837, the Taney Court narrowed the interpretation of the contract clause in CRB by deciding that States, and not a prelegal notion of property determine property rights.[693] In the 1830s, Louisiana's jurisprudence was a fresh mixture of Roman, French, and Spanish Civil Law, unlike the English Common law in New York and the rest of the United States.[694] While the latter is based on judicial precedent (and judges take an active role in shaping the law), Civilian jurisdictions place greater emphasis on statutory codification. Unlike in other Southern States,[695] Louisiana's Civil law courts liquidated insolvent plantations in 1810s and 1820s and had well developed brokerage law.[696] Similarly, Louisiana's law was more creditor and investor friendly than the French law that inspired it,[697] likely due to the difference between the English *South Sea Co.* and French *Mississippi Co.* failures of the 1720s. However, Louisiana had no statues for bank receivership until 1843.

Hermann, Briggs ("HB") was part of a network of cotton factors in New Orleans that monopolized the region's exports.[698] The network of factors and their New York broker were partnerships linked by ethnic kinship ties and custom more than contracts of limited liability corporations.[699] Like other factors, HB floated pledges in the form of accommodation bills for access to credit (e.g., paying Alabama cotton merchants with promissory notes for gold in London maturing in 60 days.[700]) As these were not netted, the gross exposure represented between 6 and 20% of Louisiana's banking capital.[701] Although 16 of New Orleans' banks considered bailing out HB, an insider tipped HB's creditor in New York on March 4th.[702]

Although 16 of New Orleans' banks considered bailing out HB, on March 7th, 1837, one of the insiders, Thomas Barrett, sent a letter tipping HB's bill broker in New York, *J. L. & S. Joseph & Co.* ("JLSJ").[703] Two days later, Barrett sent another letter as Biddle's *Bank of the United States of Pennsylvania* (the private successor

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of SBUS, "BUSP") and other banks assisted the New Orleans houses and they resumed payment.[704] Immediately after receiving the first leak of the insolvency, JLSJ announced its failure on March 16th and cited the HBs' suspension as the direct cause.[705]

As newspapers reprinted Barrett's letter from March 9th,[706] there was hope that firm would resume,[707] but the delays in communication created panic in London.[708] On March 28th, a committee of New York bankers turned to Biddle's BUSP for help,[709] which began making minority investments.[710] However, as the rescue of HB failed to materialize and JLSJ had not resumed payment,[711] there was a cascade of failures among hubs of accommodation bill trade in New York and London in April as the lack of bankruptcy law tied up assets.[712]

Banks in Louisiana and across the South agreed to renew all paper falling due as long as 10% was paid every two months and no new paper was issued for over two years.[713] The British merchant bank *Rothschild* —which financed JLSJ and HB— sent an emissary to the United States to recover debts; he replied it was impossible due to the absence of a bankruptcy process.[714] This elevated the issue to the point that BOE sued HB in New Orleans.[715] On July 19th, 1837, another English merchant attempting to recover his firm's money in America, noted the laxity in the debt enforcement law, particularly in Southern States.[716] Without a credible lender of last resort,[717] most banks in the United States suspended convertibility[718] to avoid liquidation.[719]

On September 28th, 1837, JLSJ's principal creditors —including representatives from BUSP, MCBC (minority-owned by BUSP), and the *Merchants Bank*— met to liquidate the firm.[720] The creditors resolved that assignees would destroy value and so resolved for the firm's management to liquidate the firm under the inspection of a creditor committee. (In 1842 Joseph filed after the *Bankruptcy Act of 1841* was passed to little fanfare.[721])

In September 1837, now President Van Buren called Congress in Special Session where he questioned Federal currency powers to aid in the depreciation and so urged a bankruptcy bill confined to incorporated banks which failed to redeem their notes[722] but failed to pass.[723] A bill was carried in the Senate for the issuance of Treasury Notes and the creation under the UST of an *Independent* (or *Sub-*) *Treasury System* ("ITS"), as an alternative to a federal bank[724] to protect public funds, but was lost in the House.

Federal efforts failed to curb bank growth,[725] but the States suppressed the business.[726] In 1838, New York adopted Free Banking with a security system to restore confidence.[727] The arrangement combined Van Buren's anti-charter sentiment from 1829, and that deposit insurance protected the system.[728]

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ii. Panic of 1839 and Bankruptcy Act of 1841

There was a revival as the number of banks grew by 5% between 1837 and 1838 (Trask, 2002).[729] With the Federal Government's departure from the bond markets, the European market was open[730] for Biddle's *Bank of the United States of Pennsylvania* (the private successor of SBUS, "BUSP"). During the *Panic of 1837*, BUSP purchased distressed assets —acquiring MCBC to finance canal and railroad projects[731]— and maintained a high price of cotton by extending loans to Louisiana banks.[732]

In the 1820s, Alabama established a central bank with branches that financed the expenses of the States in lieu of taxes; the *Panic of 1837* forced suspension and the legislature made the banks' bills legal tender.[733] However, this did not expand to the bills of other banks. In January 1839, the Supreme Court decided in *Bank of Augusta v. Earle* that BUSP of Pennsylvania, the *Bank of Augusta* of Georgia, and the *New Orleans and Carrollton R.R. Co.* of Louisiana were due nothing from sales of bills of exchange in Alabama as they were not valid contracts per local law; Chief Justice Taney's solution was the doctrine of *Comity*, holding that states are presumed to voluntarily allow foreign corporations to make and enforce local contracts.[734] As Alabama and Louisiana were the two largest cotton exporters (see Exhibit 11), BUSP's (and their English financiers') support of cotton prices was stretched.

In the summer, cotton prices collapsed again, and BUSP was forced to pull funding its Northwest project financing commitments, leading to another panic in 1839 as MCBC defaulted on its obligations.[735] As Congressional and State legislatures —including Alabama in 1839 and Louisiana in 1840— passed statutes prohibiting confinement for public defaulters following the *Panic of 1837*.[736]

While the substitution of indentured servitude for imprisonment was common 18th century jail-delivery practice, in 1827 Delaware turned the servitude for debt system into peonage directed against blacks.[737] On the other hand, although Massachusetts increased debt imprisonment for men on debts from $5 to 10 ($3,000 in 2020 dollars) and women in all amounts in 1831, debt imprisonment continued until 1857. See Exhibit 11. President Van Buren's ITS was passed into law in 1840 and served as the depository and fiscal agency of the UST until the *Federal Reserve* proved itself during the *World War I*.[738]

Arguing that only merchants should issue commercial paper could issue and blaming post-notes and negotiable notes and bills for the failures of SBUS and other banks, with the *Act of 1840*, New York extended the prohibition on bills of exchange —already in place for banks chartered before 1838— to Free Banks.[739] As a great deal of BUSP's capital was held in New York,[740] the *New Yorker* (1841), argued that bankruptcy protection, that covered corporations, could have alleviated the effects from the *Panic of 1837* but was now needed to reenergize the country.[741] Governor Seward (W-NY) repealed debtors prisons to promote credit-driven trade and urged a federal bankruptcy code.[742] When the Whigs regained control in 1841, Congress enacted the *Bankruptcy Act in 1841* ("BA41").[743]

While corporate banks and insurance underwriters were initially included in BA41, the provision was removed before the Act received final approval.[744] BA41 pioneered debtor protection —such as voluntary filing and debt discharge by individuals— and so was seen by creditors as too pro-debtor[745] and opposed by Democrats as an expansion of federal power.[746] Unlike the English counterpart, this law did not distinguish between bankrupt traders dependent on the money market and insolvent debtors with predictable incomes.[747] The proposal for a *Fiscal National Bank* failed that year, effectively continuing UST's payments as before with the ITS.[748] In the wake of the crisis, the private industry established the first commercial credit-rating service.[749]

Banks that were unfortunate enough to hold municipal bonds for reserves on their notes faced balance sheet insolvency as land prices fell, States defaulted on their loans, and decreased the collateral value of bank notes.[750] As the Constitution precludes suits against States to enforce debt payment, these debts were sovereign debts held by residents of other States and England; although, as part of a powerful union, they were insulated from

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direct sanctions that could have been imposed on individual countries, most States repaid their debts to maintain access to international capital markets.[751]

Many debtors fled to the Republic of Texas — which had declared independence from Mexico in 1836 without extradition laws to force absconders to return to the United States for trial — doubling the population in the 4 years after 1837.[752]

The number of banks collapsed by 18% between 1839 and 1843; and so, although the total specie in the country increased by 1% between 1839 and 1843, the volume of bank notes, deposits, and loans plummeted by 56%, 38%, and 48%, respectively; hence, constricting the total money supply by 36% and causing deflation of 55%.[753] The result was the nation's second recorded net decline in the number of banks; however, the 1840-3 declines were significantly worse than those in 1821-2 (see Exhibit 7). Governor Seward (W-NY) gave credit to supervised free banking for protecting against suspension during the crisis.[754] However, deposit insurance did not work in New York,[755] Vermont,[756] or Michigan,[757] but it did work in Indiana's supervised branching model.[758]

Upon regaining power, the Democrats repealed the BA41 in 1843 and re-established the ITS with the *Act of 1846*. As ITS conducted business using only specie (rather than bank notes or bills of exchange), the net effect was a reduction of banks' reserves, loans, and discounts and the development of expensive private brokers to satisfy means of paying liabilities.[759] However, as UST's funds was often placed with State banks —until the emergence of National banks— this arrangement imposed large and periodic reserve imbalances upon the system.[760] BA41's adoption led to a massive increase in Federal bankruptcy case law volume; after it was repealed in 1843, State courts started producing creditor remuneration case law (See Exhibit 13).[761]

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iii. Reorganization and Private Enterprise

Although the United States experimented with differentiating partnerships and corporations since the 1820s, England first developed an inexpensive incorporation in 1844. Prior to this corporate form as a risk-limiting device, the bankruptcy discharge —limited to traders— performed the same function to preferred encourage risk-taking.[762] While the English limited the number of members an association can have before incorporation was required —as partnerships presuppose trust which is impossible in large joint-stock ventures— no such development occurred in the United States and the unincorporated association continued to evolve until, at the end of the century, Federal bankruptcy legislation transformed the unincorporated joint-stock companies into business trusts.[763]

Until Federal bankruptcy legislation, however, case law developed for corporate receiverships.[764] These developed in the railroad industry outside of a normal bankruptcy jurisdiction.[765] In 1845, a Georgia court appointed a receiver over the insolvent *Monroe Railroad & Banking Co*,[766] both inside and outside creditors were held junior to the bill holders, so, instead of liquidation, emerged an early (possibly the first) reorganization[767] as the *Macon & Western Railway*, and spread reorganization to corporate railroads[768] as debt financing increased[769] and private enterprise replaced State charters.[770]

Following the crisis, States amended their constitutions regarding State borrowing and reformed the charter system through general incorporation laws, in line with the principle of Freedom.[771] The 1846 New York Constitution prohibited future State debt[772] (in favor of free enterprise); the requirement for a special act of the State legislature to incorporate[773] was abolished (in favor of double liability for stockholders as supervision[774]) and with it the equity Court of Chancery (that houses bankruptcy); enabling stockholders to appoint receivers to liquidate mercantile concerns and insured banks upon insolvency or fraud.[775] Incorporations spiked (see Exhibit 16.)

Since New York created Free Banking in 1838, two smaller States experimented with these principles in 1849 and 1850, and by 1851 Illinois, Virginia, and Ohio adopted the law.[776] Between 1848 and 1852, 18 States passed homestead exemption laws following Texas' 1839 law — spreading first to the South and then across the Midwest and Northeast.[777]

In Illinois, private money circulated until Free Banking allowed banks to incorporate in 1851.[778] While several States outlawed note issuance,[779] the unlimited liability of bank incorporation of some Free Banking systems[780] supported regulatory arbitrage through private banks without charters that did not issue notes.[781] Following New York's lead in 1849 for insurance regulation, several States passed a law requiring no capital.[782]

In the Deep South, as Louisiana's land banks were responsible for servicing their own debt, the State required that bondholders pursue liquidation of the mortgaged property of stockholder-borrowers before the State would meet obligations to them; while repudiating bank debt, Louisiana managed to recover its reputation in the bond market by paying its remaining State debt proper.[783] Following the default on Louisiana's bank bonds, the English boycotted cotton until Louisiana's *Act of 1843* provided the machinery for bank liquidation, permitted the debtors to pay off their debts, relieved the State from the banks' contingent liabilities, and ended the English boycott by providing an alternative to bills of exchange by using Louisiana State bonds as the medium of exchange.[784]

Alabama —which helped precipitate the 1839 crisis by not accepting Louisiana's bills of exchange in 1839— liquidated its banks in 1842 and, instead of repudiating on its State debt, increased taxes.[785] The State combined this with debt relief by reforming debt imprisonment and passing fraudulent conveyance and attachment laws.[786] A large portion of the attachment laws concerned enslaved Africans, who constituted a significant capital base for the State.[787] Since Alabama retained access to the capital markets but started losing market share,[788] the rigid link between labor and bankruptcy may have been the cause.

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iv. Panics of 1854 and 1855

The joint-stock partnership —unlike the State chartered corporation— is based on individuals' freedom to associate and organize labor for mutual advantage and each partner is fully liable for debts incurred by the company —an onerous burden in large-scale ventures, such as railroads, mines, banks, and insurance companies pressed the state legislature for the ability to organize under general incorporation laws.[789]

Following victory in the *Mexican-American War*, the United States annexed the California and New Mexico Territories, precipitating the *California Gold Rush* in 1848. The *Rush* attracted miners from across the World —with Chinese debt peons accounting for over a third.[790] These Chinese miners and generations that followed were 'credit-ticket' immigrants —bound to labor importers with monetary, not term based, contracts— but, without property transfer rights for indentured servants, labor importers could not legally sell labor contracts to employers.[791] Before State or Federal legal institutional infrastructure, mining property rights were settled by community courts.[792] This frontier Common law tradition would persevered through California's flexible, extra-judicial insolvency process that allowed for everything from liquidation to retaining key staff with specialized property.[793]

The *California Constitution* of 1849 defined pro rata liability as a direct, primary obligation —any creditor could assert directly against the shareholder without first instituting an action against the corporations incorporated under State law —without regard to the law of the jurisdiction in which the debt was incurred— and foreign corporations doing business in the State —with respect to debts arising in California.[794]

As Eastern and European capital looked to finance mining ventures, California's Statehood accelerated as free State under the *Compromise of 1850*, but retained the validity of the original community laws.[795] Importantly, the limited liability definition was rolled back for the shareholder was liable only for the proportion of each creditor's claim represented by the shareholder's proportional ownership of the stock (and this lasted until 1931.[796])

Instead of a going concern, miners had a single ore deposit to extract and were self-liquidating —and as such, undervalued property, plant and equipment investment — as the sunk cost of acquiring, developing, and equipping mines was unavailable for dividend.[797] The claims of both resident and non-resident creditors were discharged upon the debtors making an assignment for the benefit of creditors ("ABC") process defined in the *Insolvency Act of 1852*.[798] For mining companies in particular, the *California Act of 1853* defined *pro rata* liability according to the original 1849 Constitution, empowering creditors to collect from any shareholder the entire amount of a corporate obligation up to the shareholder's aggregate share.[799]

Since 1849, California's Constitution prohibited the creation and circulation of any instruments of credit as money: "*The legislature shall have no power to pass any act granting any charter for banking purposes, but associations may be for general laws, for the deposit of gold and silver; but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The legislature of this State shall prohibit by law any person or persons, association, company, or corporation from exercising the privileges of banking or creating paper.*" (Moses, 1892). Gold discoveries ensured a plentiful money supply (including private coinage until 1864.)

Miners, remitting money had no choice but to purchase exchange notes with gold but —without security that the note issuing exchange dealer would pay the beneficiaries' correspondent banks— merchants preferred shipping the gold until 1851.[800] The reliable St. Louis-based *Page & Bacon* sent a son to open up a branch, San Francisco-based *Page, Bacon & Co.* ("PBC"), wherein, the confidence in PBC's bank notes was a direct result of confidence in those of the St. Louis house.[801] While the *Gold Rush* lasted until 1855, gold production growth in California topped in 1852 as diminishing returns kicked in (see Exhibit 8). Rapid technological advances

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tightened profit margins and required greater capital resources,[802] spurring the 'picks and shovels' businesses that suppled the heavily leveraged miners with inside trade credit.[803]

From the late 1840s to 1853, gold discoveries quadrupled annual production and flooded monetary markets and —as the price of gold fell rapidly between 1850 and 1859, the relative price of silver sharply increased and melting of silver coins became rampant— many retail businesses and consumers relying upon disappearing silver coinage for minor transactions had to pay premium values.[804] The success of the *State Bank of Indiana*'s insured banking system and Ohio's banks use of Indiana banknotes as the par standard in estimating the value of paper money,[805] inspired Ohio to adopt insured *State Bank of Ohio* branches in 1845.[806] By 1851, there were three types of banks in Ohio —Old Banks (e.g., OLIT), *State Bank of Ohio* branches, and unincorporated— with a diversity of taxation charters.[807]

The Popular war on chartered banking of that year introduced Free Banking and amended the Ohio Constitution for uniform property taxation across banks;[808] such *ad valorem* taxes on loans instead of capital are destabilizing for banks as dealers of intangible assets.[809] The tax encouraged local banks to close and Ohioans imported bank notes from Indiana and other States,[810] further depreciating Ohio banknotes.[811] Indiana enacted Free Banking that month and 60 and 33 banks started over the next two years, respectively; similarly, 28 and 34 banks closed those years.[812]

On May 19th, 1852, Special Master Commissioner Judge Hitchhock examined OLIT and concluded that the bank was prudently run but that the tax would lead to insolvency.[813] The Ohio Supreme Court decided in January 1853 that all domestic banks are liable for the new taxes as monopolistic charters were not protected by the Constitution from impairment by States.[814] The previous month, OLIT Cashier Coe left to become a VP at the *American Exchange Bank* ("AEB"),[815] and the politically connected Rockwell became Cashier and now argued for closing the Ohio operation and focusing efforts on building up the New York office.[816] Lafayette Bank allowed its charter to expire and continued under individual responsibility.[817]

In February 1853, Congress replaced the *1834 Act* with the *Coinage Act of 1853*, lowering the silver content. This stemmed outflows as the new coins were no longer worth their weight in silver and so were worth more for their face value within the United States than as bullion abroad.

The following month, to counter monopolistic trusts, the Ohio legislature moved ABCs from the equity court of Chancery to the newly established probate court —the liquidation-focused Common Pleas that fostered the race of diligence— to review ABCs for creditor fairness over going concern.[818] Railroad receiverships continued to require special legislative acts (see ICC, 1933, pg. 272.)

These developments did not bode well for Henry Dwight, Jr. of New York. In order to finance railroads, Dwight acquired control of the *Bank of Massillon* —an Old Bank established in 1834 along with OLIT, but set to expire in 1855[819]— and floated a bond using two New York banks, until his failure in November 1853 caused the failure of the Ohio bank.[820] The bank was liquidated by the *Ohio Court of Common Pleas*,[821] while Dwight's legal challenges with the New York banks continued separately until 1860 —which did not mention the Ohio bank[822]— and pivoted on the bank's inability to receive the land title in another State.[823]

To protect the New York City payment system from bank suspensions associated with rigid collection system and secure bill settlement, bankers established the *New York Clearing House Association* ("NYCHA") on October 11th.[824]

However, as the old bank charters expired, bank bills were withdrawn from circulation and replaced with NYCHA certificates for wholesale transactions among member banks in lieu of specie or other legal reserves for settlement of clearinghouse balances[825] and certified checks among banks and growing NYSE brokerage.[826]

During the 1853 December term the United States Supreme Court protected the *State Bank of Ohio* branches against impairment of charters as contracts by the States and reversed the tax decision by the lower court.[827]

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However, the tax remained for OLIT[828] and following the decision, *Banker's Magazine* predicted an imminent distressing, wind-down of OLIT.[829] But it lasted on.

As Indiana Free Banks multiplied to fill the need for money in Ohio, on May 1st, 1854, the Ohio Legislature outlawed small banknotes from other States,[830] precipitating a run on Indiana banks — destroying half of the States' Free Banks,[831] while the insured *State Bank of Indiana* system survived.[832] The run reverberated back on the *State Banks of Ohio* and New York's stock market.[833] The depreciation of Indiana's notes spread the panic to Illinois.[834] On July 1st there was a scandal concerning fraud along New York railroads that were unable to get credit.[835] Bankers Magazine (1855, p493) counted 24 bank failures in November 13th in Ohio; as the State money market gradually decreased from the peak, it remained elevated from 1855 to 1857.[836]

On November 17th, NYCHA evicted a founding member, the *Knickerbocker Bank*,[837] and after several weeks of not producing clearinghouse certificates, on December 12th depositors ran on the bank and an affiliated savings bank (the only one to fail in New York in the antebellum era.[838]) The Supreme Court of New York Judge handling this trial did not believe equity was warranted,[839] but New York's 1846 Constitution made it unclear whether SBs could be incorporated as general entities as their public utility nature seemed connected to special legislative acts and so the resolution process itself was uncertain.[840]

Following the *Panic of 1854*, the St. Louis-based *Page & Bacon*'s investments in Indiana and Missouri defaulted.[841] When on January 12th, 1855 the New York-based *Duncan, Sherman & Co.* refused to pay or accept drafts upon them by *Page, Bacon*, the latter suspended operations the following day and —although the doors reopened on February 15th when a shipment of $3 M gold from San Francisco's PBC was delivered on behalf of the St. Louis branch— on February 17th news of the earlier suspension reached PBC's creditors in San Francisco, who now had $3 M less of gold.[842] Without Federal inter-State bankruptcy law — in *Booth v. Clark*, the Supreme Court reiterated that *comity* does not extend across States to little fanfare, but established precedent by prohibiting equity receivers from suing outside of the jurisdiction from which appointed to[843]— creditors started the race of the diligence on the resources of *Page & Bacon* and PBC within their States.[844] PBC's suspension on February 22nd precipitated a banking collapse in San Francisco the following day.[845] Upon suspension, creditors jeopardized the partnership structure when *Adams & Co.* was pushed into an involuntary ABC and, in the name of Alvin Adams, the general partner, the receiver sued to dissolve the partnership and settle accounts.[846] By May, the PBC entities executed general deeds of assignment with creditors in New York and the Mid-Western States and, in an ABC in California — pleading this was a liquidity event, not a solvency question.[847]

The liquidated casualties of the *Panic of 1855* included all 83 French-funded California-based mines companies founded since 1849.[848] As only 18 miners had limited liability—eight in France, three each in England, Australia, and California, and one in New York[849]— and as European capital withdrew from California.[850] ABC liquidations sold machinery for scraps and spread to inside creditors —between 50 and 66% of all merchants filed— as property values retreated.[851]

Concurrently, in the Australian gold rush inspired by California's rush, miners of Victoria rebelled against the English Empire for taxation without representation during the *Eureka Stockade* in December 1854.[852] As in California, the existing bankruptcy law for cattle trade had a liquidation focus.[853] Several months after the *Panic of 1855* in California, on June 12th, 1855, miners were enfranchised and Australia enacted the recommendations of the commissioned report, separating the *trading* concern —expected to grow value inherent in itself in the shape of goodwill, trade connection, or other exclusive rights— by adding a cost book option for *mining* ventures —wholly bounded by the extent of the mineral deposits and structurally depletive.[854] The latter *cost book* mining company —which survived in England through the pre-Roman *Stannaries Court* of Cornwall— allowed for the company to issue credit advances to its miners and treated them as *trading partners* for more flexible operation and greater leniency in bankruptcy.[855] And although the English Parliament passed the

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Limited Liability Act in 1855 several months later, most of the stockholders in the joint-stock mining companies were fully liable.[856] After another boom the following year, an increasing share of Australia's mines became shareholder owned.[857]

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v. Panic of 1857

The global boom[858] — which invested more in railroads[859] — turned into the first global economic crisis.[860] Following the *Crimean War*, European demand for wheat from Western States fell and —instead of selling at depressed prices so they could repay the Eastern merchants who could then retire their debts to the banks— held on to their bankable paper.[861] As credit grew scarcer in the United States, one of the wheat producers, Ohio, introduced a fifth class of banks in April 1857.[862] Falling grain prices dimmed outlook for Northern rail.[863]

Ohio's tax forced OLIT to create a new strategy. In 1855 Cashier Rockwell left to become President of the *Cleveland & Pittsburgh Railroad Co.* ("CPR").[864] While Coe and other eastern trustees wrote to OLIT President Stetson in Ohio concerning a maturity mismatch that could lead to a run,[865] they supported Rockwell's successor, Cashier Ludlow, in 1857 lending over 25% of OLIT's capital to CPR[866] through unsecured bonds,[867] financed using bonds pledged to its deposit bank in New York —AEB— for call loans.[868]

This was a tenuous situation as the Ohio and New York operations shared liquidity across common capital; two New York agency OLIT cashiers —Coe and Rockwell— both complained about persistent liquidity demand and Coe was concerned about excessive railroad investments by the home office.[869] The market was aware of this, and as bears attacked the securities of CPR and OLIT,[870] Rockwell of CPR was chosen President of a railroad cartel in late June and publicly committed to set rates following a fare reduction by the *New York & Erie Railroad*.[871]

Without central clearing houses recording transactions, brokers cleared stock transactions with certified checks (escrowed funds) —the certifying bank, for several hours, had an unsecured loan on its books until the security collateral was delivered— and States allowed banks to extend credit with *over*certification of checks in excess of deposits, as they had for *over*drafts, as volumes were not large relative to bank capital (but in time this free leverage allowed speculators to inflate asset prices.[872]) Banks were protected from overceritifcation clearing risk as stock trades were settled by buyer's and seller's options (time contracts) —which transferred settlement risk to brokers.[873] Following the crisis, stock traders moved from time contracts to certifying overnight settlement using certified checks[874] — and the resulting overcertification led to a series of panics over the following decades.

In July, the *New York State Court of Appeals*' landmark decision —it took 15 years and became New York's most expensive case— in *Curtis v. Leavitt* against the receiver of New York's failed *North American Trust & Banking Co* ("NAT"). While decisions for related cases in 1849 and 1852 followed the precedent used for banks chartered prior to the 1838 Free Banking law —allowing for only enumerated activities to reduce risk and prohibiting notes and bills payable without interest (e.g., bills of exchange)— in 1857, the court held instead, that the Free Banking system covered activities *incidental* to banking and gave legal authority for New York banks to issue letters of credit and accept bills.[875] Until then, the legal bankable paper for financing commerce was the trade acceptance for specific transactions —with a definite maturity and secured by all parties— within a decade the preferred bill of exchange was, like that of the English,[876] the single-name, unsecured promissory notes dominated.[877] Although contemporaries held that the former self-liquidating commercial bills were of higher quality than the latter accommodation paper,[878] it was actually more susceptible to runs during deflationary periods as the underlying transactions became unprofitable.[879] Like the Scottish 1772 law, the court's decision may have disrupted trading arrangements funded by short term bills.

Railroad prices continued to fall, and the arbitrage fell apart.[880] NYCHA did not assist.[881] The *Board of Control of the Bank of the State of Ohio* insulated the *State Bank of Ohio* branches by transferring assets of the failed bank directly to its depositor banks to secure their deposits — subordinating the debts of individual depositors and other creditors[882] — and extended loans to branches that depended on OLIT for correspondent banking with New York.[883] Furthermore, 2 members of the *Board of Control* were in New York at the time and contracted

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with the cashier to prioritize *State of Ohio Bank* branches.[884] All of OLIT's assets in New York were seized under foreign attachment, and by August 27th, 1857, the *New York Supreme Court* granted over $1 M in attachments against OLIT to New York banks, 44% to AEB.[885]

The day after OLIT suspended, CPR President Rockwell called a meeting and the company went into insolvency on August 25th.[886] Several days later, OLIT President Stetson claimed to be unaware and blamed the New York Agency.[887]

As checks in AEB and Western Correspondents in Ohio were presented for certification, endorsement was refused, sending the checks into protest.[888] OLIT's systemic importance was realized the following week as prices collapsed across markets,[889] squeezing bank and broker liquidity providers. The *Mechanics' Banking Association* of New York collapsed soon after and suspension followed by the banks of the Mid-Atlantic[890] and then the rest of the country;[891] and as mercantile failures spread in New York, NYCHA refused to suspend (which increased credit hoarding.[892])

For a month after declaring insolvency, OLIT's Ohio-based trustees paid off Ohio banks that kept funds on deposit in Cincinnati and then appointed themselves assignees (with court approval shortly thereafter) for a year —without planning for or communicating with local trustees, administrators, executors, etc. and New York creditors— until an undisputed receiver was appointed in late October 1858.[893]

Without suspension, Midwest banks sold railroad bonds and withdrew liquidity from the New York City money market banks to meet deposit demands; the money market banks called in their short-term loans to brokers;[894] and the brokers' fire sales decreased the solvency of all banks holding those bonds —causing banks to question selling or suspending.[895] New York's prudential regulations about speculative bond holding limits accelerated a run on the notes of Western banks.[896]

As banks could not recall railroad debts, they reduced loans to merchants, the merchants ran on the banks[897] and resolved to extend inside, trade credit to other merchants.[898] On October 13th in New York City, a run started at the *American Exchange Bank* —OLIT's largest creditor— and 18 banks failed that day.[899]

Following a period of 'normal' rates for merchant credit,[900] commercial-paper rates reached levels unseen in the United States since (see Exhibit 2) and to stop the internal drain, instead of curtailing loans, for the first time, the clearinghouse banks of NYCHA agreed to '*increase their loans so that the clearing-house balances of all of them would be increased proportionately and would cancel each other without reducing the slender stock of specie*' using clearinghouse loan certificates.[901] Creating money-of-account allowed member banks to settle on NYCHA's books in lieu of specie in settling balances (Gorton, 1985).[902] Despite New York's Constitution prohibiting suspension, the Supreme Court in *Livingston v. The Bank of New York* refused to issue an injunction as, in times of crisis, debt should not be enforced on illiquid banks as they are not insolvent under normal situations.[903]

While UST maintained a real bills doctrine to limited financial markets intervention,[904] Secretary Cobb supported SBs by adding liquidity to the quality of bonds they were allowed to hold.[905] This was not sustainable. Like the NYCHA certificates —as New York's recent laws regarding SBs increased divisibility of liquid assets to depositors[906]— SBs issued certificates secured by high quality bonds held with the State Comptroller.[907] By October 13th, New York SBs evoked a clause limiting conversions to specie at 10% of the balance.[908] The same day, the discount banks suspended convertibility, and banks eased pressure on borrowers.[909] On December 8th, 1857, UST Secretary Cobb (D-GA), in his annual report, called for a compulsory bankruptcy process to restrain bank suspensions and railroad corporations;[910] while he was supported by other Southern Democrats, the scheme failed.[911]

The depression lasted from 1858 to 1859 and the business casualties were catastrophic (see Exhibit 3.[912]) Between 1857 and 1861, failures in the Middle States were 3x those in Eastern and Western States.[913] Iowa had earlier suppressed bank creation and, following the *Panic* and crop losses, lost access to credit. Despite

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being the epicenter of the crisis, Ohio's banking system and deposit insurance succeeded,[914] while Vermont system collapsed due to fraud.[915] This inspired the Iowa legislature to adopt a Free banking and insured *Bank of Iowa* in 1858 — but the strict construction of the law yielded little interest.[916] With few other options, the State created around a quarter of all attachment laws.[917]

Without a federal bankruptcy code, State courts produced a massive amount of creditor remuneration case law (See Exhibit 13) — accelerating the race of the diligent.[918] Unlike Massachusetts, New York and most other States had no involuntary bankruptcy procedures to protect in-State creditor interests.[919] Recovery of the speculative railroads was slow,[920] and so courts appointed receivers to continue operations[921] —10% of railroads were in receivership in terms of mileage in 1859.[922] Case law recognized that the negotiability of bonds[923] and started extending bankruptcy benefits to inside creditors.[924]

Although OLIT was not a bank, it issued trust certificates transferable on the books of the company. In March 1858, the Superior Court of Cincinnati in *Tuffli v. OLIT* found that as these were issued by a trust they were 'deposits in trust' and had super money qualities as their 'low' 3% interest rate doubled to 6%.[925] Several months later, after a receiver was appointed to OLIT, the same court in *Spinning & Brown v. OLIT*, asserted its jurisdiction and effectively warned the Federal Court not to meddle with the local receiver.[926] Following the OLIT disaster, Ohio reform in 1859 introduced court receiverships,[927] which favored inside credit over bondholders.[928] In 1860, Coe became President of the AEB and proposed a new credit instrument —the clearinghouse loan certificate— to NYCHA and it was adopted soon after.[929]

Similarly, other States enacted banking and securities regulation. In 1858, Tennessee repealed its Free Banking statute and Oregon outlawed banking in 1859.[930] Following Massachusetts' earlier example, New York began supervising insurance companies in 1859, and other States imitated following the Civil War.[931] In 1861, while Illinois developed an early derivatives exchange,[932] free banking ended in 1862.[933] Still, Iowa, Minnesota, and Massachusetts adopted Free Banking[934] to reduce uncapitalized unincorporated ("private") banks.[935]

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d. Unity

i. Civil War and Legal Tender Notes

In the fight over Free Labor,[936] when the Confederate cessation from the Union precipitated the Civil War in 1861, debtors in the Southern States owed Northerners $300 M — which spurred a wave of business failures in the North— but Congress failed to establish a Federal bankruptcy process.[937] After the *Panic of 1857*, banknotes traded at a discount in the Midwest, but circulated at par in New England until the War.[938]

In 1861, as the government was allowed to only deposit specie into the *Treasury*, UST Secretary Chase obtained congressional authorization to obtain payment in specie rather than bank credit. This sparked a run on gold and forced banks and the government to suspend convertibility — which would have happened sooner or later as the War progressed.[939]

That same year, President Lincoln signed the *First Legal Tender Act* for the issue *United States Demand Notes*, which could be used to pay "*all dues*" to the federal government but were not redeemable in specie. In lieu of a central bank, NYCHA made this pooling operation possible through its money of account and eased financial stringency by accepting the Government's securities as collateral for its liabilities.[940]

To raise additional financing, Congress adopted the *Second* and *Third Legal Tender Acts* of 1862 and 1863, respectively, to issue *United States Legal Tender Notes* (greenbacks, "USLTN") backed only with UST debt. Reissuance of the latter over the following years vastly outnumbered the former. Increasingly despotic measures did not stop the depreciation of USLTN against gold, and destroyed public confidence in the currency (see Exhibit 8.[941]) In the mining heavy States of California and Oregon, State legislation allowed businesses to not accept payments in USLTN and required payment of taxes in specie.[942] For debt relief, while most of the Southern States of the Confederacy passed complete moratory laws, while Northern States in the Union limited debt moratoria to military personnel.[943]

The resulting hyperinflation led creditors to be more risk averse —loan durations fell sharply and payment in cash relative to credit increased significantly— but business profits were high and business failures low (see Exhibit 3.[944]) In his 1865 report, UST Secretary McCulloch observed: "*It is undoubtedly true that trade is carried on much more largely for cash than was ever the case previous to 1861, and that there is a much greater proper demand for money than there would be if sales were made, as heretofore, on credit.*"

The depreciating currency increased the demand for higher yielding debt, helping finance a trans-National railroad network to support the Union's War effort. The *Pacific Railroad Act of 1862* was signed into law by President Lincoln on July 1, 1862, the authorized extensive land grants in the Western United States and the issuance of 30-year government bonds (at 6%) to the *Union Pacific*, *Central Pacific*, and —following the *1864 Amendment*— the *Northern Pacific Railroad Companies*. Similarly, Jay Cooke, who helped finance the Union (and made a fortune) by selling low denominated UST bonds as savings tools,[945] regarded USLTN "*as a circulating medium, as an anomaly in finance. It was purely a war measure, justifiable because necessary to the life of the nation, and, like other war measures, should end with the return of prosperous peace. It is not desirable that the greenbacks be immediately or suddenly withdrawn, but they should be gradually and surely replaced with a currency which is legitimate and permanent.*" Cooke then went on to create the trans-National money network with the *National Bank Act* — and started several National banks.[946] By 1870, he owned the *Northern Pacific*.

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ii. National Banks

As banks were forced to suspend convertibility in 1861, State bank notes could no longer be redeemed and, by 1863, were competing with USLTN for seigniorage. Rep. Spaulding (R-NY) —the Chairman of Chairman of the House Ways and Means Subcommittee— with the aid of Jay Cooke, prepared a bill, based on the Free Banking Law of New York with aspects of FBUS, which served as the model for the *National Currency Act of 1863* (renamed the *National Bank Act* in 1874, "NBA" collectively.) The NBA was established to provide a market for government bonds[947] and, following the creation of national banks, UST used national banks as depositories.[948]

As in New York's Free Banking Law, there was no stipulation for notes to trade at par —to burden money center banks— and so national bank notes from other parts of the country continued to trade a discount in New York.[949] As the amount of USLTN available for stock trade settlement fell, during the *Panic 1864* in April, USLTN commanded a 2% premium over certified checks.[950] With the *NBA of 1864*, all national banks were to trade at par — increasing the capital for the money market.[951] Additionally, private coins —specie money— were outlawed as counterfeiting[952] and, briefly, prohibited gold derivatives.[953]

The 1863 Act created competition to State banks with national banks regulated by the *Office of the Comptroller of the Currency* ("COTC"), a new, independent bureau of UST. Nationally chartered banks are the first group that received national bankruptcy protocol that continues to this day.[954] The currency was insured regardless of bank condition[955] with prudential limits on leverage through reserve requirements[956] (counting clearinghouse loan certificates,[957]) capital requirements including double liability for shareholders (just like New York general incorporation law), limits on note circulation, and the requirement that national bank notes be backed by US government bonds deposited with the COTC at a 10% haircut.[958]

However, as few State banks converted, Congress imposed a punitive tax on State bank notes to end Free Banking. Soon, very few State banks remained (see Exhibit 7.) In many States, legislation regulating banking activities became obsolete after the NBA.[959] State bank-obligation (i.e., deposit) insurance —including New York's system which was operational since 1829[960] — all collapsed in 1866.[961]

Savings banks had existed for decades, but their trust business form, strict regulation, and allowable assets were distinct from commercial banks' note issuance and risky lending.[962] The lack of State banking regulation allowed for regulatory arbitrage[963] — demand deposits[964] — a financial innovation by State banks that led to a strong comeback in their number; so much so that within 10 years of the amendment to tax State banknotes, State banks claimed more customer deposits than national banks. By then the war was over and so a dual banking system emerged. While the stability of bank notes secured the circulating medium, the rapid growth of banks' dependence on deposits resurfaced the prospect of banking panics.[965] Exhibit 7 illustrates the increased frequency of net decreases of first State and then national banks following 1864.[966]

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iii. Recovery and Bankruptcy Act of 1867

After the Union's victory, UST began slowly purchasing USLTN and replacing circulating money with species (See Exhibit 8).[967] By 1866 there were only 42% as many gold coins circulating as in 1862 (see Exhibit 8); national banks were allowed to recognize gold and USLTN as reserves. In 1868, Rep. Henderson (R-MO) linked inflation to trust in the government rather than the amount of gold and argued that a lack of circulating medium —credit– was destroying business,[968] while Rep. Cary (R-OH) argued that UST's liabilities (e.g., USLTN) are a safer circulating medium than private bank notes.[969] State banks were still challenging the tax on bank notes as unconstitutional so both bills were ignored. In New York, safe money was created through New York Senate's resolution of new supervisory powers over SBs[970] and the Gold Exchange created a clearinghouse for transactions in gold.[971]

In 1867, Congress enacted the third *Bankruptcy Act of 1867* ("BA67") to relieve debtors[972] affected by the depreciated currency;[973] it deferred to State exemptions.[974] Prior to BA67, most of the bankruptcy case law was being created by States; in 1868, Federal bankruptcy case law volume exploded to fill pent up demand; it yielded 29,529 petitions nationally (443 involuntary)[975] — over 50% of petitions were filed by the Southern States from the former *Confederacy* (which accounted for only 30% of the total population.[976]) See Exhibit 13. BA67 permitted corporations—including railroads and some types that remain excluded today because of their systemic and social importance— to file voluntary petitions.[977] Further supporting bankruptcy over resolution, in *Hugh v. McRae* (1869), the Supreme Court held that reorganizations could be undone without concern for equity jurisprudence.[978] As one weakness of earlier bankruptcy legislation had been too much involvement by the judges themselves, BA67 required judges to appoint non-judicial registers learned in law to counsel petitioners.[979]

Soon after, the Supreme Court upheld the tax on State bank notes in the 1869 *Veazie Bank v. Fenno*, overturning the long held practice that the instruments of State sovereignty were exempt from Federal taxation upon the same grounds that the instruments of Federal sovereignty were exempt from State taxation.[980] USLTN's value structurally increased from 70s (where it had wavered since 1864) to 90 (see Exhibit 8). Moreover, from 1863 to 1870, 15 courts of last resort upheld the Legal Tender Act as valid.

Suddenly, in the 1870 *Hepburn v. Griswold* —concerning a debt made prior to the *Legal Tender Act*, and whether it could be paid back in US notes or USLTN— that the Court found the *Act* unconstitutional. Chief Justice Chase —who served as Secretary of UST between 1861 and 1864— argued that impairment of contracts (even for the Federal government) is inconsistent with the spirit of the Constitution and as such, USLTN impair the payment of debt and the enforcement of contracts (and so not a legally enforceable means to pay debts.[981]) Membership of the Court quickly changed, and the decision was reversed several months later in similar cases.[982] Bills soon emerged to outlaw USLTN.[983] There were other options to this lack of agreement.

The problem of unstable money was exacerbated by risky banks as they were a source of speculative capital and risky for bank note and deposit creditors:[984] The need for a medium of exchange (money) and store of value (investment) was great when the bankruptcy regime for banks was deficient (and the need to produce private information to win in the 'race of diligence' during the ever present bank runs.)

In 1871, the Postmaster General proposed *United States Postal Savings Banks* ("USPSBs"), modeled on the English financial inclusion innovation,[985] to pay for a new telegraph system — a plan endorsed by President Grant. USPSBs offered a safe circulating medium.[986] While these USPSBs would be fully reserved and so create a disciplined, rigid currency, the ability to convert might add elasticity for business needs.[987] According to the Postmaster General, savers searching for store of value would add side-tracked base specie money into the circulating payment system.[988] This bill —and the dozens that followed— were voted down. Circulating, interest-bearing federal money risked disintermediating the banking system. While the American Bankers'

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Association labeled USPSB as 'socialist banking,' the group recommended the Federal Reserve member banks be allowed to establish savings departments to segregate assets.[989]

Then there was silver. Since Colonial times, both gold and silver were legal tender (bimetallism). Like gold, silver was convertible to notes – outside suspension periods – but the conversion rate fell in the 1800s.[990] Throughout the 1860s, silver coins circulated at 10% the amount of gold (see Exhibit 8). Following the global trend, however, Congress passed the *Coinage Act of 1873*, debasing silver and moving the country to a de facto, mono-metallic gold standard with the United States Dollar as the unit of account.[991]

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iv. Panic of 1873

Investors did not want to purchase bonds at face value until the railroad was built and Congress prohibited the *Union Pacific Railroad Co.* ("UPR") from selling securities under par so UPR, financed originally in 1862 by federal subsidy bonds, , set up another agency to sell the railroad's stocks and bonds in 1865 — the *Crédit Mobilier* ("CM"). CM accepted stock and bonds from UPR at face value and sold them to investors at rates under par. To make up for the loss, CM overcharged UPR for railroad construction. In 1868, government-appointed directors tried to expose problems ("private books") as Rep. Ames distributed discounted shares and cash bribes to stamp down Congressional concerns. Since the UPR's board ran CM, they were able to make an estimated $16.5 M in profits, and by the time of the railroad's completion in 1869, the value of UPR stock had risen 750%.

That year, scandal broke out after financier Jay Gould bribed members of President Grant's inner circle and attempted to corner the gold market but failed and triggered a panic.[992] The Congressional investigation into the *Gold Panic of 1869* found that bank overcertification provided leverage to speculators seeking to inflate asset prices and legislation was passed in March 1869 prohibiting national banks from the practice (but they continued as stock trading increased under decentralized overnight clearing .[993])

Following the Panic, from 1869 to 1872, voluntary bankruptcy filings fell while involuntary increased: in the Southern District of New York, total voluntary filings between 1869 and 1872, were 5x lower than 1868 levels while total involuntary filings over that period were 8x higher than those in 1868.[994] With many grounds for denying discharge, only about 33% of the debtors received a discharge.[995]

BA67 was systematically destabilizing as it defined insolvency as a failure to meet obligations; for example, if "*a banker, merchant, or trader, has fraudulently stopped or suspended and not resumed payment of his commercial paper, within a period of 14 days, [he] shall be deemed to have committed an act of bankruptcy*."[996] The inability to pay debts in the ordinary course of business — as opposed to the aggregate net of assets and liabilities at a fair value — would make most merchants legally insolvent during panics.[997] While only Federally chartered, National banks were covered under the NBA,[998] State-chartered banks (the few that existed) and insurance companies could and did file under the BA67.[999] However, the insolvency sections of BA67 aggravated the severity and extent of the crisis.[1000]

This created significant pressure on the Supreme Court and the district judges of the bankruptcy jurisdiction;[1001] Exhibit 9 illustrates the massive volume of bankruptcy case law being developed by both Federal and State courts. Due to increased involuntary flings, Congress prohibited involuntary bankruptcy proceedings with the *May 27th, 1872 Amendment* to BA67 (unless indebtedness exceeded $3 K).[1002]

On September 4th, 1872, a CM stockholder allowed *New York Sun* to publish incriminating letters from Rep. Ames, implicating a number of Republican politicians, including Vice President Colfax of the Grant Administration. As the scandal diverted investment, credit markets tightened for railroad bonds,[1003] and banks endorsed railroad commercial paper, "*borrowing largely on call loans secured by pledge of the railroad securities as collateral*" (Sprague, 1910).

Two House committees —Poland & Wilson— investigated the scandal and presented a report to Congress on February 18th, 1873 (NYTimes, February 1873). To punish UPR, Congress passed an act prohibiting it from issuing mortgage secured bonds on assets with Government liens on March 3rd.[1004] On April 1st, 1873, the *Coinage Act* went into effect and had an immediate impact on the value of existing credit contracts, which destabilized railroad debt.[1005]

Banks started failing and by September 20th, railroads defaulted on $91 M of debt, leading to a loss of market for railroad debt and the collapse of the financier of the Civil War, *Jay Cooke & Co.*, the promoters of the *Northern Pacific Railroad*;[1006] this high profile event spread contagion across banks[1007] and, NYCHA suspended

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overcertification[1008] —due to the heightened counterparty risk from broker defaults— and so shuttering the NYSE for nine days.[1009] Railroads defaulted on an additional $153 M of debt from September 20th to December 31st.[1010] To enforce its preference, the United States sued the trustees of railroads with obligations to the Federal Government from 1862 —including Jay Cooke's *Northern Pacific Railway*.[1011]

As the credit contraction prevented commerce, UST added limited liquidity through monetary policy.[1012] New York banks were ready to accept payment on certified checks with NYCHA-backed clearinghouse loan certificates, putting the two at par.[1013]

In 1872, railroad debt defaults represented 97% of the total mercantile business failure liabilities; this increased to 120% and 181% in 1873 and 1874, before falling to 82% in 1875. By 1873, 10 States were in default on their debt after taking over railroads.[1014] While reorganizations for railroads became common after the *Panic of 1857*, the court rulings of 1869 that undid reorganizations without consideration for equity, likely delayed recovery and decreased the availability of debt financing.[1015]

As district courts considered the claims of bondholders and inside credit (i.e., salaries and trade credits), they began experimenting with directed preferential payment of pre-receivership operating expenses[1016] and allowed public interests (e.g., railroads)[1017] to extend credit by issuing receivers' certificates[1018] — predecessor of today's debtor-in-possession financing.[1019] Bondholders recovered little[1020] and the railroads continued to be operated by the same agents,[1021]although Jay Gould purchased the distressed UPR.

Creditors were left with little after legal fees and expenses;[1022] many blamed the *1872 Amendment* prohibiting involuntary proceedings for removing the function and leaving the systemically risky fraudulent voluntary petitions.[1023] Inflationist calls for stimulating circulating credit delayed the resumption of USLTN to specie, and while their goals were constrained by President Grant, UST pursued expansionary monetary policy initially.[1024] With the *June 20, 1874 Amendment of the NBA*, Congress allowed banks to not hold reserves against national bank notes, but required reserves to be held for deposits, and placed restrictions upon the free development of the banking system.[1025] The need for market integrity led Illinois to regulate its derivative exchange.[1026] The failures of relatively safe trusts and savings banks disclosed the increased risk-taking[1027] and so New York and the New England States started regulating them.[1028]

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v. Panic of 1875

In the early 1860s, several banks with charters from California, Colorado, and the English crown started in San Francisco.[1029] One of these, the *Bank of California* ("BOC"), opened in 1864 to offer lower cost financing for miners of Virginia City, Nevada.[1030] However, there were no national banks due to California's demand for notes redeemable in gold[1031] and so, in 1970, to avoid a BOC monopoly, Congress amended the *National Bank Act* for a limited issue[1032]— the *First National Gold Bank* and *the National Gold Bank & Trust Co* ("NGBT") started soon after in San Francisco.[1033]

The California legislature adopted the *Civil Code of March 21st, 1872* and, several months later, Congress passed the *General Mining Act of 1872*. When miners struck silver at the *Comstock Lode* in neighboring Virginia City, Nevada, they used the new corporate Californian form but, due to the lottery-like behavior of some of the mining stock operators, California passed a law requiring monthly balance and semi-annual cash flow accounting statements starting in 1874.[1034]

President Grant's earlier call for repeal of the BA67 as it "*is productive of more evil than good at this time*"[1035] and Congress passed a major revision the *Bankruptcy Amendment of June 22nd, 1874*.[1036] Although this *Act* repealed the clause that failure to pay commercial paper for 14 days was an act of bankruptcy,[1037] it was destabilizing as it made involuntary bankruptcy difficult and borrowed the voluntarism of discharges from England's failed 1869 law.[1038] In addition to creating the popular limited composition option for corporations as an alternative to liquidation —permitting small insolvent firms to restructure unsecured obligations through compositions approved by a majority of creditors[1039]— several of the Amendment's radical changes were objectionable.[1040]

As was the case during the *Gold Rush of 1855*, the economic reality of the individual mines was a lottery —the underlying land, equipment, and labor had little value without the concerted silver mining process. As the mining mills deteriorate rapidly when in disuse, instead of paying interest to banks when operations stopped or deal with an expensive BA67 bankruptcy, miners assigned their mills using ABCs.[1041] That Oct, the Supreme Court clarified the constitutionality of State insolvency processes in lieu of BA67 in the case of *Mayer et al. v. Hellman*.[1042] Although BOC still had a franchise, the depreciation in mining stocks and loans impaired by the ABC process, destabilized the institution.

In a little over a year since the *Bankruptcy Amendment of 1874*, *Duncan, Sherman & Co* —the firm which started the *Panic of 1855* by protesting *Page, Bacon*'s bills— on July 28th, 1875 filed for a voluntary liquidation through a general assignment for the benefit of all creditors.[1043] The firm's counsel added that it was probably the first time that a large bank with access to capital on unsecured terms voluntarily liquidated.[1044] Duncan's partners may have been spurred to action by BA67's radical *1874 Amendment* — including voluntarism and compositions. As the markets fell in the coming months during the *Panic of 1875*, *Duncan's* creditors filed for an involuntary bankruptcy at the end of the year and the debts were discharged by October 1878.[1045]

In 1874, the total bullion product of the Pacific States and Territories was $74 M, split between gold —$26 of which 67% from California— and silver —$48 M of which 73% from Nevada, with the latter promising greater growth.[1046] Despite the large specie production, the equally large increase in shipments east left the California banks with little coin.[1047] Then, in January 1875, the Republican Congress passed the *Specie Payment Resumption Act* to eliminate Civil War-era USLTN in favor of 'hard money' by 1879 and — to as a compromise with Inflationist Democrats[1048]— the Act supported Free Banking.[1049] Although the NYCHA clearinghouse had protected New York's banking system for nearly two decades, there was not enough trust amongst the motley group of San Francisco banks to create their own system.[1050]

To win control of banking the *Comstock Lode*, a group of successful miners and their San Francisco-based *Nevada Bank* instigated a slanderous campaign for several months,[1051] and as banks hoarded gold and shunned BOC's paper, the latter had to endorse notes from foreign institutions for access to cash.[1052] Following BOC's

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suspension there was consideration of a reorganization, but the suicide of its Cashier and active Manager activated the race of the diligent.[1053] Contagion spread suspending businesses and banks. NGBT liquidated after other banks in California refused to take the gold notes.[1054] Similarly, as banks in Los Angeles were liquidated under BA67, the market and value of real estate and bankable paper collapsed as California slid into depression.[1055]

The *Great Fire* of October 26th, 1875 destroyed most of Virginia City, but the community was rebuilt by December 15th,[1056] the same day that the *San Francisco Clearing House Association* ("SFCHA") was organized[1057] by most banks in the city: 6 private banks, 4 foreign banks with royal charters, 4 State banks (from California and Colorado), and 1 national.[1058] Unlike the *Panic of 1855*, the contagion from banking to mining and the length of the depression were mitigated by the reorganization of BOC (and later, NGBT[1059]) as well as the new *Nevada Bank* and European banks.[1060] Then, California led in ABC experimentation by creating extra-judicial adjustment bureau in 1877—which came to widespread use during the *Depression of 1920*[1061]— and the State legislature enacted bank supervision in 1878.[1062]

By 1877, the *Inflationists* won control of both Congressional chambers and President Hayes was in; Congress could not agree on a way to repeal the *1875 Specie Act*; instead, the *Bland-Allison Act of 1878* superseded the former and, for the first time in decades, great quantities of silver were added to the country's circulation.[1063] Additionally, USLTN without specie backing was legalized.[1064] Still, there was only circulating liquidity (for small purchases with silver) as UST Secretary Sherman neutralized inflation by building gold reserves for *Resumption*.[1065]

By 1878, the number of bills to amend BA67 grew until it was realized to be impossible,[1066] and BA67 was repealed.[1067] As State courts produced creditor protection case law (See Exhibit 13), California created one of the few bankruptcy regimes outside of New England with the *Insolvency Act of 1880*.[1068]

Over 18% of the total mileage of railroads in the United States was in receivership by early 1877 — this would remain the record as the industry developed (the peak annual rate following *the Panic of 1893* was fleeting) (Swain, 1898, pgs. 68, 70). The first reason for this is the development of equity jurisprudence case law after the repeal of the BA67[1069] culminating in the October 1878 Supreme Court in *Fosdick v. Schall, 99 U.S. 235*; taking into account the necessity from the peculiar circumstances surrounding railroad bankruptcies and permitted the debtor to pay suppliers in full, rather than treating them like bondholders and other non-priority creditors, for 6 months from the initiation of a receivership.[1070]

The second reason for this improvement is a tool created in 1879 as legal arbitrage by UPR against the United States Governments' 1873 punishment.[1071] Excited markets[1072] hailed this the masterpiece[1073] of Jay Gould, who purchased the distressed railroad. The collateral trust mortgage issued liens on the trust holding company rather than on specific tangible property[1074] to retain strategic franchise ownership and legal protections.[1075]

The expense and limitation of bank charters contrasted with unincorporated private banks. "*The private banker is frequently engaged in other business enterprises, and in the event of his failure creditors other than depositors come in for a share of the assets. A corporation, on the other hand, cannot engage in business other than that prescribed by its charter...[T]he fields of operation of national and of private banks are for the most part mutually exclusive, for very few private banks have a capital sufficiently large to enable them to organize under [NBA]*." (Barnett, 1911). These competed with State banks in Ohio, Indiana, Illinois, and in the South as States incentivized banks to incorporate to limit risk by decreasing the required capital,[1076] while eastern States sought to regulate their growing brokers.[1077]

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vi. Panics of 1884 and 1893

Following the assassination of President Garfield in 1881, the economy weakened.[1078] As national banks became less profitable, Congress decreased prudential regulations for all banks,[1079] easing monetary policy. Also, New York modernized its commercial and banking laws (in place since 1826), and limited financial incorporation arbitrage.[1080] By 1883, the railroad industry entered a slump[1081] and there was concern that the United States would leave the gold standard.[1082]

On May 8, 1884 *Grant & Ward* (a brokerage firm connected to former President Grant) failed, dragging down with it the *Marine National Bank* (a large interconnected institution), which had overcertified a *Grant & Ward* check; soon after, the President of another national bank embezzled deposits and fled to Canada. Rumors caused *Metropolitan* to close, which raised doubts to the banks it was linked with, and a bank run spread through *Metropolitan*'s network.[1083] The decision of the NYCHA to issue loan certificates to *Metropolitan* during the *Panic of 1884*, alleviated the need for a suspension of convertibility and mitigated nationwide contagion.[1084]

The money market stringency to New York banks and businesses spread across State lines as over 100 State banks collapsed and 10,000 business failed in 1884 alone (see Exhibit 3).[1085] These losses were exacerbated by the failure of a popular proposal for bankruptcy reform. Following the repeal of BA67 in 1878, creditors and businesses organized conventions to lobby for uniform bankruptcy law through the *Lowell Bill*.[1086] While importers and manufacturers engaged in large transactions in and with the large cities supported any federal process to State laws, Western merchants were afraid that Eastern creditors would seize assets immediately upon missed payments.[1087] As small businesses increasingly failed at a time without heavy losses or panic, contemporaries blamed the diversity of State insolvency laws and assignments to preferred creditors decreased credit and fueled the race of diligence.[1088]

Unlike Europe, most States developed assignments for the benefit of creditors ("ABCs") and did not have voluntary and involuntary bankruptcy laws: New York and several Western States had a voluntary bankruptcy only system, while the bankruptcy double system —including both voluntary and involuntary filings— was found in England, in all the continental European Europe, and only New England and Western States.[1089] Voluntary processes were especially potent in combination with debt discharge, which was not approved upon across the European Continent, but firmly embedded in the laws of England and the United States.[1090] In 1883, the English Parliament undid the failed creditor-run bankruptcy scheme of 1869 —creditors had little incentive in monitoring small debtors— and passed a law that returned to credit control '*officialism*' focused on distribution rather than debtor relief.[1091] While creditors' rights were relatively weaker in England than before, there was no similar change on the European continent, and France, Germany, and Scandinavia remained firmly pro-creditor (See Exhibit 1.) Calls from President Arthur for a Federal process in the United States and broad expectations that the generally liked *Lowell Bill* would pass were quashed on May 19th.[1092] On the same day, Congress failed to pass bills that would have allowed banks to increase circulation and for UST to increase open market operations — although this was expected.[1093]

The NYCHA innovation in rebuilding trust after crises[1094] was an example of the potential of supervision and bank bankruptcy[1095] and as State banks increased, started widespread adoption of laws concerning supervision and conferred power to State regulators to apply for receivers (and to a lesser extent, take possession of pending appointment of receiver) in 1886 (see Exhibit 9.)

Following creation in 1879, the efficiency[1096] of collateral trust mortgages led to widespread adoption.[1097] After the Wabash issued these in 1883,[1098] the holding company structure helped the Court approve the railroad's first voluntary application for a Federal receiver and impair debts so as to not disrupt operations (similar to an automatic stay[1099]); The Wabash-style equity receivership became popular tools for railroad reorganization.[1100]

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In 1890, as a large bondholder, the *Mutual Life Insurance Co of New York* created a policy to railroad reorganization where it served as a receiver, conservator, and creditor for important investments.[1101] On the other hand, a non-bank that invested in railroad securities triggered a stock market panic (creditors received 100% on liquidation),[1102] but NYCHA protected the payment system.[1103] The following year, NYCHA made the NYSE establish the NYSE Clearing House, which multilaterally netted debts across all members; so while the banks continued to bear overtification risk but at a greatly reduced level.[1104]

The legal sphere sought to improve credit. In 1887, the *American Bar Association*'s ("ABA") *Committee on Commercial Law* submitted a report 'pleading' for uniform bankruptcy and negotiability regulation — the first report since the ABA started in 1878.[1105] As a result, ABA formed the *Uniform Law Commission* in 1892 to create uniform commercial laws. Similarly, associations of creditors and businesses organized conventions to lobby for uniform bankruptcy law through the Torrey bill in 1889 (following the failure to pass the Lowell bill for bankruptcy in 1884.[1106])

To deal with competitive questions and systemic contagion risks that railroad failures posed, Congress passed the *Interstate Commerce Act of 1887,* creating the ICC to regulate private corporations engaged in interstate commerce.[1107] While there was a high hurdle in rate setting,[1108] it established financial reporting.[1109]

On the other hand, debtors — particularly farmers and Westerners — advocated for bimetallism as the associated inflation would alleviate their debt burdens; as a concession to the pro-silver party Congress passed the *Sherman Silver Purchase Act of 1890* ("SSPA").[1110]

Following the Supreme Court's proclamation that the Wabash equity receivership was constitutional in 1892,[1111] receivership became an attractive option for the *Philadelphia & Reading Railway Co* in February 1893;[1112] UST responded with easy monetary policy carried out through purchases of federal, State, and railroad bonds.[1113]

Since New Jersey allowed corporations to purchase the stock of other corporations by payment in their own stock in 1891, the *National Cordage Co* ("NCC") used the trust form to centralize purchases and control sales, but not to consolidate and centralize the administration of its constituent companies, nor did it try to consolidate or reorganize production facilities.[1114] Without a Federal bankruptcy process, creditors in different States attached property in the race of diligence.[1115]

When NCC failed in May,[1116] contagion spread and there was a rapid withdrawal of cash reserves from the city banks and failures in the West.[1117] News of the repeal of SSPA in June brought some respite, but it was delayed and did not pass until Nov.[1118] By October, accumulated failures led to runs on banks,[1119] the UST helped support convertibility[1120] and expanded the range of allowable railroad bonds.[1121] The collateral trust mortgage innovation helped to quickly integrate railroads falling behind on their debt into trust-backed secure bonds.[1122]

As bank runs spread to interior, on October 26th NYCHA, sought to quell bank failures and extended its previous loan certificate process to allowing banks to print their own money and issue directly to the public in lieu of government.[1123]

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e. Consolidation

i. Bankruptcy Law

Following the disastrous *Panic of 1893*, Rep. Bryan (D-NE), presented a bill to Congress proposing a national deposit insurance fund.[1124] Little came of this proposal or the hundred that followed from both Republicans and Democrats. Although Congress taxed State bank notes out of existence 15 years earlier in 1879, in 1894 Congress equalized money taxation by allowing States to tax Federal USLTNs held as reserves by banks[1125]

By 1896, as the Democratic Presidential Candidate, Bryan charged that debt-burdened farmers were being crucified upon a "*Cross of Gold*" for not being able to pay off their loans with debased silver. The pro-debtor Populists linked bankruptcy law with the (deflationary) gold standard as the two scourges of the laborer.[1126] However, by 1896, global money supply expanded with the earlier discoveries —gold in South Africa and the use of cyanide for extraction from ore— and ending Europe's *Long Depression*.[1127] Moreover, the suspension in the early part of the *Panic of 1893* helped pull specie in.[1128] Bryan was defeated.

There was a record spike of railroad receiverships in 1893[1129] and, as trust mortgages and a variety of other reorganization security devices became the market norm,[1130] the ICC developed uniform financial accounting.[1131] While there were calls to federalize the process in 1896,[1132] the ABA's *Uniform Negotiable Instruments Law,* was approved that year, and soon enacted in every State. Similarly, New York intervened in a public dispute to secure a general single accounting standard (like the ICC created for railroads.)[1133]

However, the *United States v. Trans-Missouri Freight Association* decision in 1897 held that the *Sherman Anti-Trust Act of 1890* outlawed the ICC's rate-fixing. Following a barrage of complaints,[1134] old receivership laws favoring bondholders were swept away[1135] in favor of collateral trust mortgages using Wabash-style equity receiverships,[1136] allowing J.P. Morgan and to consolidate the industry and maintain European capital.[1137] Bankruptcy used to strengthen the overbuilt utilities industry through consolidation formed the Nation's first merger wave (see Exhibit 14.)

The Republican platform supported an integrated commercial Nation —and the *Bankruptcy Act of 1898* ("BA98") was a part of it— as State-based debt collection was problematic.[1138] While Southern Democrats supported a temporary bill for discharging insolvent debtors after the collapse of a speculative market in Texas,[1139] Republicans argued that it had to be permanent as part of a commercial canon and were supported by a national coalition promoting bankruptcy legislation.[1140] BA98's commercial aim was to encourage the flow of credit[1141] and was focused on individuals and medium-sized business, not railroads,[1142] corporations, or national banks.[1143]

To encourage inter-State trade, creditors drove BA98, in their desire to streamline debt collection and maintain investment opportunities with a debtor-friendly approach to bankruptcy.[1144] For example, BA98 reversed the BA67's provisions which allowed creditors to initiate involuntary procedures against farmers and laborers. Unlike the English bankruptcy law of 1883 (that empowered courts to approve distribution of failed shopkeepers' assets to creditors), BA98 focused on rehabilitating debtors with limited judicial review of discharges.[1145] This helped bring the down the cost dramatically from BA67 to accommodate the growing working-class.[1146]

To provide for temporary illiquidity without accelerating bankruptcies during panics, the definition of insolvency changed from an inability to meet obligations to liabilities exceeding assets.[1147] To stop the run-like race of diligence collection efforts, filing for bankruptcy triggered an automatic stay.[1148] Parties were allowed to agree upon a reorganization plan to relieve financial pressures and enable the debtor to remain a going concern. Alternatively, it provided for the liquidation of a debtor's non-exempt assets and required pro-rata distribution of the proceeds among creditors with the remaining debts discharged.[1149]

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BA98 also created federal bankruptcy referees and an industry of bankruptcy lawyers sprang up to counsel creditors and debtors.[1150] These factors —along with continued control of Congress by the Republican for 16 years— allowed the law to ingrain itself before political repeal.[1151]

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ii. Panic of 1907

President McKinley financed the War with Spain and the construction of the Panama Canal[1152] with the *Gold Standard Act of 1900*, which increased the number of banks and the circulating medium.[1153] Easy monetary policy fueled credit creation through regulatory arbitrage[1154] while UST sought central bank-like powers to manage liquidity needs.[1155]

As BA98 suspended State insolvency laws, assignments became less frequent the duties of an assignee and of a trustee in bankruptcy became similar in securing a just distribution of the assets among the creditors.[1156] Hence, BA98 fueled trusts (see —the ultimate evolution of unincorporated joint-stock[1157]— in different forms (see Exhibit 16.) As New Jersey earlier allowed corporations to increase merger intangibles 1896 (following the NCC disaster),[1158] the first merger wave peaked (see Exhibit 14) and created monopolistic holding companies, such as the *Standard Oil Trust* (legally reborn in New Jersey in 1899.) In New York City, as the City itself consolidated in 1898,[1159] State banks using the trust structure, such as the *Knickerbocker*,[1160] were excluded from involuntary liquidation under BA98. While anyone could file voluntarily, BA98 held that "*Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts.*" Neither trusts nor corporate industrial firms were eligible for involuntary bankruptcy petitioning.[1161] This was probably for the better as unprofessional receivers destroyed value.[1162]

A strategy of some banking trusts was to purchase subprime railroad bonds[1163] as collateral for accommodation paper sold to London until October 1906.[1164] The *Chicago & Alton Railroad's* stock was the most widely used collateral[1165] as its debt was held by prominent bankers, who decreased the capital stock to debt ratio from 2.6 to 0.5.[1166]

President Roosevelt (R-NY) became the driving force against the monopolistic trusts and supervised railroad regulation. The 1903 Elkins amendment to the *ICC Act of 1887* (and penalized rebates to avoid discrimination) and the *Hepburn Act of June 1906* gave the ICC authority to set maximum railroad rates and extend its jurisdiction. Empowered by these, the ICC sued the *Chicago & Alton Railroad* for discriminatory fare pricing on March 4th, 1907,[1167] as Congress increased the production of safe assets as circulating medium and bank liquidity.[1168] The stock market crashed 10 days later.[1169]

Few banks held the subprime railroad bonds, with the vast majority being quality.[1170] However, interlocking directorates headed by Morse and Heinze were both within and outside BA98 liquidation.[1171] After they ran into trouble, NYCHA rescued several banks associated with this group[1172] but allowed the nonmember[1173] *Knickerbocker T*rust to fail.[1174] This forced the race of the diligent on other trusts, which J.P. Morgan contained in New York City,[1175] but spread across the country.[1176]

The scramble for liquidity[1177] shocked businesses and banks in other States, as clearinghouses issued jurisdiction-specific certificates and paralyzed inter-State commerce.[1178] Western States experimented with legal bank holidays.[1179] Contemporaries argued that BA98 decreased insolvency litigation and prevented further disaster.[1180] While there were bank failures,[1181] losses by trust depositors were contained,[1182] except for the *California Safe Deposit & Trust Co of San Francisco* ("CSDTC").[1183] Friedman and Schwartz (1963) describe "*the business contraction... though relatively brief, [as] extremely severe, involving a sharp drop in output and employment. Even the annual net national product figures show a fall of over 11% in both constant and current prices*." The rush of capital ended the panic.[1184]

Following the panic, most States granted local regulators the power to appoint receivers and to liquidate banks; Oklahoma started deposit insurance in 1908 and was joined by Kansas, Nebraska, and Texas in 1909 (see Exhibit 9.)[1185] California rehauled its banking regulation following the CSDTC disaster.[1186] In 1910, Kansas Banking Commissioner Dolley created the *Investment Information Bureau* to provide information about the financial standing of companies offering to sell stock to investors and "*protect the people of Kansas from fakers with*

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worthless stock to sell"; these 'blue sky' laws spread across the country quickly and became the basis for federal securities regulation.[1187]

As Presidents Roosevelt and Taft were in favor of a voluntary federal incorporation law for industrial firms in 1910,[1188] Congress amended BA98 and extended involuntary liquidation[1189] to corporations, including trusts, SBs, and State banks (but not National);[1190] NYCHA subsequently extended membership to trusts.[1191] Courts made court receiverships easier by abandoning the need for insolvency, and while employee debt was the only unsecured debt with priority (in several States by statute), there was a tendency towards extending priority to tort creditors.[1192]

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iii. The Need for a Central Bank

In the aftermath of the *Panic of 1907*, Taft campaigned on postal banking as a way to stabilize the banking sector and help credit-starved regions like the South and the West in 1908.[1193] Although opposed by Democrats, Congress passed the *Aldrich-Vreeland Act of 1908* and established the *National Monetary Commission* ("NMC"). Following Taft's win, the NMC reviewed international experiences (NMC, 1910) and President Taft signed the *United States Postal Savings System* into law in 1911 — allowing the *United States Post Office Department* to issue money.[1194] The same year, the Supreme Court ordered the dissolution of *Standard Oil Trust*, ruling it was in violation of the *Sherman Antitrust Act*.

Still a diversity of banks is necessary.[1195] Upon the recommendation of the Commission, Congress passed the *Federal Reserve Act of 1913*. While NYCHA and other clearinghouses already acted as lenders of last resort in times of crisis, policymakers hoped to prevent panics altogether by creating an elastic currency.[1196]

Advocates of a banking and currency bill saw the 1893 discounting of railroad collateral trust mortgage bonds as proof that private debt could be used as collateral for a currency, but there was not enough political will.[1197] Democrat critics feared that accepting commercial paper would lead to the speculative money creation and that discretionary discounting would result in political favoritism and corruption.[1198] Others argued that loans would lead to inflation and that Congress should instead mandate higher reserves to protect against State bank bankruptcy.[1199]

Under the prevailing Real Bills doctrine, the market for mercantile commercial paper – as opposed to speculative credit - would be bolstered by a permanent discount window at the Federal Reserve that would purchase at penalty rates. The regional system – as opposed to a single central bank - would not depend on decisions, but through an automatic mechanism under the laws of trade. While Senator Owen (R-ME), sponsor of the *Owen-Glass Act* (*Federal Reserve Act)*, was heavily influenced by Irving Fisher's idea of price stabilization, AEA President Kinley objected to it as it discretionary reaction to past harms.[1200]

Following the declaration of World War I in 1914, the NYSE closed to avoid export of gold for four months and Congress unanimously agreed on emergency paper money for a medium of exchange.[1201] As World War I raged on in Europe, Congress passed the *Army Appropriations Act of 1916* authorizing the President to "*take possession and assume control of any system or systems of transportation*." Following declaration of war in April of 1917, President Wilson issued the order to nationalize railroads and other transport systems and create the *United States Railroad Administration*.[1202] Similarly, the Fed's independence was sacrificed to maintain low interest rates to decrease government debt financing[1203] and the federal government increased account size limits for USPBs[1204] and created its own bank, the *War Finance Corporation* ("WFC").[1205]

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iv. Panic of 1926

To avoid the consolidation seen in the mercantile sphere, the New York money market and agricultural banking were segregated by geography and from one another. Following the creation of the *Federal Reserve Board System* in 1913, Congress enacted legislation in 1916 (delegalizing Heinze-type mergers for national banks[1206]) and 1918 (allowing national banks to merge without liquidation while keeping this requirement for national banks merging with other institutions.[1207]) Likewise, in 1918 Congress created the *Federal Farm Loan Board System* ("FFLB")[1208] to increase credit to rural family farmers through joint-stock land banks ("JSLB") with no joint liability among them.[1209]

Following the War, the United States and the rest of the world were struck with a deadly influenza breakout.[1210] Still, the Federal Reserve raised interest rates until banks curtailed loans; dovish Federal Reserve District Banks of New York, Boston, Philadelphia, and Cleveland reduced reserve requirements for member banks and bolstered lending; this was financed through borrowing from the other Hawks.[1211]

As the Nation plunged into the *Depression of 1920-1*, instead of Federal bankruptcies, insolvent businesses sought to reorganize 'outside of court' through States' assignment for the benefits of creditors processes by electing adjustment bureaus receivers operated by the *National Association of Credit Men* ("NACM") —which had mushroomed from 5 to 84 locations between 1904 and 1922.[1212] Whereas bankruptcy was a legal solution to the economic problem of insolvent estates, these friendly adjustment were founded as business solutions.[1213] By 1922, however, these processes were widely seen as perpetuating unsound 'zombie' businesses and, without court orders, prone to the holdout problem.[1214] Bank failures were confined almost exclusively to small institutions serving farmers in the rural Midwest and South after commodity prices whiplashed.[1215] Between 1922 and 1925, almost as many farmers as wage workers declared bankruptcy and many lost the farm (see Exhibit 4.[1216]) The WFC assisted with expansionary monetary policy to urban banks and businesses and agricultural farmers[1217] with stabilizing derivatives market regulation.[1218] Despite the massive economic shock, there were no panics during this period.[1219]

These developments synchronized Southern and Northern securities markets. Defaults by Southern States following the *Panic of 1837* and the *Civil War* depressed investor demand for municipal bonds and the South's issuance lagged the rest of the Nation into the 1920s.[1220] While trading interests of Southern cities focused on cotton speculation and real estate operations, Nashville in Tennessee had an active securities market dating back to the antebellum.[1221] *Caldwell & Co.* opened in Nashville in 1918 and decreased the spread between Southern municipal debt and that of the rest of the country by purchasing securities using the affiliated *State Bank of Tennessee* and reselling in branch offices[1222] and trusts[1223] around the country. This was despite the effect that loan portfolios in Tennessee, Alabama, and Kentucky were prone to discharge as voluntary wage earner bankruptcy filing rates were 4x the national average (see Exhibit 4.)[1224] Wage-earners in these States were more likely to seek the protection of the Federal bankruptcy court due to pro-creditor garnishments.[1225]

Outside of New England and the Civil Law State of Louisiana,[1226] the absence of centralized real estate title recording made ownership rights uncertain, impairing market values and transferability.[1227] Philadelphia and New York developed title insurance following the passage of BA67, but after its repeal, this insurance remained confined to metropolitan cities, where it facilitated real estate lending.[1228] Interest in national lending renewed with BA98, and New York's legalization of private mortgage insurance in 1904 permitted title and mortgage guarantee companies to offer insurance of deeds in trust against a defect in a land title and the non-payment of mortgages nationally.[1229]

While this increased real estate prices nationally following World War I, the Florida real estate boom was an amplified version of the more general boom.[1230] As a lien mortgage State, buyers acquired the mortgage deed and, even in a foreclosure, divested it only after bankruptcy. To facilitate credit, Florida's *Act of 1919* obliged the court to enter a deficiency decree in case of default, while contractual acceleration clauses provided that

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the whole amount secured by the mortgage shall immediately become payable following default on taxes, interest, principal, or assessment.[1231]

Of the municipal and commercial real estate mortgages purchased by Tennessee's *Caldwell & Co.*, the bulk was in Florida starting in 1922 and reaching $32 M in 1928.[1232] Similarly, by 1923, Tennessee's *Union & Planters Bank & Trust Co*— which *Caldwell* purchased after the boom— backed title and mortgage insurance agents in Florida adding order to a complex web of titles derived from old Spanish grants and early United States patents.[1233] The following year, Florida ushered in a wave of immigration by repealing income and inheritance taxes.[1234]

Home buyers and dealers purchased binders —30 to 60-day call options—for a fraction of the proposed price, but as the delay in completing title transfers increased, investors began trading the binders themselves.[1235] As these leveraged transactions of real estate became increasingly liquid, Florida's *Real Estate Brokers' Registration Board* secured legislation to limit real estate brokerage effective September 30th, 1925 and the number of transfers and conveyances collapsed immediately (see Exhibit 15.[1236])

After the *Depression of 1920*, farmer bankruptcies peaked in 1925, while voluntary bankruptcies by wage earners —following the unexpected real estate market boom and bust— became an increasingly large proportion of petitions, and, unlike mercantile bankruptcy cases, there were no assets and so creditors paid little attention.[1237] Like the debt relief that individual States' laws provided, the discharge of the voluntary Federal bankruptcy process continued to be anathema to Continental Europe and more extreme than England.[1238] See Exhibit 4.

Following a contraction in 1923, Chief Justice Taft and others requested the ABA recommend amendments to BA98, which Congress passed in 1926.[1239] Although Congress amended BA98 9 times between 1899 and 1927, 1926 was the most comprehensive.[1240] The *1926 Amendment* made equity receiverships into acts of bankruptcy,[1241] and —while it did not cover railroads— corporations that could be petitioned into involuntary bankruptcy was extended to include joint-stock companies, unincorporated companies and associations, and any business conducted by trustees.[1242] This included business trusts that were partnerships —with their members directly liable upon its debts— that often ought to have had their assets distributed in bankruptcy under partnerships provisions.[1243]

The amendment did not fix the problem that in distributed bankruptcy processes broker-dealers were liquidated piece-meal across geographic and legal jurisdictions, creating arbitrage opportunities.[1244] The Senate ostensibly did not void an 1877 Tennessee law giving priority to local creditors.[1245] Moreover, the amendment did not account for the growth of interstate corporations and so encouraged a race of the diligent that liquidated businesses rather than reorganizing for temporary relief.[1246]

One reason that businesses preferred receiverships was that voluntary bankruptcy petitions required immediate public disclosure, and so incentivized runs.[1247] The *1926 Amendment* allowed voluntary bankruptcies to file 10 days after adjudication.[1248] Still receiverships were preferred to bankruptcy in some States.

Since the 1870s, courts allowed railroads and other quasi-public utilities in equity receiverships to issue receivers' certificates senior to secured bonds during a reorganization period; by 1908, the New Jersey Court of Chancery allowed private corporations to issue certificates to preserve properties.[1249] In a review of receiverships in Connecticut from 1920 to 1929, Professor Douglas was concerned by the extensive use of court approved receivers' certificates for private corporations that were not public interests.[1250] On the other hand, according to Professor Billig, Ohio State courts were unique in that they encouraged liquidation of businesses through court receiverships,[1251] as these were as faster than Federal bankruptcy, and so administration was less expensive.[1252] Comparing the cases handled by the extra-judicial methods of the adjustment bureaus with similar cases handled in bankruptcy by officers of the bureaus, he found the extra-judicial methods in favor by a distinct margin.[1253] As NACM originally organized in Toledo, Ohio, the State

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had more NACM adjustment bureaus than the rest of the country,[1254] which serviced both extra-judicial as well as the larger court receiverships.[1255]

While most Floridian banks had invested prudently,[1256] the *Bankers' Trust Co. of Atlanta* ("BTC") was already unstable during the height of the market in April 1925.[1257] BTC was not a supervised bank, but a trust that acted as a financial agent for a chain system of over 100 banks across Florida and Georgia.[1258] Enabled by the *1926 Amendment* —which was enacted on May 26th— the *Bank of Umatilla* petitioned for an involuntary bankruptcy in July, precipitating a run across the system.[1259]

Although Jacksonville's building permit values had rebounded and surpassed their 1925 high, they crashed again after the *Panic of 1926* (See Exhibit 15.) In April 1927, the *Coral Gables Corp* reversed its policy since 1922 and began filing petitions against delinquent mortgages.[1260] The following month, the Florida legislature overturned the *Act of 1919* and held binder contracts to not be enforceable.[1261] Although the title and mortgage insurance companies were able to weather the storm due to geographic diversification and selective substitution of accounts, they failed after the national market collapsed in 1929.[1262]

Between 1926 and 1929, over 99% of bankrupts were granted discharges.[1263] Although President Hoover would later blame the bankruptcy act for encouraging forbearance,[1264] Professor Douglas argued that creditor control was the foundation of BA98 and attributed creditor 'laziness' to perverse economics.[1265] He blamed that courts for discharging debts of businesses that failed to keep accounting records and were involved in speculation (in stark contrast with England's *officialistic* bankruptcy process.[1266])

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v. Regional Panics of 1930 and 1931

By 1929 easy monetary policy[1267] and banking credit unleashed following the NYSE's mutualization of clearing and settlement risk in 1920 (but slowed the money market business)[1268] led to an equity market boom;[1269] including leveraged, closed-end investment trust funds.[1270] Investor demand for these funds spurred an excess of mergers (see Exhibit 14) and IPOs, which were held by banks and brokers during the packaging process.[1271] Despite the commercialization of investing and the *1926 Amendment* turning equity receiverships into acts of bankruptcy, States retained bank stockholder double liability.[1272]

Banks, adding less liquidity to NYSE, instead capitalized on their experience selling WWI Liberty and Victory bonds, and moved into fiduciary and investment services ("*incidental activities*" allowed under the NBA.[1273]) As scale economies and diversification benefits of branching led national banks to abandon charters in favor of State alternatives, the *McFadden Act* allowed national banks to branch based upon the States' laws.[1274] The increased wealth fueled inside credit,[1275] installment credit,[1276] and an urban real estate boom.

The Fed was torn between controlling the financial banking boom and the divergent monetary policy to support the depression of agricultural markets.[1277] Farmers, free home involuntary bankruptcy, rarely filed.[1278] Congress added FHLB credit in 1923,[1279] farm bankruptcies continued increasing until 1925;[1280] some JSLBs were driven to technical insolvency and in 1927, receivers were appointed to 3 JSLBs under the FHLB's jurisdiction, (including 1 in Ohio.[1281])

Under the *1926 Amendment* to BA98, the entities were bankrupt and, rather than decreasing forbearance, stockholder double liability of these GSE-backed entities politicized banking in Ohio.[1282] The FHLB continued requesting receivership powers (akin to those of the COTC with respect to national banks[1283]) and the Fed advocated for an exemption from the *Clayton Act* to allow JSLBs to consolidate for survival,[1284] while continuing to provide easy monetary policy until October 1928.[1285] This supported a market for farms as life insurance companies purchased 8,000 acres of foreclosed farms in Ohio in 1927 and over 25,000 each of the following 3 years.[1286]

While the Supreme Court adopted a stance of liquidation over reorganization for non-utilities starting in 1928,[1287] a corruption scandal of the bankruptcy court in New York led to investigations.[1288] The stock market crashed soon after in October 1929;[1289] Professor Douglas' investigation for the SEC later blamed investors' losses on low priority in a bankruptcy process monopolized by a cadre of financiers.[1290]

UST Secretary Mellon largely echoed the courts' sentiment on the bloated Roaring Twenties, and privately urged President Hoover to "*liquidate labor, liquidate stocks, liquidate the farmers, liquidate real estate. Purge the rottenness out of the system. High costs of living and high living will come down... enterprising people will pick up the wrecks from less competent people.*" (Hoover, 1952).

Friedman and Schwartz (1963, p309) identify three waves of banking panic spikes on an aggregate national level (see Exhibit 15) and Wicker (2000) disaggregates the *Troubles* of the *Depression* into 3 distinct geographic clusters: the *Caldwell*-empire around Tennessee, Chicago, and Toledo in Ohio.

The first, in November 1930, Tennessee-based *Caldwell & Co.* — an investment bank deemed the Morgan of the South— collapsed after creditors from Kentucky, Arkansas, and North Carolina ran on it[1291] at least partly due to Tennessee's law granting domestic creditors priority over all others (which Congress refused to strike in the 1926 amendment to BA98.)[1292] Nashville's Clearing House and Atlanta Fed Governor publicly supported *Caldwell & Co.*, but when the Tennessee Bank Superintendent took the *State Bank of Tennessee* into receivership, the Tennessee Governor publicly vowed to protect the State's interests as it was the State's depository (the latter was a political rival of Caldwell.[1293]) As *Caldwell & Co.* had little liquidity and its insurance companies, securities, and industrial interests were liquidated.[1294] As banks failed across the Nation, the pressures upon regulators grew, extending creditor illiquidity.[1295]

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Following the failure of 256 banks with $180 M of deposits, in Dec, NYCHA and New York regulators allowed the *Bank of United States* ("BOUS") —a Federal Reserve member bank with over $370 M in deposits— to fail as punishment for unsavory activities.[1296] Although losses were marginal and the effects in the United States were highly localized, the failure may have rocked confidence in Europe as BOUS was the largest bank to ever fail with a name evocative of public trust.[1297]

The second banking crisis wave emanated in Illinois and Ohio.[1298] These States were within the Federal Reserve Districts of Chicago and Cleveland, which were strong proponents of the 'Real Bills' doctrine that limited intervention to stem bank runs.[1299] Moreover, while the majority of States and the Supreme Court, only three States —Ohio, Illinois, and Minnesota— held that mortgage could never be treated as a negotiable instrument.[1300] While banks in other States could easily sell their mortgages to securitization pools, mortgages notes from these States would have been impaired.

Unlike Ohio, Illinois was a pro-creditor —but wage earners did not readily file for bankruptcy as the courts protected wage assignments—[1301] and unit banking State and prohibited branching, so Chicago State banks formed interlocked director groups.[1302] Although combinations of banks could better withstand runs, interlocks were unable to share liquidity and lacked legal claim to assets,[1303] which became clear after the clearinghouse selectively rescued a bank within a group.[1304] Depositors ran on banks orphaned from the group and on other groups in June (See Exhibit 15.[1305])

In Ohio, in addition to banking politicization surrounding JSLBs, State banks were destabilized by Building and Loans ("B&L"). B&Ls in Dayton, Ohio were the first nonfarm lenders in the country to adopt amortized loans during the 1870s and 1880s (based on English building societies) and Ohio led the nation in amortized, direct reduction lending that inspired federal responses to the Depression.[1306] There were 1.7 M members of B&Ls in Ohio in 1924, which grew to 2.4 M in 1929 and a peak of 2.6 M in 1930 out of the 6.6 M population; out of the 5 States with the most B&L count, members, and assets, Ohio had the highest members per association (like MA) but the lowest assets per member (like Illinois.[1307]) On June 30, 1924, Toledo counted 12 B&Ls with $24 M in assets; while Toledo's National and State banks were 3 and 12 in count, $21 and 119 M in aggregate deposits, and $6 and 16 M in total capital, respectively.[1308] Toldeo's bank deposits had grown from $140 to $ 196 M in September 1929, and fell to $189 the following year (see Exhibit 15.)

Hence, B&Ls were safe relative to banks in terms of liquidation — but not suspension and so USPSBs became safe assets in regions with weak banking systems between 1921 and 1930.[1309] Although the banking departments of some States regulated B&Ls, they were not covered under *1926 Bankruptcy Amendment* as shareholders were usually the only creditors and did not have access to Federal Reserve liquidity.[1310] Still, in 1931, Charles Mylander, representing the *American Bankers' Association*, attributed the B&Ls' success at directly competing with national banks in Ohio to the *Dayton Plan* and noted several of the B&Ls claimed to be demand deposits, but aren't (and so do not liquidate automatically, thereby having lower losses for depositors and shareholders.[1311])

Just as businesses preferred receiverships in Ohio, wage earners filed for federal bankruptcy relatively less as Ohio had limited State garnishment severity and homestead exemptions.[1312] To facilitate credit remuneration, the Ohio State courts developed a system wherein the title and right of possession are automatically transferred upon breach of condition.[1313] Starting in 1927, wage earners in the Northern District of Ohio filed at rates above the national average and by 1930 filings across Ohio were 50% higher than the national average (see Exhibit 4.[1314]) However, mortgage surrenders in lieu of foreclosure were only slightly lower than over foreclosure rates.[1315]

The Toledo economy was dominated by the *Willys-Overland Co.* ("WOC") automobile manufacturing, which was highly cyclical — in 1928, 15,846 people were employed in January and 28,809 were in June[1316] — and instead of reneging on contracts or eliminating dividends, the company laid off most wage earners following

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the 1929 stock market crash.[1317] By 1930, the liquidation wave left most Toledoans unemployed, with banks holding foreclosed mortgages without buyers.[1318] While the national bank merger guidelines allowed national banks to merge and write-down losses, State banks were required to liquidate first; and, as the 1926 amendment to BA98 made receiverships acts of bankruptcy, there was no middle ground.

This was particularly pressing in Toledo, and so older State banks consolidated for survival.[1319] Banks —as dealers of intangibles and, for State banks, unable to write-down losses during consolidation— were burdened[1320] under Ohio's unique *ad valorem* tax on intangible assets; while the tax had been uniform across business since 1852 (and so, linked to the 1850s Panics), a 1929 popular vote limited the intangibles tax to shares in and capital employed by dealers of intangibles (e.g., banks) effective January 1931.[1321] Forbearance through consolidation made less sense now.

On June 30th, 1930, the *Security Savings Bank & Trust Co.* (Est. 1898), following its merger strategy without write-downs,[1322] acquired the *Home Bank & Trust Co.* (Est. 1892) and forming the *Security-Home Trust Co.*, Toledo's third-largest depository with 10 branches;[1323] by September 24th, its book value was half of the next smallest, and while it paid the highest dividend, it had the lowest bids. Comparing the official and internal reports of the *Security-Home Trust Co.*'s condition on June 11th, 1931 and the cumulative deposit losses (Exhibit 15), although stockholders' equity was wiped out in the internal audited version, the excess liabilities are half of the allowance for shrinkage that was dropped and deposits.

Finally, on June 17th, 1931, the *Security-Home Trust Co.*, a State bank nonmember of the Federal Reserve System — without assistance from the WFC,[1324] the Toledo Clearing House,[1325] or another bank to merge with— was placed into receivership by Ohio's Banking Superintendent.[1326] This precipitated a run on similar banks, which in turn were forced to close after failing to merge within the 60 day stay.[1327] See Exhibit 15.[1328]

As contagion spread through Europe, in June 1931, *Nordwolle* —the largest textile firm in Europe— failed in Germany.[1329] Bankruptcy law did not allow for temporary suspensions and only insolvency measures for preventive compositions that required creditors to write down debt.[1330] Although the Hoover Administration made an effort to support the *Reichsbank,* Germany's central bank, when the *Danatbank*— *Nordwolle*'s creditor and Germany's second largest lender— ran out of bills to discount it became impossible for the *Reichsbank* to rescue the firm and remain on the gold standard.[1331] As the Jewish-operated *Danatbank* failed, the *National Socialist* party was democratically elected by the populace most impacted.[1332] Following a year of regional panics in the United States, the third wave of banking crisis started in September as England abandoned the gold standard, and Europe descended into despotism.[1333] Bank failures remained concentrated in Illinois, Ohio, and spread through the *Federal Reserve Bank of Cleveland* into West Virginia and Pennsylvania, as failed banks issued receivers' certificates to stem runs for liquidity.[1334]

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vi. The Great Depression and New Deal

As debt deflation progressed,[1335] President Hoover called for the *National Credit Corporation* ("NCC") to increase bank liquidity in Oct;[1336] in the months following, the NCC was superseded by the *Reconstruction Finance Corporation* ("RFC"),[1337] acceptable collateral for discounting was expanded,[1338] the FHLB and JSLBs were empowered to support State banks,[1339] and bankruptcy was reformed.[1340]

Dun & Bradstreet report that the rate of mercantile failures was highest in 1932 since 1878. In March, conservatorship was created for national banks[1341] and in April 1933, the new President Roosevelt took draconian measures to remain on the gold standard and avoid depreciating the currency[1342] and closed banks to quell the public's fear of banks.[1343] By June all stops were pulled. On June 5, the United States went off the gold standard. While one pamphleteer saw bankruptcy reform as an alternative to inflation,[1344] on June 7, legislation codified existing reorganization processes (making bankruptcy more rigid.[1345]) Then, on June 16, President Roosevelt signed the *Banking Act of 1933* into law, joining together two long-standing Congressional projects: (1) a federal system of bank deposit insurance[1346] and (2) the regulation (or prohibition) of the combination of commercial and investment banking (and other restrictions on 'speculative' bank activities such as interlocking directorates that plagued Chicago.[1347]) While the FDIC finally plugged the hole created by deposits after the NBA of 1864,[1348] many savings banks actively resisted it.[1349] During the run on banks, people fled to the safety of USPSBs,[1350] which only barely lost their trust advantage with FDIC.[1351]

President Roosevelt subsequently urged banks to raise capital by selling preferred stock to the RFC[1352] and, in 1934, enacted bankruptcy reform for corporations and farmers,[1353] and disregarded Antitrust laws to support prosocial mercantile consolidation.[1354] reforms from 1933 to 1936 created the *Securities & Exchange Commission* ("SEC") to regulate stock and bond securities[1355] and established rules for commodity futures trading.[1356]

Like *the Banking Acts of 1933* and *1934* split investment from federally insured banking, the *Bankruptcy 'Chandler' Act of 1938* split equity receivership[1357] into equity and corporate reorganization law overseen by the SEC, to protect diverse stakeholder interests.[1358] Similarly, bankruptcies of stockbrokers were no longer to proceed piece-meal, but at the holding company level.[1359] Additional securities legislation was enacted after to protect investors (including distressed firms in bankruptcy.[1360])

In 1944, 730 delegates from all 44 Allied nations gathered at the *United Nations Monetary & Financial Conference* in Bretton Woods, to set up a system of rules, institutions, and procedures to regulate the international monetary system. From 1945 to 1971, most countries pegged their currency to the United States Dollar, which in turn was pegged to gold. Similarly, countries under the tutelage of the United States —including Japan and Korea— emulated the *Chandler Act*.

There were very few crises during this period (see Exhibit 17.) As during the first World War, the Fed was UST's fiscal agent and capped interest rates by purchasing Treasuries until the 1951 Accord granted the Fed independence from UST.

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f. Monetarism

i. Panic of 1970 and Bankruptcy Act of 1978

Since the antebellum, the Supreme Court has held that as banks and insurance companies supply the instrument of commerce and do not engage in commerce, they are immune from antitrust laws under the Clayton and Sherman Acts; opinion evolved as insurance was deemed commerce in 1944.[1361] Concurrently, after the growth trajectory of bankruptcy rates dropped precipitously after 1931, filings accelerated quickly after the war in 1945 (the filing record from the Great Depression was not eclipsed until in 1955 and, by 1961, was growing at the pre-1931 trajectory, See Exhibit 4.[1362])

In 1950, Congress granted the FDIC expanded bankruptcy powers under the *Federal Deposit Insurance Act* ("FDIA").[1363] This fostered bank consolidation in the 1950s, which Congress checked with the *Bank Holding Co Act of 1956* to regulate interstate mergers.[1364] At the same time, Congress supported a uniform national securities market in 1956;[1365] increased credit from merged banks and national securities market helped finance a wave of business conglomerate mergers starting in 1960.[1366] See Exhibit 14.

By 1960, over 1,500 banks with $30 B in assets merged in the bank merger wave, prompting Congress to compromise between restricting bank mergers and limiting competition that threatens bank solvency with the *1960 Bank Merger Act*. The Act amended the FDIA to require Federal approval for consolidations of insured banks,[1367] and was bolstered by the Supreme Court, which ruled that banking fell under the auspices of the *Clayton* and *Sherman Acts* in 1963 and 1964, respectively.[1368]

Following the closing of the *San Francisco National Bank* —the largest bank failure in terms of deposits ($40 M) since 1940— on January 22nd, 1965, a Senate subcommittee in March 1965 called the COTC Saxon to justify liberal chartering policies; he stated the COTC lacked the resolution flexibility available for nonbanks through BA98.[1369]

Escalated Vietnam War spending in 1966 increased inflation and led the Federal Reserve to increase interest rates, without easing *Regulation Q* limits.[1370] This deteriorated banks already poor balance sheets, and soon after, the *Public Bank of Detroit* failed ($90 M of deposits)[1371] and so Congress bestowed the ability to shutter unsound banks unto regulators.[1372]

While the drafters of the *Chandler Amendment* to BA98 envisioned *Chapter XI* governing the reorganization of private partnerships and *Chapter X* for corporations with public debt or equity, it became controversial as most reorganization cases were filed as *Chapter XI*, through which corporations avoided the SEC, courts, and management change.[1373] Moreover, the process gave priority to unsecured buyers and sellers of goods over other unsecured creditors.[1374] In the event of a broker-dealer bankruptcy, §60(e) treated the relationship between broker-dealers and customers as that of debtors and creditors for equality of distribution.[1375] NYSE had created the $10 M *Special Trust Fund* in 1965, to assist the customers of members in liquidations —which helped Big Board member firms avoid *Chandler Act* bankruptcy as NYSE appointed its own liquidators in voluntary transactions (or acquisition by healthier firms.[1376])

The Federal Reserve tightened in 1968 and again in 1969, leading investors to sell bank CDs (with *Regulation Q* capped interest rates) and purchase commercial paper and other yielding assets.[1377] The growth of investing led to a paper-work crisis as brokers were unable to clear stock certificates, which required large investment; Congress increased securities regulation[1378] and NYSE implemented the *Central Certificate Service* ("CCS") on June 28th, 1968 to replace shareholder certificates and completed on February 24th, 1969.[1379] This was followed by severe cost-income squeeze in 1969 and 1970.[1380] Concerned that cash managed through CCS had senior priority to commingled funds, the SEC requested Congress amend §60(e).[1381]

Penn Central Transportation Co. could no longer liquidate assets and relied on short-term commercial paper.[1382] Congress and the Fed refused to extend a bail out and this prominent issuer of commercial paper failed on

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June 21st. To prevent a crisis from materializing, the Fed encouraged banks to borrow at the discount window to finance loans to commercial paper issuers[1383] and suspended *Regulation Q* interest rate ceilings on short-maturity large negotiable CDs.[1384] The days of the latter tool were already numbered as, earlier that year, Bruce Bent created money market funds ("MMFs") —which would create massive demand for commercial paper— as regulatory arbitrage to *Regulation Q*.[1385] And as NYSE NYSE's *Special Trust Fund* program had to be expanded to $55 M as more brokers had to be liquidated.[1386]

Over the next few months, NYSE suspended several brokers. While the *Goodbody & Co.* sale to *Merrill Lynch* went through with no impact to investors,[1387] the others went less well. Two voluntarily filed for bankruptcy, *Plohn & Co.,* in August[1388] and *Robinson & Co.* in Sep.[1389] The *First Devonshire Corporation*, was adjudicated bankrupt by a Federal court referee in perhaps the first involuntary bankruptcy case involving a stock exchange firm since the Great Depression.[1390] In response to the crisis and to insure investors against loss, on December 1st Congress formalized a liquidation bankruptcy processes for insolvent brokers and dealers registered under the 1934 *Securities Investor Protection Act* ("SIPA").[1391]

On December 22nd, the *Penn Central* was still not in bankruptcy[1392] and so Congress passed the *Emergency Rail Services Act of 1970* to aid the industry. Following hearings in 1970, the *National Bankruptcy Commission* was established[1393] and in 1973, the *Commission* issued its report and put forth a legislative draft.[1394] For railroads, the report blamed divided responsibilities for protracting the bankruptcy process and delaying liquidation.[1395] At the junction of equity and reorganization, Congress enacted the *Employee Retirement Income Security Act* ("ERISA") to safeguard corporate pension plans[1396] (which would come to drive reorganization.)

Over this period, the Vietnam War and the Great Society programs of President Johnson, increased dollar outflow, and by 1971, the *Bretton Woods* system broke down under President Nixon as the United States floated the dollar from gold. Currency trading became speculative but as German bank collapsed in the middle of a trading day, its New York counterparty required the Federal Reserve to step in as the lender of last resort. The *Herstatt* risk —named after the failed bank— spurred the *Bank for International Settlements* to issue protocols regarding national responsibility for bank failures.[1397]

The increased money supply following the fall of Bretton Woods elevated commodity prices and led to risky international investments[1398] to countries without bankruptcy laws.[1399] Congress fought this inflation with derivatives regulation[1400] and then passed the *Humphrey-Hawkins Act of 1978*,[1401] leading to Fed Chair Volcker's disinflation.[1402]

With the *Bankruptcy Reform Act of 1978*, Congress enacted structural reforms that eliminated the role of the SEC in representing equity jurisprudence in corporate reorganization to reduce SEC litigation and, to incentivize reorganization of troubled firms, favored retention of management, dropped the insolvency requirement for filing and created the automatic stay.[1403] The Act also increased bondholder rights relative to those of banks.[1404] Demand for these increased bankruptcies would come from pension funds; the US Department of Labor, through the '*prudent man rule*,' relaxed investment restrictions in ERISA, which allowed investment in private equity leveraged buyouts ("LBOs").[1405] Together, the legislation led to the strategic corporate bankruptcy (see Exhibit 3.[1406]) Activist monetary policy combined with free market bankruptcy reform[1407] —through only Chapter 11 liquidation eligible LBOs— reduced the volatility of macroeconomic variables of advanced economies —with the notable exception of Japan— during the *Great Moderation.*[1408]

In Japan —where courts enforced a process inspired by the Chandler Act's Chapter X process and slowed down the resolution of insolvency[1409]— 'zombie' institutions formed as creditors avoided write downs instead of creative destruction.[1410] Following Japan's crisis in 1990, similar problems plagued Korea in 1997.[1411] In the United States, the relationship between firm bankruptcy and inflation returned to the pre-Depression participation of the SEC (see Exhibit 6.)

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The story was different for wage-earners and farmers. The *Marquette* Case of that year allowed States to export consumer lending rates —possibly disrupting is said to unsettled usury laws across States— increasing credit, and consumer bankruptcies along with it.[1412] Instead of blaming the case, large credit issuers, such as *Sears, Roebuck, & Co.*, blamed the increase of defaults on high consumer discharges.[1413]

Following the decision that automatic stay provision required court permission for creditors to sell collateral in repo transactions in the 1982 *Lombard-Wall, Inc. v. Columbus Bank & Trust Co.*, creditors saw an opportunity as collateral privileged in bankruptcy becomes a safe asset on top of which money can be created.[1414] Congress enacted the *Bankruptcy Amendment of 1984* to privilege repos of certain securities and limit consumer discharges.[1415] See Exhibit 4.

Farmers, free home involuntary bankruptcy, rarely filed.[1416] By 1980, creditors circumvented this (and similar State remedies, such as homestead laws) and financed using liens and security interests,[1417] and Chapter 11 liquidations usually foreclosed properties.[1418] In 1981, the Reagan administration reversed the availability of farm credit and increased FmHA loan liquidations and foreclosures, the courts found these actions unconstitutional.[1419] In response, Congress adopted the Chapter 12 option in 1986, which made bankruptcy more attractive for farmers (1987 filing levels were 68% higher than those of the Great Depression[1420]) and reduced the market for farm credit by eliminating binding mortgages.[1421] This led to the 1987 reorganization of the FHLB by consolidating organizations and services provided by agencies within the system (see Exhibit 4.[1422])

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ii. Savings and Loan Crisis

Following the rise of money market funds ("MMFs") developed in reaction to *Regulation Q* as regulatory arbitrage and began disintermediating banks, the *Monetary Control Act of 1980* revoked *Regulation Q*[1423] while the *Economic Recovery Tax Act of 1981* ("ERTA") promoted commercial real estate investment.[1424]

The disintegration of *Penn Square Bank* spread claim disputes by syndicated loan participants[1425] which took down *Continental Illinois*; Congress reacted with forbearance through 1982 deregulation[1426] and allowing banks to diverge from GAAP standards by circulating FSLIC certificates (as it ran out of funds.)[1427]

Widened authority for S&Ls allowed lending up to 40% of their assets in commercial real estate loans and allowed investments in junk bonds[1428] — marketed as safer than stocks[1429] — although they were often fraudulent[1430]— and used the proceeds to finance a wave of LBOs.[1431] Corporate failure rates that had fallen in half while Wall Street was not allowed in the bankruptcy process, had returned (see Exhibit 6.[1432])

There are several explanations for why Texas was the hardest hit, including energy and real estate (FDIC, 1997; Orley, 1992). Texas was a unit-banking State and did not permit banks to branch beyond a single location, but the *Banking Holding Co Act of 1956* and its 1970 Amendment allowed banks desiring to operate at multiple locations to organize as multi-bank holding companies ("BHC")[1433] — Texas' largest in 1983, *Interfirst Corporation of Dallas*, owned 66 banks when it reported the largest quarterly loss in the history of American banking (NYTimes, 1983).

While a number of States protected commercial plaintiffs with deceptive trade practices legislation, Texas' 1973 statute was the most amended and represented half of the national litigation in 1984.[1434] Financial institutions were not technically excluded, but up to that time, Texas courts maintained that money is not a 'good' and that extension of credit is not a 'service.'[1435]

Then in 1984, the Texas Supreme Court in *State National Bank v. Farah Manufacturing Co.* applied the traditional theories of fraud, duress, and interference in the context of a debtor-creditor relationship.[1436] This unleashed lender liability suits and significantly expanded the potential liabilities of lenders to their borrowers,[1437] creating uncertainty of liability and contracting credit.[1438]

Since Texas' banks operated as separately incorporated units, BHCs had an incentive to 'dump' liabilities into banks and then force them to fail — so in 1984, the Fed ordered BHCs to be the 'source of strength' of subsidiaries (to fight this incentive for strategic bankruptcy from the 1978 Amendment to BA98.)[1439]

By 1986, Congress repeal of ERTA's tax shelters ended the real estate boom and triggered the S&L Crisis.[1440] Without the SEC's intervention in corporate bankruptcy filings, the tension between bankruptcy and securities law snapped;[1441] LTV became the largest bankruptcy in 1986. FSLIC's approach to receiverships resulted in insolvency and led to the *Competitive Equality Banking Act of 1987* ("CEBA"),[1442] which created bridge banks, a federally insured forbearance[1443] alternative to receivership[1444] and stabilized the system.[1445] Consolidation for survival eroded Glass-Stegall's restrictions in 1986.[1446]

When the FDIC fought MCorp over allowing subsidiaries to fail in 1988, the bank's bond creditors invoked involuntary bankruptcy in case the FDIC got its way;[1447] afterward, the Fed sued the company after (and the Supreme Court upheld the Fed's 'source of strength' power to force BHCs to bail out their failing subsidiaries in 1991.[1448]) These same incentives led to Pohlad wanting to first close NBC and TAB and then purchase the banks free of lender liabilities.[1449] Following the crisis, Texas [1989] and most other States passed statutes precluding lender liability claims.[1450]

Congress blamed thrift's regulators, and passed the *Financial Institutions Reform, Recovery & Enforcement Act* of 1989 ("FIRREA"),[1451] to reform thrift bankruptcy processes[1452] and, although only a few S&Ls held junk bonds,[1453] forced fire sales of junk-bond holdings —which fell 30-50%.[1454] In 1988, the SEC sued Milken and

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Drexel and, without junk bonds, LBOs were failing.[1455] This, along with other bankruptcy revisions and leverage controls,[1456] accelerated S&L failures, and by 1990, Drexel was liquidated[1457] and junk-issuing companies' default rates soared, starting a recession.[1458]

Since the *Chandler Act*, equity and corporate receivership were separate branches of law, the latter being federal. In the 1990s, lawyers realized that the *1978 Amendment* to BA98 allowed for venue shopping,[1459] leading corporations away from New York — with judges known for extending reorganization plans[1460] — and back to the equity receivership capital of the Chancery Court of Delaware, with efficient rules-based courts allowing for pre-packaged, strategic bankruptcies.[1461]

For banks, Congress extended regulatory relief in 1992,[1462] lifted prohibitions on cross-State branching,[1463] and repealed *Glass-Stegall* in 1998.[1464] Additional legislation centralized the FDIC's power.[1465] The financial deregulation and uniformity trend continued with securities and derivatives.[1466]

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iii. Great Recession

The elimination of Reg Q in 1980 should have also eliminated the MMFs; however, the SEC's lack of capital requirements and exemption on NAV float offered an implicit subsidy. Banks needed to offload loan risk[1467] and while securitization started off slowly, it exploded over the coming years through MMFs.

Commercial banks were disintermediated with market-based credit intermediation[1468] which, unlike the FDIC's rehabilitative receiverships, had only liquidation bankruptcy options; and conducted by investment banks,[1469] investment funds,[1470] and hedge funds — trading derivatives over-the-counter without a central clearing party and regulated by the CFTC.[1471] In 1998, *Long Term Capital Management* ("LTCM"), a shadow bank regulated as a hedge fund, was insolvent and, instead of a SIPA Chapter 11, the *Federal Reserve* forced a reorganization with the firm's trading parties.[1472]

Whereas the *1978 Amendment* treated all companies equally —large or small, public or private, corporation or partnership— with the *Bankruptcy Reform Act of 1994*, Congress wanted to promote credit for small companies by hastening liquidation.[1473] While the prospect of a more efficient process may have encouraged investors, few lawyers advocated this route.[1474]

California's mining inspired assignments for the benefit of creditors ("ABC") process dating back to 1850, manifested as a significantly higher rate of business failure and bankruptcy relative to other States.[1475] As the Internet startups had unclear security interests and were poor candidates for conventional court-approved bankruptcies,[1476] startups (or rather their senior investors) preferred liquidation through California's unique ABC refined for mining companies using cost book accounting.[1477] While these are less stigmatic than bankruptcy,[1478] inside trade creditors —other startups— had low priority in this snowballing liquidation regime.[1479]

The low-interest rates fueled the *Tech Bubble*,[1480] which started bursting in California in 2001 and several months later, the 9/11 terrorist attacks on New York City tore up Wall Street and disrupted the financial system.[1481] Decreased financing uncovered corporate accounting frauds,[1482] and the Fed reacted by pushing monetary policy lower for longer.[1483] Following a *Global Savings Glut* ("GSG"), increased demand for US Treasuries[1484] and the private sector demanded synthetic safe assets.[1485] Banks and nonbanks structured bankruptcy remote vehicles[1486] insured against regulatory capital by AIG.[1487] Despite litigation from the States,[1488] the Supreme Court supported Federal banking regulatory clientelism[1489] by the OCC and OTS under the preemption doctrine, as they raced to the bottom and pulled down State banks,[1490] to produce mortgages for packaging into safe assets.[1491]

In 2005, after nearly a decade of creditor lobbying, Congress passed the *Bankruptcy Abuse Prevention & Consumer Protection Act* ("BACPA").[1492] While the United States restricted access to bankruptcy in favor of insolvency debt management plans, countries in Europe—including Sweden and the Netherlands, which experienced serious bankruptcy forbearance challenges under such plans— moved in the reverse direction toward consumer dischargeable debt relief.[1493] Regarding consumer bankruptcy, BACPA gave home mortgage lenders priority over other creditors[1494] and decreased bankruptcy petition rates (see Exhibit 4), which accelerated foreclosures.[1495]

This —along with an expansion of the *1984 Amendment's* safe harbor around negotiable derivatives giving counterparties priority over other creditors[1496]— gave markets a (false) sense of security of mortgages underlying the repo market[1497] and purposely reduced incentives to monitor counterparties.[1498] In the midst of the GSG, this enabled for the private production of safe money —liquid and insensitive to information— alternative to UST Treasuries off of which to expand credit.[1499] The monetization of real estate accelerated price appreciation.

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While the Fed increased interest rates, they were kept low by GSG, but by 2006 the housing market popped.[1500] Due to capital regulations, banks with high concentration ratios in particular real estate markets pushed borrowers into bankruptcy and foreclosure's downward price spiral instead of less drastic measures, such as renegotiating loans.[1501] After *BNP Paribas* suspended fund redemption in August 2007, there was a run on the $1.3 T ABCP market-based credit system.[1502] The relative calm that followed concealed a breakdown of trust.[1503] Following the rescue of *Bear Stearns* in March 2008, too-big-to-fail was in play until *Lehman Brothers* ("LBH") filed Chapter 11 in September.[1504]

As bankruptcy became strategic again after the *Chandler Act* was repealed in 1978, broker-dealer bankruptcies were piecemeal again. By LBH's 2008 failure, "*The U.S. Bankruptcy Code applied to LBHI and its subsidiaries. [SIPA] regime applied to the insolvent broker-dealer, Lehman Brothers Inc. (LBI)... The [FDIA] applied to its State-chartered bank and federally chartered thrift... U.S. state insurance laws applied to its insurance subsidiaries.*" (Fleming and Sarkar, 2014). The SIPA liquidation[1505] and a default on ABCP, triggered the run on MMFs started and froze credit.[1506] Insuring MMF deposits and lending directly to securities firms "*reflected a delayed recognition, following [LHB], of the importance of the shadow banking system.*" (Eichengreen, 2015).

Several expansionary efforts sought to aid homeowners.[1507] All large investment banks converted to bank holding companies and came under the regulation of the Fed, which paid interest on excess reserves;[1508] the *Dodd-Frank Act* of 2010[1509] provided the FDIC with new liquidation (not rehabilitation as with banks)[1510] powers for large financial companies[1511] and required living wills of complicated financial institutions in an attempt to avoid the too-big-to-fail problem,[1512] although regulatory forbearance remains an issue.[1513]

The shadow and regulated banks in the United States were part of a larger system that included European universal banks in what is known as the *Global Banking Glut,* which helped decrease quality standards and underpriced currency risk across the Atlantic Ocean.[1514] Additionally, as industrialized Northern Europe moved towards debt relief,[1515] the Euro common currency increased credit flows to the Civil Law countries with underdeveloped bankruptcy regimes —such as Greece, Italy, Portugal, and Spain. [1516]

The *Euro Crisis* erupted as these local central banks were unable to use monetary policy as part of a currency union to refinance banks within their own borders.[1517] As the *European Central Bank* ("ECB") attempted to remain politically independent,[1518] it introduced risk and started a race of the diligence and Germany's liabilities became even cheaper relative to the peripheral nations.[1519] The political nature of cross-border bank bailouts threatened the stability of the European Union itself, until ECB Governor Draghi (2012) unequivocally vowed to support the Euro.[1520]

In the United States, following the Crisis, the provisions that allowed MMFs to engage in regulatory arbitrage were closed.[1521] On the other hand, to promote business, the *Jumpstart Our Business Startup Act of 2012* ("JOBS") was a rare instance of reduction of securities regulation that reduced requirements for going public. Along with lower for longer interest rates, these developments drove ERISA demand for LBOs, leveraged loans, and venture capital.

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Appendix

Exhibit 1: Origins of Money

The Hierarchy of Money

Note: Gold appears only once because it's outside money - value of its own. All other – the majority – credit, 'inside money', and is someone's promise. Source: Mehrling (2012)

Comparison of English, French, and Other Continental Laws [Sgard (2014), Sgard (2006)]

	England, 1625–1880s	France
	Bankruptcy Statutes	
Possible outcomes	Liquidation only	Liquidation or renegotiation
Institutional structure	Administrative	Judicial
Signal/criteria	Acts of bankruptcy	*État de faillite*
Initiation	Involuntary only	Involuntary and voluntary
Role for discovery	Limited	Important
Qualified majority vote	Impossible, then limited	Standard
Debt discharge and fresh start	After 1705	Always there
Distinction between penal and civil dimensions	Late and difficult	Intrinsic
Main expected benefit of the law	Ex ante market discipline	Ex post absorption of exogenous shocks
Main downside risk of the law	Undue liquidations	Moral hazard
	Out-of-Courts Arrangements	
Private agreements	Most common	Most common
Capacity to design permanent, post-negotiation, collective arrangements	Large (from late 18th c. onwards)	Inexistent
Willingness of the courts to sanction private innovation	Substantial	Limited

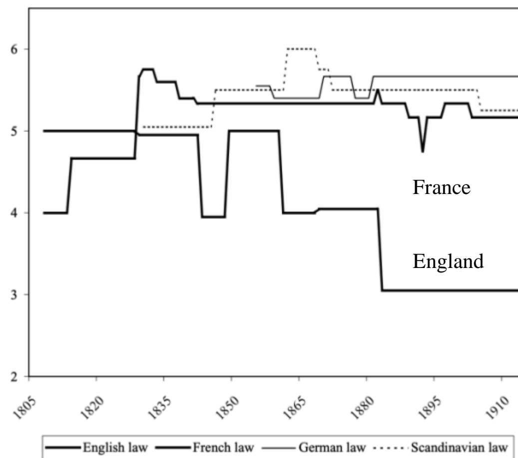

Figure 1. *Creditors' rights during bankruptcy, an enhanced LLSV index.*

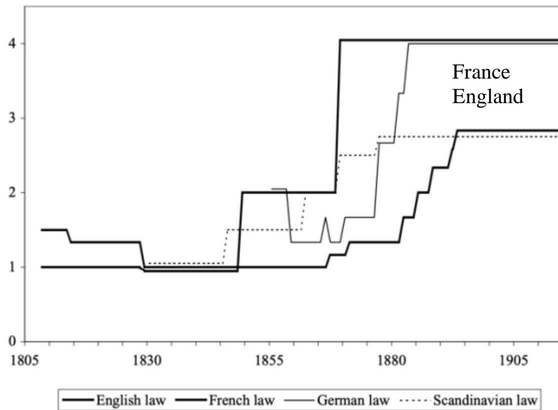

Figure 3. *The debtor's status, by legal traditions.*

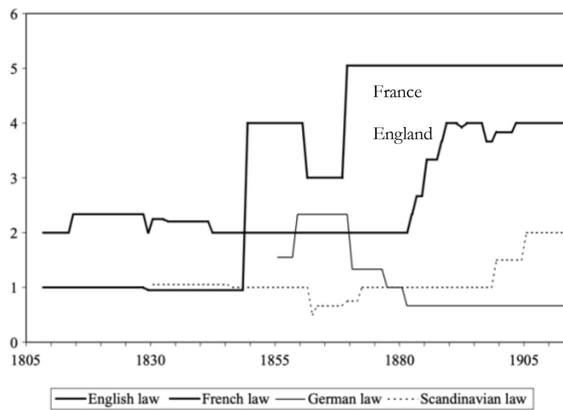

Figure 4. *Contractual autonomy, by legal traditions.*

For converting acts to dates, see Chronology of English Statues as a result of Parliamentary Acts.

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English Bankruptcy (1688-1801) [Hoppit (1986) & Hoppitt (1987)]

Annual Filings (1630-1723) and Quarterly Filings (1715-1722)

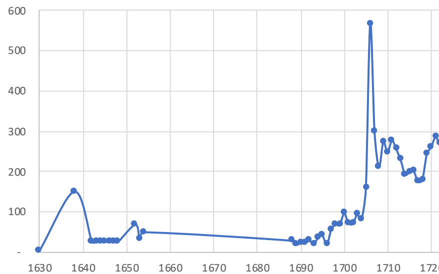


Table 1. *Quarterly and Annual Totals of Bankruptcy, 1715-22*

Year	I	II	III	IV	Total
1715	40	40	36	41	157
1716	43	47	21	48	159
1717	38	40	31	29	138
1718	32	29	26	54	141
1719	38	47	54	54	193
1720	55	40	36	75	206
1721	69	50	46	61	226
1722	66	61	28	56	211

Source: P.R.O. B4/2-3.
Note: These figures have not been de-seasonalized.

Source: Jones (1979) [London in 1630, 1640s, and early 1650s] and Brooks (2009) [England in 1638] added.

Quarterly Bankruptcy Filings (1695-1800) and Fluctuations There-of (1708-1801)

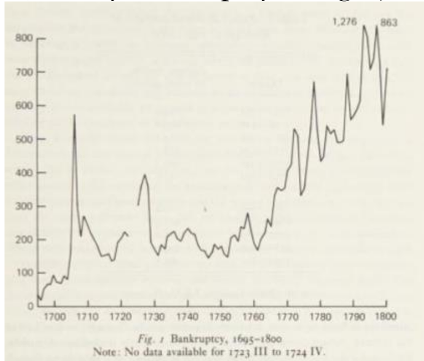
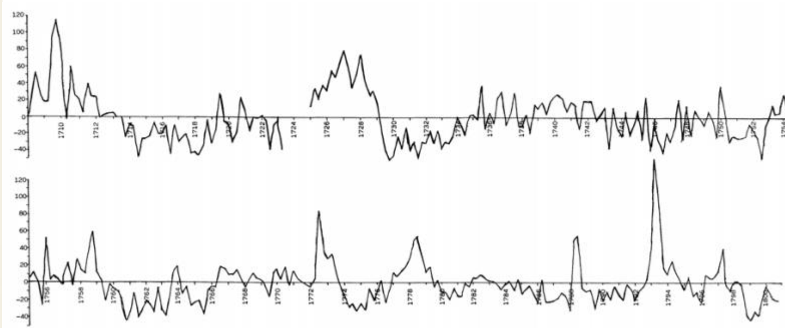


Fig. 1 Bankruptcy, 1695–1800
Note: No data available for 1723 III to 1724 IV.



Sectoral Composition of creditors and bankrupts (1711-60)

18. *Sectoral composition of debtors and creditors, 1711–60 (per cent)*

Sector	Creditors	Bankrupts
Agriculture	5.6	1.6
Fuel	0.4	0.5
Food	8.0	12.7
Drink	7.8	12.2
Construction	2.4	3.6
Textiles and clothes	26.1	26.2
Finance	1.1	1.2
Transport	2.4	3.9
Metal	3.2	3.6
Wood	0.9	1.5
Retail	1.4	9.9
Wholesale	17.9	15.7
Miscellaneous	22.9	7.2

Sectoral Composition of English bankrupts (1701-1800)

Table 3. *Sectoral composition of bankrupts, 1701–1800 (as percentage of all bankrupts for twenty-year periods)*

Sector	1701–20	1721–40	1741–60	1761–80	1781–1800
Agriculture	2.4	1.6	1.5	1.8	3.1
Fuel	0.2	0.4	0.8	1.0	1.3
Food	11.4	12.8	13.4	11.4	12.6
Drink	11.4	14.3	11.2	8.8	8.6
Construction	2.4	3.7	4.2	5.0	5.9
Textiles and clothes	27.7	26.2	25.6	23.9	23.9
Finance	1.6	1.1	1.3	2.1	3.7
Transport	3.0	4.1	4.1	5.1	5.8
Metal	3.3	3.4	4.0	5.6	5.6
Wood	1.0	1.4	2.0	2.8	2.0
Retail	9.8	10.1	9.1	8.7	7.6
Wholesale	19.0	14.1	15.7	16.6	13.1
Miscellaneous	6.8	7.0	7.1	7.2	7.2

Table 7. *Occupations of textile bankrupts, 1701–1800 (as percentage of textile bankrupts in given periods)*

Occupation	1701–20	1741–60	1781–1800	Century
Woollen manufacturer	17.6	12.4	7.5	12.2
Clothier	16.9	17.4	13.9	15.6
Linen dealer	12.0	18.4	21.5	17.5
Cotton manufacturer	0.8	0.8	11.2	4.7
Tailor	2.5	6.6	8.7	6.5
Hosier	3.4	6.1	5.3	5.6
Haberdasher	5.0	8.1	6.9	6.8
Mercer	25.0	15.6	9.6	15.0

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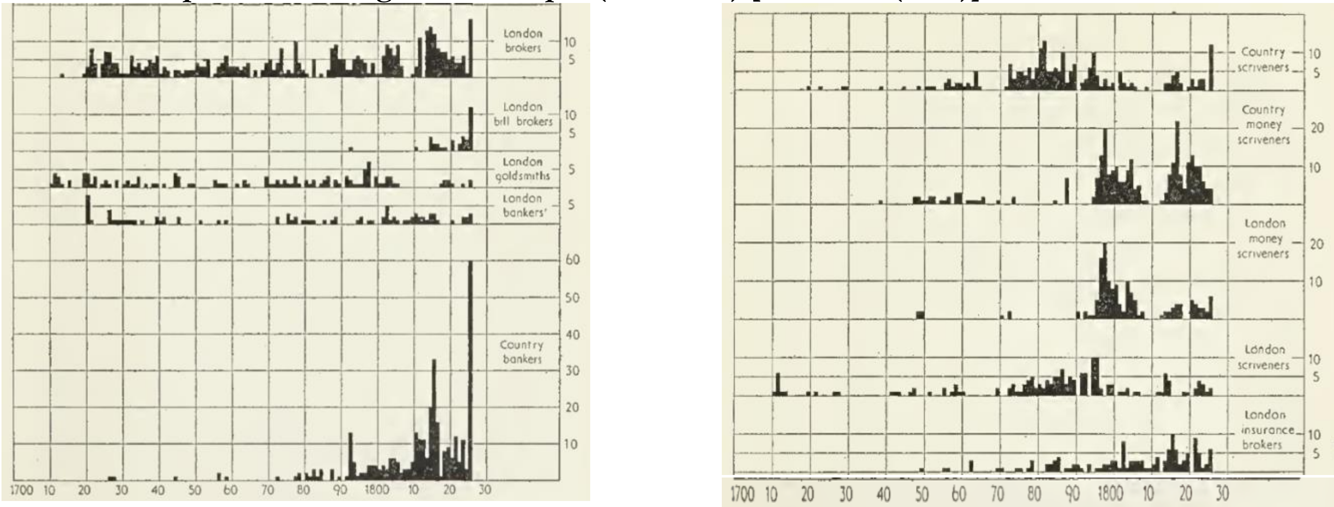
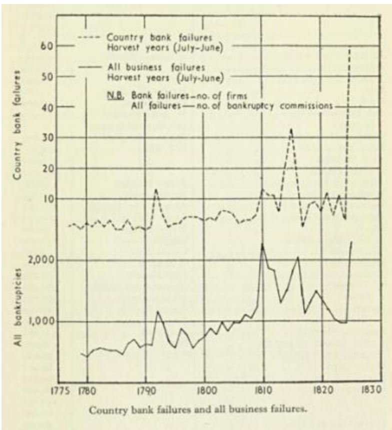
Sectoral Composition of English bankrupts (1710-1825) [Pressnell (1956)]

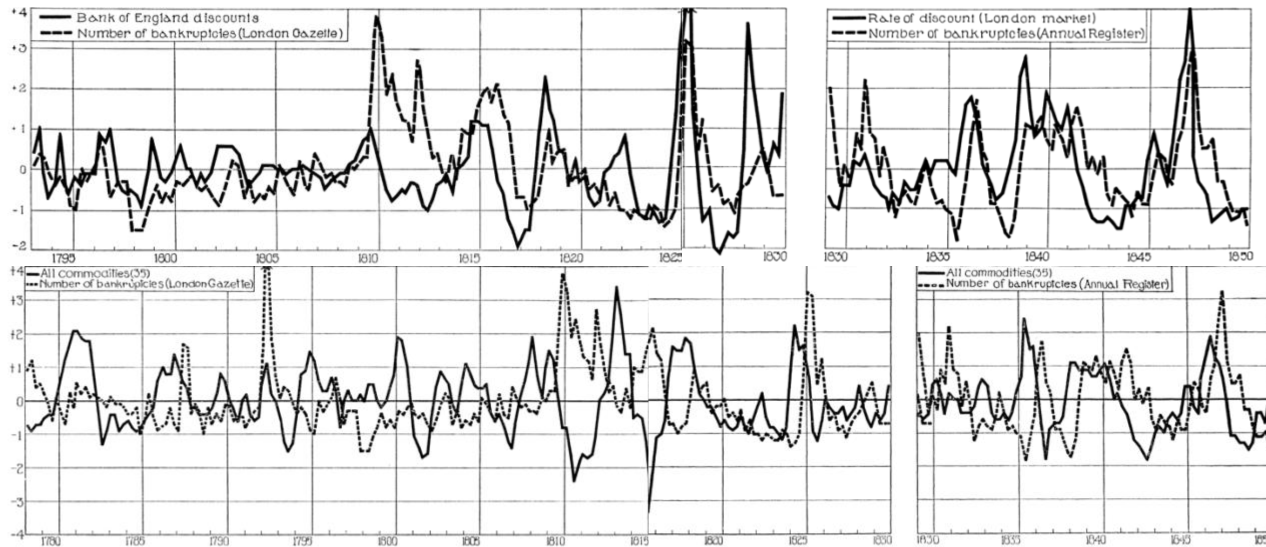




Country bank failures and all business failures.

Corrected Quarterly 'Cycles' of Bankruptcy Filings with BOE Discount Rate (Top) and with General Commodity Prices (Bottom) [Silbering (1923)]

Discount rates lead both inflation and bankruptcies. Bankruptcies are negatively correlated with inflation.



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See additional data on inflation —Horsefield (1956), Doughty (1975) — and bankruptcy —Chalmers (1794), Hoppitt (1987), Hoppit (1986), Marriner (1980)

Mint Equivalents for England (Redish, 1990) and France (Velde, 2006)

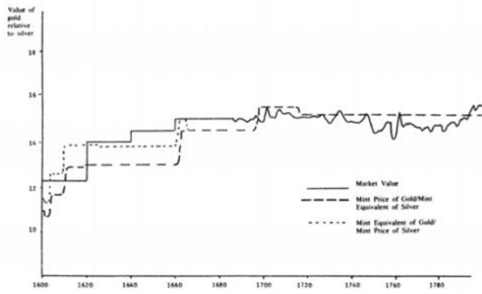


FIGURE 1

ENGLAND'S VALUATION OF GOLD, 1600–1800

Sources: Mint prices, mint equivalents: A. Feavearyear, *The Pound Sterling* (Oxford, 1963); Market value: J. Laurence Laughlin, *The History of Bimetallism in the United States* (New York, 1885).

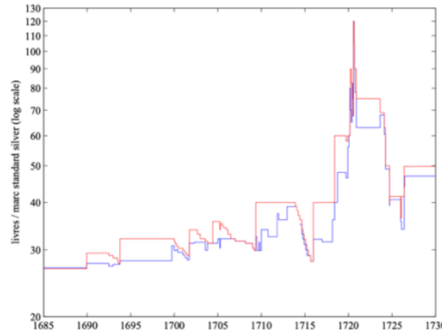


Figure 4: Mint equivalent (upper line) and mint price (lower line) of silver, France, 1685–1730.

French Income, Cost of Living, and Composition of Legacies (Roche, 1987)

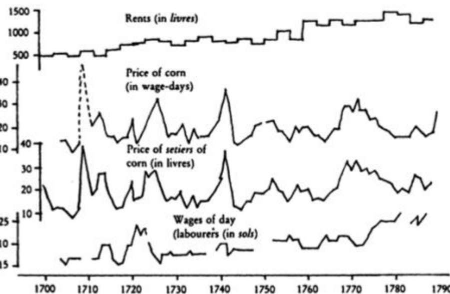
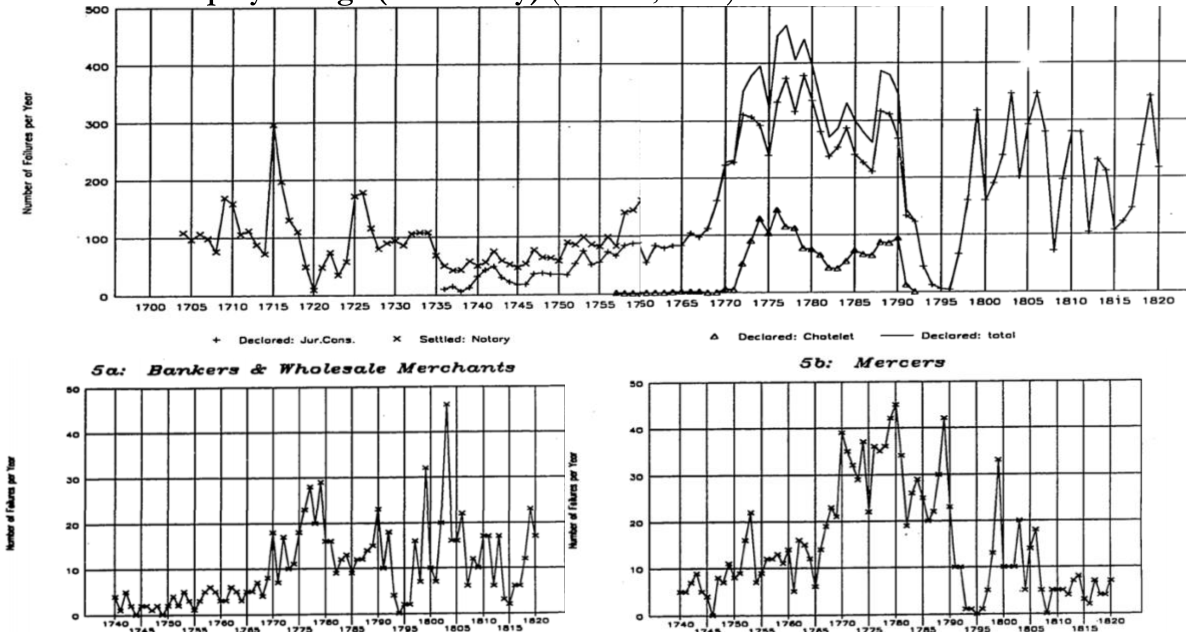


Table 3.8. Composition of legacies and levels of fortune (%)

	Assets 500 *livres*		Assets 3,000 *livres*	
	1695–1715	1775–90	1695–1715	1775–90
Wage-earners				
Furniture, clothes, linen	78.0	79.0	5.0	8.0
Silver	7.0	7.0	1.0	1.5
Cash	2.0	5.0	1.0	4.5
Rentes	—	2.0	28.0	64.0
Promissory notes, bonds	3.0	3.5	33.0	16.0
Debts	3.0	3.5	4.0	4.0
Real estate	7.0	—	30.0	2.0
Servants				
Furniture, clothes, linen	51.0	40.0	10.0	7.0
Silver	2.0	13.0	3.0	2.0
Cash	2.0	5.0	2.0	3.0
Rentes	5.0	10.0	50.0	70.0
Promissory notes, bonds	15.0	20.0	24.0	16.0
Offices	—	—	4.0	—
Book debts	25.0	10.0	5.0	1.0
Real estate	—	2.0	2.0	1.0

French Bankruptcy Filings (Paris Only) (Luckett, 1992)



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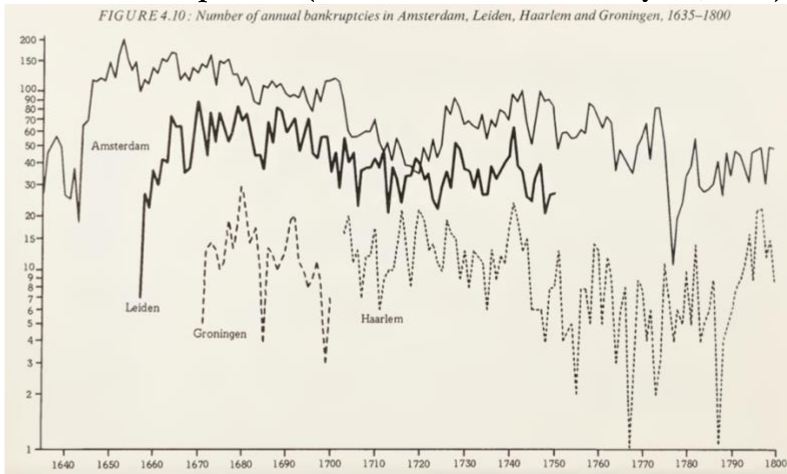
Dutch Bankruptcies (Van Houtte and Van Buyten, 1977)



Hamburg Bankruptcy [1772-1802] [Baasch (1919) and Beerbühl (2018)]

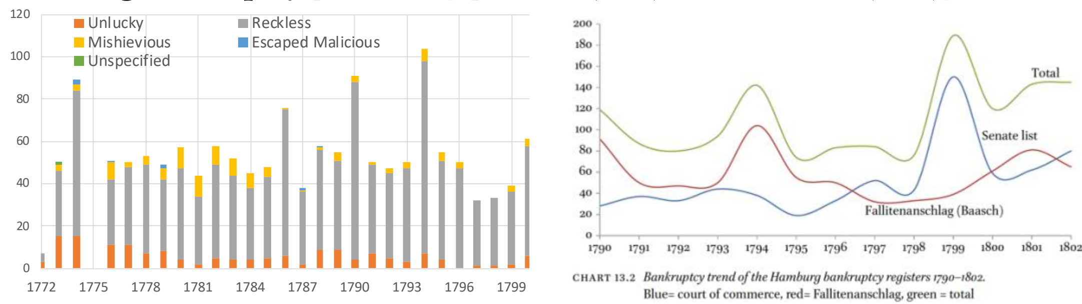
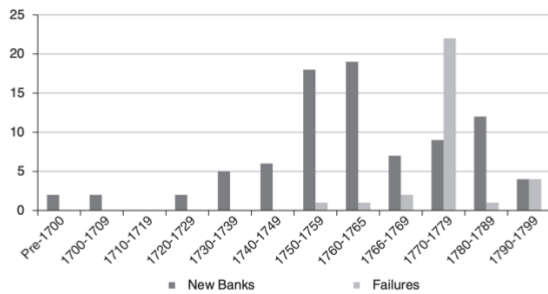
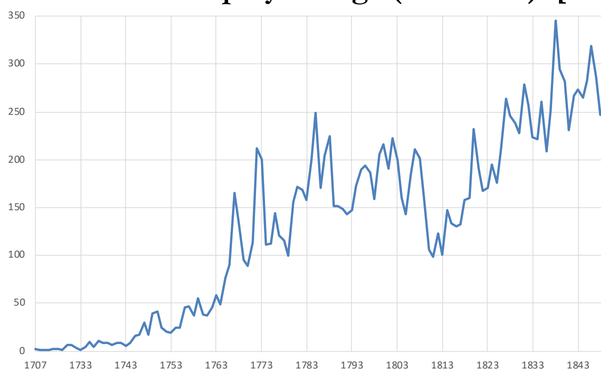


CHART 13.2 *Bankruptcy trend of the Hamburg bankruptcy registers 1790–1802.*
Blue= court of commerce, red= Fallitenanschlag, green = total

Scottish Bank Starts & Failures (1700-1800) [Goodspeed, 2016]



Swedish Bankruptcy Filings (1707-1849) [Stockholm Bankruptcy Database Project]



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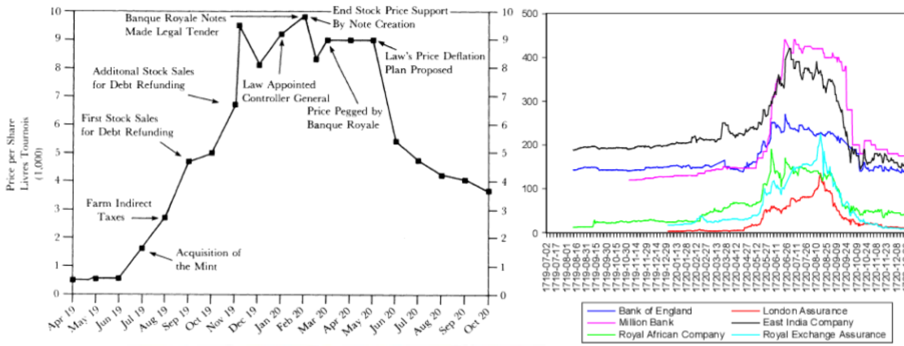
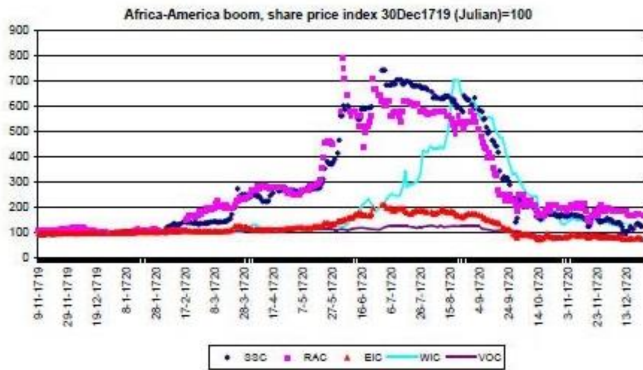
Mania and Panic of 1720

Figure 1
Compagnie des Indes Stock Price





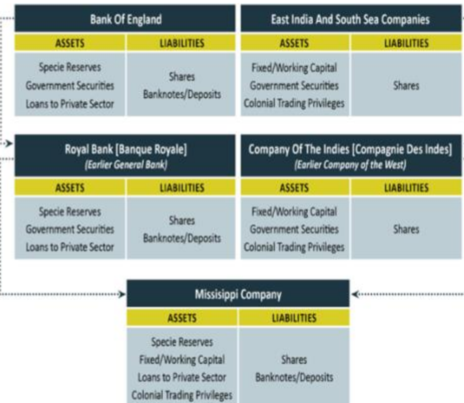
France's Mississippi System (Murphy (1997))

Table 9.2. Balance Sheets of the Banks and the Trading Companies

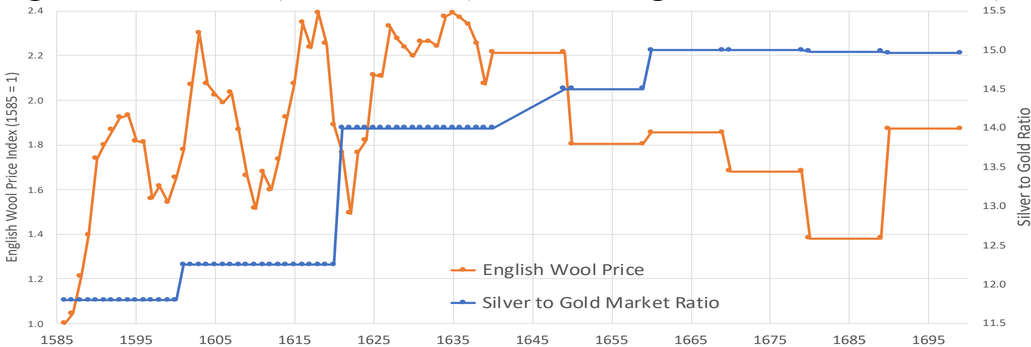
BANK OF ENGLAND		EAST INDIA AND SOUTH SEA COMPANIES	
Liabilities	*Assets*	*Liabilities*	*Assets*
Shares	Gold/Silver	Shares	Fixed/Working Capital
Banknotes/Deposits	Reserves Government Securities		Government Securities Colonial Trading Privileges
↓		↓	
BANQUE ROYALE (earlier Banque Générale)		COMPAGNIE DES INDES (earlier Compagnie d'Occident)	
Liabilities	*Assets*	*Liabilities*	*Assets*
Shares	Gold/Silver	Shares	Fixed/Working Capital
Banknotes/Deposits	Reserves Government Securities		Government Securities Colonial Trading Privileges
↘		↙	
	MISSISSIPPI COMPANY		
	Liabilities	*Assets*	
	Shares	Gold/Silver Reserves	
	Banknotes/ Deposits	Fixed/Working Capital Government Securities Colonial Trading Privileges	

(1) The banking proposals of the *Essay on a Land Bank* of 1704 and *Money and Trade* in 1705, the draft submission for the Bank of Turin in 1710–12, and the range of plans for the General and the Royal Bank in France in 1706–7 and between 1715 and 1718.
(2) The emerging theoretical analysis of the role of the trading companies between 1706 and 1717.
(3) The recognition of the debt-management role of the trading companies.

This evolution in Law's thought was influenced by the changing pattern of the problems he examined between 1704 and his rise to power in France during the period 1716–20. In Scotland in 1705, in Savoy between 1710 and 1712, and in France in 1706–7 and 1715–16, Law analysed monetary crises in these three states.



English Wool Prices (Bowden, 1962) and Exchange Rate of Silver to Gold (Laughlin, 1896, p288)



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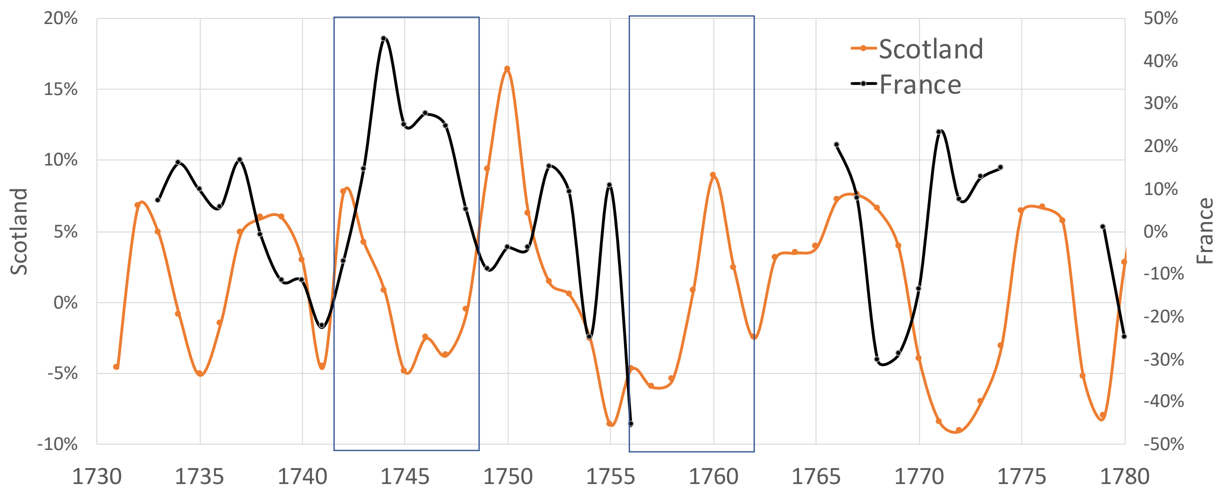
Percent Change of Price of Linen in Scotland (Stamped Sales) and France (Raw) Over 3 Year Average



Note: The War of the Austrian Succession (1740-8) and the Seven Years' War (1756-63) are shaded.
Sources: Price of linen goods stamped for sale in Scotland (Hamilton, 1963, p404); Price of wool cotton in Nantes, France (Hauser, 1936, p510)

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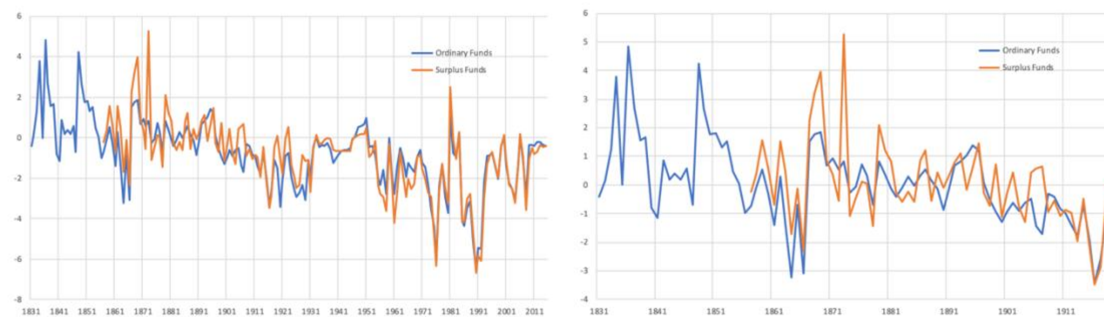
Exhibit 2: Short and Long Term Rates (Various dates)

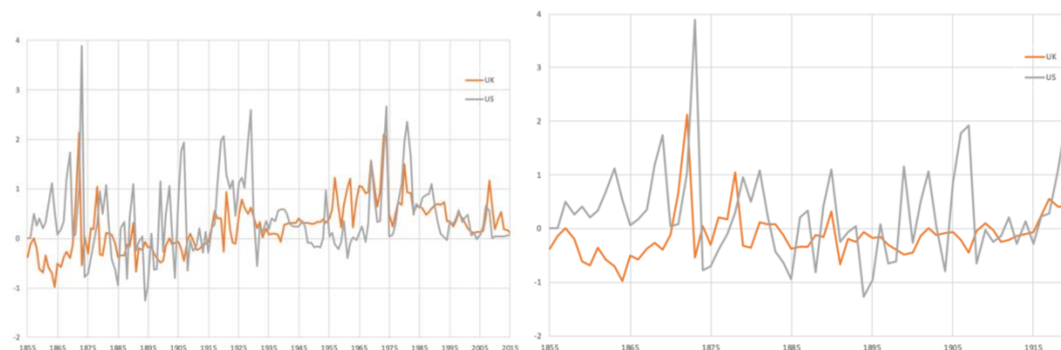
Commercial (Bankable) Paper

(a) Short-Term Rates - Excess of US over UK. Chart on left 1831-2015 and chart on right 1831-1920.



(b) Long-Term Rates - Excess of US over UK. Chart on left 1798-2015 and chart on right 1798-1920.

(c) Risk Premium in Financial Markets – proxied by spread between the commercial paper (ordinary) and the call money (surplus) rates. Chart on left 1855-2015 and chart on right 1855-1920.



Source: MeasuringWorth, 2019.

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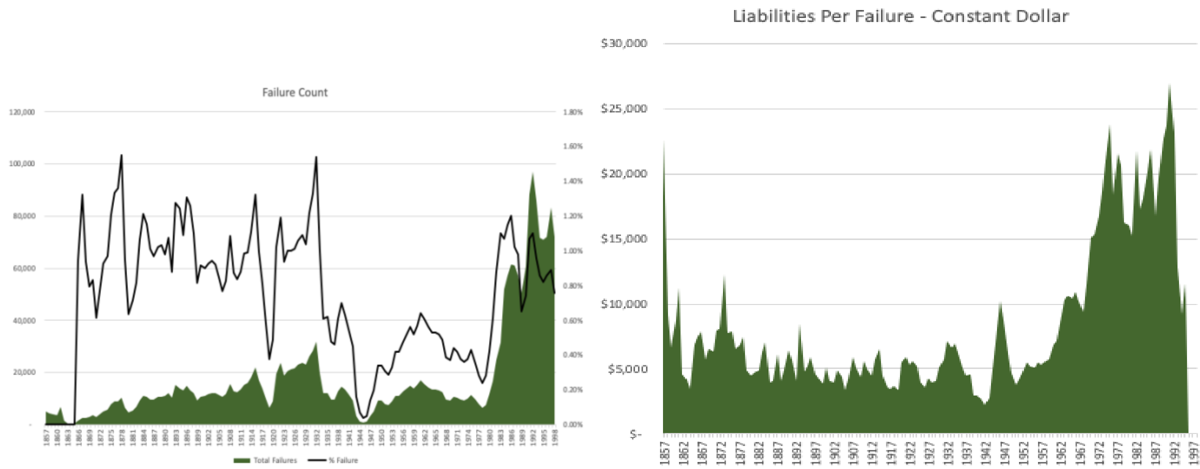
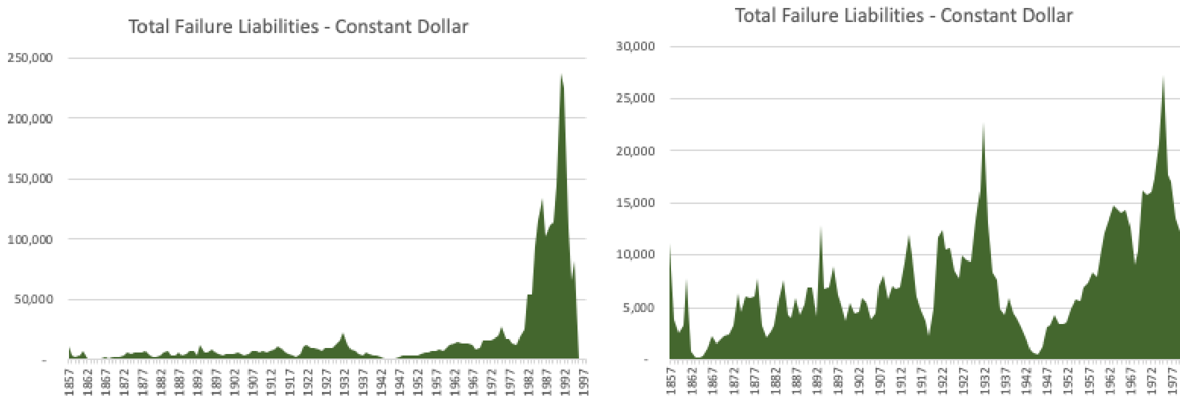
Exhibit 3: Business Failures (1857-1998)

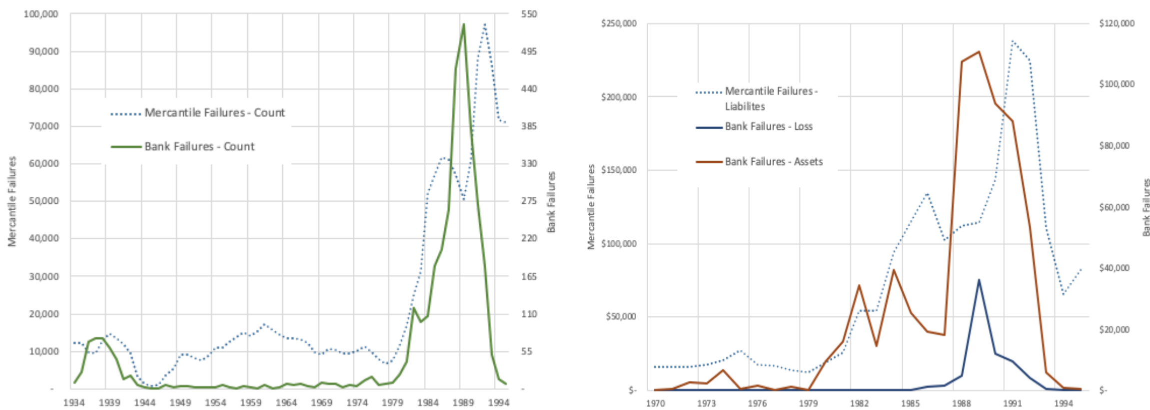
Business Failures (1857-1998) and Failures as % of Total Business Concerns (1866-1998) (left) and liabilities per business failure (1857-1995).



Total failure liabilities deflated by McCusker Index from 1857 to 1995 (left) and from 1857 to 1981 (right)



Annual Mercantile and Bank Failures Count 1935-95 (left) and Constant Dollar Measures 1970-95 (right)



Source: Dun & Bradstreet; FDIC (for bank failures); $ Values deflated by McCusker Consumer Price Index

Bond Default Rates (1866-2008)

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Default Rates on bonds issued by U.S. domestic non-financial firms. Note the differences in events before and after the 1898 Bankruptcy Act. These data include railroad companies which were protected by a different, earlier bankruptcy regime.

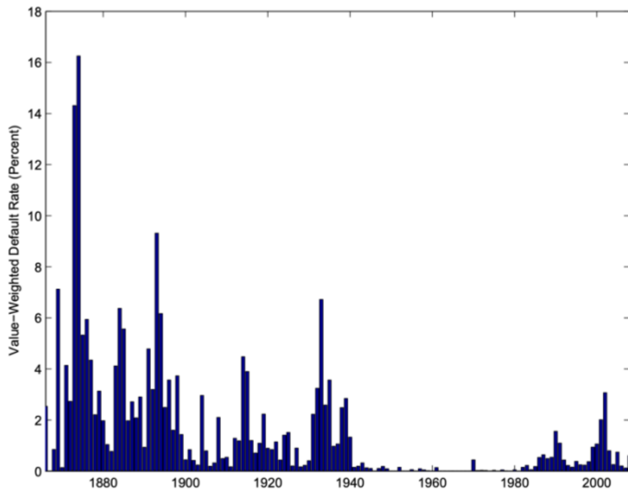

Figure 1. Historical Default Rates. This graph plots the annual value-weighted percentage default rates for bonds issued by domestic nonfinancial firms for the 1866−2008 period.

Default cycles.

This table lists the dates for the default cycles during the 1866–2008 sample period where a default cycle is defined as a contiguous period during which annual default rates exceed the unconditional mean default rate of 1.517%. The annual default rates are the annual percentage default rates of U.S. nonfinancial corporate bonds for the 1866–2008 period. The length of the default cycle is measured in years. Default rates are expressed as percentages.

Date of cycle	Length of cycle	Average default rate	Maximum default rate	Historical background
1866–1866	1	2.54	2.54	Post Civil War adjustment
1869–1869	1	7.13	7.13	Linking of coasts by railroad
1871–1880	10	6.04	16.25	Railroad boom and crash
1883–1889	7	3.68	6.37	Major bank panic of 1884
1891–1898	8	4.36	9.32	Major bank panic of 1893
1904–1904	1	2.97	2.97	Roosevelt, Panama Canal
1908–1908	1	2.10	2.10	Stock market panic
1914–1915	2	4.19	4.48	First World War
1919–1919	1	2.23	2.23	Post First World War adjustment
1931–1935	5	3.67	6.73	Great depression
1938–1939	2	2.67	2.84	Great Depression
1990–1990	1	1.56	1.56	Junk bond defaults
2001–2002	2	2.54	3.07	Dot-com crisis

Source: Giesecke et al., 2011

Debt Default Rates (1920-2017)

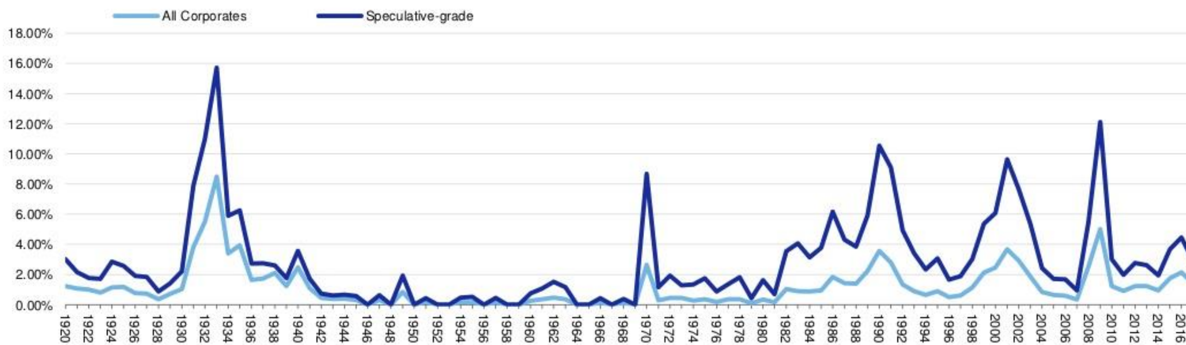

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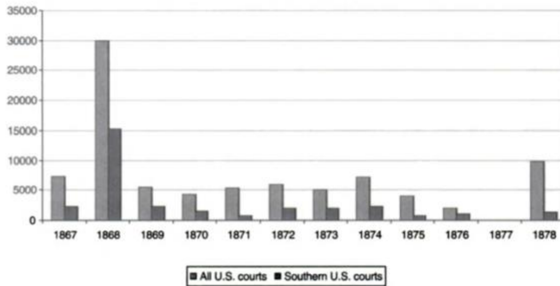
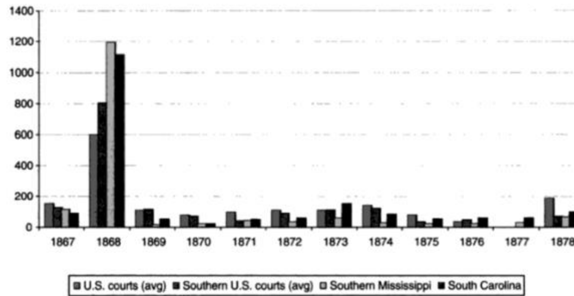
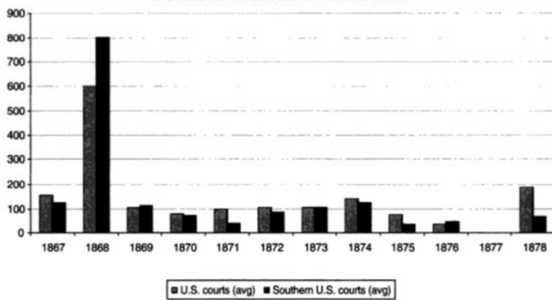
Exhibit 4: Bankruptcies

Bankruptcy Act of 1867



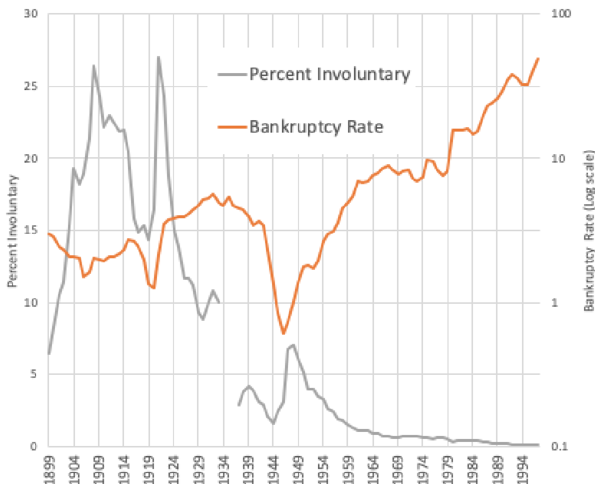


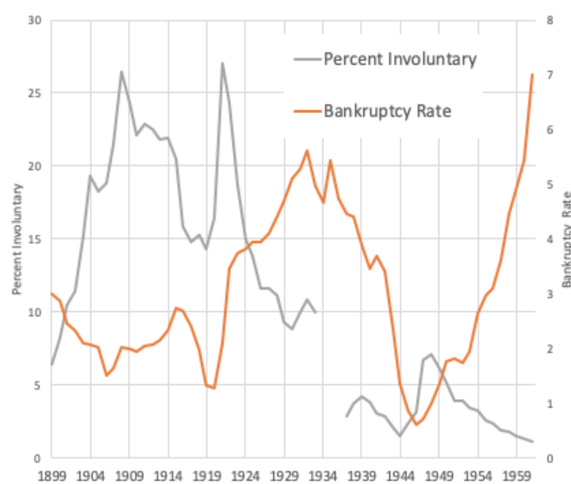


Source: Thompson (2004)

Bankruptcy Act of 1898

Percent Involuntary (Equity Receiverships) and Bank Failures Count from 1899 to 1997 (log scale, left) and to 1961 (normal scale, right)





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Farmer and other Bankruptcies from 1899 to 1935 (Wickens (1936); Stam and Dixon (2004))

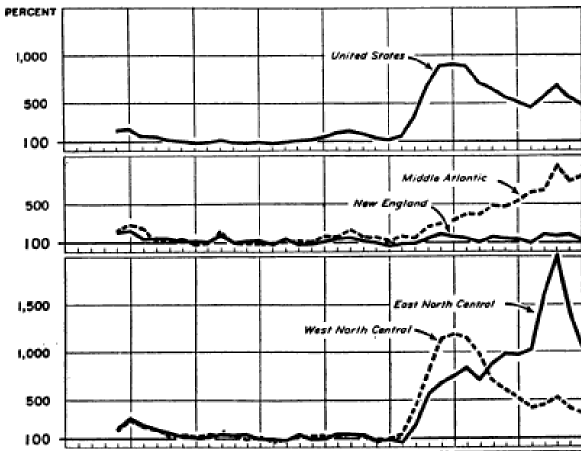
TABLE 3.—*Distribution of bankruptcies in the United States, by specified periods, 1899–1934*

Period ended June 30	Farmers	Wage earners	Merchants	Manufacturers	Professional	Other classes	Total
	Number	*Number*	*Number*	*Number*	*Number*	*Number*	*Number*
1899–1909	13, 015	56, 309	46, 517	5, 901	4, 116	27, 659	153, 517
1910–19	12, 001	59, 859	66, 418	9, 744	4, 460	41, 689	194, 171
1920–29	51, 863	139, 273	99, 869	12, 033	7, 980	67, 641	378, 659
1930–34	23, 969	[1] 144, 363	71, 772	7, 525	[2] 6, 201	55, 465	309, 295
Total	100, 848	399, 804	284, 576	35, 203	22, 757	192, 454	1, 035, 642
	Percent	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
1899–1909	8. 5	36. 7	30. 3	3. 8	2. 7	18. 0	100. 0
1910–19	6. 2	30. 8	34. 2	5. 0	2. 3	21. 5	100. 0
1920–29	13. 7	36. 8	26. 4	3. 2	2. 1	17. 8	100. 0
1930–34	7. 8	[1] 46. 7	23. 2	2. 4	[2] 2. 0	17. 9	100. 0
Total	9. 7	38. 6	27. 5	3. 4	2. 2	18. 6	100. 0

[1] Includes professional for 1934.
[2] 4 years 1930–33.

TABLE 9.—*Annual rate of bankruptcies per 1,000 farms, by geographic divisions in specified periods, 1899–1934*

Geographic division	Years ended June 30— 1899–1909	1910–19	1920–29	1930–34	Geographic division	Years ended June 30— 1899–1909	1910–19	1920–29	1930–34
	Number	*Number*	*Number*	*Number*		*Number*	*Number*	*Number*	*Number*
New England	0. 78	0. 61	0. 85	1. 23	West South Central	0. 09	0. 13	0. 49	0. 30
Middle Atlantic	. 18	. 17	. 41	1. 10	Mountain	. 26	. 57	2. 48	. 81
East North Central	. 15	. 10	. 54	1. 44	Pacific	. 47	. 51	1. 60	1. 07
West North Central	. 37	. 23	1. 61	1. 01	United States	. 21	. 19	. 80	. 76
South Atlantic	. 08	. 19	. 58	. 51					
East South Central	. 17	. 11	. 37	. 35					



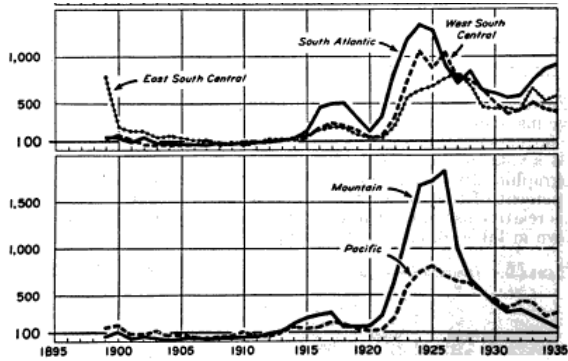
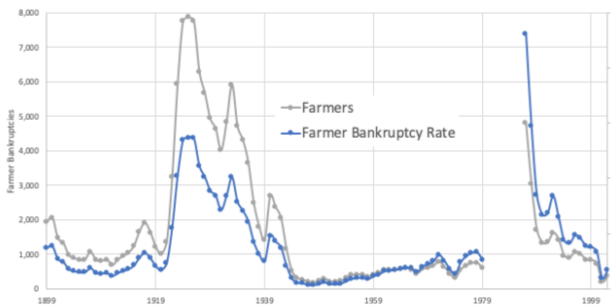
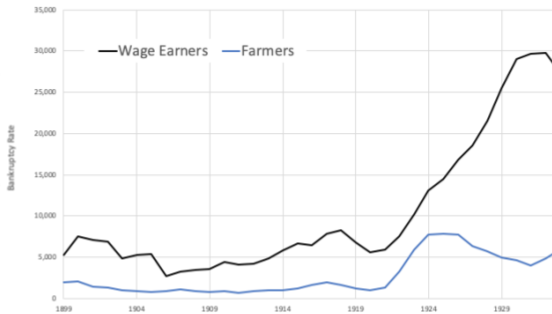


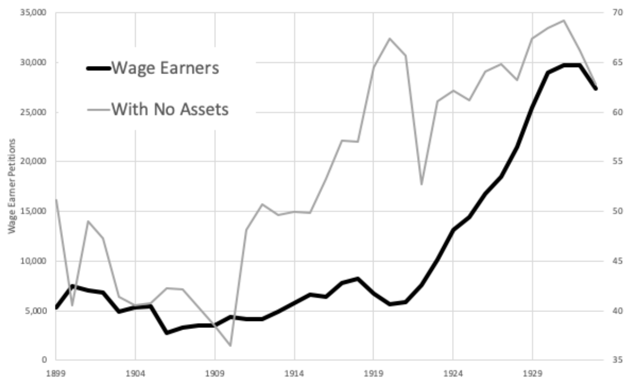
FIGURE 3.—INDEX NUMBERS OF FARMER BANKRUPTCIES, BY GEOGRAPHIC DIVISIONS, 1899–1935.

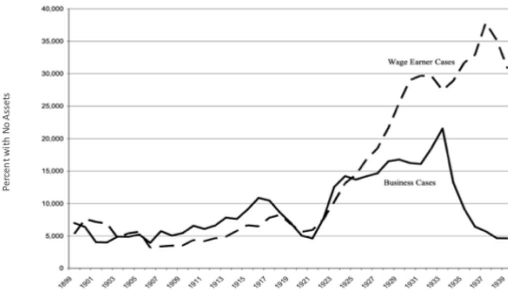
Comparatively few farmer cases occurred during the long period of agricultural prosperity from 1900 to 1915. Increases for the years 1915–17 were largely confined to the Southern States where cotton prices had been very low in 1914. Following 1920 tremendous increases occurred in all areas except New England, where debt expansion had remained moderate. Declines began about 1926, except in the Middle Atlantic and East North Central States where the number of cases continued steadily upward until 1933.





Wage Earner Bankruptcies with Percent with No Assets (left) and Wage earner and business cases (right)





Source: 1899-1938 *Annual Report of the Attorney General of the United States*; 1939-97; *Statistical Abstract of the United States*. Various years. (Digitized on EH.net.) Wage earner and business cases (Hansen and Hansen, 2005).

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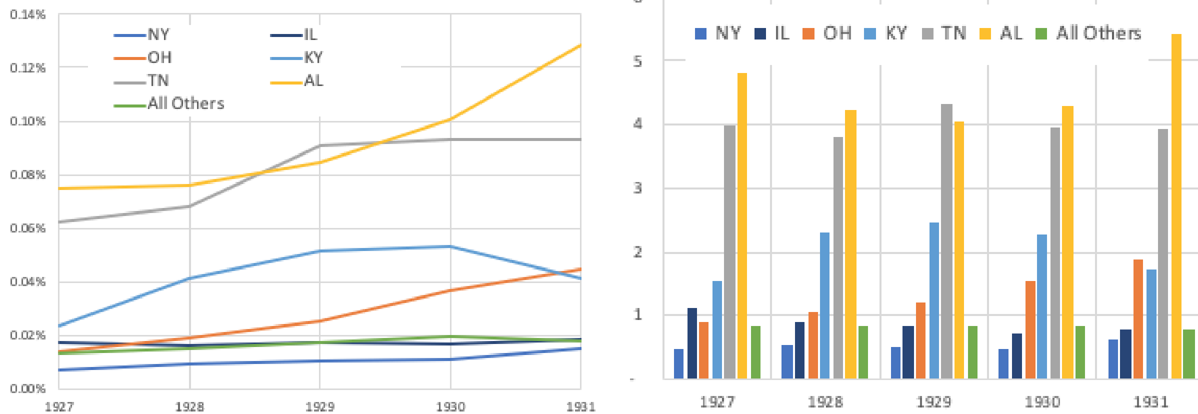
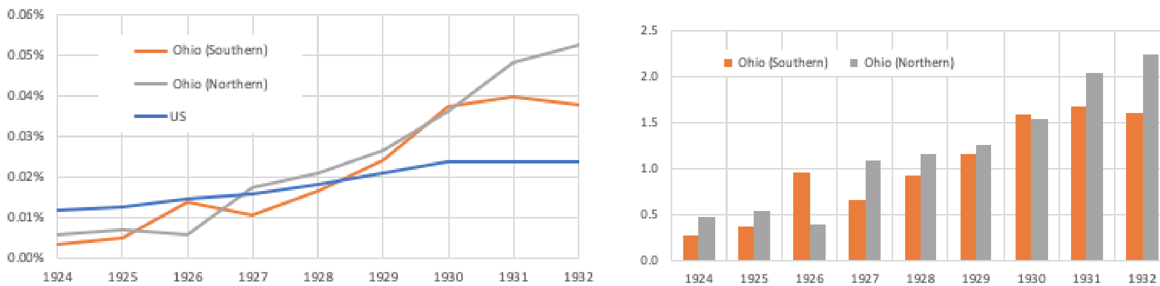
Wage Earner Bankruptcy Filings by State

Voluntary bankruptcy filings by wage earners as a percent of population (left) and this ratio a multiple of the ratio for the entire United States (right)



Voluntary bankruptcy filings by wage earners as a percent of population for the Southern and Northern Districts of Ohio and for the entire United States (left) and this ratio a multiple of the ratio for the entire United States (right)



Sources: Annual Report of the Attorney General of the United States (1927-1932); US Census (1996)

Wage Earner Bankruptcy Rates by Garnishment Law and Personal Exemptions (Hansen and Hansen, 2012)

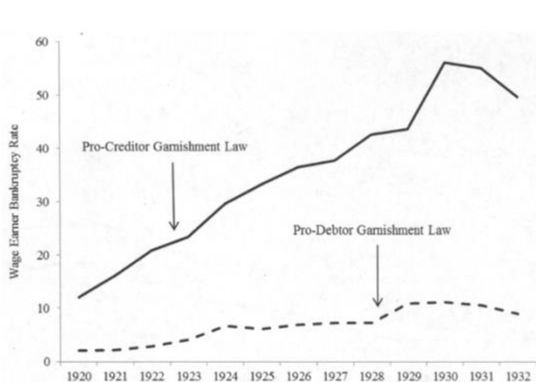


FIGURE 1
PRO-CREDITOR GARNISHMENT INCREASED WAGE EARNER BANKRUPTCY RATES

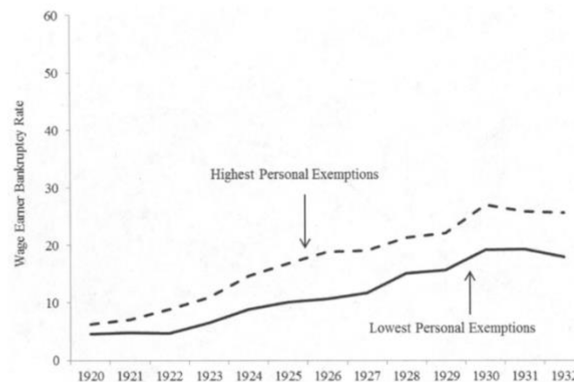


FIGURE 2
GENEROUS PERSONAL EXEMPTIONS INCREASED WAGE EARNER BANKRUPTCY RATES

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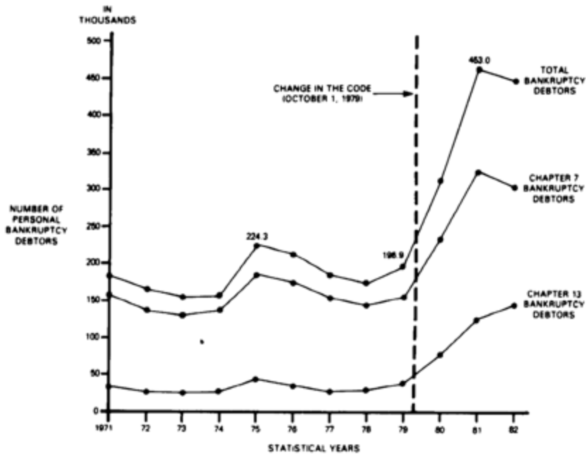
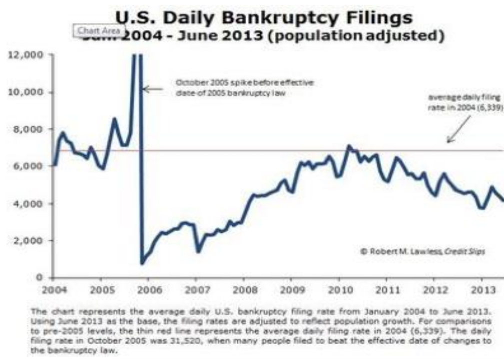
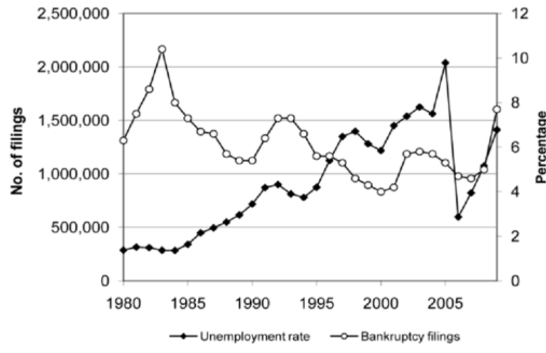
Effects of 1978 Reforms & Laws (GPO, 1983)



Effects of BACPA





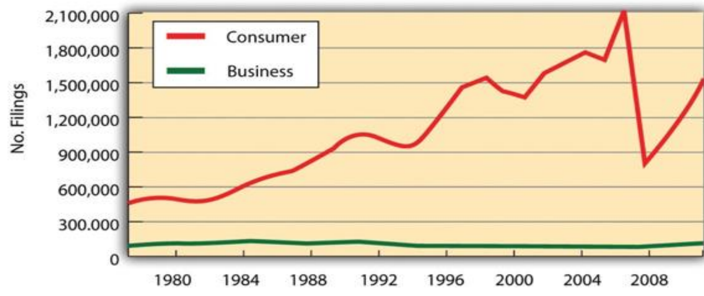


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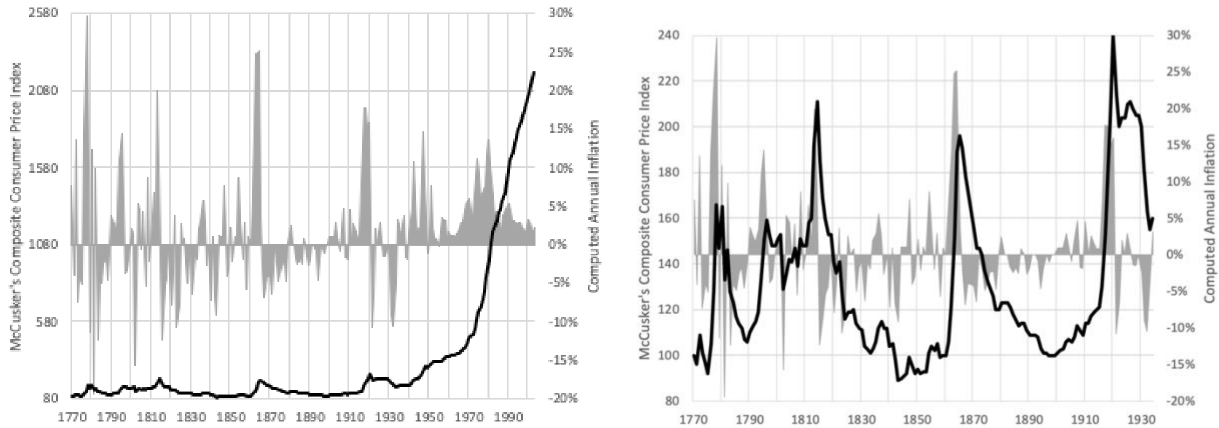
Exhibit 5: Price and Inflation Index (1770-2003)

McCusker's Composite Consumer Price Index (CPI) and Inflation (to 2003, left) and (to 1934, right)



Reuters/Jefferies Commodity Research Bureau (CRB) Index (1749-2011) [Bianco Research]

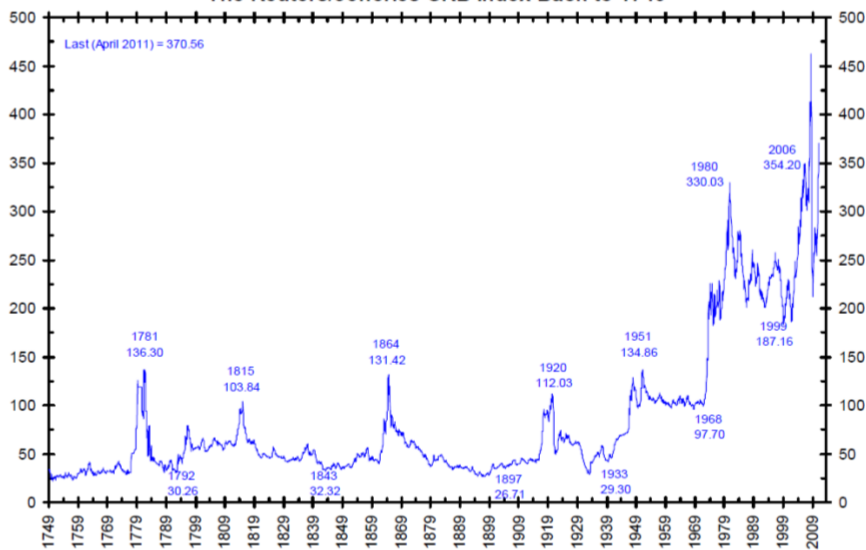


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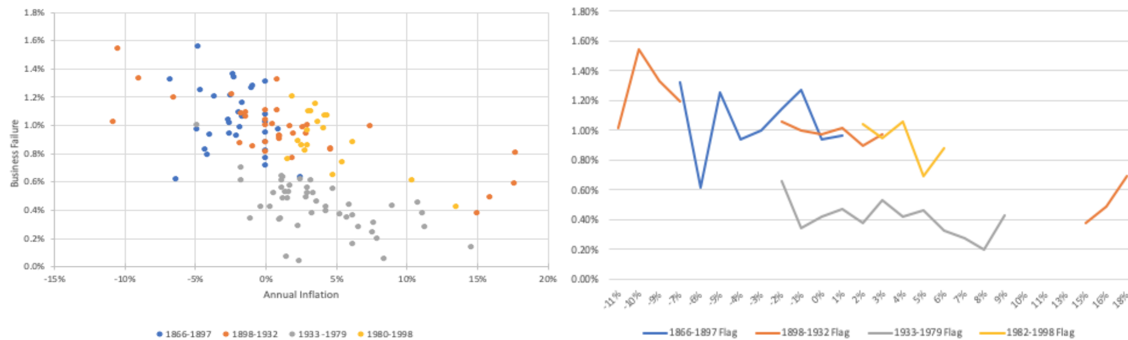
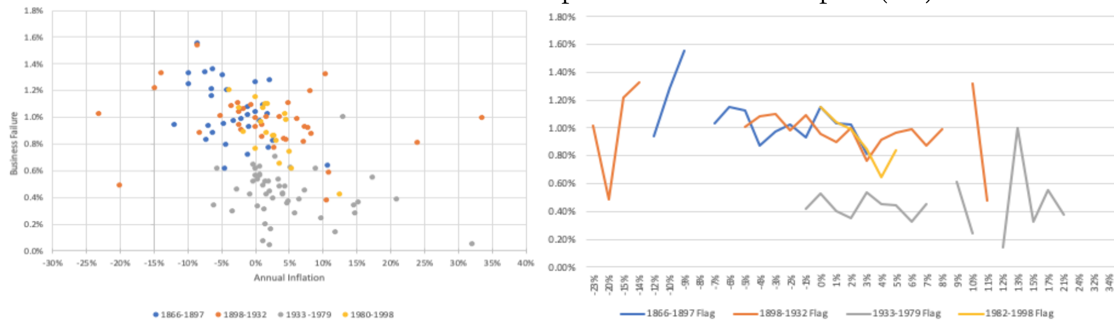
Exhibit 6: Inflation and Business Failure (1866-1997)

These are not adjusted for the discount rate, which affects both variables. See Exhibit 1 for England.
Consumer Price Inflation (annual change in McCusker Index) with Business Failures per 100 firms Scatterplot (left) and Linear Averaging (right) by Era



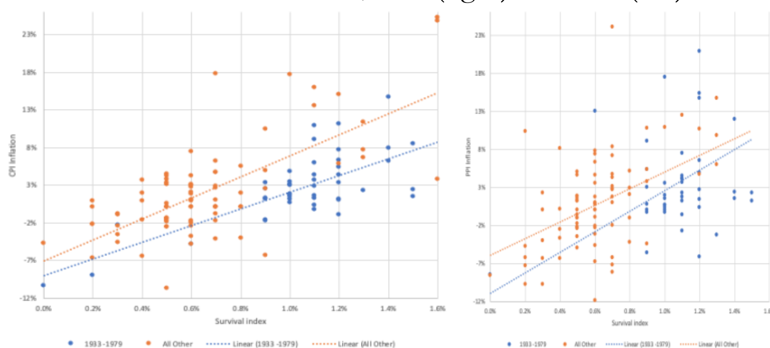
Producer Price Inflation & Business Failures per 100 firms Scatterplot (left) and Linear Averages (right)



Rationale for Era periods chosen:

- 1866-1897: End of Civil War until BA98. During this period, BA67 was in effect until 1878.
- 1898-1932: BA98 until FDIC. During this period, the Federal Reserve was established in 1913.
- 1933-1979: Post Banking Act of 1933 and the Chandler Act of 1938 until Bankruptcy Reform Act of 1978.
- 1980-1998: Post credit laws until Tech Bubble (Latest available data from Dun).

Note: While there is a lot of endogeneity in the time series data, the change in the *New Deal Era* is a shift in the relationship between inflation and corporate failure rates. In order to flip the above graph, the failure variable was transformed into a survival index (max failure rate of 1.55% in 1881 less annual failure rate, rounded to the first decimal). From this perspective, the impact of the *New Deal Era* prohibitions on corporate failure is the doubling of steady state equilibrium in terms of survival and higher realized inflation along a flatter inflation-survival curve, CPI (right) and PPI (left):



Source: Dun's & Bradstreet (Failures), McCusker Index, stitched wholesale PPIs (BLS all commodities pre-1891, BLS extended to 1913, BLS PPIACO from FRED).

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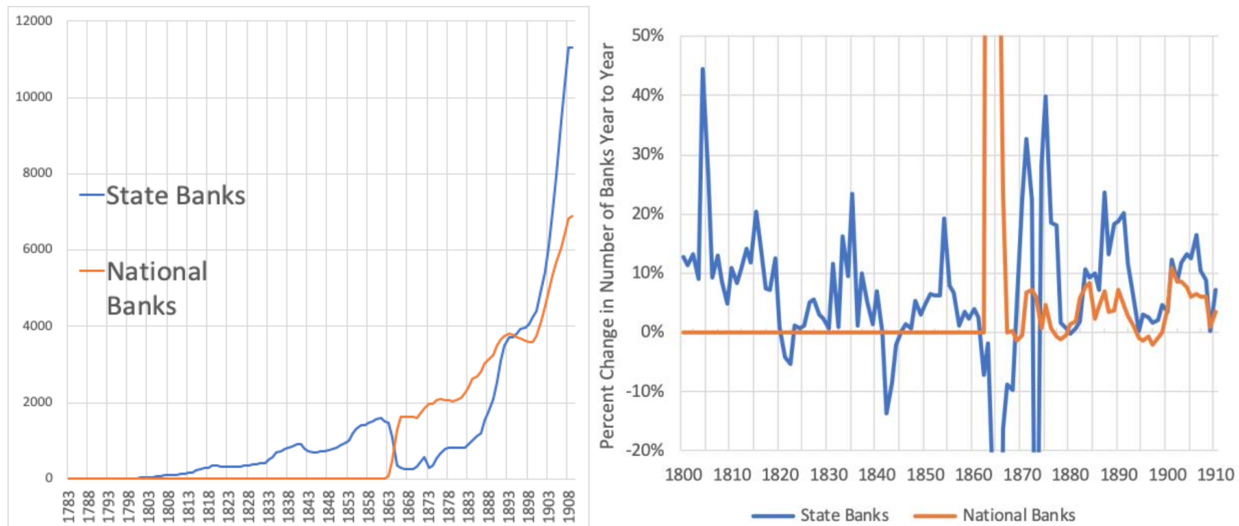
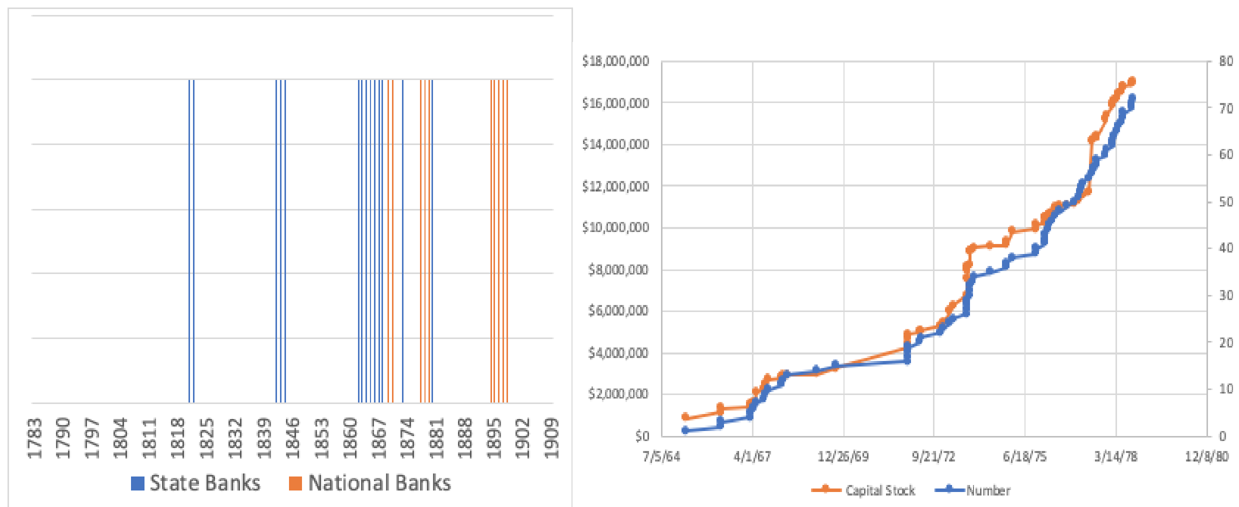
Exhibit 7: Banks Statistics

Number of State and National Banks 1783-1909 (left); Percent Change of Number YoY (right), and Prior to the National Bank Era, banks had net annual failures only in 1821-2 and 1841-4.



Flag for Net Decreases (Negatives YoY, left) and National Bank Failures (1864 to 1878) (right, COTC)



Sources: Hepburn, 1915; Weber, 2006; White, 1983

Note: The Number of Antebellum banks is calculated as the maximum value in any given year of series (counting branches) from Hepburn and Weber (who also provides data from Fenstermaker and Congressional documents). Post-bellum data are from White.

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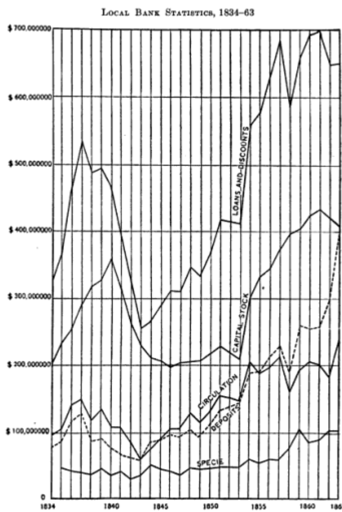
*Bank Stock Prices (1800-1841) (*A History of Public Sector Pensions in the United States*)*

Figure 6.1. Prices, as percent of par value, of stock of the First Bank of the United States, the Second Bank of the United States, and the Smith-Cole Index of New York Bank Stocks, 1800–1841. The figure ends with December 1840, because the price of the Second Bank declined to 4.00 percent of par in 1842 and to 1.75 in 1843, which, if included, would distort the representation of prices graphed on the logarithmic scale. The data for these bank prices are unpublished. The stock prices of the First Bank are from data collected by Wilson and Sylla in New York. The stock prices of the Second Bank are from those underlying the chart by Smith (1953) and which are currently being collected by Sylla and Wilson from the papers of Arthur Cole in the Baker Library at Harvard.

Bank Statistics (1834-63) (United States Congress, 1940) and for Southern States only (bottom, Schweikart, 1987)



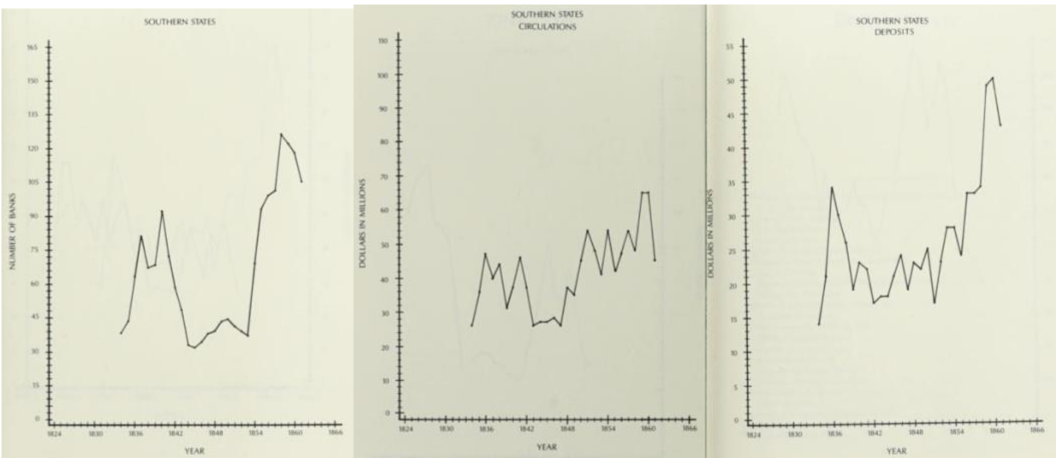


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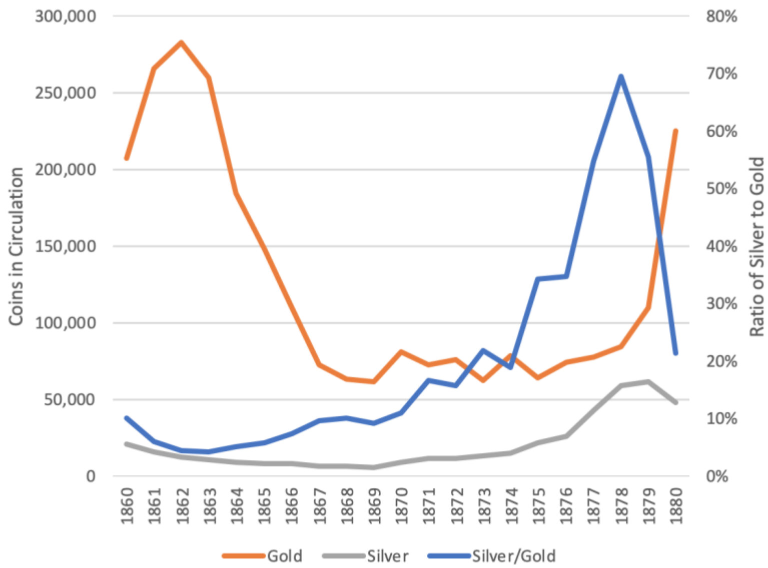
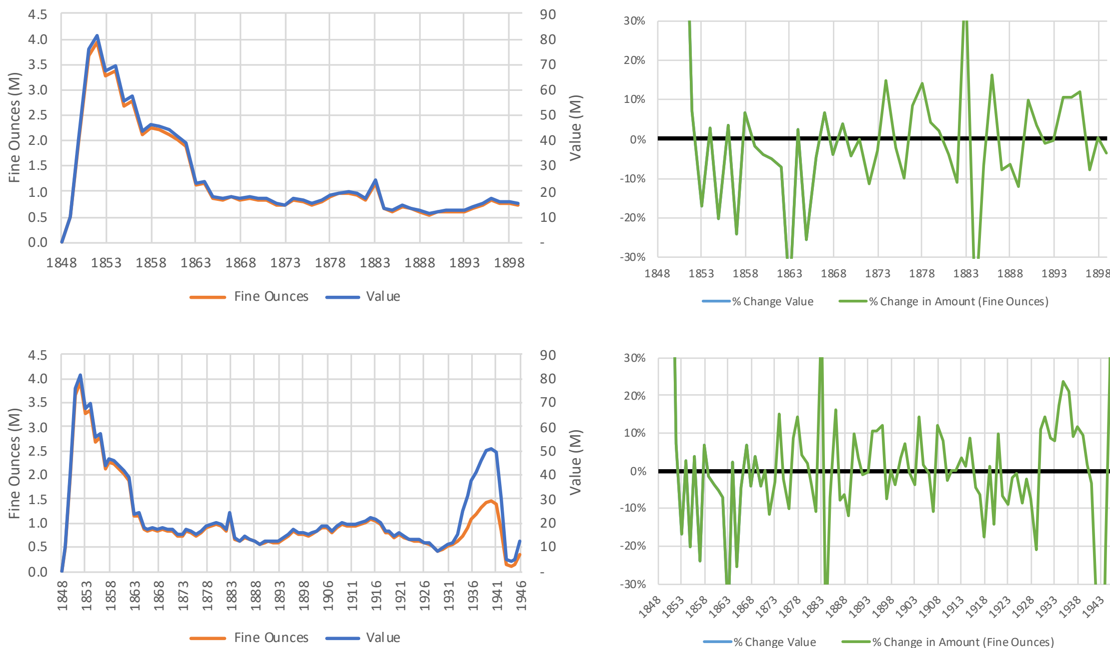
Exhibit 8: Money

Specie in Circulation (1860-1880)



Source: https://files.stlouisfed.org/files/htdocs/wp/2003/2003-006.pdf

Annual Amount and Value of California Gold produced (left) and Year Over Year Change (right) from 1848 to 1800 (top) and to 1946 (Bottom)



Source: Averill, King, Symons, and Davis, 1948.

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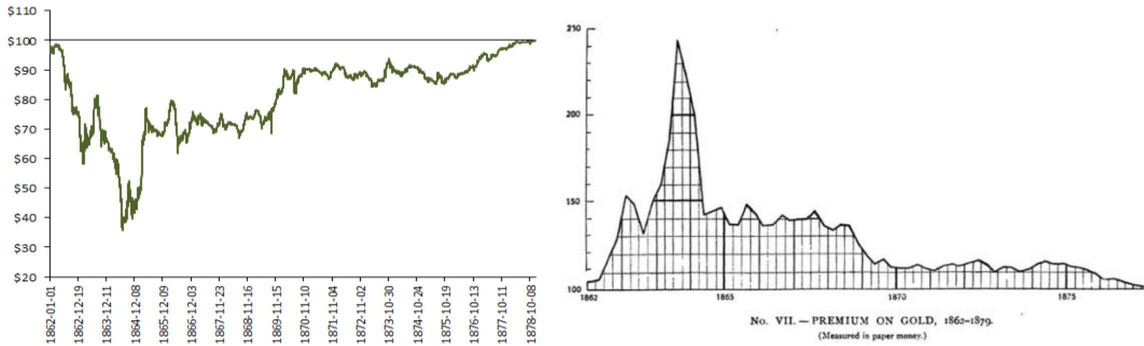
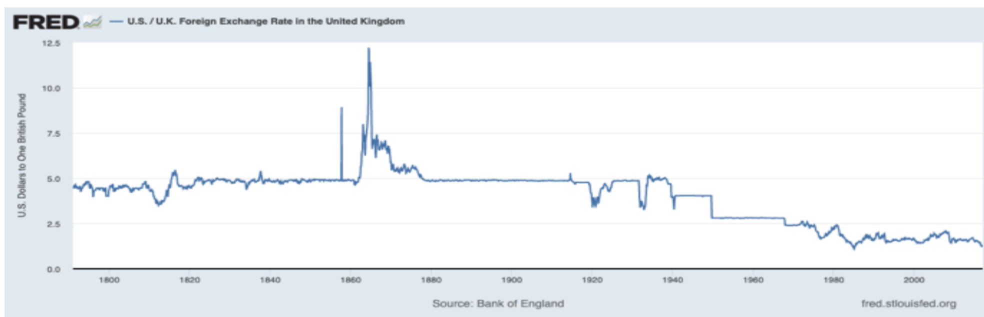
Price of USLTN (1862-1878)

The Price of USLTN in terms of gold (left, $100 = par) and Premium on Gold (right), 1862-1879



Source: Dewey (1918)

US to England FX Rate (Top) and English to US FX Rate (Bottom)



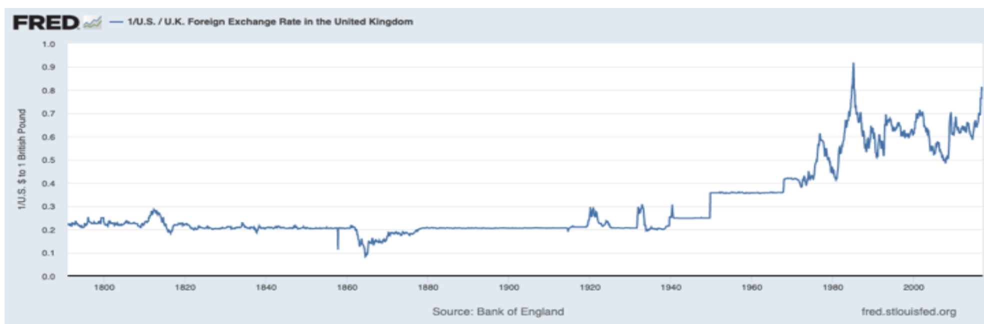


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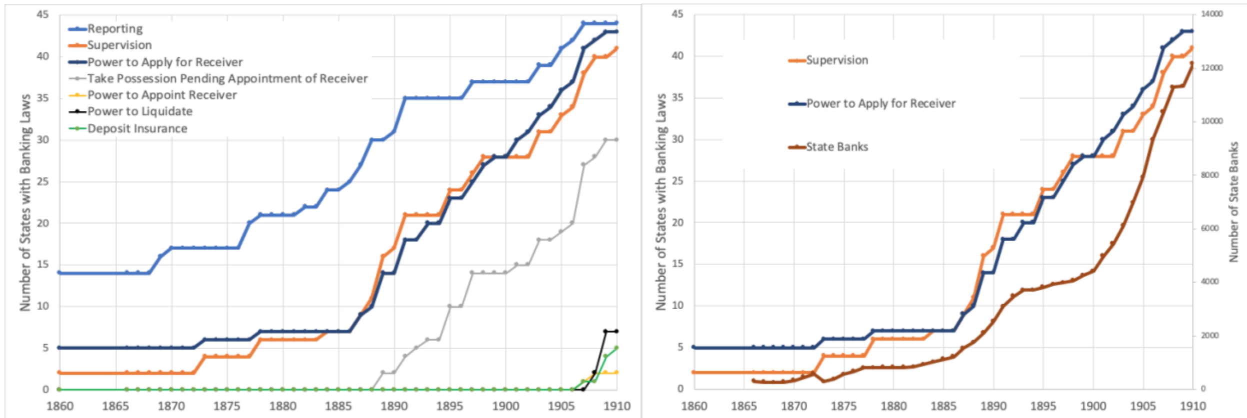
Exhibit 9: State Legislation of Bank Regulation (1860-1910)

Aggregate States by year of first law (Left) & Supervision laws and Number of State banks (Right)



Deposit Insurance Legislation in Force by State and Year

	1829	1834	1839	1844	1849	1854	1859	1864		1907	1912	1917
NY												
VT												
IN												
MI												
OH												
OK												
KS												
SD												
NE												
TX												
MS												
ND												
WA												

Source: Barnett, 1911, Pgs 178-9. For Deposit Insurance (Calmoiris, 1989).

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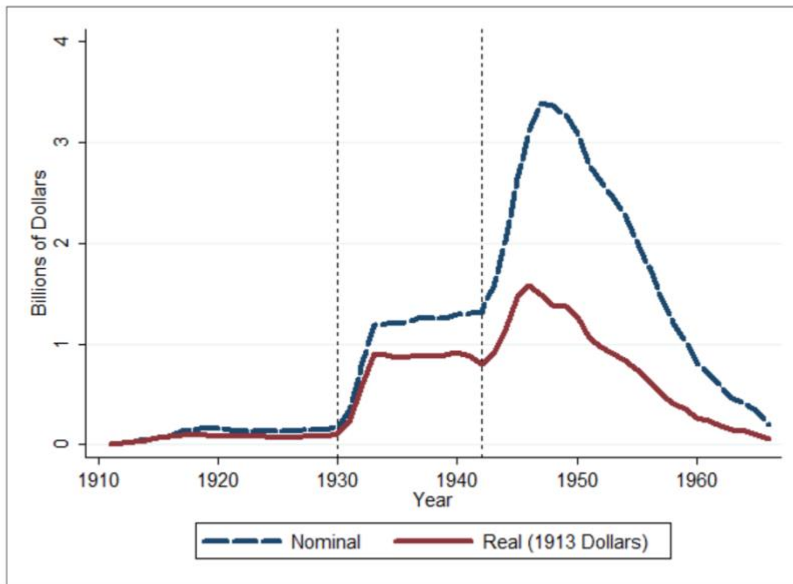
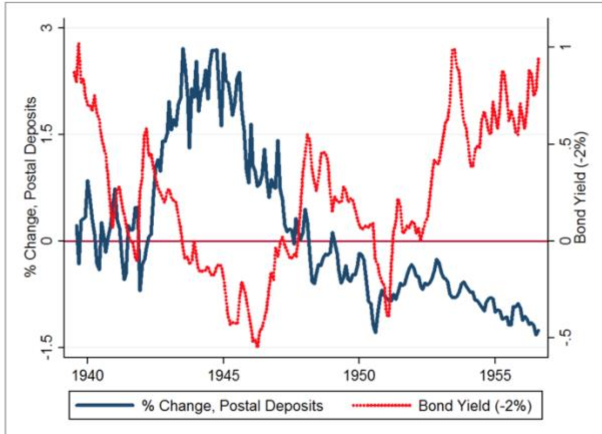
Exhibit 10: Postal Savings System (1911-67)

Figure 1: Deposits in Postal Savings System



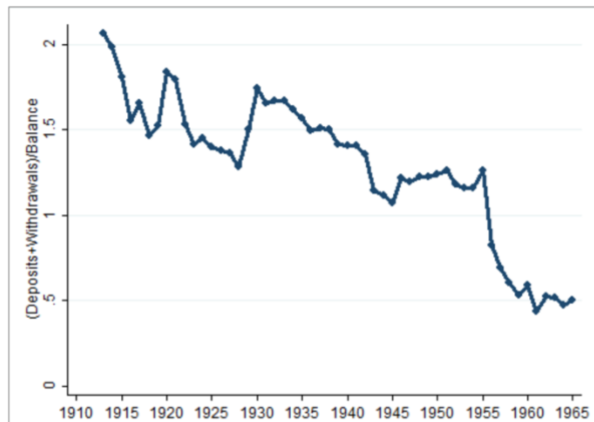
Notes: This figure provides the aggregate amount of deposits in the Postal Savings System in July of each year. In addition to the nominal values, we provide the real values deflated to 1913 dollars using CPI inflation calculator from the Bureau of Labor Statistics. See data section for a description of the Postal Savings Data.

Figure 5: Monthly Changes in Postal Deposits and Bond Yields



Notes: This figure shows the monthly percent change in postal savings deposits, compared to the yield on municipal bonds, from which we subtract two so as to compare it to the 2% interest rate offered by postal savings. Data come from the *Operations of the Postal Savings System* and National Bureau of Economic Research (2012).

Figure 4: Yearly Activity in the Postal Savings System



Notes: This figure shows the ratio of the sum of all deposits and withdrawals into and out of the Postal Savings System divided by the year-end balance. All data come from the *Operations of the Postal Savings System.*

Source: Sprick Schuster et al. (2019)

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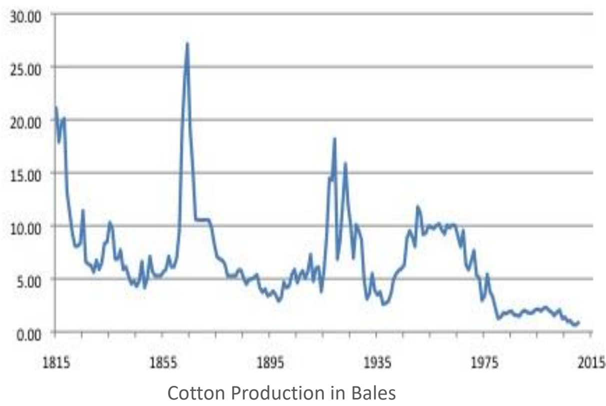
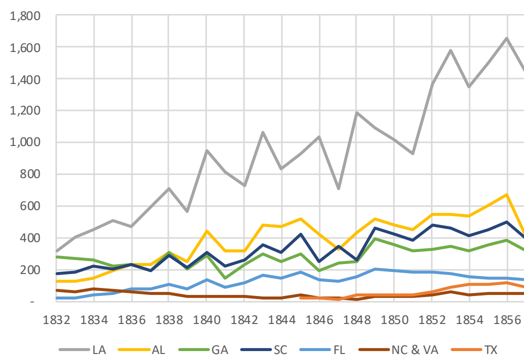
Exhibit 11: Southern Economy

The Gold Price of Cotton (1815-2015)





Market Share

60%
50%
40%
30%
20%
10%
0%
1832 1834 1836 1838 1840 1842 1844 1846 1848 1850 1852 1854 1856
LA AL GA SC FL NC & VA TX

Source: Data based on multiple years in Donnell,1872. Louisiana's Port of New Orleans processed cotton on behalf of Mississippi.

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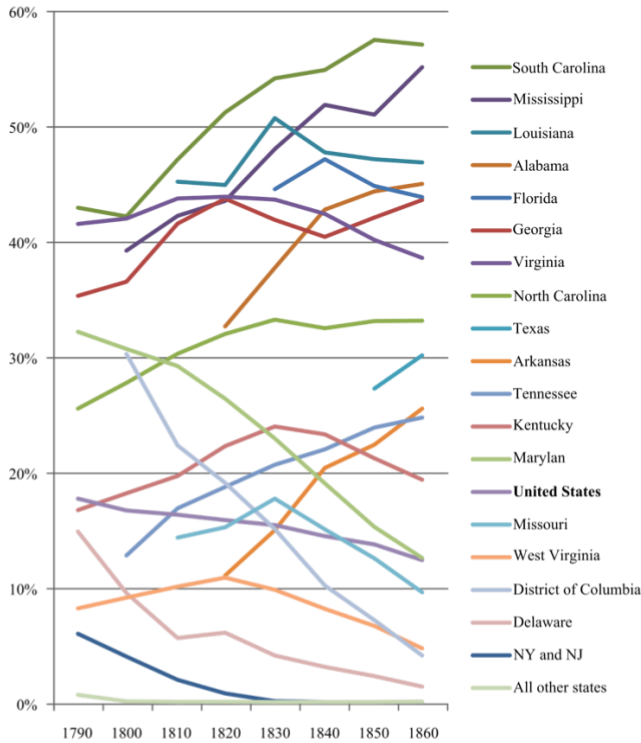
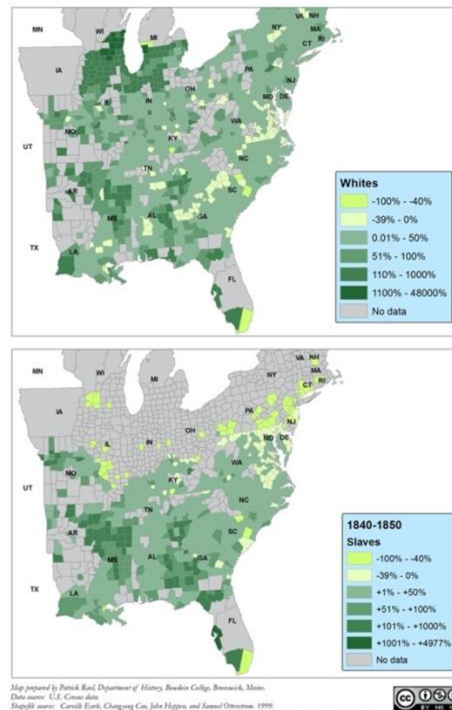
Evolution of the Enslaved Population of the United States as a percentage of the Population of each State, 1790–1860





NEGRO POPULATION, 1740–1860.

1740	140,000.	1820	1,777,000.
1776	300,000.	1830	2,328,000.
1790	750,000.	1840	2,873,000.
1800	1,002,000.	1850	3,638,000.
1810	1,380,000.	1860	4,441,000.

The table given below will show the distribution of the negro population among the several Southern slave states from 1810 to 1860. From the statistics one may note the slow increase in the upper South as compared with the rapid increase in the cotton states.

DISTRIBUTION OF THE NEGRO POPULATION, 1810–1860.
In Thousands.

Census Year	1810	1820	1830	1840	1850	1860
Maryland	145	147	155	151	165	171
Virginia	423	462	517	499	526	549
North Carolina	179	219	265	268	316	361
South Carolina	200	265	323	335	394	412
Georgia	107	151	220	283	384	465
Florida	...	...	16	26	40	62
Alabama	...	42	119	255	345	437
Mississippi	17	33	66	196	310	437
Louisiana	42	79	126	193	262	350
Texas	...	...	...	...	58	183
Arkansas	...	2	5	20	47	111
Tennessee	45	82	146	188	245	283
Kentucky	82	129	170	189	220	236
Missouri	4	10	25	59	90	118

The range of slave prices at various times and places in the ante-bellum South may be gathered from the accompanying table, which has been made

AVERAGE PRICES OF PRIME FIELD HANDS
(Young slave men, able-bodied but unskilled)

	1800	1808	1813	1818	1828	1837	1843	1848	1853	1856	1860
	$	$	$	$	$	$	$	$	$	$	$
Washington, Richmond, and Norfolk	350	500	400	700	....	900	....	....	1,250	1,300	....
Charleston, S. C.	500	550	450	850	450	1,200	500	700	900	....	1,200
Louisville, Ky.	400	....	550	800	500	1,200	....	....	....	1,000	1,400
Middle Georgia	450	650	450	1,000	700	1,300	600	900	1,200	....	1,800
Montgomery, Ala.	....	....	....	800	600	1,200	650	800	....	....	1,600
New Orleans, La.	500	600	....	1,000	700	1,300	600	900	1,250	1,500	1,800

after extensive research by the present writer among the archives in the vicinities indicated. The prices given in the table are average prices of "prime field hands," or able-bodied young male slaves of no special training. The averages are only

Source: Chandler et al., 1909

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Evolution of state laws, imprisonment for debt.

State	Year	Notes
Alabama	1839	
Arkansas*	1843	
Connecticut	1842	1826 – Women excluded 1837 – no petty debts
Delaware	1841	1841 – Only debts > 50$?
Florida	<1850	1824 – Women excluded
Georgia*	1858	1847 – Women excluded
Illinois*		
Indiana*	1842?	1838 – Prison bounds coextensive with the county
Iowa (Terr.)		
Kentucky*	1821?	1820 – Women excluded
Louisiana	1840	
Maine*		1822 – Only debts > 5$
Maryland*	1851	1824 – Women excluded
Massachusetts	1857	1811 – Only debts > 5$ 1831 – only debts > 10$, women excluded
Michigan	1839	
Mississippi	1839	
Missouri*	1843	
New Hampshire	1840	1818 – Only debts > $13.33 1831 – women excluded
New Jersey	1842	1818 – Women excluded
New York	1831	1819 – Only debts > 10$ 1828 – women excluded
North Carolina*	>1850	1823 – Women excluded 1844 – proof of concealment or transfer
Ohio	1838	
Pennsylvania	1842	1819 – Women excluded, 1833 – no petty debts
Rhode Island*	>1900	
South Carolina*	>1850	1825 – Only debts > 20$ 1841 – judicial district boundaries
Tennessee	1840	
Vermont	1838	1819 – Only debts > 15$ 1834 – women excluded
Virginia*	1873	1849 – "Partial abolition"
Wisconsin (Terr.)	1841	

Notes: The table was constructed through consultation of Coleman (1999), Kent (1848, 1866), Kinne (1842), McMaster (1920), and Prison Discipline Society (1841).

* Marks states which Kent (1848, 1866) asserts still allowed some form of imprisonment for debt as of the writing of his book.

Source: Baker et al., 2012

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Exhibit 12: Savings Banks

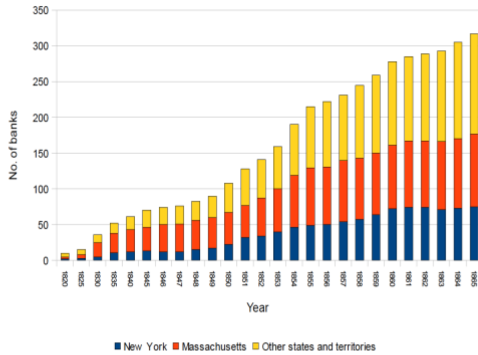
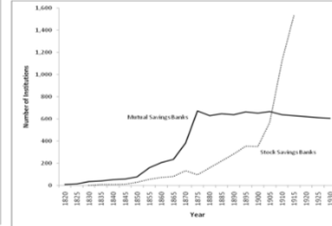


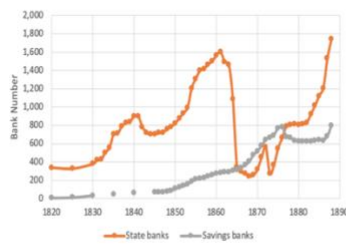
Figure 2. Incorporation trends for mutual & stock savings banks (3-Year moving average), 1816-61.

Notes: Sylla & Wright database used for all states but New York since data for that state not collected by the time of this writing. NY incorporations were hence drawn from Keyes (1870). Hybrid ownership structures lumped with 'stock savings banks.'
Sources: Keyes (1870); Sylla & Wright (2011).

Figure 3. Estimated stock and mutual savings banks, 1820-1930.



Notes: Sylla & Wright (2011) database of incorporations was used to estimate breakdown between stock & mutual savings banks for antebellum U.S.
Sources: Comptroller of Currency Annual Reports; Lintner (1948); Sylla and Wright (2011).



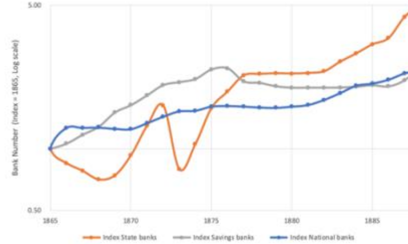
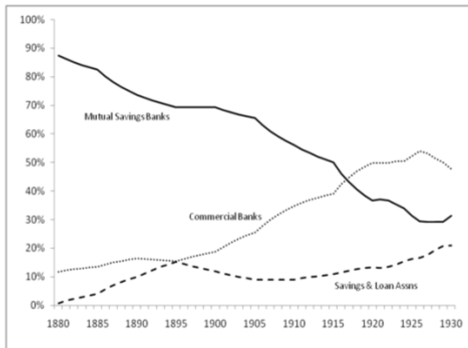
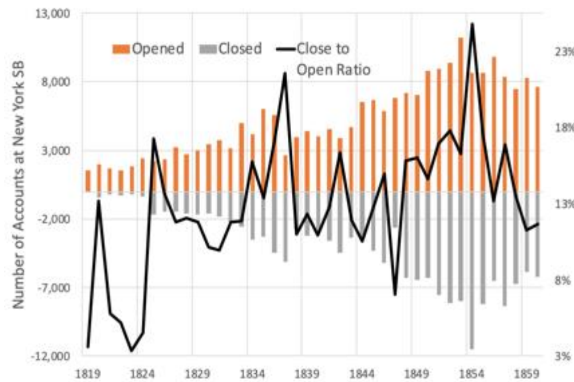


Figure 5: Share of individual savings held by various depository institutions.



Source: Lintner (1948), 460-461.



Source: Wadhwani (2011b), Osborne (2014), Own calculations

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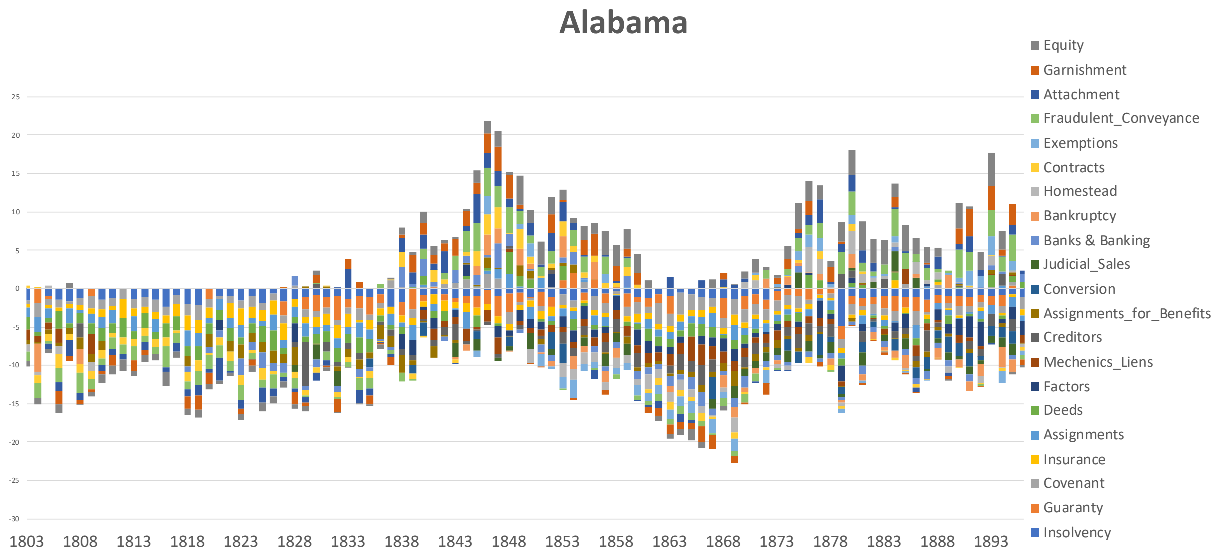
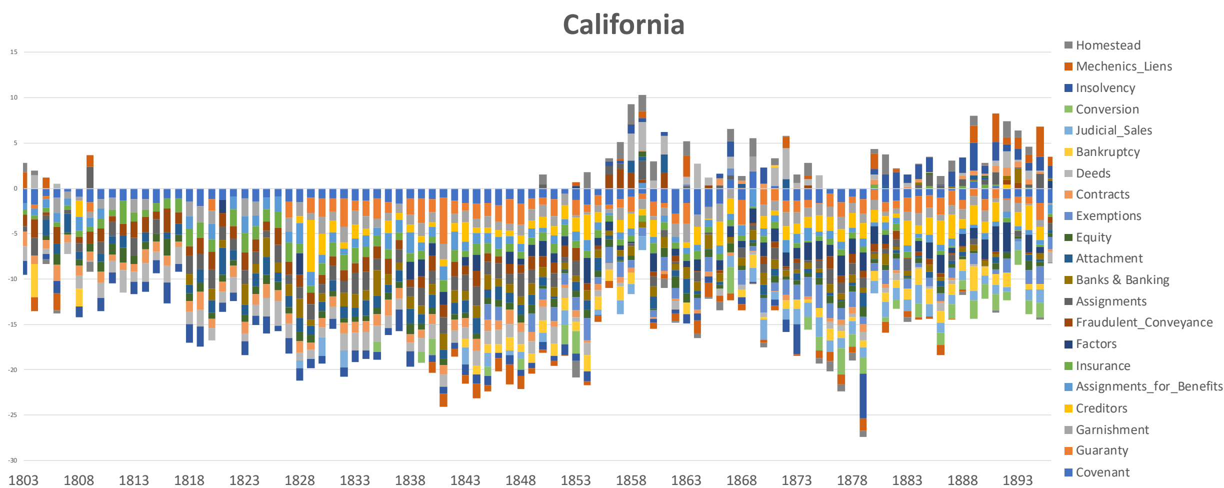
Exhibit 13: Case Law by State (1800-96)

Various volumes of the *Century Edition of The American Digest: A Complete Digest of All Reported American Cases from the Earliest Times to 1896* [West Publishing (1898-1900), available on Google Books and with OCR performed by Google.] A set of chapters dealing with commercial creditor and debtor relations — where in each chapter represented a branch of law— were processed using R. Regular expressions in the form ***State, year*** were matched with the chapter to gauge case law.

Where each case court create multiple case laws, the following charts count case laws for each year by State and branch of law. For each branch law with at 8 States reporting case laws that year, a z-score was calculated using the number of State laws for the given State and the average and standard deviation of that year's case laws for that branch law across all States.

The following charts stack the z-scores to represent the intensity of case laws relative to other States. The legend is resorted for each State based on the sum of z-scores — so coloring remains consistent for order, not branch of law. The height of the bars represents how significantly different this State is from the average State. Hence, the vertical axis represents the deviation of the case law produced relative to the average State in either direction.





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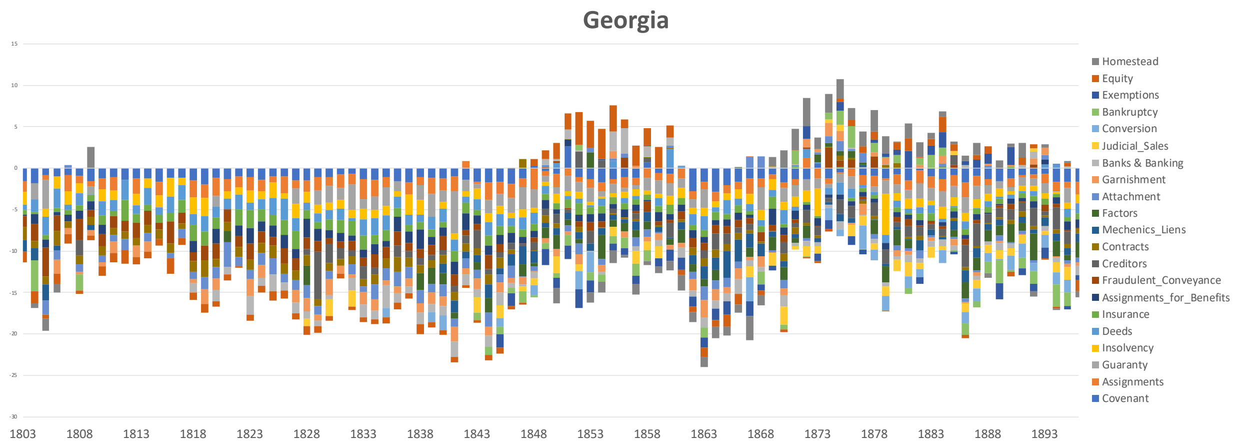
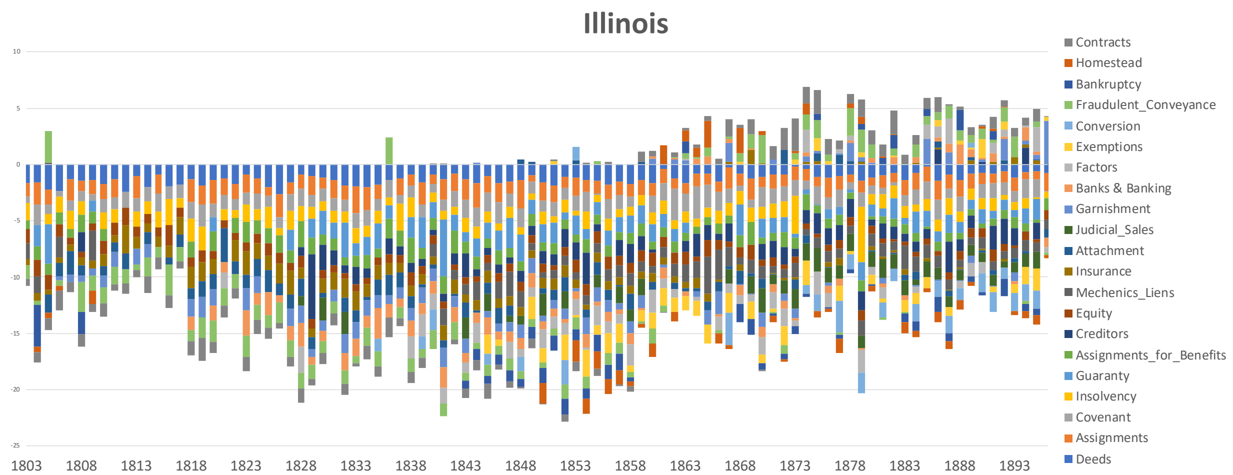
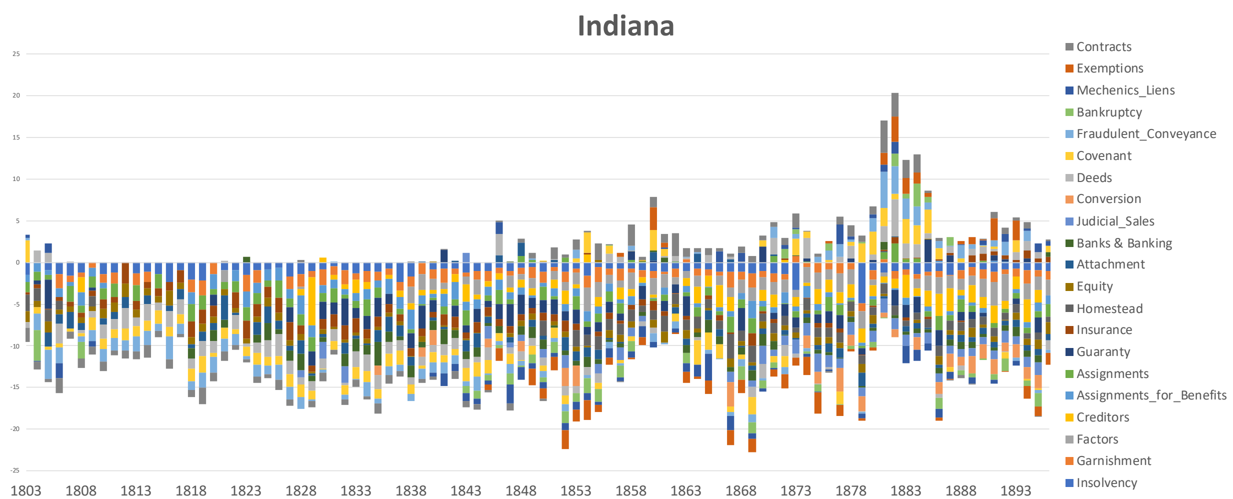
Note: California was granted Statehood in 1850, so data prior is erroneous. The California Gold Rush started in 1848 and ended in 1855. After the repeal of BA67 in 1878, the State passed Insolvency and Mechanics liens.







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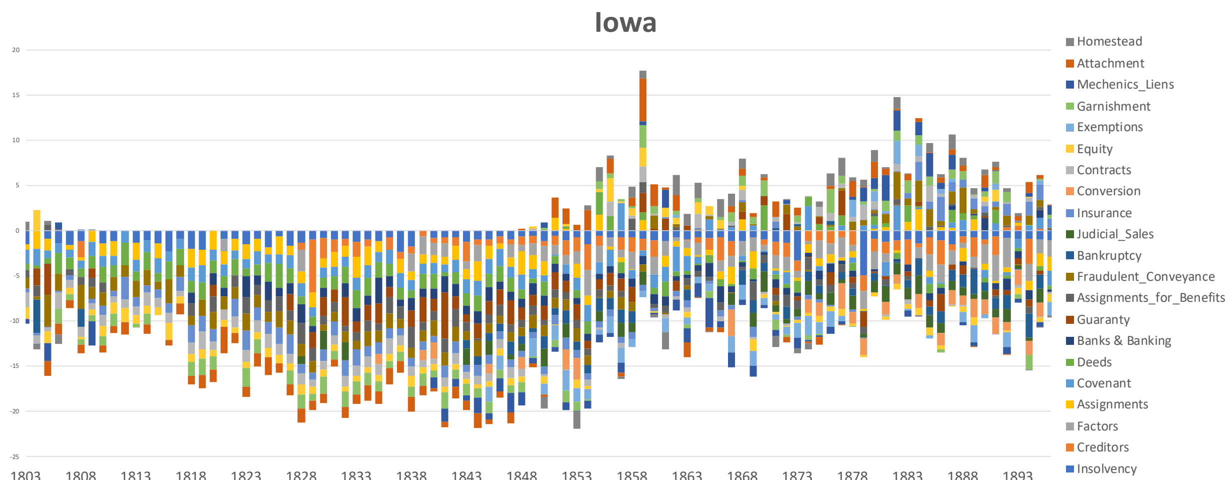
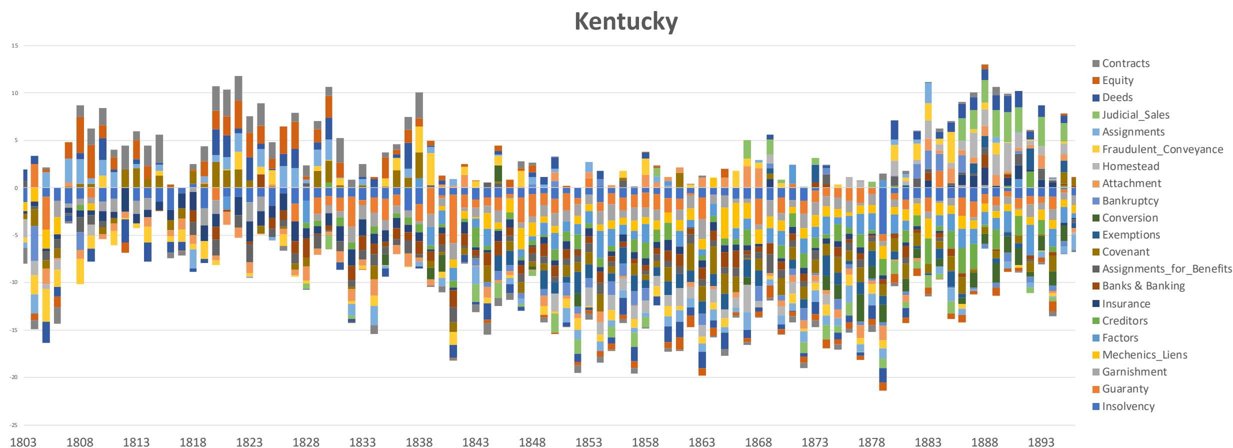


Note: Following the *Panic of 1857*, markets were depressed and left no option for Iowa's farm troubles. The State experienced record attachment case law in 1858-9.



Note: Although Kentucky became the first State to reform debtors prisons in 1821, the pattern of case laws was similar to those prior to the *Panic if 1819*— Contracts, Equity, Assignments, and Covenants (see Rothbard, 2007). In addition to the cyclical Fraudulent Conveyance case laws, after BA67, the State opted for Judicial Sales, Homestead, and Deeds.

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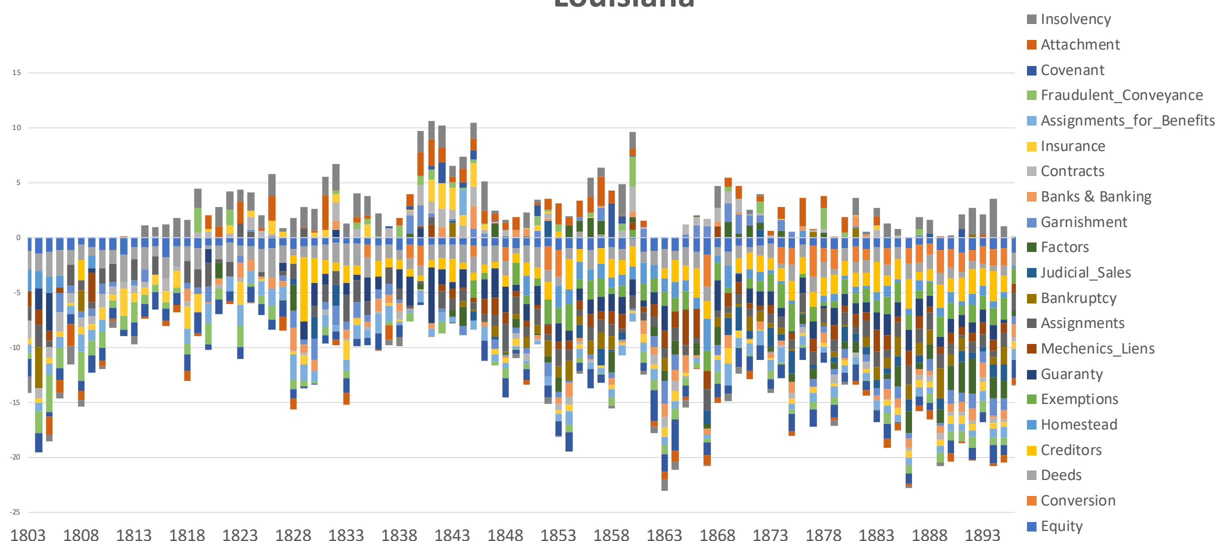
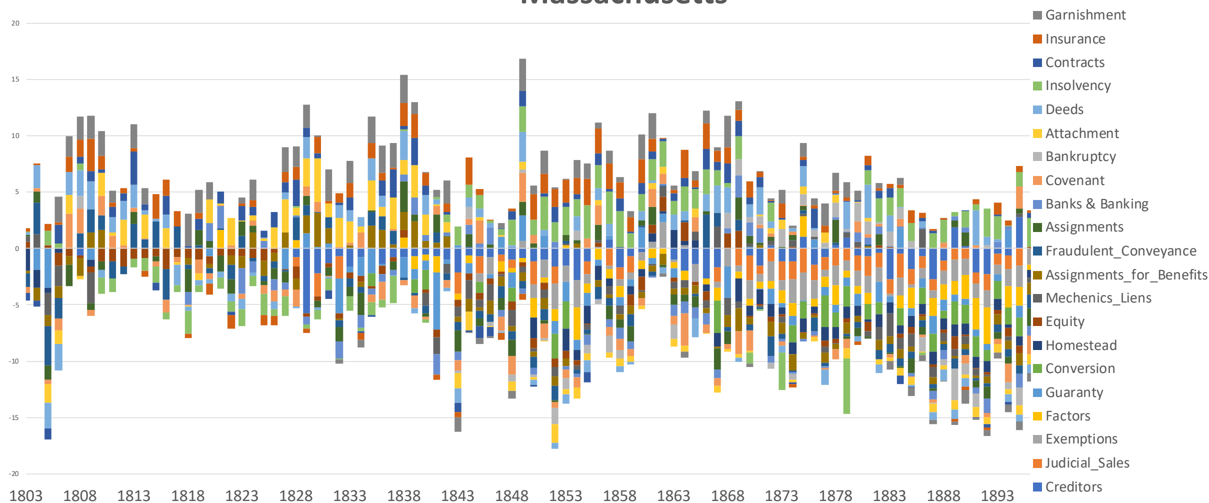


Note: Louisiana —the United States' lone Civil Law State— developed insolvency, contact, laws and continued in several small waves until the large wave following the *Panic of 1837*. Insolvency law remained consistently productive.



Note: Massachusetts followed strict English norms with consistent Garnishment laws and heavy debt imprisonment —not shown, but the Boston-based Suffolk Prison alone imprisoned 22% of the population of Boston for debt — until in 1831, exempted all males from debt imprisonment under $10 —approximately $3,000 in 2020 dollars— and females for debts of any amount.[1522] Case law reflects the changes from Attachment and Deeds law to Insolvency and Insurance. The Boston based Suffolk limited bank suspensions until the Civil War in 1861 (except in 1837.[1523])

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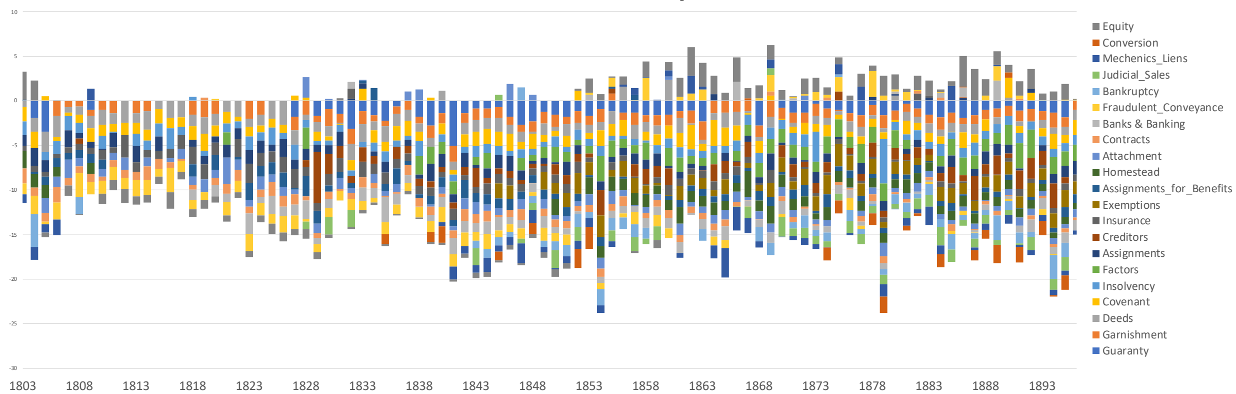

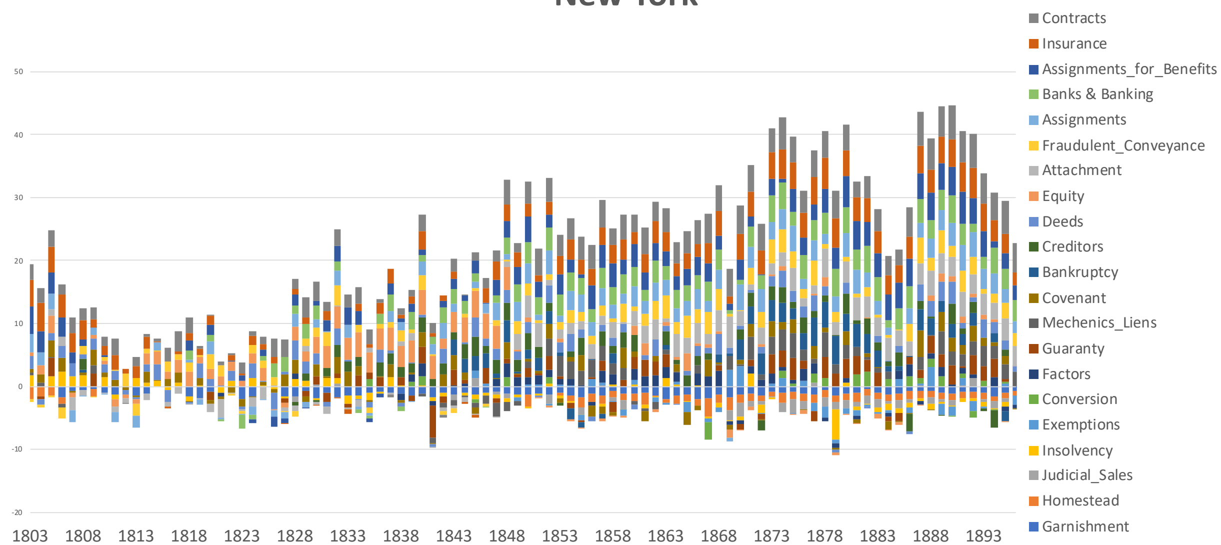

Note: New York's early focus on Contracts, Insurance, Assignment for the Benefits of Creditors, and Fraudulent Conveyance and, were joined by Banking laws in the 1820s, continuing through the sample's end in 1896. There was a sustained elevation between the Revised Statutes of 1828/the Safety Fund of 1829 until the 1846 Constitution, after which case laws accelerated again.

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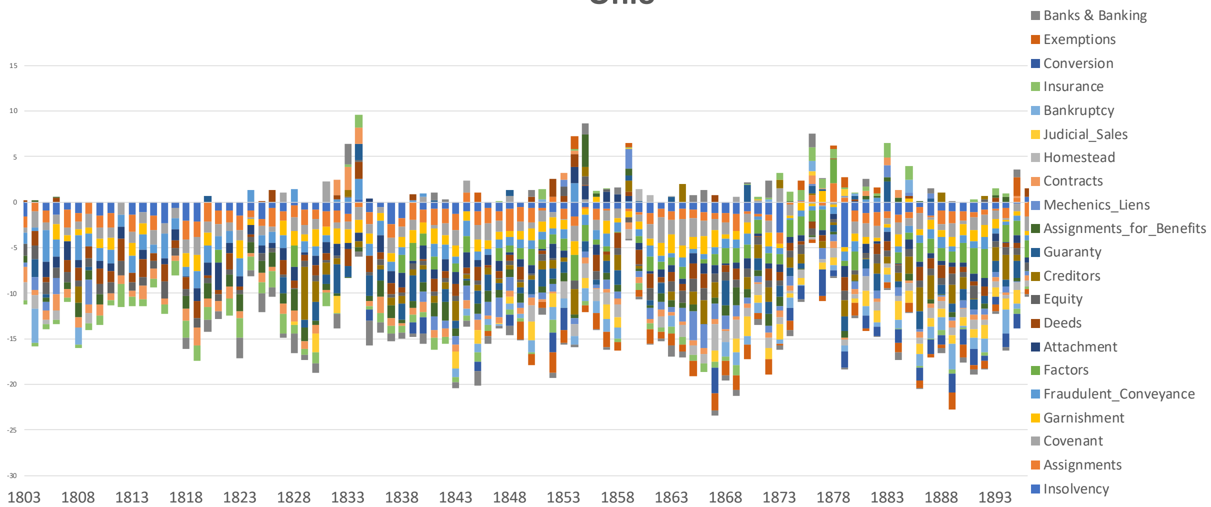
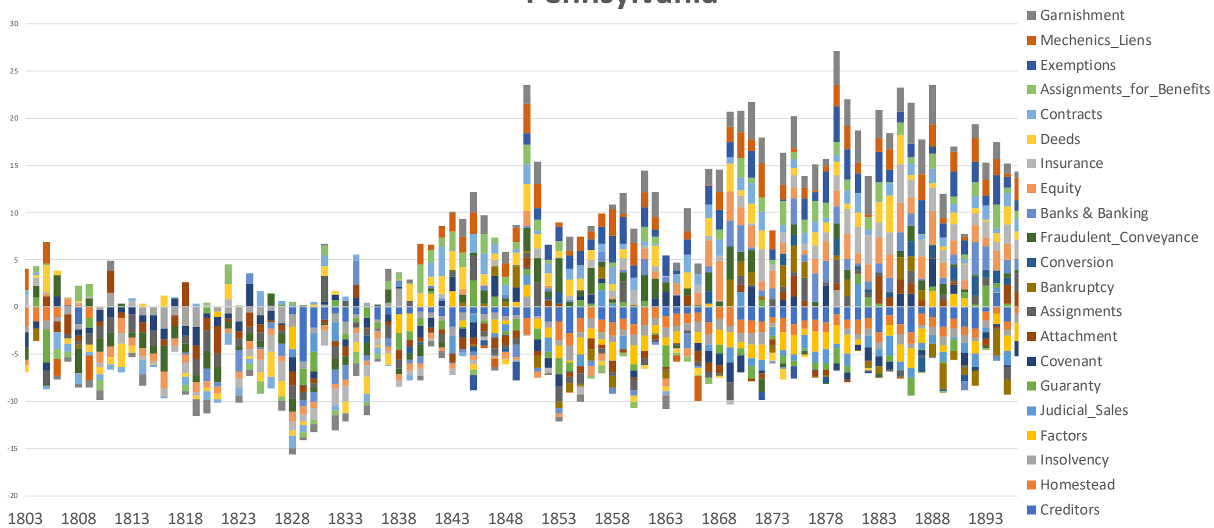
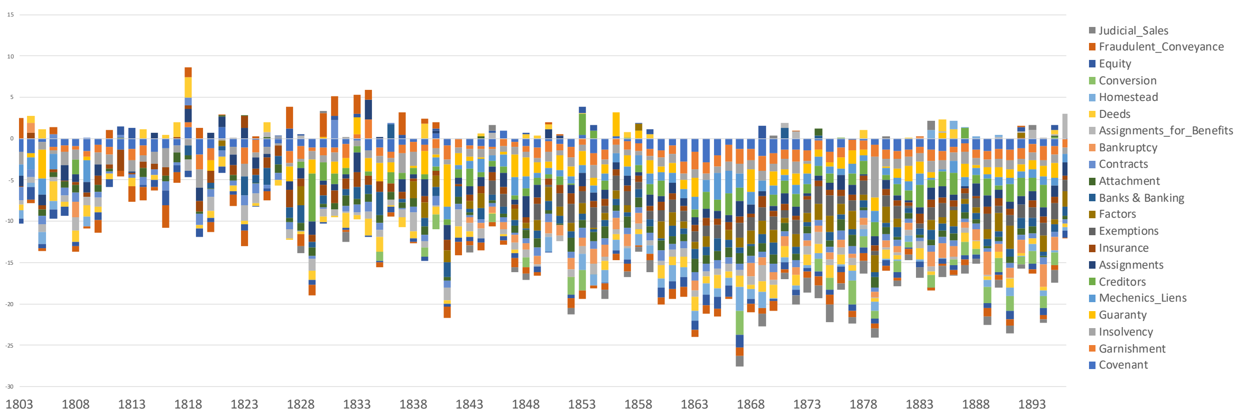




Note: Pennsylvania registered relatively few case laws until the *Second Bank of the United States* re-chartered as the *Bank of the United States of Pennsylvania* in 1836, and accelerated after BUSP failed in 1839.



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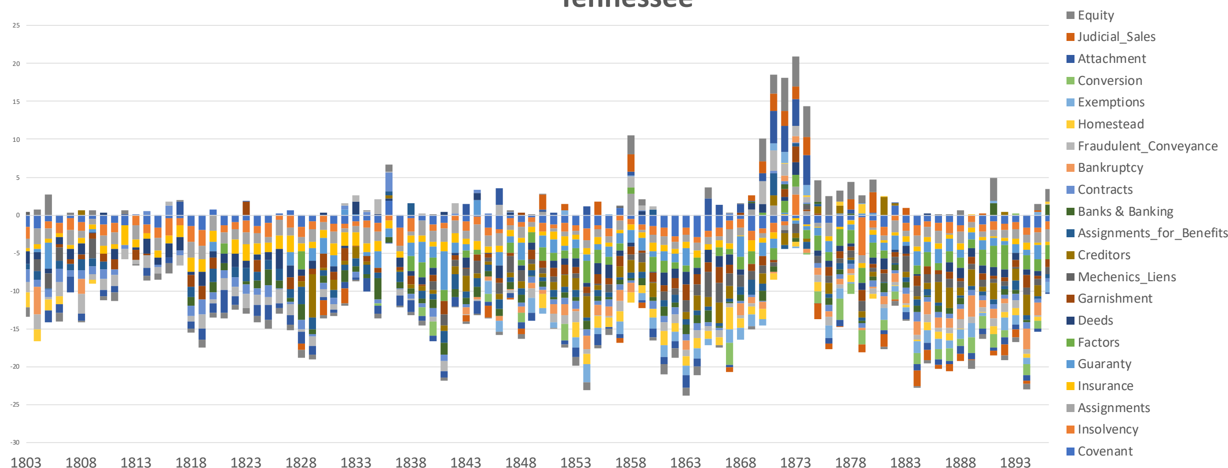
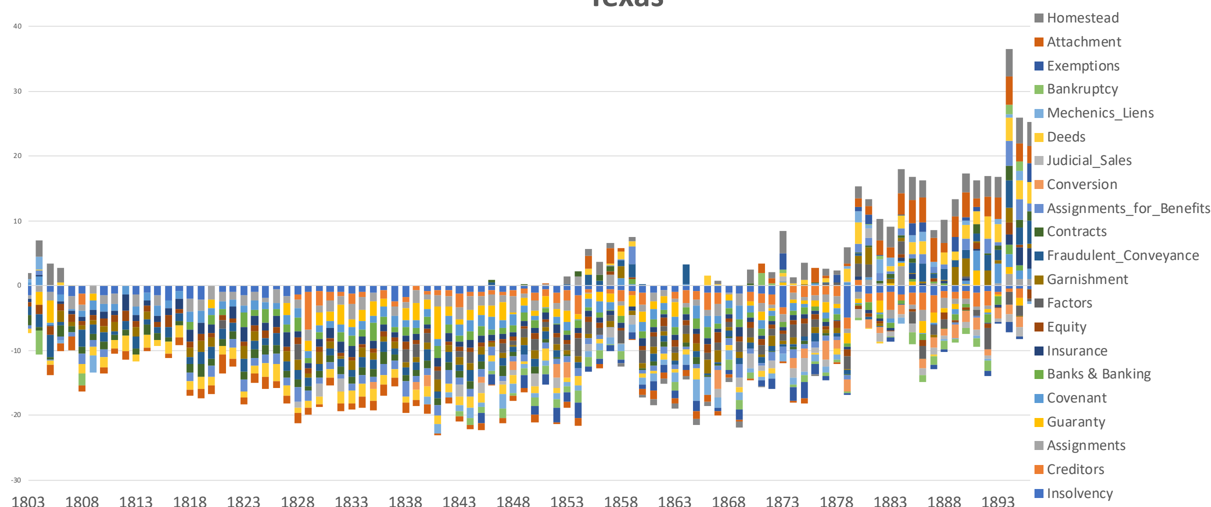


Note: Tennessee's largest spike of equity law during the BA67 era ended following the *Panic of 1873* and the law's amendment and repeal, in 1874 and 1878, respectably. An 1877 Tennessee law giving priority to local creditors,[1524] may have destabilized the Memphis-based *Caldwell & Co.* investment bank in 1930.



Note: Texas joined the United States in 1845. There are several false positives in the early 1800s, but the data appear accurate after. Texas waves came after the *Panic of 1854* and again after BA67 was abolished in 1878. These data do not capture Texas' most severe calamity, the Savings & Loan Crisis of the 1980s during which most Texan banks failed. However, the roots of the homestead laws were long in place.

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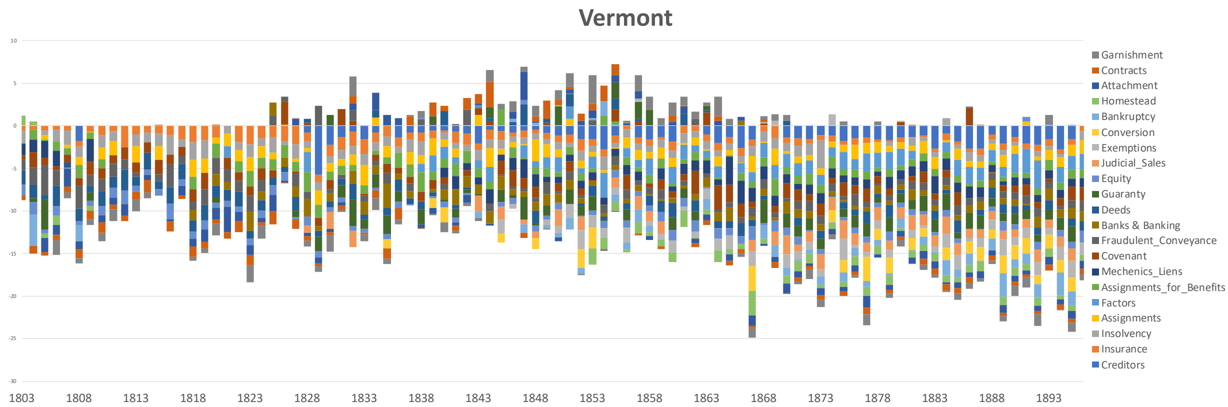
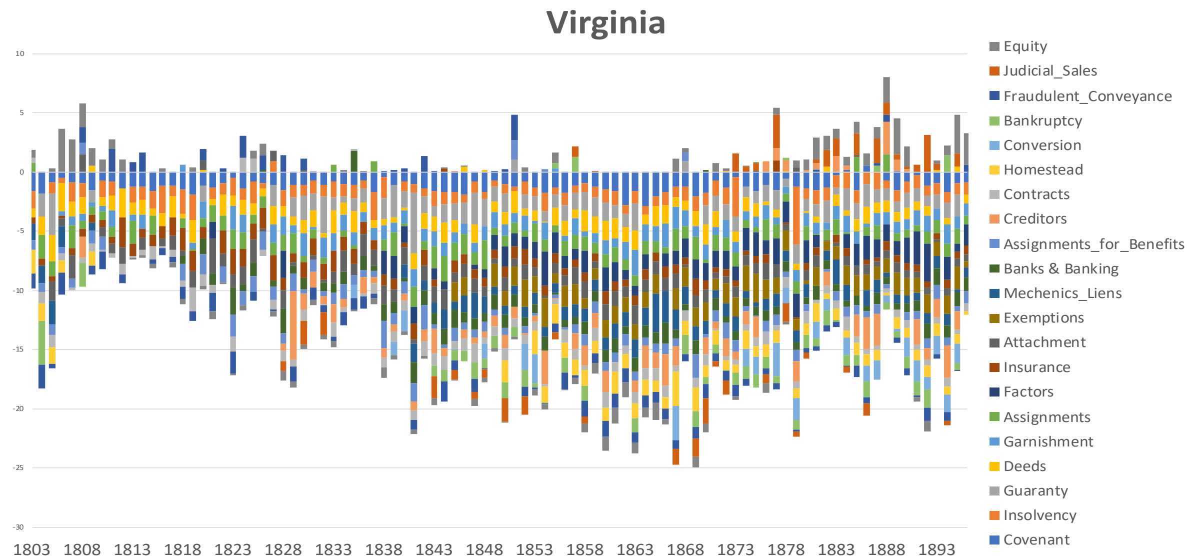
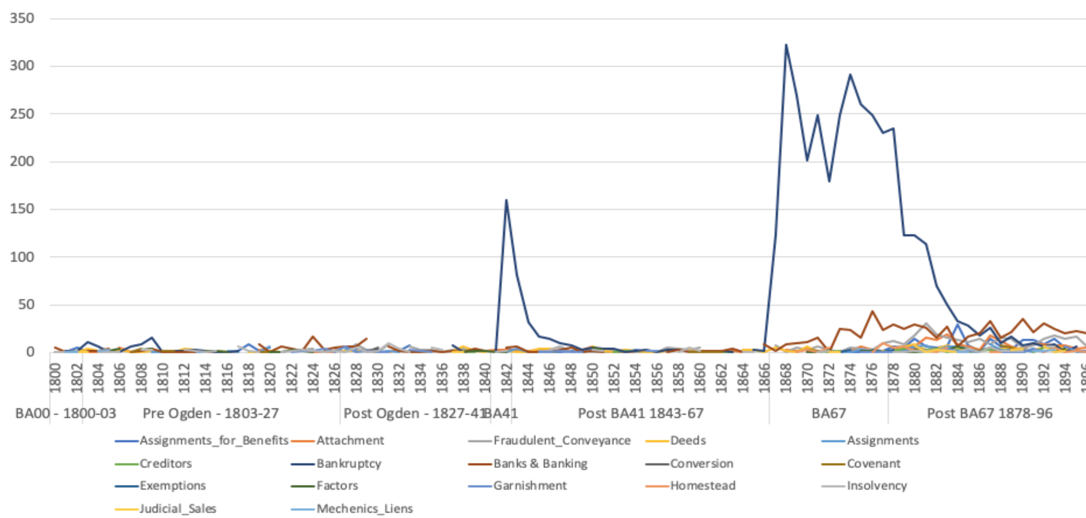




Federal bankruptcy vastly outnumbers all others, followed by Banking law post *Panic of 1873*.

Federal Only



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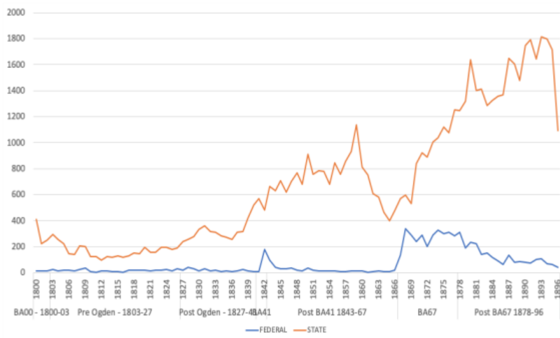
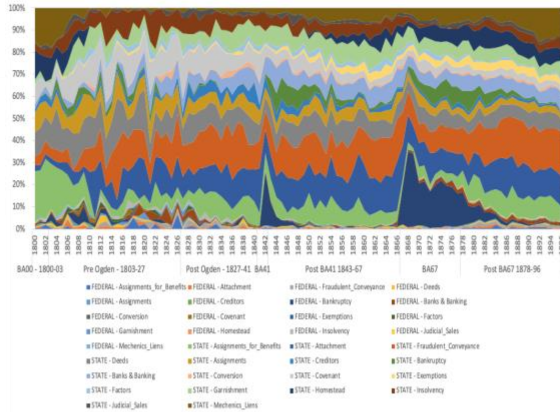
Federal and States:





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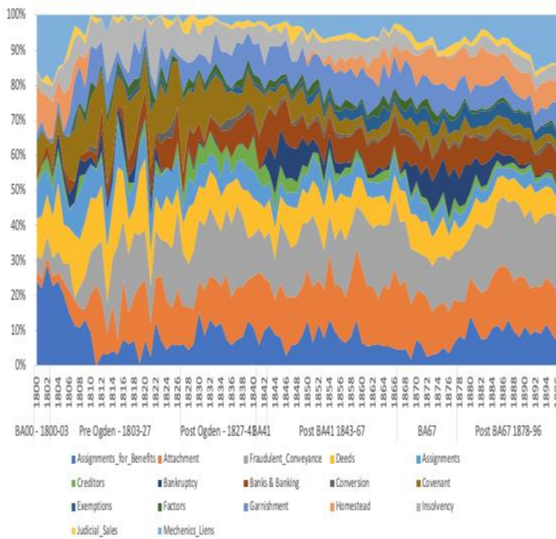

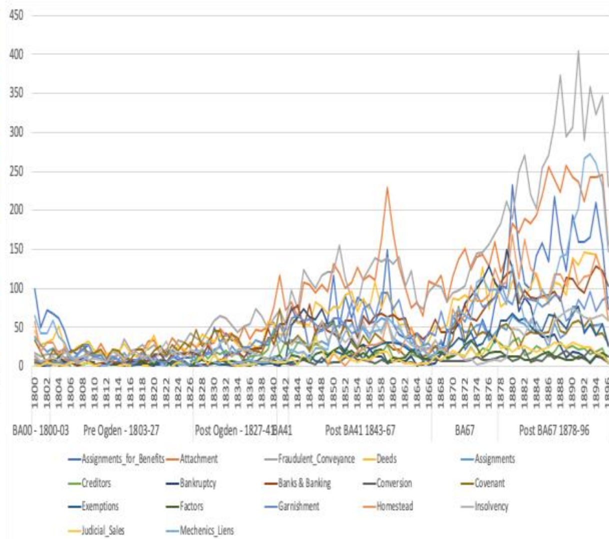

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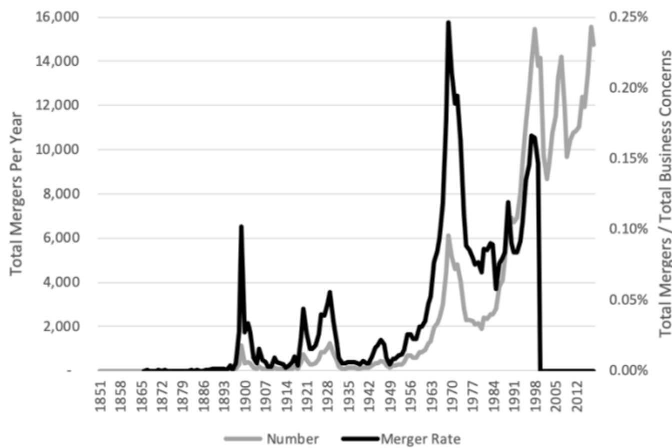
Exhibit 14: General Merger Activity (1851-2017) and Bank Mergers (1910-32)



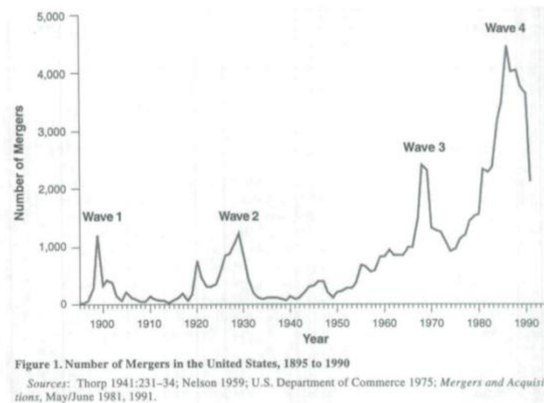


Figure 1. Number of Mergers in the United States, 1895 to 1990

Sources: Thorp 1941:231–34; Nelson 1959; U.S. Department of Commerce 1975; *Mergers and Acquisitions*, May/June 1981, 1991.

Sources:

Number of Mergers: Thomson Financial, Institute for Mergers, Acquisitions and Alliances (IMAA) analysis. Merger Rate divides Mergers by Total Business Concerns (from the previous year) from Dun and Bradstreet (1866-1998). Stearns and Allan (1996).

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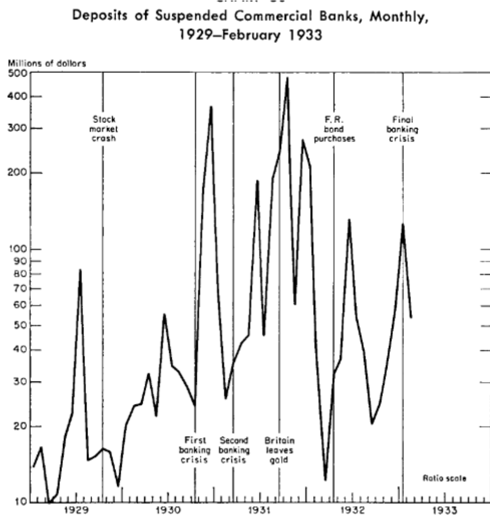
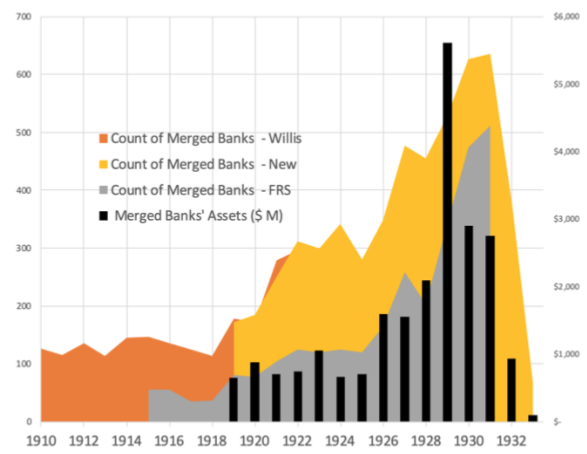
Exhibit 15: Panics of 1925-31

Banking suspension waves (Friedman and Schwartz, 1963) & Banking suspension waves (White 1985)





Regional Differences (Wicker, 2000)

Table 2.3 *Net change in Federal Reserve notes in circulation seasonally adjusted by Federal Reserve Districts monthly, November 1930–January 1931 ($m.)*

	November	December	January	Change
Boston	−3	−2	+3	−2
New York	+7	+77	0	+84
Philadelphia	−3	+6	−18	−15
Cleveland	−1	+3	+1	+3
Richmond	−1	+18	−1	+16
Atlanta	+1	+5	+8	+14
Chicago	−7	−7	+5	−9
St. Louis	+8	+8	−2	+14
Minneapolis	−2	+2	0	0
Kansas City	−2	0	0	−2
Dallas	−1	0	0	−1
San Francisco	0	+13	+6	+19

Source: Raw data from Board of Governors of the Federal Reserve System, *Federal Reserve Bulletin*. The data were seasonally adjusted by Sandy Hanson using the census X–11 program.

Table 3.1 *Number of bank suspensions, deposits in closed banks, and increases in hoarding, April–August and September–October 1931 by Federal Reserve District*

Federal Reserve District	April–August			September–October		
	No. of bank suspensions (1)	Deposits of failed banks $m. (2)	• Increase in hoarding $m. (3)	No. of bank suspensions (4)	Deposits of failed banks $m. (5)	• Inc. in hoarding $m. (6)
Boston	0	0	0	6	24	6
New York	23	71	143	18	37	76
Philadelphia	18	13	9	59	118	88
Cleveland	55	134	33	72	234	63
Richmond	34	9	−8	89	67	16
Atlanta	14	7	−21	33	7	1
Chicago	194	192	232	204	145	81
St. Louis	26	5	1	82	30	4
Minneapolis	106	21	4	104	25	7
Kansas City	56	17	3	81	18.6	6
Dallas	19	6	1	47	38	12
San Francisco	18	22	17	22	4	33
Totals[1]	563	497	414	817	747	393
Totals[2]	(573)	(496)		(827)	(705)	

Notes: [1] My own estimates from Fed's cumulative total of deposits of failed banks.
[2] Fed's revised estimates of totals for all Districts.
• Federal Reserve notes in circulation seasonally adjusted.
Source: Board of Governors of the Federal Reserve System, *Federal Reserve Bulletin*, 1931.
Commercial and Financial Chronicle, 1931.

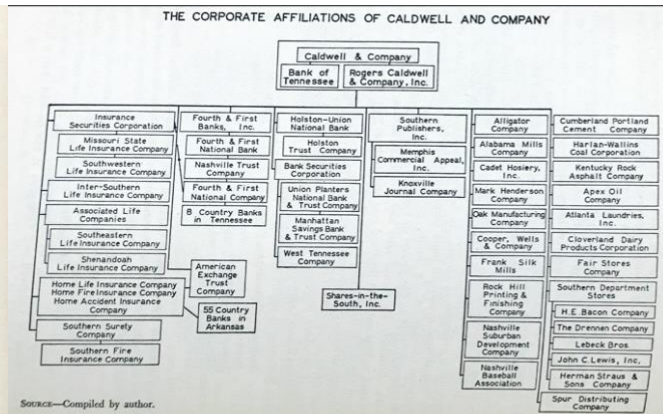
Caldwell & Co. (McFerrin, 1969)

APPENDIX A

A SAMPLE OF MUNICIPAL BONDS BOUGHT BY CALDWELL AND COMPANY. 1918-1930
(IN THOUSANDS OF DOLLARS)

Year	Tenn.	Ala.	La.	Fla.	N. C.	S. C.	Va.	Ky.	Miss.	Ark.	Texas
1918	$ 200	$.....	$.....	$.....	$.....	$.....	$....	$.....	$.....	$....	$.....
1919	1,358		425						287		
1920	250		1,875								
1921	365	650	1,000	275							
1922	370		852	355	525						
1923	125	90	3,700					100			
1924	390	1,330		5,527	915				600		
1925	470	144		1,982	780	1,350			600		
1926	1,597	1,017	1,958	3,957	350			800	1,789		
1927	4,450	1,747	1,847	1,278	3,049	1,355	160	525	465		2,550
1928	4,364	175	55	225		1,276	185	2,975			2,314
1929	2,660	1,150	1,840	80	3,153	525	150	1,866	250	117	803
1930	384	10			87	25		235	236	131	558

Compiled from *Manufacturers Record* and "Report of Receivers of Caldwell and Company," Part 1. The sample includes no state bonds.



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Appendix C

Comparative Consolidated Balance Sheets of Caldwell and Company, Bank of Tennessee, and Rogers Caldwell and Company, Incorporated, 1918-1930*

Date†	1918	1920	1921	1922	1923	1925	1926	1927	1928	1929	Dec. 31, 1929	June 30, 1930	Sept. 30, 1930††
Assets													
Current Assets:													
Cash	$ 24,602	$ 300,910	$ 130,771	$ 472,223	$ 628,324	$ 538,651	$ 489,656	$ 668,217	$ 517,706	$ 982,090	$ 1,194,251	$ 602,191	$ 741,115
Receivables	359,211	1,086,076	2,018,677	1,886,854	2,233,491	2,194,708	1,615,983	2,367,463	2,161,175	1,948,907	3,843,038	2,987,639	2,594,830
Securities	1,702,879	6,355,996	6,474,269	6,476,966	6,175,836	12,661,994	9,197,464	9,884,542	13,688,038	15,236,859	15,986,717	19,425,247	17,169,025
Total Cur. Assets	$2,086,692	$7,742,982	$8,623,717	$8,836,043	$ 9,037,651	$15,395,353	$11,303,103	$12,920,222	$16,366,919	$18,167,856	$21,024,006	$23,015,077	$20,494,970
Investments in Controlled Cos.	$........	$........	$........	$........	$........	$ 645,379	$ 3,694,497	$ 3,849,498	$ 5,937,577	$14,036,439	$15,263,548	$15,440,836	$15,353,411
Other Assets	49,745	222,315	118,547	557,228	2,121,710	1,137,098	761,668	1,100,418	1,722,614	2,317,559	1,223,028	511,050	904,488
Fixed Assets	1,483	7,924	9,731	101,502	490,037	522,026	523,730	520,730	534,122	546,370	564,509	548,921	541,926
Total Assets	$2,137,920	$7,973,221	$8,751,995	$9,494,773	$11,649,398	$17,699,856	$16,282,998	$18,390,868	$24,561,232	$35,068,224	$38,075,091	$59,515,884	$57,294,795
Liabilities													
Current Liabilities:													
Notes Payable	$ 161,061	$3,285,511	$ 910,516	$1,153,294	$ 3,289,262	$ 1,602,224	$ 3,428,040	$ 4,427,993	$ 8,488,137	$ 8,301,176	$ 7,320,824	$10,131,370	$ 8,009,050
Repurchase Agreem'ts	....	....	1,416,000	....	....	....	467,217	465,000	171,600	39,423	2,503,281	1,111,800	2,178,900
Deposits	1,463,855	4,457,902	4,475,339	5,591,265	5,883,655	12,470,842	8,226,864	7,305,954	11,338,190	9,733,985	12,192,141	14,420,639	12,189,239
Due to Controlled Cos.	....	....	....	....	....	40,000	1,697,912	3,199,960	1,365,930	6,913,294	7,526,149	3,724,161	4,990,544
Due to Broker	361,423	....	1,721,529	1,247,956	38,319	4,473	....	279,283	782,700	993,377	1,175,723	1,631,623	1,443,607
Other Cur. Liabilities	23,000	50,737	29,492	571,788	1,069,926	1,650,839	455,358	733,100	672,664	2,452,439	2,085,826	4,167,996	4,998,969
Total Cur. Liabilities	$2,009,339	$7,794,150	$8,552,876	$8,564,303	$10,281,162	$15,768,378	$14,275,391	$16,411,290	$22,819,221	$28,453,693	$33,003,944	$35,187,588	$33,810,309
Other Liabilities:													
Payables (not current)	....	....	....	....	240,653	168,888	....	....	....	3,050,000	2,020,000	1,411,182	1,325,825
First Mort. Bonds	....	....	....	400,000	400,000	380,000	370,000	360,000	345,000	330,000	322,500	315,000	311,250
Reserve for Sustained Security Losses	....	....	....	....	....	....	....	....	....	....	943,960	....	....
Total Liabilities	$2,009,339	$7,794,150	$8,552,876	$8,964,303	$10,921,815	$16,317,266	$14,645,391	$16,771,290	$23,164,221	$31,813,693	$36,290,404	$36,913,770	$35,447,384
Net Worth:													
Capital Stock	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 1,000,000	$ 1,000,000	$ 2,000,000	$ 2,000,000
Reserve for Cont'g's	....	....	....	97,259	166,667	100,000	200,000	284,000	375,000	1,125,000	1,225,000	....	....
Surplus	28,581	79,071	99,119	333,211	460,916	1,182,590	1,337,607	1,235,578	922,011	1,129,531	d 440,313	20,602,114	19,847,411
Total Net Worth	$ 128,581	$ 179,071	$ 199,119	$ 530,470	$ 727,583	$ 1,382,590	$ 1,637,607	$ 1,619,578	$ 1,397,011	$ 3,254,531	$ 1,784,687	$22,602,114	$21,847,411
Total Liabilities and Net Worth	$2,137,920	$7,973,221	$8,751,995	$9,494,773	$11,649,398	$17,699,856	$16,282,998	$18,390,868	$24,561,232	$35,068,224	$38,075,091	$59,515,884	$57,294,795

*Bank of Tennessee included after 1918, Rogers Caldwell and Company, Inc., after 1925.
†Balance sheets from 1918 to 1923, inclusive, are as of December 31; others as of June 30, unless otherwise noted.
††This is the date of the last consolidated balance sheet of the companies prepared. "d" indicates deficit.
Source—Compiled from "Audit Report of Caldwell and Company" as of dates given.

Appendix D

Annual Earnings of Caldwell and Company, Bank of Tennessee, and Rogers Caldwell and Company, Inc. 1918-1930*

Year ending	December 31, 1918	$ 38,265
	December 31, 1919	48,496
	December 31, 1920	11,498
	December 31, 1921	12,906
	December 31, 1922	233,302
	December 31, 1923	127,705
	December 31, 1924	257,583
Six months ending	June 30, 1925	464,095
Year ending	June 30, 1926	28,281-loss
	June 30, 1927	57,688
	June 30, 1928	164,568-loss
	June 30, 1929	1,907,522
	June 30, 1930	2,511,000-loss

*Bank of Tennessee earnings are included after 1919 and Rogers Caldwell and Company, Incorporated, after 1925.
Note—The loss in 1930 does not take into account the arbitrary write-up of security values on the books of Caldwell and Company in connection with the merger of this company with BancoKentucky Company.
Source—"Audit Report of Caldwell and Company," as of dates given.

Appendix F

Balance Sheet of Caldwell and Company, November 13, 1930

Assets		Liabilities	
Cash in banks and on hand	$ 67,552.43	Notes payable:	
Notes receivable, less reserve	381,942.44	Banks, demand	$ 3,581,882.94
Accounts receivable, less reserve	444,829.21	Banks, time	1,588,822.93
Accrued interest, rentals and concessions	185,198.67	Others	792,565.20
Due from officers and employees	81,500.44	Repurchase agreements	2,257,100.00
Securities owned:		Deposits:	
Certificates of deposit	85,000.00	Demand	3,591,515.67
U. S. Government bonds	875.75	Time and trust funds	293,370.86
Foreign bonds	9,685.02	Bank overdraft	2,195.53
Corporation bonds	4,581,509.09	Due to Kidder, Peabody and Company	1,311,855.92
Municipal bonds	710,056.93	Customers balances	237,990.56
Stocks	4,071,678.57	Joint accounts and concessions payable	3,064,356.21
Deposits on issues	1,295,368.64	Purchase commitments	14,394.92
Bonds subject to repurchase	746,256.19	Interim receipts	94,201.18
Investments in controlled companies	20,720,997.36	Accrued interest, taxes, etc.	41,831.69
Advances to controlled companies	1,951,920.02	Dividend payable to Rogers Caldwell	219,379.57
Assets pledged with the Bank of Tennessee	2,036,752.73	Liability for securities borrowed	697,875.00
Real estate, less depreciation	381,237.78	Liability for securities sold short	299,859.12
Drainage lands	52,097.07	First mortgage bonds on office bldg.	310,000.00
Past due bonds and coupons	158,847.84	First mortgages on other property	247,084.89
Certified checks	136,045.00	Deferred credits to income	1,230.90
Prepaid expenses, insurance, etc.	115,555.15	Total Liabilities	$18,647,513.09
Cash value corporation life ins.	74,210.00		
Bonds borrowed	697,875.00	Net Worth	
Claims against Receiver of Bank of Tennessee	4,725.50	Reserve for Contingencies	$ 300,000.00
Office building, less depreciation	489,191.66	Capital Stock	2,000,000.00
Furniture, fixtures and automobiles	108,747.53	Surplus	18,642,142.93
		Total Net Worth	$20,942,142.93
Total Assets	$39,589,656.02	Total Net Worth and Liabilities	$39,589,656.02

Balance Sheet of the Bank of Tennessee, November 6, 1930

Assets		Liabilities	
Cash in banks and on hand	$ 73,831.19	Notes payable:	
Notes receivable, less reserves	734,574.17	Banks, demand	$ 1,844,100.00
Accounts receivable	34,502.99	Banks, time	1,043,000.00
Securities owned:		Deposit accounts:	
Certificates of deposit	257,295.60	Demand	3,568,382.60
Corporation bonds	1,890,652.26	Time deposits and trust funds	3,935,469.57
Municipal bonds	1,712,752.37	Due to Caldwell and Company	201,540.18
Stocks	1,161,654.29	Due to controlled companies	1,969,919.40
Investments in controlled companies	7,632,740.09	Outstanding drafts and bank over-drafts	32,359.12
Real Estate	211,418.34	Certified cheques	172,740.00
		Capital stock	500,000.00
		Surplus	441,910.43
Total Assets	$13,709,421.30	Total liabilities and net worth	$13,709,421.30

Source—Caldwell and Company: Balance sheet filed in *Dean* v. *Caldwell*; Bank of Tennessee: Balance sheet filed in *State of Tennessee* ex rel. *Robertson* v. *Bank of Tennessee*.

Florida Land Transfers & Conveyances (SA, left) and Building Permit Values (right) (Vanderblue, 1927)

Shaded areas indicates time (1) Florida's new real law going into effect on Sep 30, 1925 and (2) the Panic of July 1926

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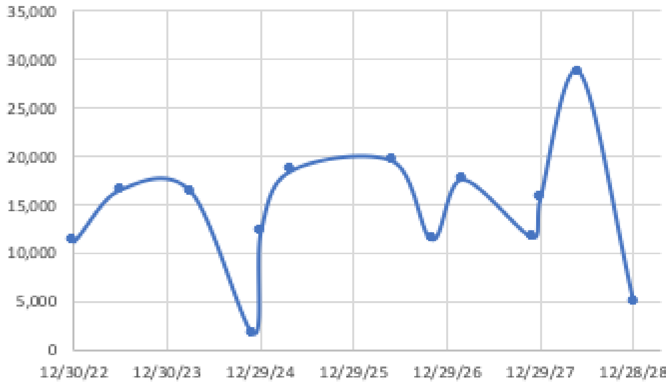
Bank failures in Ohio

The *Willys-Overland Automobile* plant was Toledo's (of Lucas County, Ohio) largest employer. Automobile manufacturing in Lucas County was highly cyclical (Croxton and Croxton, 1930, p42).



Comparative Table of Toledo banks (Braun and Bosworth)

Bank Stocks — Municipal Bonds

	Capital	Surplus and Undivided Profits Sep. 12, 1919	Surplus and Undivided Profits Sep. 8, 1920	Deposits Sep. 12, 1919	Deposits Sep. 8, 1920	Book Value Sep. 12,'19	Book Value Sep. 8,'20	Div. Rate PerCt.	Bid	Asked
First National Bank	$ 500,000.00	$1,472,868.11	$1,519,005.38	$ 10,644,860.66	$ 10,501,018.55	394	404	12	340	...
National Bank of Commerce	1,000,000.00	627,705.05	710,434.39	16,306,986.75	14,457,221.86	159	171	8	160	180
Northern National Bank	1,000,000.00	889,263.11	981,973.44	11,906,654.43	10,111,589.15	189	198	8	204	...
Second National Bank	1,000,000.00	2,392,213.38	2,544,836.99	16,268,307.87	16,413,891.51	339	354	12	320	...
	$3,500,000.00	$5,382,049.65	$5,756,250.20	$ 55,126,809.71	$ 51,483,721.07					
Citizens Safe D. & T. Co.	$ 25,000.00	$ 34,046.73	$ 34,984.09	$ 251,226.86	$ 364,902.51	236	240	10	......	...
Commercial S. Bk. & T. Co.	200,000.00	121,500.93	174,471.70	7,090,938.23	8,266,930.29	161	187	6	185	...
Dime Savings Bank Co.	225,000.00	173,801.17	252,760.54	6,086,317.15	7,000,803.57	177	212	8	160	...
Guardian Trust & Sav. Bank	200,000.00	315,941.57	367,623.09	5,074,807.82	5,557,619.06	258	284	‡12	......	...
Home Savings Bank Co.	250,000.00	418,104.93	496,019.15	5,763,120.46	5,303,575.90	267	298	†16	300	325
Merchants & Clerks Sav. Bk.	150,000.00	317,203.09	331,445.78	2,334,998.02	2,465,060.59	311	320	16	305	320
Ohio Sav. Bank & Trust Co.	1,000,000.00	800,451.93	1,016,736.22	22,831,485.57	23,553,435.06	180	202	8	200	...
Opeika Savings Bank Co.	50,000.00	14,684.14	14,515.56	940,311.85	950,828.03	129	129	8	145	145
People State Savings Bank	100,000.00	11,780.59	25,341.91	1,536,610.10	1,708,958.34	112	125	6	160	165
Security Sav. Bk. & Trust Co.	250,000.00	273,108.50	309,564.32	4,955,504.39	5,868,824.54	209	223	10	225	232
Spitzer-Rorick Trust & S. Bk.	300,000.00	123,485.31	189,572.59	2,414,309.64	2,649,134.31	141	163	6	140	...
Toledo Sav. Bank & T. Co.	300,000.00	580,058.77	621,865.53	3,464,366.03	3,615,149.75	293	307	*12	295	300
Union Savings Bank	250,000.00	359,428.31	375,029.32	1,190,032.84	1,329,031.36	244	250	12	238	...
	$3,300,000.00	$3,543,595.97	$4,209,929.80	$ 63,934,028.96	$ 68,634,253.31					
Total National Banks	3,500,000.00	5,382,049.65	5,756,250.20	55,126,809.71	51,483,721.07					
Total State Banks	3,300,000.00	3,543,595.97	4,209,929.80	63,934,028.96	68,634,253.31					
Combined Total	$6,800,000.00	$8,925,645.62	$9,966,180.00	$119,060,838.67	$120,117,974.38					

*10% Regular, 2% Extra Jan. 1, 1920.
†8% Regular, 2% Extra Quarterly.
‡8% Regular, 2% Extra Jan. and July 1, 1920.

STACY & BRAUN
200-206 SECOND NATIONAL BANK BUILDING

Bank Stocks — Municipal Bonds

NATIONAL BANKS	Capital	Surplus and Undivided Profits June 30, 1923	Surplus and Undivided Profits June 30, 1924	Deposits June 30, 1923	Deposits June 30, 1924	Book Value June 30,'23	Book Value June 30,'24	Div. Rate PerCt.	Bid	Asked
First National Bank	$ 500,000.00	$1,643,879.03	$1,656,212.33	$ 10,212,215.38	$ 10,915,323.24	429	431	a12	----	----
xNorthern National Bank	----	1,195,882.55	----	9,764,563.80	----	220	----	b8	----	----
Second National Bank	1,000,000.00	2,842,239.78	3,031,761.04	12,062,383.43	10,272,218.00	384	403	c12	330	----
	$1,500,000.00	$5,682,001.36	$4,687,973.37	$ 32,039,162.61	21,187,541.24					
STATE BANKS										
*Citizens Safe D. & T. Co.	----	$ 9,661.94	----	291,253.68	----	119	----	5	----	----
†City Savings Bank	100,000.00	----	20,000.00	----	510,812.95	----	120	----	120	----
Commerce-Guard. T. & S.	1,400,000.00	974,075.43	1,097,348.35	23,967,379.34	22,633,155.40	170	178	8	172	----
Commercial Sav. Bk. & T.	200,000.00	339,694.00	378,518.12	10,434,675.14	12,023,243.77	270	289	10	275	----
Dime Savings Bank Co.	300,000.00	344,014.32	344,443.64	8,133,704.06	8,600,823.79	215	215	8	220	----
*Home Bank & Trust Co.	250,000.00	646,719.31	651,402.24	7,008,341.82	7,074,831.15	359	361	d10	325	----
Merchants S. Bk. & T. Co.	150,000.00	350,635.38	354,278.96	2,290,833.43	2,395,255.44	334	336	16	300	----
Ohio Sav. Bank & T. Co.	1,000,000.00	1,595,387.23	1,955,669.24	28,628,409.15	32,769,720.88	260	296	e12	275	----
Peoples State Sav. Bank	150,000.00	80,998.08	88,646.01	1,881,868.18	2,119,748.25	154	159	8	150	----
Security Sav. Bk. & T. Co.	577,700.00	509,137.66	607,209.01	8,363,756.41	10,286,097.65	190	205	8	210	----
Spitzer-Rorick T. & S. Bk.	300,000.00	303,883.42	332,399.42	2,944,321.80	3,359,846.67	201	211	6	220	----
xToledo Trust Co.	3,000,000.00	415,420.00	2,315,594.47	3,101,492.54	15,295,542.86	169	177	6	175	175
Union Savings Bank	250,000.00	409,255.23	409,921.57	1,458,253.22	1,655,307.78	264	264	f16	245	----
	$7,677,700.00	$5,978,882.00	$8,555,431.03	$ 98,504,288.77	$118,724,386.59					
Total National Banks	1,500,000.00	5,682,001.36	4,687,973.37	32,039,162.61	21,187,541.24					
Total State Banks	7,677,700.00	5,978,882.00	8,555,431.03	98,504,288.77	118,724,386.59					
Combined Total	$9,177,700.00	11,660,883.36	13,243,404.40	$130,543,451.38	$139,911,927.83					

xConsolidation of The Tol. Savings Bank and the North'n Nat'l Bank and The Summit Trust Co. into the Toledo Trust Co.
*Consolidated as the Home Bank & Trust Co. on July 1, 1924.
a4% extra in 1923
b2% extra in 1923
c3% extra in 1923
d10% extra in 1923
e1% payable monthly.
f4% payable quarterly.
†Incorporated Dec. 1, 1923

BRAUN, BOSWORTH & CO.
200-204 SECOND NATIONAL BANK BUILDING
TOLEDO, OHIO
Bell Phone Adams 7760 and 7761 Home Phone Main 7760 and 7761

Bank Stocks — Municipal Bonds

NATIONAL BANKS	Capital	Surplus and Undivided Profits June 30, 1925	Surplus and Undivided Profits June 30, 1926	Deposits June 30, 1925	Deposits June 30, 1926	Book Value June 30,'25	Book Value June 30,'26	Div. Rate PerCt.	Bid	Asked
First National Bank	$ 500,000.00	$1,586,182.48	$1,744,752.71	$ 10,524,457.77	$ 10,799,159.47	417	448	12	336	-----
	$ 500,000.00	$1,586,182.48	$1,744,752.71	$ 10,524,457.77	$ 10,799,159.47					
STATE BANKS										
†American Bank	$ 200,000.00	----	$ 50,000.00	----	$ 509,946.55	----	125	----	----	-----
City Savings Bank	100,000.00	$ 20,305.03	26,573.21	$ 805,015.06	1,068,843.21	120	126	----	130	-----
Commercial Sav. Bk. & T.	200,000.00	477,451.00	557,706.53	13,651,829.04	14,424,715.86	339	378	10	340	-----
Commerce-Guard. T. & S.	1,400,000.00	1,183,209.79	1,372,983.83	24,625,932.06	25,429,317.79	185	198	8	185	-----
Dime Sav. Bk. & Tr. Co.	300,000.00	373,122.20	432,085.32	8,978,603.18	9,595,231.30	224	244	8	275	-----
Home Bank & Trust Co.	1,000,000.00	501,649.43	508,414.52	8,226,928.78	9,998,809.32	150	151	8	160	-----
*Merchants S. B. & T. Co.	----	352,021.77	----	2,466,924.48	----	334	----	----	----	-----
Ohio Sav. Bk. & Tr. Co.	1,000,000.00	2,362,791.59	2,737,957.70	37,419,433.93	36,805,043.03	336	373	12	360	-----
‡People's Bank & Tr. Co.	200,000.00	92,701.38	139,172.74	2,330,379.88	2,426,385.40	162	169	8	169	-----
*Security Sav. B. & T. Co.	600,000.00	740,039.69	852,470.78	10,611,781.01	13,302,341.56	223	242	8	250	-----
§Spitzer-Rorick T. & S. B.	600,000.00	436,951.43	257,193.82	4,609,763.23	3,037,520.02	246	143	6	220	-----
Toledo Trust Co.	5,000,000.00	3,407,902.46	3,309,611.15	28,363,196.57	35,443,063.71	168	166	6	172	-----
Union Trust & Sav. Bank	250,000.00	411,543.00	410,166.82	1,639,130.39	1,637,737.62	265	264	16	245	-----
	10,850,000.00	10,359,688.77	10,654,336.42	$143,728,917.61	$153,678,955.37					
Total National Banks	500,000.00	1,586,182.48	1,744,752.71	10,524,457.77	10,799,159.47					
Total State Banks	10,850,000.00	10,359,688.77	10,654,336.42	143,728,917.61	153,678,955.37					
Combined Total	11,350,000.00	11,945,871.25	12,399,089.13	$154,253,375.38	$164,478,114.84					

†Incorporated May 1, 1925.
*Consolidation of Merchants S. B. & Tr. Co. and Security Sav. B. & Tr. Co. into the Security S. B. & Tr. Co. Jan. 1, 1926.
§Capital increased from $300,000.00 to $600,000.00 Jan. 1, 1926.
‡Formerly People's State Savings Bank.

BRAUN, BOSWORTH & CO.
1206 SECOND NATIONAL BANK BUILDING
TOLEDO, OHIO

Bank Stocks — Municipal Bonds

NATIONAL BANKS	Capital Sept. 24, 1930	Surplus and Undivided Profits Sept. 12, 1929	Surplus and Undivided Profits Sept. 24, 1930	Deposits Sept. 12, 1929	Deposits Sept. 24, 1930	Book Value Sept. 12 1929	Book Value Sept. 24 1930	Dividend Rate Per Ct.	Bid
a First National Bank	$ 500,000.00	$1,963,777.05	$2,026,641.98	$ 11,665,092.43	$ 11,603,058.47	493	505	12	.....
West Toledo Nat'l. Bank	200,000.00		104,016.30		367,110.21		152	.....	.....
	$ 700,000.00	$1,963,777.05	$2,130,658.28	$ 11,665,092.43	$ 11,970,168.68				
STATE BANKS	Sept. 25, 1930	Sept. 12, 1929	Sept. 25, 1930	Sept. 12, 1929	Sept. 25, 1930	Sept. 12 1929	Sept. 25 1930		
American Bank	$ 200,000.00	$ 79,047.50	$ 88,242.52	$ 1,698,826.47	$ 1,624,606.12	140	144	.....	125
Comm. Guard. Tr. & Sav. Bk.	1,400,000.00	1,758,621.67	1,792,569.20	27,960,134.06	28,925,908.93	226	228	8	250
Com'l Sav. Bank & Trust Co.	700,000.00	633,120.24	621,270.27	18,230,581.03	15,926,469.29	190	189	6	250
Ohio Sav. Bk. & Trust Co.	3,000,000.00	5,555,724.95	5,700,779.74	59,583,637.01	55,974,862.78	285	290	9	400
b Security-Home Trust Co.	1,500,000.00	x2,071,602.24	2,049,886.52	x31,183,327.19	31,426,604.51		59	10	75
Spitzer-Rorick Tr. & Sav. Bk.	600,000.00	390,308.53	342,389.41	3,378,378.96	3,296,568.81	167	157	6	.....
Toledo Trust Company	5,000,000.00	3,899,994.70	4,115,218.57	41,972,594.29	40,035,352.39	178	z91	8	125
	12,400,000.00	14,397,419.83	14,710,356.23	184,007,479.01	177,210,372.83				
Total National Banks	700,000.00	1,963,777.05	2,130,658.28	11,665,092.43	11,970,168.68				
Total State Banks	12,400,000.00	14,397,419.83	14,710,356.23	184,007,479.01	177,210,372.83				
Combined Totals	13,100,000.00	16,361,196.88	16,841,014.51	$195,672,571.44	$189,180,541.51				

a No National Bank Call as of Sept. 12, 1929. Figures furnished through courtesy of The First National Bank.
b Consolidation of The Security Savings Bank & Trust Company and The Home Bank & Trust Co. as of June 30, 1930. Cash dividend of $10 per share paid on Home Bank & Trust Company stock, as of June 30, 1930.
x These figures represent the addition of the corresponding items of the Security Savings Bank & Trust Company and The Home Bank & Trust Company, as of Sept. 12, 1929.
z Par value reduced from $100 to $50 per share, as of Oct. 1, 1929.

BRAUN, BOSWORTH & CO.
1206 SECOND NATIONAL BANK BUILDING
TOLEDO, OHIO
Phone: MAin 7251

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Record of Prices of Toledo Stocks (CFC, 1930, p1039)

Without a stock exchange, there was a thin market for Toledo stocks; despite the stock market crash of 1929, there was less variation in banks' stock prices than in 1928.

RECORD OF PRICES OF TOLEDO STOCKS FOR 1929.

There is no Stock Exchange in Toledo, but we have obtained from Bell & Beckwith the following list of high and low prices for the calendar year 1929 on the stocks which are traded in more or less actively in the Toledo market. Important Toledo stocks, such as Airway Electric Appliance common, Owens Bottle common, Willys-Overland common, and preferred, and Electric Auto Lite, are listed on the New York Stock Exchange and appear in our records regularly for the New York market. City Machine & Tool is traded in on the New York Curb, and appears in our regular records for thatExchange.

STOCKS—	Low.	High.
Airway Electric Appliance preferred	87	102
City Auto Stamping common	6	33
Fifty Associates common	108	109
Preferred	100	102
Haughton Elevator preferred	100	100
Larrowe Milling common *a*	28	31¼
La Salle & Koch preferred	110	110
Logan Gear common	29	40
Preference	16	21½
McMillen Milling *b*	25	51
Toledo Scale Co. preferred	110	110
Toledo Edison Co. 5% preferred	81	92
6% preferred	89	103½
7% preferred	96	110
Woolson Spice Co. common	30	35
Preferred	100	100
BANK STOCKS—		
American Bank	125	125
Commercial Savings Bank & Trust Co	225	250
Commerce Guardian Trust & Savings Bank	200	250
First National Bank	400	600
Home Bank & Trust Co	180	180
Industrial Bank *c*	110	118
Ohio Savings Bank & Trust Co *d*	400	400
Security Savings Bank & Trust Co. (old) *e*	300	350
Spitzer-Rorock Trust & Savings Bank	220	220
Toledo Trust Co. (new) *e*	118	118
Union Trust & Savings Bank	245	250
BONDS—		
American National 6s 1938	99	101
Lamson Building 6s serial	95	99
La Salle & Koch 6s serial	96	101
Scott Realty 6s serial	96	102
Secor Hotel 6½s 1932	93	99
Toledo Paramount 6s serial	95	99
Toledo Gas El & Heating 5s 1935	99	103⅝
Waldorf Realty 6s serial	98¼	103

a Larrowe Milling Co. merged with General Mills. Listed on New York Stock Exchange March 1929.

b This company merged with American Milling Co. of Peoria, Ill., and the new company became known as Allied Mills, listed on Chicago Board of Trade.

c Opened for business Dec. 8 1928.

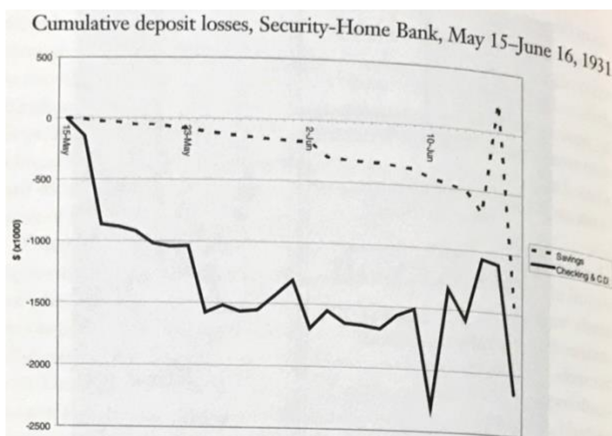
d A recent merger of Bankers Trust Co. and Security Savings Bank & Trust Co. has been completed. The capital stock increased from 8,000 $100 par shares to 32,000 $100 par shares. Par is asked price on new stock—no sales.

e Changed capitalization from 50,000 $100 par value shares to 100,000 $50 par value shares and formed new allied securities company 50,000 $50 par value shares.

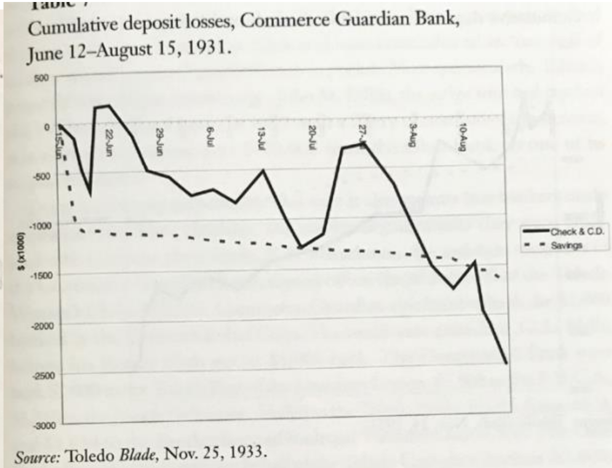
RECORD OF PRICES OF TOLEDO STOCKS FOR 1928.

STOCKS—	Low.	High.
Airway Electric Appliance, common	36½	46
Preferred	100	106
Fifty Associates, common	102	105
Preferred	102	104
Haughton Elevator, preferred	100	102
Harris Auto Press	See Cleveland Exchange	
Larrowe Milling	25	30½
La Salle & Koch, preferred	110	110
Toledo Scale Co., preferred	110	111
Toledo Edison, 6% preferred	100	105
7% preferred	108	110
Woolson Spice, preferred	100	102
BONDS—		
La Salle & Koch 6s, series	98	102
Secor Hotel 6½s, 1932	95	99
Scott Realty 6s, serial	100	102
Toledo Gas, Electric & Heating 5s, 1935	100	105
Waldorf Realty 6s, serial	100	101
BANK STOCKS—		
American Bank	125	125
Bankers Trust Co	125	150
Commerce Guardian Trust & Savings Bank	200	225
Commercial Savings Bank & Trust Co	200	225
First National Bank	400	450
Home Bank & Trust Co	170	180
Ohio Savings Bank & Trust Co	300	325
Security Savings Bank & Trust Co	280	300
Spitzer Rorick Savings Bank & Trust Co	220	220
Toledo Trust Co	210	215
Union Trust & Savings Bank	240	250

Toledo Banks (Messer-Kruse, 2004)



Source: Toledo *Blade*, Jan. 5, 1934.



Source: Toledo *Blade*, Nov. 25, 1933.

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Table 5 Official and internal reports of condition, Security-Home Bank, June 11, 1931.

Resources		Reported	Audit
Loans:			
Real Estate		7,100,569.40	6,862,925.07
Demand		3,202,948.97	2,770,145.93
Time-unsecured		3,140,937.31	3,131,450.81
Time collateral		5,471,780.47	5,444,663.97
Past due		1,124,329.39	1,160,932.39
Less allowance for shrinkage		-792,310.15	
	Total Loans	20,040,565.54	18,577,808.02
Securities	Total Securities	5,382,303.56	3,131,389.79
Bank buildings		2,087,201.12	1,031,593.24
Furniture and fixtures		140,982.84	130,517.84
Other real estate owned		2,614,964.24	
Leaseholds		140,625.91	
Due from reserve banks		2,399,486.06	2,400,854.57
Cash and clearings		705,586.61	708,815.01
Receivables held by subsidiary		58,538.39	
Remittances		28,849.16	
Overdrafts		981.86	1,125.74
Misc. other claims and receivables		363,245.13	
Customers liability on accep.		36,455.30	6,678.30
	Sub-total	5,399,542.95	7,456,958.37
Total resources		30,822,412.05	29,166,156.18
Liabilities		**Reported**	**Audit**
Capital stock		1,500,000.00	1,500,000.00
Surplus		1,500,000.00	0.00
Undivided profits		545,194.78	0.00
Accrual ledger		153,012.65	0.00
	Sub-total	3,698,207.43	1,500,000.00
Demand deposits:			
Commercial		5,065,175.51	5,007,260.19
Public funds		3,506,470.58	3,506,470.58
Certified checks		17,648.13	17,648.13
Officers checks		48,345.40	70,561.81
Deferred items		563.95	
Dividend checks		154.75	154.75
Expense, balance & misc. checks		9,703.38	14,040.82
Bond and coupon		10,199.65	
Demand C.D.'s		58,703.17	58,703.17
Banks and bankers		335,989.20	335,989.20
	Total demand deposits:	9,052,953.72	9,010,828.65
Total time deposits:		14,014,845.26	14,077,413.31
Trust deposits		476,510.46	474,455.50
Bills payable		3,164,839.73	3,164,839.73
Bills rediscountable		375,000.00	375,000.00
Other Liabilities		40,055.45	22,626.89
Mortgages payable			490,669.17
Land Trust Certificates Outstanding			122,000.00
Reserves			323,192.93
	Sub-total	18,071,250.90	19,050,197.53
	Total liabilities	30,822,412.05	29,561,026.18
	Excess Liabilities	0.00	394,870.00

Cumulative deposit losses, Ohio Bank, June 12–August 15, 1931.

Source: Toledo *Blade*, Nov. 24, 1933.

Banks with 5 or more branches that suspended 1927-1932 (United States Congress, 1932, p19)

Banks with five or more branches, that have suspended since the approval of the McFadden Act on February 25, 1927

State	City	Name of bank	Date of suspension	Deposits	Number of branches: Total	In headquarters office city	Outside headquarters office city
		NATIONAL BANKS					
Massachusetts	Boston	Federal National Bank	Dec. 15, 1931	$24, 000, 000	5	5	
California	Los Angeles	United States National Bank	Aug. 18, 1931	7, 799, 000	8	8	
		STATE BANK MEMBERS					
New York	New York	Bank of United States	Dec. 11, 1930	161, 000, 000	58	58	
Kentucky	Louisville	Louisville Trust Co	Nov. 17, 1930	13, 928, 000	6	6	
Ohio	Toledo	Commerce Guardian Trust & Savings Bank	Aug. 17, 1931	15, 458, 000	8	6	
	Youngstown	Dollar Savings & Trust Co	Oct. 14, 1931	17, 373, 000	5	4	1
	Dayton	Union Trust Co	Oct. 30, 1931	20, 156, 000	10	10	
		NONMEMBER BANKS					
New York	New York	Chelsea Bank & Trust Co	Dec. 23, 1930	18, 801, 000	6	6	
Pennsylvania	Philadelphia	Bankers Trust Co	Dec. 22, 1930	34, 700, 000	19	19	
		Northern Central Trust Co	Sept. 28, 1931	3, 839, 000	5	5	
		County Trust Co	Oct. 9, 1931	5, 395, 000	7	7	
Ohio	Cincinnati	Cosmopolitan Bank & Trust Co	June 9, 1930	9, 000, 000	7	7	
	Toledo	Security-Home Trust Co	June 16, 1931	25, 192, 000	11	11	
		Commercial Savings Bank & Trust Co	Aug. 17, 1931	15, 611, 000	11	11	
		Ohio Savings Bank & Trust Co	do	38, 692, 000	16	16	
	Cleveland	Standard Trust Co	Dec. 21, 1931	13, 630, 000	5	5	
Maryland	Frederick	Central Trust Co. of Maryland	Sept. 2, 1931	13, 400, 000	11		11
North Carolina	New Bern	Eastern Bank & Trust Co	Aug. 7, 1930	2, 137, 000	5		5
South Carolina	Cheraw	Bank of Cheraw & Chesterfield County	Nov. 13, 1928	1, 784, 000	5		5
	Aiken	Bank of Western Carolina	Oct. 15, 1931	1, 027, 000	9		9
	Charleston	Peoples State Bank of South Carolina	Jan. 2, 1932	23, 139, 000	44	2	42

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Chicago bank failures (Source: United States Congress, 1934)

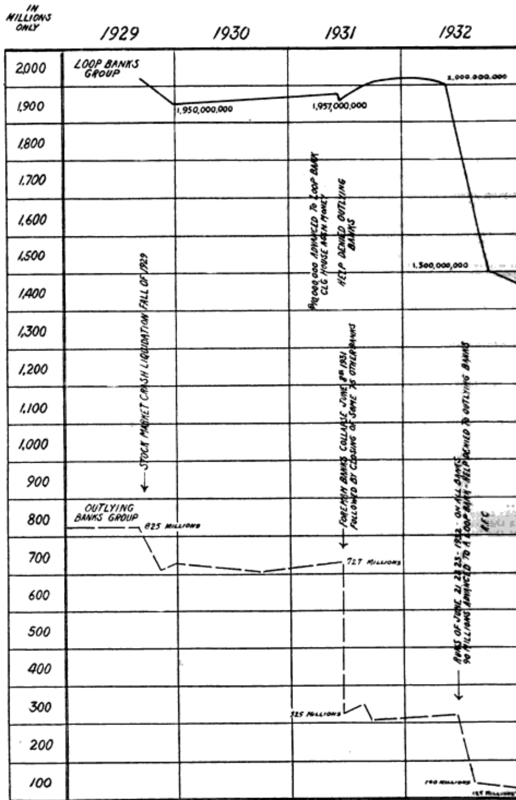

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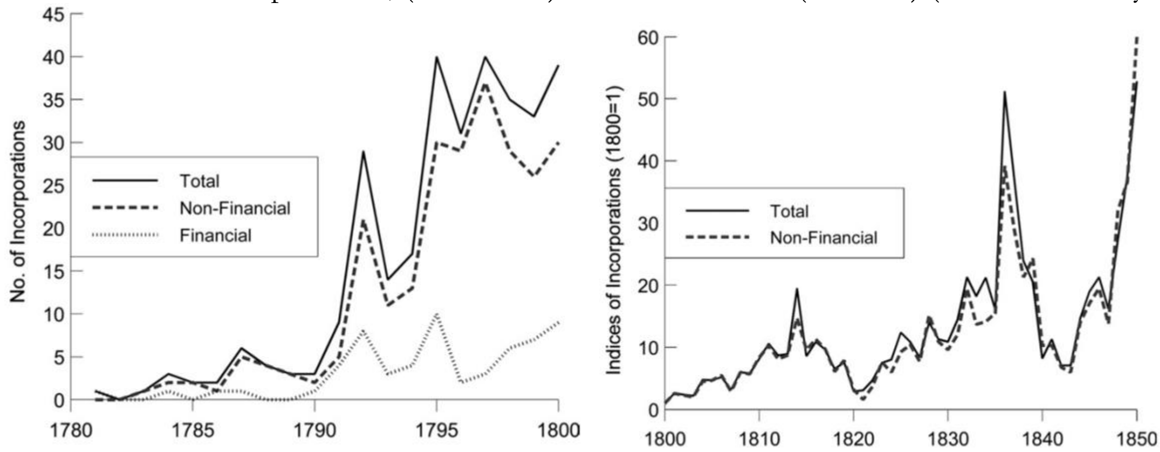
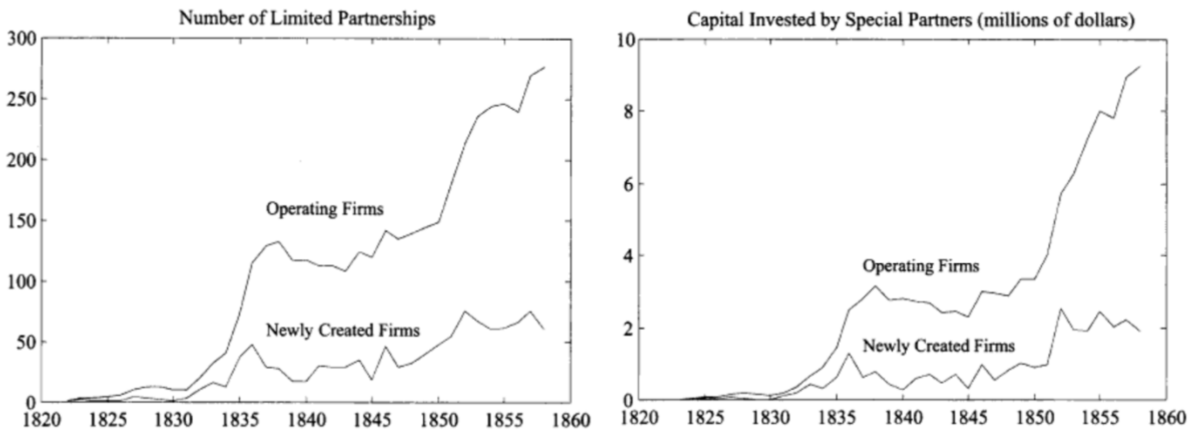
Exhibit 16: United States Business Incorporations

Annual business incorporations, (1781–1800) and Index thereof (1800–50) (Rousseau and Sylla, 2005)

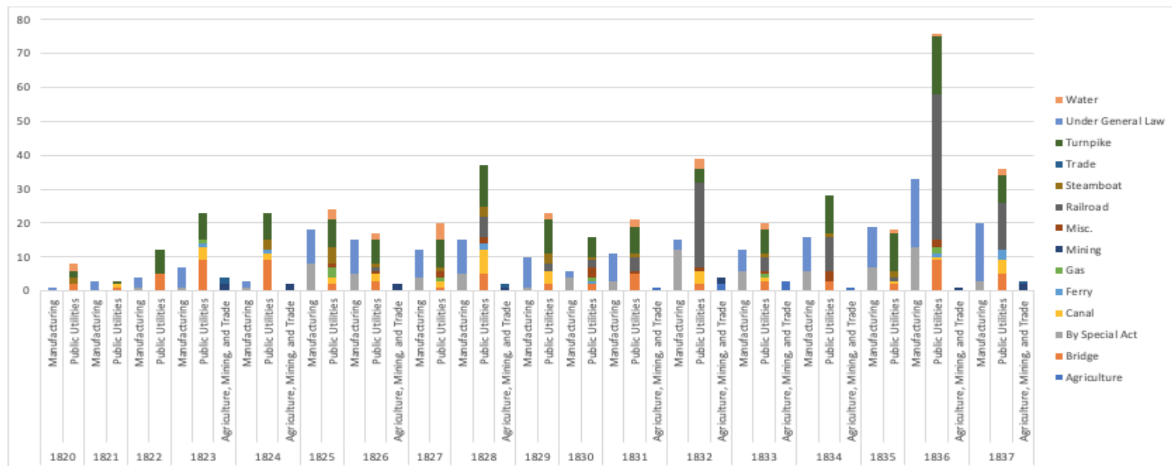


Limited Liability Partnerships in New York City (1822-58)



Source: Hilt and O'Banion (2009).

New York City Incorporations (Non-Financials)



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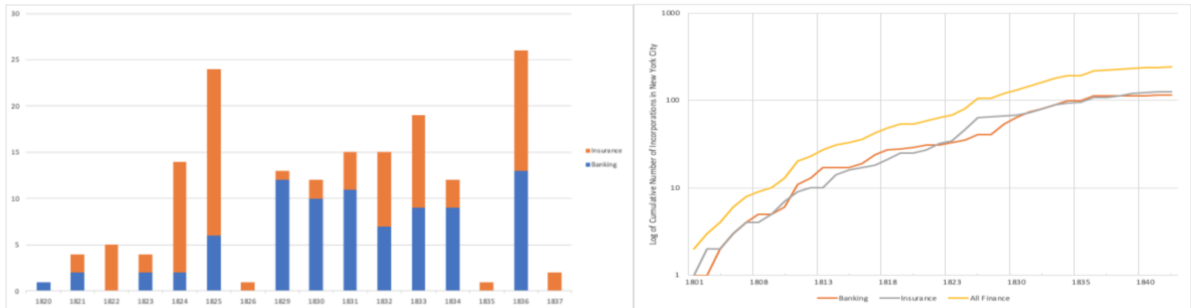
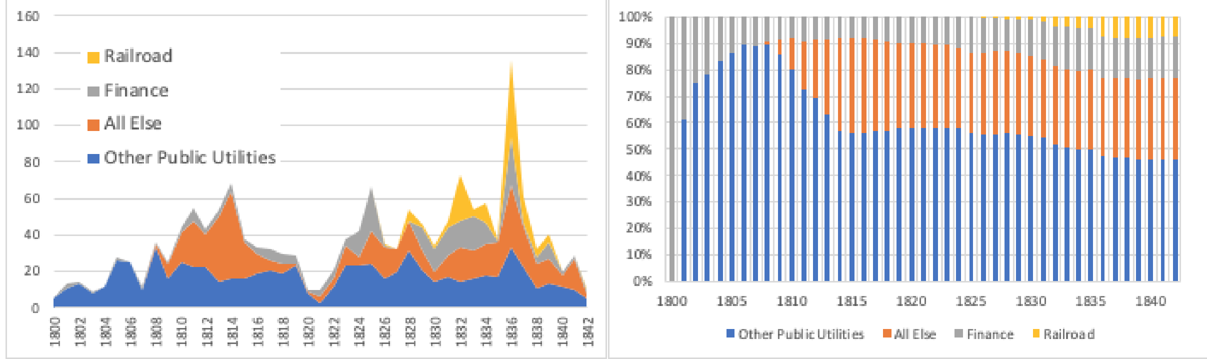
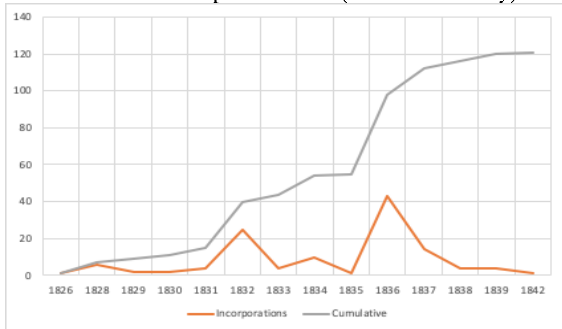
New York City Incorporations (Finance only)



New York Annual Incorporations by Type; Annual (left) and Cumulative Incorporations (right)



New York Incorporations (Railroad only)



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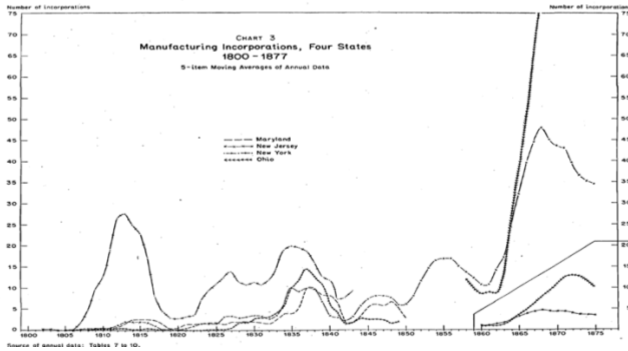
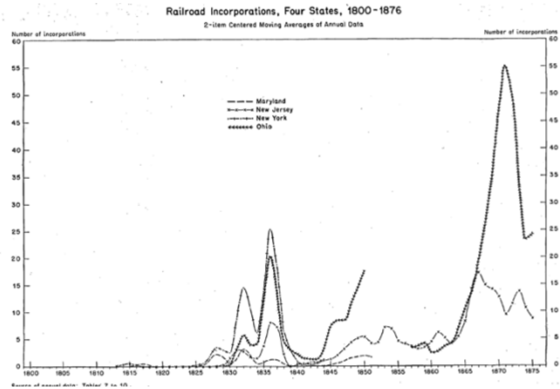
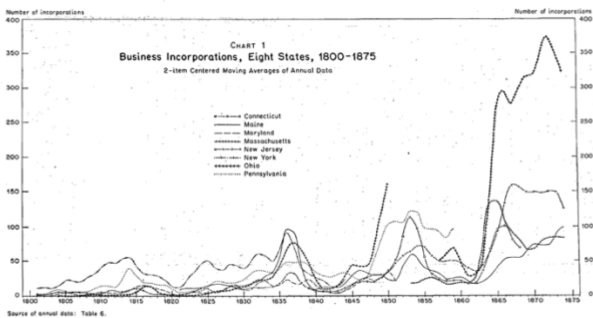
Various Incorporations (1800-75) [Evans (1948)]

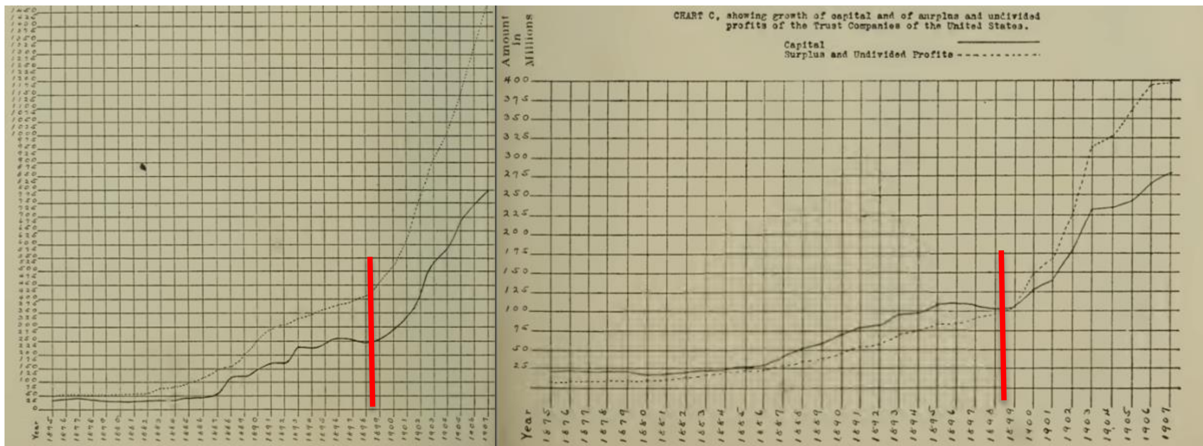






Trust Formation (1875-1907) [Herrick, 1915, p. 21, 27]

COTC (solid) and 'Trust Co of America' (dotted) Count of Trusts (left) and Growth of Capital (right)



Note: red markets indicate Bankruptcy Act of 1898

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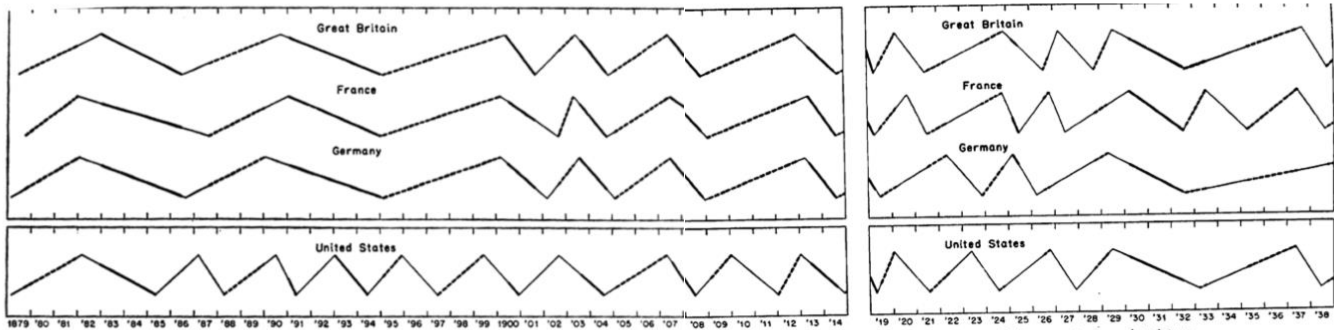
Exhibit 17: Panics

Panics in the US, Great Britain, France, and Germany (1879-1938) [Morgenstern, 1959]



Reinhart and Rogoff (2009)

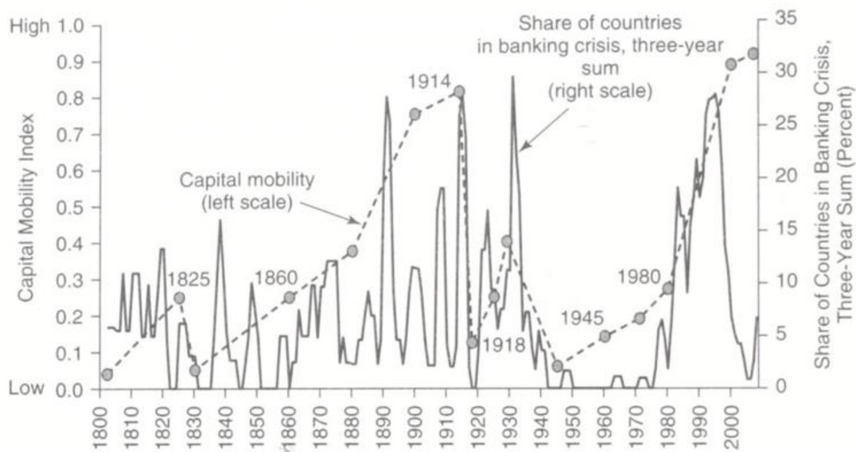


Figure 10.1. Capital mobility and the incidence of banking crises: All countries, 1800–2008.

Kindleberger & Aliber (1720 - 1998)

Year	1618–1623	1636–1637	1690–1696
Countries (city)	Holy Roman Empire	Dutch Republic	England
Related to	Thirty Years' War	Boom in war against Spain	Glorious Revolution 1688; war with France 1689–1697
Preceding speculation in	Subsidiary coin, exchanging bad for good	Shares of Dutch East India Company, real estate, exotic tulip bulbs, common tulip bulbs, canals	East India Company, treasure, new companies, lotteries
Monetary expansion from	Debasement of coins by weight, fineness, denomination	None (?), down payments in kind	Coin debasement, Bank of England established 1694
Speculative peak	February 1622	February 1637	1695
Crisis (crash, panic)	February 1622	February 1637	1696
Lender of last resort	None	None	None

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Year	1720		1763	1772	
Countries (city)	England	France	Amsterdam	Britain	Amsterdam
Related to	Treaty of Utrecht, 1713	Death of Louis XIV, 1715	End of Seven Years' War	Seven Years' War (10 years after)	
Preceding speculation in	South Sea Company stock; government debt	Mississippi Company, Banque Générale, Banque Royale	Commodities, esp. sugar (?)	Housing, turnpikes, canals	East India Co.
Monetary expansion from	Sword Blade Bank	John Law banks	*Wisselruitij* (chain of accommodation bills)	Ayr Bank; country banks	*Wisselruitij*; Bank of Amsterdam
Speculative peak	Apr. 1720	Dec. 1719	Jan. 1763		June 1772
Crisis (crash, panic)	Sept. 1720	May 1720	Sept. 1763		Jan. 1773
Lender of last resort	Bank of England (??)	None	Bank of England	Bank of England	City of Amsterdam

Year	1792	1793	1797	1799	1810	1815–16
Countries (city)	United States	England	England	Hamburg	England	England
Related to	Constitution adopted, 1789	Reign of Terror (France)	Collapse of *assignats*; French landing, Fishguard	Break in Continental blockade	Wellington's peninsula campaign	End of Napoleonic War
Preceding speculation in	Recovery of US bonds	Canal mania	Securities, canals	Commodities	Exports to Brazil (and Scandinavia)	Export commodities, Continent and United States
Monetary expansion from	Treasury accepted public securities at par for stock of Bank of the US	Capital flows from France	Country banks	*Wechselreiterei*	Country banks	Banks
Speculative peak	Jan. 1792	Nov. 1792	1796	1799	1809	1815
Crisis (crash, panic)	March 1792	Feb. 1793	Feb.–June 1797	Aug.–Nov. 1799	1810, Jan. 1811	1816
Lender of last resort	US Treasury open market purchases, deferred customs receipts	Exchequer bills	Exchequer bills, abandon gold	Admiralty bills	Exchequer bills	?

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Year	1819		1825	1828	1836	1837	1838
Countries (city)	England	United States	England	France	England	United States	France
Related to	Waterloo (five years after)		Success of Baring loan; decline in interest rates	Decline in interest rates	Textile boom	Jackson presidency	July 1830 Monarchy
Preceding speculation in	Commodities, securities	Manufacturing behind embargo	Latin American bonds, mines, cotton	Canals, cotton, building sites	Cotton, railroads	Cotton, land	Cotton, building sites
Monetary expansion from	Banks generally	Bank of the US	Bonds sold in installments, country banks	Paris banks	Joint-stock banks	Wildcat banks; retention of silver	Regional banks
Speculative peak	Dec. 1818	Aug. 1818	Early 1825		Apr. 1836	Nov. 1836	
Crisis (crash, panic)	None	Nov. 1818 to June 1819	Dec. 1825	Dec. 1827	Dec. 1836	Sept. 1837	June 1837
Lender of last resort	None needed	Treasury specie deposits	Bank of England	Paris, Basel banks, Bank of France banks,		Bank of France and Bank of Hamburg helped Bank of England	

Year	1847	1848		1857	
Countries(city)	England	Continent	United States	England	Continent
Related to	1846 potato blight, wheat failure			End of Crimean War	
Preceding speculation in	Railways, wheat	Railways, wheat, building (Cologne)	Railroads, public lands	Railroads, wheat	Railroads, heavy industry
Monetary expansion from	Installment sale of railway securities	Regional banks	Gold discoveries, clearinghouse	Bank mergers, clearinghouse	Crédit Mobilier, new German banks
Speculative peak	Jan. 1847	Mar.–Apr. 1848	End of 1856	March 1857	
Crisis (crash, panic)	Oct. 1847	Mar. 1848	Aug. 1857	Oct. 1857	Nov. 1857
Lender of last resort	Suspension of Bank Act of 1844	Bank of England loan to Bank of France; Russian purchase of French *rentes*	Capital inflow from England	Suspension of Bank Act of 1844	Silberzug (Hamburg)

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Year	1864	1866	1873		1882
Countries (city)	France	England/Italy	Germany/Austria	United States	France
Related to	End of Civil War	General limited liability	Franco-Prussian indemnity	Fraud exposed in 1872 campaign	Expansion into southeastern Europe
Preceding speculation in	Cotton, shipping companies generally		Building sites, railroads, securities, commodities	Railroads, homesteading, Chicago bldg.	Stocks of new banks, Lyons
Monetary expansion from	Crédit Mobilier	Joint-stock discount houses	New industrial banks, broker banks, construction banks	Short-term credit, inflow of European capital	Securities bought on margin
Speculative peak	1863	July 1865	Fall 1872	March 1873	Dec. 1881
Crisis (crash, panic)	Jan. 1864	May 1866	May 1873	Sept. 1873	Jan. 1882
Lender of last resort	Maturities of bills extended	Suspension of Bank Act; Italy abandoned fixed parity	None	None	Limited help from Paris banks

Year	1890	1893		1907		1920–21
Countries (city)	England	United States	Australia	United States	France/Italy	Britain United States
Related to	Argentine clearing of southern lands; Brazil, coffee; Chile, nitrates; South Africa, gold	Sherman Silver Act, 1890	Growth of cities	Russo-Japanese war (?), San Francisco earthquake (??)		End of postwar boom
Preceding speculation in	Argentine securities, private companies going public	Silver, gold	Land, gold mines	Coffee, Union Pacific	Industrial borrowing from banks	Securities, ships, commodities, inventories
Monetary expansion from	Goschen conversion	Contraction	Capital inflow	Trust companies	Società Bancaria Italiana	Banks
Speculative peak	Aug. 1890	Dec. 1892	1891	Early 1907	March 1906	Summer 1920
Crisis (crash, panic)	Nov. 1890	May 1893	Spring 1893	Oct. 1907	Aug. 1907	Spring 1921
Lender of last resort	Baring liabilities guaranteed; Bank of France, Russian gold loans to Britain	Repeal of Sherman Silver Act of Aug. 1893	None	$100 million inflow from Britain	Bank of Italy	None

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Year	1929	1931–33	1950s, 1960s	1974–75
Countries (city)	United States	Europe	Worldwide	United States Worldwide
Related to	End of extended postwar boom	Cut-off of US foreign lending	Convertibility without macroeconomic coordination	Collapse of Bretton Woods: OPEC 1973 price rise
Preceding speculation in	Land to 1925, stocks 1928–29	Not applicable	Foreign exchange	Stocks, REITs, office buildings, tankers, Boeing 747s
Monetary expansion from	Stocks bought on margin	US lending	Not applicable	Eurodollar market flooding in 1970–71
Speculative peak	Sept. 1929	1929	Speculation in currencies of	1973
Crisis (crash,panic)	Oct. 1929	Austria, May 1931; Germany, June 1931; Britain, Sept. 1931; Japan, Dec. 1931; United States, Mar. 1933	France, 1958; Canada, 1962; Italy, 1963; Britain, 1964; France, 1968; United States, 1973, etc.	1974–75
Lender of last resort	FRBNY open-market operations (inadequate)	Feeble efforts in United States, France	BIS swap network	BIS swap network

Year	1979–82	1982–87
Countries (city)	United States World	United States
Related to	Third World syndicated bank loans, OPEC 1979 price rise in oil, real estate in southwest United States, US farmland, dollar	Stock market, luxury housing, office buildings, dollar
Monetary expansion from		Capital inflow
Speculative peak	1979	Dollar, 1985; stocks, 1987; real estate, 1987
Crisis (crash, panic)	Dollar, 1979; farmland, 1979; oil, 1980; Third World debt, 1982	Stocks, Oct. 19, 1987
Lender of last resort	IMF; FRBNY, US govt. for Mexican debt, Farm Loan Bank Board	FRBNY open-market operations banks, FDIC, FSLIC dollar, swaps

Year	1990	1994–95	1997–98
Countries (city)	Japan	Mexico	Thailand, Indonesia, Malaysia, Korea, Russia, Brazil
Related to	Nikkei shares index; real estate	Deregulation; capital inflow and outflow; domestic boom	Deregulation, capital inflow and outflow; borrowing abroad
Monetary expansion from	Interest-rate reduction 1986	Capital inflow, bank lending, domestic new banks 1991, nationalized banks privatized 1991	Bank lending; construction boom; crony capitalism
Speculative peak	First half 1989	1994–95	1997–98
Crisis (crash, panic)	January 1990	1994–95	1997–98
Lender of last resort	Ministry of Finance and Bank of Japan slow to react	US Stabilization Fund; IMF; IADB	IMF; World Bank; ADB; bilateral country loans

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Endnotes

These may be direct sources or references to related information to the topic, event, or because it was a good a place as any to include an interesting perspective. Where possible, words, numbers, or dates may have been abbreviated for the superior reading and to save space.

1 "*Did Roman law represent a kind of moral menace in premodern Europe, encouraging commercialism, greed, and exploitativeness, and fostering a lifeless 'rationalism'? In one version or another, this idea has been accepted by Europeans for centuries. Petrarch was already warning his readers in the Middle Ages that the practice of Roman law was a nursery of corrupt and mercenary values; and in the early-modem period many Europeans took the same view. Even in modem times, some of our greatest legal historians have put their authority behind the idea that Roman law was somehow morally menacing... Cessio bonorum permitted debtors to escape imprisonment through a public ceding of all their goods, saving a few life necessities, to their creditors... Medieval legal practice permitted cessio bonorum, which had unimpeachable authority as a Roman institution, but insisted on adding to it heavy sanctions of dishonor. As early-16th-century canon lawyers explained it, a debtor insolvent through no fault of his own could receive a full discharge by declaring cession—but only if he performed his cessio, as the canonists put it, vituperose, 'amidst shame*.'" (Whitman, 1996)

2 "*In later years execution on the person of the debtor fell into disuse and the Roman bankruptcy system was refined to provide for a piecemeal sale of the debtor's estate at auction, but still no discharge for the debtor. To a limited extent there was also developed a law of compositions by which a majority of creditors could bind all dissenters to a plan for reduction in the amount of debts and a law of moratorium by which a majority of creditors could bind dissenters to a 5-year delay in the payment of debts.*" (Countryman, 1976). "*Over its long history, Roman law developed several forms of possessory and nonpossessory security for debts. The pignus was originally a possessory pledge (Dig. 13.7.92; Inst. 4.6.7), which became non-possessory at the creditor's sufferance or by lease after A.D. 175. The pignus thus became practically indistinguishable from the later non-possessory hypothec (Dig. 20.1.5.1; Inst. 4.6.7). Although a Roman pledge could be 'special', that is identified with specific property or rights, usually it was 'general', in all the property or rights of the debtor'... The first attempt in the West to construct a commercially viable system of priorities among lien holders can be traced to the celebrated Bolognese glossator Bulgarus (d. 1166). Bulgarus, an avowed proponent of strict construction (ius strictumi), opposed the absolute priority which Justinian seemed to have allowed to wives with dowries over prior secured creditors of husbands.*" (Whitman, 1996)

3 "*The extent to which Antwerp's magistrates were willing to adapt legal procedures to the changing organization of trade is apparent from the change in their treatment of insolvencies. Before the 16th century the basic rule was that the first creditor to attach the property of a merchant was the first whose debts would be honored [De Smedt (1954, p593).] This 'first come, first served' principle was applied in the Low Countries as well as in the German lands. It entailed considerable risks for merchants, however, because it created incentives for creditors to provoke bankruptcy, stand first in line, and snub other claimants. This not only was unfair but also harmed the merchant community at large as creditors further down the line could run into financial difficulties, which in turn might lead to further insolvencies. In France, Italy, and Spain, where all creditors were treated as equals, these problems were avoided [De ruysscher (2009c, p305-69, esp. 326-7); De ruysscher (2009b).] Still, it was only in the 16th century that the magistrates of Bruges and Antwerp began to change insolvency proceedings. The most likely explanation is that before 1500, in case of insolvencies, most foreign merchants relied on their consular courts, which, even if the city supervised the arrest of goods, could settle debts according to their own rules. But from the moment they settled in Antwerp for a longer period and then started to develop credit relations with merchants from different legal background who could claim allegiance to different legal prescripts, reforms were required to secure an equal treatment of all creditors.*" (Gelderblom, 2013). "*In German law, the principle of priority was very strongly intrenched from earliest times. In some districts, indeed, it was the law as late as the 17th century that the creditor who seized an absconding debtor's property could satisfy his own claim regardless of the claims of the other creditors. The first signs of the weakening of the principle of priority are noticeable in the Hanseatic Towns, Lubeck, Hamburg and Bremen. As Kohler points out, the introduction of equality among creditors into German law was clue to Italian influence, a fact indicated by the many features common to both systems... In France, the Germanic principle of priority was introduced at an early date. In the old Coutumes of Alais, in the first half of the 13th century... creditors were satisfied in the order of the date the debts were contracted. The Germanic theory that the first execution creditor should precede all subsequent creditors became firmly embedded in comparatively early French law. An exception was recognized, however, in the case of insolvency as early as the 14th century, and in the Coutumes of Paris of 1510, it is expressly provided that en matiere de deconfiture chacun creancier vient à contribution.*" (Levinthal, 1918).

4 "*Town ordinances from 1516 and 1518 determined that in case of rogue insolvencies the order of attachment was of no consequence for the validity of the claims of creditors [De Smedt (1954, p594), Goris (1925, p359), De ruysscher (2009c, p320-3).] The only requirement for interested merchants was to report their debts outstanding [Antwerp Customs (1582, title 67).] Creditors from the Low Countries, Germany, and northern France had to come forward within 40 days with their claims, and merchants in more distant markets were granted 3 months [De ruysscher (2009c: 321).] Officially these rules did not apply to bona fide insolvencies, but in practice merchants combined the new bankruptcy proceedings with older rulers regarding the cession of property to support amicable agreements between creditors and insolvent debtors. From the 1520s onward the typical procedure was for the legal authorities to draw up an inventory of the assets in the insolvent estate, after which the merchant or his heirs, in case the insolvency was discovered after his death, ceded the property to the collective creditors. The creditors then started to negotiate, and after they had reached an agreement followed the proportional distribution of the assets [De ruysscher (2009c: 320–59).] In 1556 merchants formally stated before Antwerp's town magistrate that the equality of all creditors applied to the insolvency of bona fide merchants as much as to bankruptcies [De Ruysscher (2009c, p323), De ruysscher (2008).]*" (Gelderblom, 2013). "*The first legislation in Holland dealing specifically with bankruptcy was enacted in 1531 by Charles V of Spain; and the Perpetual Edict of*

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the 4th of Oct 1540, one of the great consolidation acts of the Spanish King, stated in its preamble that it was promulgated in order to check the heresy that was creeping into the provinces, to remedy the expense connected with law suits, and to provide for a pure administration of justice, which would deal equally with rich and poor. The preamble went on to point out the great impulse trade had received, and that, in order to guard and foster that trade, debtors must be compelled to pay their debts and must be prevented from evading their liabilities by flight. The ordinance then provided that all persons who absented themselves from their ordinary residences with the object of defrauding their creditors were to be regarded as common thieves, and if caught might be summarily dealt with and publicly hanged. Persons who aided and abetted the fugitive were to be held liable for the payment of all the debts, and unless they paid in full they might be imprisoned or otherwise punished. Article 3 declared all contracts with fugitive bankrupts, and all sales or alienations made by them, void if prejudicial to creditors. Those who left the country in order to avoid paying their debts were to be punished even if they paid their creditors in full, and even if the creditors all agreed to grant the offenders freedom from punishment. This is most significant, indicating that bankruptcy was not regarded as a private matter of concern to the creditors exclusively, but as something of vital importance to the entire community, a matter in which the public interest transcended the interest of the creditors." (Levinthal, 1918). "*In the second placard given by Emperor Charles V in 1540, the punishment for 'Banckerouten ende Fugitiven' is considerably increased; the judges must 'condemn them to do with the judgments, without prejudice, forger, or dissimulation.' If the judges and officers did not impose that punishment, they were personally bound for all debts. Those who had assisted the guilty in his deceptive acts If it were to make it easy for him to embezzle his goods, or if he deceived himself as creditors, he was likewise obliged to pay all the debts of the banker; if they did not do so, the people of Leek were punished with der gheesselinghe: ende the witty folks at a lettuce of their own pace. All contracts, after the bankruptcy, are null and void, without being able to be confirmed in any way at any time. Finally, the placard orders all officers and judges to adhere strictly to these precepts, and even to impose the death penalty on those bankrupts who have paid their debts in full. it seems that at the time much used means of enriching themselves to the detriment of their creditors was prohibited. They are denied the right, 'to construct their own Huijswomen, to make large rags, run excessive gifts and gain on their good goods.' If the merchants subsequently fell into bankruptcy, their wives could claim large sums to the detriment of ordinary creditors, whereby then often the bankrupt merchant had more goods after his bankruptcy than before.*" (Moll,1879). [Translated using Google.]

5 "*The principle of self-help of creditors and of private control of the debtor and his property found no favor in Spain . The creditors derived their rights from the tribunal of justice. Into the hands of the law the debtor's estate had to be placed, and the judges were required to see to its disposition and to the distribution of the proceeds. Judicial liquidation of the bankrupt's estate alone was tolerated. Whatever was taken from the debtor's estate by the self-help of the creditors had to be returned. The Ley de Siete Partidas borrowed the cessio bonorum from Roman law, but the tribunal of justice had the sole and exclusive control and management of the debtor's estate. If a person became insolvent, he was imprisoned until he made a cessio. As a corollary of the decree that a cessio could be coerced through imprisonment, it became universally accepted that until the bankrupt's case was all cleared up, the person who made a cessio should languish in jail. This was legally sanctioned in the famous ley of July 18, 1590.*" (Levinthal, 1918).

6 "*Spain under the Habsburgs ruled an empire on which the sun never set. Her financial troubles appear to have stretched every bit as far. Habsburg Spain was the first 'serial defaulter' in history. Philip II failed to honor his debts 4 times, in 1557, 1560, 1575 and 1596... The fiscal position did not deteriorate decisively until the defeat of the 'Invincible Armada' in the late 1580s. Far from being undermined by reckless spending and weak fiscal institutions, Spain's finances suffered from unexpected, large, negative shocks to her military position. Philip's first 3 bankruptcies were caused by temporary liquidity shocks, not structural revenue shortfalls... Debt was issued in two forms, asientos and juros. Asientos were short-term debt contracts negotiated between the Crown and its bankers. Many asientos involved transfers of funds abroad. During Philip's reign, they usually included a license to export bullion from Castile, as well as clauses protecting the bankers against variations in the metallic content of the currency. The king was often in arrears in his payment on asientos. Juros were long-term bonds issued against a particular revenue stream, such as the sales taxes of Seville. Because they were backed by specific tax streams, juros were perceived as safer investments than asientos, and Philip II never defaulted on them. Philip's father, Charles V, had assiduously serviced his debts with German bankers. Philip's reign was different. Barely a year after ascending to the throne, he defaulted on his short-term loans. He did so again in 1575 and 1596. Philip's first rescheduling unfolded in two stages in 1557 and 1560. The settlement involved the Fuggers taking control of Crown land and monopolies. It was not fully negotiated until 1566, the year in which lending resumed in earnest... In each bankruptcy, short-term loans were converted into long-term debt. The Crown would issue fresh juros, secured against new taxes voted by the Cortes (as was done in 1576). This also implies that after each general settlement (medio general) that ended the bankruptcies, the Crown was free of short-term obligations. We will exploit this fact to reconstruct the total debt stock... As fighting in the Netherlands and in the Mediterranean escalated, so did borrowing. The Dutch Revolt and the Holy League strained royal finances. When the Cortes stalled on Philip's request for additional funding, the king once again defaulted on asientos. The total outstanding amount was 14.6 M ducats, or 2 years' worth of revenue. 5.5 M ducats had been collateralized through standard juros, while 4.3 M were backed by bonds guaranteed by the Casa de Contratación that had failed to perform as expected and were already trading at a discount.*" (Drelichman and Voth, 2010). "*No fewer than 13 major bankruptcies occurred in the period between 1559 and 1561 and seem to have been a consequence of the Spanish or French defaults of that period. A still larger group of modest merchants were caught in the aftershock, so to speak, of state bankruptcies. Their insolvencies resulted in part from the uncompromising attitude of their creditors, themselves under tremendous pressure to recover investments lost to the crowned heads of Europe. A further 14 failures between 1573 and 1576 seem to have some chronological, if not always financial, connection to the 1575 Spanish bankruptcy. Yet, the agreement of 1577 enabled royal financiers to compensate themselves by transferring losses to other parties. Rather than calling the debts of Philip II, they called the debts of lesser debtors and associates. The exact nature of the connection between state and private bankruptcies remains complicated.*" (Safley, 2009). "*Mark Steele has documented the systematic impact of silver's declining value—otherwise known as silver-content price inflation— on the reduced purchasing power of Crown revenues. The famous ad-valorem (sales) tax, the alcabala, was converted to a fixed-payment encabezamiento in 1523; by 1534 two-thirds of the tax was paid under this new system. Charles I was thereby stuck with fixed payments for a quarter-century during which time the general level of prices in Castile rose by 60%. The 'bankruptcy' of 1557 resulted, an event which Steele regards as renegotiation of terms of the debt rather than a true bankruptcy. The second encabezamiento of 1560 —40% higher than the first— can be viewed as a sort of medium-term solution to the problem of silver's falling value, but again it remained fixed for many years while price inflation continued to eat away at Crown*

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revenues. The third encabezamiento was instituted in 1575, during a year of real fiscal bankruptcy, but that amount was chopped some 30 % in an agreement with the Cortes in 1577. Philip II's revenues from all sources did triple during the second half of the sixteenth century, while prices only doubled, but the costs of war continued to outstrip growth in revenue sources." (Flynn and Giraldez, 1996).

7 "*After 1550, the Spanish government signed asiento loans, and the borrowed sums were provided in Antwerp by means of bills of exchange, where they served to pay out salaries to the Spanish troops. Genoese paguistas residing in Antwerp introduced practices of financial exchange into the city's legal environment, which further sustained innovations in this area. In 1571, Genoese banking associates made a statement on the customs pertaining to bills of exchange, which the Antwerp lords recognized as lawful. The 1582 and 1608 compilations of Antwerp private law provided certain rights for receivers of bills of exchange that went beyond the traditional civil-law ideas. A holder that had been given rights on the funds was also legally deemed to be autonomous. If the holder was acting on his own behalf, the lender, who had received the bill as compensation for his credit, could not revoke the bill. The holder could also act against the drawer, which was a right that according to civil law literature was acknowledged only for the lender, because the latter was considered to be the only creditor in the exchange contract with the drawer."* (De ruysscher, 2011).

8 "*The collapse of Spanish authority in almost all the provinces of the Netherlands was to a great extent the result of the Spanish bankruptcy announced on 1 Sep 1575, which made it almost impossible to transfer money from Spain to the Netherlands. When Requesens died on 5 March 1576 the financial plight of the government in Brussels was already so desperate that the governor-general's funeral had to be postponed for several days because there was not enough money to pay for lift In the circumstances the Spanish soldiers naturally complained more bitterly than ever of the delay in paying their wages, and it was inevitable that many of them would soon resort to mutiny. The Council of State, to which Philip temporarily entrusted the government after Requesens's death, but without investing it with full powers, could not cope with this problem, and soon lost its authority.*" (Swart, 1978). "*The Habsburg default of 1575 led to a serious dislocation of international money markets at a delicate moment: prior to 1 Sep 1575 the Spanish position in the Netherlands had shown promise; after this date it proved impossible to satisfy the demand of the royal troops stationed in the Low Countries for pay and arrears. The sack of Antwerp ('the Spanish Fury') which took place in the early days of Nov 1576 was a direct result... Cardinal Granvelle, at the time viceroy of Naples, warned repeatedly against a default; while Don Luis de Requesens, under even more pressing circumstances, had no doubt that a suspension of repayment on royal debts would lead to the loss of the Netherlands. The bankers, as was to be expected, did not let their interests go unrepresented. But as Philip himself explained 'the decree was passed without listening to them*.'" (Lovett, 1980).

9 "*...Roman law was linked to revolutionary changes in two critical areas of Dutch commercial law... first, the Dutch abandonment of longstanding just-price principles; and second, the Dutch abandonment of traditional shame sanctions inflicted upon bankrupts. (With regard to just price in particular, I will try to show that the great Dutch commercial revolution was marked by an important, and neglected, evolution: a transition from the regulation of price to the regulation of quality.) In the areas both of just price and of bankruptcy, Roman law encouraged critical changes in commercial morality; and if we understand these little-understood points, I will argue, we will see that the spread of Roman law was indeed a large factor in the rise of a very new kind of commercial society... It is in the law of bankruptcy that we see Roman law at its most immoral, by the measures of the day. And it is in bankruptcy that we most clearly see Dutch law taking a new, Romanizing path. To European authors everywhere in the 17th century, the declaration of bankruptcy was the single most scandalous phenomenon of commercial society... Yet as we shall see, even though Udemans denounced bancquerouterie as he understood it, he and his Dutch contemporaries took a dramatically more liberal, and more Roman, attitude toward insolvency than did Europeans elsewhere. In particular, they took a dramatically more liberal attitude toward a Roman practice called cessio bonorum: the practice of ceding all one's goods, much as in a modem liquidation, in order to gain immunity from the normal sanction against insolvents, imprisonment... In virtually every part of early-modern Europe, cessio bonorum was either unavailable, or available only to those willing to brave daunting public shame. Virtually every part-except the Lowlands. For it is a remarkable, but as yet unremarked, fact that these traditional, and brutal, shame sanctions died away in the commercializing Lowlands. Just as the Roman law of overreaching circulated unimpeded in Dutch vernacular literature, the Roman law of debtor protection through cessio bonorum came into unimpeded use. This seems to have begun in the Lowlands commercial center whose rise to prominence preceded that of Amsterdam: Antwerp. Already in the mid-16 century, vernacular Flemish authors contrasted the cession bonorum of their own country with that of nearby France. Lowlands law on cessio bonorum was in some ways quite close to French law. But in France, as authors such as Philips Wielant and Joost Damhouder noted, cessio bonorum could not be done by attorney, and it had to be performed in a 'humiliating' way. Their own Flemish law, by contrast, was different, comprising largely the unadorned rules of Roman law; Damhouder even observed that debtors of his day had begun to glory in obtaining a cessio. When the center of gravity of commerce moved to Calvinist Amsterdam, this Flemish law (like all of the customary commercial law of Antwerp) continued to govern. And indeed, like their Flemish predecessors, Dutch authors were aware that something had changed in the traditional system of shame. This is a development we can detect both in the vernacular legal literature and in the moralizing literature. To begin with the vernacular legal literature: Strikingly few of the vernacular legal authors even mention shame sanctions. But I have found at least one author who commented directly on the demise of Italian-style shame sanctions in his country. Simon van Leeuwen, a learned text writer with strong antiquarian tastes and no great sympathy for insolvents, collected and described shaming statutes in his general introduction to Dutch law; the first, 1652 edition of his book described a typical shaming statute, dating to 1501, from van Leeuwen's hometown of Leiden... Van Leeuwen added that there was no longer any particular shame involved in cessio bonorum. The 'public scandal' was gone from bankruptcy in Leiden... For most Dutch vernacular legal authors, there was simply, strikingly, nothing to say on the topic of shame. On the contrary: The Dutch vernacular legal texts, here once again, merely presented, in a coolly unmoralizing way, the Roman rules... Everywhere, the Dutch vernacular practical legal literature breathed the same air of chill immorality. Where the Christian theological tradition had always preached so vehemently the virtues of charity, these legal authors simply told their readers what they were permitted to do—and told them in their own Dutch language. The Roman-law tradition, after centuries of resistance, had begun to gain the upper hand.*" (Whitman, 1996).

10 "*We find sanctuaries in most cultures. Their origin has usually to do with the conception of a dual legal system, either divine and secular or natural and temporal. The basic idea was that fugitives who are unable to find justice in one system could resort to another. The practical side was that the fugitive inside the Sanctuary could in a bit more tranquility prepares his defense and settle the dispute. The Sanctuaries were entirely legal, they were not against the law*

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or outside the law, no usually authorities granted privileges of Sanctuary to temples, mosques and churches. Sometimes locations in the forest were known as Sanctuary by old custom and usage. At other times certain districts of larger cities were known as Sanctuary like streets off the Strand in London. These however were located where precincts of the medieval Temple of the Knights Templar had been and as such were expected to have old -Sanctuary rights... Usually these Sanctuary towns were founded by appealing to the Law of Moses : admitted were dissenters, debtors and criminals with the exception of premeditating killers. In England and France, the kings had been trying to get rid of Sanctuaries since Henry VIII and François I. Their attempts were partly political, partly founded on the desire to increase state control over criminality. Sanctuaries in these two countries continued nonetheless until the industrial period (in England and France contra legem with the exception of the Temple in Paris). In other countries they continued in full legality until the industrial period." (Bianchi, 1986). "*Marijke Gijswi jt-Hofstraf's dissertation deals with the granting of this type of asylum in the early modern period. The data refer to five sanctuaries in the northern Netherlands: Culemborg, Vianen, Buren, Leerdam and Ijsselstein (I will for the duration use the word sanctuary to denote the places where asylum was offered). In those places — in each case a small town and its immediate surroundings - the granting of asylum had become institutionalized from at least the late sixteenth century onwards. The extant archival sources, however, almost exclusively date from the period after 1600. This was the Republican period in the history of the northern Netherlands, but the 5 sanctuaries did not form part of the Republic. Originally free heerli jkheden of the Empire, they were considered sovereign entities at the time. Still, Buren, Leerdam and IJsselstein, and Culembog after 1748, belonged to the house of Orange. Vianen was even sold to the Estates of Holland in 1725, but it continued to function as a sanctuary, people seeking refuge there from, among others, the Court of Holland... Sanctuaries had not always been just places into which people had escaped from prosecuting authorities. Well into the sixteenth century the fugitives were often fleeing from private persons seeking their revenge. So in that period various authorities were favorably disposed towards sanctuaries, because they served to attenuate blood-feuds. The Dutch Republic hardly witnessed such vendettas any longer and the persons seeking asylum were either bankrupt or suspected by a court of homicide. In a sense, debtors were of course fleeing from private persons, their creditors, but the latter were acting through the law. The idea was that asylum offered a period of rest to those enjoying it; a period in which they should attempt to regulate their affairs and set matters straight.*" (P.S., 1986).

11 "*The elders of the Dutch Reformed Church in Amsterdam—many of whom were Dutch and Flemish merchants—also played an active role in the resolution of commercial conflicts. Between 1578 and 1650 the elders of this church dealt with 247 insolvencies, many involving merchants [*Roodenburg *(1990, p377-81); Gelderblom (2002, p29); Estié (1987, p64-5).]*" (Gelderblom, 2013).

12 "*The final consolidation of the procedure followed in the Customs of 1582 with the explicit stipulation that the rules applied to all merchants regardless of their origin [Antwerp Customs (1582, title 65, art. 2).]*" (Gelderblom, 2013). *"Already in the 1560s, Hamburg harbored many immigrants from the Netherlands and Antwerp, in particular. The commercial relations with Antwerp resulted in a Hamburg exchange building in 1558, which was modelled after its Antwerp counterpart. After 1585, the considerable number of Antwerpeners already residing in Hamburg grew even further. The commercial contacts prompted the introduction of Dutch techniques in the city on the Elbe. For example, Antwerp newcomers imported marine insurance, which had never before been used in the Hanseatic trade. Hamburg legislation demonstrated the affinity of its trade with the Netherlands and also for matters other than marine insurance. The 1603 Hamburg Stadtrecht contains a paragraph on 'Wechsel und Wechselbriefe' (exchange, and bills of exchange), of which three articles paraphrase provisions of the 1582 Antwerp costuymen on acceptance by third parties and regarding the prohibition to revoke a bill of exchange given to an autonomous beneficiary.*" (De ruysscher, 2011).

13 "*An Amsterdam ordinance of approximately 1617 consecrated the Roman law paritas-principle, which encompassed equality for non-privileged creditors at the distribution of a bankrupt's assets. This same rule had been written down in the Antwerp 1582 costuymen and went back a long way to a 1516 Antwerp ordinance. An important Antwerp provision on the restricted possibility for a debtor of a bill obligatory to hold defences against its holder, was introduced in an Amsterdam ordinance of 27 July 1635. [Handvesten (1639, p118). This rule excluded the debtor's right to introduce defences of earlier payment of the debt and of set-off.] Other Amsterdam rules were contrary to the Antwerp ones. In a 1617 turbe Amsterdam barristers and proctors declared that a vendor was not permitted to revendicate his sold but unpaid goods from a bankrupt buyer if the vendor had given credit and had fixed a payment date after the delivery. [Handvesten (1624, p196).]*" (De ruysscher, 2009).

14 "*It was believed that outlawing speculation would eliminate much of the price volatility and price declines. One event that caused a stir was when, in 1608, the price of the stock fell from 200 to 130, which they attributed to a large number of shorts (Kellenbenz, 1957, p134). The government claimed outlawing short selling would prevent further such episodes. Wilson (1941, p14) states, 'In Feb 1610, selling 'in blanco' was prohibited, and it was stipulated that shares which were sold must be transferred to the purchaser a month after the sale at the latest." The law pronounced that only those who owned the stock could engage in sales. Kellenbenz recounts: [O]n the 27th of Feb 1610, the first edict was published prohibiting activities of this sort, especially 'windhandel,' that is, the dealing in shares were not in possession of the seller. The sale of shares of the Company by bona fide owners for future delivery was allowed. In 1621, after the outbreak of war with Spain, a second edict against the 'wind trade' had to be issued, and further prohibitions followed; but apparently the abuses could not be eliminated. (1957, p134-5) In the following decades official prohibitions continued with additional ordinances passed in 1621, 1623, 1624, 1630, 1636, and 1677 (Dehing & Hart, 1997, p55; Garber, 1994, p78). But despite these bans the speculative market still persisted.*" (Stringham, 2003). "*By the 17th century futures were traded in such goods as pepper, coffee, cacao, saltpeter, whale oil and whalebone. In 1609, 'futures trading' emerged for shares in [VOC] when a disgruntled former owner tried to organize 'bears' to drive down the price... Risky and suspect investments included 'windhandel' or 'trading in the wind' (trading shares the investors doesn't possess; think stock options). Such investments were banned by an edict of 1610. The tulips future market lacked some of the features of modern futures markets. Sales for future delivery were permitted for those investors who actually owned shares. We can see that futures for bulbs would fall into the prohibited activity because most of the speculators would not own the bulbs they were trading. While futures for hedging were permitted, the authorities decried future trading as immoral gambling and edicts precluded civil enforcement of these contracts. This edict was extended when the war with Spain renewed in 1630, and again in 1636. Future traders were not prosecuted.*" (Day, 2006).

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15 "*The 17th-century monetary system was based on a dual coinage of so-called 'real' and 'imaginary' money. The former was the medium of exchange-the actual metallic counters circulating from hand to hand. The latter, however, was used for price-quotation; it was the money of account... Further, the severity of the manipulations threatened creditors whose future receipts (contracted in money of account) would now fluctuate arbitrarily in terms of silver... 'The monies (have) become so variable, that when a merchant hath sold his cloth, and hopeth to have gained something thereby, by that time that the term for payment is expired, he receiveth less in value than the cloth cost, by the raising and rising of the monies.' (Misselden, Free Trade, p52). For Adventurers' complaints of uncertainty and insecurity, see The Commons Debates, z621, ed. W. Notestein, F. H. Relf and H. Simpson (New Haven, 1935), III, 45 et seq.; VII, 225 et seq.; B.M. Add. MS. 34,324, fol. 191; P.R.O. S.P.Dom. James I, 180/75.*" (Supple, 1957). "*Recent historical research, notably that of Craig Muldrew, who has sifted through thousands of inventories and court cases from 16th- and 17th-century England, has caused us to revise almost all our old assumptions about what every day economic life at that time was like. Of course, very little of the American gold and silver that reached Europe actually ended up in the pockets of ordinary farmers, mercers, or haberdashers. The lion's share stayed in the coffers of either the aristocracy or the great London merchants, or else in the royal treasury. Small change was almost nonexistent. As I've already pointed out, in the poorer neighborhoods of cities or large towns, shopkeepers would issue their own lead, leather, or wooden token money; in the 16th century, this became something of a fad, with artisans and even poor widows producing their own currency as a way to make ends meet. Elsewhere, those frequenting the local butcher, baker, or shoemaker would simply put things on the tab. The same was true of those attending weekly markets, or selling neighbors milk or cheese or candle-wax. In a typical village, the only people likely to pay cash were passing travelers, and those considered riff-raff: paupers and ne'er-do-wells so notoriously down on their luck that no one would extend credit to them. Since everyone was involved in selling something, however, just about everyone was both creditor and debtor; most family income took the form of promises from other families; everyone knew and kept count of what their neighbors owed one another; and every 6 months or year or so, communities would hold a general public 'reckoning,' canceling debts out against each other in a great circle, with only those differences then remaining when all was done being settled by use of coin or goods.*" (Graeber, 2011).

16 "*The Dutch authorities attempted to deal with the debasement problem through laws and regulations, but these were often slow and ineffective. It took decades, for example, for the Republic to establish full control over its numerous independent mints. By contrast, laws assigning coin values were enacted early and often, but these did not solve the problem of debasement. While intended to simplify the use of coins by giving them a known value (tale) in terms of a unit of account, we argue that these laws, called mint ordinances, had the unintended consequence of making the situation worse. The disconnect between legal and intrinsic value encouraged people to bring old coins with high intrinsic, but low legal value to the mint in order to repay their debts with the new debased coins. The mints benefited as well from the consequent increase in business and their government owners benefited from the increase in seigniorage. Then as now, there was no free lunch, as the garnering of seigniorage through debasement imposed an onerous burden on the Dutch economy. Another regulatory approach was the creation of an exchange bank or Wisselbank. Exchange banks were intended to address the debasement problem by effectively limiting deposits to coins above a certain quality. When debt was settled within the exchange bank, lenders were protected from repayment in debased coin. To generate participation, municipalities, starting with Amsterdam in 1609, required that commercial debts embodied in bills of exchange had to be settled through the city's exchange bank. Because bills of exchange were the dominant vehicle for international trade credit, merchants were compelled to open an account with the exchange bank. This paper argues that the creation of this exchange bank, known as the Bank of Amsterdam or Amsterdamsche Wisselbank, was effective at reducing debasement. Settlement of bills in bank money blunted debasement incentives by, ultimately, decoupling the connection between common coins and their ordinance value in the Dutch unit of account called the florin. In shielding creditors—the beneficiaries (also called payees) of bills of exchange—from payment in debased coins, the exchange bank diminished mints' ability to extract profits from these beneficiaries.*" (Quinn and Roberds, 2006). "*The currency of a great state, such as France or England, generally consists almost entirely of its own coin. Should this currency therefore be at any time, worn, clipt or otherwise degraded below its standard value, the state by a reformation of its coin can effectively re-establish its currency. But the currency of a small state, such as Genoa or Hamburgh, can seldom consist altogether in its own coin, but must be made up, in great measure, of the coins of all the neighboring states with which its inhabitants have a continual intercourse. Such a state, therefore, by reforming its coin will not always be able to reform its currency.*" (Smith, 1848). "*The AWB opened in 1609 as a municipal exchange bank, an institution for facilitating settlement that was common in Early Modern Europe.*" (Quinn and Roberds, 2010). See the older banks in Genoa, Venice, Naples, and Catalonia (Roberds and Velde, 2014).

17 "*Amsterdam's capacity to adapt its legal institutions to the growth of international trade during its Golden Age can be demonstrated to good effect with its bankruptcy proceedings. Insolvencies in Amsterdam were dealt with according to the principles laid down in Antwerp's customs in 1582 [De ruysscher (2008, p309-13), De ruysscher (2009a, 473-4).] Notarial deeds from Portuguese merchants show insolvent merchants after 1600 handing over control over their assets to a collective of creditors. The latter reviewed the estate's assets and liabilities and determined what percentage of debts outstanding could be restituted. It is difficult to judge the efficiency of this procedure. The surviving evidence on creditors' agreements typically relates to disputes that arose when some creditors claimed preference over others. In 1624, for example, the local court ruled in favor of Portuguese merchants who claimed 700 pounds from two merchants for a bill of exchange written only days before their insolvency became public knowledge. They claimed the merchants had known about their financial difficulties, which would give the Portuguese debt preference over all others. Determining the date of the insolvency was important to sort out claims of creditors. In principle, in both Antwerp and Amsterdam, a merchant was considered insolvent when he no longer appeared at the Exchange. The debtor himself, and sometimes even some of the creditors, would know about the financial difficulties before that, however. This could lead to disagreement about what to do with payments made or debts incurred after the insolvency had become apparent. The surviving Portuguese cases suggest the creditors, and sometimes the arbiters, judges, or even church officials, relied on the accounts of the insolvent merchants to determine the exact date of insolvency. It may have been the precision required for this inspection that led Amsterdam's magistrate to create the Chamber of Insolvent Estates in 1627. The town ordinance promulgated in 1643 to regulate its work determined that the commissioners of the chamber supervised the inspection of the debtor's accounts, formally declared insolvency, established which claims creditors had, supervised the liquidation of the estate, and made the payments to creditors [De ruysscher (2009a, p475).] The combination of a local court taking on general conflicts and a string of specialized courts for bankruptcies, insurances, exchange, and*

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maritime law left very little for merchants to desire. Even so, in the second half of the 17th century, some merchants began to contemplate the creation of a separate court for all commercial conflicts, very much like the commercial tribunals in Spain, Italy, and France. A proposition to this end was made by former bookkeeper Johannes Phoonsen in his WisselStyl tot Amsterdam. Phoonsen proposed turning the local Exchange Bank into a bank van judicature. Conflicts between merchants that did not fall under the jurisdiction of the Chambers of Insurance and Maritime Affairs would initially be brought before the commissioners of [AWB]. Their jurisdiction would comprise 'all differences concerning matters of exchange trade, sales or purchases, deliveries and payment; and contracts of trade, and their observance; liquidation and adjustments of accounts, as well as provisions, salaries, and pay of Commissioners, Factors, Bookkeepers and Servants &c. and generally all disputes and matters that arise in, or follow from trade.' [Phoonsen (1676).] Although a merchant tribunal was never created in Amsterdam, the very proposition shows the constant concern for the alignment of legal institutions with business practice." (Gelderblom, 2013). "*As I have already indicated above, all bankruptcy estates in Amsterdam all bankruptcy estates came under the supervision of the Aldermen, who took care of the liquidation and distribution of funds among the entitled creditors. If someone was unable to pay his debts in full, this could be reported by appointing one or more receivers to the creditors who then requested bankruptcy... Earlier, in 1627, it had been understood that there was a need for a judicial body, to whose leadership only the desolate estates would be entrusted; on the 30th of Jan 1627, the company therefore decided to establish a 'Camere van Desolate Boedels'... It is not possible to determine with certainty why it was waited until the end of the year 1643 to establish this chamber.*" (Moll,1879). [Translated using Google.]

18 "*The 17th century was marked by extensive securitization in the Amsterdam market, where shares, futures and options were pledged easily... In the later 1500s the lien of the unpaid seller was still mainly considered a special debt for which third-party seizures could be laid... Over the course of the 1500s non-possessory pledges of movables became general instead of special and a droit de suite, which exceptionally had been acknowledged before that time, became further restricted... [The result] was that defaults on any debt could result in seizure proceedings, which could lead up to the executory sale of the assets seized... No absolute title of ownership, or a ratified debt, was required for the creditor to lock the debtor's assets in case of his default... These transitions were more fundamental for non-possessory securities on movables than with regard to hypothecs on land and immovable property. In particular the legal positions of unpaid sellers and of creditors entitled in non-possessory pledges were fundamentally adjusted... [T]he source texts of Holland local law predating the 1580s, even the early 1600s, do virtually not mention an ownership-based seller's lien. But after the publication of Grotius' Inleidinghe this changed... After 1631, unrestricted tracing by the unpaid seller was considered lawful because he was viewed as an owner, until from the later 1650s onwards this became limited by municipal bylaws... One Amsterdam turbe of 31 July 1632 states that if a sale was 'à contant' the seller as owner could retrieve his merchandise not only with the buyer, but also with others. Moreover, it was stated that it was irrelevant whether the acquirer had paid a purchasing price. The 2 advocates and 5 proctors at the interview confirmed these rules as being 'in viridi observantia'. However, the turbe lacks the regular formula that the witnesses had seen this being practiced or imposed in judgments, which may point to the recent introduction of the rules... Considering the seller's lien as ownership and allowing for the reservation of ownership at sale as conventional pledge, invited for the harmonizing of the rules relating to both arrangements.*" (De ruysscher and Kotlyar, 2018).

19 "*Formal futures markets developed in 1636 and were the primary focus of trading before the collapse in Feb 1637. Earlier deals had employed written contracts entered into before a notary. Trading became extensive enough in the summer of 1636 that traders began meeting in numerous taverns in groups called 'colleges', where trades were regulated by a few rules governing the method of bidding and fees. Buyers were required to pay 1/2 stuiver (1 stuiver = 1/20 guilder) out of each contracted guilder to sellers up to a maximum of 3 guilders for each deal for 'wine money.' To the extent that a trader ran a balanced book over any length of time, these payments would cancel out. No margin was required from either party, so bankruptcy constraints did not restrict the magnitude of an individual's position. Typically, the buyer did not currently possess the cash to be delivered on the settlement date and the seller did not currently possess the bulb. Neither party intended a delivery on the settlement date; only a payment of the difference between the contract and settlement price was expected. Thus, as a bet on the price of the bulbs on the settlement date, this market was not different in function from currently operating futures markets. The operational differences were that the contracts were not continuously marked to market, required no margin deposits to guarantee compliance, and consisted of commitments of individuals rather than an exchange so that a collapse would require the untangling of gross, rather than net, positions. It is unclear which date was designated as the settlement date in the college contracts. No bulbs were delivered under the deals struck in the new futures markets in 1636-7 prior to the collapse because of the necessity of waiting until June to exhume the bulbs. It is also unclear how the settlement price was determined. Beckmann (1846, p29) states that the settlement price was 'determined by that at which most bargains were made', presumably at the time of expiration of a given contract. Again, this is the standard practice in current futures markets. Serious and wealthy tulip fanciers who traded regularly in rare varieties did not participate in the new speculative markets. Even after the collapse of the speculation, they continued to trade rare bulbs for 'large amounts' (see Posthumus 1929, p442). To the extent that rare bulbs also traded on the futures markets, this implies that no one arbitraged the spot and futures markets. To take a long position in spot bulbs required substantial capital resources or access to the financial credit markets. To hedge this position with a short sale in the futures market would have required the future purchaser to have substantial capital or access to sound credit; substantial risk of noncompliance with the deal in the futures market would have undermined the hedge. Since participants in the futures markets faced no capital requirements, there was no basis for an arbitrage. During most of the period of the tulip speculation, high prices and recorded trading occurred only for the rare bulbs. Common bulbs did not figure in the speculation until Nov 1636.*" (Garber, 1989). "*The market extended to the 'future' sale for full bulbs. Horticulturists and speculators alike-sought bulbs that contained the mosaic virus that produced fantastic 'breaks.' The high price for tulips was for particularly beautiful broken bulbs. Single colored breeder bulbs, except for their potential as 'breaks' were not highly valued. Breaking was unpredictable and growers' pursuit of breaking bulbs could be characterized as a calculated gamble... Buyers were required to pay 1/20 guilder per contract with a maximum of 3 guilders for each deal, or 'wine money', a modest amount. Margins were not required for either party. Typical buyers didn't possess the cash until closing. Sellers didn't possess the bulbs. Neither party expected delivery on settlement. Payment of the amount between the contract price and settlement price was required. Contracts were not repriced according to market fluctuations; there were no margin requirements to prompt compliance; commitments were to individuals rather than an exchange. in modem practice: 'The futures exchange has a clearing association that serves guarantor of all futures contracts*

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and reduces the risk of default significantly... At the end of every business day, the futures' clearing association interposes itself between the two parties to a futures contract, assuming the opposite side of each transaction... and also serves as a guarantor of every futures contract.' These protections were absent from the Dutch tulip market and their absence undoubtedly contributed to that market's turbulence... The Dutch developed an innovative futures market for an exciting new product, the exotic tulip. It functioned well, before, and for a large part during (for sophisticated investors and growers), and after Tulip Mania. The futures market was frowned upon by the authorities, magistrates and religious leaders. Contracts were unenforceable, yet in the main they were honored because the dealers did not want to lose face or trading rights in the bourse. Large investors were well-financed for both long and short positions. Without capital and access to capital they could not have functioned and the underlying market for tulip growers and florists (distributors and sellers) would not have functioned as smoothly. [This is true because the large amounts of capital invested in the futures market by the professionals, including professional speculators, ensured the capital necessary to bring the flowers to market.] The 'failure' in the market was the lack of developed legal processes to handle the newly created futures market. Options were a new, abstract, and incredibly innovative financial device. [The West conceptualized property rights in the abstract and capitalized upon them. This has proven to be a key to the success of capitalism. Cf. De Soto (2000, p49-51). The Dutch in the 16th and 17th centuries pioneered a critical tool, the futures or options contract, that abstracted the essence of the commodities (herring, grain or tulip bulbs) and lowered risk, creating greater prosperity, economic diversity, and growth.] The Dutch tulip options were based upon bills of exchange, yet another relatively new instrument was used to establish credit for future delivery and facilitate foreign and domestic trade. The Dutch capital markets, while vibrant, sophisticated and the most advanced in the Western World, were still developing. No formal exchange rules regulated tulip futures. And trading outside of the mainstream was permitted to flourish in the taverns. Accounting and finance had not captured all of the esoterics and niceties of options trading. Hence the rules for clearing were not well established. Coupled with the lack of legal enforcement, it was not surprising that tulip options skyrocketed in a time of great stress in society. [Think of how we tout gold options in times of financial stress in modern times.] What may be surprising is how quickly the markets recovered and returned to normal functioning without all of the modern regulatory apparatus and firmly established legal procedures we take for granted." (Day, 2006).

20 "*Nevertheless, future trading and selling short were tolerated and thrived with private enforcement. Repudiation might result in the trader being excluded from the bourse. Reputation and the desire for profits from future trading persuaded most traders. to honor their contracts. Only when traders faced bankruptcy did they choose to dishonor the contracts. Thus, while futures trading in tulips and other commodities was frowned upon by the magistrates and authorities, it thrived. Even though such trading was banned by the edicts and unenforceable in the courts, by the mid-1630s the Dutch had created a developed and sophisticated futures market for tulips. It was soundly financed and relied principally upon moral suasion and reputation for enforcement."* (Day, 2006). "*There are many passages from Confusion de Confusiones that illustrate the importance of reputation. De la Vega wrote, 'The Exchange business is comparable to a game. Some of the players behave like princes and combine strength with tenderness and amiability with intelligence, but there are some participants who lose their reputation and others who lack devotion to their business even before play begins.' We would expect the untrustworthy brokers to not be very successful. Sure enough De la Vega mentioned the disreputable, 'Since the status, the insignificant capital, the low reputation, and the limited trustworthiness of such people are well known, they do not dare attempt to carry on any considerable business.'*" (Stringham, 2003)

21 "*However, legal enforcement of the contracts was refused. The process, 'an appeal to Frederick' (or to the Prince), permitted the buyer of a futures contract to renege with the backing of the courts.*" (Day, 2006). "*One might assume that the law was the reason why traders followed through with contracts, but from Confusion de Confusiones we can see otherwise since time bargains were prohibited. De la Vega wrote: 'As to the unactionable feature of any speculative transaction to be settled by the payment of the differences, you are right in remarking that with cash transactions the regulation lacks pertinence. It is, however, valid in the case of time bargains unless the seller has the shares transferred to the time account of the purchaser within a fortnight. Then the buyer is obliged to take up the shares, or declare himself insolvent. Though the opinion prevails generally that this regulation does not apply in the case of the seller but only in that of the buyer, this is an error introduced by bad practice. The lawyers assert that the seller as well as the buyer is allowed to raise the objection [envisaged by Frederick Henry's edict]. The public also presumes that, if the seller of stocks buys them back (from someone who had purchased them earlier), the law does not apply. That is undoubtedly an error also. (For instance), the edict does not apply when I buy shares at [540], sell it at [520], and declare before witnesses that the stock so sold will serve to settle the account of shares previously purchased. By this action I have declared myself debtor for the difference of 20% [of the face value] which I have lost. Therefore, I am not permitted to appeal to the regulation, since I have already assumed the debt; I must pay the difference or become insolvent. But if I have bought a share at [540] from one and without subsequent declaration I sell him another share at [520], [the seller in neither case really owning the stock,] I need neither declare myself bankrupt in order to free myself [from the obligation] nor disappear in order to shake loose; [I can merely appeal to the edict].' Shares needed to be settled or transferred within 2 weeks of the initial transaction, otherwise a contract would violate the law. Luckily for the traders, however, the regulations were not strictly enforced and they went on making forward contracts with each other despite their doubtful legal status.*" (Stringham, 2003)

22 "*Until 1621, the Amsterdam lords stimulated the use of order paper and they generally condemned bonds to bearer. This policy proved indirectly supportive for the newly practiced indorsement. Because bills of exchange were generally considered to be more delicate financial instruments than bearer bills, they were almost never made to bearer. Therefore, indorsement, as the bill of exchange itself, was 'to order.' This implied that a holder had to provide proof of his power of attorney, which could nonetheless be deduced from a note written on the brought instrument and containing his name. After 1621, the Amsterdam government overcame its first hesitations and started supporting the use of the Antwerp styled bearer bills, by applying the Antwerp precepts of law. In 1635, for example, the Amsterdam rulers expressly agreed that the assignor of a bearer bill remained liable for payment."* (De ruysscher, 2011).

23 "*Framing Tulipmania in terms of sticky consumption and sequestered capital — capital whose quantities, usages, and future yields are hidden from market participants — offers a richer and more straightforward explanation... Simply put, the tulip bulbs planted in 1636 were sequestered capital. Planting them (underground) blindfolded 17th century Dutch speculators regarding the planted quantities and their development and future yields. The price-boom began in mid-Nov of 1636, coinciding with the time of planting. The price-collapse occurred in the first week of Feb 1637, coinciding with the*

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time of bulb sprouting (signaling bulb quantities, development, and future yields). Also consistent with our theory is the initial price-collapse location, in the Dutch city of Haarlem, where temperature and geography favored early sprouting and sprout-visibility." (McClure and Thomas, 2017).

24 "*Contract prices rose to new heights until word of a trading suspension reached the traders on Feb 2nd and 3rd (Posthumus, 1929, p. 444), after which prices sagged until the actual suspension of trading at the market center at Alkmaer on Feb 5th 1637*." (Thompson, 2007).

25 "*The crash of tulip prices in 1637 left the growers of the bulbs to absorb the majority of the financial damage of the mania. With the government basically canceling all contracts [The Court of Holland judged the tulip sales to be bets under Roman law (Gelderblom and Jonker n.d.)], growers could not find new buyers or recover money owed them by buyers supposedly under contract. As Simon Schama (1987, p361-2) describes: 'In any event, the magistrates of the Dutch towns saw niceties of equity as less pressing than the need to deintoxicate the tulip craze. Their intervention was hastened by the urgency of returning the genie speculation to the bottle from which it had escaped, and corking it tightly to ensure against any recurrence. To some extent, they could feel satisfied that the ineluctable operations of Fortuna had already punished the foolhardy by taking them from rags to riches and back again in short order. But they still felt impelled to launch a didactic campaign in tracts, sermons and prints against folly, since its special wickedness had been in leading the common people astray'*." (French, 2006). "*Tulip prices collapsed in Feb 1637. There was a general suspension of settlements for contracts coining due. Florists proposed that contracts before Nov 30, 1636 should be executed and honored. Later contracts would give the buyer the right to reject the contract on payment of 10% of the sales price. The Dutch authorities did not accept the proposal. In April, Holland suspended all contracts giving the seller the right to sell at market prices-during the suspension. Thus, growers were released to market the bulbs in June. Other avenues of settlement followed. For instance, Haarlern permitted buyers to avoid the contract upon payment of 3.5% of the contract price. The courts did not uphold the contracts but local settlements were worked out. This modest frenzy, fueled by novice speculators, immune from enforcement (but not death) petered out. The tulip markets returned to normal with little lasting effect upon the vibrant commerce of the Netherlands*." (Day, 2006). "*The tulip speculation collapsed after the first week of Feb 1637. Apparently, a general suspension of settlement occurred on contracts coming due. On Feb 24, 1637, delegates of florists meeting in Amsterdam proposed that sales of tulips contracted on or before Nov 30, 1636, should be executed and that for later contracts, the buyer would be given the right to reject the deal on payment of 10% of the sale price to the seller. The authorities did not adopt this suggestion. On April 27, 1637, the states of Holland decided to suspend all contracts, giving the seller the right to sell contracted bulbs at market prices during the suspension. The buyer would be responsible for the difference between this market price and whatever price the authorities eventually determined for contract settlement. This decision released the growers to market the bulbs that would emerge in June. After this decision, the disposition of further settlement becomes murky, though Posthumus (1929, pp446-7) states that many cities followed the example of Haarlem, where in May 1638 the city council passed a regulation permitting buyers to terminate a contract on payment of 3.5% of the contract price.*" (Garber, 1989).

26 "*In spite of the short duration of the tulip craze, and assertions by other authors to the contrary, there is evidence of financial pain that resulted from Tulipmania. A chart depicting the number of annual bankruptcies in Amsterdam, Leiden, Haarlem, and Groningen from 1635–1800, [See Appendix A], reflects a doubling in the number of bankruptcies in Amsterdam from 1635-7. It would be hard to imagine that only tulip growers made up this increase in the number of bankruptcies. I suspect some of the 'foolhardy masses' were among this group*." (French, 2006). "*I have found no bankruptcies that can be attributed to tulipmania. Although some bankruptcies of poorer people, less likely to turn up in these records, might well have occurred, if there was a rash of financial disasters among artisans, it was never discussed by the magistrates of Haarlem. The classic case of bankruptcy from tulipmania that is always given, indeed the only name usually mentioned in the literature, is the painter Jan van Goyen. Van Goyen had the misfortune to make several tulip deals on Jan 27 and Feb 4, 1637, just at the time of the crash. He both sold tulips and bought others from a burgemeester of The Hague, [Ravesteijn]. On Ravesteijn's death in 1641, Van Goyen still owed him f 897 for tulips, plus a painting of Judas worth f36 that had been part of the Jan 27 transaction. The fact that Van Goyen died bankrupt is usually mentioned as a sign of the fatal consequences of tulip-dealing. But Van Goyen's debts at his death on Apri127, 1656, were at least f 18,000, many of them incurred in his active speculation in land well after the fall in tulip prices. Van Goyen bought, sold, and developed property from the 1620s through the 1640s, and although this, no less than flowers, turned out ill for him, it does show that it was not tulips, or at least not tulips alone, that caused Van Goyen to die in penury twenty years after the crash. Indeed, when we look at bloemisten after the fall in tulip prices, the general impression is of relative financial health*." (Goldgar, 2008).

27 *One inconsistency in the 1631 Inleidinghe was that tracing for the pledgee, in some regards, was less broad than for the owner. Indeed, the pledgee could not invoke his pledge against a third acquirer having a legitimate title, irrespective of whether the acquirer had paid for the assets or not. Without pledge, the seller could trace his assets with a third acquirer with a legitimate title, and also when the latter had paid for the assets. But if the subsequent sale had been made at a market, the holder was compensated for the price which he had paid. As a result, in some respects pledge procured fewer rights than the default contract of sale. Grotius seems to have struggled with this. In a 1638-9 annotation, in preparation for a new edition of the Inleidinghe, Grotius restricted the forfeiture of the seller-pledgee's right to acquisitions by third parties on the basis of an onerous title... Another source, a jurist's advice of 1641 mentions 'several' decisions by the Court of Holland and the High Court of the Dutch Republic which permit tracing by an unpaid seller against third parties. Both sources depict the claim of the unpaid seller as a reivindicatio. In another Amsterdam turbe, of 1649, the interviewed proctors confirmed the unpaid seller's droit de suite against any holder, now adding that they had seen this being imposed by the aldermen-judges. A swift reception of Grotius' ideas can be explained when considering the earlier practice of third-party seizures. In procedural terms, the embracing of Grotius's views did not change a lot. But it seems that on the level of substantive law, the newly devised position of the unpaid seller was soon considered too powerful. For example, the Amsterdam aldermen felt obliged to intervene when several trials were conducted on the issue."* (De ruysscher and Kotlyar, 2018).

28 "*On 6 Nov 1643, the Amsterdam City Council issued an ordinance establishing a Chamber for insolvencies. It formulated a liquidation procedure which was applied to all types of insolvency and which went further than the Antwerp solutions. Lawsuits on liquidation would henceforth suspend the public sale and should be brought before the Chamber, which also managed the evaluation and payment of the creditors' claims. This was not the case in Antwerp, where the estate was usually managed by an official whose actions were not hindered by litigation of involved parties before the City Council. The Amsterdam ordinance also encompassed principles of the Antwerp costuymen, such as comparable rules for ranking creditors. Therefore, references to the*

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Antwerp law book were no longer necessary in bankruptcy cases after 1643. Following these and other legal interventions by the Amsterdam aldermen, the direct need for legal borrowing disappeared and the 1613, 1624 and 1639 editions of the Amsterdam Willekeuren did no longer include the excerpts of Antwerp law which had been attached to the 1597 edition. This phenomenon can equally explain why the mentioned practical treatises and histories of Amsterdam contain virtually no references to Antwerp law." (De ruysscher, 2008). "*[T]he ordinance for the Desolate Estates Chamber was not published until the 6th Nov 1643, and the 12th subsequent Commissioners began to exercise their functions. Alzoo was therefore the foundation of a fixed and regular bankruptcy law in Amsterdam. That first attempt was still flawed, but it would not have taken many years before one would again lay hands on the plow to continue the further clearing of that neglected field... in that year the activities in insolvent estates were transferred to Commissioners, while probably the manner of doing business remained largely the same. The curators were appointed to a limited number by Aldermen*." (Moll,1879). [Translated using Google.]

29 "*Krelage (1946) supplies prices of hyacinths during the 18th and 19th centuries. Hyacinths replaced tulips at the start of the 18th century as the fashion-able flower, and once again a large effort arose to innovate beautiful varieties. Krelage provides long price series for many hyacinths after their introduction. In table 4, 1 have mainly selected the price patterns for bulbs carrying particularly high prices at the time of introduction. Note that the pattern is similar to that for prized tulips in the 17th and 18th centuries. Within 3 decades, prices of even the highest-priced bulbs usually fell to 1-2% of the original price. Both originally highly priced and inexpensive bulbs converged to a price of from 0.5 to 1 guilder. The average annual rate of price depreciation for bulbs valued at more than 100 guilders (eight observations) was 38%, somewhat faster than the depreciation rate for tulip bulbs. For bulbs valued at 10-80 guilders, the annual price depreciation averaged 20%. Modern Bulb Prices Currently, new flower bulb varieties are also highly valuable. Typically, however, new varieties are reproduced in mass by the bulb's developer and marketed at relatively low prices only when a large quantity of bulbs has been produced. Hence, prices for prototype bulbs are usually unavailable. In the few cases in which a prototype bulb does change hands, transactions prices are not announced. Information provided by officials at the Bloembollencentrum in Haarlem indicates, however, that new varieties of 'very special' tulip bulbs currently sell for about 5,000 guilders ($2,400 at 1987 exchange rates) per kilogram. A small quantity of prototype lily bulbs recently was sold for 1 M guilders ($0.48 M at 1987 exchange rates). Such bulbs can now be reproduced rapidly with tissue growth techniques, so they also would be marketed at relatively low prices*." (Garber, 1989). "*Sometimes the warning was specifically about flowers. Momus was right to be concerned in the Olympian council of the gods about the potential resurrection of Flora. A 100 years after tulipmania, in the 1730s, the hyacinth was in the ascendant. Prices similar to those paid in the 1630s were being paid in the 18th century for these fragrant flowers, valued for their early blooming, their scent, the variety within one flower, their durability, and of course their rarity. In 1713 one British traveler, Robert Hale, brother of the dean of Bristol, visited the nursery of 'the famous Flowerist of Harlem', George Voorhelm, but came away disappointed: the hyacinths were "so mighty deer yt I did not venture to buy any." But in this situation the Dutch could easily remember the example of the tulip. A long and comparatively impenetrable satire on certain liefhebbers of hyacinths, Flora's Bloem-Warande in Holland, noted pointedly that if Flora was great in 1634-7, she was even greater in 1720-30, not to mention in 1731-4, which the authors had just experienced. The satiric journalist Justus van Effen made similar remarks in his Hollandsche Spectator; in the guise of a worried weaver in Haarlem, he reminded his audience in dialect of the problems with the tulips a hun-dred years earlier—and 'now we are experiencing the same times all over again.' The bulb grower E. H. Krelage was in a comparable mood when he denounced an apparent gladiolimania in 1913, although his fear was more for the reputation of his own industry than for the health of the economy or the sanity of investors."* (Goldgar, 2008).

30 *"The guiding principle is not the U.S. 'fresh start,' but the old Roman maxim 'pacta sunt servanda'—contracts must be fulfilled. Only through a new agreement with creditors to replace the old defaulted obligations could debtors escape lifelong liability*." (Kilborn, 2006)."*Mistreatment of debtors under the early Roman Republic, as reported in later authors, probably reflects the primitive ruthlessness of unsatisfied creditors whose standards were institutionalized in the Twelve Tables. According to Aulus Gellius (c.123-169), insolvents were once sold abroad or executed; debtors of multiple creditors were reportedly dismembered. Customary law later mitigated these practices. Execution on the person of the debtor was restricted in Rome in 326 B.C., in Ptolomaic Egypt in 118 B.C. and in Roman Egypt in A.D., although personal execution survived in Rome, Egypt and elsewhere. Torture of debtors is even reported in Justinian's time*." (Pakter, 1984)."*[I]n Roman Law where scholars have traced to 118 B.C. a crude form of bankruptcy liquidation, under which the estate of a defaulting debtor was sold in one lump sale to one buyer who would pay the creditors a percentage of the debts, but under which the debtor got no discharge of unpaid balances. If this remedy was crude, so were the debtor's alternatives. He was liable for his debts with his life and body; if he did not pay, he was either killed, made a slave, imprisoned, or exiled. By the time of the Twelve Tables (450-451 B.C.), which were supposed to improve the debtor's position somewhat by putting him before the public three times in the hope that someone would pay his debts before such dire consequences were visited on him, it was provided that: 'when a defendant after 30 days have elapsed, is brought into court a second time by the plaintiff, and does not satisfy the judgment.. the plaintiff, after the debtor has been delivered up to him, can take the latter with him and bind him or place him in fetters; provided his chains are not of more than 15 pounds weight; he can, however, place him in others which are lighter if he desires to do so... After he has been kept in chains for 60 days... he shall be condemned to be reduced to slavery by him to whom he was delivered up; or, if the latter prefers, he can be sold beyond the Tiber... Where a party is delivered up to several persons, on account of his debt... they shall be permitted to divide their debtor into different parts, if they desire to do so, and if anyone of them should, by the division, obtain more or less than he is entitled to, he shall not be responsible.*" (Countryman, 1976). "*Under Justinian, assets were distributed pro-rata among creditors (Cod. 7.72.10.1). This may also have been true in classical Roman law, although the relevant text is partially interpolated (Dig. 12.6.61 [Scaevola]). Even the Twelve Tables, as reported by Gellius, which excused creditors for taking more than their share of the debtor's body, imply a crude awareness of rateable distribution*." (Whitman, 1996)

31 "*The underlying prevailing view, linked especially with Blackstone, was that credit was unjustified and, indeed, almost a species of fraud. In the commercial context, however, reality eventually forced the recognition of credit as a necessary evil. Of course, once credit is used, problems with repayment can develop even for the best-intentioned debtor, because of accidental and unforeseen losses. In order to encourage risk-taking, which was in the good of the nation, exposure to such enterprise risk needed to be limited. Since the corporate form of organization was not then generally available as a risk-limiting device, the bankruptcy discharge was used to perform the same function. This whole line of argument is wholly inapplicable, of course, to non-merchants, to whom the*

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general principal that credit was 'bad' continued to apply. Since non-merchants were considered to be at fault for having used credit in the first place, society was not inclined to forgive them for any consequential losses via discharge of debt." (Tabb, 1991). "*The problems arise from British bankruptcy law, which confined the possibility of bankruptcy to firms engaged in trade, excluding farms, factories, and the other professions. The latter were covered by the much harsher law of insolvency, but in case of difficulty they did what they could to come under bankruptcy law. To do this, they had to be engaged to a significant extent in trade, stop payment on debts amounting to over £100, and refuse in front of witnesses to pay a legitimate creditor.*" (Neal, 1998).

32 "*The early English bankruptcy laws did not relieve, but rather augmented, the ranks of imprisoned debtors. The first such law, enacted in 1542, was applicable to individual debtors who 'flee to parts unknown, or keep [to] their houses, not minding to pay or restore to any of their creditors, their debts and duties.' It provided for involuntary proceedings only, in which all of the debtor's property should be seized and sold for distribution to creditors the debtor should be imprisoned, and all remedies were preserved to creditors for the collection of balances unpaid in the bankruptcy proceeding.*" (Countryman, 1976).

33 "*In most parts of Europe, moreover, those restrictions grew in scope and force during the 16th and 17th centuries. In France and Italy, as Walter Pakter has observed, bankruptcy was 'progressively criminalized.' [Pakter (1988).] The same was true of England and the Holy Roman Empire, which set about vigorously penalizing 'fraudulent' insolvency. Particularly in the early 17th century, bankruptcy was everywhere perceived as a growing, and dangerously immoral, practice, and was sanctioned. Thus, the early-modern French kings made ever-intensifying efforts to guarantee that merchants would not try to escape the shame associated with their act. Particularly interesting is a series of royal ordonnances, from 1490 to 1673, that forbade the practice, permissible under Roman law, of declaring bankruptcy through an attorney. The idea that one could declare bankruptcy through an attorney ran counter to the great common European policy of inflicting personal humiliation directly upon the debtor himself. Declaration per attorney, as a leading French author thus explained, simply spared the debtor too much shame. Accordingly, French law required bankrupts to appear before a judge in person, and 'bare-headed and with their clothing hanging open [to expose their naked bodies], to mark and augment their infamy.' This remained thoroughly in the old Christian tradition—so much so that a late—17th-century French author took it as natural to begin his treatise on bankruptcy with a disquisition on Christian charity.*" (Whitman, 1996). "*In the same period, bankruptcy was progressively criminalized in France and Italy. In 1582, Tuscany, while under French influence, promulgated imprisonment of insolvents who could not prove good faith*." (Pakter, 1988*).*

34 "*The 1543 statute tried to prevent creditors from cutting each other's throats. A temporary apportionment by rate was to be enforced and the ability of creditors to take advantage of every available remedy, including private negotiation with the bankrupt, was suspended, not extinguished, for an unspecified time. The bankrupt's liability was not reduced. He was treated as an offender, and hence the statute has been described as 'quasi-criminal.' His body, lands, and goods were liable to any valid recovery once creditors had received their ratable share of available assets. Creditors, who were not 'fully satisfied and paid or otherwise contended', might subsequently seek satisfaction through all the remedies available at law. The situation would revert to that described by Brinkelow as 'first come, first served.' A bankrupt would then be at the mercy of his creditors despite the apparently bare cupboard of resources available for restitution. The only restriction was that which barred creditors from recovery against assets distributed by virtue of actions taken under authority of the statute... A bankrupt could be summoned by proclamation and outlawed if he did not appear within 3 months 'or as soon after as he conveniently may.' This allowed for the difficulties of distant traders and presumably gave the absentee, assuming that he heard about the proclamation, time to explain himself in writing and arrange a date for his return. Otherwise, there were few concessions. Bankrupts could be imprisoned. Yet new powers were not provided to deal with traditional defenses of persons who kept to their houses. This may be reflected in an Elizabethan complaint made by some French merchants.*" (Jones, 1979).

35 "*After 1532 the mercantile court of Genoa applied contracting rules from a variety of sources, including local customs, Roman law, and the maritime law of the Consulado del Mar. In Venice, in 1553, Benvenuto Stracca published De Mercature, a treatise that gave a survey of extant laws pertaining to long-distance trade, albeit without any intention of consolidating a universal commercial code. The concept of a border-crossing lex mercatoria was a 17th-century idea, promoted by English merchants who struggled against the king's attempts to obtain jurisdiction in commercial matters [Basile et al. (1998, p124).] The most prominent advocate was Gerard Malynes, who in 1622 published Consvetvdo, vel Lex Mercatoria (The Ancient Law Merchant). On closer inspection his book is not a comprehensive legal code, but rather a survey of local and foreign customs, not unlike the collections of commercial laws and customs that circulated in Italy and the Low Countries in the 17th century [Munro (2003, p555).] In a similar vein, half a century later, the French Ordonnances sur le Commerce de Negotians & Marchands explicated the legal power of merchant books, the central role of arbitration in the resolution of conflicts, and the primary place of local courts in commercial litigation. It was surely no coincidence that the compiler of the Ordonnances, Jacques Savary, was the first of several French writers to publish lengthy books on commercial practices in the Dutch Republic, and Amsterdam in particular*." (Gelderblom, 2013).

36 "*Assignability is not negotiability. Assignability only puts the assignee in the shoes of the assignor, whereas negotiability allows financial instruments to pass from hand to hand as currency, as though they were money, despite the fact that they are far from that and are not even fiduciary media, for endorsement and acceptance are purely discretionary, depending on the perceived credit-worthiness of the names. Where such an instrument is transferable in this way and is also capable of being sued upon by due course of law by the pro tempore holder for value, then it is a negotiable instrument. Thus, the essential difference between a negotiable instrument and one merely assignable is that the holder for value for the time being of the former may have an even better right than the original payee. For example, a man who innocently takes a stolen banknote in payment of a lawful debt can nevertheless demand and obtain payment on it at the bank of issue. To be fully negotiable a credit instrument must, first, be transferable as by the custom of merchants, i.e. it must be recognized as transferable in the ordinary course of business and simply by delivery or by endorsement and delivery; and, secondly, it must be capable of being sued upon by the holder for the time being. The bona fide transferee for value of a fully negotiable instrument acquires the property in it and the right to sue on it, even though, to take an extreme case, it may have originally been procured by fraud, and even though the person from whom he gets it has and had no title to it. At common law choses in action like debts were not in general assignable even when the parties contracted expressly for themselves and assigns; but, in particular, bills obligatory and bills of exchange were excepted from this general rule, because they were recognized as assignable by law merchant,*

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which was the highly efficient custom of merchants, created by the merchants themselves in much earlier times; and custom, when general, was ipso facto common law. and if particular and reasonable, was received by it. As Hobart, C said, in 1622, 'the custome of merchants is part of the common law of this kingdom of which the judges ought to take notice: and if any doubt arise to them about there custome, they may send for the merchants to know there custom.' Coke was repeating Hobart when he declared in 1628, the law merchant (as hath beene said), is part of the towel of this realme.' In 1613 it had been decided in King's Bench that the acceptance of a bill of exchange for value received amounted by the law merchant to a promise to pay on it, provided the drawee was stated to be a merchant at the time he accepted... At the outset of our period, the Court of Admiralty still had jurisdiction over bills of exchange, but by 1564 this was being disputed by the Westminster courts. Despite an agreement in 1575, this contest still remained unsettled until 1632, when the Privy Council decreed that Admiralty have jurisdiction over contracts made beyond the sea and the Westminster courts over those made in this country. This, however, seems to have left in doubt the position regarding many outland bills... Meanwhile, as unsealed bills obligatory came into increasing use in English business circles, litigation arose from them in the common law courts. Already in the second half of the 16th century their books of entries contain pleadings for this purpose. Assumpsit already allowed a plaintiff to sue for damages sustained through non-payment of a debt. Now the indebitatus count, indebitatus assumpsit, came in to provide a new remedy for the non-payment itself. In 1566 occurred the first case so far discovered of assumpsit brought on an outland bill of exchange, and in 1602 the first case of assumpsit on a bill to be reported. Previously actions for debt could be brought only in the Common Pleas; but by the action of indebitatus assumpsit the King's Bench sought to entertain pleas of debt. As King's Bench was also a cheaper and swifter court than Common Pleas, much business was momentarily captured, but at first all such cases were reversed by the Court of Exchequer Chamber. This unseemly situation, Plucknett tells us, lasted for almost a generation, until the question was finally referred to that other assembly, also called the Exchequer Chamber, consisting of all the judges of all 3 courts assembled for discussion, in Slade's case (1602). From this assembly the case was then referred to a conference of judges at Serjeants' Inn, with Coke, the attorney-general, for the plaintiff, and Bacon for the defendant. The final resolution was that indebitatus assumpsit was an alternative to an action of debt, at the election of the plaintiff. This being so, unsealed bills could be sued upon by the ordinary course of the common law, without pleading the custom of merchants, but only if a quid pro quo could be proved. In other words, even unsealed bills were legally valid, provided they were for value, i.e., if consideration had been given for them. In cases upon inland bills of exchange, no special difficulty was met in pleading in terms of the common law. The general practice was to rest such cases on the custom of merchants, by which bills passed from hand to hand as if currency. By pleading this custom, the assignability of inland bills could be established in law... But in order to have this remedy one had, as late as 1632, to be styled a merchant, for it was ruled in the King's Bench, upon a bill of exchange, between party and party who were not merchants, there could not be a declaration upon the law of merchants, though there might be upon the assumpsit, giving the acceptance of the bill as evidence of the acknowledgement of the debt. Thus, an action on the case upon the custom was not always as satisfactory as an action for debt. To ensure the possibility of an action for debt, all one had to do was to have inserted in the bill a value-received clause, for if the drawer mention 'for value received', then he is chargeable at common law; but if no such mention, then you must come upon the custom of merchants only... In fine, it is manifest that English inland trade in the period 1560-1660 was already conducted on credit and that the financial instruments chiefly employed were the old-established bills obligatory and the newly invented bills of exchange, the majority of both being informal until the legal developments of the second half of the 17th century." (Kerridge, 1988). *"[Bills of Exchange were] payable, as far as the courts were concerned, to the creditor 'or his assigns', but apparently not — in medieval— 'to bearer.' Assignment by simply writing the name of another payee on the back of the bill was sufficient, however, to create a thriving discount market, in which an assignee could have his bill cashed by a third party before it fell due; and, proclaiming that 'merchants can no more be without exchanges... than ships at sea without water', Sir Thomas Gresham built the first Royal Exchange as a centre for the business in 1566."* (Harding, 1966). *"The medieval bill of exchange does not seem to have been assigned to third parties either in England or on the Continent. The earliest evidence of negotiability comes from the customs of Bruges (1527) which recognized the rights of third parties in the case of bills drawn in favor of 'bearer') There is no clear evidence of negotiability in 16th-century England, but early in the 17th century various types of Exchequer order were being assigned to third parties by endorsement. Malynes in his Lex Mercatoria (1622) does not refer to the negotiability of the bill of exchange."* (Feavearyear, 1963). *"Prof. Tawney has shown how the booming land market of Elizabethan England, with the consequent increase in the business of drawing up bonds and arranging mortgages, provided much profitable labour for the scrivener. It seems clear, too, that many of the profession turned from the legal work which would today be described as conveyancing to a type of financial business which contemporaries called 'scrivening', those engaged being sometimes distinguished as 'money-scriveners.' As is usual when specialized functions are gradually appearing, early practitioners covered a wide field."* (Coleman, 1951). *"When the common-law courts first began to take jurisdiction, as compared to the staple or Admiralty courts they were in a very backward state. Assignment as such was unknown, and it required 150 years of travail before the idea of negotiation in its present sense appeared. Still burdened with the problem of forms of action, the courts had to develop a classification as well as a theory of actions on commercial paper. The history of the manner in which the common-law courts solved these problems is well developed elsewhere[See Street (1906); Holdsworth (1937, p159)]... Apparently realizing their inadequacy to deal with the subject matter, the first reported cases beginning about 1600 show that the courts were willing to take evidence as to the nature of the law merchant. [Vanheath v. Turner, Winch 24 (C. P. 1621); Street (1906, p346); but this practice seems to have started at an even earlier date. See Holdsworth (1937, p144).]"* (Beutel, 1938).

37 *"In Vaughan's time the securities usually accepted by the bankers of Antwerp for English loans were those of Italian mercantile firms established in London, such as the houses of Vivalde and Bonvyce. This is evidence of an exotic predominance in the embryonic London money market of the first half of the 16th century, a predominance which declined in the second half of the same century when Englishmen began to play an important part in international finance. Sometimes, however, even in the first half of this century, English merchants and members of the Privy Council guaranteed the integrity of the Italian house in London whose securities for loans were accepted in Antwerp. Antwerp reached the height of its prosperity between 1500 and 1560, and during this important period of European commercial expansion its great financial magnates, the Fuggers, Hochstetters, Welsers, Tuchers, Van Dalis, Prowens, Hoffemans, Lyndenas and Rantzaviuses appear to have been always ready to negotiate with the English royal agent. The wealthiest of these continental financiers were the Fuggers of Augsburg. 'The Fugger is never from me', wrote Vaughan to the English Privy Council in Sep 1546, 'the house of Bonvyce... pulls me hourly by the sleeve'; and it was with the firm of Fugger, which by 1508 had established an agency in Antwerp, that more than one*

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of the English royal agents, particularly Sir Thomas Gresham, the greatest of them all, conducted large transactions. Gresham commenced his loan operations in Antwerp in 1552, operations which have been described in great detail by Burgon. During the ensuing 15 years, with the assistance of Sir Richard Clough, his able and zealous Welsh 'factor', he raised in this great financial center many large loans for the Tudors. Before 1570 this famous 'Court banker of Elizabeth' had also succeeded in obtaining very substantial State loans in London, loans which are of considerable importance in the genesis of the London money market, and which prove that by the 'sixties of the 16th century Englishmen undoubtedly possessed the power to engage in high finance. [Evidence of the increasing importance of London as a monetary center is contained in an interesting letter from Gresham to Cecil, dated Antwerp, 12th May 1560. Gresham states that he is confident that large loans for the use of the State could be raised in England at interest not exceeding 5%. S.P. For., Eliz., 14. A little later in the same year Gresham informed Cecil of the large number of bankruptcies in Antwerp, the most startling being those of Lixhall and Fleachamore (ibid., 14, letter dated 30th Aug 1560); and in Sep 1561 he reported a great scarcity of money in Antwerp (ibid., 30, letter dated 2nd Sep 1561).]" (Richards, 1929).

38 "*The Act of 13 Elizabeth, c. 7 [1570], complains that despite the Act of 34 and 35 Henry VIII, c. 4 [1542], fraudulent bankrupts had much increased, and it was necessary to make better provision for suppressing them, and to declare who is to be deemed a bankrupt. The Act of Henry VIII does not, in terms, confine itself to traders. The Act of 13 Elizabeth does specifically relate only to merchants or other persons using or exercising the trade of merchandise, by way of bargaining, exchange, rechange, bartry, chevisance, or otherwise, in gross or by retail, or seeking the trade of living by buying and selling, and provides that if any person of that description departs the realm, or keeps his house, or takes sanctuary, or suffers himself willingly to be arrested for any debt not justly due, or suffers himself to be outlawed, or yields himself to prison, or departs from his dwelling-house, with the intent to defraud or hinder any of his creditors, he shall be taken for a bankrupt. The management of the bankrupt's property and affairs for the benefit of his creditors is entrusted to such 'wise, honest and discreet' persons as the Lord Chancellor shall appoint by commission*." (Levinthal, 1919). "*With the enactment of 1 Jac. I c.15, there were therefore 2 streams of law relating to attempts to convey away wealth from creditors; the Elizabethan, aimed at all debtors; and the Jacobean, concerned with the trader. The courts, whilst concerned with giving full support to the statutory enjoinder that interpretation should favor the creditor [§1], had made a firm stand against extending those acts by which a man might be made bankrupt; could not resist this chance and it was held that a deed fraudulent within either of the two statutes of Elizabeth was sufficient on which to found an act of bankruptcy."* (Cadwallader, 1965). *"[I]t is to be observed, that all the aforesaid statues and laws made against bankrupts, and for relief of creditors, shall be in all things largely and beneficially construed, &c. for the aid, help and relief of the creditors*." (Coke, 1797).

39"*The continuance of the war, involving loss of trade and shipping as well as high taxation, was followed by further events prejudicial to commerce. From 1594 until 1597 there was a great dearth, and the price of wheat and other provisions was very high. In 1594 and 1595 the quotation of corn was from 56s. to 53s. 4d. a quarter, rising sharply in 1596 to 80s. and finally to 120s. which was repeated in 1597. Tillage was described as being very greatly decayed, and bread-riots were frequent. The distress in rural districts was accentuated by the rise in rents that had taken place during the time of prosperity from 1575 to 1586. The wool-trade at the same time suffered, since in 1597 the Merchant Adventurers were expelled from Germany; and, for several years, it was difficult to obtain a market for wool. The situation was so serious that it was reported that this company was on the eve of dissolving, and the whole trade of the city was described as being much impaired and its traffic greatly diminished. The cumulative effect of these misfortunes was a period of considerable distress in 1597 and part of 1598, which approximated a crisis. That the Dutch succeeded in carrying on a trade with Spain, in spite of the efforts of Philip, produced great dissatisfaction amongst the mercantile classes in England. It was represented that 'we, for theire sake and defence entring into the warre, and being barred from all commerce and entercourse of merchandize, they in the meantime thrust us out of all trafficke to our utter undoing (if in time it be not looked into).' The difficulty, experienced by Elizabeth in endeavoring to obtain a loan of £150,000, is another symptom of the acute depression of the time. The mention of it made the citizens 'shrinke and pull in theire homes'; and, after efforts extending over 6 months, it was found impossible to obtain two-thirds of the sum required, so that the Queen was forced 'to descend to mean men' and 'pick up money here and there' as it could be obtained. Some return of confidence arose from the rumored peace negotiations; but the outlook again became overcast, through anticipations of a Spanish invasion and by the serious nature of the revolt in Ireland. The concluding years of the war made great demands on the Crown finances, more than a million and a half being spent in Ireland alone from August 14th, 1598*." (Scott, 1910a).

40 "*The Stannaries Court jurisdiction, like the Cost Book system of the present day, is founded on immemorial customs. Over 2,800 years past, B.C. 1,000, the Phoenicians are stated to have first reached this country, and to have instituted, with all the energy by which that adventurous people were characterized, a search for tin, copper, and lead along the coasts of Cornwall and others of our maritime districts. Cornwall seems indeed to have been made, owing no doubt to their conviction of its great mineral richness, the main point of their operations; and their intimate intercourse with the country can be easily traced by the antiquary of the present day, through ancient habits, names of localities, and words still extant, and evidently derived from Hebrew or Phoenician origin... The 'Customs' which first convoked the tinners of Cornwall, and organized them into a body enjoying the direct and special patronage and protection of the crown, no doubt arose from the remote and classical eras just now alluded to; and, consequently, upon the first foot-print of human civilization in the sands of time have been found some of those golden grains which now form the 'hour glass' and regulator of our mineral labors... Where a land-owner digs for, procures, and sells the ore of mines on his own estate, or a tenant, or joint tenants, or tenants in common of land work mines, either by their several means, or by a union of capital in one common fund, neither proprietors or tenants come under the denomination of 'Trader,' so considered by the bankrupt laws; but in those cases where a [tenancy] is established for the sole or chief purpose of mining as a primary object, or companies formed expressly and essentially to promote such speculation, obtain licenses to dig or work lodes, or leases of land, or minerals, or both, they are held by courts of equity to be trading partnerships [Crawshaw v. Maule (1803)]; but owing to the peculiar risks, difficulties, and expenses attendant on mining, they are considered such in a modified sense ; discipline is relaxed, and they possess the freedom of action which the law, under all circumstances, appears to accord, in a greater or lesser degree, to associations founded for mineral labor... To use the dictum of Baron Parke, 'A mining concern is a trading concern'... To form a scale by which the reader can estimate a priori the origin and antiquity of the Stannaries Court, it may be laid down that up to the granting of the charter by John [Charter, 3 John], and the confirmation and extension thereof by Edward I [33 Edw I], at the commencement of the 14th century, the*

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Stannaries were governed by custom founded on the notion of civil law, and commerce derived from the earliest adventurers, the Phoenicians, Greeks, Gauls, and Romans—that courts, for the arrangement of crown dues, and for the regulating of everything relating to mining, 'life, [limb], and land excepted,' were then permitted to be holden; such courts or local parliaments for the trial of Stannarie causes being constituted by certain Lords of tythings, to whom were allotted for the performance of their duties 'the toll-tynne' within those tythings; also that the mining associations of the period were established on the principle of 'doales' or shares, and under the direct authority of the court granted by Edward I., to determine all 'matters and causes' between tynners; and it further appears that the crown, jealous of the powers exercised in both the counties of Devon and Cornwall by the said tynners, who were then united in one body for the administration and regulation of mining, divided them into 2 sections, restricting the jurisdiction of each to its proper district, and apportioning to Cornwall 5, and to Devon 3 towns for the coin age of tin, permission being granted to every proprietor of the metal to vend the same to the public, unless the king himself should desire to become the purchaser. Other changes followed for the better regulation and extension of this system under Edw. III. and succeeding monarchs down to the reign of Elizabeth, all of which resulted in a quaternary division of the association or body of Tynners in Cornwall, such divisions being intituled after the 4 districts within the county where the principal operations in tin were carried on." (Bartlett, 1850). "*It may be sufficient here to say, that the common law jurisdiction of the Stannaries Court appears to be of very high antiquity, confirmed rather than created by Charters 3 John, and 33 Edw. I, and recognized and defined by many subsequent charters, statutes, and convocations of tinners. The working timers were taken under the peculiar protection of the Crown, under the appellation of 'Stannatores nostri', and seem to have been at one time exempted from all other jurisdiction than that of the Stannary Courts, 'except pleas of life land and member' (d), and the Warden was empowered to hold all pleas, not only between tinner and tinner, but concerning trespasses, plaints, and contracts, done or made in places worked in by tinners within the Stannaries. d: On this subject, see 3 Blacks. Com. 80; 4 Co. Inst. 230. Martin v. Marshall, Hob. 63; 2 Roll. Abr. 266. 1. 20. Perrott's case, 26 & 27 Eliz; 4 Inst. 87. Earl of Derby's case, 12 Co. 114. 8. C. 4 Inst. 213. Trelawny v. Williams, 2 Vern. 483. Hall v. Vivian, Mr. Smirke's Rep. of Vice v. Thomas, 37. Oppy v. Lord De Dunstanville, ibid. 38; Carew's Survey of Cornwall, Book 1,p. 17, ed. 1769. See also stat 22 Jac. 1, s. 21; 12 Car. I, §18 & §31; 22 Geo. II, art. 8, §3; 26 Geo. II, §9.*" (Collier, 1849).

41 "*The evolution of the law of compositions in general. The history of the compositions shows in an interesting fashion how an important private law-institution gradually gains international acceptance. Its roots reach far back to the days of Roman Law At the time of the Emperor Justinian two types of majority compositions were recognized. A debtor could generally obtain from the majority of his creditors a five-year moratorium which bound the minority. [Justinian's Code, VII, 71, 8. These moratoria by agreement with a majority of creditors must be sharply distinguished from the moratoria which could be obtained by special edict of the Emperor upon petition by the debtor, Justinian's Code 1, 19, 2 and 4, cf. Elster, Moratorium in 4 Stier-Somlo and Elster, Handwsrterbuch der Rechtswissenschaft, 1927, 124, and Feller (1933)]... From the middle of the 16th to the middle of the 17th century there had existed a previous period in English law in which the Privy Council had intervened to induce creditors to come to terms with embarrassed debtors, and in which the Chancery, especially Francis Bacon, through bills of conformity or injunctions, had compelled a minority of creditors to assent to a composition entered into by the debtor with the majority... Most of the cases cited involved primarily a moratorium. The similarity of this practice with the imperial intercession under the Roman law, and the French lettres de répit, striking.*" (Riesenfeld, 1947).

42 "*David Smith (2010) accounts for this long trial-and-error process, which extended from the 1590s until the 1620s, whereby Equity courts—in the name of human charity—tried to mitigate the harshness of the Common law and impose accommodation on creditors. Under Elizabeth I, petitions by debtors were addressed to the Privy Council which typically transferred them to the Court of Request.*"" (Sgard, 2014). "*Bills or petitions to the Crown, courts or Chancellor from debtors seeking to force composition on a dissenting minority of their creditors were to some extent controlled by the Chancellor through the use of the injunction. On a favorable answer to a debtor's request such creditors would be instructed not to sue the debtor in the ordinary courts and to accept the composition agreed upon; such directives becoming known as 'Bills of Conformity.' An example of such a bill, can be found in Ramsey v. Brabson... That such machinery was capable of making endless delay for a creditor is obvious [See Malynes p. 160, 'Bills of conformity... of late years used in the Chancery... are made void, because of divers great abuses committed in the defense of Bankrupts, who to shelter themselves from the rigor of the Common laws, did prefer their Bills of complaint in Chancery, which was in the nature of a Protection, and the Parties broken, became to be relieved for easier agreement with their creditors, albeit at charges another way extraordinary.'], and if for a time it served to supplement the compositions enforced by the council [But the council intervention also caused delay, a good example of which can be seen from letters between the council and the Mayor of London concerning one Nicholas Jones], yet it was out of place amidst the growing technicality of the bankruptcy laws.*" (Cadwallader, 1965). "*Central to the history of the bill of conformity was the Court of Requests, to which Elizabeth I and James I referred petitions for administration and enforcement. The royal desire to urge subjects to charity and concord motivated these references, and the equitable courts were receptive. The development of the bill of conformity coincided with their increasing assertiveness to repair the 'strict' course of the common law. These impulses, as shall be demonstrated, were undermined in James's reign when critics insisted upon the king's duty to protect his subjects' property and cited the behavior of unscrupulous debtors who manipulated the legal system to defeat their creditors. To subjects aggrieved by the use of the law's violence to seize their property, the king himself appeared to facilitate a theft. Like several other features of royal government that became increasingly controversial, such as monopolies and concealments, James inherited tolerations from Elizabeth. They were not an innovation of Jacobean government, and Treiman has argued that they imitated arbitration practices among merchants modeled on continental example. The problem, as Treiman observed, was that such informal agreements could be overridden by unhappy creditors using formal legal process. Yet, overlooked in the reign of Elizabeth was the enforcement provided by the Court of Requests, alongside Chancery, of compositions already reached by creditors and debtors in private arbitrations [Metcalf v. Bright, TNA REQ 1/16, f. 918r.] Requests was an equitable court for civil causes that had emerged from the jurisdiction of the Privy Council in 1483. Most of the bench and typically half of the 4 master ships were occupied by common lawyers. Originally tasked with the Council's jurisdiction for the relief of poor men's causes, the Masters of Requests were both receivers of petitions to the king and judges in the Court of Requests. This overlapping responsibility likely facilitated the enforcement of conformity in that court. Already in the reign of Elizabeth I there is evidence that petitions were being exhibited to the Privy Council for arbitration and referred to the Court of Requests... Under James I, Requests was crucial in the development of conformity as his new subjects sought relief by petition from the king and his equitable courts. This*

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willingness to entertain insolvent debtors connected to James's belief that the king was the source of justice in the kingdom along the...The bill of conformity allowed debtors to engage in their trade, restore their finances without danger of arrest, and begin anew with a discharge, since all their creditors were bound to a settlement. The bill of conformity's application to all insolvent individuals, voluntariness on the part of the debtor, and discharge of liabilities contrasted with the draconian terms of the bankruptcy statutes then in force." (Smith, 2010).

43 "*Following the defeat of the Armada in 1588 there was a serious trade depression until 1603. In 1598 the Russia Co again proved unfortunate and suffered heavy losses in trade and ships. In 1600 a group of its members formed [EIC], the capital coming largely from Drake's privateering in his voyage around the world. [EIC] yielded large profits and the Russia Co again proved successful chiefly in its whaling voyages. Trade with Africa was reopened and during the period from 1603-1620 there was a marked revival of overseas commerce and many new companies came into existence. Two Virginia companies were granted charters in 1606, and in 1619 a company was formed to trade with and occupy Guiana. In 1620 a New England company received its charter, and in 1621 the Nova Scotia venture was begun. In the period from 1609-13 [EIC] yielded a profit of 234%, while the Russia Co earned 90% annually in the years 1611 and 1612. From the foundation of [EIC], the word 'company' was invariably attached to the name of the body established, and the more and idea of 'society' gave way to it. The full title of [EIC] was 'The Governor and Co of Merchants of London trading into the East Indies.' In the newly organized Africa Co incorporated in 1618, there was a governor, a deputy-governor, and 12 directors, the use of the term 'director' appearing in the charter, for the first time. [EIC] required new members to pay a premium in addition to the agreed price, 'a certain sum for his freedom'... The original plan of making calls on shares confined membership to the wealthy. Therefore, two methods were adopted of attracting the small investor, that of dividing the shares, and that of admitting 'under-adventurers,' the smaller investor purchasing a part of a member's share.*" (Walker, 1931). "*From 1617-20 as much as £1.6 M had been expended by the Second Joint-Stock. A considerable portion of this amount had been provided by the calls on adventurers, some of it consisted of profits made on the first and second expeditions of this series and again reinvested, while the remainder was borrowed. A change of fortune began with the crisis of 1620, which assumed a form which vitally affected the company. It was the prevalent opinion that the distress was due to the exportation of bullion, and it was natural, while such views were accepted, that [EIC] should be regarded as a prime offender... Misselden, in tracing out the explanations of the prevailing want of money, mentions as 'a special remote cause' the large amount of capital employed in India which had not as yet been returned to England in the tangible form of divisions to the adventurers.' He takes note of the contention of those that 'presse, or rather oppresse that plea of equity, that is that all subjects should bee alike free to be merchants in all trades," to which he replies it is against public utility that all should be merchants adding that it had ever been the policy of the State "to reduce trades to corps and societies',' He points out that the East India trade is far beyond any other', and that to carry it on without government is 'like men making holes in the bottom of a ship in which they are passengers'.*" (Scott, 1910b).

44 "*At one time many of the adventurers had become so discouraged that they were inclined to abandon the whole enterprise. At length in 1606 the expedition returned, and it was known that a considerable profit had been obtained. Steps were taken to begin the winding up of the stock by clearing accounts and making divisions (on account of principal and profit) to the members. It was only in 1609 that the liquidation was completed, and the total divisions came to 195%... It is necessary to note however that other and earlier under takings, such as the Russia Co, the Mines Royal, and the Mineral & Battery Works, had each of them capitals which were relatively permanent. It follows that the terminable stocks of this undertaking are to be ascribed to something exceptional in its position. The explanation is to be found partly in the state of feeling at the time of its incorporation, partly to certain personal characteristics of the adventurers. Attention has already been directed to the important part played by the Levant Co in the foundation of the younger society, and just about 1600 there was much division of opinion amongst the members as to whether the former body should be still conducted on a joint stock basis or should be reorganized as a regulated enterprise. Traces of this point of view are to be found in the East India charter, which, while intended primarily for a joint-stock body, has many expressions that would be more appropriate to a regulated one. Instances of this tendency are to be found in the importance given to the freedom and in the stipulations describing the monopoly as granted to the members and their factors. In the second place the groups from which the adventurers were drawn is deserving of attention. A few were members of the Russia Co and of other companies with a comparatively permanent capital. There was a large body, amongst whom the most prominent was Watts, which had been accustomed to the privateering syndicates of the period, in which it was convenient to treat each separate cruise as, financially, a distinct enterprise. Again the influx of the Levant merchants was due to the lack of opportunity for profit in their own business. This was regarded as temporary, and these merchants no doubt contemplated withdrawing their resources from the Indian trade when the outlook in the Mediterranean became less overcast. For these special reasons [EIC] was somewhat exceptional in adopting the system of terminable stocks.*" (Scott, 1910b).

45 "*At first [EIC] could hardly be considered as a joint-stock company; for in the early years of its history the voyages were separate and not necessarily permanent ventures of the subscribers, who contributed varying amounts to the capital required for the expedition and received a proportionate share of the proceeds when the expedition returned. A shareholder in one of the early expeditions might or might not be a shareholder in the next. In 1613 the first so-called joint-stock was subscribed; but the term is misleading; it was not a subscription of permanent capital. As late as the middle of the 17th century subscribers wished to carry on separate trade in ships of their own, but the company protested and in 1654 a decision of the council of state was given 'in favor of joint-stock management and exclusive trading'.*" (Michell, 1903). "*These results were considered very favorable, and it is recorded that they put new life into the trade. It was recognized that the co-existence of separate stocks was disadvantageous, and it was decided in 1613 to make a fresh subscription on the basis that the capital adventured would be used for 4 successive voyages. The proposal was well received, and as much as £0.40 M was underwritten in a fortnight,' while the whole amount paid in was £0.42 M. It was to be provided in annual in statements of equal amounts which were to be employed in dispatching a succession of voyages for 4 years. The idea of a series of expeditions with one capital was a natural development of the previous interrelation of two voyages and it is possible that the change of title may have been thought desirable to avoid the associations that might be connected with the name of a '13th voyage.' Whatever may have been the reason, instead of '13th voyage,' the term joint stock was used, and so the whole series of expeditions was described as the 'First Joint-Stock.*'" (Scott, 1910b). See list (Scott, 1910b, p123-6).

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46 *"In 1618 the 13th voyage had a number of assets as yet undistributed. Since, after 150% had been divided, the stock was sold from £214 to 218, it was expected that the 'remains' would realize a large sum, but the conflict with the Dutch company precluded the making good of this anticipation. There was only one case in which it was recorded that an adventure was sold below par. This was in 1601, when a share in the first voyage changed hands at only 90% of the sum paid in. To some extent the sale was a forced one, since the original adventurer was not disposed to pay a further call, then due."* (Scott, 1910a).

47 "*English Poor Laws are the single most influential legal source in the historical development of the poor laws of the United States. It should not come as a surprise that the English Poor Laws were so influential since American Colonial law and the subsequent development of the poor laws of the original 13 States grew out of the English legal tradition. The earliest English Poor Laws: the Statutes of Labourers of the 1350s; the Poor Law Reforms of the 1530s; the Statute of Artificers of 1563; and the Elizabethan Poor Law of 1601 when taken together constitute the main foundation of the English poor relief system... These first English Poor Laws from 1349 to 1601 regulated both the working poor and the non-working poor by forcing every possible person to labor upon pain of imprisonment Poverty was perceived not as a social or economic problem but as an individual problem. Lack of adequate compensation or employment or someone to provide child care was not a recognized reason not to work. The law was simple: poor people worked or they went to jail. The responsibility for making sure people worked was placed upon the local authorities, as was the responsibility for assisting those poor who could not work and who were legal residents. Reforms of the laws regulating the poor continued and in 1601, Parliament passed An Act for the Relief of the Poor. This act ordered local authorities called overseers of the poor to administer and enforce the poor laws. These overseers forced to work 'all such persons, married or unmarried, having no means to maintain them. The poor who would not work were jailed. The 1601 Act authorized overseers to bind out or apprentice the children of the poor who were not 'thought able to keep and maintain their children. Only the 'impotent poor' were to be cared for and housed. The 1601 Act also obligated private families to accept 3 generational responsibility for their poor relatives before the public assumed-any responsibility: 'the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work... [were to] relieve and maintain' their relatives. Finally, local justices of the peace were charged with ensuring compliance with the 1601 Act upon pain of fines.*" (Quigley, 1998). "*After many ineffectual laws for the support of the poor, an act was now passed [43 Eliz. c. 2] prescribing nearly the present method of collecting the poors rates, by overseers in every parish: yet notwithstanding the various alterations and amendments which the laws relating to the poor have undergone, it is still the opinion of every observing person, that the poor might be taken care of at a much lower expense than by the present method; and that the shameful nuisance of common beggars and vagabonds might also be effectually prevented, were a proper committee of gentlemen and merchants, with one or two able and honest lawyers, to undertake the truly arduous, though not absolutely impracticable task, with patience and steady resolution.*" (Macpherson, 1805).

48 "*Until the 1670s, policy was empirical and intermittent. Merchants could export wheat if the price was below 32s a quarter. In 1670 the emphasis switched, and export was in general allowed, with an understanding that the policy would be suspended if harvests failed... While the corn market might be the farmers' preserve, the wool market was reserved for the clothier. Here 17th-century policy consistently aimed at a bountiful supply of wool at low prices that helped the manufacturer to keep spinners and weavers busy, accepting it as axiomatic that it was uneconomic to export a primary material when it was possible to export it in a manufactured, and therefore more profitable, form. Scores of Acts prohibiting the export of wool testified to this belief, and it is fallacious to suppose they were of no effect. Smuggling there certainly was, especially to France, but the laments of the Dutch clothiers and the trend of Dutch industry leave no room for doubt that large sections of the old Dutch woollen export trade were killed stone dead."* (Wilson, 1984). For example, "*Although the preparation of yarn was chiefly carried on in the villages and smaller towns, it also continued to find occupation for a considerable amount of semi-pauperized labor in the larger towns. Spinning indeed was the main resource of those whose duty it became under the new Poor Law to find work for the unemployed, and in institutions, such as Christ's Hospital, Ipswich (founded 1569), children were set to card and spin wool from their tenderest years. At Bury in 1570, an order was made by the town that every spinster was to have (if it may be) 6 lb. of wool every week and to bring the same home every Saturday at night, and if any fail so to do, the clothier to advertise the constable thereof for the examination of the cause, and to punish it according to the quality of the fault.' And an order was made in 1590 at Ipswich with a view to finding employment for the poor, that no clothier should put out more than half his work to be carded or spun, woven, shorn, or dressed out of the town (if he could get it as well done in the town), without special license from the bailiffs.' The spinners, who never seem to have possessed any organization of their own, were very liable to oppression on the part of their employers, not only through low wages, but also through payment in kind and the exaction of arbitrary fines. It is not surprising, therefore, to find them frequently accused of keeping back part of the wool given out to them and of making up the weight by the addition of oil or other moisture to the yarn. The natural connexion of these two evils found recognition in a Bill presented to the Parliament of 1593, which while imposing fresh penalties on frauds in spinning and weaving, proposed at the same time to raise the wages of spinners and weavers by a third." The Bill failed to pass, but the regulation of wages in the interest of the spinners continued to be a problem of poor law administration during the next half-century.*" (Page, 1907).

49 "*Gilbert v. Brett (1604), commonly known as the Case of Mixt Monies... is the only reported common law decision which considers squarely how the debasement of a commodity currency should affect the performance of a monetary obligation. It has long been treated as the leading common law authority for the proposition that money is tendered and received at nominal rates in discharge of debts. The Case holds that an obligee, who is owed a monetary debt, bears the risk of changes in the monetary standard between the date of contract and the date it falls due for performance. If the obligee sued on the debt, then he would only be entitled to be paid money with a legal value equal to the nominal value of the debt when it was first contracted. No allowance would be made for the change in the weight or fineness of the coinage, or any consequential change in its purchasing power. The Case arose out of Elizabeth I's debasement of the Irish currency in 1601. It was referred to London for a ruling from the assembled Chief Judges of the Queen's Privy Council. It established a point of general importance to the English government's project to empty Ireland of its old intrinsically valuable coinage and to replace it with new debased silver coins and copper tokens. The purpose of the debasement was to assist in the suppression of the rebellion led by Hugh O'Neill, Earl of Tyrone. By depriving the rebels of their supplies of hard currency, it was thought that they would be unable to buy armaments from abroad. The English finances needed to pay for the war could be stretched further by paying wages to the troops in debased coin. The debasement of the currency presented the English*

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administration with many problems, particularly in enforcing the exchange rules for remitting currency between England and Ireland, and in forcing the public to accept the debased currency without also increasing their prices. The legal issue exemplified in the Case was one part of that larger picture. Seen purely from the perspective of common law doctrine, the Case is surprising. It was, in one sense, unnecessary. Long before 1604 the common law had legal structures in place to ensure that English money issued by the sovereign generally passed at nominal rates. These seem to have been enforced during the 14th, 15th and 16th centuries on the occasions when the English sovereign reduced the intrinsic content of the silver and gold coinage. They even held up during Henry VIII's and Edward VI's aggressive debasements of the English and Irish coinages between 1542-51. These structures for enforcing monetary nominalism existed in the interstices of the common law: they followed from the way that practitioners drafted payment clauses in transactional documents, and from the pleading and enforcement of actions in debt. Monetary nominalism was enforced by public law penalties and by direct government coercion. If one of the parties did suffer some real economic loss through the change in the monetary standard, then it may be that the question rarely reached a jury for determination. What the common law lacked, however, was an explanation of the substantive reasons why monetary obligations should be enforced on a nominal basis. That is what the Case provided. Very few of the reasons given by the judges in the Case depended on institutional reasons peculiar to common law practice and procedure. Instead, they are reported as drawing on an eclectic range of sources: the sparse case law generated by the sovereign's earlier changes to the monetary standard in England; some works of political history which described, as matters of constitutional fact, the King's exercise of his sovereign power over the monetary standard; and, surprisingly, the writings of European jurists of the civil law on the performance of monetary obligations." (Fox and Ernst, 2016). "*The nominalist principle has been part of the common law since at least 1604, when the leading case of Gilbert v. Brett (also known as the Case de Mixt Moneys), was decided. Gilbert had sold goods for '£100 sterling current and lawful money of England' to be paid in Dublin. Before payment was due, Queen Elizabeth replaced all Irish currency with an issue of debased coins with the same nominal denominations. A royal proclamation declared these debased coins, popularly known as mixed money, to be the loyal and current money of the realm of Ireland and stated that anyone who refused to accept them at face value should be punished for contempt of the royal prerogative. Gilbert rejected the tender of £100 in the debased coins. Relying on the principles of common law, as well as continental authorities such as Molinaeus, the Chief Judges of England held that an obligation to pay £100 sterling could be discharged by payment of whatever sum the law recognizes as £ 100 sterling at the date of payment.*" (Rosenn, 1982).

50 "*If we now re-arrange our data chronologically, we find the ratio of money to credit by bond, bill obligatory and book, in the period 1538-61, was 1:1; in the period 1563-89, 1:4.5; in 1590-1620, 1:12; in 1621-39, 1:11; in 1640-60, 1:6. Thus the price rises after the great recoinage coincided with a great upsurge of credit, even without taking inland bills of exchange into account.*" (Kerridge, 1991).

51 "*[T]here was introduced for the first-time in English law the now important formal 'examination' of the bankrupt as to the conduct of his affairs. The practices of bankrupts, it was complained, were so secret and so subtle that they could hardly be found out or brought to light, and the commissioners were given enlarged powers to imprison offenders, if they were endeavoring to evade full inquiry.*" (Levinthal, 1919). "*Under the early statutes if the bankrupt died, the commission abated, but by [§12] it was enacted that after a commission had been sued forth and dealt in by the commissioners that the death of the offender was not to affect the commissioners and they were to continue to gather and distribute the estate... An attempt to save the commissioners time in settling the estate of the bankrupt was made in the early years of the 17th century when they were given power to assign debts due to the bankrupt to his creditors [§8.] By virtue of this provision all the rights formerly enforceable by the bankrupt might then be exercised by the person to whom the debt was assigned.*" (Cadwallader, 1965).

52 "*Although privilege and protection had been useful to the early debtor it failed to be of much use to the bankrupt be he peer or member of the House of Commons, although the privilege was safeguarded by the provision which made an act of bankruptcy of: 'Procuring protection or protections other than where lawfully protected by privilege of Parliament' [1 Jac. I, c.13 (1603-4), 'An Act for new executions to be sued against any which shall hereafter be delivered out of execution by Privilege of Parliament and for discharge of them out of whose custody such persons shall be delivered.' In this way the rights of the creditor were preserved, although he might still, be greatly delayed.] Blackstone regarded this as an endeavor to elude the justice of the law, by claiming a privilege from arrest which the debtor did not have by virtue of parliamentary privilege or Act of Parliament. It is really only in relation to cases of arrest that it has any importance here. Shirley's had already succeeded in according the members of the House of Commons freedom from arrest during session, and this was later claimed to extend to 40 days after every prorogation and 40 days before the next appointed meeting, in the case of dissolution a convenient time was to be given in which they might be able to return to Parliament.*" (Cadwallader, 1965).

53 "*But this practice came under increasing attacks after 1609 and in 1614 the Common Law courts de facto obtained the authority to annul, or 'prohibit' their Bills of Conformity (as their instruments were known).*" (Sgard, 2014).

54 "*By the beginning of the 17th century it had become an important objective of English economic policy to encourage the finishing processes in the textile industry —scouring, fulling, dyeing, and dressing—by restricting and even prohibiting the export of cloth undyed and undressed. The attempt, in James I's reign, to prohibit altogether the export of unfinished cloth would have proved a much greater calamity than it did for the spinners and weavers [Friis (1927)], who were still partly dependent on foreign markets, had it not been for the growing domestic manufacture of 4 materials indispensable in the finishing processes: alum, which was needed for dyeing in all colors; copperas or green vitriol for dyeing in black; soap for scouring cloth as well as wool; and starch for dressing.*" (Nef, 1936b).

55 "*The clothiers and weavers in 3 eastern boroughs had immediately moved to incorporate, to be in a stronger position to bargain for a share of what was left of the foreign market. In each, the businessmen had worked closely with their borough governments to enforce the power of supervision of all the related operations. Since the various workmen were not gathered together physically in any sort of factory or shop but labored individually in their own homes, it was a difficult and complicated job to standardize methods and quality, to say nothing of wages and prices. The clothiers in Bury St. Edmunds had been incorporated since 1607, and the borough's aldermen and burgesses chose 6 overseers each year who took the responsibility for imposing standards of workmanship. The clothworkers and tailors of Ipswich had formed an even more extensive corporation, embracing a third of Suffolk and containing representatives from the towns of Hadleigh, Lavenham, Glemsford, Waldringfield, Boxford, and Groton. By 1618, the Privy Council had granted incorporation to a 'Co of Clothiers, Clothworkers and Bay & Say Makers of Colchester,' but the clothiers and weavers in Sudbury, 20 miles away, had*

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preferred to rely on their cheaper says and on competition to battle a declining market. The whole question of whether borough governments should take on the responsibilities of appointing inspecting officers in the various trades, or whether individual corporate groups should be given such powers was much argued. The Privy Council tried to establish a set of regulations for wool and the manufacture of cloth, but found that the problem of actual regulation was almost insurmountable, as long as the workers lived and worked in such a scattered state." (Powell, 1924). "*[T]here was a general movement in this direction among the cloth workers of the chief clothing towns of England about this time [*Unwin (1904, p40, 98, 147)*.] The clothiers, clothworkers, woollen weavers, and tailors of Bury and its liberties were incorporated in 1610, the cloth workers and tailors of Ipswich about 1619. The Bury corporation was the more ambitious of the two, as the liberties of Bury not only embraced a third of Suffolk, but included nearly all the districts where cloth-making was carried on*." (Page, 1907).

56 "*The charter had not long been granted before a number of tailors, weavers, and others of the district petitioned for its suppression, declaring 'that the corporation was obtained by some few men of the meaner sort without the consent of the majority as a means to draw money from the poorest sort by divers unjust taxations, and to vex those they have a grudge against; that they exact money to admit men into their society, and having compounded with them allow them to do as they please; that they draw all the men over whom they can get any de mand to travel from all places of the said franchise (about 96 towns) to attend the common hall of Bury or else to undergo a fine*'." (Page, 1907).

57 "*In contrast with the Spanish and Portuguese reliance on military law, English and French monarchs provided the officers of the royal forces with no immunities from civilian forms of law. Yet English adventurers in the 16th century in Ireland, like the conquistadors, used martial law to terrify resistant civilians into obedience. English and French entrepreneurs also found military law useful as a strategy for controlling laborers. The Virginia Co in 1609, within 2 years of landing in Jamestown, installed a military regimen that punished civilian settlers brutally in order to force them to plant crops and build fortifications. During the middle of the 17th century, English commanders shipped Irish and Scottish prisoners of war to the Caribbean, where they worked for planters for a period of 7 years as 'bond slaves.' In French areas, the crown sent prisoners of war to Mediterranean ports, where as 'galley slaves' they performed the backbreaking labor of oarsmen under the supervision of military officers*." (Collins, 2005). "*The English-managed Virginia Co initiated an underfunded commercial enterprise in the Chesapeake region, expecting its colonists to grow in numbers to support themselves and company enterprises through long-term, if not permanent, settlement*." (Wokeck, 2005).

58 "*Unlike in either Amsterdam or Hamburg, no exchange bank was established in London. However, the Merchant Adventurers Co, which undertook the export of woollens to northern Europe, the staple English trade of the early 17th century, made use of the exchange banks at Amsterdam and Hamburg, and at Delft and Rotterdam. Other exchange business was totally concentrated within London's mercantile community, aided by Dutch and Italian 'remitters' who negotiated foreign bills of exchange*." (Cassis and Cottrell, 2015). "*Of the more common textile fabrics, woolens were undoubtedly the most important, though in France the manufacture of woolen cloth did not exceed that of linen by as big a margin as in England [Quenedey, L'habitation rouennaise (Rouen, 1926), p56-58, 77-8.] The great advantage held by the English over the French in the manufacture of woolen cloth of most kinds throughout the ancien regime is one of the commonplaces of economic history. Everywhere in France the growth of the manufacture was handicapped by a partial dependence on foreign countries for raw materials, for wool itself and for the alum needed in dyeing. While the woolens produced in a few provinces like Poitou had some market in other parts of the kingdom, there was no general concentration of the manufacture of ordinary cloth, such as had already taken place in England in the west country before our period, and such as was taking place during it in East Anglia and in Lancashire and the West Riding. French exports of woolen cloth were small compared with imports, and these came from Italy, Flanders, and, especially, England*." (Nef, 1936a).

59 "*[The 2nd reason for the crisis was] the abortive Alderman Cockayne project of 1615 to hold back woolens from the Continent for finishing in England*." (Kindleberger, 1991). *"The resulting tendency towards depression applied only to the newer branches of commerce, but a much graver decline in English prosperity arose partly from another side of the same competition, partly from the hazardous manipulation of the cloth trade by James I. No industrial measure in the beginning of the 17th century was more disastrous in its immediate effects than that aimed at the foundation of the dyeing and finishing of cloth in England by the privileges granted to the New Merchant Adventurers. This movement had a plausible justification, as an effort to remedy the decline in the production of cloth, which had already begun to show itself to a moderate amount. The English cloth-making trade had gained through the wars on the Continent; and, with the recovery of the Low Countries after peace was made, some falling off was to be expected... it would have been worth making the experiment of granting a patent for the introduction of dyeing, as a new trade, for a term of years. Unfortunately, the financial necessities of James I enabled the promoters of the New Merchant Adventurers Co to obtain such privileges that the whole trade was dislocated.... The responsibility for [the crisis] is to be attributed mainly to the disturbance of the trade from 1613-7, but also, in part, to the manner in which the old company of Merchant Adventurers was re-established. The members had to pay some £70,000 in bribes to secure a new charter; and those, who provided the money, recouped themselves by a tax or imposition deducted from the price offered to the clothiers. In an over-stocked market, this meant that the net sum, received by the manufacturer, was reduced, first by the competition at home and that further he had to bear this deduction in order to make a sale*." (Scott, 1910a). "*Finally, at the end of 1614, just after a dissolution of Parliament, the Government sanctioned an elaborate scheme based on a large grant of monopoly for securing the dressing and dyeing of all exported cloth. In the discussion that led up to the adoption of what proved a. disastrous policy, the case of the Suffolk industry occupied a prominent place. A state paper was prepared giving a survey of the benefits which cometh to this state by colouring of the wool: and cloth made in Suffolk exceeding the like quantity of cloth made white elsewhere*.'" (Page, 1907). "*In the latter half of 1614, the abandonment of Parliamentary government presented an opportunity for realizing some of Bacon's ideals; and the result was to be seen in the revival of an unconstitutional form of taxation under the thin disguise of a voluntary contribution; and in the condemnation of a country gentleman by the Star Chamber, and the torture of an aged clergyman in the Tower for resistance to the imposition and for outspoken criticism of the Government. It was in the midst of these ill-omened proceedings that the plan for the protection of the cloth-finishing industry was brought to maturity. A proclamation was issued, in the month following the dissolution of Parliament, forbidding the export of unfinished cloth; and as the Merchant Adventurers' Co declared their inability to carry on the export trade on such terms, a charter was granted, in Feb 1615, transferring their privileges to the new company promoted by Alderman Cockayne, which undertook to export a gradually increasing quantity of the dyed and finished cloth. The King's advisers assured him that the work was feasible in a*

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little time, and very profitable to the state. That this project was not an isolated phenomenon will have been made sufficiently clear by the facts presented in the two preceding chapters. In many other industries the spirit of monopoly was not, indeed, called into existence —it was everywhere latent already—but provided with a golden opportunity by the fiscal necessities of the Government." (Unwin, 1904). "*The old company, who refused to join them, was dissolved by the king in 1615, and a new charter was issued incorporating Cockayne's Co. The conditions under which the patent was granted were, that the new company should transport within 3 years 36,000 cloths dyed and dressed, and after 3 years it should endeavor to dye and dress all cloths. In the meanwhile it had leave to transport 30,000 'whites,' yearly. It inherited all the rights and privileges of the old company, and was further permitted to stretch cloths 'as they doe beyond the seas and to bring into England such stranger workmen as they think fit'.*" (Durham, 1899).

60 "*[T]the drain of gold ultimately reappeared, especially in 1610 when Holland raised its ratio to over 11.5:1. To prevent this, in Nov 1611, a drastic move was made: gold coins were enhanced by 10%. The resulting ratio of over 13:1 was unquestionably too high (i.e. in relation to European ratios) and the disparity, although it brought more gold to the Mint, set-up a chronic efflux of silver. After 1611 until the end of the period the English currency was largely unaltered. Consequently until (in the 1630's) the French and Dutch ratios were raised and the natural depreciation of silver increased the market ratio, the bimetallic outflow of silver was a semi-permanent phenomenon-as was the problem of a clipped and worn coinage. The loss was especially aggravated from 1615-22, when the Dutch ratio was relatively lower than at other times and when currency disturbances in eastern Europe accentuated England's undervaluation of silver. The attraction of this metal overseas was not necessarily on a direct bimetallic basis, i.e. it need not have gone only to fetch back gold. Its high valuation on the Continent made it a valuable export commodity in its own right, which could be 'returned' by the import of goods or the purchase of bills of exchange. Similarly, it became less remunerative to bring home silver earned abroad in the normal ways of commerce; instead, other goods (including gold) might be imported and, in general, silver diverted. In addition, as described above, both gold and silver might flow overseas to take advantage of the profitable opportunities opened by a sudden raising of mint prices there which, for a shorter or longer period, outstripped the consequent inflation. In general, however, contemporary writers concentrated on the case of the manipulation abroad of the silver currency and on the resulting bimetallic loss of the less precious metal.*" (Supple, 1957). "*[The 3rd reason for the crisis was] the clumsy adjustment of the prices of gold and silver relative to the ratio in Amsterdam: first in 1606, when the silver content of coins was lowered more than gold, and again in 1611, when the price of all gold coins was raised to bring a large volume of silver to the mint from 1601 to 1611, and none from 1611 to 1630.*" (Kindleberger, 1991). "*Supple [1959] emphasized the existence of a 'drain of silver' from England, especially during the 1620s... The upshot was a severe drop in demand, especially for British cloth. This was the phenomenon, according to Supple, that underlay 'so many contemporary complaints concerning a scarcity of money' (1957:251).*" (Findlay et al., 2006).

61 "*[The 1st reason for the crisis was] the shortage of money in the country as a result of the export of coin and bullion, partly through [EIC] to pay for pepper and calico but also to the Baltic for timber and naval stores.*" (Kindleberger, 1991). "*By 1620, however, the efflux of silver from England had reached such proportion that the Government was seriously alarmed. It was recorded in the Court Minutes of [EIC] as early as June 1618 that the 'moniers of the Tower' had unjustly complained to the King that 'they are grown poor for want of silver to coin which is carried away by [EIC].' There was some truth in this complaint, though the Mint was not wholly justified in laying the cause of silver shortage at [EIC'S] door alone. The official figures of coinage do suggest that during these years the proportion of silver coined at the Mint in relation to gold had sunk to negligible level, being less than 1%. In early 1620, plans were being made in the Government circles for debasing the English silver coinage to prevent its exportation and for restraining [EIC] by Court Acts from paying higher price for rials abroad than the official mint price of silver in England. The Privy Council issued orders to cut 66s from a pound weight of silver; the merchants were to pay 2s in the lb for coinage; and an ounce of silver was priced at 5s 4d and the Rial of 8 at 4s 8d. Neither the merchants nor the goldsmiths were to overbuy the King's mint. [EIC[was fully alive to the consequences of such a measure on its trade. A committee was at once appointed to attend on the Lord Chancellor for examining the whole question of [EIC's] responsibility in causing the drain of silver, and if the allegations against [EIC] were found untrue, then, the Court of Committees requested, they 'might still be retained in His Majesty's good opinion and live in quiet under his Royal protection.' When the case came up before the Privy Council, this committee pointed out that if the Government forced [EIC] to cease paying the current price for rials and questioned them 'for the lightness of such money as they shall buy' it would be as good as asking them to cease their trade, for in Spain no one would dare to weigh the rials but must take them as they come. If the English did not pay the prices which other nations paid for them, then 'the others will buy them and they never the near.' These arguments appeared to have carried weight with the Government. No restriction was put immediately on [EIC's] freedom 'to contract with either of their members to bring over rials...'*" (Chadhuri, 1965).

62 "*It is now abundantly clear that a direct result of these tendencies was the shattering decline in textile exports which made for so much misery in the early 1620s. The export figures demonstrate the extent of the depression, and show its primary repercussions on markets in northern and eastern Europe... In this period throughout Poland and Germany magnates and controllers of the innumerable local mints [—at this time the Saxon Dynasty controlled 45 mints; the Dukes of Brandenburg, 40; Silesia had 18, and the Lower Rhenish Circle, 67—] persistently enhanced and debased the local currencies-partly as a result of the confusions at the outbreak of the Thirty Years War... In Germany currency manipulation was almost as extreme. In Sep 1617 the Hamburg shilling represented only 90-4% as much silver as it had done in Dec 1614. One year later it had fallen to 87.2%; in Sep 1619 it was 80.6%.*" (Supple, 1957). "*The period in the economic history of the German peoples and their Slavic neighbors which began about 1450 and ended in 1618 is of special interest today, when the expansive traditions of the German race are once more asserting themselves, and with greater force than ever before in history. The year following the first of the two dates, 1451, marked the Duke of Saxony's grant of the right to use a new invention for separating silver from rich argentiferous copper ores with the help of lead. More than any other invention, this accounts for the great prosperity of mining and metallurgy during the century which followed.*" (Nef, 1941). "*Britain's economic crisis, in contrast, was more commercial than financial and did not involve currency debasement at domestic mints. Much of it was ascribed to the loss of wool exports to the Continent resulting from the undervaluation of the German and Polish currencies: prices rose less than the metal value of coin-at least subsidiary coin-declined. But contemporary documents present long lists of reasons for the decline in income and rise in unemployment in Britain... Feaveryear suggests that the Gresham's-Law undervaluation of silver was more important than the decline in cloth exports, because the continued inflow of gold to the mint implies that the balance of payments cannot be blamed. The exchange of an*

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equal value of silver for gold was a blow to the 'effective monetary circulation' because of the far greater use of silver than gold in ordinary transactions. I have some difficulty in accepting the analysis that the debasement of German and Polish coins led to the English commercial difficulties, because the debasement affected primarily the subsidiary coinage and not those of larger denomination such as the silver Reichstaler *or the gold ducat normally used to settle balances in international trade. These coins may have been so widely hoarded, however, that the effective exchange rate ran to the gulden (or florin) rather than to the higher units of account. As I have already noted, and as has been recently analyzed for later inflations, inflation can be accompanied by export surpluses at a stage frequently encountered when the external depreciation exceeds the rise of domestic prices. Evidence from the Swabian Circle, at a considerable distance from the seacoast, indicates concern over local export surpluses. Ulm, Biberach, and Uberlingen restricted the export of foodstuffs, hay, cattle, and yarn and confined sales to local markets following a 'policy of supply', the rationale for which was developed in Italy in the 18th century. Closer to the time I am concerned with, Biberach clad its civil servants in uniforms of Meissen cloth rather than the English cloth that 'had become too dear, and must be paid for in ducats, doubloons,* Rose *Nobles and other hard talers, all of which required a large agio. Shortages in Swabia became so acute that the authorities on one occasion commandeered a shipment passing through on its way to Switzerland and sold the goods on the local market*." (Kindleberger, 1991).

63 "*Not only had the activity of trade been checked, but, through special circumstances, the balance of indebtedness had turned against England in foreign trade. The enterprise of the Dutch and their determination to secure an entrance into various branches of commerce by armed interference, where force could be used without straining international relations—as for instance at the whaling grounds or in the East Indies [the* Russia *Co and EIC, respectively]—meant a necessary arrest of the expansion of exports*." (Scott, 1910a). *The Calvinist Dutch acquired specie through commerce and funneled it, in part, toward war with Catholic Spain, first in defense of religious liberties and later in pursuit of political independence. But how to mobilize the limited supplies of bullion to support two agendas simultaneously, toward trade and war? From 1609 credit and commerce concentrated the value of monetary metals in [AWB], which leveraged its holdings of specie via issues of stock and bills of exchange, the financial tools of [VOC and the GWC], founded in 1602 and 1621, respectively. These financial strategies funded construction of a merchant fleet that by 1650 controlled 90% of Europe's trade with the wider world, backed by maritime military capacity to protect the global interests of Dutch merchants and bankers. The Dutch steadily supplanted the Portuguese around the world, still moving African gold east around the Cape to Asia and slaves west across the Atlantic, while the Spanish found themselves on the losing side of the Thirty Years' War (1618–1648)*." (Weiland, 2005). "*[The 4th reason for the crisis was] the trial in the Star Chamber in 1617 and 1618 of 18 foreign merchants for smuggling coin out of England to the fantastic extent of £7 M, which may have been a blundering attempt to stop the flow of interest payments to Holland but also possibly led to a halt in Dutch lending to London and contributed to the financial crisis there in 1621. The loss in exports of woolen cloth gets special stress in the contemporary documents, as exports fell from 127,000 pieces in 1614 to 45,000 in 1640 after having risen from 100,000 pieces in 1600. Further causes of the 'spectacular British crisis of the 1620s' have been adduced: bad harvests, plague, and the disastrous loss of 11 ships, some filled with silver, in the Far Eastern Dutch-British war of 1618 and 1619*." (Kindleberger, 1991). "*The Dutch began to make unfinished cloth, and in 1617 it was discovered that they had succeeded in establishing the industry on a firm basis. This meant more than might be anticipated, unless due weight be given to the importance of the export of cloth in the foreign trade of England*." (Page, 1907).

64 "*We find that in the period 1538-1660 the ratio of money (coins) to debts by bond, bill obligatory and book was on average 1:9; among merchants, shipowners, merchant tailors and others of similar rank, 1:26; among farmers and cultivators, 1:6; among graziers, drapers, ironmongers, haberdashers, mercers, grocers and high-class shop-keepers, 1:7; among textile manufacturers, clothiers, bonelacemen, silk weavers, thread twisters, yarn masters, market spinners, maltsters, brewers, millers, tanners, whittawers, saddlers, fellmongers, wheel-wrights and upholsterers, 1:5; among laborers, manual workers in textile trades, cutting butchers, bakers, small retailers, blacksmiths, locksmiths, curriers, tailors, shoemakers, cooks, sailors, mariners, glovers, domestic servants, servants in husbandry, petty chapmen, innholders and innkeepers, 1:3; among the lower landed gentry, 1:2. Ratios vary greatly between these groups, reflecting, in part, the varying degree of use made of inland bills of exchange, which do not come into the reckoning*." (Kerridge, 1991). "*An illustration of this system of credit is supplied by the records of the Ipswich borough court. It appears that in 1577 Sebastian Mann, a merchant of Ipswich, agreed to take from Anthony Colman, clothier of Wadringfield, 6 broad cloths called 'asers' (azures) of the value of £53 10s. Mann was to be bound along with his brother for £40 before Bartholomew's day, and was to give a bill for the payment of the rest at Christmas. In the meantime, the cloths were to be sent to John Cowper, a shearman of Ipswich, who would 'dress' them and deliver them to Mann on receiving assurance that the bond for £40 was duly executed. Mann, however, without having executed the bond, obtained delivery of 2 of the cloths and sold them to other merchants, and while 3 more were lying at Cowper's house, a certain creditor of Mann's named Leete, sent the serjeant of the mayor of Ipswich to attach them, whereupon the shearman declared that the cloths were the property, not of Mann but of Colman the clothier.' It need not be supposed that trans actions of this unsatisfactory kind were of so regular occurrence as the language of petitions might seem to imply*." (Page, 1907). "*Besides the normal use of capital in more than one field, a boom might see many men entering the cloth trade, while clothiers were accustomed to becoming middlemen, money-lenders, farmers, grazers, landowners, brewers, innkeepers, etc. In any case, the clothier might often be able to diversify his wealth and interests. In was certainty true that, manufacturing his cloth well in advance of the determination of its market, he ran a greater risk than the merchant that a freezing of his assets in unsaleable stocks would lead to bankruptcy. But in all except the most abrupt and severe slumps it seems unlikely that large entrepreneurs in the industry would incur catastrophic loss: either holdings of stocks were not large, or else they could be sold or pawned at not too great a loss, or they might even be held in excitation that prices would rise. What is important is that in every case disinvestment and a stoppage of activity would commence automatically as no fresh capital was put into the productive process. In many cases it would take a more positive form as clothiers actually left the industry."* (Supple, 1959). Describing later 17th century Bohemia: "*The majority of weavers did not possess enough money to buy the yarn required for the weaving of linen cloth, and therefore, in the agreements between the merchant and the producer it was almost regularly stipulated that the merchant provide the raw material, or advance the money to craftsmen for this purpose. This, of course, changed the relationship between the merchant and the producer. The merchant became, in effect, a capitalist entrepreneur providing the weaver with raw material, yarn, and taking from him the linen cloth. What he paid him were wages, the amount the weaver obtained in order to reproduce his working power to enable him to go on producing for the entrepreneur. The former independence of the master craftsman*

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or the country weaver completely disappeared, and he became a mere wage labourer, even in cases where he owned his loom. The capitalist entrepreneur sometimes described the loan to the weavers as an advance on their wages. This quite clearly shows the great change in the relationship between the merchant and the weaver. Merchant capital in this process changes into industrial capital. Merchant capital buys goods and sells the same goods at a profit. But industrial capital buys one kind of produce to sell it again after it has been transformed by work into a different kind of product, i.e. it buys raw material and labour power which transforms the raw material into products." (Klima, 1959).

65 "*[Reviewing bankruptcy data across the 18th century, sectorally], just over a quarter of petitioning creditors came from textiles, a proportion that matches this sector's contribution to bankruptcy. Among the creditors, 5 occupations were especially prominent: woollen manufacturers, cloth dealers, linen dealers, mercers and haberdashers. Of these, the linen dealers were the most important, something that is easily explained. 'The draper kept a shop, but was much more than a mere shopkeeper; he was often his own wholesaler, travelling into the countryside to procure goods.' [Pressnell, 1956] As such, they frequently supplied credit to country manufacturers and, acting as wholesalers, they usually sold goods on credit to retailers. Richard Campbell thought that linen drapers were in 'the first Rank of Tradesmen,' potentially able to accumulate substantial profits and provide loans. Indeed, in time, many went on to become country bankers. Initially, they had been both wholesalers and retailers but 'The retail function became less and less and was given over to the mercers.' [Westerfield, 1915].*" (Hoppitt,1987).

66 "*The affairs of the new company went from bad to worse and the cloth trade was completely disorganized. The Dutch would not yield. At about the same time a bankruptcy on a large scale of a Scotchman in Prussia who had in his possession English goods to the value of £80,000, and another failure for a greater sum, caused a panic among merchants [Carew Papers, p. 70 (Cam. Soc. Pub. Vol 73.)]*" (Durham, 1899). "*This is shown clearly enough by a petition of the justices of Suffolk to the Privy Council in 1619. Not many years since (they say) our country tasted of an extraordinary calamity in the breaking of one Cragg a merchant beyond the seas, by occasion where of divers merchants in London bankrupting likewise overthrew the estates of divers clothiers in our country... And this loss not yet recovered... one Gerrard Reade a merchant of London having gotten of the clothiers' estates about £20,000 into his hands for cloths bought of them doth now withdraw himself into his house and hath set over his goods unto his friends answering the said clothiers that he is able to make them no satisfaction. There are 48 clothiers of Suffolk at the least to whom he is indebted, many of them young beginners so that their estates be overthrown if they lose the money he oweth them, and their people being 5,000 at the least that work unto them they will be brought into such extremities that neither the clothiers by their trade nor we by any means we can use shall be able to relieve them'.*" (Page, 1907). "*Dec—Sorrowfull newes from Elbine, within the Sound, is come to the companye of Eastland marchants in London, by the breakinge of a Scottishman's sonne borne there, who had in his possession of Englishe goodes to the valew of £80,000. and vpwards: by this bankrout Alderman Cockayne alone hathe lost, as I amme in formed, above £1,000. Allso there is another broken att Hambourge (as itt is thought) for a farre greater somme, but the truths is nott yett exactlye knowne; in the mean tyme our marchants are perplext.*" (Maclean, 1860). "*Once the cloths were landed in Elbing, new difficulties arose. Most English merchants bought their cloths from the producers on credit and were thus anxious to sell them as quickly as possible if not for cash, then for bills of exchange. On the other hand, the main destination for most of these cloths were the Polish gentry, who habitually lived one year ahead of their incomes, paying off last year's debts with this year's profits, and issuing new bills on the prospects for the forthcoming year. In such a situation, the role of the Elbing middleman, who provided credit to both parties, was indispensible. The Elbinger would offer bills of exchange to the Englishman for his cloths, take the cloths to the Polish interior, sell them for cash or produce, and bring the produce back to Elbing to redeem the original bills. Ideally, the commodities so bought by the English merchants would yield enough return back in England to pay off the original debts incurred on cloth purchases, after transportation charges, interest, agio, and profit had been skimmed off... What was worse, the intricate and interconnected nature of the credit system could easily come apart if an eager merchant overreached himself: the bankruptcy of one merchant could drag his bill holders down with him and the repercussions could affect the entire community. [For an example of such a chain of bankruptcies see Historical Manuscripts Commission (cited henceforth HMC). Sackville Mss., Cranfield Papers vol. 2, pp. 198, 201, 214-7. As a result of these bankruptcies, Lionel Cranfield's operations in Prussia were severely curtailed, ultimately leading to his abandoning the trade altogether.] The agent of one of the greatest merchants trading in the area, Lionel Cranfield, expressed the indignation of all sober and responsible merchants on contemplating a series of bankruptcies so caused, when he wrote to his principal, 'God deliver all good men from such arch devils for surely they be not men. I fear it will be the undoing of 3 or 4 (merchants)...' To prevent such occurrences as much as was in its power, the Eastland Company instituted strict regulations as to amount and length of credit allowable to its members. All merchants were required to announce the full extent of their bills within ten days of contracting them, with the Company deputy in Elbing keeping track of these transactions and penalizing delinquents. Apart from this, however, no system of regular exchange payments between Elbing and England was ever initiated, despite periodic recommendations to this effect.*" (Fedorowicz, 1979). Lingelbach (1904) describes a cordial relationship between Hamburg and England's Merchant Adventurers between 1611 and a revised 1618 contract with legal arbitration by the Senate.

67 "*Cockayne, among others, was involved in this loss. On Jan 19, 1617, the new company gave up their charter and the old company was reinstated.*" (Durham, 1899).

68 "*Apparently the distress was then due chiefly to the beginning of a crisis in the cloth trade, for in May 1620 an inquiry was ordered into the decay of cloth-making in Wilshire. [Drafts of this commission are in existence both in the British Museum and the Bodlsian, and its issue was therefore contemplated, but it does not follow that it was actually issued.]*" (Leonard, 1965). "*By 1620, there was so much general complaint in Suffolk that a royal commission was appointed to meet at Bury St. Edmunds, to hear that cloths were piling up, that neither the Russian nor the Turkish merchants were buying, that overhead was eating up capital, and that something had to be done. The major accomplishment seems to have been the expression of the many complaints, but the principal problem of monopolistic practices in sales to foreign markets remained unsolved.*" (Powell, 1924). "*'I had rather be a plowman than a merchant,' said a member of Parliament in 1621. All sorts of explanations were offered, but while many discussed the relationship between crumbling English cloth exports and the economic and monetary consequences of wars in Europe, few could agree on the exact causal connection. [Supple (1959, p54, 58)]... It has been argued that contemporaries who hesitated to put the war high on their list of causes for the depression may not have been far wrong. [Gould (1954)]... Wentworth and others expressed the real nature of current anger: many clothiers had failed and it was supposed that this was often due*

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to the deceitful bankruptcy of their financial associates. It was said that clothiers were demanding a new act. Considerable progress was made, but nothing was achieved since this Parliament collapsed amid disagreement with the king on other matters... Commercial crises intensified what many had said for years: the existing bankruptcy law was ineffective because the statutes were full of gaping loopholes." (Jones, 1979).

69 "*In England there were indications that trade was less prosperous than it had been. Although the revenue had recovered from the check, sustained by the interference with the cloth trade, the rate of expansion was slower. While in 1619 there was an estimated balance of £45,000, after defraying the ordinary charges, the extraordinary expenses continued to be a serious burden, transforming the ordinary surpluses into chronic deficits. In Sep 1617 the debt was £0.73 M. At first sight, it is surprising that, in view of the fact that the subsidy of 1610-1 was only 10% and 7%, and that the Parliament of 1614 granted no supply, the borrowing had not been larger. No doubt some reform in the royal expenditure had been effected, but the small increase of debt was due mainly to 2 different causes. Large sums had been paid by Holland, in reduction of its debt (as much as £0.21 M was received in 1615-6), and James I was rewarding his favorites, without making such large money payments, as had been his custom in former years. During the long gap between the Parliaments of 1614-21, opportunities had arisen for a fresh series of monopolies. Though the annual payments actually made to the Crown only amounted, at the most, to the inconsiderable sum of £900, there were intermediate persons between some of the patentees and the King, who intercepted considerable amounts. For instance, in addition to large sums exacted from both the 'New' and the 'Old' Merchant Adventurers, Lady Bedford had received £500 from one of several persons, interested in obtaining a patent for gold and silver thread, while Lord Kelly was said to have secured £40,000 from his right to nominate 400 merchants or others under a new patent of the Staplers. Thus, these patents were burdened by heavy preliminary expenses, and those, who had obtained privileges through them, were likely to use oppressive measures to recoup themselves. It followed that, under orders from the Privy Council, the patentees began to tax the allied trades for their own benefit, with the result that there were actions against, and imprisonments of those, who refused to compound, to an extent hitherto unknown. Such harsh measures naturally aroused much indignation, and some of the patentees were severely handled, when Parliament met in 1621.*" (Scott, 1910a).

70 "*The rule that transactions by insolvent debtors which diminish the assets available to their creditors may be subject to attack by or on behalf of the creditors (often referred to as the actio Pauliana) is very widely recognized in both Civil and Common Law systems. The classic examples are well-known. A debtor recognizes that he is irrecoverably insolvent. Knowing that his assets will be sold to pay his debts, he decides that he would rather see them go to his friends, so he gives them away.*" (MacLeod, 2014). "*In the reputed ownership jurisdiction the court bars a party from pleading title through purchase for value where there has not yet been a conveyance or delivery and where no publicly observable shift in ownership has occurred. Reputed ownership typically involves transfer of personal property (that is, title to goods and chattels) from Vendor to Purchaser for good consideration, for example where a factor sells goods to a merchant; but the Purchaser then leaves the goods in Vendor's possession so as to create the impression of a reputed ownership in the Purchaser of those goods. Where the Vendor then becomes bankrupt, the creditors of the Vendor may treat the goods bought by the Purchaser as if they are in the Vendor's estate and legally available to the estate's general creditors, and the Purchaser is barred or prevented from asserting ownership despite the purchase for good consideration. The reason is that Purchaser has by his conduct led creditors to rely on the Vendor's false appearance of credit, and by creating such an ostensible ownership Purchaser is barred from asserting title against those who have relied upon the appearances created by the Purchaser. The doctrine is thus close to doctrines of estoppel by representation at law and equity and ostensible agency at law. The court's jurisdiction is not based on fraud by the Purchaser who may well have acted in good faith, but rather fixes on the combination of negligence in allowing the Vendor to have the appearance of title, coupled with fraud by the Vendor in exploiting that false credit. An alternative scenario involves a factor buying goods on behalf of a merchant, where the merchant leaves the goods with the factor and does not take forward delivery; if the factor is bankrupted the creditors can then rely on his reputed ownership of the goods bought with the merchant's value.*" (Getzler and Macnair, 2006).

71 "*In the law of Rome this general principle was fully acknowledged. In strict law, a mere donation was revocable at the suit of creditors, if granted by an insolvent debtor and to their prejudice. But conveyances having often been made instruments of fraud, the praetor published an edict, called the Praetorian Edict, 'De Actione Pauliana,' by which he declared that he would give an action in equity to the creditors, or their curator bonis, for the revocation of all deeds which were, to the knowledge of the receiver, prejudicial to creditors. In France, following the course of Roman jurisprudence, a general law was made to annul all deeds done in defraud of creditors, directly or indirectly; but it was not specified what should be considered as a deed in defraud of creditors, and the general rule received its interpretation from the Roman law. When a third party acquired the property in question by onerous title, it was liable to restitution if the receiver was aware of the fraud (conscius fraudis); when it was acquired by gratuitous title, restitution was competent, without participation in the fraud. In England, a law was made in the reign of Queen Elizabeth, of precisely the same kind with the French ordonnance; providing for the annulling of all false conveyances and obligations, but without declaring specifically what should be held objectionable, or whether mere want of consideration should entitle the true creditors to relief. But it was soon found necessary to make the law more precise; and accordingly in 1604 a statute was made, declaring all voluntary deeds, granted without a valuable consideration, unavailable against creditors.*" (Bell, 1870).

72 "*Thus the Act 1621, c.18, which is designed as an Act against alienations 'made by dyvours and bankrupts,' relates solely to deeds executed during simple insolvency. But even subsequent to the introduction of notour bankruptcy and sequestration, similar ambiguity will be found both in judicial decisions and statutes and among legal writers of authority. The ambiguity in terminology above mentioned has not infrequently been the cause of litigation in regard to the construction of legal documents... English law never recognized such an intermediate stage as notour bankruptcy, in which the debtor, while left in possession of his estate, has his personal status and capacity restricted. It is by adjudication of his estate to his creditors—a process corresponding to our sequestration—that a debtor can alone be constituted bankrupt. If he commit so-called 'acts of bankruptcy,' these have important effects upon his transactions subsequent to their date if an adjudication be thereafter awarded; but, till an adjudication of his estate takes place, a debtor, no matter how prostrate or how much subjected to diligence, is simply insolvent and not bankrupt.*" (Goudy et al., 1895).

73 "*Some 'country' activists thus had their own program, and in 1621 the polarization of politics was not yet complete. What concessions might the government make in order to achieve its central aims? Religion was high on the agenda, and no compromises were possible here; but were there other aspects of economic reform, retrenchment and renewal that might detach those with purely local concerns from the Presbyterians? Hamilton's 'insinuation' in his*

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opening speech 'that he had a warrant to give way to a good advise, whereby money might abound in the country efter the taxation' sounds like a promise to make legislative concessions to a 'pure' country interest, and several such laws were in fact passed. There was a law against superfluous banqueting, apparel and funeral celebrations. Another discharged past penalties for breach of penal statutes (a group of acts restricting commerce), and cancelled an obnoxious monopolistic commission to enforce them. A commission was set up on the coinage, to remedy the 'present scairsitie of money', by looking at the possibility of allowing circulation of foreign coins (something that landlords had been demanding and the authorities had tended to resist). An even bigger concession, from a government upheld by insolvent nobles, was the package of measures to improve the collection of debts. The famous 'Bankruptcy Act' of 1621, still partially in force, curbed fraudulent alienations by landed debtors. It was accompanied by a large number of related acts regulating debt and credit, of which all except the last (against demanding interest payments in advance) would have delighted the creditors' lobby. This was emphatically not the legislative program that the court favored; it suggests that the government's managers were seeking to win over the middle ground." (Goodare, 1995). "*[T]he great object of the whole of the law was to secure (quality and fair dealing among all creditors claiming or entitled to claim upon the bankrupt estate... This is an Act which has been, of course, submitted to interpretation by the Court in many and many a decision, and the general effect of it is just a prohibition against gratuitous alienations by an insolvent person—to prevent an insolvent person from putting away his effects gratuitously into the bands of conjunct and confident persons. A conjunct person in the construction of the law, is such a person as a father, son, a stepson, an uncle, or a brother-in-law--near relations, in short. Confident persons, in the construction of the law are persons such as law-agents—I mean the confidential law-agents of the insolvent,—servants, agents in business, mercantile agents of the insolvent—any person, in short, who is connected with the insolvent by ties of intimacy and of business, The prohibition in this statute is against making alienations or conveyances of the insolvent's goods to conjunct or confident persons ; against making these alienations in a state of insolvency to the hurt and prejudice of creditors—persons who are enlisters at the date of the insolvency—without just, true, and necessary cause... under the Act 1621, preferences to friends and relatives would be set aside... So you see the important help which this Act gives to the common law; for although, by the common law, a deed to the man's father or brother-in-law, or confidential agent—when the debtor was insolvent at the date of granting it might be suspicious, there would be trouble in proving that the insolvent intended to defraud his creditors, and still greater difficulty in showing that the receiver was partaker in the fraud. This Act gets over these difficulties. It says, 'Simply show that the receiver benefited is a conjunct or confident person; show that you represent creditors prior in date to the deed, and that the granter is now insolvent ; and we will presume everything else in your favor, and set aside the deed.' It will be set aside in these circumstances, unless the holder can prove that the grunter was really solvent at the date of the deed, when there will be no reduction.*" (Campbell, 1890)

74 "*The [Scottish] Act focuses on two relatively narrow cases: a transfer to a conjunct or confident person for which there was no 'trew, just and necessarie' cause; and voluntary payment or transfer in prejudice of prior diligence. In contrast to the approach in the Corpus Iuris and in the English statutes there is no general provision striking down deeds made with the intention of defrauding creditors. This narrow scope was to prove a major defect. A great number of the cases which came before the courts did not fit into either of the two categories. As discussed below, this led to pressure for flexible interpretation and to recognition of common law rules alongside the statutory provisions... Craig provides a hint at the reason for this narrower approach in his argument that inhibitions are preferable to the actio Pauliana because of the difficulty in proving knowledge of the debtor's insolvency. By the same token, depriving inhibitions of effect where the debtor was solvent may have been thought to introduce an unacceptable level of uncertainty... Many of the transactions by fraudulent debtors were either not purely gratuitous or not made with conjunct or confident persons, and the creditors prejudiced had often not commenced their diligence. These pressures led the court to adopt a flexible approach to the conditions in the Act. Where this was felt to be impossible, the common law of fraud was allowed to resurface and fill the gap. The end point of this process was an independent common law challenge to transactions in fraud of creditors, which sat alongside the 1621 Act.*" (MacLeod, 2014). "*In Scotland, not only has the general principle been recognized on which, under the Roman law, all gratuitous deeds made in prejudice of creditors were annulled; but a special statute has been enacted for the purpose of aiding the operation of this principle, and rendering it more efficacious. As it is scarcely less difficult to prove the gratuitous nature of a deed than to prove the fraudulent intention of the parties, the law has, by the aid of certain presumptions, thrown the onus probandi on the receivers, where, after insolvency, a person is found to have alienated his property in favor of any of his near relations or confidential friends. To establish these presumptions was the object proposed in the first branch of the statute made in 1621. But the expression of the Act was in some points unhappily conceived for a law intended to accomplish the objects of fair distribution on bankruptcy. This statute was preceded by an Act of Sederunt made in July 1620 by the Court of Session according to the practice of those days, in order to declare the rule by which they meant to administer justice relative to the deeds of insolvents. It was afterwards adopted and confirmed in Parliament by the 18th chapter of the year 1621. The regulations introduced by this statute, as a check upon secret trusts and gratuitous conveyances, were these: 1. That all conveyances made to any conjunct or confident person, without true, just, and necessary causes, should, if done after the existence of lawful debts, be null when challenged by the creditors injured. 2. That it should be sufficient evidence of the fraud, if the creditors were able to prove, by the writ or oath of the receiver of the deed, that it was made without an onerous cause. And, 3. That the right of one purchasing bona fide from the confident and interposed person should not be null, but the interposed person should be liable to the creditors of the bankrupt for the price received; and the purchaser should make whatever part of the price remained unpaid forthcoming to the creditors. The ambiguity of expression which unfortunately prevails in this statute, led to many doubts and questions.*" (Bell, 1870). "*In 1621, the Scots parliament ratified an 'act of the lordis of counsell and session made in Julii 1620 aganis unlauchfull dispositiones and alienationis made be dyvoures and banckruptis'... One of the most remarkable things about the act was that it was thought necessary at all. The preamble to the act of sederunt made clear that the judge's intention was to imitate the 'guid and commendable lawis, civill and cannone, maid agains fraudfull alienatiounes in prejudice of creditouris'. At the time the act was passed, Scots lawyers were clearly familiar with the relevant ius commune rule known as the actio Pauliana, which allowed creditors of an insolvent debtor to challenge transactions by insolvent debtors which diminished the pool of assets available to satisfy their rights. Legal materials going back as far as 1492 impugn grants on the basis that they were made 'in defraud of creditors', calling to mind the opening words of Digest 42.8. However, the early authorities suggest a rule which is somewhat narrower than the typical understanding of the actio Pauliana. Several early sources apply the term 'defraud of creditors' to transfer of property which was already subject to attachment in execution by a creditor. Similarly, the old form of words used in inhibitions (freezing injunctions) narrated that the inhibited party*

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intended to defraud his creditors by alienating or burdening his property. Sir Thomas Craig of Riccarton (writing before the 1621 Act) went as far as to suggest that inhibition was Scots law's equivalent to the actio Pauliana. However, some 16th century cases saw successful challenge to grants made after a creditor had received decree for payment as done in defraud of creditors although no diligence had been done. The basis for the fraud was the fact that the granter did not have other assets sufficient to meet the obligation. This was extended to cases where the grant was made before decree (initially by way of a legal fiction which treated the alienation as made after it rather than before). Cases from this period also show emphasis being placed on the bad faith of the grantee or the gratuitous nature of the transaction. Scots law thus appeared to be on the way to developing a common law actio Pauliana. The matter was not left to the common law, however. The problem of fraudulent grants by debtors was among the issues on which parliamentary commissions were asked to produce legislation in 1567 and 1581. However, neither of these endeavors came to fruition. Instead, legislation on the subject came not from parliament but from the judiciary. In 1620, they passed an act of sederunt on the matter, which would later be adopted by parliament. The rules it set out drew on the prior common law but did not mirror it precisely. Unlike the common law examples, it was not focused on the debtor's evasion of a particular decree and it restricted its main provision to grants to conjunct or confident persons. The latter rule would force later Scottish judges to develop a common law extension to the statutory provision. Also, the act's final clause provided a Scots law approximation of infamia for those who breached its rules. In these ways, the 1621 Act and its background provide an interesting example of the interaction between municipal law and the ius commune and between court and parliament as legal sources in early modern Scotland." (MacLeod, 2012).

75 *"[I]n 1605, the Court of Session in Scotland made an Act of Sederunt, requiring the magistrates of Edinburgh to erect a pillory near the market-cross, with a seat upon it, 'whereupon, in time coming, shall be set all dyvoris, and shall sit thereon on market day from 10 hours in the morning until an hour after dinner; and the said dyvoris, before their liberty, and coming forth of the Tolbuith of Edinburgh, upon their own charges, to cause make and buy a hat or bonnet, of yellow color, to be worn by them all the time of their sitting on the said pillory, and in all time thereafter, so long as they remain and abide dyvoris, with special provision and ordinance, if at any time or place after the publication of the said dyvoris, at the said market cross, any person or persons declared dyvoris, be found wanted the aforesaid hat or bonnet of yellow color; toties, it shall be lawful to the bailies of Edinburgh, or any of his creditors, to take or apprehend the said dyvour, and put him in the Tolbuith of Edinburgh, thereon to remain in their custody the space of an quarter of an year, for ilk fault and fellie foresaid.' Somewhat more than half a century after this, it was thought necessary to strengthen rather than relax the rule; and instead of a bonnet, a whole habit was ordered to be worn, the one-half yellow and the other brown, with a cap or hood which they are to 'wear on their head, party-colored, as said is.' [Act of Sederunt, 26th Feb 1669. This is further enforced, 23d Jan 1673.]*" (Bell, 1870).

76 "*There were good business possibilities, especially in the years of the currency crisis between 1618 and 1623. English and Dutch merchants exported large quantities of linen which they bought up at extremely low prices in the countries of Central Europe as well as in Bohemia. This situation was described by a citizen of Nuremberg, Georg Ayrman, in a letter to the Saxon Kurfurst in 1633: 'From 1618 to 1623 this kind of thieving was going on, when foreigners exported well-made goods from our empire for which they paid with their bad money, or they exchanged our good German dollar for 3, 4, 5 up to 10 and 12 guilders. When the cheese merchant Kasebauer came from Holland to Silesia and Meissen (or to Upper Lusatia) with 2000 German dollars he took home with him such an amount of yarn and linen that his earnings after selling it made him a rich man.' This certainly applied also to Bohemia. The linen bought in Central Europe by Dutch and English merchants was sent through Hamburg to Spanish and Portuguese ports and to the colonies. At this time the foundations were laid for the later penetration of English merchant capital into Central Europe*." (Klima, 1959).

77 "*The prevalent impression, that the crisis was due to a 'scarcity of coin,' was one of those facile explanations, dependent on the taking of the symbol for the thing itself. The credit system of the country was not sufficiently developed to produce a panic through any abuse of credit instruments. There was no debasement of the currency; and, even though a temporary scarcity of the precious metals may have occasioned some inconvenience, Europe had enough to support the usual level of prices. No doubt in 1620 England was short of bullion; but this phenomenon was a symptom of the malady rather than the true cause of the distress.*" (Scott, 1910a).

78 "*In spite of the progress made in the East India and American ventures, the shipping of cloth remained at this period by far the largest part of the exports, and the falling off in 1620 was remarkable. The Merchant Adventurers were selling about 50% of the amount they had been able to dispose of abroad in 1612-3, and the Eastland Co little more than 33%. The loss in value, annually, was upwards of 0.5 M in the exports of these 2 organizations alone, or nearly 25% of the total amount sent abroad in a year of good trade such as 1613. If there be added the further losses elsewhere to this decline in the exports to the Baltic, the whole decrease must have been very great, especially in its ratio to the total volume of goods sent abroad. The depression extended to other textile trades, and, at Manchester, there were 853 pieces of friezes, cottons and bays at the Hall which could not be sold, while it was reported that 'there was a far greater quantity of cloth of these sorts lying in the country ready to be sent up, if the market were not so bad.'*" (Page, 1907).

79 "*The Privy Council actively bestirred itself. It issued a circular letter to the justices of the clothing counties, enjoining them to call the clothiers together, and require the latter to keep their workfolk in employment under penalty of a summons before the Council. The clothiers were not to be allowed to dismiss their men at their pleasure, for those who made profit when trade was good must be content to suffer loss when trade was bad... Other measures were taken to deal with the situation. Merchants were ordered to buy up as much cloth as possible, and wool dealers to sell wool at moderate prices; clothiers were protected from the importunity of their creditors; the justices were instructed to raise a fund, where necessary, to put the unemployed on work although the impoverishment of the country made this difficult.*" (Lipson, 1948). "*The Council also say the woolgrowers must sell their wool at a moderate price, and finish up with the statement of the general principle on which they act. 'This being the rule... by [which] both the woolgrower, the clothier and merchant must be governed. That whosoever had a part of the game in profitable times since his Maty happie raigne must now in the decay of Trade... bear part of the public losses as may best conduce to the good of the public and the maintenance of the general trade.' This high-handed proceeding on the part of the Government might have been successful if the slackness in trade had been of very short duration. But in this ease the crisis continued, and the employers were soon in as bad a plight as their men."* (Leonard, 1965).

80 "*In one Wiltshire town 44 looms stood idle for half a year— 'by which means 800 persons, 20 at the least for each loom in weaving, spinning and spooling, are now miserably distressed for want of employment.' The distress was general throughout the kingdom: 'The whole commonwealth suffereth', said*

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a royal edict: 'Many thousands of spinners, weavers, fullers and cloth-workers were affected, and disturbances seemed likely. 'We much fear', wrote the justices of Gloucestershire to the Privy Council, 'that the peace hereof will be very shortly endangered notwithstanding all the vigilance we use or can use to the contrary', since workmen 'do wander, beg and steal, and are in case to starve as their faces (to our great griefs) do manifest.' The unemployed went in groups to the houses of the rich, demanding food and money, and seized provisions in the market-place." (Lipson, 1948).

81 "*The Suffolk justices state that in 12 towns out of 200 the manufacturers have lost over £30,000 by bankruptcies, and in 20 towns only have cloth unsold worth £39,282. The employers cannot employ the men in clothmaking, but the justices will do all they can to relieve the industrious poor... From Oxfordshire there is a like report. The justices of Somerset state that the corn riots are now suppressed, but that the want of work tends to mutiny. Cal. of State Papers, May 14th, 1622. The justices of Wilts reply that some of the clothiers have dismissed their workpeople and there are now 8,000 out of work; some of them have attacked and seized corn on its way to market and further outrages are feared.*" (Leonard, 1965). "*[W]hen the Privy Council were instructing the justices in many counties to urge the clothiers to find work for the poor, the Suffolk justices replied that the clothiers were willing to employ their workmen, but were unable, having spent most of their estates in making cloth which lay on their hands. 'The clothiers,' they add, 'that inhabit but in 20 towns in 200 of this county have at the present 4,453 broad cloths worth £39,282 which do lie upon their hands, some 1 year, some 2.' The losses from bankruptcy sustained by the clothiers in 12 of these towns amount to £30,415, and the losses elsewhere are in the same proportion. The justices attribute this bad state of things to the lack of free trade in buying and selling of cloth owing to the incorporation of the merchants into companies. They complain also of the export of wool and fuller's earth, and of the new imposition lately laid on cloth... In referring to the lack of free trade the justices undoubtedly came nearer to the real cause of the trouble. Not that the merchants who were complained of were alone to blame in this respect. We have already seen the clothworker of the towns trying to hamper the freedom of the clothier. At the very same time a number of weavers and shearmen of Suffolk were appealing to the Privy Council against the action of the clothiers, who were bringing indictments against them for setting up in the trade of cloth making. 'The spirit of monopoly was deeply rooted and widespread, and the merchants had good precedents for their assertion that foreign trade could not be safely carried on except by exclusive and privileged corporations. It is in the records of a struggle against this tradition as preserved in the evidence taken in a case between some Ipswich clothiers and the Eastland Co that we get one of the last glimpses of the Suffolk broad-cloth industry in its relations with the European market.*" (Page, 1907).

82 "*There was, it seems, less opportunity for the employee (or for the very small independent 'manufacturer') so to diversify his interests as to provide effective insurance against the onslaught of bad times. In normal years and during trade expansions the mobility of labor was high—there were relatively few effective barriers to occupational change—but during a crisis in the textile industry the sheer numbers involved would render labor the most immobile of the factors of production. Some buffer against hardship might have been afforded by the fact that many of the workers were never far removed from some sort of agricultural pursuit. But, especially in the west western counties and East Anglia, there were thousands who drew the preponderant part of their subsistence from earnings in the cloth industry. Even the counter-attraction of the harvest period, whose urgent demand for labor served to reduce the output of textiles, was a purely temporary phenomenon, and mainly affected spinners, As already mentioned, the mass unemployment resulting from a slump could not be absorbed in one gulp: men redundant in one occupation produced a problem of reemployment radically different from that of capital redundant in one use... After two excellent harvests, which had reduced many farmers to the verge of bankruptcy, the yield of 1621 was atrocious. Gain prices shot up and served to help absorb what little purchasing pwer there was amid widespread unemployment. [See Supple, A comparative study, p479-80, 4893-9]*" (Supple, 1959).

83 James I's Domestic Calendar of State Papers of March 23, 1622 notes "*Justices of Suffolk to the Council. The clothiers are willing to re-employ their workmen, but are unable, having spent most of their estates in making cloth, which lies on their hands. In 20 towns out of 200 in the county, there is cloth on hand worth 39,282l., and in 12 towns only the clothiers have lost 30,415l. by bankruptcies. They think the causes of decay of their trade are the incorporation of merchants into companies, which prevents the free buying and selling of cloth; the export of wool, fullers' earth, &c., which promotes its manufacture abroad, and the new impositions laid on it. Will do their best to relieve the industrious poor.*" (Green, 1858). "*In consequence of this distress inquiry was ordered. A committee of the Privy Council was appointed to find out the causes of the decay of trade and to suggest remedies. Representative clothiers were to be sent from every county to the Council, and the Merchant Adventurers were to appoint some of their number to confer with the committee. In May it was settled that if the Eastland merchants did not buy the cloths the merchants might do so themselves, and in Oct an important committee was appointed to consider the whole matter.*" (Leonard, 1965). "*Finally, in 1622 a commission, composed of 12 persons, was set up to ascertain the causes of and remedies for the decay of trade; and two representatives of the clothiers of each 'clothing' county were summoned to London to give evidence before it. This commission, the first of its kind to make a detailed investigation of the causes of unemployment... The reasons assigned for the stagnation of trade were as follows : (1) 'The making of cloth and other draperies in foreign parts in more abundance than in former times, being thereunto chiefly enabled by the wools and other materials transported from the kingdoms of England, Scotland and Ireland, we conceive to be the chiefest cause that less quantity of ours are vented there.' (2) 'The false and deceitful making, dyeing and dressing of our cloth and stuffs, which disgraceth it in foreign parts.' (This was attributed by the drapers to the corruption or remissness of the aulnagers, the sale of cloth privately instead of in public markets, and the intrusion of ' inexperienced persons into the industry; (3) 'The heavy burthen upon our cloth whereby it is made so dear to the buyer, that those that were wont to furnish themselves therewith in foreign parts either buy cloth in other countries, or clothe themselves in a cheaper manner than our cloth can be afforded', (4) 'The clothiers apprehend that staplers, jobbers and brokers of wool are also a cause 'by deceitful mingling [of wool], and often selling it from hand to hand before it comes to the clothiers' (5) 'The present state of the times by reason of the wars in Germany is conceived by many to be some present impediment to the vent of our cloth, partly by the interruption of passages, partly for want of money occasioned by foraging of the countries.' (6) The policies of the Merchant Adventurers which bring upon themselves suspicion of combination in trading, and the smallness of their number which do now usually buy and vent cloth, and the like policies of other merchants.' (The clothiers attached particular responsibility for the 'deadness of trade' to the close corporations of merchants, 'which limit the times, persons, numbers and prices to be observed in buying cloths'; (7) 'The scarcity of coin at home and the baseness of foreign coins compared unto ours.' (8) 'The want of means of return for our merchants especially out of the Eastland countries, which discourage*

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them to carry out cloth thither because they can neither sell for ready money nor barter for vendible commodities.'; (9) 'The too little use of wearing cloth at home, and the too much of silks and foreign stuffs which over-balance our trade.' The report omits mention of the most important cause of the crisis, the disastrous interference of James I. with the cloth industry, of which an account will be given below. The remedies proposed by the commission covered a Remedy's range not less comprehensive than its survey of the causes of the crisis." (Lipson, 1948).

84 "*The key point, however, Supple maintained was that 'the reiterated claims of these years that England had an unfavorable balance of trade were founded on uncomfortable fact.' From this, he immediately drew the conclusion that 'much of the economic literature which historians have interpreted as 'typical' of mercantilism is, in fact, the product of a specific situation and a short-run crisis' (Supple 1957:251; see also Supple 1959:226f).*" (Findlay et al., 2006).

85 "*The Chancery then took over but its attempted rescue became also embroiled in the broad conflict between the Common law courts and the Parliament on the one hand, and King and Equity courts on the other. A reformed and streamlined version of the Bills of Conformity was actually introduced in 1620 by Francis Bacon—then Lord Chancellor (and hence an ally of the King) and no minor historical figure. But this effort was apparently too late: within a year, and in a context of economic crisis, Bills were abolished by the Parliament. The main figure in this fight was Edward Cooke—then the most articulate defender of Common law and Common law courts as well as a major leader in the House of Commons. His ultimate attack, on 14 March 1621, was just an opening shot in the final scene of Cooke's long political and personal fight against Bacon. Immediately afterward and in front of the same parliamentary committee, charges of corruption were levelled against Bacon, charges to which he would confess before being impeached by Parliament on 3 May... This is the moment when the English and French experiences with bankruptcy law diverged. Whereas French Commercial law evolved as the legitimate heir to the Italian legacy, English law took a distinct trajectory: beginning in 1621, the judicial confirmation of majority arrangements was forbidden and so bankruptcy became a single-exit institution that allowed only for liquidation; accords between the parties could only be voluntary and private. This apparently minor deviation eventually led to sharply contrasting rules of the game, which by the 18th century resulted in well-differentiated, rather stable bankruptcy regimes. Moreover, this lengthy English exception is not an exclusively bilateral pattern: as far as I know, all Continental statutes and codes enshrined the confirmation of majority arrangements during the period under review. This separate English route also had an end: since the later part of the 19th century, all countries that belong to the Common law tradition have allowed for qualified majority votes'... English bankruptcy law emerged as a liquidation-only institution after majority arrangements among creditors were prohibited, in 1621... The consequence of this weak constitution is that Commissions arguably made an unpromising forum for a rule-based, judicial approach to the confirmation of majority arrangements. Hence, attempts to develop this practice along Continental lines were observed exclusively outside Commissions.*" (Sgard, 2014). "*There was no place for rival concerns both intent on securing a payment but concerned with opposite parties [That is to say the Chancellor on the one aide aiding the debtor to obtain a composition, whilst the commissioners of bankrupts sought to enforce the bankruptcy laws in favor of the creditors.] The very spirit of the bankruptcy law was to the intent that the debtor be stripped of his estate so that it might be distributed amongst his creditors proportionately to the debts owed them... The position was to some extent remedied by the Chancery, and on Oct 31, 1620 the following orders were published in open court... Although this Order had much to recommend it, either it did not work as intended, or, as is more probable, it was not given sufficient time in which to be brought into normal. practice. For within a short while after the introduction of the order there is a proclamation for the abolishing of the abuses of 'Billes of Conformity'... 'Whereas Bills of Conformity (Bills of complaint) have been brought into Chancery and other equity Courts, whereby creditors are forced to accept less than their debts, or to give long delays: Judges are to dismiss all such suits where the creditor does not assent: Orders on such Bills are to be suspended, and no further bills are to be received until order is taken by Parliament, Any one in prison on such accounts to be released or discharged of their bail.' (Tudor & Stuart Proclamations I, p. 155 No. 1312 Westminster 31 March 1621. A Proclamation for abolishing of abuses of Billes of Conformity.)] This in its turn served but a short time and in 1623-4 it is enacted... In this way any power of the Chancellor to enforce composition on wrangling minorities ceased without any apparent struggle to hang on to the natural equity with which the court was imbued, in 1683 the Lord Keeper declares that 'bills of conformity... had long since been exploded, and there was no such equity now in this court.' This, however, did not prevent debtors from still seeking out the king to aid them, nor did the Council cease to interfere merely because of the above provision, they may well have thought that it did not in fact include them and even if it did the members were quite capable of seeing to it that their commands were not overreached.*" (Cadwallader, 1965). "*It was to remove these abuses that Francis Bacon in the year 1620 published a number of orders regarding bills of conformity for the future guidance of the Court of Chancery. Among them was the requirement that the concurring creditors represent at least 'three parts in four' of the amount of the debtor's total indebtedness, and that each claimed debt be subject to examination and verification by the Masters or other commissioners of the Court of Chancery. Had these orders been allowed to stand, it is quite possible that a system of compositions, based upon the majority principle, would have been established in England without the necessity of legislation. Unfortunately, a royal proclamation issued shortly after the resignation of Bacon and the revelations concerning the abuses in the Court of Chancery, abolished the whole practice of granting 'bills of conformity.' Thus, it came about that by the middle of the 17th century with the downfall of the Privy Council and the abolition of the Chancery bills of conformity—the principle of majority control in compositions was left without any machinery for its enforcement against dissenting creditors. The result was that the insolvent debtor, as well as the majority of his creditors, was again left to the mercy of a single creditor.*" (Treiman, 1938).

86 "*Though the principle of ratable distribution was included [in English bankruptcy acts], there was no measure of relief for the honest debtor, who sought means to restore his position by a scaling down of debts. But for the Council, with its wide powers and its practical view of the problem, it was a short step from the device of a respite to an outright composition. The principal means, again, was the arbitral commission. The arbitrators chosen, usually merchants in merchants' cases, were simply directed to deal with the creditors to secure not only an extension of time but a scaling down of debts. [Dasent X (1578); 12 (1580-1); 13(1582); 15 (1587); 161 (1588); 17 (1589); 30 75 (1600). In 2 cases the orders for composition were drawn up in detail by a member of the Council and the Council itself undertook to enforce them directly: Dasent 15 (1587); 19 (1590).] As in the simple respite, stay of all actions by creditors was sometimes directly ordered. For the creditor who refused to conform to the settlement recommended, there was at least the vague menace of the Council's displeasure, reinforced by an order to appear before the Council to give reasons for his obduracy. Much more than this was apparently not needed. Through the prestige of the Council and the aid it could enlist, a most useful and necessary service was enabled to continue right up to the civil war.*

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[*Holdsowrth (1926) refers to cases before the Council in 1637. There is evidence that in the interval an attempt had been made to transfer this class of cases to the Chancery [A.P.C. 1616-17, 190; Ritchie (1932)], but by general order of the Chancellor in 1620, confirmed by royal proclamation in 1621, the filing of such 'bills of conformity' was forbidden unless subscribed by all the creditors. [Sanders (1845, p129, 132); Holdsworth (1926)]. The cases cited prior to 1621 above, indicate that these regulations did not apply to the Council. The activities of the Council and Chancery in this period are discussed further by Treiman (1938).]"* (Dawson, 1950a). "*Instead of encouraging compositions, the legislature in 1623 had made it an act of bankruptcy for a debtor to present any petition or bill against his creditors 'to compel or enforce them or any of them to accept less than their just and principal debts, or to procure time or longer days of payment, than was given at the time of their original contracts.'*" (Treiman, 1938). "*Bankruptcy law in England developed along very specific lines that apparently reflected the original patterns of its judicial history. Most significantly, until the late 19th century judges could not confirm majority votes. Continuation arrangements, therefore, were only private affairs, that is, voluntary and noncoercive accords. Note also that English bankruptcy law has always been statute based: there is no concept of bankruptcy under common law. See Treiman (1938), Johnes (1979), Duffy (1985), and Lester (1995).*" (Ma, 2011). "*Note that, historically, bankruptcy law in England and the United States stems from statutory law, whereas case law has never produced a coherent body of rules on this issue: the only major exception in this respect is the US equity receivership, which emerged in the late 19th century (see Skeel 2001, Martin 1974).*" (Sgard, 2006).

87 "*Under that act it was held that choses in action were included under 'goods and chattels' and, just as goods in the possession of the bankrupt were liable to pay his debts notwithstanding any former grant, so choses in action were liable notwithstanding a former assignment unless notice of the assignment had been given to the debtor. Notice to the debtor was therefore treated as analogous to delivery of a chattel. From an ordinary chose in action the step was easy to a claim in equity against funds in the hands of a trustee*." (Bordwell, 1927). "*The doctrine was set out by the statute 21 Jac. 1, c. 19 (1623-4), though again the legislation may be seen as a codification of curial practice, also likely to have been borrowed from Civilian doctrine though possibly finding its immediate source in Scots law."* (Getzler and Macnair, 2006). "*But the most noticeable step in advance was the creation of the doctrine of reputed ownership which has probably given rise to more litigation than almost any other part of the law of bankruptcy from that day to this. It is formulated in almost the same words as have been followed in recent Bankruptcy Acts, since it was enacted that if any persons should become bankrupt and should at such time by the consent and permission of the true owner have 'in their possession, order and disposition' any goods whereof they should be reputed owners, then that these articles were to be sold for the benefit of the creditors."* (Roscoe, 1911).

88 "*The most striking feature of Anglo-American secured transaction law is the requirement to file notice in public files for the nonpossessory secured transaction for court enforcement of the transaction against third parties. Not all legal jurisdictions follow this example. Roman law recognized the transaction without any filing. The Napoleonic Code banned the transaction. A secured transaction ensures that a lender receives repayment. [In Rome, hostage taking of slaves to work off the debt developed to taking personalty to work of the debt through rents and then to leaving the debtor in possession to earn moneys for the debt payments] In return for the loan, the lender receives a priority interest in the borrower's personalty. Secured transactions differ depending upon whether the creditor takes possession of the collateral, a pledge, or the debtor retains possession of the collateral, a nonpossesory secured transaction. The traditional explanation of the Anglo-American notice filing requirement for the nonpossessory secured transaction deals with its potential to create a secret lien. Without disclosing the existence of a prior nonpossessory secured transaction with respect to the collateral, the debtor may enter a subsequent secured transaction. If the two loan amounts aggregated exceed the value of the collateral, one secured party could fail to recover its loan if the debtor becomes insolvent. Roman law solved the problem by imposing a fraud penalty on the debtor for entering into subsequent secured transactions. The Napoleonic Code solved the problem by not enforcing any nonpossessory secured transaction. Anglo-American law solves the problem by granting priority to prior secured transactions that provide notice to subsequent lenders, typically through a filing."* (Flint, 2004).

89 "*In the only other important bankruptcy statute of the 17th century, the statute of 1623, we find a further extension of the fiction through the addition to the list of bankrupts of persons who 'being indebted to any person or persons in the sum of one hundred pounds or more, shall not pay or otherwise compound for the same within 6 months next after the same shall grow due — or within 6 months after an original writ sued out to recover the said debt.' Here, at last, the legislator has practically absorbed into the bankruptcy law the case of simple non-payment of debt. A mere condition of financial helplessness has become a subject for bankruptcy legislation. But the act-fiction still clings to it. The debtor's conduct, not his financial condition, is still the technical basis of his bankruptcy*." (Treiman, 1938).

90 "*No evidence has thus far answered the question whether a provision making bankruptcy a capital offense found its way into any drafts of the 1604 Act, but such a clause did make it into the draft of the next statute. The act that became 21 James I, c. 19 of 1624 was originally taken up in the House of Commons in 1621. The 1621 and 1624 bills must, in their preliminary drafts, have been nearly identical, or verbatim printed summaries of the two exist. Both summaries indicate that the laws would punish with pillorying fraudulent conveyance, refusal to disclose assets, and failure to demonstrate to the commission that the loss suffered was caused by misfortune. The bills then went on to punish as a felon without benefit of clergy any bankrupt who absconded and did not surrender himself to the commissioners. In other words, the offender would be hanged. The briefs offered the justification that '[t]his wilfull deceit is worse than burglary, or robbing by the high-way, which may be prevented, this cannot.' In debates in the House of Commons on May 24, 1621, Sir Edward Coke, at that time the famous former judge, appears to have reacted to this provision with the following observation: 'Adrian would have bankrupts whipped to death. They deserved it. But I like not laws written in blood. It is sufficient that it is so penal in some cases.' Other members shared Coke's opposition. The heavily edited manuscript draft of the House of Lords' version of the 1624 bill shows that the Lords struggled with the capital punishment clause more than with any other provision of the bill. They attempted to salvage the clause by adjusting the wording, crossing out lines, and making short substantive additions. In the end, however, the Lords abandoned the idea and dropped the entire clause, which consequently did not appear in the final law*." (Kadens, 2000). *"In England a bankruptcy bill, which provided for corporal punishment under certain circumstances, was introduced by Sir Francis Crane, a member of Parliament for Penryn. An extreme suggestion was that some bankrupts should be whipped to death. Sir Edward Coke felt that bankrupts might deserve this fate, but he did not like 'laws written in blood'... By 1624, however, the political climate had altered. Prince Charles and Buckingham were in pursuit of diplomatic revenge and native popularity; as Cranfield fell a new bankruptcy statute was born. It was modeled upon*

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the design of 1621, but excluded bloodthirsty suggestions. Even the proposal, put forward again, that bankruptcy should be made a felony was left out. It was, nonetheless, the most stringent bankruptcy statute which had yet been produced. In other respects, this Parliament, hostile to monopolies, sought a greater freedom —in terms of economic activity— for the landowner, the farmer, and even those who wished to participate in the cloth trade. This had little to do with the circumstances of tradesmen and most merchants. They might in some respects be allowed a greater freedom of enterprise and maneuver the 1604 session of Parliament had also been marked by a campaign against certain company regulations, but this could entail a stricter set of regulations to satisfy a society of landed producers and investors. Furthermore, there was still a backlash against the memory of Bacon's innovations and past interventions by the Privy Council. An attempt to tighten the bankruptcy laws was not out of touch with the economic ethos of 1624. Henceforth, and for a few decades, the initiative in providing refinement passed from Parliament to the judiciary. The latter could do no more than interpret complex problems as they arose. Political circumstances precluded legislation. This applies to all aspects of debt." (Jones, 1979).

91 "*For 20 years these acts [1 Jac. I c.15] served to provide the tests whereby men were adjudged bankrupts. But in England, if trade was growing so was the number of bankrupts and with them the 'frauds and deceits invented and practiced for the avoiding and eluding the penalties of the good laws in that behalf already made.'[Preamble to 21 Jac. I, c.19]... Debtor indebted for £100 or over not paying or compounding within 6 months after debt due and debtor arrested for such debt; or if debt not paid or compounded within 6 months of issue of original writ, notice of which had been left at last known abode of the debtor; or being arrested for £100 or more just debt or debts procuring enlargement by putting in common or hired bail; in such cases the debtor was to be adjudged bankrupt to all, intents and purposes. In the cases of arrest or putting in common or hired bail bankruptcy was to be as from the time of the first arrest. These acts of bankruptcy were repealed by 10 Anne, c. 25, on the grounds that great inconvenience and mischiefs have arisen through them] Nor was the legislature going to bother with looking into the minds of men to gather their intentions, for these acts made a person bankrupt 'to all intents and purposes.' [§2 reduced the period of lying in prison from 6 months to 2 months]... The common debtor might keep his house against all save the King [Semayne's Case (1604) Co. Rep. V, 91 b]; to the bankrupt no such privilege was afforded; to remain closeted from the questing creditor was to invite the commissioners of bankrupt to enter. [Any doubts held as to the right of the commissioners to force an entry were swept aside by §7]... [the statute] widened the scope of the punishment. If the bankrupt, upon examination, is found to have concealed or conveyed away estate to the value of £20 or above, and does not disclose such fact to the commissioners upon his examination, recovering the same where possible, or cannot show that he sustained some casual loss by virtue of which he is unable to pay what was then owed; then upon indictment and conviction the bankrupt again to be set upon the pillory for 2 hours and to lose a nailed ear.*" (Cadwallader, 1965). "*But the reign of James I did not close without adding another statute to the law of bankruptcy, important rather in the development of the existing system of law than in the laying down of new principles. The cruelty of the age is indeed exemplified by the provisions intended to prevent the non-disclosure by the bankrupt of his goods by means of the punishment of the pillory for 2 hours, added to the torture of the bankrupt of having one of his ears nailed to it and then cut off... It is fitting to pause here in a view of English bankruptcy law, because with this statute closes the first series of legislative efforts to create a satisfactory law, nor had those efforts been on the whole unsuccessful, for the bankruptcy law of the 17th century was considerably in advance of the common law. It was small in compass, reasonably clear in substance, free from technicalities of procedure, neither based on nor interwoven with legal fictions, and though cruel, not more so than the temper of the times allowed, or than was natural having regard to the callousness with which human suffering was treated in that age. Nor when the improvements and changes which have taken place in other parts of our municipal law are noted can the law of bankruptcy be said to have improved as time has gone on. It has grown large in compass and more complicated in detail. It was nearly a 100 years, however, before a further change took place, and when it occurred it was followed by others down to our own time in a rapid succession caused by the fact that the existing law has never fulfilled the intentions of the promoters or satisfied the nation at large.*" (Roscoe, 1911).

92 "*It seems clear, too, that many of the profession turned from the legal work which would today be described as conveyancing to a type of financial business which contemporaries called 'scrivening', those engaged being sometimes distinguished as 'money-scriveners.' As is usual when specialized functions are gradually appearing, early practitioners covered a wide field. By 1624 scriveners were described in an Act of Parliament as persons who 'received other men's monies or estates into their trust or custody.' It has been suggested that attorneys and notaries were admitted to the Co of Scriveners-incorporated in 1617 and in this way the Company contrived to preserve its monopoly of the conveyancing work which could apparently lead to a hybrid of functions. According to the needs of clients, they advanced money for marriage settlements or acted as financial 'contact-men.' Inevitably they figured as 'extortioners' and 'chargers of excessive usury.' Dekker, in the 1630's could write of 'gull-gropers' and 'money-mongers', and a century later Defoe was warning his English tradesman against the wiles of the 'Procurer or Scrivener or Banker' and noting that the 'customary encroachments of Usurers, Money-Lenders, Scriveners etc... have been the scandal of the times'.*" (Coleman, 1951). "*The 1624 statute also for the first time specifically named scriveners as one of the occupations liable to bankruptcy, an innovation that was apparently connected with a recent scandal in London that involved money from the City's orphan funds that had been put out to loan by scriveners who had subsequently gone broke.* (Brooks, 2009). "*The 17th century saw the development of the old 'writings obligatory' into 'promissory notes', the ancestors of modern banknotes. A banker is a man who borrows from some people in order to lend —at interest— to others: and the scriveners were engaged in this business on a large scale at the beginning of the 17th century.*" (Harding, 1966).

93 "*By statute 13 Eliz. c. 7. bankruptcy is confined to such persons only as have used the trade of merchandize, in gross or by retail, by way of bargaining, exchange, rechange, bartering, chevisance, or otherwise; or have sought their living by buying and selling. And, by statute 21 Jac. I. c. 19. persons using the trade or profession of a scrivener, receiving other men's monies and estates into their trust and custody, are also made liable to the statutes of bankruptcy; and the benefits, as well as the penal parts of the law, are extended as well to aliens and denizens as to natural-born subjects. Lastly, by statute 5 Geo. II. c. 30. [in 1731] bankers, brokers, and factors, are declared liable to the statues of bankruptcy.*" (Blackstone, 1823).

94 "*The commission had the power to examine the debtor and his creditors for the purpose of arranging a composition which resulted in the imprisoned debtor's release. Creditors routinely acceded to the proposed settlement, and those who did not could be summoned before the commission or Council to give reasons for their refusal. The commission's mediation could result in the discharge of the debtor's liability. This was the most interesting aspect of the commission's work since, as we have seen, bankruptcy did not discharge the insolvent trader until the early 18th century, nearly a century after these commissions ceased to function. Indeed, such discharge would not be available to a non-trader-debtor until the mid-19th-century... The commission represented*

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the most lenient policy towards the insolvent debtor for several centuries to come… Dawson has observed that 'the largest class of (private) litigation dealt with by the Tudor and Stuart Privy Councils was concerned with aid to debtors.'" (Cohen, 1983).

95 "*The Virginia Co, which established Jamestown in 1607, had gone bankrupt by 1624. The Providence Island Co, founded in 1629 by critics of King Charles I, managed to set up a small island colony off the Central American coast in the 1630s, only to have their base overrun by the Spanish in 1641. The Massachusetts Bay Co, founded the year before at Providence Island by those with similar sentiments, is usually viewed as a success, but its population and wealth were risible compared to the mineral-rich possessions of the Spanish in the Americas and the Portuguese in Africa. Had the English state not become directly involved in the Massachusetts Bay enterprise in the mid-century, the significance of the colony would surely now be seen in a less favorable light. Since the English crown failed to develop institutions to supervise the overseas ventures of its subjects prior to the middle of the 17th century, England had a tiny, fragile, and ephemeral presence in the Atlantic prior to the establishment of the English Republic in 1649.*" (Pincus, 2005). "*The initial English company set up to develop American commerce, the Virginia Co, was organized as a joint stock venture in imitation of the seemingly secure [EIC] chartered to tap the fabled riches of Asia. The failure of the Virginia Co to attract many investors was not due to a lack of funds: merchants of the City of London and members of the landed gentry poured massive amounts of money into [EIC] in the same years that its Virginia counterpart struggled. Investor reluctance can be attributed to the larger outlays foreseen in opening up the Americas in comparison with Asian exploits. The Virginia Co not only sought trade with resident populations, as was the case with the vast and skilled artisan production of Asian peasants, but also aimed to set up and maintain productive plantations of its own, which required large and frequent injections of capital over a long period. The merchants of London also withdrew their support from the contemporaneous Newfoundland Co, as its investments in settlement and plantation infrastructure left only a minute margin of profit for the extractive, and thus much less costly, local fisheries. Barring the minor and insular exceptions of the Puritan-led Bermuda and Providence Island Cos, established English merchant capital looked elsewhere for cheaper opportunities.*" (Klooster, 2005). "*Craven (1932) presented Sandys in a kinder light than Professor Scott, who was less interested in colonization than in fraudulent share-pushing and quarrels for control among directors. But although Mr. Craven sees Sandys influenced by 'considerations of honor and public service' and considers that his 'persistent devotion and service to the company cannot alone be explained by a desire to protect his own investment', he also acknowledges that the 'Sandys administration had reduced the company to bankruptcy and the planters to a miserable state of famine.' He also fully agrees that the motive of personal gain was present in Sandys and considers his attempts, in collaboration with the Ferrar brothers, to get quick results by stimulating colonization mean that 'a heavy burden of responsibility must rest upon him for his ill-considered measures.' Neither does Mr. Craven defend Sandys's attack on Sir Thomas Smythe, for 'it was a grave mistake to inject into an atmosphere already fraught with resentment and bitterness charges of dishonesty which he was unable to substantiate'.*" (Prestwich, 1966).

96 "*[In 1629] King Charles confirmed the appointment... of the office of receiver-general of the revenues of the province of Carolina, and the adjacent isles of Bahama, lying between the 31st and 36th degrees of north latitude, extending from the Atlantic to the Pacific Ocean. Carolina, with the Bahama isles, had been granted, on the 30th of October 1629, by King Charles to Sir Robert Heath, and to his heirs, and was the same country (exclusive of the isles) now named North and South Carolina, and Georgia, together with the usurped French colony behind them, called Mississippi or Louisiana. Sir Robert afterwards conveyed his province of Carolina to the earl of Arundel, who was at the expense of planting sundry parts of it: but the war which broke out in Scotland, (in which that lord was the king's general) and the subsequent civil war in England, prevented his farther progress therein. The 5 Indian nations of the Iroquois, who have been so long the voluntary vassals of the English crown, and who had lately conquered all the lands from their own original country behind New York as far as the Mississippi and beyond it, made a surrender and sale of all those conquests to the governor of New-York, in King James II's reign.... [In 1632] This year gave birth to the prosperous colony of Maryland. Sir George Calvert, secretary of state, having, in the years 1621 and 1622, obtained of King James a grant of part of Newfoundland, he sometime after removed thither with his family, but he soon found it to be one of the worst countries in the habitable world. Whereupon he returned back to England; and he, being a conscientious Roman Catholic, (says Sir William Keith, in his history of Virginia) was inclined to retire with his family to some part of Virginia, there quietly to enjoy the free exercise of his religion; for which purpose he went thither himself, about the year 1631: but being discouraged by the universal dislike which he perceived the people of Virginia had to the very name of a papist, he left Virginia, and went farther up the bay of Chesapeak; and finding there a very large tract of land, commodiously watered with many fine rivers, and not yet inhabited by any Christians, he returned to England, and represented to the king that the colony of Virginia had not as yet occupied any lands beyond the south bank of Potomack river; whereupon he obtained a promise of a grant of that unplanted country. But he dying before the grant was made out, his son Caecil, lord Baltimore, took it out in his own name on the 20th of June 1632; the king himself naming it Maryland, in honor of his Queen Henrietta Maria... 1633–In 1633, Lord Baltimore carried 200 persons to his new colony of Maryland, mostly papists. This colony had in the beginning a very great advantage in being in the neighborhood of that of Virginia already planted, from whence they supplied themselves at first with flesh-meat, poultry, &c. insomuch that Maryland, being quickly and easily settled, became in a few years flourishing and populous. It has therefor at length became a large and noble estate to Lord Baltimore. In this province, as well as in that of Virginia, the planters live mostly in separate situations and not in towns, for the conveniency of the great number of rivers, and of creeks and inlets of the great bay of Chesapeake, whereby they so easily convey their tobacco to the ships; so that in neither of those colonies are there as yet any towns of considerable bulk or importance. For the greater planters have generally storehouses within themselves, for all kinds of necessaries brought from Great Britain, not only for their own consumption, but likewise for supplying the lesser planters and their servants, &c. And, whilst that kind of economy continues, there can be no prospect of towns becoming considerable in either province, which is so far a benefit to their mother country, as without towns (wherein home manufactures and handicrafts are generally first propagated) they must continue to be supplied from Britain with clothing, furniture, tools, delicacies, &c. The tobacco of Maryland, called oroonoko, being stronger than that of Virginia, is not so generally agreeable to the British taste as the sweet scented tobacco of the later colony; but the northern nations of Europe are said to like it better, and they are thought to raise about as much tobacco, and to employ near as many ships as Virginia does. Its soil is in general extremely good, being mostly a level country... [1637] King Charles issued a proclamation, importing, 'that being informed that numbers of his subjects are every year transporting themselves and families, with their estates, to the English plantations in America, amongst whom there are many idle and refractory humours, whose only or principal end is to live as much as they can without the reach of authority;' the king thereby commands all the officers*

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of the several ports that they do not hereafter permit any persons being subsidy men (i.e. payers of the usual subsidies) to embark themselves thither, without a license from the commissioners for plantations; nor none under the value of subsidy-men, without a certificate of his having taken the oaths of supremacy and allegiance, and likewise, from the minister of the parish, of his conversation, and conformity to the orders and discipline of the church of England. This was levelled against the puritans, then going in great numbers to New-England to avoid persecution at home: and a better sample needs not to be desired of the wisdom of this king and his ministers." (Macpherson, 1805).

97 "*Between mid-Sep 1630, and mid-March, 1631, an official reported transmitting payments for only 4 commissions issued with respect to persons living in the city of London and its vicinity [2 P.R.O., E.215/2/227].*" (Jones, 1979).

98 "*At the outset of our period, the Court of Admiralty still had jurisdiction over bills of exchange, but by 1564 this was being disputed by the Westminster courts. Despite an agreement in 1575, this contest still remained unsettled until 1632, when the Privy Council decreed that Admiralty have jurisdiction over contracts made beyond the sea and the Westminster courts over those made in this country. This, however, seems to have left in doubt the position regarding many outland bills... In cases upon inland bills of exchange, no special difficulty was met in pleading in terms of the common law. The general practice was to rest such cases on the custom of merchants, by which bills passed from hand to hand as if currency. By pleading this custom, the assignability of inland bills could be established in law... But in order to have this remedy one had, as late as 1632, to be styled a merchant, for it was ruled in the King's Bench, upon a bill of exchange, between party and party who were not merchants, there could not be a declaration upon the law of merchants, though there might be upon the assumpsit, giving the acceptance of the bill as evidence of the acknowledgement of the debt.*" (Kerridge, 1988).

99 "*The Petition of Right of 1628 ended the last vestige of government by divine right of kings. Parliament declared that the commitment of those like Darnel who had refused to 'loan' money to the king had violated Magna Carta, and 'when for their deliverance they were brought before your justices by... habeas corpus', the returns showed no cause of commitment. Yet they 'were returned back to several prisons, without being charged with anything to which they might make answer according to the law.' Consequently, the Petition of Right promised that without authorization by Parliament, no person could be forced to make a loan to the king or be imprisoned for his refusal... Habeas corpus ad subjiciendum was initially used by the king's common law courts to limit the jurisdiction of local and rival central courts, such as the specialized courts that decided ecclesiastical and admiralty matters. Habeas was thus not originally understood, as it is now, as a guarantee of civil or human rights but, rather, as a means for the king to ensure just cause for the imprisonment of any of his subjects. By the 1600s, habeas corpus started to become viewed 'as a safeguard against the arbitrary power of the Crown itself.' An important shift occurred with the Five Knights case (also known as Darnel's case). King Charles I had imprisoned a number of men for refusing to contribute to a loan to raise money for a war with France and Spain. No charges were filed, and 5 of the men sought writs of habeas corpus challenging their imprisonment and demanding release on bail. Without formal charges, they argued, 'imprisonment shall not continue for a time, but for ever; and the subjects of this kingdom may be restrained of their liberties perpetually' in violation of the Magna Carta's guarantee of due process of law [Darnel's Case, 31 Howell's State Trials 1, 8 (K.B. 1627).] Attorney General Robert Heath responded on behalf of the Crown that it was the king's prerogative to imprison by his 'special command' for 'a matter of state... not ripe nor timely' for the ordinary process of formal accusation and trial. Heath insisted that the judges defer to the king's judgment about what means were necessary to protect 'a conspiracy-threatened commonwealth' from danger and not 'inquire further' into matters of state. Although the king won this particular battle, he lost the larger struggle over the Crown's prerogative. After the court denied relief to the prisoners, Parliament responded with the Petition of Right, proclaiming it illegal for the Crown to imprison based on royal command and without formal charges. Responsible government, the Petition of Right stated, could not coexist with such sweeping claims to emergency powers of arrest and detention [Petition of Right, 3 Car. 1, c.1, §§ 5, 10 (1628); Duker (1980, p141).]*" (Hafetz, 2011).

100 "*[In 1629] London at this time abounded in wealth and grandeur, compared to its condition in former ages. The gay appearance of goldsmiths shops shining with plate on the south side of the street called Cheapside, thence named Goldsmiths-row, was then thought very grand, extending from Bucklersbury to the Old change, (4 shops only excepted of other trades) which small exception made the privy council think it worthwhile to direct the judges to consider what laws there might be in force to oblige the goldsmiths to plant themselves in Cheapside and Lombard street, for the use of their trade... We have seen that King Charles revived the office of the king's exchanger of gold and silver, which had been long in disuse; and a pamphlet was this year published by his authority, intitled, 'Cambium regir', or the office of his majesty's exchange royal; declaring and justifying 'his majesty's right thereto, and the conveniency thereof; wherein it was shown, that the prerogative of exchange of bullion for coin has always been a flower of the crown, of which instances are quoted from the time of King Henry I downward: that King John farmed out that office for no smaller a sum than 5000 marks: that the place or office where the exchange was made in his reign, was near St. Paul's cathedral in London, and gave name to the street still called the Old change: that, in succeeding reigns, there were several other places for these exchange besides London: that this method continued till the time of King Henry VIII, who suffered his coin to be so far debased that no regular exchanges could be made: that that confusion made way for the London goldsmiths to leave off their proper trade of goldsmithrie, and to turn exchangers of plate and foreign coins for English coins; though they had no right to buy any gold or silver for any other purpose than for their manufacture; neither had any other person, but those substituted by the crown, a right to buy the same. The king, therefor, has now resumed this office, not merely to keep up his right so to do, but like wise to prevent those trafficking goldsmiths from culling and sorting all the heavy coin, and selling the same to the mint of Holland, which gained greatly thereby, or melting those heavy coins down for making of plate; witness the pieces of 13.5 d, old shillings of Queen Elizabeth, 9d, and 4.5d pieces; which being weighty monies, none of them are now to be met with; whereby they have raised the price of silver to 2d per ounce above the value of the mint; which thereby has stood still ever since the 11th of King James. That for above 30 years past it has been the usual practice of those exchanging goldsmiths to make their servants run every morning from shop to shop, to buy up all weighty coins for the mints of Holland and the east countries, whereby the king's mint has stood still. The former allowances in the old cambium regis were 1d, and sometimes 1.5d exchange upon the value of every noble, (i.e. 6/8.) Those offices were usually sold by the crown for a good sum of money, and the king's exchanger had also the sole right of ex changing plate and any other manufacture of gold and silver at home for the king's coin, taking the like allowance, and also the coinage duty. Against the revival of this royal exchange, the goldsmiths company of London earnestly petitioned the king and council, as did afterwards the lord mayor, court of aldermen, and common council, in behalf of the goldsmiths company, who called themselves no fewer than 900 families, whereas the royal pamphlet asserts*

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that not above ten goldsmiths were concerned in this exchanging trade. In brief, upon a second petition of the goldsmiths, the king told them to trouble him no farther, since his right to the office was undoubtedly clear." (Macpherson, 1805).

101 "*There is also in the possession of Messrs. Hoare a curious old pre-Civil War receipt, dated 11th Dec 1633, which appears to indicate that deposits were kept by the Hoare of that day. This rare document, the earliest known gold-smith's receipt, was only recently discovered. It is signed by Lawrence Hoare of 'The Golden Bottle', Cheapside, and acknowledges the receipt of (3 5s. 0d. from one William Hale for a 'post flyne charged upon Rowland Hale upon the accompt of Henry Coghill', High Sheriff of Hertfordshire. But though some of the London goldsmiths accepted money and plate in trust prior to the Civil War, there does not appear to be any documentary evidence to show that this was a general practice. The Mint in the Tower, however, was, during the 4 decades preceding the outbreak of this war, increasingly used as a repository.*" (Richards, 1929). "*During the late 16th Century and the first half of the 17th Century, the goldsmiths functioned as jewelers, lapidaries, and craftsmen of gold and silver. There is evidence that the goldsmiths extended their business to receiving deposits by the 1630s.*" (Nichols, 1971).

102 "*On the 2d of March 1628-9 King Charles dissolved his parliament, with many sharp expressions of resentment against those members of the house of commons who opposed his measures; by which the differences between him and his people grew dayly wider. Yet, rather than have any more parliaments, he went deeper into arbitrary and illegal methods for raising money by his sole prerogative. So from this time till the year 1640 there was no par liament summoned.*" (Macpherson, 1805).

103"*At the beginning of 1635 the condition of the finances was alarming. The debt, which had been very large in 1628, had been increased by the deficits of the intervening years, and future income had been anticipated, in some cases, until the end of 1637... The finance of the advisers of Charles I. was in its essence a system of indirect taxation of commodities, produced at home, and that too raised in a most wasteful manner by the grant of very wide privileges to so-called trading societies, which were brought into being for the collection of the money accruing to the Crown and which secured for themselves large profits. [The patentees of salt and soap are mentioned as having made great wealth from their respective monopolies.] Both the new revenue and these profits were obtained, not only at the expense of the consumer, but also at that of the trader and manufacturer. In 1636 and 1637 industry had begun to feel the effect of these grants. The great staple trade—that in wool— suffered doubly through the manipulation of the soap-trade, first in the increased cost of that commodity and secondly by the scarcity of potash which was due to the suspension of imports and the demands on home-supplies by the society of soapers and the King's saltpetre makers. Similarly, the restriction of the production of old soap was a serious blow to the Greenland company, since the chief consumption of trainoil was that of the soap-boilers. The operations of the salt-monopoly were prejudicial to the Fishery society, and in 1636-7 both these undertakings were in difficulties8. The same policy affected the other trading bodies. The tobacco monopoly was highly detrimental to the Bermuda Co; while the East India merchants were exceptionally unfortunate, in so far as they failed to provide what was judged to be their share towards the royal necessities and, as a consequence, at the end of 1635 a rival company was authorized, in which Charles I. was to receive a share of the profits. The result was a fall in the price of the stock to 80. A similar breach of faith is shown in the treatment of the New River company. Under the agreement with James I. the Crown was entitled to one-half the profit. In 1631 Charles I. commuted his right for an annual rent of £500 a year, and he immediately granted facilities to rival schemes, which promised larger payments... A preliminary warning of the cessation of prosperity, through the increased cost of production and the dislocation of trade, was occasioned by the plague of 1636-76. The tendency towards depression was accentuated by religious troubles in Scotland in 1637-8, and in these years there were symptoms of a minor crisis, which was the precursor of that of 1640... It cannot be a matter for surprise that the pressure of the monopolies was a powerful influence in alienating the affections of his subjects from Charles I., and also, when he appealed to the arbitrament of the sword, in depriving him of the support of the mercantile classes. A quantitative valuation of the injury, inflicted on industry by this policy, gives reality to expressions that seem to be the outpourings of excited rhetoric. When account is taken of the increase of the direct burden in rise of price by the curtailment of trade, a reason can be seen for the complaints that commerce alike in London, the provincial towns and the country was 'greatly decayed' through this cause, and that the merchants were much impoverished by their estates being 'squeezed' from them by the agents of the monopolists. For these reasons, the nation was described as 'groaning under the mountainous weight of these exactions,' or as being overrun 'with swarms of projecting cankerworms.' Indeed, according to one writer, 'it was a thing somewhat dangerous for merchants, foreign or native, to export or import merchandize upon payment of the ancient Customs... without a second fee or fine to Sir John, Sir Paul or Sir Thomas.' When matters were in this condition and the nation was distracted by political unrest, any untoward events would result in a serious crisis.*" (Scott, 1910a)

104 "*[1635,] year is remarkable for King Charles's most memorable imposition of ship-money for the ensuing year 1636 on all the counties, cities, and towns, in England, by virtue of his own sole prerogative. His pretense for this most arbitrary and illegal imposition was, that the Dutch pretended a right to a free and undisturbed fishery on his coasts... King Charles, bent on bringing the Dutch to acknowledge his sea dominion, had now, besides other naval armaments, built the greatest ship of war that had ever been seen in England before, and gave it the name of the Sovereign, of 96 guns and 1740 tons. And the better to enable him to fit out a superior fleet, he ordered his chancellor Coventry to issue writs to the sheriffs of the several counties, and to the magistrates, &c. of several towns, 'for assessing and collecting money for fitting out ships of war for suppressing pirates and for the guard of the seas.' The precept for the county and towns of Dorsetshire being, given at large, it appears that they were commanded to procure and fit out a ship of 500 tons burden, with a commander and 200 sailors, with cannon, small arms, spears, darts, ammunition, &c. answerable, and stored with provisions, and double equipage, and all other necessaries, for 26 weeks at least; all which was to be paid and maintained at their own charge. Here follows the list of all the ships which the several counties of England and Wales were commanded to supply for the year 1636.*" (Macpherson, 1805).

105 "*The parallel between the two decades 1610-20 and 1630-40 is, in several respects, remarkably close. Both began with great activity in trade, which developed towards fishing and drainage enterprises. In either period there is the same tendency to stake the future of an important trade on the success of a new process. Again, there are the same dangerous offices of supervision, the same arbitrary imprisonments, in the early period of gold and silver thread-makers, in the later of the soap-boilers. Still more remarkable, the serious industrial crises, which began in 1620 and in 1640, were prefaced by minor ones about three years earlier, namely in 1617 and in 1637... collating the statistics available, relating to the total consumption and the rise in prices of the*

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commodities affected between 1628-30 and 1638-40, it may be estimated that the advance at the later date meant a difference, against consumers, of at least three-quarters of a million a year. The question remains as to how far this rise in prices is to be attributed to the action of the monopolistic grants, since it is possible that this phenomenon might have been only one aspect of a general movement towards a higher level of values. Fortunately, there is sufficient evidence to decide this problem, by separating the commodities acted on by monopolies from those that were unaffected, or influenced by these in a very slight degree. Prominent in the latter groups are the great staple products, grain and wool. Comparing the ten years 1621-30 with 1631-40 the increase in the price of wheat is only about 2% in the later decade, while the highest quotation of the twenty years is in the earlier period. Wool, according to Rogers, was stationary. Moreover, the scarcity of silver about 1636, in conjunction with the slackening of trade, would tend pro tanto towards a lower rather than a higher level of general prices." (Scott, 1910a). "*In the early 1620's a crisis had been considered primarily from the point of view of the producing areas and the outports, by a Parliament essentially hostile to the Merchant Adventurers. 10 years later there was no Parliament in session and, we may assume, the interests of the outports were relatively poorly represented in London. The Privy Council, left to its own resources, returned to the mainstream of traditional ideas on the benefits of regulated commerce. Trading difficulties were seen largely in terms of the unfavorable repercussions on London merchants, and, while the council established relatively low entrance fees to facilitate an expansion of company membership, a regulated monopoly was re-established over the most important branch of English commerce*." (Supple, 1959).

106 "*[T]he long-term contraction in the traditional markets for English broadcloth was most apparent. The repercussions of this development, of the government's attempts to resist the cost-reducing debasements of the quality of textiles, and of the difficulties experiences by the Merchant Adventures, produced an unhappy atmosphere in the textile areas of the West during the troubled 1630s... 1633 was a bad year for cloth exports, only some 80,800 short clothes being shipped from London. In April a proclamation for the reform of abuses in manufacture was published; but attempts to enforce it produced a real threat on unemployment among employees of the manufacturers of colored cloth who wished to continue the use of the gig mills, while the general requirements of the proclamation were distasteful to clothiers producing white cloths, who were especially affected, finding that 'by reason of the deadness of the times for sale of cloth, the loss of part of the principal stock sustain by the sale of them for the space of two years last past, their estates are decayed… and also the ready money for their cloth is hardly to be hard.' In Gloucestershire, therefore, the Justices of Assize found that 'the clothiers did begin to cast off their workmen', and during the stormy year of 1634 in Wiltshire 'some of the sufficientest clothiers... [have] given over the making of cloth and... divers others intend to do the like to the impoverishing of many poor people depending thereupon.' In December 1634 there was, 'for want of buyers,' much cloth in pawn and unsold in London storehouses, while a month later the clothiers of Essex and Suffolk put the value of such frozen assets at some £100,000... Meanwhile the Merchant Adventures, whose markets in Germany and Holland were contracting most of all, were themselves experiences commercial difficulties... [Upon petition, the Council] decided, in view 'of the great decay of their trade' and its weakening by dispersion, that Adventurers 'shall henceforth enjoy the sole trading in the Low Countries and Germany not only in all white cloths, but also in all colored cloths'... Late in 1636, according to the Chief Justice of the King's Bench, the local magistrates, and the bay makers of Bocking and Coggeshall, there was 'a great stop in the trade of bays and cloth in... Essex' and the council was forced to suspend and then revoke the proclamation of the previous July which had increased the wages of spinners in that industry: it was feared that the depression would only grow worse unless labor costs were reduced, but the government urged strongly that the poor be kept in employment and be paid 'fit and competent wages.' The slump continued into spring 1637 and the council, worried by 'the present stop and stay of clothing and of the vent of cloth, bays, and other manufactures of wool' in Essex, consulted with the Merchant Adventurers and the merchants trading to Spain and France. The former were warned that if no satisfactory conclusion was reached in their discussions with industrial representatives then the trade would be thrown open. Wages had already been adversely affected by the fall in sales, stocks of textiles were accumulating in London and Essex, and the position of some clothiers considerably worsened by the freezing of their assets in bad debts due from various merchants. The bay manufacturers of Coggeshall, Bocking, and Braintree reported that many employers had found their businesses so unprofitable that they had become, where possible, wage laborers, and that many of the remaining clothiers 'have been encouraged to engage their credits far beyond their stocks in borrowing money... to keep the poor at work.' But by 12 May the council, in writing to the Essex authorities, was able to report some progress in its efforts to alleviate the depression. The principal complaints of the merchant groups had been of poor sales abroad, of the false manufacture of bays, and of the unsuitability of the fabrics for the market. The council secured an agreement by which the merchants, in return for a promise that bays would be well made and 'merchantable', consented to buy up the full output. On the other hand, however, the justices of the peace were enjoined to 'take order that by degrees fewer bays be made since that commodity is not now so vendible.' It is the last statement which is, perhaps, the most interesting comment to emerge from the discussions. It is difficult to see the particular cause of the slump in Essex in 1636-7. But there is a distinct possibility that the county, over the long run, was simply manufacturing more bays than overseas demand could readily absorb. The mobility of the factors of production in the bay industry was probably higher than in most other branches of the textile industry: the process of manufacture did not demand a heavy investment, there were no stringent apprenticeship requirements, and, as a consequence, men moved in and out of the industry, and from employed to employing and back again, with considerable ease. With an over-supply of labor and no initial hindrances to a productive expansion the frequent intimations of over-production should come as no surprise. The weavers of Braintree and Bocking had complained in 1629 employment had been lacking for 6 years, and the ease with which, that year, output increased to glut the market was by no means a healthy sign; in 1632 there was another depression in Essex which resembled over-production; in 1637 the local magistrates had noted that one fault lay with 'the taking of too many apprentices contrary to the although it is doubtful if the industry did, in fact, come under either the cloth statutes or the Statute of Artificers; finally, the county had by no means seen the last of chronic industrial dislocation. It was not alone in East Anglia that a fundamentally unsound situation existed in the textile industry. By the late 1630's it was apparent to all commentators that the old draperies centered —on the West of England— were in a depressed state. A commission was appointed in 1638 to investigate the poor quality of English cloth, whose 'ancient reputation in foreign parts hath of late times been much impaired to the decay of trade and vent there and to the impoverishing of many thousands of our poor people.' Its final report, in 1640, was also concerned with the general reasons for the decay of the cloth trade and, although it was in large part a repetition of the report of the 1622 committee, it paints a striking picture of stagnation at home and powerful competition abroad. The commission's anxiety concerning the excessively low wages being paid in textiles, and its desire to increase them were matched by William Goffe, who, in a pamphlet*

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dated 1641, advocated industrial diversification because in cloth manufacture 'the price is beat down to so low a rate that the slow workmen cannot maintain themselves.' These fears reflected the situation which gave rise to the re-issue, in May 1640, of the proclamation, which had originally been promulgated to meet the crisis of 1629, 'commanding the due execution of the laws made for setting the poor on work.' And similar analyses, tempered by a realization of the potentialities of economic adaptation, emerge from the writings of Sir Thomas Roe and Henry Robinson. By the end of the period men admitted that the possibilities of reviving the ancient textile trade had been exhausted. Their minds turned in other directions. In any case, by 1640 constitutional questions began to intrude upon economic affairs. It was for this reason that no serious official consideration was given to the commission's report, and one of the last attempts on the part of the government to deal with commercial matters in isolation from all others had come in 1639, when a 'deadness of trade in London' had coincided with yet another effort to strengthen the monopoly of the Merchant Adventurers—by an enforcement of the 1634 proclamation. The troubled years which followed only served to emphasize the economic confusion which pervaded the textile industry, and turned the government's attention away from matters of purely economic interest." (Supple, 1959). "*Turning the Cockayne crisis energetically to advantage, the woollen manufacturers of Leiden used their better protected position to build up an expanding production of lakens. The industry did not escape its ups and downs, but, as the table shows, it was the only branch of the Leiden industry which enjoyed a fairly steady increase through the years from 1620 to 1700 and whose output was greater in the 1690's than at any other period of the century. Here again, we have the reverse situation from that in England, where the makers of pure woollens were in difficulties, save for the 'Spanish' cloths of Wiltshire and, later, of neighbouring counties. Closer examination of the evidence leaves little doubt that these contrasting situations in the two major European textile industries were the result of direct competition, product by product, between them; and that the special achievements of the woollen and camlet branches of the Leiden industry must be related to the exploitation of the unique advantage these industries (and they alone) possessed in regard to raw material supply... Thus the outstanding feature of the period from 1620 to 1700 at Leiden was the rise of a new woollen manufacture, and the protracted but inexorable decline of the worsted and mixed cloth industries, with the exception of one — the grein or camlet industry. In short, the fortunes of the Leiden industries were exactly the reverse of those of the English textile industry, where the worsted group was in the ascendant and woollens in decline.*" (Wilson, 1960).

107 "*[In 1632] A dearth of provisions continuing, the king prohibited the exportation of corn for one year. And by the same proclamation, he renewed a former one, against the exportation of wool, fuller's-earth, and leather. King Charles by a special warrant to his treasury declared, that notwithstanding the laws and customs of England forbid the exportation of any gold and silver to foreign parts, either in coin or bullion, yet he, being desirous to cultivate the friendship of his most dear brother King Philip IV of Spain, and of the merchants of the Spanish Netherlands, grants a license for the said merchants to export gold and silver, either in our coin or otherwise, being the produce of the merchandize they shall import into England, as far as the amount of £2000 sterling, in every ship returning home; so as the said money be exported within the space of 100 days from their unlading the merchandize they import, until we shall otherwise ordain, any statute or custom to the contrary notwithstanding... [1635] K. have a proclamation 'prohibiting any coin, plate, or bullion, from being used in making gold and silver thread, copper-gilt or silvered, gold or silver foliate, purles, ores, spangles, wire, and such other manufactures, except what shall be imported from foreign parts, or which shall arise from the same works and manufactures being melted again: and that none of the current gold and silver coins of this realm be hereafter molten down by any refiner, goldsmith, &c. And that all gold and silver hereafter to be employed in the said manufactures be provided, prepared, and disgrossed by such persons only as we shall assign, and by none others; and which shall be by them sold and delivered to all persons who shall use the same, according to such standards, and at such rates and prices as we shall limit, and at such places in London as our commissioners shall assign. And none shall make the said wares but such as shall be by them authorized: and a stamp to be put on all the said manufactures.'... Private copper farthings, or tokens, as they were then called, being still used in retail business, King Charles issued a proclamation forbidding the currency of them, and ordering that none be used but those formerly issued by his fathers... In the same year King Charles granted a patent to the Lord Maltravers and Sir Francis Crane for the sole coinage of copper or brass farthings; and, pursuant to an order of the Star Chamber, of the year 1634, it was now provided, that the said brass farthings should not be forced upon poor laborers in payment, they having formerly been compelled to take all or most of their wages in such farthings from designing men, who had bought up great quantities of them at a low rate. Silver (says Rushworth) was so scarce and gold so plenty at this time, that when cattle were sold in Smithfield, they commonly bargained to be paid in silver and not in gold, insomuch that twopence or more was. usually given for exchanging a 20-shilling piece into silver, although the gold was full weight. The king appointed commissioners to compound with the transgressors of the laws made against destroyers of timber trees and woods in. melting and forging iron... [1938] King Charles issued a proclamation against selling or exporting tin from Devonshire and Cornwall, until it be duely assayed, weighed, and coined, (as the stamping of it is termed by the stannary laws) by his officers. He also prohibited the importation of tin from foreign parts. [EIC] having represented to King Charles, the great scarcity of Spanish silver, whereby they were disabled from supplying themselves with a sufficient quantity for their intended voyage to Persia and India with 3 ships; he licensed them to export £20,000 in foreign gold; or if that could not be done, in English gold; any law, statute, act of parliament, proclamation, &c. to the contrary notwithstanding. There was coined at the mint in the tower of London, from March 1619 to March 1638, £6.9 M : 11:1 in gold and silver.*" (Macpherson, 1805).

108 "*[A]lthough the number of bankrupts appears initially to have been relatively small (around 10 a year), they were not an exclusively metropolitan phenomenon, and they increased significantly in the 1630s. In 1638, a least 150 commissions were granted involving people from all around the country in all sorts of trades and occupations. [A Calendar of the Docquets of Lord Keeper Coventry 1625-40, ed. J. Broadway, R. Cust and S. Roberts (List and Index Society, Special Series, 34, 2004), p487ff]... Unique pieces of evidence from Somerset in the later 1620s and 1630s indicate that large numbers of yeoman farmers evidently spent spells in debtors' prison, and it is no less telling that the inhabitants of Ilchester claimed that the economic well-being of the town was largely dependent on the local debtors' prison that was located there. There seems no reason to believe that this example from the West Country was unique, and while the exact number of those imprisoned before 1640 is incalculable, it is likely that their numbers were made up of the middling of one sort or another, rather than the chronically poor.*" (Brooks, 2009).

109 "*[W]ee humbly crave leave to represent to your Majestie our opinions of the necessitie of a Court of Marchaunts for the speedy determininge of all suites and differences that happen betweene Marchaunts Factours Clothiers, Tradesmen and Shopkeepers concerninge Accompt bills of Exchange bargaines and*

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other differences proceding or depending, for Wares and all sortes of Marchaundizes or debts arising thereupon, which are seldome or never determined by any of your Majesties Courts of Justice without the Report and Opinion of Marchaunts which wilbe agreeable to that breife and summary waye nowe used by the Comissioners for the pollicyes of assurance, And this wee humbly conceive would bee a comfort and incouragement to the Marchaunts, and an increase of Trade, and generall wealthe of the Realme. 9th of June, 1640." (Ramsay, 1942).

110 "*The next period in Edinburgh's history covers the years up to the signing of the National Covenant in 1638. It has generally been agreed that this, together with the previous decade, was a time of relative prosperity for the burgh and for Scotland as a whole, and in support of this view, attention has been drawn to the amount of new building within the Scottish burghs, the increased average value of estates recorded in the Registers of Testaments and the internal peace throughout the land. Against this must be set the European wars of the period, in which Britain became directly involved against France and Spain in the late 1620s, while suffering only indirectly, if at all, from the Thirty Years' War; the famine of 1622-3 which caused one of the most catastrophic mortality crises of the century, together with further periods of scarcity in 1634-6; the ever-increasing level of taxation which had to be borne by the burgesses of Edinburgh during the reign of Charles I in order to pay for the new Parliament House, new and extensively altered church buildings and the royal visit of 1633; and the frequent references to depression which are to be found in official records, not only in the famine years, but in the mid-to-late 1620s and early 1630s when trade was felt to be in decay. Even when allowance is made for the normal over-reaction of burgh councils to any economic setback, real or imagined, the repetition of complaints suggests that they were based to some extent on fact. Local sources also seem to indicate mixed economic fortunes, with recruitment of craftsmen apprentices fluctuating widely and reaching low points for the entire century in the early and mid-1620s and the mid-1630s, and both merchant and craft burgess recruitment remaining at a low level for much of the 20 year span*." (McMillan, 1984). "*The Covenant was created by Archibald Johnston of Warriston in 1637 as a means of binding together a wide spectrum of Scottish support for the Presbyterian Kirk. It was based upon the Confession of Faith of 1580, as signed by James VI, Charles's father, so that it could be portrayed as supporting the status quo in Scotland. However, it was seen as an implicit repudiation of episcopacy, and, by extension, of Charles's attempts to forge a Church in Scotland similar to that in England. It was popularly acclaimed in 1638 and became the basis of the bond between the Scottish people in their war against Charles I. The treaty between the English Parliament and Scotland in 1643 entailed the extension of the Covenant to England, preparatory to the proposed establishment of a Presbyterian Church in that country. From then on, the Covenant drove a wedge between rival groups of Presbyterians and Independents, who opposed the creation of a state Church. The Covenant was also one of the rocks upon which attempts to bring Charles to conclude a peace settlement foundered, as he consistently refused to sign the Covenant himself.*" (Bennett, 1995).

111 "*Ship money and Coat and Conduct levies were not coming in. There is evidence that in some counties, the Quarter Sessions courts were full of cases involving default, whilst in others there were protests and also wrangles between the different arms of county government over the collection of the taxes [Bonsey and Jenkins (1965, p91).]*" (Bennett, 1995).

112 "*Charles I was in great straits through want of funds. The royal treasury was in danger of bankruptcy, if Parliament chose to be obstructive. Out of a total revenue of £0.86 M only £0.33 M was certain, and, of this, £0.27 M had been anticipated. Therefore, Charles I., apart from the grant of tonnage and poundage, could only count on receipts to the meagre amount of £0.07 M, against a normal expenditure of about 10 times that amount. London, disgusted by the attack on its property in Ireland and suffering from a slackening of trade, for which the King's advisers were blamed, refused to make advances. After endeavouring to borrow without success from the Pope, Spain, France and Genoa, he had before him a proposal to debase the coinage.*" (Scott, 1910a). "*The crisis of mercantile confidence which, in these years, produced wide-spread dislocation in the already weakened economy, was largely due to the direct interference of the Crown under the stress of its financial needs, and to the sweeping public resistance to its political and religious policies. In 1640 the government's financial difficulties seemed insurmountable. The First Bishops' War had reduced it almost to bankruptcy, the City persistently refused to advance any money, the Customs Farmers were at the limit of their resources, and efforts to negotiate loans abroad failed miserably.*" (Supple, 1959).

113 *In these circumstances Charles decided on a policy which amounted to the exaction of a forced loan. Since 1630, under the terms of the Cottington Treaty, large quantities of silver shipped from Spain and destined for Flanders had been given protection by England. Part of these shipments had come to be taken by Englishmen, in return for bills of exchange on Antwerp, and coined into native money at the Mint. Originally, this arrangement applied to the bullion owned by the Spanish government and used to pay its armies in Flanders; but the scheme worked so well that it was increasingly utilized by private merchants—in the main, Genoese operating from Madrid. At the end of 1640 there was about 130,000 worth of this treasure deposited for minting.*" (Supple, 1959). "*But though some of the London goldsmiths accepted money and plate in trust prior to the Civil War, there does not appear to be any documentary evidence to show that this was a general practice. The Mint in the Tower, however, was, during the 4 decades preceding the outbreak of this war, increasingly used as a repository.*" (Richards, 1929).

114 "*Up to 1640, banking in the modern sense of the term, either as meaning the receiving of deposits or the issue of notes, had no appreciable existence in England. Merchants deposited their superfluous bullion and cash in the Mint in the Tower for convenience and security under the guardianship of the Crown. But in 1640 the troubles between Charles I and his parliament reached a climax. He dissolved Parliament after a short and barren session, during which no bills, not even supply, had been passed. An invasion by France was momentarily expected.*" (Paget, 1888). "*He resorted to the expedient of a voluntary loan, the result of which was the payment of £0.3 M into the Exchequer. This was soon exhausted, and Charles was reduced to the disgraceful measure of seizing the merchants' bullion and cash, lying in the Tower, to the amount of £0.12 M. But even so high handed a proceeding as this, when on the part of the Crown, was not susceptible of immediate redress in those days, and the despoiled merchants were no doubt glad to get their property back by compromise on the terms of letting the King have £40,000 on remarkably easy terms. But they had learnt a lesson, and were not afterwards so ready to put their trust in princes, and for some time after that, merchants kept their money at home. But it did not suit their ideas to have their capital lying idle. The goldsmiths were the first to recognize possibilities of making a profit without exposing their capital to the caprice and dubious good faith of the Crown.*" (Paget, 1888). "*[H]e had before him a proposal to debase the coinage. Rejecting this scheme, he seized bullion to the value of £130,000, lodged by goldsmiths and merchants at the mint in the month of July 8, and in August the stock of pepper of [EIC].*" (Scott, 1910a). "*Charles I ordered that this*

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sum be 'stopped '—that there was to be no issue of coins to its owners—and the owners were referred to the Treasurer, at whose hands they were to receive security for the principal and, for the payment of 8% interest. However, after much protest and bargaining, it was decided that, as a compromise, two-thirds of the should be freed and the remaining £40,000 advanced to the Crown for 6 months at 8%." (Supple, 1959). "*When Charles I was refused a loan by the City of London, he was advised by his ministers to seize upon the money that had been deposited in the Royal Mint, in the Tower of London, by the Lombards and Goldsmiths, amounting in all to the sum of £0.2 M; which operation was the cause of ruin to many. The goldsmiths had up to that time been in the habit of placing their money there for security; but henceforth they were forced to keep it in their own shops, and to lend it out to customers at interest. After this shameful robbery by the King of the goldsmiths' money, it is not surprising that the Goldsmiths' Co should have subscribed cash and men to help Cromwell in the Civil Wars.*" (Price, 1876).

115 "*One government official, writing in the early 17th century, predicted that 'the love of [money] will sooner effect civility than any other persuasion whatsoever.' He had a point. On the eve of the Irish rebellion of Oct 1641, indebtedness plagued power brokers—native, newcomer, Catholic, and Protestant across the country [Ohlmeyer (2012).] When asked why he had wanted to rebel, Lord Maguire, one of the leaders of the 1641 rising, attributed his action to the 'the smallness of my estate', which was diminished as a result of plantation, and to the fact that he was 'overwhelmed in debt.' [McCoy (2007).] Maguire, like so many others, had engaged in an orgy of conspicuous consumption during the early decades of the 17th century and had mortgaged his estates to fund his spending. The Gaelic intelligentsia commented on the pernicious effect of excessive expenditure and the uncontrolled borrowing that it triggered and how it undermined their position and the traditional culture that they embodied. An anonymous verse, 'Blazonry, My Curse on Thee', ridiculed the Butlers of Mountgarret for their determination to keep up with the latest London fashions, wearing shirts with fancy brimmed hats, narrow shoes, cambric blouses, lace and silk fabric, and elaborate hair adornments. What a person wore made a powerful staten he or she was, and by the early decades of the 17th century, 'the better sort' were, according to one observer, 'apparelled at all points like the English.' The obligation to dress like the English, to speak English, and to live in English-style houses was part of the wider 'civilizing' agenda, but the 'love for money' that this triggered drove many into bankruptcy. That a handful of prominent Catholic grandees embraced the crown's commercial and civilizing strategies should not suggest that the bulk of the native population shared their enthusiasm. On the contrary, many did not.*" (Ohlmeyer, 2016). "*Despite the existence of this county-based framework of local government, Gillespie rightly notes that individual landlords had to be 'encouraged to see the county, rather than their individual estates, as the main unit of political life.' The manor court, which had been introduced under the plantation so that local disputes and offences could be dealt with by the local landlord, offered a simpler and cheaper alternative to bringing disputes before the quarter sessions or assizes. Two types of court were established on every plantation estate, both with different functions. The court baron was the landlord's private court and dealt with small debts and trespassers. It enjoyed full jurisdiction over 'debts, covenants, transgressions, accounts, detentions.' The second, the court leet, was a franchisal jurisdiction which dealt with minor criminal offences that did not amount over 40 shillings. In practice, however, the courts tended to be used interchangeably. While the manor courts proved a vital instrument in regulating the affairs of the estate and in settling disputes, they also became an economic asset to the landlord as he benefited from the profits of the administration of justice... Despite major gaps in evidence, attempts have been made to sketch the administrative framework of County Fermanagh during the early decades of the 17th century in the hope that some general conclusions can be made about the county's bureaucratic, judicial and legal structure on the eve of the 1641 rebellion. By 1641 the machinery of local government in Fermanagh appeared, on the surface, to be running smoothly. There were sheriffs, sub-sheriffs, bailiffs and justices of the peace all working together to enforce law and order within the local community. While British settlers monopolised these positions there is some evidence of Irish natives working within the new anglicized system, albeit at a lower level... Actions during the rebellion, however, would suggest that they were not attempting to overthrow the system of local government but instead they simply wanted to replace the British officeholders with Irish natives.*" (McCoy, 2007). "*Ireland, in addition to their own Scottish crown, continued the policy of plantation. The settlement of Ulster, carried out by James I (1603-25), was the most comprehensive and successful of all. With the defeat of Hugh O'Neill in 1603 and his flight to Europe in 1607 with his ally Hugh O'Donnell and their extended families, Ulster was substantially planted with Anglican English and Presbyterian Scots settlers at the expense of those native inhabitants who had previously occupied the land. Those new settlers who were granted land in Ulster were charged with responsibility for its defense against the return of the native or the hybridization of the newcomer. The Irish Society and its shareholders, the City of London guild-companies, were granted a charter by the crown in 1613, giving them responsibility for fortifying and colonizing the region west of the Bann River, which was renamed Londonderry. The new settlers arrived in significant numbers from England and lowland Scotland, in contrast to earlier Tudor plantation schemes. By 1630 about 6,500 British males had settled on confiscated lands. They undertook the task of planting Ulster with eagerness and fortitude, building towns and villages, clearing the land, practicing arable farming, and establishing market centers. Despite this auspicious beginning and substantial change, there were not enough new settlers to completely modify the territory. As with earlier and later plantation attempts, the Gaelic Irish, theoretically expelled from the land, were necessary to work it as tenants and laborers*." (Lee et al., 2006). "*Perhaps the main achievement of the Plantation was a legacy of bitterness. For although the native 'tyrants' had been removed, the native population do not appear to have particularly enjoyed their new found freedom. Many, even most, still hankered after the lords who had disappeared over the sea, but even after the death of O'Neill in 1616, there was still support for his successors. Meanwhile, the Gaelic (and Old English) lords who still held their land throughout the whole of the island, had now to adapt themselves to the new situation, as did the inhabitants of the towns. Old powers and privileges had been lost, and now that the threat of Gaelic Ireland had been (largely) removed through conquest, there was no real reason to muffle persecution for religion. In the first half of the 17th century the previously loyal inhabitants of the Pale and the cities were now openly regarded by many in the government as being traitors. Titles to land were also investigated, creating much unease, since very few lords really could hold an unchallenged right to their lands, especially when corrupt officials were willing to 'consider' claims against them. In addition, the cash nexus appeared particularly difficult to adapt to, many landholders saw their possession shrink rapidly, or lost them altogether because of debt. This heady mixture would explode in 1641, in the rising that began in Gaelic Ulster and would soon spread all over the island and trigger off the English Civil War.*" (Ó Néill, 2013).

116 "*On several occasions the common law judges were expressly forbidden to issue prohibitions in future. The courage of the common law judges in ignoring such explicit commands was a measure of their determination. Similar issues were raised in the struggle over the Court of Requests, which encountered*

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vigorous attack long before Coke's advent to the bench. The registers of the Council record many examples of intervention by the Council in aid of process from the Court of Requests. The strong support given at the height of the conflict, in the last decade of the 16th century, undoubtedly helped to ensure survival of the Court of Requests until 1641, when the Council's own jurisdiction in private disputes was abolished." (Dawson, 1950a)."*Though its activities left no permanent mark on English private law or procedure, the firm controls of the Council were an essential part of the system of Tudor and Stuart judicial administration. Its strong support helped greatly to confirm those ideas of policy and morality that were later to be worked, by other agencies, into the structure of English law. Against this positive achievement, however, must be balanced the dangers of authority in a group without specialized training, impatient with formality and accustomed to the exercise of overriding power. The realization of justice in individual cases required patience, care, and attention to detail. The judgment of the Long Parliament in 1641, in abolishing the private jurisdiction of the Council, was a judgment of condemnation on the institutions of prerogative government and the ambitions they expressed. History has confirmed that the judgment was right-that so great a concentration of power was dangerous, however wisely the power was used."* (Dawson, 1950b). "*Inevitably perhaps, this activity of the Council came into conflict with the jurisdiction of the common law courts. The judges first formally protested in 1591, and Coke repeated the complaint, some 20 years later. As a consequence, the Council's jurisdiction ultimately was abolished by the 'Long Parliament' in 1641... "Be it likewise declared and enacted by authority of this present parliament, That neither his Majesty, nor his privy council, have or ought to have any jurisdiction, power or authority, by English bill, petition, articles, libel or any other arbitrary way whatsoever, to examine or draw into question, determine or dispose of the lands, tenements, hereditaments, goods or chattels of any of the subjects of this kingdom, but that the same ought to be tried and determined in the ordinary courts of justice, and by the ordinary course of the law. [16 Charles I, ch. 10, §5 (1640).]*" (McCoid, 1996). "*Charles I, 1640: An Act for [the Regulating the Privie Councell and for taking away the Court commonly called the Star Chamber.*" (Raithby, 1819).

117 "*Not until 1641, when Parliament abolished the Star Chamber and passed the Habeas Corpus Act, did the writ again become effective. The new measure guaranteed that the writ should be issued without delay to anyone imprisoned by command of the king or his councilors; it also obliged the officer in charge to certify the imprisonment's cause, and it required the court to decide within 3 days whether the commitment was 'just and legal, or not.' Anyone who failed to obey the act was liable for triple damages to the offended party... When the king continued to imprison individuals without charge or trial, Parliament enacted the Habeas Corpus Act of 1641, requiring the courts to issue writs of habeas corpus on behalf of prisoners 'without delay' and abolishing the Star Chamber, which had become associated with arbitrary exercises of power and other abuses [16 Car. 1, c.10, § 2-3, 6 (1641).]*" (Hafetz, 2011).

118 "*In Aug 1641, the House of Commons rejected a bill intended to aid creditors and relieve debtors unable to meet their obligations.*" (Jones, 1979).

119 "*The effect of certain exceptions in the 1641 act, considerable doubts about which courts or judicial officers had jurisdiction to issue the writ of habeas corpus, and various devices employed to avoid the effect of the writ, all united to permit continued infringements on the personal liberty of the subject and to necessitate the important reforms in the famous Habeas Corpus Act of 1679.*" (Oaks, 1966).

120 "*The abstraction of the bullion caused a serious crisis, for it represented a part of the metallic reserve of the London traders. Credit had been shaken by the breach with Scotland, and foreign merchants had been steadily reducing their commitments in England. The sudden diversion of this bullion prevented many, engaged in commerce abroad, from meeting bills of exchange they had accepted. The protestation of these bills led to a cessation of shipments of coin to London. This reacted on the exchange—'the only sinews and livelihood of all trade.' The disorder of trade abroad affected the home market. The crisis was followed by failures, and the purchases of cloth and other goods for exportation were greatly reduced. Bankruptcies became numerous; and, with the suspension of credit, the amount of losses multiplied. [St Hilary's Tears, 1642, in Harleian Miscellany, n. p. 199.]*" (Scott, 1910a). "*This Year of Disasters, 1642. Written by one of his Secretaries that had nothing else to do... At Westminster-hall, where in pristine ages you might without offence shoulder a lord to get through the press, now you may walk in the same posture a justice of peace doth in his own great hall at the examination of a delinquent, play with your band-strings, and twist your beard with the same gravity, and not an elbow-rub to disturb you; the benches are better half empty, and those few judges left have time enough to get a nap, and no noise to awake them; the bars, that had wont to swell with a 5-fold row of listed gowns, where the favorites in the front imbursed more fees than would supply an army, and the rest (by lady) had good doings, a motion or a short cause to open, are now so empty that boys may peep over them; the surly tipstaff and messenger, whom your best oratory, and money to boot, would hardly persuade to admit you within the bench-room, stands looking over the door as it were through a pillory, to ask you, sir, shall I open; and for the teaster you give him kisses his hand and scrapes you a leg, as fawningly, as a hungry spaniel takes a bone from his master, the lawyers, instead of perusing the breviates, and reducing the matter in question to cases, now buying up all the pamphlets, and dispersing themselves into corners to read them, thereby to keep their tongues in use, lest the faculties of brawling should be dried up with unwilling silence. The prime court, the chancery (wherein the clerks had won't to dash their clients out of countenance with long dashes; the examiners to take the depositions in hyperboles, and round about Robinhood circumstances, with saids and aforesaids, to inlarge the number of sheets ; the registers, to whom you used to come, in the same equipage as if you had a suit to the council-board, and had this ready answer, well you must wait till the latter end of the term) now as silent as a puritan conventicle when the lights are out; no waiting, no hyperboles, no dashes, nor any employment, towards maintenance of taffeta, sack, wenches, and other the usual prodigalities, and luxuries, whereunto the gentlemen that practice there are addicted. That court, that hath been known to decree pro, review, and decree con, hath the bar now empty of pro's, and con's, no wrangling, no noise, but the lamentation of my lord's escape. The court of requests, to whom so many thousand of loyal, faithful, and obedient subjects have come humbly complaining, and shewing, can shew you at this present no subject, but its own humble complaint; you that knew it, when the necessity of over great employment caused it to double the number of its clerks, and they to treble theirs, when it was solicited by petitions as numberless as hops, or ants, which all her Welch kindred had brought [200 and 12 and 20] miles, to get admitted in Forma pauperis, and thereby enabled to do more mischief than the best pursed clients in England, would wonder how it should tumble from such a throng, to such a vacation of employment; that that court, that hath made 200 orders in one cause, should be in danger not to have one cause to order; it is methinks a lamentable change. The ministers of the court of wards do all wear mourning liveries in their faces, as if fate had granted out writs in the nature of a Diem clausit extremitm, alter the death of Feoda multa, to find their offices for Vacua pluiima; and of all courts else the Chequers must needs come within the limitation of this calamity, because they stand so much for the King, and in that predicament is the Kings-Bench ; marry, if any thrive, it must needs be the Common-pleas, for, as the times go, nothing stands*

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stiff, but what pertains to the commons, and yet they meet with revolts too, as well as the rest... On both sides of the hall they complain. At heaven they say there is not a lawyer nor a clerk comes near them; and at hell, where they were wont to flock like swallows to a reed-bush, they come dropping... All along the Strand (lodgings being empty) you shall find the house keepers generally projecting where to borrow, and what to pawn towards payment of their quarter's rents, thereby to preserve their leases from forfeiture, and themselves from the tyranny of their stern landlords, who are very infidels in trusting, and will not forbear a minute; nay, the mischief on it is, there are no courtiers nor bad paymasters to curse and rail at for want of money, and that is the heaviest torment of all." (Harleian Miscellany, 1810).

121 "*Winstanley's business was in the retail cloth trade. The 1660 depositions mention both cottons (fustians and dimities) and linens.9 He apparently participated in the cloth mart at Blackwell Hall in Basing- hall Street, since as late as 1656 the Yorkshire M. P. Luke Robinson could refer to him as a Blackwell-hall-man thief.' This implies that Winstanley was a cloth-dealer, involved in purchase for resale. It appears that much of his activity was financed by the acquisition of textiles on credit from several London wholesale merchants for retail sale in his shop... Finally, Winstanley ceased trading altogether, recognized his insolvency, and, on Nov 30, 1643, 'when the late unhappy wars were violent', divided up his remaining stock-in-trade among his creditor... in his 1660 Chancery deposition... he laid no blame on dishonesty for his collapse, attributing it entirely to 'the badnes of the tymes' in 1643... Winstanley's bankruptcy of 1643 did not, of course, create by itself one of the fore- most radicals of the English Revolution. But scholars are agreed that the failure provoked a significant break in the continuity of Winstanley's life that forced him to change his livelihood and to transport him- self from London to Cobham in Surrey, the location of his Digger radicalism. Furthermore, Winstanley never forgot the experience. Throughout his writings of the later 1640s, the bitter contempt and frustration engendered by his financial failings were obvious... Even other Diggers did not need to share Winstanley's personal trauma in order to write against the disadvantages of imprisonment for debt. Winstanley's communism, first established in The New Law of Righteousnes of early 1649 and expounded in subsequent publications, assigned obvious priority to agrarian topics rather than to trade. Since, after 1649, agrarian communism dominated his views on socioeconomic relation- ships, the anticommercial themes introduced into these works could have been logical adjuncts of the main principles, even if the specific vehemence arose out of personal experience, triggered whenever tangentially relevant. On the other hand, it is surely pertinent that his attack on commerce had the prior existence. The hostility toward 'being cheated by false spirited men' was first, in 1648, and the common treasury of the earth came later. All the assaults on trade and introspective rejections of his previous obsessions within the 1648 publications were subsidiary to his calls for a spiritual awakening and implicitly or explicitly arose from his own life.*" (Alsop, 1989).

122 "*In the disturbed years between 1642 and the King's execution in Jan 1649, the annual average of enrolled commissions was about 25, the 38 granted in the 12 months from March 1643, being an exceptional total.*" (Jones, 1979).

123 "*During the latter half of the 17th century a variety of English insolvency laws were enacted which were designed to enable some debtors to secure release from prison, but not discharge their debts, by surrendering their assets and taking a poor debtor's oath. Further, the creditor who had the debtor incarcerated could by his objection prevent the release, but if he did so he was obligated to pay a weekly sum for the debtor's subsistence. However, these laws were of limited application and were not very effectual. [Cohen (1982); Holdsowrth (1937, p234-6).]*" (Countryman, 1983). "*In 1649 the Interregnum Parliament passed the first statute providing for the release of the imprisoned insolvent debtor. [Firth and Rait (1911). For a comprehensive examination of the Interregnum Parliament's activities on behalf of insolvent debtors, see Hertzler (1967).] The act became a model of Parliamentary attempts at debtors' relief for the following century. The statute provided for an imprisoned debtor's release upon his oath that his assets did not exceed £5 (exempting some basic necessities), and that he had not transferred any part of his estate in trust for his own benefit. [The statute required the judge to give a creditor 30 days notice prior to the oath. If the creditor failed to appear on the appointed day, or if he could not contravene the veracity of the debtor's oath, the prisoner obtained his freedom.] The liberated debtor did not, however, receive a discharge from his debts; a creditor could sue out a new execution against goods and chattels the debtor might acquire after his release. [The statute stated that 'notwithstanding the Discharge of the person of such Debtor, all and every former Judgment and Execution had or taken forth against such Debtor shall be and stand good against the Goods and Chattels of said Debtor.' Firth and Rait (1911).]*" (Cohen, 1983)

124 "*A statute of 1649 authorized habeas corpus for anyone whose imprisonment resulted from breach of contract or bad debt. But Oliver Cromwell defied laws not of his making or liking; he authorized his officers not to honor writs of habeas corpus in cases in which imprisonment resulted from violation of various public policies of his administration.*" (Hafetz, 2011).

125 "*The early Stuarts inherited and insisted on the tradition that the regulation of economic affairs fell under the King's prerogative. The burden of decision fell on the Privy Council and down to 1622 it discharged its office without formal assistance by committees. In that year special Commissions of Trade were appointed, to inquire, inter alia, into the depression in the cloth industry. Temporary commissions gave way in 1630 to one that was to be virtually permanent and ruled down to 1640. During the early part of the Interregnum, Parliament assumed the duty of economic control. For the first time merchants were brought into full membership of the appropriate committees. In 1650 the first Board of Trade was created, though the Council of State swiftly resumed full control (as the Privy Council had earlier done) in face of the growing weakness of Parliament. The Protector continued the custom of consulting expert merchant opinion. It was the representations of financiers like Martin Noell and Thomas Povey which led to the creation of the 'Trade Committee' of 1655 headed by Cromwell's son Richard and comprising 70 members. In the range of mercantile interests of its somewhat unwieldy membership, and in the breadth and variety of its inquiries, the Committee of 1655 went beyond its predecessors. But it did not renounce their character: the interest of the State remained paramount. The Protectorate was no more at the bidding of merchants than the monarchy it had replaced. But it preserved and extended the habit of economic government by consultation that had been evolving since 1622. What Adam Smith was to call 'the mercantile system', and later writers 'mercantilism', emerged front the streams of petitions from private parties directed to these various Committees of State, from the continuous discussions that arose from the frictions between competing private interests and from attempts to reconcile the demands of the mercantile elements in the State with needs deemed to be those of the Commonwealth as a whole.*" (Wilson, 1984).

126 "*In 1652, 68 commissions were awarded, but there were only 31 and 49 in 1653 and 1654 respectively [3 P.R.O., C.67/76a-85.]*" (Jones, 1979).

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127 "*Early adventurers into Virginia or Greenland, in contrast to Muscovy merchants, were not within the statutes. It was held that although they exchanged 'trifles' with 'the savages' their main concern was with plantation and discovery. An important distinction was that eventually made between investment and active participation in commerce. Guidelines in this respect were not easily established and they did not exist before 1640. The critical case was that of Sir John Wolstenholme, a stockholder in [EIC] and formerly a prominent figure in the city of London, who was alleged to have gone bankrupt in or around June 1646, to the tune of over £2,000. A bankruptcy commission was issued in July 1650, and its membership was reconstituted in May 1652. This was maintained in 1653 even though Wolstenholme had lands worth £3,000 per annum and it could not be established that he obtained 'the greatest part of his living by buying and selling.' All this was considered as being overshadowed by his work as an active member of [EIC] and its managing committee. After years of hesitation, the impact of this decision could have been cataclysmic: not least because some law reformers had castigated the inefficiency of laws which did not apply to debtors of all classes. Instead, the Restoration confirmed trends which are perhaps discernible during the Protectorate. The 'Act Declaratory Concerning Bankrupts' of 1662 confronted the fact that persons 'not bred up to trade' became members of public companies. In respect of their stock, members of [EIC], the Guinea Co, and the 'Royal Fishing Trade' were specifically excluded from liability under the bankruptcy statutes. The Wolstenholme decision was declared contrary to law and voided... Elsewhere each individual traded on his own account and thus, it was pointed out, could go bankrupt even if a gentleman. 2 Keble, 487, Cotton v. Daintry (1669).*" (Jones, 1979). "*[A] matter which caused considerable worry to the courts was the position of gentlemen who invested money in the growing trading ventures only to lose their family fortunes. Could noblemen and gentlemen really be bankrupts? The Court had this problem to consider in the case of Sir John Wolstenholme, a gentleman of large estate, stockholder in [EIC] and member of the board of that Co [Wolstenholme's (Sir John) Case (1653) Vin. Abr. Creditor & Bankrupt 'A' No. 4, p55.] Sir John came within the rules for such bankrupts in that he obtained some of his living by the buying and selling of the goods of the company in that he received the profits from such ventures even if he did not obtain the greater part of his living in such a manner. The Court held that he was within the statutes since it was not the quality of his person, or the greatness of his estate, which protected him from the law, for his buying and selling rendered him liable to be a bankrupt. This ruling did not long remain and in 1662 it was enacted that the decision was 'contrary to law', and is therefore reversed and declared null and void [14 Car. II. c.24, §3]; although such distribution of the estate as had been made by the commissioners or any claiming under them by virtue of such distribution was stated to remain good and not to be impeached, or frustrated, but that the same be enjoyed for and toward satisfaction of the debts, for which the same have been disposed [§4.]"* (Cadwallader, 1965).

128 "*Cromwell found the Dutch triumphant in Europe and Asia, our Indian relations with the Portuguese still left to the haphazard of local conventions on the Bombay coast, and Amboyna unavenged. He enforced from Portugal an open trade for the English in the East; from Holland he wrung the long-denied redress for the torture and judicial slaughter of Englishmen in 1623, together with the restoration of the island then seized by the Dutch. Chief of all, he definitely imposed on the Company the principle of a permanent joint stock, on which it continued until its trade was thrown open in the 19th century. Under Cromwell's charter of 1657 was raised the first subscription destined not to be dissolved, but to grow into the permanent capital of [EIC]. The corporation passed, with little recognition of the change at the time, from its medieval to its modern basis.*" (Jackson, 1907)."*Beginning in 1651 the governor and committees had adopted an attitude of great caution, and they had reduced the trade to very small dimensions. It was easy for opponents of the company to claim that the trade to India was deserted; and, as early as 1652, application was made to the Council of State for a license authorizing a single voyage. The company itself met this new attack by granting similar permissions to its own members. When this order was repealed in 1654 there was considerable dissatisfaction amongst a group of the adventurers'. At this time the United Stock might have been determined and a new subscription made. There were several reasons which induced the company to defer the taking of this step. It was not known how much the Dutch indemnity would amount to, and when the sum total had been fixed a new difficulty arose in determining the proportions receivable by the different financially distinct undertakings which were entitled to participate. Much of the damage for which compensation had been claimed had been done during the currency of the First Joint Stock. That enterprise had sold its remains 'both in esse and in posse' to the Second Stock, which in like manner had handed over its assets to the Third Stock. At this point the continuity ends. The Fourth Stock did not acquire all the assets of the Third, and therefore each of these, as well as the United Stock, had claims on the indemnity. It was desirable that these should be settled and the liquidation of the earlier under takings far advanced before a new stock was subscribed. It was found necessary to submit the claims of the different stocks to arbitration, and in the meantime £50,000 of the money in dispute was lent to the State. Another and a more serious tendency towards delaying a new subscription was the increase in the number of licenses, which was considered so great a discouragement by the committees that in 1655 the factors were directed to take steps towards winding up the company's affairs in India. There was a minority of the adventurers which did not acquiesce in this decision. This body wished to continue an East India company, but to revert to the system of independent voyages or alternatively to carry on the trade by means of a regulated company. Thus at the end of 1654 there were at least 4 distinct views as to the future of the trade. Some wished it to be completely open under license from the State, others asked that a regulated company should be established, others again favored a company such as had existed from 1600-12, while finally the governor and committees with the older adventurers, remembering the numerous evils of over-lapping separate undertakings, were emphatic in their adherence to the single joint-stock type, as had been recommended by Parliament in 1650. The varying arguments were remitted to the consideration of a committee of the Council of State, which reported on Dec 18th, 1656. The company, dreading further delay, announced on Jan 14th, 1657, that unless a decision had been reached within a month it would offer its whole property for sale to any natives of the commonwealth. The Council of State held a meeting for the consideration of the whole matter, as a result of which it was resolved that the trade 'should be managed by a united joint stock exclusive of all others', and on Feb 10th, 1657, a committee of the Council was appointed to draw up a charter, which was sealed on Oct 19th. The resolution of the Council of State involved the winding up of the existing separate undertakings. The Second General Voyage had come to an end in 1653... Though the Fourth Joint-Stock had been begun earlier it was still awaiting its share of the Dutch indemnity, and it was only in 1663 that the liquidation was completed... The United Joint-Stock was wound up about the same time or rather earlier...*" (Scott, 1910b)."*The EIC stayed afloat and navigated the Scylla and Charybdis of ruler and estates (unlike some of the French companies, for example), but only with difficulty. Episodic contention between the Crown and Parliament, the two putative heads of international commercial/colonial policy, continued to undercut [EIC's] ability to enforce its monopoly and to hold together its own merchant sponsors. The EIC's*

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prospects improved under Cromwell, whose 1657 charter, modeled on the VOC's, endowed the EIC with its first permanent joint stock organization. This arrangement was reaffirmed by Charles II after the Restoration. But the backwash of the metropolitan struggle between monarch and estates continued even beyond the Glorious Revolution of 1688. Prior to 1657, when the EIC's joint stock was made permanent, overlapping syndicates caused further confusion of accounts and authority (see Chaudhuri 1965:40 and Brenner 1993). Conflict between metropolitan principals reverberated until 1708, when a rival [EIC] (created during one particularly heated period of struggle) merged with the original EIC, healing the split and ending the conflict." (Adams, 1996).

129 "*The goldsmiths had up to that time been in the habit of placing their money there for security... After this shameful robbery by the King of the goldsmiths' money, it is not surprising that the Goldsmiths' Co should have subscribed cash and men to help Cromwell in the Civil Wars... During the Commonwealth the number of goldsmiths increased considerably...*" (Price, 1876).

130 "*[H]enceforth they were forced to keep it in their own shops, and to lend it out to customers at interest... they then commenced to receive moneys of noblemen and gentlemen, who deposited their surplus cash with them for safe custody. The goldsmiths usually issued receipts of cash-notes for the same, payable on demand; and these receipts passed from hand to hand and were called goldsmiths'-notes. A customer wishing to withdraw any sum, would draw a note or draft payable to his own or someone else's order; and this was the origin of cheques.*" (Price, 1876). "*The term 'check' seems to have derived from the practice of early English banks, such as [BOE], of providing a means by which one could be assured that the customer was in fact authorized to draw on the bank. Clapham explains that in the early years of [BOE], a customer could simply write out an instruction on ordinary paper: 'But during the next 20 years the Bank, in this an innovator, gradually induced a great proportion of its clients when drawing to utilize its 'cheque' paper—or better in the modern American spelling its 'check' paper. For this it got its name not because it was chequered but because it was something printed so as to serve as a check, at once a counterfoil and evidence that its user was a bona fide client of the Bank with a balance. Only such people could get the paper. The printed slips had some scroll work at the left-hand end. This could be cut through, leaving part on the 'cheque" and part on the 'counterfoil'—the real 'check'.' Various historians have located examples of what we would today call checks in records of late-17th-century Goldsmith bankers.*" Fox and Ernst, 2016) "*Clarendon, writing towards the end of the 17th century, described the evolution of goldsmiths into bankers: 'bankers were a tribe that had risen and grown up in Cromwell's time, and never were heard of before the late troubles, till when the whole trade of money had passed through the hands of scriveners, they were for the most part goldsmiths'... Sir John Clapham confirmed the evolution of the goldsmiths into bankers, noting that: 'In the early years of the Restoration, the goldsmith bankers of London were doing every kind of banking business. They accepted deposits at interest—6% was a normal rate—giving receipts, on presentation of which repayment was made; they kept 'running cashes', also interest bearing, but without the formal receipt, and so easily drawn upon; they honored their customers 'drawn notes' on these; and their own promises to pay the depositor or his order, and then the depositor or the bearer, their 'bills' or 'notes', were getting into circulation. As goldsmiths they bought and sold bullion and did ordinary business. With the funds at their disposal they discounted commercial bills and different sorts of official obligations-tallies, Exchequer orders of various kinds.*'" (Murphy, 1997). "*One of the most notable improvements in English finance during the latter half of the 17th Century was the conversion of the goldsmiths to investment bankers. During the late 16th Century and the first half of the 17th Century, the goldsmiths functioned as jewelers, lapidaries, and craftsmen of gold and silver... The amounts deposited with the goldsmiths increased greatly during the 1640s, partly because Charles I closed the Mint in 1640 and temporarily held the private bullion deposited there, partly because many individuals needed a safe place to keep their ready money during the disorder of the Civil War, and, of course, because of the inducement of interest paid on deposits. By the 1650s, the goldsmiths had sufficient capital to make large loans to Cromwell's government.*" (Nichols, 1971). "*The coin minted in those troublous times was very irregular in weight. They bought it up, melted down the coins exceeding the regulation or current weight and disposed of the bullion abroad. The next development of their enterprise was the lending out the money accumulated in their hands to responsible persons at interest, and finding tins a lucrative business, they sought to extend it by offering interest on deposits. Here, then, we have a distinct institution of the deposit bank, while the goldsmiths' notes or receipts promising repayment to bearer, the germ of issue, were not introduced till 1670, and not recognized by law as negotiable until the reign of Anne. The goldsmiths who pursued this course were entitled bankers, the first introduction of that name into this country. A large and lucrative branch of this business consisting in the receiving on deposit at interest the rents of gentlemen's country estates, safer no doubt in London than in disturbed country districts, and Clarendon in his 'Life of himself' says of the bankers that 'there were 5 or 6 of them preeminent among the rest, known to be so rich and of so good reputation, that all the money of the Kingdom would be trusted or deposited in their hands.' During the Commonwealth, things seem to have gone fairly well with these bankers, and they appear to have entered into those relations with the State which were afterwards to end so disastrously for them and their customers. Cromwell applied to them for advances in anticipation of supplies, and these advances were made from time to time and presumably repaid.*" (Paget, 1888).

131 Common law courts "*adopted the position that the law merchant was part of the law of England of which the court took judicial notice without the necessity of taking testimony as to its real provisions. It is interesting to note in this respect that the hardening of the court's attitude toward receiving law merchant in evidence began with the loss of the merchants' fight in parliament to establish Admiralty as a commercial jurisdiction, and reached its height during the term of Lord Holt, which marked the final ending of the staple jurisdiction [125 Brown v. London, I Vent. 152; I Mod. 285, 2 Keb. 695, 7I3, 758, 822, Freem. 14, O Lev. 298 (KB 1670); Anonymous (or Milton's Case), Hardres 485 (Ex. 1668). But cf. Vanheath v. Turner, Winch 24 (CP 1621). It may be that this case is an early aspect of assumpsit; but whether it be special assumpsit on the bill and custom, or just case, either based on tort for withholding money, as was the practice in the 13th century, or special assumpsit, is not clear.] As soon as the courts began to take judicial notice of the law merchant, interesting developments occurred. In suits on bills assumpsit was the proper action against the drawer ['Sur case... on the law and custome of England', Woodward v. Row, 2 Keb. 132 (K. B. 1666)]; neither indebitatus assumpsit nor debt lay by the payee against the acceptor], but only an action on the case; 125 yet an indorsee who had reimbursed a subsequent indorsee might bring debt [Death v. Serwonters, I Lutw. 885 (Ex. 1685).]*" (Beutel, 1938). "*Contrary to the usual view that the main theme of the early history of the law of bills was the struggle against the common law principle that choses in action are not assignable, the practice of transferring bills seems to have been accommodated by the common law courts with relatively little difficulty. Form books contain precedents of declarations in actions on bills by endorsees dating from as early as the 1660s [Aboas v. Raworth (1666), Vidian, Exact Pleader, 30; Clarke v. Robinson (1662), Vidian, Exact Pleader, 34; Colville v. Cutler (1666), Vidian, Exact Pleader, 31;*

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Oades v. Potter (1683), Clift, Declarations, 893], and there are a number of reported decisions of actions on endorsed bills in the 1660s to the 1680s where endorsement is discussed in a way that suggests that it was a familiar practice [Dashwood v. Lee (1667), 2 Keb. 303 (endorsee against acceptor); Tercese v. Geray (1677), Finch 301 (acceptor of bill ordered by equity court to pay amount of bill to second endorsee who had lost it, provided endorsee gives adequate indemnity); Claxton v. Swift (1686), 2 Show. 441, 494, Comb. 4, 3 Mod. 86, 1 Lutw. 878, Skin. 255 (endorsee against endorser; counsel remarked that 'the natural reason why the endorser is chargeable ... is, because he is supposed to have received the value or other consideration from me, for assigning to me this bill; and it has been ruled often, that 'value received' is implied in every bill and endorsement,' 2 Show. at 497); Death v. Serwonters (1685), 1 Lutw. 885 (after third endorsee recovered from payee on his endorsement, payee can recover from acceptor).] Once one understands the commercial practices that gave rise to bills, it is not at all surprising that endorsement did not present significant legal problems. Accounts of the history of the law of bills tend to assume that the typical transactions in which bills or notes were issued were credit sales of goods, in which either the buyer gave the seller a note for the purchase price or the seller drew a bill on the buyer which the buyer accepted. In such cases, endorsing the bill or note would be a way of assigning the cause of action for the price of the goods. In fact, however, the typical bill transaction was different, in a subtle but important way, from the assumed paradigm of a credit sale of goods. Bills were not simply credit instruments, they were means of making use of balances that one person held for the account of another. Even the inland bill of exchange was a bill of exchange, not simply a bill. A merchant who had shipped goods to a factor for sale would draw a bill on the factor when he had occasion to use the balances that he had built up in the factor's location. The bill did not serve merely as an evidence of the factor's obligation arising out of the underlying transaction, it served as the means by which the principal." (Rogers, 1995). "*Even the Common Law courts learnt how to enforce a bill of exchange, at first by assumpsit, and then, after Woodward v. Rowe (1666), when the court stated bluntly that 'the law of merchants is the law of the land', by 'an action on the case upon the custom of merchants' [Kiralfy, (1957, p244), Holden (p25-6)]... The goldsmiths, with whom merchants began to deposit their surplus cash for security during the Civil War, were however the first to issue promissory notes — of any denomination— in exchange for deposits, which they then lent to Cromwell. They also invented the cheque, which is a bill of exchange drawn on a banker*." (Harding, 1966). "*Finally, in 1648, the Lords and Commons forbade the Court of Admiralty to hold pleas or admit actions upon any bills of exchange or on accounts between merchant and merchant or their respective factors. Meanwhile, as unsealed bills obligatory came into increasing use in English business circles, litigation arose from them in the common law courts... Thus in 1664, in Edgar versus Chute, a butcher had bought cattle from the plaintiff and got a person to draw a bill on J.S. in the plaintiff's favor in payment for them. But the butcher became insolvent before he had paid the said person, who then instructed J.S. not to pay. The plaintiff brought a case upon the custom of merchants and succeeded... [I]n 1667 it was declared that 'the law of merchants is the law of the land, and the custome is good enough generally for any man, without naming him merchant.' It sufficed to plead the bill was drawn secundum usum et consuetudinem mercatorum. Thus, the law merchant was extended to anyone wanting to use inland bills of exchange... In 1667 a plaintiff based his case on the custom and law of the realm, that if any man write a bill to another, that then if he to whom the bill is directed, do not pay for the value received by the maker, that then the maker of such bill should pay. Verdict was given for the plaintiff, for 'by the common law a man may resort to him who received the money, if he to whom the bill was directed, refuse.' The holder for value was thus doubly protected, by the law merchant and by indebitatus assumpsit. None of this, however, established the legal negotiability of inland bills of exchange by the ordinary course of law as opposed to custom. Such negotiability only came in 16% with an obiter dictum from Holt, C.J., that such a bill, drawn to order, could be transferred by endorsement and delivery, that the title of a bona fide holder for value was not invalidated by defects in the title of the man who transferred to him, and that value-received should be presumed and taken as said.*" (Kerridge, 1988). "*By 1651, when John Marius published his Advice Concerning Bills of Exchange the assignment of bills made payable 'to order' was common practice among merchants and, by the end of the century, it had been recognized in Common Law, so that the principle of negotiability applied not only between merchants but to all. When the promissory note became important in the second half of the 17th century, it was at first treated by lawyers as a bill of exchange. and the terms arc sometimes used interchangeably in the Law Reports of the period.*" (Feavearyear, 1963). "*The relationship between drawer and drawee was not, though, confined to that of merchant drawing on his factor. Rather, any situation in which one person had or might have funds in his hands belonging to another might form the basis of a bill transaction. One commonly encounters cases in which an English importer's foreign factor buys goods for the merchant's account, paying or reimbursing himself by drawing a bill on his principal. [Barnaby v. Rigalt, Cro. Car. 301, 79 Eng. Rep. 864 (C.P. 1633), one of the earliest reported decisions in the central courts on bills of exchange, is probably a case of this sort]... The realization that bills commonly arose out of the obligation of a commission merchant to return funds held for his principal sheds a great deal of light on the role of the transferability of bills. The picture one gets from most modern law books is that merchants have long wanted some form of transferable paper instrument and found that bills of exchange met the need. That is putting the cart before the horse. In the era in which the commission merchant system of distribution predominated, merchants would invariably find that they had balances due to them from their correspondents in various location around the country or the globe. Bills of exchange were the mechanism by which they could make use of these distant balances in the era before the development of a specialized financial system. That the bills were transferrable facilitated this system, but it was not the essential key to it. Indeed, one finds many cases in the classical era in which bills are used as a payment device without any transfer of the bill itself... Indeed, one might have funds in another's hands in non-mercantile situations. For example, the case usually cited as the first reported decision on an inland bill, Edgar v. Chut [Keb. 592, 636, 83 Eng. Rep. 1130 (K.B. 1663)], was one in which a parson in Norfolk had funds in London and consented to draw a bill on his London friend and give it to a local butcher who needed London funds to pay for cattle. [The parson quickly learned the wages of excessive trust. The butcher failed before reimbursing the parson, and though the parson had taken the precaution of instructing his London friend not to pay the bill until the parson got the money, the cattle seller succeeded in collecting from the parson as drawer of the bill.] There are also a fair number of cases of profligate sons surprised to find that dear old dad had finally had enough and dishonored the bills they had drawn on him. [e.g., Witherly v. Sarsileld, I Shower, K.B. 125, 89 Eng. Rep. 491 (Exch. Ch. 1686).] Although the relationship between drawer and drawee in these cases may not have been merchant and factor, all involve essentially the same form of underlying transaction—the drawee has, or is hoped to act as if he had, funds of the drawer in his hands. Unlike the model of bill transactions assumed in the twentieth century treatises, these were not cases in which bills were given as embodiments of obligations to pay for goods sold on credit.*" (Rogers, 1990).

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132 "*Goldsmith-bankers increased the usefulness of notes and checks by offering intermediation between the public and other bankers. By accepting rivals' debt, goldsmith-bankers exchanged their own debt for that of competitors while creating a network externality. Mutual debt acceptance by goldsmith-bankers improved the attractiveness of all bank debt, and each goldsmith benefited by his colleagues' actions. While mutual acceptance among goldsmith-bankers was a form of intermediation that complemented transferability in minimizing the public's recourse to specie, goldsmiths accepting each other's debts still had to settle debts with each other. Like everyone else, goldsmith-bankers appreciated not moving gold and silver, so a system of retained precautionary debt reserves developed. By building up uncleared debits, goldsmith-bankers only needed to clear net balances. Holding competitors' debts, however, created risk that increased with time, so clearing occurred frequently enough to monitor net positions for abuse. Moreover, small net positions could be rolled over into new reserves for the next round of clearing, so only systematic imbalances had to be dealt with in gold and silver. Besides improving the circulation of bank debt, the inter-banker clearing of debt that followed from mutual debt acceptance between bankers assisted goldsmith-banking in dealing with the problems of delegated lending. Like issuing debt as a medium of exchange, intermediation between depositors and borrowers was a fundamental service of goldsmith-banking, but one that created asymmetric information, fractional reserves and the potential for runs. From the first instance, demandable debt complemented delegated lending because the potential for runs allowed relatively uninformed depositors to monitor goldsmith-bankers. The additional layer of intermediation that supported the goldsmith-bankers' sophisticated system of inter-banker debt clearing permitted goldsmiths to monitor their rivals for insolvency and assist those rivals suffering from potentially contagious runs. A system of clearing that improved the circulation of debt as a medium of exchange could also improve goldsmith-bankers' ability to maintain asymmetric information between depositors and bankers... For example, in the summer of 1668, the goldsmith banker Edward Backwell held over £30,000 of uncleared debts payable by his colleague Sir Robert Vyner. Vyner was suffering a run because he held one and £0.5 M in government debt created during the Second Dutch War. The English had just lost that war, and Backwell had himself just weathered a run because of the government debt he held. Backwell might well have feared that Vyner's collapse would spark runs on all holders of government debt. Clearing arrangements between goldsmith-bankers facilitated both the supply of media of exchange and the helped reduce the systemic risk associated with depositors' lack of knowledge of loan portfolios. The institutional form under which bankers cleared each other's debt also could counteract the potential for runs and panics inherent in the asymmetry of information produced when banks specialize in non-marketable lending.*" (Quinn, 1994). "*The goldsmiths' banking network was an important advance in the series of 17th century developments known as the Financial Revolution because reliable acceptance encouraged note circulation and the adoption by the public of the then-called 'banking habit' (Roseveare, 1991, p19–20). Merchants were aware that the Dutch had managed to use their public bank in Amsterdam to support paper that passed in trade like coin (Dickson, 1967, p5). While the English debated the founding of a similar institution, goldsmith-bankers were already operating a paper-dominated system of payments (Roseveare, 1991, p83). Additionally, the goldsmiths' system facilitated tax collection, channeled money into the credit market, and ameliorated the declining state of the coinage (Mayhew, 1995; Horsefield, 1983; Quinn, 1994). When [BOE] was founded in 1694, its practices were patterned after those of the already well established goldsmiths (Clapham, 1944, p16)... Trust between goldsmith-bankers was a function of information and commitment. Bankers had to know that their colleagues had more to gain from future business than from fleeing London with all the bullion they could carry. Unlike the Maghribi traders story developed by Greif (1989), London's goldsmith bankers could not rely on international punishment. A banker that had absconded would not be punishable by the group because the goldsmiths were London based. The lack of repeated play after an abuse meant colleagues had to monitor each other's business health, assets, and family ties. Proximity and personal histories interacted with business relationships to reduce the risk members faced when holding uncleared balances. The informal system, however, did have a formal backbone—the Goldsmiths' Co. As one of the oldest and wealthiest of London's great livery companies, the Goldsmiths' Co was entrusted with guaranteeing the purity of worked precious metals. The goldsmith-bankers formed a powerful yet informal subset of the larger company, and the goldsmith-bankers used the Goldsmiths' Co's formal system of apprenticeship to train new bankers. Throughout London's trades, 'seven years' 'genteel servitude' remained the commonest introduction to the world of business (Earle, 1989, p86). In exchange for 7 years of nonwage skilled labor and often an initial fee, the master taught the apprentice the necessary banking skills, introduced him to established bankers, and developed the groundwork for a long professional relationship. Generations of such apprentices-turned-bankers produced lines of goldsmith bankers related by apprenticeship. Family trees of who was apprenticed to whom emerged. Figure 2 demonstrates how early bankers like Sir Thomas Vyner produced numerous banking off-spring by apprenticeship... Apprenticeship allowed the master and the other bankers time and proximity to judge a newcomer. The relationships built during apprenticeships were important because no explicit custom or legal statement is known of that delineated who was in or not in the system. Being a system of bilateral clearing and not a clearing house, the arrangements between each banker were different and personal relationships would became important. Each banker faced no known restrictions in tailoring his exposure to other bankers. Undoubtedly, apprenticeship generated information and loyalties that supported greater ties and trust.*" (Quinn, 1997).

133 The 1662 Act was a blanket protection from bankruptcy due to holding shares: "*Provided [awlays] and it is hereby declared That every person or persons who shall Trade Traffique or Merchandise in any other way or manner then in the said Royal Fishing Trade or the Trade managed by [EIC] or the Guiney Co as aforesaid shall for and by reason of his and theire trading traffiquing and merchandising be [liable] to Commission and Commissions against Bankrupts as fully to all intents and purposes and not otherwise as if this Act had never been made Any thing in this Act to the contrary notwithstanding... And be it further enacted That a Verdict and Judgement in Replevin heretofore had or given in the Terme of Easter in [1653,] in the Kings Bench betwixt Phineas Andrewes Plaintiffe Richard Woolward and William Meggs Defendants whereby Sir John Wolstenholme Knight and Adventurer in the said [EIC] was adjudged and found [liable] to a Commission of Bankrupts only for and by reason of a share hee had in the [joint stock of EIC] and a pretended selling for money part of the return which hee had in Specie for his said Adventure shall be and is hereby declared contrary to Law and is hereby reversed and made void and null.*" (Raithby, 1820).

134 "*The most remarkable feature, connected with the companies of the Restoration, was the act of 1662, which created a species of limited liability in favour of shareholders in [EIC, RAC, and Fishery Co]. It was enacted that subscribers to these undertakings should not pro tanto be subject to the law of bankruptcy, in the event of losses being incurred by any one of the companies named. The effect of this statute was that a shareholder was only liable for the amount unpaid on his shares, and it is clear that such legislation was disadvantageous to unincorporated companies or syndicates.*" (Scott, 1910a).

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135 "*It was not until 1663 that a definitive solution of the question of bimetallism was resolved. In that year, in England, by the Act of 15 Charles II (c. 7, §12) the statutes forbidding the exportation of bullion were removed at one blow of astounding boldness... The importance of this enactment lies in its abandonment of the attempt to control, by means of mint rates of metal purchase and metal coinage, the working of the money mechanism and the flow of the precious metals. It was a step in the direction of laissez faire so far as the financial system was concerned*." (Groseclose, 1934). "*Under various statutes in the 14th century, those who gave information leading to the discovery of metal about to be sent out received 25-50% of what was found. Edward III appointed a regular corps of searchers to form a complete chain around the cast and south coasts and to search all vessels for bullion, with a promise of receiving 33% of the contraband. To export gold or silver of any sort remained illegal without the king's license until 1663, in which year an Act was passed allowing the re-export of foreign coin or bullion if entry were made of it at the custom house, by which it was hoped the better to guard against the export of English coin. In 1696, however, another Act forbade the export of bullion unless it were stamped at Goldsmiths' Hall and an oath taken that it was not the produce of English coin... The appreciation of gold in terms of silver had slackened off in the reign of Charles I, and the latter had made no alteration in the rating of gold. During the Commonwealth, however, the price of gold had begun to rise again and the metal had almost ceased to be coined. In 1661, therefore, the gold coins were raised about 6.66%, though not all of them quite equally. The old unites, minted before 1611, which had already been raised to 22s.0d., now became 23s.6d. The later unites, circulating legally at 20s.0d., became 21s.4d. The rose ryals of the earlier weight, which were of angel gold and had been called up in 1611 from 30s.0d. to 33s.0d., now became 35s.0d. The later ones, going for 30s.0d., now went up to 32s.0d. No arrangements were made immediately for a new issue of gold, but on Christmas Eve 1663 a warrant was issued to the officers of the Mint requiring them to stamp all the gold and silver which might be brought to them by the African Company to be coined, with a little elephant, the mark of the Company*." (Feavearyear, 1963). "*These gold pieces were called guineas, because, when first struck in 1663, they were made out of gold from the Guinea coast of Africa. They bore on the reverse an elephant, later an elephant and castle, which was taken from the arms of the African Company... This is close reasoning; and if it sounds over-confident, let us remember that it was based on the commercial experience derived from a long spell of peace among the Western powers. The essence lies in the statement 'the market will adjust the disproportion which the law had made.' The one thing necessary to the action of the market was that the trade in bullion and coin should be free. The trade in bullion and foreign coin was entirely free under the act of 1663 (15 Car. II, c. 7, s. 12). The export of domestic coin was not free: it was definitely illegal both for gold and silver coin right down to 1819. But the prohibition was freely evaded by melting and smuggling, and in the case of gold the evasion was made positively easy. There was a ceremony of swearing off gold, i.e. declaring it on oath not to be the produce of English coin, and thus making it available for export. Such gold sold for 12d. an ounce more than unsworn gold. Thorold Rogers calls it 'the price of perjury.'*" (Fay, 1935).

136 "*The demise of the restrictive chartered English Virginia Co in 1626 and the attendant triumph of new merchants who championed 'free trade,' open to less well-connected associates, was paralleled across the English Channel in the termination of the government monopolies granted to [GWC]. Ideally, the argument ran, a large, government-chartered organization possessed the political and even military capacities needed to establish a permanent infrastructure overseas, protecting investments against intrusions (by establishing an administrative staff resident overseas), extending military protections, organizing regular transport, and constructing warehouses, depots, shipyards, and forts. When the balance sheet for New Netherland (the colony set up at the mouth of the Hudson River at the present-day site of Manhattan) showed that expenditures were much higher than anticipated— 5 years into its existence—[GWC] directors allowed for private capital to make the colony profitable. New Amsterdam traders gained the right to trade along the entire eastern seaboard, while non-Company merchants in the Dutch Republic could also freely dispatch their goods to them. Before long, the Company monopolies in the trade with the Portuguese sugar-producing areas in northeastern Brazil, which the Company had seized, were also abandoned. Though these new merchants took key initiatives in creating and exploiting overseas opportunities, older interests did not entirely neglect the possibilities of the Atlantic. However, they required government subsidies in the form of monopolies to undertake the costly and risky investments in commercial infrastructure and, eventually, even more to enter commodity production in the Americas. The financial demands and lack of reliable military protection eventually made most of them abandon the risky and costly new arena of the Atlantic World to newcomers marginal to the interests well established in Europe*." (Klooster, 2005). "*Only 3 patroonships were actually established: Pavonia, which was sold back to [GWC] after a couple of years, Swanendael, which was destroyed by an Indian attack in 1632, after which the patroonship rights were also sold to [GWC], and Rensselaerswijck. The lack of success was partly caused by the fact that the patroons, most of whom were ousted from the Amsterdam chamber in the early 1630s, soon came into conflict with [GWC] over the extent of their powers, and specifically their rights to the fur trade... The matter was discussed in 1633 and 1634 by the Heren xix, but without any result. Thereupon both sides asked the States General for mediation. A committee of the States discussed it in June 1634, but did not make a decision. Instead, the sides were allowed another twelve days to reach a compromise. It is likely that a compromise was the outcome. The solution was the buying out of most of the patroons, with the exception of Rensselaerswijck*." (Jacobs, 2007).

137 "*[The trade triangle] First, manufactured goods—here cloth but elsewhere other trade goods were sent by European investors to the wampum-producing zone and exchanged for wampum. Second, the wampum was transported upriver and exchanged for furs. Third, the furs were shipped back to investors and sold at great profit. [GWC] records outline the 3 legs of this triangle and, in particular, the itinerary of company sloops between Narragansett Bay ('Sloupbay') and the Dutch post upriver at Fort Nassau, or Castle Island*." (Ceci, 1990). "*Long before wampum became legal tender, it was actually being used as money, all over New England and New Netherlands [1620s]... It was this shortage of coins, plus a desire to put standards and controls on the wampum trade, that led to the legalization and standardization of wampum as a currency, both in New England and New Netherlands. By this means, both the Dutch and the English could legally set, revise, and reset the value of the beads, to match the changing value of beaver, and other pelts, as determined by the demand and other Irregularities of the European market economy. They could also, of course, apply this system to any particular commodity that they desired to, and set whatever price, in wampumpeag, that they wished, or that the market would allow. The fluctuating wampum values that were placed on such commodities as furs, changing sometimes from season to season, caused some discontent and bewilderment among the tribal nations*." (Price, 1996).

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138 "*With the conquest of Pequot land and control of other bead makers, the value of the English pence doubled to 6 beads per penny... [R]ecords do indicate that payments between 1634 and 1664 to English colonists amounted conservatively to over 21,000 fathoms of wampum—almost 7 M beads. This total means that beads worth about [£5,000] entered colonial coffers during this period, more if double-valued purple beads were included. Thus, a second outcome of the Pequot War was, in effect, the partial underwriting of New England colonization costs by the conquered natives. A third outcome was the creation of a new, more advantageous English trade triangle, one that began on this side of the Atlantic with free tribute wampum gained without trade goods, and ended with credit—including final payment of the Puritan indebtedness and badly needed supplies from Europe. Other economic results of the Pequot War could be cited, such as the expansion of English settlements across conquered Indian agricultural territories claimed and mapped earlier by the Dutch, and ultimately, the conquest of Dutch New Amsterdam in 1664 through the manipulation of wampum money supplies and tributes to outbid the Dutch for furs*." (Ceci, 1990).

139 "[*New Netherland] was not written off the books by [GWC] in 1639 when its failure as a commercial venture became fully apparent... But while [GWC] did not abandon its colony in North America after 1639, it saw no reason why it should not profit or at least break even on operations. In opening up the fur trade to private traders [GWC] was not now consciously taking upon it-self the disinterested task of building a political society in New Netherland. Rather it was merely trying a new commercial approach with its white elephant in North America which seemed to fit no known pattern of successful commercial development. This shift in policy resulted from [GWC's] experience in the previous years which had clearly indicated that an efficient commercial outpost could not be maintained with profit in New Netherland... Incredible disorder resulted initially from the opening up of the fur trade in 1639... And in shifting from a policy of direct commercial participation to one of commercial regulation, [GWC] unwittingly only became more involved in the organization of settlement in New Netherland. However much [GWC] preferred to see its role in New Netherland as a commercial one, [GWC's] servants and the inhabitants in New Netherland pushed it increasingly into a governmental one. [GWC] was certainly not opposed to the peopling of New Netherland. In fact, it now hoped to profit by the presence of people there. But it could not justify to its stockholders the expenditures of vast sums of money without some expectation of profit*." (Condon, 1968).

140 "*People already residing in New Netherland abandoned their farms and trekked far inland in the hope of establishing better trading relations with the Indians for furs, According to one source, 'everyone thought that now was the acceptable time to make his fortune' ...The announcement of the opening of the fur trade produced a similar effect in the Netherlands, attracting not the farmer and artisan as [GWC] had hoped but rather the fortune seeking private merchant who came on his own account or as an agent for an Amsterdam company. New Netherland began to abound with rootless, private traders whose only interest was in the profits which the fur trade offered. Not only did they compete with the old inhabitants of New Netherland but they tended to drive the price of both furs and goods up*." (Condon, 1968).

141 *"[Passed 18 April 1641] Whereas very bad Wampum is at present circulating here, and payment is made in nothing but rough, unpolished stuff which is brought hither from other places, where it is 50% cheaper than it is paid out here, and the good, polished Wampum, commonly called Manhattan Wampum is wholly put out of sight or exported, which tends to the express ruin and destruction of this Country ; In order to provide in time therefor, We do, therefore, for the public good, interdict and forbid, all persons of what state, quality or condition soever they may be, to receive in payment, or to pay out, any unpolished Wampum during the next month of May except at 5 for 1 stiver and that strung, and then after that 6 beads for 1 stiver. Whosoever shall be found to have acted contrary hereunto, shall provisionally forfeit the Wampum which is paid out and 10 guilders for the Poor, and both payer and payee are alike liable. The well polished Wampum shall remain at its price as before, to wit, 4 for 1 stiver, provided it be strung... [Passed 30 May 1650] Whereas we have by experience and for a long time seen the decline and daily depreciation of the loose Wampum... Ordain that the commercial shall pass and be good pay as heretofore, to wit 6 White or 3 Black for 1 Stiver; on the contrary, poor strung Wampum shall pass 8 White and 4 Black for 1 Stiver*." (O'Callaghan, 1868). "*The fruits of this conduct can speak and testify of themselves. People have been here now so long, and would beat every bush; yet not a thing had been done concerning weights and measures or the like, previous to the 23d July, of the year 1649, at which time the people were notified that an order on the subject would be issued the ensuing Aug, which the Fiscal would then enforce—this was as much as to say: 'Water the pigeons.' Much discontent and division also frequently prevail among the people in regard to the weights and measures; and as these were never stamped, there can be no uniformity. The belief likewise obtains, that some, whose consciences are large, have two sets of them, but we cannot affirm the fact. The Company's grain measure has always been suspected; but who dare say so? The payment in Wampum, which is the currency here, has never been placed on a sure footing, although the Select men requested it, and showed how it could be done, and added conclusive reasons in support thereof. But it has always been misconceived and distasteful. And when anything was said to the Director on these and similar subjects, more than pleased him, a great deal of ill and spiteful language was received ; even those who were officially brought to speak with him of such things, if he were not in good humor, were berated as rascals, bear skinners, &c*." (O'Callaghan, 1856). "*Both Indians and Europeans accused each other of dyeing the white wampum to make it pass for the more valuable black. The ratio of black to white shell was usually two to one, but it varied considerably, as did the prices quoted in wampum. New Netherland merchants complained to the 'High and Mighty Lords States General of the United Netherlands' in 1649 that 'Wampum, which is the currency here, has never been placed on a sure footing.' By 1664 wampum had depreciated by about one-fourth in relation to the Dutch guilder but was still used for many transactions. Peter Stuyvesant, the Director-General of New Netherland, in that year asked Van Renselaer, a merchant in Albany, to raise a loan of 5or 6 thousand guilders in wampum and send it to him in New York to pay the laborers on the fort; he promised to repay the loan either in slaves or other goods*." (Myers, 1930).

142 "*By the early 1640s, the amount of time that the Narragansetts, and other tribes whose territories included the shores around the Long Island Sound, were being pressured to spend making wampum beads was taking them away from their normal subsistence activities and forcing them to become more dependent on trade. Although some Pequot 'slaves' had been added to the Narragansett labor force, the English and Dutch hunger for more wampum seemed to be insatiable. In the words of* Ceci (1990)*, the wampum-producing tribes of that area had become '..laborers who could never quite satisfy their creditors'... Ceci directs our attention to the fact that all of those little payments in wampum, by Indians, for various petty crimes, as listed in colonial court records, add up fast. She states that: 'the records do indicate that payments between 1634 and 1664 to English colonists amounted conservatively to over*

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21,000 fathoms of wampum— almost 7 M beads. This total means that beads worth about 5,000 pounds in English currency entered colonial coffers during this period, more if double-valued purple beads were included. Since most merchants in Europe who did business with colonists in America accepted wampum as payment from them, a large part of the indebtedness incurred in the process of creating the colonies, was paid off with wampum. So, much of the Indian labor that went into producing the wampum was paying for what made it possible for them to become indentured wampum-makers in the first place." (Price, 1996).

143 "*Following continental practice, the Dutch in New Netherland did not permit imprisonment for debt except in limited and exceptional circumstances. The creditor could have the debtor's body only when he neglected or refused to carry out the judgment of the court. In effect, imprisonment was for contempt of court rather than for debt. [O'Callaghan (1868, p351-3).]*" (Coleman, 1974).

144 "*The public gibbet on the shore of New Netherland in the foreground of Van der Donck's picture is suggestive of the nature of the laws of early New York, a colony of Holland founded primarily for gain. The form of land-tenure was semi-feudal, and this, together with the trading occupation of the settlers, and their difference of nationality, resulted in varied laws on the subject of debt as well as on other matters. The first colonists arrived in 1612. Fort Orange, where Albany now stands, was the most important settlement... During Peter Stuyvesant's administration as Director General, he received a petition complaining of great frauds by merchants of New Amsterdam, and others of South River and the village of Beaverwyck setting forth the paradox that, those 'who do not pay could sell cheaper than those who do pay.' The petition recited that some time previously the creditors furnished the 'inhabitants on the South River, in the neighborhood of their former forts Nassau and Casimir, with several cargoes, for the payment of which the majority of the inhabitants mortgaged their lands, houses, and all their real property. Said debtors, by removing to the colony of New Amstel, endeavor to sell and alienate, to defraud their creditors, which is against all law and justice.' Stuyvesant issued a 'warning.' He declared null and void all such sales and transfers made without the consent and knowledge of the creditors. Buyers were 'warned not to make any payments on such purchases, unless a formal notification is made previously of their intention , under penalty of being compelled to pay the price a second time to the creditors, unless done in the presence or with the consent of all concerned.' Hazard states that, the goods of an individual, of the name of Outhouse, were attached in New York, but permitted to be transported to Delaware to be deposited until the debt should be paid. The Court, contrary to the governor's order, released the goods and gave a longer time for payment. The governor held the Court liable, and required it to secure all charges from the debtor's estate, and if the Court could not do so, it was held to make the amount good. Another case of debt is recorded. It is that of Jeuffra Armgardt Printz alias Pappegay versus Andrew and Pricilla Carr for the sum of 3,000 guilders, Holland money, a sum equal to about £300. The jury awarded for the plaintiff and the governor confirmed the decision and directed the sheriff to levy, and, after appraisement, to put the plaintiff 'into the possession of said Island, Tinnicum and the stock thereon, which if not sufficient, levy on other property of Carr.' Dutch punishment was extraordinarily embarrassing and their greatest ingenuity was exerted to maintain credit and secure the payment of accounts in order to preserve the commerce of the colony.*" (Noel, 1919).

145 "[*Passed 29 Nov 1657]: That whereas, both by their own experience and by manifold complaints of Inhabitants and Strangers, they are sufficiently, to their sorrow, daily informed and importuned respecting the great, excessive and intolerable high prices of necessary commodities and household articles, arising, among other causes, principally from the high price, far beyond their value, of Beaver and other Peltries in this Country, in consequence of the abundance of Wampum, which has run up to 10, 11 and 12 guilders for 1 Beaver... [Passed 11 Nov 1658]: and family necessaries, arising among other causes, from the abundance and uncurrent condition of the Wampum, which in barter for Beaver, has risen to 16 guilders and more for 1 Beaver; according to which rate, all household commodities and common daily necessaries take their course, even to such a degree, that a difference of 80, 90, yea 100% is made by Shopkeepers, Tradesmen, Brewers, Bakers, Tapsters, and Grocers, if they work and sell their wares for Beavers or Wampum...[Passed 28 Dec 1662:] Taking into consideration, on the one hand, the depreciation and present low price of Wampum, to the degree that 20, yea, even, by some, 24, guilders, are now ordinarily paid for one Beaver, and, on the other hand, the Order and Instructions of Mess the Directors, communicated in divers of their dispatches, and especially in their Honors' letter of the 22 Dec, 1659, to reduce the payment which is made here to [GWC's] servants in Wampum or Deaver, to the value of Holland money, may receive in some degree an equivalent of Holland money, again to reduce the Wampum, at [GWC's] counting house, from 16 to 24 White, or 12 Black [beads] for 1 stiver, and to disburse it at that rate on the first of Jan next, to [GWC's] Servants in payment of Monthly wages and Board money, and as regards Beaver, to continue to pay it out, provisionally, until further Order, at 7 guilders, in payment of Monthly wages and board money.*" (O'Callaghan, 1868).

146 "*In the late 1650's the supply of European silver and gold coins began to rise in the colonies, due largely to increasing trade from the Caribbean Islands, including trade in African slaves. Newport, Rhode Island became one of the biggest ports for that trade, towards the end of the 17th century... The colonial laws of the late 1650's reveal a rapid drop in the value of wampum to the penny. In Rhode Island, in 1658, white beads went down to 8 beads per penny, from 6 beads per penny the previous year. By 1662 wampum was no longer legal tender in Rhode Island, or the United Colonies of New England. The Dutch still had a mild coin shortage, so it stayed legal there until after the English took New Netherlands, in 1664, and turned it into New York.*" (Price, 1996).

147 "*The event itself could hardly have been avoided by the Dutch government, unless all their previous policy had been reversed, and the holding of New Netherland at all hazards against any enemies been made an indispensable obligation. But this could not have been expected. Neither [GWC brink of bankruptcy—nor the States General adequately valued their American province. It was not until toward the end of their rule that the importance of New Nether land and the necessity of securing it seriously engaged the attention of the authorities in Holland. Even then their apparent indifference encouraged the mousing designs of England. Charles II decreed that the United Netherlands should no longer have a foothold in North America. The decree was executed; and the Dutch province became the easy prey of undeclared enemies, who sneaked, in time of peace, into her chief harbor... Intelligence of these preparations soon reached the Hague. Stuyvesant had already warned [GWC] of the intended grant of Charles to the Duke of York, and that not only Long Island, but the whole of New Netherland, would be lost, unless speedily re-enforced from Holland. But [GWC], now on the brink of bankruptcy, wrote back, with marvelous infatuation, that the king, 'being inclined to reduce all his kingdoms under one form of government in Church and State, hath taken care that commissioners are ready in England to repair to New England to install bishops there, the same as in Old England; therefore we believe*

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that the English of the North, mostly left England for the aforesaid causes, will give us henceforth so much trouble, and will prefer to live under us with freedom of conscience, rather than risk that in order to be rid of our authority, and then again to fall under a government from which they formerly fled.' Never was the Puritan sentiment in New England more thoroughly misapprehended than by [GWC]. Scarcely had this absurd letter been dispatched before the real purpose of Nicolls's expedition was better understood. In great concern, De Witt sought from Downing some explanation of the report of the English 'sending to take New Netherland.' The British envoy replied, 'I know of no such country but only in the maps'; and he boldly insisted that 'the English had the first pattern of first possession of those parts'... New York replaced New Netherland on the map of the world. Although wars in Europe followed, the result in America was the same. Holland retired from the unequal strife, leaving France and Spain to contend for a season with England for ultimate supremacy in North America." (Brodhead, 1871).

148 "*The basic rules governing the rights and obligations of lenders and borrowers, laid down in the Duke of York's laws between 1665 and 1675, provided for the imprisonment of defaulting debtors, the arrest on mesne process of potential absconders, the assignment of poor debtors to the service of their creditors, and the punishment of runaway bond servants and their accomplices. Amendments adopted in 1684 required poor debtors to be released if their creditors refused to let them work off their obligations, and all debtors had to be liberated or assigned by the end of the court term following arrest unless it could be proved that there were concealed assets. Minors could not be arrested for any debts except for food and clothing. These early changes represented modest though significant modifications in creditor rights. Although these arrangements still gave creditors ample protection, holding a debtor until he was impoverished served no practical or socially desirable purpose. Overcrowded jails soon became a public scandal as well as a health menace.*" (Coleman, 1974). "*[A]fter the English acquisition, Charles II gave it to his brother, James, Duke of York, who introduced the so-called 'Duke's Laws', which operated and developed much the same as in Pennsylvania, in connection with which State they will be noticed more carefully. New Jersey was a part of the territory claimed by Holland and was governed by the same laws as New Netherland.*" (Noel, 1919). "*The 'Duke's Laws' originally obtained in the shire of Yorkshire only, and did not go into effect in New York until after the second occupation by the Dutch in 1674, nor on the Delaware River, until 1676... Until the 'Duke's Laws' became of general effect throughout the province, the Dutch laws probably continued of force in accordance with the principle that the laws of a conquered country continue in force until expressly abrogated by the conqueror... [The 1655 Act:] All actions of Debt or Trespasse under ye value of £5 between Neighbors shall be put to Arbitration of two indifferent persons of the Neighborhood to be nominated by the Constable of the place... All action or cases from the value of £5 to 20, shall be tryed att the Sessions within that Jurisdiction from whence there is to be no appeal unless the debt appears to be above that summe of £20, or where there is a dubiousnesse in the expression of the law, which doubt made by one, if it tend to the Causeless vexation of ye other Party; the other Person so ofiending shall pay all the charges... Any Person falsely pretending great damages & Debts to vex his Adversary; shall pay treble Damage... No mans person shall be longer imprisoned for Debt or fine than he can find sureties for his Answering the Suite, or paying the Debt. And if it shall Appear to the Court, that the person impleaded hath a Competent man ['means' in Roslyn copy] to give Satisfaction out of his Estate reall or personal for the said Debt, Then the Court shall Discharge the person and Secure the plaintiff's debt out of the Defendants Estate.*" (Lincoln et al., 1894).

149 "*From the concluding months of the year 1664 until the summer of 1667, England, and more especially London, experienced a succession of misfortunes. Beginning with the Dutch war, there followed the Plague in 1665, the Great Fire in 1666 and finally the forcing of the defenses of the Thames by the Dutch fleet in June 1667. The joint effect of these calamities upon commerce was necessarily serious. Even prior to the outbreak of the war, some of the more timorous merchants, engaged in foreign trade, had begun to reduce their commitments abroad. At the end of 1664, shipowners were afraid to expose their vessels to war-risks, and there was a marked contraction of over-sea commerce. Moreover, the pressing of merchant sailors for the navy left insufficient crews available for the export of the cloth produced; and, to mitigate the resulting distress, it was proposed to suspend the Navigation Act, so that the goods might be carried by neutrals. Then the ravages of the plague produced a total dislocation of business. After 15 years of almost complete immunity from this scourge, there came the dreadful visitation of 1665, when the deaths from pestilence in London were returned at 68,596, being almost double those in 1603 and 1625.*" (Scott, 1910a).

150 "*During the reign of James I, the tally of sol was also used in loan transactions with some frequency. It did not develop into a popular credit instrument, however, until after some basic changes were made during the first decade of the Restoration. Up to this point, the tally of sol had been given for loans paid in at the Exchequer. Before 1665, the tally of sol did not give its holder a legal claim to a specified piece of revenue, as did the tally of pro, but this disadvantage was more than offset by the relatively easy assignability of the tally of sol, because, in contrast to the tally of pro, the lender's name was not written on the tally. The acute financial stress of the first decade of the Restoration occasioned further development in the use of the tally of sol. The Act passed by Parliament to grant an assessment of £1.2 M to Charles for the purpose of assisting him in the Second Dutch War contained a number of important innovations contrived by Sir George Downing, a Teller of the Exchequer. Downing believed that the government relied too heavily on a small coterie of goldsmith-bankers, and that the investing public should be invited to invest in government loans and supplant the bankers. In order to establish the kind of ironclad security needed to attract loans, the receipts of the Assessment were to be strictly appropriated to the repayment of the loans made on the security of the Act. Downing also realized that the tally of sol, while more easily assignable than the tally of pro, did not offer a firm guarantee of repayment, and that this would discourage potential investors, so Downing fashioned a written repayment order which would be given to lenders together with a tally of sol. The repayment order assigned a lender a number in the system of repayment, the lender's standing in the rota being determined by the date on which he made the loan. In addition to guaranteeing a lender a specific position in line for repayment of the loan, the repayment order and accompanying tally of sol also guaranteed that the repayment of loan would be automatic. Normally repayment of a loan on a tally of sol required a Treasury warrant, and even though a loan was due to be repaid, the lender could not obtain repayment without a Treasury warrant, and this was not always immediately forthcoming. The repayment order, however, also served as a Treasury warrant, and consequently repayment was automatic and guaranteed. The repayment order made the tally of sol every bit as safe an investment as a tally of pro. In addition, the repayment order was assignable by endorsement. If the bearer of a repayment order needed money before the date set for its redemption, he could easily take it to one of the goldsmiths, who would buy it at*

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a discount. This new instrument of credit offered a lender almost complete security, repayment in an orderly sequence, was negotiable, and paid the same amount of interest a lender would receive if he deposited his money with a goldsmith." (Nichols, 1971).

151 "*The goldsmith notes were not, however, endowed with legal tender quality, and were not, strictly speaking, money. The first English paper money which was endowed with the quality of legal tender was the exchequer order, which originated early in the reign of Charles II in 1665, during the period of Charles' first Dutch war. An exchequer order was an order to the Teller of the Receipt of the Exchequer to pay such and such a person so much out of the fund arising from this or that parliamentary supply. Whenever it represented the repayment of a loan, the exchequer order bore interest reckoned from the date of the loan. From that time on the exchequer order was made frequent use of by Charles II and his successors as a convenient way of anticipating revenue receipts. But the exchequer order was far from being true paper money. Though made transferable from hand to hand by parliamentary enactment, and full tender for the payment of public and private dues, the orders were transferable only by endorsement, and whenever the order represented the payment of a loan, it bore interest from the date of the loan. The mere fact that the order bore interest deprived it of the first requisite of money, the quality of freely circulating, for paper which bears interest is regarded as a form of investment rather than as a species of currency. It tends to be kept or stored away until maturity, and if it is disposed of at any time before maturity the calculation of interest is troublesome.*" (Groseclose, 1934).

152 "*One of the most hopeful of the achievements of the 17th and 18th centuries was the formal abandonment by government of its prerogative to control the minting of money. In perfect theory, and under ideal conditions, it is the state alone, as the agency of society, which can exercise that plenary and permeant control of the money mechanism which is necessary for its highest functioning in the economic order. Nevertheless, so abused had been this sovereign prerogative that as a practical measure its surrender had the most salutary results. The surrender of the coinage privilege was first accomplished, as we have observed, in England by the Act of 1666 (Act of Free Coinage of 18 Car. II, c. 5) which opened the mint to coinage by individuals... The prime importance of the Acts of 1663 and 1666 was that they paved the way for the establishment of the single gold standard. During the 18th century the mint ratio was... in favor of silver in France, and conversely, in favor of gold in England and Spain. The result was that gold became almost the only constituent of the currency of England and Spain for the greater part of the century. What silver appeared in England was drawn off for the Indian trade, where the ratio of silver to gold was very low, possibly 1:4. There can be little doubt that this fact had a great influence in actually determining the great currency legislation which closed the century and finally decided England upon gold, and France and the United States upon bimetallism strongly favoring silver. The transition in England from the bimetallic to the gold standard may be traced briefly: Concurrent with the Act of Charles II freeing the precious metals from import and export restrictions, a new gold coin, the guinea, was introduced, and no attempt was made to give this coin a fixed value as against silver coins. The fixing of the value of the coin was left to the open market, and the treasury was allowed to accept the guinea in payment at the rate of exchange of the day. This system which England now adopted, and which is known as the 'parallel standard' or 'alternative standard,' did not prove satisfactory. Traders found it inconvenient to have to calculate continually in 2 different kinds of money which stood to each other in a fluctuating ratio, and under the pressure of this inconvenience the experiment had to be dropped. Towards the end of the 17th century the English silver coinage, as a result of fraudulent abrasion and clipping, had lost a large part (a sampling showed an average of 48%) of its original metallic content. As a result of the influence of the free market in the metals, the new and relatively full weight guineas rose in value to 30 shillings or more.*" (Groseclose, 1934). "*The act of 1666 (18 Car. II, c. 5), establishing free and gratuitous coinage, indirectly favored gold. It destroyed the historic idea of money as something which derives its value from specific limitation in the name of the sovereign; and turned money into a commodity of commerce. This was Holland's conception of money, and in this, as in so many other things, England imitated Holland. In 1679 France followed suit. Now this freedom, unless it is neutralized by the employment of bank money, leads to the same bullion passing successively through the mints of the principal countries; for the government bears the expense. But it is cheaper to mint £100 of gold coin than £100 of silver coin; for in the former case there is less coining to be done in order to produce a given value in money. England, therefore, by giving a preference to gold, adopted the cheapest method of operating the expensive policy of free and gratuitous coinage; and it is possible that this consideration of economy was in the minds of Newton and his contemporaries when they took the decision of 1717.*" (Fay, 1935).

153 "*The panic was so great that most people were much too anxious about escaping the deadly contagion to pursue their ordinary avocations. Many fled from the infected area, making no provision for the payment of their debts; and there was an unavoidable delay in winding up the affairs of those who had perished by the epidemic. Trade was described as being 'very low', and Change was almost deserted. There was very great distress, through want of employment and the high price of fuel. Since so much of the trade of the whole country passed through London, the cordon, drawn round it for sanitary reasons, caused the great depression in the City to react on the provinces; and, by June (1665), the woollen trade was in a declining condition. In Aug of 1666 confidence had been so shaken that there was no discounting of bills, and wholesale business was reduced to the transactions connected with the realization of prizes. The previous losses of property were however inconsiderable, when compared with the devastation wrought by the Great Fire, which began on Sep 2, 1666.*" (Scott, 1910a).

154 "*The pressure of these cumulative misfortunes may be arrived at by another method. The loss on the Customs alone through the Plague, Fire and the War, during the 2 years Sep 29, 1665 to Sep 29, 1667, was £319,905.14s7d, and the reduction of the whole settled revenue during this period was £0.6 M. Although the Dutch had spent 11 M on the contest, the raising of £4.3 M, by increased taxation in England, was found to be a crushing burden, in view of the misfortunes that had happened since the beginning of the contest. It was calculated, that, owing to the area on which new taxes could be placed being so small, if the war were continued till Christmas 1667, on the same scale as in 1665, some persons would have been compelled to pay to the State 33% of their whole estates; and, for this reason as well as the unmanageable amount of the Crown Debt, it was decided to reduce the expenditure on the navy in 1667 in view of the negotiations for peace which were then in progress. The Dutch increased the captures of British merchantmen and often, for weeks at a time, sailings from the threatened ports were suspended. Thus, in Dec 1666, the merchants of the Tyne and the Humber 'murmured cruelly' of the want of convoys, and it was openly said that trade was better guarded in the time of Cromwell. At Newcastle the frequent interruptions of the coal-trade had deprived many of the colliers of work, and numbers of them were forced to beg. On 2 occasions, the collectors of Hearth-money had been driven out of the town. From Plymouth round to the Severn similar conditions prevailed, and in June 1667 no English ships could sail in safety from these ports.*

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These results of the unavoidable, but premature retrenchment of the navy were in considerable, as compared with the consequences of the national humiliation, when the Dutch fleet made its appearance in the Thames in June 1667 and obtained command of the North Sea." (Scott, 1910a).

155 "*There was a panic in the City; an invasion was expected, and, in the desire to escape from the threatened district, those, who had deposits with the goldsmiths, demanded payment of their balances. Thus, there resulted the first run on English banks. One of the leading firms, that of the Viners, had £0.1 M available, at the beginning of the panic, but this was soon exhausted. Indeed, it was said that, in this case, certain influential persons obtained early and full payment. Even in this first run, the bankers were sufficiently astute to adopt every possible device to procure time, in the hope that the alarm would abate. To applicants for withdrawals they replied—'It is payable at 20 days, when the days are out we will pay you and those that are not so, they make tell over their money, and make their bags false on purpose to give cause to retell it and so spend time.' The shock to confidence was too severe to be repaired by such methods, and there was a universal suspension of cash payments, the liabilities of the bankers being estimated at £1.2 M. Merchants, who were depositors, were thus unable to meet their obligations, and failures were numerous. On June 15th the state of feeling was graphically described by John Rush worth, who writes that 'the people were readie to tear the hair off' their heads.' The suspension of credit was intensified by the distress of the poor, and all classes suffered by the interruption of the supply of coal from Newcastle. In July fuel had reached famine-prices, and sea-coal was quoted at £6 the chaldron. The 'deadness' of commerce was so great that collectors of taxes were unable to enforce payments, owing to 'the infinite wants of all men' in their districts. It was the opinion of experienced merchants that the nation was greatly impoverished, and that none of them had known trade to be so bad... One consequence of the great scarcity of capital during the crisis had been the appearance of proposals for the extension of credit by means of the establishment of an institution for the accommodation of merchants. It was to be neither 'a bank nor a Lombard' but both combined, the intention being to make advances to traders up to 75% or even, in special cases, to 90% of the value of their goods This scheme was propounded in 1665; and, in the following year, another was mooted for the issue of inconvertible paper, based on the 'satisfying security' of land or monies granted to the Crown by Parliament. The second suggestion is of interest as an anticipation of the land-banks, which became important in the closing years of the century. The discredit of the private bankers in 1667 delayed the realization of these projects, and trade did not begin to revive till peace had been made with Holland*." (Scott, 1910a).

156 "*By 1667 complaints of depression were heard everywhere. The plague was said to have caused an 'infinite interruption to the whole trade of the nation.' Poverty and pauperism were increasing, according to a somewhat earlier observer who produced as evidence the vast number of 'poor men, women, and hunger-starved children lying in every corner...' The value of land was supposed to have dropped greatly; 'that rents decay', wrote a government official, 'every landlord feels.' And these complaints, which may seem to rest on nothing more solid than hearsay, are borne out by evidence that prices in general dropped off sharply between about 1665 and 1670. The Government, in all its parts, reacted quickly to the crisis. The House of Commons late in 1667 appointed a Select Committee on the State of Trade, including a number of its senior members and all the merchants of the House. In 1668 the King established a new Council of Trade, a large body of statesmen and merchants responsible for advising him on all economic questions. And in 1669 the House of Lords appointed a committee of its own 'to consider of the causes and grounds of the fall of rents and decay of trade within this Kingdom.' The formation of these groups reflected the belief that economic policy was partly at least a matter of expert knowledge; indeed the practice of continuously maintaining within Government a group of specialists on economic affairs, and more specifically, the beginnings of the Board of Trade, can be traced from this moment. In the activities of the Council of Trade and the Lords' Committee, and perhaps in those of the Commons' Committee as well, Josiah Child played a leading part. The views which he urged in all of them are summarized in his pamphlet, Brief Observations concerning trade, and interest of money*." (Letwin, 1964).

157 "*House of Lords—1669, Oct. 28. Decay of Trade, &c. Minutes of proceedings of the Committee appointed to consider of the causes and grounds of the fall of rents and decay of trade within these kingdoms... Dr. Worsley, Mr. Child, and other members of the Council of Trade gave evidence before it. Mr. Child attributed the prosperity of the trade of the Dutch to their fidelity in their seal, encouragement of Inventors (whom they reward, and make their inventions public, instead of granting a Patent as here), thrift, small ships, low duties, poor laws, mercantile law, easy admission of burghers, inland navigation, low interest, fisheries, colonies, religious liberty, education. English trade had increased in gross. Persecutions abroad had brought us several trades, such as Milan and jean fustians; comfit-makers brought in by one that escaped the Inquisition; Maidstone thread is carried all over the world. The drawbacks to English trade, are dishonest aulnage, dishonest packing of fish, Bankruptcy Statute, Taxes on home manufactures, Statutory obligation to serve Apprentice, export of coin, trade bye-laws, bad poor laws, scarcity of labour, the Fire and the Plague, and the heavy land-taxes which preceded them, usual plenty of corn, racking up of rents 51 and 52, high bank rates, anticipation of revenue; improvement of Ireland, which exports to the Colonies in Dutch ships:—The Irish Cattle Act ineffectual. The Eastland, Russia, Norway, Greenland, and Scotch trades much impaired by the exclusiveness of the Companies' high duties, or free trade without reciprocity. The way to promote trade is by increasing the capital of the nation, and by the use of bills of exchange and registers. Perfect free trade is an advantage. Increase the stock of labour and capital.*" (Papillon, 1887)."*The prodigious increase of the Netherlanders in their domestick and forreign Trade, Riches, and multitude of Shipping, is the envy of the present, and may be the wonder of all future Generations: And yet the means whereby they have thus advanced themselves, are sufficiently obvious, and in a great measure imitable by most other Nations, but more easily by us of this Kingdom of England, which I shall endeavour to demonstrate in the following discourse. Some of the said means by which they have advanced their Trade, and thereby improved their Estates, are these following... Tenthly, Their use of BANKS, which are of so immence advantage to them, that some not without good grounds have estimated the profit of them to the Publick to amount to at least £1 M per annum...Twelfthly, Their Law-Merchant, By which all Controversies between Merchants and Tradesmen are decided in three or four days time, and that not at the fortieth part (I might say in many cases not the hundredth part) of the charge they are with us. Thirteenthly, The Law that is in use among them for transference of Bills for Debts from one man to another: This is of extra-ordinary advantage to them in their Commerce; by means whereof, the can turn their Stocks twice or thrice in Trade, for once that we can in England; for that having sold our Foreign Goods here, we cannot buy again to advantage, till we are possest of our Money; which it may be we shall be 6, 9, or 12 Months in recovering: And if what we sell be considerable, it is a good man's work all the Year to be following Vintners, and Shopkeepers for Money. Whereas, were the Law for Transferring Bills in practise with us, we could presently after sale of our Goods, dispose of our Bills; and close up our accounts. To do which, the advantage, ease, and accommodations it would be to Trade, is so great, that none but Merchants that have lived where that custom is in use, can value to its due proportion... if with this law for abatement of Interest, a Law for Transferring*

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Bills of Debt should pass, we should not miss the Dutch Money, were it ten times as much as it is amongst us; for that such a Law will certainly supply the defect of at least one half of all the ready money we have in use in the Nation." (Child, 1668). "*The Lords committee on the decay of rents and trade was told in 1669 that the statutes of artificers and bankrupts were prejudicial to trade*." (Jones, 1979).

158 "*The procedural requirements of the [1649] act were amended by a second act passed in [1670] which required that if the creditor disputed the debtor's oath, the case was to be tried by a jury... A statute passed in 1670 also provided for the liberation of imprisoned debtors. [22 & 23 Car. 2, c.20 (1670). Unlike the 1649 act which provided for jury trial of contested oaths, this statute left it to the court to adjudicate if the creditor had successfully disputed the debtor's oath.] One provision of the 1670 act underscored the essentially coercive nature of imprisonment for debt: a creditor could insist on the continued detention of a debtor even if the creditor could not dispute the veracity of his debtor's oath, so long as the creditor paid a weekly fee for the debtor's subsistence. [This suggests that one of the primary motivations for the enactment of the statute was to insure decent prison conditions.] The 1670 statute applied only retrospectively to prisoners already confined*." (Cohen, 1983).

159 "*Downing's plans were adumbrated in 1665-6; when the Additional Aid was voted for the Dutch War, he succeeded, against Clarendon, in getting parliamentary authority for 4 innovations. First, that all money raised by the Bill should be appropriated to a specific purpose, i.e. the war. Second, that a direct appeal should be made to the country at large to lend directly to the Exchequer on the product of the Aid. Third, that those who lent should be repaid by a regular chronology — first in, first out. Fourth, that these repayment orders could be 'assigned.' A creditor could therefore take his order to a banker and have it cashed —at an appropriate discount— if he needed ready money before his repayment fell due. There followed a long period in office at the Treasury for Downing and the first real attempt to make the Exchequer master of its business of controlling receipts and issues. Even the great Backwell would be peremptorily summoned to come to Downing's house at 8 a.m. 'without faile.' In Jan 1671 Downing even succeeded in persuading the House to impose a tax of 15 shillings on every £100 lent by the bankers that carried over 6% interest. The aim was clear: to encourage lenders to place their funds directly with the Exchequer instead of via the bankers. Contemporary events seemed to support his belief that the money was there if only means could be found of tapping the resources that the goldsmiths managed to tap. Why, otherwise, was it easy for [RAC] to open its subscription books for £0.1 M in Nov 1671 and exceed its target by 10% in less than a month. In his campaign against the bankers, Downing had the powerful support of [EIC], led by Josiah Child, who appeared before the Lords in 1669-70 to deplore, inter alia, 'The late innovated Trade by the Bankers in London.' Downing's dream of a national Exchequer 'bank', drawing loans directly from the investing public, was based, like most of his ideas, on his observation of the Dutch system. But it was not to be realized — in his lifetime, anyway. The bankers retained their power, in spite of his efforts and in spite of individual bankruptcies. It was to take a revolution in financial methods to make government loans competitive with commercial investment in the eye of the ordinary lender*." (Wilson, 1984).

160 "*It appears to be commonly assumed that paper money came into use in England around 1700. But if we ask contemporary writers whether paper money circulated then we get contradictory answers. Some said it did—for example, an anonymous author who claimed that it was first issued about 1650 by a goldsmith named Futter. [Some observations on our Trade, and on the use of a Standard [?1700], p. 36. Price (1890-1, p63) lists Henry Futter as a goldsmith from 1633.] Others differed, like Leigh in 1671 and Clements in 1695, or for that matter Giles Jacob as late as 1756, who all regarded money as comprising only coins... Goldsmiths' Notes — Goldsmiths may have been issuing notes as early as 1650, as stated by the anonymous writer quoted above. It was not however until 1670, by which time they were described as 'numerous', that they were officially identified as bankers. In 1703 Chief Justice Holt was advised by '2 of the most famous merchants in London' that goldsmiths' notes had been in use for 'a matter of 30 years.' [Buller v. Crips (1703) 6 Mod. 30.]*" (Horsefield, 1977).

161 "*After its initial success with fiduciary orders issued on the ordinary revenue, the Treasury Commissioners began to issue fiduciary orders on the credit of the Exchequer in general, and it is at this point in the development of the fiduciary order that it can be considered a form of paper money. Unfortunately, the government abused this source of credit by issuing fiduciary orders far in excess of its ability to redeem them.*" (Nichols, 1971). "*During the first 12 years of his reign, Charles's debts rose to more than £2 M*." (Wilson, 1984). "*But on the Restoration, extravagance, and recklessness became the order of the day. Charles II naturally desired to get rid of the Republican armies formed under the Commonwealth. The only safe method of so doing was to pay them off, and Ministers accordingly had recourse to the bankers. Fresh necessities arose, and the King was in frequent communication with the bankers, the transactions being conducted in a manner of which Clarendon has left us a graphic description. The King would send for the leading men among the bankers and ask how much each was prepared and disposed to contribute. One would say so much, another so much—they did not act in any concert or on any joint stock principle, but independently, according as each had available funds at his disposal. Then the question of interest would be mooted, and this was generally courteously left to his Majesty's pleasure with the information and suggestion that 6%, was what they had to give their customers. 8 % came to be the rate of interest usually granted by the Crown, and the repayment was secured by an equivalent assignment of the first monies which should be voted by Parliament or by tallies giving a charge on the revenue or both, the payments being made out of the Exchequer... In 1667, Charles had issued a proclamation affirming the in violability of the Exchequer and precluding and prohibiting the idea of any stoppage of or interference with the payments to be made thereout second proclamation appeared, having been prepared, as was the step it announced, with the utmost secrecy, suspending all payments out of the Exchequer for a year, but promising interest during that time at 6%... [T]he King's great reluctance to take the step in question, which he justifies on the ground of public necessity and the warlike preparations of neighboring States, which there was no other means of meeting.*" (Paget, 1888).

162 "*The government could not pay its bills and defaulted (it continued to pay interest but did not repay capital). Not all government payment obligations were affected (*Horsefield, 1982*). Most of the affected bills had been assigned to bankers, discounted for the risk involved.*" (Temin and Voth, 2013). "*Charles II being distressed for money (with him not an unusual circumstance), and not wishing to go before the House of Commons, summoned together his ministers to take counsel as to the best way of obtaining the sum of £1.5 M without the aid of Parliament. The King promised the Lord Treasurer's place to anyone who could suggest the means. After the Restoration the goldsmiths were in the habit of depositing in the Exchequer their floating capital, such as they did not require for their business, for the use of which the King gave them high interest. Lord Ashley had unguardedly communicated to Sir Thomas Clifford the expedient of shutting up the Exchequer and seizing these accumulations. Sir Thomas instantly went before the King, informing his*

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Majesty that he had hit on a good notion. 'Odd's fish!' cried his Majesty, 'I will be as good as my word, if you can find the money.' Sir Thomas then informed the King that the bankers had £1.5 M in the Exchequer, which money he could obtain by shutting it up. Accordingly, on the 2nd of Jan 1672, the Exchequer was closed, and all payments to the bankers were suspended; this novel mode of relieving the Royal necessities causing ruin, not only to most of the goldsmiths, but likewise to many of their customers. The exact amount of money in the Exchequer at that time was £1.33 M. As a reward for this robbery, Sir Thomas Clifford was made Lord High Treasurer, and raised to the peerage." (Price, 1876). "*The state of the finances was so bad, that funds were required to despatch the fleet and to make other preparations; and, while the King's advisers were at a loss to obtain money, it was suggested that the difficulty could be met by the closing of the Exchequer for payments on assignation. By this operation the incoming revenue, which should have been paid out to bankers against their previous advances, would be liberated for the purposes of the coming war and would carry it on for some months.*" (Scott, 1910a). "*By 1672, the government could no longer avoid temporarily suspending payment of this primitive floating debt. Because they had discounted most of the fiduciary orders, the temporary suspension of repayment, known as the Stop of the Exchequer, affected the goldsmiths most severely... By 1672, the goldsmiths also discounted bills and issued notes. In addition to making loans to the government directly, the goldsmiths also discounted government tallies and this also involved them in government finance. At the Stop of the Exchequer, the goldsmiths held approximately £1 M of the floating debt.*" (Nichols, 1971).

163 "*New York was re-taken by the Dutch on July 30, 1673, and the commanders of the fleet re-established the Dutch form of government by the appointment of Schout, burgomasters and schepens, on Aug 17, 1673... The Dutch were in possession of New York for too brief a period to re-establish a permanent or stable form of government, and their rule amounted to little more than a military occupation of the city. By the treaty of Westminster, signed Feb 19, 1674, the Dutch relinquished New York, although they were in actual possession of the city for some months thereafter*." (Croswell, 1896). "*For [GWC], financial and political difficulties were a constant threat. After the proposal for a merger [with VOC] in the 1640s failed, the [GWC] managed to extend its pre-carious existence until 1674, when a bankruptcy became unavoidable. Immediately, a new, revised [GWC] was founded, with much more limited powers, however*." (Jacobs, 2007). "*It was clear to Charles II that Parliament in this situation would give no more money to continue the war against the Protestant Republic. He was forced to tell Colbert de Croissy that he could no longer fight on France's side. Through the Marquis del Fresno, the Spanish consul in London, Charles II opened negotiations with the Dutch, which on 9 Feb 1674 led to the Peace of Westminster.*" (Troost, 2017).

164 "*By this measure of practical confiscation, the King became possessed of no less a sum than £1.33 M, whereof £0.42 M belonged to Sir Thomas Vyner, one of the bankers, or his customers*." (Paget, 1888). "*Sir Robert Vyner, the Crown's principal creditor, was in trouble from the outset. In Nov 1674 Sir Joseph Williamson, Secretary of State, was told by his clerk that the bankers were 'extremely disheartened, and now apprehend they shall never get their moneys... poor Sir R. Vyner is the most pitied and perhaps the most deserves it.' In fact, he survived for another 10 years, but failed in 1684.*" (Horsefield, 1982). "*By that memorable closing of the Exchequer on 2nd Jan, 1672, Sir Robert Vyner lost the sum of £416,724.13s.1.5d; in consideration of which he was awarded £25,003.9s.4d. per annum out of the Excise; and customers were commanded in the meantime not to sue him. Whether the same injunction applied generally to the protection of all the goldsmiths who were similarly robbed, I have no means of ascertaining*." (Price, 1876).

165 "*Goldsmith bankers and their clients were the government creditors hardest hit by the payment stop. Initially intended for a year, the stop was extended until 1674, when it effectively became permanent. While some interest payments were made, losses were massive, and many goldsmith bankers went out of business. After the Stop of Exchequer, goldsmith bankers emerged in the smaller but more viable form of bankers to private individuals, investing in a range of assets from mortgages to stocks and, eventually, government bonds (Wilson 1984, p214-5). Learning to be a fractional-reserve banker in the early 18th century was difficult, as shown by the rapid demise of many goldsmith bankers at the end of the 17th and the beginning of the 18th centuries. Many failed after the Stop of the Exchequer, and goldsmiths' notes were unacceptable as currency during the 1670s. Many firms and individuals drifted into the banking business, only to give it up after a few years... The early years of goldsmith banking were marked by rapid entry into the business and equally rapid exit, as shown in table 3.1. More short-lived banks might have existed, but those in table 3.1 are the only ones we could find in a variety of sources.*" (Temin and Voth, 2013). *The bankers' grip was broken, and England had stumbled, as it transpired, into the device of a funded debt; for in due course, arrangements were made to pay to the bankers annual disbursements large enough to cover 'annuities' to them and their stricken clients. The principal of the loans thus remained unpaid, but interest of 6% was forthcoming on the capital. Downing's ambitious schemes remained unfulfilled at his death in 1684*." (Wilson, 1984).

166 "*The 'stop of the Exchequer' was ordered on Dec 18th, 1671, and the consequences were disastrous, not only to the credit of the Crown, but to the trade of the country. Apparently only the bankers immediately concerned were affected, but it is to be remembered that most of the funds, lent by them to the Crown, had been borrowed from their depositors. The bankers were unable to obtain the payment promised them at the due dates, and, consequently, they could not meet their obligations. About one-half of the whole number failed, and from them the area of ruin extended to the merchants, until it reached many widows and orphans, whose income was derived from the interest on their capital. Some effort was made to maintain a vestige of the royal faith, by the promise of 6% interest on the sum of £1.3 M, which was stopped; but, even had this promise been punctually performed, it would have been small compensation to those whose credit had been lost in the crash. Altogether it was computed that nearly 10,000 families were serious sufferers, and 'that many of them were entirely ruined.'*" (Scott, 1910a). "*In 1672 capital bankruptcy was only staved off by suspending the repayment of loans to the lenders. And when this was done —by the famous 'Stop of the Exchequer'—the truth emerged; most of the repayment orders issued to individuals had already been discounted by the bankers, in whose hands they now stood. The burden of the 'Stop', therefore, fell mainly on them— nearly 5 M. The Government was enabled to spend its revenues on the Dutch war instead of on repaying its debts. But the effect on the bankers was dire. Five large ones went bankrupt. The largest survived, but precariously. Backwell crashed later in 1682; Vyner followed in 1684*." (Wilson, 1984).

167 "*The suspension of payment, originally for a year, was prolonged indefinitely; in Dec 1671, further letters patent postponed the payment till May 1673; when that date arrived no payment was forthcoming, and the disappointed bankers and their creditors had not even the satisfaction of having their debt*

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recognized, if postponed, by any further letters patent or proclamation. The distress this caused was terrible. People who had confided their money to the bankers were ruined by thousands, many put an end to their lives, or went mad, the principal creditors of the bankers alone being estimated by Turnor at 10,000, the persons consequentially injured innumerable. The case is shortly and well put by Turnor thus 'A banker lends to the King an £0.1 M more or less, this money is secured to the said banker upon the customs or any other branch of the King's revenue by order registered in the Exchequer by tally of loan or both and then the King (upon the warlike preparations of our neighbor princes and states) is advised to make stop of all payments out of the Exchequer, which is executed accordingly. Whether by this counsel executed, the subject's property be invaded and violated? And I clearly conceive it is'—a proposition he proceeds to support with much of that curious reference to classical and scriptural antiquity which is the characteristic of law-books of that date, but which to our minds does not seem to require much argument to substantiate it. Up to 1676 no principal was paid and very little interest..." (Paget, 1888). "*The nature of the Stop of the Exchequer is frequently misunderstood. Charles neither repudiated his debts, nor confiscated any of the goldsmiths' money. The Stop of the Exchequer was simply a postponement of the payment of the fiduciary orders for 1 year."* (Nichols, 1971). "*The King at first intended to close the Exchequer only for 1 year; but year after year passed, and neither principal nor interest was returned.*" (Price, 1876).

168 "*Up to 1676 no principal was paid and very little interest, but at length in that year the King condescended to have the accounts of the bankers and creditors examined by the Chancellor of the Exchequer, and in the next year (1677) letters patent were issued granting to each of the bankers, his heirs and assigns, for the benefit of their customers or creditors in lieu and satisfaction of their debt a yearly rent, part of the hereditary excise, equal to 6%, upon the debt, with a clause for redemption upon the King paying principal and amount of interest."* (Paget, 1888). "*Public indignation rose to such a height at this injustice, that on the 16th April 1677, just 5 years after the seizure, the King caused Letters Patent to be granted to each of those goldsmiths who had entrusted their money to the Exchequer, covenanting to pay interest at the rate of 6% per annum.*" (Price, 1876). "*The settlement of the Stop of the Exchequer debt unintentionally created the first funded National debt. The debt was funded on the Excise, one of the most stable and productive sources of revenue. The goldsmiths were to receive an annual 6% annuity of £81,944.0s.2d. from the Excise receipts. Danby prepared a schedule allotting each goldsmith a share in the annuity proportionate to the amount owed to him. But the goldsmiths did not receive the payment directly. Danby was alert to prevent the goldsmiths from taking their share of the annuity and not paying off their depositors, so he required the goldsmiths to make pro rata assignments of their share of the annuity to their creditors. The goldsmiths' creditors were given an Exchequer order and a tally for their share of the goldsmiths' share, which they took directly to the Excise Office for their payment. Payments to the goldsmiths were made regularly for the first few years after the settlement. During 1680, however, the government fell behind in making the payments. The state of Charles's finances prevented the government from fulfilling its obligation to the goldsmiths."* (Nichols, 1971). "*What seems to be a most extraordinary circumstance is, that although so many persons of influence must have been injured by the transaction, there was no notice of it taken in Parliament. At length, in April 1676, the King was obliged to order the accounts of the creditors to be examined by the Chancellor of the Exchequer. This having been done, in April 1677, the King issued letters patent, granting to each of the goldsmiths, their heirs and assigns, for the benefit of their creditors, in lieu and satisfaction of their debts, a yearly rent, part of the hereditary excise, equal to 6% upon the debt, with a clause of redemption, upon the King paying the principal and arrears of interest. These letters were printed and made public on the 23rd of May 1677, and a bill to ratify them was passed by the House of Lords on the 10th July 1678, but unfortunately, was not presented to the Commons before the end of the Session, and never became law.*" (Macleod, 1902). "*However, the king, in 1677, by way of relieving the bankers, granted them annuities out of the hereditary excise (Granted to the Crown by stat. 12 Car. 2, c. 24, s. 15), equal to 6% interest on their several debts, redeemable on payment of the principal.*" (Broom, 1885).

169 Temin and Voth (2013) summarize entry, exit, and bankruptcy of goldsmith banks for 1671, 1678, 1688, and 1701 in Table 3.1 (p41). They find net exits and bankruptcies to be highest in 1678 and 1701.

170 "*But that act, for all its renown, was essentially a reform of habeas corpus procedures and jurisdictions. It merely clarified which courts or judicial officers could issue the writ, empowered judicial officers to issue it when courts were not in session, and established rules to govern the practice incident to the writ and to prevent its evasion. The act contained no enlargement of the types of confinements for which the writ could issue. In fact, it clearly exempted from the benefits of the ·writ persons committed for 'felony or treason plainly expressed in the warrant of commitment' and 'persons convict or in execution by legal process.' The Habeas Corpus Act of 1679 apparently satisfied the need of that time, for the law in this area remained relatively static for the next century and a half. The general rule, as stated by Lord Campbell in an 1860 opinion denying habeas corpus relief to a person convicted of a criminal offense, was that a writ of habeas corpus, to the expediency of granting which we have also directed our attention, is not grantable in general where the party is in execution on a criminal charge, after judgment, on an indictment according to the course of common law.*"" (Oaks, 1966).

171 "*In 1679, Parliament enacted another habeas corpus act to remedy the perceived loopholes in existing law and to ensure that prisoners would not languish in jail without a prompt judicial examination into the cause of their commitment [31 Car. 2, c. 2 (1679); Sharpe (2011, p18-20); Crosby's Case, 88 Eng. Rep. 1167, 1168 (K.B. 1694).] William Blackstone praised the 1679 act as a 'second magna carta and stable bulwark of our liberties." [Blackstone, (1765, p137).] Yet it was the development of the judicial exercise of common law habeas powers (as opposed to statutory intervention by Parliament) that was most crucial to the writ's emergence as a guarantee of individual liberty [Halliday and White (2008, p575, 631-2). Since the 1679 act applied only to criminal matters, the common law writ remained the principal mechanism for challenging noncriminal forms of detention by government officials and private actors until 1816, when a statute was enacted expressly providing for habeas corpus in noncriminal matters. See Holdsworth (1930, v9, p117-8); Hafetz (1998, p2522-3).] Judges increasingly became willing to uphold challenges to detention by Crown officials through the exercise of their habeas corpus jurisdiction. Amid the political turmoil of the late 1600s, for example, the King's Bench adjudicated numerous habeas petitions involving accusations of treason, treasonous practices, and sedition, often finding that there was no basis to hold the prisoner [Halliday and White (2008, p626).] The writ had become, and would thereafter remain, 'the great and efficacious writ, in all manner of illegal confinement.' [Blackstone (1765, v3, p131).]*" (Hafetz, 2011).

172 "*It was in the year 1678 that Dr. Lewis, an eminent clergyman, published his Model of a Bank, with some observations on the great advantages that would accrue from it, to the crown and to the people. But who could venture, in the reign of a rash, desperate, and needy monarch like Charles II to trust*

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their property in any place which he might be tempted to invade, and to which he could possibly find access?" (Sinclair, 1803). "*Several schemes were suggested during the 17th century for strengthening the City's finances, and two of these, an insurance project, and a banking scheme, were actually floated but survived for a brief period only. Even so early as 1665 an 'Office of Credit' had been proposed in London, but it was not until 1682 that the Lord Mayor, Aldermen and Common Council referred the state of the City Chamber for the consideration of a select committee with power to receive and examine propositions for increasing the revenue of the Chamber.*" (Richards, 1929).

173 "*Player, on behalf of the City of London, advanced large sums of money to Charles II, receiving as securities tallies, and (after 1665) tallies and repayment orders. See Cal. T. B., ii, 613. The non-payment of these loans, together with the prevailing slipshod methods of civic finance, reduced the City of London to bankruptcy, and resulted in the passing of the Orphans Act (596 W & M, c. 10) in 1694 —an act which initiated a new and remarkable epoch in London's finance and expansion*." (Richards, 1927). "*As early as 1642 the Orphans' Fund had been drawn upon not only to provide a part of the contributions demanded from the City at that time, but also, it was alleged, in the case of Major-General Skipton, to furnish a pension of 2300 a year. It was said that payments, from the fund to one applicant, were made out of the resources lodged on behalf of others, who could not claim their principal until a later date, and no doubt the insecurity of the fund was accentuated by the financial expedients adopted by Charles II in 1672.* " (Scott, 1912).

174 "*[I]t was not until 1682 that the Lord Mayor, Aldermen and Common Council referred the state of the City Chamber for the consideration of a select committee with power to receive and examine propositions for increasing the revenue of the Chamber. It was this committee that recommended for the approval of the civic authorities a number of proposals for the immediate establishment of a 'Bank of Credit' in London, with 'books of accompts, books of register, journals and other books' under the inspection of the Common Council. These proposals were accepted by the Lord Mayor and Corporation, and the City's seal affixed to them on 29th Aug 1682. Thus, was launched the so-called 'General Bank of Credit', or 'Bank of the City of London.' This bank appears to have been primarily a 'lumbard', an institution where 'goods and merchandise' could be deposited, and credit obtained on such deposits. Money subscriptions were also taken; subscription books were opened at various coffee-houses such as Garroway's, Jonathan's and the Amsterdam; and it was definitely stated in the bank's constitution that the profits were to be chiefly devoted to the reduction of the big debt due to the City's orphans.*" (Richards, 1929). "*In 1681 and 1683 this bank, which was then in operation, charged 6% interest for loans, which sum was inclusive of warehousing charges*." (Scott, 1912).

175 "*[In 1683], Dr. Hugh Chamberlain, a physician, and one Robert Murray, both great projectors, made a mighty stir with their scheme of a bank, for circulating bills of credit on merchandize to be pawned there in, and for lending money to the industrious poor on pawns, at 5% interest: yet it came to nothing*." (Macpherson, 1805). "*By letters patent from the crown, a company had been erected, called the Royal Fishery of England, instituted for the purpose of carrying on that branch of commerce with advantage to this country, and, indeed, with the hopes of depriving the Dutch of the profits they acquired by fishing upon our coasts. Upon this company, it appears, that a general bank of credit was engrafted: but though the plan was supported by persons of considerable character and property, neither the state of the government, nor the temper of the times, were calculated for such an institution; and consequently it was soon dropped*." (Sinclair, 1803). "*Blackwell's connection with the Fishery Co began when a group of promoters formed a scheme to graft a bank on to what was then a moribund organization with practically no fishing equipment. Its main —almost its only—asset was a Royal Charter, which conferred upon it the status of a corporation with perpetual succession and the right to sue and be sued in its own name instead of those of its members*." (Horsefield, 1966). "*Parliament added to the Companies whose members were free from the threat of bankruptcy, as long as their failure only came from their interest in the companies [Persons having investments in EIC, the Guiney Co or the Royal Fishing Trade were excepted from the bankruptcy enactments by §1 of 14 Car. II, c.24 (1662).]*" (Cadwallader, 1965).

176 "*These letters were printed and made public on the 23rd of May 1677, and a bill to ratify them was passed by the House of Lords on the 10th July 1678, but unfortunately, was not presented to the Commons before the end of the Session, and never became law. The interest continued to be paid till Lady-day, 1683, when it ceased*." (Macleod, 1902). "*The ground for quibbling was that the letters patent, in which Charles had recognized his debt to each of the goldsmiths and to their heirs, had been ratified by the House of Lords, but had never been presented to the House of Commons, and had not passed into law*." (Andréadès, 1909).

177 "*The failure of this scheme, added to the suspension of private bankers from time to time, made the problem of the improvement of credit all the more urgent, since it was calculated that, up to 1694, the depositors of the goldsmiths and scriveners had suffered to the extent of between 2-3 M*." (Scott, 1912). "*Nicholas Barbon, writing in the 1690s, described the growth of goldsmiths' notes in trade prior to the establishment of [BOE]: 'Publick banks arc of so great a concern in trade, that the merchants of London, for want of such a bank, have been forced to earn. their cash to goldsmiths, and have thereby raised such a credit upon goldsmiths notes, that they pass in payments from one to another like notes upon the bank; and although by this way of credit, there bath been very vast sums of money lost, not less than [2M within 25 years], yet the dispatch and ease in trade is so great by such notes, that the credit is still in some measure kept up'*." (Murphy, 1997).

178 "*It was announced in the London Gazette of Aug 23, 1683, that Bolitho and Wilson were prepared to make an agreement with their creditors... Addis, John , & Co. Were keeping running-cashes at the Sun, in Lombard Street, in 1677. Sep 20, 1683, announces a meeting of their creditors... Cook and Cary. Thomas Cook and Nicholas Cary were goldsmiths keeping running-cashes at the Griffin, in Exchange Alley, in 1677. I have seen their names frequently between that date and 1683 as paying into accounts with Blanchard and Child... Temple, John. In the London Gazette of Sep 18, 1684, we read the following:— 'Notice to Creditors of John and Thomas Temple of London, Goldsmiths, that they repair to the house of the said Temples, being the sign of the Three Tuns in Lumbard Street, to make proof of their debts before the Com missioners executing a commission of Bankrupt.' Again on March 2, 1685 —'These are to give notice to Mr. Temple's creditors, That if they repair any day to Mr. Temple's shop in Lumbard Street, they may receive their first dividend.' ... Crofts, Richard. In 1675 he was a goldsmith at the Bear in Foster Lane, against the Goldsmiths' Hall, but described in the Gazette of Dec 4, 1684, as a bankrupt... There is an announcement that a meeting of the creditors of John Lindsay, late of London, banker, 'now beyond the seas', was to take place in July 1684*." (Price, 1890). "*Only 5 bankruptcies are known to have occurred among those who financed the Government. Sir Robert Vyner, who suffered most, managed to carry on this business for 12 years after the 'Stop', for it was not until 1684 that he became*

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bankrupt. Lindsay collapsed in 1679, Blackwell in 1682, Rowe in 1683, and the 'shop' of Price in 1715." (Richards, 1929). *"[Sir R. Vyner] survived for another 10 years, but failed in 1684. He died in 1688. The settlement of his estate was a most complicated business, and while in 1689 agreement was reached between his executor, Thomas Vyner, and some of his creditors, this was still being contested by other creditors 9 years later [London Gazette, no. 3444 (Nov. 10-4, 1698); cf. An Answer to a late printed paper, Intituled, The case of the Creditors of Sir Robert Vyner... (1690).] Eventually, in 1699, a Private Act was passed 'for the relief of [his] creditors.' [10 & 11 W.III, no. 10.]*" (Horsefield, 1982). The largest goldsmith, Backwell was bankrupt in 1682, possibly because he was dying and coordinated with creditors to close his affairs: "*The London Gazette of June 1, 1682, announced:—"The creditors of Edward Backwell, Esq., are desired to take notice that the said Edward Backwell hath published his proposals, and that they will be delivered to them or any they shall please send for them by Mr. Richard Snagg or by some other person at Mr. Valentine Duncombe's shop, where the said Edward Backwell formerly dwelt in Lombard Street, and such as live remove in the country are desired to write," etc. Several other notices appeared this year. Shortly after this he retired to Holland, and there died. He was buried June 13, 1683, in St. Mary Woolnoth's, Lombard Street; and on Oct 20, 1685, his body was removed to Tirringham, Bucks*." (Price, 1890).

179 "*The last shock to the credit of the Chamber came from its excursion into banking in 1681 and the large withdrawals made in 1683, during the crisis of that year. The result of these successive adverse influences was that, in 1689, neither principal nor interest could be paid to the Orphans.*" (Scott, 1912).

180 "*Captain Blackwell declared for the Parliamentary side in the Civil War, and became Treasurer of War and Receiver General of Assessments under Cromwell. In 1656 he was elected Member of Parliament for Surrey. Upon the Restoration he lost his posts and much of his land. For the next 25 years we have almost no news of him. In 1684, however, he left London for New England, where he was welcomed by his fellow Independents... We may feel fairly sure that the scale of Blackwell's plans for his Boston bank, and the large expectations of profit that he apparently entertained, reflect the confidence of the promoters enshrined in the Royal Fishery agreement. It should be noted that it was not until after Blackwell was settled in Boston that the attempt by the Co to combine fishing and banking was abandoned, ostensibly because of the expiration of its Royal Charter on the death of Charles II on Feb 6, 1685... In June 1686 Blackwell was made a justice of the peace in Massachusetts, and at about the same time he submitted to the President and Council, 'on behalf of himself and divers others, his participants, as well in England as in this Countrey', the banking scheme subsequently described in his 'Discourse.' A committee of the Council reported favorably on the scheme, accepting the promoter's argument that 'Bank Bills, or credit given by persons of estate and known integrity and reputation... may passe with greater ease and security in all payments of 20 shillings or above than monies coyned,' and on Sep 27, 1686, the Council, after accepting the report, gave leave to the directors of the bank ('Assessors') to commence to issue bills on the security of real and personal estate, and imperishable merchandise.*" (Horsefield, 1966). "*During Massachusetts' previous war, it promised land to troops before a critical battle and later promised land as security for the war's debts. The colony did pay many wartime and other debts with conquered land in the 1680s. Land backing was also used in Boston's financial institutions: a clearinghouse (1681-3) and the failed land bank scheme (1686-8)... Massachusetts lost both its charter and its mint in 1684 and became part of the royal Dominion of New England. A land bank scheme was launched in 1686 but was aborted in 1688. Following the Glorious Revolution, the colonists deposed the governor in 1689, established a provisional government, fought Canada, and lobbied for charter restoration. In Oct 1690 Massachusetts failed to occupy Quebec and returning troops demanded pay. They received debentures which stated the colony's debt to them. The government's hopes for loot, tax receipts, or loans were in vain. Payments for previous expeditions had already been postponed and the government was under real threat of mutiny, desertion, and defection. Allowing troops to pay taxes with debentures was not enough.10 On 24 Dec 1690 an order authorized a committee to pay £7,000 in 'bills' to troops 'who shall desire' to be so paid. Any payment to the colony (for example, taxes) could be discharged with the bills. Bills could be redeemed for specie or goods 'as the Treasury shall be enabled.*'" (Goldberg, 2009). "*The Crown forced the colony to [of Massachusetts] close its mint in approximately 1684. The resulting coin shortage was so severe that one town paid taxes in milk pails. Blackwell had brought with him a bank scheme from England. It was part of an English land banking movement, which began in 1650 and climaxed with the failed land banks of 1695-6. The basic idea was to enable business loans upon mortgaged land on a regular basis. These loans, at a 4% interest rate, were to be given in banknotes of 20 shillings or more. The notes would help to ameliorate the liquidity problem, even if not for the smallest transactions. The bank was similar to a pawn shop, only that it would issue its own money and accept mostly land titles and some goods. This is not a coincidence, as the idea of land banks developed from the Italian pawn shops known as lombards*." (Goldberg, 2011).

181 "*The AWB opened in 1609 as a municipal exchange bank, an institution for facilitating settlement that was common in Early Modern Europe. Our focus is on the period around 1683 when the bank limited its depositors' ability to withdraw coin, and so effectively became a fiat money provider. The fiat money regime remained in place until the bank's collapse in 1795... First, the data clearly show that the fiat money regime facilitated the AWB's lending to a preferred customer... VOC, a government-sponsored enterprise employing approximately 50,000 people during our period of interest). The bank lent to the Company both before and after 1683; but afterward this lending becomes more seasonal and regular in nature. Seasonality means that this lending often does not show up in the annual AWB balance sheets assembled by van Dillen (1925) nor in the annual balance sheets of the VOC assembled by de Korte (1984). Lending was cheaper and less risky for the AWB after 1683 because liquid claims on the bank were limited and chances of a run were ameliorated. Lending activities were extensive but, over the period considered, never exposed the bank to substantial credit risk. We find that the 1683 changes also freed the City of Amsterdam to frequently take the bank's retained earnings from this profitable activity. Secondly, our analysis indicates that both before and after 1683, the AWB regularly engaged in open market operations. Again, however, the character of this intervention evolves under the fiat regime, as the bank more often chose to 'drain funds' by selling off its metal stock. Indirect evidence suggests that an objective of these operations was to smooth short-term fluctuations in the stock of base money. To summarize, the data we analyze show that by the time of 1683 transition, the AWB managers had ample experience with both lending and open market operations. The move to fiat money simply allowed for more vigorous pursuit of these same activities. The markets seem to have applauded the change: following the 1683 reorganization, there was widespread agreement that trading had been enhanced by this new, if puzzling, kind of money. Writing in 1767, James Denham-Steuart offered the following explanation: '[AWB] pays none in either gold or silver coin, or bullion; consequently, it cannot be said, that the florin banco [bank money] is attached to the metals. What is it then which determines its value? I answer, That which it can bring; and what it can bring when turned into gold or silver, shows the proportion of the metals to every*

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other commodity whatsoever at that time: such and such only is the nature of an invariable scale.'" (Quinn and Roberds, 2010). "*The system of dual units of account was formalized by the mint ordinance of 1659, which assigned separate values to large coins, in current and bank money respectively. Bills of exchange drawn from outside the Republic continued to be denominated and settled in bank guilders, while local bills were primarily denominated in current guilders and settled through private cashiers. The cashiers also operated a daily market where bank money could be exchanged for current money for a small commission (0.25% or less). A reform in 1683 sharply reduced the costs of trading in bank money. Following the suggestion of an Amsterdam merchant, the bank began giving out a new type of receipt against each deposit of coin. The receipt, which was negotiable, entitled its bearer to reclaim the specific deposited coin within six months, at a minimal charge—0.5 % for gold coin and 0.25% for silver. No receipts were given for existing deposits. Under this system, it was now cheaper to redeem a receipt than to exercise the right to withdraw a deposit in the traditional fashion. Depositors not holding a receipt could purchase one, so the right to withdrawal became unused and at some unknown point (probably 1685) was quietly abolished. Bank money thus lost its inherent redeemability and took on a quasi-fiat character. The lowering of redemption fees greatly increased the flow of money into and out of bank accounts, the turnover of bank money, and the profitability of the bank. During this period the bank also began a practice of regular, seasonal lending (anticipatiepenningen) to [VOC]. Virtually all of the bank's profit from these operations was quietly transferred to the city, leaving the bank with little or no capital reserve. Despite this back-door fiscal exploitation, the metallic reserves were generally ample over this time period, and averaged 82% of deposits over the entire period of the bank's existence*." (Roberds and Velde, 2016).

182 "*The 1660s were a moment of profound crisis generated by a variety of different causes — warfare, a global decline in the availability of silver, climatic difficulties, and Dutch monopoly pressure. Only the VOC with its monopolistic structure was able to continue to thrive, although on a reduced scale compared with previous decades. Dutch monopolies had been established first in the buying areas, starting with the nutmeg and mace of Banda (1621), then the cloves of Maluku more broadly (complete by the 1650s), and finally and less successfully the widely dispersed pepper-growing areas. The Dutch monopoly of the vital supply of Indian cloth was never so complete, as demonstrated by the fact that they had to pay progressively higher prices for their Indian cloth. Laarhoven has been able to show that the average buying price of cloth by the VOC was 1.8 guilders per piece in the period 1619-23, 3.75 guilders in 1652-3, 4.66 in 1703-5 and 6.01 in 1723-4. Even though the Dutch Company was not affected as much as other traders by the crisis of the mid-17th century, its sale of textiles to Southeast Asia decreased substantially. If we disregard the exceptional years 1683-5, when the VOC bought record amounts of Coromandel cloth in a vain attempt to monopolize supply and break the spirit of its rivals, the amount of cloth the VOC shipped from Coromandel to Batavia dropped steadily from a peak of 2 M guilders worth each year in the 1660s, to less than 0.8 M guilders in the late 1680s*." (Gupta, 2009).

183 "*With 3 factories in operation from 1680, [EIC's] export business from Bengal grew rapidly. From 123,000 pieces in 1678-9, it grew to 207,000 pieces in 1680-1, and 718,000 pieces in 1683. For the period 1678-83 as a whole, the average growth rate was 96.75% per annum. The trade, however, fell thereafter following [EIC's] hostilities with the Mughal administration. It was reduced to 175,000 pieces in 1686-7 and 397,000 pieces in 1688. This success in the British market was due to the growing popularity of oriental style in contemporary British society. [EIC] had promoted this trend by tacitly using the image of King Charles II as the 'brand ambassador.' There is evidence that during 1660-83, it gifted around £324,150 worth of various Indian fabrics to the King who, 'in return, was pleased to be seen in an oriental style waistcoat, confirming the desirability of Indian fabrics to all aspirants of fashion.' These fabrics became so popular in Britain that a contemporary pamphleteer wrote that they had 'crept into our houses, our closets and bedchambers; curtains, cushions, chairs, and at last beds themselves were nothing but callicoes and Indian stuffs.'*" (Ray, 2009).

184 "*[In 1683,] The English interlopers to East-India becoming so very numerous, our [EIC] this year obtained a new charter from King Charles II, (being his fifth charter to them) whereby all former charters were confirmed, and they were empowered to seize the ships and merchandize of the interlopers, with the forfeiture of one half to the king, and the other half to the company, who were thereby empowered to raise, train, and muster, such military forces, as they should judge requisite ; and at their forts, factories &c. to exercise martial law. Moreover, for redressing injuries and wrongs committed on the high seas with in their limits, a court of judicature might be erected by the company, to consist of one civilian and two merchants, who were to determine all cases of forfeitures and seizures of ships and goods within their limits, and all maritime and mercantile bargains, policies of insurance, bills, bonds, contracts, charter-parties, wages of mariners, trespasses on the high seas, &c.*" (Macpherson, 1805). "*It is surprising that the Levant Co did not lay more stress on the arbitrary acts of its rival in the suppression of interlopers, since the practice of the seizure of ships and cargoes in the East made the company in effect both plaintiff and judge in the same cause.*" (Scott, 1910a).

185 "*On a long view [grain prices] were pretty stable. Maximum Elizabethan prices, it has been said, had become normal Stuart prices. The 1680s, a time for good harvests, saw wheat at 34s. to 35s. a quarter, which was precisely where it had stood nearly a century earlier when the 'nine men's morris was filled up with mud.' It was this general stability of price levels, reflecting presumably adequate food supplies for the nation, which encouraged the landed interest to demand, and Government to grant, permission for the export of corn. The Scylla and Charybdis that faced statesmen were starvation and high prices if harvests were bad, and ruin for farmers and landlords if a glut sent down prices to bankruptcy levels. Until the 1670s, policy was empirical and intermittent. Merchants could export wheat if the price was below 32s a quarter. In 1670 the emphasis switched, and export was in general allowed, with an understanding that the policy would be suspended if harvests failed. 3 years later came the famous 'experimental' bounty of 5s a quarter on wheat, and smaller bounties on barley and rye, when prices fell below certain reasonable levels. The policy was renewed again in 1689 and was applied pretty steadily thereafter. The 'mercantilist' attractions of the bounty the stimulus to export, a contribution to a favorable balance of trade and a larger mercantile marine —have been mentioned. It should be added that like many other acts of high policy, this one had a private aspect. The first grant in 1673 was by way of a bargain between Government and the landed interest. The Government imposed a property tax on land; the landowner got his bounty, 'to the end that all owners of land whereupon this tax principally lyeth may be the better enabled to pay, by rendering corn more valuable.' Bounties on exports were coupled with duties on imports, so that England was pretty well a closed market so far as corn was concerned. Yet the bounty system did not inaugurate a Golden Age for the arable farmer. Prices from 1675 to 1700 were only poor to moderate, rising higher only in the 'barren years' of the 1690s. Probably the bounty did no more than keep levels reasonably stable. The extension of new methods of arable farming in these years was therefore not a pursuit of easy profits but*

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a means of adjusting arrangements so that a larger out-put at stable prices was obtained for the same or slightly larger costs. If the bounty policy looks like another of those conspiracies between Government and the landed interest which has led some historians to suppose that government policy was wholly dictated by private interests, a glance at wool production suggests a different view. While the corn market might be the farmers' preserve, the wool market was reserved for the clothier. Here 17th-century policy consistently aimed at a bountiful supply of wool at low prices that helped the manufacturer to keep spinners and weavers busy, accepting it as axiomatic that it was uneconomic to export a primary material when it was possible to export it in a manufactured, and therefore more profitable, form. Scores of Acts prohibiting the export of wool testified to this belief, and it is fallacious to suppose they were of no effect. Smuggling there certainly was, especially to France, but the laments of the Dutch clothiers and the trend of Dutch industry leave no room for doubt that large sections of the old Dutch woollen export trade were killed stone dead." (Wilson, 1984).

186 "*It was the Levant Co which suffered most, or which made at least the greatest outcry, when it began to experience the renewed competition of the French and the Dutch, within the area assigned it. No doubt, the volume of its trade was considerably reduced, but such reduction was not from the normal average, but from an exceptionally high level, dependent on a concatenation of causes unlikely to be repeated. Just as the import of cattle from Ireland and that of commodities in general from France had been prohibited, the one in the interests of English stock-raising and the other on behalf of the cloth trade, so now the foreign trade to tropical countries was attacked in order to keep the woollen industry at high water mark. The East India trade, particularly, prejudiced the Levant Co, by importing Eastern commodities at a relatively cheap rate, and for this reason it was chosen for special attack. The main points in the controversy are recapitulated elsewhere, but what is of interest is the comparison of the regulated and joint-stock types of organization. It was admitted by both sides that some kind of monopoly was required, and the chief point in dispute was whether such a privilege should be granted to a regulated or to a joint-stock body... [EIC] was able to show that the exaction of the test of being 'a legitimate merchant' from intending members was illiberal. Though many of the statements, circulated by the Levant Co, to the discredit of the joint-stock organization were reproduced verbatim, during a debate in the House of Commons (1680), some were inexact and misleading. It was asserted that the stock had become 'engrossed' by a few members; whereas, according to a return made in 1682, about one-third of the 500 proprietors owned £1,000 stock. [EIC], like [RAC] undertaking, was able to make a strong case for the sinking of a large capital in concessions, forts and factories; and, it was shown that where such 'dead stock' became considerable, the joint-stock type of organization was preferable to the regulated... On the whole, while the controversy had brought to light some abuses and imperfections of [EIC], the attack succeeded only in the detection of these, and the whole discussion tended to show that the joint-stock form of organization was possessed of several advantages for the prosecution of a trade to distant countries. The failure of the Levant Co to reduce the operations of the East India adventurers left the former face to face with a marked reduction in the volume of the trade of its members, as compared with the prosperous times before 1678.*" (Scott, 1910a).

187 "*The failure of the Levant Co to reduce the operations of [EIC] left the former face to face with a marked reduction in the volume of the trade of its members, as compared with the prosperous times before 1678. By 1686 the woolen industry was in the throes of a crisis which was produced partly by the falling off in the purchases of the Levant Co. This depression was experienced most in the districts which produced for export. Sales, made in Gloucester to this company, had declined by 75%, those of Coventry by 33%. The clothiers of Suffolk and Essex complained that their trade was 'almost undone,' and that they were unable to employ numbers of poor families, which had recently come to depend on this industry for support. At Coventry some hundreds of workers were ruined, and the city was described as being reduced to a deplorable condition, through the decline in the production of cloth. In some of the parishes in Gloucester 20% of the whole annual value was distributed in poor-relief, owing to multitudes of workers being unable to subsist. The effect of the depression in the woolen trade would have been of comparatively little consequence, since it was confined to certain districts, had it not been co-existent with a credit-crisis in London.*" (Scott, 1910a).

188 "*In spite of political anxieties, the last years of Charles II and James II's short reign were a time of active commerce and considerable prosperity. There were banking difficulties and failures, especially at the time of Monmouth's rebellion 1685, but there was also an almost incredible addition to that national stock of bullion which it was part of the goldsmith bankers' business to handle.*" (Clapham, 1945). "*The effect of the depression in the woollen trade would have been of comparatively little consequence, since it was confined to certain districts, had it not been co-existent with a credit-crisis in London. The corporation there had founded a bank in 1683, which was intended to make advances on approved mercantile bills. When the news of Monmouth's rebellion reached the City in the summer of 1685, there was a run on the banks, and this one failed. Many traders, whose credit was involved in the crash, were imprisoned for debt; and such failures involved the suspension of merchants and others who were sureties for those who had fallen into difficulties. It was calculated that the losses from the latter cause exceeded those from theft, robbery and fraud. From the City the great bankruptcy extended, in the words of a contemporary writer, 'like a plague,' to the country, where, for some time, the land lay desolate and untilled. A distressing characteristic of the crisis was the locking up of funds, held by the Corporation in trust for widows and orphans, in the general suspension.*" (Scott, 1910a). "*[T]he London Gazette of Nov 4, 1686, we are informed that a meeting of the creditors of Thomas and Samuel Price of London, goldsmiths, was convened for the 10th of that month... Moorhouse and Co., 1777-86... The name of Francis Kenton appears in Blanchard and Child 's ledgers up to 1687 as having a clearing account with them... Wade, Peter, Goldsmith, keeping running-cashes at the Mearmaid, in Lumbard Street, in 1677. His name is not met with after 1687.*" (Price, 1890).

189 "*Mercantilism entered a new and more remarkable phase towards the last quarter of the century... The keynote of this policy was the fostering of national industries, and all the energies of the state were concentrated upon this main object. Indeed, foreign trade continued to be as important as before, but it was valued, not so much for its own sake or the treasure brought by it, as for its effect upon home industries. The state came to regard it as its principal concern to regulate trade in such a way as to further industrial development. In the hands of a patriotic Parliament, this policy assumed the form of a vigorous protection of what were regarded as national industries against unfair competition from foreign countries. The foreigner was vigorously ousted, either by absolutely prohibiting his imports into England or by the milder method of protective tariffs. This phase of Mercantilism (which we might very well call Protectionism) was initiated in the interests of home industries, and was a clean and creditable movement so long as it looked to the collective well-being of the nation. But later it inevitably degenerated into a clash of rival interests at home; and by its selfishness and greedy spirit exposed itself to the attacks of Adam Smith and other critics. When Mercantilism reached this last phase, it was time for it to give place to the new policy of laissez faire. The middle*

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phase of Mercantilism above noted centered round the controversies that arose in connection with the French, Irish and Indian trades, and these struggles loom large in the economic history of that period. They were also formative influences of the first magnitude in the evolution of English economic thought. The protection of the principal English industries was the central idea of all these struggles, and they resulted in legislation of a predominantly protectionist character. Nor were they purely economic controversies; political motives also got mixed up with some of them. And the issues were often con fused by the many-sided character of the struggles... The Indian trade controversy alone was fought almost entirely on economic issues, and had little of political rancor underneath it. It is especially noteworthy that the economic issues raised by it centered mainly round protectionism, and partook little of the character of a bullionist struggle. It was concerned with the stopping of the unequal competition between the expensive home-made commodities and the cheap foreign goods, and thus the question was purely one of protectionism. It was the first controversy in which the protection of home industries was the predominant motive; and it was fought on the now familiar lines of protection versus free trade. As might be expected, this first clash between these opposing policies broke new ground, and produced permanent results. It not only offered an occasion for clearing up the protectionist view (which was already familiar), but also led to the emergence of the opposing theory of free trade which (in its modern sense) was hardly known before. Hence the importance of this struggle to the student of economic history and theory, and the reason why it is treated in detail in the present work. Dr. Cunningham calls this the New Attack upon the East India trade in contra-distinction to the old attack, which was concerned with bullion and balance of trade. This title may not be altogether unsuitable: yet it would perhaps be better to make it more precise by giving it a qualifying epithet. Hence the phrase, 'Protectionist Controversy' used at the beginning of this section. The New Attack was based on protectionism pure and simple, and this is its title to prominence as a topic in economic history. [From about 1670] Indian calicoes and silks were imported into England in larger quantities." (Thomas, 1926).

190 *This trend met with considerable protest from British textile interests, who had already obtained some protection from Queen Elizabeth I. On this occasion, Parliament imposed a duty of 10% ad valorem on Indian calicoes and muslins in 1685. This duty was officially intended to finance the war with France, and hence was a temporary measure, intended to last for 5 years. However, in 1690, instead of being annulled, it was actually increased to 20%, and perpetuated later on as 'the old impost.' These protections had virtually no long-run impact on the trade.*" (Ray, 2009). "*However, the feeling against calicoes, muslins, and India wrought silks went on growing and heavier duties were laid on their importation to satisfy the popular demand. In 1685 an additional duty of £10 per £100 value with 10% discount for prompt payment and full drawback on re-exportation was imposed on 'all calicoes and all other Indian Linnen Imported from the East Indies and on all wrought silks or manufactures of India made of or mixed with Herba or silk and thread or cotton imported into England from the East Indies after 18th July, 1685, and before 1st July, 1690.' [Statutes of the Realm, Vol VI, pp. 7-9. Ct. 1 Jac. II, c. 5. Measr8. Alton and Holland have truly asserted that a general study of the records shows that at this time the duties were not levied as percentages on the gross price at the sales (King's Customs, Vol. II, p. 156).]*" (Krishna, 1924).

191"*[In 1684,] In this year we have the Lord Chief Justice Pollexfen's argument, as so termed, printed in a suit brought by [EIC] against Thomas Sands, who had fitted out a ship for India without being licensed by that company. 1st, Sands in his defense, pleaded a statute [18 Edw. III, c. 3] whereby it is enacted, that the seas shall be open for all merchants to pass with their merchandize wherever they please. 2dly, The statute [21 Jac. I, c. 3] declaring all monopolies to be against the common law. 3dly, That the grant of any role trade whatever is contrary to Magna Charta, [9 Hen. III, c. 35] and to divers other ancient statutes, as 25 Edw. III, c. 2, 2 Ric. II, c. I, and 1 I Ric, II, c. 7, both which enact, that all letters-patent and commands, to the contrary of the freedom of commerce, shall be void. Then he proceeds to shew, that [EIC] is a true monopoly, as described by our law books, and is not like the Turkey, Russia, and Hamburg companies, where there is no joint stock, but every member uses his own trade, buys and sells his own commodities, and has his own servants and factors. These companies only order what ships shall go, but leave to every member to send his merchandize at his own will and pleasure; and no man is refused to be free of their companies that has a mind, paying come small sum for his freedom. But this body-politic, the in visible corporation, trades perhaps for a million sterling yearly. The last 3 sales that they made came to £1.8 M, and nobody hath these commodities but they. No man can vote in their company unless he has £500 stock, which costs above £1500. In short, his lordship labored, not unsuccessfully, to prove the company to be a true monopoly, and Sands to be innocent, as the company was not establish ed by any act of parliament. Yet the kings's order for the ship not to sail obliged Sands, after a year's suspense, to sell his ship and cargo with great loss. The ships and goods of some other interlopers, as they were then stiled, were likewise seized and confiscated in the following reign, in the years 1686 and 1687: but they took out no license from the company. All which was decided directly against the spirit and maxims. of our common law, purely for supporting a lawless prerogative in the crown, which, under another monarch, 6 years after this time, was agreed to be legally disclaimed... [In 1685] Although [EIC's] affairs were said at this time to have been so prosperous, that their profits in 9 years' time, viz. from 1676 to 1685, amounted to £0.964 M, yet, as all things on earth are unstable, a revere of fortune happened at this very time. It seems the Indians had killed some of the company's people at Hughley, in the Bay of Bengal, and that thereupon their governors commenced war against the mogul. The company alleged, that the proper origin of this war was the false reports industriously spread by the interlopers against them; such as, that the company was fallen under the displeasure of our king, that our nation at home was under great disturbances, and that they themselves (the interlopers) were the true company. They also had corrupted many of the company's servants, whereby a revolt had been occasioned at Bombay, and also at St. Helena, where they set up for themselves. The company farther urged, that this dividing of the English interest in India made the Mogul's governors and rajas break through all their antient engagements and stipulations with the company, and deprive them of many valuable privileges in India, and also extort great sums of money from both parties: for the company alleged that the interlopers submitted to any impositions, so as they might carry on the trade; they having, moreover, formerly given a handle to the Dutch, to expel the company from Bantam in the year 1682. All these considerations being laid before King James, and it being apprehended, that, unless some effectual care was speedily taken, the whole English interest in India would be utterly lost, a ship of war was immediately dispatched to India, with orders to seize all interlopers, and, therewith a proclamation from the king for all his subjects in India to repair to the company's forts and factories, and to submit to their jurisdiction. The company also sent out several warlike ships for the same purpose. Lastly, for corroborating the whole, on the 12th of April 1686 the king granted them a new charter, (being their sixth since the Restoration) wherein he recites at large the 5 preceding charters, and subjoins... In consequence of the great power given to the company by this charter, they proceeded rigorously against the interlopers, who, on the other hand, by their abettors and agents, did not fail to raise a great clamor against the company, who, however, continued in the*

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exercise of those powers till after the accession of King William to the throne." (Macpherson, 1805). "*In fact, before 1685 the law was not so clearly on the side of the joint-stock companies against the interlopers. It was in Jan 1685 that the matter of '[EIC's] charter and the power of the King to grant such charters and prohibit his other subjects' was decided in King's Bench in the case of the [EIC] v. Thomas Sandys. [EIC] had sought a ruling against the interloper Thomas Sandys for trading without a license. In so doing, the company and its lawyers laid out the ideological suppositions of land-based political economy. Sir John Holt and Daniel Finch—the future Earl of Nottingham—argued that exclusive joint-stock companies were justifiable despite prohibitions on monopolies for three reasons. First, since 'the main end of government' was 'the preservation of Christianity', the kings of England had a special interest in regulating commerce with infidels, such as the inhabitants of the East Indies. The religious practices of merchants in exclusive trading companies with royal charters were more easily supervised. Second, they argued that 'tis necessary for the king to have a power to restrain a foreign trade, because a foreign trade, as the case may be, may be very inconvenient and mischievous.' It was therefore necessarily within the royal prerogative to create limited trading companies that existed at the king's pleasure. Third, as Finch argued, the vicious zero-sum nature of international trade in the Indies created 'an absolute necessity of a company to manage this trade'... every issue in dispute. Both Justices Walcott and Holloway insisted that it was essential to the king's being 'to protect us in our religion', that the king 'is the Defender of the Faith.' The justices also endorsed the plaintiffs' understanding of property. 'As to manufactures', the creation of goods by human labor, argued Chief Justice Jeffreys in his most expansive opinion, 'the public weal is little concerned therein.' Land, not manufactures or exchange, was what mattered for Jeffreys. 'The King is the only person truly concerned in this question' of [EIC], Jeffreys reasoned, 'for this island supported its inhabitants in many ages without any foreign trade at all, having in it all things necessary for the life of man.' Property and livelihood depended on land. Trade was clearly a luxury not a necessity, and therefore it was well within the king's prerogative to regulate all foreign trade as he saw fit. Justice Holloway asserted that the king 'hath the sole right and power of trade.' Justice Witkins concluded that the king had the right 'to control all trade in general.' Significantly, Jeffreys spelled out the necessary imperial corollary of this reasoning. Because they could regulate trade, 'His Majesty and his predecessors have always disposed of the several plantations abroad that have been discovered or gained by any of their subjects, and may do for the future, in case any other be discovered or acquired.' Figured in this way, then, it is hardly surprising that the justices were unanimous in declaring [EIC] v. Sandys to be of monumental importance for the royal prerogative. Jeffreys declared the case to be 'of so great concern and consequence as perhaps there was none ever so great (I am sure none greater) in Westminster Hall wherein the prerogative of the King was more concerned on the one hand, and the liberty and property of the subject on the other.' Jeffreys went so far as to suggest that the emergence of the East India interlopers and the rise of radical rebellious principles exactly coincided in England. Similarly, Jeffreys proclaimed, lawyers had 'of late years' been making a habit of 'lessening the power of the king, and advancing, I had almost said the prerogative of the people', 'making the power of the king thought so inconsiderable, as though he were a mere duke of Venice, being absolutely dependent on the Parliament.' All of this, he insisted, must end. By defining property as a natural creation, measured only in land, Jeffreys was able to show that English kings had the power to regulate all trade."* (Pincus, 2017).

192 "*What a remarkable progress is indicated by these figures, when we remember that the English exports to the East for 57 years since the establishment of that trade to 1657 were approximately equal to the amounts remitted in the 10 years from 1698 to 1707... it will be seen that goods of the value of more than £0.6 M per annum had been sent to the East during these years while the exports of specie came up very nearly to £0.5 M per annum, and the total amount of gold and silver for the 9 year, was £4.5 M against £5.4 M in goods, giving us an average of £1.1 M per year. Thus, the balance of trade was mightily upset in these years. While the amount of bullion exported in the 24 years from 1658 to 1681 was thrice that of goods, the same fell to 82% during the last decade. Never before was 80 large a proportion of merchandise exported out of England to the East. It has previously been seen that the total exports of the two Companies a. given in their records amounted to £5.8 M. The Custom House, however, registered about £11.0 M. It is evident that this excess of export. was handled by private merchants. It means that private trade had assumed such large proportions as to approximately equal the trade of [EIC]. It will have been perfectly clear that to arrive at the real extent of the total English export trade with the East during these 50 years we should also reckon the large but unknown quantities of gold, silver, coral, amber and other merchandise exported by the mariners and officers of each ship, the 'free' merchants, the clandestine traders and the 'separate' traders.*" (Krishna, 1924).

193 "*The rage for establishing new companies... did not properly get underway until 1687. In that year, William Phipps, a New England sea captain, returned to England with 32 tons of silver and a quantity of jewels raised from a Spanish plate ship, stalk off the island of Hispaniola... The success of the expedition created a great stir across the country... Others sought to emulate Phipps's success, yet instead of creating partnerships, as had been the case with the Phipps venture, the new treasure-hunting schemes were floated as joint-stock companies: the age of adventuring, a tradition going back to the Elizabethan privateers, suddenly gave way to an age of speculation... War had broken out with France in 1689, as Louis XIV sought to overturn William of Orange's usurpation of the English crown. Rather than causing a commercial crisis, however, the outbreak of war actually stimulated the nascent English stock market as the French saying goes... buy at the cannons' roar, sell when the trumpets sound. The interruption of foreign trade obliged merchants to find another outlet for their capital, while Parliament passed an act forbidding French imports. Promoters sponsored a crop of new companies to manufacture goods formerly brought over from France... Many of these new companies were floated with patents for inventions. Between June 1691 and Oct 1693, 61 patents were issued (of which 11 were for diving engines)... In order to facilitate the transfer of shares, standard sale contracts were printed. The sophisticated tools of speculation, including stock options and futures (then known as 'time bargains') were imported from Amsterdam.*" (Chancellor, 1999).

194 "[*In 1691*] *Addison endeavored to show that he had discovered a method of smelting 'all sorts of iron ore, iron stone, slags, cinders and other material,' using pit or sea coal, by which means good iron could be made cheaper than heretofore.' He obtained a warrant for a patent on Feb 15th, 1692. Addison transferred his patent to a number of others, and he, together with his partners, petitioned on Dec 6th for incorporation on the ground that the undertaking required many thousands, which could only be raised by means of a joint-stock.' The Attorney-General reported on Dec 14th that the petitioners supported their request for a charter, by arguing that the requisite capital could not be raised otherwise, since 'persons are unwilling to advance great sums in a way of partnership, because, in case of the bankruptcy of any of the partners, the stock in partnership would be liable to be seized,' and for this and other reasons, he recommended the grant of a charter, subject to the persons proposing to be incorporated being prevented from making an ill-use of it, by the insertion of*

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clauses providing for the determination of the patent should the undertaking prove hurtful to the public or if the works were not established and carried on effectually... It was agreed to raise £10,500 'on easy payments, and to make the iron, all charges included, at... per ton and to sell the same at £13 per ton, which must produce [consider]able dividends, because of the quantity that will be delivered quarterly [as] aforesaid.' The author of Anglia Tutamen [1695] mentions, amongst other mineral companies, one dealing with iron, and it seems that the company existed at least as late as the reign of Anne [1702], but the effectual smelting of iron with coal was established only at a later date, so that it may be concluded that this company shared the fate of the pioneers of any great invention." (Scott, 1910b).

195 "*The limitation of joint-stock enterprises to these fields arose from the limitations, first, of... common law, which made stockholders in co-partnerships with transferable shares (i.e., unincorporated joint-stock enterprises) liable in unlimited amount, proportional to their shares in the equity of the company*" (Neal, 1998). "*Until 1844 there were no arrangements in England for speedy and cheap incorporation... We then recognized that the partnership form was not intrinsically suited to large joint-stock enterprise, for partnership principles presuppose mutual trust and confidence among the members which is impossible if their number is unduly large.*" (Gower, 1955).

196 "*There were signs of a distinct revival of trade towards the late 'eighties. On Aug 27, 1688, the Directors wrote 'Calicoes of all sorts are in great demand.' In 1687, only 13,500 long cloths were ordered from Madras, but in the next year the figures mounted up to 75,000. The demand in Sallampores was for 41,500 for 1687, and 132,000 for 1688. Bay' goods, too, were wanted in greater quantities. Orders for malmuls stood at 16,500 during both these years. Surat goods still lagged behind. Bafts did not rise above 77,000, which is only a fifth of the 1682 figures. Similarly, with chintzes, tapseils, nicarees and other items. Plain calicoes from Bombay were, however, in great demand. The Directors' instruction, 'Bafts are the best commodities you can send us' show in what direction demand was shifting. The use of Indian goods was filtering down to the lower layers of society; they came to be used 'from ladyes down to cook-maids.' [EIC] found this the opportunity for extending its investments. It was when trade again began to flourish that the 'Glorious Revolution' took place in England. Though they lost their greatest patron thereby, the Directors speak in favorable terms of the Prince of Orange in their despatches. 'The Prince's army', they wrote, 'do behave themselves civilly paying for their quarters and doing no injury to the country.' Interesting details are also found in these letters of the Convention Parliament and other important events of the time. Nor did the Company suffer by the change of dynasty or by the triumph of the Whigs. Their trade increased rapidly after 1689.*" (Thomas, 1926).

197 "*The recoil of the crimes and cruelty of the Popish plot had struck down the fomenters of that horrible delusion. The blood of the hostile parties alternately flowed like water from the scaffold. The Royalists had obtained the undisputed ascendency, and payment of the interest due to the bankers immediately ceased. None was paid during the reign of James II... in 1689, when the creditors were worn out with despair, some of them determined to petition the Court of Exchequer to make an order for payment of their claims. The Crown determined to resist payment, and the case was argued at great length; two years were occupied in the arguments and deliberations of the judges... in 1691, the Court gave judgment in favor of the petitioners, and made an order on the Exchequer for payment. The Court appealed to the Exchequer Chamber. At that time the Lord Chancellor, or the Keeper of the Great Seal, sat in the Exchequer Chamber, and was accustomed to receive the assistance of all the Common Law Judges. Lord Somers was Keeper of the Great Seal. In 1697, the case was argued before the whole of the Judges. There were two points to be decided. 1. Whether the letters patent were good and valid to bind the Crown. 2. Whether the remedy taken by the petitioners was the proper one, and if it was in the power of the Court of Exchequer to order payment from the Treasury of the sums due to the claimants. On the first point the Common Law Judges unanimously held that the letters patent were good and valid to bind the Crown. On the second point they all, with one exception, held that the petitioners had adopted the proper course in petitioning the Exchequer, and that the Court had power to order payment. The Chief Justice of the Common Pleas alone held that they had not adopted the right remedy; that the Court of Exchequer had no power to order payments out of the treasury; and that the claimants ought to have petitioned the King himself. The assistant Judges having thus all delivered their opinions, the case remained for the final judgment of Lord Somers. It is one of the most famous cases in Westminster Hall. The Lord Keeper is said to have expended several hundred pounds in collecting books and pamphlets for his judgment.*" (Macleod, 1902). "*This interest was accordingly paid till 1683. It then became in arrear, and continued so at the Revolution; and thereupon suits were commenced to enforce payment of the arrears. [In Macbeath v. Haldimand, 1 T. R. 176, Lord Mansfield, C.J., remarks on 'the great difference' which 'had arisen since the Revolution with respect to the expenditure of the public money. Before that period all the public supplies were given to the king, who, in his individual capacity, contracted for all position of the public money. But since that time the supplies have been appropriated by parliament to particular purposes, and now who ever advances money for the public service trusts to the faith of parliament.' See May, Parl. Prac. 9th ed.-638.] The proceeding [of the Bankers' Case] was by petition to the Barons of the Exchequer for payment of arrears of the annuities granted; whereupon two questions arose: 1st. Whether the grant of the king was good so as to bind his successors, and continue a charge upon the revenue? 2ndly. Whether the petitioners had adopted a proper remedy for recovery of the arrears?*" (Broom, 1885). "*The discussion turned chiefly on the second point, since the first was not seriously disputed. Somers, the Lord Chancellor, in spite of the opinion of the majority of the judges, declared that the Court of Exchequer was not competent in the case. The question whether Lord Somers could give a decision contrary to the. opinion of the majority of the judges gave rise to an appeal to the House of Lords, the Supreme Court, which, on January 23rd, 1701, reversed Lord Somers' judgment. But—and this is the most surprising part of this remark-able suit—as Macleod aptly points out, although this Court recognized the indisputable rights of the petitioners, it made no attempt to redress their grievances. And this was the conclusion of a lawsuit of 12 years' duration.*" (Andréadès, 1909). "*The suspicion of the Crown as a debtor which frustrated such schemes appeared justified by the famous 'Stop of the Exchequer' in 1672, when the inability of the Crown to pay its debts on time placed the goldsmiths and their depositors in difficulties. The judges in Exchequer Chamber, led by Holt, helped to save the situation in The Bankers' Case (1696-1700), which established that a creditor of the king could claim his money by petition of right.* " (Harding, 1966).

198 "*The obligation was observed up to Lady Day, 1683, when it ceased; and none was paid at all by James II. In the reign of William III, a great stir was made, and the bankers not only lost all their interest, but in the end were paid only half of their original debt. It was the first item with which the National Debt was charged, and it ultimately became a part of the celebrated South Sea Fund.*" (Price, 1876). "*By 1688, the government was just making the payments for 1683. The debt remained in abeyance from the Revolution until 1705, when the debt was again funded, this time at 3% interest,*

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and with the stipulation that the entire debt could be amortized if the government paid half the principal. In 1720, the Stop of the Exchequer debt was amortized by exchanging it for South Sea stock. Ironically, what began as a bad debt ended in a financial disaster, for the South Sea Bubble burst late in 1720" (Nichols, 1971).

199 "*While the stock market merrily bubbled along, the government of William of Orange decided to harness the nation's gambling propensity to raise funds for the war against France. Following Dutch precedent, in 1694 the ubiquitous Thomas Nettle launched the first British government lottery. Enticingly styled 'The Million Adventure,' it offered a first prize of £1,000 a year for 16 years for a £10 ticket (losing tickets or 'blanks' received £1 a year for the same period.) The hundred thousand tickets sold out quickly... 'Penny Lotteries' followed the larger promotions, and stockjobbers subdivided £10 tickets into smaller shares for the less well-off. By the middle of the decade, lottery tickets, like credit notes, were circulating as currency.*" (Chancellor, 1999). This wasn't the first, but it appears to have been more extensive than earlier versions. "*[In 1630,] King Charles granted them a special license to erect and establish a lottery or lotteries; according (says this record) to the course of other lotteries heretofore used or practiced. This is, however, the earliest mention of lotteries, either in the Foedera or the statute-book. The words quoted prove that lotteries had already been used or practiced. There was one at least so early as the year 1612, the profits of which were allotted to carry on the settlement of Virginia. [Chalmers's Annals, v.i, p. 32.]* " (Macpherson, 1805).

200 "*The differences between London and Amsterdam were translated into divergent paths of development. Founded in 1609, [AWB] replaced the paper notes then being issued by cashiers and money changers. As a result, the development of Amsterdam's private banking system appears to have been constrained for a century. In the absence of an exchange bank, London witnessed the development of a strong banking industry. Individual bankers supplied deposits, means of payment, lending and money changing. As a group, they offered mutual acceptance and systemic monitoring. In order to offer overseas services, London bankers had to arrange a network of international monitoring without the benefit of a centralized institution. A measure of success in this regard is that [BOE] was founded in 1694 as a fractional reserve, note issuing institution, modelled on existing banks. The City's financial system had developed to the point that, when the new corporate bank was established, it was not created to dominate the bill market or act as a clearing house."* (Neal and Quinn, 2001). "*[BOE] was the first chartered bank in the UK... The primary motivation was the necessity for raising government funds to finance the war against France, although the view had become current that a bank was needed to 'stabilize' financial activity in London, which saw periodic fluctuations in the availability of currency and credit. An original proposal in 1693, by William Paterson, for a government 'fund of perpetual interest', was turned down in favor of another proposal by Paterson (in 1694) to establish a company known as [BOE] whose capital, once raised, would be lent in its entirety to the government... An ordinary Finance Act, now known as [BOE] Act 1694, stipulated that the Bank was to be established via stock subscriptions which were to be lent to the government. A Governor, Deputy Governor and 24 Directors were to be elected by stockholders (holding £500 or more of stock). Under its original charter the Bank was allowed to issue bank notes, redeemable in silver coin, as well as trade in bills and bullion. The notes of the Bank competed with other paper media of exchange, which comprised notes issued by the Exchequer and by private financial companies. In addition, customers could maintain deposit accounts with the Bank, which were transferable to other parties via notes drawn against deposit receipts (known as accomptable notes), thus providing an early form of cheque.*" (Capie et al., 1995). "*On 21 June 1694, the subscription lists opened for a venture incorporated as [BOE]. This new establishment epitomized the financial marvels of the age. The Bank was granted a royal charter and banking monopoly on condition that it lent £1.2 M to the government. However, it was allowed to provide this loan in the form of its own banknotes of no intrinsic value (i.e., they were not backed by gold), on which it nevertheless received an annual interest payment from the government of £0.1 M. Paper currency, the philosophers stone of financial capitalism, had received the first tentative mark of government approval. [BOE's] flotation was a great success: its subscription books were filled in a few days with investors ranging from the Earl of Portland, King William's favorite, to a medley of apothecaries, carriers, cloth workers, embroiderers, farmers, mariners, and wharfingers. [BOE] shares jumped to a 20% premium.*" (Chancellor, 1999). "*In 1694 the war with France continued to be costly and the English government offered a new loan of £1.2 M secured by the duty on tonnage and paying 8%; as an extra inducement, subscribers received the right to incorporate themselves as [BOE* (Macaulay, 1864)]… *In the 1630's the Chamber of London loaned to merchants at 7% and to [EIC] at 6%. In 1640 the market rate for good London loans was reported to be 8%, the legal limit, and in 1688 to be 4–6%, or below the legal limit. After the financial innovations of William III, [BOE], founded in 1694, discounted trade bills at the following rates: 1694, 4.5-6%; 1695, 3-6%; 1698, 4.5%; 1699, 4.5%.*" (Homer and Sylla, 2005).

201 "*Most goldsmith-bankers were little affected, but all took fright of lending much to the Crown, lest they should not be repaid. With the Crown still in this parlous financial situation, there came a great and pressing need for large loans to sustain the life-and-death struggle under William of Orange against French despotism, increased taxes being neither enough nor ready enough for the purpose. But what no number of goldsmith-bankers would undertake as individuals was successfully accomplished by a consortium, which lent £1.2 M, mostly in sealed bills and running cash notes. These arrangements for a temporary bank for the duration of the emergency were formalized by an Act of Parliament creating, and providing for the chartering of, [BOE]. Shares in [BOE] were bought not only by many London businessmen, including 6 goldsmiths, but also by William and Mary, the dukes of Marlborough, Leeds, and Devonshire, the earls of Pembroke and Portland, and other peers, and likewise by Dutch noblemen and landowners, as well as by bodies like the city of Utrecht orphans court, the hospital in Geneva, and the hospital, city and canton of Berne. [BOE] was thus the financial counterpart in the Protestant coalition of the armies raised from among English, Dutch, Flemish, Danish, French and Swiss Protestants. [BOE], in short, was open to the charge of being a 'Whig finance company' (Bagehot). 'The infant [BOE] was not a copy of a Continental model. Its chief original function was that of a bank of issue, whereas the banks on the Continent were essentially banks of deposit and exchange.' (Richards). Like many European public banks, however, [BOE] was initially a temporary wartime device, the tonnage and other taxes on which the loan was secured being voted only for four years in the first instance and the charter itself being valid only for 10. But the titanic war raged on and off for a century and a quarter, so fresh charters were granted time and time again, and, as so often happens, what was intended to be temporary became permanent. From time to time the stock was increased. In 1697 the tallies were grafted on to it, and short-term floating debts were progressively turned into permanent stock. By 1715 [BOE's] capital had mounted to £10 M. Unlike contemporary public banks, however, [BOE] was 'only an ordinary banking concern on a large scale' (Lord Overstone 1857); it was a giant*

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'Unicorn', but with joint stock and limited liability: it came to undertake everything the goldsmith-bankers did or had done. Like them, it lent to the Crown, and, eventually, as [EIC] and others dropped out of the business, became the sole such lender." (Kerridge, 1988).

202 "*But the experiment was a disastrous one. The bank suddenly collapsed, leaving the City's finances in a still more parlous state. Finally, after a number of petitions to Parliament, and the drafting of two Bills, the Orphans' Act of 1694 was passed. This measure created a 'perpetual fund' for discharging the interest upon the debt to the orphans; it authorized that the contributions to this fund were to be certain 'rents' chargeable upon the estates and revenues of the City, certain profits and impositions within the City, and the duties upon coal and wine imported into the port of London ; and it forbade the old type of compulsory contribution to the Chamber. Thus, was the original Orphans' Fund replaced by the new 'perpetual fund', which was also known as the Orphans' Fund, though its revenues were derived from sources other than the estates of deceased freemen, and its functions were quite different from those of the old Fund.*" (Richards, 1929).

203 "*By 1695 there were 140 joint stock companies with a total capital of £4.5 M, more than 80% had been formed in the previous 7 years. By 1717 total capitalization had reached £21 M*." (Kindleberger and Aliber, 2005).

204 "*The deterioration of the pound from the mid-168os to 1694 is evident, while its collapse in 1695 is truly extraordinary. The weakening pound exchange rate reoriented market incentives from importing gold into England to exporting silver from England*." (Quinn, 1996).

205 "*The government of William and Mary, intending at the time to reform the debased silver currency, viewed these quotations with dismay. In order to put a stop to any further rise, it prohibited the treasury in Aug 1695, from accepting the guinea at a rate of exchange higher than 30 shillings, and upon the reformation of the silver coinage the maximum rate for the guinea was in the first months of the following year reduced step by step to 22 shillings. This process was consolidated by the Act of 1717 which fixed the legal tender value of the guinea at 21 shillings, at which rate it was coined until 1813. As the maximum rates fixed for the guinea were higher than the market ratio—that is, gold was more valuable as legal tender than as bullion, while silver was less valuable—the effect was to drive silver out of circulation. In consequence of the low value of silver set by the statutory ratio, silver did not find its way to the English mint, and it became profitable to melt down for sale as metal the silver coins which had been recoined between 1695 and 1698 and had been brought up to their full statutory weight. Silver coins of full standard value disappeared entirely from circulation, and those remaining were so worn that their melting down was not a profitable proposition, notwithstanding the high price of silver. The solution to this problem of preserving the advantages of the preponderating gold currency while retaining a silver circulation was found by the Act of 1774*." (Groseclose, 1934). "*Any inflation, that there may have been in 1694, was gradually reduced by the growing stringency of the money-market; and, by the summer of 1695, there were the premonitory symptoms of the beginning of a crisis. This was indicated by the straits to which the government was reduced in its efforts to raise money, and by the state of the foreign exchanges... This adverse state of the exchanges was occasioned, partly by the exceedingly bad state of the coinage, partly by financial difficulties of the government. For a considerable period, the number of defective coins had occasioned much inconvenience in the transaction of business... Though some of the details in this picture are certainly exaggerated, the urgency of a reform of the currency was sufficiently pressing to induce the administration to undertake a re-coinage in the midst of a costly war, and at a time when the strain on the finances had become almost intolerable. This step had been resolved upon at the end of 1695, and the re-coinage was actually begun early in the following year*." (Scott, 1910a).

206 "*These blessed effects the Land Bank was to produce simply by issuing enormous quantities of notes on landed security. The doctrine of the projectors was that every person who had real property out to have besides that property, paper money to the full value of that property... The projectors could not deny that many people had a prejudice in favor of the previous metals, and that therefore, if the Land Bank were bound to cash its notes, it would very soon stop payment. This difficulty they got over by proposing that the notes should be inconvertible, and that everybody should be forced to take them*." (Macaulay, 1864). "*[T]he scarcity of money produced the land bank schemes, which proposed to establish 'a fund of credit' on a non-metallic basis'... in the land bank, the promoters, Asgill and Barbon, were to receive £3,000 stock and £2,000 stock, respectively. In view of the special circumstances none of these payments were excessive, and it is clear that the more important companies were not mulcted by the promoters... [Asgill, John.] Several Assertions proved in order to create another species of Money than Gold and Silver. 1696. Reprint, Econ. Tracts, Baltimore... The land bank had been expected to provide £2 M, but it utterly failed to make good its offer, besides adding to the want of credit by increasing the suspicions of bank-notes... At the root of the various schemes for an increase of the circulating medium, propounded in Scotland from 1699 to 1705, there is the same idea of a fund of credit. Though none of the proposals were adopted, this agitation is of special interest, since one of the plans emanated from John Law and was in many respects similar to that carried out by him in France. Then again in England, one aspect of the land-bank scheme was adopted by [BB], which issued notes on the security of lands it had purchased in Ireland*." (Scott, 1910a). "*A more dangerous rival than either of the latter was the Land bank. This scheme had been considered as an alternative to the foundation of [BOE], and had not been accepted in 1694. But in 1696 it appeared to Parliament, or perhaps rather to the ministry, that [BOE] had raised what money it could, and that other sources of loans must be sought. Besides, [BOE] was a Whig institution, and the Tories still hankered after a land bank. Therefore, when early in Feb the House of Commons had voted in favor of establishing a land bank, there followed the serious fall in [BOE] stock already noticed. This however was only the beginning of the misfortunes of [BOE]... The absence of response to this loan produced great confusion in the national finances for several years afterwards, and it had the effect of discrediting all the land banks. The reasons this issue was not subscribed are not far to seek. It came at the worst possible time, just after the run on [BOE] and while cash-payments were suspended. Coin was at a great premium, and no one was likely to subscribe his money for 7% with dubious contingent advantages when much more was to be obtained on equal, if not better, security. Obviously, if 8% with trading privileges was a fair rate in 1694 and 1698, a considerably higher percentage would have been required in 1696. Moreover, the failure of this loan is an instance of the peculiar interaction of [BOE] and the land banks. These had been rivals from the beginning, the progress of the latter had something to do with the suspension of the former, and that suspension again was a powerful influence towards preventing the incorporation of the National land bank*." (Scott, 1912).

207 "*The carrying out of this [recoinage] policy revealed the dangers surrounding [BOE], which was without an adequate reserve for the critical times in which it had to work. It was moreover forced to strain its credit to the uttermost in the service of the State; and, at the same time, it was subject to attacks on the one side from the Tories and on the other from the private bankers. The combination of all these circumstances produced the run of May 4th, 1696,*

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and the consequent suspension of cash payments of the notes of [BOE]. Had the crisis been mainly a monetary one, it would have passed away when the new coins were in circulation, but it lasted until about March in the following year (1697). All the evidence points to the conclusion that the 'want of money,' in this as in previous periods of acute depression, was a symptom. not the cause of the malady. The chief influence tending towards a dislocation of credit continued to make itself felt. This was the cumulative weight of the cost of the war, acting at a time when the volume of trade was becoming more and more restricted... The unfunded debt was the measure of the embarrassment of the administration. It represented so-called securities, many of which were hovering on the verge of default. Tallies were issued when there was no more than a pious hope that they would be redeemed; and, in view of the state of national credit, it is not surprising that these obligations were at an immense discount. Even the recently created Exchequer Bills were 14 to 15% below par in the middle of 1696." (Scott, 1910a). "*In the 1694 creation of [BOE] itself the first public offer of equity was by subscription for partly-paid shares, which were actively traded in the nearly 2 years that passed before they became fully paid*." (Shea, 2007b). *"The government, after making it the agent for effecting the calling in of the old coinage and the issuing of the new, treated the court with a remarkable want of consideration. The clipped money had been called in by May 4th, 1696, but [BOE] had not received the new coins in sufficient quantities from the mint. On May 6th a run was made on [BOE]; and, owing in a large measure to the neglect of the government, it was forced to suspend payment of its notes in cash. Arrangements were made to pay a part of any notes presented in cash and the remainder as soon as coin could be obtained from the mint. Thus, the notes ceased to be convertible; and, although [BOE] undertook to pay interest, they soon were at a discount, sometimes of as much as 20%. To meet these adverse circumstances, it was proposed in May to call up 20% on the capital, but this scheme was merged in another by which the proprietors advanced the money to [BOE] as a loan. When the crisis had been occasioned in part by the remissness of the government, it is somewhat curious to find [BOE] being approached a on Aug 15th, 1696, to lend £0.2 M to the King 'in the present At the same time the governor and proprietors were informed 'that they were now assured of all the encouragement and support the government could give them, and that, as a mark of it, divers great men had given orders for the buying of [BOE] stock and that some have already bought.' In spite of this support to the market in [BOE's] stock, the price continued to fall. It had been 70 in the middle of Aug and, under rumors of a call, it fell to 60 in Oct. This call was fixed at 20 % and was payable on or before Nov 26th. Therefore, the prices, quoted in the end of that month, are for the stock with £80 called up, that recorded on Nov 18th, 80, being exactly par. During the remainder of the year the quotation declined, the last price, on Dec 22nd, 73, being considerably below par. During the end of the year 1696 and the first half of 1697, the credit of the government was very low. The pressure of the war began to be felt, and money became scarcer and scarcer.' The ministry, Davenant writes, 'was like a distressed debtor, who was daily squeezed to death by the exorbitant greediness of the lender. The citizens began to decline trade and to turn usurers.' In these circumstances an appeal was again made to [BOE], which in Dec 1696 was asked to lend the government £2.5 M. To have endeavored to comply with this demand would have meant the most serious consequences for [BOE]. Its notes were at a discount of 16.25-17%, and the call of 20%, made in Oct, had only been paid in part. The stock was quoted below par; and, although on Dec 4th, 1696, an account was presented to the House of Commons, showing a surplus of assets over liabilities of £125,315.2s. 11d., the cash in hand was no more than £35,669.1s. 10d. It will therefore be evident that the most [BOE] could do would be to maintain its credit; and, if possible, to assist the government in any way that did not involve a subscription or a loan in cash. By Jan 1697 a way by which this might be done*." (Scott, 1912). "*Though the English mints were working at full pressure, they could not produce enough coin to satisfy the home demand, and great part of what they did issue was hoarded with such care that it did not come into circulation. Credit was in those days ill-organised, and was itself almost paralyzed. [BOE], whose notes might have saved the situation, was so shaken by the proposal to form a rival institution, and by a run upon its resources, that it only escaped bankruptcy by a call of 20% upon its shareholders... William was already on the verge of despair, when the news came that the whole scheme of the Land bank had ended in failure. William wrote to Shrewsbury on July 20 that, if the lords justices could not devise some expedient, 'all is lost, and I must go to the Indies.' The next day he sent Portland to permit the immediate summons of parliament, though 'I know the difficulty, and even the danger, of assembling it during my absence.' This expedient was rejected as too hazardous. Attempts to galvanise the subscriptions to the Land bank produced a beggarly £40,000*." (Lodge, 1910). "*With this first bank treaty completed in Parliament, the subscription books of the Bank were opened. Would anyone support it in the face of such opposition from so many wealthy and prestigious men?... The goldsmiths of London led the first charge. They attempted a run on the inadequate reserves of gold and silver used as collateral for the Bank's newly invented bank bills. On May 6, 1696, [BOE] was forced to a partial suspension of cash payments. An emergency clearing committee resolved this crisis quickly, but another, of more fearful dimensions, had begun earlier. On March 5, Parliament had decided to found a National Land Bank. The history of this statute goes back at least one year. In 1695, the government had again faced financial distress. [BOE] found the nation constantly behind in the payment of interest on debts owed it, and the Directors plagued the treasury with requests for payments. The Court of Directors met on June 26, 1695 to discuss its concern with the value of tallies and the price of guineas. It was decided that: 'Sr. William Gore is desired to gett orders from the Trëary for the payment of the deficiency by Tallies to bee procured on the Post Office. Ordered that the Interest due to the Bank on the Tallies on the severall funds discounted on be seperately cast up by the Accountants and that the same be laid before the court. To the intent orders may bee given for receiving the same.' William's ministers understood that these deficiencies had to be made up rapidly. [BOE] formulated plans to deal with these emergencies but wished to have questions of tallies, taxes, and interest settled before it completed negotiations. Ministers and members of the House of Commons now saw the Bank as a 'Whig' institution, which would support projects only if the government acceded to its advice and granted further favors for its support. Another group of projectors, identified as 'Tory', mobilized rapidly behind the Land Bank scheme of Asgill, Barbor, and Briscoe. Their proposal, which many economic historians have either ridiculed or found premature, frightened the Directors of [BOE.] Immediately upon hearing of the Land Bank proposal, a resolution was passed that: 'The deputy governor Mr. Bridges, Mr. Smith, Mr. Sedgwick, Mr. Knight, Mr. Goddard and Mr. Ward "are desired to meet and discourse some Members of Parliament This Evening at Temple Barr, and to acquaint them of the Resolution of this Court" to loan at 5% if a new bank were not chartered.' [BOE] could not stop the sanguine projectors. The new scheme had much in common with that which had gained a charter for [BOE] 2 years earlier. Subscriptions were called for as soon as the Statute passed. Free trade in banking seemed a possibility. [BOE] stock fell on the market*." (Rosen, 1981).

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208 "*Montagu's ingenious device of exchequer bills bearing a small rate of interest prevented domestic trade from falling back upon the elementary processes of barter, but they were useless for transmission abroad.*" (Lodge, 1910)

209 "*As with many later crises, its cause lay in a combination of monetary distress with speculative revulsion. Despite the many innovations of 'Dutch finance'... the costs of the war with France had exceeded public revenue and the government had turned to the age-old remedy of debasing the coinage. In accordance with 'Gresham's Law' (named after Elizabeth I's finance minister, who observed that bad money drives out good money). people began hoarding the undebased coins. In the summer of 1696, John Evelyn recorded in his diary a 'want of current money to carry on not only the smallest concerns, but for daily provisions in the Common Markets.' Riots broke out in the north of England. Credit, that nervous creature, took flight from the City. Government tallies (short-term public debt) fell to a 40% discount and a lottery loan for £1.4 M raised less than £18,000. Shares were badly affected. The 'bellwether' [EIC] share price fell from 200 in 1692 to 37 in 1696. In the same period, shares in the Hudson's Bay Co and the Linen Co fell by 70 and 90%, respectively. Most of the new companies, including all the diving and patent companies simply disappeared. Of 140 English and Scottish companies operating in 1693, only 40 survived the crisis to 1697—a failure rate of 70 %... In 1697, Parliament passed a law to 'refrain the number and ill practices of brokers and stockjobbers,' restricting the total number of stockjobbers to 100, licensed by the Aldermen of the City of London... After the 1690s boom, Defoe stated that many stocks had been raised above their 'intrinsick value' and that shares in [EIC] had sold at between 300 and 400% above their nominal value 'without any material difference in [intrinsic value]*.'" (Chancellor, 1999).

210 "*Under pressure from the government, [BOE] was induced to adopt a device in Jan 1697, which at once tended to steady the market in tallies and other unfunded debts, but which was temporarily most depressing in its effects on the quotation of Bank stock. This scheme consisted in the distribution of the reserved profits to make the stock fully paid, and then the taking of a subscription for a temporary addition to the capital, known as the engrafted stock, which might be paid as to 80% in tallies. The effect of this method of supporting the credit of the State was to transfer the discount at which tallies stood to Bank stock. Early in 1696 the latter (then partly paid) had been at 48 premium. Under the combined effects of the passing of the land bank act and the suspension, it had fallen to 7 discount at the end of the year. The engraftment of the tallies produced a more serious effect than all the other adverse tendencies; and, in Feb 1697, the fully paid stock was at £51, or a discount of nearly 50%... Some measure of the improvement of credit and the general prosperity of the 3 years ending in 1700 may be obtained from the position of [BOE] at this period... From the summer of 1701-4 there were 3 years of prosperity... At this time, the repayment of the engrafted stock of [BOE] was the barometer by which the position was judged; and, from 1702-4, large amounts of this stock were extinguished... The repayment of the engrafted stock of [BOE] had been completed in 1707, and thus it may be remarked that this stock both began and was extinguished during a time of crisis.*" (Scott, 1910a).

211 BOE's financing act, *8 & 9 Will. III, c.20, §47, 1696-7*, states: "*No Member to be adjudged a Bankrupt. Stock not liable to Foreign Attachment. And be it enacted That no Member of the said Corporation shall be or be adjudged liable to be a Bankrupt within the intent and meaning of all or any the Statutes made against or concerning Bankrupts for or by reason of their Stock or Interest in the said Corporation and that no Stock in the said Corporation shall be subject or liable to any forreigne Attachment by the Custome of London or otherwise.*" (Raithby, 1820). "*Parliament added to the Companies whose members were free from the threat of bankruptcy, as long as their failure only came from their interest in the companies. Members of [BOE, 8.9 Will. III, c.20, §47 (1696-7).]*" (Cadwallader, 1965).

212 "*In 1688–9 [EIC] experienced two disasters of the greatest magnitude. In India, friction with Aurangzeb resulted in its servants being driven out of Bengal, while at home the Revolution shattered the influence that Child had been building up during the previous 7 or 8 years. The position of [EIC] had been made to depend upon the favor of a sovereign, now in exile, and all the deposed committee men, like Papillon and Bernardison, and many of the interlopers were exceedingly powerful in the convention Parliament. As early as April 18th, 1689, petitions were presented from interlopers whose goods had been seized and who had failed (before or after the Sandys case) to obtain redress. The Skinner incident, which was upwards of 30 years old and which had already produced something of the nature of a constitutional crisis between the Lords and Commons, was revived. Charles Price and company complained of the seizure of the Andalusia in 1684 and 1686. Samuel White declared he had lost £40,000, and Jeffrey stated he had suffered to the extent of £30,000. Though the report of the committee, to whom it had been remitted to consider these petitions, was referred back to it 'as being only a narrative of evidence without stating a case', it was rumored in the City as early as June 16th, 1689, that the company was likely to be dissolved. Though nothing was effected in this session, the prospects of the opposition to the existing body were considered so hopeful that, by Jan 16th, 1690, £0.10 M had been subscribed to be used as a campaign-fund, and soon afterwards £0.18 M was raised. Three courses were open to this syndicate. If it could secure the support of Parliament, it might force the company to take a new subscription; or failing this, in some respects the line of least resistance, it might obtain authorization for a new company which might either be constituted on the regulated or the joint-stock basis... For the next year (May 1692 to May 1693) it appeared that everything favored the opponents of the company. The criticism by the committees of the proposed regulations was construed as a deliberate flouting of the House of Commons from which they had emanated. When, on Nov 14th, William III. replied to the address of the previous Feb, which had asked for the dissolution of the company, that this could only be effected on giving 3 years' notice, which course would, he feared, be prejudicial to the trade, he added that, since the company would not accept such modifications as were acceptable to the House, the best method on which to proceed was by the drafting of a bill which would settle the questions at issue. It was felt, no doubt, that the opposition to the company would only remain harmonious as long as its work was destructive not constructive, and therefore the Commons returned a further address praying that notice of a dissolution, on 3 years' warning, should be given to the company. William III hesitated to take this extreme course, since he may have heard, as was reported in the following year, that any action on his part against the existing undertaking would be construed as at the instigation of some persons in Holland who wished to possess the trade on the winding up of the English body. Then in March 1693 came the dramatic incident when, under the Act 4 & 5 Will & Mary, xv. § 10, the company failed to pay, by the last available date, the first quarter of the tax of 5% on the value of its stock, and, according to the letter of the law, its charters were subject to forfeiture. News of this misfortune affected the price of the stock, which had been over 140 before the mistake was made and was as low as 90 in July. Thus, one object of the opposition, namely the depressing of the stock below par, had been achieved. Then after considerable negotiation on Oct 7th, 1693, a charter was signed binding the company to accept all such alterations as should be imposed on it by the Crown, and on this condition all its former*

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privileges were restored to it. What may be termed the regulating charter was signed on Nov 11th of the same year, and it was popularly considered to embody all that had been contended for by the chief opponents of the company. This was the external aspect of the situation, but the inner history of the 15 months, May 1692 to Nov 1693, was such that the apparent victory of the adversaries of the company was valueless to them and became in reality a conditional triumph for Child. From Nov 1692 both sides had been bribing freely... On the signature of the charter, without waiting for the act which was hoped for later, the management took proceedings against certain merchants on the ground that they were interlopers, with the result that on Dec 7th, 1693, fresh petitions were presented against the company, which asked that an altogether new organization should be erected. Finally, the House of Commons resolved that 'all the subjects of England have equal right to trade to the East Indies, unless prohibited by act of Parliament.' The direct effect of this explicit denial of the privileges of the charter was to prevent seizures of interlopers' ships in England, but it produced no distinctive effects on the policy of the servants of the company in India. On the other hand, it became obvious that the legal position had become intolerable, inasmuch as powers confirmed by the Crown in Nov 1693 were denied by Parliament less than two months later. The effect of this continued tension, together with the losses sustained by the company during the war, is shown by the fall in the price of the stock, which had touched 94 when it was known that the subscription had been, as far as then appeared, a success, only to fall to 66 in May. From this low level there was a recovery, till 97 was recorded in Nov. After which there was a relapse, and the quotation at the end of the year was. According to a balance sheet of this period, which is dated Jan 16th, 1695, there was a considerable depreciation in the net assets, which were valued at a 1.25 M, against an issued capital of about 1.5 M." (Scott, 1910b).

213 "*Scotland and England were united by Crown and not by Parliament. In 1667, 1670, and 1681 Scotland had asked for a commercial union with England and been firmly rebuffed. This time she was not asking... In 1693 the Scots Parliament passed two trade acts the first for Encouraging Foreign Trade, and another allowing for the formation of joint-stock companies which empowered companies to combine colonizing and commercial operations. Both pieces of legislation were vital to the future expansion of the country.*" (Kerr, 1992).

214 "*[The 1693] acts laid the groundwork for the greatest piece of Scottish economic legislation of the period —the Act establishing a Company Trading to Africa & the Indies, passed on 26 June 1695. There were 22 men named in the act — 7 London merchants, 3 Scottish merchants, 4 Scottish merchants resident in London, and 8 Scots of position, including Lord Belhaven, the Lord Justice Clerk, the Lord Provost of Edinburgh and a former Baillie of Edinburg... Blackwood was involved in the Newmills Co, founded in 1681 under the patronage of the Duke of York. Newmills was the first successful joint stock company in Scotland. As a director Blackwood had helped in the setting up, financing, and running of the company. His involvement in Newmills was connected to his interest in promoting legislation to establish [COS]. He believed that it was possible to break into the English trade with Africa. The vulnerability of the Royal African company in the years leading up to 1695 was well known and the stimulus given to the English woolen industry from its trade with Africa was also well documented. Newmills needed an external market for its product... Before 1695, for example, Scotland had discussed and legislated without interference from the Crown or its representatives, but after this date, William, realizing how unruly his northern kingdom could be, now proposed that the two countries be united. This plan fell apart, however, due in no small measure to the Massacre of Glencoe on 13 Feb 1692 which dampened any hope of Scottish politicians cooperating with the King. The Scots exploited the King's blunder at Glencoe by passing two acts in 1693 which had a broader scope than any economic legislation in that era, and these acts were followed by the crowning glory of Scottish mercantile dreams—the act creating [COS] in 1695. This act allowed the Scots to trade anywhere that was not at war with the Crown and to settle anywhere that was not inhabited or possessed by a European country.*" (Kerr, 1992).

215 "*From the outset, [BOS] was a pure corporation. Though it was to operate independent of the state, it was a direct and conscious creation of the law. Its foundation Act brought into being an entity with a persona in the eyes of the law. It was endowed with a defined identity and perpetual succession, was capable of entering into contracts and of suing and being sued, and was responsible for its debts to the full extent of its own means but no more. In all these respects it stood in strong contrast to the partnership, the traditional basis of trade and of such quasi-banking functions as were available. The members of the corporation retained their own identity outside it: they were in no way liable for its engagements. This meant that they enjoyed limited liability; the most they could lose should the corporation fail was the sum they had subscribed to its joint stock. For the creation of a separate identity for [BOS] carried the implication that liability could only lie with it, and not with any other persona, namely the shareholders. To this were added two further privileges. In order to help [BOE] in its formative years, the Scottish Parliament conceded that its dividends were to be free from taxation for 21 years. Even more important, a monopoly of public (though not of private) banking in Scotland was granted for the same period. [BOE] at this time had no such monopoly. [BOS'] identity and privileges were of course confined to Scotland... The differences between [BOS and BOE] lay in the fact that whereas [BOE] was 'chartered by the government as a money-raising machine,' [BOS] did not lend to the state and, indeed, was, as forbidden to do so. It had no role as a governmental financial agent, and had no connection with the management of the public debt. In this sense, [BOS] not only shared the innovatory character of [BOE], but had its own distinguishing peculiarity of independence of the state. From the outset, then, banking in Scotland was unique in its exclusive reliance upon the business opportunities afforded by agriculture, commerce and industry: it represented banking in its purest form... The Act authorized the promoters of [BOS] to raise a capital of £1.2 M Scots. This meant that its subscribed capital was nominally the same size as that of [BOE]. But it was expressed in the Scots pound, worth 1/12 of the English, and so amounting to £100,000 sterling. The first call was for 1/10 of the subscription. This tiny sum of £10,000 sterling was not permanently increased until 1720, when it became £20,000. The uncalled 9/10 of the subscribed capital was treated, in effect, as a reserve, for it fell within the liability of the shareholders.*" (Checkland, 1975).

216 "*[BOS] contained the curious clause 'that all Forraigners who shall joyne as Partners of the Bank shall be and become naturalized Scotsmen to all intents and purposes whatsoever.' The promoters might well have hoped that this clause would attract foreign capital... There are parallels between the founding of [BOS] and the setting up of [COS]. Both, by virtue of incorporation, carried limitation of liability. Both companies were protected against English takeover: in the case of [COS], half the shares were required to be held in Scotland. Neither corporation could lend money to the sovereign without specific parliamentary consent. [COS, like BOS], was given a monopoly, though a much longer one: it was to have an exclusive trade between Scotland and America for 31 years and, in the case of trade with Africa and Asia, the monopoly was to be perpetual. Alien shareholders of [COS] became Scottish*

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denizens, as in the case of [BOS]. The great difference between the two corporations was, that whereas [BOS] was forbidden to trade, [COS] was not forbidden to bank." (Checkland, 1975).

217 "*The Lords turned their attention from [COS] at precisely the same time as the Commons began to take an interest in it. It is interesting that although both houses were involved with the Address to the King it was really the Lords who were in charge. The Upper House had given as much satisfaction as it felt was necessary to put an end to [COS] but clearly this was not enough for [EIC] which decided to move the dispute into the Commons. This was done by means of a petition from the Governor and the Company of Merchants of London, that is [EIC], on 20 Jan 1696 to the House of Commons. The petition informed the Commons that some ships were being fitted out for a trip to the East Indies and it was believed that the organizers were members of [COS]. Under the direction of Lord Belhaven, [COS] had indeed decided to send ships with all possible haste to the East Indies. After the hearings in the House of Lords this plan was quietly dropped. It is odd that news of plans that had already been scuttled would have come to the attention of [EIC] almost 2 months later when all the excitement had died down. It appears to have been an attempt to move the debate on [EIC] from the Lords to the Commons. In this it was successful, and since there was a good number of company supporters in the Commons there was now an even better chance of [COS] obtaining a confirmation of its privileges. Whatever the reason, the petition prompted a committee to be appointed to examine the methods used to pass the Scotch Act. The committee headed by Colonel Granville included Sir Christopher Musgrave, Mr. Montague, Sir Edward Seymour, and Sir Richard Temple. The committee, which contained a good mixture of supporters and opponents of [EIC], examined several [COS] directors and Roderick MacKenzie, [COS'] secretary. All of the directors had taken an oath de fideli administratione, administered by Lord Belhaven. This was all that anyone would admit. Some conceded that [COS] had initially planned to send ships to the East but all claimed ignorance of the details.... After examining the material and witnesses a decision was made. It was resolved that the directors of [COS] by administering and taking an oath de fideli were guilty of a High Crime and Misdemeanor. By trading under the color of an act of the Scots Parliament, calling themselves a Company, and raising money in England, they were again guilty of a High Crime and Misdemeanor and were to be impeached. A committee was appointed to prepare articles of impeachment against all those named. English merchants who had subscribed claimed that they were not aware that they had violated their oath to [EIC]. This plea was ignored, and they were impeached along with the others. The results of these Parliamentary activities were varied. The subscriptions raised in London were returned and plans to include English capital and expertise had to be dropped. It meant that the Scots had to raise capital all over again. This time Amsterdam and Hamburg were approached. The actions of the English government did not put an end to [COS] but it delayed and changed [COS'] plans. The interference of the Lords and Commons created hostility in Edinburgh. The hearings held by the House of Lords and the decision of the House of Commons to impeach the directors of [COS] were meant to stop the Scots and make the act passed in Scotland useless.*" (Kerr, 1992).

218 "*[COS], having large sums on its hands while its plans were maturing, took up Paterson's original intention that it should become a bank, using its corporate status to do so. [COS] began to make loans at interest to its members from its idle funds. Much more serious, it began to meet its obligations in Scotland by the issue of notes, thus striking at the basis of [BOS'] business. Because of doubts about [BOS'] future, its notes were presented in considerable quantities by the public for payment. A liquidity crisis rapidly developed. The Directors wrote in alarm to John Holland in London. They were convinced that they were under attack. 'We understand' they told him, 'that there are formed designs to break us.' So active was the Africa Co's agent in Glasgow, where there were man of its subscribers, that [BOS'] cashier there was left with nothing to do. The Edinburgh Directors began to call in their loans; they also proposed that a further 10% of the subscribed capital be called up. They brought into Edinburgh the available cash from the 4 branches. The position of [BOS] continued to deteriorate, for it was impossible to call loans in as fast as notes were being presented for specie. [BOS] became aware that its very success in issuing notes had placed it in a dangerous position. Its notes were used at the fairs, especially the Linen Cloth Fair, and the city of Edinburgh paid its creditors in them. The need to pay for imported corn caused merchants to demand further gold or silver. [COS] had acquired a considerable number of [BOS'] notes in exchange for its own, thus threatening [BOS] with a run. The Directors of [BOS] sought Holland's advice on whether to proceed at law against [COS] as an infringer of their banking monopoly. After anxious thought they decided to 'ly by', fearing an expensive and dangerous lawsuit that might not be successful. Thus, in the first year of its existence [BOS] experienced its first bank war. A general meeting of the Edinburgh Adventurers of [BOS] insisted that an additional 20% call on capital (making 30% in all), be made. The Edinburgh men paid up quickly. But there was serious difficulty at the London end. The Adventurers there, either could not or would not raise the money. A severe strain was placed upon the relationship between the two groups. For there was also great financial difficulty in London; [BOE] partially suspended payments for the first time in May 1696. [BOE], in order to restore its shaken credit, had called up more of its subscribed capital. The limitations of relying on London for credit support in times of difficulty were thus early demonstrated to Scots bankers. The Act founding [BOS] provided that delinquents who failed to pay a call might be deprived of their shares. The Directors were afraid that things might get out of hand. observing that 'God knows what a General Meeting might do.' They remarked, 'We have had a very hard beginning in this business.' But their initiation troubles were drawing to a close. There had been repeated attempts to hold conciliatory meetings with William Paterson and other member of [COS]. Articles of Accommodation were proposed. [COS] had not found its excursion into banking altogether profitable and it was now prepared to give it up, turning to its main business of trade and colonization. In Aug 1697, one-half of the emergency call of [BOS'] capital was repaid to its proprietors and the second half in March 1698, leaving the original £10,000 for trading. Meanwhile, [COS], though so aggressive toward [BOS], was having its own troubles. Its councils were divided; Paterson had lost authority. The attempt to raise capital in London had failed. Some £300,000 had been subscribed there. But [COS] was proceeded against in both the Lords and Commons as harmful to the interests both of [EIC] and the Kingdom. The result was to kill the London subscription, leaving Scotland dependent upon her own resources. There was much bitterness over the London failure to support and finance a Scottish East India Co in rivalry with the English. All in all, Scotland subscribed some £153,000 sterling in capital. This was an extraordinary demand upon Scotland's slender resources. The conflict between [BOS and COS] had some lasting results. It simplified the dual system of government within the Bank. The Londoners had greatly resented the call upon them for additional capital. They began to sell their shares to Edinburgh men. By May 1703, there were fewer than 13 Adventurers in England. In this way, the strains imposed by [COS on BOS] were largely responsible for cutting [BOS'] proprietorship link with London. The Adventurers there had already given up their separate directorate: resenting the emergency demands made upon them, they now withdrew almost entirely. It is probable that had the Bank been able to find a way*

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of maintaining an effective committee in London it might have greatly strengthened its position. As it was, the stresses imposed by [COS left BOS] isolated in Edinburgh, with no effective link with the City of London or [BOE. BOS'] affairs were simplified in another way. During the crisis the liquid assets at the branches had been called in." (Checkland, 1975). "*Meantime [BOS] had gained an assured position in the city of Edinburgh. and year by year its balance sheet showed the profitable nature of its business, In the 9 years following 1699 the average dividend was 14%. But it was not all plain sailing, for when [BOS] opened its doors it was faced with competition from [COS], which began to issue notes. Though this appeared to be an infringement of [BOS'] monopoly, nothing much could be done about it for [COS] was the idol of the people on which great and small had staked their all. Moreover, it was easy for its notes to pass into circulation, as they were used to pay for purchases of goods and also to give loans to needy shareholders on the security of their stock in [COS].*" (Hamilton, 1963).

219 "*The difficulties caused by [COS to BOS] were not confined to the direct threat. [COS] had been the source of profound difficulty for the Scottish economy as a whole. It represented, in effect, an attempt in a primitive economy suddenly to step up the rate of capital formation far beyond any former level. To embody so much capital, in so poor a country, in a single venture, even had it met with long-run success, was bound to create stresses. After [COS] had been provided for, there was very little capital left in Scotland, in the short run, to promote industrial or agricultural investment. To all this disturbance must he added crop failure: the harvest was very had in 1695, even worse in 1696, and bad again in 1697. Moreover, after 1696. the enforcement against the Scots by the English of their Navigation Acts became much more severe. All in all, the Directors of [BOS] had to learn their job under most difficult conditions. [COS], after many troubles and disputes, sent its first tiny fleet of 5 ships from the Forth in July 1698. The colony was planted on the Isthmus of Panama. But it soon fell into dissension and disorder and so was abandoned. A second fleet of 4 ships fared no better. Fort St Andrew, after a hopeless defense, was surrendered to the Spanish in March 1700.*" (Checkland, 1975). "*[COS] tried to raise subscriptions overseas only to find itself blocked, this time by the King and his ambassadors. [COS] was undaunted by these actions of the King, and raised its subscription on a smaller scale in Scotland. It then focused its aims, and set off to found a colony at Darien. Neither of the expeditions that sailed to Darien were able to maintain the colony. A mixture of bad luck, internal division, and disease played their part, but undoubtedly the actions of the English government were central to the overall failure of the colony. Once the colony was established the King ensured its failure by issuing the 'Proclamations.' In Jan 1699 the House of Lords, after consulting with the Council of Trade and Plantations on how consistent the Scots colony at Darien was with English treaties with Spain (Treaty of Madrid, 1670), decided to uphold its decision of 20 Dec 1695. This decision meant that the Scots colony at Darien would not be recognized as legal and therefore no aid would be given to it. With the colony a bitter failure it was expected that [COS] would quietly end its operations. Instead earlier plans of trade with the East were revived. One voyage to the West coast of Africa in 1699 managed at least moderate success. Even in these belated endeavors there was no rest from English interference. In 1703, as one of [COS's] ships was lying in an English port waiting to sail to Malacca, it was seized and its goods held forfeit by the Court of [EIC].*" (Kerr, 1992).

220 "*The collapse of [COS] had occasioned widespread losses which the stockholders could not afford. From 1695 to 1699 the harvests had been bad; provisions were dear and there was much distress. The highly protective policy, judged necessary to encourage the new manufactures, produced retaliation; and, when Scotland was largely excluded from foreign markets, the failure of the colonizing scheme showed that no outlet for her products was to be found in plantations. These circumstances reacted on the recently established manufactories, many of which could no longer find a market for their goods. There was a general want of ready money, and failures were numerous. The scarcity of cash was so great that the Newmills Co adopted the extraordinary course of making advances to its shareholders on account of the future dividends, which were expected to be due to them, but which were not yet declared. The unrest in the last months of the year 1704 made those, who had money at call in [BOS], anxious to have the actual cash, and withdrawals were in excess of lodgments. In Dec there was a report that the current coins would be recalled, and [BOS] was forced to suspend payment on Dec 18th. The same events produced demands on [BOE], and there was a considerable fall in the stock. The crisis was avoided for the time by the issue of interest-bearing bills, but the uncertainty continued during the years 1705 and 1706. Besides the unrest in Scotland, there was the pressure of the war and the consequent losses to merchants, while there were fears of a French expedition which might effect a landing in one of the disaffected districts. Alarm was general amongst the owners of capital, and the position of [BOE] was endangered. In both these years it was only able to pay 7% annually out of profits, or 1% less than the interest received from the State. This reduced distribution suggested the inference that either great losses had been made or that the situation was so grave that profits must be withheld to maintain the credit of the institution. The effect of these adverse influences on the price of the chief stocks was very marked. That of [BOE], which had touched 138.8 in 1703—a relatively high quotation during a great war—fell steadily from the winter of 1704, and all through 1706 it was below par.*" (Scott, 1910a). "*Controlling the exchange on London had proved much more difficult than had been expected. With the weakening of [BOS'] London connection, it became harder to get a reliable judgment on business trends. It would seem that [BOS'] exchange business ceased about 1700. Bringing specie from London was an expensive business. In 1699 it cost £8 or £9 per cent; this meant that the Edinburgh—London exchange could move within wide limits. Down to 1704, [BOS'] issue of notes had been confined to large denominations, the smallest being for £5. This meant that the hand-to-hand currency in Scotland remained the coinage. In 1704, [BOS], after a good deal of thought, decided to issue notes of £1, a most important move. It opened the way for a great extension of the note issue. and for the beginning of the displacement of coin in smaller transactions. In Dec 1704. [BOS] was faced with its second great liquidity crisis. Because of Marlborough's campaign (Blenheim was won in Aug there had been a serious internal drain in England and Scotland of the precious metals. together with losses to the continent. The specie shortage thus created caused a rumor in Scotland 'industriously promoted and spread by some persons' that the government proposed to 'raise the value of the several current species', that is to say, to declare each coin worth more than its face value. With such gains to be made in holding specie for a rise, who would hold notes? The directors bitterly complained that the rumor 'occasioned a very great, unexpected and unaccustomed demand upon the bank.' Moreover, the [COS] calamity had reduced available resources in Scotland to a very low ebb. The directors tried to make themselves more liquid by calling in their loans, but events moved too quickly. People rushed in demanding coin for notes and [BOS'] treasure was soon drained away. Calling up a further part of the subscribed capital was too slow a response. In an% case. it would not yield the specie required, for there was an absolute shortage of this. On 8 Dec [BOS] was obliged to stop pavement. The Scottish government could not stand aside. A Committee of the Privy Council called at [BOS'] office and considered [BOS'] books, together with its*

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heritable and personal bonds and its discounted hills of exchange. The Lords of the Privy Council declared themselves satisfied that, though [BOS] was insolvent, its true assets considerably exceeded its liabilities. They ordered that interest be paid on [BOS'] outstanding notes, according to law, until they could be redeemed. [BOS] was to call up a second 10% of its subscribed capital, and pressure was to be put on all creditors to repay their loans. In May 1705, [BOS] was able to resume payment on its notes. The balance sheet presented to the Lords of the Privy Council survives. It is of course abnormal, for it comes after a credit contraction followed by a run. It does, however, indicate certain minima. The undistributed profits were £12,352. The note issue stood at £50,847. It's crucial importance is thus revealed, for it allowed [BOS], even after sharp contraction, to make interest-bearing advances equal to some 6 times its paid-up capital. The largest category of loans was on personal security, totaling £27,682; the second largest was that on land (on heritable bonds) at £21,968, and third stood Bills of exchange, at £11,253. [BOS] thus had some £61,000 out on loan. This extension of credit could have had a significant effect in easing the post-[COS] financial stringency." (Checkland, 1975). "*Even before the disastrous consequences of its first expedition were known, [COS] had lost much of its popular support... The large amount of the country's capital locked up in [COS], and the heavy purchase of supplies overseas. had caused a drain on bullion, which led to a great scarcity of money at home. In addition, there was the further danger of economic collapse following the disastrous results of [COS]. For a time, it looked as if the bank itself would be drawn down in the general confusion. The whole economy was in the doldrums. Many of the new industrial enterprises were proving unremunerative, and credit was at so low an ebb that 'men of very good fortunes could not procure money to answer their necessary demands.' There were complaints that the currency was depreciated, and when it was rumored in Dec 1704 that the Privy Council was about to 'raise the value of the several current species', this naturally led to a strong temptation to hoard cash. The run on the bank soon resulted in the exhaustion of reserves, and on 18 Dec the directors suspended payment of notes. announcing at the same time that their notes would bear interest until redeemed. This established a principle which was to be followed in similar circumstances by other banks at a later date. The position of [BOS], however, was quite sound; its weakness lay in the large investments in heritable securities which could not easily be realized. Indeed over 43% of its total liabilities were of this character. But there was also a general scarcity of currency, which, it was maintained, was caused to some extent by the export of bullion. To alleviate the position the bank had issued £1 (sterling) notes, and this went some way to make good the provision of small currency, but the notes were being presented for payment. As things turned out, cash payments were resumed on 18 April 1705. To increase their liquid funds, the directors made a call on shareholders of 10% by way of loan. Many English shareholders, who had already objected to an earlier call of 20%., showed their dislike of this and refused to pay. Their shares were then sold, and gradually more and more of the capital came to be owned in Scotland. Thus, instead of the court being elected half by English shareholders and half by Scots, the stage was soon reached when the whole court was comprised of Scotsmen. By the end of 1706 the loan was repaid.*" (Hamilton, 1963).

221 "*The design of establishing an Indian trade in Scotland, the intended settlement at Darien, and the general spirit of enterprise which spread widely in the country, produced much sanguine though fruitless speculation, attended with frequent bankruptcies. The records of the Court of Session bear testimony to the numerous failures produced by the premature exertions excited in Scotland. Not only traders, but gentlemen of landed property, engaged in those speculations, and sold and mortgaged their lands to raise funds for the enterprise. When bankruptcy came, it was often found that its history was that of a train of struggles to maintain a desperate credit; and the discontents of the creditors were expressed in challenges of preferences. The necessity of some general rule for deciding such cases was apparent; but while the difficulty of settling the principle was felt and acknowledged, an extensive bankruptcy occurred in the year 1694, which brought this matter into very full discussion. The result was the appointment of a committee of the judges to prepare a legislative proposal. So far as any decision was pronounced in this case, it seemed to fix that, after notorious and public failure, the creditors were to be held as the true owners of the debtor's funds. But another case occurred, in which, though the debtor was insolvent, he was not notoriously so; and the question was, whether private knowledge on the part of him in whose favor the alienation was made was sufficient to ground a challenge? The idea of a retrospective and constructive bankruptcy has been supposed to have been borrowed from France, whence we had been in the practice of deriving many institutions. But in France the law of retrospective bankruptcy was not yet established; though, in Lyons, a regulation which appears to have been the groundwork afterwards of a regulation similar to that adopted in Scotland, had for some time before been established. And it is probable that our judges were led to adopt the principle of a retrospective bankruptcy, rather by the natural course of their deliberations on the cases which had actually occurred before them, than from any suggestion of foreign jurisprudence. The law was at last passed in 1696. That part of it which settles the definition of public bankruptcy, and fixes the rule for computing the constructive bankruptcy, has already been commented on." What remains to be explained is the effect of the bankruptcy so established on deeds of alienation and preference. There is a remarkable difference between the Scottish rule of retrospect, as settled in the Act of 1696, and that of England on the one hand, and of France on the other. 1. It differs from the French rule only in degree, not in principle. It is as a fraud on the creditors that the deed is annulled in France, as it is in Scotland; only, instead of sixty days, the French law has fixed ten days as the retrospective term during which a bankrupt's acts of alienation and of preference shall be ineffectual; a period which, in a busy commercial country, may be thought long enough. 2. The English and Scottish laws differ in principle. The principle of the English law is not, that an act in itself legitimate is to be annulled on account of actual or constructive fraud, but that the whole estate is bound up by the commission from the first act of bankruptcy, and that the right of the assignees operates as a conveyance of all the estate which stood in the bankrupt at the time when the first act of bankruptcy was committed. It was held that the hardship of individual cases was compensated by the public advantage arising from the general rule; while the exceptions introduced by particular statutes were supposed to confine its operation, as to the bankrupt, almost solely to fraudulent transactions; and as to other persons, only to the placing of them on a level with all the rest of the bankrupt's creditors. But the length of time to which the rule sometimes drew back, was an evil which was remedied by a law, proposed by Sir Samuel Romilly, for limiting to the period of two months the retrospective effect of the commission. The difference of principle has produced a very distinguishable difference of effect in the operation of the two laws. By the original rule of the English law, independent of the exceptions in the later statutes, the debtor could neither receive payment of money due to him, nor pay away any part of his funds in liquidation of debt, nor sell effectually, though for a fair price. But in Scotland, payment to a bankrupt is effectual; payments by him are not included within the things prohibited; and sales for a fair price, or a new transaction of any kind, for full value, not being deeds of preference, are effectual. It was necessary to have the direct interference of the Legislature in England to control the general rule (which bound the debtor's property as from the first act of bankruptcy) so far as to authorize the bankrupt to receive*

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payment of his debts, to make it safe to pay to him bills or the price of goods, or even to make a purchaser safe in the possession of what he had bought for a fair price at the distance of more than five years from the public bankruptcy. In Scotland all these things were fully provided for by the general principle of the statute, without requiring any direct interference of the Legislature." (Bell, 1870).

222 "*In the early Scotch statutes and decisions, prior to the Act 1696, c.5, the terms insolvency and bankruptcy are used as synonymous. Neither notour bankruptcy nor bankruptcy as a judicial process of divestiture was then known to the law. Thus the Act 1621, c.18, which is designed as an Act against alienations 'made by dyvours and bankrupts,' relates solely to deeds executed during simple insolvency... The ambiguity in terminology above mentioned has not infrequently been the cause of litigation in regard to the construction of legal documents. Thus, when the terms insolvency and bankruptcy are used by themselves in a deed or contract, as a lease or contract of copartnery, the question may arise, In what sense are they to be construed? The general rule is that the intention of parties, when that can be discovered from the deed, governs the construction. But apart from evidence of intention, it would seem to be a rule that where the term 'bankruptcy' occurs by itself in a deed or written document, bankruptcy by divestiture of the debtor, and not simple insolvency or notour bankruptcy, must be taken as implied. Where, on the other hand, the term 'insolvency' is used alone, it will be taken to mean simple insolvency in the sense of practical inability to meet obligations and carry on business. In England the terms insolvency and bankruptcy are used in a more definite sense than with us. The term bankruptcy is used exclusively to express judicial divestiture of the debtor. English law never recognized such an intermediate stage as notour bankruptcy, in which the debtor, while left in possession of his estate, has his personal status and capacity restricted. It is by adjudication of his estate to his creditors—a process corresponding to our sequestration—that a debtor can alone be constituted bankrupt. If he commit so-called 'acts of bankruptcy,' these have important effects upon his transactions subsequent to their date if an adjudication be thereafter awarded; but, till an adjudication of his estate takes place, a debtor, no matter how prostrate or how much subjected to diligence, is simply insolvent and not bankrupt.*" (Goudy et al., 1895).

223 "*[I]t was thought necessary to strengthen rather than relax the rule... In 1688 an oath was drawn up, to be sworn by every bankrupt claiming the cessio, in which he swears that he has given up all his property to his creditors by a conveyance and inventory; that he has made no other conveyance since his imprisonment, nor put out of his hands any money, goods, etc., belonging to him; that he has not cancelled any writings since his imprisonment, or if he has, that he specify them particularly; and that he has not granted any conveyances before imprisonment which he has not specified. [Acts of Sederunt, 8th Feb 1688; and 18th July 1691.] In July 1688 the rule of the habit was enforced; but it was declared, at the same time, that if innocent misfortune should be libeled and proved as the cause of insolvency, the habit should be dispensed with. In the same Act it was declared that the imprisonment must have continued a month before the debtor could apply for the cessio. And by statute in 1696, c. 5, the Court was forbid to dispense with the habit, unless in the summons and process of cessio the bankrupt's failing through misfortune be libelled, sustained, and proven... The habit is abolished by 6 and 7 Will. IV. c. 56 [1836]. This statute constitutes the rule of procedure in applications for cessio bomorum, whether brought in the Sheriff Court or in the Court of Session.*" (Bell, 1870).

224 "*The crisis seemed to be over in 1707, although the depression continued; but, even after the Union had been completed, there was great dissatisfaction in Scotland, and in Feb 1708 there came an actual descent by the French, the news of which produced another crisis in London, accompanied by a run on [BOE] and a great fall in the price of stocks. Owing to the incompleteness of the record of quotations in 1708, it is impossible to determine whether lower prices were touched at this time or in 1706, indeed the whole period from Oct 1704 to March 1708 must be regarded as one of very great depression, during which there were frequent crises, the most serious of which were those from Sep to Nov 1706 and in Feb and March 1708.*" (Scott, 1910a). "*At the Union of 1707, the Scots currency consisted of a multitude of coins—Scots, English and foreign—of different values. Some were milled with ridges round the edge, and were thus difficult to clip without detection, but most were hammered. and an easy target for the clipper. Good coins disappeared from circulation to be melted down for bullion, and those remaining tended to lose value in accordance with their depreciated metallic content. The situation was further aggravated by the large amount expended on goods by [COS]. Many people found their ready cash locked up in shares in this ill-fated concern, while the currency of the country was also reduced by the export of bullion to purchase ships, stores, and other equipment. Small wonder there were repeated complaints of the scarcity of currency. Indeed, from 1699 various proposals were made for the creation of inconvertible paper currencies, involving the issue of notes either by the State, by municipalities, or by private individuals; but none of these were acceptable, as [BOS], recently granted a monopoly of banking in Scotland, was just getting into its stride... The Act of Union had provided for a sum of £398,085. 10s., appropriately known as 'The Equivalent', to be paid to Scotland to recompense holders of [COS] stock for the losses they bad sustained, to redeem the Scots national debt. which really consisted of deferred payments and pensions, to pay a sum of £2,000 a year for seven years to foster Scottish manufactures and fisheries, and to reimburse individuals who might incur loss through re-coinage. At this time the Scots economy was at a very low ebb. [COS] which had cost so much in life and treasure, had collapsed in 1704 and all the fine hopes of establishing a colony in the New World were shattered. The paid-up capital of £153,448, a substantial amount for a country so poor as Scotland, was lost beyond recovery. But there were other causes of distress. Before 1700, Scotland had built up a number of industries in the shelter of protection, but this had provoked retaliation, and the loss of English markets had serious effects on Scotland's balance of payments. There was a drain of bullion and a depreciation of Scots money in terms of English, so that even before the Union there were complaints of scarcity of money and high interest rates. Overshadowing all else, however, was the desperate plight of agriculture, which had suffered blight and famine for 7 long years from Aug 1696.*" (Hamilton, 1963). "*Despite all of this [COS] was still in existence as late as 1706, and it became a bargaining chip in the Union negotiations. The Scots wanted to keep [COS] active but the English were willing to pay £233,000 under Article XV of the Treaty of Union to ensure that [COS] was no more. This was an enormous sum of money but was considered a fair price to pay to rid England of the threat of a Scots competitor.*" (Kerr, 1992).

225 "*Modern bankruptcy laws emerged in the trading cities of northern Italy (Florence, Pisa, Genoa, Venice) during the 13th and 14th centuries. At that time, the opening of a bankruptcy procedure already imposed on agents a clearly defined brake on normal contractual interactions: the individual remedies of creditors were suspended, and the debtor's status was severely reduced; he could no longer trade; his assets, accounting books, and correspondence were seized; he was usually imprisoned and torture was sometimes countenanced. A primary aim of these laws was to control the usual endgame problems in strategic interaction: creditors may run on the assets and the debtor may fly away, or adopt high-risk strategies of 'gambling for resurrection'... These core Italian principles were apparently exported to the rest of Europe, possibly via the great fairs, and absorbed into the statutes of the larger trading cities (e.g.,*

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Barcelona, Lyons, Antwerp, Bruges, Lübeck). As in Italy, procedures were generally conducted by mostly self-regulated, elected commercial courts. During the 16th century, kings and princes added repressive penal statutes against failed debtors [The first such statutes were enacted in 1543 and 1571 (England) and in 1536 and 1560 (France)]... An elementary account of the transition in France to an integrated, national legal order starts in the 17th century with the Kings (i.e. their courts) confirming and enforcing commercial customs. Then Colbert, Louis XIV's reformist Minister of Finance (1661-83), used these customs as the main basis for the 1673 Ordonnance du Commerce. This first modern commercial code, a light text indeed, would be compounded until the Revolution by a series of piecemeal royal decisions and by a large body of learned comments... In this long-run history, bankruptcy—which was addressed comprehensively in the 1673 statute—is probably the item whose evolution since the Italian, medieval experiences presents the clearest elements of continuity. The standard procedure, or faillite, was the direct heir to the Italian fallimento and it offered the 2 usual options. If the parties decided to liquidate, however, the debtor would not be offered a debt discharge and a fresh start: unless he later fully reimbursed his creditors, he would not regain his full civic and professional rights. Alternatively, a continuation arrangement was the normal and least dishonorable road to debt restructuring and hence to the discharge of debt. The doctrine also made clear that any arrangement would bind only junior creditors — senior creditors were fully protected." (Sgard, 2014)."*In Lyon, the foremost trade center of France, which in the 16th century experienced a great influx of Italians, the Ordinance of Francis I, dated Oct 10, 1536, is of special interest. Fundamentally the law of Lyon was the same as that of Italy. [Ordonnance de Commerce of 1673, embodies the salient principles of Italian bankruptcy.] The creditors met, elected one or more deputés, and appointed also a procurator to conduct trials. The deputés were like our modern trustees and receivers, and the procurator like our referee. The Declaration of Dec 23, 1699, provided that in the case of a moratorium, the creditors might appoint directeurs or synndics to supervise the debtor's dealings. The innocent bankrupt could negotiate with his creditors, and the composition had to be homologated by the court if it had the consent of the majority of the creditors. The debtor, however, had to make full disclosure of all his possessions and business transactions 'à peyne d'être pendu et étranglé par la gorge.*'" (Levinthal, 1918).

226 "*Endorsement does not seem to have been legalized until the late 16th century in northern Italy and the 1620s in France. In the meantime, the larger fairs, particularly those of Lyon, became international clearing houses for debt contracted through bills of exchange. 4 times a year the bankers and wholesale merchants attending Lyon's fairs met together at the Loge du Change for payment sessions. They brought with them lists of all their debts and credits payable at the fair as well as those of others for whom they acted as agents... As late as 1707 Pierre de Boisguilbert claimed that 80 M livres changed hands each year at the Lyon fairs, practically without the use of coin.*" (Luckett, 1992).

227 "*This ordinance was to commerce what the statutes were to manufactures, except that public opinion has always been unanimous in its favor. Several partial edicts had preceded it. A declaration of Jan 9, 1664, on the making and negotiating of letters of exchange and notes to order and to the bearer, fixed the delays and formalities of protests, recourses, etc... Title XII. On the jurisdiction of consuls (tribunals of commerce). This is the development and extension of the principles laid down in the edict of 1563, which had created the first tribunals of commerce. 'Under the empire of the edict of 1565, the consular competency was limited to the disputes of merchants among themselves concerning merchandise: it was at once personal and real. The ordinance of 1673 imprinted a character of legality on an essentially commercial contract, which had its origin in the strife and persecutions of the Middle Ages — the letter of exchange. A rapid vehicle of commercial value, a bond of distant relations, an effective transportation of sums due to foreign places, the letter of exchange was considered as an act apart, an act commercial in its nature , and attributive to consular juris diction; it determined a purely real competence; between all persons, it was submitted to the jurisdiction of consul-judges.' [Laferrière, Histoire du droit français, t. I. p453]. Bills of exchange, for letters of exchange furnished or to be furnished, observes Laferrière, had not the same character: in order that they might be attributed to consular jurisdiction, it was necessary that one of the two contracting parties should be a merchant. By the code of existing commerce, the bill of exchange has become an act of commerce in all cases, and the bill to order has been placed in the mixed condition in which the bill of exchange was under Colbert. Under the edict of 1673, the bill to order was an act of commerce only between two merchants*." (Martin, 1865). "*The Dutch 'indorsement' was mentioned in the French 1673 Ordonnance de commerce and thereafter in German Wechselgesetze, which now accepted indorsement as lawful.*" (De ruysscher, 2011).

228 "*We have now traced the history of the maritime legislation of the Middle Ages, so far as it relates to the more important compilations of maritime rights and usages of that period. In the condition that legislation left it, so maritime law continued, until Louis XIV established the marine ordinances of 1673 and 1681, which enlarged its foundations, arranged its parts, and out of various materials constructed a harmonious system. Those monuments of wisdom and learning owe their erection to the genius and encouragement of that illustrious minister, of whom it has been said, that if Louis XIV gained the title of great, it is to Colbert he is indebted for that glorious appellation. An English translation of the ordinance of 1681 is contained in the 'Sea Laws.' The present commercial code of France, adopted in 1807, and said at the time to be conceived by the inspiration of the greatest man in history, is substantially but a republication of the ordinances of '73 and '81. It is, however, more comprehensive in its plan, and embraces the subjects of partnership, common-carriers, bankruptcy, insolvency, and stoppage in transitu... The ordinance of 1673 treated at length of negotiable paper. The ordinance of 1681 embodies in systematic order the subjects of navigation, shipping, insurance, and bottomry. It forms, says Marshall, in his works on Insurance, a system of whatever experience and the wisdom of ages had pronounced to be most just and convenient in the marine institutions of the maritime states of Europe. And though it contains many new regulations, suggested by motives of national interest, yet it has hitherto been esteemed a code of great authority upon all questions of maritime law. Lord Mansfield, who appears to have taken much pains to obtain the best information, and to possess himself of the soundest principles of marine law, and of the law of insurance, seems to have drawn much of his knowledge upon these subjects from this ordinance and from the elaborate and useful commentary of Valin... It is a little remarkable that the most commercial nation of modern times should have framed and established no general code of maritime law. The maritime jurisprudence of England is grounded on the law-merchant, which is a branch of the law of nations, and forms a part of the English Common Law, and on the rules and usages which pre-vail among commercial men in all countries. Her courts of admiralty; like those of the United States, proceed according to the civil law, the laws of Oleron, and other generally received collections of maritime law, the customs of admiralty, and particular statutes.*'" (Flanders, 1852).

229 "*There were prior to the late Revolution, two separate jurisdictions for the recovery of commercial debts and for enforcing the performance of commercial contracts. The courts of Admiralty had cognizance of all controversies of a maritime nature, and the Consular courts, of all other matters relating to trade.*

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Since the Revolution [1790] these 2 jurisdictions have been united in the commercial Tribunals, which are established in every seaport and manufacturing town of any note. The proceedings of those Tribunals, although sufficiently formal to prevent oppression and surprise, are nevertheless so quick in their operation, that a judgment is obtained in a very few days and is followed by an almost immediate execution." (Cooper, 1801). "*A successful merchant from Bourges, Toubeau had served both as the city's prey & des marchands and as judge of the local merchant court. In seeking to adjudicate the disputes that came before him, he apparently realized that there was no comprehensive account of the law applicable in merchant courts and thus decided to write one for his own benefit. After doing so, however, he discovered that there was great demand among merchant court judges through-out France for such a treatise and, accordingly, decided to publish it as an aid for them as well: 'All the judges and consuls, in the discussions that I had with them, in person and by letter, made me know that they have the same need for this book, [and] they displayed to me their impatience to have it.' First published in 1682, the treatise was subsequently reissued in 1700, in a new edition augmented by Toubeau's son. As demonstrated by Jacqueline L. Lafon's analysis of the correspondence between the monarchy's Bureau du Commerce and merchants throughout France, Toubeau's strategy for making 'consular law [droit consulaire]' available and understandable to merchants nationwide proved quite successful. According to Lafon, his treatise was one of the primary resources to which 18th-century merchants turned in seeking guidance on matters of commercial law.*" (Kessler, 2007).

230 "*Tradesman and merchants at wholesale and at retail shall have a book (livre), which shall contain all their business, their bills of exchange, their accounts receivable and pay- able (dettes active: et passives), and the monies employed for the expense of their [domestic] establishment [s]. II. Dealers in exchange, and bankers shall keep a journal (livre journal), in which shall be entered all the affairs negotiated by them, to have recourse to it in case of dispute... The books of tradesmen and merchants both at wholesale and at retail shall be signed on the first page and on the last by one of the consuls in the cities where there is consular jurisdiction, and in the others by the mayor or one of the aldermen, without cost or fee, and the pages shall be initialed and numbered from first to last by the hand of those who shall have been commissioned by the consuls or mayor and aldermen, notation of which shall be made on the first page.*" (Howard, 1932).

231 "*The principal disposition of the Laws of France concerning Bankrupts, are textually contained in the 11th title of the Ordinance of Louis the XIV, respecting commerce, made in the year 1673, and in subsequent edicts of the same monarch, and of his immediate successor... The system of commercial Law in France is so organized that the insolvent situation of a merchant cannot be long kept concealed.*" (Cooper, 1801).

232 "*The natural and certain consequence of this system is that no appeals are ever interposed for the fake of delay, but only in such cases where there exists a real cause of dispute. Under this order of things it may easily be understood that the non-performance of a commercial contract, as for instance, the non-payment of a Bill of Exchange or promissory note being so quickly followed by judgment and execution, a merchant cannot remain long in a state of insolvency without its becoming apparent to his creditors and to the whole world. The severity of the Laws in case he should pursue a different line of conduct, obliges him when he is ascertained of his situation, to call his creditors together and obtain from them the best terms in his power, which are generally more or less favorable as he has taken this step at an earlier or later period of his insolvency; as his conduct in business has been honest or dishonorable; and lastly as his disclosure of his situation appears fair or fraudulent. The composition which the creditors make with their insolvent debtor is generally suited to the circumstances of his case.*" (Cooper, 1801).

233 "*Until the late 19th century credit markets in France were decentralized. The usual intermediaries were not banks but rather notaries, semipublic officials who drew up and certified private legal documents... As in a number of other European countries, notaries in France had recorded wills, prenuptial agreements, estate papers, and financial contracts since the Middle Ages. Usually they made two versions of each act: an original, which went to one of the interested parties, and a copy, which the notary kept so that he or his successors could verify documents in cases of litigation. The number of notarial offices etudese) in which notaries carried out their business was regulated, but the etudes themselves were the private property of the notaries, who could sell them or bequeath them to their children. The value of an etude derived from the records the notary preserved and from the notary's clientele, who typically remained with the etude when it was transferred. Often a notarial etude recorded a family's financial transactions for generations; as a result, notaries enjoyed unequaled access to information about the wealth and income of individuals. Because smoothly functioning credit markets required reliable estimates of wealth and income, notaries were ideally suited to mediate between borrowers and lenders. On behalf of lenders, they could locate borrowers with enough assets to seem creditworthy; for borrowers, they could use their lender clientele to mobilize funds on short notice... Many lenders were of course unwilling to surrender control of their capital for a lifetime or conceivably in perpetuity as the annuities required, and obviously many borrowers needed loans for briefer periods. In such instances, the lenders and borrowers resorted to other sorts of contracts, some-the notes known as obligations-drawn up before notaries and others merely signed by the parties and not recorded by a notary (billets). The obligations might cover loans lasting less than one year or they might be renewed for five or ten years. Repayment could be demanded by the lender on short notice, and they were ostensibly interest free. Yet while the contracts could not legally mention any interest due, it is nonetheless clear that interest was charged on the obligations-indeed, often at a rate above the limit on rentes.*" (Hoffman et al., 1992).

234 "*[Merchant Courts] were run by merchants, they were in a better position to detect fraud and thereby distinguish criminal banqueroutes from mere faillites. As explained by the merchant duties of the Bureau du Commerce in a 1718 memorandum summarizing the demands for bankruptcy jurisdiction made by numerous merchant courts, merchants were better able to detect fraud 'because negociants know those among themselves who can be suspected of this fault;... [moreover,] because these frauds can be undertaken only by altering the various accounting books of the bankrupt and also of his creditors, one must have been a negociant, and a very experienced one at that, in order to make these kinds of discoveries.' The distinctive capacity of merchant courts to detect fraud would ensure that individuals engaging in it would be found — and the money they unlawfully converted thereby recovered for creditors — while also protecting the unfortunate individual of good faith from unjustified attacks on his reputation and pocketbook. By thus recovering funds for creditors and bolstering the reputation of the innocent, the merchant courts would in turn preserve the viability of credit networks and thereby sustain the vital social function of commerce."* (Kessler, 2007).

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235 "*Any examination of bankruptcy in the Old Regime must start from the distinction between a faillite, or innocent insolvency, and a banqueroute, or criminal bankruptcy. Dating back to royal legislation of the 16th century, and reinforced by the Commercial Ordinance of 1673, this distinction turned largely on an assessment of the debtor's intent, and in particular on whether he was deemed to be of good or bad faith. If the debtor had done his best to conduct business in a responsible manner — as attested by the fact that he had not overextended himself and that he had made every effort to pay creditors — then he was deemed a failli and could escape debtors' prison by turning his remaining assets over to the court, which would in turn arrange for their distribution among creditors.' In contrast, if the debtor had undertaken extremely risky investments, and even more damaging, had sought to defraud his creditors, then he was a banqueroutier, subject to criminal punishment—usually in the form of forced labor and shame sanctions. As the commercial jurist Masson explained, 'Faillite is the disorder of a negociant's business, caused by setbacks that render him insolvent... when he presents himself honestly before his creditors, explains his misfortune, [and] asks them for time or for remission [of the debt].' In contrast, 'The banqueroute of a négociant is a fraud to enrich himself by falsifying losses, by claiming more creditors than he has, by misappropriating part of his assets in order to give to his creditors only those which are the least liquid, and when he has succeeded in reaching an agreement with them, regaining an establishment that is more luxurious than ever with money that he stole from them; or if they do not agree to the transaction, leaving the country with their money.'*" (Kessler, 2007). "*The words Failure and Bankruptcy, although apparently Synonymous, are not however absolutely so in the French Language, either in legal or in common parlance. The word Bankruptcy, (Banqueroute) is considered as a term of reproach and disgrace, which is not the case with the word failure (Faillite). (l) The insolvent merchant whose losses have been occasioned by real misfortunes in the course of a fair trade, is simply said to have failed, and his condition in Law is expressed by the French participle failli. He, on the contrary, who by gambling, debauchery, or by rash speculations has unjustifiably wasted the property of his creditors, is de nominated by the appropriate term Bankrupt (Banqueroutier), and lastly, he who in either of these cases embezzles or secretes his property, or practices any fraud or imposition on his creditors is technically called a fraudulent Bankrupt (Banqueroutier fraud. wleux).*" (Cooper, 1801).

236 "*Fraudulent bankruptcy is punished with death... This extreme rigor was only the consequence of the legislation on theft. Fraudulent bankruptcy was assimilated to theft of the worst kind.*" (Martin, 1865).

237 "*Although the Commercial Ordinance of 1673 extensively regulated faillites and banqueroutes and required merchants undergoing either to deposit their accounting books with the local merchant court, it said nothing about which courts would have jurisdiction over such matters. Not surprisingly, this led to extensive jurisdictional conflict between merchant courts and ordinary courts — conflict that persisted throughout the 18th century, without either side achieving clear victory.*" (Kessler, 2007).

238 "*After the faillite, the Lettre de répit was the second entry to financial restructuring. It was granted by the King upon the demand of the debtor and allowed temporary relief in order to negotiate with the creditors. Although the ulterior negotiation followed very much the same steps as under the faillite, the initial decision came from the sovereign and was discretionary. Clearly, this instrument was perceived as twisting the arms of reluctant creditors and at substantial further cost to the debtor's reputation. Although, in the Middle Ages, the Lettres were very much an unconstrained royal privilege (like grace in the case of conviction), they became increasingly regulated after 1673. However, much evidence suggests that the Lettres encountered considerable and apparently increasing resistance: the 1789 Cahiers de doléances often called for their elimination, and the 1807 Code enacted it; they would be remembered, all over the 19th century, as the mark of a past, despotic government.*" (Sgard, 2009). "*Rather than evolving as a platform for renegotiation and debt discharge, as in France, English bankruptcy law emerged as a liquidation-only institution after majority arrangements among creditors were prohibited, in 1621. However, after 1705, good faith debtors could be offered a discharge, i.e. a form of limited liability... Under the Ancien Régime, debtors could also benefit from lettre de répit, which were granted on a discretionary basis by the Chancery and gave temporary relief to the debtor. Then was the cession, a Roman institution that re-emerged within the Civil (not Commercial) law. Finally, la banqueroute was the penal procedure associated with commercial failure in case of fraud. All legal commentators discussed in detail these alternative roads.*" (Sgard, 2014). "[*T]he Code of Justinian became the source of much controversy in the Middle Ages, but they were generally construed to permit the sovereign to issue orders staying court proceedings against individual debtors. This authority was sometimes used to decree moratoria for groups of debtors. The French kings in this way gave relief to persons indebted to the Jews and to crusaders. More often, however, debtors would buy grants of respite from the sovereign. The traffic in such indulgences became such an unbearable nuisance that it was abolished in France in 1560 [Ordonnances de janvier 1560, rendue sur les pleintes doleances et remonstrance des etats assemblées a Orleans]... A similar power to grant stays to individual debtors seems to have been exercised by the English Privy Council during the reign of the Tudors... Per contra, the general moratorium continued to figure as an indispensable safety valve in times of crisis.*" (Feller, 1933).

"*The similarity of [English bills of conformity] with the imperial intercession under the Roman law, and the French lettres de répit, striking...[France's 1673 Ordonnance du commerce] curbed also the practice of moratoria by royal decrees called lettres de répit (title 9) which had their origin in the Roman Law.*" (Riesenfeld, 1947).

239 "*The other possible outcome of the bankruptcy procedure is the union contract with 'abandonment of property.' The creditors agree by this contract to cease prosecution in exchange for the assignment of all or part of the debtor's assets. According to Antonetti, these contracts would provide more often, instead of judicial assignment, the definitive cancellation of debts that the asset sale would fail to repay [Antonetti, 1988, p7.] As with the procrastination contract, it is an agreement between the creditors and their debtor. The conditions of validity (agreement of the majority of 3 quarters in sum, approval by a civil court) are also identical. The consequence, on the other hand, is different, insofar as the contract dispossesses the debtor and prevents him from continuing his activity. It is then a question of starting the liquidation of the assets, with a view to which the creditors can be united by an ad hoc contract, the union or management contract [Dupouy, 1960, p171]... The procrastination contract or the abandonment of assets are procedures of the commercialist tradition which penetrate the corpus of public law with the Ordinance of 1673 [Antonetti, 1988; Hilaire, 1986, p311.] Public law also offers procedures for the judicial settlement of insolvency. These are typical procedures of so-called restrained justice, that is to say that the king, requested by a subject, intervenes directly in a civil procedure to suspend its effects or to grant a special pardon... What also leads us to believe that the use of the various procedural channels is distributed according to the sector of activity and according to the geographical situation, is that these channels involve judicial practices and diverse and sometimes concurrent legal cultures. Constraint by body is a classic way of enforcing civil law. The benefit of transfer or the suspension of stay fall within the*

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framework of the public law typical of the Old Regime: it is a form of 'justice retained.' Notarial contracts for procrastination or abandonment are part of a privatist or commercialist practice in favor in a fraction of the commercial world. At the intersection of these 3 legal cultures are consular jurisdictions, which represent as a privilege granted to merchants by the royal power a brand of the relative autonomy of the commercial world versus ordinary justice'" (Deshusses, 2008).

240 "*[T]he cession, was a direct legacy of an archaic form of collective action against debtors that originated in ancient Rome and then re-emerged in the Middle Ages within the Civil (not Commercial) law. The cession was specifically the most common instrument of debt relief for nontraders, who did not have access to la faillite; it would even be closed to traders after 1838. The logic was that the debtor surrendered all his goods and assets to his creditors, who then proceeded to sell them and to share the receipts on a pro-rata basis. The debtor was then freed both from prison and from the threat of future imprisonment, so that he actually would benefit from a 'fresh start.*" (Sgard, 2009). "*In the 16th century and early 17th century, various royal bankruptcy edicts were also issued. The first was that of King Francois I in 1536, and applicable to Lyon. Under the edict of 1536, provision was made for creditors to meet, and elect one or more 'deputes'—a kind of receiver or trustee—and a 'procurator' to conduct trials. Although one scholar claims that this edict brought Italian law to Lyon, another, more persuasively, contends that this and a series of other royal edicts were primarily punitive in purpose. There was a third strain to the law as well, which had first surfaced in France as early as the 13th century: cessio bonorum, or in French, la cession de biens. In an early period, this could only be obtained through the issuance of royal letters, but eventually such letters were issued as a matter of course. The practice was sufficiently common in France to support publication of a treatise on it in the late 16th century. La cession de biens became part of the first French national bankruptcy statute in 1673, and became, 'at least in the domain of civil law, the normal and regular insolvency procedure.' The principles were similar to those in Italy. If certain conditions were met —issuance of an order by a court, agreement by all or 75% of the creditors— then upon surrendering his goods, the debtor would be free from risk of bodily constraints. In theory, creditors retained the right to pursue property that the debtor latter acquired, but in practice the debtor could usually more or less resume a normal life.*" (Schick, 2006). "*In the case of England, scholars have insisted on a fundamental shift occurring with the Act of 4 & 5 Anne (1706). Although, by introducing the possibility of debt discharge, this has been hailed as a modern feature of the English bankruptcy system, the notion has been toned down recently, given that the possibility of debt discharge had been contemplated in urban or royal statutes of other European states, by way of the Roman cession bonorum, as early as the 15th century.*" (Antunes and Miranda, 2019). This is a stretch as one is an insolvency procedure agreed upon by creditors and followed according to custom, whilst the other is a permanent discharge of private obligations by the State.

241 "*[A]ll insolvent debtors were in principle subject to the collective procedure, but most technical bankruptcy rules applied only to traders, less for legal reasons than because in practice they could only apply to them.*" (Lévy-Bruhl, 1939).

242 "*As soon as a man is actually insolvent, the Law considers the property which remains in his hands to be no longer his own, but to belong to his creditors, who together are considered as being entitled to that property by a kind of partnership in which they are jointly interested pro rata of their respective demands. The first object, therefore, that the Law has in view, is to take that property out of the hands of the Bankrupt, and place it where it ought to be, into the hands of the creditors. But it is difficult, if not altogether impossible to know the precise moment when insolvency begins. There must therefore have been some overt act done or committed by the party to make his insolvency legally apparent, and to entitle the creditors to proceed against him as in a case of Bankruptcy. The Law of England has defined with the greatest precision what those acts are to be, because the commission of one of them makes the party ipso facto a Bankrupt. Not so the Law of France. Flight, (i) is the only act which draws after it the same effects as the commission of an act of Bankruptcy in England. If a merchant flies from his usual place of abode, his flight is considered an act of Bankruptcy in the English acceptation of the words, and as the French Law expresses it, from that moment the Bankruptcy is opened (la Banqueroute est ouverte). The Consular court will immediately on the petition of one or more creditors to any amount, order the seals to be affixed on the books and effects of the Bankrupt, in order to secure them to the creditors, and prevent any embezzlement, until they can meet and take order for the disposal thereof.*" (Cooper, 1801).

243 "*The emergence of new financial instruments fundamentally changed the way that commerce was viewed. The English monetary system was no longer based only on the coins of the realm, but was now something much broader, incorporating paper money, bills of exchange, and various financial instruments that underwrote merchants, the military and the state itself. The key impetus for these innovations was to enable the state to develop the financial resources necessary to sustain a protracted war with France. The economic crisis of the 1690s, caused by related pressures of the Nine Years War and the problem of England's silver coin, which was severely depleted by clipping, had to be addressed by Parliament and the Treasury. Although [BOE] was the first central bank to be designed from the beginning as a financial arm of the state it was limited in its functions insofar as it lacked the financial capacity to act as a lender of last resort and the legal authority to regulate the monetary sector of the economy. This means that in the 1690s, response to the situation took place through temporary commissions, such as the one served by Locke, Newton, Davenant, and their colleagues. In 1696, facing these monetary difficulties, England made the fateful decision to recoin all its silver currency. This decision eventually led to the economic policy that created the famed British Gold Standard and subsequently the International Gold Standard.*" (Larkin, 2009).

244 "*The period 1694-1712 was one of great financial innovation. In London, [BOE] had been established in 1694, the new [EIC], formed in 1698, then partially merged with the old company under the title 'The United Co of Merchants trading to the East Indies', was fully amalgamated in 1709, and [SSC] was formed in 1711. During this period insurance companies were founded in Britain and a wide range of land bank proposals, including those by Law, were made. In France, a new type of money, the billets de monnaie, was created in 1701 to help finance the Royal treasury... It is noticeable that Greg referred to just one project of John Law's, that proposed in Money and Trade, where he suggested that the initial note issue was to be £50,000 sterling The Scottish Parliament considered the specific proposals of Money and Trade in July of 1705 with Greg noting, in a further letter to Harley, that the Earl of Roxburghe had reminded the Parliament that Law 'had not dedicated his book to the Estates of Parliament, nor put his name to it'. The reference to Money and Trade suggests that it was the banking proposal of this work which the Parliament was considering. This seems to imply that Law wrote up the '1705 Act for a Land Mint' after the Scottish Parliament's refusal to accept the banking proposals as outlined in Money and Trade. Perhaps he felt that there was nothing to lose in making another proposal, but on this occasion he suggested that it would be subscribers from the private sector who would*

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assume the risk of operating the bank. Another possibility was that someone such as the Duke of Argyll, the Queen's Commissioner in Scotland, suggested that Law draw up an alternative draft proposal for a joint-stock bank. There was to be a later parallel to Law's dual banking proposals of 1705. This arose in France in 1715-6. Law's proposal for a state-controlled bank was rejected in 1715, but, undaunted, he managed, as has been shown above, to persuade the Regent to allow him to create a privately run joint-stock bank in May 1716. Unlike the French, the Scots rejected both of Law's proposals in 1705." (Murphy, 1997).

245 "*It should always be remembered that these legal niceties were immaterial to the great majority of transactions, where the trust was mutual and where no party had any thought of instituting litigation. Nevertheless, these developments, amounting to the full legal recognition of ordinary commercial practice, are evidence that this practice was already firmly established, and they in turn reinforced it. In fine, it is manifest that English inland trade in the period 1560-1660 was already conducted on credit and that the financial instruments chiefly employed were the old-established bills obligatory and the newly invented bills of exchange, the majority of both being informal until the legal developments of the second half of the 17th century.*" (Kerridge, 1988). "*Even in the middle ages, however, there were the beginnings of other forms of wealth, and as time proceeds commerce takes an increasing place in national life. Nevertheless for a long time it was the policy of the law to separate the two; it is curious to observe that merchants very nearly became an estate of the realm and occasionally we find what looks like a parliament of merchants; there was a chance that in England as in some other countries there might have grown up a House of Merchants in Parliament. The separation of commerce from the normal occupation of the nation was further emphasized by the fact that the merchants had their own organization and their own law. It is only as a result of many centuries of history culminating in the industrial revolution that these barriers were broken down; it is familiar knowledge that such bodies of mercantile law as those relating to bankruptcy and negotiable instruments for a long time pertained exclusively to merchants; indeed, a separate organization was set up to supervise the affairs of insolvent debtors who were not merchants and therefore outside of the law of bankruptcy. It was only as late as 1690 that the law considered the possibility of a non-merchant being a party to a bill of exchange [Witherley v. Sarsfield (1690), Show. 125].*" (Plucknett, 1956).

246 "*The holder for value was thus doubly protected, by the law merchant and by indebitatus assumpsit. None of this, however, established the legal negotiability of inland bills of exchange by the ordinary course of law as opposed to custom. Such negotiability only came in 16% with an obiter dictum from Holt, C.J., that such a bill, drawn to order, could be transferred by endorsement and delivery, that the title of a bona fide holder for value was not invalidated by defects in the title of the man who transferred to him, and that value-received should be presumed and taken as said. This rule was taken over by the Court of Chancery in 1697. Next year this negotiability of inland bills was established by statute, without any need to plead the custom, provided they were date bills, not sight or after-sight ones, but specifying payment on a particular date, which at this time was usually set so that, allowing for delivery, it fell about 20 days after sight, this being now a common usance for mere transfers of funds by 4-party bills as distinct from the payment of commercial debts. There was then also a requirement for protestation, which was to be either before a public notary, as with outland bills, or in default of such a notary, before some other substantial person in the presence of two or more credible witnesses. In 1705 inland bills of less than £20 were excused formal protestation and bills accepted in writing could be protested by the payee's servant, agent or assign. Full negotiability had finally arrived.*" (Kerridge, 1988).

247 "*Bills obligatory were a different kettle of fish. They were not on the same footing as bills of exchange, as Holt found in 1702, when he refused to allow an endorsee to sue on a promissory note. Sealed notes were good in law if payable to bearer, but not if payable to order and endorsed; and unsealed bills were not negotiable even if payable to bearer. The first common-law case recognizing the claim of a bona fide holder for value of a promissory note occurred in 1699, but it remained for the Act of 1704 to confer full negotiability on bills obligatory of all kinds.*" (Kerridge, 1988). "*The prevailing belief in the negotiability of the promissory note was upset by a decision of Chief justice Holt in the case of Clarke v. Martin (1703), but in the following year the matter was finally settled when notes were declared negotiable by statue.*" (Feavearyear, 1963).

248 "*The English in the year 1697 (not long after the publication of the French Ordinance) attempted to introduce the same system among themselves. An act was passed by the Parliament (8 & 9 W. 3 Ch. 18) entitled 'An act for the relief of creditors, by making compositions with their debtors, in case 66% in number and value do agree.' But that act lived but a very short time; it was repealed a few months afterwards by 9 & 10th W. 3. Ch. 29—the preamble of this latter Statute recites that the act which it repealed 'had not answered the end for which the same was intended, in regard that notwithstanding the provisions in the said act for preventing fraud, in the making of such compositions, many fraudulent practices had been committed by making pretended agreements with persons who were not real creditors, and for greater advantage, than what were expressed in such compositions, which practices had (as there was just cause to fear) occasioned much perjury.'—A single case appears to have been decided in the courts of law in England under that Statute, which is reported in I Lord Raymond 383, and in Salk 99; Anonymous. It was a question of Bail in which it was determined that a non-subscribing creditor might hold his debtor to bail, notwithstanding his having made a composition with others of his creditors to the number and amount prescribed by the act, unless the plaintiff had before action brought, been summoned before a judge, according to the directions of the Statute, which proceeding, it seems was analogous to the homologation by the Parliaments under the French Ordinance. A similar decision was given in Pennsylvania in the year 1788, by the Court of Common Pleas of Philadelphia County. Defendant had become a Bankrupt in France and his composition had been signed by 75% in value of his creditors, but had not been homologated by the Parliament—The court determined that the plaintiff being a non-subscribing creditor, had a right to hold the defendant to bail, on making the usual affidavit of a subscribing debt. Gorgerat vs. Macarty. 1. Dall. Rep. 366.*" (Cooper, 1801).

249 "*On Sat, Feb 10, 1705, Thomas Pitkin met with his business partner, Thomas Brerewood, in the Swan Tavern in Cornhill, in the heart of the mercantile district of London. The men met to pull the trigger on a fraud that had been at least 9 months in the making. After the meeting, Pitkin would leave London, absconding first to Scotland and later to Holland, and setting in motion an economic panic, an international manhunt, and a reform of English bankruptcy law.*" (Kadens, 2010). Defoe noted a deadness of trade that had preceded the Pitkin scandal: *"[A] multitude of circumstances too many to reckon up here, fell heavy upon trade, which added to the general obstruction of the Spanish trade, and deadness of our manufactures, had among others this most necessary consequence, that an unusual number of trades-man, as well merchants as others, sunk under the calamity, and became bankrupt.*" (Defoe and Hazlitt, 1843).

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[250] "*Defoe thought that the bill was more immediately precipitated, however, by the failure of one Thomas Pitkin, a linen draper who had broken 'for a very great sum of money, and that with all the dark circumstances of a designed fraud.'*" (McCoid, 1996). "*[I]t seems requisite, in the first place, to give a short history of the bill for its first rise in the House of Commons, to its Commitment by the Lords, viz. The original cause and ground of it, was that notorious fraud of Mr. Pitkins and his accomplices, which has made so much nose in the world; for upon this, his creditors made their application to the Parliament for some remedy, to prevent the fatal consequences that were likely to attend trade in general, and themselves in particular.*" (Bragg, 1706). "*[Since the 1620s,] The argument that fraudulent bankrupts should be treated as felons did not die out. In a petition to the House of Lords around 1696, the merchants of London suggested that it 'may be very useful in a Law to be made for time to come, whereby it may be made Felony for Debtors to [e]mbezel their Effects, or to abscond themselves...' In the chapter of his 1697 book, Essays Upon Several Projects, proposing bankruptcy reforms otherwise highly favorable to debtors, author and political commentator Daniel Defoe recommended that any merchant or trader demonstrating fraudulent intent either by absconding upon becoming insolvent or by failing to cooperate with the bankruptcy process should 'be guilty of Felony, and upon Conviction of the same, shall suffer as a Felon, without Benefit of Clergy.' That the death penalty after so much time finally became part of the bankruptcy law in 1706—at exactly the moment Parliament made an abrupt policy about-face and decided to offer the bankrupt the carrot of discharge—can be explained as a response to a very public scandal involving the massive financial scam that two London merchants, Thomas Pitkin and Thomas Brerewood, nearly pulled off in 1705. The anger and frustration of lawmakers and creditors over their inability to scare Pitkin and Brerewood into making a full and honest disclosure and restitution of the money they had stolen boiled over into a series of parliamentary statutes, one of which was the 1706 Act of 4 & 5 Anne... [Statues] 4 & 5 Anne, c. 17, the parliamentary session began in Oct 1705, but the act only passed the two houses of Parliament and received royal assent in March 1706. In the statute books, the statute would be dated 1705... A further wrinkle makes dating even more complicated. Until 1752, the English used a modified form of medieval dating in which the first day of the new year was March 25. Because the Act of 4 & 5 Anne was passed on March 19, its year of enactment was 1705 under the old-style dating system.*" (Kadens, 2010). "*The first watershed event in the Anglo-American history of the bankruptcy discharge occurred in 1705 when Parliament, in the Statute of 4 Anne, enacted the first provision enabling an honest and cooperative bankrupt to obtain a discharge from prebankruptcy debts. Paradoxically, given its historical importance in the evolution of a more humane treatment of distressed debtors, the statute probably was motivated largely by concerns for creditors' welfare, and may have had only a limited beneficial effect for most debtors. When enacted it contained a sunset provision of only 3 years, and was apparently intended as only a temporary or trial measure. Furthermore, efforts were made almost immediately to lessen the utility of the provision for debtors. Nevertheless, the statute's importance remains, as the step was never fully erased.*" (Tabb, 1991). "*[P]arliament had acknowledged the existence of unfortunate bankrupts in James I's reign without feeling compelled to give them concessions (as has been shown), and a similar concern for the creditor's interests was largely responsible for the initial meliorating statute in 1705. When introduced to parliament, in response to the notorious frauds of Thomas Pitkyn in 1704, this measure was intended simply to increase the penalties for dishonesty, but several M.P.s, influenced by the heavy losses recently sustained by traders as a result of the French wars and storms, proposed additional clauses for the relief of honest bankrupts. These were adopted because of the conviction, previously hinted at in the 1624 act, that a law which was 'all Penalty and no Reward' was self-defeating: by compelling bankrupts to relinquish all property to some creditors and then exposing them to perpetual imprisonment by others, it encouraged evasion even by traders who would otherwise be willing to cooperate. In other words, what had changed was parliament's perception not of the object of the process but of the methods by which it could be attained. This is confirmed by the statute's title—An Act to Prevent Frauds Frequently Committed by Bankrupts—and preamble, which describes the reasons for its enactment as follows: 'many persons have and do daily become bankrupt, not so much by reason of losses and unavoidable misfortunes, as to the intent to defraud and hinder their creditors of their just debts and duties to them due and owing.' The titles of related early 18th-century statutes are similar, and their more informative preambles clearly reflect the view that the severity of the old system fostered the very abuses it was designed to eradicate*." (Duffy, 1980).

[251] "*The Act of the 4th & 5th of Anne drew the link that connected the Chancellor with bankruptcy a little closer. It gave authority to the Lord Chancellor, or Lord Keeper, or Commissioners of the Great Seal, to enlarge the time, for the bankrupt surrendering. This act too, for the first time, introduced the bankrupt's certificate of conformity, which was to be granted by the commissioners, and allowed and confirmed by the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal, or by such two of the judges of the Court of Queen's Bench, Common Pleas, and Exchequer, to whom the consideration of such certificate should be referred by the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal, for the time being; and it is remarkable, that so little did former Lord Chancellors consider the business in bankruptcy to be the province of the Great Seal, that before Lord Ilardwicke's time they referred all certificates to the judges. The act of the 5th of Anne first introduced assignees, chosen by the creditors, to whom the commissioners were required to assign the bankrupt's estate and effects. It also required the petitioning creditor to give a bond to the Great Seal as a security for proving his debt, and that the party had become a bankrupt at the time when the commission was taken out. The Lord Chancellor, as it has been before observed, was in the habit of requiring such a bond to be executed before the passing of this act.*" (Cooper, 1828).

[252] "*The first watershed event in the Anglo-American history of the bankruptcy discharge occurred in 1705 when Parliament, in the Statute of 4 Anne, enacted the first provision enabling an honest and cooperative bankrupt to obtain a discharge from prebankruptcy debts. Paradoxically, given its historical importance in the evolution of a more humane treatment of distressed debtors, the statute probably was motivated largely by concerns for creditors' welfare, and may have had only a limited beneficial effect for most debtors. When enacted it contained a sunset provision of only 3 years, and was apparently intended as only a temporary or trial measure. Furthermore, efforts were made almost immediately to lesson the utility of the provision for debtors. Nevertheless, the statute's importance remains, as the step was never fully erased... 2 very important limitations on the scope of the first discharge law must be noted. First, only 'traders' were eligible for treatment under the bankruptcy laws. Since a discharge of debts was available only in bankruptcy, non-trader insolvents had no opportunity to receive a discharge. This limitation says much about 18th-century attitudes towards the moral propriety of the use of credit and the general lack of sympathy for debtors.*" (Tabb, 1991). "*On March 19, 1706, during the reign of Queen Anne, Parliament passed a bankruptcy act containing a provision for the discharge of the debtor from prebankruptcy debts as a feature. The event, if not the precise date, is well-known, of course, and there has been occasional speculation about what prompted it. Some have suggested that it can be attributed to a belated recognition that not all debtors are scoundrels*

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and that the discharge was designed to benefit the honest ones. Others, pointing to the fact that a discharge was available only in bankruptcy, which in turn, was limited to traders and merchants and could only be initiated by creditors, have argued that the discharge was simply a carrot to induce those in trade who became insolvent to cooperate in supplying information about assets and dealings for the benefit of their creditors." (McCoid, 1996). "*The Statutes of 4 Anne, c. 17 (1705), and 10 Anne, c. 15 (1711), permit an allowance for maintenance to he made to a bankrupt who surrenders, and, even more important, grant him a 'discharge' from all debts owing at the commencement of his bankruptcy. It is the feature of the discharge -that has caused some writers to regard these statutes as the earliest English bankruptcy laws... The Acts of Anne provided that honest insolvents should be granted their discharge if they complied with the requirements of the law. This provision was probably the consequence not only of pity, but also of the feeling that mercantile credit is given in the interest of the creditor as well as of the debtor; that the giving of credit necessarily involves some risk; that it should be the business of the trader to insure against this loss by adding on a percentage for the credit which he advances; and that all the debtor ought to pledge is his estate, not his future earnings, and certainly not his personal liberty.' By the Act of 4 and 5 Anne, c. 4, the bankrupt was entitled to his certificate without any opposition by the creditors, upon the adjudication of the commissioners. The granting of the discharge was regarded as a judicial act to be exercised by the commissioners, the bankrupt being entitled to his discharge when the majority of the commissioners certified to the Great Seal that the bankrupt had conformed with the law. With the introduction of the discharge, English law had all the elements of modern bankruptcy*." (Levinthal, 1919).

253 "*During the latter half of the 17th century a variety of insolvency laws were enacted which were designed to enable imprisoned debtors to secure release from prison, but not a discharge of their debts, by surrendering up their estates and taking a poor debtor's oath. But these laws were of limited application and were not very effectual. Finally, in a bankruptcy law of 1705, which again provided for involuntary proceedings only, some concessions were made to the debtor. He was allowed to keep, as exempt property, necessary family wearing apparel. And if he honestly surrendered up his estate to the commissioner and made a full disclosure of his affairs he was granted a discharge of his debts (a feature still unrecognized on the Continent except when creditors agree to a composition), and allowed to retain as an additional exemption 5% of the estate not to exceed £200 in a case where the estate paid a dividend of at least 8 shillings on the pound to creditors-if the dividend to creditors was less, the commissioner was to determine what the additional exemption should be. But no 'privilege, benefit or advantage' under the law was to extend to any bankrupt who had made a marriage settlement on a child of more than £100 which left him insolvent, or who had lost at gambling £5 in one day or £100 in the aggregate in the year preceding bankruptcy. The bankrupt who did not honestly surrender up his property and disclose his affairs was, under this law, to be 'adjudged a fraudulent bankrupt' and a felon*." (Countryman, 1976).

254 "*There are 2 broad principles upon which a bankrupt-law should be based, to divide the debtor's property equally among his creditors, and to discharge him from the unpaid residue of his debts. The former of these principles rests upon strict justice and is universally recognized upon the Continent, as well as in England and the United States. The latter rests upon grounds of public policy and expediency, as well as of humanity, and is by no means so generally adopted. Viewed from the standpoint of the public interest, the theory of a discharge is that an undischarged bankrupt, burdened with the incubus of debt, will have no incentive to gain more than a mere livelihood, nor will he be likely to receive assistance from relatives or friends, when hordes of hungry creditors stand ready to pounce upon his acquisitions. The creditors, therefore, will reap no advantage from such a condition of affairs. On the other hand, the discharged bankrupt will begin afresh with renewed courage, and the community will not be deprived of his industry. A discharge will, of course, on this theory, be refused to a fraudulent bankrupt, since his labors are not deemed of any value to the community. The idea of a discharge is not generally approved upon the Continent, but has become firmly embedded in the laws of England and the United States*." (Dunscomb, 1893). "*To this day, though, 'bankruptcy' in the Netherlands offers not relief for debtors, but a general collection device for creditors. Dutch 'bankruptcy' proceedings conclude with unpaid creditors retaining their right to pursue the debtor for life, seizing any property beyond the small modicum of assets shielded as 'exempt' from creditors' claims. This is 'bankruptcy' old-European style. The guiding principle is not the U.S. 'fresh start,' but the old Roman maxim 'pacta sunt servanda'—contracts must be fulfilled. Only through a new agreement with creditors to replace the old defaulted obligations could debtors escape lifelong liability*." (Kilborn, 2006).

255 "*By the time the Act of 4 & 5 Anne passed the two Houses of Parliament and received royal assent in March 1706, it had morphed into a major reform of bankruptcy law. In addition to introducing capital punishment and discharge, it made important procedural changes, such as requiring the commissioners to hold 3 creditors' meetings to help organize the process of proving debts and examining witnesses... Made a capital offense in 1706 by the Act of 4 & 5 Anne, the crime of fraudulent bankruptcy was statutorily defined as a debtor's failure to cooperate fully with his creditors by appearing before the bankruptcy commissioners and disclosing all of his assets after becoming a bankrupt… The idea of discharge did not originate in 1706. In 1662, Parliament had considered a bill relieving debtors worth less than £10 of their debts upon their relinquishing 66% of their assets. The string of composition acts repeatedly proposed in the last quarter of the same century had also assumed a proceeding analogous to discharge, though within the context of contract rather than bankruptcy. Defoe had called for discharge in his 1697 book... and his newspaper... in favor of bankruptcy reform during Feb and March 1706, were at the peak of their influence at the time of the 1706 debate... honest disclosure of his assets. The bill was sent back to the Commons with this amendment and was passed into law on March 19, 1706. Within a month of the passage of the Act, the number of docketed commissions of bankruptcy skyrocketed. In 1705, an estimated 159 commissions were opened; in 1706, that number grew to 567. Bankruptcy commissions did not reach 1706 numbers again until the 1770s. Breaking 1706 down by quarter shows the impact of the Act even more dramatically: Q1, prior to the passage of the Act saw 31 commissions issued; quarter two, during the period when the Act was available retroactively, saw 91; Q3: 166; and Q4:, 279. Unfortunately, easy discharge would not last. In Jan 1707, less than a year after the passage of the Act, the House of Commons received a petition from the merchants and traders of London complaining that, notwithstanding the Act, 'there are still carried on divers notorious Frauds (and it may be feared) willful Perjuries, and secret Evasions of the said Law, to the manifest Prejudice of Trade, and the endangering of the Nation's Credit both at home and abroad.' A committee was immediately created to investigate abuses of the new bankruptcy law. In early Feb, the Commons received a petition from the company of mercers, grocers, apothecaries, and haberdashers of the city of Worcester complaining that the bankruptcy bill 'hath been made use of by fraudulent Persons, to the Damage of their Creditors,' and asking that the bill be amended... On Feb 27, 1707, exactly one year after the first bankruptcy act with discharge was*

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introduced, the Commons received a bill to amend the 1706 Act. A key change was the requirement that 80% of the creditors in number and value consent to the bankrupt receiving his certificate of discharge. The Commons passed the bill in late March, sending it to the Lords, who considered but refused several proposed amendments in favor of debtors, and returned the bill unaltered with their assent on April 4. Again the impact on the opening of bankruptcy commissions was immediate. In the first quarter of 1707, before the new law was in place, 149 commissions were opened, but in Q2 only 64, in Q3, 36, and in Q4, 49. The numbers remained well below their 1706 peak in the following years....The 2 acts of Anne were both set to expire in 1709 but were extended until 1716, when they were permitted to lapse [7 Anne, c. 25 4 (1708 [1709]).] " (Kadens, 2010). "*The second leg of the legal origins argument would state that after equity principles had been defeated, in 1621-4, a super-strong definition of creditors rights would have shaped the long-term evolution of the institution in ways permanently favorable to market discipline. The initial problem raised by this reading is that during the 17th century, the fate of bankrupt debtors in England proved quite dire, more so even than under classical debtor Roman law. If any unpaid debt remained after the procedure was closed, then any new resources (e.g., an inheritance) acquired or earned by the debtor could be seized. He could also be returned to prison by any creditor and would stay there as long as the latter was willing to pay for his incarceration. Business risks were further compounded by the Common law's resistance to partnership's limited liability of the commenda type. Hence a great number of pamphlets against the 'strictness' of debtor law can be found. The proposal to once again allow judicial confirmation of majority arrangements actually experienced a revival during the last two decades of the 17th century. Attempts to reintroduce it were made in 1679, in 1693 and in 1696-7, along with ad hoc measures of debt relief (in 1649-54, 1670-2, 1678, 1690, and 1694). 26 The breakthrough occurred in 1705 with the Act of Anne, that brought more balance into the institution: if the debtor transferred all his assets and acted cooperatively, and if 80% in sum of creditors agreed, then he would be discharged of his residual liabilities and his old debtors could no longer throw him in prison or seize his (new) assets. Ironically, the overall intention of lawmakers at the time was repressive: as showed by Kaddens (2010), they first introduced death penalty, as a threat raised against uncooperative debtors, and they added discharge at a late hour, as a balance. Still, in hindsight, the Act of Anne introduced a form of limited liability which main beneficiary was the proverbial 'honest but unlucky trader' – whether he traded on his own or within a partnership. In later decades, and along the usual complaints about costs and corruption, the notion then gained prominence that this 'fresh start' approach had major social benefits. In the much-quoted commentary of Blackstone: 'Thus the bankrupt becomes a clear man again; and... may become a useful member of the commonwealth' (1811, p488).*" (Sgard, 2014). "*Statutes of 1705 and 1706 produced a major change in the bankruptcy laws. For the first time, a distinction was made between the fraudulent and the honest bankrupt, the man whose failure was 'his misfortune and not his fault.' A new stick and carrot situation was created where honesty was rewarded and fraud punished by death or, as one contemporary put it, 'all that run away shall be hanged if they are caught, and all that surrender cleared, if nothing is made out against the truth of their discovery.' Those bankrupts who surrendered them-selves within 30 days of notice and made a full and honest declaration of their affairs were given a certificate discharging them of the balance of their former debts. They were also entitled to be given 5% of their net estate if the dividend paid was more than 8s. in the pound, to a maximum of £200. Such leniency was too much for many contemporaries and the law was modified in 1706 in 2 important ways. It was first declared that no one could become bankrupt unless he owed £100 to 1 creditor, £150 to 2 creditors or £200 to 3, thus barring small men from the benefits of the new act and, secondly, discharge certificates could only be issued if 80% of the creditors in number and value signed them, thus once again opening the door to the malicious who could keep his body, starve him, and never let him out of prison unless they and 80% parts of them in number and value voluntarily please to agree to it.*" (Grassby, 2002).

256 "*Parliament added to the Companies whose members were free from the threat of bankruptcy, as long as their failure only came from their interest in the companies... [as well as] farmers, graziers, drovers of cattle or anyone who is or has been a Receiver General of Taxes granted by Parliament are also excepted. [6 Anne, c. 22, §8 (1706-7). By 7 Anne, c.12 (1708) special protection was given to ambassadors and public ministers of foreign states. §5 of that Act, however, specifically excludes from such protection merchants or traders otherwise liable to the bankruptcy acts who placed themselves in the service of such ambassadors or ministers...]*" (Cadwallader, 1965). "*Provided always and it is hereby further declared and enacted by the Authority aforesaid That no Farmer Grazier or Drover of Cattle or any Person who is or hath been a Receiver General of Taxes granted by Parliament shall be entitled to any of the Benefits given by this or the said late Act made in the Fourth and Fifth Years of Her Majesties Reign nor be deemed a Bankrupt within the same or any former Acts made against Bankrupts Any Law Custom or Usage to the contrary notwithstanding*." (Luders, 1963).

257 "*There had been a considerable amount of discussion, both in Parliament and in various publications, as to the policy of dealing with forfeited estates in Ireland. At first these had been disposed of by grants from the Crown, but it was contended such grants should be 'resumed' and the lands sold for the benefit of the public, in order to reduce the debt occasioned by the military operations in Ireland after the Revolution. At length on July 16, 1702, it was announced that the forfeited lands would be sold on Oct 20t and following days. The company, that then owned the [BB] charter, decided to come forward as a purchaser. As the amount required would be large, the question naturally suggests itself as to how the court proposed to raise the capital required. The adopted was that of [BOE], the Million Bank and a number of other undertakings of the period. The great want of the time was actual cash; and, since the government would accept payment in its own obligations, it was decided that the company should invite persons, holding Army Debentures, to subscribe these, receiving the company's stock in exchange, while the Debentures were returned to the State, in payment of the purchase-price of the estates. By June 25, 1703, £0.15 M of Debentures had been subscribed, and a fresh subscription was taken. In all, estates, returning £20,000 a year, were purchased, including widely scattered lands with a very extensive acreage. The inducement for persons, holding Army Debentures, to exchange them for [BB] stock was that they replaced a government, by a landed security-the latter being generally held more desirable at the beginning of the 18th century. Interest on the various government debts was often in arrear, and the rents from the Irish estates ought to have provided an income, at least not more uncertain. Prom the point of view of the security of capital, the scheme seemed equally promising. The forfeited estates were being disposed of by a forced sale, and it was only to be expected that, with more settled political conditions, the land would increase in value. On the other hand, the Army Debentures were below par, and therefore it would seem to be wise to exchange a depreciated security for one which would be likely to improve in price. Such a calculation was on the whole borne out by the quotations of the 2 stocks—[BB] touching 91.75 in 1704, whereas the highest price of the Debentures was only 85, on the other hand the former stock fell rather lower than the latter, so that the average price of the year was practically the same —81.4 for [BB] stock and 81.5 for the*

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unconverted dbentures. The company was thus thrown back on its land-development enterprise, and it had purchased estates to the value of £208,867.5s.10 ¼ d, besides paying off encumbrances amounting to upwards of £0.26 M. Feeling in Ireland was opposed to the corporation, and suits were against it in the Irish courts on the question of title. The company contended that the act of the English Parliament guaranteed it a clear title, irrespective of the original deeds, and a further act was passed in its favor; but the Irish House was hostile; and, in 1708, it was known that it would not suffer the company to enjoy the estates, unmolested, whereupon the stock fell to 51. During the next 4 years the lands were being resold and the company wound up. There was some improvement in the market for the shares, which touched 69 on March 1, 1710, but fell to 58 in July and Aug 1711." (Scott, 1912).

258 *"Meanwhile the loans, made to other purchasers of Irish estates in 1704-9, had suggested a new class of business. Not only was money advanced, but notes were issued and cash received on deposit, and it was alleged that [BB] had aided a run made against [BOE]. When the bill was drafted for restraining all corporations from banking, with the exception of [BOE], this undertaking protested vigorously, urging that the competition of the 2 companies had resulted in bringing interest lower than it had been since the Revolution. This protest was ineffectual, and [BB] undertaking was debarred from banking, as a corporation, after 1708... In fact the enterprise carried on from 1704-1 was very closely connected with [BB] in many respects, and [SCC] may be considered from one point of view as the continuation of the former. In both there was the same idea of converting government debt into the stock of a trading company, and it may have happened that some of the securities, released by the sale of the Irish estates, were re-subscribed at the floatation of [SCC]. It was undoubtedly the experience gained in the earlier undertaking by Elias Turner, Jacob Sawbridge and Sir George Caswall which aided in determining many of the financial methods of the later one. These 3 were in partnership in stock exchange transactions, and they were described as 'having so many bear-skins pawn'd to them at a time, so much stock deposited with them upon bottomrée, as it might be called, that indeed they may be called the city pawnbrokers; and I have been told, that they have 50 stockjobbers and brokers bound hand and foot and laid in heaps at their doors at a time.' [In this passage the early use of the term 'bear' is interesting, cf. Chimera (1720), 'the first bite Mr Laws may be said to have put on the country was to give out by way of premio 10 K pistoles or thereabouts at the rate of - % for the refusing of Mississippi or West India stock, now subscribed and full, at 100 livres each action for a years time: This was what we call the buying of the bear-skin and was a dear bear-akin to those that sold it, as we shall hear presently.' A 'bear' of stocks was described as 'a bear-skinned man.']*" (Scott, 1912). "*Their first Blow was aimed at [BOE], but there they were outwitted and the Great Lord-Treasurer Godolphin, in the late Reign, gave them their just Characters from that Action. The Defeat they met with there, sticks so close to them, that they reserve the Measures of their Revenge, nor to cool, no not till the Charter of the Bank shall expire. However, their Wings being clipt by the Clause then obtained in an Act of Parliament, (viz.) That no Society, Corporation, &c. should issue out Bills of Credit as a Bank, but [BOE] only; they were obliged ever since to turn Stock-jobbers, or if we may speak properly of them, they are the Stock-jobbers Masters; for they have so many Bear-Skins pawned to them at a time, so much Stock deposited with them upon Bottomrée, as it might be called; that indeed they may be called the City Pawn-Brokers: And I have been told, that they have had 50 Stock-Jobbers and Brokers bound Hand and Foot, and laid in Heaps at their Doors at a time.*" (Defoe, 1719). "*[BOE] had been set up 2 years before that case began, to lend £1.2 M to the government. On the interest of this loan, [BOE] seemed to think itself entitled to lend to private persons without limit by means of promissory notes, and the issuing of notes, soon of fixed denominations, became much more important for it than deposit business. An act of 1708 (7 Anne, c. 7) gave it a virtual monopoly of note-issuing and forced private banks to rely on cheques, which had the advantage, anyway, that clients could make them payable to the exact sums required [Holden (p327-8), Costin and Watson (1961, p271-8), Ashton (p178-9).]*" (Harding, 1966). *"[BOE] stock was the first stock to appear on a permanent basis and the one that has constituted our longest-lived security traded on the London Stock Exchange for two and a half centuries. According to Scott, 'the 10 years from July 1697 to July 1708 constitute a new epoch in the history of the Bank... It was now to experience the benefits of peace and the mitigation of rivalry.' This period began with an engrafting of £1,001,171.5 onto the bank's original £1.2 M, the result of the bank funding for a limited period an equivalent amount of government debt. At intervals over the next 10 years, this engrafted stock was gradually paid off as the government repaid its debt to the bank. In March 1707, however, in order to meet fresh demands upon it by the government, the bank declared a 50% call on the original stock plus the engrafted stock, paid out nearly £100,00, to the existing stockholders, and ended up with a new permanent capital of, once again, £2,201,171.5. At the height of the pressures caused by the war in the years 1709-11, the bank successively doubled its stock, added 15%, and then added another 10%, so that it entered our next period of analysis with a capital stock of £5,559,995.75. "* (Neal, 1990).

259 "*English debt history during the 18th and early 19th centuries is rich in the lottery device... Up to 1731, money was raised through the sale of lottery tickets. An amount of debt at least equal to the proceeds was offered as prizes. These lotteries can be referred to as 'lottery loans.' In some cases, more than the proceeds of the lottery was funded. For example, in the first lottery of 1711, £1.5 M was raised by the sale of 150,000 lottery tickets at £10 each. Terms provided for repayment of this sum plus an additional sum of £428,570 at the end of 32 years, both at 6 % for 32 years. Similar methods of borrowing were followed, once again in 1711, twice in 1712 and in 1713 and 1714... For the most part lottery loans appear to have been a relatively expensive method of borrowing. The effective rate on the loan of 1694 was 11.5%; on the loan of 1710 and the first of 1711, 8.3%.; on the second in 1711 and the two in 1712, 8.7%. There is a continued fall thereafter toward the rate of 3 % reached in 1726. This is shown in Table I. Debt operations between 1694 and 1784 can be subdivided into debt lotteries, other public loans, debt transactions involving [BOE], and those involving other companies.*" (Cohen, 1953).

260 *"Since its publication in 1938, DuBois's The English business company has been the basic survey of all matters legal, organizational, and financial for the 18-century British business corporation. DuBois's opinions on the general enforceability of 18-century subscription contracts are quite relevant to the specific cases of [SSC] and other companies in 1720. In a few passages he makes his basic points and concludes, 'It is clear that no common law right of action was recognized and that, if a right to sue existed at all, it was believed to rest upon the privilege granted by the act of Parliament. Moreover, it was thought essential for the success of the action that the procedure for making of calls, prescribed in the act, be carefully and painstakingly followed.' Whether the historian agrees or disagrees with DuBois, his study is still the basic starting point for a study of 18-century subscription contract enforceability and it must be cited and discussed."* (Shea, 2007a).

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261 *"[RAC was] Subject to repeated attempts at bankruptcy settlements, which kept failing for want of clear legal precedence or act of Parliament..."* (Neal, 1993). *"[RAC] received a royal charter in 1672 giving it a legal monopoly of English trade along the coast of Africa from modern-day Senegal to Angola and between Africa and the West Indies... [and] was a profitable venture through the 1670s and 1680s. Although we have no consistent share price series for this period, the few documented prices are all well above par, reaching £173 at the end of the 1680s. The wars of the 1690s led to serious losses and, by the end of the decade, the price per share had fallen to £14.8 As a result of its financial problems, [RAC] began to license traders for the African and West Indian trade, which over time resulted in a dramatic decline in its market share (Carlos and Kruse, 1996). From 1700 to 1712, [RAC's] financial situation worsened even though [RAC] sought new capital to taxing its existing shareholders, requiring them to hold [RAC] bonds. Despite these actions, [RAC] was essentially bankrupt by 1712. The price of [RAC] shares was £2 on a book value of £100. Rather than winding up the business, [RAC] underwent a major financial reorganization, dramatically writing down the existing capital stock and exchanging all bonds outstanding for shares. [It was very difficult to wind up a joint-stock chartered company because there was no defined mechanism for doing so.] As a result of the reorganization, the book value of the capital stock of [RAC] was written down to [£0.45], with approximately 4500 shares. Share prices rebounded to £60 but then stabilized in the £20 range from 1715-20. [RAC] share price began 1720 at £24 (Scott, 1910b, p28–35). The pattern of dividends paid to shareholders mirrors the pattern of stock prices and [RAC's] financial circumstances. From 1676 to 1682, [RAC] paid annual dividends of 10.5% on the par value of its capital stock. During the 9 years from 1682 to 1691, it paid out 5 dividends of roughly the same amount. The following year, it paid 3% on the new capital, which was equivalent to 12% on the old capital. For the next 10 years, no dividends were paid. Then starting in 1702, [RAC] paid 0.5% for 3 years and 1.5% in 1706 and 1707. Thereafter no further dividends were paid to the shareholders (Scott, 1910b, p33-5). Thus, on the eve of the South Sea Bubble, [RAC] was a trading company with a checkered financial history."* (Carlos et al., 2002). *"This mode of finance as well as the pressure of loans generally on [RAC] at a critical period of its history was a more serious hindrance to its prosperity than the losses of the war or the competition of the separate traders. If the increment of capital from undivided profits in 1691 was bona fide it had confessedly been lost; thus the real capital of [RAC] was actually less than the loans for which it was pledged. In 1710 [RAC] presented a valuation of their assets to Parliament in which its quick stock (including debts due, apparently both good and bad) negroes and stock only amounted to [£0.3 M]. It is true that the total was swelled to [£0.52 M] by an exaggerated estimate of the dead stock (forts, etc.) at [£0.24 M]; but whatever may have been the value of the latter, it is obvious that the bonds were ill-secured both as to principal and interest. Early in 1708 bonds were sold at 84, and later in the year when interest could no longer be paid, according to one account as low as 30. The embarrassment of [RAC] was reflected in the price of the stock which touched 4.9; in 1708 and fell as low as 2.6, 2.5, 2.1, 2.3 in the years 1709 to 1712 respectively—thus at the lowest price [£1 M] of capital was valued at no more than £21,500."* (Scott, 1910b).

262 *"Obviously, the time for reconstruction had come, indeed the re arrangement of the capital account had been too long delayed. In Jan 1709 the governor and assistants had petitioned Parliament for the restoration of the privilege of exclusive trade, and for the next 2 years this question was under the consideration of the House. At first there was some difficulty in arranging a reconstruction owing to the necessity of providing fresh capital in a way that would be acceptable to the creditors, who were not willing to take new stock for their debts. The company professed itself ready to raise [£0.5 M] as an additional stock and undertook to write down the existing capital to its present estimated value... Meanwhile the condition of the company's finances had gone from bad to worse. The assistants in 1712 spoke of its difficulties 'as being without precedent or parallel.' It had in fact come to the end of its resources, having 'mortgaged both its stock and credit' and there was no way out of the 'labyrinth of debt' in which it was involved. Finally, in Sep 1712 a reconstruction scheme was at last agreed to which was sanctioned by Act of Parliament.' According to this scheme the capital was to be written down by 90%, thereby reducing it to practically the same amount at which it stood at the formation of the company in 1672. The stockholders, before receiving stock in the reorganized company, were to pay a call to provide working capital and the money due on bond was to be paid by an issue of new stock to the bond-holders at par. There is some uncertainty as to the amount of new stock distributed amongst the members and the rate of the assessment. In the 10 years since 1702 there had been a reduction in the capital from £1,101,050 to £1,009,000 through forfeitures for non-payment of calls. This capital of £1,009,000 was exchangeable for new stock at 10% of its face value. An assessment of 5 % on the old capital or of 50% on the new was made and in this way £50,450 working capital was provided. Thus, the total amount of new capital available for the old stockholders was £151,350... From 1715-8 the company continued to be unfortunate. The lowest price of each of the 4 years was only 15 or 16 for the reduced capital, thus repeating those from 1697 to 1700 for the old. A further instance of the ill-luck of the company came in 1720 when an issue of capital, known as the 'engrafted stock,' was made at a low price, and within a few months the quotation had risen from 23 to 185."* (Scott, 1910b).

263 *"The 2 acts of Anne were both set to expire in 1709 but were extended until 1716, when they were permitted to lapse [7 Anne, c. 25 § 4 (1708 [1709]).]"* (Kadens, 2010). *"Despite these shortcomings, the reforms were clearly revolutionary and aroused understandable anxiety that bankrupts would be able to escape their liabilities too easily. That parliament shared this concern is suggested by the readiness with which it altered the mode of granting the certificate and by the course of subsequent legislation. In 1716, the privileges were deliberately allowed to expire and, when reinstituted, were restricted to commissions issued before the expiration date (3 George I c. 12). Only after widespread complaints of the resurgence of fraud were they made available to all bankrupts in 1718 (George I c. 24)."* (Duffy, 1980). *"Legislation on the subject of bankruptcy showed, as Sir W. Holdsworth [1938] observes, that 'the bankrupt had ceased to be regarded as necessarily a criminal.' An Act of 1705 laid down that a bankrupt who made over his property to his creditors was entitled to his discharge. Lord Hardwicke, in 1744, declared that this provision was unique, that it was 'temporary at first and never intended to be a perpetual law, but was made in consideration of 2 long wars which had been very detrimental to traders, and rendered them incapable of paying their creditors.'"* (Lipson, 1948).

264 *"Some indicators of the effect upon the business and investment environment are also available. For example, there was no overwhelming surge of the number of bankrupts in the wake of the Bubble. Annual totals for the 3 years 1719-21 were 193, 206 and 226, a rise to be sure, but hardly a meteoric one… [While,] within England numbers of merchants going bankrupt did double between 1719-21... Statistically speaking, for bankruptcy the long-forgotten crises of 1710-1 and 1727-9 were more significant (Hoppit, 1986, p47-8). Similarly, Muldrew's important study of everyday credit and court*

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*action over debt provides no evidence of the impact of the Bubble (*Muldrew, 2016, p222-4*). That said, there is some statistical evidence that domestically liquidity was sought as the Bubble burst, but it is not very compelling. This is most clearly suggested by the rise in the price of gold, the once traditional bolt hole for the nervous investors. In the year prior to the summer of 1720 it was very steady at £3.90 an ounce, but for the last 4 months of the year was generally 5% higher. By available statistical data there is reason to doubt the depth and breadth of the economic effect of the Bubble within Britain. Trade, industry and agriculture were their usual medley of success and failure*." (Hoppit, 2001). "*Modern historical research has shown that 1720 was not as disastrous a year in English history as Scott and his disciples would like us to believe. As recently shown by Hoppit, the number of bankruptcies did not jump following the bubble, and '[f]or the business community as a whole, through the length and breadth of England, the Bubble was not a catastrophe.' In Plumb's political perspective, the events of 1720 began an age of political stability at home and peace abroad. According to Peter Dickson and John Brewer, who examined the public-finance perspective, [SSC] was successful, solving the pressing problems of the national debt by lowering interest payments, putting the debt on a funded basis and attracting new public creditors. The trauma sent English public finance into a new era — more efficient, more financially sound, and less corrupted by private interests. Taking an international capital market perspective, Neal and Schubert come to the conclusion that the South Sea bubble advanced the links between various financial markets in Western Europe, especially London and Amsterdam. In the long run, it thus facilitated the emergence, for the first time, of an integrated and efficient international financial markets*." (Harris, 2000).

265 "*The year 1718 may be considered, as the true epoch of that favorable change, in our jurisprudence; whereby bankrupts are regarded as rather unfortunate than fraudulent. It was the temporary statute of the 5 Geo. I. ch. 24, for preventing the frauds committed by bankrupts, which first directed, that an allowance should be made to fair bankrupts*." (Chalmers, 1794). "*A new bankruptcy act, passed in 1719, reintroduced capital punishment and discharge, but, after being continued twice, that act, too, was allowed to expire in 1729 [5 Geo. I, c. 24, §§ 1, 3 (1718 [1719])*." (Kadens, 2010). "*In 1716, the privileges were deliberately allowed to expire and, when re-instituted, were restricted to commissions issued before the expiration date [3 Geo. I c. 1.] Only after widespread complaints of the resurgence of fraud were they made available to all bankrupts in 1718."* (Duffy, 1980). "*That the legislature was becoming increasingly lenient towards bankrupts is further evidenced by the fact that in 1718 they were, for the first time, protected from arrest for debt during journeys to and from meetings with commissioners. This statute also attempted to reduce the incidence of frauds committed after proceedings had commenced by authorizing the Lord Chancellor to dismiss unsuitable assignees and ordering (apparently for the first time) that bankruptcy proceedings be recorded. In 1719, it was enacted that imprisoned bankrupts would be released after receiving their certificate of discharge. A year later, creditors who held bills of exchange which were not due at the time of the acceptor's bankruptcy were allowed to prove them in his commission.*" (Duffy, 2017).

266 "*Prior to the passing of 5 Geo. I, c.24 bankrupts raised their voices against the fact that 1 or 2 creditors might effectively block any chance of the bankrupt ever gaining his certificate...*" Cadwallader, 1965). "*5 Geo. I. ch. 24. Enacted for 7 years, and from thence to end of the next session of Parliament, expired. 7 Geo. I. ch. 31... Persons taking bills, bonds, &c. payable at a future day for goods, delivered to such as after become bankrupt, shall be admitted to prove upon the bankrupt's estate... This is a declaratory law, 3 T. Rep. 546. Act of Congress §39... By 5 Geo. I. ch. 24, Bankrupt might have been examined as to his own bankruptcy. Ex parte James 1 P. W. 611; but that act is expired.*" (Cooper, 1801). "*The fact that §7 Geo. I. ch. 31, prohibited creditors, whose debts were not due, from becoming petitioning creditors, shows that but for the enactment they could have been such petitioners.*" (Legal Courts & Municipal Gazette, 1868).

267 "*Particularly, the edicts of the 18th of Nov 1702; 13th of June and 11th of July 1716. They are inserted at large in* Bornier's (1767) *Commentary*." (Cooper, 1801). *Declaration Du Roy, Portant Que Toutes Les Cessions & Transports Sur Les Biens Des Marchands Qui Font Faillite, Seront Nuls S'ils Ne Font Faits Dix Jours Au Moins Avant La Faillite Publiquement Connuë, Comme Aussi Que Les Actes & Obligations Qu'ils Passeront Pardevant Notaires, Ensemble Les Sentences Qui Seront Renduës Contr'eux N'acquereront Aucun Hypotheque Ny Privilege Sur Les Creanciers Chirographaires, Si Lesdits Actes & Obligations Ne Sont Passées, & Lesdites Sentences Ne Sont Renduës Pareillement Dix Jours Au Moins La Faillite Publiquement Connuë*, Nov. 1702. *Archives Unbound*.

268 "*In 1702 an act of the Parlement de Paris made it illegal to arrest debtors in their homes without special permission (which was seldom accorded)... 19 Dec 1702: Arrest de la cour de Parlement portant defense de prendre aucune personne prisonniere dans leurs maisons; 'Contrainte par corps,' Encyclopedic, vol. 4, p. 121: Couchot, Le Praticien des juges et consuls, p. 406... Known in legal parlance as la rigueur de la contrainte par corps, the arrest of debtors in their homes continued to be practiced only in the Lyonnais, where the Conservation was able to maintain unique privileges. Elsewhere the insolvent's house, which usually included his place of work, became an inviolable sanctuary. In theory at least, the abolition of rigueur made it possible for the condemned debtor to carry on his trade and eventually to repay his debts*." (Luckett, 1992).

269 "*A third aspect of French contrainte par corps that set it off from imprisonment for debt in England was that the creditor was required to pay for the imprisoned debtor's food during the whole term of his imprisonment. In 1709 the monthly allowance was set at 7 sous per day... and in 1785 this amount was raised... Such an allowance was about equal to half the full-time pay for a wage-laborer. These laws, moreover, were actually enforced, for debtors were automatically released when their creditors failed to bring in their monthly payments. In part such legislation must have encouraged creditors to act collectively against a mutual debtor, and thus share the cost of his allowance, but it also discouraged creditors from imprisoning debtors unnecessarily. In England, by contrast, the Lord's Act of 1729, which attempted to introduce a similar system for the poorest of debtors, was never effectively applied.*" (Luckett, 1992). England also had a similar act in 1670 "*One provision of the 1670 act underscored the essentially coercive nature of imprisonment for debt: a creditor could insist on the continued detention of a debtor even if the creditor could not dispute the veracity of his debtor's oath, so long as the creditor paid a weekly fee for the debtor's subsistence. [This suggests that one of the primary motivations for the enactment of the statute was to insure decent prison conditions.] The 1670 statute applied only retrospectively to prisoners already confined.*" (Cohen, 1983).

270 "*In Lyon, the foremost trade center of France, which in the 16th century experienced a great influx of Italians, the Ordinance of Francis I, dated Oct 10, 1536, is of special interest. Fundamentally the law of Lyon was the same as that of Italy. The creditors met, elected one or more deputes, and appointed also a procurator to conduct trials. The deputes were like our modern trustees and receivers, and the procurator like our referee. The Declaration of Dec 23, 1699, provided that in the case of a moratorium, the creditors might appoint directeurs or synndics to supervise the debtor's dealings*." (Levinthal, 1918).

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"*Known in legal parlance as la rigueur de la contrainte par corps, the arrest of debtors in their homes continued to be practiced only in the Lyonnais [after the 1702 Amendment], where the Conservation was able to maintain unique privileges.*" (Luckett, 1992).

271 Lüthy (1959 v1, p226) cited in *Table 6.3* on pg189 of Flandreau, et al. (2009).

272 "*The 10 years from July 1697 to July 1708 constitute a new epoch in the history of [BOE], of which the most important characteristics are the political situation and, partly as arising out of it, the change that had been made in the capital. The Bank had been founded during a time of war abroad and of keen competition in banking at home. It was now to experience the benefits of peace and the mitigation of rivalry. The less stable banking ventures had proved failures, the Land bank had come to no good result, the Million bank had already, or was soon, to retire from banking, and the competition of the Mine Adventurers) and [BB] companies had not begun.*" (Scott, 1912). "*An early customer of [BOE] was [BOS], which made arrangements to keep cash at [BOE] from its inception. Loans were extended, predominantly in the form of discounting of bills, to individuals and companies, and [BOE] undertook a large amount of lending (often via overdrafts) to [VOC] and, from 1711, [SSC]. [BOE] also acted as a mortgage lender, although this business never took off, and ceased some years later. Finally, an important function of the Bank was the remittance of cash to Flanders and elsewhere for the wars against Louis XIV, which was facilitated through correspondent arrangements with banks in Holland... [BOE] encouraged the use of its notes over other media of exchange by persuading the Treasury to increase the denomination of Exchequer bills.*" (Capie et al., 1995). "*There can be no doubt, however, about the existence of a stock-jobbing mania in the year 1710 or thereabouts. It was in 1710 and 1711 that [SSC] was incorporated by Acts of Parliament (9 Anne, c, 21, and 10 Anne, c. 37), so that this greatest of bubbles completed the first stage of its strange career in just about 10 years. In 1710 and 1711 also we find Parliament complaining of the prevalence of gambling and bubbling, and in both these years Acts were passed to restrain these evils—(9 Anne, c.6, §§50, 57, and 10 Anne, c. 26, §109)... [Using a list of insurance company formed,] nothing can be more plain, looking at these figures, than that there was a mania in the years 1710-2, preceding by 10 years the mania of 1720.*" (Jevons, 1884).

273 "*[In 1709,] The partners were left with [BB's] charter, after the land undertaking was wound up, and they used it to recommence banking of a somewhat speculative character... [Sawbridge and Caswall] were directors of [SCC], and their bank, now known as that of [BB], became the 'cash keeper' of the former... In fact the enterprise carried on from 1704 to 1711 was very closely connected with [SCC] in many respects, and [BB] may be considered from one point of view as the continuation of the former. In both there was the same idea of converting government debt into the stock of a trading company, and it may have happened that some of the securities, released by the sale of the Irish estates, were re-subscribed at the floatation of [SCC]... There can be little doubt that the knowledge of market-manipulation, attributed to the partners, helped to determine the direction of [SSC] finance. They were in the inner councils of the directors; and it was by their aid that some of the most secret portions of the scheme of inflation were carried out. It follows that all the most profitable portions of the great conversion were reserved for [BB], and its bonds or notes were issued for the part of the price, fixed for the annuitants, which was to be paid in 'cash.' On June 15th, 17, a new partnership was formed by the inclusion of Blunt —a son of Sir John Blunt, one of the leading directors of [SCC]— and Robinson Knight, a nephew of Hobert Knight, the secretary.*" (Scott, 1912).

274 Lüthy (1959 v1, 256-7) cited in *Table 6.3* on pg189 of Flandreau, et al. (2009).

275 *Declaration Du Roy, Qui Attribuë Pendant Un Certain Remps Aux Jurisdictions Consulaires La Connoissance Des Faillites & Banqueroutes*. Archives Unbound. "*[O]n June 10, 1715, when the monarchy issued a declaration providing that merchant courts would have jurisdiction over faillites, as well as all civil proceedings stemming from banqueroutes, for a 9-month period, running from April 1, 1715, though Jan 1, 1716. Criminal proceedings intended to adjudicate the guilt of banqueroutiers were to remain with the ordinary royal courts — though the monarchy sought to limit the number of these proceedings by such measures as requiring creditors to agree to them. After issuing this declaration, the monarchy repeatedly extended it for brief periods of 6 months to 1 year, the final such declaration appearing on Aug 5, 1732, and running through Sep 1, 1733. The driving force behind the issuance of the 1715 declaration appears to have been the economic crisis (and concomitant bankruptcies) that followed from the lengthy and costly wars to which Louis XIV committed France in the final decades of his reign —the War of the League of Augsburg (1688-97) and the War of the Spanish Succession (1702-13). Citing the fact that merchant courts relied on summary procedure and low fees — an argument that, as discussed below, merchant courts themselves advanced in favor of their claim to bankruptcy jurisdiction — the monarchy concluded that these courts would be better able than ordinary courts to stem the tide of bankruptcies. Accordingly, it decided to grant them bankruptcy jurisdiction until the crisis was staved. Since the economic difficulties experienced during this period were further exacerbated by the Mississippi Bubble of 1720, the monarchy repeatedly extended the 1715 declaration in the years that followed.*" (Kessler, 2007).

276 "*Particularly, the edicts of the 18th of Nov 1702; 13th of June and 11th of July 1716. They are inserted at large in Bornier's (1767) Commentary.*" (Cooper, 1801).

277 "*The study of procrastination contracts should also lead to challenge the demographic metaphor which presents bankruptcy as a death. The procrastination contract does not in fact put an end to the debtor's activity. On the contrary, it allows him to pursue it without risking physical constraint. It is the happiest outcome for the debtor. However, this is the path followed for the most part in the files examined by Antonetti for Paris. Between 1714-7, he noted that 'more than 700 bankruptcies, or about 80% of them, had most probably been settled by time limits, even discounts, granted by the creditors, and without dispossession of the bankrupt, neither cessation of activities, nor compulsory liquidation.' The same proportion is observed in the series established for 1729-31. Delay is also a frequent issue in the series (before 1673) established by Gascon for Lyon: 48 agreements on 76 files between 1559-80. It is true that these are 2 important commercial places and 2 series established mainly on the basis of notarial archives: it is therefore possible that outright liquidations may be underestimated. Only these 2 series are available, so it is impossible to know whether the frequency of procrastination contracts is a phenomenon linked to large trade or whether it is also observed in other market contexts... Regarding the crisis of 1714-7, he first noticed a clear separation between the merchants and the business people, who practiced the 'flexible' ways of execution (safe-conduct and procrastination) and the 'members of the high nobility, the high-ranking soldiers', the nobles of dress and the notaries, who practice the most strict ways (contract of union). He also points out that, was used more in the world of money and procrastination in the world of goods.'*"" (Deshusses, 2008). "*The end of Louis XIV's wars, with wartime debt approaching 2 B livres, represented a financial turning point that did not turn. At first the Regency set up during Louis XV's minority opted for traditional measures:*

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devaluation of the currency and a visa to 'verify' the holdings of financiers who were reputedly 'enriched through criminal means.' Over half of the outstanding short-term debt was simply eliminated, and capital of most categories of rentes was reduced by 40%. A chambre de justice was also launched, but gained little for the government because the most powerful financiers at court were able to get their fines substantially reduced. After 1716 the moralistic chambre de justice disappeared from the monarchy's repertoire of bankruptcy procedures." (Bossenga, 2011).

278 "*Lüthy has shown that earlier financial panics occurred in 1709 and 1715, dates that correspond to peaks in the number of notarized bankruptcy settlements registered in Paris, while another severe crisis appears to have followed the final liquidation of the Law system and devaluation of the livre tournois in 1725-6*." (Luckett, 1992).

279 *"It was in 1711 that the most ambitious development of the idea of the fund of credit was realized, when [SSC] was incorporated, with a nominal capital of over 9 M. Like the engrafted stock of [BOE], [SSC] was formed by the conversion of various depreciated government securities into the stock of the trading company. Similarly, in France in Aug 1717 the compagnie d'Occident was formed, under the auspices of Law; and, exactly as in the case of [SSC], stock was obtained by subscribing depreciated obligations of the State. The only difference between the 2 floatations was that in France the securities subscribed were at a much greater discount*." (Scott, 1910a).

280 "*The government of William and Mary, intending at the time to reform the debased silver currency, viewed these quotations with dismay. In order to put a stop to any further rise, it prohibited the treasury in Aug 1695, from accepting the guinea at a rate of exchange higher than 30 shillings, and upon the reformation of the silver coinage the maximum rate for the guinea was in the first months of the following year reduced step by step to 22 shillings. This process was consolidated by the Act of 1717 which fixed the legal tender value of the guinea at 21 shillings, at which rate it was coined until 1813*." (Groseclose, 1934).

281 "*In contrast a French land bank, the Banque Générale was successfully set up in 1716 by John Law. The theory underlying this venture had been expounded by Law in his Money and Trade Considered (1705). Land, he claimed, 'has a better and more certain value than silver money... Land is what is most valuable, and what increases in value more than other goods; so the paper money issued from it, will in appearance not only keep equal to other goods but rise above them' (Law, 1705, p97). The establishment of a land bank which has issued paper currency would make it possible to increase the money supply and hence to increase the level of economic activity. After failing to get his ideas accepted in Scotland, Law had turned to France persuading the Regent to help him set up the Banque Générale with a view to putting his ideas into practice. Law's objective in setting up the Banque Générale was thus to use monetary, fiscal and exchange rate policy to increase the level of economic activity in France. However, he faced the problem that given its small capital (effectively only about 825,000 lives) and the enormous volume of government debt (probably around 450 M livres this being a legacy of the recent war) the bank had little control over interest rates. This led Law into the area of debt management through his Compagnie d'Occident (Co of the West) setup in 1817. This was granted exclusive trading rights to Louisisana (still owned by France) in return for the company agreeing to take over a large quantity of government debt. The Compagnie d'Occident and the Banque Générale became tied up with each other as Law used newly creased bank notes to support the price of shares in the Compagnie d'Occcident*." (Blackhouse, 1994).

282 "*Law's idea got its chance in France in 1715. France had been bankrupted by the wars of Louis XIV. In a situation similar to the current debt problems of less developed countries, it had repudiated part of its debt, forced a reduction in interest due on the remainder, and was still in arrears on its debt servicing. High taxes, combined with a tax system full of privileges and exemptions, had seriously depressed economic activity*." (Garber, 1990). "*Law's objective was to introduce a credit-creating bank issuing banknotes at Turin based on the [BOE] model. The French had also created a quasi-paper money, the billets de monnaie, which circulated between 1701-11. He wanted to show why the British had been successful and why the French had failed. In doing so he had to discuss the debt-management issue, as in both instances monetary creation and government borrowing were interlinked, leading Law to raise the paradox as to why Britain had succeeded in simultaneously establishing the Bank and making a loan to the government, thereby helping to boost economic activity, whereas France established a new credit system enabling the government to increase its borrowings but in the process reduced economic activity... In England, prior to the establishment of [BOE], the government had found it difficult and expensive to borrow money. After the establishment of the Bank, the government discovered, according to Law, that it could borrow*." (Murphy, 1997).

283 "*John Law behaved very much like a man of the 20th century who knew that the banking system did not need to be anchored by gold or silver... His theoretical economic writings... captured many key conceptual points which are very much part of the modern monetary theorizing... In the space of 3 years, between 1717-20, John Law raised the market capitalization of the Mississippi Co from around 34 M livres to over 5 B livres, showing in the process a degree of financial sophistication which would be admired, even today, by practitioners of leveraged buyouts... By 1720 Law had assembled and fused together all of the French trading companies, the tax farms, the tobacco farm, the mint, the French national debt and a quasi-Central Bank under a giant holding conglomerate popularly known as the Mississippi Co... In Table 9.2 (p111) the main elements on the balance sheets of [BOE, EIC, and SSC] are traced, to show the way in which Law used these models for the development of the Mississippi System. Presented in this way it can be seen that the Royal Bank (the Banque Royale) was modelled on [BOE] and that the Co of the Indies (the Compagnie des Indes), popularly known as the Mississippi Co, was modelled on [EIC and SSC]*." (Murphy, 1997). "*Law's scheme was more audacious than the normal Wall Street operation in that he was attempting a corporate takeover of France. But Law's principle was also that finance came first; the financial operation and the expansion of circulating credit was the driving force for economic expansion. From a modern perspective, this idea is not flawed. It is the centerpiece of most money and macroeconomics textbooks produced in the last two generations and the lingua franca of economic policy-makers concerned with the problem of underemployed economies. Indeed, recent pressure on the Bank of Japan to monetize long-term government bonds is a scheme that Law would have found familiar. Law's mistake was that he recognized the accelerating price inflation as inconsistent with the prediction of his theory. His launching of the deflation was similar to any modern restructuring effort to eliminate an excessive debt overhang. Because of the programmed share price fall and the ensuing declines forced by his removal from power, his experiment is tarred with the pejorative 'bubble.' When modern economic policymakers reach exceeds their grasp, they simply accommodate the ensuing tenfold price inflation and get the Nobel prize*." (Garber, 2001). "*[Law] launched a venture to develop the hitherto profitless colony of Louisiana, under the name of the Co of the West. Both companies began with initial public offerings of shares payable in the form of billets d'État, which*

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became the companies' assets and provided working capital through the earned interest. To better ensure the payment of the interest, Law proposed to take over the tobacco monopoly farm on which they were assigned, and cancel out the interest payment with the lease price. This started the company on a series of mergers and acquisitions that led to its merger with the existing French Indies Co, whose name it took. By Dec 1718, the Bank, which took credit for the coincident economic recovery, was nationalized and became accountable only to the king, and, in practice, wholly managed at the discretion of Law. The summer of 1719 brought far-reaching changes in Law's operations. Having bought out virtually all the trading companies then in existence, the Indies Co branched into tax collection and mint management. In Aug 1719, it had the existing lease on the General Farms rescinded, and was awarded a new lease. At the same time, it proposed to refinance the whole national debt at a lower interest rate. To finance this gigantic operation, the Co proceeded as it had done with its earlier acquisitions, with further share issues, at prices that tracked the bullish market. The operation ended up being a conversion of government debt into equity in a company that, at the same time, collected virtually all the taxes in France. I call this 'government equity'." (Velde, 2006).

284 "*The plan might have worked, but a particular feature of the share issues, a form of down-payment and installment plan, made the operation contingent on the former bondholders being willing to exercise options on the shares of the Company. To induce them to do so, Law felt compelled to sustain a rising share price, through covert and then over price manipulations and interventions on the stock market. For this purpose, the Bank proved very convenient, as further note issues went essentially unchecked... Law's peak was short: the price support for the shares had the effect of monetizing the debt and unleashing foreign exchange depreciation and incipient inflation.*" (Velde, 2006). "*In France land prices rose in the fall of 1719 as speculators started to take their profits from the Mississippi Bubble (Guy Chaussinand-Nogaret, 1970, p146.) This author observed that the financiers were much more realistic than John Law, stimulating the speculation (agiotage) but keeping themselves aloof from the fever and ruining the system by converting their notes when they judged the moment to be the most favorable. (Ibid., p. 129.)*" (Kindleberger and Aliber, 2005).

285 "*The apparent success of swaps of debt for equity encouraged more ambitious conversions, and they in turn created the stock market bubbles of 1719 and 1720, the culmination of an epoch of increased integration of financial markets. The mania started in Paris in 1719 when John Law tried to lower interest rates and raise stock prices as part of his System. The chief mechanism for both actions was to convert all outstanding debt into equity in the Compagnie des Indes (Mississippi Co). Increased issues of bank notes from the Banque Royale financed the operations. The ensuing bull market attracted foreign capital from London and Amsterdam, but had the unintended result of creating a huge pool of excess liquidity in the Paris financial market. Similar schemes in other Western European countries flourished for the next year, causing an explosion in the volume of securities traded. The initial success of the Mississippi Bubble spurred the English government to match the French conversion. In the spring of 1720 the British government promoted [SSC] by offering to swap the outstanding government debt for additional equity in the company.*" (Schubert, 1988).

286 "*Following Law's scheme to refinance the French debt, [SSC] launched a similar plan to acquire British government debt in Jan 1720. The financial operations of the British scheme, however, were much simpler than those of Law: [SSC] was not involved in large-scale takeovers of commercial companies nor in government functions such as the mint, the collection of taxes, or the creation of paper money*." (Garber, 2001). "*The most controversial behavior on the part of [SSC], however, was the application of subscription financing to uses other than those permitted under 6 Geo. 1, c. 4. As monies from the first two subscriptions started to come in, it was declared that the new financing would be used largely to support the [SSC's] stock by lending the money back to shareholders and subscribers. The debate about the validity of the subscription contracts reached its height in late 1720.*" (Shea, 2007a).

287 "*It was precisely in the Great Bubble year that for the last time the Bank took an active, and misguided, part in that keen competitive finance which, in some form, normally precedes a crisis. It bid against [SSC]. Fighting for position with it and perhaps blinded by some current delusions on capital and credit, from May to Oct 1720 it lent money freely, very freely, on its own stock. At the Aug balance these loans stood at £0.948 M. No doubt members of the Court of Directors, all necessarily large stockholders, realized that stock which carries borrowing rights will appreciate. The price was already too high, at 200: the highest was 265*." (Clapham, 1945).

288 "*Following the example of [SSC, RAC] lent its funds to equity holders at a preferential rate. Recognizing this benefit along with the announced dividends explains a large portion of the bubble. Furthermore, the unexplained residual does not behave like an exploding bubble, casting doubt that speculative excess motivated market participants in 1720. Our findings are indeed consistent with investor rationality, and the unexplained residual suggests that we are missing information that was available to the British financial market in 1720... During the course of 1720, [RAC] did announce dividends of various forms: a dividend on the senior stock of £10 per £100 book value to be paid in April 1721; the installment payments delay on the engrafted stock; and a preferential loan available to senior and engrafted shareholders. Shareholders may have expected other dividends in the future, but again we have no means of measuring this... The year 1720 was an exciting and transformative period for the development of public finance in England and for the capital market. What makes this period so interesting is that the perception of a bubble in share prices was so strong that it led to the whole boom being named the South Sea Bubble, and so identifying it as one of the first capital market bubbles. Despite the movement in prices, we do need to consider whether these shifts were a response to changes in underlying fundamentals due to the policy decisions by the companies involved or to some form of exuberance on the part of market participants... In Jan 1720, there were roughly 4500 shares of [RAC] stock potentially available for trade in the market for a book value of £0.5 M. During 1720, the total number of transactions in the stock was about 1100 with a value of £0.7 M across 583 sellers and 603 buyers. Thus, the capital stock turned over 1.5 times. The average book value of stock traded per transaction was roughly £600, while the average amount traded per person for the year was £1100. The difference arises from the fact that there were some buyers and sellers with multiple transactions during the year. The largest number of transfers, 297, took place in March 1720. This peak coincides with the first rise in the price of [RAC] shares. The market continues to remain active in June, July, and Aug with 186, 128, and 71 transactions, respectively. There were another 41 transactions in Sep but only 2 further transactions in the last 3 months of the year. In April 1720, [RAC] offered a large new stock issue to the value of £1.6 M, almost 4 times the value of the existing stock. [To differentiate between the existing shares and the new issue, we label the existing shares 'senior' and the new issue 'engrafted.'] In all previous issues, [RAC] itself had sold the new stock. In this case, it used an underwriter. In an agreement dated April 7, 1720, Joseph Taylor paid £76 K for the whole issue. Thus, Joseph Taylor bought the issue at 4.82% of its book value. [RAC] did, of course, receive £75,696 as a new cash infusion. As stock was sold in units of £100 book value, there were now 15,690 new or 'engrafted' shares available. As was common at this time, purchasers of*

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these engrafted shares paid for them in a series of installments: 5% payable on June 1, 5% payable on Sep 1, and 7% payable on Dec 1, 1720. The initial selling price was, thus, lower than the book value, but higher than the price paid by Joseph Taylor. Although this was a seasoned equity issue and not an IPO, the issue has a number of features of an IPO. In particular, there is the underpricing of the issue by Joseph Taylor upon its offering to the public. Another IPO feature comes from the way in which Joseph Taylor and the Duke of Chandos sought to place a large percentage of the offering prior to sale. In any capital market, a new issue would typically depress the share price if there has been no change in the underlying value for the shareholders. In order, therefore, to obtain agreement for a new issue, the senior shareholders of [RAC] had to be compensated. The agreement drawn up did, in fact, promise them a dividend of 10% of their book value 1 year hence, in April 1721. No dividend was promised on the newly issued stock. [It was because of this dividend that [RAC] had to record the stock transfers of the engrafted stock in a separate transfer book until after the dividend payment.] This difference in dividend payments on the senior and engrafted stock led to different market prices for these shares." (Carlos et al., 2002).

289 "*[I]f a company wished to raise large-scale financing from credit-constrained financiers, a simple alternative means would have been to make public offerings of smaller fractional shares, but in the 18th century, companies rarely did this. [This is what the Hudson's Bay Co did in 1720, but it was exceptional (DuBois, The English business Co, p357)].*" (Shea, 2007a). "*During the excitement of the years 1719 and 1720 none of the industrious recorders of the erratic movements of the bubbles of the time mentions any transactions in Hudson's Bay stock, indeed it was stated by the company that none of its securities had been bought or sold on the market at this period.' At the same time the promotion of new companies with large capitals was so common that it produced some effect on the minds of the committees, and, in Aug 1720, it was decided to re-arrange the capital. Owing to the system of using earnings as capital, by this time there was a large reserve, and it was estimated that 'at a moderate valuation' the quick and dead stocks were worth £94,500. This was thrice the existing capital, and, on Aug 29th, it was resolved to again treble the stock, bringing it up to exactly that amount. To take advantage of the boom, it was further determined that new stock to the extent of £283,500 should be created and offered to the present members for subscription for cash. The effect of this scheme was to make a new capital 3 times that with the bonus augmentation of 1720, or, in other words, had the cash-subscription succeeded, the whole stock would have been 12 times what it was in 1719 and 36 times that of 1670–89.*" (Scott, 1910b).

290 "*As late as 1718, Lord Macclesfield L.C. held in Bromfield v. Wytherley that if a solvent executor or trustee invested money held by him and derived a profit, he could keep the profit because any loss would have been chargeable to him: only if he were insolvent would he be required to account for the profit to the beneficiaries, because in this event a loss would also have had to be borne by them. This decision contradicted the earlier ruling in Brown v. Litton (1711) to the effect that profits received by a trustee from investment of the trust assets had to be accounted for to the beneficiary. Later decisions came down on the side of Brown v. Litton, being probably impelled in that direction by the occurrence of [SSC] in 1720. This demonstrated all too clearly that a solvent trustee who was permitted to speculate with trust funds in the hope of making a profit for himself might easily be insolvent himself after a stock market crash, in which event the fact that Lord Macclesfield L.C. would declare him disentitled from retaining investment profits would be cold comfort for the beneficiaries. It has been suggested that the seminal decision in Keech v. Sandford (1726), from which the modern 'secret profits' doctrine is substantially derived, represents a further judicial reaction to the South Sea Bubble. It is certainly in line with the emerging rule that profits from trustee investment belong to the trust, not the trustee, though the links with this rule or with the Bubble itself were not made explicit at the time.*" (Rubin and Sugarman., 1984).

291 "*Several factors have been proposed as potentially contributing to one of the greatest periods of asset overvaluation in history: an intricate debt-for-equity swap, deferred payment for these shares, and the possibility of default on the deferred payments. We consider which aspect might have had the most impact in creating the South Sea bubble. The results of the experiment suggest that the company's attempt to exchange its shares for government debt was the single biggest contributor to the stock price explosion, because of the manner in which the swap affected fundamental value. Issuing new shares with only partial payments required, in conjunction with the debt-equity swap, also had a significant effect on the size of the bubble. Limited contract enforcement, on the other hand, does not appear to have contributed significantly… Bidding against [BOE] for the right to do the debt conversion, [SSC] finally won the contract in a parliamentary vote in 1720. Massive bribery preceded the award of the contract. By this stage, the stock price had more than doubled. After the award of the contract, [SSC] began to issue new shares in repeated rounds of offerings. As shown in table 1, it did so at steadily rising prices – for £300 in early April, £400 in late April, £1,000 in June, and £1,000 in Aug. These were known as 'subscriptions,' and were bought on installment plans. Actual down payments amounted to only £40-200 (10-20% of the total cost). Subscribers did not become owners of shares until all payments had been made. Subscription receipts could themselves be traded. Their prices moved in parallel with the price of the underlying stock, but in relative terms, price changes were magnified – as they are with options*" (Giusti et al., 2014). "*[SSC] began drawing up ambitious plans to replicate Law's scheme. Where once he had copied them, they were now going to return the favor. However their timing was hardly propitious as Law's scheme collapsed in early 1720 when its creator began to meddle too much in the market in an attempt to keep the Mississippi Co's share value rising. Thus as the Mississippi bubble began to crash, what we now call the South Sea bubble began. In Jan 1720, [SSC] proposed to take over the remainder of the British national debt. They offered to reduce the interest rate they charged the government from 1727 onward, while also offering an initial lump sum payment of £3 M to the Treasury. This proposal, which would have turned the company into the world's biggest financial corporation, perhaps unsurprisingly caused concern at [BOE], and the Bank felt compelled to propose a counter-offer so as to maintain their dominant position in the British financial system. Over the next 2 months a duel would be fought both inside and outside parliament to determine which corporation or institution would take over the nation's debt [*Carswell, 1960*, p98-118.] After a complex and sometimes dirty bidding war, [SSC] emerged victorious and what became known as the South Sea Act received royal assent on 7 April 1720) Under its terms, [SSC] took control of the majority of the national debt, amounting to £31.5 M, most of which was in the form of long-term irredeemable annuities. Annuitants were encouraged to convert their holdings of government debt into [SSC] stock, with future returns coming in the form of company dividends rather than interest payments from the Treasury. This offered great advantages to the government who stood to substantially reduce their annual expenditure on servicing this debt.*" (Walsh, 2014). "*Following a bidding process between [BOE] and [SSC], the latter 'won' the right to buy in all outstanding government long annuities, short annuities, and redeemable debts (£31.5 M) in exchange for its own stock. The government agreed to credit [SSC] with an increase of £31.5 M in its nominal share capital if all subscribable debts were exchanged, and to pay interest on the debt partly at 4% and partly at 5% until 1727, when a single rate of 4% would be paid. In exchange for these privileges, [SSC] agreed to pay the government*

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a maximum sum of £7.6 M, assuming full conversion of the government debt." (Dale et al., 2005). "*The House of Commons accepted [SSC's] proposal, and it was enacted into law 7 April 1720. The formal operation of the conversion operation began with the first subscription of stock on 14 April. That issue of new stock was intended to raise some working capital for the company, and so only money payments were accepted. None of the annuities were convened in this operation. The intended amount of new stock was £2 M, but it was quickly over-subscribed — the first quantitative sign of the extent of public enthusiasm for the scheme based on the proven advantages of increased liquidity and the prospect of monopoly profits. It was also the first indication of the inadequacy of [SSC's] bookkeeping facilities for carrying out the conversion scheme. The amount of new stock issued was small relative to the total that was foreseen, but it was large enough to pay the bribes that had been promised to members of Parliament and officials in the government and to buy up enough redeemables to satisfy the government's requirement. Converting the redeemables purchased into new equity would increase the value of the company so long as the new shares commanded a premium. That could be maintained if the old shares maintained a premium over par, and that was likely, because the working capital obtained from the first subscription could be used to support the price of the existing stock. The new stock was not actually entered into the ledgers and available for transfer until Dec 1720: so only demand for the existing stock was increased, not the supply. The price rose correspondingly, from 288 on 13 April to 335 by 27 AprilI.16 On 28 April the company held the first registration of the irredeemables*." (Neal, 1993). For the national debt conversion bids see appendix of Dickson (2017).

292 In France for example, "*Title IV, article VIII, of the Commercial Ordinance of 1673 provided that "[l]imited partners will be obligated only up to the limit of their share" (Bornier 1755, 2:472)... Although the Commercial Ordinance of 1673, the primary statutory law addressing commercial matters, discussed both the société générale and the société en commandite simple, it did not provide comprehensive definitions of these partnerships, but instead left this task to contemporary jurists. According to Jean Toubeau, arguably the leading French commercial jurist of the late 17th and 18th centuries, the société générale is an enterprise 'in which commerce is done in the name of all the partners, through their individual names or collectively.' In contrast, the société en commandite simple 'is contracted between 2 or several people, in which one... does nothing other than contribute his money, and the other gives his name, his money, and his industry, or his name and his industry only' (Toubeau 1700, 2:73). Toubeau thus suggested that the fundamental difference between the société générale and the société en commandite simple is that the latter contains partners who are not required to give their name and their labor to the partnership business. It is only many pages after setting forth these definitions that he noted that, pursuant to the Commercial Ordinance of 1673, partners who do not give their names to the société en commandite simple have limited liability (Toubeau 1700, 2:105–6). For Toubeau, in other words, limited liability was only one—and perhaps even a secondary—feature of a form of organization that could also be distinguished from the société générale by the existence of partners who are hidden from the public because they do not contribute their names or their labor.*" (Kessler, 2003).

293 "*Suppliers of new finance may have required some reassurance that their monies would be well spent, and this is why financing acts, such as 6 Geo. I, c.4, were expected to specify a list of permitted uses for new funds. As long as [SSC] stock values were riding high, [SSC] was not even at pains to disguise the extra-contractual and unequal treatment it meted out to different subscribers... An investigation into the legal and political history of [SSC] subscription finance shows that the subscription contracts had default options built into them, as was typically the case in 18-century subscription financing. [SSC] records and contemporary pamphlet literature show that people understood the subscription finance mechanics that were stated in law... Why was enforcement of subscription contracts designed typically to be 'gentle'? The question touches upon the issue of why subscription finance was resorted to in the first place in the 18th-century. At a time when shares were large in nominal size and new finance was likely to be constrained in supply, subscription contracts appealed (gently) to a class of financiers who might not otherwise be able or willing to buy complete shares outright. After all, if a company wished to raise large-scale financing from credit-constrained financiers, a simple alternative means would have been to make public offerings of smaller fractional shares, but in the 18th century, companies rarely did this... The language used in 6 Geo. I, c.4 therefore is the language of options and sanctioned default. Subscribers were not told that they would be forced to comply with their subscriptions, nor were they told that their personal estates would be liable for the missed calls and costs of enforcement. They were handed an option to default and the act tried to make clear only what would be the costs of exercising that option. Most importantly, the act stated explicitly that a defaulter's liability to [SSC] was limited to his holding of stock in [SSC]. Not only were subscribers handed an option to default, they were also told that the consequences of default were not necessarily permanent. As long as they complied within 3 months, their position as members of [SSC] could be restored. This handed additionally to the subscribers what we might call an option 'to wait and see.' Parliamentary bill writers were perfectly capable of writing enforcement mechanisms of the kind that DJT presumed existed and could have inserted them into 6 Geo. I, c.4 if they had been required to do so. They could have written language that made subscribers' personal estates liable in actions of debt or actions on the case. A good contemporary example of such mechanisms is found in the swingeing language of 6 Geo. I, c.10 by which the circulation of new Exchequer Bills was enforced. [SSC] also had a view as to how it would enforced.*" (Shea, 2007a). "*[SSC] subscription shares of 1720 were compound call options. They were the creation of a law, which when examined closely enough, clearly suggests how the shares' option-like nature can be given precise expression in a theory. From the theory it is but a short step to defining a computational method for theoretical subscription share values that can be compared to their historical values. As crude as our resulting model was, it was still capable of producing the approximate values for subscription shares that were quite close to their values in history. The model performed well for early 1720 and it performed equally well for periods after the bursting of the South Sea Bubble. Further research can go in several directions. We should next turn our attention to the small amounts of data we have that pertain to the 3rd and 4th subscriptions to see if they conform to the theory presented in this paper. Then there are some other South Sea data questions on which some progress might be made with the help of data from financial derivatives markets. Finding the actual path of the South Sea Bubble itself should be a priority. Locating spot values for fully-paid shares in the crucial midsummer period will not be easy, but perhaps data on financial derivatives values will be of some help. Financial derivatives textbooks, for example, tell us how synthetic forward contracts can be constructed in portfolios that contain positions in derivatives and other assets. It would be straightforward to modify the exercise to create or estimate synthetic spot values for shares from data on their forward and option contract values. Another thing that can be done with financial derivatives is to use their values in estimating implied volatilities of share returns. A time series of time-changing volatilities in returns could be just as useful way of measuring the progress of the South Sea Bubble as would be looking at a time path of fully-paid share values*." (Shea, 2007b).

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294 *[EIC] issued debentures as a counterpart for loans made to the government. These debentures were therefore 'secured' by debts due from the government to the Co and [EIC] was monitored by Parliament, which set the volume of debt authorized. 'Both the [EIC and SSC] bonds were, in effect, secured on the debts due from the government to the two companies. Thus, a statute of 1721 empowered [EIC] to take up money on its common seal up to the sum which the government owed the company. (This was an analogous position to that of [BOE], whose notes in its early days were, at least in theory, largely backed by the long-term debts which the government owed it.)' (Dickson 1967, ch. 16)."* (Nogues-Marco and Vam Malle-Sabouret, 2007).

295 "*Members of, [BOE (8 & 9 Will. III, c.20, §47, 1697), SSC (9 Anne c.15, §45, 1710; see also 3 Geo. I, c.9, 1716-7; and 5 Geo. I, c.19, 1718-9), and, the Royal Exchange, and London Insurances (See 6 Geo. I, c.18, §10, 1720). Similar exception was later created for members of the English Linen Co — 4 Geo. III c.37, s.13 (1764).] Persons circulating Exchequer Bills [See 6 Geo. I, c.4 (1719-20) and 8 Geo. I, c.20 (1721-2)], farmers, graziers, drovers of cattle or anyone who is or has been a Receiver General of Taxes granted by Parliament are also excepted.*" (Cadwallader, 1965). "*Subsequently, similar protection was granted to subscribers in other joint-stock companies established by charter or act of parliament, specifically [BOE], the New East India Co (1698) [9, 10 William III c. 44, §74], [SSC (1711) 9 Anne c. 21, §42], the Royal Exchange and London Assurance Cos, and the English Linen Co... The only other parliamentary contribution in the first phase was the exclusion, from 1706, of farmers, graziers, drovers and receivers-general of taxes [6 Anne c. 22, s. 8.] Again, self-interest seems to have played a part since, as Blackstone said, to include the first 3 'might be a means of defeating their landlords of the security which the law has given them above all others, for the payment of their reserved rents'; similarly, the exclusion of receivers-general preserved the king's remedies against his debtors.*" (Duffy, 1980). For Exchequer Bills —*Geo. I, c.4 (1719-20)*: '*...That such person or persons, who have advanced or paid into your Majesty's treasury any sum or sums of money, being part of the said principal sum of £50,000, their executors, administrators, or assigns, shall continue to have and receive, and be well and truly paid, at the receipt of your Majesty's Exchequer, by the hands of the vice-treasurer, or pay-master general, his or their deputy deputies, every 6 months the legal interest of the respective sum or sums of money, so by them advanced, without fee or charge, and free from all manner of deductions, defalcations, and abatements whatsoever, out of such his Majesty's treasure as (hall come to his or their hands, until they are respectively paid and satisfied the respective principal sums so by them paid and advanced as aforesaid; and that if any part of the said principal sum of £50,000 mail be due and unpaid on the 25th day of December, which shall be in the year of our Lord 1721, the same shall be well and truly satisfied and paid unto the several and respective persons, their executors, administrators, or assigns respectively, to whom the same shall be then due, together with such legal interest for the same as (hall be then due, without any deduction, defalcation, or abatement, for or on account of pells, poundage, or other fees, charges, of deductions whatsoever*." (Grierson, 1765).

296 "*At one level that was the South Sea Bubble; it was the spectacular rise and precipitous collapse of one company's share price. But as Figure 1 suggests, the stock market was more generally disordered in 1720. [EIC] share price also surged by over 100% and even that of [BOE] rose by about 60%, both then falling back. In fact, speculation took place very widely. Though the details are very hazy, perhaps 190 separate joint-stock projects were launched in 1719 and 1720, with a collective nominal capital of £93.6 M by one report, £300 M by another, an unprecedented level of activity... Very little evidence about these companies survives. W. R. Scott provides information on the advertised capitalization of 111 of them, totaling £221 M (*Scott, 1912*, p445-58). Actual amounts raised are unknown, but after most were suppressed by the Bubble Act it was claimed that 'no less than 1.5 M... will be lost: Northampton Mercury, 27 June 1720, 107."* (Hoppit, 2001). "*The series of events in 1720 called the Mississippi Bubble, South Sea Bubble and the Dutch Windhandel represent the first and by some measures the largest global financial bubble in history. Stock prices of more than 50 companies rose by 100% to 800% in less than a year and then lost nearly all of their gains within 2 months. The question is: why? In this paper we hand-collect new, high-frequency, cross-sectional data from 1720 to test theories about market bubbles. Our tests suggest that innovation was a key driver of bubble expectations. We present evidence in contrast with the currently prevailing debt-for-equity conversion hypothesis and relate stock returns to innovations in Atlantic trade and insurance... There were several companies in the early 18th century set up to exploit trade in the Americas. The 2 largest were the Mississippi Co, which owned rights to develop the Louisiana territory, and [SSC] which owned the right to export African slaves to Spanish America and to establish trading stations in South and Central America. Both France and Britain hoped at that time to challenge Spanish control of the Atlantic trade. Spain's dominant position was weakened as a result of the War of the Spanish Succession [1701-14], and the War of the Quadruple Alliance [1718-20], opening the door to competition. These geopolitical conditions offered economic possibilities and it is logical to posit that they would be reflected in the prices of securities related to New World ventures."* (Frehen et al., 2009). "*Cole (1949, p5-6) observes that Holland had a full-scale bubble between April and Oct 1720, stimulated by the excitements of Paris and London. 40 new companies were floated in 30 mostly smaller towns, in the amount of 350 M guilders. Shares of [VOC] tripled in this period, and those of the West India Co went from 40 to 600 before the bubble burst.*" (Kindleberger and Aliber, 2005). "*By the summer of 1720 those who had profited in [SSC] took those gains and speculated in the bubbles centering on insurance companies in Hamburg and throughout Holland.*" (Schubert, 1988).

297 "*The reaction of the Paris—London exchange rate at first was a case of the Ashton effect. Because speculators could not convert their shares of Mississippi stock directly into specie, but only into depreciating paper currency on the French market, the uncertainty of the situation led to an appreciation of the livre as holders of English bills of exchange on Paris sold their assets at a discount. Once the stock market in Paris reopened, the livre depreciated sharply, signaling the exodus of speculators. The stock market gyrations continued in France with mostly domestic speculators until the middle of May 1720. On to May, in a fit of desperation, Law announced a deflationary decree, again in an attempt to save his system. Convertibility of bank notes to specie was to end... Whether the remaining speculators, French and/or foreigners, took their money from France and put it in England for more profits or whether the French nobility took their specie to safer quarters, this depreciation signaled a capital outflow. From the deflationary decree in May (which Law lifted a week later again under public pressure) onward, currency debasements and increased bank-note issues resulted in a continued depreciation of the livre.*" (Neal, 1993). "*Law's peak was short: the price support for the shares had the effect of monetizing the debt and unleashing foreign exchange depreciation and incipient inflation. Law tried to contain this side effect by demonetizing gold and silver coinage to shore up the demand for his currency; then, he tried to reduce the nominal money supply in the way governments before him had done the same, by cutting the nominal value of notes and shares in May 1720. This led to a run on the Bank and a major crisis of confidence. Law briefly lost his position as finance minister, but was partially reinstated.*"

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(Velde, 2006). "*Law, while believing that the expansion of the money supply was a necessary condition for economic development, also recognized that it was not sufficient. The problem of 'les finances' had to be solved to produce an environment conducive to the operation of an expansionary monetary policy. Whereas money had been of primary importance in Money & Trade, written against the backdrop of a Scottish economy not suffering from a debt burden, its role had to be understood in the context of a more general set of policies in France during the Regency, when the debt problem was perceived to be first on the policy agenda: 'Mr Law was convinced that this huge quantity of debt, with which France was overburdened, was the greatest obstacle to affluence.' When it came to making a choice between monetary and debt-management policies Law would choose the latter: 'He sacrificed the reputation that he had acquired, through the establishment of his bank... to the extreme desire that he had to re-establish promptly the state's affairs by the extinction of all the debt.' Ultimately, Law sacrificed monetary policy to debt-management policy. He felt that monetary policy could not operate effectively unless the superstructure of accumulated state debt was dismantled. This is to anticipate the development of the Mississippi System.*" (Murphy, 1997).

298 "*The second rise, found for early July, was not associated with an issuance of stock, but may have been due to the French connection. The price of [SSC] stock was hovering around £850 or more and had not yet begun its final plummet. Whereas the bankruptcy of the Banque Royale on 6 July (O.S.) in France caused both the pound and the guilder to appreciate relative to the livre, it appears that flight capital from France headed more toward London than toward Amsterdam... The bankruptcy of 6 July (O.S.) of the Banque Royale shifted speculation in France from shares in the Compagnie des Indes to billets de banque, which declined in value until the exchange market in France closed in Sep 1720. The sharp appreciation of the livre in late Sep was the result of more traditional bankers regaining power and causing a repatriation of gold into France... The official price of shares of the Compagnie des Indes was dropped to 8,000 livres, with a target price of 5,000 livres by 1 Dec. In response, the French exchange rate moved as it had in Feb, with an initial appreciation, followed by a sharp depreciation.*" (Neal, 1993).

299 "*The first sharp rise came as the result of another group of subscriptions of [SSC] stock sold between 16 June and 22 June. [SSC] offered £5 M in stock at £1,000 per £100 share. This issue pumped £4.75 M into the market, running the total to £11.4 M since April.*" (Neal, 1993).

300 "*In July 1720 the Bubble Act forbade formation of new joint-stock companies without explicit approval of parliament, a limitation that lasted until 1856. Although this regulation has normally been interpreted as a reaction against [SSC] speculation, Carswell (1960) asserts that it was undertaken in support of [SSC], as king and parliament sought to repress the development of rival companies that might attract cash that was intensely needed by [SSC] promoters as the bubble expanded... Although many writers have viewed the Bubble Act of June 1720 as a warning by Robert Walpole and King George II against speculation, the primary objective of that legislation was to repress competitors of [SSC] because the other bubbles were draining cash subscriptions that [SSC] wanted and needed [Carswell (1960), p139].*" (Kindleberger and Aliber, 2005). "*The King, roused to anxiety, issued a proclamation on June 1st, against 'Such mischievous and dangerous undertakings, especially the presuming to act as a corporate body, or raising stocks or shares without legal authority.' But this proclamation had no more effect than the satires and epigrams, and it remained for [SSC] itself, jealous of its rivals, to put an end to the folly and to bring about its own ruin. Alarmed by the success of all these projects, [SSC] obtained a writ from the Lord Justices rejecting all petitions and dissolving all the bubble companies. This writ issued on July 12 was followed by a list of those companies which were considered to be of this kind. There were no fewer than 86 and this list is still amusing to read, both for the number and the absurdity of the inventions.*" (Andréadès, 1909).

301 "*At the start of the 18th century, marine insurance in Britain was carried out entirely by private individuals. Many underwriters were merchants who wrote insurance on the side, but any wealthy individual willing to dabble could underwrite a policy. A merchant wishing to insure generally employed a broker to draw up a policy and present it to private underwriters for their signature. If they considered the premium acceptable, the underwriters wrote their name on the policy, along with the amount they were willing to insure. Risks were usually shared among several underwriters. Although there was as yet no single center for underwriting, merchants and underwriters generally frequented several coffee houses around the Royal Exchange and near the Thames, where they exchanged news and gossip, and transacted marine business including ship auctions and marine insurance*." (Kingston, 2007). "*Changing tactics, the two groups had now decided that if the market could be captured from the Dutch, who till then had a virtual monopoly of marine insurance, it was big enough for both of them. But they still had to face the opposition of the [SSC] syndicate, whose policy it was to destroy all competition for investment and prevent any further incorporation of joint stocks: a policy that on 27 April received the timely aid of the Hungerford Committee's report, whose recommendation of a statutory ban on all joint stocks not authorized by royal charter was at once accepted by the Commons and led directly to the so-called Bubble Act; which was imposed, contrary to the impression usually given by economic histories, to protect the South Sea's rise, and not in consequence of its fall. The leading [SSC] men's support for this narrow-minded policy does not seem to have been affected in the least by the fact that several of their fellow-directors—Walpole's friend Sir William Chapman, Sir Jacob Jacobsen the steelmaster, Raymond, and Chester—were among the directors of Chetwynd's insurance; or even by the large amount of [SSC] stock that had found its way into the insurance company portfolios. The promoters never showed much tenderness for the interests of the other men on the [SSC] board. Politics, however, saved the insurances from the jealousy of [SSC]. Both Walpole and Craggs were deeply interested in them. According to Lady Cowper, both men had bought large blocks of shares at bargain prices early in the year... From the very beginning of the peace negotiations between Leicester House and St. James's these companies were designated as playing a vital part in the settlement, and the therefore had to be exempted, in the teeth of [SSC], from any restrictions on bubbles. The arrangement was that as the price of incorporation each insurance company was to pay £0.3 M towards clearing the King's Civil List arrears. The King was certainly not to be persuaded with anything less, and even with it he was hardly satisfied. 'Did you not always promise me... to bring me the Prince bound hand and foot—and what's become of all the money you promised me?' As a result, Onslow's and Chetwynd's insurances survive today as the Royal Exchange and London Assurances, the only major promotions of the period to escape the jealousy of [SSC].*" (Carswell, 1960).

302 "*Maritime insurance was an essential institution for risk-sharing, particularly for the empires founded on overseas trade such as Great Britain and the Netherlands. Prior to 1720, maritime trade was insured through a market that matched voyages with individual insurers or private syndicates. In 1720, Great Britain changed the status quo by chartering the first joint-stock insurance corporations and allowing them to raise capital by issuing shares. The Royal Exchange Assurance Co and the London Assurance Co immediately presented a novel institutional model of capital formation and risk-sharing as*

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they made possible a larger capital base for underwriting. Kingston (2007, 2016) argues that this innovation changed the institutional equilibrium. Within months, the joint-stock company form for insurance underwriting took hold outside of Great Britain, spreading to the Netherlands, Germany and beyond. Many of the dozens of IPOs in the Netherlands in 1720 were to finance maritime insurance companies." (Frehen et al., 2009). "*[In] 1720, several groups of merchants and speculators began petitioning to obtain charters for joint-stock marine insurance corporations. The promoters of the proposed corporations argued that they would provide cheaper and more secure insurance than the existing system of private underwriters. Private underwriters had unlimited liability for losses, but there had been instances of failures, especially in wartime. In contrast, the proposed corporations would be backed by a large capital fund, and in the event of a claim, the merchant could more easily recover his losses from a corporation than from many individual underwriters separately. In addition, corporations would expand the pool of capital available for underwriting by enabling those without specialist knowledge of marine risks, or with relatively modest amounts of capital, to act as insurers by entrusting their underwriting decisions to experts. The proposed charters were opposed by merchants and private underwriters in London and Bristol, who claimed that the existing system was adequate, and that a monopoly would harm trade. It was widely assumed on both sides that if charters were granted, the proposed corporations would rapidly drive the private underwriters out of the market. The argument was settled when the 2 main groups of promoters offered the King £0.6 M (to pay off the debt on the Civil List) in exchange for charters. Two joint stock corporations (the Royal Exchange Assurance and the London Assurance) were subsequently incorporated as part of what later became known as the 'Bubble Act' of 1720. The Bubble Act made it illegal for joint-stock companies to operate without a corporate charter. In all industries except marine insurance, however, other kinds of unincorporated companies, including partnerships and trusts, were still allowed, and businessmen were later able to use these devices to create (highly imperfect) substitutes for the joint-stock business corporation. However, marine insurance received special treatment: all firms and partnerships, apart from the two corporations chartered by the Bubble Act, were barred from writing marine insurance (crucially, however, private underwriting by individuals was still allowed).*" (Kingston, 2007).

303 "*In 18th century Britain, the Bubble Act of 1720 temporarily limited the development of marine insurance corporations, thereby enabling Lloyd's coffee house to develop as a center where individual private underwriting could flourish. Lloyd's became a hub for information about ships and their crews, trade routes and political developments, and the many other factors which would affect the riskiness of a voyage, and also for reputational information about trading partners, which helped partially overcome various agency problems inherent to marine insurance at the time. Over time, its role gradually evolved in the shadow of the Bubble Act as a variety of informal and later formal organizations, laws, specialized roles, and mechanisms for sharing information developed and were adapted to a market dominated by private underwriting. In particular, the extended period of heightened risk in international commerce resulting from the Napoleonic wars (1793-1815) led to boom years in marine insurance, and a period of accelerated institutional development at Lloyd's... The superior access to information enjoyed by Lloyd's underwriters created a lemons problem which prevented the chartered corporations from coming to dominate the market. The Napoleonic Wars gave rise to challenges and opportunities which strengthened the system of private underwriting at Lloyd's, enabling it to survive competition from corporations even after the Bubble Act was subsequently repealed.*" (Kingston, 2007).

304 "*[SSC] was brought down by its attempt to suppress rival speculations, bringing proceedings under the Bubble Act of June 1720 against York Buildings, Lustrings, and Welsh Copper. The effort boomeranged (Carswell, 1960, p171). The spread of speculation from one object to another, to generalize the rise of prices, occurred because the speculators that sold [SSC] stock when prices were approaching their peak purchased banks and insurance stocks and country houses (Carswell, 1960, p140,155). So closely linked were the several markets that in time the price of land began to move with [SSC] quotations (Carswell, 1960, p 159)... John Law's system peaked in Dec 1719 and collapsed in May 1720 – 5 or 6 months from glory to disaster. In the South Sea Bubble of 1720, the lunatic note sounded clearly at the end of April, the ugly drop in the market occurred in Aug, and collapse came in the first days of Sep.*" (Kindleberger and Aliber, 2005).

305 "*Samuel Bernard, a French banker, was sent to London to sell [SSC] stock against gold, to be brought back to France in revulsion against Law's system. Dutch banks 'shortened sail, recalling advances, refusing further credit, selling stocks held as collateral.' [Carswell, 1960, p178, 199.]*"(Kindleberger and Aliber, 2005). "*Blunt [of SSC] had always seen his project as a European one, and now Europe was fast withdrawing its confidence. Every week brought reports of gold being exported. In Paris the orthodox bankers were regaining control of financial policy from Law, and their London representative... began selling [SSC] heavily early in Sep to raise bullion for repatriation to France. In Holland such operators as Pieter Schabaalje, who had been involved against the judgement in their own local boom and saw it too was overblown, were telling their London agents to sell out... In Holland the shares of [GWC] and the numerous insurance schemes sank in Oct with devastating suddenness. The big Dutch banks were shortening sail by recalling advances made in London, refusing further credit, and selling stock held as collateral. Prince Kourakinc, the adventurous Russian envoy at The Hague, who had been one of the heroes of the Kalvcrstraat and deep in the Welsh Copper Company on Exchange Alley as well, vanished altogether from society. Dayrolles, the British envoy, was a mined man. Moses Haasverberg's English coffee-house at Amsterdam, where English businessmen were accustomed to gather and read the London papers over 'English elixir', Epsom salts, and other favorite British beverages in which the proprietor specialized, was sacked and burned by a crowd of infuriated Dutchmen."* (Carswell, 1960).

306 "*The price of the British pound in terms of the guilder in Amsterdam, which had risen from 35.4 guilders to the pound to 36.1 when the first increase in [SSC] stock took place in April and 'France, Holland and to some extent Denmark, Spain and Portugal' were buying, declined to 33.9 on 1 Sep as 'foreigners lost their taste for English securities'. At the height of the panic it recovered to 35.2 (Ashton, 1959, p120.)*" (Kindleberger and Aliber, 2005). "*Deposits at [AWB], which we would expect to have been a bolt hole for nervous investors seeking solidity, rose from 20 M guilders in 1720 to 29 M in 1721, though of course much of this would have been from domestic Dutch investors... [G]old, the once traditional bolt hole for the nervous investors. In the year prior to the summer of 1720 it was very steady at £3.90 an ounce, but for the last 4 months of the year was generally 5% higher... If the Bubble did not disrupt general trading patterns, the flow and ebb of funds across the Channel helps to demonstrate, as Neal has shown, one particular form of credit — international settlements between major financial centers — that was deeply disordered in 1720 and 1721.*" (Hoppit, 2001).

307 "*Then came the fearful collapse; on the 2nd Sep the stock was at £700. The Directors made many vain efforts to retrieve its credit. On the 13th it was at £400. Then the Directors were compelled to make humble suit to their vanquished rivals. At the intercession of Walpole, [BOE] agreed to a draft of*

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a contract for providing a means to sustain the credit of a number of their bonds. After protracted negotiations, the terms were agreed upon between the two Companies, and brought before the proprietors of [BOE], and approved of by them. Before, however, it could be embodied in a legal form, affairs took a very different turn. A great many of the goldsmiths and private bankers had advanced great sums upon [SSC] Stock; when this fell, it brought a run upon them. Many of them stopped payment, and absconded. [BB], who were the cashiers to [SSC], stopped payment. This portended universal bankruptcy. [BOE] had been assailed with every species of public resentment because it had hesitated to lend its aid in supporting [SSC] Bonds." (Macleod, 1902). "*[SSC] was apparently triumphant, but the bursting of the bubbles caused general uneasiness; everyone wished to realize his gains. People quickly found out the difference between the prices in Change Alley and the real value of the shares of the different companies, and [SSC] found itself involved in the ruin it had caused... The directors of the company vainly sought to delay the catastrophe by the help of credit. Several goldsmiths and private bankers who had advanced money on the shares were obliged to stop payment owing to the depreciation of these, and [BB] which had been the company's chief cashiers, now shared its disgrace. In vain they even applied to the Bank itself. Urged by Walpole the directors had indeed undertaken to circulate £3.5 M of the company's bonds at £400, but this agreement, which was made on Sep 13, was no longer tenable, and the directors took advantage of the fact that the contract drawings had not been legally ratified, and refused to execute it. Indeed, had they been forced to carry it out, they would only have shared [SSC's] ruin. [BOE] had difficulty enough to maintain its own credit and it was only able to meet the run made upon it by devices which Macleod thus describes...*" (Andréadès, 1909). *"[In 1720,] Though the agreement was signed, events made its accomplishment impossible. On Sep 24th [BB] was forced to suspend payment, and there was a run on [BOE], which precluded that institution from endangering its credit by any assistance to [SSC]. The suspension of [BB] took place on a Saturday, and on the following Monday [SSC] stock opened at 360 and fell to 300, touching 190 on the 28th.*" (Scott, 1912). "*Since all stock deposited as security was formally transferred to Knight, the Company and its cashier had become possessed of a fund of stock, acquired at relatively low cost, on which it was a standing temptation to trade for capital gains, relying on being able to replace the pledged stock when the loan was returned. Since Blunt's whole system depended on the price of the stock never encountering a serious setback, it is obvious that by trading in pawned stock the Company ran a serious risk of getting 'caught short.' Worse still, from the point of view of the promotion's success, the return of this stock once more to market naturally acted as a clog on the price. This and other profit-taking operations were responsible for the comparative gentleness of the upward trend for nearly a month alter the new loan was announced.*" (Carswell, 1960).

308 "*Everyone looked upon it as the sole pillar of credit, but even the credit of [BOE] was now shaken. The general failure of the bankers immediately caused a great run upon it. [BOE], in these straits, devised a trick to prolong the payments. It employed a number of clerks to tell out the money which was demanded, as well as what was brought in. Payments were made in light sixpences and shillings, and large sums were paid to particular friends, who went out with their bags of money at one door, to deliver them to people placed at another, who were let in to pay the same money to tellers, who took time to count it over. These persons, were, of course, always served first. By this means time was gained, the friends of the Bank rallied round it, and made large subscriptions to support the Company; the festival of Michaelmas, at which it was usual, at that time, to shut up the Bank, came, and, when it was opened again, the public alarm had passed off. But something was required to be done to restore public credit. [SSC] were permitted to sell annuities to the value of £0.2 M a year. The Bank bought them at 20 years purchase, and was allowed to add the £4 M to its capital: it then stood at £8.96 M 14s. 8d .*" (Macleod, 1902). "*Mcleod's Theory and Practice of Banking describes how [BOE] defended itself in Sep 1720 against a run brought on by its reversal of a promise to absorb the bonds of [SSC] at £400. [BOE] organized its friends in the front of the line and paid them off slowly in sixpence coins. These friends brought the cash back to [BOE] through another door. The money was deposited, again slowly counted, and then again paid out. The run was staved off until the feast of Michaelmas (29 Sep). When the holidays were over, so was the run, and [BOE] remained open. A second story, which may well have the same origin and is likely to be more accurate, is that [BB], a supporter of [SSC], resisted attempts to redeem its paper with silver coins. When the run started on 19 Sep, the bank brought up wagonloads of silver that it paid out 'slowly in small change'. One depositor is reported to have received £8,000 in shillings and sixpences before the bank closed its doors on Sat 24 Sep (Carswell, 1960, p184). The circumstances suggest one story; the dates, two. Since [BB and BOE] were mortal enemies, it is unlikely they cooperated... A bank that buys its own stock to keep the price high reduces its own liquidity since the ratio of its cash holdings to its deposits declines as it pays out cash to obtain the stock. In 1720 [BOE] borrowed using its own stock as collateral. Clapham noted that [BOE] did not penetrate into the far wilder and 'absolutely dishonest' finance of [SSC].*" (Kindleberger and Aliber, 2005). "*In the aftermath of the South Sea Bubble, [BOE], in order to purchase £4 M of [SSC] stock, increased its own capital by another £3.4 M in 1722... [BOE's] capital was £8,959,995.75, where it remained until 1742.*" (Neal, 1990).

309 "*Whilst clearly some people must lose when the bubble bursts, this does not mean that they should necessarily be compensated as Hutcheson suggested. Indeed, Walpole took the important step of announcing that the agreements to buy or sell shares made during the Bubble should not be rescinded (Dickson 1967: 134). This action clarified a grey area in law. George I had also seen fit to pardon all of his subjects involved in episode, just in case they had unknowingly broken the law (House of Commons 1720). There were precedents for allowing courts to change legal bargains (Paul 2010). Most notably, there was the opportunity for landowners and their heirs to ask the courts to alter loan agreements which used land as security. The idea of equity of redemption explicitly assumed that no landed gentleman or heir to an estate would willingly lose his estate. Therefore, creditors could find that the debts owed to them were forgiven by the courts on the grounds that the creditors had tricked the debtor into forfeiting his birthright (Baker 1990). Elsewhere, bargains made between [SSC] and its subscribers had been reviewed and altered. Therefore, it was entirely possible that other stock market bargains might be altered or declared void after the crash. It was necessary to clarify the situation with regard to these bargains. Otherwise, the resulting confusion would encourage many people to renege on their obligations or else take the matter to the courts. The costs involved would be enormous and the result would be decreased confidence in the financial system. However, Walpole could have taken Hutcheson's view that the landed elite should be protected at the expense of the merchant and financier class. The effects would have been similar to the Stop of the Exchequer, when many goldsmith bankers were ruined.*" (Paul, 2011). "*Although the 1720 House of Commons investigation... ruled that the directors of [SSC], having been guilty of a breach of trust in lending money of the company on its own stock, should use their own wealth to make good investor losses (Carswell, 1960, p222-4.)*" (Kindleberger and Aliber, 2005). "*Since the bulk of the shareholders were the former creditors of the State, a declaration of [SSC's] bankruptcy would be the equivalent of a national*

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default. No British Parliament after 1688 could contemplate such a thing. 2 days after [SSC] had delivered its statement, Walpole enforced the moral by presenting a message from the King in which a broad hint was given that Parliamentary action would have to be taken to relieve [SSC] of some of its burdens." (Carswell, 1960).

310 "*[Following 1 Jac. I c.15 of 1604,*] *The position in relation to bankruptcy of a member of the House of Commons, however, remained an awkward one. 1722 Sir George Caswell being a member of the House of Commons at first claimed privilege where a commission of bankrupts issued against him and his partner in relation to them as bankers. Caswell attempted to waive his privilege but nevertheless it was resolved 'That no Copartner in any Trade or Undertaking, is entitled to the Privilege of this House, in respect of any Matter relating to such Co-partnership.' [Jo. H.C. XX, p. 57, 16 Nov. 1722.] Lord Hardwicke had no doubts as to the application of the bankruptcy laws to peers and members of the Commons alike*." (Cadwallader, 1965). "*After the suspension of payment in 1720 business was resumed by John Caswall and John Mount. This firm continued till 1742 when it failed.*" (Scott, 1912).

311 "*[F]rom a historical, rather than a medical point of view, one of the most important interludes in [Dover's] long life was his pioneering of British commercial interests in South America as the first President of [SSC's] 'factory' or trading post in Buenos Aires... As a substantial shareholder in [SSC], Dover would be a frequent visitor to Exchange Alley, as his practice at that time was probably quite small. But enterprise, like Icarus, had soared too high. [SSC] had paid out bribes of £1.25 M to public men in order to bolster confidence, but against the premiums they had issued unsanctioned stock. The crash came in 1720. Robert Knight the treasurer absconded with 'considerable Effects' but was 'stop'd and secur'd in Flanders' having left assets in Britain valued at £36,000... Heavy losses on the stock exchange now precipitated a return to medicine in earnest, so throughout 1721 Dover was occupied with monthly examinations until he was admitted licentiate of the College of Physicians in Sep... In 1726 he returned to Barton-on-the-Heath, where his wife died. Dover was now plagued by creditors, as he had mortgaged his farms to buy [SSC] stock, and in May 1727 he was forced to sell his lands to Thomas Mander of the Inner Temple for £3,400. Mander agreed to an immediate payment of Dover's debts, including £800 to [SSC], and to discharge a mortgage of £1,037.10s.0d.: when all his debts had been paid Dover received only £140 until the balance of £1,562 10s. was due on 29 Sept 1727. Widowed, homeless and virtually bankrupt, Thomas Dover had now reached the nadir of his chequered career. He went to live with his kinsman, Robert Tracy, at Stanway Hall in Gloucestershire where his professional services were soon in demand, as a severe epidemic lasting two years swept 'off whole families, nay almost whole villages... His book was a sort of 18th-century Family physician: it 'made a great noise in London and was the subject of almost every coffee house.' It is, of course, best known for this powder which still bears his name*." (Dewhurst and Doublet, 1974).

312 "*Prior to 7 Geo. I, St.1, c.3, where debts were contracted before the act of bankruptcy, but by their nature were not repayable until some future date which now fell after the act of bankruptcy, such debts could not be proved for under the commission [Tully v. Sparkes (1729) 2 Ld. Raym. 1546, at 1549.] The preamble of the Act gives the situation which necessitated changing this rule: 'Whereas merchants, and other traders in goods have been often obliged, and more especially of late years, to sell and dispose of their goods and merchandizes to such persons as have occasion for the same upon trust or credit, and to take bills, bonds, promissory notes, or other persons securities for their monies, payable at the end of 3, 4, or 6 months, or other future days of payment, and the buyers of such goods becoming bankrupts, and commissions of bankruptcy being taken out against them, before the money upon such bonds, notes, or other securities, became payable, it hath been a question, whether such persons, giving such credit on such securities, should be let in to prove their debts or be admitted to have any dividend or other benefit by the commission, before such time as such securities became payable, which hath been a great discouragement to trade, and great prejudice to credit within this realm.' To remedy this situation it is provided that persons giving such credit upon valuable consideration in good faith may prove for their debt under the commission and share equally with the other creditors save that a deduction of 5% per annum out of what is received computed from the time of actual payment to the time when the debt was due to be paid.*" (Cadwallader, 1965). "*The next case was Godling v. Godling. Pasch. 11. Ann. omitted by Strange, but cited in Ld. Raymond's report of the same case of Tully v. Sparkes, 2. Ld. Ray. 1548. Godling v. Godling, this cited, was debt on bond conditioned for the payment of a summon, a day before which the obligor became bankrupt. Held that he was not discharged from this debt. These cases however bore so hard upon merchants, holders of bills of exchange, and other securities payable at a future day, and left the bankrupt open to so many suits after certificate obtained...*" (Cooper, 1801).

313 "*[B]y 7 Geo. I. ch. 31. §1 let in all persons to prove under commissions of bankruptcy who should sell or dispose of their goods and merchandizes on trust, or credit, and should take bills, bonds, promissory notes, or other persons' securities, payable at a future day, on deducting 5%, from the dividend as a discount for the time intervening, between the payment thereof, and the day of payment in the original security. It is true that in Utterson & Vernon's T. Rep. 546. L. Kenyon seems to think this act was a declaratory act, but there is no evidence in the previous history of this question, that the common law was or would have been taken in conformity thereto. This provision of 7 Geo. I, ch. 31. § 1. was afterwards extended in 5 Geo. II. ch. 30 §22. by enabling such bill holders, &c. to become petitioning creditors: and still farther indulgence was granted in consequence of the decisions on contingent debts, (which were not embraced by 7 Geo. I. ch. 31) by 19 Geo. II. ch. 32, §2; which enables the holders of bottomree and respondentia bonds, and policies of insurance to prove under commissioners of bankruptcy against the obligors. These provisions our act of Congress has adopted in §39. Excepting therefore the cases of debita in presenti solvenda in futuro, actually included in 7 Geo. I. c. 31, all such debts are still liable to be rejected by the commissioners, and the bankrupt may be still sued upon them notwithstanding his certificate. And excepting bottomree, and respondentia bonds, and insurance policies, all contingent debts are still in the same predicament, both by the English and the American law. But the abovementioned statute of 7 Geo, I. ch. 31, has embraced so large a class of debts payable at a future day, that the remaining points of litigation have been almost confined to contingent debts. The act of 7 Geo. I. ch. 31, has been construed to extend to all bonds, bills, notes, and personal securities, payable at a future day certain, although not given by the bankrupt for goods sold and delivered to him in the course of his trade.*" (Cooper, 1801). "*At first it was required that the debt upon which the petition rested be actually due at the time of suing out the commission, but in §22 of 5 Geo. II, c.30 it was provided that persons taking security by way of bills, bonds, promissory notes or other personal security payable at a future day might petition or join in petitioning for a commission of bankruptcy... It was provided by 7 Geo. I, St.1, c.31, §1 (1721) that creditors whose debts were payable at a future day upon bills, bonds, promissory notes or other securities might come in and prove*

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their debts under a commission. By §3 of that Act, however, it was specifically laid down that no such debt might support a petition for suing out a commission. As to debts payable at a future day or upon a contingency... Highznore v. Molloy (1737) 1 Atk. 206 - Lord Hardwicke based his decision that a pawnbroker was within the acts by reference to §39 of 5 Geo. II, c.30 (1731), which makes bankers, brokers and factors liable to bankruptcy. 'For... though pawnbrokers are not expressly named, yet the general word brokers is the genus, and all other kind of brokerage the species.'" (Cadwallader, 1965). "*Only after widespread complaints of the resurgence of fraud were they made available to all bankrupts in 1718 [5 Geo. I c. 24.] A decade later, the process was repeated. The privileges lapsed in 1729, were revived for old commissions in 1730 [3 Geo. II c. 2], and not until a similar spate of frauds had again vindicated the new leniency were they fully and permanently restored in 1732 [5 George II c. 30.]*" (Duffy, 1980).

314 "*Under 7 Geo. I c. 31 (1720), holders of bills, bonds and promissory notes payable in the future (after bankruptcy) were permitted to prove them, a discount of interest for prepayment being made from the due date to the date of declaration of the dividend. Only 'debts' were held provable: contract undertakings to pay a fixed and definite sum of money based upon an executed consideration, and only such 'debts' as were absolutely and unconditionally owing at the time of the issuance of fiat. The courts excluded all contingent obligations, generally calling them 'liabilities which might never become debts.' Tully v. Sparkes, 2 Strange 867 (K. B. 1729)*" (Schwabacher and Weinstein, 1933). "*It is desirable to clear up in a single bankruptcy proceeding as many as possible of the entanglements in which the debtor has become involved at the time of bankruptcy. To this end former bankruptcy statutes have provided expressly that contingent claims be provable [7 Geo. I, c.31], but the courts have held it impossible to apply such provisions to cases where the contingency cannot be determined or fairly valued during the bankruptcy administration [Tully v. Sparkes, 2 Ld. Raym. 1546, 2 Strange, 867 (1730).]*" (McLaughlin, 1927). "*The fact that §7 Geo. I. ch. 31, prohibited creditors, whose debts were not due, from becoming petitioning creditors, shows that but for the enactment they could have been such petitioners. This section, too, was also expressly repealed by the 5 Geo. II ch. 30, and therefore a creditor, whose debt was not due could after that be a petitioning creditor, as was held in Ex parte Douthat, 4 B & Al. 67.*" (Legal Courts & Municipal Gazette, 1868). "*The money payable upon a counter acceptance will not be a good petitioning creditor's debt to support a commission, unless it appear that the petitioning creditor has taken up his own acceptance. Sarratt and another v. Austin, 4 Taunt. 200. In trover by the assignees of a bankrupt against the sheriff for goods taken in execution, the only question was as to the sufficiency of the petitioning creditor's debt. He and the bankrupt had drawn two bills on each other of precisely the same tenor and dates, and each had accepted the other's bills. Before any of the bills became due, the bankrupt committed an act of bankruptcy, upon which a commission was issued founded upon the acceptances so given by the bankrupt. Not one of the bills was due or paid when this action was brought. A verdict was found for the plaintiffs, with liberty to the defendant to move to set it aside and enter a nonsuit. On rule nisi accordingly, and cause shown, 3 manuscript cases were cited to show that where there are cross acceptances neither party can prove under a commission of bankruptcy until he has taken up his own acceptance. Mansfield, C. J., said, 'If those cases had not been mentioned, I should have had no doubt that either party might prove. That the debt is barred by the certificate has been decided; why is it barred? because it might have been proved under the commission. It is strange to say then that it cannot be proved; either the one or the other must be wrong.' And after time taken to consider, his Lordship, in delivering the opinion of the Court, said, 'This question depends on the construction of 7 Geo. I. c. 31, and 5 Geo. II. c. 30, taken together. The preamble of the former Act only contemplates the case of bills and other securities being taken for goods sold, and has not the least mention of their being taken where a debt is not clearly due. The act does not apply to debts in their nature contingent. This debt, though not contingent on the face of the instrument, is thus far in its nature contingent that, until the party taking the bankrupt's acceptance shall have paid his counter bill, the Court of Chancery will restrain him from receiving any dividend; and it would be a singular construction of the statutes, that a man, who will not be entitled to receive a shilling out of the bankrupt's estate unless he take up his own acceptance, should be able to petition for a commission. And no case being cited to show that he can, the Court upon principle think the debt not sufficient to support the commission.'*" (Bayley et al., 1848). "*Bayley and Park are writing books based on Mansfield's creations even as Mansfield is going off the bench. Note, however, the meaning of the gamble for the law of Sales. No branch of mercantile law is after Mansfield to be seen as a thing distinct and differentiate unless it has been shaped so by the Master that it keeps its mercantile character even after nominal merger with the common body. Thus, Park saw Marine Insurance, and thus Bayley saw Bills of Exchange. When an Englishman, any Englishman, goes into either field, he subjects himself to the peculiar law there, which though now common law, is yet mercantile in base line and base line and detail. But Mansfield has not had a chance to shape and differentiate and stamp and guide a merchant's law of Sales.*" (Llewellyn,1939).

315 "*The downfall soon followed. John Law, for a variety of reasons (in particular to induce the bondholders to literally buy into his conversion scheme) pegged the price of shares above their market level, leading to a massive issue of notes in exchange for shares. To control the inflation that was bound to follow, he tried to change the relation between notes and unit of account, just as his predecessors routinely did during and after monetary reformations. This broke the trust in his System, both in the public and in government (May 1720). Law spent 6 months trying to rescue his company by unwinding the debt conversion scheme and repurchasing bank notes, until the company's impending bankruptcy forced him to throw in the towel and leave France.*'" (Shea, 2009). "*Until Oct 1, the notes were still legal tender for debts and taxes (a decree of Sep 15 limited the validity of both high and low denominations to 50% of any payment except for existing debts). After Oct 1, the large denominations could only purchase government bonds, bank accounts, or company shares.*" (Velde, 2014). For information on liquidation, see Marion (1914, p124-9).

316 "*One lasting achievement of this experiment was the stabilization of the value of the livre tournois after 1726. Under Louis XV, France relied on issues of rentes as its primary source of long-term loans. Instead of coercing investors or bribing them with privileges, this strategy required creating a voluntary lending public and wooing it with market incentives. In 1724 royal officials set up a stock exchange where government securities could be bought and sold in a regulated manner. In 1747 the controller-general, Jean-Baptiste Mach-ault d'Arnouville, made the sale of perpetual rentes more liquid to increase the potential pool of lenders. Notaries, who marketed rentes for the government, developed sophisticated techniques to match lenders with borrowers across regional and even national boundaries. By the 1780s, approximately 60% of the government's rentes issued in Paris were held by provincials and foreigners. Lending to the royal government had also became more socially diverse: it was possible to find Parisian seamstresses, servants, and wage earners who owned government rentes. One price of this market-oriented strategy was high interest rates. Lacking constitutional guarantees against default, the monarchy was forced to pay a default or risk premium because lenders expected the government to renege in some form on its obligations. Another emerging problem was*

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the role that the stock market started to play in the price of government securities. Because a great deal of short-term debt consisted of paper traded on the stock market, the volatility of this paper became a more urgent problem for the monarchy." (Bossenga, 2011). "*For the French monarchy, a bankruptcy that resulted in a squeeze by its creditors and a collapse of future credit would be no solution at all; it would end France's ability to function as a great power. Thus, a bankruptcy was feasible only to the extent that it could command the goodwill of the lenders, and be seen as reasonable and unavoidable. This was the case in 1716, not quite in 1770, and not at all in 1789. In 1716, Louis XIV had just emerged from the War of the Spanish Succession (1702-14) and the War of the League of Augsburg (1688-97)— 23 years of war in the past 26 years. France had lost, and the debts of the war now had to be paid. The problems were clear; inflation was not involved (prices had been stable) and the burdens of the war had been visible to all. The French elites were thus willing to let the crown follow the advice of the Scottish financier John Law and restructure the crown's debts in a partial bankruptcy. But the collapse of Law's scheme shortly afterwards, which resulted in even greater financial losses for investors, made the elites hostile to any such schemes in the future.*" (Kaiser et al., 2011).

317 See Marion (1914, p127-9).

318 "*As a result of the South Sea Bubble, an Act was passed which required every company to possess a charter. This imposed a grave handicap on joint-stock enterprise on account of the expense involved. In default of a charter, an industrial or commercial undertaking was carried on by articles of partnership alone—a procedure attended by serious drawbacks. First, the capital was held liable for the private debts of the individual partners, 'and subject to be tom in pieces upon the bankruptcy of any of them.' Secondly, it was believed, whether rightly or wrongly, that a charter gave the shareholders the privilege of limited liability, for an application made in 1764 was based expressly on the plea that many gentlemen, who are now willing to subscribe largely for extending and improving the manufactory [of cambrics], will not advance their money if they are to be answerable for more than they subscribe, which they must be in case of common partnership'... Mr. DuBois points out that it decreased the number of incorporated companies, and so 'ensured England the benefits of experimentation' with the joint-stock association which had no formal act of incorporation, and thereby it ensured a 'variety of financial devices... But the unexpected freedom, resulting paradoxically from prohibition... had its penalties.' The profit-making motive in joint-stock enterprise enjoyed freer scope in the unincorporated association. 'Therefore, to the extent that the 'Bubble Act' prevented the early introduction in England of a carefully planned system for the regulation by governmental control of joint-stock business organization... it had an unfortunate influence.' It eliminated the possibilities of intelligent official control. Furthermore, owing to the ambiguity of its wording and the severity of its penalties, it created for counsel 'a new and great role in the shaping of big business. This was the first step by which the lawyer came into his own as the originator of business practices that were to be crystallized into the company laws of the future. 'On advice of counsel' was to be the keynote of the developments in the realm of business organization.'*" (Lipson, 1948). "*Sir John Barnard's Act, which was the major piece of securities legislation of the 18th century, condemns stock-jobbing as pernicious and attempts to prevent the trade in futures and options: 'That all contracts after June 1, 1734, upon which any premium or consideration in the nature of a premium shall be given or paid for liberty to putt upon, or to deliver, receive, accept or refuse any publick or joint stock, or other publick securities whatsoever, or any part share or interest therein, and also all wagers and contracts in the nature of wagers, and all contracts in the nature of putts and refusals, relating to the then present or future price of any such securities, as aforesaid, shall be null and void to all intents and purposes whatsoever.' The Act goes on to decree stiff penalties for trading in these contracts.*" (Harrison, 2003).

319 "*The crucial difference between developments in France and Great Britain was that in Britain [BOE] was kept separate from the trading companies... The collapse of the System resulted in considerable losses for a wide cross-section of the French public. For the most part, debtors gained at the expense of creditors. The state, the biggest debtor, gained at the expense of the rentiers, in the short term, through a reduction of its debt... Over the long term the costs of the System were great because confidence, that most delicate financial flower, had been destroyed... After the failure of Law's System, the public no longer trusted financial innovation or paper money.*" (Murphy, 1997). *Because governments had a responsibility to promote a sound judicial system, the quality of government institutions reverberated on the condition of private credit. Lacking commercial and bankruptcy laws, as well as judges and a police to enforce them, contracts would be plagued with moral hazard and the credit market would disappear'... A variant emphasized what today's credit agencies refer to as 'transfer risks.' Poor government credit spills over on private credit because bad governments are likely to expropriate private agents in order to pay off their debts. This view, John Law emphasized, had its origin in medieval conceptions of private ownership, whereby individual agents could not really own assets but only use them as long as the king was gracious enough to let them do so. As a result, governments with poor reputation dragged with them the entire scale of credit toward bankruptcy. As Claviere, a Swiss refugee and financier in Paris, argued: 'Lack of public faith would spread general distrust among individuals, because the government can just as well rip off an individual to whom it owes nothing, as it can renege its pledge to those he is indebted to.' For how could the law punish private bankruptcies, this same law that has not punished but authorized the general bankruptcy of the government?*'" (Shea, 2009). "*Until the late 19th century credit markets in France were decentralized. The usual intermediaries were not banks but rather notaries, semipublic officials who drew up and certified private legal documents.*" (Hoffman et al., 1992).

320 "*Municipal exchange banks (Stadtwechsel) arose in a number of German cities during the 15th and 16th centuries: examples cited by Günther (1932) include Erfurt, Wismar, Bremen, Lübeck, Frankfurt, Basel, Konstanz, Augsburg, Strasbourg, Cologne, and Merseburg. Throughout Germany, right to exchange money was bound to coinage rights. By tradition such rights were reserved for religious and secular authorities, but in practice coinage and exchange activities were often carried out by Hausgenossenschaften, hereditary societies often associated with guilds. With the rise of commerce, cities sought to exercise increased control over the local money supply.*" (Roberds and Velde, 2014).

321 "*Problems with circulating coinage in early 17th-century Hamburg were, if anything, worse than in Amsterdam, this being the era of rampant debasement throughout Germany. The destructive practice of competitive debasement culminated in the infamous Kipper- und Wipperzeit of 1619–23, during which prices increased as much as tenfold in some areas (Schnabel and Shin 2006). The foreign merchant community in Hamburg was impressed by the monetary stabilization achieved by the Bank of Amsterdam, and advocated the chartering of a similar institution. Distrust of banks was widespread among the native population, however, and the Bank of Hamburg (Hamburger Bank) was founded in 1619 only after long and contentious debate (Sieveking 1934b)... Unlike in Amsterdam, the founders of the Bank of Hamburg envisioned an explicit credit role for the bank. The bank was formally split into*

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two entities, an exchange bank (Kaufmannskassa) and a lending bank (Lehnbank). Private parties could borrow against a wide range of collateral: gold and silver coin and jewelry, gems, durable goods, municipal securities, and in one case an estate near Leipzig (Sieveking 1934b, 129). Loans were limited to 75% of the estimated value of the collateral (Levy von Halle 1891, 4). The bulk of the bank's lending went to the municipal treasury (Kämmerei), however, which used loans from the bank as a way of smoothing tax revenues. Finally, the bank was given the job of maintaining a store of grain for the city... The Hamburg bank experienced its first serious crisis in 1672, following the French invasion of the Netherlands. Expansive lending and heavy cash demands forced the bank to close its doors in May 1672, and it did not reopen until June of the following year. Revisions of the bank charter followed in 1710 and 1719; the most important change was to restrict eligible collateral for loans to gold, silver, and copper (Sieveking 1934b). As in Amsterdam, bank money in Hamburg circulated at a premium over current money. As current money continued to depreciate for much of the seventeenth and eighteenth centuries, this agio tended to be both large and unstable. By 1718 the 'disagio' on current money had risen to 34% (Schneider et al. 1991). Pressure from merchants led to the creation of a 'current money bank' in 1726, temporarily stabilizing the disagio at 16 percent, but the current money bank had to be closed in 1737 following an influx of low-quality coins from Denmark, which threatened its liquidity (Sieveking 1934b, 145). The period of the Seven Years' War was a time of instability for the Bank. Liquidity pressures forced the bank to close again in 1755. The bank was not fully reopened until 1761, and this was only possible after the bank curtailed loans against metal and called in existing loans (Sieveking 1934b, 140)." (Roberds and Velde, 2014).

322 "*The Public Bank of Nuremberg (Nürnberger Banco Publico) was founded by the city of Nuremberg in 1621. The Bank was founded in an attempt to exclude the debased coinage of the Kipper- und Wipperzeit (1619–23) from circulating within the city. At that time, Nuremberg merchants had extensive trading relationships with their counterparts in the 'banking cities' of Amsterdam, Hamburg, and Venice, so the founding of a municipal exchange bank was widely viewed as a reasonable solution to the problem of payment in debased coinage*." (Roberds and Velde, 2014).

323 "*It was Netherlanders, not native Hamburgers, who founded the Bank of Hamburg in 1619, and formed threequarters of its greatest depositors*." (Roper, 1967). "*Hamburg developed the strongest Iberia cruise of all German ports. In 1623, 156 ships came from Iberian ports according to the Hamburg Schifferbuch. Hamburg was the most notable competitor of the northern Netherlands out of the entire group of German ports. But, as we shall see, this competition was partially eliminated by the diverse links between the Hamburg-based and northern Dutch merchants. To a certain extent, but to a much lesser extent, the same was true for Lübeck, while Danzig was particularly fond of working with the Northern Netherlands. It can be said that the old system of the Hanseatic League was interwoven with a new one, which brought these cities into a very peculiar connection with northern Dutch entrepreneurship, making a good part of the buying streak of these German seaside towns allies of the northern Netherlands and thus the Lübeck-Hanseatic alliance with the general states of 1613 and 1615/16 gave a deeper meaning. So the whole problem presents itself to us in a new perspective. By pursuing these interdependencies within the merchant and entrepreneurship in the German seaside towns and the Netherlands, we come to the core of our statements... The sales accounts obtained from the early years of the Hamburger Bank (1619-1623) show that the Dutch had the largest sales, but not only that, but at the same time it can be shown that almost all of these companies are involved in Iberian business Audi Bremen, where the prevailing creed was also Calvinist, his group of Dutch, Emden, Stade knew them particularly well in their heyday, in Lübeck, Lüneburg, Rostock and, as already mentioned, in Gdansk and other Baltic ports*." (Kellenbenz, 1954)[Translated using Google.] "*In Hamburg, Holland and the Dutch had long been known. A strong immigration from Holland not only strengthened and strengthened the old relationships that had existed since the Middle Ages, there were also numerous economic and social influences, such as those in banking, shipbuilding and industry, so many points of contact, positive and negative that hardly any other foreign city was as close to Hamburg as Amsterdam, and that meant Holland for a long time. We only have to recall the predominantly mercantile culture and monetary rule in both cities, the strange similarity of the Lutheran regiment in Hamburg, the equally strict Calvinist one in Amsterdam and the religious disputes arising from both; the great importance of Judaism for internal development here and there. Discussing all of this in more detail is not our task here. But if, despite these and other points of comparison, an attitude towards the Dutch grew in Hamburg from the middle of the 17th century that was generally not friendly to them, it was the result of the political and economic situation. The ruthlessness with which the Dutch treated Hamburg had aroused exasperation against the old allies, which was unknown in earlier times. In addition to the capers in the naval wars, there was the overwhelming position that the Dutch shipping company had in Hamburg's traffic and that was very uncomfortable for the local boatmen, and there was also the apparent desire of the Dutch to do nothing that would make the barber's counter danger easier for the Hamburgers could*." (Baasch, 1910). [Translated using Google.]

324 "*The Peace of Westphalia that emerged from these convoluted discussions is probably the most frequently cited diplomatic document in European history, though in fact no single treaty exists to embody its terms. Nor did the delegates ever meet in a single plenary session to adopt it. The peace is in reality the sum of three separate complementary agreements signed at different times in different cities. In the January Peace of Münster, Spain recognized the independence of the Dutch Republic, capping an eight-decades-long Dutch revolt that had merged with the Thirty Years' War. In October 1648, separate groupings of powers signed the Treaty of Münster and the Treaty of Osnabruck, with terms mirroring each other and incorporating key provisions by reference. Both of the main multilateral treaties proclaimed their intent as 'a Christian, universal, perpetual, true, and sincere peace and friendship' for 'the glory of God and the security of Christendom.' The operative terms were not substantially different from other documents of the period. Yet the mechanisms through which they were to be reached were unprecedented. The war had shattered pretensions to universality or confessional solidarity. Begun as a struggle of Catholics against Protestants, particularly after France's entry against the Catholic Holy Roman Empire it had turned into a free-for-all of shifting and conflicting alliances... The inherent equality of sovereign states, regardless of their power or domestic system, was instituted. Newly arrived powers, such as Sweden and the Dutch Republic, were granted protocol treatment equal to that of established great powers like France and Austria... The Peace of Westphalia became a turning point in the history of nations because the elements it set in place were as uncomplicated as they were sweeping. The state, not the empire, dynasty, or religious confession, was affirmed as the building block of European order. The concept of state sovereignty was established. The right of each signatory to choose its own domestic structure and religious orientation free from intervention was affirmed, while novel clauses ensured that minority sects could practice their faith in peace and be free from the prospect of forced conversion. Beyond the immediate demands of the moment, the*

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principles of a system of 'international relations' were taking shape, motivated by the common desire to avoid a recurrence of total war on the Continent. Diplomatic exchanges, including the stationing of resident representatives in the capitals of fellow states (a practice followed before then generally only by Venetians), were designed to regulate relations and promote the arts of peace. The parties envisioned future conferences and consultations on the Westphalian model as forums for settling disputes before they led to conflict. International law, developed by traveling scholar-advisors such as Hugo de Groot (Grotius) during the war, was treated as an expandable body of agreed doctrine aimed at the cultivation of harmony, with the Westphalian treaties themselves at its heart. The genius of this system, and the reason it spread across the world, was that its provisions were procedural, not substantive. If a state would accept these basic requirements, it could be recognized as an international citizen able to maintain its own culture, politics, religion, and internal policies, shielded by the international system from outside intervention... Today these Westphalian concepts are often maligned as a system of cynical power manipulation, indifferent to moral claims. Yet the structure established in the Peace of Westphalia represented the first attempt to institutionalize an international order on the basis of agreed rules and limits and to base it on a multiplicity of powers rather than the dominance of a single country. The concepts of raison d'état and the 'national interest' made their first appearance, representing not an exaltation of power but an attempt to rationalize and limit its use. Armies had marched across Europe for generations under the banner of universal (and contradictory) moral claims; prophets and conquerors had unleashed total war in pursuit of a mixture of personal, dynastic, imperial, and religious ambitions. The theoretically logical and predictable intermeshing of state interests was intended to overcome the disorder unfolding in every corner of the Continent. Limited wars over calculable issues would replace the era of contending universalisms, with its forced expulsions and conversions and general war consuming civilian populations. With all its ambiguities, the balancing of power was thought an improvement over the exactions of religious wars. But how was the balance of power to be established? In theory, it was based on realities; hence every participant in it should see it alike. But each society's perceptions are affected by its domestic structure, culture, and history and by the overriding reality that the elements of power—however objective —are in constant flux. Hence the balance of power needs to be recalibrated from time to time. It produces the wars whose extent it also limits." (Kissinger, 2014) "*Although much criticized, the concept of 'sovereignty' is still central to most thinking about international relations and particularly international law. The old 'Westphalian' concept in the context of a nation-state's 'right' to monopolize certain exercises of power with respect to its territory and citizens... The general perception is that the concept of sovereignty as it is thought of today, particularly as to its 'core' of a monopoly of power for the highest authority of what evolved as the 'nation-state', began with the 1648 Treaty of Westphalia. To read the 128 clauses of that document is to wade through dozens of provisions dealing with minute details of ending the Thirty Years' War, restoring properties to various feudal entities within their territories. It is hard to surmise from these any general principle of 'sovereignty', but as a 'Peace Treaty Between the Holy Roman Emperor and the King of France and Their Respective Allies', the compact represented the passing of some power from the emperor with his claim of holy predominance, to many kings and lords who then treasured their own local predominance. As time passed, this developed into notions of the absolute right of the sovereign, and what we call 'Westphalian sovereignty.'*" (Jackson, 2003).

325 "*A large number of imperial estates received from Emperor [morataria] for her debts accrued in times of war. So Goslar as early as 1627, Palatinate 1654 for 20 years, Nassau-Saarbrücken 1666 for 12, then 1678 for another 10 years, Worms 1670 for 10 years, Holstein Gottorp 1684 for 5 years. All of these moratoria are in the sense of the time at that time as special indulgences issued by heads of state to individual estates, since the debts of a territory were regarded as debts of the sovereign, but the cities were also regarded as individual estates and legally as universities*." (Kirstaedter, 1905). [Translated using Google.] "*In many German states the rulers continued, through the 18th century, to grant respites under the denomination of 'iron letters' or 'Quinquennellen.' Popular resentment at their widespread use gave rise to the proverb 'Quinquennellen kommen aus der Hollen.' A similar power to grant stays to individual debtors seems to have been exercised by the English Privy Council during the reign of the Tudors... Per contra, the general moratorium continued to figure as an indispensable safety valve in times of crisis. Usually, these occurred during a war; almost every great war saw moratory legislation enacted. We find moratoria in the Holy Roman Empire during the Thirty Years' War [Mayer (1915, p181)] and during the War of the Spanish succession...*" (Feller, 1933).

326 "*The birth throes of the modern state gave rise to a crisis from which in many countries it emerged in absolutist vigor, dominating an exhausted society. The state administration proceeded, in alliance with its aristocratic and bourgeois partisans, to turn the fiscal screws on the common people, especially the peasantry... Numerous families had been ruined by the Thirty Years' War. Many of the pre-war debtors among them had sold their estates at bargain prices to military adventurers enriched by the spoils of war or to well-heeled favorites of the absolutist court. Those who before the war had invested their earnings in the public tax corporations were lucky to recover one-third of their capital, shorn of accumulated interest, by the 1670s or 1680s. Some of the Junkers were able to repair their fortunes by seizure of abandoned peasant holdings. Others found an economically safe haven in state service, but not as many as the literature sometimes suggests... Hahn (Struktur, 48-49; 'Landesstaat', 63; Territorialhoheit, 24, 155, 196) interprets the numerous early 17th-century noble bankruptcies and forced estate sales to mean that the private landlords as a class had fallen into economic crisis at the end of the sixteenth century. But the ready purchase at high prices of overindebted estates by capital-strong and credit-worthy noblemen would seem to argue for property redistribution within the nobility rather than generalized pre-war crisis. In 1620, debts forced the family von Rohr to sell their Freyenstein estates. The von Winterfeld family bought them for the considerable sum of 153,000 Taler, an acquisition they retained into the 19th century. The frequency of such nonspeculative transactions remains unknown. Gerhard Albrecht, Die Gutsherrschaft Freyenstein (Dissertation, Padagogische Hochschule Potsdam, Historisch- Philologische Fakultat, 1968)*" (Hagen, 1989).

327 "*To evade the very severe provisions of [Spanish bankruptcy] law, a new institution was developed in Spain which, through Salgado de Samoza in his Labyrinthus Creditorum, published about 1663, influenced greatly the bankruptcy systems of all countries. Under the provisions of this Spanish system, the debtor placed his estate into the custody of the judicial tribunal for the benefit of his creditors. The tribunal appointed an administrator. It is true that the approval of a majority of the creditors was required to validate the administrator's appointment, but it is equally true that that official was an organ of the law and was absolutely powerless, except in so far as the court expressly granted him the authority to act. The debtor retained the title to his property; he still had the dominium. The creditors had what was vaguely and indefinitely called a ''jus et interesse considerabile.' The public tribunal practically had the sole control over the debtor and his estate.*" (Levinthal, 1918). "*In fact, territorialism is the most ancient approach to insolvency: in the first systematic*

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work on insolvency law, Salgado de Somoza's Labyrinthus Creditorum, there is already a sense that those creditors who have relationships with a debtor that has a establishment (negotiatio) in the territory, should satisfy their claims with the proceeds of the liquidation of that establishment. [Menendez (2010) ('Salgado de Somoza already seemed to plead for territorialism when he referred to a plurality of businesses in different places.').] Salgado makes this claim irrespective of the fact that the establishment as such has no legal personality. In the time Salgado's work was published, the questions connected with legal personality had not developed as we understand them today. In any case, it is interesting to note that, in the first stages of development of modern bankruptcy law, the theorists defended two ideas. First, that the liability of the merchant was connected to the assets and organization displayed in a territory. [See, e.g., Friedrich Karl von Sa Vigny, Private International Law and the Retrospective Operation of Statutes 257, 258 (William Guthrie trans., Rothman Reprints 1972) (1880).] Second, that creditors should enforce their claims over the assets of the debtor that are located in the territory, as the natural reach of the creditors' powers is limited by the territorial organization of the debtor. [See, e.g., id. at 260.] It is also implicitly understood that merchants extend credit to debtors based on the assets that those debtors have, and which are immediately accessible to creditors."(Garrido, 2011). "*Dalhuisen states that no uniform system of insolvency law existed in Germany during its early history. Only individual remedies were available for creditors until as late as the 15th and 16th centuries. However, in some of the Hanseatic cities a bankruptcy procedure did exist from the 13th century onwards, although initially only in regard to dead or absconding debtors. [This system was also subsequently adopted by Bremen and Hamburg.] Italian influence resulted in more sophistication in regard to the bankruptcy laws, a fact evident from the Hamburg city laws of 1603 and 1605 and the law of Nuremberg of 1564. The further development of these laws under Italian influence could also be seen in the laws of Freiburg (1520), Frankfurt (1578), Bavaria (1611 and 1616), Saxony (1622 and 1724), Gotha (1670), Eisenach (1702) and the later Hamburg regulations of 1753. The cessio bonorum was recognised by the laws of Bavaria and the law of Wuertemburg of 1610 for the honest but unfortunate debtor in order to avoid going to prison. In the 17th and 18th centuries the writings of Salgado de Samoza is said to have caused a Spanish law influence over developments in Germany. According to Dalhuisen the Spanish influence can be detected in the laws of Bavaria of 1753, the Prussian ordinances of 1718 and 1722, the Prussian Code of 1781, the Prussian Gerichtsordnung of 1793, the Codes of Lippe Detmold (1779), Hannover (1850) and Baden (1864). Germany was not unified at the beginning of the 19th century and consequently state law prevailed at the time. These laws were based on Roman law concepts that had been received and amended into Germany. In some states, such as Bavaria and Prussia, codification took place in the 18th and 19th centuries.*" (Burdette, 2004). "*The writers on bankruptcy in Europe from the middle of the 17th Century until today developed the notion of a vis attractiva concursus, i.e. 'an attractive force of bankruptcy', by virtue of which controversies otherwise belonging to the jurisdiction of other courts are drawn into that of the bankruptcy tribunal... This theory, though without the use of the term, was developed by the Spaniard Salgado de Somoza, who wrote the first systematic treatise on the procedural and substantive law of (voluntary) bankruptcy, entitled Labyrinthus creditorum concurrentium ad litem per debitorem coiniunen inter illos causatam, 1651. See particularly part I, ch. 4 and 5 of Salgado's treatise with the captions: 'Whether bankruptcy proceedings draw to themselves all other litigations before judges (otherwise possessing jurisdiction) pending either before and after the beginning of the bankruptcy proceedings', and 'Whether the bankruptcy judge by prohibition and writs of request draws to himself litigations pending before different judges and what remedy can be used in case of their disobedience.' The author's arguments are based on the much debated procedural notion of Roman law, called 'continentia causa', incorporated in Justinman's Code. II, 1, 10. Salgad's views penetrated quickly theory and practice, particularly in Germany and Italy, see Endeiann, Die Entwicklung des Konkursverfahrens in der gememnrechtlichen Lehre, (1888) 12 Zeitschrift für Deutschen Civilprozess, 24 if, and the early treatments of bankruptcy by Brunnemann. De processu concursus creditorum (ed. by Stryk) 1697 12 Ludovici, Einleitung zum Concursprocess (ed. by Schlittee 1733) 5, Leyser, Meditationes ad Pandectas, 1744, sp. 478 nr. 8. 9 Claproth, Der Concursprocess, 1777 The term 'vis attractiva' was apparently coined by Dabelow, Lehre vom Concurs der Gliiubiger, 1792, 166. The older famous treatment of involuntary bankruptcy by the Italian Stracclia with the title Tractatus de conturbatoribus sive decoctoribus, 1553, did not deal with the question of jurisdiction*." (Riesenfeld, 1947).

328 "*[T]he law of 1734, contained 9 codes with concrete regulations applied to both the countryside and the city. They replaced the medieval laws, Kristofers landslag (Kristofer's provincial law) och the general urban law code. The law built on older practice in courts and was very conservative. The regulations for bankruptcy that were introduced were very brief. Chapter 8 of the Debt Enforcement Law deals with 'On sequestration and debtors' prison.' The former means that a debtor's property is put up as security so that it can be used to pay a debt, whereas the latter means that the debtor is deprived of his freedom because of his debt. According to the Trade Code Chapter XVI of the same law, the default debtor shall be imprisoned and pay his debt by enforced labor, if it is found that his 'poverty is due to wastefulness, gambling, idleness or carelessness.' Debtors' prison, which had previously been a safety measure against the debtor being able to escape his liability to pay by escaping, was in the new law to an increasing extent used for people with an unsettled bill debt and overdue promissory notes. Debtors' prison could be used as soon as the debtor had failed in his obligation to pay. The creditor could apply to the city magistrate for permission to put a late, insolvent or reluctant debtor in debtors' prison... The issue of debtors' prison continued to be of importance. A list of decrees follows upon the law of 1734. In particular, regulations on sentencing insolvent debtors to debtors' prisons were very common. In summary, according to the law of 1734 and the decrees issued later on, a debtor could be put in debtors' prison for bills of exchange and promissory notes as soon as he had failed in his obligation to pay and for other debts when he had been found to lack the means of payment after a distraint... Carelessness from the debtor in a bankruptcy case was a known concept for the legislators of 1734 and was mentioned in contrast to fraud, on the one hand, and bankruptcy that was not due to the debtor himself, on the other. The bankruptcy legislations contained certain regulations on the consequences of such carelessness (imprisonment, prohibition against entering the stock exchange or against having any general occupation). Penalty for careless debtor was first introduced in the bankruptcy law of 1818.*" (Gratzer, 2008).

329 "*In Hamburg a new bankruptcy law was passed in 1753, after more than 50 years of discussion. Unlike many other countries, which only divided bankrupts in two groups – the innocent bankrupt who failed due to external and adverse circumstances, and the fraudulent bankrupt – the new Hamburg law inserted a third category: the frivolous bankrupt, who failed because he did not keep his books properly, or overextended his business. Except in the case of a fraudulent bankruptcy, it encouraged the judges to jostle the parties into composition... the frivolous (leichtsinnig) bankrupt in 1753, who failed as a result of disorderly bookkeeping or excessive speculation. He envisaged milder penalties than the fraudulent and in his case, as in that of the unfortunate*

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merchant, the law encouraged arbitration [Der Stadt Hamburg Neue Fallitenordnung auf Befehl des Hochedl. Raths publicirt den 31. Aug. 1753 nebst den Additional-Artikeln und den das Fallitwesen betreffenden neueren Conclusis und Verordnungen (Hamburg 1823). It may be that the older Venetian bankruptcy law served as a model for the tripartite Hamburg law. It also distinguished 3 types of bankrupts]... Although the 1753 law was not reformed before the middle of the next century, discontent with the existing laws led to frequent smaller amendments to adjust the law to the swiftly altering economic situations. The growing perception that composition should be encouraged becomes particularly apparent in Bremen. Early in the century, the city government had passed a law that declared secret compositions, e.g. outside the court, as illegal. By the end of the century the Senate not only abolished this law, but declared private compositions as being legal [Staatsarchiv Bremen, 2-D.11.a.5, 'Accorde heimliche'.]" (Beerbühl, 2018a). "*That the early laws actually pursued this latter aim can be seen in the Hamburg Bankruptcy Acts of 1630 and 1753, which clearly state that they were enacted to prevent fraudulent economic activities and the consequent damage to creditors, above all the 'disturbance of commerce' by the negligent economic behavior of members of the community (Hamburger Falliten Ordnung, 1753). It is questionable how effective these bankruptcy laws were in achieving this deterrent objective, which is the effect usually ascribed to penal procedures. More interesting, however, and structurally far more relevant, is the question of the orientation effect of these early bankruptcy statutes as guides to economically correct behavior, for this is certainly what the legislature had in mind. Anyone participating in a commercial enterprise should calculate the risks of careless economic behavior, which were laid down in the statutes, and be aware of the fact that law would prosecute improper economic activities. The threat of penal sanctions in the form of expropriation and imprisonment was intensified by moral condemnation of a bankrupt, so severe that it could bar him from any further participation in economic or social life as a respectable citizen. This strong moral pressure could even lead the court to dispense with penal sanctions where a bankrupt voluntarily handed his estate over to his creditors (cessio bonorum). By doing that he became immune from punishment and further prosecution by his creditors, although he sometimes still had to face very humiliating and stigmatizing procedures. Thus, the bankruptcy court procedure fulfilled two functions: it distributed the estate of the bankrupt in a lawful and calculable way equally among his creditors and it judged the bankrupt and decided his future. The judicial inspection was intended to reveal whether insolvency had been caused by fraud or negligence or merely by misfortune or accident.*" (Gessner et al., 1978). "*The right of the Hanseatic cities was shaped by their position as a trading city. In order not to jeopardize the trust of foreign merchants, great importance was attached to the impartiality of the case law. Overall, the Hanseatic cities adapted their legislation to the respective requirements. The law of the Hanseatic cities is a historical example of its own legislation. The Hanseatic City of Hamburg continued to develop its own bankruptcy law without fully or fully orientating itself to common law. The Hamburg Fallite Order of 1753 was rather unaffected by common law. This development is probably due to the fact that the Hanseatic cities had a sophisticated, very effective method that sufficiently satisfied local economic needs... The procedures, as they were regulated in the predecessors of the Fallite order, had already caused that the procedural costs largely consumed the existing mass. The rest benefited the believers who had a secured claim. The merchants, on the other hand, were previously mostly empty, since they could only base their claims on book claims. The Fallite order was therefore increasingly geared towards trade and merchants. It was less suitable for the needs of other traders or even ordinary citizens and farmers. 'The general purpose of the Hamburg Fallite order is to correct a credit system that has been shattered by the act.' The Fallite order also included regulating the 'race of the creditors'... [andnow pursued the goal of 'preventing the occurrence of formal bankruptcy' with its 'overly extensive and extensive legal processes as much as possible' and instead 'one for the creditors themselves.' (out-of-court) agreement on the Fallitensache... Overview of the Fallite Ordinance The opening of the fallit procedure did not presuppose over-indebtedness of the debtor nor a formal procedure to determine such... the debtor could declare himself insolvent.*" (Bauer, 2009). [Translated using Google.]

330 "*After 1660, the reception of Dutch ideas became more intense. The notion of assignatie appeared in Wechselordnungen of German cities... An extensive 1666 Frankfurt ordinance regarding financial techniques, which repeated the earlier rules concerning recourse liability, labelled such arrangements assignationes. Another example was the 1672 Breslau exchange bylaw, which fused 'anweisungen' together with assignationes. The Dutch 'indorsement' was mentioned... in German Wechselgesetze, which now accepted indorsement as lawful... [and] slowly replaced such older words as 'weiterschreiben' and 'girieren.'*" (De ruysscher, 2011). "*Of older German laws, the Bavarian Procedural Code of 1753... had already provided that the bankruptcy procedure shall be followed for insolvent decedents' estates [Codex Juris Bavarici Judiciarii of 1753, c. 19, §4, c. 20, §3.]*" (Nadelmann, 1951). "*The Bavarian Elector Maximilian HL Joseph inherited from his father Karl Albrecht the reign of a country exhausted by the war. Due to the failed attempts to expand, it was now only a second-tier state whose army and finances were in dire condition. The primary goal of the regency Maximilian HL was initially the internal strengthening of the country and the increase in economic performance. He therefore turned to internal reforms, being open to the ideas of the Enlightenment movement. The planned reorganization of the state could only succeed through a parallel reform of the legal system. The parts of the legislative body of the Corporis Juris Fridericiani published in 1749 and 1751 gave an immediate impetus to this. So Maximilian HL began the creation of several legislative bodies with the aim of improving and standardizing the legal system. The Codex Maximilianeus Bavaricus Criminalis was published as early as 1751 in order to counteract 'the overgrowth of the people and the multiplication of crimes.' The Codex Juris Bavarici Judiciarii was published on Dec 14, 1753. Three years later, in 1756, the most extensive work followed the Codex Maximilianeus Bavaricus Civilis in 4 parts and over 800 paragraphs. These three codes of law, which were followed by an additional changing order in 1785, formed a self-contained, comprehensive codification, which they were considered to be the cornerstone of the Bavarian regime Law.*" (Bauer, 2009). [Translated using Google.] In 1723, the Leipzig financier Gottfried Winckler defaulted and fled to avoid prosecution, leading to the 1724 Saxon bankruptcy law (Beachy, 2004; Beachy, 2000). "*The Wholesalers' Association drafted a lengthy report outlining the inadequacies of local and, by extension, Saxon commercial law. First among their grievances was the absence of a comprehensive commercial code and a court or jurisdiction that might efficiently enforce it. Since the 1670s, bankruptcy suits had been contested in the city court under the jurisdiction of the Leipzig Council for months and sometimes years. Not only did the inefficient litigation bind merchants' assets, the extra court expense and the frequent damage to the disputed property reduced settlements and increased losses. Between 1676 and the end of 1681, 24 Leipzig merchants announced their insolvency with losses set at 471,500 Thaler. In the same period 17 merchants from Hamburg, Freiburg, Vienna, Brunswick, and Breslau failed with losses amounting to 109,500. For visiting merchants, the risk of becoming entangled in a bankruptcy with a lengthy trial nearly outweighed the benefits of transacting business at the Leipzig fairs. No doubt, the city court had provided competent decisions for*

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earlier and less complicated proceedings. The short Saxon market regulation (Marktrescript) of 1621 protected the rights of creditors in of exchange, but it made no provisions for disputes arising from more sophisticated commissions' transactions or endorsed bills. A similar regulation from 1660 broadened the law s jurisdiction to apply to nonmerchants. The confirmation of 1669 ordered that the law be applied equally to all: 'no less for those not engaged in trade, whether noble or commoner, academic, or public office-holder.' Though these early codes failed to mention the endorsed bill explicitly, they marked the increasing association of bills with fraud and bankruptcy. But neither ordinance expanded substantively on the market regulation of 1621. With the complications introduced by endorsed bills, the city court had neither an adequate code nor the necessary expertise to decide complex trade disputes. Suits involving an endorsed bill could entangle a dozen or more merchant litigants. Since bills circulated on the credit or reputation of individual merchants, they were particularly susceptible to fraud. In an effort to stave off failure, a desperate merchant might 'float' bills on the credit extended by trusting associates. In the event of commercial failure, this tactic could drive up losses or even unleash a string of bankruptcies. The wholesalers complained that 'a lengthy court case often develops out of an affair with a bill of exchange... and over the course of years, much good money is thrown after bad.' Clearly a business failure involving merchants' bills and a string of endorsers made an equitable settlement infinitely more complicated... According to the wholesalers, the absence of a full-blown exchange ordinance (Wechselordnung) was a 'significant reason why this trade center [Leipzig] has become so disparaged'... Despite the council's resistance, the commission continued its work with the wholesalers' assistance. The wholesalers' early recommendations served as the basis for a set of commercial ordinances regulating the use of exchange bills (Wechselordnung), the brokerage in the Leipzig Exchange (Maklerordnung), and the creation of a commercial court (Handelsgericht)... With expedient compromise, the Saxon Commission incorporated the changes demanded by the Diet. On 2 Oct 1682 the elector promulgated the Wechsel-Ordnung and a few months later, on 21 Dec, the Handels-Gerichts-Ordnung." (Beachy, 1999).

331 "*Before the war, landowners had relied on private credit intermediaries who had offered loans at about 6% interest plus 0.5-1% commission. Traditional sources for loans included family, local merchants, and the church (Enders, 2008). Loans were usually granted up to half of the last sale price of the estate and would often be secured by an entry into the cadastral register of the estate (Mauer, 1907, p19). The foundation for the formal use of land as collateral for loans had already been laid with the 1722 Prussian bankruptcy law, which stipulated the publication of the cadastral register (Jessen, 1962, p36). Revisions of the Prussian mortgage laws in 1748 and 1750 established a seniority ranking for debt, which secured debt registered in first position a privileged status (Weyermann, 1910, p64). These legal advancements had improved creditor rights and facilitated the verification of collateral, leading to an influx of credit to the estates.*" (Wandschneider, 2013).

332 "*The two political parties-the Hats and the Caps-vied with one another for control of the government from 1739 to 1772, a span including most of the epoch known in Swedish history as the 'Age of Freedom', 1719-72... The quantity of inconvertible bank notes issued by the Swedish National Bank (Riksens Standers Bank) increased every year from 1745 to 1762... In 1745 the Bank's loans to the Crown predominated and constituted 61% of total loans, but by 1756 they constituted only 39% of total bank loans. Over the same period loans to private persons increased from 19 to 54%, while the share of total bank loans going to governmental agencies fell from 19% in 1745 to 6% in 1756... The boom and bust phases of the business cycle in the mid-1760's appear to have been characterized by significant changes in the levels of employment and output as well as of prices (in terms of bank notes). Prosperity in real terms had accompanied the inflation and had disappeared in the subsequent deflation. In the Stockholm textile industry, the story was the same... In this state-promoted economic growth program the National Bank played a key role. Entrepreneurs in manufacturing and commerce could use their partly finished commodities as collateral for Bank loans.*" (Eagly, 1969).

333 "*Holland was short of currency because England had borrowed huge sums from the Dutch capitalists. So eager were these money kings to put their capital out to work, that they were indifferent as to whether England would direct the money borrowed from Dutchmen against the Dutch state. In that same period England had to pay large amounts of money for the support of Prussia and for the payment of her own troops in Hanover. These payments were made partly in money and partly in bills of exchange payable by Amsterdam banks.*" (Bloom, 1937).

334 *During the Seven Years War, the credit limit had been raised above the traditional threshold of 50% of the estate's last sale price, contributing to the high indebtedness of the manors by the end of the war (Mauer, 1907, p20). Triggered by post-war economic distress, defaults on estate loans were rising.*" (Wandschneider, 2013).

335 "*Bank loans to the Crown increased as a percentage of total bank loans [between 1756-66] and bank loans to private persons decreased as a percentage of total bank loans. Deficit financing on the part of the government-largely the product of the military costs of Sweden's participation in the Seven Years' War-was the main force underlying this trend. From its lowest level in 1756, loans to the Crown increased to 56.4% of total bank loans in 1766. On the other side of the coin, bank loans to private persons as a percentage of total bank loans decreased from its highest level in 1756 to 37% in 1766... The development of greatest concern in the Swedish bullionist controversy was the price of foreign exchange. Figure 1 shows the price of Hamburg Mark Banco as a percentage of parity. A moderate downward trend in this index occurred from 1748 to 1752 and was followed by relative stability during the period 1752-5 and, after 1755, an increase almost every year until 1764... The price of Hamburg Banco was 112% of parity in 1756 and 143% of parity in 1758. After a slight reduction to 137% in 1759 the index rose to 237% of parity in 1762... Government deficits, bank note issue, and the war-induced demand for more foreign exchange would seem to be the main determinants of the inflation in the price of foreign exchange during the period 1756-62. The decline in the price of foreign exchange in 1763 coincides with the conclusion of Swedish military activity in Pomerania and may be the consequence of the reduced government demand for foreign exchange.*" (Eagly, 1969). "*Inflationary pressures on the bank only increased following suspension, and peaked during the Seven Years' War (1757–63). In addition to financing the government's activities, the bank was expected to continue providing mortgage credit on generous terms, on instructions from Parliament. In 1754 it even reduced the interest rate on mortgages from 6 to 4% (Fregert 2012, 41), perhaps the first documented episode of a central bank fueling a real estate bubble. Note issue by the bank peaked at 45 M dsm in 1762 (Heckscher 1934, 197). Not surprisingly, this was a profitable period for the bank, due to the interest spread between loans extended by the bank and their primary source of funding, non-interest bearing notes. By 1763 the bank had accumulated 22 M dsm capital through retained earnings (Fregert 2012, 35). The ongoing paper-money inflation caused a collapse in the external value of Swedish money. In 1736, one Swedish dollar silver money would buy one mark (banco) at the Bank of Hamburg; by 1762, it took 2.4 dsm to buy a Hamburg mark banco. It is known that for much of this period, the Bank of the Parliament*

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attempted to smooth fluctuations in the exchange rate via open market operations. These operations were contracted out to groups of private merchants (Växelkontor). The private merchants were funded in part through their own borrowing, and in part through interest-free loans made by the Bank of the Parliament." (Roberds and Velde, 2014). "*The worst dizziness at that time was in Sweden and elsewhere. After getting involved in the war against Prussia, it not only outdid the latter in deteriorating coins, but also resorted to repeated spending of paper money as the needs of the war exhausted its regular resources. Gradually such masses were thrown into circulation that it soon fell to a third of the nominal value calculated according to the copper currency*." (Wirth, 1890). [Translated using Google.]

336 "[*Hamburg] was another great port with a substantial trade with colonial territories - through Amsterdam, Liverpool, Cadiz and Bordeaux - and with northern Germany and Scandinavia. Hamburg had its city bank with its own relatively stable bank money. Hamburg's commerce was stimulated by the war. Prussian merchants diverted much of their Polish trade from Stettin to Hamburg and incidentally avoided paying the Sound dues in doing so. The decline of Leipzig's fair was also to Hamburg's advantage. A new trade in timber developed because the Prussians exploited Saxony's forests and sent the timber down the Elbe. The export of refined sugar to Prussia flourished since Frederick could not enforce his customs regulations as strictly as in peacetime. In Hamburg, too, the merchants supplied belligerents with grain, fodder and other supplies while the finance houses handled the payment of subsidies and contributions, dealt in inflated currencies, and endorsed bills of exchange. Busch, one of the earliest historians of the city's commerce, declared that Hamburg had never been so prosperous as in 1759*." (Henderson, 1962). "*Because Hamburg capital was very heavily invested in Prussian commerce, the Prussians had accused the merchants of Hamburg of seeking to undermine and threaten Prussian commerce. Schuback's reply, however, was that the interests of Hamburg were so intricately tied up with those of her neighbors that she could not damage their commerce without also damaging her own. In recent bankruptcies in Berlin and Breslau, more Hamburg capital had been wiped out than Prussian. Furthermore, Hamburg's heavy investments in the Silesian linen industry amounted to an increase of capital akin to that which occurred when a merchant moved to the province to live and invest in its industry on the scene. Certainly, the Silesians never risked their own capital, but merely worked on a commission for Hamburg merchants who granted them credit at low interest rates, accepted their notes, acted as underwriters, and provided foreign exchange. Prussia could hardly hope to import anything from France unless exchange were available in Hamburg*." (Liebel, 1965).

337 "*Merchants kept deposits at [AWB] to meet bills presented for collection. Deposits of precious metals enabled [AWB] to earn seignorage on its minting operation so it was able to pay a low interest rate on deposits. In 1614 a Bank of Lending (Huys van Leening) was established by the Municipality of Amsterdam; this bank enabled merchants to establish their own credit efficiently but it was not an active lender. This credit created by the merchants led to an excessive expansion of the Wisselruiti; when the chain of bills of exchange broke in 1763 because one of the merchants did not have the money to pay on a maturing bill, the DeNeufville bank failed... In 1763 credit expansion in Holland was financed by the Wisselruiti, or chains of accommodation bills from one merchant to another... [M]any firms, according to Wirth, speculated for 10 to 20 times their real capital during the boom of 1763 and many participated in this dangerous undertaking on pure credit with little if any capital [Wirth (1968, p463)]... Amsterdam had been the entrepôt center for the payment of money to British allies, and the Dutch had been expanding credit by investing both in British government stock and in Wisselruiti (chains of accommodation bills) that led to a giddy credit edifice on a small base (the proverbial 'house of cards') with bills drawn on merchant houses in Stockholm, Hamburg, Bremen, Leipzig, Altona, Lubeck, Copenhagen, and St Petersburg. Bills of exchange drawn with the security of goods shipped also circulated in Amsterdam in addition to the accommodation paper*." (Kindleberger and Aliber, 2005).

338 "*These contingent claims and liabilities arose from the strict legal provisions for the transfer and negotiability of the bills, which had two key planks: endorsement and Wechselstrenge... The economic rationale for the institution of endorsement is clear. By maintaining a contingent liability, the practice of endorsement was designed to guard against the passing on of lower quality or fraudulent bills. Also, the fact that all signatories became jointly liable greatly reduces the informational costs related to seeking recourse against default... The second plank of the legal provisions for bills was Wechselstrenge, analogous to what is known today as the holder in due course provision in U.S. and U.K. law. [The evolution of Wechselstrenge has been described extensively by Sedatis (1967).] It stipulated the legal separation of the obligation related to the bill from any underlying commercial transaction between third parties. It thus ensured that claims from bills of exchange were enforced quickly and rigorously*." (Schnabel and Shin, 2003).

339 "*[I]n Hamburg where, until 1816, no special court (Handelsgericht) or separate deputation dealt with bankruptcy issues or, for that matter, administered commercial law. Instead, all these cases came before the general court of first instance in the city: the Niedergericht. Even before the mid 18th century, the number of bankruptcies had grown so rapidly that it threatened to bring all the court's business to a virtual standstill [Daniel Heinrich Jacobi, Geschichte des Hamburger Niedergerichts (Hamburg: Nolte, 1866), 134; Klefeker, 7: 735-46]... Serious failings in commercial laws figured prominently in numerous gravamina submitted by the Burgerschaft. Little was done, however, and, by the 1730s, merchants were once again bitterly lamenting the many shortcomings of bankruptcy law. In Oct 1730, for example, the Chamber of Commerce complained about the truly shocking bankruptcy of the firm Muller & Schultz, that, according to the Deputation, had gone 'bankrupt in an entirely planned and deceptive [manner].' Over the next 20 years, the number of bankruptcies continued to grow. Still the Senate did nothing, much to the disgruntlement of the Chamber of Commerce that, at the end of 1747, pointed out that 'in these current sad and unhappy times numerous large bankruptcies have greatly damaged our Exchange.' In an earlier similar case from 1700, when faced with the bankruptcy of the firm of Brameyer & Engelbrecht, the Chamber of Commerce had petitioned the Senate for leniency, even though it knew that the firm had improperly used bills of exchange to conceal debts. The reason was simple: the merchants feared that if driven from the city, Brameyer & Englebrecht would set up shop nearby as a powerful economic rival. Such contrarieties and gray areas repeatedly cropped up in bankruptcy proceedings because of the inherently mixed nature of virtually all. Unsurprisingly, the new ordinance, finally agreed upon in 1753, did nothing to diminish the numbers of bankruptcies [Baasch, Handelskammer, I: 190-2.]* " (Lindermann, 2014).

340 "*All change of the debtor's property is stopped from the moment the commission is opened. The management of the estate is entrusted to assignees, under the authority of two commissioners chosen from the body of the Senate, and a sworn actuary takes minutes of their proceedings. The assignees collect and classify the property of the bankrupt, and make the dividends in proper time*." (Scots Magazine, 1806).

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341 "*In 1763, Frederick II of Prussia bought silver in Amsterdam on credit [from DeNeufville] to provide for a new coinage to replace that which had been debased during the Seven Years' War. He withdrew the old debased money from circulation before the new money was issued, which precipitated a deflationary crisis and the collapse of a chain of discounted bills [Wirth (1968, p92)]... The coup de grâce occurred when King Frederick II of Prussia who had debased the silver coins in 1759 to help fight the war recalled the old coins and had new ones minted in Amsterdam on the basis of credits from the Dutch bankers [Wirth (1968, p87).] Withdrawing the old coins before issuing new ones put deflationary pressure on credit because the money supply declined... Very much against his will, King Frederick had to assist Berlin merchants that were caught in the crisis as their bills were protested... In Prussia the king was the lender of last resort in 1763... the intervention of Frederick II in the Berlin crisis of 1763 [Skalweit (1937, p49-73).]*" (Kindleberger and Aliber, 2005). "*[W]hen after the Seven Years War, Frederick the Great attempted to correct the diminished value of his coinage, there was a shortage of money. In order to rectify the shortage, many bills of exchange were made out to be discounted in Amsterdam. The situation brought about the export of 3 times as much money from Amsterdam as was brought into it from Germany. The difference was paid in bills of exchange which only remained valuable as long as Prussian credit was good. Due to the more efficient control of coins in circulation in Germany the necessities of life became much more expensive. German securities dropped to 25% of their value. Native merchants suffered enormous losses and were unable to pay their bills of exchange on the stipulated dates. The Prussian debt in bills of exchange to Holland was 15 times greater than the amount of available cash. Holland was short of currency because England had borrowed huge sums from the Dutch capitalists... When the German bills of exchange came due and the Dutch capitalists were unable to come to their aid, the inevitable crash was precipitated*." (Bloom, 1937).

342 *The conclusion of the Seven Years' War gave rise to policies designed to contract the bank's balance sheet. The first of these came in 1762 with a halt to new loans and the imposition of a 4% per year amortization requirement for both government and private credits.*" (Roberds and Velde, 2014). "*Since Sweden at the same time purchased the metal for its deteriorated coins from abroad, there was also a great exchange between the Nordic empire, Amsterdam and Hamburg*." (Wirth, 1890). [Translated using Google.]

343 "*When prices of commodities fell after the war —especially sugar as imports from the French West Indies were resumed— the bills could not be paid [Jong-Keesing (1939, p216-7)]... The 1763 boom was based exclusively on government war expenditure and its finance through chains of discount bills. The DeNeufville Brothers, whose failure set off the panic, sold 'commodities, ships, and securities like so many Dutch firms' [Clapham (p239)], with hundreds of thousands of florins in acceptance liabilities against which they rarely kept more than a few thousand guilders in cash reserves... Some economists were firmly opposed to 'accommodation paper' because it was believed to be of lower quality than self-liquidating commercial bills since there was less assurance that the firms that issued the bills would have the cash to pay the holders of the bills on the dates that the bills matured. In a period of falling prices, however, the merits of the higher quality commercial bills were exaggerated, since the buyers of the goods might not have the cash to settle their obligations on the due dates because they might not be able to sell the goods at a profit. [Hawtrey (1932)]... If one house in the chain of houses that had endorsed the bill failed, the chain collapsed and might bring down good names, those with a reasonable ratio of debt to capital as well as those with much higher ratios. Each endorser on the bill was liable for the full payment. Accommodation bills enabled traders with limited capital to borrow large amounts of money, and these short-term loans in effect stretched into longer-term loans because they were rolled over and over when they mature*." (Kindleberger and Aliber, 2005). "*[Banks'] embarrassment usually arises from the embarrassments of their customers. Debts due from traders have become temporarily or perhaps permanently irrecoverable. It is at a time of pressure, when there has been a general decline of commodity prices, that such embarrassments become widespread, and banks which have been prudently conducted according to accepted standards find themselves nevertheless in difficulties. Their difficulties will undoubtedly be concealed, so long as concealment is possible... The need has therefore been felt for some further criterion of the soundness of bills to supplement that of the credit of the names upon them. And a code of morality has grown up in the bill market. The virtuous bill is that which is drawn by the seller of goods dispatched to a buyer who is himself in a position to sell them without delay. The bank which buys the bill is financing the seller and the buyer for the strictly limited interval required for the transport and disposal of the goods. Provided all goes according to plan, the bill is 'self-liquidating.' And in any case the buyer, on whom or on whose account the bill has been drawn, has in the goods an asset to hold against his liability. (The goods can actually supply a collateral security for the bill so long as bills of lading are attached to it, but the bills of lading have to be detached to permit of the goods being sold before the maturity of the bill.) By contrast with the self-liquidating commodity bill the finance bill or accommodation bill, which is no more than a device to enable the drawer to borrow temporarily on the credit of the acceptor, is an object of suspicion and condemnation. It has very commonly been the practice of central banks to favor commodity bills, and they have sometimes been bound by their statutes to confine their rediscounts to such bills. The discrimination is not entirely without justification. The commodity bill is a normal outcome of commercial business; the reason for its existence is the time necessarily occupied by the transportation and marketing of goods. Any other bill may be a signal of distress, or the outcome of some imprudence or vagary. Like all temporary borrowing, it ought to be no more than an anticipation of forthcoming receipts. But in practice forthcoming receipts are apt to be offset by forthcoming liabilities, and it may be that the bill has to be paid at maturity by the proceeds of another temporary borrowing operation. But if it is legitimate for any business to be financed by a bank advance, it is difficult to give any good reason why it should not as legitimately be financed by a bill. That the bill is marketable and that there are special sanctions for prompt payment at maturity, these are advantages to the lender who discounts it, in virtue of which the borrower obtains more favorable terms than for a bank advance. The special merits of the 'self-liquidating' commodity bill are in reality very dubious. Any bill which is drawn to meet a genuinely temporary need for cash is self-liquidating. And the expectation that commodities can be promptly sold or can be sold without loss is liable to disappointment just as much as any other expectation of forthcoming receipts... The real point is that the accommodation bill is a sign of distress. It is not drawn to supply funds for the acquisition of an asset, but to make good a deficiency of cash due to disappointed expectations... at moments of discredit, such as occur when a heavy fall of commodity prices has impaired the position of many debtors, the commodity bill has two defects. In the first place, in an unfavorable market it ceases to be self-liquidating; there may be both delay and loss in selling the goods financed by the bill. And secondly, there may be applicants for loans, whose position is ultimately sound and solvent, and who ought to be assisted, but who cannot furnish commodity bills sufficient in amount to cover the loans needed. That does not mean that finance bills then become a desirable form of security. In fact, there is an obvious danger that a finance bill may be drawn and accepted by people whose credit though reputed good has in reality been weakened. The right course is rather*

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to accept any security representing a sufficient amount of wealth to cover the loan with adequate margin, without being too particular in defining the form of the security or even in insisting on its immediate marketability." (Hawtrey, 1932).

344 "*The leading Hamburg bankers wrote to their colleagues in Amsterdam to protest against a decision which would infallibly plunge all Europe in an abyss of distress, and threatened to suspend their own payments for as long as might be necessary in the circumstances. The gloomy forebodings of the Hamburg bankers were justified since all confidence in bills of exchange vanished overnight.*" (Henderson, 1962). "*In contrast to the cashiers, the first-round effects of Neufville's failure on the shadow banks appear to have been rather limited. Rumors had been circulating for some time concerning Neufville's solvency, and most of the large firms appear to have limited their exposure accordingly. More devastating to the large banks were the second-round effects of the crisis. In Amsterdam's most important satellite market, Hamburg, claims against Neufville amounted to around 3 M florins, spread over 38 counterparties (Jong-Keesing 1939, p102). The bill market there was faced with virtual collapse. On Aug 4, a group of prominent Hamburg merchants sent a petition to Amsterdam, demanding a bankruptcy preference, and threatening a shutdown of their market for Amsterdam bills if this was not granted [Soetbeer (1855, 51) and Sautijn Kluit (1865, p25-6); English translation is from Tooke (1838, p149-50)]*" (Quinn and Roeberds, 2012). "*[Although] Swedish houses complained early in the fall of 1762 that bills they drew were protested and not paid in Amsterdam while remittances sent to cover the bills were retained... [By Aug,] Hamburg warned Amsterdam houses that they would suspend payment unless support was furnished to the DeNeufvilles. In one account, the letter arrived too late [Wilson, Anglo-Dutch Commerce, p. 168.] Another stated that a plan to save the firm failed because its reputation was too bad [Wirth (1968, p87).]"* (Kindleberger and Aliber, 2005). "*When Frederick turned to restore the Prussian currency, a fat contract to the tune of millions, envisaged a return of 5%, and a float of bullion under contract from Amsterdam and London... When the doors of [AWB] closed in mid-July for the biannual count, the surface of business in Amsterdam still looked confident. But when those doors opened again 2 weeks later, the shutters went up on Arend Joseph and another Jewish banker, both deep in the bullion deals. They left a gap of several million guilders and unleashed the break-up on Mon 25 July of the De Neufvilles. This major firm dragged down other merchants, and the crisis, gathering momentum, sharpened the demand for hard cash. On Sat 6 Aug, the premium for bank money passed —mirabile dictu— to a discount of 0.5%. By the following Tues, 17 Amsterdam houses stopped payment. Discounting bills of exchange was at a standstill. One rescue plan proposed a moratorium by settling bills a third at a time from 4 to 10 months. And insurance business was not spared: the failure of the De Neufvilles affected the important claims for the loss in 1762 of 3 grain ships sailing in the fleet from Konigsberg, Memel, Libau and Riga. These were still not settled in Aug 1763 when bankruptcy came. The disaster left the market uncertain and divided. Some firms were not sorry to see the De Neufvilles go to the wall. As interlopers, they had broken into the charmed circle of big business on the Dam with scant respect for the establishment and the old guard simmered with resentment at their success. Not least when negotiating in Berlin, they had even offered to help Frederick to promote his Emden company. The mere thought had left the Dutch minister speechless, and it still rankled in many minds. When it came to set up a rescue fund, the response was patchy. Hope & Co offered 0.5 M and others added their stint; but the wealthy Andries Pels remained aloof, leaving the rough justice of the market to clear the board."* (Spooner, 1983).

345 "*Much critical literature appeared condemning the bankruptcies. Arend Joseph is made the special butt of criticism. He is pictured as departing from Amsterdam in a coach and six, leaving a debt behind him of 100,000 guilders and taking 600,000 guilders with him to a free city (Kuilenburg, Holland) where it could not be touched.*" (Bloom, 1937). "*The myth of indiscriminate access may have been given credence by a few notorious cases in which the Culemborg or Viarren magistrates and the outside authorities were in disagreement on the innocent status of an asylum-seeker. The prosecuting authorities sometimes put pressure on the lord of a sanctuary to refuse or withdraw asylum and usually with success. The most famous case occurred in 1664, when the Estates of Holland gathered an army around Culemborg to prevent an abductor escaping to still another hiding-place. These conflicts occurred in a small minority of cases, but the conclusion that in all other ones the prosecuting authorities remained content would be too rashly drawn... Asylum was never even considered for ordinary delinquents such as thieves, robbers or smugglers. Neither did any of the fugitive sodomites, convicted by default in the course of the 18th century, request asylum. But also, the debtors and killers who found refuge in one of the sanctuaries were only admitted after a convincing plea of good faith or self-defense, respectively. Their innocence might not be 100 % or plain to see for everyone at home, but the authorities of the sanctuary had to be convinced that they were not frauds. The debtors characteristically stated that they had got into trouble temporarily through no fault of their own, while the killers claimed that it had been an accident and that they had meant no harm.*" (P.S., 1986).

346 "*In the long run, the DeNeufvilles would have been able to pay 70% of their obligations, but they settled with creditors for 60% before that became known. In the end, the Hamburg creditors had to wait 36 years to collect even that much [Baasch (1927)]"* (Kindleberger and Aliber, 2005).

347 "*Suppose that the Hamburg banker (the drawer of the bill) had repaid the Amsterdam banker (the drawee of the bill) prior to the maturity of the bill, but that the Amsterdam banker goes bust before the bill is redeemed. Then, the holder of the bill has the right to take the protested bill to the Hamburg banker and demand payment, since the legal claim of the bill is in force as long as the bill is outstanding. Thus, from the point of view of the Hamburg banker, he is being asked to 'pay twice' for the same bill – once to the (now failed) Amsterdam banker, and once to the owner of the bill. [Interestingly, this risk does not seem to have been recognized by the Hamburg bankers. The creditworthiness of the Amsterdam bankers seems to have been beyond question]... [T]here is ample evidence that many of the Hamburg bank failures arose from this feature of bills, and this feature of Wechselstrenge is the key to understanding the dynamics of the crisis in 1763... The distressed sales by an individual arise from his need to meet obligations stemming from his part in the acceptance loan. The legal institutions of endorsement and Wechselstrenge that were so effective at allowing individuals to commit ex ante become the major engine for distressed selling in a crisis... The propagation of the crisis followed the links established by the tight web of bills of exchange. When de Neufville and other Amsterdam houses declared themselves bankrupt, the bills drawn on them were protested immediately and presented to the endorsers or drawers of the bills. Due to Wechselstrenge, the Hamburg bankers could not refuse payment even if they had sent remittances to the Amsterdam house to settle the obligations from an acceptance loan, with the implication that they had to pay their obligation 'twice' [Skalweit (1937, p50), Rachel, Papritz, and Wallich (1938, p513).] In this manner, Hamburg bankers received protested bills from Amsterdam, forcing many of them to close down. In turn, Berlin bankers received protested bills from Hamburg, and by this means, the wave of bankruptcies spread contagiously from Amsterdam to Hamburg,*

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Berlin and other places. In the end, more than 100 banks succumbed to the crisis, most of which were located in Hamburg. "(Schnabel and Shin, 2003).

348 "*In Amsterdam and Hamburg, there was no direct public intervention, but the respective giro banks tried to fight the liquidity crisis through the extension of additional lombard loans. However, the banks' hands were tied by the provision that the ratio of bank money to gold and silver holdings should be kept close to one, and their support was but a drop in the ocean. Nevertheless, it may have helped to interrupt the vicious circle of pending illiquidity and fire sales of goods [Soetbeer (1855, p54).]*" (Schnabel and Shin, 2003). "*The first reaction in the city was to provide emergency credit to the banking community, for during 1763, 97 private banking firms had gone bankrupt. By Aug 3, a week after the panic began, the Bank of Hamburg had extended 1 M marks credit. By Aug 19, this had already been totally consumed and the crisis continued. The merchants and the Commerce Deputation then pressured the bank into granting loans against cheap local Danish currency—Courantgeld—and also into giving the Admiralty 500,000 marks which it in turn extended as credit against unsaleable commodities such as oil, tobacco, sugar, coffee, soap, cotton, linen, etc*." (Liebel, 1965).

349 "*This proposal was rejected after some debate, and the Hamburg merchants' threat only served to initiate a 3-month long shutdown of the Amsterdam market for Hamburg bills. To preserve their own liquidity, Amsterdam bankers protested virtually all incoming bills drawn by Hamburg counterparties (Jong-Keesing 1939, p166-71). In Hamburg, this blockade of acceptance credit forced 93 firms into bankruptcy during the month of Aug (Soetbeer 1855, 52; Schnabel and Shin 2004, p943-4). Similar shutoffs of credit and clusters of failures occurred in other places dependent on the Amsterdam bill market, including Berlin (Skalweit 1937, p50) and Stockholm (Jong-Keesing, p193-8). [From the viewpoint of the Amsterdam banks, the blanket protests of foreign bills were justifiable as a way to insulate themselves from potential insolvencies of Neufville's counterparties. To the merchants in the outlying markets, these protests seemed like nothing more than a liquidity grab; a common complaint was that Amsterdam bankers even protested bills that were covered by collateral and therefore posed no credit risk to the drawee (Skalweit 1937, p86).]*" (Quinn and Roeberds, 2012).

350 "*He was determined to frustrate any attempts by the bankers of Amsterdam and Hamburg to get out of their difficulties, at the expense of Berlin merchants. It was alleged that bills of exchange, issued by (or endorsed by) solvent Berlin firms were not being honored in Holland and in Hamburg simply because local bankers wished to keep specie in their vaults while the panic lasted. In such cases Frederick instructed his representatives to protest as energetically as possible. Frederick helped his subjects to secure assets which were held by their agents in Amsterdam and Hamburg. In Sep 1763 it was reported that 'the gold or silver, coined or in bars, deposited at Hamburg before the late bankruptcies were declared, have been reclaimed by his majesty's minister, under pain of military execution and a sum is demanded from the same city to make good deficiencies.*" (Henderson, 1962).

351 "*Since, in the opinion of all clear-sighted merchants, the confusion was far greater than the state of affairs justified, and the only important thing was to restore confidence —an almost impossible task in such situations— to ban the storm, the Admiralty advanced a million on goods, an operation that immediately made a very favorable impression. Now, in accordance with the excellent Fallite order that had existed since 1753, the fallen houses were subordinated to the directors appointed for Concurse, and the liquidation process soon revealed that the first horror had been much greater than the real situation. In many cases, the numerous changes gave so many opportunities to compensate the companies in question that the amount remaining as the actual debt was greatly reduced. Many a house, which in the first horror had given everything for lost, could soon offer full payment, at least in terms of dates, and started its business."* (Wirth, 1890). [Translated using Google.] "*One ancient device short of lending money to a firm in trouble was to issue marketable securities to the firm against appropriate collateral. (Of course, as the first part of this chapter indicated, when markets break down, even the most liquid securities may not be sold readily.) In 1763 and 1799, in an equally complex and jerry-built system of support, admiralty bills were an integral feature... to economize on the use of gold and silver coin*." (Kindleberger and Aliber, 2005).

352 "*Following the 1763 panic (originating in Amsterdam but affecting many merchants in Hamburg), lending practices were again liberalized, ultimately leading to a partial closure (suspension of withdrawals) of the bank from 1766 until 1768 (Levy von Halle 1891, 6). Beginning in 1770 the bank attempted to address the instability of the agio by making silver bullion rather than coin the basis for deposits (Sieveking 1934b, 150). The city council reluctantly agreed to this, and then only after the bank offered a 2 M mark loan on favorable terms. Under its new policy, the bank stood ready to buy at 27.625 marks/ mark fine silver and sell at 27.75 marks/ mark fine, prices only slightly above the original 1619 value of bank money (25–27 marks/ mark fine, depending on the coin). This form of 'virtual coin' proved extremely popular with merchants, so much so that in 1790 the bank ended its use of coin in favor of silver bullion. Money in bank ledgers became known as the 'pure silver currency' (Reinsilberwährung). Deposits and turnover at the bank increased sharply with the decline of [AWB] in the 1790s*." (Roberds and Velde, 2014).

353 "*In the crisis of 1763 [BOE] and London private bankers rescued their Dutch correspondents by granting, in distress, credits larger than those previously given in periods of prosperity. 5 consignments of gold were shipped in Aug and 2 in Sep. In addition, [BOE] and other banks delayed presenting bills for payment. Wilson comments that none of this was pure altruism. Instead, it represented a practical policy based on the knowledge that British prosperity was intimately associated with Dutch prosperity and that intensification of the Dutch crisis would cut off a source of capital for Great Britain [Wilson (1941, p168–9)]... Whether Amsterdam tried to save itself by selling its British securities is debatable. Wilson claimed that in this way Amsterdam exported the crisis to London. Carter insisted she cannot find evidence of sales in the transfer books... London came to the rescue of Amsterdam and took over a considerable portion of Dutch trade and finance with Scandinavia and Russia.*" (Kindleberger and Aliber, 2005). "*English bankers, and particularly [BOE], came to the rescue and lent heavily to their Dutch correspondents. [BOE] also generously suspended the payments of its own bills to tide matters over. The worst of the crisis was over by Nov, but the goods trade took longer to recover fully, and in the meantime, British shipping and trade were getting surer footholds*." (Wilson, 1939). *"In almost every commercial centre merchants refused to renew such bills and demanded payment in cash whenever bills fell due, while bankers generally refused to advance money by discounting bills. [BOE] adopted a different policy from the continental banks and advanced £1.6 M in bullion in a week to support financial houses in Holland and Hamburg. [Adam Smith (1776). But Smith was not prepared 'to warrant either the greatness of the sum or the shortness of the time'. According to Macpherson (1805), [BOE] and the chief London banks suspended payment of their own bills so as to keep funds available to assist the finance houses on the continent.]*" (Henderson, 1962). "*In London the Funds were very unsteady at the beginning of August, owing to the withdrawal of Dutch holders to realize on their investments, and the market was uneasy*

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when the first crop of bankruptcies was announced from Holland. But very few of the London houses were involved in the wisselruitenj and there were no large-scale bankruptcies. Holland's crisis was London's opportunity, and London bankers (including [BOE]) came to the rescue of their Dutch correspondents and gave valuable assistance 'by giving larger credits to their correspondents in the hour of their distress than they had ever done in the season of their prosperity.' Heavy remittances were sent for the support of the Dutch banks, so that perhaps the most conspicuous feature of the crisis as far as London was concerned was the outflow of specie to Amsterdam in Aug, when there were 5 consignments, and in Sep, when there were 2." (Wilson, 1941).

354 "*In the year 1764, the case of Solomons vs. Ross (1 H. B1. 131, in notis) came before Mr. Justice Bathurst sitting for Lord Chancellor Northington. The parties were merchants in London and correspondents of Messrs. Deneufvilles merchants and partners in Amsterdam. On the 18th of Dec 1759, the Deneufvilles stopped payment; on the 1st of Jan 1760, the chamber of desolate estates in Amsterdam took cognizance thereof, and on the next day they were declared bankrupts, and curators appointed to their estates and effects. Ross was a creditor of the bankrupts, and two days after they had stopped payment he made an affidavit of his debt in the mayor's court of London and attached their effects in the hands of Michael Solomons, who was indebted to them. Ross obtained judgment by default on the attachment, and an execution issued against the garnishee, who being unable to pay gave his note for the amount payable in a month. A few days after wards Israel Solomons, who had a power of attorney from the curators to act for them in England, filed a bill in his own name and that of the curators, praying that the garnishee might account as debtor to them and be restrained from paying Ross. The garnishee filed a bill of interpleader and paid the money into court. It was decreed, that the money should be paid to Israel Solomons for the benefit of the creditors of the bankrupts, and that, the note should be delivered up by Ross to be cancelled. This cause was cited in argument before Lord Loughborough, who then said, that he was counsel in the cause. There can therefore be no doubt of the accuracy of the report; and as has been observed by Chancellor Kent, it is 'a strong and interesting decision, applying, in favor of other nations, the rule which England asks for herself.' Lord Loughborough said, that this case was decided solely on the principle, that the assignment of the bankrupt's effects, to the curators of desolate estates in Holland, was an assignment for a valuable consideration, and therefore acknowledged in England, agreeable to captain Wilson's case in the House of Lords.* " (Livermore, 1828).

355 ""*"30 bankruptcies were soon reported, and by Aug 50 failures had occurred. A panic ensued in Amsterdam. The Jews were among the greatest sufferers because of their active participation in bill of exchange trading. In Aug 1763 nine Portuguese Jewish bankers from Amsterdam sent a request to the court of their city asking that leniency be shown in regard to the law on bills of exchange in order that payment might be postponed and a longer interval granted to meet obligations. This request was denied them and they, like their Christian colleagues, were forced into bankruptcy. Many houses were sucked into the whirlpool of failures. They later discovered that they were not as badly off as they had at first imagined, especially when it was ascertained that rumors about the bad conditions in other countries had been greatly exaggerated. Some of the bankrupt concerns realized that they could pay their debts. To help matters, many firms in Hamburg, Altona, and Berlin recalled their bills of exchange thus affording the Amsterdam merchants time to recuperate."* (Bloom, 1937).

356 "*Frederick the Great suspected a French plot to be behind these bankruptcies (for of course his understanding of economic mechanisms had been poorly tutored), and he reacted by appreciating his coinage further. Thus, he attempted to meet deflation by further deflationary policies.*" (Liebel, 1965). "*In Berlin, the number of initial failures was relatively low. This was due to the fact that Friedrich II—in violation of Wechselstrenge—imposed a payments standstill on outstanding bills and even organized outright bail-outs. However, many of the Berlin bankers who had just averted bankruptcy in 1763 collapsed in the following depression Skalweit (1937, p109), Rachel, Papritz, and Wallich (1938, p463).]*" (Schnabel and Shin, 2003). "*To aid the landholders, King Frederick II had tried to halt the crisis' transmission to Berlin through the refusal of Wechselstrenge (holder in due course) and bailouts. However, both measures only heightened the risk perception of creditors, as the king colluded with the landed nobility, thus increasing pressure on lenders and worsening the credit crunch (Schnabel and Shin, 2004).*" (Wandschneider, 2013). "*There was no true crisis and no collapse in London, but London was, in a sense, the starting-point of the tension, and London had to take the final strain. This it did with success, but the Aug statement shows what a nice thing it had been and still was. The Bank then held £0.1 M of what has here been called free gold, but of this £64,000 was at the Mint and another £1000 earmarked for coinage. It had a mere £4500 in pieces of eight. There was the usual £9-10,000 of coin in the tills and only £0.253 M in the Vault. In all the 7 years of war the Vault had not fallen below £1.358 M (in 1759). In 1761 the figure had been £2.375 M. Against this scanty metallic reserve in 1763—£0.367 M of every sort in every place—the Bank had £5.315 M of notes in circulation and another £0.138 M in the 'store', ready to be put into circulation. It had also a liability of £1.5 M on the drawing accounts and a further considerable sum for which it was liable in the Exchequer and Audit Roll of dividends on the funds received but not yet paid out to fundholders. There were also some unpaid dividends of its own. It was very busy all the year buying gold and getting it turned into guineas. Against £0.513 M issued from the Mint in 1762, £0.883 M was issued in 1763. But evidently the guineas had been going out of the Vault much faster than they could be got into it. As a contemporary wrote, the Bank bought gold with notes 'and after they had been at this trouble, the notes they had given for it returned upon them and drew it out again'... It is said—and although there is no note to this effect in the Court Boks, it may well be true—that the Bank and the principal London bankers agreed 'to suspend the payment of their own bills' so as to keep their resources free for the work. Adam Smith had heard a story that the Bank at this time advanced for the assistance of merchants, English or foreign, 'in one week, about £1.6 M; a great part of it in bullion. I do not, however', he wisely adds, 'pretend to warrant either the greatness of the sum, or the shortness of the time.' The bullion drain shows clearly enough in the figures already quoted. There was heavy discounting all the year, and particularly heavy in the autumn. On several days upwards of £0.2 M worth of bills were dealt with; though that rate was never kept up for a week, nor anything like it. The highest figure for any one week is £0.54 at the beginning of Oct. There were, however, other ways than discount by which bullion could be drawn from the Bank. The note circulation at the Aug statement in 1763, though excessive in relation to its metal backing, was nearly £0.6 M less than it had been a year before and nearly £0.9 M less than it would be a year later. Who did the discounting and who may have cashed the notes we do not know. They may have been the same people, for it was usual to pay out notes not coin in the discount business. Adam Smith's story cannot therefore be precisely checked. He knew well enough that it was a story—not an exact picture of what happened but an indication of the sort of thing that was happening. As such it may be accepted.*" (Clapham, 1945). "*In the end Amsterdam was cleansed of some overly ambitious houses and the panic restricted to a few Dutch and German commercial centers. A rapid recovery restored confidence in the inherent strength of existing credit practices, and, as*

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a result, proposals advanced during the crisis for a local credit cooperative came to nothing. But the idea of calling on stable houses and rentiers to build a public fund to assist firms caught short by a decline of commodity prices did not die. In fact, existing credit practices were more fragile than was recognized in 1763." (Riley, 1980).

357 "*A special bankruptcy court was now set up to settle the affairs of the insolvent merchants. Firms which were in financial difficulties for any reason other than the recent failures in Amsterdam and Hamburg were referred to the normal bankruptcy courts. The new court was to some extent a conciliation tribunal which helped debtors and creditors to agree upon terms which would enable debtors to stay in business. The court was instructed to do everything in its power to ensure the survival of workshops belonging to merchants who applied for relief... this court was endeavoring to promote settlements between debtors and creditors which would enable insolvent firms to stay in business...*" (Henderson, 1962).

358 "*The biggest impact of the crisis was felt in Berlin. The bank failures in Amsterdam and Hamburg, and probably also the Prussian departure from Wechselstrenge, precipitated a severe credit crunch, provoking numerous bankruptcies in the corporate sector. The situation was exacerbated by the coin reform enacted at the end of the war, which produced a drastic tightening of the monetary base. Prussia plunged into a deep and long-lasting recession and deflation, which culminated in a second wave of bankruptcies in 1766... It is easy to understand why Prussia was hit much harder than the other countries. In the other countries, the crisis led to the temporary closure of many banks and to the disappearance of unviable financial institutions. In contrast, the breakdown of credit networks entailed severe effects for the real economy of Prussia because many projects could no longer be financed and had to be interrupted or even abandoned. In addition, the willingness to extend international loans receded after the crisis, such that the total impact on Prussia was much more severe than the immediate effect.*" (Schnabel and Shin, 2003).

359 "*In 1765, Frederick II passed a 3-year general moratorium on all outstanding debts – principal and interest payments – but this was insufficient to restore the estates and it did not relieve the overall shortage of capital.*" (Wandschneider, 2013). "*Prussia plunged into a deep and long-lasting recession and deflation, which culminated in a second wave of bankruptcies in 1766. Many of the bankers who had just averted bankruptcy in 1763 finally collapsed [Skalweit (1937, p104), Rachel, Papritz, and Wallich (1938, p463).]*" (Schnabel and Shin, 2003).

360 "*At the end of the moratorium in 1768, many estates went into foreclosure and liquidations of estates in which less than half of the outstanding debt could be recovered were common (Weyermann, 1910, p66). Land as collateral no longer sufficed to attract private loans and creditors shied away from all rural investments.*" (Wandschneider, 2013). "*It was not until 1768 that industrial production in Berlin expanded once more. In that year there were 330 silk looms at work in the capital as compared with 238 in 1766. In June 1769 the special bankruptcy court reported that owing to the completely changed state of affairs' it would now be possible to refer all future bankruptcy proceedings to the normal courts.*" (Henderson, 1962).

361 "*By 1777, Landschaften were created to facilitate] the refinancing of loans to Prussian noble estates by issuing covered bonds – Pfandbriefe – that were jointly backed by the member estates. Landschaften were public institutions that did not have a profit motive and except for reserve funds did not hold their own capital... The Landschaft would issue covered bonds up to half the value of all estates and guarantee the interest payments as well as the principal, backing the Pfandbriefe with the joint liability of all member estates. Furthermore, Pfandbriefe should circulate as quasi-money to alleviate the general shortage of credit.*" (Wandschneider, 2013). "*Unfortunately for the province of Silesia, the great victories of Frederick II. had almost all been won there. Buildings had been burned, cattle driven away, implements destroyed, and losses of all kinds suffered. Moreover, the prices of grain, which had been high during the war, now fell. Everybody needed money, and property was unsalable. The current rate of interest was 6%, but even on the safest mortgage loans it was 10%; and the additional commission, which had been 0.5%, rose to from 2 to 3%. In this state of things a merchant of Berlin named Büring, in 1767, laid before Frederick a plan for a credit association, of which the text is as follows: 'A Plan for providing abundance of money and credit for the country and for the safest manner in which to begin assisting the impoverished nobility. The true capital of this country consists in cash and real estate. The latter is more than ten times in excess of the former; and, if only a small part of it could be made current, it would be abundantly sufficient to secure credit and welfare for the entire country. To arrive at this, it would be necessary to establish a general Landschaftscasse, which would place a certain valuation on all the estates of the nobility when voluntarily demanded, record it, and lend them 50 or 66% thereof on mortgage, so that they might thus pay off their annoying creditor... If anyone should fail to pay his interest promptly, his estate should at once be offered for sale. I am in favor of no receivership; for on that rests an eternal curse... To send any such bonds out of the country should be prohibited under severe penalty, and no stranger should be permitted to purchase them either directly or through others residing here, and thus draw the interest out of the country; and in any such case the entire capital should be forfeited, half to the informer, and the other half to the general Hypothekencasse... How much more value, then, these papers would possess, which draw 4% interest, and can be exchanged for cash any day, when demanded! Would not the Hollanders, without our noticing it, fish away all our papers from us, and ruin us through ourselves?'... It is now over a century and a quarter since Büring handed to King Frederick his proposal 'for making a part of the real estate of the country current'; and, while all attempts to base money on land have failed, this proposal, which resulted in the establishment of associations for the issue of long-term listed bonds based on land, is the origin of all modern methods of organized mortgage banking as it is now carried on the Continent of Europe.*" (Frederiksen, 1894).

362 "*Another mild decline [in the price relative to the Hamburg Banco] in 1763 was followed by increases to the high of 247% of parity in 1765. Thereafter, the price of Hamburg Banco fell precipitously to 117% of parity in 1768... The deflationary policies adopted by the Caps in 1766 quickly reversed the party's political fortunes and the Hats returned to power in 1769. The Caps' subsequent regaining of power in the 1771-2 Riksdag was cut short by the coup d'etat of 1772, in which the mercantilist-capitalists of the Hat party collaborated with the Crown and the nobility to overthrow parliamentary government in Sweden. With this action, bourgeois democratic government in Sweden was destroyed and the country's social revolution was nipped in the bud.*" (Eagly, 1969). "*The respected Goskowsky house and various others companies in Leipzig and Berlin, but many more in Sweden, collapsed in this crisis."* (Wirth, 1890). [Translated using Google.]

363 *"In 1765 this was followed by the development of a covert plan to gradually (over a 5-year period) restore the currency to its prewar parity with the Hamburger mark banco, to be accomplished through open market purchases of notes. The plan was supposed to be carried out in utmost secrecy, but the public soon got wind of it, and began hoarding transport notes in expectation of their appreciation. The result was a sudden, massive deflation: from 1766*

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to 1768, the exchange rate of the Swedish dollar silver money appreciated from 2 dsm/ Hamburg mark banco to 1.2 dsm/ Hamburg mark banco (Edvinsson 2010a, 282). Over the same 2-year period, Heckscher (1934, 182) estimates that the general level of domestic prices contracted by about 50%." (Roberds and Velde, 2014).

364 "*A bankruptcy-process at the Stockholm Court of Justice was typically initiated after an individual approached the court with a request to enter into a state of bankruptcy and be protected from all creditors. In the bankruptcy-legislation that developed from the late 1760s, the court normally accepted the request, if certain procedures were followed correctly, and as long as the individual agreed to certain set terms and conditions. These conditions included providing a true account of all assets and credits, agreeing to surrender all property to the court and accepting a restriction of freedom of movement. The case was closed with the final ruling of the court, which established how the assets of the debtor should be distributed among the creditors... Before 1766, when a debtor failed to pay a debt, a creditor could do one of two things, either extend the debt-time-period, or protest and take the matter to the office of the Stockholm governor. If the claim was deemed legitimate, the debtor's belongings were placed under the threat of distraint, that is to say, under the threat of possible seizure. If the debtor had no money or objects of value, he or she would be placed in debtors' prison, until the debt was settled. The right of the creditors to use distraint or debtors' prison was sanctioned in the General Law of 1734 and subsequently explained in several decrees and official letters from the Court of Appeals' The only way for a debtor to escape the threat of distraint or debtors' prison was to travel to another country (typically Copenhagen or Christiania (Oslo) in Denmark-Norway), and then send an application of free passage to the Swedish king. The nature of the situation made the process laborious. If the request was granted, the king's letter made it possible for the debtor to return to Sweden and try to settle the matter. If necessary, the debtor could then declare bankruptcy, with the option to voluntarily surrender all goods to the creditors, and thus avoid arrest. Until the Court of justice ruled in the matter, the debtor could use the king's letter to ward off possible threats of distraint and debtors' prison. Before 1766, if the debtor chose to stay in Sweden and opted to declare bankruptcy, the threat of distraint or debtors' prison still did not disappear. At any time during the bankruptcy-process the creditors could try to seize money or belongings from the debtor. Following the issue of the new decree, the creditors' right to seize the property, or call for the placement of the debtor in debtors' prison was removed, for the entire time-period from the initiation of a bankruptcy-process to the verdict. From this point onwards every bankruptcy-application, if accepted by the Court of Justice, was given the same status as a letter of free passage issued by the king, protecting the debtor from distraint and debtors' prison... Between 1763 and 1766 an alarming number of Swedes fled abroad because of debt, with potentially highly damaging effects on the economy. Protection against distraint and debtors' prison during cases of bankruptcy was further sanctioned in a new decree issued in 1767 and also in the bankruptcy law of 1773. It is likely that the rise in the annual number of bankruptcy-applications from the end of the 1760s, can be explained not only as an effect of a stagnating economy but also because of the fact that a larger number of individuals every year, actively chose to apply for bankruptcy, instead of as before flee the country. The new legislation turned the prospect of bankruptcy into something that the debtor, to a much higher degree than before, could benefit from... One important result of the new legislation was a new emphasis on the need to limit the duration of the bankruptcy-process. A call to ensure a swift handling of the bankruptcy-applications was already included in the 1767 bankruptcy law. In 1768 the Svea Court of Appeals followed up on this when issuing a letter that instructed all second-tier courts to handle cases of bankruptcy with promptness. It also requested the courts to deliver lists of all cases that had been brought to a successful end, or otherwise risk fines.26 The call was an effort to bring old un-finished cases to conclusion. It should however also be viewed as a response to the new protection against distraint and debtors' prison that guarded the debtor during the bankruptcy-process. While the 1766 decree protected the debtor, the Svea Court of Appeal came to the protection of the creditors, by trying to limit the duration of the process and hence the period during which the protection would remain in place.*" (Nyberg and Jakobsson, 2016).

365 "*After King Gustav III seized power from the Parliament in 1772, the decision was made to stabilize the value of the Swedish currency at a lower value than prewar parity. More open market operations were undertaken, this time by one of the bank's officers, Samuel Söderling, who was authorized to trade for the bank on his own account (Fregert 2012, 46). Söderling eventually succeeded in stabilizing the value of a dollar silver money to a level of 1.94 Hamburger marks banco (Edvinsson 2010a, 282). In 1777, a monetary reform restored the silver standard and introduced a new, single unit of account, the Riksdaler, which was now equal to 6 dollars silver money at the official rate. The bank's transport notes (originally payable in copper) were made payable in silver at a rate corresponding to 1.94 dsm/ Hamburger mark banco, a devaluation of almost 50% relative to their prewar 'par' value. The new regime also required the bank to write off its holdings of government debt, a move that eliminated virtually all of the bank's capital. The bank responded by halting new loans to the private sector, requiring mortgages to be amortized at a rate of 2% annually, and contracting the stock of notes in circulation. These policies were to be kept in place until the bank's metallic reserve had reached 75% of the value of notes outstanding (Fregert 2012, 52–53).*" (Roberds and Velde, 2014). "*The two political parties-the Hats and the Caps-vied with one another for control of the government from 1739 to 1772, a span including most of the epoch known in Swedish history as the 'Age of Freedom', 1719-72.*" (Eagly, 1969).

366 "*The foundation of [BOS] preceded the Union, and followed hard on that of [BOE], and like it represented collaboration between English and Scottish interests. The original directorate included 7 Edinburgh and 5 London directors, among whom John Holland was most active. It received a 21 years' monopoly, was at first chiefly concerned with bill discounting, but soon issued notes and took deposits, on which it later allowed interest. It had to suspend payments temporarily in 1704. Probably because of suspicion of the Jacobite sympathies of some directors (which its historian, Dr. Charles Malcolm, deems unwarranted) its monopoly was not renewed when the charter was due for revision in 1716.*" (Marwick, 1964).

367 "*In 1727 [BOS] adopted the 'optional clause', whereby creditors were given the alternative of delaying reimbursement for 6 months in return for payment of interest. Its main rival, [RBS], had a somewhat involved origin. Holders of the Scottish national debt had been guaranteed reimbursement from the Equivalent, which proved inadequate for the purpose. They meantime received debentures, and in 1719 formed the Equivalent Society to protect their claims, which in 1724 was constituted as a company, and in 1727 received a charter, authorizing it (much on the model of the original shareholders of [BOE] and National Debt) to undertake banking. Lord Islay, later Duke of Argyll, and virtual ruler of Scotland, became Governor, and thanks to his influence [RBS] soon attained prominence and prosperity, and acted as banker to the Board of Trustees and the Forfeited Estates Commission. It is recognized as the pioneer of the famous 'cash credit system' by which advances were made on personal security, thus allowing men without capital of their*

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own to launch enterprises ; it is held thus to have contributed to industrial advance, and also to witness to the high standard of integrity and ability which made such confidence feasible." (Marwick, 1964).

368 "*Apart from these claimants to pedigrees Smith's, Praed's of Truro, Fector's of Dover, Wood's of Gloucester, Gurneys' of Norwich, Stevenson and Salt of Stafford—there are comparatively few signs of other bankers before the middle of the 18th century. A bank at Exeter had a brief existence during 1696, but there is no subsequent trace of it. Several years later, in 1706, a bank was founded in connection with the Co of Mine Adventurers of England by Sir Humphrey Mackworth; both were speculative, highly unstable 'bubble schemes', the bank collapsing in 1708. Other evidence of early banking is to be found in the records of the High Court of Justice in Bankruptcy, founded in 1710. In its first 50 years only 8 failures of country bankers were recorded, compared with a larger number of London bankers and a fairly continuous stream of London goldsmiths. (It may be remarked that the significance of the word 'banker' as applied to the 8 country failures is not indicated.)... The reasons for the late growth of country banking are to be found partly in London's much earlier economic development, partly in the conditions accompanying the birth and adolescence of [BOE]. There had been no lack of proposals for banks of various types, many with a national basis, for a century and more before the prerequisite, a government bank, was made possible by the revolution of 1688*." (Pressnell, 1956). "*Banking appeared at an earlier date in Ireland and Scotland than in provincial England, and this remains true even if Dublin and Edinburgh are excluded. But that of course is not realistic, because non-metropolitan banking presupposed a wider network. From its foundation in 1719 the bank of La Touche & Kane operated what was virtually a country-wide system of correspondents... If the innovative genius of banking was purely Scottish from the 1770s, Scotland was in effect taking over a role in which innovation had been more on the Irish side before that. Even in the 1720s notes were circulating extensively: as Prior observed in 1729: 'were it not for bankers' notes which we have been passing in good plenty, it would be impossible to manage our domestic trade half so well as we do.' Indeed, some rough calculations of circulation, basing the combined issue on the known instances of some banks, would bear out Prior's surmise fully. If bank circulations equaled the stock of specie, Ireland's situation was unique at this stage, and proportionately note circulation in Dublin, easily the main center of banking in Ireland, would have equaled or exceeded that in London... The contraction in the note circulation in the early 1730s... was the basis of Berkeley's interest in paper money. If bank paper contracted, there was no reason why it could not be artificially provided by a state institution and with results no less beneficial than those of banks in the 1720s. Cantillon's book which existed in manuscript by 1733 went more specifically into the nature of money, and has been hailed as the precursor of modern economic theory. Thus, two of the first writers to approach the question of credit with sophistication and to analyze the nature of money were Irish*." (Cullen, 1983).

369 "*Limerick was a very minor port, but its inland situation made it the focal center of the landlord rents of 3 counties and of part of a fourth (Kerry). In the inland business of another banking house, Limerick ranked with Cork in importance. The first recognizable Irish bankers, the houses of Burton and Cairnes, grew out of such remitting. Both houses, it should be added, were established by sons of landed families. Coming from Clare and Donegal/Monaghan respectively, they reflected the interest that country gentry had in rent-receiving in Dublin. The landed dimension is thus very evident in early Irish banking just as in Scotland, banking in a landlord city, Edinburgh, preceded that in the mercantile city Glasgow. The first true merchant banks emerged only at the end of the 1710s and the 1720s. The partnership of La Touche & Kane began in 1719, and the house of Swift was opened in 1722. Not only did true merchant banks emerge late, but some of the merchant banks themselves evolved over time into landlord banks. This was most evident in the case of La Touche's house which switched from mercantile associations to landed and even aristocratic ones from mid-century or even before ... The house of Swift in time went the same way, becoming the bank of Newcomen in the second half of the century. Finlay's bank, mercantile in origin also went in the same direction and within a few years of its establishment. These moreover were the sole 3 banks which survived from the banking boom of the 1750s till the end of the century. Landlords themselves founded banking businesses: the house of Gardiner & Hill is the most obvious instance, benefitting from Gardiner's office as deputy vice-treasurer, having the powerful figure of Lord Bessborough associated with it at one stage. Nathaniel Clements, teller of the exchequer under Gardiner, taking the business over when they withdrew in 1737, played a similar role in the 1740s and 1750s*." (Cullen, 1983). "*[B]ankers' circulation in Ireland had been estimated at the modest total of £0.4 M in 1729 (Scheme of the Money Matters of Ireland, Dublin 1729, p. 17),*" (Cullen, 1958). "*Private banking, as in England, emerged from the transactions of goldsmiths such as George Heriot, bankers to James VI & I, and merchants, especially grain dealers, like the elder Law of Lauriston and Sir William Dick, Lord Provost of Edinburgh. The most famous example is John Coutts (1699- 1751) who abandoned corn dealing for banking in the 1720's, established a London agency and eventually transferred his headquarters there; the family fortune ultimately descended to Baroness Burdett-Coutts, the Victorian philanthropist and peeress by special creation. The Edinburgh firm passed into the hands of Sir William Forbes (1739-1806) who took as partner (1773) James Hunter (afterwards Sir James Hunter-Blair); and Forbes, Hunter & Co. became the best-known Edinburgh bank, commemorated in Forbes's Memoirs of a Banking House (1859). Other noted Edinburgh private bankers were Mansfield & Co., originally drapers, William Alexander & Son, heavily involved in tobacco dealing, and Thomas Kinnear, also acting as an insurance broker. These banks sometimes exercised the right of 'free' note issue, but usually acted as agents for and intermediaries of the chartered banks, on whose directorates they were sometimes represented*." (Marwick, 1964). "*[Ireland] suffered from a chronic shortage of specie... To remedy this deficiency, Irish banks issued promissory notes which were secured on investment in land. Where specie was used for commercial transactions, as in the linen trade, and where credit was required, the handling of both cash and credit transactions had to be transmitted by banks. A Bank of Ireland might have helped merchants but, as one writer put it in 1721 when the issue was under debate, the 'few gentlemen' who put their money into banks found them either 'tricky or not responsible...' The failure of these banks had few repercussions except for those directly involved, but the failure of a Bank of Ireland might have fatal consequences on the country: 'a sore Finger may be easily mended but it requires the art of Omnipotence to Recloath a Skeleton with flesh and blood'... Ryder has drawn attention to fears in 1721 that a Bank of Ireland would enable the country's gold and silver to be shipped abroad, to leave Ireland exposed to invasion by the Stuarts*." (Legg, 1996). "*Ireland's earliest banks were established to facilitate the movement of money throughout the country, as well as abroad. Centered in Dublin, they were private enterprises, run by legally binding partnerships whose proprietors were drawn from the landed elite and the mercantile classes*." (Dudley, 2013).

370 "*In 1727, Mead & Curtis suspended payments. Burton and Falkiner failed in June 1733. Here, the usual measures to satisfy its creditors were ineffective, and it took 4 acts of Parliament to wind up affairs. [Papers in the Antrim Mss in the Public Record Office of Northern Ireland show that little*

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progress was made in recovering the debts of the bank until 1803, when a new group of trustees was appointed (P.R.O.N.I. Antrim Mss D 2977/2/7).]" (Legg, 1996). "The contraction in the note circulation in the early 1730s, which we know to have been very sharp both from the failure of the largest bank, Burton & Falkiner, in 1733 [was accompanied by] the downturn in the circulation of La Touche & Kane." (Cullen, 1983). "Between c.1700 and its failure, in 1733, Burton's bank was run by a series of partnerships —Benjamin Burton and Francis Harrison (1700-25); Benjamin and Samuel Burton (1725); Benjamin Burton, Samuel Burton and Daniel Falkiner (late 1725); finally, Samuel Burton and Daniel Falkiner (1728-33). In 1733, concerns over Samuel's ill health prompted a run on the bank —the catalyst for its failure... By the mid-1720s Burton's had gained an enviable reputation. The bank was seen as synonymous with solvency prompting the expression 'as safe as Ben Burton'... However, the death of Francis Harrison, in 1725, led to the formation of a new partnership (the second partnership) between Benjamin, and his Eton-educated son, Samuel (1687-1733). Harrison died a bachelor, and... Under the terms of his will, although Harrison left his estate in the hands of 3 trustees, his brother, Jeremiah, was bequeathed a life interest in it. If Jeremiah died without issue the estate was to pass to another brother, Marsh. As Jeremiah died c.1723, the estate went directly to Marsh Harrison... Marsh Harrison died in 1727... Hugh Boulter also blamed Harrison's will for the troubles that later surrounded the winding up of Burton's Bank as: 'By [8 Geo. I] the unsettled estate of any banker is made liable at the time of his death to all the bank debts: so that when Harrison died his whole estate, which was altogether unsettled, was liable to pay all the debts of the bank as well as Burton's, since they were both answerable jointly & severally.' In relation to responsibility for the bank's debts, Boulter asserted that Harrison's beneficiaries were not prepared to sell 'any more than will answer the debts of the bank at the time of his [Harrison's] death.' If the estate eventually paid more than its fair proportion, they would seek redress from the other bankers' estates for this was not 'an affair between the creditors and the bankers, but between the bankers themselves to adjust their several proportions of payment'... After Samuel's death in 1733 responsibility for resolving the bank's difficulties fell to Falkiner. Although he promised to honor its commitments, a petition presented to Parliament by a group of influential creditors led to a parliamentary inquiry. It established the bank's insolvency as well as the partners' financial obligations to the bank. In the years that followed, despite various acts giving the parliamentary-appointed trustees considerable powers, the persistent obduracy of Abraham Creighton, responsible for meeting Harrison's debts, ensured progress in winding-up the bank was slow. Creighton's tactics prompted Robert Roberts, the creditors' agent, to write a book in which he sought to vindicate his actions. After 1757, matters ground to a virtual standstill; the next creditors' meeting was not called until 1778. Once again little was achieved and, in 1817, appeals were made to the Freeman's Journal asking it to use its influence so that the creditors' claims might finally be settled." (Dudley, 2013).

371 "[BOS] had been obliged to stop payment 3 times and it still felt vulnerable to runs made upon its notes 'without any just grounds or reasons.' Some means of securing [BOS] against such attack was sought. The directors decided, in 1730, to insert into their notes an 'optional clause.' Under it, the Bank could either redeem its notes on demand, or could opt to defer payment for 6 months, paying interest on such notes at a stated rate. In this way a run on the bank could be frustrated. When the optional clause was to be operative, [BOS] would mark and date its notes to this effect as they were presented, so that holders would know that they were temporarily inconvertible, but bearing interest. The adoption of the clause does not seem to have impaired [BOS's] note issue. [RBS] does not appear to have altered its notes in this way until 1762, though in the unsettled aftermath of the '45 it stood ready, should [BOS] activate the clause, to suspend payment and mark its notes as bearing interest." (Checkland, 1975). "According to T. S. Ashton, this crisis was confined to London, and its interest really lay only in the sharp fall of British government security prices with the brief but surprising success of the Jacobite rebellion in Scotland from Sep 1745 to April 1746. Both [EIC and BOE stocks] were in the category of government securities, however. Because the War of the Austrian Succession (1740-8) included England in the 1745 period, it is interesting that Ashton found no particular influence from the financial requirements of the larger war on the English capital markets. That war, however, was a major source of financial disturbances for the Amsterdam market. James Riley dated the start of Dutch interest in lending to foreign governments as beginning with the activities of Dutch investors on the London market in that period. The Dutch Republic became a belligerent at the end of that war, during 1747 and 1748. Finally, Austrian obligations to Dutch investors had been based on revenues from Silesia. When that province was lost to Prussia early in the war, the Austrians stopped paying interest to their Dutch creditors on the Silesian bonds. and the Prussians saw no point to assuming them. That was a continuing source of financial pressure on the Dutch markets. therefore." (Neal, 1990).

372 "A fundamental step was taken in July [1750] when [BLC] began to supply its agents with its own notes, designed to circulate like those of the banks. 'We doubt not their currency in all respects be equal to the bank notes as the security is so good', and the Commissioners of excise were persuaded to accept them in payment. Initially [BLC] sent its agents a mixture of its own and [RBS] notes, but soon only the former. Most of the parcels bought in this way were either to test demand at London or to provide an assortment for the Exporters at the warehouses which enabled them to make up all their cargo from the one place... 'One of the principal advantages to this country from [BLC]...was their establishing a warehouse at Edinburgh." (Durie, 1973).

373 "Another form of incentive came with the passing of the Bounty Act of 1742, which gave a bounty of .5d per yard for cloth under 6d a yard in value, and 1d if between 6-12d, upon exportation, financed by an additional duty on imported cambrics. This gave some stimulus to the exporter and the manufacture of low-prlced linens, and equally some help in the home market to the cambric manufacture, but the backwardness of the coarse sector was not to be overcome in a night, and the bounty was not large enough to enable Scottish linens to oust the German, or so at least if the exporters said, till it was raised in 1745." (Durie, 1973).

374 "The growth in the number of issuing banks led to an expanded note issue, and the import 'boom' from 1749 onwards witnessed an increased use of paper pumped into circulation in the discounting of merchants' bills. [The total in circulation may have reached £1.0 M. This was not in itself excessive considering that the bankers' circulation in Ireland had been estimated at the modest total of £0.4 M in 1729 (Scheme of the Money Matters of Ireland, Dublin 1729, p. 17), but it greatly exceeded the capital of the banks issuing it. (Journals of the Irish House of Commons, Vol. V, p. 378.)] The subsequent failures produced a painful contraction of credit which was a cause of Parliamentary concern. Though the Irish circulation gradually recovered in the following decades, the provincial note issue with banks in only 3 or 4 towns other than Cork must have remained relatively insignificant, and in Dublin itself the private banks can at best have barely regained by 1797 their circulation of the 'fifties. [A writer in 1762 stated that the circulation of the Irish banks prior to the many failures was above £1.0 M and that it was now 'eclipsed' through the banks being in disrepute (Some Hints on Trade, Money

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and Credit, Humbly Addressed to the True Friends of Ireland, by Arthur Jones Nevill, Dublin, 1762, p21-3). The note issue of the Dublin private banks in 1797 was estimated at £0.7 M (Report of the Committee of the House of Commons on the circulating paper, the specie, and the current coin of Ireland, 1804, reprinted 1826, p. 9).]" (Cullen, 1958). "*Moreover by 1752 banks either existed or had appeared at no less than 7 centers outside Dublin; and at that stage Irish note circulation was double or treble the level of the 1720s.*" (Cullen, 1983). "*Between 1727 and 1775, the amount of linen stamped for sale in Scotland rose in volume from 2.2 to 12.1 M yards, and in estimated value from £103,312 to £561,528. Although the lack: of any comparable dates for this period about the output of either the Irish or the English linen industries prohibit any direct comparison, it may help to place this expansion of the Scottish industry in perspective, by noting that exports of Irish linen to Great Britain rose from 3.8 M yards in 1730 to 19.7 M yards in 1770. The volume of Irish linen exported to Great Britain was, therefore, larger than that of the total amount of linen made for sale in Scotland.*" (Durie, 1973).

375 "*...for Export merchants which proved most beneficial to [BLC] in supporting it against a very hurtful trade with London, the bankruptcy of, and losses sustained by the weavers on withdrawing the bounty anno 1754 and a still more hurtful affair in its consequence – [BLC's] engagement with the Yarn Staplery'... The Glasgow warehouse was in fact virtually discontinued from Feb 1755— McCulloch had had the axe prepared for some time, and Colquhoun had been warned in July 1754 to exert himself, 'otherwise the Sales with you will make a poor figure as the Osnaburg trade is laid off.' But the plantations were flooded with linens and his chances of making sales were further dimmed by the Tobacco trade also being in the doldrums with much unsold tobacco on hand. Dilatory payments were the corroborative symptom of this: £3,000 overdue at Glasgow in Aug 1754 and throughout the autumn and winter a steady stream of stops and bankruptcies, including the Leggats, the Rowands, Andrew Craufurd (who paid 5/- in the £) and in Dec James Johnson, the joint-agent with Colquhoun for the warehouse. At the root of his troubles was the £24,000 owed him in Glasgow which he could not collect: to pay off his debts of £16,000 he had to sell his estates in America. The effect of this stoppage was particularly felt by [BLC], and McCulloch... His humor was little improved by a recurrence of trouble with the Glasgow banks which instigated an order from the Board of Excise to its collectors not to accept [BLC's] notes, which brought the circulation to a halt until Kames and Drummond could get the order reversed... 'At Glasgow there was a shortage of such big warehousemen as at London to the evident embarrassment of the trade. An ordinary merchant about 1760 might have to deal with a dozen linen drapers or small warehousemen simply to buy, the several varieties of linen he needed for a single shipment to a single store'... The severity of the recession during the period when the Bounty was withdrawn is, however, clearly demonstrated for one major —if not entirely typical — firm in the industry, namely [BLC], whose production and sale of linen was more than halved in 1755 from its level prior to 1753... The industry was not untouched by depression. The export-led slump of 1755 hit the coarse linen sector of the East particularly hard. The withdrawal of the bounty from March 1754 to March 1756 caused severe cutbacks in production in the export-orientated production areas, as can be seen from Table 3.3... The whole industry suffered two years of unemployment for both spinners and weavers, causing riots at Dundee and at Perth, where the value of linen stamped had fallen from £48,266 in 1766 to £23,810 in 1772 - tumults born of hunger and distress."* (Durie, 1973). "*By the mid 1750s, bankruptcies were high, demands on the supply of money were pressing and the banking system seemed near collapse. Nathaniel Clements, teller of the exchequer, attempted to help banks under threat with grants and payments in cash from the Treasury, and banks agreed to accept each other's' bills. But Dillon and Ferrall failed on 6 March 1754, when its partners vanished; Willcock and Dawson collapsed on 1 March 1755 when its cashier Richard Brewer absconded, having stolen over £70,000. In March 1755, Edward Synge's bankers Lennox and French were in trouble, and blamed their difficulties on 'an annual lowness of cash... and a fatal disappointment of all hopes of supplies [and a late sudden extraordinary call on their credit.' They too failed when their partners absconded. All 3 of the banks that failed in 1754-5 had been founded by merchants. 5 years later, in Nov 1759, the whole banking system tottered with the failure of 3 more banks: the houses of Richard and Thomas Dawson, of Mitchell and Macarell, and of Malone, Clements and Gore all went under in quick succession*." (Legg, 1996)

376 "*The mercantile origins of the provincial banks are no less striking. With perhaps 1 or 2 exceptions, they were all established by merchants and remained subsidiary in many cases to the trading activities of their founders. Apart from merchants who opened banking houses, there were others who, like Edward and Richard Weekes, merchants in Waterford, might issue promissory notes payable not as bankers' notes to bearer but to 'persons or their orders.' As these notes circulated it is obvious that the line dividing merchant and banker was tenuous. An Act of Parliament passed in 1756, shortly after the failure of 3 Dublin banks closely identified with the merchant community, prohibited bankers from engaging in trade as merchants [29 Geo. II, c. 16 (Ir.)]*" (Cullen, 1958). "*These [landlord banks,] moreover were the sole 3 banks which survived from the banking boom of the 1750s till the end of the century. Landlords themselves founded banking businesses: the house of Gardiner & Hill is the most obvious instance, benefitting from Gardiner's office as deputy vice-treasurer, having the powerful figure of Lord Bessborough associated with it at one stage.*" (Cullen, 1983). "*This was the fact as to Ireland in the year 1754, for some years before and for many years after; it appeared in an inquiry before the House of Commons in the session of 1755, that many persons had circulated paper to a very great amount, far exceeding not only their own capitals, t but that just proportion which the quantity of paper ought to bear to the national specie.t This gave credit to many individuals, who without property became merchant importers, and at the same time increased the receipts of the Treasury and lessened the wealth of the kingdom. At the very time that so great a balance was in the Treasury, public credit was in a. very low way, and the House of Commons was employed in preparing a law to restore it. In '54 and '55 three principal banks failed [March 6, 1754, Thomas Dillon and Richard Fermi, failed. 3rd March 1755, William Lennox and George French. Same day, John Wilcocks and John Dawson], and the legislature took up much time in inquiring into their affairs, and in framing laws for the relief of their creditors. [There was then no bankruptcy law in Ireland.] Yet in this session, the liberality of the House of Commons was excessive. The redundancy in the Treasury had, in the session of 1753, occasioned a dispute between the Crown and the House of Commons on the question whether the king's previous consent was necessary for the application of it. They wished to avoid any future contest of that kind, and were flattered to grant the public money from enlarged views of national improvements. The making rivers navigable, the making and improving harbor; and the improvement of husbandry and other useful arts, were objects worthy of the representatives of the people ; and had the faithfulness of the execution answered the goodness of the intention in many in-stances, the public in general might*

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have had no great reason to complain. Many of those grants prove the poverty of the country. There were not private stocks to carry on the projects of individuals, nor funds sufficient for incorporating and supporting." (Hely-Hutchinson, 1888).

377 "[*Two] restrictions were placed on private banks by an act of the Irish parliament of 1756. Section 1 required the names of all partners to be stated on all notes and receipts—a small point but a troublesome one especially when partners changed. Section 2, a more substantial restriction, declared that no person or persons carrying on business as bankers might 'trade or traffick as merchants in goods or merchandises imported or exported.' Any sizeable merchant business in 1820, as in 1756, would include either imports or exports, and a banker was thus debarred from having any of his wealth so employed. The intention was to prevent the abuse of banking facilities in the merchant interest of the partners but the effect was to cut banks off from their most likely supporters. The ban even applied to sleeping partners, for the act of 1782 which gave them legal recognition specifically excluded bankers from its benefits. The trader-banker, familiar to English and Scottish banking, was thus denied legal existence in Ireland after 1756 unless he confined his trade to the limited domestic sphere. When all went well private banks provided useful currency and financial services for their clients as well as profits for the partners but if any doubts arose, real or imaginary, they were wide open to catastrophe. A bank's liquid resources were, in the nature of its business, always less than its demand liabilities. They would consist primarily of coin and Bank of Ireland notes, followed in order of liquidity by bills of exchange and debts due to the bank of varying soundness and maturity dates, with the personal property of the partners as a last reserve. When a run started the readily available funds would be quickly exhausted and, unless the bank could replenish them by selling other assets or by borrowing in some form, its only recourse was to stop payment. Once a bank had stopped the creditors might take action under one of two acts, the Irish Bankers' Act, 1760 [33 Geo. II, c. 14 (Ir.); it received the royal assent in 1760 but is printed in the statutes of 1759 and is therefore sometimes dated, incorrectly, to that year], or the Bankruptcy Act, 1772 [11 & 12 Geo. III, c. 8 (Ir.).] Before 1760 there was no bankruptcy law in Ireland and when a bank failed it was usual to pass a special act for the relief of its creditors. The Irish Bankers' Act removed the need for this by providing that when any banker died, absconded or stopped payment, the creditors might appoint trustees, subject to approval by the court, to administer his property.*" (Barrow, 1975).

378 Of the 3 banks formed prior to 1761, one closed in 1753 and another had 31 partners. From 1761-3, 4 banks formed — 2 of which had at least 15 partners (Munn, 1981,p16).

379 "*During the Scottish free banking era all but 3 of Scotland's banks operated with unlimited liability of bank equity holders. If a Scottish bank failed, the publicly listed shareholders were liable, under the strict Scottish bankruptcy law, to lose their real and heritable estates, if required, to pay their liabilities in full... Scottish banks legally operated as partnerships, except for the 3 banks with charters from either the Scottish or British parliaments. For partnerships, unlimited liability was not a matter of choice. Another, related, important difference was that equity shares in non-chartered banks., called co-partneries under Scottish law (and to be distinguished from the joint-stock banks which arose in Scotland in the 1830's), were not freely traded according to Munn (1981). While nominally freely transferable, in practice partnership agreements made transfer extremely difficult (for the obvious reasons).*" (Gorton, 1985). "*The contract of [DHA]... 16. If any partner shall incline to sell or transfer his share, he shall give no tice of the intended sale, and the person to whom he purposes to sell, to the cashier, 30 days at least prior to a general meeting; of which notice the cashier shall immediately advise the whole partners by circular letters. At the following general meeting the intended purchaser must be approved by two thirds of the whole votes present, otherwise no sale can take place. But in case of such sale taking place, the company here by oblige themselves to free the seller of all their debts, deeds, and contractions, made posterior to the actual sale, which are hereby declared to be transferred from the seller to the purchaser, and the purchaser shall be taken bound in these terms. 17. In the event of the death or insolvency of any of the partners, the heir, executor, or the assigns of the deceased, and the creditors of the insolvent partner, shall be obliged to receive and draw their share in the stock, and profits thereof, as the same shall stand at the last preceding settlement of the company's affairs, with interest thereof at 4% from that settlement till payment is demanded, and the legal interest afterwards until complete payment.*" (Scots Magazine, 1772).

380 "*A majority of the bank formations between 1749 and 1830 were in fact simple partnerships. The remainder were co-partneries. For the purposes of this book, partnerships have been defined as organizations of less than 13 partners; co-partneries had 13 or more shareholders. This is a somewhat arbitrary definition but seems justified in terms of management structures. Even quite small co-partneries such as the Glasgow Bank with 14 shareholders were controlled by a committee of management whereas partnerships were usually managed by all the partners acting in concern. Both types, however, were partnerships in law... The co-partneries have often been confused with these joint-stock concerns, but apart from the differences of scale the major distinguishing factor was that joint-stock shares were often freely transferable whereas co-partnery shares were not. Furthermore, co-partneries were founded with a specific period of trading in view, usually 7 or 21 years, although contracts were often renewed upon successful completion of the first period. Joint-stock banks on the other hand were usually founded in perpetuity. In England the monopoly enjoyed by [BOE] founded in 1694, was protected by legislation which prohibited the country banks in that country from having more than 6 partners. The partners in Glasgow's first bank, the Ship Bank, believed that this law also applied to Scotland —it did not, as the founders of the Arms Bank, which was set up within months of the Ship, proved. The Ship Bank had 6 partners while the Arms Bank had 31 and was never challenged. The inapplicability of this law to Scotland was a major distinguishing feature between the English country banks and the Scottish provincials which were nevertheless similar responses to similar problems — the need for credit and a reliable circulating medium.*" (Munn, 1981)

381 "*[During the Panic of 1763,] Representatives of the two public banks sought loans to sustain the Edinburgh-London exchange. They asked £1.2 M from [BOE]. They also investigated the possibility of a loan from Holland. But neither effort succeeded. No-one in Holland would lend at less than 5%. In March 1764, so serious was the loss of specie that both banks were obliged to operate the optional clause. They acted together: cash accounts and discounts were cut back. Both banks sought deposits at 4%, to be lodged for a minimum of one year; 3% was to be paid for 6-months deposits... The statute of 1765 was entitled 'An Act to prevent the inconveniences arising from the present method of issuing notes and bills by banks, banking companies. and bankers, in that part of Great Britain called Scotland. It killed the optional clause and the very small notes. But it left Scotland with its £1 and one guinea notes. Moreover, it cleared up, once and for all, the question of 'summary diligence' against bank notes (made applicable to bills of exchange in 1681); all such notes were to be subject to protest at law by 'summary execution.' This meant that there could be no more questioning by the public banks or anyone else of*

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the legal status of the notes of any bank, banker or banking company. By these provisions, the government asserted in Scotland in most uncompromising form the principle of 'free banking', though denying the 'freedom' of the optional clause and the petty notes. The prohibition in England of notes under £5 (strengthened by the practice in London of issuing no notes under to, together with the 6 partner rule, marked the great banking differences between the two countries. Scotland, in spite of the constraints imposed by the Statute of 1765, was left with the least inhibited system in Europe. The two public banks had now to prepare to operate under the new conditions, deprived of their shield of the optional clause. The undergrowth of small bills was cut away, and with it many petty pretenders to banking." (Checkland, 1975). "*The Glasgow banking companies had not been slow to press for legislation. The above-mentioned letter from Ingram to the Lord Privy Seal had been accompanied by a 'memorial' which contained a draft bill which, if passed, would have abolished the option clause and made all bank notes protestable by summary diligence. No mention was made of bank notes of small denominations. In March, 1764 [BOS] agreed to a bill which would have abolished option clauses and all notes under £1. The bill also provided for summary diligence on bank notes... Parliament was prorogued on April 19th, 1764 with the result that there was not time to bring in the bill. It next met on Jan 10th, 1765 and the early months of that year saw renewed activity amongst those in whose interest it was to have the bill passed. The 3 Glasgow banks met regularly to discuss it, but although there were minor points of disagreement over the causes of Scotland's monetary troubles, they were generally agreed that the option clause should be banned, that notes should be protestable by summary diligence and that small notes should be dispensed with... In the outcome the Act of 5 George III c.49 set £1 as the smallest value of a Scottish bank note. The Act when it was passed was regarded as something of a victory for the provincial banking companies because it gave their notes a firmer legal standing. Although the struggle for legal recognition had been achieved, the struggle for 'de facto' recognition had not yet been accomplished. When it came into operation the Act caused the banking system to contract."* (Munn, 1981). *"Such circumstances had led to a flood of paper money in Scotland in the early 1760's. The inadequate cash basis on which this rested led to the widespread adoption of the optional clause according to which bank notes were payable at the option of the bank on demand or at 6 months' notice. The inflationary tendency inherent in this condition was counterbalanced to some extent by the expanding economy, but its potential dangers were appreciated by many and the government was urged to take action. Accordingly, an Act was passed in 1765 prohibiting the use of the optional clause and the issue of notes for lower denominations than £1 after 15 May 1766. This was a drastic measure, for during and after the Seven Years War there had been a great expansion of business activity. When the Act came into force private notes at once fell to a discount which varied according to the standing of the bank of issue, but generally the rate was 1d on each 20s. Some notes, of course, were refused altogether. The chartered banks, alarmed at the rush for cash, adopted a restrictive policy. Consequently, many manufacturers and traders were placed in difficulties, faced as they were with the alternative of contracting their business or seeking finance from other sources.*" (Hamilton, 1956).

382 "*In the 1760s the speculator, Sir George Colebrooke, who had married the heiress daughter of an Irish planter in the West Indies, occupied the seat of financial speculation in London. He drew heavily on the wealth of Irish families for his speculation: indeed, as he seems to have tapped Catholic wealth as well as hard Protestant cash, his financial seduction was considerable as the two rarely combined. The London crisis of 1772 was largely the consequence of the convergence of two parallel streams of speculation: Colebrooke's financial circle on the one hand and on the other a Scottish group of speculators. Scots and Irish alike suffered disproportionately in the ensuing collapse, and indeed other interests in London were largely unhurt. In these years too Thomas Sutton was a rising figure in France. His interests were widespread; his place in speculative ventures was outstanding, reaching from the East Indies to Spain and the West Indies; and he was one of the prominent Parisian financiers of his day. Secondly, the networks of Irishmen and Scots were geographically diffuse. Scots and Irish, from economic backgrounds of limited opportunity, often moved far afield, and kinship as well as the requirements of trade thus made it easy for them to widen their contacts. Scots and Irish both represented the largest provincial groups from within the British Islands in London; they were established at an early date, and their financial interests in London were both distinctive and well defined, whereas correspondents from the outports or inland industrial centers were fewer or were subsumed into circles dominated by metropolitan interests. It is hardly surprising in these circumstances that they were the first provincials to set up banks in London. Coutts opened their London house in 1752, 6 years before the first London house set up by an English provincial banker, and as befitted the more precocious Irish banking interests, Cairnes, Arthur, Cantillon, Hoare (Samuel) and Nesbitt had all appeared as bankers in London before the middle of the century. In Paris Scots banking was represented by the Alexanders and by Boyd Ker & Co. late in the century. The Irish presence in Paris was earlier and more sustained: Arthur, Cantillon, Loftus, Darcy, Woulfe and Waters provided a picture of 70 years of banking. The Hopes, Scots in Amsterdam, represented the pinnacle of Dutch private banking, and though the Herries were not bankers on the continent, their widespread commercial houses had close links with their bank in Britain, and represented a Scottish presence on the continent for which there was no English equivalent but which had been paralleled by Irish houses a generation earlier. If the innovative genius of banking was purely Scottish from the 1770s, Scotland was in effect taking over a role in which innovation had been more on the Irish side before."* (Cullen, 1983). "*The Scots, formerly few in number and the real economic gainers in the British provinces from the Seven Years War, rose rapidly in London, as to a lesser extent did the Irish interest of which the two George Fitzgeralds had been the best—known exponents. Various factors—the Fitzgerald ties with the Irishman Thomas Sutton in Paris; the assumption on Fitzgerald's failure in 1759 of many of his foreign and Scottish links by the Irish house of Nesbitt in London; and the associations which wartime contracting had created between the Nesbitts and Sir George Colebrooke—explain how the 1772 financial crisis was dominated by a complex and well-established web of links between [DHA], Paris interests, and the Colebrooke circle. The changing world of the 1760s and 1770s can be seen too in the new role [BOE] acquired in the remitting business with both Scotland and Ireland. The largest accounts of the Bank in number of transactions, though not in cash aggregates, had become the Irish accounts... Colebrooke, from outside the established company mafia, for a time at the end of the 1760s and in the early 1770s had an uneasy dominance in its divided and fractious councils. He had ties with the Whig speculative group which revolved around the Burke and Rockingham circle, and his own speculative interests-and the strength which made him a force to be reckoned with in the 1760s-drew heavily on provincial backing. He had very close connections both with Ireland (he opened a bank in Dublin in the 1760s), and in London with the Nesbitts, his erstwhile wartime contractor partners. Likewise, he had many dealings with Scotland, and the Edinburgh merchant Inglis was very specific in his knowledge of the 'little baronet' and his henchmen. Indeed, the London speculation of the associates of [DHA], which from the booming west*

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of Scotland had successfully challenged the decrepit Edinburgh chartered banks with their tired and complacent official aura, was tied directly into Colebrooke's manifold activities. This situation has its counterpart in France." (Cullen, 1993).

383 "*Towards the end of the 1760's there were constant complaints that business was being seriously handicapped by the tightness of credit. Faced with such a situation, many people had recourse to money brokers; others raised money by a chain of bills, a device commonly used in Holland and to a small extent in England. In Scotland it reached great heights during the few years preceding the collapse of [DHA]. By this method, A, say in Edinburgh, drew a bill on his agent B in London, payable in 2 months. Before payment was due B redrew on A for the same sum plus interest and commission. Meantime A discounted his bill in Edinburgh and before the 2 months were up he drew another bill on B and so on. According to Adam Smith 'This practice has sometimes gone on, not only for several months, but for several years together, the bill always returning on A in Edinburgh, with the accumulated interest and commission of all the former bills. The interest was 5% in the year, and the commission was never less than 0.5% on each draught. This commission being repeated more than 6 times in the year, whatever money A might raise by this expedient must necessarily have cost him something more than 8% in the year and sometimes a great deal more.' Confronted with this speculative situation the chartered banks became more conservative than ever, yet the more reluctant they were to make advances the more assiduous were the private bankers in discounting any bill presented to them. The high profits of the trade encouraged speculation. It is not surprising that the chartered banks were the target of much criticism and that there was widespread support for the proposal to found a new bank*." (Hamilton, 1956).

384 "*The basis of [DHA's] credit was land. In this respect it was different from many of the of her provincial banking companies which had been founded principally on mercantile credit. Although all of the provincial banking companies included some landowners amongst their partners, none of them could match the landed wealth of the partners of [DHA] which was said to equal some £3-4 M*." (Munn, 1981).

385 "*During this time exports rose by 71% and imports by 66%... This period was not one of uninterrupted expansion. There were recessions in 1755, 1762 and 1768, but during the whole period the trend was upwards... There were already signs, however, that Scotland was approaching a crisis. In 1769 the Board of Trustees was not happy about the rising production, a large part of which it said had been due to some merchants who had 'extended their dealings in coarse linens beyond their stock', while in the fine trade of cambric and lawns, manufacturers had 'applied their whole stock and credit' to increase output. Prices were rising rapidly, but by the end of the year there were indications of a glut*." (Hamilton, 1956). "*The Linen Industry in Scotland in 1746 was still largely a domestic and household one, in which the basic unit of production was the small master weaver, with 2-3 apprentices or journeymen in his shop. All stages of the process of production and sale were dogged by shortage of capital, which was reflected on the weaving side by lack of continuous employment and low-quality materials, utensils and weaving. In this context, it would have been extremely disappointing if [BLC] — with its resources— had failed to make any significant contribution to the development of the industry. By March 1743, [BLC] was using over 145,000 in the trade, and the scale of its operations was quite unique within the industry —with the possible exception of the Sandieman complex— during the 1740s and 1750s. Few enterprises of any sort prior to Carron, raised and employed so much capital in the Scottish economy. Nearly all of it was subscribed from Scottish sources... The ultimate withdrawal of [BLC] from active participation in the manufacture and sale of linen, reflected the growth of the industry and its ability to stand unsupported. Increasing competition from other producers within Scotland at both the home and the export markets was the basic cause of much of the troubles after 1757, which in turn reinforced the desire of the proprietors for safer profits, and induced the shift of power within the ranks of the directors away from those concerned to promote the Linen trade to those whose objective was banking proper... The percolation of skills to the independent and country weavers, the more continuous employment and sustained demand, combined to render the strict supervision of the factory unnecessary in the coarser fabrics, and uneconomic as the basis of production could revert to the lower-cost, unsupervised weavers without any serious loss of quality. But this development was also conditional on the provision of adequate supplies of yarn. The establishment of spinning in the North-east of the Highlands by [BLC] was import suit both for the region and for the industry, and deserves recognition as one of the most important objectives realized by [BLC]. The contribution of [BLC's] bleachfield at Salton was singularly valuable for that aspect of the industry. [BLC] gave, therefore, distinctive and vital assistance to virtually every stage of the manufacture of linen*." (Durie, 1973).

386 "*[BLC], founded in 1746 to finance the domestically organized linen industry, now began to concentrate on banking proper and soon it had many customers outside the linen industry*." (Hamilton, 1956). "*The lack of success with [BLC's] linens and sales on its own account, led to the suggestion by some of the Directors that [BLC] should cease the manufacture of linen, and confine its operations to the support of the circulation of its notes and to lending money upon pledge of linen, which would help to bridge the gap for the manufacturer or dealer between purchase and receipts. This was linked with a proposal then current to build a Linen Hall in Edinburgh similar to the one in Dublin, at which sales of Scottish linens could be held 4 times a year. [BLC] would supervise the sales on commission of 1.5%, and advance money on interest on the value of linens deposited at the warehouse. This would ease the liquidity position of the dealers and manufacturers and [BLC's] capital would be at little risk as the linens acted as security... During the period of transition from Linen Company to lank, what was consistent with both the Charter and the intentions of the Directors was the advance of money on reasonable security to manufacturers and dealers in linen. This was part of the function of a bank, as was also the discounting of bills, and the provision of cash credits, which were designed to help maintain the circulation of [BLC's] notes (c. £80,000 stg. in 1764-65). But these services, which were initially confined to those connected with the Linen Industry and Trade, were soon extended without any such distinction. Cash credits, for instance, were freely granted in 1764 to dealers like George Young of Coupar Angus, who received one of £5000. (This, incidentally, was quite exceptional, as most were for no more than £500, but must have been used to aid his recovery from bankruptcy in 1763, as already discussed). Within 5 years, they were being granted quite frequently to those entirely unconnected with any branch of the Linen Trade, e.g. William Cadell of Grange Colliery... Deposits at 3% interest had been accented from 1762, and by 1770 it was clear that [BLC] had completed its transition into a bank in all but name. Lending on interest, discounting bills, and supporting the circulation of its notes, was the staple diet of [BLC]*." (Durie, 1973).

387 "*[L]oose in wording, it was ineffective in practice, because merchants could still issue notes, without assuming the formal status of bankers... Even allowing for some development of provincial banking in the second half of the century... the discounting facilities made available by the banks were failing to keep up with the growth of internal and external trade. This gave rise in the second half of the century to a class of merchants with a specialized bill trade.*

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Their functions were similar to those of the Irish banks, the only real difference being that they did not issue notes in discounting, largely because of an enlarged supply of gold coins." (Cullen, 1958).

388 "*Heavy investment in Britain in houses, turnpikes, canals, and other public works had put a strain on resources and unleashed the excess credit [Ashton (1959, p127).] One source relates the fall in coffee prices beginning in 1770 to the financial crisis of 1772-3 [van der Voort (1973), Riley (1976)] but this is not mentioned by Wilson, the standard source, or by Ashton, Clapham, or Buist [Wilson (1941, p169–87), Ashton (1959, p127-9), Clapham (1945, v1, p242-9), Buist (1974, p21ff)]* "(Kindleberger and Aliber, 2005). "*The remarkable economic progress of Scotland at this time, depending as it did on capital investment and the adequate provision of finance to keep the wheels of the economic machine turning, was thus becoming each year more and more capitalistic. That is to say its progress was bound up with long-term calculations as to profitability and with nice decisions as the right balance between investment and consumption. Some projects, such as agricultural improvements or the building of a lint mill, had a short gestation period, others, like afforestation or the Forth & Clyde Canal, could only become profitable years after the initial investment had been made. All required a steady flow of finance while operations proceeded. It was to meet this need that [DHA] was founded... Many Englishmen, for instance, were shareholders in the Forth & Clyde Canal and most of the capital for founding and expanding Carron Iron Works came from England. Many Englishmen, too, deposited their capital with Edinburgh bankers. Thus, both long-term and short-term capital came from England. The latter was sometimes an embarrassment to Scotland when speculative conditions, as in 1762, led to sudden repatriation of capital... The effects of the depression on large capital undertakings like the Forth & Clyde and Monkland Canals were not apparent at once. This is understandable, for especially in the case of the former the major part had been completed by 1772. It is clear, however, that the company was faced with a serious situation. In July 1772 Smeaton complained of rising costs and of the impossibility of completing the canal for the sum originally estimated. Some 6 months later the Annual General Meeting of the company decided that those who had not paid their calls should be given 2 months in which to meet their obligations; otherwise they would be prosecuted. The company had perforce to borrow, but eventually, in 1775, it was compelled to suspend operations.*" (Hamilton, 1956).

389 "*In the later 18th century, then, the chronic indebtedness of the colonial planter class became fundamental to the expansion of tobacco cultivation. Credit from Glasgow houses allowed the small planters to defer payment for European goods and at the same time freed scarce cash resources for the purchase of land, slaves and the pursuit of a higher standard of living. As a result, the system of credit developed a momentum of its own. As trade boomed, mounting planter indebtedness became the cost to be paid for high returns from European sales. In turn, the prospect of yet greater remittances acted as an incentive to further credit expansion as the increasing size and number of plantations made consumers better credit risks. In the process several elements tended to exacerbate the trend. Firstly, despite the oligopolistic nature of mercantile organization in Glasgow and the evidence of various attempts at price-fixing in the colonies, competition for customers between firms was still keen. Linked with this was the undoubted fact that few planters felt any compunction in flitting from one store to another with their businesses Given this fickleness, refusal of credit might mean the loss of a potential customer and at least one company believed that because of 'the large number of powerful rivals' operating close to its stores 'there is no avoiding bad debts.' For the same reason ever-zealous debt collection was considered inadvisable except in periods of severe financial stress [Devine (1973).] These combined pressures meant that in the years before the American Revolution, the sums owed Glasgow merchant houses from the colonies became truly enormous. Between 1765 and 1775, gross debts tripled from about £0.5 M to just less than £1.4 M.*" (Devine, 1974). "*For the "ruinous" practice described by Smith of Scottish banks drawing and redrawing bills of exchange on London correspondents had been relied upon not only for financing industrial development and agricultural improvements in Scotland itself, but even more importantly, as Devine [1973, 1974, 1976, 1978], Sheridan (1960), Soltow (1959), and Gipson (1961) have demonstrated, for providing a vital source of credit for the transatlantic tobacco and linen trades. Of an estimated £4-5 M owed by the North American colonies to British creditors on the eve of the Revolution, as much as £1.4 M was due to Scottish lenders. Indeed, given the relative size of its population and economy, Scotland accounted for a staggeringly disproportionate 42% of all imports into Great Britain from the North American colonies in the year before the crisis. Scottish banks were especially essential in financing small- and medium-sized colonial exporters; of 290 outstanding Virginian debts owed to British creditors reported to a British government commission in 1776, 72% were to Scots, with such prominent names as Jefferson, Monroe, Washington, and Lee among those owing £1,000 or more to Scottish lenders.*" (Goodspeed, 2014). See comparison of imports between Scotland and England (Price, 1980, p160) and Scottish export destinations (Hamilton, 1963, p418).

390 "*In May 1771 the public banks decided to break with tradition and accept the notes of the provincial banking companies in payments. This of course, involved an extension of the note exchange. The fact that a number of the provincial bankers had already been exchanging their notes in Edinburgh encouraged the directors of [BOS and RBS] to think that they would continue to do so in an exchange which embraced all the Scottish banks and banking companies. Several reasons may be given for this radical change of policy on the part of the Edinburgh banks. Customer demand was probably the most important. In a joint letter to the Aberdeen Banking Co. they claimed that the measure 'was adopted at the general desire of the Merchants and Traders about Edinburgh.' This 'general desire' was not just that the traders' inconvenience of non-acceptance would be overcome but, more particularly, that the note issues of the provincial banks would be controlled if they were required to retire their notes regularly. An anonymous writer in the Scots Magazine of 1770 advocated just this line of action. As a lover of his country, he could not help deploring 'the pestiferous itch that has infected men to deal in banking', and his remedy for stable growth was the acceptance by the public banks of the notes of provincial companies. This he claimed, would have the effect of keeping Edinburgh notes in circulation and confining the issues of the provincial banks within proper limit. In addition to a wish to satisfy their customers, the public banks were also motivated by a desire to holster their falling profits... The effect of the note exchange as a control on the over-issue of notes was attested by the witnesses of the 1826 Parliamentary Committee on Promissory Notes in Scotland and Ireland. Alexander Blair, Secretary to [BLC], thought that it was 'impossible that there should be an over issue of our notes under the system of note exchanges which exists at present.' Other witnesses were of the same opinion. The note exchange played an important part in developing the stability which was such an important feature of the Scottish banking system. It was not, however, an infallible guarantee of safe practice... In May 1771 a general meeting enacted a bye-law whereby the consent of all 3 boards was required before a new cash account could be granted. This was apparently ignored on several occasions. The excuse was made by [DHA] directors that this was done because of the agreement entered into with the proprietors of John McAdam and Co. when that bank was taken over in 1771.*

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They maintained that the contract obliged them to make advances to customers of the McAdam Bank. There were similar alleged irregularities when the Dumfries bank of Johnston, Lawson & Co. was taken over in the later months of 1771." (Munn, 1981). "*The business of John Macadam & Co., bankers in Ayr, was purchased on 1st Jan of that year for £18,000; and, on the following 29th Oct, that of Alex. Johnston, Hugh Lawson & Co., in Dumfries, was acquired for £7,350. Neither of these houses seems to have been in a satisfactory condition; and Johnston, Lawson & Co. were virtually insolvent. Meanwhile the capital had been increased beyond the originally designed £150,000, the old directors were regularly re-elected, and affairs went on in the usual way.*" (Kerr, 1884).

"*At one stage it was estimated that the notes of [DHA] constituted two thirds of the total Scottish note issue, as the agents indulged in picking up the notes of other banks and placing [DHA] notes in the circle in place of those removed. There was a particularly vituperative note war of this nature between [DHA] and the Aberdeen Banking Co which was not settled until the latter joined the Edinburgh note exchange in Sep 1771. The excess of notes thus issued 'would perpetually return upon [DHA] to be exchanged for other value', with the result that they would he 'perpetually contracting debts somewhere for answering the demands upon them.'*" (Munn, 1981).

391 "*[DHA] in 1771 found that their notes were being returned upon them quickly from the exchange, and rather than tailor their business to the amount of notes which they could effectively keep in the circle they resorted to the practice of drawing bills of exchange upon London to pay for their returned notes and other debts. The number and value of these bills increased until when the bank failed in June. 1772 their amount exceeded £0.6 M. The note exchange acted as an indicator of a bank's business capacity. Those who ignored it did so at their peril... A vast London debt was built up both to meet repayments of notes and to pay bills. The practice of drawing and redrawing bills on London was soon resorted to by [DHA]. It was estimated that the money thus raised cost 8% per annum, whilst the bank received only 5% on its advances. When [DHA] stopped payment in 1772 there were upwards of £0.6 M of debts due in London in addition to £0.2 M of notes in circulation and £0.3 M of private loans to [DHA]. The advances made by [DHA] were 'placed so injudiciously that they became in fact permanent loans of money; and the stream which by this means once issued from [DHA], being in reality never replenished, [DHA] lost the command of their funds*." (Munn, 1981).

392 "*In Dec 1771 [BOS] had proposed that [DHA] should have its cash credit cut back to £5,000 and insisted that it register its contract with the Court of Session. [RBS] saw no reason for this credit reduction but agreed to the demand for the registration of the contract and throughout the early months of 1772 [DHA] sought frequent loans of specie from other bankers.*" (Munn, 1981).

393 "*Closely associated with the reign of Louis XIV, [CDI] projected the image of an institution of the powerful French monarchy actively participating in the lucrative East Indies trade. Despite royal support, however, [CDI's] commercial operations paled in comparison to the powerful Dutch and British companies in the late 17th and early 18th centuries. Reorganized as part of John Law's System during the Regency of the duc d'Orléans, [CDI] shares became the object of a speculative mania that ended in the financial catastrophe of the Mississippi Bubble in 1720. [CDI], nevertheless, survived Law's disgrace and began to build a profitable commerce during the 1720s. According to Philippe Haudrère, [CDI's] annual sales virtually equaled those of [EIC] by the early 1750s. [CDI] profits exceeding 5 M livres annually were generated primarily by the trade with India and supplemented by the commerce with China and the island colonies of France and Bourbon (Mauritius and Réunion) in the Indian Ocean. Nevertheless, [CDI's] total income was heavily dependent on the 9 M livres in rentes received annually from the tabac, the income from the royal monopoly on tobacco sales administered by the General Farms.*" (Margerison, 2006).

394 "*The greatest threat to company prosperity was war with England. During the War of the Austrian Succession and the Seven Years War, [CDI's] trading operations suffered losses of more than 30 M livres. The Seven Years War had not only required considerable military expenditure by [CDI] over and above the royal subsidies granted to counter the British in India, but the French defeat had also resulted in the commercial domination of India by [EIC]. By the 1760s, [CDI's] ever-mounting debts presented a serious threat to its financial stability... As early as 1759 concern with [CDI's] debts had led at least one of the ministerial proponents of free trade, Charles-Robert Boutin, to argue for the dissolution of [CDI] along with its commercial privileges. Nevertheless, by 1763 the Controller-General Henri Léonarde Jean-Baptiste Bertin and his successor Clément Charles François de L'Averdy, both of whom produced decrees eliminating controls on the grain trade, worked to preserve [CDI] and its commercial privileges. Both, however, were equally determined to resist granting government subsidies to maintain its operations... At this point Jacques Necker, the Genevan banker, shareholder, and future Controller-General of France, began to play an important role in the affairs of [CDI]. A partner in the Banque Thellusson, Necker, et Cie, Necker was thought to have made his fortune through speculation in France's Canadian obligations at the end of the Seven Years War. Now Necker appeared interested in acquiring a role for his bank in financing the debt of [CDI]. Displaying his 'republican principles' at the shareholders' assembly held on 3 Aug 1763, Necker suggested limiting royal control over [CDI's] activities. The plan called for the shareholders to invest additional funds in the company and receive an increased dividend. Simultaneously, the king would remove himself from company affairs by exchanging his shares for [CDI's] Indian Ocean islands of France and Bourbon and certain other possessions. Necker assured his fellow shareholders that these measures would put the company back on the road to commercial success and predicted an annual profit of 8 M livres by 1770. The ministry, eager to shed its financial obligations to the company, accepted Necker's proposal, and [CDI] was reorganized as une compagnie de commerce and relieved of some of its non-commercial obligations which were shifted to the royal government... Even though the royal edict of Aug 1764 establishing the commercial company had implied that [CDI] was to direct its own internal affairs as well as its commerce, the exact form of its new administrative structure was to be determined by statutes and regulations to be approved by the king and registered by lettres patentes in the Parlement. In the meantime, Necker's mémoire, which provided only a vague outline of [CDI's] administrative structure and did not specify the precise relationship between the government and the company administration, was to serve as the governing policy of the company. However, the shareholders were convinced that the company would now conduct its operations without interference from the royal government, even though Bertin, the former Controller-General, had insisted that the company administration continue to report to the ministry. The single remaining royal commissioner to [CDI], Vilevault, was horrified by these changes and claimed that by July 1764 he had 'hardly any function' because [CDI] had dissolved into 'the most complete anarchy.' The imprecise language of Necker's mémoire regarding [CDI's] new relationship with the royal government combined with the lack of commercial success in the Indies trade resulted in an outburst of shareholder anger in 1767. Even though the royal*

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decree of Aug 1764 had required that new statutes and regulations governing [CDI's] operations be established 'without delay', the company administrators did not present the shareholders a draft of the new organizational structure until 4 April 1767. In their final form, the regulations called for the assembly of shareholders to elect 6 syndics for 6-year terms and 10 directors to serve for life. The regulations did not require that those currently serving as syndics or directors be re-elected by the assembly in order to retain their positions. The Controller-General, whose role was not established in the temporary regulations drafted by Necker in 1764, was authorized to meet on a weekly basis with the company administration, an indication that the government had no intention of leaving [CDI] to its own devices. When [CDI] administration presented the draft regulations to the shareholders, they were still digesting the Jan 1767 announcement that revenues from the previous year's voyage had not met expectations, throwing serious doubt on Necker's prediction that the company would be profitable by 1770... [The 1769] conflict pitted the shareholders of [CDI] against the Controller-General, Etienne Maynon d'Invault, who was determined to withdraw the company's commercial privilege, liquidate its assets, and open the Indies trade to individual merchants. The company had undergone a major reorganization earlier in the decade, but it had failed to thrive. Refusing to subsidize the company's operations as the government had at times in the past, Maynon d'Invault seized the opportunity to end the company's trading monopoly and to establish, for French merchants, liberty of commerce in the Indies. Convinced that the 1764 company reorganization had vested full authority in their assembly, the shareholders offered a determined resistance to these ministerial plans. To defend their position from ministerial attack, they fashioned a political language to solidify shareholder opposition to the government and to seek public support for their position. As early as 1767 certain shareholders portrayed their assembly as a small republic populated by shareholder-citizens. This citizenry possessed the ultimate authority to govern [CDI] and had the duty to expose the corruption of its administrators and the despotism of the royal ministers who tried to interfere in its affairs. As events unfolded in 1769, the shareholders expanded their political language to emphasize the patriotic nature of the sacrifices they had undertaken in the promotion of French interests in the Indies. Thus, the conflict fashioned a political discourse, that of patriotic republicanism, that then entered the public sphere." (Margerison, 2006).

395 "*In a 12-month period in 1769-70, it was alleged, some 2500 business failures took place. In Anjou, there were more business failures in the years 1768-71 than at almost any other time in the century. In Rouen, a record number of failures occurred in 1768, not surpassed until 1788. Some prominent people were affected, such as Isaac Panchaud who had to suspend his payments on 24 July 1769 and went bankrupt on 23 Sep. Taking the kingdom generally, there occurred what Herbert Lüthy calls 'la crise générale de Commerce.' Large private fortunes were threatened also: in 1772 occurred the bankruptcy of Prince Rohan-Guéménée, the first of a series of enormous princely bankruptcies in France. The conditions in which these failure The conditions in which these failures occurred could not fail to hurt the royal finances because they were in the hands of financiers. For example, the Treasurer General for the Paris Police, Louis-Paul Bourgevin de Norville, was found to be bankrupt and his affairs in great disorder when he died on 29 Dec 1769. Both the Chamber of Accounts and the Châtelet criminal court set about investigating the case. Another case that began about the same time was that of Nicolas Quinquet, the cashier of the régie for the droits réunis called the régie Jean-Baptiste Fouache. Suspicion that he was in difficulties had been aroused as early as 17 Dec 1769 when an Intendant of Finances, Moreau de Beaumont, had instructed one of the régisseurs to have Quinquet submit accounts. In the accounts he then sub mitted, debits of 441,036 livres had appeared and therefore the Châtelet and the Chamber of Accounts had begun to prosecute him.*" (Bosher, 1972). "*Then many merchants note in their balance sheets that there occurred in 1766 and 1767 a significant increase in the price of threads and cottons (raw and spun), while lowering the prices of manufactured goods, and they make this increase and this concomitant and contradictory decline responsible for their misfortunes.. But woolen cotton also could not be maintained at high prices, and in Nov and Dec 1767 it in turn suffered a brutal decline of 20%, a decline which, according to Boumard, merchant in Rouen, began in Oct 1767 and continued until July 1768. ['Lost for two years on goods relates to the increase in yarns and cottons and to the variation in the price of manufactured goods'. (Louvel, toilier at Aufîay, Jan 4, 1768). - Dévé, canvas artist in Rouen, Feb 19, 1768. - Mallet, siamoisier in Hautot-l'Auvray, Feb 15, 1768. 'Loss on goods for one year compared to increase of the price of materials and dead sales, more than 1,000 pounds. ' (Porcherou. Drapier à Darnétal, Feb 3, 1768). - Other balance sheets: April 26, 1266, May 14, 1767, Sep 10, 1768. 'Lost on the decrease in cottons since last Oct, 10,000.' (Boumard, merchant in Rouen, July 6, 1768). 'Decrease in cottons from Jan 1st, 1768 until April 31st following: 2.700.' (Rasse, cotton merchant in Rouen, April 11, 1769). 'On a cotton purchase of 17,800 done in the year 1767... which suddenly decreased at the beginning of 1768, why I lost... at least 3,000.' (Cannehan, canvas artist in Rouen, March 26, 1770). 'For achapt of 3,000. cotton in 1767, which decreased by 20%. before being able to use at its destination: 3,000.' (May 16, 1770). The wholesale prices for cotton cottons from [CDI] increased in 1764 (20 s.) to 1765 (30 s.), then continued in 1766 and 1767 (28 s.), but fell sharply from 1767 (28 s.) to 1768 (20 s.). (Hauser, op. cit., p. 510)... This crisis was accompanied and even very certainly produced by the high cost of wheat. This one which listed 141 only in 1764 in the generality of Rouen, reached 241 in 1767 and 301 in 1768. This dearness caused a great misery which reached its paroxysm in 1768 and 1769 and had a significant repercussion on the economic situation of the whole France. [On the crisis of 1768-1769, see Lion (1933), de Beaurepaire, (1912, p411-8).] All professions were affected, but mainly the most sensitive of all, that of fabrics. The Rouen factory inspector observed on Aug 21, 1768: 'The greatest decrease [in the production of draperies] is felt mainly on coarse draperies for the use of the people... As the Rouen merchants get most of their goods without being dressed, this inaction in trade has also greatly reduced the ordinary work of dyers and dressers in this city. One can hardly attribute the cause of this languor in trade to the misery which has reigned for a long time in the people by the high cost of wheat and other foodstuffs necessary for life. As is well known, the fabric and fabric manufacturers of this town also dismissed many workers, which increased the misery even further. It is generally the people who make the greatest consumption. It is hoped that after the harvest, which appears to be quite good in several places, the wheat may decrease and the trade will resume favor. ' [State of the drapery ... etc. (Arch. Seine-Inf., C. 163).] In 1770, the inspector made the same observations: 'But it is very little thing [increase of 1,001 pieces], when we consider what this business has fallen in 3 years. He is always very languid ... The misery which reigns for several years in the people, as well as the uneasiness of ordinary people, are the main causes. All the basic necessities being extremely expensive, the people cannot dress as much as they need to. The decrease which is found in fine factories also seems to have a second cause: it is the considerable introduction which has been made for some time of foreign fabrics.*" (Dardel, 1948). [Translated using Google.]

396 "*[CDI] was originally an independent joint stock company with a monopoly of trade to the East Indies. It had fallen on hard economic times and its assets and liabilities were assumed by the government in 1770. The shares of the company effectively became 5% consoles, paying 125 lives on a nominal*

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capital of 2,500 lives [Robert D. Harris, Necker: Reform Statesman of the Ancien Regime (Berkeley, 1979), p35-6. Henry Weber, La Compagnie Frangaise des Indes (1604-1875) (Paris, 1904), p614-5.] Prices stock had fallen for several years, owing to the company's difficulties, and the implied yield was thus already high when the government took over. The effect of Terray's partial bankruptcy is registered in the sharp increase in the yield, which rose above 12% in late 1770. It remained at this level most of 1771, matching the return on the 1771 rente viage're, then declined rapidly in succeeding years as Terray produced budget surpluses and retired some of the outstanding debt." (White, 1989). "*In 1770 the crown took over the failing [CDI] and transformed its stock into perpetual annuities paying a coupon of 125 ₶ per year. To give a sense of the profits available to investors in the royal debt I have plotted monthly averages for the yield rate on [CDI] stock in parallel with the discount rate derived from The Course of the Exchange (figure 13 [on p219]). Following the default of 1770 the difference between private and royal interest rates was high indeed, reaching 8% in 1771, and in the late 1770s it was still between 2 and 3%.*" (Luckett, 1992).

397 "*The year 1771 marked the climax of a long period of economic progress dating back to the late 1740's. This is well illustrated by the performance of the linen industry, Scotland's major industry, whose output rose from 5.5 M yards in 1746 to 13.5 M yards in 1771. Statistics of overseas trade are only available from 1755, but they tell the same story of expansion, reaching a peak in 1771, the year preceding the bank failure.*" (Hamilton, 1956).

398 "*In an enquiry before the House of Commons in 1772 into the bankruptcy of William Howard, a wine importer, for instance, a witness stated that Howard had 'set up the bill trade, that is to say, that he had become an acceptor and discounter of bills, and that country gentlemen lodged their money with him'... Some idea of the extent of Howard's bill trade can be obtained from the evidence given by Patrick Ferril, book-keeper to the partnership of William & John Howard, before the parliamentary committee. According to the committee's summary of Ferril's evidence, Howard's receipts over the period 1 June-15 Nov., 1770, the latter the date of his bankruptcy, were £34,678 and his disbursements from notes and bills accepted in the same time, £60,513.*" (Cullen, 1958). "*The 1772 act, on the other hand, was of general application and provided that when anyone had committed an act of bankruptcy, any creditor might petition the lord chancellor to appoint a commissioner to examine him, arrange his affairs and hand over his property to trustees to administer. The creditors could then only proceed under the 1760 act if the court agreed to supersede the commission.*" (Barrow, 1975). "*The 11 & 12 Geo. III. Irish statute first introduced the bankrupt law into Ireland... It incorporated all the existing English statutes... The law in England and Ireland is almost the same*." (Christian, 1818)

399 "*In the following year the price of linen cloth fell rapidly, output declined and there was unemployment. Some manufacturers went bankrupt. [A writer to the Scots Magazine (1770) noted the failure of one firm for £70,000; another for £60,000 and several for sums ranging from £1,000 to 16,000. He urged a reform of bankruptcy laws. According to existing practice there was nothing to hinder a few favored creditors receiving satisfaction from a bankrupt's estate without the claims of other less fortunately placed creditors being consulted. In 1772 a new law (12 Geo. III, cap. 72) was passed according to which the estate of a bankrupt could be sequestrated and a factor appointed for the management and settlement of the claims of all creditors (Scots Magazine, (1772).)] The check, however, was only temporary and in 1771 production again rose, though the value of output fell. The finer sections of the industry had not shown any improvement, and this, the Board of Trustees argued, was due to heavy importations. In 1772 there was a heavy fall in total output.*" (Hamilton, 1956). "*Failure of private issuers of notes. It is stated in the Scots Magazine, under date 27th Jan 1770, that among the recent failures were several issuers of notes, one of whom had failed for £100,000, another for £70.000, and another for £60,000. It is not stated what amount of notes either of them had in circulation.*" (Boase, 1867). "*Another house failed lately for about £76,000, to the great hurt of the country, and ruin of many individuals. Another bankruptcy of £60,000 has happened, within these few weeks, which will be a great loss to those concerned; besides several of £16,000, £5,000, £4,000, and £1,0000. &c. Some of these eminent bankrupts ha wing great and powerful friends and connections; the method devised now-a-days, by them, for managing their affairs, is a trust deed or disposition, by the bankrupt; to which all the creditors agree, by signing a deed of accession; because it is made to be understood, that it will be fruitless, and even odious, for any creditor to stand out; and if he does, the bankrupt bids defiance, by retiring to the sanctuary. As to the poorer sort, who fail for smaller sums, and have not friends to propose and carry through trust-deeds for them, they must take the legal method prescribed and practiced in this country, namely, the Cessio bonorum. The form of which is this: The bankrupt is put in prison, by some of his favorite creditors; then he raises a summons, calling all his creditors, and gives in to court a disposition of all his estate and effects, in favor of his creditors; whereupon he makes oath, that he has no more than what is contained in that disposition; and he sets forth, though he seldom makes it appear by evidence, that he has been so reduced by innocent misfortunes: and as these processes are little attended to, or opposed as they ought to be, they pass of course; and the bankrupt comes out of prison quite a free man, ready to begin business again, after having cheated the world of considerable sums; and nobody is ever at pains to inquire about the effects in the disposition, so he continues to enjoy all.*" (Scots Magazine, 1770). "*E. McCulloch & Co., dealt particularly in fabrics for the export market, and traded successfully till 1769, when the 'disturbances and combinations in America... totally stopped all exportation thither, and the banks in this country having terminated all cash transactions' he was forced, with no sales, at home, to consign his goods to different merchants at London for sale. Failures there, and at home, forced him to declare himself bankrupt, with his Company owing £43,485. He was obliged to surrender his house in Edinburgh, stock in [BLC], his bleachfield and farm at Kevock, and was even imprisoned for a while during the sequestration of his estate. On release, he managed to secure the post of Surveyor for the Trustees of the Linen Manufacture in the East of Scotland, where he had opportunity to pursue his interest in bleaching.*" (Durie, 1973).

400 "*The Scottish Statutes of 1621 and 1696, with which we are familiar, were directed equally against insolvents and bankrupts. In both Acts 'dyvour' and 'bankrupt' are used as interchangeable terms, and there is no trace of any special treatment in respect of the debtor's occupation. Dyvour and bankrupt had equally the benefit of the Common Law of Cessio Bonorum, which was almost identical with that of France. The first statutory law of distribution or sequestration in Scotland was that of 1772, and, like the older Acts mentioned, it was not confined to traders. Shortly afterwards, however, the influence of the English system became manifest. The Sequestration Act of 1783 was confined to traders, and the non-trader continued subject to imprisonment, modified only by the Common Law of Cessio Bonorum*." (Brown, 1900). "*Besides introducing the main features of the sequestration process as we still have it, the Act of 1772 contained certain provisions which affected the law of notour bankruptcy and of preference by diligence. First, it provided that in the case of debtors to whom, by reason of personal privilege from imprisonment, the provisions of the existing law of notour bankruptcy (under the Act*

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1696, c. 5) were inapplicable—such as married women, pupils, etc.—arrestment of their property along with diligence by horning and caption duly denounced and registered should be the basis for sequestration. The object of this provision was to enable these classes of privileged debtors to share in the benefits of sequestration. In the second place, it introduced rules by which the diligences of arrestment and poinding within 30 days of an application for sequestration gave no preference (s. 17, 18)... With the exception of the case of adjudications—for the pari passu ranking of which provision was to a certain extent made in 1661 (Act 1661, c. 62)—creditors were enabled to run a race of diligence, and acquire preferences down to the passing of the first Sequestration Act of 1772 (12 Geo. III. c. 72). This statute first imposed a check by providing that arrestments or poindings executed within 30 days of the date of sequestration should be ranked pari passu... The introduction of sequestration in 1772 gave further relief Sequestration statutes to debtors by enabling them, after sequestration, to obtain a warrant of protection or liberation with consent of a certain majority of their creditors, and ultimately a final discharge from their debts." (Goudy, 1885). "*It was much taken notice of at the time that, only a few days previous to these extensive bankruptcies, a total alteration had been made by an act of Parliament on the bankrupt laws of Scotland. As the law stood previously, any creditor, laying an arrestment on the effects of his debtor, secured to himself the value of the property thus attached, to the exclusion of all the rest of the creditors, even although arrestments should immediately afterwards be laid on the same effects by any other creditor. By this means a debtor had it in his power to give a preference to any creditor whom he chose to favor, by informing him privately of the situation of his affairs, which enabled that creditor to secure himself by arrestment to the prejudice of all the rest. And, even without supposing anything unfair of that sort, whenever a person declared himself bankrupt, those creditors who were on the spot had it in their power to gain a preference before those creditors who lived at a distance. The Court of Session had attempted to remedy this abuse by an order of court in the year 1754, declaring that all arrestments laid within 30 days after the bankruptcy should be of equal force; but this order was only made for 7 years, and at the end of that period was not renewed by the Court of Session, probably because they did not think they had the power to make so great an alteration on the common law by their own authority merely. The abolishing of this iniquitous system, and the procuring an act of parliament to be passed for an equal distribution of the effects of debtors among their creditors, was the work of Mr (now Sir) James Montgomery, at that time Lord Advocate for Scotland, and after-wards Lord Chief Baron of Exchequer. After consulting with the principal merchants of Edinburgh and Glasgow, an act of parliament was framed which received the royal assent in June 1772, and the salutary effects of it were very speedily proved, on occasion of the numerous bankruptcies which now took place.*" (Forbes, 1859). "*A minor factor which contributed to greater stability was changes in the Scottish law of bankruptcy. It became less necessary or desirable for any one person to precipitate the bankruptcies always made imminent by any financial crisis and which had an adverse effect on banks, when the failure of anyone with an obligation to one could so easily cause a run on them. In the early 18th century the law enabled any creditor who arrested the effects of his debtor to secure for himself the value of the property thus attached to the exclusion of other creditors, even if their arrestments should follow at once. Under this procedure some debtors helped creditors, with whom they were on intimate terms, by informing them privately of an impending bankruptcy, so enabling the favored creditor to arrest the goods. Apart from the advantages of such advance information, creditors living close to a debtor always had a better chance of making the first arrestments than those living at a distance. In 1754 the Court of Session first made an order that all arrestments laid within 30 days of the bankruptcy should be of equal effect, but it was not renewed after 7 years. A complete change came only in June 1772 when an Act authorized an equal distribution of a debtor's effects among the creditors. The new provision removed a factor which frequently precipitated bankruptcies, and may have helped to mitigate the repercussions of the crisis of 1772, but did nothing to remove the fundamental causes which led to them.*" (Campbell, 1985).

401 "*In whatever way a Scottish sequestration may be enforced, the distribution of a bankrupt's effects under it is perfectly different from what it is under an English commission of bankruptcy. The Scottish law cuts down all securities that have been made or given within a certain number of days prior to the issuing of the sequestration, whether they have been given bond fide, or given, as we should say, in contemplation of bankruptcy. On the other hand, in our law, though the approximation of the security to the date of the commission may be evidence that it was given in contemplation of bankruptcy, yet it is but evidence; and the security may be perfectly good. Again, in England, a man cannot become a bankrupt without committing an act of bankruptcy. The commission must be founded on that act of bankruptcy; and there are various other differences applying to the property of a bankrupt, as administered under an English commission, or vice versa, as distributed by the rules and according to the forms of a Scottish sequestration. If, my lords, you attempt to obviate these inconveniences by a coexisting sequestration and commission, the difficulty is tenfold greater, unless the one should be used merely as the means of assisting the distribution of the funds on the other. What personal property shall belong to the one proceeding, and what to the other proceeding, is no ordinary difficulty. The counsel for the appellant say there is no difficulty. That a debt owing to the house in Scotland, wherever the debtor lives, ought to go to the Scotch sequestration; and in like manner that the debt owing to the house in England, wherever the debtor lives, should go to the commission. But the house may be constituted of persons of whom it may be difficult to say whether a man is a Scotchman or an Englishman. It may happen that a house is composed of persons, some of whom reside in Scotland and some in England. I should wish to know, not only how the joint debts due to one firm and the joint debts due to the other are to be distributed; but where separate debts are due to each, whether the separate debts are to be a fund of distribution under the English commission, or under the Scottish sequestration, or what is to become of them. All these difficulties certainly belong to this case. But notwithstanding that, one thing is quite clear, there is not in any book any dictum or authority that would authorize me to deny, at least in this place, that an English commission passes, as with respect to the bankrupt and his creditors in England, the personal property he has in Scotland or in any foreign country. It is admitted that the assignment under the English commission, as between the bankrupt and the English and Scotch proprietors, passes the Scotch property, and vests in the assignees, when the Scotch creditors have not used legal diligence. I think the case was put at the bar thus: That the commission of bankruptcy operated so as to bring into the fund the Scotch personal property, provided that such personal property was not arrested by legal diligence in Scotland, prior to the intimation of the assignment in Scotland. It was therefore argued that this was to be put on the same footing as the case of the assignation of a particular debt to a particular individual. Now, your lordships need not be told that, by the law of Scotland, if B assign a debt which is due from C to B, a creditor of B may arrest that debt in the hands of the debtor, notwithstanding the assignment, unless the assignee has given an intimation formally to the person by whom the debt is owing. That must be admitted. Upon that it has been insisted here that no intimation has been given, and that this subsequent arrestment in 1798 ought to have the preference of the title of the assignees under the commission, that was sued out in the year*

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1782. [2 Rose, Bank. Cases, 314.]" (Story, 1872). "*A question of this nature came before Lord Hardwicke in the bankruptcy of captain Wilson, of which a statement is given by Lord Loughborough, in giving the judgment in Sill vs. Warwick [1 H. B1 665]. In that case there were 3 different sets of creditors in Scotland, who claimed, in opposition to the English assignees, the amount of considerable debts due to Hilson in Scotland. By the law of Scotland debts are assignable, and an assignment of a debt notified to the debtor, which is technically termed an intimation, makes a specific lien quoad that debt. An assignment of a debt, not intimated to the debtor, gives a right to the assignee to demand that debt; but it is a right inferior to that of the creditor, who has obtained his assignment and intimated it. Some of the creditors had assignments of specific debts, intimated to the debtors prior to the act of bankruptcy. Others had assignments of debts not intimated before the bankruptcy. Others had proceeded by process of arrestment, as it is called in the Scottish law, or, in other words, had attached the debts, after the commission of the act of bankruptcy. Lord Hardwicke and the Court of Session, entirely concurred in the opinion, that the creditors, who had specific assignments of debts with intimation to the debtors, stood in the same situation as creditors claiming by mortgage antecedent to the bankruptcy. All therefore he could do with respect to the, was, to refuse to admit them to come in under the commission, unless they accounted for what they had obtained under their specific security. With respect to the next class of creditors Lord Hardwicke was of opinion, as was also the Court of Session, that their title by assignment was preferable to the title by arrestment ; and they likewise held, that the arrestments being subsequent to the bankruptcy were of no avail, the property being by assignment vested in the assignees under the commission... The case of Sill vs. Warwick was decided by the court of Common Pleas... the Chief Justice entered very fully into the general doctrine, which he discussed with much force and ability. After stating the general principle, that personal property is governed by the law of the country which governs the person of the owner, he said, that the condition of a bankrupt by the law of England is 'that the law, upon the act of bankruptcy being committed, vests his property upon a just consideration, not as a forfeiture, not on a supposition of a crime committed, not as a penalty, and takes the administration of it by vesting it in assignees, who apply that property to the just purpose of the equal payment of his debts. If the bankrupt happens to have [personal] property, which lies out of the jurisdiction of the law of England, if the country in which it lies proceeds according to the principles of well-regulated justice, there is no doubt but it will give effect to the title of the assignees. The determinations of the courts of this country have been uniform to admit the title of foreign assignees.' His opinion was, that the claim of the assignees was to be preferred to that of all other creditors, who had not acquired a specific lien, prior to the commission of the act of bankruptcy; and that in this case, if the assignees had sent to St. Christophers a person to act for them and had given notice of the assignment, the court at country, in which the personal property maybe, may entertain jurisdiction over that property, and by express regulation may prefer the claim of the attaching creditor to the previous assignment by the operation of the bankrupt laws, although he should consider such a determination wrong and contrary to well established principles of the law of nations."* (Livermore, 1828).

402 "*In Scotland, a new Act to regulate bankruptcy proceedings, especially those associated with bills of exchange and promissory notes, was by a remarkable coincidence introduced only a few days before the crisis started in London in mid-May 1772. This law was novel enough that just after the June crisis struck, the Scots Magazine felt compelled to detail the proceedings against Fordyce, Malcolm, & Co as an instructive demonstration of the operation of the new legal regime*." (Kosmetatos, 2018). "*The inferior class of people have unfortunately got a notion into their heads, that a general act of indemnity has now passed in favor of every bankrupt indiscriminately; and provided a sequestration can be obtained in terms of the act, think themselves se cure against every legal attachment or distress. The influence which the dread of diligence has heretofore had upon their conduct, is totally removed; and that spirit of deceit and chicanery, too prevalent amongst the inferior class of mankind, is left without any check or control. I am led, Sir, into these reflections, from the multiplicity of applications lately made to the court of session, under the authority of the statute. Names of bankrupts have appeared both in Scottish and English newspapers, who were never heard of as traders; and sequestrations have been awarded against the personal estates of debtors, the product of whose funds will, in the sequel, scarce. reimburse the factor of his necessary expenditure in the management. And what shows the absurdity of applying the law indiscriminately to every failure is, that in a multiplicity of the late sequestrations, nothing effectual can follow; for the statute has expressly declared, that no creditor shall be intitled to vote at the meeting, whose claim does not amount to £10. What then effectual can be done in some of the late instances After running through the preliminary steps of procedure, and dissipating the bulk of the sequestrated funds, the first meeting of creditors is held, nobody can vote, so they find too late their error in prostituting a salutary law. It is equally absurd for people to imagine that under the sanction of the late statute, the personal liberty of debtors is secured. The squalor carceris, though capable to be abused, is a necessary check upon debtors, which the legislature never meant to remove. All that is meant by the statute is, a relief to the unfortunate honest bankrupt against the rigor of diligence; and it serves likewise as an inducement to the declining merchant to make a fair surrender of his effects to his creditors in proper time, before his a fairs become involved in total confusion. In this view, the legislature has done well in investing the court of session with the power of bestowing personal liberty; but that court are too attentive to the rights and interests of society, to make an application of their powers in favor of every debtor indiscriminately. If a debtor deserves pity, they will bestow it; if he deserves chastisement, they will allow the law to inflict it. I shall mention only one other argument against the misapplication of the late statute. It is well known, and in deed the preamble of the law itself has told us, that by the law of Scotland, as it formerly stood, the personal estates of such debtors as became insolvent were generally carried off by the diligences of creditors, who, from nearness of residence, or connections with the debtors, got early notice of the insolvency, to the prejudice of creditors more remote and unconnected, and to the disappointment of that equality which ought to take place in the distribution of the estates of insolvent debtors among their creditors. Foreign creditors complained loudly of this inconveniency; and the mercantile transactions betwixt Scotland and other countries were marked with that caution and dissidence, which must always destroy the liberal confidence. which ought to subsist amongst merchants: and, in proportion as the risk of trading with this country increased, so did also the profit upon foreign merchandise imported to this country. The late law has removed this long-felt grievance, and given an equal security to every creditor of a Scottish debtor wherever residing. The English or foreign creditor will now think themselves secure under the protection of the late law; but if the misapplication of it continues, they will be justly alarmed from another circumstance. The English statutes relating to bankruptcies do not apply, like the late Scottish statute, to every bankruptcy indiscriminately: they are framed upon mercantile ideas, and it is insolvent buyers and sellers only to whom they can apply. Hence it follows, that the bankruptcies which are publicly declared, bear but a small proportion to the bankruptcies which must necessarily happen in England. People's ideas are generally for ta cd upon their own laws and customs. The English therefore will be startled when in the London Gazette they observe the Scottish list of*

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bankrupts exceed those of England. They will conclude, that the whole mercantile people in Scotland are going to ruin: for, in the advertisements prescribed by statute, one who perhaps never traded to the extent of six-pence, makes the self-same appearance in the Gazette, as another per son who perhaps has failed for a plum. This growing evil of misapplying of the statute ought certainly to be checked. It is difficult to make an embarrassed and distressed debtor believe, that he cannot shelter himself under the protection of the statute. The legislature meant to obviate fraud and partiality, which may be equally dangerous in the bankruptcy of a landed man or a tenant, as of a merchant; but it never meant to extend the salutary principles of the law to trifling failures. When such occurs, it is the duty of practitioners before the court of session, to advise the unfortunate petty bankrupt to seek relief by the law as it. formerly stood; but on no account ought they to advise a prostitution of the late law to cases never meant by the legislature." (Scots Magazine, 1772).

403 "*The Act of 1783 limited the process of sequestration to traders, but under the provisions of the Bankruptcy Act, 1856, the relief was extended to all classes of debtors.*" (Goudy, 1885).

404 "*It has been well observed by an English writer, that as commerce advanced in its progress, the multiplicity of its concerns required, in many instances, a less complicated mode of payment, and of obtaining credit, than through the medium of bills of exchange, to which there are in general 3 parties. A trader, whose situation and circumstances rendered credit from a merchant or manufacturer who supplied him with goods absolutely necessary, might have so limited a connection with the commercial world at large, that he could not easily furnish his creditor with a bill of exchange on another man, while his own responsibility might be such, that his simple promise of payment, reduced to writing for the purpose of evidence, might be accepted with equal confidence with a bill on another trader. Hence the introduction of promissory notes; and hence, as before observed, the expedient devised by the Scotch merchants, of drawing their inland bills, so as to be the same in effect with promissory notes, while their form secured to them, at the same time, all the privileges of bills. By these inland bills, almost all the purchases and mercantile dealings in Scotland have for a long period been transacted; and though promissory notes were, in the 12th year of the reign of his present Majesty, endued by statue with the same privileges as bills of exchange, they still continue to be in general use. By a temporary statute 12 Geo. III. c 72, made perpetual by 23d Geo. III. c. 18 §55, it is enacted, §56, 'that from and after the 15th May 1772, the same diligence and execution shall be competent, and shall proceed upon promissory notes, whether holograph or not, as it is provided to pass upon bills of exchange and inland bills, by the laws of Scotland; that promissory notes shall bear interest as bills, and shall pass by [endorsement]; and that the endorsers of promissory notes shall have the same privileges as the endorsers of bills, in all points'... Before the year 1772, it had not been ascertained how long the privileges of bills endured, so as to entitle the holder to an action upon them against the debtor, or what lapse of time or silence, on the part of the holder, was to be construed into a loss of his right, sufficient t debar him from pursuing. There was, accordingly, a variety of decision on the point. But to obviate the inconveniences which had been found t result from the not limiting of bills and promissory notes to a moderate endurance, it was enacted by 12. Geo. III c.72, that action and diligence on bills and notes should be circumscribed to 6 years after the terms at which such bills or notes became exigible. And bills now retain their extraordinary privileges during that period... But after the bill was accepted, the statute 1681 authorized no summary diligence against any other than the accepter; and in the event of his failure, the holder could only proceed by way of ordinary action against the drawer and endorsers. To remedy this, it is enacted, by 12. George III. c. 72. § 42. That from and after the 15th day of May 1772, summary execution by horning or other diligence, shall pass upon bills, whether foreign or inland, and whether accepted or protested, for non-acceptance, and upon all promissory notes duly negotiated, not only against the accepters of such bills, or grantors of such notes, but also against the drawers of such bills and the whole endorsers of the said bills and notes, jointly and severally, except where the [endorsement] is qualified to be without recourse, saving and reserving to the drawers or endorsers their respective claims of recourse against each other, and all defenses against the same, according to law. And by the same act it is appointed, §41, 'That all inland bills and promissory notes shall be protested in like manner as foreign bills, before the expiration of the three days of grace, otherwise there shall be no recourse against the drawers or endorsers of such inland bills, or against the endorsers of such promissory notes; and it shall be sufficient to preserve the said recourse, if notice is given of the dishonor within fourteen days after the protest is taken, without prejudice to the notification of the dishonor of foreign bills, to be made within such time as is required by the usage and custom of merchants'... Many disputes and difficulties were found to result from there being no limited period within which actions upon bills should be brought, and no ascertained space during which they should retain their force and efficacy as privileged documents. It was, therefore, by the 12. Geo. III. c. 72. (rendered perpetual by 21. Geo. III. c. 1 s. 55.) enacted, § 37. 'That no bill of exchange, or inland bill or promissory note, executed after the 15th day of May 1772, shall be of force, or effectual to produce any diligence or action, in that part of Great Britain called Scotland, unless such diligence shall be raised and executed, or action commenced thereon, within the space of 6 years from and after the terms at winch the sums in the said bills or notes became exigible.' The same statute enacts, §38., 'That no bill of exchange, or inland bill or promissory note, which has been or shall be granted, before the said 15th clay of May 1772, shall be of force, or effectual to produce any diligence or action, unless such diligence has been or shall be raised, or action has or shall be commenced thereon, before the expiration of 6 years from and after the said 15th day of May 1772.' And by §39, it is provided, 'That no notes, commonly called bank-notes, or post-bills, issued or to be issued by any bank or banking company, and which contain an obligation of payment to the bearer, and are circulated as money, shall be comprehended under the aforesaid limitation or prescription; and that it shall and may be lawful and competent, at any time after the expiration of the said 6 years, in either of cases before mentioned, to prove the debts contained in the said bills and promissory notes, and that the same are resting owing, by the oath or writ of the debtor.' As the action or diligence upon bills and notes, must be raised within 6 year; after the terms at which the sums therein contained become exigible, it has been decided, that the sexennial prescription runs, not from the precise day of payment, but from the last day of grace, as the contents of a bill or note are not exigible till then [1793, DHA a. Trustees of Grant — affirmed on appeal, Nov 11, 1796]; and where a bill was dated prior to the 15th May 1712, but not payable till after that day, it was found sufficient that action was commenced within 6 years from the term of payment, as the case had not been provided for by the statute [1782, Tweedie &c. a Gibson, Fae. Coll.] To interrupt and preclude prescription, summary diligence in the form pointed out in the preceding chapter, must be executed against the parties to the bill; or, where that is omitted to be done within the time required by the statutes, an ordinary action, founding on the bill as a document of debt, must be brought within the 6 years, in terms of the act above recited. By either of these modes, the debt may be constituted against the debtor, so as to bar the limitation, and entitle the creditor to recover at any time within 40 years, the period of the long prescription. The diligence necessary for this purpose must be complete, and the action regular and formal. The mere act of protesting the bill, or even registering the protest, is not*

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sufficient [1784, DHA a Richarson]; a charge of payment must be given. Neither will the sexennial limitation be affected by an informal summons, such as where the officer's execution is not authenticated in the witraip manner by subscribing witnesses [1790, Bailie a. Doig]; Nor will it be so by the execution of a blank admiral precept, in which, according to its form, no mention is made of any particular debt; but a decree taken against one of the co-obligants in a bill before the lapse of the 6 years, was deemed sufficient to interrupt prescription as to all the other obligants [1784, Gordon a. Bogle.] It was also held to be a sufficient interruption, that certain bills and protests had been produced by the holders within the statutory period, in a process of rankin& and sale of the debtor's estate [1784, DHA a Richardson]... A majority of the Court were of opinion, that the enactment of 1772 was of a similar nature with those introducing the shorter prescriptions of Scotland, and not an adoption of the English law with regard to the limitation of bills, &c. ; and that neither the markings in the handwriting of the defender, nor the relative correspondence within the 6 years, could save from the currency of prescription. But it was ultimately found, that the letter in process, dated 22d July 1789, from the defender to the pursuer, after the sexennial prescription had run, did instruct that the debt was then resting owing in part; and, therefore, repelled the defense of prescription [1793, Russel a. Fairie.]" (Glen, 1807).

405 In the United States, the Supreme Court's 1857 decision in *Curtis v. Leavitt* legalized the single name accommodation bill shortly before the *Panic of 1857*.

406 "*It was a fortunate circumstance in connection with this crisis that an Act of Parliament, amending the bankruptcy laws of Scotland, had been passed just in time (the Royal assent was given June 1772) to preserve the equality of rights of creditors in the numerous bankruptcies that occurred. Previously creditors ranked by priority of arrestment, and thus debtors could give and creditors secure undue preferences. The Act 12 Geo. III., cap. 72, abolished this system, and made several salutary provisions for securing the rights of creditors*." (Kerr, 1884). "*The devastation of course went much further in the business community. But there was one mitigating factor. In the very month of the disaster, June 1772. the Scottish law of bankruptcy had been remade. Previously, the first creditor to lay an arrestment of his debtor secured to himself his portion of the property to the exclusion of others. A debtor about to fail could thus favor a creditor by intimating his condition. The new law abolished this iniquitous system, replacing it with equal distribution among creditors. This greatly eased the liquidation process*." (Checkland, 1975). "*Had the old system been still in force, the expense and confusion arising from the multiplicity of arrestments and law proceedings must have been altogether inconceivable*." (Forbes, 1859).

407 "*Bankruptcies are become very frequent here: an eminent woollen draper at Delft, who had the clothing of several regiments in the service of the Republic, lately failed; it is said for upwards of 200,000 florins, and, as some frauds are suspected, he was taken up a few days ago and committed to prison, till proper enquiry can be made into the state of his affairs. Another person, who was director of the manufacture of marbled paper, has likewise failed, and it is said, he owes to the Comptroller General of Holland 150,000 florins for the paper he was disposed of*." (General Evening News, Jan 7-9, 1772).

408 "*Early in 1772 it had tried to put a brake on over-trading by a selective limitation of its discounts, a policy which it had often adopted before. This exposed it to criticism, like the Edinburgh banks, from those whose paper it rejected; but it was obviously in the right. [There is no vote of Court about limiting discounts, but we have the criticism—a letter to the press quoted in Acres. No doubt the restrictions were exercised by the Committee of Treasury and the Committee in Waiting. There is reason to think that they applied mainly (and reasonably) to the paper of Scots and Jews with Amsterdam connections. It is said that he immediate cause of Fordyce's collapse was the refusal of [BOE] to discount a bill of his on an Amsterdam Jew.] It was in touch with [DHA]; may have guessed that it was trying, as Adam Smith thought, 'to supplant all the other Scottish banks'; and certainly knew, again to quote Smith, that 'all the dealers in circulating bills of exchange... had recourse to this new bank where they were received with open arms', and allowed to do business freely. It would also know that the reluctance of the old Scottish banks to do the riskier business had concentrated the explosive material at [DHA]—so that in the end they 'were enabled to get very easily out of that fatal circle.' The aristocratic names behind [DHA] had given the firm a good name in London. It had done business with [BOE] and with many London bankers and commercial houses. Everyone was interested in averting a crash, if that were possible. It hardly was. In May the direction at [DHA] tried to limit the commitments, but too late]*." (Clapham, 1945). "*In the crisis of 1773 London was deeply implicated. An important English banking concern had discounted bills of exchange amounting to £0.2 M for a prominent house in Amsterdam. We are told that Fordyce, the first banker to fail in London, had connections with many Jews there and in Amsterdam. One of the reasons assigned for Fordyce's failure was [BOE's] refusal to discount bills of exchange drawn on Jews. While we do not know how many Jews were ruined in these crises, we know that their efforts to rehabilitate themselves with their creditors were looked upon with favor. Some of them repaid 50% at once, 25% in bills of exchange and 25 % in loans on their goods*." (Bloom, 1937).

409 One account conjectured that "*[Fordyce had] dabbled deeply in Exchange alley. By these transactions he is said to have acquired at first a great fortune: but as stock-jobbing was the cause of his rise, it likewise brought on his ruin; for at the time of the failure he is said to have had a difference of 10% to pay on £0.5 M, some say, £1.5 M, of [EIC] flock, of which he had been a bear for many months. Mr Fordyce immediately absconded; and his real debts were said to amount to £0.3 M. though if his friends may be credited, he was last winter worth £0.15 M*." (Scots Magazine, 1772). Another noted that "*His capital stroke, however, is thought to have been made at the time of the great rife of India stock, about 7 years since.This success was fatal to Mr.Fordyce; for it induced him not only to speculate for still larger sums in the Alley, but in many other pursuits, particularly in hops*." (Gentleman's Magazine, 1772). During his bankruptcy trial *"[Creditor:] Was it solvent at Christmas? [Fordyce:] I conceived it solvent then... [Fordyce:] Mr James was often with me crying like a child about the situation of the house, for many weeks before that fatal event [on June 10th], and saying, 'He saw we must stop payment'... [Creditor:] Was it not the custom with you, to borrow money of several gentlemen in this court, who borrowed the money first from the house? Did the partners know of that? [Fordyce:] The partners knew it from the books. [A Creditor:] But the partners did not know you borrowed that money to make up deficiencies for your having made use of the cash beforehand; and I am told that was constantly done before the deficiency appeared. [Fordyce:] I own, with great confusion, that was done: and I will tell you why it was done; it was in order that there might not any idea go into the world that our cash was too low; the partners saw it, and assisted at it. [A Creditor:] That often happened, I suppose. [Fordyce:] No, Sir, I beg pardon; it was not often. [A Creditor:] I have been told, it often happened; and that notes were wrote, and locked up in your desk, merely to give a face to your account at night... [Fordyce:] I was very sorry to find a gentle man had taken out a commission: for although I went away, I don't know whether I might not have been relieved from it, and all this mischief saved: it was done before I knew of it. [Creditor:] You did not know of it? [Fordyce:] No, I did*

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not: they ought not to have struck a docket before they had given me time to apply to my friends. But that is now over, and I am sorry for it." (Scots Magazine, 1772). "*The crisis of 1772 was precipitated by speculation in Amsterdam and London in the stock of [EIC] and by the collapse of [DHA]. Numerous complex details are involved, including the political reverses of [EIC] and restriction on its credit by [BOE]; the practice of the thrusting new [DHA] (which was left bad loans by the established banks) in borrowing from London when its acceptances came due; and the flight in July 1772 of Alexander Fordyce, who had lost his firm's money selling [EIC] stock prematurely... In 1772 Alexander Fordyce absconded from London to the Continent, leaving his associates to meet obligations of £0.55 M, largely in dubious acceptances of [DHA], if they could – but they could not. Fordyce had personally been short of [EIC] stock, whose price had risen enough to wipe him out [Wilson (1941, p170)]... In 1772 [BOE] raised its discount rate early in the year; [DHA] cut back operations in May, but too late. Fordyce absconded on 10 June and the news precipitated a panic in Great Britain on 22 June...*" (Kindleberger and Aliber, 2005). "*Fordyce... had for months been shorting some £1.0 M (approximately £111.5 M in 2013 prices) of [EIC] stock. But with [EIC] share prices flat since late 1771, and facing an additional margin call of 10%, Fordyce absconded to France, leaving his partners liable for an estimated £0.24 M in debts.*" (Goodspeed, 2014).

410 "[*Mr Fordyce] disappeared on the 10th of June. A commission of bankrupt was immediately issued forth against him; and by an advertisement in the Gazette of June 13. he was required to surrender himself to the commissioners, on the 10th of June, and the 4th and 25th of July, at Guildhall, London, to make a full discovery of his estate and effects. A like commission was soon after issued against the house in which he was a partner, viz. Mess. Henry Neale, William James, Alexander Fordyce, and Richard Downe; and by an advertisement in the Gazette of June 20. they were required to surrender on the 24th of June, 3d of July, and 1st of Aug; whose appearance has been already mentioned. Notice was given in the Gazette of July 28, that the time of Mr Fordyce's appearance was enlarged 49 days from the 25th of July. Accordingly, he appeared, at Guildhall, on Sat, Sept. 12... What sum of money he carried off with him when he first absconded? Answered: That so far from taking money with him, he was obliged to borrow a small trifle from a friend to pay for a few necessaries which he had occasion for on his journey. — If not in money, had he not taken with him any other valuable property Ans. 'Not to the value of a single shilling, but what returned with me, and is here surrendered', (pointing to a bag that lay on the table); 'and I wish to God I could deliver more; I wish and hope to pay every shilling for which I stand indebted.'— Here nature burst forth, and a few tears eased the anguish of an aching heart. 2. In what manner had he lost the sum of £75,000. which appeared to be deficient 2 Ans. That when his misfortunes came upon him, the raising of money by drawing and redrawing, to keep up his credit, in hopes of recovering himself, and of doing justice to his creditors, had swallowed up that enormous sum : but that he referred to the books then fur rendered, which would discover every shilling that had ever come into or gone out of his hands. The assignee who had put the question, observed, that the expense of raising money could not be thought to amount to a fifth part of that sum. Ans. That more than two thirds of it had been really expended for that purpose; and that the gentleman himself, if he chose it, could explain this matter as well as any man in England.*" (Scots Magazine, 1772).

411 Prior to stoppage, DHA's liabilities included £0.22 M note issue, £0.3 M deposits, and £0.6 M in bills on London correspondents; on the asset side, out of a total £0.41 M of bills of exchange, £0.18 M (44%) were dishonored (Somers, 1873, p103). "*Of the over 500 claims made in the bankruptcy commission proceedings against Alexander Fordyce and his partners, just 22 came from persons identifying themselves as 'broker' or 'banker', of whom only 3 certainly stopped payment as well. Some of those names central in the traditional crisis narrative, like Glyn & Hallifax or [DHA], do not appear either among the commission claimants or in any petitions to the Lord Chancellor. Fordyce's connections with [DHA] in particular are at best tenuous. He was certainly not its London correspondent as he has been sometimes described, and there is no evidence whatsoever that the bank was a counterparty in his trading in Exchange Alley. [Wilson 1941, p. 170, reverses the direction of this supposed relationship and attributes Fordyce's troubles on his 'acceptance of dubious bills for [DHA], an assertion that has no support in the primary record. Ashton 1959, pp. 136-7, similarly dissents from the traditional narrative in that he sees contagion travelling from Scotland to London and not the other way around, also without further elaboration.] If Fordyce '[broke] half the bankers', as Walpole exclaimed, he probably did not do so by dishonouring bilateral debts to them.*" (Kosmetatos, 2014). "*This source of credit was shut off suddenly on June 10, 1772, when the banking firm of Neal, James, Fordyce and Down, the London correspondent of [DHA], closed its doors.*" (Sheridan, 1960). "*Next month the misconduct of a London Scot, a correspondent of theirs, set the train alight that blew [DHA] up.*" (Clapham, 1945).

412 "*On 8 June 1772, the London-Scottish banking house of Neale, James, Fordyce & Downe, with extensive connections with [DHA] collapsed. Fordyce was said to have been gambling in die stock exchange and to owe £0.243 M. This son of a former provost of Aberdeen absconded, leaving his partners unable to meet the obligations of the house. There was consternation among the Scottish merchants and bankers in London, most of them with strong Edinburgh connections. 'I think 25 Capital Scotch houses have stop'd here', wrote a Scot from London to Virginia.*" (Checkland, 1975). "*The French weekly Gazette de France, meanwhile, reported on 4 July that the entire city of London was awash 'in rumors and tears', noting that suspension of payment by several banking houses had prompted bank-on-bank runs, with 'universal bankruptcy' seemingly imminent. The editors further cautioned that the failure of Neale, James, Fordyce, & Down had merely provided the spark; the tinder was the immense quantity of Scottish paper the firm had been discounting, with a nominal face value of as much as £4 M over the preceding 5 years.' The consequent evaporation of liquidity for Scottish bills of exchange, they observed, thus instantly cast doubt on any London houses that had been buying Scottish bank debt, and on those Scottish banks, particularly [DHA], that had been relying on London to roll over short-term debt.*" (Goodspeed, 2016). "*It took just 43 hours for a rider to carry word of the collapse to Edinburgh, where several leading banking firms had been relying heavily on Neale, James, Fordyce and Down, the largest buyer of Scottish bills in London, to roll over short-term debt. Fordyce himself being a Scotsman, and with two Scottish houses in London having already stopped payment owing to his failure, the fear was that the sudden evaporation of liquidity for Scottish bills, which had lately been flooding the London discount market, would render it nearly impossible for Scotland's banks to obtain vital refinancing as outstanding drafts came due.*" (Goodspeed, 2014). "*The Fordyce of the above London banking house being a Scotchman, and two Scotch houses having stopped owing to his failure, the idea arose that many other Scotch houses, and even some of the Scotch Banks, might be connected with his Bank, and have to suspend also. Some ground for this fear was afforded by the fact, that the number of Scotch bills which had of late appeared in London, in the discount market, had become very great, while the foundation of them being little*

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understood there, much speculation respecting the cause of this had arisen, and, in consequence, many bills drawn by Scotch houses on respectable London houses had been refused to be discounted by [BOE]." (Boase, 1867). "*But in the afternoon of Fri, the 12th of June, a horseman, in extreme haste, rode into Edinburgh. He had travelled from London in the extraordinary space of 43 hours. The news he brought accounted for his speed. The banking house of Neale, James, Fordyce & Downe had failed, and dragged down other firms with it, from which a terrible panic had ensued. These were dire tidings for the financial houses of the Scottish metropolis... To none must the news have had more purport than to the Edinburgh board of [DHA], who, although not at the chief seat of management, were perhaps even more involved than [DHA] board in maturing and carrying out the credit and exchange transactions. They had intimate relationships with most of the private banking houses in Edinburgh, in order to assist the floating of their paper. The first of these firms to collapse was Fordyce, Malcolm & Co., who stopped payment three days after the arrival of the news from London. Next day, the 16th, Arbuthnot & Guthrie followed suit. These failures, and fears of more to follow, seem to have raised the first excitement to a considerable pitch. A rumor got abroad that the bills of [DHA] were refused for discount in London. 'Terrified with the apprehension that an immediate stoppage would be the consequence, the common people ran in crowds to draw specie for their notes; and on Tues evening the following advertisement was handed about in Edinburgh: Bank Office, Canongate, June 16, 1772.— Whereas the Branch of [DHA], here, have for these 2 days past had an immense demand for specie, from the lower class of people, in exchange for notes, owing, as it is suspected, to some ill-grounded reports raised by foolish or malicious persons respecting said branch, a reward is therefore offered of £100 to anyone who will discover the person or persons who have been concerned in raising such an infamous report; the reward to be paid by Mr. Hogg, cashier, upon conviction of the offenders. [DHA Cashier, Hogg].' This advertisement, joined with the knowledge of the solid foundation of that company, in a good measure quieted the minds of people, and the ferment had greatly subsided. But new failures continuing to happen, the demands on them for specie became greater than ever. On the 24th June, the import ant firm of Wm. Alexander & Sons, with Gibson & Balfour, Andrew Sinclair & Co., Johnstone & Smith, and Garbet & Co. —all well-known houses—suspended payment.*" (Kerr, 1884).

413 "*The failure of Neale, James, Fordyce & Downe in London on June 10th, 1772 set off a wave of failure throughout the United Kingdom. There had been commercial crises before but this was the first which involved the banks to any extent. In the 2 weeks following the first London failure several Edinburgh-based private bankers stopped payment. This put [DHA] under increased pressure, as a run on them for specie in exchange for notes began, following the circulation of rumors. They attempted to restore confidence by placing a notice in the papers offering a reward of 100 for information leading to the conviction of the 'person or persons who have been concerned in raising such an infamous report.' At the same time, they were applying to the public banks for further loans. They assured these banks that they had sufficient funds to cover their engagements to the London houses which had failed. They requested a loan in London bills and asked that 'the banks will allow £10,000 for the notes in the hands of each to lie at interest and take the balance at the daily exchange in their favor in London bills for 4 or 6 months.' This was refused. At the same time the Duke of Queensberry had applied to [BOE] for help. This too was turned down.*" (Munn, 1981). "*A deputation including [DHA's] two ducal shareholders (Buccleuch having the advice of Adam Smith), was sent to negotiate a loan from [BOE]. Knowing the extent of the landed wealth of the partners, [BOE] was prepared to advance £0.30 M. But the terms were so stiff that [DHA] declined them. They approached the two Scottish public banks with requests for loans of £0.02 M from each. raising this within a few days to £0.05 M. The two banks, comfortably safe themselves, felt unable to comply. This refusal left [DHA] no alternative but to suspend payments on the (Mowing day. [DHA] guaranteed 5% on its notes until redeemed, entering in the books of the Court of Session a bond, sworn by the cashier, to pay notes and interest.*" (Checkland, 1975). "*In May 1772, the directors began to realize the gravity of the situation, and resolved on retrenchment. But the opportunity for such a course had passed, and irretrievable ruin stared them in the face. Even if they had had the moral courage (which they had not) to put their resolution into force, their power of doing so was gone. They were so hopelessly involved in the web they had themselves woven, that they could only passively submit to the fate that awaited them in a few weeks. Their bills on London had rapidly augmented until they amounted to about £0.4 M; they had more than £0.2 M of notes in the circle, and £0.3 M of deposits, and but small available funds. The Edinburgh banks had refused to hold their paper, and even their hitherto fertile genius was at last unable to devise an alleviation for their distress. They struggled on, nevertheless, and, aided by the general ignorance of their position, managed wonderfully to maintain their credit.*" (Kerr, 1884). "*Perhaps most notably, [DHA] attempted to staunch the bleeding in June 1772 by temporary suspension of payments, coupled with a pledge of compensatory accrual of interest. After their advertisement of a reward for the identity of any source of rumors concerning their solvency, which they colorfully attributed to 'some ill grounded rumors raised by foolish or malicious persons', failed to halt the hemorrhaging of reserves, the directors were compelled to close their doors. On the morning of 26 June, they issued a circular announcing that '[DHA], taking into their consideration the present state of the credit of this country, and the uncommon demands that have been made upon them for specie, owing to causes sufficiently well known, have come to the conclusion to give over for some time paying specie for their notes.' The directors added, however, that as the country 'cannot entertain the smallest doubt of the solidity' of the bank's foundation, 'it is hoped that on occasion of a national emergency of this kind, the holders of their notes will not be under any alarm.' Moreover, 'In order to give full satisfaction to the public', they further declared that they 'will pay 5% interest for such of their notes as remain in the circle, until paid, after 26th June current.'*" (Goodspeed, 2016). "*Already the day before, they had approached directors of [BOS and RBS] to insist that, though the extent of their exposure to Neale, James, Fordyce, and Down did not exceed £22,000, they required an immediate 6-month loan of £20,000 from each bank to resolve what they claimed was a temporary lack of liquidity. The directors of the two chartered banks sensed a bluff, and promptly responded that though they were 'exceedingly sorry for the Bankruptcys that have happened in London," they were "at the same time extremely pleased to be Informed that [DHA] are entirely Covered on their Engagements with the Houses that have failed', and therefore were 'of Opinion that it would be Improper for them to Agree to the Proposals' made to them by the bank.*" (Goodspeed, 2014).

"*The bills of [DHA] having been refused, a meeting of noblemen and gentlemen was held in Ayr, on July 1, and passed resolutions of thanks to, and unbounded confidence in that firm, while in London a meeting of Scotchmen was held, for the purpose of offering [BOE] an indemnity if they would assist [DHA]. Two Dukes, who were partners of it, accompanied by one of the richest men of the city. waited on the Directors of [BOE], and told them that they were liable for the Scotch Bank's transactions, and were ready to grant to [BOE] legal acknowledgment to that effect. The Directors having enquired what was the total amount of [DHA's] bills afloat, and being told £0.3, were surprised and frightened, as [BOE] had already about half of this amount*

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under discount. The Directors promised to consider the matter till the next day, when they refused to discount, any more of this paper unless the two Dukes would transfer to [BOE] property in England to the value of £20,000 per annum. Support on these terms was, however, declined, as the property of the partners of the Bank requiring aid was well known to exceed £5 M. They stipulated also for the gradual diminution of the circulation of the notes of [DHA], which had usually amounted to £0.30, but had within a few weeks increased to £0.45. This was perhaps the first application formally made to [BOE] to take on itself the burden of supporting commercial credit." (Boase, 1867).

414 *"A further round of failure on June 24th caused [DHA] to close its doors on June 25th and a notice of suspension was inserted in the newspapers. It assured the holders of notes that [DHA] was established on a solid foundation and that it would pay 5% interest on its notes after 26th June. This was strictly illegal in terms of the 1765 Bank Act but the alternative was a general bankruptcy in terms of the Bankruptcy Act which had been passed only the previous month. Such a course of action would have caused more problems than it solved. Most people were content to hold their [DHA] notes, secure in the knowledge that the Duke of Queensberry alone could pay all the obligations of the bank several times over. The immediate problem was liquidity... The people who lost most in the crisis were the partners in the bank. By Aug 1775 only 112 out of 226 remained solvent. The partners ultimately had to pay £0.66 M—this amounted to £2,200 per £500 share, although some dividends were returned on solvent shares in the early 19th century*." (Munn, 1981). "*The demands on [DHA] had now become too great for their restricted treasury; and on the morning of the 26th they issued the following circular:—Air, June 25, 1772.— The company of [DHA], taking into their consideration the present state of the credit of this country, and the uncommon demands that have been made upon them for specie, owing to causes sufficiently well known, have come to a resolution to give over, for some time, paying specie for their notes. But as the country, who have received the most liberal aids from this company, cannot entertain the smallest doubt of the solidity of its foundation, it is hoped, that, on occasion of a national emergency of this kind, the holders of their notes will not be under any alarm.' The circular, which was signed by John Christian, cashier, proceeded to declare that interest at 5% per annum would be allowed on notes remaining in the circle, for which a bond was duly executed on 4th July succeeding. [DHA] office appears to have closed on 22nd June."* (Kerr, 1884).

415 "*[T]he Merchant Banking Co of Glasgow, which was compelled to close its doors on July 9; but it announced that its partners were 70 in number, with ample means to cover all the Company's engagements, and that it would resume business on the 9th Oct, paying 5% interest on its notes*." (Boase, 1867). "*Specifically, facing large internal and external drains of specie in June 1772, several Scottish banks attempted to replicate the optional clause through temporary suspension of payment with pledges of compensatory interest. The Merchant Banking Co of Glasgow, for instance, facing overwhelming demands for specie, shut its doors on 9 July. Shortly thereafter, however, it advertised that its partners, numbering 'more than 70 and 'whose real and personal estates are wholly engaged for the payment of the company's debts', were possessed of ample means to cover all of the bank's liabilities, and that it would thus resume business on 9 Oct— exactly 3 months after closure. It further announced that upon reopening it would pay 5% interest on all outstanding notes as compensation for suspension, secured by a bond registered in the borough court books of Glasgow*." (Goodspeed, 2016).

416 "*Although [BOE] quickly intervened by advancing credits to selected bankers, and by facilitating a City-led rescue of the important private bank of Glyn & Hallifax... the bridge loan to Glyn & Hallifax in London came to £89,139 for the one month of its stop of payments*." (Kosmetatos, 2014). "*No less than 13 Edinburgh private bankers fell with [DHA], never to rise again*." (Checkland, 1975). "*The crisis was essentially a banking one; and although it was necessarily directly associated with trade, it would appear that that connection was, as far as Scotland was concerned, limited to a comparatively small section of the community. The resolution of the banks, in 1773, to accept the notes of [DHA] in payments, when that establishment finally agreed to give up business, was a further assistance in the restoration of confidence. The harvest of 1773 was fairly good, the fisheries excellent, the cattle trade active, and money cheap*." (Kerr, 1884). "*The [The Merchant Banking Co of Glasgow] duly resumed business on 9 Oct and survived the crisis. In Edinburgh, similarly, the private banks of William Alexander & Sons and John Fyffe & Co. temporarily closed their doors, on 24 June and 20 Aug, respectively, but later reopened, the former just a few weeks later, on 13 July. Of Fyffe & Co., Sir William Forbes recounted that 'John Fyffe, from a principle of high honor, suspended his payments in 1772, because he was fearful of the effect of those numerous bankruptcies which he saw daily happening around him. But, on a more narrow inspection of his affairs, he found no reason for apprehension, and very soon went on again.'... [DHA] resumed payments on 28 Sep, almost exactly 3 months after suspension, announcing its intention to recommence in an advertisement released 10 days before. Although we possess no counterfactual scenario in which the Scottish banking system was subjected to a shock quite of the magnitude of June 1772 with the handicap of the optional clause to which we might contrast the actual historical episode, we can nonetheless compare the orderliness of payment suspension under the optional clause before 1765 with the disorderliness of ad hoc suspension through sudden stoppage after 1765. Whereas invocation of the optional clause had been discriminate, with banks always continuing to redeem smaller denomination notes while marking larger notes presented by high-volume speculators, suspensions in June 1772 were indiscriminate, implying a more comprehensive disruption to the flow of credit and an amplification of the incentive to be first in line for large redemptions. In particular, indiscriminate suspension of payment in 1772 generated significant contagion effects, as suspension by any one bank immediately rendered illiquid those of its notes held as reserves by other banks. Thus, several banks that failed were subsequently determined by bankruptcy trustees to 'have carried on their business with such regularity, diligence, and frugality' that their failure owed purely to 'their connection with other houses which have stopt payment'*." (Goodspeed, 2016).

417 "*[T]he failure of [DHA] in 1772 caused 8 small private bankers in Edinburgh to fail because they held significant amounts of [DHA's] liabilities, but the remaining Scottish banks were unaffected. In fact, 2 of the chartered banks advertised, the day before the liquidation of [DHA], that they would accept the insolvent bank's notes, perhaps to gain in market share by attracting former [DHA] customers [White (1984, p30-2)]. This behavior was the opposite of the panic scenario in which one failure leads to other runs. Significantly though, it is worth recalling, the chartered banks had limited liability, and, as it turned out, the claims of [DHA] creditors were paid off in full by the equity holders whose liability was unlimited... So when losses are actually realized, or expected to be realized, it is not surprising that note holders run in one system and not the other Scottish equity holders had nowhere to run since their shares were not freely transferable. Any difference between the two systems must turn on the question of information externalities, on whether in the American system the failure of one bank leads somehow to runs on other banks*." (Gorton, 1985). "*Indeed, I find that in the absence of a formal lender of last resort, the unlimited liability of shareholders in bankrupt Scottish banks essentially served that role, as sequestration of shareholders' personal*

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estates effectively 'bailed in' equity holders for more than their subscribed capital, thereby mitigating counterparty risk in the Scottish financial system and facilitating a more rapid recovery in the flow of credit. Once [DHA] received parliamentary permission to issue the transferable bonds to their creditors, secured largely by the immense landed wealth of their 226 partners, the Scottish financial system and economy rebounded sharply. The fact that Scottish banks, unlike their English counter parts, could consist of more than 6 partners, moreover, meant that their equity base was generally sufficiently diffuse and diverse to absorb losses; of the 16 banks that failed in 1772, I find that all but [DHA] had fewer than 6 partners, while all three that failed and inflicted losses on creditors had fewer than 6 partners. For the entire Scottish free banking period, Acheson, Hickson, and Turner actually observe that all of the banks which failed and imposed losses upon creditors had fewer than 7 partners. The problem in 1772 was largely that [DHA] at first conveyed ambiguous messages to the public concerning the liability of their partners, so that for a time there was considerable confusion as to whether they were, in fact, unlimitedly liable to the full extent of their personal wealth. Even after that question was clarified in the affirmative, the extent of the firm's debts was such that fully unfreezing Scottish credit markets necessitated the creation of a more liquid market for securities backed by the proprietors' estates, which required (due to the strictures of the Bubble Act) an act of Parliament expressly authorizing the bankrupt firm to issue tradeable bonds. The firm was thus essentially transformed into a 'bad bank' whose sole function was to gradually work off its toxic assets and repay creditors while the immense landed wealth of its proprietors' personal estates provided a financial backstop." (Goodspeed, 2016).

418 "*For those financial speculators who were not declared legally bankrupt or who could muster enough financial and political clout so as to come to a quick composition with their creditors and obtain the certificate of conformity that would allow them to re-enter business, the consequences of failure were essentially confined to damage in their reputation and personal credit*." (Kosmetatos, 2018). See Table 4.5 on page 211. "*In fact, of the 16 Scottish banks that ultimately collapsed in the wake of Black Monday, only 3 failed to eventually pay their creditors in full. In addition to Johnstone & Smith, the firms of Fordyce, Malcolm & Co. and Charles Fergusson & Co. reached composition settlements with creditors for 6s. 6d. and 5s. in the pound, respectively. Both, however, seem to have constituted highly irregular cases. First, the largest creditor to both firms was none other than [DHA], meaning the loss was ultimately primarily born by shareholders of [DHA]. [DHA] acceded to the composition in a borderline negligently hurried and opaque fashion; the directors involved claimed the deed of composition had been signed by 'many' of the creditors of Fordyce, Malcolm & Co. and Charles Fergusson & Co., though it is unclear how many were 'many.' Considering that the report from the 24 Aug 1772 meeting of creditors of Fordyce, Malcolm & Co., re-printed in that month's issue of The Scots Magazine, noted that 'John Fordyce and Andrew Grant are possessed of very considerable landed property, subject to the legal attachments of creditors', it would be surprising if a majority of other creditors, like [DHA], acceded to a composition of just 6s. 6d. in the pound less than one month hence. Barely a month after acceding, [DHA] actually extended a new £29,000 to Fordyce, Malcolm & Co. to cover composition payouts, on the security of partner Andrew Grant's estate at Torrerie, as well as lands owned by Fordyce at New Grange, near St. Andrew's, and two houses in Edinburgh*." (Goodspeed, 2014).

419 "*Compared with the other major British failures of the 1772 crisis, this affair was the most damaging financially and one of the slowest to resolve. The insistence on paying creditors in full and avoiding a bankruptcy at all costs prolonged what was already a difficult liquidation process, and in turn exacerbated individual partner losses as interest mounted. An anonymous 1782 pamphlet complained that the affairs of the bank were being unjustifiably prolonged, thus compounding the partners' costs, and pointedly wondered whether the delay might have been due to the 'emoluments of office [and the] lucrative establishment' awarded to the Committee and its Manager... As the bank never went bankrupt but paid all its creditors in full over several decades."* (Kosmetatos, 2014). "*The people who lost most in the crisis were the partners in the bank. By Aug 1775 only 112 out of 226 remained solvent. The partners ultimately had to pay £0.66 M—this amounted to £2,200 per £500 share, although some dividends were returned on solvent shares in the early 19th century*." (Munn, 1981). "*The shareholders found themselves heavily burdened. By 1788 the owner of a single share had not only lost his £500, but was being pressed for £2,200 additional, plus interest. As late as 1793, the liquidators were putting up debts owed by [DHA] for public roup in the Old Exchange Coffee House, Edinburgh. Much land had to be sold outright, causing a good deal of change in the proprietorship of Ayrshire and the adjacent counties. Even where land was retained, it was burdened with heavy debt. For the remainder of their lives, many of the shareholders were never done with paying. Scotland's attempt to make the notion of a land bank a reality had ended in the most miserable collapse. Adam Smith was right to discuss it at length. Yet failure of the firm was not a conclusive refutation of the principle. For had there been more knowledge, caution and honesty in the affairs of [DHA], the company, with its extraordinary ample landed backing, might well have succeeded —not in its grandiose attempt, almost overnight, to dominate the Scottish banking scene, but as a regional banking company lending for real improvements and on real transactions. Unfortunately, those in charge of the Bank, finding that the support they enjoyed gave them for a short time almost unlimited and unquestioned scope, and finding Scotland starved for cash and credit, could not enforce upon themselves the necessary discipline. They acted as fools to a major degree and as knaves to a lesser. But their credits may to some extent have helped economic development in Scotland. The 1772 failures did not seriously impair Scottish banking development. Not one of the provincial banking companies went down. The shock was certainly severe in Edinburgh and the south-west. But so far as Scotland in general was concerned the difficulties passed quickly away, for it was known that great landed estates stood pledged behind the bank. Had [DHA] achieved the limitation of liability by charter, the outcome would have been very different, the losses filling not on the bank proprietors but on the public."* (Checkland, 1975).

420 "*Benjamin Franklin had in fact even conducted business with [DHA]; in a letter from London to his son-in-law on 7 Oct 1772, Franklin wrote that amidst 'the late wreck of credit' he had used his credit with a London bank 'to support that of a Friend as far as £5,000', for which he noted with trepidation that he was 'secur'd by Bills of [DHA].' As early as 8 July 1772, Alexander McCaul, a Glasgwegian tobacco merchant, thus wrote Thomas Jefferson to inform him that recent events had 'thrown a damp on Public Credit, and it will be some time before it is perfectly restored.' One month later, John Norton, of the London merchant house of John Norton & Sons, wrote his son in Virginia to warn him against accepting Virginian bills of exchange drawn on Scottish creditors, as these were possibly 'discharged by drafts on [DHA] which lately stopt.' Even one year on from Black Monday, William Wiatt, merchant in Fredericksburg, Virginia, reported to his brother in Liverpool that 'the late bankruptcies have made prodigious. alterations within these 9 months, the factors for the Scotch merchants in Glasgow are forbid to draw, and a great number of their bills come back protested.' Facing an*

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accelerating credit crunch back home, many Scottish creditors began to retrench; on 1 July 1772, William Cunninghame & Co., in Glasgow, instructed their agents in Virginia 'to force payment of many of our overgrown large debts', and one month later issued orders to sharply limit cash payments for tobacco purchases. Moreover, as the supply of sterling bills evaporated, the exchange rate swung heavily against American borrowers; Virginian bills fell from 20% under par on London in Oct 1771, to 25% under by July 1772, and to 30% under by May 1773. American debtors were getting crushed by the original sin of foreign-denominated debt." (Goodspeed, 2014). "*When the crisis hit London, there was no immediate panic among those merchants and warehouse-men heavily involved in the American trades, because the amounts owing on 12 months' credit would only gradually become due in the course of the coming year. However, the merchants sensed the panic psychology, and seeing all possible sources of external credit drying up at the banks and elsewhere, they became very cautious. Most of them soon began to refuse to accept bills of exchange not covered by effects in hand. With the fall in tobacco prices, such shortfalls in book credits were becoming increasingly common. However, the same relatively small group of merchants in each port on whom the bills were drawn were most often those to whom the bills were also payable. Thus, the merchants increasingly pinched one another as they refused bill after bill. Joshua Johnson's records show that about 25% of the bills he received from America in the year starting Aug 1772 were refused and had to be returned protested (that is with a notarial record of nonpayment). Other merchants, lacking Johnson's well-connected partners in the Chesapeake, may have had slightly higher proportions protested. With something like 25% of bills of exchange being protested and tobacco prices continuing to fall, the Chesapeake merchants of Britain soon faced very serious liquidity problems. There was, however. no panic in this trade. The big warehousemen realized that they would gain nothing by driving their customers into bankruptcy, and they generally allowed everyone extensions of 6 additional months on 12-month debts, only charging interest at 5% per annum for the extra months. Some smaller and weaker suppliers, who might have been in terribly straitened circumstances themselves, caused trouble, but they were not important enough to undermine the general solidity of credit. The impression given by the merchants' correspondence is confirmed by the statistics of failures. Although published bankruptcies in the 2 years ending 30 Sep 1773 were 41% higher than in the 2 previous years, little of this is ascribable to the Chesapeake trade. Only 2 identifiable houses trading to Virginia and Maryland went through formal bankruptcy proceedings as a direct result of the panic of 1772: Robert & Robert Bogle & Scott of London; and Sitnson, Baird & Company of Glasgow. As they were correspondents, their bankruptcies can almost be considered as one. This trivial use of formal bankruptcy procedures was consistent with the recent history of the trade, if not with practices earlier in the century. Though the distress of 1711 forced many Chesapeake merchants to take advantage of the newly reorganized English bankruptcy procedures. there was thereafter a marked tendency to avoid this course. In Scotland, the situation was much the same both before and after the reform of bankruptcy procedures in 1772. Since Chesapeake merchants had most of their effects outside the country, there was little point in dragging them into bankruptcy. The trade had its own more circumspect ways of handling sickly firms tottering on the edge of insolvency. If the 6 months' extension of credit offered by the big warehousemen was not enough—as too often was the case in 1773—the experienced Chesapeake merchant called in his largest creditors and opened his books. Two of the greatest firms in the London trade—James Russell and John Buchanan & Son, both heavily involved in the cargo trade—had to do this in 1773. Both probably had in the vicinity of £0.1 M owing them in America. Although their cases were similar, their creditors reached different decisions. Perhaps because John Buchanan was so old (he was to die shortly afterward) and his only surviving son, Gilbert (who later became a clergyman) was so inexperienced, the creditors decided that the firm should be wound up even though its books showed assets exceeding liabilities by £50,000! In exchange for turning over all their assets to trustees named by the creditors and helping with collections, the Buchanans, father and son, were allowed £500 a year for living expenses during the winding-up period. In Russell's case, however, the greater vigor of the head of the firm (who in 1773, at 65, went out to America himself to stimulate collections) and the influence of an extensive family connection in Britain and America induced the creditors to let the firm continue, though under the supervision of trustees for the creditors, who had to approve the payment of all bills of exchange and the dispatch of all future cargoes. Lesser firms calling in their creditors might receive either the treatment of a Russell or that of a Buchanan. The young Christopher Court was allowed to continue, perhaps because of his connection with Thomas Eden, the brother of Governor Robert Eden of Maryland. Others were forced to wind up. including the possessors of old names in the Chesapeake trade: James Anderson, Thomas Philpot, and John Bland. Winding up meant turning over everything to trustees for one's creditors, but in the cases of Philpot and Anderson, 'compositions' were arranged: when relatives of the merchant in difficulty agreed to counter-sign notes, all claims were settled for 10 shillings in the pound or less. In one very complicated case, the big firm of Perkins, Buchanan Er Brown appears to have turned over much of its business to its principal creditors, the wholesale linen drapers Barlow, Wiggin-ton & Francis, who by 1775 had of necessity become Virginia merchants. In all of this, there was not a single important failure among the warehousemen and other big suppliers, and the essential fabric of credit remained unshaken. The trade continued on the same lines down to the Revolution and was to resume on essentially the same lines after the war. In the Chesapeake, the 3 levels of credit receivers described at the beginning of this chapter met the crisis of 1772 and the depression of 1772-4 with different degrees of suffering. The small farmer found his income reduced by the fall in tobacco prices and his store debts harder to pay off. He could in some areas—within limits prescribed by his rent and tax obligations—switch part of his labor from tobacco to cereals. His ability to get additional credit was reduced although it was unlikely that he would be prosecuted for his old debts: they were usually too small. Larger planters, by contrast, may well have felt themselves more threatened. Some could transfer part of their land to cereals, but the difficulties in using their slave labor force efficiently limited this option. (The very large tobacco crops of 1773 and 1774 suggest that there could not have been very much change in crops planted.) The larger planter's reduced income probably reduced the availability of credit for the purchase not just of luxuries but also of additional land and slaves. He would be put under increased pressure to cover some of his older debts by bonds or mortgages (he was rich enough to be sued), and he would find the fixed interest on his existing debt more burdensome as his income declined. Nevertheless, most in this class could, like the smaller farmers, get by through retrenchment and a postponement of slave and land purchases and improvements. Only in extreme cases would mortgages be foreclosed, or land and slaves sold to meet court judgments or other debts. Far more precarious was the position of the indigenous merchants in the Chesapeake, particularly those in the tobacco-growing regions. Unlike those neighbors. such as the merchants of Baltimore, who dealt primarily in wheat and flour and were sustained by good markets in Europe and relatively high prices throughout the early 1770s, the merchants in the tobacco-growing regions were sorely pressed. In the two years preceding the crash of June 1772 they had imported exceptionally large cargoes from Britain. A good portion of these goods was still on hand and was very difficult to sell in a time of glut. Much that was sold resulted only in book credits that were hard to realize as falling*

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tobacco prices reduced the disposable resources of planters. farmers, and inland storekeepers. At the same time, these indigenous merchants were obliged to pay for their cargoes in twelve months and were charged interest after that time. If they were laggard in their remittances to Britain, they would find their bills of exchange protested, heavy penalties incurred, and their local credit undermined. They were under great pressure to sustain their remittances to Britain, not just to cover their bills of exchange but to help the merchants there whose credit was pledged on their cargoes. If one's correspondent in London failed, where would one find another correspondent in such times? What mercy could one expect from the trustees of his creditors? Many an indigenous merchant must have felt himself on the brink of ruin in the 2 years following the crash of 1772. Some were saved, at least for the moment, only by the closing of the courts in 1774. It is incorrect to think of debt in the Chesapeake on the eve of the American Revolution as something owing only by planters to metropolitan merchants, or even by Americans to Britons. Aubrey Land has shown that the amount owed to local creditors far exceeded that owed to merchants and others in Britain. Emory Evans has reviewed the entire question and concluded that debt has been considerably exaggerated as a cause of revolutionary unrest or protest. Yet the economic distress that followed the crisis must have heightened the sense of unease fed from so many other sources. We do know that the tobacco-growing regions tended to be more revolutionary than the wheat-growing regions in the same states. (This is particularly striking in Maryland.) We also sense that the indigenous merchant class in the tobacco-growing regions (excluding Scottish factors and other foreign-born) was much more enthusiastically and consistently revolutionary than its counterpart farther north." (Price, 1980).

421 "*Humanitarian sentiment led, as we have seen, to the Insolvent Code of England. Thus the Preamble of the Insolvent Debtors Act of 1772 (12 Geo. III., No. 23) recites that 'many persons, by losses and other misfortunes, are rendered incapable of paying their whole debts, and though they are willing to make the utmost satisfaction they can, and many of them are able to serve his Majesty by sea or land, yet are detained in prison by their creditors, or have been forced to go into foreign parts, and such unhappy debtors have always been deemed the proper objects of public compassion*.'" (Brown, 1900). "*Temporary acts 'for the Relief of Insolvent Debtors' were passed in... 1769, 1772, 1774, 1776, 1778 and in 1781. There was a period of 13 years after 1781 when no such bills were passed... The 1768 act was extended to those who failed to pay sums settled by arbitration. In 1772 the bill was elaborated to deal with those who sought release a second time after being remanded on the first occasion. By 1778 the act was 77 clauses in length, and in 1781 the whole bill was redrafted in a more logical sequence... in 1776 imprisoned bankrupts were also made eligible, and there was an increasing tendency to manipulate these bills to suit wider circumstances*." (Lineham,1974).

422 "*Increasingly authors tended to advance specific proposals for reform, and they appear to better understand the legal issue. Potentially much of the criticism of the debtor laws verged on a radical verdict upon the entire constitutional structure of Britain. James Stephens, the King's Bench prisoner, had reached such conclusions in his pseudo-legal arguments. He wanted to overturn the traditions of Common Law and revive Magna Carta. Thomas Haillie Delamayne revised these legal arguments in a pseudonymous work published in 1772. He feared lest Stephens' 'rapidity of temper' prejudice the case for reform. After a long and technical study, he triumphantly concluded that 'statutes are the great victors for the debtor. He realized that the 'barbarous' practice was firmly accepted by the Courts, so his solution was less simplistic than that of Stephens. Let the fieri facias be restored as the execution for non-payment of debts, and imprison only the fraudulent, he proposed. Parliament should pass a permanent Insolvent Act to accomplish this. To encourage Parliament, Delarnayne made his plea: 'We have drawn the drooping Debtor, the weeping Wife, distracted Family, Law-deluded Creditor Morality, Trade, Commerce, Policy, the insulted Legislature all in one group bending suitors to you', he wrote, and certainly in the next decade there was increasing pressure on Parliament... On 19 Nov 1770, James Stephens, a debtor in the King's Bench prison, was called before the Judges of the King's Bench, including the distinguished Lord Mansfield. He had written a pamphlet entitled Considerations on Imprisonment for Debt; fully proving that the confining of the bodies of debtors is contrary to Common Law, Magna Charta, Statute Law, Justice, Humanity and Policy etc., and the Bench wanted to. hear his arguments. They were very radical. Stephens had written that the law was a 'confused unintelligible... jumble of words.' In court he expounded his views for half an hour, and insisted on his releasement, which he urged was no more than his right. The court was disinclined to agree, and Mansfield remanded him back to the gaol, stating that there was no other legal alternative. Stephens left with a threat on his lips, that the prisoners would 'do themselves justice.' And this message he carried back to prison. There he opened the prison gates, and invited any who were willing to claim their rights, to leave the prison and to accompany him to higher courts in search of justice. 6 prisoners were persuaded to leave, but they were not so interested in the verdict of the courts. When Stephens voluntarily surrendered himself to the Marshal later that evening, he had learnt that not all debtors had the same faith in the principles of English Law that he had. In their trial for escaping from lawful custody, which took place on 31 Jan 1771, Stephens, along with Robert Leslie, William Thompson, J. Biggs and John Mein, —perhaps the other 2 had not been recaptured—heard a much clearer defense of imprisonment for debt by the Court. The judge declared that: 'To doubt the equity of such a thing now... after a practice of 400 years, would be preposterous, and what none but madmen could think of; however, men ought to be tender of the natural and personal liberty of their fellow creatures.' And there the matter rested. It was not thought worthy of record by any of the Law Reporters, and Parliament seems to have taken cognizance of the incident only in the addition of a clause to the next insolvent act, which indemnified the Marshal of the prison from liability for the debts of those who had escaped. Yet it was a symbolic incident, marking the beginning of a radical movement which attacked the whole practice of imprisonment for debt. Widely reported as the incident was, it also inspired others to adopt and extend Stephens' arguments. The first such pamphlet appeared in 1772, and others swiftly followed. for reform would shortly be familiar. The timing and themes of this demand were significant. As revolutionary ideas began to be propagated in Europe and America, in England the debtor laws were attacked as a threat to civil liberty and the constitution. Did this part of the English campaign for reform of the law draw its inspiration from the intellectual forces that advocated revolution elsewhere in Europe, or was the campaign based on more traditional grounds? It is significant that in the year 1772 philanthropic Society was set up to aid the debtors, and this must have been linked with dissatisfaction with the practice. This chapter plots the relationship of philanthropy and reform*." (Lineham,1974).

423 "*That most of the other states had general insolvency laws, was due, primarily, to the fact that, in the colonial period, the Privy Council had insisted on general legislation and generally disallowed special acts. [May 27, 1771, disallowance of 2 special Pennsylvania Acts of 1769-70, 5 Acts of the Privy Council-Colonial Series 300 (1912); June 7, 1771, disallowance of New York Act, 5 Id. 311; June 7, 1771, disallowance of several New Jersey Acts for relief of individual insolvent debtors, 5 Id. 315: 'that the frequent and occasional interposition in the legislature in the cases of individuals for the purpose*

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of stopping or diverting the usual course of legal proceedings, cannot but be attended with danger of great injustice, and therefore it is to be wished that general Acts of Insolvency may be penned with such care and attention, as at the same time to include every proper case, and likewise to provide for the most equal justice among the creditors both present in the Colony and absent so as to make further private Acts of this sort unnecessary...' (opinion noted of Richard Jackson, K.C., counsel to the Board of Trade). See, in general, Russel, The Review of American Colonial Legislation by the King in Council 125 [Vol. 64 (2) of Col. Univ. Studies in History, Economics and Public Law, 1915]; Joseph H. Smith, Appeals to the Privy Council -from the American Plantations 523 (1950).] This had not affected the Province of Connecticut, which was not obliged to submit its legislation to the Privy Council for approval. Imprisonment for debt, an institution inherited from the mother country, had become one of the great plagues of the time. Insolvent debtors, victims of the consequences of the war and, in particular, of the monetary disorders, filled the prisons to capacity. Legislation, different in each state, was inadequate to cope with the situation. In Connecticut, because of the number of cases and other urgent business, disposition had to be postponed from one session of the legislature to the other, and in the courts in other states the situation does not seem to have been better. The great question remained whether action in one state could protect the debtor if he ventured into another state. The Connecticut Records for the period show debtors from other states petition for protection from imprisonment while coming to Connecticut, and we have the evidence of the early conflicts cases in the Pennsylvania courts reported in the first volume of Dallas." (Nadelmann, 1957). "*Almost all the debtor and bankruptcy laws of the colonies—Massachusetts, Virginia, North Carolina, and others—were considered injurious to the British merchants, and when in 1771 Jackson reported adversely on the Montserrat law attaching the goods, money, and chattels of persons absent, he said that laws of this description were almost universal in America and 'were contrary to the principles requisite to the very foundations of commerce.*" (Andrews, 1914). "*An act passed by North Carolina in 1773 was disallowed because it allowed only 60 days between the appointment of commissioners and the examination of creditors, and permitted no further delay for absent persons: and a law of Antigua, which was annulled 'for the sake of precedent', though it had probably taken effect, provided that the entire estates of two insolvents should be applied in payment of executions already in the hands of the provost marshal. Some months notice of distribution and 18 months to make the distribution in, the Board stated, would be fair to British creditors. But it is doubtful, to say the least, whether a delay of two years, or more, between the insolvency of a debtor and the declaration of a dividend would have been satisfactory in all cases to colonial creditors. In addition to bankruptcy legislation, the assemblies presumed to regulate the collection of debts in ways detrimental to the interests of the English merchants. Especially objectionable were provisions compelling the acceptance in payment for debts of commodities of uncertain value, or of depreciated currency at an unduly low rate of exchange.*" (Russell, 1915).

424 "*It is quite clear that the sarrafs specialized not only in issuing hundis, but also in discounting them. Indeed, in 1655, the English factors at Agra reported that the sarrafs were not lending out money at interest, for they were 'finding more profit by exchange', i.e., by using their funds to discount hundis. Whenever the English drew a 'bill', it was usually discounted by a sarraf. In circumstances when remittances and loans were few, or commerce was not extensively supported by credit, the rate of 'exchange', that is the amount of money paid at the place of issue of the hundi as against the amount to be paid by the drawee, might vary considerably on hundis drawn by sarrafs and on those discounted by them. But if extensive dealing in such bills had been established, the two rates were likely to converge... An established customary law appears to have governed the obligations of different parties involved. If the drawee refused to pay, then the hundi was returned to the drawer, and the latter had to pay 5% over and above the value of the hundi. From another report, it seems that the drawee too was held liable, until the drawer paid up, and even after that the drawee might be called upon to pay 1% of the value of the hundi. Where the hundi had passed through many hands, the person who presented the hundi to the drawee could on the latter's refusal to pay, demand its value from the person who had sold it to him; and so, up the chain, the principal could ultimately be claimed from the drawer. 'Now, the law of these nations (India) is in such a case that if a merchant cannot recover in what is due on such bills, that he shall return them to the persons of whom he bought them and receive his money without interest.' This custom of the country was recognized to be 'different... from all others', since elsewhere (and, in England, at any rate), a person who had once sold a bill was no longer under any obligation to pay anything if it was not honored. The Indian custom had this significance, that a hundi which had been discounted by merchants of credit, could be confidently purchased in the knowledge that in the event of the drawee's failure, the amount of the principal could be claimed from those who had discounted it earlier. This explains the procedure adopted at Patna in 1621, when the English factor, Hughes, received a bill from the Agra factors, drawn by Kalyan, a sarraf at Agra, upon his 'gamoshtye' (gumashta, agent) at Patna. The gumashta had left the city. The other sarrafs cashed the bill, but only after Hughes had discounted (i.e., formally endorsed) it, which, in the light of our other information, means that he had made himself liable to compensate the sarrafs should they fail to receive satisfaction from the drawer. The negotiability of hundis led to a situation in which a large number of hundis were simply drawn and honored against other hundis without the intermediation of actual cash payments. The simplest case is represented by the drawing of a hundi to meet another that is due. One hundi may then be exchanged for another. But, of course, in actual practice much more complex conditions prevailed, with hundis constantly passing hands in adjusting payments, and thus becoming, in the process, a medium of payment.*" (Habib, 1971). "*In Maharashtra, such local circuits comprised a dense and overlapping nexus of numerous instances, partly determined by the scattered and fragmented social distribution of property rights and dispersed, rural habitations of large right-holders. Note that the question is not that of the value of such transactions, but their frequency and their social distribution; numerous, very small transactions are decisive evidence of the nature of economic life, even if their total local value is small in contrast with the purchases of lords and administrators, or taking place in towns and ports.*" (Perlin, 1983).

425 "*While the mercantile population possessed a consciousness of caste and caste institutions which were more or less effective in Tatters of ritual, this did not preclude the formation of wider merchant organizations and bonds of trust which stretched across the boundaries of caste... Most trades were multi-caste ventures, and in their dealings with each other or with the authorities, merchants needed common institutions... Conceptions of status and mercantile honor also overrode caste for it is evident that trade and credit relations over long distances could not have survived without them. 'Credit-worthiness', having one's hundis accepted in the bazaar, keeping regular commercial books, being frugal rather than 'expensive': these were the measures of respectability which are mentioned regularly in commercial cases and they are witness to a consistent mercantile 'public opinion.' At the pinnacle of merchant society stood the members of the Naupatti Sabha themselves who functioned as a final panel of arbitration among merchants on matters such as debt, the division of assets in family partitions, bankruptcy, and the status of mercantile custom on legal instruments... To all intents and purposes then, an ad hoc 'law merchant'*

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existed. Excommunication remained the usual sanction for caste assemblies, but what were the sanctions available to this wider mercantile opinion?... The failure of one's credit in the bazaar was a sentence of commercial and sometimes of physical death. But the sanctions of Hindu religion were also available. Oaths were made in Ganges water and in the name of tutelary deities, or with the witness of a Gosain who was technically above caste and kin... The ultimate sanction was to have Brahmins mutilate themselves before the door of a debtor in order to heap spiritual demerit on him (dharna); this was only the most dramatic instance of the role of popular religion in reinforcing mercantile trust." (Bayly, 1983). "*As a rule, while merchants might invest the idle cash on their hands by lending to other merchants or discounting their hundis, there was a separate class of persons, known as sarrafs (shroffs), who really specialized in the provision of commercial finance. The sarrafs too sometimes engaged in trading, but for them commerce took a second place to usury and banking... Similarly, in mid-18th century Bengal, there were mahajans who 'offer to pay the land-revenue on behalf of the zamindar. Till their time (of final accounting) comes, they obtain great profit from the perquisites of revenue-farming, interest, commission, etc. Such mahajans were in fact often ambitious of becoming zamindars themselves, taking over the zamindarls of their debtors when the latter failed to repay their debts.* (Habib, 1964). "*[A]n agricultural crisis had developed in the rural structure of Mughal society so that 'the peasants' flight from the land was a common phenomenon of the 17th century and there was a net decline of cultivation over the period.' This was largely due to the gradual monetization of the land revenue, rise of usury and the changes in the nature of the zamindars' economic rights. The transformation of the zamindar into an intermediary (e.g. talukdar), responsible for the collection of the revenue and its payment to the authorities led him in cases of increased revenue demand from the authorities, a) to lose his share of profit or b) to recompense himself at the expense of the peasantry... This crisis in agriculture and breakdown of law and order, following the death of Aurangzeb (1700) was not as severely felt in Bengal as in the rest of the Mughal empire, due to the firm rule of its subadars or governors like Murshid Quli Khan, who was responsible for bringing about 'a new and illustrious era of finance.' His main policy was to encourage the formation of large zamindaris, which he regarded as the best method for collecting revenue and maintaining law and order. The powerful zamindars had the means to organize the local police, grant agricultural loans known as taccavi to their tenants in times of drought or inundation and take charge of the pulbundi or embankment repairs. Under Murshid Quli, half the land revenue of Bengal was paid by 6 large zamindaris which he granted to his trusted counsellors, formed by the agglomeration of lapsed estates, or those estates which revolted or defaulted. In this way the mighty zamindaris of Burdwan, Nadia, Birbhum and Midnapore along with Dinajpore in Eastern Bengal emerged. According to Murshid Quli, it was easier to compel a few big zamindars to obey the government regulations rather than numerous small ones, for whom the collection charges were reduced*." (Chowdhury-Zilly, 1982).

426 "*[T]he redirecting of the fruits of surplus extraction into the international trading circuits of [EIC], arguably led to the money famines characterizing the early nineteenth century, and to the various phenomena associated with the decline of manufacturing industries. This was accentuated by the general reorientation of the monetary system in the early decades of the 19th century, its transformation into a monetary order of the European type, thus by the closing of the numerous dispersed 'coin manufacturies' providing local cash supplies to the 'rurban' and commercial economies. Siddiqi has commented upon the filip this initially gave to forgery and clipping (which had been notable features of the supply of money in early-modern Europe's cash-hungry, but over-centralized monetary systems), to which we may perhaps add the use of a host of ancient coinages in order to satisfy the famine in coinage media characterizing these decades. In short, an unprecedented centralization of monetary production and controls seems, together with a variety of other features mentioned in this paragraph, to have led to a relative demonetization of the countryside in many regions. Not surprisingly, the period also witnesses the collapse of many indigenous banking firms*." (Perlin, 1985). "*The economic effects of Tribute were not, however, confined to areas which came under [EIC's] government or its system of indemnities and subsidies. There was, first, the deflationary tendency stemming from net loss of silver, which affected prices and capital supply everywhere. Unfortunately, price-information for the latter half of the eighteenth century has not been properly collected. Jevons, prices for wheat at Delhi, nonetheless, show a long-term decline (when considered on the basis of annual average by decades), beginning with the 1790s and continuing into the next century. Bayly himself notices that 'a great want of specie' was felt in the Delhi region and the Punjab after 1770 and that towns and trade in the area decayed between 1770 and 1800. The diversion of Bengals exports in silk and textiles entirely to Europe, practically closed the traditional trade with Gujarat, whose famous textile industry depended upon Bengal silk. Under these circumstances, one cannot be sure that what now took place was a mere 'redeployment of merchant capital within India, not its (partial) destruction*.'" (Habib, 1995). "*Mir Kasam's policy of overtaxing the zamindars, which was a temporary policy created to solve an urgent situation, emerged as the official and permanent policy of the EIC. The zamindarsiin order to pay the amils, were forced to contract loans. Their previous creditors or shroffs, now aware of the zamindars' reduced means, became reluctant to provide credit at the earlier rates which were moderate under the new conditions. Thus, a new pressure was exerted on the already overstrained zamindaris in the form of borrowing money from new creditors at exorbitant rates of interest. The employees of the EIC, aware of the zamindars' plight, emerged as the new creditors. In order to realize their loans, they even resorted to exacting arbitrary taxes from the zamindars' ryots, as experienced by Graham, Resident Officer at Midnapore. This type of credit demands impoverished the zamindars, who became incapable of protecting their ryots and granting them agricultural loans or taccavi in times of distress, thereby contributing to the decline of agriculture. Since the new creditors were [EIC's] factors and military officers, it was difficult to prevent them from oppressing the ryots and threatening the zamindars, since they had no respect for the latter, unlike the earlier creditors... [I]t is important to note that the gradual bankruptcy of the zamindar prevented him from acting as the protector of his ryots. He had no longer the means for granting taccavi loans (agricultural aid) which had previously helped the peasantry to tide over their misfortunes, since the private rent-free lands from which he previously paid these loans, were heavily assessed by the EIC. The new landlords were disinterested farmers of revenue who did nothing to protect the ryots and left them at the mercy of the mundoles. The mundoles exploited their local influence later on by bribing various revenue agents, and secured a reduction of their own rents by claiming the wasted and uncultivated lands of the poor peasants as their own. Often, they forced the poorer ryots to escape and when according to the rent roll, revenue for deserted lands was demanded, it was transferred to the name of the poorer ryots, who in fear of having to pay a kind of back-rent, preferred to desert their holdings*." (Chowdhury-Zilly, 1982). "*In contrast, early colonial rule led to a substantial reduction in the level of monetary life, partly because of the control gained by the authorities over taxation and its consequent substitution for bullion imports in making purchases, partly owing to a whole bundle of changes affecting social and economic life which destroyed the 'rurban' economy. Small market towns decayed, village-based residential complexes of lords, administrators and garrisons of soldiers tended to disappear, together with the local mints and complexes of*

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market-oriented craftsmen described above. References to money famines are as frequent in early 19th-century Maharashtra as those to food famines in a period generally characterized by severe crisis... [But how was society organized before?] I am referring to banking, credit and other forms of finance, to money remittances, hundi transactions and currency dealings, and to the extensive use of credit production relations, in both agriculture and manufacture, throughout the sub-continent, institutions which knit together region and region, town and countryside, producer and noble, and transcended particular regions, dynasties and polities. [Although a great deal of incidental information on these institutions exists in the secondary literature, and a small number of articles describes their modes of operation, they are only now beginning to get the detailed study they deserve. Their full implications for understanding the nature of the old order has not yet been recognized.] The peasant, manufacturer, ruler, noble, state administration, and [EIC] were generally dependent upon prior financing of the season's production." (Perlin, 1983). "*Siddiqi has described part of this process in a region of Northern India, where the closure of the Banares and Farrukhabad mints, on which local transactions had come to depend, led to money famine and a decline in the number of local bankers (thus intensifying an earlier crisis). Such money famines also occurred in Maharashtra in these early decades, causing dire, if temporary local dislocation. It is not surprising that Siddiqi also describes the appearance of coin clippers and illegal minting to supply local needs in the former case, nor that a host of copper coins of diverse, often ancient origins appeared in the markets of the early 19th century. Finally, in these same decades, a few of the private mints left in the so-called 'princely states' (territories left under nominally autonomous governments, but in fact highly dependent on the colonial order) seem to have found a profitable business in supplying Company territories with hand-produced coins for popular use, exchanging below the rate of the machine produced currencies. Once again, an analogy with late 18th century England is relevant, if this time with a different kind of emphasis*." (Subrahmanyam, 1994). "*'London, Aug. 24. We are allured that the East-India trade, which formerly carried a million Sterling in specie from this kingdom annually, now brings us in near three, and is the great means which has prevented our bankruptcy as a people*." (Scots Magazine, 1771).

427 "*[EIC] at this time had become the predominant power in India and the question arose of what ought to be the relations between the English Government and a private company which bad thus acquired immense political importance. A first step was taken in 1767, when a measure was passed limiting the dividend which the company might pay to 10%; and the directors, terrified by the action of the Government, purchased temporary exemption from further interference by agreeing to contribute £0.4 to the public revenue. In 1767 this agreement was renewed for 5 years. Overwhelmed with debt and burdened with the cost of a disastrous war against Hyder Ali, [EIC], in July 1772, had to confess that they were unable to carry out their engagements. A parliamentary committee was thereupon appointed to inquire into the affairs of India, and the publication of their report in 1773 showed that the company was on the verge of bankruptcy. Two Acts were thereupon passed by Parliament — the first affording the company immediate financial assistance, and the second transforming the center of political power in India to the Crown. Amongst other measures taken to help the company was one allowing them to export tea to America direct, without first landing it in England, or, if it was so landed and re-exported to America, remitting the whole duty of a shilling a pound to which it was liable. As [EIC] had 17 M pounds of tea stored up in their warehouses, it was hoped that this license would be of considerable assistance to them*." (Burke, 1908). "*Like so many high-profile corporate ventures since, the takeover of Bengal proved to be an acquisition too far for [EIC]. Initial stock market euphoria quickly gave way to excess, mismanagement and collapse. As [EIC] transformed itself from a modest trading venture into a powerful corporate machine, its systems of governance completely failed to cope with the new responsibilities it faced. Oppression of local weavers and peasants became the norm. Military spending spiraled out of control as adventurers took over from traders. Corruption assumed epidemic proportions and speculation overtook its shares, stoked up by Clive and others. Then, in 1769, conflict in south India rattled nervy investors, sending its share price into free fall. Financial crisis stalked Europe and [EIC] faced bankruptcy. Across the world in Bengal, drought turned to famine as [EIC] executives profiteered from rising grain prices. Plays, pamphlets and poems poured from the presses back in Britain to pillory [EIC] and its executives. [EIC] executives became caricatured as grasping Nabobs (or Nobs), the Yuppies of Georgian England. Like many of his contemporaries, the Glasgow Professor of Moral Philosophy, Adam Smith, was horrified at the way that [EIC] 'oppresses and domineers' in the East Indies*." (Robins, 2012).

428 *"The cause of the upset lay in England, where the ending of the Seven Years' War had been followed by lively speculation in shares of [EIC]. But the high expectations of dividends, which had done much to encourage the speculation, were not fulfilled. At the end of the war, [EIC] was obliged to extend its administrative apparatus to cover a far greater area than before, a task for which it was ill-equipped in both organizational and financial terms. By 1772 [EIC's] debt to [BOE] reached the point where further credit was withheld. At about the same time, [BOE], faced with roaring speculation in goods and shares, restricted the discounting of drafts [Kluit (1865, p65-7, 71-2), Wilson (1941, p170), Van Dillen (1970, p609-10).]"* (Buist, 1974). "*When the general state of business became awkward, in the course of 1772, [BOE] was less willing to grant credits to [EIC] than it had normally been. Instead of agreeing to them as a matter of course, with no questions asked, it is found in July requiring 'security to the satisfaction of the Committee of Treasury' for a £0.3 M advance. In Nov it is pressing for half a million, 'part of your loan of £0.6 M' 'out of the first money arising from the present Sep sale [of East India produce] agreeable to the repeated promises' of your 'Chairs.' The Governor of [BOE] had already been conferring with Lord North about [EIC] debt; for the Treasury also had a claim for a prompt payment of £0.204 M from [EIC]—customs duties overdue. [EIC] argued that the claim had priority over all others. North agreed that it had; but said that if it were met by 1 Dec [BOE's] claim should come next. The result, in Jan 1773, was a letter sent not to any committee of [EIC] but to the whole Court 'to demand payment of the large debt... however tender we would wish to be of distressing your Company at present', because payment had been 'repeatedly promised.' The upshot, to be dealt with later, is hardly part of the history of the crisis of 1772-3; but this pressure of [BOE] on the debtor [EIC] throughout 1772 is very closely connected with it. [BOE] was doing its best to support houses in difficulties, and naturally wished for the help —which it did not get—of so reputedly strong a neighbor as [EIC.]*" (Clapham, 1945).

429 *"When the [EIC] stock actually fell in the fall of the year, Clifford & Co., the Dutch bank that had headed a syndicate trying to push the price up, failed [in Dec]... As the 1772 crisis reached a peak in Jan 1773, Anglo-Dutch trade was paralyzed. Amsterdam was helpless, and only [BOE], Wilson says, could rescue the city. On 10 Jan, a Sun, the Bank opened its windows and allowed specie to be drawn against presentation of notes and government stocks. Loads of bullion were sent on the first packet boat, and one Dutch banker was said to have drawn £0.5 M. At the same time, the Bank refused to discount doubtful paper, which had the effect of breaking many Jewish-owned banks in Amsterdam... [BOE's] issuance of new regulations about*

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discounting and refusal to discount doubtful paper were interpreted as an attempt to break the Jewish houses in Amsterdam that had been most involved in the speculation. Then there was the Bank's decision to refuse the bills of Scottish banks, and finally to stop discounting altogether, which was probably 'a step taken quite deliberately to break up a group of Dutch speculators' [Wilson (1941, p176-7)]... The 1772 crisis spread from Scotland and London to Amsterdam and thence to Stockholm and St Petersburg... In the same crisis, Catherine the Great of Russia helped her best customers, the British merchants, the first of a number of occasions when czarist Russia assisted Western Europe in crisis. [Clapham (1945, v1, p249).]" (Kindleberger and Aliber, 2005). *"When news of [EIC's] plight became known in London, its shares declined in value, to be followed shortly afterwards by other issues. In the commodity sector, the disclosure put an end to the steady rise in prices... Speculation in English shares was just as rife in Amsterdam, and acceptance credit there was just as overstrained. The house of Clifford & Sons had indulged so rashly in bull speculations that it was obliged to suspend payments at the end of 1772, ruining a number of smaller firms in the process. In 1773 Andries Pels & Sons went into liquidation, partly, it was said, as a result of losses suffered through Clifford's downfall [Van Dillen (1970, p611-13), Wilson (1941, p187), de Vries (1959, p77-8).] Hope & Co. were involved financially in Neale's bankruptcy. The partners had done a lot of business with Alexander Fordyce, and this had included advancing him monies in association with Gurnell Hoare & Harman of London. A sum of £50,000 was outstanding when Neale & Co. failed. In addition, Hope had undertaken commissions for Fordyce on the Amsterdam Stock Exchange, involving dealings for the account in shares of [EIC]."* (Buist, 1974).

430 "*Major bankruptcies such as that of the firms Clifford & Son and ter Borch in 1773 in Amsterdam, called for special arrangements. They were not turned over to the Desolate boedelkamer; instead the city constituted special commissions of merchants to deal with these [Meilink (1938) 'Amsterdam in de jaaren 1750-1780', Banknummer van het Algemeen Handesblad.]*" (Lindermann, 2014). "*When Dutch investors finally realised the 'pitiful condition' of [EIC's] affairs, those Amsterdam 'longs' like Cliffords, van Seppenwolde, and ter Borch were brought down in short notice... All possible efforts had been similarly made to support the Cliffords at Amsterdam 'by their Dutch and English friends', though to no avail. In the middle of the run that finished them off, Clifford & Sons announced that they possessed more than 2.7 M florins in cash reserves...*" (Kosmetatos, 2014).

431 "*Once again international support was mobilized to save other threatened firms, but Amsterdam merchants turned also to a cooperative fund organized within the locale. In Jan 1773 a circle of houses led in the formation of a subscription loan bank styled the 'Fonds tot maintien van het publiek crediet', and that institution, with municipal support, extended short-term credit on commodities and domestic government securities. [Loans were made at 3.5% on securities and 4% on commodities for 3 to 6 months, and for up to 75% of the value as determined by independent brokers. Altogether, credits totaling f. 0.52 M were arranged between Jan and June. As a point of comparison, Clifford's liabilities were about f. 4.6 M.] The lesson of 1773 was taken to be that acceptance credit was hazardous, and there was substantial contraction in that area. But the conclusion of the crisis restored confidence in the individualistic structure of private credit, and the subscription loan bank was dissolved later in 1773. Because the crisis had called to account a number of firms overextended in speculations and threatened investors overcommitted in plantation loans, it is plausible to suggest that rentiers may have put another interpretation on it.*" (Riley, 1980).

432 "*These speculations had been general throughout Europe, and in 1773 the crash extended to Holland. About the beginning of the year, the failures of that country were of so alarming a nature, and so extensive in their influence, as to threaten a mortal blow to all public and private credit through-out Europe. They were caused by great speculative dealings in trade, as well as in the public funds of different countries, and the losses were estimated at £10 M.*" (Macleod, 1875). "*[T]he fall of [EIC] in which the Dutch invested 40 M guilders [Vissering, op. cit., De Gids, 1856, pp. 666 ff.] The fall of [EIC] caused many English banks to fail together with their Dutch associates. On Oct 27, 1772, Clifford en Zoonen, of Amsterdam, which had been one of the most important banking firms of Europe for over a century, stopped payment. As a result many huge failures followed. Bankruptcies amounting to 20,000 or 30,000 guilders were as nothing, one spoke only of failures involving millions [De Koopman, IV p295 and 291 ff.] Capitalists sat on their money chests and withdrew what-ever currency was outstanding. The small investors suffered more severely in this crisis than they had in that of 1763 because the great moneyed interests refused to help them. As a consequence, they were driven to sell their possessions at a loss in order to realize immediate ready cash. The trustees of [AWB] were among the few who wished to help the small capitalist. They tried in every way possible to extend credit, but Amsterdam was stagnant. Clifford en Zoonen's failure had been too great a shock. As a result of this crisis the treasury of the city of Amsterdam appropriated 2 M guilders for the establishment of a Kantoor van Beleening (Loan Office), an institution enabling merchants to realize cash on unperishable goods, federal and provincial stock and [EIC] securities. Certain capitalists followed the example of the City and extended credit, which slowly improved conditions... The Portuguese Jews, as a group, never regained their financial eminence after these crises.*" (Bloom, 1937).

433 "*Meanwhile, on the other side of the globe, [EIC] was facing its own travails, caught between the general contraction of credit at home and a disastrous military campaign against Hyder Ali in Mysore. By Oct, its £0.3 M cash account with [BOE] had fallen 'to so low an ebb' that [BOE's] directors refused any further credit 'till the present debt is first liquidated', forcing the Company's directors to seek an emergency loan from the government through the facilitation of Lord North. Across the Channel, press reports in France and even Spain followed intently [EIC's] affairs, and those of its chairman, Sir George Colebrooke, who stood accused of duplicitously speculating in the shares of his own company. By May 1773, with its dividend slashed from 12.5% to 6%, its share price down 33% from June 1772, and some £17 M of unsold tea rotting in English warehouses, [EIC] finally persuaded Parliament to intercede. In 'An Act to allow a Drawback of the Duties of Customs on the Exportation of Tea to any of his Majesty's Colonies or Plantations in America; to increase the Deposit on Bohea Tea to be sold at [EIC's] Sales; and to empower the Commissioners of the Treasury to grant Licenses to [EIC] to export Tea Duty-free', popularly known in the American colonies as the 'Tea Act', the government of Lord North removed British custom from [EIC] tea destined for North America and permitted the Company to export directly to the colonies, with the aim of thereby enabling Company tea to effectively compete on price with smuggled Dutch tea. The following month, by 'An Act for establishing certain Regulations for the better Management of the Affairs of [EIC], as well in India as in Europe', Lord North's government furthermore granted the Company a bailout loan of £1.4 M, at 4%, with [BOE], wary of the threat to their own balance sheet should the Company collapse, agreeing to accommodate Treasury for the full amount of the loan.*" (Goodspeed, 2014). "*Sir George replied to Mr. Creighton... In the first instance then he observed, that on the 30th of Oct 1771, he was not in the direction; therefore could not be accountable for not knowing so minutely whether the estimates were rightly valued or not; That he really did not know, till*

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after he came to the chair, that their treasury was inadequate to pay their demands, which he said were owing to their servants in Bengal drawing on them so much above what they expected: that these, together with the indemnity on teas expiring, and the annual sum paid to administration, all coming down together upon them, and in a great measure unexpectedly, were the motives, and the only motives, which induced the directors to postpone making their dividend the: that by Christmas next they expected to have their business with administration settled; a great part of their goods which were now in their store houses sold; and, in short, that their cash account would be so recruited, as would enable them to do that justice to the proprietary they wished." (Gentleman's Magazine, 1772).

434 "*Want, famine, and mortality would immediately prevail in that class, and from thence extend themselves to all the superior classes, till the number of inhabitants in the country was reduced to what could easily be maintained by the revenue and stock which remained in it, and which had escaped either the tyranny or calamity which had destroyed the rest. This, perhaps, is nearly the present state of Bengal, and of some other of the English settlements in the East Indies. In a fertile country which had before been much depopulated, where subsistence, consequently, should not be very difficult, and where, not withstanding, three or four hundred thousand people die of hunger in one year, we may be assured that the funds destined for the maintenance of the laboring poor are fast decaying. The difference between the genius of the British Constitution which protects and governs North America, and that of the mercantile company which oppresses and domineers in the East Indies, cannot perhaps be better illustrated than by the different state of those countries. The liberal reward of labor, therefore, as it is the necessary effect, so it is the natural symptom of increasing national wealth. The scanty maintenance of the laboring poor, on the other hand, is the natural symptom that things are at a stand, and their starving condition that they are going fast backward.*" (Smith, 1776).

435 "*Mr. Burke further said, that [EIC], annexed as an appendage to the British empire, rendered the whole an object of too vast a magnitude for the capacity of any administration whatever to grasp. That in the present dearth of genius, domestic occurrences were almost too much for the understandings of ministers: that [EIC] tied about their necks, would, like a mill stone, drag them down into an unfathomable abyss; that it was well if it dragged not this nation along with them; for that, for his part, he always had had his fears, and would now venture to prophecy his apprehensions, that this cursed [EIC] would at last, viper-like, be the destruction of the country which fostered it in her bosom... Mr. Burke said, a most servile degenerate herd, destitute of capacity to distinguish, or virtue to relish, what was good. In the proceedings relative to [EIC's] affairs, the justness of these censures was verified to a tittle; the people followed the cry of the ministry, changed as they changed, and varied their tones to keep even a discordant sameness with their masters. Do the ministry assert the public's right to the territorial possessions of [EIC]: 'Oh', say the parliament and the people, 'to be sure they have a right.' Do the ministry talk of restraining It is echoed back by the people, 'by all means restrain.' Is punishment hinted at? 'Punish to the utmost', reply the people. Is lenity recommended? 'Mercy is Heaven's darling attribute', rejoin the herd. Thus, not a single absurdity can be broached, nor a principle can the ministry lay down today, and contradict tomorrow...*" (Cobbett, 1813).

436 "*Without really definite evidence to the contrary, one must, perhaps, accept the view that the motive tor passing the Tea Act was the obvious one of aiding [EIC]. Many Americans in England, nevertheless, together with Englishmen who wrote to Americans, viewed the Act as an attempt to establish the American duty, and this was the impression which they transmitted to influential correspondents in America. Their influence may well have been of crucial importance in determining the nature of the American reaction. This position is firmly supported by Thomas Hutchinson who said, referring to the period just after the arrival of news of the Tea Act in America, '...the first suggestion of a design in the ministry to enlarge the revenue, and to habituate the colonies to parliamentary taxes was made from England.' A few examples will suffice to show how strongly letters from England did convey the impression that the Act was designed to enforce the duty. Franklin, certainly the most influential American abroad, wrote, '...now the wise scheme is, to take off so much duty here as will make tea cheaper in America than foreigners can supply us, and to confine the duty there, to keep up the exercise of the right.' William Bollan, whose efforts to obtain a repeal of the duty have been noted, told the Massachusetts Council that his 'hopes of success were not inconsiderable for some time, but at length they failed, for which I know no reason, save that, according to my information, it was thot fit to continue this tax as a badge of sovereignty over you.' Arthur Lee spoke of 'the scheme which is carrying into execution of insidiously obtaining from us the duty on tea...' In July, 1773M correspondent wrote from London: 'To prevent this (i.e., the bankruptcy of [EIC]) and at the same Time to gain the favorite point of subjecting the colonies to the payment of taxes... the scheme was devised of [EIC's] sending their tea to America, subject to no Tax but that imposed by the Parliament on its arrival there. This was thought a masterly stroke of the Ministry, whereby they might accomplish their design on 'America, and at the same time sell [EIC's] tea.' [The Pennsylvania Gazette, Feb 9, 1774] Such advices as these were no doubt welcome news to colonial radicals who through the agency of 'the committees of correspondence in the several colonies soon availed themselves of so favorable an opportunity for promoting their great purpose.*'" (Jensen, 1949).

"*Parliament's decision to bail out the bankrupt [EIC] in 1773 (with the Tea Act, allowing tea to be conveyed directly from China to America) was an essential goad to the uprising, and immediately after the war Americans established their own direct routes to China. Salem, Massachusetts, and other thriving seaports serving the industrial development of New England in the mid-19th century grew on trading in the Indian Ocean. The loyalist diaspora set in motion by the British defeat in the War of American Independence deposited former Americans not just along the Atlantic rim but also in India (where 2 of Benedict Arnold's sons served in the British army) and in the Australian outback (where several black loyalists took jobs as cowboys).*" (Holton, 2005). "*Parliament was forced to intervene, while over the Atlantic in Britain's American colonies, patriots focused on [EIC's] tea as a symbol of oppression. For one 'Mechanic' appealing to the tradesmen of Pennsylvania, America was faced with the most powerful Trading Company in the Universe', an institution 'well-versed in tyranny, plunder, oppression and bloodshed.' ['To the Tradesmen and Mechanics of Pennsylvania', 4 Dec 1773.] On the night of 16 Dec 1773, patriots dressed as 'Indians' dumped [EIC] tea into Boston harbour, the symbolic start to the American War of Independence.*" (Robins, 2012). "*The point in question is, whether we have property of our own, or not? whether our property, and the dear-earned fruits of our labor, are at our own disposal, or shall be wantonly wrested from us, by a set of luxurious, abandoned and piratical hirelings, so be appropriated by them to increase the number of such infamous pensioners, and support their unlimited extravagance? The result depends on our determined virtue and integrity, at so important a crisis. The nature of the detestable tea scheme, and the pernicious consequences of submitting to receive it amongst us, subject to a duty payable here, and levied on us without our consent, have been so judiciously set forth, and demonstrated by abler pens, as to leave no room for one of*

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my capacity to undertake it; and, if the trifling Duty of Three Peace were only to be considered, it would not be worth our while to oppose it; nor worthwhile for the ministry so strenuously to insist on, and take off, in lieu thereof, a much greater sum payable in London: But, that by this Breach (though small) they will enter the bulwark of our sacred liberties, and will never desist, till they have made a conquest of the whole. These arbitrary measures we have virtuously opposed hitherto: let us for our own sakes, for our posterity's sake, for our country's sake, steadfastly persevere in opposing to the end. Corruption, extravagance, and luxury, are seldom found in the habitations of tradesmen. Industry, economy, prudence, and fortitude, generally inhabit there; and I expect to see these commendable virtues shine forth upon the present occasion, with more than brilliant luster. Let not the artful insinuation of our enemies, That the duty will be paid in England, by [EIC], and not in America, have any Weight amongst us: This is one of their toils to ensnare us. The Act of 11th of Geo. 3, expressly lays the aforesaid Duty, on all Teas imported in America from England, payable on its landing here: and no private contract between [EIC] and the Lords of the Treasury, no power under the crown, nor even the King himself, can dispense with, set aside, disannul, or make void such a clause, or any other in any act of Parliament, but the same power and authority by which it was enacted. The grand point in view is, by every artifice to enslave the American Colonies, and to plunder them of their property, and, what is more, their birth-right, liberty. It is therefore highly incumbent on us unitedly, with heart and soul, to resist the diabolical delusion, and despise the infamous projectors. But supposing the Act was repealed, and the tea could be imported free of any duty, impost, or custom; yet, is it not a most gross and daring insult to pilfer the trade from the Americans, and lodge it in the hands of [EIC]? Let us not be prevailed upon to suppose that this will affect the merchants only: we need not concern ourselves with it:—It will first most sensibly affect the merchants; but it will also very materially affect you, me, and every member of the community. [EIC] at present have shipped their desperate adventure in chartered bottoms; it was prudent so to do, or else possibly their obnoxious vessels and cargoes might become a sacrifice to the resentment of a much injured and exasperated people. The same consideration might probably have induced them to appoint our merchants their agents to support the first heat of action, rightly judging that if we would chastise our friends with whips, we should chastise their factors with scorpions. But if they can once open the channel of trade to themselves, they will hereafter ship their teas in their own bottoms. They have passed a gross affront upon our merchants in appointing such; whom we respect, commissioners. Hereafter, if they succeed, they will send their own factors and creatures, establish houses amongst us. Ship us all other East-India goods; and in order to full freight their ships, take in other kind of goods at under freight, or (more probably) ship them on their own accounts to their own factors, and under-sell our merchants, till they monopolize the whole trade. Thus, our merchants are ruined, ship building ceases. They will then sell goods at any exorbitant price. Our artificers will be unemployed, and every tradesman will groan under the dire oppression. [EIC], if once they get footing in this (once) happy country, will leave no stone unturned to become your masters. They are an opulent body, and money or credit is not wanting amongst them. They have a designing, depraved, and despotic ministry to assist and support them. They themselves are well versed in tyranny, plunder, oppression, and bloodshed. Whole provinces laboring under the distress of oppression, slavery, famine, and the sword, are familiar to them. Thus, they have enriched themselves, —thus they are become the most powerful trading company in the universe. Be, therefore, my dear fellow-tradesmen, prudent, —be watchful,—be determined to let no motive induce you to favor the accursed scheme." (A Mechanic, 1773). "*[T]he American pamphleteers makes sense as soon as it is realized that their predicament, shortly after the Seven Years' War, bore a striking resemblance to that of the black slaves in their midst. The outrage of the colonials stemmed from their conviction that only black people in America were deserving of servile status... The widely quoted syllogism of John Dickinson, Philadelphia's largest slaveowner for a number of years, is, without doubt, a compelling expression of this equation: 'Those who are taxed without their own consent, expressed by themselves or their representatives, are slaves. We are taxed without our own consent, expressed by ourselves or our representatives. We are therefore SLAVES'... The American patriots, when they used the rhetoric of 'slavery,' were expressing their fear that England actually intended to subjugate and reduce them to the status of chattel slaves, to bind them in the very same shackles with which they bound their own black slaves*." (Okoye, 1980).

437 "*In the case of the French crown, extensive international borrowing to finance its role in, first, the Seven Years' War and then the War of American Independence—coupled with the limited legal ability of either Louis XV (r. 1715–74) or Louis XVI to draw any significant revenue out of the privileged classes in France—created a fiscal crisis in the 1770s and 1780s. It was this fiscal disaster, specifically the bankrupting of the Royal Treasury once it became impossible to borrow further, that triggered the process that led to the creation of the National Assembly and, ultimately, the composition of the Declaration of the Rights of Man and the Citizen in the summer of 1789.*" (Rosenfeld, 2005). "*Just as the Seven Years' War had nearly doubled the British government debt, leading to the budget-balancing measures that helped provoke the colonists, the assistance that Louis XVI provided to his British rival's rebellious colonies accelerated the deterioration in French finances that in 1787 culminated in bankruptcy.*" (Holton, 2005).

438 "*In 1702 an act of the Parlement de Paris made it illegal to arrest debtors in their homes without special permission (which was seldom accorded)... Elsewhere the insolvent's house, which usually included his place of work, became an inviolable sanctuary. In theory at least, the abolition of rigueur made it possible for the condemned debtor to carry on his trade and eventually to repay his debts... At the same time the judges of the Juridiction consulaire de Paris contended that rigueur should be reestablished in Paris, for 'the difficulty in this great city of knowing the resources of those with whom one trades renders the use of contrainte par corps more necessary here than anywhere else.' The Juridiction consulaire would finally get its way when the edict of 1772 legalized the arrest of debtors in their homes within the city of Paris and its faubourgs... Finally, the edict of Nov 1772, while legalizing the arrest of debtors in their homes within Paris, also created for this purpose ten gardes du commerce who, it was hoped, would be more professional than the traditional bailiffs. According to Mercier, this reform was a considerable success. 'Their method is decent and discrete. No one resists because they do things without a scandal. It all happens quietly.*'" (Luckett, 1992).

439 "*The movement to reform contrainte par corps gained momentum as the century progressed. Liberal economists supported the institution and wished to see it expanded, for if the economy was to be regulated by the invisible hand of self-interest, then businesspeople needed to have an interest in paying their debts. 'Honor does not live in the same heart with interest, and interest as you know is the first divinity of businesspeople.' Without the threat of imprisonment, the paper that they used as money would be valueless and trade would cease. 'The great machine of commerce depends on bodily constraint for civil debts. If you make the slightest alteration in this rigorous law, commerce will necessarily collapse and leave nothing but ruins everywhere.' In the last decade before the Revolution a commission created by the garde des sceaux to draw up a new commercial code took the same attitude. The commission*

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proposed to allow the arrest of debtors on all days and in all places, and to abolish the exemption for people over 70. At the same time, however, debtors would have been free to leave the prison the moment they declared bankruptcy before the Juridiction consulaire, thus eliminating the need for lettres de cession. Critics of contrainte par corps saw it as anti-mercantile legislation that victimized innocent business people, a survival no doubt of darker ages... Imprisonment for debt weighed on the conscience of old-regime society. Unwilling to forego the stability that contrainte par corps provided to the private financial system, the commercial community was unable completely to justify the confinement of the innocent and impoverished. 'Can humanity support the idea of a law that places in perpetual chains a citizen guilty of no crime, who in spite of himself has lost his livelihood, his reputation, his honor and his wealth?' This moral dilemma inspired the decision of the Necker ministry to provide debtors at least with a decent prison. The Hotel de la Force... became a model for European penal reform." (Luckett, 1992).

440 "*The Insolvency Chamber was established in 1643 and insolvency cases were delegated to it by the aldermen. ... insolvencies of important merchant houses were often taken care off in amicable settlements instead of through the Insolvency Chamber [Oldewelt (1962, 429)]... The new insolvency rules of 1777, the first revision after more than a century, stipulated that all possessions of the insolvent henceforth had to be handed over to the Insolvency Chamber. Previously the insolvent regained control over his possessions after reaching a settlement with his lenders and he had to make payments to them himself. Through the new regulations the Insolvency Chamber itself took responsibility as a trustee for making payments to the lenders on behalf of the insolvent. Bonds that could be linked to an insolvency case all entered the Insolvency Chamber after 1777. Quite similarly the Code de Commerce, introduced per 1 March 1811, fundamentally changed insolvency law and led to the dissolution of the Insolvency Chamber.*" (Van Bochove and Kole, 2013). "*The most perfect law of insolvency was that of Amsterdam of 1777. It recognized compulsory sequestration, the administration of the insolvent estate by a trustee under the direction of creditors, and rehabilitation... The provisions of this Amsterdam Ordimance were briefly as follows: Whenever anyone within the city or its jurisdiction was so situated that he was obliged to stop payment, and notice thereof was given to the commissioners of the Desolate Boeclelkamer, either by himself or any of his creditors with a request that they should take charge of his goods, two members of the board were appointed to administer the estate. The comissioners first tried to make an arrangement with the creditors, but if the latter refused or if the insolvent was deemed unworthy of a composition, then these commissioners proceeded to make a rough inventory of the estate and to examine the insolvent. The next step was to call a meeting of creditors and to elect provisional sequestrators. The sequestrators then made a complete inventory and took charge of the estate. The insolvent was given a month to compound with his creditors. If he succeeded the estate was released from sequestration, but if not then the com missioners adjudged the debtor insolvent, and the sequestrators became curators (trustees). Claims were filed against the estate and the assets were liquidated by the curators. The curators could, when they deemed it necessary, summon the insolvent before the commissioners and examine him. For non-attendance and for fraud he could be punished. The estate after being liquidated was divided amongst the creditors, the preferent claims being first paid*." (Wessels, 1908). "*By the State Commission to revise the Wetb. In its draft of a bankruptcy law, the same system followed as in the 2 or donnantien for the desolate estate chamber in Amsterdam of 1643 and 1777, according to which not only the estate of merchants who were in insolvency in the chamber were devolved but also the estate of any other person who was unable to pay his debt... [T]he need arose for a new Order for the Chamber for desolate estates, which, in replacement of that of 1659, in 1777 was created. According to these, persons known to the trade were committed annually by the lords of the court. In the event of inability to pay, 2 supervisory directors were appointed to the management of the estate, in person or by creditors, one legal expert and one merchant. The estate was immediately inventoried and sealed, creditors were called up and sequesters appointed. All shipments, assignments and pledges made 28 days before the bankruptcy would be void. The debtor was given the opportunity to offer an agreement. If that was accepted by the debtors, it was binding, after approval by supervisory directors. If no agreement was offered or the offered agreement was rejected, the estate was declared insolvent and the liquidation took place. Under this ordinance, the debtor could be granted special advantages*." (de Kempenaer, 1889). [Translated using Google.]

441 "*Before the war, its credit activity was dominated by loans to [VOC] called anticipations. Anticipations were short-duration, seasonal loans secured on the return of fleets from Asia, typically toward the end of the year. The longest maturity for anticipations during the first 3 years of our sample was 4 months. In 1779, however, [VOC] delayed some repayments for over a year, after borrowing heavily. In 1780, [VOC] again borrowed heavily and failed to repay any of these anticipations, but it did manage intermittent interest payments. War then reduced shipments to and from Holland to their lowest levels in a century (de Korte 1984, App. 8C). In Feb 1781, the largest division ('chamber') of [VOC] received permission from the province of Holland to suspend payment on its anticipations (Steur 1984, p116). The Bank stopped new lending to [VOC] in 1781, and receipt holders began to 'run' the Bank, with the extent of the run limited by the stock of outstanding receipts. [Steur (1984) emphasizes that this period was marked by great legal uncertainty, stemming in part from the fact that contemporary Dutch bankruptcy law did not provide for potential insolvency of entities such as [VOC]; it was apparently seen as 'too big to fail'.] In 1782, near the end of the run, [VOC] offered to convert its suspended debt into [VOC] bonds that, in theory at least, were guaranteed by the States (Parliament) of Holland (de Korte 1984, p. 81). To participate in the swap, however, current creditors of [VOC] had to loan it an additional 50%. In May, the City formally sanctioned Bank participation in this conversion (van Dillen 1964, p417), and the Bank loaned [VOC] an additional 2.5 M. By year-end, total [VOC] debt at the Bank was 7.7 M florins... Secured loans against various types of collateral were common, but since private lenders' claims on collateral were subject to bankruptcy stay and thus to liquidity risk (de Jong-Keesing 1939, p124-5), higher haircuts and higher interest rates resulted. [Private-sector repos of VOC stock were common from the mid-17th century (Petram 2011; Koudijs and Voth 2014). The market risk of such transactions meant that a haircut of about 20% was applied]... The florin's downfall illustrates 3 types of policies that have been identified in the literature as detrimental to central banks' net worth and credibility more generally. The Bank's first policy error (see, e.g., Cukierman 2011, p36) was its decision to support a large, bankrupt government-sponsored enterprise ([VOC]) while trying to maintain an indefensible policy target (the agio peg of 4-5%). Negative impacts on the Bank's net worth were amplified by a second policy error (Archer and Moser-Boehm 2013), which was the City of Amsterdam's practice of keeping Bank profits to itself and allocating losses to the Bank. The first 2 mistakes eroded the net worth of the Bank until a fiscal bailout offered the only feasible way to restore the Bank's reputation. A third policy error, of inadequate fiscal backup (Sims 2004), was manifested in the City's botched recapitalization of 1791-2. Applied in isolation, any of these policies would have worked to undermine the Bank.*" (Quinn and Roberds, 2016).

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442 "*In 1781, during the Fourth Anglo-Dutch War and more general North Atlantic tension, disruption of Dutch commercial routes led to trade depression. The subscription bank of 1773 was revived under the style 'Stads-Beleeningkamer', and on this occasion maintained after the depression faded. [Using resources of AWB, the municipal treasury provided a drawing power of up to f. 2 M.] But the resources assigned to it would not permit it to supersede private credit channels even in short-term lending. There was, therefore, no fundamental alteration in Amsterdam's credit structure and no correction of the basic instability of commercial finance in that city. Because the Stads-Beleeningkamer did not become a central bank able to manipulate credit practices or costs, future corrective measures remained focused on the mobilization of international assistance.*" (Riley, 1980).

443 "*During the 1770s stock-substitution ventures moved away from portfolios concentrated in plantation loans, domestic government annuities, or the British funds and toward diversification. Such a trend represented an obvious response to the collapse of both West Indian commodities and [EIC] stock, but it also had the effect of channeling attention toward other investment sectors, and in particular toward loans to foreign governments... Dutch willingness to invest in French securities was met by the French need to borrow. Jacques Necker, who gained an undeserved reputation for financial competence, found himself in his first ministry (1777-81) in a political situation that seemed to demand borrowing. Accordingly, Necker met the extraordinary costs of the War of the American Revolution and some other minor expenditures as well through a series of loans, loans continued by his successors, on ruinous terms, loans that magnified the French debt and led directly to the virtual bankruptcy of 1788. Still, it is less important that servicing the debt accumulated by 1788 (nearly 5 B livres) cost about half of all expenditures than it is that credit costs were so much higher for France than for other states that they reduced severely the total debt that could be carried even by half of expenditures... Nevertheless, they too overlooked an opportunity to reduce yields, namely, that provided by a surge of capital imports from the Dutch Republic in the early 1780s. As was the case also in Dutch investment in the British public debt, rentiers added French securities to their portfolios chiefly by investing through agents in the debtor state. No source has yet been developed that permits a satisfactory reconstruction of the amount of French paper in Dutch hands at any given point. Although it can be demonstrated that such holdings increased markedly during the 1780s, it is necessary to deal in estimated ranges. On the other hand, Dutch rentiers also participated during the 1780s in stock-substitution ventures in which subscriptions were employed to acquire one or more types of French securities. That method of investment, which tended to attract small— rather than large-scale investors, represented no more than a fraction of all capital exports into French government loans, but the available evidence about it is more comprehensive. Contemporary observers acknowledged and commented upon the reversal of the trend around 1780 under which Dutch resources moved toward France rather than Britain. The most reliable of those commentators was L. P. van de Spiegel who, in 1782, when secretary to the states of Zeeland, appraised the total invested by the Dutch in foreign government loans at f. 335 M. Of that sum van de Spiegel thought some f. 25 M to be in French holdings. Four years later the Prussian ambassador at The Hague, Thulemeyer, estimated that the Dutch received f. 12 M per annum in interest and annuities from France, indicating an investment, at an average return of 5%, of f. 240 M, or nearly a tenfold increase over van de Spiegel's figure. If the average return is assumed to have been somewhat higher, 6.5 or 7% being the maximum possible, then the increase would have been to between f. 185 and about 171.5 M... Van de Spiegel's estimate relates to the eve of substantial expansion in Dutch holdings in French securities. Because of that it can be used in conjunction with an analysis of Dutch investment patterns that includes a comparison of holdings in 1779-80 with 1789-90. On the basis of collateral-succession tax inventories in Amsterdam, Alice Carter has found that holdings in France increased from 4 to 18.6% of all investments abroad outside Britain within that decade. Such inventories tend to understate foreign, and particularly French, holdings of Amsterdam rentiers because assessors were not required to specify the assets behind stock-substitution securities. But on the assumption that portfolio distribution patterns among Amsterdam rentiers were similar to those among Dutch rentiers in general, Carter's analysis suggests an increase from van de Spiegel's f. 25 M estimate to a minimum of slightly more than f. 115 M by 1789-90... Dutch interest in French loans began to grow at the end of the 1770s, but the takeoff seems to have been sparked by a French loan opened in Amsterdam in 1781 on behalf of the United States, and the appealing terms of the loan floated in Paris by Controller General Joly de Fleury in Jan 1782. Joly de Fleury also tried to borrow directly in Amsterdam and Antwerp. Although that plan failed, succeeding controllers general renewed the effort to tap Dutch capital and, in 1786, Calonne appointed Henri Fizeaux & Co. and N. & J. van Staphorst as French bankers in Amsterdam, thus easing the collection of returns on French securities. Nevertheless, by that point Dutch capital exports to France were slowing. These trends are evident in documents detailing the French investments of the prominent Amsterdam rentier Jan Jacob Brants, whose correspondence with a French agent and a balances truck in 1773 indicate a holding of 25,000 l.t. in depreciated state paper. Brants's annuities paid a comparatively modest nominal return of 2.5%, and he resolved by 1782 to convert them into more lucrative securities. In the meantime, in 1779 or early 1780, he added 4 life-annuity contracts of 4,000 l.t. each, returning 8.5% per annum. From that point, as his portfolio management accounts show, Brants's French holdings expanded rapidly. In 1782 he had a total investment of f. 44,567, in life and perpetual annuities, but within 3 years that had expanded to f. 78,994, and by 1790 to f. 104.5 M. The expansion was accompanied by increasing diversification. At the beginning of the decade Brants held only annuities. By 1790 he had added shares in lottery loans of 1783, in loans extended to commercial houses in Lyons on the security of French annuities, in negotiations opened in Amsterdam on the security of French life annuities, and in a single-unit (French annuities) investment trust opened by Couderc & Brants in 1787. In addition, he had in at least one instance extended a private loan on hypothecated French annuities, and had amassed altogether a sizable portfolio of life-annuity contracts... See Antonetti, Greffulhe Montz & Cie, pp. 198-9; and NNJ, 1789, 725-7, on a minor crisis in Amsterdam in the early summer of 1789 and a proposal for a discount bank.*" (Riley, 1980).

444 "*Metal deposits were withdrawn from the bank, and soon the customary agio on bank money could no longer be maintained. In 1790 the bank tried to unilaterally impose an 9% depreciation of bank money, causing the agio to fall below zero and forcing a recapitalization of the bank the following year. A near-total collapse followed soon thereafter, with the French invasion of 1795. [AWB] was superseded by De Nederlandsche Bank in 1814, and was liquidated in 1820 (Van Dillen 1964).*" (Roberds and Velde, 2014).

445 "*French deficit financing was based on credit inflation but, to the extent that maintenance costs were absorbed early, France failed to seize the same benefit from inflationary price trends as other states. As numerous authorities have indicated, French fiscal arrangements had brought the government to the verge of insolvency by the 1780s. J. F. Bosher has taken issue with the widely accepted notion that the tax structure was basically responsible for this situation. He suggests, to the contrary, that the problem could not have been resolved merely by an improvement in the revenue system, but required a*

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thorough reorganization, which in his view was begun in 1771, halted with the conclusion of Necker's first ministry in 1781, and begun again with Calonne's fall from office in 1787. What both points of view tend to overlook is the decreasing time span during which more efficiency in assessing revenues or in administering collections and expenditures could have been brought to bear to save the monarchy from crisis. The burden of debt that already existed by 1771 was, despite Terray's reforms, substantial, and whether or not a formal budget existed (and Bosher has shown that even the term 'budget' was foreign), there was unquestionably a large and only partially comprehended imbalance between revenue and expenditure. Although administrative reforms produced some economies, both the debt itself and the cost of debt maintenance increased in the 2 decades after 1771. As a result a reformist program was difficult to afford, and a program that achieved substantial savings would have required years to take effect, a period of time that could have been available only if ignorance of the actual state of affairs had been more extensive even than it was. Necker himself was at least partially aware of the extent of royal indebtedness, and should have been well aware that borrowing during his first administration, totaling about 530 M l.t. according to G. Susane, had added substantially to an already burdensome debt. His successors, even had they continued the reforms begun and proposed by Necker, could also have done no more than continue to borrow." (Riley, 1980).

446 "*The crisis came to a head at the end of Sep when rumor provoked a run on [CE] in Paris. Chartered in 1776 to issue banknotes and discount commercial paper at 4%, [CE], though technically a private institution, was by now the closest thing in France to a state bank. On 24 Aug 1783 the directors of [CE] had reached a secret agreement with the new controller general Lefevre d'Ormesson to lend the government 24 M livres in banknotes over the last 4 months of the year. When a clerk leaked news of this arrangement a month later, holders of banknotes rushed to have them redeemed in the belief that their money was about to be expropriated. In fact, cash reserves at [CE]had fallen to just 2 M livres for a total note circulation of more than 45 M, but for an independent reason. Taking advantage of the great disparity between bi-metal ratios in France and Spain combined with the current strength of the livre tournois against the doblon de cambio, the directors of [CE] had removed some 15 M livres from its reserves to purchase 4 M silver pesos (piastres) from the Bank of San Carlos in Madrid. Masterminded by Parisian banker Lecouteulx de la Noraye such arbitrage could yield considerable profits, but first the Spanish silver had to be transformed into French coin and the Paris mint could not physically manufacture more than 100,000 livre per day. The run on [CE] forced its administrators to slow the rate at which they redeemed banknotes. They eliminated 3 of 4 tellers and counted payments coin by coin. Simultaneously they appealed to the minister, who intervened on Sep 27 with an edict granting banknotes forced rate until Jan 1 and authorizing [CE] to redeem its bills with private commercial paper. 3 days later d'Ormesson moved to prohibit all export of coin from the kingdom, an unnecessary restriction at a time when the exchange rate for the livre tournois had been above both gold and silver parity against nearly all major currencies for two years. Even the massive silver imports organized by Lecouteulx had been purchased via bills of exchange and were thus balanced by exports of merchandise rather than gold. The suspension of payments only increased the anger of the growing crowd of note-holders in the streets around [CE] and in the nearby gardens of the Palais royal, who smashed out the bank's windows on Oct 3. Armed guards had to be posted around the building while police spies mingled with the crowd and listened for dangerous rumors. Some people blamed the administrators of [CE] for their irresponsible speculations. In the words of one anonymous pamphlet they were 'fabricators of paper money, embezzlers, fraudulent bankrupts, disgraceful slanderers and disturbers of the public order'... Most blamed d'Ormesson himself, who was forced to step down on 2 Nov. What had started as a failure of confidence in [CE] soon turned into a severe financial crisis of the French economy. 'Every day we see banks in Paris cease payment and we believe many more will do so before Jan', reported a Parisian apothecary. Bankers of the Paris area were especially hard hit since they had come to depend on [CE] for a ready supply of liquidity and held a large part of their own reserves in banknotes. Now the cessation of payments had 'removed all confidence from the paper of banks, with the result that everyone prefers the paper of the mere business person, I mean a merchant who buys from you and pays with money, and not that of Mr. Banker who pays with imaginary values in the form of notes that [CE] creates each time it needs funds to send into foreign countries.' Mathew Ridley pointed out that bank failures 'have not happened from any loss that the Parties had sustained by [CE] but from the Interruption to the facility of discounting paper.' Yet the crisis spread further and the bankruptcy curve for Paris shows a rise of business failures in both the banking and artisanal sectors (figure 5 above)... 'Business here is still in the same state, and their will surely be more failures since the insolvency of individuals does nothing but augment.' Though the panic of autumn 1783 was one of the most intense financial crises of 18th-century France, with discount rates peaking at over 14% in early Nov, it was also the briefest. Before long the mint worked through its backlog of pesos while the ministry, having opened a new public loan in October, was able to reimburse an outstanding debt to [CE] for 6 M livres. On Nov 23 the new controller general Charles-Alexandre de Calonne repealed d'Ormesson's unpopular edict of Sep 27 and eliminated the forced rate on banknotes. His own reputation was made.*" (Luckett, 1992). See Bigo (1927, p 76-94) and Bouchary (1937, p43) as cited in *Table 6.3* on pg189 of Flandreau, et al. (2009). *Having led an uneventful existence as an exchange market since its founding in 1724, the Paris Bourse now became the center of feverish trading in stocks and government securities while in Lyon the Loge du Change took on the same role. [CE] helped make possible the transformation of the Bourse, for by lending at below-market rates it provided traders with much of their financial capital. At the same time the stock of [CE] itself, available at the Bourse and subject to violent price swings, became the original object of speculation and as such prompted the creation of similar joint-stock companies throughout the decade... Too numerous for the building, traders also bought and sold in the surrounding cafés as we know from an edict of 1785 attempting to suppress the practice. Such competitive speculation was far from the habits of the conservative French business community, which remained essentially dissociated from it. Starting early in the decade, however, a new breed of speculative investors entered the French capital market. Contemporaries stigmatized them as agioteurs or 'stockjobbers.' Many of the most prominent were foreign protestants, hailing especially from Amsterdam and Geneva.*" (Luckett, 1992).

447 "*The monarchy did have one way out of this constitutional impasse— bankruptcy. The Crown had defaulted on its obligations before. A partial bankruptcy, as in 1770, would free it of the constraints imposed by the Parlement. The idea of a bankruptcy was apparently discussed in some government circles. In response, pamphlets denounced the idea. The most well-known was written by Jacques-Pierre Brissot de Warville in 1787. A close associate of wealthy bankers, Brissot warned that bankruptcy would weaken France's international influence by alienating the numerous Dutch and Swiss creditors. More importantly, bankruptcy would injure and enrage the huge creditor class in France that included not only the rich but also artisans and domestics... The power and size of the creditor class had grown since Terray's suspension of payments on the debt. While not narrowly restricted in 1770, ownership of*

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the rentes had expanded with the growth of the debt and financial innovation. The proportion of rentes in the fortunes and legacies of Parisians rose over the course of the 18th century. The future revolutionary concluded that the Estates-General needed to be convened to verify the deficit and set up a new tax system, ominously adding that the scaffold awaited those who contemplated default. Default on the debt was opposed by a powerful combination of interests. The numerous and influential rentiers were joined in their campaign against bankruptcy by the Parlement de Paris, upholding the legal guarantee implied by its registration of loans. The members of Parlement remembered very well how during the last bankruptcy in 1770 the government took the opportunity to suspend the Parlement and implement legislation on its own. The threat of a partial bankruptcy probably accounts for the rise in the yield on the Loan of 1784 to above 8 and then 9% in 1788. The yield on the stock of [CDI] also increased, but the spread between the two widened to 2%. [CDI] stock was an old well-established debt, but the Loan of 1784 had been issued by the discredited Minister-turned-emigre Calonne. In any partial bankruptcy it was more likely candidate for default or suspension. By early Aug confidence in the government's ability to solve its financial problems through ordinary channels was fading. Brienne suddenly found it impossible to obtain sufficient tax anticipations to cover expenditures. In a desperate effort to bolster the Crown's credibility, the king moved up the date for convening the Estates-General to May 1, 1789. This did not, however, improve the government's finances, and Brienne was forced to issue a decree on Aug 16 that delayed all reimbursements for one year and ordered government obligations to be paid with a mix of coin and 5% notes. While the loans from [CE] were excepted, Brienne feared a run on the bank and issued a decree allowing [CE] to limit payment in coin for its notes until Jan 1, 1789. Although not immediately used, this decree marks the beginning of financing the deficit by money creation. The financial crisis of the state was in full swing when Brienne resigned on Aug 25, 1788. The specter of bankruptcy haunted both the rentiers and the Parlement. One pamphleteer, Simon-Nicolas-Henri Linguet, boldly counselled the king to declare a partial bankruptcy to escape the despotism of the Parlement. As the yield of the Loan of 1784 rose above 10% in Sep 1788, the Parlement reaffirmed the constitutionality of the loans it had registered and condemned Linguet's journal to be burned by the public executioner. To replace Brienne, the king reluctantly reappointed Jacques Necker. Owing to his popularity, he was able to borrow enough from the clergy and the Chamber of Notaries so that the government was not forced to make any payments in paper. Necker began anew his reform of the fiscal system, but he was aware that this gradual approach would not stave off a financial collapse. The only remaining source of credit left for the Crown to squeeze was [CE]. Necker secretly obtained a 15 M livres loan from the bank in Sep and another in Oct. The nervous administrators of [CE] attempted to strengthen the bank by reducing the quantity of notes in circulation. Necker, however, demanded a new loan for 25 M livres in Jan 1789. To protect [CE], Necker renewed the decree restricting payments in coin. Thus protected, Necker returned to borrow from the bank again in April and May. The economic depression of 1789 caused government revenues to decline and expenditures to rise... The opening of the Estates-General, which promised to safeguard the interests of the rentiers, seems to have calmed financial markets. Yields on both assets in Figures 1 and 3 declined slightly after May 1789. Although interest rates remained high throughout the year and oscillated with political events, creditors were reassured by the National Assembly that the nation's debts were a sacred obligation." White, 1989).

448 Bankruptcies of the French State "*can be found in the years 1559, 1598, 1634, 1648, 1661, 1716, 1722, 1759, 1770-1, and 1788. The government's descent toward bankruptcy in 1788, therefore, is hardly cause for surprise. France had, after all, fought 2 extremely expensive wars in the 2 decades before the Revolution: the Seven Years' War (1756-63) and the American War of Independence (1776-83), the first costing around 1.325 B livres, and the second almost as much, between 1-1.3 B livres. Meanwhile, the royal government had not been able to overhaul the French tax structure and therefore had to borrow large sums at high interest rates. The financial problems of the French monarchy on the eve of the Revolution might be seen, therefore, as a predictable consequence of long-standing institutional difficulties. What was not predictable was the path that the monarchy took. In 1788, instead of defaulting on part of its obligations, the monarchy convoked the Estates-General, the kingdom's representative body, which had not met in 175 years. It was this act, the calling of the Estates-General to solve a financial crisis, and not impending bankruptcy per se, that was novel in French history. This fateful decision opened the way to a whole new era in politics, in fact, to revolution. The convocation of the Estates-General in response to royal financial distress thus poses a problem for historians looking at long-term patterns. It does not really fit. Economic historians have argued recently that the institutional structure of France was more modern than is usually assumed. The implication is that the financial situation of France in 1788 did not require such drastic measures as calling the Estates-General. The French system, contended one economic historian, could have survived the crisis of 1788 with a package of defaults 'only slightly worse than that of 1770.' 'Only gradual administrative tax reforms were necessary to save the monarchy, not the politically difficult, perhaps impossible, radical fiscal changes proposed by some reformers', stated another. Could the French monarchy have survived with some 'gradual' tax reforms, or with yet another round of defaults? The ministers in charge of the royal treasury obviously did not think so, or they would not have called the Estates-General. Bankruptcy had never been a simple financial option for the monarchy, and its effects cannot be evaluated in financial terms alone. Traditionally, bankruptcy occurred during highly unstable political situations, such as the 17th-century revolt of the Fronde, or in times of monarchical weakness, such as the minority of a king. Bankruptcy always presented the possibility, as Philip Hoffman observed, of political consequences that 'were considerable and not always predictable.' Until the end of the Old Regime, those outcomes had always ended ultimately with the survival, and even seemingly increased authority, of absolute monarchy*." (Bossenga, 2011). "*From a banker's viewpoint French public loans after 1777 should have appeared as bad risks. By paying excessive returns the state was behaving like a near-bankrupt merchant, for in commerce it was a rule of thumb that anyone who in normal times paid unreasonable interest should be considered as approaching a failure. How else to interpret the scandalous 10% rentes viageres? When in Aug 1786 Calonne told the King that payments would have to be suspended unless drastic reforms were imposed upon the privileged orders, he was confessing the insolvency of the monarchy, which the bankers could have foreseen. In 1788 and 1789, with payments suspended and issues falling in market value, those who held the state loans had reason to fear a repudiation, and this fear explains the importance of Necker as a warrant of confidence and, in the opposite sense, the shock that resulted from his dismissal on July 11, 1789. Bankruptcy having been predictable at least from Necker's first ministry, why should men schooled in commerce have continued buying, merchandising, and speculating in these dangerous loans?... According to the Chamber of Commerce of Lyon in April 1787, the scarcity of credit had carried the interest rate to 12 and even 16%, and the Chamber held the activities of Parisian speculators accountable for the shortage. These difficulties were compounded by the export of coins and bullion that continued during the whole decade of the 80s. This outflow of metal further reduced the means of payment, increased the demand for specie, and cheapened the drafts. Such were the causes of the 'money famine'*

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(disette de nume'raire) that provoked universal complaint in 1789 and for which the assignats seemed a proper and urgent remedy... Paris paid the provinces in 90-day drafts that were distrusted and could be disposed of only at a discount if at all. Being 'gorged' with these drafts, the provincial merchants were unable to buy merchandise to sell to Paris; some of them, unable to pay their creditors, were threatened with bankruptcy proceedings. (Summary of an address by the Six Corporations of Paris to the National Assembly, Jan. 14, 1790, Re'impression de l'ancien Moniteur, HII, 131-32; there is much other evidence.)" (Taylor, 1962).

449 "*At the risk of going beyond my timeframe for this dissertation, a glance at the fate of contrainte par corps in the Revolution demonstrates the popular nature of opposition to imprisonment for debt in the 18th century (figure 6b). In 1789, one day before their famous assault on the Bastille, the Paris militants attacked La Force. 'At 11 in the morning,' noted the bookseller Hardy, 'the director of the Hotel de la Force had been forced by the people to open his doors and allow all the prisoners to leave, men and women.' But significantly the crowd refused to liberate the prisoners at Bicetre and the Grand Chatelet, since these were reputed to contain 'dangerous criminals' rather than civil prisoners. For nearly 2 years the authorities all but ceased to imprison debtors, at least in the Paris region. Several Paris districts even passed resolutions abolishing contrainte par corps, though lacking the approval of the Constituent they did not have the force of law. Then at the beginning of May 1791 the Hotel de la Force began once again to receive debtors in large numbers. In late Sep the debt prisoners in Paris collectively petitioned the government to grant them one year's release. Such a measure, they argued, was in keeping with France's new spirit of liberty, and would allow them to return to their jobs and earn the money to pay their debts. But the Legislative Assembly failed to act... One of the remarkable aspects of the prison massacres that followed was the popular movement within Paris to save the 'poor debtors.' On the night of Sep 2, following the initial attack on the St-Germain Abbey, the Commune moved quickly to evacuate debtors from la Force. Jean-Paul Marat, who later claimed to have inspired the evacuation, admitted that 'the precaution proved unnecessary' as the massacrers themselves took care at La Force to sort out and liberate the remaining debtors. Similarly, Ste-Pelagie was entirely evacuated, but the militants never thought to attack it. The following March, recognizing a fait accompli, the Convention abolished contrainte par corps, which would not be reestablished until 1797.*" (Luckett, 1992).

450 "*Known in legal parlance as la rigueur de la contrainte par corps, the arrest of debtors in their homes continued to be practiced only in the Lyonnais [after the 1702 Amendment], where the Conservation was able to maintain unique privileges.*" (Luckett, 1992). "I*n 1793, Lyon rebelled against the Convention. From Aug 22 to Oct 9 a republican army besieged the city, and after the last sortie some 2,000 Lyonnais were condemned and executed for insurrection. As usual, their property was confiscated 'to the profit of the Republic.' Since about 300 of these condamne's were merchants, the Republic acquired partnership interests in 98 commercial houses, but it could realize these interests only by liquidating the sequestered companies and sharing the proceeds with creditors and surviving partners*." (Taylor, 1963).

451 "*The small band of French abolitionists was outmaneuvered by a proslavery countermobilization in French slaving ports and among planters in the colonies. After the revolution of 1789, neither the first French republican constitution (1791) nor its more radical successor (1793) even mentioned slavery or the slave trade, much less intimated a desire to limit the futures of either. The overwhelming consensus among legislators in Paris was that the colonial system, based on slave-grown sugar in Saint-Domingue and other Caribbean islands, was simply too important to the financial survival of a bankrupt home government and a turbulent metropolitan society to be subjected to interference. The major impetus toward abolition came from the great slave revolution in Saint-Domingue (1791), and then was expanded in 1794 by the French Convention to a decree of general emancipation throughout the empire. By the decade's end the revolutionary societies on both sides of the French Atlantic had been subjected to militarized states, at the cost of the civil and political liberties they had proclaimed. In 1802, Napoleon Bonaparte made France the first and only European nation to reopen an abolished slave trade and to re-enslave tens of thousands of men and women who had been living in Martinique and Guadeloupe as fellow citizens. In the following year Napoleon's army of reconquest in Saint-Domingue suffered a disastrous defeat, ending in the creation of Haiti, a nation largely of ex-slaves and without slavery. Napoleon's concurrent suppression of civil and political associations in France ensured that both his restoration of slavery and his loss of Saint Domingue occurred without manifest disapproval, or approval, in the metropole. Henceforth, France would be a reluctant follower on the trail being blazed in London, ending its own slave trade in the early 1830s*." (Drescher, 2005).

452 "*The panic of 1791-4 The War for American Independence and the French Revolution each caused disturbances on the London Stock Exchange and in the foreign exchange markets for sterling. But in each case the disturbance was limited either in duration or to the British market alone. Far more serious were the disturbances that led up to the formal declaration of war between Britain and France in Feb 1793 and the military successes of the French armies that led eventually to the occupation of Amsterdam in 1795. The establishment of the Batavian Republic in 1795 under revolutionary rules of the game also led to the publication of an official price list for the Amsterdam Effectenbeurs that began in 1795. According to Ashton, the war crisis in the exchanges preceded the actual war, as was usually the case, and by summer 1793 the financial crisis was over. I have taken the period Dec 1791 to Dec 1794 for analysis of this episode, which really began in France, was transmitted equally to Amsterdam and London, and finally was terminated in Amsterdam by French occupation*." (Neal, 1998).

453 "*In France the Revolution finally put an end to the existence of sanctuaries. A fancy phrase was found to legitimate the measure: 'All asylums are abolished, because the law is everyone's asylum'... As in France, the Batavian Revolution of 1795 put an end to the granting of asylum. The Batavian Republic soon annexed the 5 heerli jkheden*" (P.S., 1986).

454 "*Traditional English laws and procedures stabilized the inheritance system of the English landed class by protecting real property from the claims of creditors in multiple ways. The law incorporated a default rule that protected property owners' titles to land from the claims of all unsecured creditors—that is, claims to collect debts when land had not been explicitly offered as security. The law also extended this rule so that, at the death of a debtor, the debtor's real property holdings descended to the heirs and devisees free of all legal claims of the deceased debtor's unsecured creditors. As Sir Samuel Romilly described, an English landowner was 'allowed to live in splendor on his property, while his honest creditors remain[ed] unpaid, struggling perhaps with all the vicissitudes of trade, or reduced to bankruptcy and ruin.' Under English law, landowners could alienate freehold interests in land by satisfying the formalities of secured credit agreements such as mortgages, bonds, deeds, or wills—formalities not undertaken for unsecured debt. Creditors seeking to force the seizure of land pledged in secured credit agreements, however, suffered the procedural costs of having to obtain a judgment in a common law court and a foreclosure*

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decree in the Court of Chancery. Moreover, the Court of Chancery gave landed inheritance preferential treatment over debt satisfaction in its proceedings. The legal restrictions on creditors' ability to seize land in satisfaction of debts helped to stabilize the landed class by protecting real property holdings from the risk associated with accumulated unsecured debt. This legal structure, however, on the margin, was likely to have reduced capital available for productive investment. The exemption of title interests in land from creditors' claims meant that all unsecured creditors assumed the risk that debtors (landowners or not) might convert their chattel assets and purchase land that creditors could not seize. Similarly, unsecured creditors faced the risk that landowning debtors might die unexpectedly, in which case their only legal recourse would be to seize the debtors' chattel property. Each of these risks would have worsened the terms on which creditors would lend to debtors on an unsecured basis. The extension of credit with security — the promise of the borrower to allow a levy against land — was likely to have been limited on the margin by the costs imposed on creditors in the form of arduous foreclosure procedures in the Court of Chancery. This structure of property rules suggests that, in England, greater stability in real property ownership over the generations was valued more highly than the more extensive credit and investment in economic growth that would have resulted from less restrictive land credit policies and the reform of Chancery." (Priest, 2006).

455 "*As early as 1723, Lord Talbot, then at the bar, gave an opinion that the statutes of bankruptcy of England did not extend to the plantations; yet that the personal property of an English bankrupt in the plantations passed to the assignees.*" (Story, 1872). "*In the year 1723, Lord Talbot, then at the bar, gave an opinion, that although the statutes of bankruptcy did not extend to the plantations, yet that the personal property of an English bankrupt, in the plantations, passed to the assignee. From that time to the present, this opinion has been maintained by the courts in Westminster Hall, as will appear by a review of the cases.*" (Livermore, 1828). "*The effects of A. in the plantations are liable to the commission here, and the right to them is vested in the assignees; and it seems reasonable that this certificate should be equally extensive as to his discharge: however as the laws of England, made since Virginia and the other plantations were settled, do not extend to them unless they are expressly named, and as the laws relating to certificates do not expressly extend to the plantations, I am of opinion, that a certificate confirmed here will be no discharge to if a suit is commenced against him in Virginia, or the other Plantations.*" (Beawes, 1792).

456 "*Quantitatively, indentured servants played a major role in early British migration to the New World. Although their total numbers are not subject to precise estimation, an indication of their significance is given by Abbot Emerson Smith's judgment that between 50 and 66% of all white immigrants to the American colonies after the 1630s came under indenture, or Wesley Frank Craven's estimate that 75% or more of Virginia's settlers in the 17th century were servants. The quantitative importance of the indenture system was greater than that of slavery in both the early settlement of British America and the development of its economy. The Chesapeake colonies of Maryland and Virginia prospered through the use of white servants in the 17th century, and when black slaves came in significant numbers, as U. B. Phillips noted, they were 'late comers fitted into a system already developed.' It is in this sense that Eric Williams wrote in his history of slavery in British America that 'white servitude was the historic base upon which Negro slavery was constructed.' Estimates based on probate inventories suggest that as late as the second half of the 1670s servants made up 80% of all Maryland's bound labor and thus outnumbered slaves in the colony by a ratio of 4 to 1.*" (Galenson, 1981). See table H.3 for decennial estimates of net migration for British mainland colonies between 1650 and 1780 by race and colony on p 216-7.

457 "*New colonies, as Adam Smith observed, had an insatiable demand for capital. Scarce capital in conjunction with abundant land resources yielded a high return, generally higher than that on investments in the mother country. The colonists, who seldom had much capital of their own, endeavored to borrow as much as possible from the mother country, to whom they were chronically indebted. In explaining the way by which this debt was contracted, Smith says that the colonists seldom borrowed upon bond of the rich people of the mother country, 'but by running as much in arrear to their correspondents, who supply them with goods from Europe, as their correspondents will allow them.' He estimated that the annual return from the colonies was frequently as little as a third or less of the amount owed. William Knox, who resided in Georgia several years before returning to England to assume the post of Undersecretary of State for America, wrote: 'the planter becomes indebted to the merchant for 2 years' supply before he makes him any payment; and as it seldom happens that at the end of the second year he pays the expense of one, he goes on increasing his estate in a much greater proportion; and all this time the English merchant, who supports the whole, is without any returns.' Despite the risks and uncertainties of the age, credit entered into a remarkably high proportion of business transactions. Professor Ashton has noted that 'Most entrepreneurs were, at one and the same time, borrowers and lenders, debtors and creditors', and that credit 'penetrated to relationships from which it is largely excluded today...*" (Sheridan, 1960).

458 "*Technical bills might have relevance to the slave trade that at first glance is not self-evident. In 1709-10 the merchants of London trading to Maryland obtained the disallowance by the crown of 3 measures passed by the Maryland legislature. One of these, 'An Act for the Relief of Poor Debtors', would have exempted future earnings from the claims of current creditors (as is true of modern bankruptcy laws). The merchant creditors objected 'Because the Merchants have given the planters credit to buy negroes[,] to cloath and support their familyes not upon any known or supposed stock they had, but [upon] their [sense of] justice & [the] future crops they should make.' The law deprived the creditor of any claims upon 'their future labor... which alone was that foundation on which the credit was solely given, & by which credit those plantations have been supported & peopled & y' trade itself sustained & without which it had been altogether unable to have been carryed on & can't long without it be supported but by credit.' They also objected to the law reducing the penalty on protested bills of exchange from 15 to 10%. Since the bill of exchange was a common medium for paying for slaves, a planter anxious to get more slaves might well try paying for purchases with bills he knew would be refused acceptance and protested, calculating that 10% was not an excessive interest and penalty to pay to get the labor he needed? Tensions between creditors and debtors —and hence between debtor-dominated colonial legislatures and the creditor-influenced metropolitan government— so conspicuous during the price fall of ca. 1660-90 became pronounced again with the new fall in commodity prices in the late 1720s.*" (Solow, 1991).

459 "*The Virginia legislature amended the chattel mortgage provisions many times during the colonial and early statehood eras. Besides the 1656 changes, in 1658 the burgesses appended a 4-month period after filing in which any creditor could come and challenge the transaction as fraudulent. In 1662, the burgesses provided that the statute did not apply if the item was delivered without the precondition of a debt. This amendment removed recording for the basic sale. In 1705, the burgesses separated recordings for land and for personalty. The statute deeming slaves as realty, but exempting them from the new*

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realty recording requirements, confirms this action. Parties were to transfer slaves as before. That action meant recording only for the nonpossessory secured transaction on slaves. For real estate recordings, the burgesses required 3 witnesses and provided filing within 8 months in the county where the land lay. The 1705 statute also mentioned the 6-month requirement of the 1662 Act and repealed all prior statutes only insofar as they related to matters of the statute, namely realty. The Board of Trade rejected this statute. In 1710, the burgesses reenacted the 1705 Act without the offending patent language that the Board of Trade had rejected. In 1734, the burgesses reunited personalty and realty recording. The burgesses overruled the courts and made certain that unrecorded conveyances were valid between the parties, extended the developments of 3 witnesses and 8 months to chattel mortgages, and permitted the filing of a chattel mortgage memorial rather than the entire document. In Oct of 1748, the burgesses allowed recording also in the General Court. Only minor changes occurred thereafter." (Flint and Alfaro, 2004). "*In 1705 the Virginia Assembly passed a law that made a significant modification in the status of primogeniture and entail in the colony by making it impossible to dock an entail except by special act of the legislature. The act of 1705 thus closed the door for docking entails that the English law of 1540 had opened by permitting the use of fine and recovery... [Still, in England], Very few estates followed other than the rule of primogeniture. Entail in the youngest daughter, or youngest son, rarely occurred... Docking by an act of the Assembly would be a much more difficult and expensive process than it had heretofore been by fine and recovery. The purpose of the act clearly was to reduce the possibility of breaking the entailed estates... In 1727 [Virginia's] Assembly enacted a second bill relating to primogeniture and entail. The act of 1727 made it possible to annex slaves to lands held in fee tail and to pass them together, either by a deed or by the last will and testament of the tenant in tail. Also, a tenant in fee simple could devise by will both slaves and lands in fee tail. Unlike entailed land, however, entailed slaves were liable to the payment of debts... Slaves annexed to the estate of a woman could not be taken for the debts of her husband. It is evident from this act that the prevailing system of economy was that of the plantation worked by slaves. The slaves were a necessary part of the economic unit, and, to prevent the impoverishment or disorganization of that unit, the planter-legislators hit upon the plan of having slaves descend with the lands in a state of perpetual entail... There was no further legislation on entails until 1776, when the Virginia legislature enacted Thomas Jefferson's bill abolishing entails.*" (Keim, 1968).

460 "*In 1732 Parliament had come to the assistance of British creditors who had complained that they were compelled at great expense to make an appearance in the local courts of the province, but found when doing so that they could not secure attachment of lands, houses, or slaves of the Virginia planters since these were not regarded technically as 'assets.' [Tucker (1931).] The British merchants had petitioned Parliament for redress and 'An Act for the more easy Recovery of Debts in his Majesty's Plantations and Colonies in America' (5 Geo. II, c. 7) had resulted. This statute provided that plantation debts could be proved in Great Britain on oath before a chief magistrate with a heavy penalty for a false oath; further, that lands, houses, Negroes, and other hereditaments, belonging to the debtor and situated within any of the plantations, were liable for all just debts.*" (Gipson, 1961). "*First, after they had run so far in debt, that they could be no longer trusted; — they required that the English creditor should make his appearance in their courts of law, or before some of their magistrates, in order to prove his debt. Now it is easy to see, that in many cases, it would be better for the English merchant. to compound his debt at any rate, or even totally to relinquish it, than to prosecute the recovery of it after this manner. Then, secondly, they insisted, that their lands, houses, and slaves were not liable to the payment of commercial or book debts, because they were not assets; — though these possessions were purchased, or procured by that very credit, and those very capitals, which they had obtained from England. The merchants of Great Britain, finding themselves thus shamefully cheated of their Property, petitioned the Parliament for a redress of grievances; and obtained an Act the 5th of Geo II c 7. Anno 1732, entituled, 'An Act. for the more easy recovery of debts in his Majesty's plantations and colonies in America.' In which Act there are special clauses inserted for defeating both these Schemes of your ingenious friends, the Americans.*" (Tucker, 1931).

461 "*Concern about Virginia emerged in 1727 when, in response to an Instruction from England, Governor Gooch requested that the Virginia legislature enact a law allowing English creditors to seize the land of debtors who had formally declared bankruptcy in England. The legislature failed to provide the requested remedy. It tried to placate the imperial authorities with a law reaffirming that slaves would be available to satisfy debts. English creditors then complained to the Board of Trade about a 1705 Virginia law establishing a 3- to 5-year statute of limitations (depending on the type of debt) for bringing a suit against a debtor. In 1730, the Crown repealed the Virginia statute of limitations by royal proclamation. The Virginia legislature enacted a new law to replace the 1705 law, but the new law purposefully omitted a provision of the 1705 law that had allowed an English creditor to prove his debts by swearing to them in England, 'in the court of that county where he shall reside', or 'before the governor or mayor of the place where he is.' By failing to reenact this provision, the Virginia legislature implicitly changed the existing policy from one in which debts could be proved in England to one requiring English creditors to produce evidence in the local colonial courts... Initially, most colonial courts and legislatures administered the English body of laws exempting real property from the claims of creditors. In the late 17th century, however, a number of colonial legislatures in New England and the legislature of Barbados attempted to expand the extent of credit offered within their colonies by rejecting English protections to real property from creditors. Then, during a recession in the early 1730s, English merchants and creditors became increasingly active in lobbying the English Board of Trade and Parliament to monitor and to overturn colonial legislation that they viewed as imposing costs on them. In 1731, a group of English creditors concerned about debt collection in colonies that had relied on English credit to expand slave labor forces petitioned Parliament to enact a law that would ensure that colonial subjects could not use traditional English real property exemptions to protect their land and slaves from English creditors. In 1732, Parliament enacted a statute entitled the Act for the More Easy Recovery of Debts in His Majesty's Plantations and Colonies in America ('Debt Recovery Act'). The Debt Recovery Act applied to all of the North American and West Indian British colonies. It required that all interests in real property and slaves be treated exactly like personal or chattel property for the purposes of satisfying debts. The Debt Recovery Act had both substantive and procedural implications. Substantively, the Act abolished the legal distinctions between real property, chattel property, and slaves in relation to the claims of creditors. Under the Act, land and slaves could be seized and sold to satisfy any type of debt, including many widely used forms of unsecured debt. In most colonies, executors appointed to distribute the assets of estates were given the authority to sell real property to pay the debts of the deceased, an authority not available under English law. In all colonies in America after 1732, in contrast to the English regime, an heir to real property took only the land that remained after the claims of all of the deceased's creditors had been satisfied. Procedurally, the Act required courts to extend to real property and to slave property the local processes in place for seizing and selling debtors' chattel property in satisfaction of debts. These processes typically consisted of auctions and, at times, of in-*

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kind transfers to creditors. The Debt Recovery Act therefore provided parliamentary authority for the legal institutionalization of judicially supervised real property auctions, a remedy not available to creditors under English law. Moreover, as recognized later by English abolitionists, Parliament's Debt Recovery Act required that colonial courts engage in one of the most abhorrent features of slavery, the administration of slave auctions to satisfy judgments based on debts. Moreover, in most colonies, debtors' equity rights to redeem real property after a mortgagee had obtained a legal judgment on a mortgage were either strongly curtailed or abolished. The Debt Recovery Act required that courts sell land, houses, and slaves to satisfy debts according to the same procedures used for chattel property. Often this was interpreted as requiring land to be sold during the process of execution at law, with the purchaser obtaining a fee simple title interest, free of familial redemption rights. In sum, the Act removed protections to real property that had increased stability in landownership and had safeguarded inheritance, and it came close to abolishing the age-old distinctions between real and chattel property. Joseph Story stated that 'the growth of the respective colonies was in no small degree affected by' this legal transformation. The transformation was socially and politically significant as well. English political life was dominated by the landed elite whose wealth (in land) enjoyed protections from commercial and financial risks. The landed class was distinguished from the class of merchants and traders whose wealth was subject to those risks. In America, the treatment of land as legally equivalent to any other form of chattel in relation to creditors' claims obliterated the division between landed wealth and commercial wealth, and thus between landowners and merchants." (Priest, 2006).

462 "*In 1727 tobacco notes were legalized. These were in the nature of certificates of deposit issued by the inspectors. They were declared by law current and payable for all tobacco debts within the warehouse district where they were issued. In 1730 the notes were made the only legal tender for tobacco debts, in the warehouse district. They were redeemable in tobacco of a particular grade, but not in any specified lots — resembling in this respect the grain warehouse receipts of the present day. Counterfeiting the notes was made a felony. In 1734 another variety of currency called 'crop notes' was introduced. These were issued for particular casks of tobacco, each cask being branded and the marks specified on the notes. In 1742 it was enacted that persons not growing tobacco might pay taxes and fees to public officers 'in current money at such prices and rates for tobacco as shall be settled by the courts of their respective counties.'*" (White, 1895).

463 "*In 1755 and again in 1758, in consequence of severe drought and short crops, it was enacted that all tobacco debts, taxes, and fees might be paid in money at 16s. 8d. per 100 lbs. During the revolutionary war the currency of Virginia, bad enough in its normal state, fell into terrible confusion. It consisted of continental currency, Virginia bills of credit (both depreciating at a galloping pace) and tobacco. The latter had become a stable currency by comparison. Its value was fixed from time to time by the grand jury. After the revolution the old system of payment by tobacco notes was resumed and continued until near the beginning of the present century. The history of tobacco currency in Maryland is in general the same as in Virginia. The year 1753 was distinguished by an act of formidable length and remarkable character for 'amending the staple of tobacco.' First, the inspection laws were greatly improved and then it was provided that all tobacco debts arising before May 16, 1747, if paid in tobacco inspected under this act should be reduced one-fourth. The act recited also that since traders had generally kept their books in terms of silver money, although their dealings had been in tobacco, and the intention of both debtor and creditor had been for payment in tobacco, in all such cases the creditor should be paid in tobacco at the rates prevailing at the time, but if paid in tobacco inspected under this act the debt should be reduced one-fourth. All judgments, bonds, mortgages, bills of exchange, notes or other securities of any kind for the payment of money, taken to elude the provisions of this act, were declared null and void*." (White, 1895). "*A sharp break in tobacco prices, which reduced the purchasing power of Virginia produce and increased the demand for bills of exchange to balance imports from Great Britain, brought on the paper currency crisis in Virginia. There, provincial currency was discounted as much as 50 to 60% to purchase bills of exchange. Yet, by a 1749 statute, the legislature had set the discount rate at 25% advance on sterling for the difference of exchange*." (Sosin, 1964). "*[T]here is considerable evidence to support the assertion of Scottish merchant Charles Steuart that the merchants were merely protesting 'against imaginary losses and ill-founded apprehensions.' A comparison between the judgments obtained by British merchants in the Virginia General Court between 1757-63 and the actual rate of exchange reveals that the merchants lost an average of no more than 2% on the original debt, hardly enough to warrant their outraged cries. Such a loss undoubtedly cut into the merchants' profits, but a recent study of one London firm shows that despite such a loss profits would still have been very high. Moreover, Virginia political leaders certainly were convinced that they were acting with reasonable justice to the merchants and that existing arrangements were fairer to all concerned than those proposed by the merchants. The committee of correspondence wrote to London agent Edward Montague that it seemed more just 'that the difference of Exchange be settled by the determination of disinterested judges than to leave it to the arbitrary will of the Creditor.' The committee also pointed out that the merchants' greatest losses came about as a result of the 'Ignorance or inadvertency of some Factors who while bringing suits have too hastily received said debts before the Exchange was either settled by the purchasers of Bills or the Court.' Moreover, the legislature argued that to remove the legal tender clause as the merchants requested would be unjust to the many people who had accepted the notes with the guarantee that they were a tender in payment of all obligations. There would seem to be no direct evidence on which to question the sincerity of the committee's statement or to support Gipson's assumption that Virginians consciously shaped their policies to enable them to avoid part of their debt. Had they had such goals in mind it is doubtful that they would have so willingly consented to permit the General Court to adjust the exchange rate as they did in 1755*." (Evans, 1962).

464 "*However, a people so full of resources, as you have described them to be, soon recovered themselves from this overthrow: For in a very few Years, they contrived another successful mode of cheating their English creditors: And the 4 New England provinces, now in actual rebellion, were particularly concerned in this conspiracy. The trick was, to issue out a paper currency, and to oblige the English creditor to accept of it as a legal tender, in full discharge of all demands. The Englishman, who, in Great Britain, is not obliged by law to accept even of a bank-note, as a tender of payment, was shocked and alarmed to the last degree, at this repeated Attack upon his property: And therefore applied again to the legislature for assistance and protection. Nor did he apply in vain: For in the year 1751, viz. 24th of Geo II. c 53, an Act was passed, entituled, 'An Act. to regulate and restrain paper bills of credit in his Majesty's colonies and plantations of Rhode-Island and Providence Plantations, Connecticut and Massachusetts Bay, and New Hampshire in America; and to prevent the same being legal tenders in payment of money*." (Tucker, 1931). "*[In 1749,] One of the 57 acts that inadvertently secured the royal approval was 'An Act declaring the law concerning Executions; and for relief of Insolvent debtors.' According to its 29th section, executions [to the seizure*

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of the person or property of the debtor in default of payment] ordered by the Virginia courts for a debt due in terms of sterling money might be stayed by liquidation of the debt in Virginia currency upon simply adding 25% to the face value of the debt as the difference in exchange value between the two currencies. The law was to become effective after June 10, 1751. While not obvious at the time it was confirmed, in reality it struck squarely at the vast indebtedness of the tobacco planters to British businessmen, who long had been accustomed to extend to them easy credit in terms of sterling money. Naturally they expected to be repaid in sterling and not in current colonial money subject to sharp depreciation at the will of the General Assembly by the simple device of placing into circulation whatever quantity of paper money seemed desirable. The British merchants, therefore, became alarmed as soon as they were made aware of what had transpired. It may be added that this apprehension as to the security of their loans was not unjustified. Memorials were drawn up by the merchants of Liverpool and Bristol and presented to the Board of Trade on Nov 19, 1751; a week later the London merchants presented their memorial. All took the position that the law was confiscatory in nature and that the exchange rate between sterling and Virginia currency actually was at the time a differential not of 25 but of 33%." (Gipson, 1961).

465 "*These emissions of paper money by Virginia and other continental colonies between 1755 and 1762 were made necessary by wartime conditions... Nor did this differential decrease after that year; as a matter of fact, it widened. In 1757 it stood at 35%; in 1759 it reached 45% and, in the fall of 1762, it was 65%. However, with the law confirmed, the Lords Commissioners could do little else but offer advice to the merchant groups to appeal directly to the King for relief. This was done.*" (Gipson, 1961). "*Specifically, we examine the monetary experiences of several of the American colonies from the 1720s until 1770. Each of the colonies to be examined issued its own notes which circulated (for the most part) as legal tender, served as a local unit of account, and exchanged at a freely determined market rate with pounds sterling. As we shall see, each colony examined issued notes during this period that were backed typically not by gold or any other commodity, but by future government income streams. The primary result emerging from this examination is that all the colonies examined engineered extremely large (relative to typical government expenditures) note issues (reductions) that were not accompanied by inflation (deflation) or any depreciation (appreciation) of the notes issued against pounds sterling. As the most dramatic examples, from 1755 to 1765 Massachusetts increased its per capita stock of paper money by a factor of 6. Nevertheless, all available commodity prices declined over this period, and the exchange rate between Massachusetts currency and sterling depreciated by less than 0.2%. From 1755-60 Virginia increased its per capita note issue by 749%, and Pennsylvania by 27%. Virginia notes depreciated only 9% against sterling. (Britain was following a policy of non-inflationary expenditure finance), and Pennsylvania notes appreciated against sterling. On the opposite side of the coin, from 1760-70 New York reduced its per capita note circulation by 86%, while its notes appreciated only 10% against sterling and its price level fell only 2%... As indicated above, paper money consisted of two types of bills of credit. The first of these was issued by colonial treasuries to cover shortfalls of receipts relative to expenditures and was used directly to purchase goods and services. Thus, these are easily understood and require no further explanation, except with regard to their backing, which is provided when deficit finance is discussed in more detail. Bills of credit issued by colonial loan offices, however, are an instrument outside the realm of contemporary experience and hence merit a more complete description. The first colonial loan office was established in 1712 in South Carolina, and the last in 1737 in New York. At least 10 of the colonies established land banks, which as indicated previously, printed notes for the purpose of purchasing mortgages. In this section we describe the loan office system, which was a major source of notes prior to the French and Indian War in most colonies... It might be suspected, however, that this stabilization of exchange rates and prices occurred for reasons that had nothing to do with Massachusetts's currency reform. For instance, in 1751 the Currency Act prohibited the colonies of New England from further issues of legal tender notes. However, the practical effects of this prohibition seem to have been nil... June 1750 marked the date of the highest exchange rate against London for Massachusetts currency until 1758. By contrast, New Hampshire and Rhode Island currencies both depreciated over 50 % between 1750-5. In Connecticut this depreciation was 40%. Thus, in spite of the massive depreciations continuing in each of its neighboring colonies, 'currency reform' in Massachusetts put an end to inflation and depreciation of its currency.*" (Smith, 1985). "*[In France,] Correspondents in other cities simply refused to accept commodity payment, and in the face of their 'rather bitter complaints' Lorient merchants were forced to slow their sales and return to the painful search for coin. In vain they protested that the stability of the price of cochineal was 'second only to cash.' Since it had no forced rate that would be recognized by a commercial court, its stability could not guarantee its possessor against prosecution for debt. By contrast, William Letwin has shown that commodity money was used more successfully in the North American colonies, where legislatures were willing to declare it legal tender.*" (Luckett, 1992). "*...previous bills, were not negotiable in England, and this sudden loss of liquidity forced some English firms into bankruptcy.*" (Solow, 1991). "*The method of credit in the colonies was likewise a subject of complaint at this time. Planters gave their own bonds for 5 years instead of bills of exchange for 12 or 18 months. The bills of exchange could be used to make payments, but now the British merchant had nothing but the planters' bonds, and 'many of the African merchants have been obliged to stop payment leaving great sums owing to the merchants of London, and the manufacturers of Manchester and Birmingham for goods.'*" (Donnan, 1931).

466 "*Temporary acts 'for the Relief of Insolvent Debtors' were passed in 1755 (and amended in the next session), in 1761 (and amended later that year), [and] in 1765... In 1765 an amendment required insolvents to advertise their intention to seek release in the Gazette... In 1765 the maximum debt permitted was increased to £1,000...*" (Lineham,1974).

467 "*Like the merchants, the Board regarded paper currency with dislike and apprehension, as a necessary evil of which the best must be made. They felt the colonists to be mistaken in their expectation that bills of credit would prove an economic panacea, and believed that in permitting their issue only under stringent restrictions and careful regulations, they were advancing the true interests not only of British traders, but of the colonies as well. Conflict between the interests of English merchant creditors and of colonial debtors resulted also from the enactment of laws which regulated and sometimes impeded the collection of debts. In this case the Board of Trade, always solicitous for the security of private property and mindful that a sound credit was requisite as a basis for the plantation trade, regarded the creditor's right of recovery as axiomatic, and conceded very little to colonial sentiment. Massachusetts in 1757, and Virginia in 1762, passed elaborate bankruptcy acts which allowed debtors, voluntarily confessing themselves insolvent and surrendering their assets, exemption from imprisonment and a certain percentage of the proceeds from the disposal of their property. The Board acknowledged the beneficial intent and inherent jus tice of these laws, but insisted, nevertheless, upon their disallowance because of fear that their operation by colonials would surely work injustice to absent English creditors. 'Upon the whole', says the Board's representation upon the Massachusetts act, 'a bankrupt law, even though just and equitable*

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in abstract principle, has always been found in its execution to afford opportunities for fraudulent practice. And even in this country where in most cases all creditors are resident on the spot, it may well be doubted whether the fair trader does not receive more detriment than benefit from such a law. But in a Colony where not above one tenth of the Creditors are resident, and where that small proportion of the whole , both in money and in value, might (as under this act), upon a commission being issued, get possession of the bankrupt's effects and proceed to make a dividend before English merchants could ever be informed of bankruptcy, such a law is beneficial to a small part of the Creditors resident only.' [Regarding 'Bankrupts and their Creditors.' CO / 5-430; Disallowed 28 July 1758. The Virginia law 'For the Relief of Insolvent Debtors' was disallowed July 20, 1763. The law of Virginia was more objectionable than that of Massachusetts in that it did not permit debtors to be petitioned into involuntary bankruptcy.] Toward acts designed to relieve debtors who were already charged in execution and suffering imprisonment, and who chose to surrender their property for the benefit of creditors, the Board was more tolerant; and all of the colonies passed such laws from time to time. It was insisted, however, that settlements be not concluded without the consent of creditors holding at least the major part in value of the claims presented, and that insolvents should not be granted exemption from debts which they might contract in the future. Several acts providing for the release of individual debtors were disallowed because, in the opinion of the Board, the process of liquidation was not surrounded with adequate safeguards for protecting the interests of creditors against fraud and concealment. In framing act of New Jersey, for example, the assembly neglected to make the notification of all creditors obligatory upon the trustees, and provided merely that the insolvent should lose the benefit of the law if he secreted any part of his estate a penalty which the Board deemed 'much too light and trivial for an offence commonly enacted a felony.' [An act of New Jersey 'For the Relief of Francis Goelet'; Disallowed 2 Jan 1762.]... Most of the objections made to debtor legislation had to do with provisions which, under the guise of uniformity, did in fact impose particular obstacles to a just recovery by English creditors. Many acts discriminated against the British merchants by so fixing the time for the final settlement of insolvent estates that they were not allowed a sufficient period for presenting and proving their claims. The Virginia bankruptcy law of 1762 provided that the effects of insolvents should be sold at auction within 3 months after the assignment, and a final dividend declared within 18 months... An act of Virginia for the 'Encouragement of Manufactures' was held objectionable because it provided that for all debts, contracted in money or tobacco, the debtor could, upon taking oath as to his substance (in money or tobacco, tender the same in payment and the residue in certain commodities. Notwithstanding the fact that the depreciation of paper currency had advanced the rate of exchange to 40%, it required more than 10 years of urgency from the Board of Trade to secure the amendment of a Virginia law, inadvertently confirmed, by which the tender of paper at 25% was made a legal discharge for sterling debts. Declaring it 'unjust to enact that Debts already contracted shall be hereafter discharged according to an accidental rate of exchange', the Council disallowed a Jamaica act which fixed an arbitrary rate of 40%." (Russell, 1915). "*Connecticut, at the time of the Constitutional Convention, had no general bankruptcy or insolvency law. In 1763, the Province had passed a general Act for the Relief of Insolvent Debtors, but it was repealed the year thereafter, and another act, passed in 1765, was in effect for 2 years only. Since then, insolvent debtors desiring to obtain a discharge from their debts and be protected from imprisonment had to petition the legislature for what was called a special act of insolvency and, sometimes, a special act of bankruptcy. Hardly a session of the General Assembly passed without actions being taken on such petitions. Normally a protection from imprisonment and execution was ordered at the start, and an act of insolvency was passed at a subsequent session, after the creditors had been notified. Such acts embodied the principal features of general bankruptcy or insolvency legislation, provision for assignment of the estate to a trustee, designation of a trustee or trustees, provision for distribution of the assets. discharge from debts, and so forth... The practice of special acts of the legislature for the relief of individual debtors was not limited to Connecticut.*" (Nadelmann, 1957).

468 "*The fear of banking institutions which existed in the minds of the majority of Virginians during the first quarter of the 19th century caused the development of banking to proceed very slowly in that state. In fact, Virginia was among the last of the old states of the Union to embark upon a policy of bank establishment. It was not until the system of discount, deposit, and issue had been extensively adopted by the other states, and after [FBUS] was in full operation, that Virginia definitely decided to permit similar institutions to operate within her boundaries. The activity of commerce and the incentive to useful industry which she beheld springing from such sources and enriching those around her could not be mistaken. In 1790 Maryland had established a bank in Baltimore, and in 1795 another, with a combined capital of $1.5 M. These banks had been of invaluable assistance to the merchants of Baltimore, and, through the accumulation of scattered and idle capital for useful and productive purposes, had been an important factor in the rapid progress of the state. On the other hand, the prejudices of the Virginians during this period against commercial institutions, together with the lack of capital, compelled many of their merchants to become mere retailers for northern importers. [A writer in the Virginia Gazette of Aug 4, 1804, said the above conditions were bound to exist 'until the State shall adopt and support a system of banking and patronage to merchants, instead of delusive and destructive prejudices']... The first bank organized under the principles just outlined was the Bank of Virginia, chartered by the legislature Jan 30, 1804. Its successful establishment marks the real beginning of banking in Virginia. [The little Bank of Alexandria, chartered Nov 23, 1792, was a local institution and created at a time when it was expected Alexandria would soon pass from the state's jurisdiction.]*" (Starnes, 1928).

469 "*Jacob M. Price and Russell R. Menard have contrasted the 'Anglo-Saxon or creditor defense model' of legal remedies against the land with the 'Latin model' used in Brazil where, under Portuguese rule, landed estates were protected from creditors' claims. Menard attributes the rise of centralized plantation slavery in Barbados, but not in Brazil, to this distinction.*" (Priest, 2006). "*Several owned plantations in the West Indies (see Table 1 below) —partly because some had made their original fortunes as planters in the Caribbean before returning to Glasgow to set up as traders on their own account. But plantation ownership was also one consequence of planter indebtedness to merchant houses, since loans were often secured on the plantations and failure to liquidate debts within specified periods could result in foreclosure.*" (Devine, 1978).

470 "*Parliament repealed the Debt Recovery Act with respect to slaves in the remaining British colonies in 1797. See 37 Geo. 3, c. 119 (1797).*" (Priest, 2006). The practice moved to locales with lower indebtedness. "*The Act of 1807 abolished the slave trade as a means of supplying labor to the British West Indian colonies. In 1811 slave trade was made a felonious offense, with the qualification, whether deliberate or not, that slaves could be transported from one British colony, settlement or island in the West Indies to another... There was nothing in the Acts of 1807 and 1811, however, to prevent the transfer of slaves from the older exhausted colonies to those acquired at the end of the French wars in 1815, Trinidad and Britain Guiana; nothing to prevent a colony like Barbados, for example, already holding out that promise of overpopulation which was to encourage it in its 'mission*

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civilisatrice' all over the Caribbean area in the 19th century, from going in for slave breeding on a large scale in the fashion of Virginia and from supplying its new neighbors with the sinews needed so badly after the slave trade had been cut off, at least on paper, at its source. This intercolonial slave trade was carried on under the innocent guise of domestics in attendance upon their owners, in accordance with the provisions of an Act of 1819. Under this guise a trade of truly alarming proportions grew up. There were two aspects to this trade: their export from British to foreign colonies and their export from the old British colonies to the newer colonies acquired at the Congress of Vienna. In Jamaica, Britain's largest island in the Caribbean, where there was almost certainly a sufficiency of slaves for internal purposes, the tendency was rather to export slaves under the cloak of domestic servants than to import them. The Committee of Correspondence of the Jamaica House of Assembly wrote to its agent in England in 1819 stressing the refusal of all inhabitants to violate the Abolition Laws and their determination to prosecute all such violations." (Williams, 1942).

471 Describing Louisiana under Civil Law, but similar principle: "*Most of the literature has approached slavery as a labor system, an 'organizational form or system of production,' according to Gavin Wright, 'as though that term represented a clearly defined, well understood economic arrangement, to be contrasted with 'free' or 'wage' labor.' In a recent article Wright focused on slavery as a 'set of property rights': 'The weight of the evidence suggests that the rise of modern slavery was not attributable to advantages in production or political organization, but to the third set of features... property rights... owners could do things with slaves that they could not do with free persons. Slaves could be bought and sold; they could be transported to any location where slavery was legal; they could be assigned to any task with no legal right to refuse or resign. Moreover, slave prices 'were a basis for credit arrangements across long distances and thus affected settlement patterns throughout the South'... Slaves accounted for most of the collateral for both short-term and long-term credit arrangements in antebellum East Feliciana Parish. It could be argued that the lien, or privilege (which arose by operation of law and was not recorded), on standing crops for supplies furnished to a farm or plantation in fact was the primary form of credit for yearly financing arrangements. However, privileges did not extend to cash advances or credit facilities furnished on open accounts, by far the most important sources of debit entries in account current statements. The Civil Code was only amended after the war to extend the privilege to cash advanced on open accounts.*" (Kilbourne and Wright, 2014). "*Even the great Atlantic failed to sever the nexus of credit which was so much a feature of the British mercantile system. From tidewater planter to piedmont farmer, from seaport merchant to frontier Indian trader, credit forged an invisible band that was both a condition of economic growth and a source of disunity. Few species of property escaped hypothecation: the Negro slave, no less than the land and tools with which he worked, was pledged as security for a loan. 'Credit is a thing so very common here', wrote a Virginian on the eve of the Revolution, 'that there is not one person in a 100 who pays the ready money for the goods he takes up to a store....*'" (Sheridan, 1960).

472 *By the mercantilist-agrarian system of tobacco production and export, so closely interwoven with problems of land and slaves and of trade and merchants, the Virginia planter was constantly burdened with financial obligations that could not be liquidated so long as the system remained intact. The Revolution gave the planter the theoretical right to control the system, but actual circumstances prevented its exercise inasmuch as the planter could not bring concerted political and economic action through a powerful national or state government. Furthermore, the planter lacked ships, experienced seamen, adequate knowledge of mercantile enterprise, and efficient methods of farming needed to remove the incubus of the old commercial system and to eliminate the baneful effects of the essentially one-crop system of tobacco culture. Both before and after the war, British merchants carried Virginia exports and imports in British bottoms. Tobacco was shipped to Britain in exchange for manufactured articles, while, to a lesser extent, corn, beef, pork, wheat, and timber went to the West Indies in return for rum, sugar, and molasses. This cycle was definitely colonial in origin; it was not destroyed by the Revolution despite the fact that British laws of the Revolutionary period, which Virginians regarded as discriminatory, removed the old preferential guaranties accorded continental exports to the West Indies. The tobacco trade remained primarily a monopoly of British mercantile firms... The fears that old debts would be collected through the new federal courts were soon justified. 4 days after Virginia ratified the Constitution, St. George Tucker, a prominent legal scholar, wrote to his stepsons, one of whom was the youthful John Randolph of Roanoke: 'You will have heard that the Constitution has been adopted in this State. That event, my dear children, affects your interest more nearly than that of many others. The recovery of British debts can no longer be postponed, and there now seems to be a moral certainty that your patrimony will all go to satisfy the unjust debt from your papa to the Hanburys. The consequence, my dear boys, must be obvious to you. Your sole dependence must be on your own personal abilities and exertions.*'" (Low, 1953).

473 "*The British merchants who submitted a statement respecting debts owed by Americans to British creditors estimated that with interest these amounted to £4.9 M, five-sixths of which was owed by the more Southern States of the Union, with £2.3 M owed by Virginians... Thomas Jefferson —who served as governor of the new state of Virginia in the course of the War for American Independence— when called upon in 1786 to supply information, was only hazarding an estimate when he wrote: 'Virginia certainly owed £2 M to Great Britain... Some have conjectured the debt as high as £3 M. I think that state owed [before the outbreak of the War] near as much as all the rest [of the states] put together*." (Gipson, 1961).

474 "*Virginia certainly owed £2 M to Great Britain... Some have conjectured the debt as high as £3 M. I think that state owed [before the outbreak of the War] near as much as all the rest [of the states] put together... These debts had become hereditary from father to son for many generations, so that the planters were a species of property annexed to certain mercantile houses in London*." (Cited in Gipson, 1961).

475 "*[A]fter the news had reached America in 1783 of the signing of the peace preliminaries between the United States and Great Britain - embodying a clause that no lawful impediment should be placed in the way of British creditors seeking to obtain payment of debts owed by Americans before the outbreak of the war — George Mason wrote to Patrick Henry that a complaint had been voiced in his presence: 'If we now have to pay the debts due to British merchants, what have we been fighting for all this while?' In line with this position the citizens of Halifax County adopted a series of resolutions in the spring of 1783 denouncing the agreement entered into by the government of the Confederation of the United States for the 'payment of debts contracted before the Revolution.' In the resolutions it was affirmed 'The debts of the British merchants are equally forfeited with their rights of property among us, and we can never consent that the good citizens of this state shall lay at the mercy of British creditors on account of such debts.' One point at least cannot escape the attention of the inquiring student. It is the surprising fact that in this most British of all colonies, Virginia, there was, with the outbreak of war, scarcely a loyalist to be found among the great planter group and scarcely a patriot among those established in the province as merchants. It is also a fact that most of the private debts owed to British creditors were never paid and that various laws were passed between 1777 and 1782 to relieve Virginia debtors from*

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British claims. Ultimately — after the negotiations, under terms of the Jay treaty of 1794 by a joint commission concerned with American private debts owed to British subjects, had failed - the government of the United States was to agree in 1802 to liquidate all British private claims - calculated at £5.6 M— against its citizens by the payment of £0.6 M in 3 annual installments. The responsibility was thereupon to rest with the British government for apportioning this sum among the multitude of British creditors." (Gipson, 1961). "*After this review of the cases decided in the English courts I believe it will not be disputed, that there is a well settled rule upon the subject there established, and that the same was clearly fixed before the independence of these states. So generally was it received as a rule of international law, that Lord Thurlow heard with surprise, in 1787, that some of the states in America did not respect the title of the assignees under an English commission. He said, that 'he had no idea of any country refusing to take notice of the rights of the assignees under their laws, and he believed every country on earth would do it, besides.' [Ex parte Blakes, 1 Cox, 398.]*" (Livermore, 1828).

476 "*Most state legislatures enacted statutes affirming that the remedial regime existing prior to the American Revolution would remain in place without substantial modification. Indeed, the early state legislation was even more explicit than analogous colonial legislation that its purpose was to signal to creditors that the state's real property law offered few opportunities for debtors to shield assets from creditors' claims. A North Carolina statute of 1777 that extended the Debt Recovery Act, for example, stated that it was directed toward 'divers Persons residing in other States or Governments [who] contract Debts with the Inhabitants of this State', and that 'by the Policy and Genius of our present Constitution, Lands and Tenements ought to be made subject to the Payment of just Debts, when the Debtor hath not within the Limits of this State Goods and Chattels sufficient to satisfy the same.'... The abolition of the practice of entailing property in the 1780s was another means by which state legislatures attempted to improve the terms of credit offered to the newly independent states. By abolishing the entail, the state legislatures removed the principal remaining mechanism by which landowners could protect their real property assets from the claims of creditors in the era after the Debt Recovery Act... North Carolina's state legislation and judicial decisions, such as D'Urphey and Waters, reflected a broader ideological position that asserted that protections to real property from the claims of creditors were undesirable remnants of aristocratic England that had no place in republican America. It is notable that the judges in both the D'Urphey and Waters opinions felt compelled to state explicitly that the laws at issue purposefully rejected the value system of the English landed class that privileged heirs. In doing so, these judges related protecting creditors' interests and streamlining judicial process with dismantling the vestiges of feudalism (which historians have previously associated with the abolition of primogeniture and the entail)... Statutes passed in New York in 1787 and 1801 [Act of Mar. 19, 1787, ch. 56, 1787 N.Y. Laws 108; see also Act of Mar. 31, 1801, ch. 105, 1 80 1 N.Y. Laws 388 (reenacting 1787 law)], were more typical: they required courts to treat land exactly like personal property for the satisfaction of debts, but added the requirement that the personal property be exhausted first*." (Priest, 2006). "*There was no further legislation on entails until 1776, when the Virginia legislature enacted Thomas Jefferson's bill abolishing entails*." (Keim, 1968).

477 "*An examination of the origin of the bankruptcy clause in the Constitution will show that this subject was akin to or closely related to commerce. It is interesting to note that the fathers of bankruptcy legislation in this country were Rutledge and the Pinckneys of South Carolina... Mr. Pinckney moved to commit Article 16, which was the 'full faith and credit clause' of the Constitution, with the following proposition: 'To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange;' thus showing that at that early date he regarded bankruptcy as a part of the law merchant, or a regulation of commerce. On Sep 1, 1787, Mr. Rutledge, afterwards Chief Justice, reported for the Committee which considered this subject that the provision 'to establish uniform laws on the subject of bankruptcies' should be incorporated with the provision where it now stands relative to a uniform rule of naturalization. On Mon, Sep 3, 1787, when the subject was reached for discussion, the following observations were made: 'Mr. (Roger) Sherman (of Connecticut) observed, that bankruptcies were in some cases punishable with death, by the laws of England; and he did not choose to grant a power by which that might be done here*.'" (Olmstead, 1902). "*An amendment to the Constitution was proposed by the ratifying convention of [NY in 1787], to the effect that the power of passing uniform laws on bankruptcies should be limited to an application to only merchants and other traders[, States allowed to pass laws to relieve other insolvent debtors]; but it did not meet favor even in that convention. At the present time it is readily seen that such a limitation... would have impaired the usefulness of this clause and would have necessitated an amendment to the Constitution to permit the development of the present system. The North Carolina ratifying convention, as well as... the Maryland ratifying convention, argued for the retention of the right of impairing the sacredness of contracts by the State legislatures*." (Noel, 1919).

478 "*An examination of the origin of the bankruptcy clause in the Constitution will show that this subject was akin to or closely related to commerce. It is interesting to note that the fathers of bankruptcy legislation in this country were Rutledge and the Pinckneys of South Carolina... Mr. Pinckney moved to commit Article 16, which was the 'full faith and credit clause' of the Constitution, with the following proposition: 'To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange;' thus showing that at that early date he regarded bankruptcy as a part of the law merchant, or a regulation of commerce. On Sep 1, 1787, Mr. Rutledge, afterwards Chief Justice, reported for the Committee which considered this subject that the provision 'to establish uniform laws on the subject of bankruptcies' should be incorporated with the provision where it now stands relative to a uniform rule of naturalization. On Mon, Sep 3, 1787, when the subject was reached for discussion, the following observations were made: 'Mr. (Roger) Sherman (of Connecticut) observed, that bankruptcies were in some cases punishable with death, by the laws of England; and he did not choose to grant a power by which that might be done here*.'" (Olmstead, 1902). "*An amendment to the Constitution was proposed by the ratifying convention of [NY in 1787], to the effect that the power of passing uniform laws on bankruptcies should be limited to an application to only merchants and other traders[, States allowed to pass laws to relieve other insolvent debtors]; but it did not meet favor even in that convention. At the present time it is readily seen that such a limitation... would have impaired the usefulness of this clause and would have necessitated an amendment to the Constitution to permit the development of the present system. The North Carolina ratifying convention, as well as... the Maryland ratifying convention, argued for the retention of the right of impairing the sacredness of contracts by the State legislatures*." (Noel, 1919). "*The power to pass laws on the subject of bankruptcies was not in the original draft of the constitution. The original article was committed to a committee together with the following proposition: 'to establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange.' The committee subsequently made a report in favor of incorporating the clause on the subject of bankruptcies into the constitution; and it was adopted by a vote of 9 states against 1.*

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The brevity, with which this subject is treated by the Federalist, is quite remarkable. The only passage in that elaborate commentary, in which the subject is treated, is as follows: 'The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds, where the parties or their property may lie, or be removed into different states, that the expediency of it seems not likely to be drawn in question.'" (Story, 1833).

479 "*Bankruptcy is 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*." (Smith, 1776). "*Contemporary bankruptcy law is often viewed as a creditor funded social welfare program to ameliorate the condition of insolvent debtors, but its origins are deeply rooted in criminal law to prevent debtor perpetrated fraud. Historically, bankruptcy was defined as a form of debtor fraud. Under early English and American jurisprudence, debtors were defendants accused of committing 'Acts of Bankruptcy,' typically absconding without paying debts, and such originally required 'the intent or purpose to defraud or hinder' creditors. Several acts of bankruptcy were capital felonies. Debtors convicted of bankruptcy in England could be hanged until an 1820 enactment substituted 7 years, with or without hard labor, for the death penalty. Bankrupts also once became legally infamous — they could not vote, hold public office, sit on juries, and in some countries lost commercial in addition to political rights... The U.S. Supreme Court in Continental Bank v. Chicago, Rock Island & Pacific Railway (1935) noted, 'The English law of bankruptcy, as it existed at the time of the Constitution, was conceived wholly in the interest of the creditor and proceeded upon the assumption that the debtor was necessarily to be dealt with as an offender. Anything in the nature of voluntary bankruptcy was unknown to that system...*" (Pomykala, 2000).

480 "*That where any bond for the payment of the duties shall not be satisfied on the day it became due, the collector shall prosecute for the recovery of the money due thereon, by action or suit at law, in the proper court, having cognizance therein; and in all cases of insolvency, or where any estate in the hands of executors or administrators shall be insufficient to pay all the debts due from the deceased, the debt due to the United States on any such bonds shall be first satisfied*." (United States Congress, 1789, p42). Similarly see United States Congress 1792, p263 and 1797, p515. "*In all cases of insolvency or bankruptcy of a debtor of the United States, they are entitled to payment out of his effects. The United States v. Fisher [Feb 1805]. The United States have no lien on the estate of their debtor, until suit brought, or a notorious insolvency or bankruptcy has taken place; or, tieing unable to pay all his debts, he has made a voluntary assignment of all his property; or the debtor having absconded, concealed, or absented himself, his property has been attached by process of law. United States v. Hooe [1805]. The 5th section of the act of March 3, 1797, giving a priority of payment to the United States out of the effects of their debtors, did not apply to a debt due before the putting of the act, although the balance was not adjusted at the treasury until after the act was passed. United States v. Bryan [Feb 1815]. In case of insolvency the United States are not entitled to a priority of payment, unless the insolvency be a legal and known insolvency, manifested by some notorious act of the debtor, pursuant to the act of Congress. Prince v. Bartlett [Feb 1814]. The United States are not entitled to a priority over all creditors, under the 65th section of the act of March 2, 1799, upon the ground of the debtor having made an assignment for the benefit of his creditors, unless it is proved that it is all the debtor's property. The priority or the United States does not attach by the mere concealment of the debtor when insolvent. United States v. Howland et al., 4 Wheat. [1819].*" (Little and Brown, 1850, p263)

481 "*Jefferson also objected that the bill would invoke federal intervention too readily by treating any move across state lines as an act of bankruptcy, even though the debtor remained subject to legal process under the full faith and credit clause. He deeply disagreed with the power given to commissioners to 'enter houses, break open doors, chests, etc.' to search for assets, asking rhetorically, 'Is that spirit of independence and sovereignty which a man feels in his own house, and which Englishmen felt when they denominated their houses their castles, to be absolutely subdued, and is it expedient that it should be subdued?'—thus echoing James Otis's argument against writs of assistance before the Revolution*" (Mann, 2009). "*The term Writs of Assistance stirs to recollection an image of irritated and indignant American colonists protesting against tyrannical Britain. James Otis, portrayed by John Adams as a 'flame of fire', assumes the heroic role attacking with 'a torrent of impetuous eloquence the terrible menacing monster'; with his words our pre-revolutionary ancestors are imbued with the spirit of independence... Writs of assistance, first authorized in England, by a statute of Charles II, were warrants issued by a court, upon the application of the surveyor-general of the customs, to an inferior officer of the customs, authorizing him to search for 'uncustomed' goods, or goods illegally imported. As 'general' warrants available in any case where search was needed, they did not require that specific information in each instance be given previously to the court. Not until a century later was the first writ of assistance issued in the colonies [Quincy (1865, p405-6)]... Before 1755, the colonial governors had issued only special search warrants, which authorized search only in places set forth in the warrant and upon information given on oath that smuggled goods were hidden there*." (Hickman, 1932). "*The year 1660 appears to have been the first time that legislation for power of customs search was found necessary. Even the weighty customs enforcement statute of 1558 was silent on this aspect of its subject. [1 Eliz. 1, c. 11. There appears to have been a brief spasm of legislative activity on powers of search in 1604, early in the reign of Elizabeth's successor: 2 Jac. 1 c. 20 (regulation of the 'Art or Mystery of Painting'), and 2 Jac. 1, c. 22 (leather cutting). And another in 1622: 21 Jac. 1, c. 18 and c. 19 (respectively, woolen cloths and commissioners in bankruptcy). Such specimens are not numerous, however, or related to smuggling. Act of 15 Car. 2, c. 7.] Yet a power to move in and seize the offending goods was essential if forfeiture, long a fundamental institution of customs enforcement law, was to bite to full effect... The 1660s brought forth a good many statutory enactments on powers of entry on to private property. There was much besides the customs legislation of 1660 and 1662. The regulation of a certain trade might be facilitated by its authorities being given statutory power to enter premises in order to inspect specimens of the product. [For example, baize-making (12 Car. 2, c. 22, §5); 13 & 14 Car. 2, c. 7 permitted wardens of the curriers' company to search for illicit export consignments of leather.] Statutory protection of timber for shipbuilding extended to search by warrant of particular places where unlawfully cut wood was suspected to be [15 Car. 2, c. 2, §3.] The notorious Licensing Act of 1662 provided for access to places thought to harbor uncensored press material [13 & 14 Car. 2, c. 33.] Another act of 1662 enabled the dwellings of persons considered 'dangerous to the Peace of the Kingdom' to be searched for arms [13 & 14 Car. 2, c. 3.] The significance of all this legislation is that there had been very little like it before. Hitherto the English statute book had hardly anything on powers of entry and search*." (Smith, 1978). *[T]he controversial writ of assistance issued by courts of equity in England and in the American colonies prior to 1789. In its modem form, a writ of assistance is akin to a writ of possession at law, whereby a court orders the transfer of title to and possession of real property based upon a previously entered decree. Historically, a writ of assistance could also be issued commanding an officer of the court*

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to put a party in possession of property to which she is entitled. This writ authorized a sheriff to search and 'break open all necessary doors, if the possession be not quietly delivered.' More significantly, the writ of assistance was often utilized to place property into the hands of receivers, a position that functions akin to today's bankruptcy trustee. More generally, the writs of assistance utilized in pre-revolutionary America were akin to general search warrants 'that permitted the authorities to search anywhere they pleased for any reason—or for no reason.' This included searches of homes, oftentimes in search of uncustomed goods. The writs of assistance and general warrants were 'anathema in the colonies' and served in part as a catalyst for the Revolution and for the Fourth Amendment's inclusion in the Constitution. By all accounts, the Fourth Amendment served to remedy and prevent writs of assistance and general warrants from issuing in America after the adoption of the Constitution." (Sousa, 2012).

482 UST Secretary Hamilton connected the constitutionality of the national bank directly to the that of uniform currency and bankruptcy: "*There are laws concerning bankruptcy in some States. Some States have laws regulating the value of foreign coins. Congress are empowered to establish uniform laws concerning bankruptcy throughout the United States, and to regulate the value of foreign coins. The exercise of either of these powers by Congress, necessarily involves an alteration of the laws of those States. Again: every person, by the common law of each State, may export his property to foreign countries at pleasure; but Congress, in pursuance of the power of regulating trade, may prohibit the exportation of commodities; in doing which, they would alter the common law of each State, in abridgment of individual right. Again. Every person, by the common law of each State, may export his property to foreign countries, at pleasure. But Congress in pursuance of the power of regulating trade, may prohibit the exportation of commodities; in doing which, they would alter the common law of each State, in abridgment of individual right. It can therefore never be good reasoning to say this or that act is unconstitutional, because it alters this or that law of a State. It must be shown that the act which makes the alteration is unconstitutional on other accounts; not because it makes the alteration*" (Hamilton, 1791). Similarly, in *Federalist no. 44* (1788), Madison noted that "*it may be observed that the same reasons which shew the necessity of denying to the States the power of regulating coin, prove with equal force that they ought not to be at liberty to substitute a paper medium in the place of coin. Had every State a right to regulate the value of its coin, there might be as many different currencies as States; and thus the intercourse among them would be impeded… The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question.*"

483 Rep. James Madison (DR-VA) opposed the formation of FBUS and SBUS later as President: "*On the whole, when it is considered that the proposed establishment will enjoy a monopoly of the profits of a national bank for a period of 20 years; that the monopolized profits will be continually growing, with the progress of the national population and wealth; that the nation will, during the same period, be dependent on the notes of the bank for that species of circulating medium, whenever the precious metals may be wanted, and at all times for so much thereof as may be an eligible substitute for a specie medium; and that the extensive employment of the notes in the collection of the augmented taxes will, moreover, enable the bank greatly to extend its profitable issues of them, without the expense of specie capital to support their circulation; it is as reasonable as it is requisite that the Government, in return for these extraordinary concessions to the bank, should have a greater security for attaining the public objects of the institution than is presented in the bill, and particularly for every practicable accommodation, both in the temporary advances necessary to anticipate the taxes, and in those more durable loans which are equally necessary to diminish the resort to taxes.*" (Miller, 1913).

484 "*While those Americans sympathetic to capitalist development routinely supported measures to promote the extension and rationalization of the credit network, those in the republican tradition perceived in credit a mysterious rule guided by whim and illusion, 'the evil Spirit of general Vogue,' and the fortunes of speculation. Credit, in their view, embodied the fickle, unpredictable currents of change destructive to a virtuous republic. Thus, credit stood paramount among the forms of transient or imaginary property that threatened to usurp the position of the 'real' property (in both senses) of the agriculturalist. With the increase in credit utilization that accompanies commercial development, the incidents and consequences of default expand as well. Hence, a modem credit system requires a systematic approach to the administration of unpaid debts. Bankruptcy measures provide a means to marshal and distribute an insolvent debtor's assets among his creditors while discharging the debtor from any remaining obligations. This mechanism has been described as a signal characteristic of economic modernity, 'the result of the complex development to which modem society has attained*.'" (Sauer, 1994).

485 "*Yet what seems more significant in explaining the persistence of the powerful anti-bankruptcy strand in 19th-century American politics is that bankruptcy legislation highlighted the classic divide in American politics between the Hamiltonian vision of a commercial nation and the Jeffersonian vision of a decentralized agricultural republic. 'Is commerce so much the basis of the existence of the United States as to call for a bankrupt law?' asked Jefferson in 1792. 'On the contrary, are we not almost agricultural?' Bankruptcy legislation thus became a lightning rod, like the national bank and later the gold standard, in the symbolic politics of national definition.*" (Witt, 2003).

486 "*The stimulus to the preceding expansion hardly came from harvests, which were poor for most of the decade, though corn prices were lower in the early part of 1786 and 1787 than in other years. Domestic investment, however, offered good prospects, with the expiry of Arkwright's patents in 1785 and with fresh technical advances in the cotton industry. The conditions of domestic trade tended to check expansion between 1784 and 1787 because of inadequate water supplies in rivers, streams, and canals, but this was probably a serious drawback only in 1785... Prices rose from the end of 1786 and reached a maximum at the end of 1787, thereafter turning steadily downwards until the first quarter of 1790. Bankruptcies were at their worst in the second and third quarters of 1788. A perusal of the London Gazette for the year shows that bankruptcy occurred in many parts of the country; nor was the crisis a purely domestic phenomenon: there was an industrial crisis in France also, and in Scotland most of the distillers and corn dealers failed in Feb and March. Yet, if the country as a whole was affected, the real crisis was in the cotton industry, and apparently in other textile industries as well by the end of the year... There had been a great expansion of the cotton industry, and one writer put the reduction in prices of muslins at from 33 to 50%. The expansion of the trade and of the manufacture owed much to accommodation bills, the misuse of which brought on the crisis. A regular network of this kind of finance can be pieced together from the petitions heard in bankruptcy cases during 1788 and following years. Messrs. MacAlpine, Young, Barr & Maddocks were in partnership as calico printers; the first 2 managed the business at Perth, the last 2 in Cheapside, London. Barr and Maddocks dealt with Davison & Baker, linen drapers in Cheapside, who were by Feb 1788 accepting some bills for them. Early in April MacAlpine, on behalf of his*

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firm, 'exchanged... bills of exchange with... Davison and Barr for the mutual accommodation of both parties' who thereupon negotiated them to their own advantage. Later that month there came the first of a series of bankruptcy commissions against the firm of MacAlpine & Co. Another linen drapery business, with which MacAlpine's had dealings of an extensive nature, was that rim by a Thomas Jeffrey; each drew hills on the other, and those drawn on Jeffrey were accepted by him 'merely for the accommodation' of MacAlpine & Co. At Jeffrey's bankruptcy in May 1788, he was owed over £16,000 for goods delivered to the other firm; in addition, outstanding bills drawn on them by him amounted to over £8,000, while bills drawn on Jeffrey by MacAlpine's amounted to almost £14,700. Jeffrey had negotiated these bills. He had also negotiated many fictitious bills drawn by Livesey, Hargreaves & Co. For their part, Livesev & Co. had dragged down one of their London agents, Messrs. Gibson & Johnson, with whom they had begun to keep an account about 1785. Gibson & Co., who seem to have been somewhat ingenuous dupes of their Lancashire correspondent, had strained their own resources by accepting for Livesey & Co. at dates shorter than those of hills they paid in; when Livesey & Co. failed in June 1788 they owed to Gibson and Johnson almost £30,000, besides interest and commission of some £674. Gibson & Co. were first gazetted in May, but the stoppage had certainly occurred earlier. Its regular customers included such eminent manufacturers as the Arkwrights, the Strutts, and Brockle-burst & Co., and its failure must have tended to dislocate their business. For several years Arkwright and others sought with limited success to recover the many thousands of pounds immobilized by the bankruptcy of Gibson & Co. The crisis of 1788 seems, therefore, to be explicable largely in terms of a domestic boom and of temporarily attractive trade conditions. There were 3 country bank failures, besides that of Livesey & Co., who were gazetted as calico manufacturers. Allen & Co. of Manchester were gazetted in June 1788; they had close banking connections with Livesey & Co. A month earlier Messrs. Crane had failed in Liverpool —a town which could hardly avoid being affected by a Lancashire crisis. The third failure—it was in fact the earliest of the 3—occurred in March in Norwich, the center of a textile industry of a different kind: there are some signs in the London Gazette for the year of difficulties in East Anglia. Because the antecedent boom had occurred in a particular industry, other banks were shaken but there was no general collapse." (Pressnell, 1956). "*In spite of great industrial activity, there had been no conspicuous movements in general prices —a moderate fall from 1787 to 1789, with some resulting embarrassment to traders and a high figure of bankruptcies in 1788; a rise in 1790; and after that a fairly steady course for 2.5 years.*" (Clapham, 1945). "*A financing device long considered legitimate and desirable was adapted —or perverted— to uses deemed improper under prevailing financial mores... In the year 1788, the firm of Livesey, Hargreaves & Co. of Lancashire went bankrupt. The firm was one of the largest cotton manufacturing enterprises that developed in the early stages of the Industrial Revolution in England... the firm 'employed between 700 and 1,000 printers... they were said to be the means of giving bread to near 20,000 persons' and their cloth out at bleaching was reputed to occupy more than 12 miles'... The fictitious payee cases arising out of the Livesey failure presented the courts with a classic legal dilemma. Although the cases turned on very narrow and technical rules of pleading and evidence, major issues of justice and economic policy were implicated. From the perspective of the holders of the bills, the argument against them seemed outrageous. Having resorted to the sham of issuing the bills in the name of fictitious payees, the perpetrators of the scheme sought to escape liability on the grounds that the holders were unable to prove the handwriting of the non-existent payees. That view of the cases clearly influenced many of the judges. The matter, however, was not really that simple. Since Livesey had gone bankrupt, the real fight was not between the holders of the fictitious bills and the partners of Livesey, but between the holders of such paper and other creditors of the firm. If the holders of the fictitious paper could not recover, the other creditors would receive a larger dividend in the Livesey bankruptcy. Thus, even as a matter of private rights, the case was a hard one. The cases were made even more difficult by the public concerns they raised. These cases were the first real test of how the law of bills should respond to the economic problems posed by use of accommodation paper. One of the striking things about the cases is that the judges quite openly discussed the possible economic and social consequences of the decisions that they were called upon to make. As Mr Justice Heath said in his opinion in the House of Lords, 'It is agreed on all hands, that the circulation of these bills is extremely mischievous, and ought to be restrained. It is the great commercial evil of these days, which has grown to a gigantic height. It has enabled needy adventurers to engage in desperate undertakings, relying on the money which they raise on this fictitious credit. On the present question, a million of property now depends. No wonder that this traffic has spread poverty, distress, and bankruptcy, through large districts which it has pervaded.' There was, however, no agreement on the proper response of the legal system.*" (Rogers, 2004).

487 "*Recovery from the recession was hampered by unfavorable weather and harvests from 1788 to 1790. There had been an 'unparalleled Dry Summer' in 1788 and then a frost which had impeded trade, recorded the minutes of the Oxford Canal in 1790, in explaining why no dividend had been made since 1787. Crops were bad in 1789, and a wet summer in 1790 helped to keep corn prices at fairly high levels. Strained relations with Spain involved government borrowing on Exchequer bills and through the Consolidated Fund of some £3 M together with a loan of £0.5 M... Poor harvests and uncertainty in international affairs no doubt account for the hesitant fall in interest rates during 1790 and the early months of 1791. But the Spanish anxieties seemed to have cleared before summer 1791, and the year's harvest was good. Domestic investment entered a boom period. Canals remained the great attraction they had been before the crisis of 1772-3 and then the American war had virtually stifled new investment in them: only 1 new canal was promoted between 1779 and 1787. 1 was promoted in 1788, 2 in 1789, but only 1 in 1790. The better conditions of 1791 were reflected in the promotion of 4 new canals; the boom atmosphere of 1792 and the early part of 1793 brought 6 and 18 new canals respectively. To these figures must be added 3 Acts for extending existing canals or for improving rivers in 1792, and 13 in 1793... [Annual investment approved by Parliament between 1788-95: 115; 134; 377; 804; 1,064; 3,160; 2,589; & 385.] In addition, there were numerous projects for the enclosure of land, the construction of roads and bridges, and for local improvements. Chalmers estimated in 1794 that 418 Acts for such purposes had been passed in the previous 3 years, about as many as in the preceding, 5-year period, 1786-90. The boom was accompanied by a price rise that was gradual in 1791 and 1792, but which accelerated sharply during the first half of 1793.*" (Pressnell, 1956).

488 "*In Jan 1790, Hamilton presented to Congress his first Report on Public Credit, which called for funding the national government's domestic debts at par and assuming the debts the states had incurred when fighting the War of Independence. The report also suggested reducing the rate of interest paid on the restructured domestic national debt from 6 % to 4 %, but paying off the debt to foreign nations according to the terms of the original debt contracts. After 6 months of debates and political dealings behind the scenes, Congress in July 1790 adopted the essence of Hamilton's recommendations. Holders of old evidences of debt began voluntarily to exchange them for packages of new Treasury debt consisting of 6% bonds, or sixes—6% 'deferred' bonds (interest*

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at 6% would commence in 1801, so for 10 years these were 'zeros') or deferreds—and for 3% bonds, or threes, all repayable at the pleasure of the government, that is, with no fixed maturities." (Sylla et al., 2009). James Madison opposed this and instead "*proposed that the purchasers should receive the highest average price at which the debt had been sold. and the original holders the residue, both to have interest at 6%... In favor of the proposition it was, among other things, urged that the case was in many respects so extraordinary that the usual maxims were not strictly applicable. The debt originally contracted, it was said, was to be paid in gold and silver, but, instead of this, paper had been substituted, which the creditors were compelled to take. This paper they had parted with, either from necessity or a well-grounded distrust of the public. In either case they had been injured, and suffered loss from the default of the debtor, and in justice the debtor ought not to take advantage of this default. The original debt had never been discharged, because the paper had been forced upon the creditors. A composition, therefore, between the purchasers and the original holders, by allowing the former an average price at which the debt had been sold and paying the latter the residue, would do equal justice to both. In opposition to the measure it was said in the first place that the discrimination proposed was a violation of the original contract on the part of the public. That, by the terms of the certificates given to the original creditors, the debt was made payable to assignees or to bearer; and, of course, the contract was made with the purchaser as well as with the original holder. That it was impossible for Government to examine into the private transactions between the original creditor and his assignee. The debt had been purchased at the market price, and the creditor had parted with his security for what he deemed an equivalent; and, however unfortunate might be the situation of some, who from."* (Miller, 1913). FBUS was "*modelled upon [BOE], and acted as a collector of and depository for public funds, issued notes and made loans to the Federal government. Organized as a joint stock bank, with private shareholders constituting the majority owners*" (Goodhart et al., 1994). "*Congress has necessarily been concerned from the beginning to provide appropriate safeguards for government funds. One of the motives in the establishment of [FBUS] was its availability as a safe depositary for such funds. They were kept there until the expiration of that Bank's charter in 1811."* (Frankfurter, 1938). Moreover, the *Coinage* (*Mint*) *Act*, passed on April 2, 1792, formalized bimetallic monetary standard by creating the United States dollar as the country's standard unit of money, establishing the *United States Mint*, and regulating the coinage of the United States.

[489]"*On July 4, 1791, [FBUS] direct public offering of securities was heavily oversubscribed. Investors that day paid only $25 per 'scrip', a call option on a share. To obtain a $400 full share, the owner of a scrip had to make additional payments of $100, one-quarter in specie and three-quarters in U.S. debt, on Jan 1 and July 1, 1792, and Jan 1, 1793, with a final payment of $75 in U.S. debt due on July 1, 1793. The BUS became organized in the autumn of 1791, and its Philadelphia headquarters opened for business that Dec. [FBUS] also opened branches in Boston, New York, and Charleston in early 1792, in the midst of the panic; launched a branch in Baltimore in June 1792; and, later, opened the doors of additional branches in Norfolk, Washington, D.C., Savannah, and New Orleans*." (Sylla et al., 2009).

[490] "*The first canal of any importance actually begun in the United States was the 2-mile cut through the rocks about the Southment Hadley falls of the Connecticut. The Massachusetts legislature passed an act in 1792, incorporating the 'Proprietors of the Locks and Canals on Connecticut River.' Work was begun at once with Dutch capital, and in two years the canal was completed... In Pennsylvania the Schuylkill and Susquehanna canal company was incorporated in 1791, and the Delaware and Schuylkill Canal Co, the following year. In 1792 New York chartered the Western Inland Lock Navigation company to connect the Mohawk with Lake Ontario, and the Northern Inland Lock Navigation Co to link the Hudson with Lake Champlain... To the west of Philadelphia lay the Susquehanna valley. The natural outlet of this growing region was down the Chesapeake to Baltimore. To attract traffic to the Quaker city a company was organized in Philadelphia in 1792 to build the Lancaster Pike, which was the first turnpike in this country built by voluntary subscription*." (Cleveland and Powell, 1909) "*People speculated in all types of 'internal improvement' investments, e.g., canals, turnpikes, mining*." (Frimet, 1991). "*[A] wild wave of speculation in Government scrip and in the shares of every kind of corporation — bank, canal, turnpike, manufacturing, coal and land companies which had been recklessly organized everywhere and whose stock found eager subscribers."* (Warren, 1935)

[491] "*The first hearing of arguments on the British debt pleas began on 24 Nov 1791 and continued for more than a week in the courtroom of the Capitol in Richmond. The federal circuit court at this term included two Virginians: District Court Judge Cyrus Griffin and Associate Justice John Blair. The third member of the bench was Associate Justice Thomas Johnson of Maryland. The case selected for the purpose was Jones v. Walker, one of the suits brought by the surviving partner of Farell & Jones... Jones v. Walker was continued to the May 1792 term, when Griffin was joined by just one Supreme Court justice, James Wilson of Pennsylvania. Much to the disappointment of British plaintiffs, Wilson refused to decide on the points argued at the last term or to hear any suits for British debts, though more than a hundred were set for trial. The court adjourned after meeting only a week. Again at the Nov 1792 term only two judges attended, Griffin and William Cushing of Massachusetts. Illness prevented Chief Justice John Jay from accompanying Cushing, a 'political sickness', muttered one frustrated creditor. The result was another suspension of the British business for want of a full court, though two made a quorum. Finally, at the May 1793 term a full court was present: Gr James Iredell of North Carolina. The plaintiff William Jones had since died, however, which meant that his numerous suits had to be revived by special writs in the name of his administrator, John Tyndale Ware. This could not be done before the session began, but to prevent still another postponement the court, with the defendant's consent, ordered one of the cases to be revived in Wares name: the suit against Richmond merchant Daniel L. Hylton, which accordingly became the new test case. A second hearing on the British debt pleas took place between 24 May and 7 June 1793. On the latter date the court struck down three of the pleas, but on the loan office plea Iredell and Griffin overruled Jay, whose sympathy for the creditors was public knowledge, and declared that payments under Virginia's sequestration law were a lawful discharge of the debt... That of Judge Iredell was included in the report of the appeal of Ware v. Hylton as heard by the Supreme Court in 1796."* (Hobson, 1984). "*British merchants were defeated in the Virginia Supreme Court in the case of Jones vs. Walker, called Nov 23, 1791...*" (Low, 1953).

[492] "*Just before 'the paper bubble burst', he wrote, in March 1792: 'This nefarious business is becoming more and more the public detestation, and cannot fail, when the knowledge of it shall be sufficiently extended, to 'tumble' its authors headlong from their heights. Money is leaving from the remoter parts of the Union and flowing to this place to purchase paper; and here, a paper medium supplying its place, it is shipped off in exchange for luxuries. The value of property is necessarily falling in the places left bare of money. In Virginia, for instance, property has fallen 25% in the last 12 months.'*" (Warren,

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1935). "*1792: Prosperity; financial distress. Continued activity and expansion, little affected by financial difficulties; South depressed; exports increase, marked decrease in imports. Active speculation, especially in [FBUS] stock, brings financial crisis and short panic, Jan; money eases, spring, and speculation again vigorous, autumn. Excellent wheat crop.*" (Thorp, 1926).

493 "*Hamilton clearly saw trouble brewing at [FBUS], which had recklessly overexpanded its credit creation when it first opened. By Feb, [FBUS]suffered the consequences of that credit overexpansion as holders converted its liabilities into specie at [FBUS'] counters. Its specie reserves declined from $0.71 M on Dec 29, to $0.51 M on Jan 31, and then to $0.24 M on March 9. In response to the drain, [FBUS] sharply contracted its discounts, which declined from $2.68 M on Jan 31 to $2.05 M on March 9. Between those two dates, BUS monetary liabilities declined less, from $2.17 to $2.06 M, and its notes outstanding actually rose by $5,000.*" (Sylla et al., 2009). The scrips were "*heavily oversubscribed within 1 hour after the books were open... many would be subscribers were entirely excluded... Just as the bull market in scrip reached its zenith Secretary Hamilton intervened with a few words of warning to extreme speculators. Prices sank rapidly... Active speculation was resumed within a few weeks and continued for months, being a major factor in the New York stock market panic of March 1792.*" (Wettereau, 1937). "

494 "*[T]he contraction of [FBUS] discounts by $0.62 M from Jan 31 to March 9 severely damaged speculators like Duer and 'company', who were longs in the public debt market and who financed their securities purchases by borrowing. The BUS was saved, but the speculators faltered. Sixes in New York fell from 125.83 on March 5 to 116.25 on March 8, the day before Duer stopped paying his debts. Duer's default caused a contagion of further defaults, as well as panic selling of securities. Sixes dropped to 95 on March 20, a decline of 25% in 2 weeks. Philadelphia prices mirrored New York's, but the chain of debt defaults there was not as great as in Manhattan, where speculators were more highly leveraged. On March 11 or 12, Duer informed Hamilton by letter of his default. He provided a sort of Enron-type explanation of his fall: 'The Fact is that I have been compelled to do it, with Respect to a certain Description of Notes, which were issued by my agent during any absence from this City—the Circumstances are too long and too Painful to detail.' Hamilton wrote back briefly on March 14, advising Duer to 'act with fortitude and honor.' On March 19, Hamilton's old friend Robert Troup wrote from New York that 'Duer's total bankruptcy will affect the public interest by bringing the whole funding system into odium.'*" (Sylla et al., 2009). "*In April, when the failure of William Duer, the leading speculator of New York, crashed many others down with him, Jefferson wrote that it was computed that the dead loss at New York was about $5 M, 'which is reckoned the value of all the buildings of that city, so that if the whole town had been burnt to the ground it would have been the measure of the present calamity'; and in Boston and in Philadelphia, the dead loss was about $1 M. The result was, he wrote, that all over the country 'building and other improvements are suspended, workmen turned adrift, country produce not to be sold at any price.'*" (Warren, 1935).

495 "*Hamilton hardly needed to be reminded that the panic threatened to undo the financial revolution he was directing, and he already was doing all he could to disarm the threat. That very day, in fact, Hamilton wrote to Seton to begin a series of lender-of-last resort operations that would last for several weeks. After reassuring Seton that [FBUS] would 'maintain the most perfect & confidential communication with your institution & ... cooperate in mutual & general accommodation', he urged the BONY to consider 'how much more can be done in favor of parties who can pledge public Stock as collateral security. This foundation of Credit', he reminded Seton, 'you are sure is a good one.' He also intimated that the bank could 'boldly accommodate' New York merchants who owed the government money under customs bonds, 'under an assurance that the money shall in no event be drawn out of your hands in less than three Months, unless perfectly agreeable to you.' Also on March 19, Hamilton reminded [FBUS] that the collector of customs duties in its district had been authorized to receive post notes of [FBUS] with a maximum maturity of 30 days 'upon equal terms with cash', and he encouraged [FBUS] 'to make operations payable in such notes, which might not be convenient if payable immediately in specie or cash notes." He added that it was 'particularly desirable, at the present crisis, that every reasonable accommodation should be afforded," especially to those who owed the government money. Hamilton's day was not yet done, as he also initiated open-market purchases. The following day, March 20, Hamilton wrote fellow sinking-fund commissioners Adams and Jefferson that they 'may have heard that the Treasurer was in the Market last night and may be at a loss concerning his authority', which, Hamilton explained, was a little over $50,000 left unexpended from the previous summer's authorization. In a crisis, act first, explain later. Hamilton also called the sinking-fund commissioners—himself, Jefferson, Adams, Randolph, and Jay—to meet the following day to make further authorizations. Jay was absent, performing his judicial duties in New York, and the other 4 divided evenly on a fine point of what the sinking-fund law allowed. Adams and Hamilton favored action, while Jefferson and Randolph wanted to delay action until Jay returned from New York to vote, or at least to explain to the other commissioners what the law meant when it said purchases could be made at prices 'not exceeding the par or true value thereof.' Time was lost in conveying the question to Jay, who did not formally give his opinion that 'true value' meant market price until March 31. Jay wrote Hamilton informally from New York on March 23 to ask for clarification of the issues and to report that Duer's misfortunes 'have affected all money operations here, and I believe it is still doubtful whether any favorable change likely to last, will soon take place.' While waiting for Jay, Randolph joined Hamilton and Adams on March 26 in authorizing a further $100,000 of open-market purchases of sixes at par, because it was thought 'necessary to operate immediately, if at all.' Hamilton had probably advised his fellow commissioners of the gravity of the situation and persuaded Randolph to support authorization of the purchases.*" (Sylla et al., 2009).

496 "*In the earlier years of financial reorganization the credit of the government was strengthened by the establishment of a sinking fund and the pledge of specific revenues for the payment of the debt and its interest. By the original funding act of Aug 4, 1790, the proceeds of the sales of public lands in the Western territory were pledged solely to the redemption of the debt... By the act of May 8, 1792, a regular sinking fund was established, to which were inviolably pledged the interest on so much of the debt as had been heretofore redeemed, and the surplus of all sums appropriated for the payment of interest on the debt.*" (Dewey, 1918). "*The sinking fund, a seemingly minor feature of Hamilton's plan for restructuring U.S. debts, ostensibly designed to assure the public that the new government was committed to redeeming its debts, played an important part in the management of the financial crises in 1791 and 1792. Hamilton proposed in his Jan 1790 Report on Public Credit that the sinking-fund commissioners, later specified as the vice president, the secretaries of state and [UST], the attorney general, and the chief justice of the Supreme Court, be authorized to borrow money to purchase public debt on the open*

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market 'while it continues below its true value.' Hamilton anticipated that financial crises would occur and that mechanisms needed to be in place to allow liquidity injections thorugh open-market purchases. The ability to make such purchases was the true purpose of his sinking fund." (Sylla et al., 2009)

497 "*I learn with real concern the calamities which are fallen on New York and which must fall on this place also. No man of reflection who had ever attended to the South Sea bubble, in England, or that of Law in France, and who applied the lessons of the past to the present time, could fail to foresee the issue tho' he might not calculate the moment at which it would happen. The evidences of the public debt are solid and sacred things. I presume there is not a man in the U.S. who would not part with his last shilling to pay them. But all that stuff called scrip, of whatever description, was folly or roguery, and yet, under a resemblance to genuine public paper, it buoyed itself up to a par with that. It has given a severe lesson: yet such is the public culpability in the hands of cunning and unprincipled men, that it is doomed by nature to receive these lessons once in an age at least. Happy if they now come about and get back into the tract of plain unsophisticated common sense which they ought never to have been decoyed from.—It was reported here last night that there had been a collection of people round the place of Duer's confinement of so threatening an appearance as to call out the Governor and militia, and to be fired on by them: and that several of them were killed. I hope it is not true. Nothing was wanting to fill up the criminality of this paper system, but to shed the blood of those whom it had cheated of their substance.*" (Jefferson, Apr 14, 1792).

498 DPRA was amended to continue on May 30, 1794 and on May 28, 1796.

499 "*Though a bankruptcy bill was reported in this 2nd Congress in the hope of relieving these conditions and of preventing their repetition, no action was taken; and during the next 4 years similar bills proposed in the 3rd and 4th Congresses also failed of consideration. [2d Cong., 1st Sess., Nov 9, 1791; 2d Cong., 2d Sess., Nov 21, Dec 6,1792; 3d Cong., 1st Sess., Dec 13,1793; 3d Cong., 2d Sess., Dec 9,1794; 4th Cong., 1st Sess., Dec 16, 1795, Jan 13, 1796; 4th Cong., 2d Sess., Dec 29, 1796 — all in the House of Representatives.]*" (Warren, 1935).

500 "*The issue of whether land would be available to satisfy debts was also central to the debates over the nation's first bankruptcy legislation. Under all of the proposed legislation, a bankrupt's lands would be seized and sold as a condition of obtaining a fresh start. As early as 1792, Thomas Jefferson questioned the desirability of a federal policy involving 'seizing and selling lands.' He noted that '[h]itherto, we had imagined the General Government could not meddle with the title to lands.' He emphasized that bankruptcy legislation providing for the seizure of land was suited for a commercial or mercantile society, but not for one based on agriculture.*" (Priest, 2006).

501 "*The turning-point was in the second quarter, but the crisis had broken in March. There is a temptation to attribute the crisis to the war which had commenced in Jan, but there are sound enough reasons for suspecting the independent existence of strain in the country's credit system; the most that the war did was possibly to accelerate the onset of the crisis. The raising of progressively larger sums of money for investment that would be slow to yield returns was bound to create serious problems. The initial subscriptions to canal schemes were followed by a series of percentage calls upon the subscribers... The strain of optimistic investment must have percolated to the banking system, as liquid funds were transformed into a less liquid state; the strain was increased by the shaky structure of some of the new banks which had grown up in the boom.*" (Pressnell, 1956).

502 "*The first large bankruptcy to arouse concern had been that of Messrs. Donald & Burton in the middle of Feb. They were corn traders —'Quebec traders' according to Thornton—who had speculated in corn imports. A few days later, another house concerned with the American trade, Messrs. Lane, Son & Fraser, who had been shaky since the American war, collapsed after the rejection of their paper by [BOE]. [The Times spoke of a bubble that had burst and declared that 'It is full time that the country should be purged of such nuisances as many of... [the country banks] are.' Some professed to see in the spread of the crisis the results of a decision by [BOE] to stimulate this purge.] During March there came the collapse of the West India merchants, Messrs. Burton, Forbes & Gregory, to be followed by that of the associated Liverpool bank and mercantile business of Caldwell & Co. [There had been 3 country failures since 1788, the last having occurred at Bath in July 1792. The new crop of failures began in mid-March and totaled 6 by the end of the month. There were 2 in each of the next 3 months, 3 in July, 1 in Aug, and then no more until June 1794.] The impression that this was a mercantile crisis which affected the country banks and exposed their weaknesses, but which was not caused by them, is confirmed by Thornton's estimates of the extent of the early bankruptcies in his letter to Pitt of March 1793. Of a first list of failures for almost £6 M, 4 West India merchants accounted for £0.92 M, and the inclusion of the London and Liverpool firms of Burton & Forbes brings this figure to £1.82 M; a further £1.11 M is accounted for by 19 Bristol houses, excluding the local banks; those engaged in the cotton trade, the Irish trade, the American trade, in fact the trade of the 2 great western ports, are predominant in the list. This helps to explain the geographical concentration of the bank failures, while the popularity as investments of West India and cotton bills of exchange amongst country bankers helps to explain the spread of the crisis from the mercantile sectors to a banking system upon which a boom in domestic investment and in bank promotion had surely imposed their own stresses already. [There were tendencies towards regional concentrations of bank failures, as in those at Bath, Bristol, Chepstow, Worcester, for example; in the north-western area there were failures, connected with cotton, in Chester, Liverpool, Warrington, Stockport, Blackburn. But there were also failures in Shropshire, at Daventry, Hull, Newark, Northampton, and a rural collapse at Horsham in Sussex.] The reaction of the public in many parts of the country was to hold meetings at which support was pledged to the local banks... In Newcastle, for example, a well-attended meeting of the local gentry, traders, and merchants was held early in April, and a committee was appointed to inquire into the stability of the local banks, which was soon found to exceed its 'most sanguine expectations.' In its report the committee stated that the note circulation of the banks was £0.23 M, backed by abundant private resources... Credit was gradually restored, but the decline in the activity of country banks was prolonged, first by the fall in their numbers, second by the shrinkage in their note-issues.*" (Pressnell, 1956).

503 "*Bankruptcies were abnormally high in the fourth quarter of the year: 1793 opened with a heavy commercial atmosphere. The Committee of Treasury, watching its bullion, told Pitt that it suspected an extensive illegal export of guineas. On the declaration of war by France, at the beginning of Feb, the atmosphere became sultry, but the credit storm did not break until March. When it did break it was nation-wide —most severe in Bristol, Liverpool and the City. Runs on bankers soon brought down the weaker among them; and their clients followed. There were 105 bankruptcies recorded in the Gazette in Much, more than there often had been in quiet times in a quarter. There were 188 in April and 209 in May. The quarter that included these months saw 566: whole years had often seen fewer. By the middle of March the London press was tilling with bad news—from Bristol how of 15 'houses that received a temporary shock' 2, but only 2, had 'been re-instated'; how there was 'a scene of great distrust and alarm' at the Royal Exchange on Sat the 16th, that*

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'2 capital houses in Norfolk [had] stopped... and 9 expected'; of 'a Bank Director and one of the first houses in the Irish, Liverpool and Dutch trades gone'; of a Liverpool bank 'said to have stopped payment for upwards of 2 M of money'; that 'the Bankers in the City have refused to discount any more paper for the present. The alarm on the Royal Exchange is beyond conception.' This last report is from the March quarter-day. Fact and rumor were mingled. [BOE] was praised for coming to 'the late, but we believe, wise decision, of putting down all the country banks.' Actually, though it refused to lend to a Chichester bank on mortgages bonds or the like, because this was 'out of the usual line of business', and so helped to bring that bank down, and though rather later it refused £30,000 to Jones, Loyd & Co., the Manchester bankers, it did advance £40,000 to bankers in Liverpool, But when the Corporation of Liverpool asked for a loan on its staled bonds this was rejected: the Committee of Treasury, following its invariable practice, would only consider 2-month notes 'of respectable gentlemen in London.' Nearer home it was busy saving from collapse the Lord Mayor of London, Sir James Sanderson, M.P., partner in a banking house in Southwark. He was promised £6000 on 21 March, and more on the quarter-day, because of the 'mischief' that might result from a Lord Mayor's bankruptcy." (Clapham, 1945). "*[T]he unprecedented number of bankruptcies in Nov 1792 was prodigiously exceeded in number and amount by those, which took place in the spring and summer of [1793]; 105 in March, 188 in April, 209 in May, 158 in June, and 108 in July. Many houses of the most extensive dealings, and most established credit, failed; and their fall involved vast numbers of their correspondents and connections in all parts of the country. Houses of great respectability and undoubted solidity, possessing ample funds, which actually did in a (bon time enable them to pay every (billing of their debts, were obliged to stop payment: and some bankers, who almost immediately, on recovering from the first panic, returned the regularity of their payments, were obliged to make a pause. Many whom the temporary assistance of even a moderate sum of money would have enabled to surmount their difficulties, could not obtain any accommodation; for, in the general distress and dismay, everyone looked upon his neighbor with caution, if not with suspicion. It was impossible to mile any money upon the security of machinery or (hares of canals ; for the value of such property seemed to be annihilated in the gloomy apprehensions of the finking Rate of the country, its commerce, and manufactures : and those, who had any money, not knowing where they could place it with safety, kept it unemployed, and locked up in their coffers. Amidst the general calamity the country banks, which were multiplied greatly beyond the demand of the country for circulating paper currency, (there being about 280, or, according to other accounts, above 400, of them England and Wales) and whose eagerness to push their notes into circulation had laid the foundation of their own misfortunes, were among the greatest sufferers, and consequently the greatest spreaders of distress and ruin among those connected with them: and they were also the chief cause of the great drain of cash from the [BOE], exceeding every demand of the kind for about 10 years back. Of these banks above 100 failed, whereof there were 12 in Yorkshire, 7 in Northumberland, 7 in Lincolnshire, 6 is Sussex, 5 in Lancashire, 4 in Northamptonshire, 4 in Somersetshire, &c.*" (Macpherson, 1805).

504 "*[D]uring a banking crisis, and for some time afterwards, it was hardly possible to know how many and which banks would ultimately survive; hence the wide divergence between the numbers reported to have failed and the numbers of those which eventually ended their days in the bankruptcy court. For example, George Chalmers wrote in 1794 that of 'upwards of 400' country banks a full fourth had stopped payment: he spoke of 71 banks that had failed, giving the impression that this was the number of those that had not succeeded in reopening. The figure of 100 failures as a measure of the failures—1 in every 3 or 4 banks has found its way into Macpherson's Annals of Commerce and thence into Sir John Clapham's Bank of England. George Ellison, who as secretary to the Association of Country Bankers spoke with authority, put their numbers in 1797 at about 230, compared with some 280 before the crisis of 1793. Not all of the 50 had disappeared by bankruptcy, and not all the bankruptcies had occurred in 1793. From the beginning of March 1793 (when the crisis burst) to the end of March 1797, when Ellison gave his evidence, there were 22 failures of country banks. For March 1793 there is a record of 6 bankruptcies of country banks (excluding branches); for the whole of the calendar year 1793 the figure was 16, or 23 if the branches that can be traced are included... confusion about the extent of bankruptcy arises from the nature of bankruptcy proceedings. There were 3 stages: first, a creditor for £100 or more would establish a claim against the alleged bankrupt, and a docket of bankruptcy was thereupon struck. Next, a commission of bankrupt might be issued; by this step—the 'gazetting' of the bankrupt by the announcement of his failure in the London Gazette—the man concerned was formally declared to be bankrupt. Finally, the commission would be 'worked' or sued out: that is, claims would he heard, assets called in, and dividends from the estate would be distributed. This procedure brought a bankrupt constantly before the public, by announcements and by reports in the press, and it is arguable that this constant reminder of failures created an over-gloomy impression. More interesting as a possible source of exaggeration is the fact that a docket was not automatically followed by the issue of a commission. For this there were many reasons. A man might strike a docket as a measure of insurance against his debtor, but he would, if sensible, refrain from pursuing him into the bankruptcy court unless more satisfactory, speedier, means of settling matters were out of the question. Sometimes a docket might be struck in the heat of a crisis, but, because an alternative solution seemed possible or because the suspected bankrupt quickly recovered his financial equilibrium, it would not be followed by gazetting. It is impossible to estimate the extent to which this occurred: the cases that have been traced in the records of the bankruptcy court usually relate to banks that did eventually fail, after the striking of a further docket, but it is conceivable that the bankruptcy court did not always take account of dockets which were not a prelude—albeit a premature one—to failure.*" (Pressnell, 1956).

505 "*The Exchequer bill was widely thought to have been the idea of Sir John Sinclair, although it may have originated with [BOE]. On 22 April 1793, City leaders met with the Prime Minister, William Pitt, to devise means to combat the crisis that arose from the failure of 100 of the 300 country banks and the calamitous decline in commodity prices. The next day, 11 of their number met at the Mansion House to formulate a scheme for state assistance. According to Clapham, there was no clear guide to what ought to be done. In due course, the idea emerged of having the government issue £3 M in Exchequer bills, a total that was later raised by parliament to £5 M, to be issued to merchants on the collateral of goods that they would deposit in the customs houses. An additional feature of the plan was to issue £5 notes – the previous minimum was £10 – to economize on the use of gold and silver coin. The Exchequer bills were issued by special commissioners rather than [BOE]. Some £70,000 worth of these bills was immediately sent to Manchester and an equal amount to Glasgow. The device worked like a charm, according to MacPherson. 338 firms applied for only £3 M of the total amount. A total of £2.2 M was granted to 228 firms, only 2 of which subsequently went bankrupt. Applications for more than £1.2 M were withdrawn after the panic abated.*" (Kindleberger and Aliber, 2005)."*The reaction of the government, as expressed by Pitt to the select committee appointed to inquire into*

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the crisis, was that the irresponsible issue of paper credit by some houses had involved many more perfectly sound establishments in difficulties, because the panic had led to abnormal demands being made upon them. The subsequent issue of Exchequer bills helped to restore order into credit. The amount authorized was £5 M; Thornton's first estimate of the amount involved in the stoppages by early in March had been about £6 M. There were 332 applications eventually made for £3.86 M in bills, and a total of £2.2 M granted after the withdrawal of 45 applications for £1.22 M and the rejection of 49 for £0.44 M. In their report to the Treasury the commissioners responsible for the issues declared that 'with the exception of 2 only, who have become bankrupt, the parties assisted have been ultimately solvent, and, in many instances, possessed of great property.' This was fairly clear testimony to the calamitous effects of the original breakdown in credit." (Pressnell, 1956).

506 "*[In 1782,] Morris [land sales] regarded as a future source of revenue, but as yet not available for the existing debt... Urged by Congress, the individual states, after the war, ceded their western lands, thus endowing the poverty-stricken national government with a vast territorial domain. As petty local jealousy and state narrowness thwarted every effort to establish national revenues, Congress turned to the sale of public lands as a final resource. The ordinance of 1784-5 proposed that all moneys, arising from the sale of land warrants, should be applied to the sinking of the public debt, and to no other purpose whatsoever. Although this paragraph was omitted at the final stage of the ordinance, the object of it was secured. In a report of Feb 2, 1786, it is admitted that the United States are in possession of 'another fund', arising from the cession of vacant and unappropriated land by individual states. But this, as public securities are received in payment, will bring but little specie into the treasury. Being depreciated considerably below and receivable, at par with specie, it is to be presumed the purchasers will procure these securities for the purpose. These lands may be calculated on, therefore, as a fund only for the discharge of the domestic debt. Thus, by land sales, and by taxes of which a large share was permitted to be paid in securities, the debt was slowly being absorbed... [According to Gallatin,] From the 1st of Jan 1784, to the 1st of Jan 1790, the principal of the domestic debt was reduced by the sales of land, which amounted to about $1.1 M... [In 1791,] The final provision is that the proceeds of all sales of public lands be appropriated to the sinking of the public debt... [The Sinking Fund of 1795] was now enlarged by the following additional appropriations... 4. The proceeds of the sale of public lands.*" (Ross, 1892). "*[I]n 1795 when the North American Land Company was formed with Robert Morris as the moving spirit. This company obtained vast tracts of land, about 6 M acres, situated in several different states, principally from Pennsylvania south to Georgia... In the early months of 1796 Congress took up seriously the question of disposing of the public domain.*" (Hibbard, 1924).

507 Robert Morris signed the *Declaration of Independence*, the *Articles of Confederation*, and the *Constitution*. He helped acquire funds necessary for the *Revolutionary War*—and was known as the *Financier of the American Revolution*— and was the *United States Superintendent of Finance* prior to the UST. He was one of the best-known merchants in the colonies and served as a Pennsylvania's Senator from 1789-95. During this period, he became heavily involved in land speculation with, among others, John Nicholson. They "*had made massive land purchases [including up to 40% of Washington, D.C.] on credit in the expectation of quick sales, which did not materialize... Pressed for cash, Morris and Nicholson financed their purchases with millions of dollars' worth of their notes, which they cheerfully cross-endorsed for each other and which creditors readily accepted because, after all, if a financial colossus like Robert Morris was not creditworthy, who was?*" (Mann, 2009). "*In 1797, however, there again arose an insistent demand for a bankruptcy law, owing to another financial crash brought about by the wild over-speculation which had been going on in real estate all over the country — William Duer and his Scioto Associates in Ohio; the Miami Purchase in Ohio of John Cleves Symmes, Jonathan Dayton, and Elias Boudinot; the notorious Yazoo Cos which had bought from the State of Georgia 30 M acres covering most of the present States of Alabama and Mississippi; the North American Land Co owning 6 M acres in New York, Pennsylvania, and the South, in which Robert Morris, James Greenleaf, Justice James Wilson, and Robert G. Harper were interested; and the tremendous holdings of Morris, Greenleaf, and John Nicholson in District of Columbia lots.*" (Warren, 1935).

508 "*The outbreak of war in Europe in 1793 triggered a rash of mercantile failures in London, many of whom were Morris's correspondents on whom he had drawn bills of exchange that they now could not honor, which meant that the payees now looked to Morris for satisfaction. Men of lesser means than Morris whose bills also were returned could not stay afloat and so failed themselves. A French trader in Philadelphia warned a countryman that 'bankruptcies are multiplying' to such an extent that '[i]t seems that men and the elements have conspired against our unfortunate city.' As the European conflict widened, the sharp constriction of credit available in Europe combined with French predations on American shipping to disrupt American commerce, drive the cost of money even higher, and expose the precariousness of land speculation schemes built on pyramids of credit... As their fortunes declined, their notes—referred to as 'M & Ns'—traded at increasingly steep discounts and became objects of speculation themselves, even as they remained a heavily depreciated medium of exchange. To complicate things further, their land titles were rarely clear. Imprecise surveys, no surveys, unextinguished Indian titles, competing claims from other speculators, unissued patents, unmet conditions, squatters' claims, mortgages and other encumbrances, litigation claims, creditors' attachments, government liens, tax assessments, mechanics' liens—in short, every title defect known to law—made their land both difficult to sell and difficult to hold on to... Then their notes started falling due. Nicholson alone turned away so many demands for payment that the notary who recorded the protests began using printed forms, with Nicholson's name preprinted as well. The result was a cloud that began to settle over their affairs as early as 1794 and that grew to envelop everyone with whom they business, which is to say almost every investor of consequence in the country.*" (Mann, 2009).

509 "*In 1796 a land act was passed This act provided for the rectangular survey, the division of half of the townships into sections of 640 acres each to be sold at local land offices, the other half of the town ships to be sold in quarters at the seat of government. In all cases 4 sections of land at the center of the township were to be reserved. One twentieth of the price, $2 per acre, was to be paid in cash, and credit of varying lengths of time allowed on the balance, the final payment to be made in one year... Another major consideration was that of time payments. The credit allowed in the act of 1796 was not credit at all so far as the small purchaser was concerned. It gave but a year's postponement of pay day, though the most superficial acquaintance with the frontier would make it plain that the settler who could not pay cash at the time of purchase would hardly be able to produce it in another 12-month. It was during the first year that important initial expenses must be met, while receipts above living expenses could hardly begin during the period, or during a period 5 times as long for that matter. Hardly more than half a year had elapsed after the passage of the act of 1796 before petitions for extension of time began to come in. A committee appointed to consider the subject reported on Jan 30, 1797, in favor of extension of time.*" (Hibbard, 1924).

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[510] "*Harvests were indifferent in 1792 and 1793, and bad in 1794 and 1795. Government loans and overseas remittances to finance the war placed increasing strains upon the economy: public expenditure, which had been just over £30 M in 1793 (year ending 20 Oct) was over £50 M both in 1795 and 1796, almost the whole of the increase being financed by borrowing; overseas transfers by bills, speck, and loans rose to over £5 M in 1794, over £9 M in 1795, and were kept to the high figure of £7 M in 1796 by the expenditure of £2.5 M on grain imports. The pressure was increased by the return of confidence in the currency in France; this caused a reversal of the flow of gold to Britain which had characterized the inflationary period in France. A leading feature of the increasing stringency of credit was the rationing by [BOE] of its discounts from the end of 1795. By the following April The Times was wondering how serious the rationing really was: it estimated that the demand for discounts was 'nearly 20 times more considerable than ever was known in the regular course of business.' For this it suggested two reasons: first, the maintenance of the discount rate at 5% when the market rate of interest was far higher; second, 'merchants, finding that [BOE] discount in many instances according to a certain percentage of the amount of the bills sent in, take care to send a much larger quantity, in order to procure the sum they stand in need of.' [BOE's] commercial discounts had in fact been little different in 1795 from what they had been in 1794, but they rose somewhat after the decision to ration. The slight increase could hardly take account of the decline in discounts by other sections of the money market, however; about a week before the comment quoted above The Times had declared that [BOE's] action had helped to reduce the price of bread, for the Country Banks have been checked in their means of providing the farmers with money, which enabled them to keep back their corn from market. It was usual for the farmers to renew their [promissory] notes when they became due; the Country Banks not being able to show them this accommodation, they are now forced to sell their grain... As the strain mounted there could be little doubt this time that causes other than country bank activity were at the heart of the trouble, although scant attention seems to have been concentrated on the French currency as a cause of the movement of gold to the Continent.*" (Pressnell, 1956).

[511] "*A consequence of the credit expansion ushered in by the BUS was heightened business investment in several areas of the US economy, in the ensuing years... For the years 1795-8 there is a cumulative current account deficit... The US net balance of trade turns sharply negative for the second half of the 1790s. The consequent specie outflow and decline in the money supply provided a transmission mechanism for an economy-wide recession... The loss of gold reserves caused banks to rein in their credit for fear of insolvency. The credit contraction destroyed the profitability of long-term investment projects and eventually led to an economy-wide business contraction. Bank lending in the 1790s primarily consisted of short-term loans, such as discounting merchants' bills of exchange. This meant that an entrepreneur who wanted to invest in a long-term business project had to borrow money and then roll over the debt at regular intervals. Entrepreneurs in the early half of the 1790s, as explained above, were lured into undertaking such investments because of artificially low real interest rates. In 1794 and 1795 real interest rates were even negative, meaning that borrowing was particularly attractive, especially for entrepreneurs who expected a continuation of the inflationary conditions. As the credit expansion led to price inflation and an eventual correction through specie exportation, however, banks began tightening credit... real interest rates bottomed out in 1795 and then began to rise sharply. When businesses went to roll over their short-term debt in 1796 it was suddenly much more difficult to find willing lenders. Real interest rates were suddenly 14% higher than the year before. The dearth of credit, so bitterly complained about, caused clusters of businesses to begin failing already in Dec of 1796. Industrial production... began to drop off sharply. The decline in the economy-wide industrial production marked the beginning of the recession… Chew likewise traces the recession overseas, but argues that it was triggered when [BOE] suspended redemption of its banknotes in Feb 1797.*" (Curott and Watts, 2011).

[512] "*Morris and Nicholson were only the largest of many speculators who had issued large quantities of commercial paper backed by the land they claimed to own. By Dec 1796 business failures were epidemic. Benjamin Rush counted 150 failures in 6 weeks in Philadelphia and 67 people imprisoned for debt in 2 weeks... As Morris wrote to a Baltimore creditor, 'People are ready to tear one another to pieces.' [M & N] notes, held by virtually everyone and said to total $10 M, were trading at 1/8 of their face value. With money so scarce, interest rates rose so high that hundreds of people called in low-interest loans and withdrew their money from banks to lend it through brokers at 30% and higher. They were the profiteers to whom Morris referred when he wrote of the 'vultures who are preying upon the general scene of distress' and for whom 'no premium for the use of their money is enough nor any security sufficient.'*" (Mann, 2009). "*In 1795 the Georgia legislature sold over half the western territory to which she laid claim, to 4 land companies. It transpired that the sellers were also the buyers and a great scandal resulted. The legislature rescinded its action promptly, but not until much of the land had passed into the hands of third parties. The outcome was a long series of controversies over the right to the land so transferred, resulting in a recognition of the claims of the innocent purchasers. The case was not settled until 1814 and at a cost to the United States of over $6 M.*" (Hibbard, 1924).

[513] "*The negative advantage of protection from potential future debts was shunted into the background. Particularly in the great land companies of the last decade of the 18th century this modern corporate advantage was regarded as quite unimportant... Robert Morris' projected North American Land Co possessed all the features of a corporation other than the limitation of liability. Its creators never considered the desirability of having a charter.*" (Livermore, 1935). Contrast with Maryland in 1806 "*The monopoly of banking was not given to the chartered banks, though they enjoyed an advantage over unincorporated banks through their limited liability.*" (Bryan, 1899).

[514] "*Some financial instability occurred between 1792-3, but the economy grew vigorously during 1794-5. Thorp... described 1795 as a year of 'prosperity,' with 'active internal trade; land speculation; many new companies formed' and 'booming' foreign trade. Banks, according to Thorp, 'multiplied rapidly' in 1795. David and Solar's... consumer price index rises sharply throughout 1794-6. The price level fell in 1797, however, and was accompanied by a recession and major banking panic.*" (Bordo and Wheelock, 1998). "*Almost all of these projects had resulted in ruin and imprisonment for debt. William Duer died in a debtor's prison in New York; Robert Morris, the great financier of the Revolution, was in the Prune Street Jail in Philadelphia for nearly 3 years, with debts of about $12 M; the distinguished James Wilson, a Justice of the United States Supreme Court, just before his death, went to North Carolina to avoid imprisonment for debt in Pennsylvania; and a like fate had overtaken many other rich and prominent traders. Only a few States had insolvent laws which could discharge prisoners for debt.*" (Warren, 1935). "*[In] 1797, when another panic caused widespread ruin and the imprisonment of thousands of debtors. Robert Morris, one of the main financiers of the Revolution, spent 3 years in debtor's prison owing $12 M, and Supreme Court Justice Wilson fled from Pennsylvania to avoid a like fate.*" (Tabb, 1995).

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515 "*When the rumors of invasion precipitated a panic, and compelled [BOE] to suspend payments at the end of Feb 1797, the role of [BOE] as the ultimate arbiter of credit was fully demonstrated. No docket of bankruptcy was struck against it—even had that been practical law and politics, it was evident that [BOE] was the victim of war-time difficulties—but some of the public meetings that were held at this crisis to support local banks were characterized by discussion of the acceptability of the small notes to be issued by [BOE].*" (Pressnell, 1956). "*[B]efore 1797 [BOE] had done no discounting for bankers, whereas on 1 Jan 1800 it held £0.40 M pounds worth of bankers' bills discounted.*" (Clapham, 1945).

516 "*[A] statute of 1796 required that lands be paid for in 'money'; the act of March 3, 1797, added 'evidences of the public debt'; under the act of May 10, 1800, specie or evidences of the public debt were required.*" (Dewey, 1918).

517 "*As to the operation of the new act nothing could have been more disappointing from the financial standpoint, and hardly anything from the standpoint of settling the wilderness. Less than 50,000 acres were sold between 1796 and 1800. 43,000 acres were sold at Pittsburg at about $2.33 per acre, while at Philadelphia, where the large-scale sales were to take place, but a single quarter township was sold and that at the bare minimum [$2]. 'The sections and quarter townships in the 7 ranges have been repeatedly offered for sale [at Pittsburg] without success.' As early as Jan 1797, Oliver Wolcott, Treasurer of the United States, was ready to say, 'Indeed, it is now certain that none of the quarter townships will be sold.' In June 1797, Mr. Gallatin reported a petition to the House: '100 persons in the Ohio country complained that they could not become purchasers of land at the sales owing to conspiracies on the part of speculators.' Yet the rage of speculation was apparently unable to rise above the $2 barrier.*" (Hibbard, 1924).

518 "*As soon as suits were brought, lawyers for the Virginia debtors raised elaborate special defenses that were essentially political rather than legal in nature. These special defenses effectively prevented any judgment on a British debt case until 1793. Even after the circuit court in 1793 and the Supreme Court in 1796 overruled the debtors' special pleas, British creditors continued to encounter obstacles to the recovery of their debts... With the signing of a new treaty in 1794, negotiated for the United States by John Jay, British debts were referred to an arbitration commission. The Jay Treaty also provided for the withdrawal of the British from the Northwest, removing one obstacle to the payment of the debts, though it was silent as to compensation for the slaves. The debts commission was to hear claims for losses allegedly arising from the operation of lawful impediments to recovery by British creditors since 1783 and for which full compensation could not be obtained 'in the ordinary course of justice.' Consisting of 3 British and 2 American members (the 5th seat fell by lot to a British subject), the commission was to determine cases according to 'equity and justice.' When the mixed commission began its work at Philadelphia in the spring of 1797, British claimants immediately shifted their attention from the courts to this quasi-judicial body. Arbitration, however, was not the answer. After 2 years the commission was dissolved by the withdrawal of the American members, who had consistently dissented from a series of rulings favorable to the claimants, including one that restored war interest.*" (Hobson, 1984). "*British merchants were defeated in the Virginia Supreme Court in the case of Jones vs. Walker, called Nov 23, 1791; but 5 years later the United States Supreme Court reversed the decision, ruling that, though Virginia was a sovereign state in 1777 and capable of sequestering British property, the Treaty of 1783 bound her to pay bona-fide British debts. Thus, legally there came to a close the long conflict between Virginia planter and British merchant. The settlement was a disability that aided further the financial collapse of the tobacco planter. Some sought credit in France, some paid what they were able, some migrated westward, some evaded payment, and some were left completely bankrupt. The decision against the planter coincided with the transfer of property accelerated by the Revolution. It may be said then, that post-Revolutionary relations between the Virginia planter and the British merchant were conditioned by the traditional nature of the mercantilist-agrarian system in which the planter exploited the soil and, in turn, was exploited by the merchant.*" (Low, 1953). "*Today, the arbitral commissions established under the Jay Treaty are generally viewed as beginning the modern era of international arbitration. The procedure followed by the commission in Philadelphia is familiar in a number of respects: individual British creditors commenced the arbitral proceedings by submitting a 'claim'; the parties supplemented their initial pleadings with memoranda called 'memorials'; the commission held hearings at which testimony and argument were presented; and the commission rendered reasoned decisions.*" (Legum, 2001).

519 "*In the debates over the Bankruptcy Bill of 1798 (the first bankruptcy bill that was seriously considered), the Federalists (commercial republicans), however, were dedicated to the new order of minimal property exemptions in which credit terms were improved to promote economic development. For example, James A. Bayard, a young Federalist, described state law making land immune from the payment of debts as 'a remnant of the feudal system, of the principle of the ancient aristocracy of England, which was imported hither from that country by our ancestors.' To Bayard, the 'principle goes to the root of commercial credit; because a merchant must know, that if he gives credit to a large amount, that the whole of that money may be vested in land by his debtor, and then he cannot touch it... Commerce, and a law like this, cannot live and flourish on the same soil.' The Republicans, in contrast, wanted a general exemption from the statute for all agrarian debtors. Albert Gallatin, the most prominent Republican in Congress, argued that protections on real property, such as Virginia or Pennsylvania's limitation on execution sales to debts larger than 7 years' worth of earnings, were necessary 'in order to prevent the sacrificing of land at a rate so much below its value as it must sometimes be sold for, if it were always liable to be sold for debt, as personal property.'.*" (Priest, 2006). "*The need of a National bankruptcy statute, therefore, was gravely felt. Accordingly, such a bill (of 59 sections) was introduced in the 5th Congress in 1798 by Robert G. Harper of South Carolina. It was vigorously debated, and even at this early point in our history it is to be noted that the lines of division were largely geographical and sectional — the North against the South, and the commercial cities against the agricultural regions. As the debate took place in or soon after the excited partisan discussion in Congress over the Alien and Sedition Laws, party divisions on the bankruptcy bill were also apparent. Moreover, as the bill followed closely the existing English Bankrupt Act and applied only to traders, it was purely a creditors' measure; though representatives of the debtor class were influential enough to secure an amendment in their favor, through a motion to strike out a clause which provided that there should be no discharge of debts contracted prior to the Act... Harper and Charles Pinckney of South Carolina, Harrison Gray Otis and Samuel Sewall of Massachusetts, and James A. Bayard of Delaware, — all Federalists and representatives of the commercial interests — were the leading advocates of the bill. Strong opposition was made by Anti-federalists from the South and from the agricultural class like Albert Gallatin of Pennsylvania, Abraham Baldwin of Georgia, and William Gordon of New Hampshire. If the law only applied to cities, he would vote for it, said Gallatin, but he could not consent to oppress the country traders by such a system... The bill, having been lost by a close vote in the 5th Congress...*" (Warren, 1935).

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520 "*[BOH] enjoyed more lasting success from 1770, when it began to allow deposits in silver bullion rather than coin. Deposits of coin were largely abolished by 1790 in favor of the 'pure silver currency' (Reinsilberwährung) of bullion-backed ledger-money... Perhaps the ultimate expression of public bank control of redeemability, Hamburg's Reinsilberwährung, appears near the end of our period (1790). Beginning in 1770, [BOH] started accepting deposits of silver bullion in addition to coin. Coin deposits were eliminated altogether in 1790 in favor of bullion, and depositors paid only a small fee (0.45%) at withdrawal. But the creation of such a 'virtual coin' was only possible in a city-state like Hamburg that was politically dominated by commercial interests*." (Roberds and Velde, 2014).

521 "*After the outbreak of the French Revolution, but especially since 1795, as a result of the deficit of the Amsterdam bank and the occupation of the Netherlands by the French, the Dutch trade was completely down, in Hamburg there was an extraordinary prosperity and rapidly expanding business lines. The exchange transactions brokered up to then in Holland as well as the trade of the Piaster and Albertsthaler [Middle Eastern and Austrian silver] moved to Hamburg; Russia had the interest on its Dutch bonds here, and England paid the subsidies to the allied powers. The supply of the inland, far to the south, with colonial wares mainly fell to Hamburg, and in addition, local houses mediated very important grain shipments to France from 1793-6, both directly and indirectly...*" (Soetbeer, 1855). [Translated using Google.] "*The popularity of [BOH] increased in the wake of Amsterdam's difficulties in the 1780s, and [BOH] was heavily used by Hamburg merchants until its activities were taken over by the Reichsbank in 1876*." (Roberds and Velde, 2014). Data source is Van Dillen, 1964).

522 "*The [English] pound was clearly weaker in Hamburg from late summer 1795 until late spring 1796, when it struggled greatly, before lapsing in May. The pound was then fairly stable, until it began to rise in Dec 1796, continuing well into Jan 1797. The fall that began in mid-Jan appears to have been very mild by the standards of previous fluctuations, a tribute perhaps to the effectiveness of [BOE's] payments of gold in maintaining the stability of the exchanges. Nevertheless, [BOE] carried out its famous suspension of convertibility of its bank notes into specie in late Feb 1797. The suspension of convertibility in late Feb 1797 was not foreseen in the Hamburg exchange rate, and its response, after fluctuating uncertainly in March through May, was to value the paper pound increasingly above the mint par for the gold pound. Indeed, the international financial pressure caused by the war, according to the exchange-rate barometer, did not affect the British economy until the spring and summer campaigns of 1799. At that time the paper pound fell to permanently lower levels, which were sustained through 1800 and 1801*." (Neal, 1990). "*The most satisfactory and also the most significant exchange quotations are those for Hamburg, at that time the great entrepot for continental trade... The usance of the bills was two and one-half months. Since the Hamburg banco money was payable in silver, it is necessary, in calculating the true par, to employ once more the ratio of gold to silver. This par having been calculated, the percentage deviations from it were taken for each year*." (Silbering, 1919). Table 7 on p287 shows that the equation of London exchange on Hamburg increased 1798 —and then falling sharply in 1799— while true par adjusted by the gold to silver ratio increased up to 1799 and remained stable in 1800 before falling. Chart 3 on p288 shows that the deviation from par overvalued the Hamburg exchange relative to Spanish silver dollars —used for trade by the United States (Martin, 1973) — in 1798, after which the former rapidly fell. Data after 1808 should be ignored as the Holy Roman Empire dissolved that year and disrupted bankruptcy processes (Nadelmann, 1944).

523 "*In the years 1792-8, no more than 4 noteworthy bankruptcies took place in Hamburg, whereas a significant number of dealerships quickly achieved considerable assets. Almost all of the commodity prices during this period had a rising tendency and commercial ones. Speculations were happy almost without exception. Under these circumstances, it was not surprising that a huge amount of business developed and that more and more companies were lined up. In 1798 the speculations, enticed by the persistently favorable results and other circumstances, finally went wild and vast, and the prices of the commodities were more and more driven to an entirely unnatural level... A harsh winter, which started in Oct 1798 and continued until the end of March 1799, prevented the supply of goods, while sales continued from there, so as the stocks became lower, the prices of the colonial goods continued to rise until April 1799, and so the local merchants, who sold their goods with great advantage during the 6-month winter, felt driven from England, Portugal and North America, where prices were considerably lower, to make and make strong new purchases for their own account. to cheer up their business friends there for consignments here. Through exchange circulation, almost everyone at the time, who was generally considered favorable, was able to easily obtain the funds to advance, as usual, 2/3 of the value. After the arrival of the consignments of goods directed in this way to the Elbe, which suddenly flowed in all the places more strongly in May and June, since the long winter had delayed the arrival, sales were far from sufficient for the prices to be so high receive. The commodity prices started to decline. The extraordinary level of prices had the natural consequence of restricting consumption, and the retailers in particular postponed the purchase of stocks that were not absolutely necessary, in anticipation of cheap prices. Added to this was the disruption of trade with Russia, as a result of the embargo placed on Hamburg ships by imperial Ukas because of alleged Jacobinism of the local senate. Many houses had done more than they should have done cautiously; some had carelessly gotten into giddiness. When prices started to drop, most, despite the extremely high rents and discounts, stopped supplying goods in the hope that prices would improve soon, and made money by changing currencies; because at that time the opinion was widespread that only with peace would the earlier cheap prices be able to return. The discount rose to 10, 12, and even 15%. And it was clear that at the slightest stall of the machine, a pernicious crisis would have to take place*." (Soetbeer, 1855). [Translated using Google.] Tables on p56-7 show prices of commodities doubled between 1793-9; and collapsed in April 1799. In particular, Virginian Tobacco cost 2-3 units between 1793-6, steadily increased to over 9 in Jan 1799 and fell to 5 by Aug. "*The not too blameworthy operations, which had given so long a profit, were suddenly hampered by the long winter, which was all the less expected, because it followed an extremely mild one in which the supply and the export were almost never interrupted. Just think how this killed the young, enterprising merchant in the process to which he had been used until then. The gusty crisis in the price of the goods was what I expected. Winter held the goods, which would still have found their good price, until the bad period... I discovered in the rise of the camp renting up to twice what it had been during the winter... The discount rose to 12%. and when the goods reached the merchant's warehouse*." (Büsch, 1800). [Translated using Google.] Pages 56-7 tabulates the discount rates, showing an average of sub-6% until Sep 1798 —increasing to 9% in Dec—dropping to 4% in Feb and Mar 1799 and then increasing above 10% for the next 3 months.

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524 "*The success of [BOE] prompted calls for the Hamburg bank to begin discounting bills and issuing notes. Proposals to this effect were floated in 1799 and 1845, but were rejected out of fear that banknotes would lead to inflation and financial instability (Soetbeer, 1855).*" (Roberds and Velde, 2014). "*Any creditor residing in Hamburg who has not above 14 days before the commission is opened sold goods or effects either on condition of immediate payment or upon credit, may claim and recover those goods. The creditor abroad, in lieu of possessing this right, has that which has already been mentioned of stopping the delivery of his goods and of placing them in other hands... Those who hold a pawn may pay themselves in full from what is in their hands. To such as have claims only hypothecated or secured upon moveables, a larger rate of dividend is indeed allowed than to the common class of book-creditors, but they are not entitled to have their hypothecary security satisfied either separate or in full... The liquidation of the demands upon the bankrupt's estate is not confined to any fixed period: it must however be done as soon as possible... In Hamburg the creditors enjoy a particular right, called the right of after claiming their former demands. It is not suffered that a bankrupt, who has been freed from his debts, should enjoy a larger income than is required for the decent support of himself and family, till he has paid his debts in full. The law therefore obliges the bankrupt who again acquires property to make an additional payment to his creditors. If the debtor does not remember this his duty, the creditors have a right to admonish him by summons before a magistrate, where they can not only put a limit to his superfluous expenditure, but also force him to the payment of a sum according to his circumstances, which sum is proportion ably divided among the creditors. This demand cannot however be made upon the bankrupt until five years after his having received his certificate; and it then depends upon his own declaration on oath, whether, after maintaining himself and family, he has it in his power to make any payment to his creditors, and how much. Every 5 years the bankrupt may be again called upon to make this declaration. A bankrupt, however, whom the magistrate has declared unfortunate, or whose hypothecary creditors have received 80%, and the book-creditors 40%, is wholly free from such after-demands. The reason of this indulgence is, to encourage debtors, for the greater benefit of their creditors, not to delay their petition for a commission whenever they find their affairs deranged and their property declining.*" (Nemnich, 1806). "*The wave of bankruptcies among the German houses in 1799 was also essentially caused by developments across the Channel. They began in Hamburg. The outbreak of the French Revolutionary War had diverted the British trade with the Netherlands to the German port cities, primarily to Hamburg, but also to the smaller ports of Bremen and Emden. They experienced an unforeseen boom that lasted until 1799. That year already started with a bad foreboding on the Continent. During the very first days of the New Year, The Times remarked, 'bankruptcies have multiplied of late... at Paris, Lyons, Marseille, Bordeaux, Rouen and other Places.' During the following months, the wave swept over Holland. In Hamburg, Lutterloh & Sons was one of the first houses to stop payment in Feb. In April, another house failed and in Aug, a witness reported that there were small bankruptcies every week.*" (Beerbühl, 2018b).

525 "*American newspapers started to report on the failures in Europe, with a delay of about two months due to the contemporary slowness of transport and communication systems. The first news were simple reprints of the English ones. However, they soon began to comment on the Hamburg crisis. As the German states had become the second largest market for American goods, the New Hampshire Sentinel feared that due to the price drop of American goods, such as Maryland and Virginia tobacco, sugar, coffee and cotton, the American merchants would be the worst victims of the bankruptcy wave [New Hampshire Sentinel, Dec 14, 1799, 1.]*" (Beerbühl, 2018a).

526 "*In Britain also a discussion arose in Parliament as to whether Parliament should provide financial help to the sugar merchants in Liverpool and the planters on the Caribbean islands. Colonel Gascoyne, the MP for Liverpool, as well as Alderman Lushington for the planters of several Caribbean islands, petitioned Parliament for a loan of £0.5 in the form of exchequer bills to overcome the liquidity squeeze and to enable the merchants and planters of St. Vincent and Grenada to fulfil their monetary obligations [Oct 1, 1799.] They pledged goods to a value of £2.5 M as security. A debate arose about the petition as it was thought of as being of 'a novel nature' that Parliament should intervene. Among the opponents to the proposed bill was William Pitt. However, the argument that the Liverpool sugar merchants and the Caribbean planters were innocent victims of the Hamburg speculators and the fact that the state would not suffer any losses given the value of goods as security, meant that even Pitt finally agreed, and the bill was passed within a short time.*" (Beerbuhl, 2018a). "*The most remarkable features about the discounts at this time are the great number of [BOE's] discounting clients and the great range of London businesses represented. The exact number of clients at the end of 1799 is uncertain but next year it was 1,340... Including the discounting done for bankers, the aggregate for persons 'in Discount with the Bank', as reported on 1 Jan 1800, was £6.60 M. Of the £6.21 M of non-bankers' business, the sort that had been going on long before 1797, merchants doing overseas trade provided rather less than half and the other traders rather more than half. At the head of the merchants, with £0.58 M of bills under discount on that day, came the great West India Interest — the sugar and slave men. Because of the 'extraordinary situation of their trade' in war time, they had recently been given specially favorable terms.*"" (Clapham, 1945). "*Parliament repealed the Debt Recovery Act with respect to slaves in the remaining British colonies in 1797. 37 Geo. 3, c. 119 (1797).*" (Priest, 2006).

527 "*The bankruptcy records of Persent & Bodecker in London show that the situation became critical after the Hamburg house of Milow had failed. Only a day after Persent & Bodecker had stopped payment, the Anglo-German house of Cox & Heisch also suffered the same fate. They were forced to go to the court in London, when shortly afterwards De Dobbeler & Hesse in Hamburg failed for several million Mark Banco. According to The Times 'De Dobbeler and Hesse's bankruptcy involves the greatest number of sufferers in this country'. It created a chain reaction and panic in London as well... A few weeks before, early in Sep, a speculation bubble had begun to burst. Within the next 6 weeks, 136 merchant and banking houses in Hamburg went bankrupt for about 68 M Mark Banco. The crisis soon swept over Europe and shortly after the beginning of the New Year reached the towns on the east coast of the United States. [Margrit Schulte Beerbühl, 'Die Hamburger Krise von 1799 und ihre weltweite Dimension', Hamburger Wirtschafts-Chronik, Neue Folge 10 (2012), 85–110.]*" (Beerbühl, 2018a). "*The situation dramatically worsened when several big accepting houses, among them Milow, Henckel & Eimbcke and De Dobbeler & Hesse stopped payment at the beginning of Sep. In Hamburg alone, 152 houses altogether went bankrupt. About the middle of Sep, the first London houses were drawn into the Hamburg crisis. Two big accepting houses, Persent & Bodecker and Cox & Heisch, stopped payment on the 12th and 13th of Sep (they failed for about £0.2 M and nearly £0.3 M, respectively). Their collapse had a domino effect. Many smaller German houses followed in London in Oct and Nov and a number of other houses failed that were deeply involved in trading with the German States. Among them was the big Swiss firm of Battier & Zornlin in London. Denmark was also drawn into the Hamburg wave of bankruptcy. By Oct 15, the number of failures had put a complete stop on all trade in Copenhagen. The first stop in Russia was reported in about the middle of Nov when the*

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Russian-German house of Maas & Son failed for more than 2.2 M mark banco. It is not clear from the sources to what extent the earlier crisis in France contributed to the crisis in Hamburg. Contemporaries attributed the bankruptcy wave in Hamburg to two main causes: the glutting of the market with coffee and sugar some months before and the insufficiency of the banking system in the Hanse town. Contemporary observers in Hamburg and London remarked that Hamburg's banking system had not kept pace with the increase in business since 1793 and that the trade in bills of exchange had gotten out of hand. A correspondent of The Times reproached the Hamburg merchants for their inactivity. They should have foreseen the crisis after the markets had been overstocked with colonial products and could have taken suitable measures to prevent it by the establishment of a public loan or a Discount Society. In Sep, the Hamburg Senate had established a private fund, but this measure came too late to prevent further collapses. It is worthy to note that all the German houses that failed in 1799 were young businesses, with none being older than 6 years. The risk of bankruptcy among young businesses was generally higher than among old established ones, but the situation in 1799 was quite unusual. Over the entire century, only about 33% went bankrupt in the first 5 years after their naturalization." (Beerbühl, 2018b).

528 "*After 2 years the commission was dissolved by the withdrawal of the American members, who had consistently dissented from a series of rulings favorable to the claimants, including one that restored war interest.*" (Hobson, 1984). "*The commission continued its work through July 1799, when, following a heated disagreement over the local remedies rule and the date of independence of the United States, and amid severe personality clashes, the US commissioners withdrew. The issue of compensation for the British creditors was finally resolved by a lumpsum settlement agreed to in a Convention of 1802 between Britain and the US*." (Legum, 2001). "*In May 1799 the board again became involved in the discussion of the question of judicial remedies, and the extent to which they must be pursued, with particular reference to the case of Ware v. Hylton. On the 10th of that month, all the commissioners being present, Mr. Macdonald submitted for the consideration of the board, in the case of Joseph Stanfield, assignee in bankruptcy of certain British creditors to whom Colonel John Syme, of Virginia, was said to be indebted, a resolution which, after declaring that no legislative act had been passed to repeal the Virginia statute; that the United States circuit court had in 1793, in Ware v. Hylton, sustained the statute as against the treaty of peace; that the recovery of the debt was in consequence impeded by the act of assembly, and that proceedings in chancery to set aside conveyances for fraud were not in the ordinary course of judicial proceedings for the recovery of debts , proposed that compensation be made for the delay , all other points and facts , tending to show that the loss was occasioned by insolvency of the debtor or other cause , being re served. Underneath the resolution there is an entry in the records, signed 'Sitgreaves', saying that, the proposed resolution 'not being an office paper, a transcript is annexed from a copy in my possession.' On the same day Mr. Macdonald proposed or suggested another resolution, concerning which there is an entry, signed 'Sitgreaves', to the same effect as in Stanfields case, directly relating to a claim presented to the board in behalf of the creditor in the case of Ware v. Hylton. This draft of a resolution refers to the act of Virginia of 1777, and its operating as an impediment until the decision of the circuit court was reversed by the Supreme Court , and concludes " that the claimant is entitled to compensation under the Treaty of Amity for the losses incurred by him in prosecuting the said Writ of Error for the purpose of removing the said lawful Impediments ; such losses being a Loss arising directly out of the operation thereof . Reserving the Consideration of the Claim for the Loss alleged to have been occasioned by the two Verdicts stated in the Records produced.' No resolution appears afterwards to have been adopted. At the meeting of the board on July 9, 1799, the case of Dulany was again brought up, and the following paper was Dulany's case presented and read: 'Reasons for withdrawing from the Board on the occasion of the order proposed to be made, on the 27th of February 1799...'*" (Moore, 1931).

529 "*The lack of adequate marketing facilities was a heavy financial burden upon the planter. Much of Virginia's trade, particularly during the post-Revolutionary period, was drawn into the orbits of Philadelphia and Baltimore, which were less expensive for some Virginia shippers to reach, either by land or water, than many of the home ports and markets. Virginia products usually brought better prices (while imported goods also cost less) at these 2 markets than in most parts of the state. In the final analysis, the Virginia planter paid the high costs of freightage, insurance, and commissions that were perpetual encumbrances upon his commercial system. Furthermore, it was often good business for the British merchant to profit from Virginia's decentralized river commerce by evading the state's customs collectors, or by regulating, to some extent, the cost of freightage, the prices of tobacco, and the terms of credit. The fact that the system operated in large measure to the advantage of the merchant was a source of conflict between merchant and planter. Perhaps, no other period of Virginia history reveals this conflict more clearly than the post-Revolutionary period... Furthermore, the British monopoly of Virginia's carrying trade continued; and though planters received better prices for their crops during the period, they likewise paid higher costs for the marketing and export of their produce. The costs of marketing were high in Virginia throughout the Colonial period because of the nature of Virginia's decentralized river commerce. It appears that the costs were even higher during the post-Revolutionary period despite the fact that the Revolution had given Virginians the theoretical right to control their mercantilist-agrarian system. It is true that Virginians attempted to control the system, but they were unable to do so largely because of handicaps they suffered in mercantile experience from the standpoint of technology, capital, or intemational politics. Specifically, the Virginia planters attempted to evade payment of old British debts. Some eluded creditors by moving to the West or South or found legal protection at home in their courts or legislature. But the new federal Constitution, contrary to expectations of the planter-federalist who aided its ratification, provided the legal means for the collection of debts and, to some extent, for the potential destruction of the economic power of the tobacco planter*." (Low, 1953).

530 Virginia did not establish its own bank for discounting commercial paper until 1804, and so could not turn to FBUS for re-discounting: "*On the other hand, the prejudices of the Virginians during this period against commercial institutions, together with the lack of capital, compelled many of their merchants to become mere retailers for northern importers. [A writer in the Virginia Gazette of Aug 4, 1804, said the above conditions were bound to exist 'until the State shall adopt and support a system of banking and patronage to merchants, instead of delusive and destructive prejudices']... The first bank organized under the principles just outlined was the Bank of Virginia, chartered by the legislature Jan 30, 1804. Its successful establishment marks the real beginning of banking in Virginia. [The little Bank of Alexandria, chartered Nov 23, I792, was a local institution and created at a time when it was expected Alexandria would soon pass from the state's jurisdiction.]*" (Starnes, 1928).

531 "*The need of such a law had now become urgent; for, on top of the financial ruin caused by the land speculators, had come the commercial losses due to captures of our vessels by the French in what our Supreme Court termed our 'limited, imperfect war with France in 1799.' Business failures involving large amounts had occurred in New York, Philadelphia, and Baltimore. As Jefferson wrote to Madison: 'The whole commercial race are lying on their oars and*

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gathering in their affairs, not knowing what new failure may put their resources to the proof.' In the existing stagnation of commerce, he said, loans could not be made or money transferred from one city to another." (Warren, 1935). On February 2, 1800, Thomas Jefferson wrote to Thomas Mann Randolph: "*I was mistaken last week in saying no more failures had happened. New ones have been declaring every day in Baltimore, others here and at New York. The last here have been Nottnagil, Montmollin & Co. and Peter Blight. These sums are enormous. I do not know the firms of the bankrupt houses in Baltimore but the crash will be incalculable. In the present stagnation of commerce and particularly that in tobacco, it is difficult to transfer money from hence to Richmond. Government bills on their custom house at Bermuda can from time to time be had. I think it would be best for Mr. Barnes always to keep them bespoke, and to remit in that way your instalments as fast as they are either due or within the discountable period. The first is due the middle of March, and so from 2 months to 2 months in 5 equal instalments. I am looking out to see whether such a difference of price here may be had as will warrant our bringing our tobacco from New York here, rather than take $8 there. We have been very unfortunate in this whole business.*" (Jefferson and Johnston, 1904).

532 "*The bill, having been lost by a close vote in the 5th Congress, was again reported by Bayard in the House in the next Congress in 1799... A motion that the bill should not apply to prior debts was rejected (Bayard and John Marshall voting against it); and the bill was finally passed in the House, February 21, 1800, with the casting vote of the Speaker (Theodore Sedgwick of Massachusetts) by a vote of 49 to 48, representing almost wholly a partisan and geographical division*." (Warren, 1935).

533 "*The first federal bankruptcy law was passed on April 4, 1800... carrying by but a single vote in the House. Federalist representatives of commercial interests pushed the bill, while the law was opposed by anti-Federalist southerners and agricultural sympathizers. [BA00] was designed as a temporary measure, to sunset in 5 years...[BA00] was very similar to the 1732 English act, and also had many of the features of the Pennsylvania statute. It was purely a creditors' remedy. Only creditors, upon proof of the debtor's commission of an act of bankruptcy, 'could initiate a bankruptcy.' Debtors, however, apparently were often able to persuade a friendly creditor to bring a case. Only merchants were eligible debtors. Fraudulent bankruptcy was a criminal offense, but was not punishable by death. Commissioners appointed by the district court supervised the process, and had powers very similar to the English commissioners. The commissioners would appoint assignees to effect the liquidation and distribution*." (Tabb, 1995). "*The statute closely tracked the English practice that had developed throughout the 18th century, and the leading treatise on the Act is peppered with cross-references to English statutes and cases. Bankruptcy petitions were filed against traders who had committed specified acts of bankruptcy, and, as initially drafted, the district courts appointed a commission to handle the proceedings*." (Lubben, 2013)."*The Act of April 4,1800 (2 Stat. 19-36), containing 64 sections, applied to 'any merchant or other person residing within the United States, actually using the trade of merchandise, by buying and selling in gross, or by retail, or dealing in exchange or as a banker, broker, factor, underwriter, or marine insurer.' Robert G. Harper wrote to his constituents, May 15, 1800, 'Papers of James A. Bayard,' (1913, ii, 101-102): 'Among the most important laws of the session thus terminated, viz., the Bankrupt Act which has long been an object of attention in Congress, but hitherto delayed by the difficulty and extent of this subject itself, or by the pressure of matters more immediately interesting. Its operation is confined to merchants and dealers, and will be rarely felt except in the great commercial towns; for a person must owe at least a thousand dollars before it can affect him. Its object is, in the first place, to support mercantile credit, by protecting the rights of creditors against the fraud of dishonest and the folly of imprudent debtors who may waste or conceal their property while the ordinary forms of law are going on against them; and secondly to encourage fair industry and prudent conduct, by enabling honest debtors reduced by misfortune, to give up their property, free themselves entirely from their debts, and begin the world anew, which no man will ever have the courage to do, while a load of old debts is hanging on him. A system so new, so extensive, and operating on such a variety of unseen cases, will, no doubt, be found very imperfect at first, and in need of frequent revision and amendment according to the light which experience alone can afford. It may also be liable to abuse in many instances, for what human institution may not be perverted? But the example of other countries proves that to a trading people a bankrupt law is highly beneficial if not absolutely necessary*.'" (Warren, 1935).

534 "*The number of cases invoking the law during its 33-month life was small —not over 500 in Pennsylvania, New York, Maryland, and the D.C., where it was most used. Among those who obtained a discharge, entitling him to release from debtor's prison after nearly 3 years' incarceration, was Robert Morris... Bankruptcy proceedings were initiated against Morris in July, 1801, and he received his discharge in Dec. Thereafter, his creditors abandoned the proceedings and the commission in bankruptcy and was vacated on petition of his heirs 29 years after it was issued and 25 years after his death. See In re Morris, 17 Fed. Cas. 785 E.D. Pa. 1837).*" (Countryman, 1976).

535 "*An act to provide for the settlement of the claims 'of widows and orphans barred by the limitations heretofore established, 'and to regulate the claims to invalid pensions;' and were, thereupon, unanimously, of opinion and agreed… That as the objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress... Upon due consideration, we have been unanimously of opinion, that, under this act, the Circuit court held for the Pennsylvania district could not proceed... Because the business directed by this act is not of a judicial nature. It forms no part of the power vested by the Constitution in the courts of the United States; the Circuit court must, consequently, have proceeded without constitutional authority*." *Hayburn's Case, 2 US 409 (Supreme Court 1792)*. "*Commissioners were not judges, or necessarily trained in the law, but many were 'politically connected lawyers and merchants.' Although there were no permanent commissions, the courts often appointed a small number of the same people to "most or all of the commissions in each jurisdiction,' thereby creating a de facto core of commissioners... that commissioners handled these important tasks rather than the courts has led more than one scholar to conclude that Congress recognized 'that the administrative work of commissioners did not fit comfortably within the definition of the judicial power of the United States.' Indeed, bankruptcy trustees, and not bankruptcy judges, now handle these administrative tasks... Commissioners 'made the all-important initial determination of whether the debtor was in fact a bankrupt,' but the debtor could demand a jury trial before a district judge on the issue. Similarly, commissioners could take evidence of the validity of creditors' claims,' but creditors (or assignees) could refuse to submit their claims to the commissioners and require a jury trial in the circuit court for the district. Elsewhere, key adjudication was determined exclusively or predominantly by the court. The estate's claims against third parties were settled by resort to litigation before a judge, not before commissioners. Further, a judge, and not a commissioner, could award the debtor a discharge.*" (Samahon, 2008). On the other hand, in 1814, former Senator Taylor (DR-VA) noted that "*Stronger reasons exist for shielding legislative power against the influence of executive and judicial patronage, than for shielding these departments*

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against legislative patronage... Offices and money, created or sustained, and taxed by the legislature, are distributed by the executive; and the bankrupt law endowed judicial power with considerable patronage; so that the legislature can extend, sustain, diminish, or cause to fluctuate, executive and judicial patronage, as it is pleased or displeased with the returns to itself." (Taylor, 1814).

536 "*By 1803, the sentiment for repeal of [BA00] was overwhelming… Small dividends were paid, and many of the discharged debtors were high-rolling speculators who went through bankruptcy and then started their operations anew. In addition, travel to the distant federal courts was difficult. Finally, agricultural interests were outraged at the perceived favoritism of mercantile groups*." (Tabb, 1995). 536 "*Reasons for dissatisfaction with the measure were various: the difficulty of travel to federal courts, the extension of federal powers, the fact that it made discharges available only to the mercantile class, and the fact that dividends to creditors were very small because most debtors were already in jail when bankruptcy proceedings were initiated against them.*" (Countryman, 1976).

537 "*2 of the most vocal opponents of the Act, Hastings and Thomas Newton, Jr., a Republican from Norfolk, Virginia, both first-term congressmen, were also the most muddled in their arguments... Each expressed a strong preference for state insolvency laws, which did not carry occupational restrictions. Hastings had also asserted that he would favor a bankruptcy law if the bankrupt's property remained liable for his debts, which would, of course, eliminate the discharge and turn the Act into an insolvency law*." (Mann, 2009). "*Partly because of the lack of economic diversification in the South and the resulting dependence on single-crop staples and distant markets, legislatures proved unusually prone to enact temporary relief measures, especially stay, valuation, and commodity laws...*" (Coleman, 1999). "*Stay laws appealed to the conservative ideology of agrarian republicans as much as to their material interests. As one scholar observes, moratoria are conservative forms of legislation, intended 'to preserve the old order through a period of crisis.' Bankruptcy laws, by contrast, 'clear away the debris of a previous era of overexpansion and over indebtedness: a policy based on the assumption that former times cannot be recreated*." (Sauer, 1994).

538 "*Well into the 19th century, owners of large plantations in the American South could survive insolvency for decades, just because of the impossibility of liquidating their stock of assets (lands and slaves) at a viable price; Thomas Jefferson is a well-known example (Coleman, 1999)*." (Sgard, 2006).

539 "*Republicans who opposed it included such luminaries as Albert Gallatin and John Randolph, both of whom denounced [BA00] for its effect on the landed interests. 'Many planters had been choused out of their property by the operations of this very law,' charged Randolph [of VA]. 12 Annals of Cong. 379 (1803)*." (Sauer,1994). Mann (2009) notes this is "*a tantalizing, but unfortunately unverifiable, assertion since no bankruptcy records from Virginia have survived. Hence Bayard's remark that 'I have heard much of the evils attending to its execution, but I have never seen them.'*" "*Strong opposition was made by Anti-federalists from the South and from the agricultural class like Albert Gallatin of Pennsylvania, Abraham Baldwin of Georgia, and William Gordon of New Hampshire. If the law only applied to cities, he would vote for it, said Gallatin, but he could not consent to oppress the country traders by such a system... Gordon, in opposing the bill, said that it was not required in 'the natural operation of commerce,' that it was the product of the 'spirit of speculation which had raged to a great extent in this country, which had driven the merchant from his country house to speculate in land and produced a sort of mania among the people of the United States. The consequence is that our jails are crowded with persons anxiously solicitous for an act of this kind.' He pointed out that the farmers and country traders would suffer by such an act. Farmers and planters do business on credit, make payments when their crops come in, and frequently are late in payment; and thus the country trader with whom they deal may fail to pay the city merchant promptly, and if the latter proceeds in bankruptcy against the country trader he in turn must press his farmer or planter debtor, with some compulsory process. Hence, a bankruptcy law was unsuited to conditions in this country which were so different from those prevailing in England. The Representatives from Virginia were almost unanimously opposed to a National bankruptcy system; for under it all property of a debtor might be reached by a creditor, whereas under Virginia statutes free-hold land could not be taken on execution. This objection had been made by Thomas Jefferson as early as 1792, to the bill then introduced. Writing to his son-in-law, he said: 'A bankrupt bill is brought in, in such a form as to render almost all the land-holders of this State liable to be declared bankrupts. It assumes a right of seizing and selling lands. Hitherto, we had imagined the General Government could not meddle with the title to lands.'*" (Warren, 1935). "*After the passage of this first act, which was a purely involuntary law and limited in its scope, being intended for traders only, violent opposition to its continuance was aroused by John Randolph of Virginia, who bitterly assailed it, on the ground it was an ex post facto law, impaired the obligation of contracts, and was an injury to the planters of the country. To him is to be attributed its repeal*." (Olmstead, 1902). "*Federal bankruptcy legislation endorsed an expansion of the federal government's role as against the authority of the states. In particular, it threatened to trump Southern states' limits on the attachment of real property*." (Witt, 2003). *"To Jefferson, these reservations paled next to what he saw as the most threatening part of the bill—that it permitted the land of bankrupt debtors to be seized and sold. In his notes to Madison and letters to others, Jefferson cast the issue as federal trespass on state prerogative—he considered land title solely a matter of state law—but his true objection was not one of constitutional theory. It was that the failure to exclude agrarian debtors who engaged in some trading would 'render almost all the landholders South of [Pennsylvania] liable to be declared bankrupts', and thus subject to losing their land to their creditors. The bill placed 'landed and farming men... in danger of being drawn into it's vortex.' This led Jefferson to his peroration, which is worth quoting in full: 'Is Commerce so much the basis of the existence of the U.S. as to call for a bankrupt law? On the contrary are we not almost merely agricultural? Should not all laws be made with a view essentially to the husbandman? When laws are wanting for particular descriptions of other callings, should not the husbandman be carefully excepted from their operation, and preserved under that of the general system only, which general system is fitted to the condition of the husband-man?'*" (Mann, 2009).

540 "*Throughout the 1820s attempts were made to pass a bill permitting voluntary bankruptcy for the direct relief of debtors, merchant and non-merchant alike. Yet throughout that period all such efforts were rebuffed by an alliance of southerners, who opposed any federal bankruptcy bill, and others who believed that voluntary bankruptcy was unconstitutional.[Swisher, 1974] John Calhoun, for example, heatedly fought off federal intervention*." (Tabb, 1995).

541 "*During the years immediately following the organization of the federal government in 1789, banks were chartered by special acts of State legislatures or the Congress, usually for a limited number of years... [the first failure, in 1809, was] of the Farmers Bank of Gloucester, Rhode Island... [and] the first wave of bank failures occurred 5 years later.*" (FDIC, 1998).

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542 From 1811 "*until [SBUS] was chartered, government monies were kept in State banks. These deposits were without security, and as a consequence severe losses followed the financial dislocation which came with the War of 1812. This experience led the Government to exact security, and losses became negligible."* (Frankfurter, 1938).

543 "*The panic caused by the capture of Washington, Aug 24... [Philadelphia's banks suspended specie payments on] Aug 31... The banks of New York immediately followed, Sep 1; and thence-forward no bank... paid its obligations except in notes. Only [some] banks of New England maintained specie payments... Until the blockade should be raised and domestic produce could find a foreign market, the course of exchange was fixed, and specie payments could not be resumed... Suspension mattered little, and had the National Bank been in existence the failure might have been an advantage to the government ; but without a central authority the currency instantly fell into confusion. No medium of exchange existed outside of New England. Boston gave the specie standard, and soon the exchanges showed wide differences. New York money stood at 20% discount, Philadelphia at 24%, Baltimore at 30%. Treasury notes were sold in Boston at 25% discount, and United States six-per-cents stood at 60 in coin. [UST] had no means of transferring its bank deposits from one part of the country to another. Unless it paid its debts in Treasury notes, it was unable to pay them at all. No other money than the notes of suspended banks came into [UST]. Even in New England, taxes, customs-duties, and loans were paid in Treasury notes, and rarely in local currency. Thus, while the government collected in the Middle and Southern States millions in bank-notes, it was obliged to leave them in deposit at the local banks where the collection was made, while its debts in Boston and New York remained unpaid... The whole South and West, and the Middle States as far north as New York, could contribute in no considerable degree to the support of government... [even though it] might possess immense resources in one State and be totally bankrupt in another; it might levy taxes to the amount of the whole circulating medium, and yet have only its own notes available for payment of debt; it might borrow hundreds of millions and be none the better for the loan. All the private bank-notes of Pennsylvania and the Southern country were useless in New York and New England where they must chiefly be used. An attempt to transfer such deposits in any quantity would have made them quite worthless. The Treasury already admitted bankruptcy. The interest on the national obligations could not be paid.*" (Adams, 1911). The event "*almost paralyzed the operations of the Treasury. It became impossible to make transfers of funds from one part of the Union to another, because the notes of the banks of one section did not pass current in other sections*." (Conant, 1915)

544 Adams (1911) describes the times: "*[T]he paper money of the State banks, which already stood at discounts… to 50% in specie, and in any large quantity could not be discounted at all. Until private paper should be abolished, public or government paper could not be brought into common use*." According to Jefferson: "*The banks have discontinued themselves... We are now without any medium; and necessity, as well as patriotism and confidence, will make us all eager to receive Treasury notes if founded on specific taxes. Congress may now borrow of the public, and without interest, all the money they may want, to the amount of a competent circulation, by merely issuing their one promissory notes of proper denomination for the larger purposes of circulation, but not for the small. Leave that door open for the entrance of metallic money... The State legislatures should be immediately urged to relinquish the right of establishing banks... Jefferson did not touch upon legal tender but the assumption of power implied in the issue of paper money seemed to require that the government should exercise the right of obliging its creditors to accept it... [As] interest-bearing Treasury notes stood then at a discount of about 20%. The proposed paper money could hardly circulate at a better rate, and coin was not to be obtained... the notes must be a forced currency if they were to circulate.*" "*Starting from the admitted premise that loans were not to be obtained, and that money could not be transferred from one point to another in any existing medium at the disposition of government, [Chairman of the House Ways and Means Committee Rep. Eppes (DR-VA)], proposed to issue Treasury notes sufficiently small for the ordinary purposes of society, which were not to be made payable on demand in coin, but might at any time be exchanged for 8% bonds, and were to be received in all payments for public lands and taxes."* UST Secretary Dallas thought it unlikely: "*Under favorable circumstances and to a limited extent an emission of Treasury notes would probably afford relief; but Treasury notes are expensive and precarious substitute either for coin or for bank notes, charged as they are with a growing interest, productive of no countervailing profit or emolument, and exposed to every breath of popular prejudice or alarm. The establishment of a national institution operating upon credit combined with capital, and regulated by prudence and good faith, is after all the only efficient remedy for the disordered condition of our circulating medium. While accomplishing that object, too, there will be found under the auspices of such so institution safe depository for the public treasure and constant auxiliary to the public credit. But whether the issues of a paper currency proceed from [UST] or from a national Bank, the acceptance of the paper in a course of payments and receipts must be forever optional with the citizens. The extremity of that delay cannot be anticipated when any honest and enlightened Statesmen will again venture upon the desperate expedient of a tender-law*." Versions from Dallas and Calhoun failed as well; Adams notes that "*The Southern preference for government paper currency lay at the bottom of Calhoun's scheme as of Jefferson's, and seemed to Dallas to combine ignorance with dishonesty. Treasury notes bearing interest could not be made to serve as a currency, and were useless as a foundation for government paper. 'What use is there,' asked Ingersoll, 'in such a mass of banking machinery to give circulation to some millions of Treasury notes? Why not issue them at once without this unwieldy, this unnecessary medium?'... the House refused to consider it.*" The only other time tenders were proposed was during the Civil War in 1862 (Young, 1924).

545 "*In 1750 there was a bare handful of country banks in England and Wales. By 1784 there were about 120, and by the early 1790's some 300. The crisis of 1793 caused a temporary decline, but the suspension of cash payments in 1797 inaugurated an era of paper money and inflation, in which banks soon multiplied. There were almost 400 by 1801, and not far short of 800 at the peak in 1810. The numbers fell slightly in the later years of the Napoleonic wars, and precipitately with the coming of peace. A temporary recovery in numbers during the early 1820's was halted and sharply reversed by the crisis of 1825, which marked the effective close of a major chapter in the history of modern English banking. Country banking was less an innovation than a specialization in existing techniques. Complete specialization was hampered by the restriction of banking to partnerships of no more than 6 between 1708 and 1826, during which period joint-stock banking was the jealously guarded monopoly of [BOE]... In consequence, banking was commonly combined with other business pursuits, from the extension of which it had originally developed. Bankers were drawn principally from 3 main groups, whose activities expanded during the Industrial Revolution: industrialists, whose main concern was to provide a local means of payment; country lawyers, who*

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sought or offered outlets for specific sums of money on behalf of their clients; and remitters of funds between the provinces and London. The third source was the most prolific." (Pressnell, 1953).

546 "*Amongst the most important remittance activities were those concerned with Government revenue... by slackness in actual payment, they were engaging in a species of deposit banking; they secured time—at the Government's expense—in which to use public money for private profit. This delay in payment might occur both before and after the money was dispatched to London; in either case, the Government funds increased the resources of private individuals. Locally, they added directly to cash reserves, and thereby to the ability to expand private credit; in London, they performed a similar function—for the extent of provincial bill drawing depended upon the funds available with a London agent— or they might be invested in Government securities... [In 1821,] The Select Committee reported that, in addition to large permanent balances, Receivers of the Land and Assessed Taxes commonly retain in their hands the whole of each quarterly collection for about 6 weeks, being equivalent to an advantage of retaining the whole year's collection for about 6 weeks in the year...' In 1820, the total remitted from England and Wales was £7.4 M; balances left with Receivers at the end of this financial year totaled £0.36 M, which corresponded closely to the permanent balances below which they were not obliged to reduce their accounts. In 1818 and 1819 the balances had averaged more than £0.37 M. As for the Stamp Distributors, their balances in 1818-9 averaged more than £0.11 M; according to Joseph Hume, speaking in the Commons in 1821, '...in the middle of a quarter, they frequently had in their possession £0.3-0.4 M of the public money...' If the remitter of Government revenues was a clear candidate for country banking, the country banker found in such remittance a regular and profitable source of income, which added both deposits and prestige to his business... The growth of Government revenue drew the attention of bankers to the unique business advantage of a special legal device for the easy recovery of Crown debts. This was the Extent-in-aid, which facilitated the recovery of private debts due to Crown debtors, if they could prove that without the payment of these they could not meet the Crown's claims. The Extent-in-aid gave the Crown debtor (in whose aid the Crown's claim had been extended) a prior lien on the resources of a third party in debt to him, by permitting him to demand peremptory payment, on pain of seizure of his belongings and person by the local sheriff... A Government account was, in fact, regarded as an insurance policy-particularly in view of the contemporary chaos of the bankruptcy law and the bedlam of the Bankruptcy Court. The significance of the defects of bankruptcy law during the Industrial Revolution is far from clear, but it is certain that for a period, at least, bankers amongst others were aided in the recovery of debts by the peculiar facilities open to handlers of Government monies... Extents were obtained with comparative ease, and most bankers felt compelled to receive a Government account, if only through a customer who transmitted revenue to Government independently of his particular bank, in order to qualify as a possible applicant for the issue of an Extent.*" (Pressnell, 1953).

547 "*The causes and course of the commercial boom of 1808-10 are well-known. Briefly, the Spanish revolt of mid-1808 presented trading opportunities in the Peninsula itself, the Mediterranean, and the Foreign West Indies (including South America) and, by diverting French attention, opened markets in northern Europe, notably Sweden. The latter were enhanced further, in 1809, when the deployment of the Grande Armée against Austria (the Aspern-Wagram campaign) made German ports available. Consequently, British merchants, previously frustrated by political impediments to traditional markets, embarked upon feverish commercial activity. As Prof. Crouzet pointed out, the credit terms on which this trade was conducted were responsible for the depreciation of late 1808 and early 1809 but its subsequent protraction, although aggravated by government remittances and grain imports, was largely caused by domestic inflation. In normal circumstances, the price rise of 1808 would have subsided after March 1809 when the scarcity of imported goods had been replaced by abundance. However, [BOE's] acquiescence in the growing demand for discounts transformed a simple bout of speculative fever into a powerful movement of inflation. The resultant disparity between British and overseas prices encouraged further large importing at a time when both domestic and foreign markets were saturated. In turn, this led to an increasing number of bankruptcies from late 1809 and the outbreak of a severe economic crisis in July 1810. According to Sir Francis Baring, [BOE] was highly irresponsible during the boom, discounting extensive accommodation paper for 'clerks not worth £100.'*" (Duffy, 1982). "*It is not to be forgotten that during the second quarter of 1810, while the Directors were giving their evidence, the crest of the commercial wave was quivering: prices had begun to sag. During the third quarter, rafter the Report was presented, the failures began—and the Bank did more discounting than in any single quarter of that whole generation. It was giving all the support it could. The country banks had lost their nerve, as the curtailment of their note stampings shows; and the autumn tide of bankruptcies was setting in. Holland had just been absorbed into France; so had the German coast up to Hamburg; Massena took Ciudad Rodrigo in July; Wellington, after beating him at Busaco, was falling back to stand on the lines of Torres Vedras. As keepers of the nation's funds, 'the Chairs' did well to be cautious and cling to what treasure they still had. As commercial bankers, it was their duty not to alarm a shaken City by acquiescing in any policy of sudden and drastic limitation of that assistance which only they could now give. As economists they come less well out of the debate. They and their supporters argued that the state of the exchanges had nothing to do with issue, but was a result of disturbances in the balance of trade. There was no doubt disturbance enough: it had driven up exchange rates for bills as well as the price of gold. Wheat was once more terribly dear in 1810: heavy imports of food were essential. The course of the war interrupted or disorganized one branch of trade after another, and the French privateers, the submarines of that time, were out where their successors have been out since. In the absence of complete commercial statistics, and with a general ignorance of the hidden movements of the gold, exact discussion of the trade balance was impossible, as the Bullion Committee agreed. Ricardo was allowing that a 4 to 5% rise in gold prices need not imply depreciation. Like Henry Thornton in 1802, a price about £4 would not have worried him. Taking account of growing risks and heavy insurance, the Committee thought that the market price might have risen to perhaps 5.5%—say 4s.—above the mint price under a system of cash payments. But the actual market price was 15.5% up, and more. 'The Chairs' no doubt hoped that the sterling price of gold would fall as the balance of trade and payments was redressed, a fortunate development to which they looked forward, although like everyone else in some ignorance. Wheat prices did fall sharply after the harvest of 1810; and collapse after boom brought general prices—as we know with some precision, though they could only know vaguely—down by over 13% between the first quarter of 1810, when the Committee began to work, and the second quarter of 1811, when its Report was debated. But gold did not fall. Jeremiah Harman's 'none whatever', underlining the less emphatically worded opinion of his colleagues, showed [BOE] witnesses at their weakest as economists and commentators on [BOE's] earlier practice. They boasted, and with some reason, of their moderation in issue and their vigilant watch over the paper that they discounted. But their old temperate defender, Henry Thornton, who had been turned by the course of events and service on the Bullion Committee into a temperate critic, following King and Ricardo,*

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not only demonstrated conclusively in speeches of the 1811 debates that excess of 'paper credit'—like the sound economist that he was, he did not simply say Bank notes—was the sole rational explanation of a level of gold prices which was peculiar to England; but also showed how this was compatible with [BOE's] admittedly reasonable issues. There had been a growing economy of notes. Bankers—he was one—were holding Exchequer Bills, paper 'from the Bank of the Right Hon. the Chancellor of the Exchequer', in their place. 'Bills of exchange... and other articles of a similar nature served exceedingly to spare, the use of notes.' Private families kept fewer notes on hand, 'through the increased habit of employing bankers, and of circulating drafts upon them [cheques], in and round the Metropolis.'" (Clapham, 1945b). "*There were 5 failures between Aug 1809 and June 1810, which could possibly be linked with vet another poor harvest, bringing higher wheat prices, in 1809, but they could equally well have been the less fortunate participants in the rising wave of economic activity between 1807 and 1810. This was induced by the new attraction of investment in Latin America as trade with Europe and the U.S.A. became more and more difficult. The buoyancy of the boom is evident from the reverse trends of some leading indexes: interest rates rose during the second half of 1808, and did not dip below their previous level until late in the following year; abnormal remittances overseas rose in each year from 1808-10; prices rose through 1808 and the first quarter of 1809, then fell for 2 quarters, to rise from the last quarter of 1809 to their peak in the first quarter of 1810. It is once again impossible to say much about the role of the country banks in this expansion, other than that their numbers grew uninterruptedly: the failures before the cracking of the boom were unimportant ones. Whatever the responsibility of the country banks, there can be few doubts about the contribution of [BOE] to the expansion of credit. 'Prices were up before the supply of notes was increased —that increase was an effect not a cause'... True enough—for a quarter, a half-year, perhaps for a 12 month, but hardly for longer: issues, commercial discounts, advances—however [BOE's] activities are viewed, the growth of these is inescapable. [BOE] may not have initiated the rise in prices, but surely helped to maintain it. The popularity of this view, which found its classic expression in the Bullion Report, no doubt explains the comparative lack of castigation of the country banking system for the many failures which occurred with the collapse of the boom. The immediate cause of the failures was the turn of the trade expansion: exports were down by 33% in 1811 upon 1810, and imports down by more than 40%. This, with the severe drop in prices, could hardly do other than cause widespread difficulties, which were experienced by West India merchants, then by bankers and manufacturers.*" (Pressnell, 1953).

548 "*[BOE] notes were used as the basis of all sizable transactions and increasingly, as gold coins disappeared after 1797, for small payments. They formed most of the reserves of the private banks which financed the trading activities of the City. [BOE] had no contact with country areas and the extent of its influence there is unclear. That provincial credit conditions tended to reflect those in the capital is suggested by various monetary links: the popularity of bills drawn on London, the dependence of country banks on metropolitan reserves (especially deposits with private banks), and the convertibility of country issues into [BOE] notes. However, as fixed reserve ratios were employed by neither London nor country banks, it seems likely that the latter could generate at least short-run monetary expansion independently of any action by [BOE].*" (Duffy, 1982). "*It has been suggested that the communication of commercial distress during the crisis of 1810 was largely attributable to the widespread use of bills of exchange... Although it is impossible to calculate the extent of such bills, their obvious efficacy suggests that they became widespread when prices fell sharply in 1810... In July, the City was shaken by the failure of a mercantile bank, Brickwood & Co.'s... The purpose here is to examine the extensive, direct ramifications of Brickwood & Co.'s stoppage and to demonstrate the responsibility of the bill of exchange for the spread of bankruptcies in a 'house of cards' effect emanating from the original bank failure... This problem was no doubt heightened by the bankruptcies of some wholesalers and the inability of others to give credit to the same extent...*" (Duffy, 1985). "*Total business bankruptcies rose from the last quarter of 1810, and again during the first quarter of 1810. Continuing high for another quarter, they mounted rapidly in the last half of the year, and continued to be heavy for most of the next 2.5 years. Bank failures in the country were precipitated by the collapse of the London bank of Brickwood & Co. in July 1810. It was subsequently to be described as having been '...perhaps as solid a house as anyone in the city', and The Times averred within 4 days of the failures that its assets were ample to meet all demands. The stoppage was attributed by the newspaper to 'the failure for £0.2 M of one of the first firms in general brokerage, but more especially concerned in West India dealings.' Besides this, The Times said, the failure must be attributed to 'the restrictions recently imposed on the introduction of Colonial produce to the Continent... A run was said to have been provoked by the spread of rumors about the firm when it became known that Down & Co. had disposed of £10,000 or £20,000 of stock for them. Its occurrence at the very time when tax monies were being paid into the government immeasurably enhanced the difficulties: money was tight in the City, and Brickwood & Co. themselves were correspondents for several provincial receivers general. On to July, 4 days after their stoppage, a docket of bankruptcy was struck against the associated Salisbury bank of Bowles & Co., and another local banker caught the contagion the next day. Alarm rapidly spread to other parts of the country. A Dartmouth bank failed on 11 July, an Exeter one 2 days later. This Exeter failure followed a week in which 'the inhabitants... suffered the greatest inconvenience, from the general distrust in the respectability of almost every bank occasioned by the failure of the Western Bank under the firm of Wilcocks & Co., and the reported stoppage of some others in the county of Devon as well as in some other parts of the Kingdom.' Thus did rumor do its work. The consequent heavy runs upon the banks led to the public meetings usual in such crises, and declarations of confidence were made in threatened banks. Hardly had this panic been checked when a Chester bank—probably Messrs. Rowton & Marshall—suffered a run. Its London agents, who were 'under large engagements' for it, were Messrs. Dawes & Co. of Pall Mall; they stopped payment in consequence!' By the end of Feb 1811 a total of 13 country banks had failed; many were in rural areas in south and west, but failures in Swansea, Chester, and Chesterfield point to the industrial impact, while that of Bowles & Co. at Salisbury brought distress to many engaged in local manufactures. The yields of Consols rose with little interruption from the middle of 1810 to the middle of 1812. So tight was credit by March 1811 that the House of Commons appointed a select committee of inquiry, which hurriedly reported within a week. Its conclusions were not seriously disputed: London, Liverpool, and Glasgow merchants had sought to exploit Latin American and West Indian trade, but had overestimated the possibilities; the distress of the merchants had affected the manufacturers and the bankers who held mercantile bills. The Chancellor of the Exchequer proposed the issue of £6 M in Exchequer bills, Parliament legislated for £2 M, and £1.34 M was eventually issued to 119 applicants. The Commissioners in charge of the issue who reported this in 1813 said that assistance had been given to mercantile houses, but that it had been 'principally advantageous to many considerable Manufacturers, in different parts of Great Britain, who, having in great degree suspended their works, were enabled to resume them, and to afford employment to a number of workmen who must otherwise have been thrown on the Public for support.' Yet again, therefore, a crisis had demonstrated the inter-dependence of the various elements in the network of*

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credit, and the crucial dependence of industry and trade upon its smooth working. Banking failures continued to be heavy in the harvest years 1811-2 and 1812-3. These were some of the outward signs of the economic depression of which the Luddite riots were another manifestation. During this period of high prices and high rates of business failure, trade with the Continent and with the U.S.A. became ever more difficult; public expenditure, and the gap between this and revenue, rose; the harvests brought high wheat prices." (Pressnell, 1953).

549 "*The popularity of consolidation bills had been growing over the previous few decades. The movement began in the 1790s when Charles Abott moved in Parliament to expand the powers of the annual committee appointed to look into laws immediately expired or expiring. Abott had the committee instructed to broaden its usual investigation and determine which laws should be repealed or consolidated. Of particular concern was Parliament's habit in the 17th-century of passing acts of temporary duration to test particular legislation before making it permanent. Over 200 such acts passed in the 17th-century, only to be renewed haphazardly. In making his motion, Abott specifically mentioned that: 'The trading interests which are deeply concerned in [sic] the laws of bankruptcy and insolvency have repeatedly suffered by the expiration of acts of this nature...*" (Lester, 1990).

550 "*There was a period of 13 years after 1781 when no such bills were passed. They then resumed in 1794, and again in 1795, 1797, 1801, 1804 (amended in the next session), 1806, -09, -11, and -12, the last 2 acts being amended in the following sessions. The final such bill was passed in 1813, after the passage of a permanent measure.*" (Lineham,1974). "*An act of 1808 enabled an imprisoned debtor who owed less than £20 and had been confined for 1 year to obtain his immediate release, but subject to continued liability upon his debt.*" (Cohen, 1982).

551 Whitmarsh (1817) describes the following 6 bankruptcy acts under George III —citing the monarch's year and chapter in brackets: 1796 [36, c. 90 — *An Act for the Relief of Persons equitably and beneficially entitled to or interested in the several Stocks and Annuities transferable at BOE*], 1801 [41 c. 90 — *An Act for the more speedy and effectual Recovery of Debts due to his Majesty, his Heirs and Successors, in Right of the Crown of the United Kingdom of Great Britain and Ireland, and for the better Administration of Justice within the same*], 1805 [45, c. 124 — *An Act to amend an Act passed in the Fourth Year of his present Majesty, intituled, 'An Act for preventing Inconveniences arising in Cases of Merchants and such other Persons as are within the Description of the Statutes relating to Bankrupts, being entitled to Privilege of Parliament and becoming insolvent, and to prevent Delay in the entering Appearances in Actions brought against Persons having Privilege if Parliament'*], 1806 [46, c. 135— *An Act to amend the Laws relating to Bankrupts*], 1809 [49, c.121— *An Act to alter and amend the Laws relating to Bankrupts*], 1812 [52, c. 144 — *An Act to suspend and finally vacate the Seats of Members of the Home of Commons, who shall become Bankrupts, and who shall not pay their Debts in full within a limited Time*].

552 "*It would also seem that the shopkeeper used arrests as a regular means of enforcing the payment of a proportion of his debts. In economic depression, when trade was hard, and credit short, his use of arrests actually declined. This relationship holds good until 1813.*" (Lineham,1974).

553 "*The Court for Relief of Insolvent Debtors was created in 1813 [53 Geo. III, c 102] and empowered to give jail release, but not a full discharge of debts, to all insolvents who surrendered their property to their creditors. It set free more than 50,000 debtors in the next 13 years.*" (Countryman, 1976). "*The price of corn had risen to an extraordinary height during the 5 years ending with 1813. But owing partly to the luxuriant crop of that year, and partly and chiefly, perhaps, to the opening of the Dutch ports, and the renewed intercourse with the Continent, prices sustained a very heavy fall in the latter part of 1813 and the beginning of 1814. And this fall having produced a want of confidence and an alarm amongst the country bankers and their customers, occasioned such a destruction of country paper as has not been paralleled, except only by the revulsion of 1825.*" (Smith and McCulloch, 1850). "*In 1813 Parliament enacted a new scheme that established a Court for Relief of Insolvent Debtors to hear prisoners' petitions for release. The procedure of the court closely resembled bankruptcy procedure, calling for transfer of the debtor's property to an assignee who had responsibility for the pro rata payment of creditors. However, the debtor, unlike the bankrupt, remained liable for his unsatisfied obligations*." (Cohen, 1982).

554 "*The Redesdale Act of 1813 set in motion a series of alterations to the debtor laws that gradually reduced imprisonment to a brief and relatively painless excursion to gaol. These changes diminished the effectiveness of such confinement as an inducement for the payment of debts... In that year the law was changed, and at the same time the committal rate changed dramatically. The enormous increase in imprisonment for debt after the Napoleonic Wars was not caused by the depression, but by the change in the law, for the rise in numbers began before 1815. This increase only inflated a sustained rise in the number of debtors, that can be traced back to 1798, and almost certainly accounts for the increased passage of temporary insolvent acts in this period. The rise was not the result of the growth in population, for when the increases recorded between the censuses of 1801, 1811, and 1821 are absorbed, the debtor figures still increase 59.6% more than them over the 21 years... [T]he use of imprisonment for debt... had grown out of all proportion to the growth in population, until by 1813 the only alternative to a permanent Relief Act could be more frequent temporary acts, or else the gaols would be intolerably crowded. This growth in the numbers of debtors suggests a greater recourse to the civil law in defense of property. It parallels another sharp rise in the increase in criminal prosecutions for larceny and other offences against property. The morality of trade was becoming more pervasive. So it became necessary to provide more assistance to the victims of trade... By law the creditor could not touch this money, and often, threatened with arrest, the debtor preferred to save what he had to meet the expenses of prison, rather than attempt to appease his creditors. Naturally, the creditor disliked this, but most observers seem to have sympathized with the debtor... Complaints about the Court from traders led to statutory alterations to its powers and organization. In an 1814 act, (54 Geo. III c. 23), the powers of the Court in the counties were more carefully defined, and the Quarter Sessions given some duties. In an 1816 act, (56 Geo. III c. 102), debtors 'guilty of gross injustice toward their creditors' were made liable to severe punishment by the Court. The problem of debtors who were distant from London troubled the Court officials. When the Redesdale Act expired in 1819, the new act, (1 Geo. IV c.119), increased the number of Commissioners to three, two of whom were to itinerate separately through the counties*." (Lineham,1974).

555 "*[I]mprisonment for debt was described by Stanhope as 'the White Slave Trade', and the same kind of concern was shown towards the two evils... It is apparent from the comments of its supporters over the four years that few of them thought it a totally satisfactory measure. Rawdon, though he defended it, himself wanted more radical reforms, including the abolition of arrest. The bill proposed to set up a court to handle relief, but the legal status of this court was unclear, and Stanhope disliked the requirement of three months' imprisonment before a prisoner could be released... In the Lords they were taken up by Stanhope, who suddenly demanded total reform. He declared that justice was sold in England, and that 'the too great increase in credit was one of the*

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greatest curses' of the country." (Lineham,1974). "*[On July 20th,] 1814, Earl Stanhope, presenting a petition from an aggrieved bankrupt, strongly recommended that some eminent lawyers or 3 judges be appointed 'to form the several laws upon particular subjects into one bill or act...' Earl Stanhope was at the forefront of the movement for codification of the law. It was upon his motion that a select committee was appointed to study the idea of undertaking a complete revision and rearrangement of the statute books.*" (Lester, 1990).

556 "*There were 20 country bank failures between Aug 1814 and June 1815; to these might reasonably be added the 4 that occurred in May-June 1814, since they can probably rank as post-war casualties: Napoleon had abdicated in April. A few failures were in industrial areas: Messrs. Dicken & Meck, bankers and cotton spinners of Stafford, during Nov; Messrs. Litton, MacMichael & McNatt, manufacturers of Bridgnorth, during the same month; and during Dec in Faversham, Kent—not an industrial area, but Francis Tappenden, a local banker, was connected with a Welsh iron business that failed about this time. The remaining bankruptcies, which were the majority, occurred in agricultural areas, chiefly in the west country, and in south-eastern and eastern England. One of the first of these failures was that of Barnard & Co. of Boston (there was no connection with the Bedford bank of the same name), and it set off a train of bank runs and collapses in the region. The Times tersely described the effects of the failure: 'it nearly put a stop to business at Lincoln, and the shrinkage in the note circulation had 'so powerful an effect... on the markets... that green peas fell in the Boston market... from 3s, to 1s. 6d. a peck, and butter from is. to 9d, per lb.' 1815 brought a marked decline in government expenditure, and deepened disillusionment with post-war trade, which had failed to expand as anticipated. There was also a decline [BOE's] commercial discounts. An excellent harvest brought down wheat prices; the general price level fell markedly in the last quarter of 1815 and continued to do so through the first 3-quarters of 1816; taking 1790 as 100, the price index in the third quarter of 1815 was 165, and for the 4 succeeding quarters 157, 142, 134, 130 respectively. General business failures were high in the third quarter of 1815 and in the first 2 quarters of 1816. That bank failures were numerous is not surprising, for to general economic depression there was added the deflationary expectations of the Resumption of Cash Payments in July 1816. There was, therefore, a process of mutual causation in business and bank failures: business depression and agricultural troubles weakened the banks, and the banks helped to intensify the crisis by contractive policies and by their own failures. The bank collapses, of which there were 33 during the harvest year, had a more industrial tinge than those of the preceding period. The north-east of the country was badly hit: 2 failures in Durham in July; 1 in Sunderland in the same month and another in Oct; a Stockton failure in July. A member of a well-known Northumberland family said that money had not been so scarce for 50 years, and another local gentleman declared that the banks had 'with-drawn all accommodation.' The failures in the county of Durham were said to have 'almost totally unhinged the public credit... [and almost to have] annihilated every business in this quarter.' Comparable stories came from some of the agricultural counties, though many who narrated them clearly stated that lending had previously been over-extended. The failures of the next 12 months ran on with no discernible break; the shrinkage in tax collection added to banking weakness. They were fewer, but at 16 still far too many. The north-east again was hit; Sunderland in July 1816, Stockton in Oct. Industrial Staffordshire, which had suffered a failure of a partnership of 'Bankers and Coal Dealers' at Bilston in Nov 1815, experienced another failure in the same time exactly a year later. The bank was that of Fereday & Co. The failure was closely connected with the depression in the iron trade and with the use of the Extent-in-aid, but was also fed directly by the agricultural crisis: earlier in 1816 Samuel Fereday had told the Board of Agriculture that he was concerned in the sale of lime; whereas he normally received six-sevenths of his demands upon customers, he now received only one-seventh, because of the farmers' distress. The harvest of 1816 provided relief for the farmers, however: how much relief in relation to how much distress is conjectural, for the agricultural interests kept their alleged sufferings continually before the public. But wheat prices rose very sharply after the appalling harvest, the defects of which were offset very slightly indeed by imports, for crops were bad in Europe as well: 1816 was known as 'the year without a harvest.' It is perhaps to this turn in farming fortunes that can be attributed the virtual petering-out of country failures at the end of 1816. There were 2 more failures in this harvest year, in Jan 1817 at Brackley (Berkshire), and in March at Otley (Yorkshire), but no subsequent failure until Jan 1818.*" (Pressnell, 1956).

557 "*[Acworth (1925)] argued convincingly that the severe deflationary policy followed by the government and [BOE] after peace in 1815 had prolonged and deepened unnecessarily the economic troubles accompanying the transition from a wartime to a peacetime economy... for 3 years after the signing of the peace treaty in Paris in 1815, the government acquiesced to the Bank's various arguments that resumption of cash payments should be delayed— whether until the exchanges had stabilized, or the bond market had strengthened, or foreign trade had picked up, or its gold reserves were increased.*" (Neal, 1998).

558 "*In England, a law was made in the reign of Queen Elizabeth, of precisely the same kind with the French ordonnance; providing for the annulling of all false conveyances and obligations, but without declaring specifically what should be held objectionable, or whether mere want of consideration should entitle the true creditors to relief. But it was soon found necessary to make the law more precise; and accordingly in 1604 [1 Jac. I c.15, §5] a statute was made, declaring all voluntary deeds, granted without a valuable consideration, unavailable against creditors.*" (Bell, 1870). "*Under [the Bankruptcy Act, (1624) 21 Jac. I, c. 19] it was held that choses in action were included under 'goods and chattels' and, just as goods in the possession of the bankrupt were liable to pay his debts notwithstanding any former grant, so choses in action were liable notwithstanding a former assignment unless notice of the assignment had been given to the debtor. Notice to the debtor was therefore treated as analogous to delivery of a chattel. From an ordinary chose in action the step was easy to a claim in equity against funds in the hands of a trustee.*" (Bordwell, 1927). "*The [reputed ownership] doctrine was set out by the statute 21 Jac. 1, c. 19 (1623-24), though again the legislation may be seen as a codification of curial practice, also likely to have been borrowed from Civilian doctrine though possibly finding its immediate source in Scots law.*" (Getzler and Macnair, 2006).

559 "*By stat. 56 Geo. 3. c. 137. (2nd July, 1816,) for extending the provisions of stat. 1 Jac. 1. c. 15. after reciting, 'that those provisions had been found beneficial, and that it was expedient to make such provisions respecting the delivery of goods', it is enacted that no person, body politic, or corporate, joint stock, or other company, having in their possession or custody any goods, wares, merchandizes or effects belonging to any person or persons who shall become bankrupt, shall be endangered by reason of the delivery of any such goods, &c. truly and bona fide to such person, or to his order, before such time as they shall know of the bankruptcy. Provided that bodies politic, or corporate, joint stock, or other company, shall be deemed to have knowledge of the bankruptcy, if the person acting on their behalf in the payment of any debt, or the delivery of any goods, &c. knew of it.*" (Selwyn, 1817). "*By stat. 56 Geo. 3. c. 137 it is enacted, that no person or persons, body politic or corporate, joint stock or other company, having in his, her, or their possession or custody any goods, wares, merchandizes, or effects belonging to any person or persons who shall be or become bankrupt, shall be endangered for or by reason of the*

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delivery of any such goods, wares, merchandises, or effects, truly and bond fide, to such person or persons, or to his, her, or their order, before such time as the person or persons, body politic or corporate, joint stock or other company, having such goods, wares, merchandises, or effects in his, her, or their possession or custody, shall understand or know that the person or persons to whom such goods, wares, merchandises, or effects do or shall belong, is or are become bankrupt. Bodies politic, &c. are to be deemed to have known of the bankruptcy, if the person acting on their behalf knew it." (Whitmarsh, 1817)

560 Also in 1816, was the *Act to regulate the Sale of Farming Stock taken in Execution* [*56 Geo. III, c. 50*]—the only significant change in over a century after the previous such legislation [*2 W. & M. s.1, c. 5, Sale of Distress—Distress on Corn, &c. —Double Damages for Distress where no Rent due*.] (Woodfall, 1898).

561 "*The appointment to receiverships of bankers was prohibited in 1816, following serious bank failures, involving Government funds, but bankers could still be appointed as Deputy Receivers; in 1821, 38 out of 66 Receivers acted by Deputy... This procedure lent itself to abuse. 'The debtor to the Crown', said Vansittart, Chancellor of the Exchequer, in 1817, 'had been enabled to take advantage of those who might be debtors to him, and to recover sums by means of extents-in-aid greatly exceeding that in which he stood indebted to the Crown.' The evils of the system were increased by the precedence given to Extents over bankruptcy proceedings, if the Extent were granted before the striking of a docket of bankruptcy by other creditors. A man subjected to an Extent might be driven to bankruptcy proceedings prematurely or unnecessarily; distress sales of his property frequently yielded but a tithe of its true value. His position was often rendered so much worse that, in place of an orderly winding-up, his affairs were thrown into confusion, and his other creditors would receive far less than their just shares. A serious case, in the Midlands, was that of Messrs Fereday & Co., bankers and ironmasters, of Bilston, Staffordshire. Their ironworks, which employed 5,000 men, ran into difficulties in the post-war depression, during 1815; discounting facilities up to £0.15 M were granted by [BOE], but their troubles continued, and Extents-in-aid were obtained by several creditors. As a result, the works were closed down and sold; the other creditors did not anticipate more than 'a trifling dividend in the pound.' The abolition of the Income Tax and the general tendency towards contraction in Government outlay after the Napoleonic wars hit bankers severely... The scythe of post-war deflation and depression cut down many bankers, and the rest were increasingly driven to use Extents. The number issued grew substantially; it was alleged in Parliament, and confirmed by a Select Committee which inquired into the subject in 1817, that the majority had been obtained by country bankers, who had become debtors of the Crown for that very purpose. Many Extents, indeed, had been procured by bankers against other bankers*" (Pressnell, 1953).

562 "*Better conditions for farmers were followed, during the second half of 1817 and most of 1818, by improved conditions for business as a whole, though farmers were to suffer by a fall in wheat prices. Trade revival was assisted by a considerable export of capital, and by the inflationary impetus of an increase of the floating debt in 1817 and of the funded debt in 1818. The yield of Consols fell steeply from the end of 1817 until the end of 1818; a virtual halt to the fall in the numbers of banks to take out note-issue licenses in the year beginning Oct 1817, and a slight rise in the following year, suggest at least a check to the decline in country bank activity. There was but one failure in the harvest year, at Tonbridge in Kent, where confidence in country banks had surely been shaken badly by 3 previous failures in Feb, April, and May of 1816. Imports had risen sharply during 1818, but exports had risen less. The terms of trade moved against Great Britain, and trading difficulties set in by the end of 1818. Prices had turned downwards during the third quarter of 1818, but recovered slightly at the end of the year, only to fall again throughout 1819—a fall that was to continue with but little break until 1823. Bankruptcies increased at the end of 1818, and thickened during the first half of 1819. The decline in British activity adversely affected the North American and South American countries, the shrinkage of whose trade hastened the downward turn of business. To these general features of depression the bankers doubtless added their own contractive policies in anticipation of a Resumption of Cash Payments in July 1819, though their expectations proved to be mistaken once again. (Resumption, scheduled in 1815 to take place in 1816, had been postponed to 1818, and then to 1819. Between July 1818 and May 1819 there were 8 country bank failures. They do not strike one as particularly important banks, though the seriousness of failure is not to be minimized. They were in widely scattered counties, 4 of them being in agricultural areas. The remainder were in Portsmouth (Nov), Hull (Dec), Bolton (Jan), and Tamworth (March). From early in 1819 the prospect of the Resumption of Cash Payments exerted a stronger influence upon the supply of credit. Following the parliamentary inquiries into its desirability and practicability, the law known as 'Peel's Act' was passed in July 1819, and provided for resumption by stages between Jan 1820 and May 1823. Country notes of values less than £5 would be withdrawn two years after full re-sumption. It would be easy to exaggerate the immediate deflationary effects of the measure, in view of the trade depression, but it certainly limited the possibility of a revival being brought about by a credit inflation. Exports were practically static between 1819 and 1823, and imports shrank between 1819 and 1822. Agriculture met with a mediocre harvest in 1819, good harvests and falling prices in 1820 and 1821. The economic difficulties in the 3 years that followed the firm decision upon Resumption in 1819 were particularly characterized by these agricultural difficulties. There were 26 failures in the 3 harvest years following the Act: 9 in 1819-20, 6 in 1820-1, 11 in 1821-2. Most of these were agricultural failures. There were 2 other major changes in banking besides the bankruptcies, that must have contributed to an intensification of the depression: a shrinkage in the numbers of banks to an extent greater than that indicated by the failures, and a contraction of note-issues and lending. In his pamphlet On Protection to Agriculture, Ricardo argued in 1822 that the progress towards Resumption, and its achievement in 1821, 2 years earlier than had been expected, could hardly be blamed for the fall in agricultural prices. A fall would have occurred in any case, he argued, because of the abundant supply. Tooke argued to the same effect, that monetary factors should not be blamed for the price fall, but along different lines. Low prices were bound to have come, he said, after the great extension of trade that had preceded the slump of 1819. As for the country banks, he did not believe that they had reduced their note-issues before the government announced in April 1822 that the withdrawal of the small notes would be postponed, from May 1823 until 1833*." (Pressnell, 1956). "*By 1817, the abuse of the device had become a scandal, and petitions against it were received by Parliament from leading commercial towns... Reform of revenue administration and of the associated abuses began against the somber background of the post-war depression. The first step, the reform of the Extent-in-aid, was closely related to the devastating toll of bankruptcies, which had been swollen by misuse of the Extent.*" (Pressnell, 1953).

563 "*The year 1814 was characterized by 'active speculation, large imports, and no exports,' according to Thorp (1926). Monetary conditions grew tight in the second half of the year, however, and banks outside of New England suspended payments in Aug. The year 1815 witnessed 'continued speculation,*

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especially in land," but then a sharp decline in commodity prices and 'financial chaos' (Thorp). As with the crisis of 1797, the Panic of 1815 occurred early in a disinflationary period that followed a substantial inflation." (Bordo and Wheelock, 1998).

564 "*[A] paper feudal system... Money, or a circulating medium of any kind, in its quality of representing property and labor, conveys property and labor to its possessor... The remedy... is to prohibit legal distributions of money or currency, those excepted rendered unavoidable by government, and to leave their distribution to industry... Even the precious metals have furnished... pillage and oppression a medium for extracting... a far greater proportion of their labor, than they could ever be made to pay directly by the feudal or any other regimen; but the impossibility of multiplying these metals at pleasure, inflicted a considerable check upon this fraudulent perversion of so useful a representative of property. An artificial currency is subject to no such check, and possesses an unlimited power of enslaving nations, if slavery consists in binding a great number to labor for a few... As money is a vehicle for retaining, it is also one for conveying the most oppressive usurpations, and possesses a complete capacity for re-enslaving nations indirectly... Employed, not for the useful purpose of exchanging, but for the fraudulent one of transferring property, currency is converted into a thief and a traitor, and begets, like an abuse of many other good things, misery instead of happiness... The first intricacy with which they endeavored to hide their design, was woven of indirect taxes travelling in mazes; the second, of loaning obscured by the mist of futurity; and the third, of an artificial currency or banking. complicated by the crookedness of its operation, flattering to industry, and restrained by no natural check, as a medium of fraud and tyranny... Had there been no debt stock in England, but an equal value of bank stock, that alone would have influenced the government to govern in the same mode, as bank and debt stock united induce or compel it to do.*" (Taylor, 1814).

565 "*The plethoric State of the currency was reflected throughout 1815 and 1816 by the high prices. The abundance of money was a matter of comment. All specie disappeared from Maryland at an early date, and the very serviceable regulation, which prohibited the issue of notes of denominations under $5, was of necessity repealed in 1814. Notes were the sole currency, even for small change, until Nov, 1817.*" (Knox, 1900). SBUS was charged with restraining uninhibited private bank note issue — already in progress to avoid financial collapse (Dangerfield, 1965, p76). SBUS, "*Like its predecessor, the Bank initially acted as the government bank, and issued its own notes, which competed with those of the numerous State banks that had arisen. Under the management of Nicholas Biddle, the Second Bank increased its commercial activity and assumed an active role in maintaining the nation's specie reserves.*" (Goodhart et al., 1994).

566 "*The government is to grow rich because it is to borrow without the obligation of repaying, and is to borrow of a bank which issues paper without the liability to redeem it... They provide for an unlimited issue of paper in an entire exemption from payment. They found their bank in the first place on the discredit of government, and then hope to enrich government out of the insolvency of the bank. [Instead, he proposed a bank with capital] composed 25% of specie and 75% of government securities; without power to suspend specie payments, and without obligation to lend 60% of its capital to the government. To such a bank he would give his support,' not as a measure of temporary policy, or an expedient to find means of relief from the present poverty of [UST], 'but as an institution most useful in times of peace.*" (Adams, 1911).

567 "*In his speech on Jan 2, 1815, Mr. Webster said 'the depreciation of the notes of all the Banks in any place is, as far as I can learn, general, uniform and equal.*" (quoted in Knox, 1900).

568 "[T]*he flood of imported goods that crossed the Atlantic at the close of the war. In 1816 almost every textile mill in New England was closed... The Lippitt mills owed their continuance to a contract with the Vermont penitentiary, where their yarn was woven by prisoners… In explanation of their suspension of operations, the directors of the Coventry mill stated that it was 'owing to the high price of cotton, the low price of goods, and the difficulties attending the currency of the Middle States.' Woolen manufactures were equally prostrated, their activity being reduced to supplying carded wool and yarn to neighboring households. The difficulties of mill-owners were accentuated by their persistence during the war in holding goods too long on an advancing market in the hope of still higher prices. When peace suddenly opened our ports to British commerce, these speculative manufacturers, whose credit was already overloaded by their warehoused stock, were irretrievably ruined. Also, during the war the poorly made fabrics of ill-equipped and inexperienced manufacturers had found customers, but as soon as better imported goods competed with them they became unsalable. Cotton manufactures revived temporarily under the encouragement of a protective tariff and the power-loom, though they experienced new reverses in 1819 and 1820*." (Clark, 1916).

569 "*With its repeal in 1803, the Massachusetts courts tried to continue many of its policies through manipulation of the common law doctrine of creditors' compositions [2 Stat. 248 (1803).] As the common law had developed in Massachusetts, a debtor was permitted to assign all or part of his property in trust to all or some of his creditors; such an assignment was valid in the absence of fraud as long as one or more of the creditors, whose debts were sufficient to absorb the property assigned, assented to the assignment. [See Russell v. Woodward, 10 Pick. 408, 414 (1830); Borden v. Sumner, 4 Pick. 265 (1826); Harris v. Sumner, 2 Pick. 129 (1824); Hastings v. Baldwin, 17 Mass. 552 (1822); Stevens v. Bell, 6 Mass. 339 (1810); Widgery v. Haskell, 5 Mass. 144 (1809); Hatch v. Smith, 5 Mass. 42, 49-50 (1809). See also Ward v. Lewis, 4 Pick. 518 (1827); Harrison v. Trustees of Phillips Academy, 12 Mass. 456 (1815). Such a composition could be modified only if all the original parties to it agreed to the modification. Andrews v. Etheridge, 9 Mass. 383 (1812). A creditor who failed to become a party to a composition within the period specified therein could not subsequently do so absent modification. See Phenix Bank v. Sullivan, 9 Pick. 410 (1830).] The property assigned was thereafter exempt from attachment by any creditors [Eaton v. Lincoln, 13 Mass. 424 (1816)], both assenting and nonassenting. Assenting creditors, moreover, were barred from arresting the debtor or attaching his other property, even if it was subsequently acquired [White v. Dingley, 4 Mass. 433 (1808), holding, however, that a debtor so discharged could not bring an action for malicious prosecution against a creditor who sued him but could merely plead his discharge as a defense to the creditor's suit], although nonassenting creditors were not subject to such bars [Marston v. Coburn, 17 Mass. 454 (1821).] Creditors' compositions fulfilled the functions of a general bankruptcy law only partially, however, for they conferred discharges only as against the claims of assenting creditors and did not prevent preferences of those creditors.*" (Nelson, 1979).

570 "*The characteristics of our recording system which distinguish it from other systems are these: the document recorded is a deed, not a memorandum of a transfer or an agreement for a transfer; the deed is operative without record, the title passing before the deed is recorded; the record is not a mere device for preserving evidence, but gives a legal priority to the grantee of the recorded deed. In the first particular it differs from the medieval registry system; in the*

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second from the continental registry systems and our own Torrens system of registration; in the third from the recording system in England under local customs, like those of Middle-sex and Yorkshire. As the present Massachusetts act goes back with no substantial change to Oct. 7, 1640... [According to this ordinance,] 'For avoiding all fraudulent conveyances, and that every man may know what estate or interest other men may have in any houses, lands, or other hereditaments they are to deale in, it is therefore ordered, that after the end of this month no mortgage, bargaine, sale, or graunt hereafter to bee made of any houses, lands, rents, or other hereditaments shallbee of force against any other person except the graunter & his heires, unless the same bee recorded, as is hereafter expressed'... We may, therefore, safely conclude that the American registry system as it prevails at present throughout the country had its origin in Massachusetts legislation; only the provision for acknowledging the deed before its record being derived from the Plymouth Colony... The most distinctive feature of the American system, the priority given to the earliest recorded deed, appears to have no prototype among foreign systems... The distinctive features of the American recording system are therefore indigenous." (Beale, 1907).

571 "*The form the Massachusetts banks chose... did not involve the pledge, but rather the nonpossessory secured transaction. [See 1784 Mass. Acts 54-55 (limiting charter of Boston's Massachusetts Bank to 50,000 pounds).] The first Massachusetts bank charter limited the amount of personalty the bank could hold directly, but allowed its sale of pledges. The first Massachusetts bank thereby adopted the deed of trust. Creditors normally used the deed of trust in conjunction with family settlements. The deed of trust operated the same as a chattel mortgage except ownership lay with a trustee, not the secured party. Ideally, the trustee held possession of the collateral; however, sometimes the debtor held the collateral, just as in any other nonpossessory secured transaction. But in all cases, the secured party lacked possession. Massachusetts bank charters after 1811 similarly contained this personalty limitation. [Compare Act of June 26, 1811, ch. 84, 1811 Mass. Acts 501 (granting the charter of Boston's State Bank without the limitation), with Act of June 22, 1792, ch. 6, 1792 Mass. Acts 199-200 (granting charter of Boston's Union Bank with a $2 M limit).] Massachusetts banks, therefore, continued the practice of the earlier bank and used the deed of trust with the bank's cashier as the trustee.*" (Flint, 1999).

572 "*The first general Massachusetts statute imposing liability was passed in 1808. By its terms executions could, after 14 days, be levied on 'members' of any manufacturing corporation thereafter created if the latter failed to show sufficient property to satisfy the judgment. This... sort of liability... was a remedy applicable only after ordinary recourse against the corporate treasury had failed.*" (Livermore, 1935). "*A cardinal legal question at the beginning of the 19th century was whether shareholders were directly liable for corporate debts if the charter was silent on shareholder liability... This fundamental issue was soon resolved in... [The Massachusetts courts in] Nichols v. Thomas, 4 Mass. (1808); Spear v. Grant, 16 Mass. (1819). Cf. Tippetts v. Walker, 4 Mass. (1808)... [which] held that shareholders were not directly liable for corporate debts unless the statute or charter expressly so provided. The courts pointed to the numerous charters of the time that imposed direct liability as confirmation that, in the absence of such a provision, shareholders were not directly liable. Similarly, in 1816, Chief Justice Tilghman of Pennsylvania stated that shareholders were not personally liable... Myers v. Irwin, 2 Serg. & Rawle 368, 371 (Pa. 1816) ('personal responsibility of a stockholder is inconsistent with the nature of a body corporate')*" (Blumberg, 1986).

573 Based on the Scottish financial inclusion innovation from 1810 (Olmstead, 1976; Ó Gráda, 2002).

574 "*Savings depositors in mutual [SBs] had a right to the earnings of the [SB], but no right to choose management or define rules for the organization; rather legal control rested with independent trustees, who volunteered to manage the firm on behalf of the depositors and were legally prohibited from receiving direct financial benefits for their services... such firms [labeled] 'commercial nonprofits', to distinguish their governance structure from purely mutual organizations, as well as to indicate the constraints on those who legally control the firm from taking its residual profits.*" (Wadhwani, 2011b).

575 The Charter of the Provident Institution for Savings in Boston enacted in 1816: "*Deposits required to be used and improved to the best advantage, and the income to be applied and divided among depositors, etc., in just proportion, with such reasonable deductions for expenses as shall be necessary, and the principal to be withdrawn at such times, and in such manner as the society shall direct and appoint.*" (Keyes, 1878b, p609).

576 "*A unique 1786 statute of New York, creating proportional liability for a specific group, was a pioneer alteration of this common-law principle of liability in solido. By its terms a group known as the Associated Manufacturing Iron Co of the City and County of New York were granted for a term of 7 years the right of assuming proportional liability for any debts incurred, measured by the contribution of each member. For the information of creditors, a statement of the members and their share of the capital was to be filed annually in Albany. But although New York thus became the first state to tamper with the liability principle, she tried much less experimentation in the succeeding quarter-century than her 2 New England neighbors in varying the common-law rule of limited liability for corporations. Nevertheless, specific clauses were occasionally inserted in charters making some changes in the principle of liability, and a little-known clause of the famous 1811 general incorporation act imposed what in practice amounted to full liability... [the act] was passed simply as a means of encouraging groups with small capital to enter general manufacturing... The act limited capital of each unit formed under it to [$50 K], and the duration of the charters to 5 years. These were certainly unattractive features. The directors were termed 'trustees' throughout the act, possibly indicating a specialized position for them in the minds of the legislators—as semipublic guardians of the to-be-encouraged expansion of manufacture. There was a clause imposing a proportional liability upon any stockholder who had received a distribution of assets upon dissolution. Since existence was limited to 5 years, this was equivalent in practice to the ordinary liability of partners or shareholders in an association; debts, even though incurred in the first year of existence, could hardly be evaded or compromised before the corporate character of the enterprise was automatically destroyed. There was a clause making the shares personal estate, and another permitting transfer of shares to be carried out as each company might require in its by-laws. Of the considerable number of projects receiving charters under this act, few endured beyond 1815. During the next 20 years this act had only a slight effect upon the attitude of businessmen toward charters; they continued to choose the association form in preference, just as most manufacturers did in the other states.*" (Livermore, 1935).

577 "*[In Dec 1816,] Mr. Parris presented a petition of... Maine, representing the inconveniences which are experienced for the want of an uniform system of bankruptcy through-out the United States, and praying that the said inconveniences may be remedied by act of Congress. Ordered, That the said petition be referred to the committee of the whole House on the bill to establish an uniform system of bankruptcy. [Then in Jan 1817,] Mr. Irving, of N. Y. presented a petition of sundry merchants of the city of New York, praying that an uniform system of bankruptcy, may be established. Ordered, That the said petition be referred to the committee of the whole House, on the bill to establish an uniform system of Bankruptcy, throughout the United States. [Then*

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in Feb 1817,]Mr. Hopkinson, also presented a petition of the Chamber of Commerce in Philadelphia, praying that an uniform system of bankruptcy may be established, which was referred to the committee of the whole House, on the bill for that purpose. [However, by March 1817, it was] Ordered, That the committee of the whole House, to which is committed the bill to establish a uniform system of bankruptcy, be discharged from a further consideration of the same, and that the said bill be postponed indefinitely." (Journal, 1816, pgs. 95, 184, 192, 459).

578 *"Considerable pressure was brought to bear on the banks at this time to resume specie payments, but exchange was still high, and besides some of the country banks had extended their circulation to dangerous limits. Altogether they were unwilling to resume*."(Knox, 1900). "*At the time of suspension specie commanded a premium of 10-12%, in Baltimore ; in Aug, 1815, the premium had risen to 12-17%; by Nov it was 19-22%, advance; in Aug, 1816, it was 14-15%, premium; after this the premium rapidly declined.*"(Knox, 1900).

579 "*In looking through Grotjan's Price Current, we have found the quotations of Pennsylvania and Ohio notes to be, for months together, from 5-6%, and afterwards 10% discount, and those of Virginia and North Carolina 2 to 3%. So general seemed to be the rate of depreciation for each part of the country, that the names of particular Banks were not given in the Price Current, for more than a year after the suspension of specie payments. While Philadelphia paper, the standard in which they were estimated, was always varying in value, as compared with silver, the notes of most of the country Banks had, as compared with one another, a singular equality of depreciation.,, This equality lasted for some time after it became the custom to give regular quotations of the Price of Bank paper. It will seen, by inspecting the table, that in May 1816, the notes of 27 out a 35 country Banks of Pennsylvania, were at a discount of 10%. It will also be seen that the discount was diminished with a regularity approximating to uniformity, up to May 1818. In the succeeding July, [SBUS] commenced its curtailment: and then the great confusion in exchanges began."* (Gouge, 1833b). "*Baltimore bank notes remained at par or very small discount in Maryland; the notes of the country banks depreciated somewhat more. Immediately after the restoration of peace in 1815, confidence in the bank notes began to rise. In Feb and March, 1815, Maryland notes generally, excepting those of 3 or 4 country banks, were at par within the State, and discount at Philadelphia and New York was only 2-3%.*"(Knox, 1900).

580 Indian cotton was much cheaper for England and, while prices wavered, they dropped by 25% in Jan 1819 (Dangerfield, 1965). Also Kirsch (2016, p. 73).

581 "*[R]ejecting the notes of all banks which refused to redeem their issues in specie after Feb 20, 1817… to compel the State banks to begin the resumption... or lose the benefit of having their notes received by the government"* (Catterall, 1897).

582 This seems to be agreed upon and blame the director of [SBUS], Captain William Jones, for the crisis. there was great According to Dangerfield (1965), there was a high European demand for agricultural products following the Napoleonic Wars, and the government was eager to capitalize on land sales in the West. As SBUS expanded credit to Eastern business entrepreneurs and issussed money out of its branches in the West and South, contributing to a speculative land and cotton boom. According to (Northrup, 2003), Jones "*allowed and participated in the speculation of bank stocks (the purchase of stocks with the expectation of increased value), and so value of the stock in the national bank dropped. State banks responded by printing unsecured paper currency.*"

583 "*In the financial crisis of 1818-19, the State banks becoming jealous and the people believing that the bank had done much to produce their ills... a movement was begun in Maryland, which Pennsylvania, Ohio, and other States promised to follow, to attempt to tax the institution out of the State…. this gave rise to the celebrated case of McCulloch v. The State of Maryland.*" (Ames, 1897). "*[SBUS] itself was a bubble, having been re-established in 1817 after dissolution in 1811. The bank was run by greedy and corrupt directors who accepted promissory notes in payment of stock, registered stock in different names to get around the law limiting concentration of ownership, voted loans on the security of bank stock, permitted other loans without collateral, and allowed accounts to be overdrawn. Hammond observed that the sober pace of 18th-century business had given way to a democratic passion to get rich quick.*" (Kindelberger and Aliber, 2005).

584 "*The autumn of 1818 and early 1819 were the scheduled dates for the repayment of the 'Louisiana debt,' which had financed the Louisiana Purchase. Most of this debt—amounting to over $4 M—was owed abroad, and it had to be repaid in specie. The responsibility for meeting the payments fell on [SBUS], the repository for [UST's] deposits.*" (Rothbard, 1962).

585 "*Now suppose at any moment, that a state of things should arise which should destroy the general credit of the country, and disable debtors, who in their turn depend on the same means for their ability to pay, to comply, with the first, an tempt him to disregard the last of these obligations, what would be then the situation of [SBUS]? Yet that state of things was on the point of taking place, when the loan in question was projected. The country could bear no further exhaustion, however small, until it had a season to recover. But the second installment of the Louisiana stock was to be paid in a few months; and the sum to be withdrawn by foreigners, exceeded probably all the specie in the two great cities of Philadelphia and New York. [SBUS]would have been bound to pay it, had it received the local paper in payment of the revenue, and it had refused it, we have seen the disastrous consequences to which it would have led. It was a payment which the country could not, at the time, bear, and the ability of [SBUS] was necessarily limited by the ability of the country. Hence, in a general view, the necessity and expediency of the loan.*" (Cheves, 1822). "*The autumn of 1818 and early 1819 were the scheduled dates for the repayment of the 'Louisiana debt,' which had financed the Louisiana Purchase. Most of this debt—amounting to over $4 M—was owed abroad, and it had to be repaid in specie. The responsibility for meeting the payments fell on [SBUS], the repository for [UST'] deposits. Faced with these threatening circumstances, [SBUS] was forced to call a halt to its expansion and launch a painful process of contraction. Beginning in the summer of 1818, [SBUS] precipitated the Panic of 1819 by a series of deflationary moves. The branches of [SBUS] were ordered to call on the state banks to redeem heavy balances and notes held by [SBUS]. The requirement that each branch redeem the notes of every other branch was rescinded, thus ending the liability of the conservative eastern branches to redeem the notes of expansionist branches. The Boston branch began this move in March, and it was made general for all [SBUS'] offices by the end of August. The contractionist policy, begun hesitantly under the presidency of William Jones and continued more firmly under the direction of his successor Langdon Cheves, sharply limited and contracted the loans and note issues of the branches*." (Rothbard, 1962).

586 According to Dangerfield (1965), in Aug 1818, with credit overextended, William Jones directed SBUS to reject State-chartered banknotes. Then, in Oct 1818, UST demanded a transfer of $2 M in specie from SBUS to redeem bonds on the Louisiana Purchase.

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State banks in the West and South, unable to provide the required specie, called in their loans on the heavily mortgaged lands they had financed. Cash-poor farmers and speculators found their land values dropping 50% to 75%. Banks began foreclosing on the properties and transferring them to SBUS, their creditor.

587 Ames (1897): "*[I]n deference to the popular clamor, the 15th Congress ordered an investigation of [SBUS], in which certain abuses, misappropriation of funds, and defalcation in certain of the branches, especially those located in Philadelphia and Baltimore, were discovered. Upon the disclosure of the report… [Pennsylvania] presented to Congress a resolution to amend the Constitution so as to prevent the establishment by Congress of any bank except within [D.C.], the branches of which were to be confined to the District. Within a short time, the legislatures of Tennessee, Ohio, Indiana, and Illinois passed resolutions concurring in the resolution proposed by the legislature of Pennsylvania.' No action, however, was taken by Congress beyond reforming the bank. The legislatures of at least 8 States passed resolutions of nonconcurrence.*"

588 In Dartmouth College v. Woodward, 17 US 250 (1819), the Supreme Court "*held, for the first time, that a private corporate charter was a contract within the meaning of the clause of the Constitution forbidding impairment of the obligation of contract; that the College involved in this case was a private corporation; and that the legislation of New Hampshire amending its charter was invalid. Thus, was established one of the fundamental principles of American law.*" (Warren, 1922a).

589 The Supreme Court prevented States from establishing bankruptcy processes (as only the federal government could impair contracts and there was no federal statute since 1803). First, "*the New Jersey high court held that Congress had exclusive control over bankruptcy and that 'a law discharging a debtor from his debts, without payment, if not a bankrupt law, is a law impairing the obligation of contracts, the power of making which is, by the said constitution, expressly forbidden to the individual States.' [Olden v. Hallet, 5 N.J.L. 466, 469] The New Jersey court thus held the New York insolvency statute unconstitutional before the Supreme Court reached the same result in Crowninshield.*" (Lubben, 2013). On Feb. 17, 1819 by a vote of 7 to 0, the Supreme Court ruled in *Sturges v. Crowninshield* that the retroactive application of New York's bankruptcy law impaired the obligation to pay debt, and therefore violated the Constitution. While "*picked up part of the slack and continued to regulate relations between debtors and creditors, bankruptcy, and insolvency during the lengthy era of federal inaction after the 1803 repeal. In some important respects State relief was limited. In 1819, the Supreme Court, in Sturges v. Crowninshield,' held that States could not constitutionally discharge preexisting debts..The Sturges decision in particular caused considerable consternation, because the period around 1819-1820 was one of extreme economic depression. During this depression there was no federal bankruptcy law by which debtors could be relieved, and because of Sturges, State relief was not possible as to preexisting debts.*" (Tabb, 1995). "*The Supreme Court's... striking down a New York bankruptcy law under the Contracts Clause, upended this postratification understanding that States enjoyed nearly unfettered authority with regard to bankruptcy... the Supreme Court rejected any constitutional distinction between a 'bankrupt' law and an 'insolvency' law. In this case, a Massachusetts creditor challenged the discharge of debts under an 1811 New York statute on the ground that the constitutional grant to Congress to enact bankruptcy laws precluded the State from enacting a 'bankruptcy' law, that is, a law discharging debts... 'This difficulty of discriminating with any accuracy between insolvent and bankrupt laws, would lead to the opinion, that a bankrupt law may contain those regulations which are generally found in insolvent laws; and that an insolvent law may contain those which are common to a bankrupt law.*" (Lubben, 2013). "[M]*any of those old fears about the patchwork of State laws are largely limited by the Contracts Clause. The type of fraud that James Madison mentioned involved debtors moving to a new State in order to take advantage of its relatively more pro-debtor bankruptcy laws. Thus, [the next day, in McMillan v. McNeill, the Court] held that the Contracts Clause prohibited a debtor from applying a Louisiana law to discharge a debt contract incurred under the laws of South Carolina. That Louisiana statute could have discharged subsequent debts incurred under the Louisiana statute without impairing the obligation of contracts, because the discharge statute would have been incorporated into the contract's obligations; however, since that law was not incorporated into the South Carolina contract, to apply Louisiana's law to discharge that contractual obligation would unconstitutionally impair the obligation of contracts.*" (Dawson, 2016)."*The true meaning of Crowninshield was further confused when, the day after announcing its opinion in that case, the Chief Justice, acting again on behalf of an apparently united Court, issued a short opinion [on McMillan] proving that: '[T]his case was not distinguishable in principle from the preceding case of Sturges v. Crowninshield. That the circumstance of the State law, under which the debt was attempted to be discharged, having been passed before the debt was contracted, made no difference in the application of the principle. And that as to the certificate under the English bankrupt laws, it had frequently been determined, and was well settled, that a discharge under a foreign law, was no bar to an action on a contract made in this country. Judgment affirmed'... The defendant had obtained not one discharge but two: in both Louisiana and England. Neither seemed to work in the eyes of the Court. In one fell swoop, the Chief Justice seemed to have greatly expanded the holding of Crowninshield to cover most State bankruptcy laws and foreign laws too.*" (Lubben, 2013).

590 "*Langdon Cheves was elected President, March 6, 1819, and he adopted heroic measures to restore the bank to solvency. He borrowed $2.5 M in specie of the Barings, who were considerable holders of the bank stock, forbade the issue of notes in the South and West when exchanges were against the branches, which was almost invariably the case, and in dealings with the government insisted upon the interval between the transfer of funds and their disbursement which was actually required for the transfers. The bank was saved and was conducted with comparative prudence until the breaking out of the war with President Jackson.*" (Conant, 1915). Cheves accumulated $7 M by the end of 1820 (Catterall, 1897). "*Langdon Cheves, the new director, implemented strict policies calling in loans owed by the State banks. The State banks, scrambling to cover their responsibilities, called in the notes of their customers, many of whom were Western and Southern farmers. Although [SBUS] survived, many of the State banks faced difficult times, and some were forced to close. Western farmers had the most difficulty because of the constricted economy*" (Northrup, 2003).

591 "*Popular anger for foreclosures and business failures fell upon [SBUS as it] called loans and hoarded specie. State-chartered banks felt the pinch of deflation and passed the pain along to their customers.*" (Hetzel, 2014)

592 "*The Panic of 1819 was most severe in the West. The region had been caught up in real estate speculation. Much of the land was still held by the federal government, but was being purchased rapidly from federal land offices. Many of the mortgages were provided by state chartered and private banks and branches of [SBUS, which] had early adopted the policy that notes issued by any individual branch should be redeemed at every other branch, and did*

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so without placing restrictions on the amount that any individual branch could issue. This allowed the western branches – Cincinnati, Chillicothe, Lexington, and Pittsburgh – to make large loans in a currency that other branches were responsible for redeeming. In 1818, for this and other reasons, [SBUS] found itself in danger of running short of specie and in July began a program of reducing its loan portfolio and reigning in the western and southern branches. This was the spark that precipitated the suspension of specie payments in the West. In Nov the federal Land Office, added to the pressure on the western banks by ruling that federal land could be sold only for specie or notes issued by [SBUS]; not for notes issued by local banks... Almost immediately the 3 chartered banks in Cincinnati and the Bank of the State of Kentucky suspended. A similar story was playing out in western Pennsylvania where the Pittsburgh branch was also taking actions to restrict credit to western banks. All of these western banks were small state chartered or private banks, and so by my definition were shadow banks. The Cincinnati branch of [SBUS] was closed in Oct 1820: a non-shadow bank that was a participant in and victim of the crisis." (Rockoff, 2013).

593 "*[W]hen banks collapsed... obstacles and intimidation were often the lot of those who attempted to press the banks to fulfill their contractual obligation to pay in specie. Thus, Maryland and Pennsylvania... engaged in almost bizarre inconsistency in this area. Maryland, on Feb 15, 1819, enacted a law 'to compel... banks to pay specie for their notes, or forfeit their charters.' Yet 2 days after this seemingly tough action, it passed another law relieving banks of any obligation to redeem notes held by money brokers, 'the major force ensuring the people of this State from the evil arising from the demands made on the banks of this State for gold and silver by brokers.' Pennsylvania followed suit a month later. In this way, these States could claim to maintain the virtue of enforcing contract and property rights while moving to prevent the most effective method of ensuring such enforcement... An amusing footnote on the problem of banks being protected against their contractual obligations to pay in specie occurred in the course of correspondence between... [Senator Condy Raguet (PA)], and the eminent English economist David Ricardo. Ricardo had evidently been bewildered by Raguet's Statement that banks technically required to pay in specie often were not called upon to do so. On April 18, 1821, Raguet replied, explaining the power of banks in the United States: You State in your letter that you find it difficult to comprehend, why persons who had a right to demand coin from the Banks in payment of their notes, so long forebore to exercise it. This no doubt appears paradoxical to one who resides in a country where an act of parliament was necessary to protect a bank, but the difficulty is easily solved. The whole of our population are either stockholders of banks or in debt to them. It is not the interest of the first to press the banks and the rest are afraid. This is the whole secret. An independent man, who was neither a stockholder or debtor, who would have ventured to compel the banks to do justice, would have been persecuted as an enemy of society*." (Rothbard, 2002).

594 "*The continued contraction of Baltimore State banks and of [SBUS'] branch bank, the latter a more extensive and rapid one, produced a very severe effect upon Maryland industry. Debts contracted during the inflation of 1817 and 1818 became payable after the currency had been reduced. The result was that property everywhere was sacrificed to pay for the speculation and extravagance of the previous years. Bankruptcies were common, and for immense amounts. The Federal Gazette of Oct 18, 1819, has 6 columns of applicants for benefit of the insolvent laws; Niles for May 5, 1821, mentions 350 applicants. The low price of grain added to the troubles of the agriculturists. By 1822 liquidation had taken place, and the financial condition of the State was much improved*." (Bryan, 1899).

595 "*By the term 'currency' they understand the medium of exchange used by contracting parties, in the interchange of commodities which are the product of labor, when direct barter or the exchange of on commodity for another, of supposed equal value, does not take place: But where time or space intervenes between the delivery of articles, that are the subjects of a contract, the written evidence that is given of the contract is the medium of exchange, and its transferable quality gives to it the character of currency. By the term 'protecting system,' the committee understand such regulations of foreign commerce as shall protect our country from purchasing and importing... the product of labor alone is wealth as that all exchanges of the products of labor are commerce-that gold and silver are products of labor, to which coinage adds no increased value—that coined gold and silver alone are money—that money is but a legal measure or value possessing the peculiar quality of expansion, in the same proportion that the material of which it is constructed is diminished in the market—that currency is but the evidence of debts... and that it consists of contracts to pay, or deliver, at some Stated time and place... [So,] if the stock of gold and silver on band at the commencement of the war shall be drawn off and exhausted, contracts payable in these materials cannot be fulfilled—yet the ordinary intercourse of society requires a 'circulating medium,' and if this medium be formed of contracts to pay gold and silver, they are contracts to perform impossibilities —they cannot be paid in that which cannot be obtained— Under such circumstances, if the operation of the law be not suspended either by common consent or otherwise, general bankruptcy of debtors must take place, including not only individuals but corporations, and especially banks, as their notes payable on demand would first come under the provisions of law, and be first rendered liable to its operation—No bank, whatever its power might be, under ordinary circumstances, could maintain specie payments, and continue to prosecute business and issue notes payable on demand, if gold and silver be exported and cannot be imported—For such contingencies an exercise of sovereign power is necessary, which would be highly inexpedient, it not illegal, under other circumstances*." (Niles' Register, 1831).

596 "*Finally, in 1819, the government initiated a bill to force [BOE] to resume convertibility, after initial experiments in 1817 at limited convertibility of [BOE]notes had succeeded without any harmful consequences. Even so, [BOE]managed to make the transition as difficult as possible, first by amassing a large stock of gold, which helped keep up the price of gold in the markets, and then by withdrawing the notes from circulation that the government used to repay £10 M of Exchequer bills that had been held by [BOE]. Further, it refused to lower its rate of discount on bills and notes even as its loan business to the private sector declined. The resulting price deflation intensified both agricultural and manufacturing distress but enabled [BOE]to resume full convertibility of notes into coin in May 1821 and to skip almost entirely the intermediate step of limiting convertibility to ingots of 60 ounces, as proposed by Ricardo*." (Neal, 1998).

597 "*The unrelenting pressure of the agricultural interests had led to explorations of possible methods of relief, and in Feb 1822 the government contemplated the issue of £5 M in Exchequer bills through the country bankers to enable them to assist farmers. A meeting was held between the Prime Minister, the Chancellor of the Exchequer, the Governor of [BOE], and several London bankers. The proposal was turned down immediately by the bankers... for they regarded the cause of agricultural distress as lying 'not in the inadequate capital of the country bankers, of which great abundance existed, but in the impossibility on the part of farmers to offer sufficient security.'*" (Pressnell, 1956).

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598 "*[T]he first step to expand credit had been taken in Dec 1821, with the substitution of 95 days for the traditional 65 days as the maximum currency of bills discounted by the bank. Not until June 1822 was Bank Rate at last reduced to 4%, [BOE's] action producing 'a very lively sensation... on the Royal Exchange.... During 1822 £150 M of 5% stock was converted into 4% stock; in 1824 £70 M of 4% stock was converted to a 3% basis... During the following year [BOE] contributed further to the expansion of credit. The reduction in Bank Rate had failed to attract sufficient discounters; after a rise in the second half of 1822 and the first quarter of 1823, the average amount of commercial paper under discount fell for 12 months until by the first quarter of 1824 it had reached a level below that of the last two quarters of 1821—it was, in fact, the lowest volume since 1794... [BOE] now turned to a policy which it had virtually abandoned a century earlier, and in May 1823 proposed to lend money on mortgage. The first mortgage was granted in Oct, when the Court agreed to lend up to £2 M in this fashion... With commercial discounts continuing to fall, and with the note circulation rising but imperceptibly, [BOE] had decided, by Sep 1823, to lend on government securities and upon its own stock... To the more or less independent policies of [BOE] must be added its co-operation with the government in its reflationary measures. It advanced £4 M on Exchequer hills that had been issued by the government during the summer of 1822; this was to enable the Treasury to assist the hungry Irish, as well as to facilitate the current loan conversion operations, and to extend its own circulation. During the following year it began to lay out a sum that was to reach some £13 M by 1828 upon the 'Deadweight.' This was the annuity, to cover expenditure on naval and military pensions, that the government had failed to sell to the public.) The total of public securities held by [BOE] had fallen to the lowest level in the post-war years in Feb 1822, at £12.5 M. By Feb 1825 it had increased to £19.4 M... The country banks could hardly avoid responding to these changes in the credit situation, if only because a fall in the rate of interest, by reducing the profitability of their London balances and investments in bills, &c., compelled them to employ their resources more actively, more fully. On the other hand, falling rates of interest and rising confidence amongst the public could be expected to stimulate the circulation of the means of payment generally. Henry Burgess, then the secretary of the Committee of Country Bankers, presented to the Bank Charter Committtee of 1832 a series of index numbers for the note-issues of 122 country banks, in July of each year from 1818-25. A simple arithmetic average of all the indexes showed that issues had fallen unbrokenly from 1818 to 1823 by 12 %. From 1823-5 they rose by 16%... The issues of 64 of the banks had risen less than the average, and some had actually fallen; those of 49 had risen by more than the average—some of them by very much more. Sir John Clapham's suggestion of 'a minimum extra issue of 20 to 25%' may not be far out for many banks. Even the sound Bedford Bank increased its issues by 16% between Dec 1823 and Dec 1824. The increases in the issues cited by Burgess are the more revealing when an examination is made of the rise between July 1824 and July 1825, when the country notes were to reach their peak: the overall average was a rise of 6.7%, but 50 banks showed rises of 10% or more. With these increases in country issues should be considered the increase in the volume of bills of exchange. Leatham estimated that the total stamped in 1825 was £260 M, £28 M more than in 1824; the daily circulation of bills he estimated to have increased from £58 M to £65 M.*" (Pressnell, 1956).

599 "*As the London stock market had proved attractive for the new issues of debt by the restored European governments and the revolutionary Latin American governments, by 1824 a much wider variety of newly formed joint-stock corporations offered their shares to London investors. In the words of a contemporary observer, 'bubble schemes came out in shoals like herring from the Polar Seas.' The success of 3 companies floated to exploit the mineral resources of Mexico—the Real del Monte Association, the United Mexican Co, and the Anglo-American Co led to flotations of domestic projects in early 1824. In Feb 1824, the Barings and Rothschilds cooperated to found the Alliance British and Foreign Life & Fire Insurance Co. It enjoyed an immediate, enormous success. In March there were 30 bills before Parliament to establish some kind of joint-stock enterprise, whether a private undertaking for issuing insurance or opening a mine, or a public utility such as gas or waterworks, or a canal, dock, or bridge. In April there were 250 such bills... Briefly, English listed 624 companies that were floated in the years 1824 and 1825. They had a capitalization of £372 M.*" (Neal, 1998).

600 "*The problems arise from British bankruptcy law, which confined the possibility of bankruptcy to firms engaged in trade, excluding farms, factories, and the other professions. The latter were covered by the much harsher law of insolvency, but in case of difficulty they did what they could to come under bankruptcy law. To do this, they had to be engaged to a significant extent in trade, stop payment on debts amounting to over £100, and refuse in front of witnesses to pay a legitimate creditor... The limitation of joint-stock enterprises to these fields arose from the limitations, first, of the Bubble Act of 1720, which forbade joint-stock corporations from engaging in activities other than those specifically stated in their charters; second, of common law, which made stockholders in co-partnerships with transferable shares (i.e., unincorporated joint-stock enterprises) liable in unlimited amount, proportional to their shares in the equity of the company; and, third, of the limited liability and ease of transfer for shareholders in mines created on the 'cost-book' system. They were subject only to calls up to the capitalization authorized by the cost-book. [Burt (1984), p74-81 describes the cost-book system and its advantages for investors at this time.]*" (Neal, 1998).

601 "*Until 1844 there were no arrangements in England for speedy and cheap incorporation. The boon of corporate entity could only be obtained by a special Act of Parliament or by obtaining a charter from the Crown and neither was readily procurable. Hence businessmen and their advisers had tried to mold the unincorporated partnership into a form which would provide most of the advantages of corporate personality without a formal grant of incorporation. Thanks to the ubiquitous trust concept their efforts met with considerable success and produced a form of joint-stock company organized under a Deed of Settlement which vested the property of the concern in Trustees, divided it into transferable shares, and entrusted its management to directors who would normally be the same as the trustees. The unincorporated Deed of Settlement Co was subject to 3 main disadvantages, all flowing from the fact that in the eyes of the law it was merely a partnership although often swollen to a size which destroyed any possibility of the mutual confidence between the members which was supposed to be at the root of partnership law: (1) The members were personally liable for the obligations of the firm without limitation of liability; (2) the gravest procedural difficulties arose when the company was suing or being sued or when execution was being levied on its property or that of its members; and (3) it was doubtful whether even express provision in the Deed of Settlement could effectively provide for complete freedom of transferability of shares.*" (Gower, 1953).

602 "*Eldon presented 2 bills in the 1822 session that became law. Neither of the bills authorized any major changes in the system. One dealt with technicalities involved in joint bankruptcy commissions; the other increased the powers of the commissioners to summon witnesses and lessened some evidentiary requirements. The weakness of Lord Eldon's 1822 reforms should not, however, suggest that he opposed substantive bankruptcy law reform. To the*

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contrary, in one of the few cases of Lord Eldon supporting any reform of the law, after passage of his 1822 acts, the Lord Chancellor sanctioned the preparation of a bill that went much further than John Smith's earlier effort. Consulting the codes of Ireland, Scotland, France, and the United States, drafters of this new measure worked toward a complete consolidation of all bankruptcy laws... Drafters of the 1824 bill realized that repetitions in the vast number of bankruptcy laws, changes affected by increased commerce, alterations both in the form and substance of mercantile proceedings, invention of new frauds, and above all, numerous judicial decisions made consolidation of the bankruptcy statutes imperative." (Lester, 1990).

603 "*In the Session of 1824 the bill, considerably amended, was again introduced, and received the Royal Assent, but it had been provided that it was not to come into operation till the 1st of May, 1825, and as many most important and valuable amendments had occurred in the interim, it was thought expedient to replace it by the present Act, which, in order that no surprise might be effected through ignorance of its provisions, is not to take effect till the 1st day of September, 1825*." (Eden, 1826). "*The bill introduced in Feb 1824, according to John Smith, was 'identically the same in principle' to his earlier efforts, but its hallmark was the consolidation of the massive body of bankruptcy law, reducing the size of such law by 6,000-7,000 words. Holdsworth calls the bankruptcy amendment and consolidation bill which became law in 1825 the foundation of the modern law of bankruptcy. It introduced for the first time many of the administrative concepts that were to be included continually in one form or another in all future bankruptcy legislation*." (Lester, 1990).

604 "*The status of shareholders in corporations [with regards to involuntary bankruptcy due to the performance of the company,] was questionable until all were excluded in 1825; shareholders in joint-stock companies not established by charter or statute were liable only if the firms in question were engaged in trade... [however,] drovers were deliberately omitted from the list of excluded occupations because they were so obviously traders and, according to a Chancery barrister, because it was now realized that 'they have no landlord to be provided for.' However, farmers and graziers remained outside the law until 1861*." (Duffy, 1980).

605 "*This was the first British legislation to recognize the doctrine of voluntary bankruptcy. It provided that debtors could solicit and procure liquidation of their assets of could seek the adjustment of their obligations through private settlements*." (Shubik, 2004). "*A step toward voluntary bankruptcy proceedings was made in 1825 [6 Geo. IV, Ch. 16] when it became an act of bankruptcy for a debtor to publish a statement that he was insolvent, although the bankruptcy commission would issue only on a creditors' petition. At the same time it was provided that a bankrupt who had destroyed, altered, mutilated, or falsified his books or records with intent to defraud his creditors should forfeit his discharge*." (Countryman, 1976).

606 "*In 1825, however, the English legislature was at last moved to action. By the Bankruptcy Consolidation Act of that year, a number of new provisions were added to the existing law of bankruptcy, the effect of which was to prevent a minority of one-tenth of the creditors in number and value from obstructing the termination of bankruptcy proceedings through a composition agreed to by the remaining nine-tenths. These new provisions were taken almost bodily from a section of the Scotch Sequestration Act of 1814. It can readily be seen, however, that the minimum ratio required for the number and value of the concurring creditors was so high that the new provision could hardly be regarded as a formal recognition by the legislature of the principle of majority control. The object of these provisions was simply to circumvent the obstinacy of a few recalcitrant creditors, rather than to enforce the will of the majority upon the minority*." (Treiman, 1938).

607 "*The first considerable alteration in the statute consists in collecting and extending the descriptions of Traders. The construction put upon the former acts most capriciously excluded many persons who ought, upon every principle of commercial law, to have been included within them. In the New Act, besides a specific enumeration of several classes of persons, the general words of description have been so enlarged as to comprehend everyone who ought upon correct principles of bankrupt law to be liable to its inconveniences or entitled to its immunities*." (Eden, 1826). "*Parliament broadened the scope of the law in two ways. For the first time, the general definition included people who did not buy and sell: all persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail; and all persons who, either for themselves, or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods or commodities... In addition, the act specifically included various occupations, most of which had previously been ineligible: bleachers, builders, calenderers, carpenters, cattle and sheep salesmen, coffee-house keepers, dyers, fullers, hotel-keepers, innkeepers, insurers of ships, packers, printers, shipwrights, tavern-keepers, victuallers, warehousemen and wharfingers. According to Robert Eden, who drafted the statute, its purpose was 'to comprehend everyone who ought upon correct principles of bankrupt law to be liable to its inconveniences or entitled to its immunities.' That this was not achieved was recorded in the passage, in 1842, of a similar statute which rendered liable alum-makers, apothecaries, auctioneers, brickmakers, carriers, coach proprietors, cow-keepers, lineburners, livery stable-keepers, market gardeners, millers and shipowners. The effect of these two statutes was to resolve most of the more difficult problems of interpretation and no further changes were made before 1861... The term 'factor', however, seems to have been applied to those who actually bought and sold goods on commission. Certainly, commission merchants, who obtained orders for goods which were supplied and charged directly to the customer by the principal, were ineligible before 1825 and, even after the statute of that year, their status remained... [Until 1825], proprietors of mills and workshops were excluded if they manufactured only the materials of their clients and did not buy and sell for themselves. This principle was applied in remarkable fashion to firms engaged in the finishing processes. Dyers were allowed to go bankrupt from the early seventeenth century but bleachers, calenderers and fullers were not, a distinction whose flimsy rationale was explained by William Evans in 1810: 'The mere distinction in fact between a dyer and a bleacher is, that the drugs of the first are incorporated with the cloth which he dyes, and may therefore... be said to be sold; but the drugs of the bleacher, though the business requires also an extensive credit, are used merely in disengaging the pieces from an adventitious coloring.' The absurdity of this interpretation was aggravated by the fact that printers were excluded despite the similarity of their function to that of dyers. Not until the statute of 1825 were all five of these finishing processes specifically included; in addition, its 'workmanship' clause was deliberately designed to encompass all substantial manufacturers who did not actually buy and sell. A variety of non-manufacturing occupations were similarly excluded because they involved neither buying nor selling. In the service sector this applied, for example, to auctioneers (before 1842), insurers (except underwriters of ships after 1825) and land agents. In the commercial sector, the inclusion of packers, warehousemen and wharfingers in 1825 indicates that, although not legally tested, their status was questionable before that date... [B]uilders were ineligible because (in the words of Lord Ellenborough) their name 'did not convey the idea of buying and selling... it was selling an interest connected*

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with the land, not a sale of mere personal chattels.' The hardship which this, again, inflicted on a large, vulnerable group and its creditors led, in 1825, to the inclusion of speculative builders, but not of land speculators employing others to build, landowners who built merely to improve their property and people who engaged in isolated building." (Duffy, 1980).

608 "*Until late March 1825, the legislative framework of business organization seemed to be as stable as it had been in the century before the boom. Liberal Tory ministers with economic portfolios declared non-intervention as their policy in encountering the boom, and that seemed reasonable considering the bull market and confident public opinion. High Tories relied on Eldon, who had not yet drafted his promised bill. The Lord Chancellor, in his judicial capacity, had a pending case, Kinder v. Taylor, and used this as an excuse to avoid any legislative initiative... On 29 March the excuse for inaction expired as Eldon delivered his judgement in Chancery in Kinder v. Taylor, in the matter of the Real del Monte Co, a typical product of the boom years. It aspired to incorporation but began its business, mining in Mexico, as an unincorporated company. At one point, the company resolved to divest itself of the rights to the Bolanos mine in favor of the defendant who was one of its promoters. The plaintiff, a shareholder, argued that this resolution withheld from him his fair share in the company's assets. Both parties argued in Chancery about the interpretation of the deed of settlement, to determine whether the company's resolution was valid. Lord Eldon astonished counsel by turning his attention from the content and interpretation of the deed to the question of the legality of the company and 'the right of any persons claiming as proprietors in such a company, to have the aid of a court of justice.'*" (Harris, 1997).

609 "*Eldon's judgement in Chancery in March 1825 created the confusion that instigated the demand to repeal the Bubble Act... Less than 3 weeks after the stopping of Moore's bill in committee, the Attorney-General, John Copley, pre-empted it and presented his own bill for the repeal of the Bubble Act on 2 June. While Moore's bill ran to 10 pages, Copley's was laconic, consisting of only 2 operative clauses, one repealing the relevant part of the Bubble Act, the other empowering the king to grant charters without limited liability, at his discretion. Copley's reasoning for repealing the Bubble Act was mainly legal: 'its meaning and effect were altogether unintelligible', it incurred 'the heaviest penalty', and it had become 'a dead letter.' To this he added the consideration of economic policy: many of the unincorporated joint-stock companies that were said to be illegal had been formed for useful and laudable purposes and were advantageous to the public. According to Copley's reasoning, the second clause would make the law officers more willing to grant charters, and would encourage promoters to apply for charters rather than for parliamentary acts of incorporation. Any further legislative measures 'would be at once difficult, unwise and impolitic' according to Copley. Colonel Davies, who rose after Copley, expressed his fear that the bill might encounter opposition from Lord Eldon who 'had uttered a general exclamation against all joint-stock companies.' Davies also criticized Eldon for not adhering to Ellenborough's decisions, given in King's Bench in 1808-12, as to the interpretation of the Bubble Act... How can we reconcile Copley's initiative for repealing the Bubble Act with Eldon's promise to strengthen the act and further restrict joint-stock companies by new legislation? After all, Copley was, at least in theory, the Lord Chancellor's representative in the Commons. Eldon must have realized that he was on the weaker side, both in Cabinet and in Parliament, at least among the active participants in the debate. It seems that, starting with his judgement in Chancery on 29 March, Eldon revised his tactics. He contemplated taking refuge in his judicial capacity and the safe haven of judge-made law. On four separate occasions, on 27 May, 7 June, 14 June and particularly on 24 June, Eldon revealed his modified approach. If the Bubble Act is repealed, 'he should not much care, for he could tell their lordships that there was hardly anything in that act which was not punishable by the common law.' Eldon induced the judges of the common law courts to interpret the common law as he did and asked Parliament not to consider incorporation bills submitted by illegal associations... Copley's bill passed the House of Lords on 29 June, 5 days after Eldon's last statement, without reported objections to its principle, by Eldon or any of the other lords. On 5 July the repeal act received royal assent as 6 Geo. 4 c. 91 (1825).*" (Harris, 1997).

610 "*Above all, foreign trade and investment proved attractive: the export of capital, mainly to Europe in 1822 and 1823, and in 1824-5 in ever larger quantities to Latin America, came to dominate the money market. There was small change in exports, but net imports rose in 1823 to be followed in 1824 by a slight fall; in 1825, net imports were more than 50% above the level of the previous year... By the end of 1824 the foreign exchanges had become less favorable, and [BOE's] bullion, though ample, had fallen noticeably. [BOE's] issues now fell off in this second quarter of 1825; its commercial discounts rose sharply after declining during the previous 4 quarters, but against this trend must he set substantial sales of Exchequer bills in Dec 1824 and in March 1825. In short, by the beginning of 1825 [BOE] was seeking to contract, though its increased discounts softened the impact of what was undoubtedly a necessary and belated measure.*" (Pressnell, 1956).

611 "*During midsummer the country banks were pulled up sharply by an incident involving a Bristol bank. Since the Resumption of Cash Payments [BOE] had been obliged to give gold, on request, in exchange for its notes. No such obligation had been laid upon country bankers, but the possibility of its existence in strict law was implicit in the fact that neither [BOE]-notes nor country notes were legal tender. In June Joseph Hume presented to the Commons a petition from a man who had on two separate occasions taken to the Castle Bank (Messrs. Rickets, Thorne, & Courtney) some of their notes, but had received [BOE] notes instead of the gold which he had demanded. The ensuing parliamentary discussions led to the conclusion that bankers must be prepared to pay their notes in gold if requested to do so by a noteholder. The implications of this were at once discerned by Hudson Gurney and by others, who envisaged the impossible situation that would face bankers in a time of panic, and therefore urged that some account ought to be taken of the time to procure gold from London. Within a few months, these publicly expressed fears, of which no legislative notice was taken, proved to be only too well founded. The Bristol affair helped to produce a contraction of the country note circulation, according to Robinson, the Chancellor of the Exchequer, when speaking several months later in a debate on banking reform. As early as July, in short at once, the incident caused 'a considerable amount of uneasiness' on the pan of the public and of caution on the other—he meant that prudential caution, on the part of solid and solvent bankers.'*" (Pressnell, 1956).

612 "*By mid-July the scarcity of money was such that it was reported to be inducing bankers to refuse to discount merchants' bills. By the end of the month it was confirmed that [BOE] had stopped lending on stock. The first serious trouble came within a fortnight or so with stoppages in the Liverpool cotton trade, but prompt aid by the banks prevented the danger from spreading. Alarm was not checked, however; panic continued to be the theme of money market reports. The international aspects of the impending crisis had been stressed by the Liverpool failures, and by reports at the beginning of Sep of difficulties in the U.S.A. They were now, in mid-Sep, further emphasized by the reported decision of London bankers to cease lending money on the South American securities which had been the dominant feature of the antecedent boom. Under these conditions the occurrence of a crack and a crash*

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seems in retrospect merely a matter of time and place... The first cracks appeared with failures of country banks in agricultural areas... At the end of Sep there came the first of a group of serious failures in the west country, when a Kingsbridge (Devon) bank collapsed after a run. Alarm spread rapidly and caused pressure on other banks in Devon. Messrs. Shiells & John of Devonport succumbed barely a week later, and the bank was soon revealed to have been in a hopeless condition. This failure, which occurred during the first week in Oct, provoked a serious run on the nearby Plymouth bank of Sir William Elford & Co... So far, however, the collapses had been of demonstrably weak banks or of insignificant banks, and they would hardly have been sufficient to cause strain or to create panic throughout the country." (Pressnell, 1956).

613 "*Two other elements did that: the collapse of overseas trade, and a breakdown in the London money market. At the end of Oct Messrs. Samuel Williams & Co., a leading house in the American trade, stopped payment with some £0.52 M of acceptances outstanding amongst its substantial liabilities. This caused alarm amongst Liverpool and Manchester merchants, and in Birmingham, where many merchants held Williams's acceptances. Throughout the following month money market conditions hardened, and by Dec the country banks had begun to call in mortgages and to accumulate gold. Mercantile distress and the demands of their correspondents affected the reserves of the London bankers, but the timing of the great panic of 1825 can probably be attributed to an old weakness: the quarterly contraction imposed upon bankers by the need to pay tax monies to the government, even though [BOE] would pay out the quarterly dividends soon afterwards. If it would only pay out the dividends earlier than usual, [BOE] could ease the strain in the money market, declared the Morning Chronicle on 13 Dec; but it was already too late, for on that very day the City and many provincial towns were swept by panic. There had been rumors of all sorts about the stability of this or that firm, and in the first 3 days of Dec there had been a run which practically emptied the till of Pole, Thornton & Co., a London bank with 43 country correspondents. The bank had been 'grossly mismanaged'—the words were those of the Governor of [BOE]—though it possessed adequate resources... The strain on the country banks had been at its greatest in those areas where existing bank weaknesses and the pressure of the London failures had been heaviest: in the west country, in Yorkshire, and above all in the counties of Northampton and Leicester. After that terrible Wednesday in London (14th) alarm became generalized, and by the end of the week there were few areas in which a stoppage of the local banks had not occurred or was not feared hourly. There was encouraging news from Oxford, the Isle of Wight, Bristol, Liverpool, and Hull, but gloomy reports from elsewhere. Rumor played its usual large part... The injury was indeed great by the end of this first week, in which the total of bankrupted country banks was 13, with dockets to be struck against a further 6 on the Mon of the next week (19 Dec). By the end of this second week the worst of the panic was over, but failures continued to come in. For the whole month of Dec the total of country failures was 33, excluding branches.*" (Pressnell, 1956).

614 "*[BOE] did not act decisively until the crisis seemed to be getting out of hand, and until its own reserves were in danger of imminent disappearance. None the less, its actions during the first fortnight of Dec were as much as might reasonably have been expected of it—perhaps rather more —given the state of contemporary central banking practice, and assuming that the Bank directors had been as unaware as most other people of the severity of the impending disaster. On 1 Dec it had discounted heavily for the public, and money was reported to be more plentiful in the money market. 4 days later it was lending generously to Pole & Co., and in the week following Pole's stoppage its total discounts reached almost £6 M. This increase took place despite the increase of Bank Rate from 4 to 5 % on the Mon (12 Dec).; The next day [BOE] sought to ease the market by the purchase of £0.5 M of Exchequer bills, but the general public, concerned to liquidate its holdings of country notes, wanted [BOE]-notes and gold. The demand for its £1 and 5 to notes [BOE] was just able to meet with the aid of its printers. In view of [BOE's] dwindling reserve of specie, and of the time needed to procure gold and silver from abroad, it seemed unlikely that the demand for sovereigns could be satisfied, unless some of this clamor for a substitute for the discredited small notes of the country banks could be diverted to £1 notes issued by [BOE] itself. [BOE] had withdrawn most of its small notes within eighteen months of the Resumption of Cash Payments in 1821. It now opened a long-stored box of its £1 notes (Fri, 16 Dec), and by the weekend they were circulating in London. Other measures taken by [BOE] included advances totaling £1.2 M on stock by the end of Dec. The issue of the £1 notes did much to allay the panic, more as a demonstration of [BOE's] determination to help than as an addition to the circulation. James Morris, a later Governor of [BOE], was to declare in 1848 that he had heard that many notes issued during the crisis had been subsequently returned to [BOE] without having gone into circulation.*" (Pressnell, 1956).

615 *The effect of the 1825-6 crisis on merchants and businesses was twofold, in that the money supply fell and merchants found it difficult to raise funds because many bills were refused for discount and surviving banks contracted their lending. Bankruptcies increased significantly in Dec 1825; in 1826, they were at least double the average annual bankruptcy rate for the period 1822-32. As shown in Table 3.10, the economy grew substantially in 1824; however, during the crisis, there was a sharp decline in GDP. Indeed, of all of the episodes listed in Table 3.10, the 1825-6 crisis was associated with the steepest decline in GDP during the actual crisis episode. The minor banking crisis of 1836-7 had relatively little effect on the real economy. Bankruptcies in 1836 and 1837 did not differ much from the average annual bankruptcy rate for the period 1832-42. As shown in Table 3.10, there was high economic growth in 1835; although this fell slightly in 1836-7, the average growth rate in the crisis years was still positive. Notably, there was a substantial rise in GDP in 1838.*" (Turner, 2014). "*By 1827, only 127 of these existed with a capitalization of £103 M, of which only £15 M had been paid in, but the market value had sunk even lower to only £9 M. But even at the height of the enthusiasm for new issues, the total capital paid in had amounted to no more than £49 M.*" (Neal, 1998). "*In 1831 [1 & 2 Will. IV, Ch. 56] the commissioners in bankruptcy were constituted a separate Court of Bankruptcy to review the acts of individual commissioners and an official assignee was provided to act jointly in each case with the assignee chosen by the creditors.*" (Countryman, 1976). "*The legislation of 1844 and 1855 adopted this familiar form of [business] organization and conferred on it the boon of corporate personality and limited liability.*" (Gower, 1955).

616 "*[T]he total amount of capital required for the 624 Companies, formed or projected in the years 1824 and 1825, was, the sum of £372 M... [and the] capital of those [127, 20%] Companies now existing amounting to £103 M [28% of total advanced and projected]. The amount actually advanced, not including the premiums, was, £17.6 M; and that now invested in the Companies £15.2 M [92% of total advanced], which at the present price of the shares may be valued at £9.3 M.*" (English, 1827).

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	Capital required.	Amount actually advanced.	Number of Shares.
127 Companies now existing	102,781,600	15,185,950	1,618,340
118 Ditto Abandoned	56,606,500	2,419,675	848,600
236 Ditto Projected	143,610,000		2,535,380
143 Ditto Projected (No. 2.) not particularized....	69,175,000		959,000
624	£372,173,100	£17,605,625	5,963,220

No.	COMPANY.	CAPITAL.	Amount Paid.	Present Value.	Amount liable to be called.	No. of Shares.
44	Mines	26,776,000	5,455,100	2,927,350	21,320,900	358,700
20	Gas	9,061,000	2,162,000	1,504,625	6,899,000	152,140
14	Insurance	28,120,000	2,247,000	1,606,000	25,873,000	545,000
49	Miscellaneous	38,824,600	5,321,850	3,265,975	33,502,750	562,500
127		£102,781,600	£15,185,950	£9,303,950	£87,595,650	1,618,340

617 "*When once the crisis had subsided, the time came to search for its causes and to find a remedy for them; this task devolved on Parliament when it assembled on Feb 3rd. The King's Speech specially drew the attention of Parliament to the question and neither House showed any disposition to neglect it. The Prime Minister, Lord Liverpool, in a speech of which we made use in studying the condition of provincial credit on the eve of the French Revolution, criticized severely both the system on which this credit was organized and also the Act of 1709, which limited the number of partners in a bank of issue to 6, so that any small provincial tradesman, a fruiterer, a grocer or a butcher, might open a bank whilst the right of issue was refused to genuine companies, well deserving of confidence. Peel supported these views in the House of Commons' and contrasted the monopoly which existed in England with the free Scotch system. He pointed out that in England 100 banks had failed in 1793, 157 between 1810 and 1817, and 76 during the recent crisis, and that, moreover, the numbers recorded would have been much greater had it not been for the different ways of making composition, and so on; whilst in Scotland, on the contrary, there was only a single bank failure on record, and even in that case the creditors had ultimately been paid in full. Peel then described the terrible condition of country banking, and declared his conviction that a system of well-established joint-stock companies would supply a more secure basis for the circulation. With reference to the small notes, which had just formed the subject of a strong speech by Huskisson, Peel agreed with the latter in thinking that the £1 notes only served to drive out the sovereigns; that the over-issue of paper money was one of the worst evils from which the country suffered and that the present was an excellent opportunity of getting rid of it. The Act of 1826 was passed by a very large majority. This Act had a two-fold object, corresponding to the two fold criticism brought against the previous legislation; it attempted (a) to reorganize country credit by abolishing the monopoly established by the laws of 1708 and 1742; (b) to suppress the small notes... The Statute 1826 (c. 46),.. authorized the establishment of banks 65 miles or more from London, having any number of partners and with power to issue notes. In this way encouragement was given to the creation of joint-stock banks of issue. [BOE] was at the same time empowered to establish branches in any part of England.*" (Andréadès, 1909). "*Contrast Scotland. In 1825 it had fewer separate banking firms than Devon—the 3 chartered banks and 29 others, two of which were old private concerns with few partners and a not very active business, in Edinburgh. The rest were joint-stock companies, co-partneries of many partners with unlimited liability: the Commercial Banking Co had 521 partners, the National Bank of Scotland 1,238. There was an extensive system of branches and agencies. And it was reported early in 1826 that down to 1825, no single Scottish bank had failed since 1816; in 1816 only 1, a more or less private one; and even it had paid 9.s. in the pound. Certainly Scotland appeared to have secrets of sound banking that England might inquire into. The use of branches by strong central institutions in Scotland had greatly attracted Lord Liverpool.*" (Clapham, 1945b). "*[In the 1825 Bankruptcy Act,] The term 'bankers' was interpreted broadly to include all who received customers' deposits, whether or not they opened a banking house or conducted business in normal banking fashion [Ex parte Wilson (1752) 1 Atk. 218.] Their liability was extended to shareholders in the joint-stock banks which spread so rapidly after 1826 [Ex parte Wyndham (1840) 1 Mont. D. & D. 14.]*" (Duffy, 1980). "*One could work up debates on each of these issues, and perhaps the differences between Scottish and English banks were not as great as they had appeared in the 1820s to such an Englishman as Thomas Joplin, Newcastle timber merchant with strong views on the desirability of joint-stock banking, which may have derived from the spotty record of the banks of his city... The failure of 73 out of 770 banks in England in 1825 was not a very different ratio than 3 out of 36 in Scotland (as of 1830), but the large absolute number made a lasting impression, as did the intensity of the panic. The country came within 48 hours of 'putting stop to all dealings between man and man except by barter'...*" (Kindleberger, 1984). This calculation ignores the difference between unit country banks and the branches of Scotland.

618 In 1821, Rep. Tracy (DR-NY) proposed a bill to establish a uniform system of bankruptcy throughout the United States; a voluntary process that would have allowed farmers to become bankrupts as well as merchants and traders (Witt, 2003). In 1822, Congress debated an amendment by Rep. Walworth (DR-NY) providing that the States may enact bankrupt or insolvent laws until Congress shall establish uniform laws on the subject but it was rejected (Niles' Register, 1822, p46-7).

619 The Act allowed debtors to relinquish the land they did not pay for and extended the schedule of payments by several years, with a discount for quick payment.

620 "*Rhode Island abandoned its relief system in 1819 when the Supreme Court declared State bankruptcy laws unconstitutional… Vermont's high court held that all State bankruptcy laws were unconstitutional following Crowninshield... The Supreme Court of Ohio found the federal cases totally inapplicable to its State insolvency statute, provided that all the relevant action in the case occurred within the boundaries of Ohio after the enactment of the statute.[Smith v. Parsons, 1 Ohio 236, 241 (1822)]*" (Lubben, 2013). Kentucky became the first State to reform debtors prisons in 1821; others followed Congress amended DPRA twice in 1824 for the first time since 1817. "*[F]aced with widespread debts and insolvencies, States in every region were confronted with, and wrangled over, debtors' relief proposals. Stay laws were considered in the eastern legislatures of Delaware, New Jersey, New York, Maryland, Vermont, Massachusetts, Pennsylvania, and Virginia, as well as in the western States of Ohio, Indiana, Illinois, Missouri, Louisiana, Tennessee, and Kentucky. Minimum appraisal laws were also considered in almost all of these States. Stay laws were passed in Maryland, Vermont, Ohio, Indiana, Illinois, Missouri, Louisiana, Tennessee, and Kentucky; minimum appraisal laws were passed in far fewer States: Ohio, Indiana, Missouri, Pennsylvania, and Kentucky... [In Kentucky,] The proponents of debtors' relief argued that the legislature was obliged to provide relief in times of distress. Indeed, they considered themselves generous for not going so far as to repudiate all private debts completely. The opposition assailed the measures as repudiating contracts, and asserted that the only remedies to help the debtors in the long run were thrift and industry. Stay laws were attacked as leaving the creditors' property in the hands of speculators and as greatly hampering credit. The bitterness of the opposition increased as the relief system continued, and, as the economy recovered, it succeeded in turning the relief tide. As early as the 1822-3 session, the legislature reduced the stay provision from 2 years*

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to 1 year, and by 1824 the stay laws were repealed." (see *Appendix B* for summary, Rothbard, 1962). "*In Kentucky, Tennessee, and Missouri, stay laws were passed requiring creditors to accept depreciated and inconvertible bank paper in payment of debts, else suffer a stay of execution of the debt. In this way, quasi–legal tender status was conferred on the paper. Many States permitted banks to suspend specie payment, and 4 western States—Tennessee, Kentucky, Missouri, and Illinois—established State-owned banks to try to overcome the depression by issuing large issues of inconvertible paper money. In all States trying to prop up inconvertible bank paper, a quasi-legal status was also conferred on the paper by agreeing to receive the notes in taxes or debts due to the State. The result of all the inconvertible paper schemes was rapid and massive depreciation, disappearance of specie, succeeded by speedy liquidation of the new State-owned banks.*" (Rothbard, 2002). By 1824, States started to repeal these.

621 "*In 1821 [the Massachusetts general statute] was… amended to provide that 'every person who shall become a member of any manufacturing corporation shall be liable for all debts contracted during the time of his continuing a member.' This statute during its life... applied only to manufacturing corporations. Banking and insurance companies were governed by the provisions in their charters. Turnpike companies were exempt from this imposition of liability. The unfriendly attitude of the Massachusetts courts (perhaps reflecting the same attitude among the business leaders of the time) is reflected in the opinion of Chief Justice Shaw in Gray v. Coffitt: 'To create any individual liability of imposition for the debt of a corporation... is a wide departure from established rules of law founded in consideration of public policy. It is therefore to be construed strictly…*" (Livermore, 1935).

622 "*New York made an indirect attack upon the business value of corporate charters in 1822 by passing the Limited Partnership Act, again a pioneering step. From the practical legislative point of view, the act was favored by many out of resentment at the clause in the Constitution of 1821 requiring that all charters must receive assenting votes from two-thirds of both houses. Obviously, the opportunity to secure a limitation of future liability in a limited partnership, protecting the large contributors of capital to an enterprise, reduced sharply the incentive to secure a charter. This law of New York was not generally imitated in other states until after 1835.*" (Livermore, 1935). "*In 1822 the State of New York introduced the commandite into its laws, with a statute that named it the 'limited partnership.' New York thus became the first common law state to authorize the form… These statutes represented a significant legal innovation, and at the time were 'supposed to be well calculated to bring dormant capital into active and useful employment.' But it was difficult to anticipate how the new institution would function and how much use it would find. American limited partnership statutes created a new class of partner, called a 'special partner,' who was granted limited liability and was required to delegate the management of the firm to the 'general partners,' who remained personally liable. To prevent fraud, the statutes imposed strict registration requirements for these firms, as well as regulations on the form of payment made by the special partners, the name the businesses could take, and the publication of the registration certificate. The penalty for failing to comply with these and other terms of the statutes was that the special partners would be stripped of their limited liability.' The special partners thus faced a 'lurking danger' that they could be exposed to unlimited liability as a result of minor or accidental deviations from the terms of the statutes, a problem that would be made more acute if common law judges were hostile to the form and interpreted the statutes conservatively."* (Hilt and O'Banion, 2009).

623 "*It was empowered to loan upon farms, houses, factories or real estate... security of their property (which cannot now be obtained without great difficulty) as to insure their buildings and effects, and those of other persons, by loss from fire.. but mortgaged property taken on foreclosure could not be held longer than 5 years, on penalty of being forfeited to the people of the State. The company was authorized to grant annuities; to insure all kinds of property against loss or damage by fire; to purchase and hold any stock or foreign debt, or the stock of any corporation. It was especially provided that nothing in the act should be so construed as to authorize the said corporation to receive any deposit or deposits, or to discount any promissory note, bond, due-bill, draft or bill of exchange, 'nor shall it be so construed as to allow any banking privileges or business whatever,'* 2 months later, the Legislature passed an act providing "*the said corporation shall also have authority to receive and take by deed or devise any effects and property, both real and personal, which may be left or conveyed to them in trust; and to assume, perform and execute any trust which has been or which may be created or declared by any deed or devise as aforesaid; and the said corporation are authorized to receive, take, possess, and stand seized of, and to execute any and all such trust or trusts in their corporate capacity and name, in the same manner and to the same extent as trustee or trustees might or could lawfully do. and no further.*" (Herrick, 1915).

624 "*A cardinal legal question at the beginning of the 19th century was whether shareholders were directly liable for corporate debts if the charter was silent on shareholder liability… This fundamental issue was soon resolved... [Following the Massachusetts and Pennsylvania courts,] Justice Story sitting as a federal circuit court Judge in Wood v. Dummer held that shareholders were not directly liable for corporate debts unless the statute or charter expressly so provided. The courts pointed to the numerous charters of the time that imposed direct liability as confirmation that, in the absence of such a provision, shareholders were not directly liable.*" (Blumberg, 1986). In *Wood v. Dummer, 3 Mason 308* (1824), a bank distributed its capital among its stockholders as dividends, leaving nothing for its creditors. Justice Story described the assets of an insolvent corporation as a trust fund for the benefit of its creditors: "*If I am right in this position, the principal difficulty in the cause is overcome. If the capital stock is a trust fund, then it may be followed into the hands of any persons having notice of the trust attaching to it… It appears to me very clear upon general principles as well as the Legislative intention, that the capital stock is to be deemed a pledge or trust fund for payment of debts contracted by the bank. The public as well as the Legislature have always supposed this to be a fund appropriated for such a purpose. The individual stockholders are not liable for the debts of the bank in their private capacities. The charter relieves them from personal responsibility and substitutes the capital stock in its stead. Credit is universally given to this fund by the public as the only means of repayment… The stockholders have no rights until all the other creditors are satisfied. They have the full benefit of all the profits made by the establishment, and cannot take any portion of the fund until all the other claims on it are extinguished.*"

625 "*On May 26, 1824... Webster of Massachusetts offered in the House a resolution in favor of a bankruptcy law, as opposed to '24 different and clashing systems,' and on March 3, 1825, spoke as follows: 'He remained fully of opinion that, in a country so commercial with so many States, having almost every degree and every kind of connection and intercourse among their citizens, true policy and just views of public utility required that so important a branch of commercial regulation as bankruptcy, ought to be uniform throughout all the States, and, of course, that it ought to be established under the authority of this Government.*" (Olmstead, 1902).

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626 "*Commercial banks in antebellum America had traditionally raised capital through equity offerings and banknote issues, not deposits; though commercial bank demand deposits had been introduced and had begun to grow before the Civil War, bank balance sheets show that they were unlike the highly leveraged intermediaries with which we are familiar with today… As State bank notes became taxed out of existence following the [NBA], State chartered banks began to actively search for new sources of liabilities. By the 1880s and 1890s... State banks... began to offer interest-bearing deposit accounts that mimicked the essential features of the [SBs]... Though national banks were prohibited from offering similar services, many of them managed to circumvent the regulation until the law itself was relaxed by the Federal Reserve Act of 1907*" (Wadhwani, 2011a).

627 "*In America, on the other hand, the Bubble Act seems, wisely, to have been ignored—despite the fact that it had been extended to the Colonies by an act of 1741. After the Declaration of Independence, incorporation, by special acts of the state legislatures, was granted far more readily than in England, and the unincorporated joint-stock company, though not unknown, was correspondingly less important. In a number of industrially important states incorporation by registration under a general act came earlier than in England —33 years earlier in New York [1822]— and, when it came, the model which the legislative draftsmen had in mind was the statutory corporation rather than the unincorporated company or partnership. Hence modern American corporation law owes less to partnership and more to corporate principles.*" (Gower, 1955).

628 "*Hence the modern English business corporation has evolved from the unincorporated partnership based on mutual agreement rather than from the corporation based on a grant from the state and owes more to partnership principles than to rules based on corporate personality… The reason for our success, I think, is that the constitution of the English business corporation is still regarded as essentially contractual. Whereas the American statutes tend to lay down mandatory rules, the English Companies Act relies far more on the technique of the Partnership Act, providing a standard form which applies only in the absence of contrary agreement by the parties. Much that in America is mandatory is in England included only in the optional model constitution-the famous Table A.*" (Gower, 1955).

629 "*After experiencing a traumatic banking crisis in 1819, the early 1820s saw interest rates fall to historically low levels in the United States. A rage for shares in new financial companies swept over Wall Street in 1824 and 1825... The boom in New York's securities markets was… [stimulated by] a speculative mania in the shares of new companies… During those years, New York's legislature was overwhelmed with petitions for charters of incorporation for financial companies... Although the incorporated banks in the State effectively opposed most efforts to create new banks, the legislature did grant charters to 7 new banks in 1824 and 1825... [and] 30 insurance companies, and another 5 'lombard' or loan companies. Because they did grant the legal authority to issue banknotes, bills to incorporate insurance companies were less politically contentious. But insurance firms did have the power to lend, and aggressive entrepreneurs who could not obtain bank charters often sought insurance charters so that they could operate these firms as quasi-banks... At the center of the scandal was the sudden failure in July of 1826 of 6 of the 67 companies whose shares were traded on [NYSE]; over the ensuing months, another 12 NYSE firms would succumb. Many of the firms that failed were new financial companies, whose shares had risen in value dramatically over 1824 and 1825. The founders of these firms were quite aggressive in their financial practices, and rejected the conservative mode of operation of many of the older [NYC] banks. These men borrowed tremendous sums, acquired firms through what would now be called hostile takeovers, and formed pyramid-like networks of companies, whose resources they often utilized for their own benefit, rather than the other shareholders'.*" (Hilt, 2009). "*Many of the state's medium-sized banks had been chartered between 1815-25 in what later came to be known as the Era of Stock Notes... Operation of the state's more conventional banks was not made easier by the legislature's decision to charter more than 70 insurance companies and so-called lombards, savings associations permitted to loan money on deposits. By 1828 these organizations had an authorized capital of more than $30 M*" (Hubbard, 1995).

630 "*The recent wild speculations in cotton, superadded to the various gambling projects of stock-jobbers, which built up various monied institutions without any money at all, the whole being puff and paper, has produced a very unpleasant state of things in several parts of the United States, and the demand for money far exceeds the usual supply, in several of our chief cities... It was formerly the case when persons wished to make a bank, or any other joint stock company, to meet at the place appointed for receiving subscriptions with their gold and silver, or other funds convertible into specie—and so actually pay in the instalments as they are called for; but the new fashion of making banks, &c. is by things called stock notes, or something else that is merely paper, or moonshine, and the whole capital of the bank is a fiction. No wonder that so many of them fail—for, instead of being in the hands of persons who have money to lend, they are under the direction of those who want to borrow... 'The Lombard & Protection Bank' of New Jersey, which lately failed, is so far exposed as to shew us that it was no more than a swindling mill. The commissioners appointed by the state, to take possession of its effects, found $4 K in specie, and a note of the president, a fellow named McLaren, for the sum of $0.1 M, which note, we suppose, constituted the capital of the bank! Its notes in circulation are ascertained to amount to $0.17 M—and, from the efforts that had been made to force them into circulation before the bank stopped payment, we must suppose that they are good for nothing—and that the proceeds of them have been pocketed by McLaren and company. Laws must be passed for dungeoning fraudulent bankers, or those which establish the punishment of thieves should be repealed... We are glad to hear that many of the banks, when the mania was at its height, refused to have anything to do with notes that had the mark of cotton upon them—and are pleased that so it was, no great speculations were made in the district that we ourselves happen to live in—that the banks, both in Maryland and Virginia, are in the best credit, and that we have a sound circulating medium, in sufficient quantity for all the purposes of change, without the presence of filthy little due bills or slippery bank notes. From what we see in the New York papers, and from what must be called the severe, because sudden and unexpected, proceeding of the city banks, in cutting off so large a portion of the circulating medium, by refusing to receive the bills of many country banks, it seems pretty evident that the alarm is greater than the facts will warrant. Much money has been lost by our merchants and traders—but the great body of the population is sound and was prosperous, and will soon overcome the disasters caused by mad speculators and mushroom incorporations, provided they are considerately dealt with... Since the preceding was written, we are happy to learn that the alarm has subsided in New York. The office of [SBUS], with great good sense and liberality, extended its discounts to $0.4 M—this enabled the other banks to extend theirs.*" (Niles, 1825).

631 "*Construction of the canal during the 8 years was slow but steady. In the fall of 1819, the canal commissioners navigated the canal from Utica to Rome. About 220 miles of the new waterway were in use by 1822. Soon the merchants of Buffalo were claiming that the partially completed Erie Canal had already cut freight charges from New York to the low figure of $37.50 per ton. New traffic crowded in as each new section of the canal was opened,*

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and the tolls collected helped hasten the completion of the project. In the spring of 1825, Lafayette, as he finished his grand tour of America, traveled much of the distance between Buffalo and Albany on the nearly finished waterway. The celebrations of the canal's completion started on Octo 26, 1825, when 5 canal boats departed from Buffalo to Albany and [NYC]...The financial success of the Erie Canal was immediate. At Schenectady the yearly canal boat traffic increased from 6,000 boats in 1824 to 15,000 in 1826, and 23,000 by 1834. In 1826, the first full year of complete operation, the canal tolls collected were nearly $0.7 M, and before long were well over $1 M. Within little over a decade, the toll revenue had paid for the canal. By the mid-1820s, New York was well out in front of her rival seaports to the south, Philadelphia and Baltimore, in her quest to dominate the trade with the western states." (Stover, 1995).

632 "*When the reaction began, about Sep, 1825, by the fall in the price of cotton and other products, general distress prevailed. Many failures occurred all over the Union, but Maryland suffered proportionally less than any other State. The circulation was uniform and adequate to its work.*" (Bryan, 1899).

633 "*The grand jury have preferred bills of indictment against Henry Eckford, Joseph G. Swift Thomas Vermilyea, and Wm. P. Rathbone, 'for a conspiracy to cheat, and for cheating' The transactions on which these bills were found, relate to certain certificates of stock in [MCBC] hypothecated to the Fulton bank. It would be at present improper to say more than thus to state generally the matter in issue... There has been a great 'sensation' at New York, in consequence of the failure of some of the new-fashioned money manufacturing establishments following have suspended payment—The Life Insurance Co—the United States Lombard Insurance— Franklin manufacturing company—the Hudson Insurance Co.—and the Greene County bank, at Catskill. The Tradesman's bank, in the city, had also suspended payment, in consequence of an injunction granted by a judge—about which a great deal is said. The Fulton bank was hardly run, but sustained the loss of public confidence and paid all notes presented, keeping its doors open 3 hours later than usual, to accommodate persons having demand upon it. All the old in the city remained firm. Some of the country banks had been severely shaken; but, on the whole, the alarm was rapidly subsiding, and measures were about to be adopted that would improve the state of the currency, if adhered to.*" (Niles, 1826). "*During the trials there were wonderful catchings-at-points of law—objection was raised after objection; and this appears manifest, that the defendants' counsel would not admit any thing which their ingenuity could exclude. The proceedings were continued for about a month, during all which the jury were kept as close prisoners in actual confinement. Judge Edwards delivered his charge to them on Fri morning last week. On, the following day, they made a communication to the court that they could not agree they afterwards appeared in the box and requested to be discharged. This request was refused, and the court adjourned to Mon on the meeting of the court, the jury again appeared in their box, and again declared it impossible that they should agree on.' verdict, not being unanimous in opinion as to the guilt or innocence of any of the defendants. At length; a juror was withdrawn and then dismissed — and so endeth these singular trials. It is stated that 8 to 4 of the jury were for convicting all the defendants, but Henry Eckford... Jacob Barker, one of the accused, was fined $100, and also publicly reprimanded, for disrespectful or indecorous conduct to the court. He paid down the money in doubloons. Some of the persons implicated may have been comparatively innocent—and so it seems that Mr. Eckford was regarded. We had not, however, any expectation that the worst of them would be punished; for 'big fish always break through the meshes of the few;' and, had the jury agreed on a verdict of guilty, bills of exceptions, or some other sort of legal things, would have been filed and argued as long as the money of the defendants lasted—and certain of then had profited largely by their speculations, though others have suffered; having lost much of the money which they had in their attempts to make more money; The proceedings, it is to be hoped, will check similar doings hereafter, and at least prevent persons who have either reputation and money to lose, (as was the case with some of the defendants in the present instance), from being engaged in the manufacture of joint stock companies on paper capitals.*" (Niles, 1927). "*In a market downturn that began in late 1825, the value of their assets fell precipitously, and they resorted to fraudulent transactions among the companies they controlled to try to keep them afloat. Ultimately the investors and creditors of these firms lost millions.*" (Hilt, 2009).

634 "*Most of the litigation occurred within the chancery courts, which had jurisdiction over bankrupt corporations. The volume of suits put tremendous strain on the State's court system, and complaints about delays became common.*" (Hilt, 2009).

635 "*[The court] held that States could not discharge the debts due a citizen of another State. Ogden did hold, however, that States could discharge future debts against citizens of the same State!*" (Tabb, 1995)

636 "*Republicans wanted to retain them all; being in a minority, the Republicans drove the best bargain they could by agreeing to sacrifice the New York law if the rest were left untouched.*" (Bates, 1938, p.119).

637 "*They are termed voluntary assignments, to distinguish them from such as are made by compulsion of law, as under statutes of bankruptcy and insolvency, (the latter being sometimes termed statutory assignments), or by order of some competent court. These instruments of provision for creditors, which are in many respects peculiar to American law and practice... special or partial assignments... in the United States... made directly to particular creditors, where no bankrupt law was in force, have been in many instances declared valid; and even in those States where preferences in general assignments have been expressly prohibited by statute, the prohibition has been held not to extend to transfers of particular portions of a debtor's property, directly to a creditor, in payment of a debt... [Assignments] which may be distinguished as general assignments... by which all or substantially all the debtor's property is appropriated for the benefit either of one or more preferred creditors, or of the creditors at large, comprise such as are made by debtors in declining or insolvent circumstances... In the United States, where bankrupt laws have been in force only at intervals, and for very short periods, the use of voluntary assignments has never been so far affected as to prevent their extensive introduction; and they are now constantly adopted by merchants and traders in nearly every State of the Union, as ordinary means of making provision for creditors. They are in fact the natural growth of the wants of the mercantile community, in the absence of a general and permanent system of bankruptcy established by law [Judge Shaw described attachment as 'founded upon early colonial laws, and uniformly practiced upon in this Commonwealth' in Russell v. Woodward (MA 1830); Judge Parker noted that 'The plaintiff [asks] the Court so to mold this process as to oblige the assignees to pay the creditors, for whom they hold in trust, out of the proceeds of the debts assigned to [the trustees], so as to relieve the goods, which were in their hands under the assignment, from the trust, and thus subject [the assignees] to this process, by analogy to the principle of marshalling assets, which is known and practiced in courts of equity... Considering... the long practice under the statute, during which the principle now set up has not been advanced, we do not think ourselves authorized to adopt it.' in Lupton v. Cutter (Ma 1829).] They have been considered as a substitute for a commission in bankruptcy, and said to become, like that, of the nature of an execution for creditors [In 1836,* Chancellor Kent *observed "The validity*

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of voluntary assignments of their property by insolvent traders and others, has been another and a fruitful topic of discussion. Under a code of bankrupt law, such assignments are held to be fraudulent, for they interfere with its regulations and policy. But where there is no bankrupt system, these assignments are a substitute for a commission in bankruptcy, and become, like that, of the nature of an execution for the creditors. A conveyance in trust to pay debts is valid, and founded on a valuable consideration.(Russell v. Woodward) A debtor in failing circumstances, by assignment of his estate in trust, and made in good faith, may even prefer one creditor to another, when no bankrupt, or other law prohibiting such preference, and no legal lien binding on the property assigned, exists. This is a well settled principle in the English and American law, and admitted by numerous authorities. (It was decided, in Connecticut, in 1826, that the directors of an insolvent corporation may, equally with individuals, give preferences by assignment of their effects.)"]. In a late case in Mississippi, assignments for the benefit of all the creditors, equally and ratably, were spoken of as 'carrying out the equitable principles of a bankrupt law, through the medium of a private contract.' In their usual form of trusts, especially, they have become almost peculiar to the law and practice of the United States. The general power to assign property in trust, on behalf and for the benefit of creditors, has always been recognized and approved in the fullest manner, both by the State and federal courts... The whole transfer, in short, was in many cases a private transaction between the debtor and his assignee, with little of the notoriety which the avowed object of it would seem to require ; and, in its effect, has, not inaptly, been characterized as 'a bankrupt law made by the debtor for himself'... [In ME, NH, MA, RI, CT, NJ, PA, OH, DE, SC, and GA], statutes have been passed for the express purpose of regulating voluntary assignments by debtors. These statutes... vary considerably... in some States, confined to the mere prohibition of preferences by the debtor; in others, compelling the conveyance of all his property, under the obligation of an oath; and in others, providing more effectually for the security of creditors as against assignees, by requiring the latter to give bonds with sureties for the faithful execution of the trust, and placing them... under the supervision of the courts." (Burrill, 1853).

638 "*The Revised Statutes also introduced an important change in the jurisdiction of New York's courts, which granted stockholders and creditors, and also the State, a powerful means of pursuing claims against corporations. In response to a petition from the attorney general with credible evidence that a corporation was conducting transactions or businesses not authorized by its charter, the court of chancery was given the power to issue an injunction to halt the operations of the firm, and inspect its books, remove directors, and compel directors who had misappropriated funds to repay them... The chancellor was thus given what is called 'visitatorial jurisdiction' over corporations, overturning an earlier New York precedent that it had no such jurisdiction (Attorney General v. Utica Insurance Co, NY 1817)... And for financial companies, the powers granted to the court were even broader. If stockholders, creditors, or the attorney general petitioned the court with evidence that a financial firm was acting in violation of any law, or was insolvent, the court of chancery was given the power halt the firm's operations by injunction, and to appoint a receiver to seize control of the firm's assets, collect all debts due to the firm, and facilitate a 'just and fair distribution of the property of the corporation.' The receiver was also empowered to enforce the personal liability of directors in cases of fraud... However, no bank charters were granted or renewed in 1828.*" (Hilt, 2009). "*A few other States emulated New York by introducing similar legislation; New Jersey passed a significant law "To prevent frauds by incorporated companies" in 1829 that was similar to New York's, and Massachusetts passed a new banking law 1829 which contained some provisions that resembled those of New York... Massachusetts's banking system was quite different than New York's, and much of the new law was no doubt enacted to reform particular features of its own system. However, the 1829 law does contain provisions regulating capital contributions, limiting loans to stockholders on pledges of their own stock, creating unlimited liability for directors in the case of mismanagement, and imposing criminal penalties for directors using banks' capital for their own purposes*." (Hilt, 2009). The unpopularity of Massachusetts' law *"after the change in 1821, led to its modification in 1827. Creditors were forced to bring suit, against the corporation and also against any individual stockholders, within one year after a debt was in default. The principle of contribution from brother-stockholders was introduced to protect an individual singled out for suit. Trustees and holders of stock pledged as collateral were exempt from liability, and thus from creditors' suits. This led to a wholesale evasion of the law in the next 3 years by placing stock in the hands of trustees, or pledging it as collateral. Finally, [the general statue was repealed in 1829 and] the general incorporation act of 1830 provided for filing of a certificate stating the amount of fully paid-in stock.*" (Livermore, 1935).

639 "*Of the 40 banks now in operation in this State, the charters of 31 expire… within 2 and 3 years. From the best information that can be derived from the returns made by the banks whose charters are about to expire, their collective capital actually paid in, amounts to [$15 M]; and the debts due to them, to more than [$30 M]. The debts due from these institutions to the community, including their stockholders, may be safely estimated at about the same amount… the principal part is probably due from merchants, manufacturers, and other large dealers in their vicinity; but they in turn have their demands against persons pursuing similar business in the country, and those again must look to their customers; thus embracing all classes of society, in the liability to contribute towards a general settlement. The amount due from the banks, especially all that portion which consists in bills issued by them, would be found scattered through the whole community.*" (Van Buren, 1829). "*[B]ank charters had limited terms (usually 20 years), so states would appoint a receiver to wind up the affairs of a bank whose charter was not renewed, or which had forfeited its charter prior to expiration. Judicially accountable receivers were created voluntarily by a vote of the partners, shareholders, or other owners of a bank to terminate their responsibility for the bank's liabilities or to make an equitable distribution of its remaining assets.*" (Todd, 1994).

640 "*The policy heretofore pursued, of requiring the payment of a large bonus to the State, or the performance of some specious service, as the price of bank charters, is condemned by experience. A Statement of the injurious consequences that have resulted from it, cannot be necessary... Eager to obtain a charter, and stimulated by the golden harvest in view, they are most liberal in their promises. If these promises are performed, the capacity of the bank to redeem its paper is impaired, and the consideration that such incapacity is caused by the exaction of the government, not unfrequently leads to unreal dividends and fraudulent advances of the stock in the first instance, and to disreputable failures in the end; failures by which those classes of the community, who stand most in need of the protecting care of a good government, are usually the principal sufferers.*" (Van Buren, 1829). "*Once the Revised Statutes took effect, in 1828, any financial corporation chartered (or having its charter renewed) after that date was to be subject to those provisions…Corporate charters were regarded as contracts, so the State did not have the power to modify their terms, and the imposition of these new regulations might be seen as the abrogation of the terms of the charters.*" (Hilt, 2009).

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641 "*[T]he idea of a State bank, with as many branches as public convenience would require, has been very properly thrown out for public consideration. If by a State bank is intended an institution to be owned by the State, and conducted by its officers, it would not seem to require much knowledge of the subject, to satisfy us that the experiment would probably fail here, as it has elsewhere... Experience has shewn that banking operations, to be successful, and consequently beneficial to the community, must be conducted by private men, upon their own account...*" (Van Buren, 1829).

642 In 1829, Joshua Foreman, a Syracuse businessman created the first obligation insurance program to guarantee the payment of debts of insolvent State banks; "*our banks... enjoy in common the exclusive right of making a paper currency for the people of the State, and by the same rule should in common be answerable for that paper*" (quoted in FDIC, 1998). "*Governor Van Buren in the former year urged upon the legislature a sweeping measure of reform. He presented what is known as 'the safety-fund plan,' which he Stated had been presented to him by... Mr. Forman [who] declared that 'The propriety of making the banks liable for each other was suggested by the regulations of the Hong merchants in Canton, where a number of men, each acting separately, have, by a grant of the government, the exclusive right of trading with foreigners and are all made liable for the debts of each in case of failure.' Mr. Forman did not propose to extend this principle further than the guarantee of the circulating notes, but by accident or design the bill which passed the legislature made the safety fund liable for all the debts of a failed bank. Each bank was required to pay annually... a sum equal to 0.5% of its capital stock until the payments should amount to 3%. The first act, approved April 2, 1829, provided for the distribution of the assets of a failed bank in the usual way and that, after all the assets had been turned into money and the final distribution made, a court of chancery should enter an order showing the amount necessary to discharge the remaining debts and should authorize the Comptroller to pay the amount from the bank fund*." (Conant, 1915). Van Buren (1829): "*[W]e should keep constantly in view the important consideration, that the solvency of the banks, and the consequent stability of their paper, is the principal and almost the only point, in which the public has much interest... Our chief duty in this respect, is, to see that the farmer, when he exchanges his produce or estate - the mechanic his wares—the merchant his goods—and all other classes of the community their property or services for bank paper— may rest contented as to its value... The importance of some more efficient safeguard has been felt by former legislatures, and they have endeavored to obtain it through the medium of a personal responsibility of the stockholders. But it is objected, that the practical operation of such a provision would be... by throwing this species of property, and of course its management, into the hands of irresponsible men... [This Act] proposes to make all the banks responsible for any loss the public may sustain by the failure of any one... Most men will, upon the first impression, view it... as presenting a rigorous condition. But it is confidently believed by competent judges, that the form in which it is proposed to enforce the responsibility - being an annual and adequate appropriation of a part of their income towards a common fund, to be placed under the control of the State -the ample supervision over the institutions, which it proposes to place under the direction of the contributing banks, in conjunction with the authority of the State —the consequent high character and correspondent circulation it would give to our paper— the expulsion from circulation of the doubtful paper which now engrosses it, and the substitution in its place of that issued by banks in full credit*." Vermont followed in 1831; both States included assessments and could close insolvent banks (Calomiris, 1989).

643 "*[I]n 1829 the State enacted a completely new banking law—the safety fund law, which created a coinsurance system among its member banks, and an administrative office to oversee and inspect them. The safety fund law provided that any bank chartered according to its provisions would be exempt from the terms of the Revised Statutes that created the presumption that insolvencies were fraudulent, and that stipulated personal liability for stockholders in the case of any fraudulent bankruptcy. In 1830, the State repealed these terms for all firms.*" (Hilt, 2009)

644 "*It is notable that, in the 1820s, as politicians like Webster were extolling the virtues of the laws that made real property more alienable to creditors as essential features of the new republican meritocracy, the popularity of the Federalist/commercial republican position on this issue was waning on a widespread basis throughout America. The preference for property exemptions was increasing among those who believed that subjecting all forms of property to commercial risk jeopardized democracy —or at least the livelihoods of families within the democracy— by creating conditions in which a mere economic downturn might lead a family to be forced out of the landowning class and into the ranks of the indigent. During the early 19th century, state legislatures enacted laws exempting various types of personal property from the claims of creditors. The first major wave of reform laws, however, consisted of enactments in the aftermath of the recession of 1817 to 1818. In those years, many states enacted more temporary stays on execution as well as 'appraisal laws', which required that land only be sold if the price obtained constituted a specified percentage (say two-thirds) of the property's appraised value. Many state legislatures also expanded the amount of personal property that was exempt from unsecured creditors' claims and enacted statutory periods during which mortgagors and other debtors could redeem their property after creditors obtained judgments in a court of law... A second issue under the new state legislation involved the question of whether mortgagors retained the traditional equitable right of redemption after a judgment at law. In 10 states, through 1820, the courts sold real estate at auction without recognizing any right of redemption and without requiring that a minimum amount of the appraised value be obtained by means of the sale... James Kent's treatise of 1830 states that the policy of affording no right of redemption was still in force in New Jersey, Maryland, North Carolina, Tennessee, South Carolina, Georgia, Alabama, and Mississippi when he wrote... New York followed the same policy until 1821, when the legislature adopted a 15-month redemption period for land sold in execution sales... Statutes passed in New York in 1787 and 1801 [Act of Mar. 19, 1787, ch. 56, 1787 N.Y. Laws 108; see also Act of Mar. 31, 1801, ch. 105, 1 80 1 N.Y. Laws 388 (reenacting 1787 law)], were more typical: they required courts to treat land exactly like personal property for the satisfaction of debts, but added the requirement that the personal property be exhausted first*." (Priest, 2006). Although Louisiana isn't mentioned, the State was liquidating entire estates at the time: "*Insolvency proceedings and succession (estate) settlements swelled the number of slave sales within Louisiana... One case involved an entire plantation sold as a unit land, slaves, livestock, tools, and cotton gin. [Oldham v. Groghan, No. 1133, 3 Mart. (N.S.) 517 (La. 1825).*" (Schafer, 1997). Compare with the enslaved populations chart in Exhibit 11.

645 "*The difference between a mortgage and a deed of trust and a conditional sale involved redemption of the collateral. For a mortgage or deed of trust the debtor retained equitable title for purposes of reacquiring ownership of the collateral, a redemption in an equity court for a reasonable period after default. A conditional bill of sale eliminated this right of redemption. Instead, the debtor had a right to repurchase, provided the debtor satisfied the contractual payment conditions. [E.g., Ambler v. Warwick, 28 Va. (1 Leigh) 195, 209 (1829) (deed of trust subject to redemption); Robertson v. Campbell, 6 Va.*

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(2 Call.) 421, 428 (1800) (pledge of slaves); Chapman v. Turner, 5 Va. (1 Call.) 280, 287-8 (1798) (pledge of a slave).] The difference between a mortgage and a deed of trust was that for a deed of trust a trustee owned the property on behalf of the secured party and usually under the direction of the secured party. [Claytor v. Anthony, 27 Va. (7 Rand.) 285, 286 (1828).]" (Flint and Alfaro, 2004). Describing Louisiana under Civil Law, but similar principle: "*A distinction, however, should be drawn between lending on slave prices (inclusive of unrealized capital gains, i.e., lending on asset values) and lending on prospective income streams from slave property. This study argues that lending practices were influenced primarily by income streams, not rising asset values. Income streams, of course, in large measure set slave prices, but when those prices contained a large speculative premium, which seems to have been the case in the 1850s, there was no corresponding increase in relative debt levels. Clearly, many antebellum lenders had invested in the economy long term, expecting to recoup their principal and interest from improving income streams and capital appreciation. The debt structure imploded with emancipation, whether because a regular income stream from slaves could no longer be assured, or because most of the wealth underpinning the structure was gone. As will be seen in the next chapter, the financial system, and indirectly the monetary system as well, were grounded in slaves... Financiers lent on income streams, hence the continuing importance of the open account in most debt arrangements. What better way to collateralize open accounts than to secure them with pledges of the very assets that produced those income streams. Mortgage notes pledged to secure open accounts were eminently flexible—they could be repledged as collateral security to those who lent to factorage firms.*" (Kilbourne and Wright, 2014). "*In the search for eradication of uncertainty in the commercial lending arena, the most widely used security device in antebellum Louisiana was the pledge, a basic form of security in civil law countries which was virtually indistinguishable from its common law counterpart.*" (Kilbourne, 1982).

646 "*Bankruptcy and insolvency laws and the abolition of imprisonment for debt are sensible legal arrangements in an industrialized society, in which personal skills are a man's primary economic resource, for a man does not lose those skills when he enters into bankruptcy, nor can he use them while he is imprisoned for debt. But in a predominantly agrarian economy, from which Massachusetts in the 1780s was not yet far removed, land is the most important resource; land, it must be remembered, can remain productive while a man is imprisoned for debt but is taken from a man who enters into bankruptcy. A debtor in such an economy may thus be better off imprisoned. In an economy in which there is a limited market for the sale of land, a creditor—rather than seizing and trying to sell land—may also be better off imprisoning a debtor in the hope that friends or other creditors will pay his debt.*" (Nelson, 1979).

647 "*There was one significant, although not universal, change in American practice in the interim between our first and second Bankruptcy Acts. Imprisonment for debt was widely employed in this country until the early 19th century. Thus, there were in Massachusetts, Maryland, New York, and Pennsylvania in 1830 from 3 to 5 times as many persons imprisoned for debt as for crime. For the decade 1820-30 the Suffolk County Jail in Boston alone contained 11,818 imprisoned debtors from a total population ranging from 43,000 to 63,000. But a wave of reform in the 1830's led to state constitutional provisions forbidding imprisonment for debt.*" (Countryman, 1976). "*In 53 prisons the entire number of persons imprisoned for more than $100 each was 416, or as 1 to 7, compared with the number incarcerated for less than $20 each. In the jail at Dedham, Norfolk County, Massachusetts, out of a total of 52 debtors confined within its walls only 9 owed more than $50, and 16 owed $10 or less, A local society for the relief of debtors confined for small debts procured the release of 15 persons whose debts added together amounted to only $132,—an average of less than $9. In a jail located at Hudson, New York, in the course of the year ending Sep 29, 1830, a total of 169 persons were committed for debts; of this number, 49 were held for 'rum debts.' In Philadelphia, 40 cases were recorded in which the sum total of the debts was only $23.40—an average of less than $0.60 each. 'In one of these cases a man was imprisoned 30 days for a debt of $0.02.' 'We observe in an Eastern paper a notice of a widow woman, who is confined in jail in Providence for the unpardonable sin of owing $0.68.'*" (Yale Review, 1908).

648 "*[I]mprisonment for debt save where fraud was shown or suspected, was abolished in Kentucky in 1821, in Ohio in 1828, in New Jersey and Vermont in 1830, in Maryland, for debts less than [$30], in 1830. Massachusetts, in 1831, exempted all males from imprisonment for debts under [$10], and females for debts of any amount. New York, after a long and bitter contest fought out in the press and in the legislature, abolished imprisonment for debt in 1832.*" (McMaster, 1903). NY's law, proposed by Assemblyman Stilwell in 1830 — *An act to abolish imprisonment for debt and to punish fraudulent debtors* — was enacted on April 26, 1831. DPRA was amended in 1831 and 1832, and "*imprisonment for debt… was abolished at the federal level in 1833... Even though debtors eventually no longer went to prison, they lacked any means to discharge preexisting debts during the first 4 decades of the 19th century after 1803. At times, especially in the 1830s, States did give partial relief through the enactment of stay laws or moratoria on debt collection. These laws presaged the stay laws to follow a century later.*" (Tabb, 1995).

649 "*The early American opinions revealed 5 chattel mortgage acts, adopted in 1755 for Georgia, 1748 for Virginia, 1729 for Maryland, 1715 for North Carolina, and 1698 for South Carolina. These southern chattel mortgage acts differed from those passed later in the northeastern states. The first chattel mortgage act passed in New England during the 1830s covered only filing for chattel mortgages. However, these earlier southern chattel mortgage acts appeared as part of a statute also requiring the filing of mortgages on real estate, or as part of a statute also requiring the filing of sales and other transfers. All the chattel mortgage acts of the southern English-American colonies covered both real estate and personalty, and both sales and mortgages, except that of Maryland, which did not cover real estate.*" (Flint and Alfaro, 2004).

650 "*There were two major security devices used for both possessory secured transactions and nonpossessory secured transactions by the early 19th century in the northeastern United States: the chattel mortgage and the conditional bill of sale. The secured party owned the collateral under both the chattel mortgage and the conditional bill of sale. The difference between the chattel mortgage and the conditional bill of sale involved redemption of the collateral. Under the chattel mortgage, the debtor retained equitable title for purposes of a redemption in an equity court for a reasonable period of time after default. A conditional bill of sale eliminated this right of redemption. Instead, the debtor had a right to repurchase, provided the debtor satisfied the payment conditions. [For examples of the devices, see Adams v. Wheeler, 27 Mass. (10 Pick.) 199 (1830) (describing bill of sale for hay, horse, and cart as security device) and Badlam v. Tucker, and 18 Mass. (I Pick.) 388 (1823) (describing chattel mortgage on brig as security device)].... The Swift v. Thompson [9 Conn. 63 (1831)] lawsuit involved the key issue of whether the court would enforce the Lee-Thompson transaction as a valid nonpossessory secured transaction. The court found that Swift had ample knowledge of the Thompson mortgage. His own deed mentioned it. Accordingly, the judge directed the jury to find for Thompson. On Swift's appeal in the July Term of 1831, the Justices of the Connecticut Supreme Court of Errors applied Connecticut's heightened*

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rebuttable rule for determining the validity of a nonpossessory secured transaction... Under Connecticut's heightened rebuttable rule, the court must presume that a debtor's possession of personalty under a chattel mortgage amounts to fraud as a secret lien unless the secured party can explain the debtor's possession as fitting one of the exceptions recognized by the Supreme Court of Errors. Therefore, the heightened rebuttable rule could foster an additional fraud, namely perjury with respect to the explanation. The reference to the Lee-Thompson transaction in the Swift transaction, under the Connecticut rule, would not serve as an excuse. A court might find that Lee's possession made the Lee-Thompson transaction illegal. Difficulty in removing the machinery would not serve as an excuse; a party could have removed it without injury to the building. Thompson lost because the Supreme Court of Errors would not recognize a nonpossessory secured transaction as an excuse under the rule without additional circumstances. By 1831, the textile industry comprised a major component of the American preindustrial economy in the northeast. Northeastern society needed to protect the ability of that industry to obtain credit by offering its machinery as collateral security to continue the well-being of a significant number of individuals dependent on that industry. Because the Connecticut courts, constrained by the doctrine of precedence to follow the heightened rebuttable rule, would not correct the situation in Thompson's case, the legislative response came the following year in the form of a chattel mortgage act requiring a public filing of the chattel mortgage for validity against third parties... The northeastern states enacted chattel mortgage acts in 3 waves: the first shortly after 1831, the second after the Panic of 1837, and the third considerably later. To eliminate the Swift v. Thompson result and reestablish order for lending on machinery, on March 22, May 29, and June 22 of 1832, the legislatures of Massachusetts, New Hampshire, and Connecticut passed their first chattel mortgage acts, followed by New York in 1833 and Rhode Island in 1834... The statutes of 3 of these states, Massachusetts, New Hampshire, and Rhode Island, resembled each other. These 3 chattel mortgage acts required public registration of the security devices used for a nonpossessory secured transaction to destroy the secrecy objection. Each of these statutes followed the respective realty recording act with one exception. The secured party filed the entire chattel mortgage with the city or town clerk where the debtor resided when he entered the transaction, not where the collateral lay... The basic rule of the 3 similar statutes voided the nonpossessory secured transaction when challenged by creditors and purchasers. This constituted a major change in the prior common law... The prior court opinions in these 3 New England states had generally enforced the nonpossessory secured transaction. These statutes provided 3 exceptions to the basic rule of invalidity: one for recorded chattel mortgages, one for transactions with delivered collateral (the pledge), and one for bottomry and respondentia bonds. Merchants used bottomry bonds, loans on the security of the vessel, and respondentia bonds, loans on the security of the cargo, both entered into by the ship's master in a foreign port on behalf of the merchant, to raise money in case of necessity in a foreign port. They differed from chattel mortgages by conditioning repayment on the successful completion of the voyage, by bearing interest over the usury rate, and by creating a maritime lien enforceable in admiralty court... Connecticut did not abolish imprisonment for debt until 1842." (Flint, 1999).

651 "*Those espousing the traditional per se fraud rule for chattel mortgages as fraudulent conveyances often cite the 1819 Pennsylvania opinion of Clow v. Woods. Developments subsequent to Clow demonstrate the business mentality. The opinion approved of leasing personalty, which also separates ownership from possession of the personalty. Pennsylvanians thus developed the bailment lease, a lease used for security, as a nonpossessory secured transaction. The bailment lease consists of two agreements: a lease for a term with rental payments approximating the purchase price, and a future sale or option to purchase for a nominal additional payment. Pennsylvanians used it to sell an object on credit. For bailment leases, see Myers v. Harvey, 2 Pen. & W. 478 (Pa. 1831) (recognizing the bailment lease), Gilmore (1965, p77-8) (stating bailment leases developed in 1831 after the conditional bill of sale also failed as a security device for Pennsylvania in 1825). See also Martin v. Mathiot, 14 Serg. & Rawle 214 (Pa. 1826) (rejecting the conditional bill of sale as security).*" (Flint, 1999). "*If the buyer's creditors might seize, or third parties buy, the goods with impunity, naturally the seller would be loath to enter into such a transaction. This situation made the time ripe for some plan to render possible a credit sale with adequate protection to the seller. The rule of Clow v. Woods was never, of course, extended to the ordinary bailment for use, where the article is rented for a term and then returned, although in such a case the property right is equally separated from the possession. The reason given was that a bailment was a time-worn, legitimate transaction in which the bailor had always been protected, while the conditional sale presumably was a more recent legal situation as to which there were no binding precedents. In the present day, however, when newlyweds spend as they earn, and the apartment is furnished from victrola to vacuum cleaner on the easy-payment plan, the conditional sale seems no more strange or illegitimate than the bailment, in fact, it is in some form or other a necessity. The solution was found in the creation of what is now termed the 'bailment lease.' This needs no particular description. It is the familiar contract used in the sale of motor cars and other commonly used articles. It is described in Myers v. Harvey [52 P. & W. 478 (Pa. 1831)] as 'a bailment, with a super-added agreement to vest the title in the bailee when he should pay a sum certain... Such a transaction includes two distinct, but consistent contracts-the one taking effect, if at all, when the other is spent. The contract of bailment preserves the ownership of the bailor during the particular relation created by it, and the contract of sale which supersedes it, transfers the title as soon as it is called into action, by payment of the price.' Where a contract has been construed to be a bailment lease, it has always been held to give protection to the bailor against creditors or bona fide purchasers of the bailee.*" (Montgomery, 1931).

652 "*Jackson was not happy with waiting to 1836 for [SBUS] to end. In 1832, Jackson ordered the withdrawal of federal government funds, approximately [$10 M from SBUS]. The president deposited these funds in State banks and privately-owned financial institutions known as 'pet banks.' Ohio had 9 of these banks. Biddle tried to keep the national bank operational by calling in loans, yet many businesses did not have the funds available to pay off their debts. As a result of Biddle's actions, numerous businesses had to close their doors due to the lack of funds during 1833 and 1834.*" (Hummel, 1999). "*President Jackson, soon after entering upon his Administration, attacked the bank, and in 1832 vetoed a bill to recharter it, on the ground that the bill was 'unconstitutional because he disapproved of it.' The next proposition to determine the question of its constitutionality by an amendment arose out of this controversy. The legislature of Georgia, in its proposition for a constitutional convention in 1833, indicated as a subject for discussion, 'The power of chartering a bank and of granting incorporation,' that it may be 'expressly given to or withheld from Congress.'*" (Ames, 1897). SBUS "*established partly to serve as a Government depositary, kept most of the federal funds until their withdrawal in 1833 by Secretary Taney. But as a condition to their deposit in various State banks after 1833, Taney, acting upon the earlier experience of [UST] under Secretaries Gallatin and Crawford, exacted appropriate security. By the Act of June 23, 1836, Congress translated [UST] practice into legislative policy. It thereby became the Secretary's duty, whenever wisdom dictated, to require collateral for Government funds. As a result security was demanded of almost all the depositaries.*" (Frankfurter,

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1938). "*The early 1830s were generally prosperous, with moderate inflation that continued after the [minor] panic of 1833. Disruptions surrounding President Jackson's 'war' with... [SBUS] may have caused the panic... 'easier money became very tight,' and the panic came late in the year, following Jackson's redistribution of public monies to the so called pet banks in Sep and an 'extraordinary' contraction of credit by [SBUS].*" (Bordo and Wheelock, 1998).

653 Free Banking in the sense that there was no federal-level central bank as well as for bank chartering. Ames (1897) notes "*On one of the last days of 1836 a resolution... was introduced to amend the Constitution by inserting provisions restricting the incorporation of banks by States, and limiting them when incorporated to the issue of bank notes.*"

654 "[SBUS]*created the domestic bill of exchange market and came to dominate this system of interregional payments in the 1820s and early 1830s... SBUS purchases of domestic exchange rose from less than $6 M in 1820 to almost $70 M by 1833... The centralization654 of payments through the [SBUS] branches yielded significant economies of scale and scope, which lowered the cost and risk of transferring funds from one location to another*" (James & Weiman, 2005). As the United States grew, a medium of exchange was essential for commerce and "*the most common instruments... were bearer notes issued by State-chartered banks [State bank notes] and bills of exchange... Both instruments were transferrable or negotiable and so could substitute for costly, risky shipments of specie in interregional trade. Their diffusion also economized on the use of potential bank reserves for transactions and so could enhance total reserves in the banking system and credit supplies.*" (James & Weiman, 2005). There was "*An active market in bills allowed merchants in different cities to remit funds anywhere in the country in the appropriate local currency. Merchants and shippers purchased 'exchange' on another city by purchasing a bill payable in that city.*" (Wallis, 2002). SBUS "*undoubtedly contributed for more than a decade to facilitate the transfer of funds from one part of the country to another and to maintain a uniform circulation equal to coin. The rates of domestic exchange... were materially reduced by the bank. Its policy greatly benefited commerce, but invited bitter complaints from the private dealers... who had been enabled to make excessive profits while the currency was below par because of its different values in different States and the constant fluctuations in these values. The bank, in the language of... Senator Smith of Maryland in 1832, furnished 'a currency as safe as silver, more convenient, and more valuable than silver, which through the whole Western and Southern and interior parts of the Union, is eagerly sought in exchange for silver ; which, in those sections, often bears a premium paid in silver; which is, throughout the Union, equal to silver, in payment to the government, and payments to individuals in business.*'" (Conant, 1915). Both FBUS and SBUS were unpopular because of their "*policy of sorting out the notes of the State banks which reached their counters and sending them home for payment in cash.*" (Young, 1924).

655 "*One of the most serious charges of evasion of law, brought against the bank in 1832, was in the issue of branch drafts to circulate as currency. Several appeals were made in vain to Congress to modify one of the provisions of the charter requiring the president and principal cashier to sign all the circulating notes. The volume of circulation necessary to do business was so great that the physical labor of signature could not well be performed by those officers. Congress neglected to act and in 1827 an opinion was obtained from Horace Binney, in which Daniel Webster and William Wirt concurred, that there was no legal obstacle to the issue of checks drawn by officers of the branches upon the parent bank, printed for even amounts in similar form to bank notes. Drafts of this sort for $5 and $10 were authorized by the board of directors on April 6, 1827, and denominations of $20 were issued in 1831. They became a common medium of circulation in the South and West and were accepted in payments to [UST].' The branch drafts outstanding in April 1832, were $7 M. They simply served the purpose of currency without conforming strictly to the intent of the law, in much the same manner as the checks of the London Cheque Bank or the temporary issues in the United States during the panic of 1893.*" (Conant, 1915).

656 "*Out of all the banks specified as incorporated, the only banking establishment in Cincinnati, in 1826, was the United States Branch Bank, and from a small work called "Cincinnati in 1826," we quote the following passage: "Cincinnati, for several years, has been deficient in the amount of its disposable capital; a nominal superfluity of it existed during the prosperity of the local banks; after their destruction, paper currency was almost withdrawn from circulation, and much of the metallic currency applied to the payments due the United States Bank and the Eastern merchants. From this condition of things the city has been gradually recovering, but its citizens are not yet large capitalists. Although engaged in profitable business, most of them have not the means of extending it to a scale proportioned to their enterprise and the resources of the place. Money is consequently in great demand, and a high price is willingly paid for its use. For small sums 36% per annum is frequently given, and for large ones from 10 to 20% is common.*" (Bankers Magazine, 1857)

657 "*It is... evident that down to the time of the Civil War the number of companies having the word 'trust' in their titles was very small, and the number that actually undertook the trust business probably did not exceed half a dozen... Of the companies now in existence over 40 began business during the years 1864-75. However, many of these companies were in their early years not trust companies, but ordinary banks.*" (Herrick, 1915).

658 OLIT "*of Cincinnati, was incorporated Feb 24, 1834, and began business in Jan of the following year. It had a trust department and a banking department. Its powers included the issuance of circulating notes, and the leading object of its incorporation seems to have been the supplying of capital for the business of the community.*" (Herrick, 1915).

659 "*While still struggling to change the administration's financial policies, the New Yorkers wrote a unique charter for [OLTI] that reflected their response to the banking crisis in 1834. The Bronsons now combined the functions of a trust company and a commercial bank in the Ohio firm in order to demonstrate that a large financial institution could both finance trade and mobilize capital for the agricultural sector without encouraging speculation. [OLTI] operated first as a trust company. The Ohio firm was to have a capital stock of $2 M invested in real estate mortgages. In addition, the charter copied the trust and deposit powers of the New York institution with the stipulations that deposits must be at least $100 and be deposited for a minimum of two months. In the first two years, deposits increased the company's investment capital by nearly $1.5 M. [OLTI] soon became Ohio's most important financial institution both because it was the largest and because a substantial majority of its capital stock and deposits came from the East*." (Haeger, 1979)

660 "*[I]n the case of Grover v. Wakeman, (11 Wend., [Supreme Court 1833]) to relax the strict rule of the courts, and sustain the voluntary assignments as a quasi-necessary substitute for a bankrupt law. I was myself engaged in that effort, and was unwilling to extend the rule any further than it had been extended in the case of Murray v. Riggs. But after full and mature consideration I was overruled by a very decided majority of the court, and the ruling of*

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Grover v. Wakeman have ever since, for now some 20 years, been the unwavering law of this State. The principle established by that case was happily and forcibly stated by Judge Sutherland... 'It is time... that some plain, simple, but comprehensive principle should be adopted and settled upon this subject. In the absence of a bankrupt law, the right of giving preferences must probably be sustained. Let the embarrassed debtor, therefore, assign his property for the benefit of whom he pleases; but let the assignment be absolute and unconditional; let it contain no reservations or conditions for the benefit of the assignor; let it not extort from the fears and apprehensions of the creditors, or any of them, an absolute discharge of their debts as the consideration for a partial dividend; let it not convert the debtor into a dispenser of alms to his own creditors; and above all, let it not put up his favor and bounty at auction, under the cover of a trust, to be bestowed upon the highest bidder. After the maturest reflection upon this subject, I have come to the conclusion that the interests, both of debtor and creditor, as well as the general purposes of justice, would be promoted, if the question is still an open one, by confining these assignments to the simple and direct appropriation of the property of the debtor to the payment of his debts. The remnants of many of these insolvent estates are now wasted in litigation, growing out of the complex or suspicious character of the provisions of these assignments. One device after another, to cover up the property for the benefit of the assignor, or to secure to him, either directly or indirectly, some unconscientious advantage, has from time to time been brought before our courts, and received condemnation. But new shifts and devices are still resorted to, and will continue to be so, until some principle is adopted upon the subject, so plain and simple, that honest debtors cannot mistake it, and fraudulent ones will be deterred from its violation by the certainty of detection and defeat. The principle to which I have adverted, it appears to me, if adopted, will, to a very considerable extent, accomplish that object." (Hunts, 1853).

661 "*The brief de facto silver monometallist interregnum of 1823-33 was terminated by the victory of the Jacksonians in the 'Gold Bill' of June 28, 1834. The mint ratio was raised to 16.002 to 1 in a deliberate attempt to secure the circulation of gold coin. In the Foreign Coin Act of June 25, 1834, foreign gold was given renewed lawful status by weight. A similar act of June 28, 1834, made foreign silver 'current as money within the United States by tale.' No expiration dates were established for either provision. The overvaluation of gold, in conjunction with other Jacksonian measures, led to a large increase in gold imports, especially from England. Moreover, silver continued to flow in from Mexico. By the end of 1837, Treasury Secretary Woodbury claimed a $45 M enlargement in the specie supply. Although the U.S. mint price undervalued silver, the market ratio remained above 15.7 during 1834-8 and 1841-50. The premium on full weight silver averaged only 1.34 and 0.98%, respectively. In the immediate period after 1834, there was a temporary shortage of silver coin prompted by the speculations of brokers and a wave of state prohibitions of small notes. Nevertheless, some American and a larger amount of underweight foreign silver remained in circulation. Specie payments were suspended by the banks in 1837-8 and again from 1839 to 1842. In the latter period, silver was at an average premium of 2.2% but net exports totaled only $1.2 M. In contrast, and also in spite of a slight price disadvantage, a net amount of more than $8 M of gold was exported. By the fall of 1842 both gold and silver were again being commonly imported. However, until 1843 coinage remained modest and specie circulation irregular. Thereafter, par circulation of both metals was restored. Annual silver coinage averaged a nearly uniform $2.4 M from 1840 to 1850, compared with $2.6 M in the preceding decade. Net silver imports at the Customs House from 1840 to 1850 totaled over $1 M dollars. The market ratio averaged 15.9 between 1842-46 and the premium on silver only 0.6%. In March 1844, Freeman Hunt, editor of Hunt's Merchants Magazine, pointed out that the 'Gold Bill' of 1834 had not resulted in de facto gold monometallism: 'it is a remarkable fact... that our gold and silver coins have ever since that date passed concurrently without premiums either way.' The persistence of silver circulation was equally pronounced away from the seaboard. Hugh McCulloch, the director of the State Bank of Indiana, stated that from 1834 to 1848 'the metallic currency of the country, chiefly, and throughout the West exclusively... was silver.' The reserves of the Bank of Indiana were over 80% in silver until they were sold for gold after 1850.*" (Martin, 1973).

662 "*Federal Government land sales rose from under $2 M a year in the 1820s to $5 M in 1834, $15 M in 1835, and $25 M in 1836. The land-sales and stock market booms occurred during a period of commodity price inflation. Temin argues that the land boom was sparked by a sharp increase in the price of cotton, which rose some 50% during 1834 alone… Smith and Cole document a close relationship between public land sales and railroad stock prices in 1834-5, though stock prices peaked and began to fall before land sales started to decline in 1836. The close correlation between land sales and railroad stock prices throughout the antebellum period led Smith and Cole to conclude that 'both series … may be regarded as reflecting a common element – that of the well-known speculative spirit of the country.*" (Bordo and Wheelock, 2004). Trask (2002) notes the sources of inflation as: President Jackson's closure of SBUS and subsequent release of federal deposits to private banks, English financiers investing in canal and railroad construction (increasing gold), and the loss of English demand for Mexican silver after the Chinese Opium Wars (increasing silver).

663 *"[The Fire of 1835] produced a sensation... more extraordinary even than the greater fire at Chicago in 1871, for the reason that fire-insurance was new... and from the experience of the preceding 20 years, and the brilliant success of a few notable companies, public confidence in the companies had become excited... Insurance had come to be considered so safe, that the courts had been in the habit of directing explicitly that trust funds and savings should be invested in the stock of the companies. The best men of the day had given the weight of their sanction to these investments, and widows and orphans had put large sums of their money into the stocks of these companies... where it would certainly be secure and remunerative."* (Baranoff, 2008).

664 "*Until the late 1830s, most fire insurers concentrated on their local markets... Many State legislatures discouraged 'foreign' competition by taxing the premiums of out-of-State insurers. This situation prevailed through 1835, when fire insurers learned a lesson they were not to forget. A devastating fire destroyed [NYC's] business district, causing between $15-26 M in damage, bankrupting 23 of the 26 local fire insurance companies. From this point on, fire insurers regarded the geographic diversification of risks as imperative... Insurance regulation developed during this period to protect consumers from the threat of... insolvency."* (Baranoff, 2008). *"After the fire of 1835, when the field was cleared so suddenly of insurance companies, the current feeling toward joint-stock concerns found expression immediately in a demand for mutual charters. Under this system the corporation has no capital: the losses are paid from the premiums, as in the original Philadelphia Contributionship, and the profits are divided among the policy-holders. No greater security was gained than under the other system; but the policy-holders who paid the premiums secured their share of the profits, and thus got a part of the benefits of the system which was sustained by their money, and theirs alone. The security was as good, after a few years as under the joint-stock plan; for all the surplus was transferred to a guaranty-fund, and a capital thus created. The sole weak point of the system was the danger that a heavy loss might occur in the first*

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few years of the mutual concern. This danger was met by the formation of mixed companies, with a capital subscribed, which could be called on in case of emergency; the business being conducted otherwise upon the mutual plan... The mutual plan was extremely popular, because in the rural communities, where capital was scarce, companies could be formed without its aid; and, in the cities, those who paid heavy premiums for insurance received, in return, part of the profits of the business... In 1835, there were only 5 applications to the legislature for insurance-charters; but in 1836 there were over 50, half being for mutual companies; and, during that and the following year, 44 charters were granted for the organization of class of concerns." (Bolles, 1879).

665 Rep. Storer (W-OH) argued that "*The object of this bill, briefly considered, is to aid the sufferers by the late conflagration, who were debtors to the Government for duties on the memorable 16th of Dec last. It embraces those whose bonds were not then due, and are not yet due; those whose bonds have since become due; and those who have subsequently to that time paid their bonds. There is another section, which extends for a shorter period the credit on all bonds taken at the custom-house, whether the obligors have sustained actual loss or not. This classification of debtors has been objected to, and a distinction attempted to be drawn between their several claims to relief; but it is manifest that they are all included within the equity of the case, and are equally entitled to our consideration, though their several conditions may differ in degree. All are involved in the common calamity, either directly or remotely; the same common interest is to be protected; and it is our duty, in extending our aid to all, to know that all are benefited... We must preserve the trust, and, to do so, are bound to follow out its end and object-adapting the means to the end, with a due regard to the nature of the fiduciary relation we have assumed, and the purpose for which that relation was created. If then, Congress has the right to levy duties on imports, the power of releasing them necessarily exists; and I if the power to substitute the credit system for cash payments is admitted, then the power to extend those credits clearly follows; and certainly, it cannot be said that the I power to preserve such credits, by taking new security, and allowing further indulgence, is not also included. Already the Secretary of the Treasury is authorized by law, in a certain class of cases, to release the bond altogether, where the obligor is clearly insolvent; to say nothing of the express power in the Constitution to pass, if Congress shall see fit, a general bankrupt law.*" (GPO, 1836).

666 "*[T]he limited partnership certificates filed in the county clerk's office in [NYC]... indicate that New York's businessmen did not begin taking advantage of the limited-partnership option immediately. The first registration was filed on Dec 16, 1822, but only 6 limited partnerships were formed before 1827... It was not until the 1830s that the new partnership form began to catch on. Several developments may have played a role in its increasing popularity in the 1830s. New York's landmark Revised Statutes, published in 1829, compiled and organized the state's most important laws (including its limited partnership statute) into an accessible format, and were accompanied by efforts to publicize and explain their contents. Other publications that may have raised awareness of the availability of the form and made it more accessible were collections of template legal documents intended for laymen, which contained examples of limited partnership contracts.*" (Hilt and O'Banion, 2009). There were 50 in 1835 and 140 in 1837.

667 "*Firms subject to joint and several liability, of which the partnership is emblematic, tended to have 2 or 3 partners at mid-century, whereas limited liability banking firms in New York circa 1820 had about 250 owners on average.*" (Bodenhorn, 2014).

668 "*In the early 19th century, most multi-owner firms in Britain and the United States were organized as partnerships, in which the members would bear unlimited liability. Unlimited liability was an essential characteristic of partnerships at common law, and was perceived as vital to the mercantile credit networks that financed these firms. But it also likely limited the circumstances in which the form could be used, and in particular foreclosed the possibility of partners raising capital by taking on passive 'outside investors'... Compared to ordinary partnerships, limited partnerships had more capital and were less likely to fail (even controlling for firm capital). Perhaps more importantly, the institution of the limited partnership appears to have facilitated investments that were unlikely to have occurred in its absence. Most of the special partners were themselves general partners in another firm, often in the same industry. Limited partnership stakes thus enabled these merchants to invest in multiple partnerships simultaneously, a position that would have been untenable in the absence of the form... The data in Table 7 indicate that 56% of the special partners were general partners in an ordinary partnership at the time of their investments. This is a clear indication that the institution of the limited partnership facilitated investments that were unlikely to have occurred in its absence, since acting as a general partner in two ordinary partnerships would have been untenable: it would have created serious conflicts of interest, and would have exposed the assets of each firm's partners to the creditors of the other partnership."* (Hilt and O'Banion, 2009).

669 "*[New York] banks specifically created by the legislature were prohibited from issuing any bill or note unless payable on demand without interest… The court now stated that 'the provisions of the revised statutes in relation to moneyed corporations have no application to banking corporations organized under the act of 1838' and that 'the regulations by the Legislature for the purpose of preventing insolvency of moneyed corporations are entirely unsuited to the free banking system' (p534).*" (Bergan et al., 1985). "*In considering this branch of the case, I shall not examine at length the questions so ably argued at bar, in regard to the nature of corporations and the limitations of their powers, but shall assume it to have been established, for the purposes of this case, at least, that associations under the general banking law... had no power to issue negotiable notes upon time; placing this assumption, however, not upon the safety fund act of 1829 (Laws of 1829, 167), but upon the general principle of law which limits corporations to the exercise of powers expressly given to them, or such as are necessarily incident thereto, and upon the statute confirmatory of that principle. (1 R.S., 600, §3)... the certificates were expressly prohibited by 1 R.S., 600, § 3. That they were also prohibited by the safety fund act of 1829. (Laws of 1829, 167, §§1, 35.)*" (*Tracy v. Talmage (14 NY 162 [1856])*). This was the case until 1857: "*Since under the decision of Curtis v. Leavitt, the New York banks had all powers incident to the banking business, and since the banking business (as practiced by British and other European banks for over 200 years) included the issuance of letters of credit and the acceptance of bills of exchange, the New York banks had legal authority to similarly issue letters of credit and accept bills.*" (Trimble, 1949).

670 While debating the ITS, Webster noted that "*our paper circulation is one-half less than that of England, but our bank debt is, nevertheless, much greater*" because BOE loans out its own capital to banks, while in the United States "*an amount of capital, supposed to be sufficient to sustain the credit of the paper and secure the public against loss, 'is provided by law, in the act of incorporation for each bank, and is assigned as a trust-fund for the payment of the liabilities of the bank. And if this capital be fairly and substantially advanced, it is a proper security; and in most cases, no doubt, it is substantially advanced. The directors are trustees of this fund, and they are liable, both civilly and criminally, for mismanagement, embezzlement,*

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or breach of trust... it is evident that the directors are agents, holding a fund intended to be loaned, and acting between lender and borrower; and this form of loan has been found exceedingly convenient and useful in the country." (Webster, 1838).

671 "*The par value of equity on the London Stock Exchange (essentially the only UK stock exchange before 1830) is estimated by Peter Rousseau and me to have been £38 M in 1825.18 Since the UK national debt was more than £800 M at the time, it is clear that the UK securities market was pretty much a government debt market. In the US on the other hand, Rousseau and I show that the equity market in 1825 was about the same size as that of the UK, but since government debt in the US was so much smaller, US securities markets were dominated by corporate equities to a much greater extent than was the case in the UK.*" (Sylla, 2009). "*The English national debt, comprising 27 of the 320 securities listed in Wetenhall's Course of the Exchange, and including Bank, South Sea, and East India stock since these companies were capitalized by government debt, was vastly larger (£820 M, or nearly $4 B) than the US government debt ($84 M) and indeed all US public debts in 1825. England had fought many wars over a far longer period than had the young United States. If we look just at equity markets, however, a different comparison emerges. For most of the 293 English securities that were not part of the national debt, Course of the Exchange lists the number and par value of company shares, as well as the par value of a small number of non-national debt issues (which came to £7.2 M or $34.3 M). The total value of English equity issues that can be calculated came to £32.79 M. For 42 of the 293 issues, or about 14% of the listings, there was insufficient information to calculate capitalization at par. Some of these, perhaps most, were new issues just beginning to be traded, but if we assume that they were on average of the same capitalization as issues whose par capitalization could be measured, a liberal estimate of the total size of the English equity market in 1825 is some £38 M or $183 M... This estimate of English equity in 1825 is not that much larger than the paid-up equity of US banks alone in that year, which including the BUS and state-chartered banks came to $138 million. The total US equity market was, of course, larger, but how much larger is not yet known. A rough estimate can be derived from the data of Goldsmith (1985), indicating that the US equity market came to $40 million around 1803 and $890 million in 1850. If we assume constant continuous growth (which works out to be 6.6% per year over the period), we arrive at an estimate of $171 million for the size of the US equity market in 1825. The conclusion we draw from these exercises may seem surprising: by 1825, the size of the US and English equity markets was virtually the same.*" (Rousseau and Sylla, 2005).

672 Rolnick et al. (2000) note that SBUS had disciplined riskier banks by returning their notes; without it, banks in the mid-Atlantic (SBUS was in Philadelphia) increased money supply significantly more in 1836 relative to banks in New England under the Suffolk system (p12); while notes of other banks were a greater share of assets for mid-Atlantic (rather than loans as in New England, p10), the railroad stock prices rose more before 1837 and fell more after in the mid-Atlantic (p12). "*Beginning in 1818, the Suffolk Bank of Boston acted as the central bank of New England. It regulated the credit practices of banks in interior villages by requiring them to keep a permanent deposit of their banknotes with the Suffolk Bank. If an interior bank issued too many banknotes, the Suffolk Bank, after accepting them for deposit, would carry them to the head office of the bank and demand that they be exchanged for specie. If these banks were unable to redeem them, the Suffolk Bank initiated bankruptcy proceedings. The threat of bankruptcy restrained excessive issues of banknote. The Suffolk system ensured that banknotes of all New England banks circulated at par. President Jackson's veto of the charter of [SBUS] in 1832 was a license for all States to incorporate more banks. Massachusetts was no exception. Between 1836-1837 the Massachusetts legislature chartered 32 new banks (72 between 1830 and 1837). Too many banks were chartered in too short a time for the Suffolk Bank to adequately restrain their credit practices.*" (Seavoy, 2013).

673 "*In 1834 Indiana was faced with the problem of establishing a banking system, a task complicated by the fact that the State constitution appeared to prohibit any banking except that which might be done by a State bank and its branches. The rather ingenious solution was to establish a State bank—which did no banking—and to provide for independent banks—but to label them 'branches'. Taken together, the 'branches' constituted the State bank, but each 'branch' had its own stockholders, officers and directors, and paid dividends out of its own earnings. The State bank itself was essentially a supervisory body, with the president occupying a position somewhat similar to that of a present-day bank commissioner. The insurance plan was simple. Upon the failure of a branch bank, the remaining branch banks were made 'mutually . . . responsible for all the debts, notes, and engagements of each other' unpaid within one year after failure. No insurance fund was provided. The necessary amounts were to be raised by special assessments on the branch banks, such assessments to be levied by the directors of the State bank.*" (Golembe, 1960). "*Unlike the systems of New York, Vermont, and Michigan, the Indiana system charged no advance fees, and special assessments were made as needed without limit. Liabilities of failed banks not covered by liquidated assets were redeemable by surviving banks without limit. Both notes and deposits were insured...'mutual guarantee' system... The banks in the Indiana system, though separately owned and operated, were called 'branches' of the State Bank of Indiana.' From its inception in 1834 until the chartering of free banks began in 1851, the system covered virtually all the liabilities of banks in Indiana. After that date, the two systems existed side by side.*" (Calomiris, 1989).

674 "*[T]here were only minor differences from the New York plan. The adoption of the New York plan in Michigan was probably due to the fact that the latter State was at that time being rapidly settled by former residents of New York.*" (Golembe, 1960).

675 "*The circumstances of an old country like England and Ireland are so different to America, that the same system, to the same extent, cannot arise here as there, though our banks might be disposed to adopt the American system of discounting accommodation paper, knowing that its proceeds were to be invested in permanent wealth. Our merchants and traders are not house, and town-lot, and land jobbers, like the American… The general principle of business with the United States Bank, and all others, with the exception of a few, in the United States, was to give accommodation to merchants and dealers, or jobbers in land and real estate, such as town lots, and houses in cities, and not the discounting of real bills of exchange, which was a minor branch of their business. By prudent management in giving accommodation, and discounting notes at 3 months, they enabled individuals to build houses, and factories, and so forth… And thus make an apparent prosperity. But, the houses, and ships, and factories were not paid for, they were all built with borrowed capital. No man, or very few indeed, in the towns could call anything in his possession his own, when I left the United States about 3 years since.*" (Clibborn, 1837)

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676 "*We shall first distinguish between two types of discounts—single-name and double-name paper. In the antebellum period commercial transactions were usually financed by the trade acceptance, which is a bill of exchange drawn to order, with a definite maturity date, where the obligation to pay at maturity has been accepted by the person upon whom it is drawn. The seller may then take the trade acceptance to a bank to be discounted. The trade acceptance arises from a specific commercial transaction and is a form of two-name paper. Two-name paper is an instrument carrying the obligation of a drawer in addition to that of an acceptor, or of an endorser in addition to the maker. At maturity payment will be sought from the buyer, or maker of the acceptance. If payment is not forth-coming, however, the seller, who obtained the discount, is liable to the bank for the amount involved. Similarly, the endorser is liable for the amount of the discount if the maker defaults. In contrast, only one party, the maker, is liable for payment of single-name paper, which is in effect an unsecured promissory note. When discounts were offered for sale on the open market, usually through a broker, as opposed to being presented at the local bank, they became known as commercial paper. The trade acceptance was widely used in the antebellum period to finance commercial transactions. Before the Civil War retail dealers customarily made 1 or 2 trips per year to commercial centers, such as New York or Boston, to purchase merchandise. Since the size of these orders was fairly large, they usually issued a trade acceptance in payment, with maturities running from about 4 months to a year. The sellers then endorsed these notes and discounted them at a local bank or else sold them to note brokers... The trade acceptance had been losing favor even before the Civil War, and the change in credit methods brought about by the war hastened its demise. By the middle of the 1860s, single-name promissory notes constituted the majority of Chicago merchants' bankable paper. By the end of the century, only about 3% of all domestic credit transactions were financed by the issuance of a trade acceptance. The most convenient method of borrowing to pay cash for merchandise was by issuing a promissory note. Thus, the single-name promissory note began to displace double-name paper, the trade acceptance. Another force that contributed to the decline of the trade acceptance after the Civil War was the changing system of distribution. The growth of traveling salesmen meant that it was no longer necessary for the merchant to go to New York once or twice a year.*" (James, 2015).

677 "*The Emergence of Factors as Investment Bankers… Woodman considers factors as financial intermediaries… The banking and investment services afforded planters by their factors remains an obscure subject. A name other than 'factor' might further clarify the picture. 'Commercial agent,' for example, embraces more of the particulars that characterized factorage firms' activities...*" (Kilbourne and Wright, 2014). "*A main part of their business was that of factors for the cotton planters and interior dealers. Those who are acquainted with this business, know how immense the acceptances of these factors are, in anticipation of the arrival of cotton. When the cotton trade goes off as it has for several years past, these acceptances are easily met by the sales of cotton as it arrives; but if the cotton fails to arrive, or cannot be sold, or the bills on Europe and the northern states in which it is common to make payment, cannot be negotiated, the state of the case is very different; and this is the state of the case at present.*" (NY Spectator, 1837).

678 "*Out of the recession that followed the monetary suspension came certain facts which no one disputed. The Great Lakes region was the area most severely affected by the monetary failure, and the troubles of westerners were quickly passed to those enterprises in the East that depended upon western sales. The South almost totally escaped the ravages of the Panic. Indeed, many Americans acknowledged that the South was seemingly impervious to economic fluctuations and that the prosperity of the Atlantic economy rested upon southern production of cotton. Undoubtedly the Panic of 1857 did contribute to the South's exaggerated estimation of the power of cotton in world commerce, but this development did not necessarily encourage secessionist dreams. The Panic of 1857 probably deflated the economic rationale for secession. At first various southerners manipulated the economic and social results of the monetary collapse to flaunt before the North the material richness of their unique civilization, the most flamboyant example being the 'Cotton is King' oration of James H. Hammond in 1858. But by 1859 and 1860 many ardent states' rights southerners, like Hammond, perceived that the Panic had humbled northern propertied interests and had made them more amenable to southern demands. Many southerners concluded that by flexing its economic might the South could obtain the support of the northern propertied classes and thereby control the government. Hence the South could safely remain in the Union because its economic strength offset its political liabilities*." (Huston, 1999).

679 "*New Orleans factors apparently conducted an extensive operation in cross acceptances for mutual accommodation, which meant that much of their paper floated in commercial channels alongside bank note issues. [Kilbourne, 1982, p619-20.] Making estimates of the antebellum money supply is a tricky business. So, too, is making generalizations about the credit system on the basis of total banking capitalization in the locality and region. Plainly, the New Orleans money market was many times larger than the $28 M of banking capital held by the state-chartered institutions resident there in 1860. Indeed, the reason per capita banking capital in the antebellum South lagged behind that of the North may in part be that much of the banking in places such as Louisiana was conducted through private channels. [Schweikart, Banking in the American South, p225-66.] The combined capitalization of the city's factorage firms at least equaled the capitalization of the state-chartered banks, and may have exceeded it... In the years before 1845, most financial arrangements in the parish involved a local lender, an accommodation endorser, or a New Orleans factor. 3 property banks chartered in the 1830s by the state legislature were actively engaged in investment banking in the parish, making loans collateralized with mortgages on land and, to a lesser extent, with slaves. However, all 3 banks were in liquidation proceedings by 1844. The Union Bank and Citizens Bank were revived by the legislature in the 1850s, but as commercial banks, not investment banks*." (Kilbourne and Wright, 2014).

680 Please see end of the earlier chapter, *First Bank of the United States and Bankruptcy Act of 1800*.

681 In Louisiana's East Feliciana Parish, "*Accommodation endorsers predominated in the locality's loan relationships in the decades prior to 1845. They lent their credit, not their financial capital, as security for loans from third parties. Just how they were compensated is not clear, but it is unlikely that most such suretyships were merely gratuitous. Only the proliferation of state-chartered banks with mortgage banking powers in the 1830s overshadowed accommodation endorsers, or at least further obscured their important role as primary lenders in the local economy. A typical arrangement involved a promissory note made payable to the order of the endorser, who then endorsed the note, thus collateralizing it with his credit and good name; the maker subsequently negotiated it to a willing third-party lender. A note made payable to 'bearer' could be collateralized with a simple endorsement. A party might also make an accommodation by drawing a note in favor of the debtor... Factors were by no means the only ones making loans in the local economy. As previously noted, in the decades prior to the 1850s, the local accommodation endorser was the primary vehicle for making loans. Much of the surplus income in the local economy, however, increasingly was being left with various factorage firms, where it earned far higher returns than could be obtained on bank*

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deposits. Leaving money on deposit with a factor was much less risky than lending directly without the factor as an intermediary... It is probable that wealthy planter families banked a substantial portion of their savings with their factors, rather than city banks, because the factors paid a higher rate of interest... Even in the decade of the 1830s, slaves remained the preferred security for most lenders. However, the proliferation of loans on land mortgages was exceptional, a direct result of the state guaranteeing the bonds that financed the capitalization of the property banks and mandating that a portion of the loan portfolios be invested in real estate mortgages. The property banks disappeared in the early years of the depression that began in 1839... In the instances where relationships between accommodation endorsers and the makers of the notes were formally collateralized, the endorsers almost always obtained mortgages on slaves from those whose debts they guaranteed. Of the 47 mortgages recorded from 1835-9, however, 21 were solely mortgages on acreage and town lots. Almost all the accommodations collateralized with mortgages on real estate involved paper that was discounted at the Union Bank... 32% of all security transactions were either bank loans on land and slaves or loans on bank stock. During this 4-year period, mortgages on land alone originating outside property banking channels almost equaled those on slaves. Mortgages on land need to be carefully scrutinized, however, and a closer look shows that most were made to secure accommodation endorsers on property in the towns of Clinton, Jackson, and Port Hudson. It is clear, too, that in most of these transactions, mortgagors were actually borrowing from the property banks on the security of accommodation endorsements. When such transactions are excluded, a ratio of 4 slave mortgages to 1 land mortgage prevails. Roughly half the slave mortgages were executed to secure accommodation endorsers, and it is probable that some of this paper was discounted eventually at one of the property banks." (Kilbourne and Wright, 2014).

682 "*Commerce in antebellum Louisiana was principally the business of factorage, the practice of commercial agents buying and selling vast quantities of agricultural commodities. In the course of their dealings, factors generated an unusually large quantity of high-quality commercial paper which ultimately underwrote Louisiana's system of state charted public banks—a system reputed to be one of the soundest in the United States. It is apparent that this commercial law environment was animated by a psychology which recognized security as the foremost factor in appraising risks. In other words, security was the heart of the commercial transaction, and this commercial environment controlled the evolution of the civil law institutions of suretyship, mortgage, and pledge… The Louisiana economy in the antebellum period was an important center for national commerce, and one would expect that the very nature of Mississippi River commerce would shape the evolution of Louisiana security devices. New Orleans was a credit center for the entire Mississippi River Valley, in particular for planters in the Deep South who relied upon New Orleans factors and banks to finance the operation of their plantations from year to year. The factors themselves were part of an intricate economic system based on national and international commerce and like the planters, they borrowed heavily through commercial channels to finance their credit. In this system, each party's ability to liquidate cash advances depended on a marketplace freed from uncertainties, whether economic or legal.*" (Kilbourne, 1982). "*Backed by prime cotton and agricultural land, these banks were thought to be among the safest investments in the United States. Barings, the noted British merchant bank, was so confident in this type of bank that it urged Louisiana to form the Union Bank of Louisiana in 1832, and took the entire issue of state bonds at a premium as a demonstration of its confidence.*" (Wallis et al., 2011).

683 *Bank of Louisiana* (1824, $2.4M), *Consolidated Association of Planters* (1827, $2 M), *Union Bank of Louisiana* (1832, $7 M), and *Citizen's Bank of Louisiana* (1833, $12 M) (Wallis et al., 2004).

684 "*Most accommodation paper, however, had value even if it sometimes took years to liquidate. Marston, for example, purchased slaves in 1839 at a probate sale in Charleston, South Carolina, and took more than 10 years to liquidate the indebtedness. Such an extended credit for slave purchases was unusual, however, and may be explained by the economic difficulties that characterized the 1840s. Marston's willingness to pay interest during all of those years on the unpaid balance also discouraged a foreclosure proceeding. In addition, he had removed the slaves to Louisiana, and reclaiming them would have been an inconvenience to the heirs, to say the least… The first of the foreclosures and sheriff's sales appear in the mortgage records in 1839, but the magnitude of the collapse at the local level only becomes apparent in the years 1841 to 1847. Of the 13 credit sales of slaves in 1841, no less than 9 were sales by syndics for insolvent debtors. These were the so-called voluntary surrenders of property for the benefit of creditors, or assignments for the benefit of creditors. 14 of the 48 credit sales of land were sales by syndics, and if such credit sales and probate sales, together with sheriff's returns, are subtracted from the total number of credit instruments recorded in 1841, credit transactions in the parish were about one-third of what they had been in 1836.*" (Kilbourne and Wright, 2014).

685 "*A central problem with the pledge in antebellum commerce as it related to negotiable paper was whether such paper was transferred in the ordinary course of business to liquidate obligations or pledged as collateral security for advances of credit. Such a distinction was often difficult, if not impossible, to draw with precision. In one sense, the pledge secures every obligation existing between a creditor and a debtor in a civil law jurisdiction, but the application of such a broad principle inevitably becomes ambiguous when a succession of creditors claim privileges on a debtor's insufficient assets. A transfer of negotiable paper for a valuable consideration, or in civil law terminology, a cause, theoretically is free of ambiguity, but the very nature of credit transactions obscures every certainty upon which men or business prefer to rely. This ambiguity was exacerbated by the procedural burden imposed on businessmen who were parties to a pledge arrangement. Until the decade prior to the Civil War the pledge lacked the flexibility contemplated by commercial imperatives because the Louisiana Civil Code required every pledge to be executed in notarial form. This involved authentication of the pledge before a notary and 2 witnesses, and a subsequent recording in the mortgage records.*" (Kilbourne, 1982).

686 Secretary of State Webster explained "*Endorsement and suretyship, therefore, are the means by which excessive and false credit is upholden. And how is this endorsement obtained? This leads us one step further in the inquiry. How is it that persons continuing to carry on business after they are really insolvent, and are suspected if not known to be so, can procure others to endorse their paper? Sir, we all know how it is. It is by promising to secure endorsers at all events. It is by giving an assurance that, if the party stops, a preference shall be made, and the favored creditors shall be his endorsers. Hence it is quite general, perhaps almost universal, that when an insolvent assigns his property for the benefit of his creditors, he classifies his creditors, and puts endorsers into the first class. This has become a sort of honorary law. A man that disregards it is in some measure disgraced. We hear daily of honorary debts, and we hear reproaches against those, who being insolvent, have yet pushed on, in the hope of retrieving their affairs, until, when failure does come, (and come it does, sooner or later,) they have not enough left to discharge these honorary obligations. Now, at the bottom of all this is preference. The*

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preference of one creditor to another, both debts being honest, is allowed by the general rules of law; but is not allowed by bankrupt laws. And this right of preference is the foundation on which the structure rests.
On the legal right or power of preference lies the promise of preference.
On the promise of preference lies endorsement.
On endorsement lies excessive and false credit.
On excessive and false credit lies over-trading." (Webster, 1840). Summarized as "*That accommodation paper was the chief contemporary source of pyramided credit; that accommodation signatures were usually procured by arrangements for preferences which were indefeasible in the absence of a bankruptcy act; that such encouragement of lax credit practices led to hopeless financial entanglements which sounder practice would have arrested in a less destructive stage; and that consequently the enactment of a bankruptcy law, even a purely voluntary one, would operate to benefit the creditor as well as the debtor class by promoting a sounder credit structure.*" (McLaughln, 1926; McLaughlin, 1937).

687 "*Although kiting provided banks with revenue and merchants with funds in the right place at the right time, the process was dangerous because if the firm should fail to make its payments, the banks would find their accounts 'overdrawn' by a considerable amount.*" (Lepler, 2013).

688 UST Secretary Woodbury noted that imports "*were dangerously swollen to the amount of [$200 M] a year, and thus constituted an excess over our exports of about [$60 M], and involved the country in a foreign debt, merely commercial, whose balance against us, after all proper deductions for freights, profits, and similar considerations, probably exceeded the aggregate of [$ 30 M].*" (GPO, 1837). In 1831 exports of flour and provisions were $28 M while imports of silk, alcohol, and sugar were $14 M; by 1836, the balance of trade reversed due to decreased harvest production (down by half to $14 M) and increased luxury consumption (up 3x to $42 M), respectively (Stebbins, 1871, p.148); "*[t]he goods imported were mostly ordered by importers here, and purchased on credits in the manufacturing districts. These credits were operated through large London houses connected with the American trade, and whose ability to extend credits depended upon the indulgence of [BOE], and that institution itself was subject to pressure whenever the harvests should fail. The system of credits was open, however, up to 1836, in England, under apparently favorable circumstances... The mania for land speculation was fed by bank bubbles, and large sums were drawn from the East as well as Europe, for the creation of banks West and South-West. The transmission of these sums was the means of credits by which goods were consumed. There were created in the period from 1830 to 1840, 577 banks, having an aggregate capital of $218 M. These banks were mostly started west and south-west, with eastern capital paid in subscription to the bank stock, and with State bonds issued in aid of the banks, Thus a stream of credit issued from London, which, aided by circumstances, poured over the Union, checking industry, exhausting capital, and raising prices.*"

689 "*[There were 2] severe disruptions in 1836 and early 1837. The first was a series of supplemental interbank transfers of public balances ordered by [UST] under the Deposit Act of June 23, 1836 to prepare for the official distribution of $28 M of the $34 M federal surplus. The second was a heightened demand for specie in the West arising from the Jackson administration's Specie Circular of July 11, 1836, which ordered the use of specie for the purchase of public lands after Aug 15... The New York Herald reports on Sep 8 that another cause of the decline of the markets (in addition to concern about the upcoming Presidential election) is the heavy surplus revenue that is to be collected and gathered up for payment to the States on [Jan 1st, ~36 M]. The transfer of moneys from one point to another, in preparation for the great payment, necessarily creates a curtailment of discounts, and a consequent pressure in the money market. All these causes unite at this moment to bring on a panic. The government adds to it. Specie is bought at 2% premium on Wall Street to go west in payment of public lands'… These 2 measures caused the specie reserves of the deposit banks in [NYC] (and especially the Bank of America, Manhattan and Mechanics' Banks) to fall from $7.2 M on Sep 1, 1836 to a mere $2.8 M by March 1, 1837 and $1.5 M by May 1. The drain left these banks unprepared to meet calls for specie from a faltering British economy that had become increasingly determined to settle its international balances.*" (Rousseau, 2000). In the mid-1830s, the anti-Jacksonians "*took up cudgels on behalf of banks and bank paper, as if there would be no currency if bank paper were withdrawn, and as if there would be no credit if there were no banks of issue. In their arguments against the bullionist party, they talked as if they believed that, if the public [UST] did its own business, and did it in gold, it would get possession of all the gold in the country, and that this would give it control of all the credit in the country, because the paper issue was based on gold*" (Sumner, 1896, p389).

690 "*According to Temin, two increases in [BOE's] discount rate in the Summer of 1836 and their instructions for the Liverpool branch to reject bills of exchange drawn on houses associated with American commerce in late Aug were the start of a deliberate and sustained effort to 'recover' specie that had been presumed lost to the U.S. These actions combined to reduce demand... for the U.S. cotton crop of 1836-7 and force a drop in its price by the following Spring. This in turn depressed the market values of cotton-backed bills in the U.S. and produced defaults among cotton factors, a deterioration of bank assets, and finally panic. The argument hinges upon a lag of at least 8 months between the Bank's initial actions and the panic, as well as large real effects of a fall in the price of cotton that occurred late in the annual export cycle. Such fluctuations in cotton prices, however, were routine by historical standards. There is also evidence that the rejection of the American bills was an embarrassing blunder by [BOE], and that public alarm had led to a reversal of this policy within days. In the Spring of 1837, the Bank even took extraordinary measures to support houses involved in the American trade.*" (Rousseau, 2000).

691 The Panic "*was triggered by credit contraction and a precipitous drop in the price of cotton... the fact that the [1837 and 1839] panics occurred after several years of a rapid increase in the money supply and rising inflation, followed by a collapse in the prices of output in the economy's dominant sector — agriculture— suggests that unanticipated price decline played an important role in the crisis... as Temin notes, 'it is a peculiarity of the antebellum financial structure that in a time of very flexible prices, many of the credit arrangements depended on the movements of a single price (the price of cotton).' A crisis of some severity would have occurred almost certainly in 1837, but the preceding inflation and the dominance of commodity prices in the aggregate price level indicates that price level instability exacerbated the financial distress.*" (Bordo and Wheelock, 1998). UST Secretary Woodbury noted a major cause "*was the over-production of cotton, coupled with the large and sudden depreciation of its price. The whole product, though before so great, had, within 3 years, been increased probably more than [100 M] pounds, so as to exceed in a single year the enormous quantity of [540 M] pounds. The fall of price was such as, on that quantity, would make a difference in its value of near [$40 M]. The occurrence of this fall, however, was at such a period of the year*

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as not much to affect over half the last crop; but the violence of the shock, though thus lessened, still occasioned a loss to an appalling amount. The fall was chiefly consequent from the over-production, and the abrupt withdrawal of foreign credit, combined with some other circumstances which need not now be particularized." (GPO, 1837). See Exhibits 5 and 11.

692 "*Things were still more unsettled at the start of the 1835 Term. Justice Johnson had died, and President Jackson had appointed Justice Wayne in his place. Justice Duvall (who had been aligned with the Marshall bloc in the 2 cases) had resigned. Marshall announced: 'The Court cannot know whether there will be a full Court during the Term; but as the Court is now composed the constitutional cases will not be taken up.' Marshall died on July 6, 1835, and the cases were not heard until the 1837 Term, by which time Chief Justice Roger B. Taney was presiding over the Supreme Court. A 3rd holdover case was heard with Briscoe and Miln at the 1837 Term. This was the longstanding [CRB] Considered together the 3 cases may be considered the 'transition trilogy,' as they give a graphic picture of the change of political direction that showed itself at the very outset of the Taney Court… When [CRB] was first argued, the Marshall-Story-Thompson bloc had viewed the case as in line with the Court's earlier 'obligation of contract' cases (Fletcher v. Peck, and Dartmouth College v. Woodward). As decided by the Taney Court, [CRB] left considerably more latitude to a state legislature to modify ancient grants. The earlier rigor of the Marshall Court with respect to 'vested rights' was softened, but not repudiated. The Taney Court's decision sustaining the Kentucky law in Briscoe, was an evident departure from Craig v. Missouri of only 7 years before. The 3rd 1837 'transition' case, Miln, was a commerce clause case. Again, the Taney Court voted differently than Chief Justice Marshall had in 1834.*" (Broderick, 1987).

693 "*[T]he underlying logic of the positivization of property rights was carried one step further in [CRB]in which the Supreme Court refused to find any right to prevent the erection of a second, competitive bridge by virtue of a state charter granted earlier to another bridge company. Little did it seem to matter that, for several hundred years, the common law itself had recognized such a property right. In America, said Chief Justice Taney, we look to the instrument created by the state and not to some prelegal notion of property to determine what privileges are conveyed to property holders. Moreover, both sides in the Supreme Court were almost exclusively concerned with the effects that one or the other definition of property would have on the encouragement of economic growth. In the end, the Supreme Court authorized a redefinition of property rights to encourage competitive development. The debate over competing definitions of property rights thus turned almost completely on utilitarian and consequentialist considerations.*" (Horwitz, 1976). "*When the Marshall Court interpreted the contract clause expansively, the Taney Court, which succeeded it, narrowed the interpretation of the clause in [CRB] (1837). Massachusetts had granted the Warren River Bridge Co the right to build a bridge near a toll bridge built by [CRB]. The [CRB] bridge had taken the place of exclusive ferry rights, and the company claimed that its contract implicitly included the early monopoly grant. By contrast, the Taney Court argued that, absent a specific' grant of power, any ambiguity in a contract 'must operate against the adventurers and in favor of the public...' Taney argued that any other reading of contracts would obstruct the development of canals, railways, and other modem modes of conveyance. Those writing contracts now knew that the courts would read them no more liberally than necessity demanded.* "(Vile, 1987).

694 In 1841, the founder of New Orleans' Law School said that: "*The jurisprudence of Louisiana is a mixture of the Roman, French and Spanish law, tinctured with no inconsiderable portion of the common law of England, as understood and expounded in the sister States of the Union, especially in criminal and commercial matters. These different elements of law are however blended in so confused a manner, that it is often extremely difficult to trace the lines of demarcation, or to determine, whet the law is on any given subject.*" (Yiannopoulos, 1979).

695 "*Well into the 19th century, owners of large plantations in the American South could survive insolvency for decades, just because of the impossibility of liquidating their stock of assets (lands and slaves) at a viable price; Thomas Jefferson is a well-known example [Thompson, 2004].*" (Sgard, 2006).

696 "*Cession for the benefit of creditors (cessio bonorum) — An insolvent debtor's assignment of all his property to a syndic or syndics for the benefit of his creditors. This is the Civil Law equivalent of bankruptcy.*" (Kilbourne and Wright, 2014). "*Insolvency proceedings and succession (estate) settlements swelled the number of slave sales within Louisiana. Often insolvency or death necessitated the sale of large communities of slaves. From an examination of cases heard by the Louisiana Supreme Court it is impossible to ascertain whether most of these large groups of slaves were sold as whole lots, small units, or individually, since most of the evidence is found in inventories or lists of slaves for sale, and not records of purchases. One case involved an entire plantation sold as a unit land, slaves, livestock, tools, and cotton gin. [Oldham v. Groghan, No. 1133, 3 Mart. (N.S.) 517 (La. 1825). In another cast an entire slave community was hired as a unit: Philips v. Fulton's Heirs, No. 83, 7 Man. (O.S.) 241 (La. 1819).]*" (Schafer, 1997).

697 "*In contrast to the Code Napoleon [of France], in the Civil Code of Louisiana brokerage is a 'nominate' contract. Articles 3016-20 of the Revised Civil Code of 1870, speaking 'of the mandatary or agent of both parties,' regulate some important aspects of the brokerage contract. The source of these provisions which were first adopted in the Civil Code of 1825, is not officially known; yet, it seems reasonable to assume that they were taken from the text of Domat, which is reproduced almost verbatim in the French edition*." (Yiannopoulos, 1959). "*Creditor rights are typically the strongest in countries with English and German origins and the weakest in countries with a French code. For example, creditors in the Philippines, where the code is of French origin, are barred by the so-called 'automatic stay on assets' from taking any collection action against the debtor's assets once bankruptcy has been filed. In addition, a creditor's security interest does not guarantee priority status. Furthermore, the statutory bankruptcy scheme prohibits creditors from ousting management during reorganization. In contrast, creditors in Malaysia, where the laws are of English origin, have strong creditor rights*." (Classens et al., 2002). "*This paper examines legal rules covering protection of corporate shareholders and creditors, the origin of these rules, and the quality of their enforcement in 49 countries. The results show that Common law countries generally have the strongest, and French Civil law countries the weakest, legal protections of investors, with German and Scandinavian Civil law countries located in the middle.*" (La Porta et al., 1998).

698 "*After months of rosy-tinted views, New Orleans faced reality the next day. On Sat, March 4, 1837, drenching rain doused the nearly finished Citizens' Bank building. Behind the columned edifice, Forstall informed his board of directors that he had been invited to an unprecedented meeting of the city's 16 bank presidents to be held the next morning, a Sun. The purpose of the meeting was 'to take into consideration the state of the affairs of [HB].' The potential failure of any single firm could have waited until Mon. [HB], however, was part of a network of cotton factors that monopolized the region's exports. If this firm failed, it would bring down the network... $0.23 M of these bills passed through just one bank in Natchez during the winter of 1836-*

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7; several million dollars in this form was in circulation. The partners floated paper back and forth between their firms, paying for one promise to pay in Natchez with another promise to pay in New Orleans." (Lepler, 2013)

699 "*The houses that have actually stopped are 3 in number, but so intimately connected that they may be considered as in fact constituting 1 establishment; their names are, Hermann & Son, [HB], and Thomas Barett & Co., one of the partners in the latter being a son of the elder Mr. Hermann. Great exertions were made to sustain the house of Barett & Co., but its connections with the other 2 were so intimate, that it was found impossible to. keep it up. The liabilities of the 3 establishments are variously stated, at from $8-10 M, more than $1 M being in accepted drafts from New York which will come back protested; but it is believed that they are secured by shipments of cotton to Liverpool. The house of Barett & Co. is expected to resume payments next month. The house of Lee Maddox & Wood suspended payment, but for one day only, it being found that their means were ample*." (New York Spectator, 1837). "*The engagements of [HB] were enormous, being for the 30 days succeeding their failure, not less than $3 M, or more than $100 K daily. The originator of this house came to New Orleans some 20 years ago, with a pedlar's pack on his back, (so it is said,) but rapidly amassed a princely fortune. He has now a son connected with him, under the firm of Samuel Hermann & Son. Another son associated with other talented business gentlemen compose the house in question, and are the now immediate successors of the wealthy firm of* Reynolds, Byrne *& Co.*" (New York Spectator, 1837).

700 "*This was the case with a bill of exchange written by [HB] on Jan 4, 1837. The bill traveled far, but when it reached its destination, [HB] did not have enough credit in his account for the London bankers to honor the promise on its face. The words on this rare document are jargon that only someone fluent in 19th-century finance would understand: 60 Days after sight of this First of Exchange, (second, third & fourth unpaid) pay to* R. Greene, *Esqre., or order [£8,000], Value received & charge the same to account as advised by Saml. Hermann & Son. To Messrs. T. W. Smith & Co., London.' This meant that Greene could present this bill of exchange to T. W. Smith & Co. in London and receive £8,000 in gold 60 days later. On the back of the bill, the signatures of several endorsers fill out the story of the bill's journey: a New Orleans factor [HB] paid an Alabama merchant (Greene) who sent the bill as a payment to New York merchants who sent the bill as a payment to London merchants who brought the bill to the bank (T. W.) for payment. This means that at least 5 people trusted that this piece of paper would ultimately be worth gold. Although in this particular instance they were wrong, the fact that the bill traveled so far and through so many different hands attests to the power of confidence to facilitate transatlantic trade.*" (Lepler, 2013). "*[T]heir kinship patterns probably explain much about the ease with which they obtained credit*" (Schweikart, 1987)

701 *"Louis Florian Hermann also traded such 'accommodation bills' or 'kites' with his father and his brothers who were affiliated with other firms. The Hermann family also endorsed one another's bills of exchange. Bound through blood and paper, the Hermann family's firms were inextricably intertwined. Kites and endorsements had kept [HB] afloat since the sinking of the Fort Adams. The firm counted on the proceeds of high-priced cotton sales in Liverpool to safely draw in their kites, but they needed more time. The partners appealed to the banks of New Orleans for greater discounting privileges and an extension of their existing loans. [HB] presented the bankers with an estimated debt of $3 M, although the partners later calculated that they owed $6 M. This imprecise sum represented between 6 and 20 % of the banking capital of the state of Louisiana. This state of affairs could not wait until Mon. Indeed, by the next week, several firms located in Louisiana and Mississippi with principals surnamed Hermann, Reynolds, Marshall, Byrne, Barrett, and Nathan all asked the banks of New Orleans for extended time to repay their debts...* " (Lepler, 2013)

702 "*Armed with highly confidential uncertainties, the 16 bank presidents left the Sun meeting to report to their boards of directors. By Mon, at least 100 men deliberated behind scattered neoclassical facades. The bankers and the partners of [HB] surely aimed for secrecy to maintain the value of the firm's paper, but with more directors and less security, the banks of New Orleans suffered more than the BOE from the problem of information control... By the time... of the [HB] failure in late April, the banks in New Orleans had failed to organize a collective response to the panic for almost 2 months. With 16 banks, each with approximately 10 board members, more than 100 men with their own pressing concerns had to agree to risky actions. The boards of individual institutions such as the Citizens' Bank of Louisiana could not decide on an appropriate response to what one correspondent described as 'the merchants' dreadful times.' Although several banks agreed to lenient terms for the businesses of the Hermann family, 'an early and a satisfactory adjustment' involving all of the banks in New Orleans never materialized. After opting out of the collective plan to support the Hermanns, the directors of the Citizens' Bank reluctantly granted the failed firms extended time to pay back several loans. 2 of the 11 directors voted against this policy and preserved in the minutes their right to 'record their reason for so doing.*'" (Lepler, 2013).

703 "*Armed with highly confidential uncertainties, the 16 bank presidents left the Sun meeting to report to their boards of directors. By Mon, at least 100 men deliberated behind scattered neoclassical facades. The bankers and the partners of [HB] surely aimed for secrecy to maintain the value of the firm's paper, but with more directors and less security, the banks of New Orleans suffered more than the BOE from the problem of information control.*" (Lepler, 2013). On March 9th, Barrett wrote to JLSJ: "*We addressed you on the 7th inst. in relation to the affairs of [HB].*" (letter reprinted in New York Spectator, 1837).

704 On March 9th, Barrett wrote to JLSJ: "*We addressed you on the 7th inst. in relation to the affairs of [HB]. Since then their matters have taken several different turns, and at last, by the preposition of yesterday, promise an early and satisfactory adjustment of which there is scarcely a doubt, as the points of the arrangement, in a measure, come from the Banks themselves… Suffice it, however, now to say, that* Reynolds, Marshall, *&* Byrne, *make a new house both here and in Natchez, for the liquidation of the affairs of [HB], and to the which their whole fortunes will be carried—certainly not less than $3 M— and in the course of today or tomorrow, all the Banks with certainly come into the incasure, giving the parties 9, 12, 15, 16, 18, 21, and 24 months for the payments of their debts,— their northern liabilities to be arranged for first, but the manner is not yet fixed. Our position with the House in question has so much impaired our credit as seriously to affect our negotiations, which were our only reliance for a while to place you in funds for our maturities; but the very moment their business is ettled we will remit the whole amount of our debt in some shape or other, acceptable, we trust all the parties concerned. In the meantime, do not if you can possibly avoid it, suspend your payments, as you will neither lose by the parties nor be placed under cash advance many days after this reaches you. Yesterday morning 6 of the banks agreed to the proposed measure, and we have this moment learned that 2 more, whose boards have just met, who boards have also come in.*" (New York Spectator, 1837). On March 9th, *Allen Clark & Co.* wrote "*Negotiations are still going on with respect to [HB]. It is now proposed that the old partners form a new house, settle up the old concern, and bring their private fortunes*

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in to take up all the bills drawn on the North, by drawing on the house here, at 9, 12, 15, 18, 21 and 24 months. Most of the banks have come into the measure, and the matter will be settled today." (New York Spectator, 1837). "*The intelligence from New Orleans, received by express mail on Sat, is fully confirmed by letters that came in last night. The 3 houses of [HB], Hermann & Son and Barrett & Co. resumed payments on [March 10th], the arrangement with the banks having been concluded. It is understood that the offer of a $1 M to [JLSJ] by [BUSP], has been accepted, and that their payments will also be resumed today.*" (New York Spectator, 1837).

705 *"During the evening of Mar. 16...[a] letter, addressed to the bill brokerage firm of [JLSJ], arrived in New York. In the letter, Thomas Barrett, the principal of a New Orleans firm that included members of the Hermann family, relayed news of the [HB] failure and reported on the Sun bankers' meeting. The letter was a private message from a trusted correspondent who offered an account of the firm's finances based on existing records… [The next] morning, [JLSJ] immediately announced its failure and cited the [HB] suspension as the direct cause of its embarrassment… the Josephs must have interpreted the letter announcing the Hermann failure as a windfall… In Aug 1836, after Samuel Hermann's interview, the Rothschilds informed the Josephs that they were 'at present desirous of not extending our business.' When [JLSJ] provided [HB] with credit anyway, the Londoners began to doubt the New Yorkers' fidelity. In letter after letter, the Rothschilds asked the Josephs 'to be good enough to curtail your transactions with us.' Finally, in early Feb 1837, after a rift over several hundred shares of New Orleans bank stock, the Rothschilds expressed their 'decided disapprobation' in the New Yorkers, officially withdrew their credit, and required the repayment of significant advances. When the Josephs received this news a few days before March 15, 1837, they mirrored the response of the Rothschilds the previous summer and replied that a recent 'death in the family' prevented them from acquiescing to the Londoners' demands.*" (Lepler, 2013). On March 19th, JLSJ wrote to N M Rothschild & Sons: "*The unexpected suspension of [HB] carrying with them [Barrett and Samuell Hermann], for all whom we are under acceptances to an amount exceeding [$2 M] in the aggregate making it impossible for us to continue our own payments, we were compelled to suspend them the day before yesterday. Since then we learn that negotiations have been entered into with the several banks of New Orleans to enable [HB] to resume their payments, but which have not yet been formally arranged... we have strong hopes will bring the cheering intelligence that all 3 above mentioned houses have resumed their payments, in which case we shall complete the arrangement immediately to resume our own. This unfortunate occurrence has, as you may imagine, given a severe blow to our credit and we shall no doubt experience for some time considerable difficulty [before] we can give it its former currency and character.*" (Rothschild Archives, XI/38/159B/227).

706 See *New York Spectator*, Mar. 17, 1837. "*Thomas Barrett & Co. to JLSJ Mar. 9, 1837, reprinted in [New York Herald], Mar. 18, 1837, and New Orleans Bee, Mar. 29, 1837.*" (Lepler, 2013).

707 "*The monetary excitement, yesterday, was greater than we have ever known, in our long experience of business in this city. Early in the forenoon the word was passed from street to street, and from counting-room to counting room, that the firm of [JLSJ] had stopped payment, in consequence of the failures in New Orleans, and, a from the known immense extent of their connexions. as well as from their high standing for financial and intellectual ability, the most alarming anticipations were everywhere entertained. The failure of such a house, possessed of such ample resources, so prompt, liberal and intelligent in its vast transactions, and so well-established in the confidence of the whole mercantile community, was naturally looked upon as a great general disaster, which must be widely and seriously felt. Happily, the decided, frank, and honorable course pursued by the house itself, and the prompt liberality with which others came forward to give assistance, tended very much to dispel the general anxiety, and before night a feeling of relief had succeeded the gloomy apprehension of the morning. The house of [JLSJ] is under engagements for that of [HB] to the amount of $1.4 M and for the house of Barrett & Co. which has suspended payment in connexion with [HB], to a farther amount of about $0.6 M; but as will be seen by the letters which we annex [from March 9th], there is almost a certainty that both the New Orleans houses will be sustained, and that of [JLSJ], of course, be relieved from all embarrassment. Indeed, after the arrival of the express mail yesterday afternoon, they had determined to resume payments immediately, and we so announced in our 5 o'clock edition; but at 6 o'clock, acting under the advice of their friends among the principal merchants of the city, who had held a meeting with them in the morning, they concluded to wait until Mon, when it is confidently expected that intelligence will be received, of the completion of the arrangements mentioned in the subjoined letter of Messrs. Barrett & Co. We are sincerely rejoiced at the cheering prospect thus assumed by the event of yesterday, knowing how deep and general was the anxiety it occasioned. We had abundant evidence of this, not only in the fact that it was almost the only topic of conversation through the day, but also in the eagerness with which our successive editions were called for, and the satisfaction created by our last, issued at 5 o'clock, it) which the intention of [JLSJ] to resume payments was announced.*" (New York Spectator, 1837).

708 "*A verbal rumor, however, asserts that the news of the failure of the Josephs and the Hermanns reached London on the evening of our last advices, and created a general panic. There must be a shaking there when the full extent of our disasters is made known… The merchants of Liverpool and other cities, have petitioned the Government to issue Exchequer bills on the pledge of the cotton, and other imported or manufactured goods they now hold, in order to save them from the most ruinous No answer has yet been given. Doubt and hesitation everywhere prevailed. In this predicament, we can readily judge with what astounding effect the news of the failure of the Josephs, the Hermanns, the Barretts, &c. of this country will fall upon the public ear. We believe that, before this time, most of the joint stock banks as well as the American houses have fallen, and that [BOE] has suspended specie payment.*" (New Yorker, 1837)

709 "*The expansion in England had reached its limit and there was a reaction with a decline in demand for cotton. With the fall in the price of cotton, the whole cotton producing region was prostrated and could not pay for the supplies it had drawn from the Northeast. At the same time the credit which had been enjoyed in England by northern merchants and bankers was lost and payment was demanded. This overthrew the 'credit system' here, and everything which depended on it. The latter revulsion fell upon the commercial and financial centers directly. Some writers on the events laid stress upon one of these sets of circumstances; others on the other. During the month of March the failures followed rapidly. On the 28th a committee of New York bankers turned to Biddle for help. He went to New York, where an agreement was made that the New York banks should increase their discounts $1.5 M; that [SBUS] should issue bonds payable in London for $5 M and send specie to the amount of $1 M; the Manhattan Co was to issue bonds, half payable here and half in London, for $2 M; the Bank of America was to draw on Rothschild for [$0.2 M] and the Girard Bank to issue bonds payable in London for [$0.5 M] and [MCBC] for $1 [M, see* Niles, 1837, p81*]. These bonds were sold for the bills receivable of the merchants at [112.5], and were sold by the*

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merchants for current paper at 109, specie being at 7%, premium. Exchange was at [111.25 -112]. The shares of the Bank were at 119 or 120. The bonds were made payable at the Barings. Biddle made the reservation that he must submit the exportation of specie to his Board of Directors. Issuing bonds under such circumstances is a transaction which may have very different phases and significance. It may be that a great and strong institution puts its credit in the place of that of a solvent debtor who can give proper security to the Bank near at hand which he could not give to his creditor at a distance. Under other circumstances a weak and rotten bank issues post-notes to insolvent debtors, pretendedly for their relief, but it is really making use of their distress to borrow from them, or to borrow else where on their security, thus driving them down to lower depths of bankruptcy. In the case now before us [SBUS] was supposed to be acting on the former principle. This was only partly true, and in the next 2 years that Bank gradually went over to the second use of post-notes. The great banks of the Southwest fully illustrated the second use of these instruments. The Bank held a great amount of securities which were not immediately available and others which had fallen in value. It did not want to sell them. Hence, while borrowing by its post-notes, it was speculating in these securities. Although its margin on the bills receivable which it had taken from the merchants was wide, yet it really took a risk on the liquidation of the debt owed by Americans in England. When it began to buy cotton it engaged in a gigantic speculation in that staple, embracing the whole crop. These hazards all went against it more or less, and all became more and more complicated... The whole cotton region, however, seemed to be prostrated... At New Orleans all but 4 or 5 of the principal cotton factors had failed. The planters depended on them for the advances by which they made their improvements and bought their supplies in anticipation of the crop. A correspondent, in April, said: 'It can no longer be concealed that the commercial community of New Orleans is altogether in a complete state of bankruptcy or suspension.. [25%] of our bank directors have become insolvent or suspended payment, there being now but 4 or 5 large commission establishments left as the pillars of the once prosperous commerce of this city... Including the responsibilities of the cotton planters, the amount may be $100 M; but taking into consideration the amount due on land or real estate speculation, the actual indebtedness of New Orleans may be estimated at $180 M.' A New Orleans newspaper declared that 'the monopoly of the cotton staple has fallen by its own weight. There will not be a house left to tell the tale.' It expressed the oft-repeated but as yet never-fulfilled hope that the rising generation would profit by the lesson. At the same time a Mobile newspaper said: 'There is a little trade to be seen going on here and there, but it is mournful even to look upon that, as it leads to comparison. Where [90%] of the merchants of a city, which until recently flourished and prospered beyond all others of its population, have suspended payment, it is enough to despond the stoutest heart." (Sumner, 1896).

710 SBUS' "*original charter prohibited the Bank from purchasing stock in private corporations, but in June of 1836, the charter was amended to allow the Bank to purchase the stock of other banks. In 1836 and 1837, the bank acquired a controlling or substantial interests in the Merchant's Bank of New Orleans, the Insurance Bank of Columbus Georgia, a one quarter interest in [MCBC], as well as interests in many other banks and transportation companies… In April of 1836, the Morris Bank was approached by Thomas Biddle and Co (Thomas was Nicholas's brother) in the matter of purchasing 3,000 shares of Morris stock. The sale was approved (the BUSP would eventually acquire a 25% stake in the company, whether this was the stock purchased originally by Thomas Biddle is not clear.) In the months that followed Thomas Biddle suggested a scheme in which the bank acquired Indiana bonds (on credit), paid for them with post note issues and bills drawn on London, and then remitted the bonds to London to cover the bank's obligations in Europe. From the very inception of the plan, the Morris Bank intended to use Indiana bonds to settle other obligations of the bank, not to market the bonds to the public. By 1837 and 1838, the banks minutes show the Bank had become a high-flying investment bank, staying one step ahead of its creditors only by issuing more of its own debt in the form of post-notes (similar to the BUSP).*" (Wallis, 2002).

711 "*By the time... of the Hermann failure in late April, the banks in New Orleans had failed to organize a collective response to the panic for almost 2 months. With 16 banks, each with approximately 10 board members, more than 100 men with their own pressing concerns had to agree to risky actions. The boards of individual institutions such as the Citizens' Bank of Louisiana could not decide on an appropriate response to what one correspondent described as 'the merchants' dreadful times.' Although several banks agreed to lenient terms for the businesses of the Hermann family, 'an early and a satisfactory adjustment' involving all of the banks in New Orleans never materialized. After opting out of the collective plan to support the Hermanns, the directors of the Citizens' Bank reluctantly granted the failed firms extended time to pay back several loans. 2 of the 11 directors voted against this policy and preserved in the minutes their right to 'record their reason for so doing.*'" (Lepler, 2013). "*In connection with [JLSJ], we were favored with a sight of a letter, from Charleston by yesterday's Express Mail, stating that Mr. Levy, the agent of the Josephs in that city, had, by his negotiations, involved 2 or 3 heavy houses in King street, and had drawn largely upon 2 banks. He has nothing to show for his liabilities. The amount of the whole transactions is nearly [$0.5 M]. Strong suspicions are entertained that the Rothschilds are not the backers to the Josephs. Such is the substance of this letter, to a gentleman standing high in the commercial world at New Orleans. Every reliance may placed upon the information… The mail failed to bring us dates direct from New York to the 23d March. But every appearance leads us to believe that the josephs have not resumed payment. Whether they will resume, is a question that must be settled satisfactorily by the next mail at furthest. Meantime money is exceedingly scarce in this city. Nor will it become plentiful till the Banks discount good paper to meet the business wants of the community. There is great trembling amid uncertainty among dealers. Another great house went by the boards today; for what amount we have not yet heard. Every thing is so involved in mist and secrecy in New Orleans, that it is almost impossible to get at correct information. The time must come and that too rapidly, that business, (not negotiations for business) must be done openly and above board. We want a bankrupt law that will draw the dividing line firmly and strongly between the solvent citizen and the insolvent one. We want a law made to bring the banks to their senses and to make them adhere to charters strictly and without fear or favor.*" (New York Herald, 1837).

712 By April 11th, 128 firms shuttered (Niles, 1837); and on April 18th, the *New York Herald* noted, "*The want of a general bankrupt law, is now awfully felt. The recent failures will lock up [$1 M] of property, and tie up the heads of a 1,000 persons. A general bankrupt law would settle these affairs in a few months. During the last winter, we proposed to Congress the subject of a bankrupt law. They were, however, too busy abusing each other, and could not attend to it.*"; by May 2nd, there was scandal at the Mechanics Bank, a major Wall Street pet bank, and "*the Panic quickly spread to note holders of other banks, triggering a 'general run' on all of the banks in [NYC]. The Commercial Advertiser estimates that [$0.6 M] of specie were withdrawn on the 8th and [$0.7 M] on the 9th*" (Liang, 2017). "*On… May 2, the New York Herald printed rumors that the investigation had discovered a scandal. According to this article, 'before the present revulsion took place,' Mechanics Bank president John Flemming had agreed to a*

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proposition offered by Bullock, Lyman & Co., a Wall Street brokerage house: 'you permit us to draw checks against you for [$0.3 M], alternatively to be placed in the Dry Dock [Bank] and Mechanics Bank, we paying the interest daily.' The broker's cashier would confirm in later testimony that this arrangement was called 'kiting, or kite flying.' Like the kited bills of exchange drawn between firms in the Hermann network, this deal between bankers and brokers also involved artificial supplies of credit." (Lepler, 2013).

713 By April 15th, "*In New Orleans, times are no better, and large additional failures have taken place, notwithstanding the arrangements for meeting the liabilities of the great house of [HB] have been perfected. The Banks can do nothing, being deeply involved in these failures. Some of them have agreed to renew all paper falling due, so long as 10% is paid every 60 days, and this seems a pretty general course at the South.*" (New Yorker, 1837). "*At the time the Crisis occurred the bank held a large amount of discounted notes, and many were on protest. Payment on these notes could not be met at maturity date; therefore, the notes were renewed and there was no set policy at first cm the renewals. The bank simply operated under a makeshift arrangement, trying to cope with individual cases as the Immediate circumstances seemed to dictate. For the most part the commercial paper held was extended in maturity, provided additional security was given and/or the paper was accepted at a lower percentage than previously discounted. No new paper was discounted during 1837 and 1838, however, simply because the bank did not possess the adequate means to extend new credit.*" (Grenier, 1942).

714 "*The Rothschilds hoped to avoid financial trouble by capitalizing on the timely arrival of their agent. Belmont's New York stop began as an afterthought, but the Rothschilds found themselves relying on him to 'recover' their assets… Instead of dunning the Rothschilds' debtors and moving on to Cuba, Belmont decided to stay in New York. He found it impolitic to follow the Rothschilds' directives to appeal to the bankruptcy laws because, as he explained to them, 'The laws of this country with regard to bankruptcy are so vague, enabling bankrupts to turn to various faculties that presently it seems not advisable to appeal to the law, as every foreigner who has got a claim, is considered to be an enemy of the country.' Nativism combined with a lack of a national bankruptcy law left Belmont unable to follow orders; his 'stupid' behavior was not entirely his fault.*" (Lepler, 2013).

715 "*Bill of exchange, [BOE] vs. Samuel Hermann & Son, docket no. 19999, original suit records, First Judicial District Court (Orleans Parish)... (Louisiana Division/City Archives, New Orleans Public Library, New Orleans, LA).*" (Lepler, 2013).

716 "*No man in America need starve. Let him travel Westward, and his labor will not only furnish him with food, but enable him in a very short time to buy land and become a farmer. People have no anxiety for the morrow! Boys of 16, with the most perfect confidence in their own resources, marry wives, migrate a thousand miles into the Wilderness, pitch their cabins, clear a patch of land, and subsist until their first crop is ready by their rifles, hunting in their own forest. I dislike the country, I dislike the people, their morals, and their manners, but were I a poor English laborer I would emigrate to America tomorrow! There is an extreme laxity in the laws throughout America, with respect to enforcing payment of debts. In every State the laws are different, and there are so many facilities for evading payment, that legal proceedings are rarely had recourse to. There are no bankrupt laws. It is common for a debtor to pay some of his creditors and leave others unpaid; and debts of preference are constantly spoken of and recognized, although they presuppose what in England the law stigmatizes as fraud and dishonesty. In the New England States the law is better, but in the South enforcing a debt is a 2 years process. There have been several attempts made to introduce a Bankrupt law in America, but as yet unsuccessfully; and this quiet resistance to the introduction of common fairness in mercantile law, seems to argue a low standard of commercial honesty.*" (Biggs, 1925, p9).

717 Even the Suffolk system suspended: "*all New England banks suspended specie redemption of their banknotes and many bankruptcies followed. A year later, surviving New England banks resumed specie redemption.*" (Seavoy, 2013). The system could not keep up with the growth in banks after SBUS.

718 The Panic was "a*ccompanied by some 600 bank failures — a 'slackening and depression; many failures; unemployment; complete collapse of the cotton market...and commodity price decline'*" (Bordo and Wheelock, 1998). "*[B]anks throughout the United States suspended specie payments, in most States until the summer of 1838.*" (Wallis, 2002). "*And without additional credit American finance could no longer sustain the artificial fabric of fraudulent prosperity. Values must be deflated; real as well as paper well destroyed; thousands turned bankrupt and rendered property-less; a few made richer or wiser; and intolerable burdens of debt and capitalization incurred at high money prices absorbed at lower levels before it was possible for the development of the United States to continue*" (Jenks, 1938 cited in Wallis, 2002). Illinois mistimed starting "*State Bank was incorporated in 1835 and $2 M of the capital subscribed by the State was paid by the issue of bonds, which were taken by the bank at par. Assistance was also given to the Bank of Illinois at Shawneetown, but both banks collapsed in 1842 and the State was saved from much actual loss by the surrender by the banks of the State stock, which was burned in the Capital Square at Springfield in the presence of the legislature.*" (Conant, 1915).

719 Differences in inter-State banking regulation, structure, and potential for coordination determined convertibility and bank failure rates; States with conditions fostering system-wide suspension of convertibility of banknotes saw fewer early failures while "*Other States typically had fewer suspensions, less uniformity among banks in the decision to suspend, and a higher incidence of bank failure*" (Calomiris & Gorton, 1991).

720 JLSJ to N M Rothschild & Sons, 29 Sep 1837 (Rothschild Archive, XI/38/159B/221). The firm's assets were primarily open accounts (44%, of which 72% were due from New Orleans houses), bank stocks (30%), and bills (20%); these were primarily financed using bills (77% of assets) and positive equity of $0.54 M surplus assets (8% of assets).

721 "*When J. L. Joseph filed for bankruptcy protection in 1842, his firm had failed to pay millions of dollars to creditors from Paris to Havana.*" (Lepler, 2013). (Case-file 1210 on from Entry 117, Bankruptcy Records, Act of 1841, United States District Court for the Southern Federal District of New York.).

722 "*In the mean time, it is our duty to provide all the remedies against a depreciated paper currency which the Constitution enables us to afford. [UST], on several former occasions, has suggested the propriety and importance of a uniform law concerning bankruptcies of corporations, and other bankers. Through the instrumentality of such a law, a salutary check may doubt less be imposed on the issues of paper money, and an effectual remedy given to the citizen in a way at once equal in all parts of the Union, and fully authorized by the Constitution.*" (GPO, 1837).

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723 Senator Webster (W-MA) saw this as a perversion: "*How do the President's suggestions conform to his notions of the Constitution? The object of bankrupt laws, sir. has no relation to currency. It is simply to distribute the effects of insolvent debtors among their creditors; and I must say, it strikes me that it would be a great perversion of the power conferred on Congress, to exercise it upon corporations and bankers, with the leading and primary object of remedying a depreciated paper currency. And this appears the more extraordinary, inasmuch as the President is of opinion that the general subject of the currency is not within our province. Bankruptcy, in its common and just meaning, is within our province. Currency, says the Message, is not. But we have a bankruptcy power in the Constitution, and we will use this power, not for bankruptcy, indeed, but for currency. This, I confess, sir, appears to me to be the short statement of the matter. I would not do the Message, or its author, any intentional injustice, nor create any apparent where there was not a real inconsistency; but I declare, in all sincerity, that I cannot reconcile the proposed use of the bankrupt power with those opinions of the Message, which respect the authority of Congress over the currency of the country*." (GPO, 1837).

724 "*[In 1836,] hostility to any new national bank unified all Democrats… The less numerous but more radical group, epitomized by Senator Thomas Hart Benton of Missouri and the Locofoco contingent of New York City Democrats, [reframed the debate and] advocated a complete 'divorce' of the national government from dealings with all banks in an effort to promote hard money.* "(Hummel, 1999). Senator Benton (D-MO) argued in support of ITS: "*We have been told that the terms divorce of Bank and State, as reminding the people of the divorce of church and State… I firmly believe that the union of bank and State would soon prove as fatal to liberty as the union of church and State; but, let me ask, are not the terms used upon the other side —one currency for the people, and another for the Government, and the terms separating the Government from the people, mere popular catchwords, which will not bear, as we have seen, the slightest examination. It is said this bill will destroy credit, by impairing confidence in banks. Have not we had too much confidence in banks, and have they not proved the greatest and universal destroyers of all credit and all confidence?... by their expansions, contractions, and failures, destroyed all confidence and all credit, not only in themselves, but also between man and man... It is the banks that render prices, confidence, and credit, fluctuating and uncertain; and, before their existence, the page of history tells that confidence and credit, between man and man, were infinitely more universal, and that protest of bills of exchange and mercantile failures were then almost wholly unknown. Specie was not hoarded, nor credit withheld from honest industry, but universally extended, unchecked by that overthrow of all confidence and all credit, arising from of the expansions, contractions, and explosion of the bank paper system. and We are told that confidence, confidence, is the magic word, and the Government has only to breathe into these banks the breath of confidence, and all will be well. Sir, if these banks, limited and restrained by the State Legislatures, ought to be continued, I would rather, by the ultimate incidental operation of this bill, push a little more of their paper out of circulation, and much more specie into the vaults, than all the false and delusive confidence that could be excited by the Government endorsement of [823] suspended State banks*." (Miller, 1913).

725 "*The first of these was reported by a select committee in March 1837, but no further action was taken. The next year Mr. Garland of Louisiana presented an amendment prohibiting State incorporated banks from issuing and circulating notes of the same or of a lower denomination than the highest denomination of the coins of the United States. [Senator Buchann of Pennsylvania], in 1840... proposed a resolution that a select committee be appointed to inquire into the expediency of an amendment to prohibit the circulation of bank paper under the authority of the several States. The resolution was considered and the committee was appointed, but there is no further record of their actions. These amendments were simply an incident connected with the crisis of 1837. Owing to the favor in which State banks were held, especially in the West and South, it would have been impossible to have secured an amendment, even if Congress had recommended one*." (Ames, 1897).

726 In "*Illinois, Mississippi, Arkansas and Florida, after the collapse of 1837, no banks were again created up to 1850, and the 3 last named are still without them [in 1860], with the exception of 2 small ones in Florida. Texas has a small bank at Galveston, and Utah, Oregon, and New Mexico have none. In [D.C.] 4 old banks expired by limitation of charter in the hands of trustees, and Congress refused to recharter them; but they continue to transact business*." (Kennedy, 1862).

727 "*The severe losses the public had suffered made some more comprehensive guarantee necessary to a full restoration of confidence in bank paper. In New York, in 1838, a new principle had been adopted that of requiring the banks to deposit security for their circulating notes and holding stockholders liable to an amount equal to the value of their shares. On this basis the banking of New York was thenceforth to operate; and the principle, as, its value became recognized, was gradually adopted in other States… it required constant alterations for many years to bring it to perfection*." (Kennedy, 1866). Although State governments had regulated banks since Independence, legislative issuance of bank charters on a case-by-case basis was subject to corruption. Free banking, by contrast, granted a charter to any applicant subject to paperwork and capitalization requirements. In his report for 1849, New York Comptroller Hon. Fillmore described the circumstances which led to the passage of the general incorporation law for banks: "*The practice of granting exclusive privileges to particular individuals invited competition for these legislative favors. They were soon regarded as a part of the spoils belonging to the victorious party and were dealt out as rewards for partisan services. This practise became so shameless and corrupt that it could be endured no longer and in 1838, the legislature sought a remedy in the general banking law*." (quoted in Barnett, 1902). According to Cohen-Mitchell (1998): "*Any citizen could incorporate a bank under a State's general incorporation laws and issue redeemable notes that could circulate as money. The States required only that the notes be backed by municipal bonds, which had to be purchased prior to a bank's issuing its own notes. This ensured that bankers seeking incorporation were sufficiently capitalized and would not issue more notes than they could redeem.*" In March 1837 the two-year old State of Michigan passed an Act to organize and regulate banking associations (amended in Dec).

728 "*The panic of 1837 put the safety fund to its first test and compelled the State Comptroller to make heavy payments in the redemption of circulating notes. 3 important banks in Buffalo failed early in May, 1837, with a reported circulation of $414 [K]. The Comptroller announced that their bills would be received in payment of canal tolls and other debts to the State and they were maintained substantially at par... [New York's Safety Fund] modified by the Act of May 8, 1837, to enable the State authorities to take such measures as might be necessary for the immediate payment of the notes of any insolvent bank whose liabilities in excess of assets should not exceed two-thirds of the bank fund... The charters of two banks were repealed by the Legislature in 1837 and their notes redeemed by the State, but one of these charters was renewed and the payments from the safety fund were reimbursed*." (Conant, 1915). "*The New York insurance system successfully met the test in 1837—owing in part to an amendment to the law [in 1837]... to permit the State*

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Comptroller to make immediate payment out of the fund to holders of the notes of failed banks so that they no longer had to wait until liquidation of assets was completed... By following this procedure the Comptroller was able to restore the credit and facilitate the reopening of 4 of 5 distressed banks in 1837." (Golembe, 1960).

729 While debating the ITS, Webster noted that "*our paper circulation is one-half less than that of England, but our bank debt is, nevertheless, much greater*" because BOE loans out its own capital to banks, while in the United States "*an amount of capital, supposed to be sufficient to sustain the credit of the paper and secure the public against loss, 'is provided by law, in the act of incorporation for each bank, and is assigned as a trust-fund for the payment of the liabilities of the bank. And if this capital be fairly and substantially advanced, it is a proper security; and in most cases, no doubt, it is substantially advanced. The directors are trustees of this fund, and they are liable, both civilly and criminally, for mismanagement, embezzlement, or breach of trust...it is evident that the directors are agents, holding a fund intended to be loaned, and acting between lender and borrower; and this form of loan has been found exceedingly convenient and useful in the country.*" (Webster, 1838).

730 "*By 1836, State bonds were the only long-term American debt instrument traded in Britain. The United States federal government retired all its debt in 1835. The single American corporation whose stock traded regularly in London was [SBUS], which lost its national charter in 1836.*" (Kim and Wallis, 2004).

731 "*Prior to losing its national charter in 1836, [SBUS] had been a conservative, responsible, commercial bank… After obtaining a new charter from Pennsylvania, the bank lost none of its reputation for probity. This put Biddle and the BUSP in an enviable position between the Panic in May and the fall of 1837. London bankers still accepted BUSP obligations at par… [BUSP acquired stakes] and interests in many other banks and transportation companies]… By 1837 and 1838, [both BUSP and MCBC started relying on short-term post-note financing and by 1839 were no longer commercial, but investment banks focused on cotton arbitrage].*" (Wallis, 2002). "*Indiana, Illinois, and Michigan all sold bonds on credit to eastern investment banks. These new States issued bonds for which they were liable for interest payments immediately, but for which they would receive payments only in installments.*" (Kim and Wallis, 2004). By Dec 1840, BUSP held stock in over 50 bank, turnpike, canal, and railroad companies (GPO, 1856, p454).

732 "*The continuous rise in the price of cotton throughout 1836, however, was a major factor which enabled the New Orleans banks to remain open during that year and the early part of 1837. Another reason why there was not a precipitous downfall as might have been expected was that the local banks, Including the Consolidated Association, were heavily Indebted to the New Orleans branch of [SBUS] and later to [BUSP] and other Eastern banks, which were actively engaged in maintaining high prices in cotton.*" (Grenier, 1942).

733 "*Under the authority granted in this article of the constitution, the legislature established a central bank with several branches, and laid the foundation of the State debt. In pursuance of a series of acts dating from 1823 to 1826 the State became possessed of bank stock to the amount of $8 M... The greater part of the expenses of the State was paid by the earnings of her stock, most of her direct taxes being abolished in 1836. But during the financial convulsion of 1837 they became involved in financial difficulties, and suspended specie payments. A special session of the legislature was called to afford relief, and, among other measures, an act was passed making the bills of the bank receivable for dues of the State.*" (Scott, 1893).

734 "*In the 1839 case of Bank of Augusta v. Earle, a Georgia corporation sued to collect a bill of exchange made and sold in Alabama by the defendant to the corporation's agent. The defendant argued that the contract of purchase was void because the plaintiff, as a Georgia corporation, could not act in Alabama. By this time, corporations were dealing extensively across state lines, and the case put in question the validity of a large number of contracts. Despite this persuasive fact, a decision in favor of the corporation was difficult to reach because of the territorial and fiction ideas. How could creatures of state law act beyond the borders of the states which created them? Chief Justice Taney accepted both ideas and wrote for the Court that 'a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created' because 'it exists only in contemplation of law, and by force of the law; and where that law ceases to operate and is no longer obligatory, the corporation can have no existence.' But the Chief Justice found a solution in the doctrine of comity and held that states are presumed, as a purely 'voluntary' matter, to allow foreign corporations to make and enforce local contracts. The Court also dealt with the argument that the corporation was entitled to protection under the privileges and immunities clause of the Constitution and held that corporations were not within the shelter of that provision. A contrary result would have radically changed-if not ended-the evolution of foreign corporation laws; such a Constitutional holding would have eliminated further development toward a principle of conditional entry. But the protection was denied on terms not directly related to the presumption of voluntary admission, so there was little effect on the principle.*" (Walker, 1968).

735 "*Cotton prices peaked in May and declined sharply over the summer... In July 1839, [MCBC] informed Indiana that it would not be able to meet its installment payments. In Aug 1839, Indiana stopped construction on its canals and railroads. It was immediately apparent that Indiana would have great difficulty servicing its bonds without further loans... [MCBC] also defaulted on Michigan. By early 1840, Michigan stopped construction on its projects... Although Illinois continued to work on some of its projects into 1841, by 1840 construction had stopped throughout most of the State... [Indiana] tried to stave off default by raising taxes, but in Jan of 1841 the State went into default. The State continued to pay interest out of the installments paid by the BUSP, until the BUSP went out of business permanently in Feb of 1841 [after the State of Pennsylvania forced it to resume specie payments], at which point Michigan defaulted Construction stopped in these States because eastern investment banks defaulted on already issued bonds, not because the States could not issue new bonds... Construction stopped in Aug of 1839 solely because [MCBC] defaulted on its obligations to the State. Land values fell because canal construction stopped, and the State was forced to default because land values fell... Unlike 1837, when interest rates had been high for an entire year before the crisis, credit conditions in 1839 tightened only as the banking crisis developed. The BUSP suspended specie payment on Oct 9, 1839. Since banks in New York and New England did not, in general, suspend specie payments in Oct of 1839, the price of 60 day bills on London stayed close to par... [While,] there was no international payments crisis... banks throughout the rest of the country... suspended convertibility in 1839, and many continued their suspension into 1843.*" (Wallis, 2002).

736 One law held "*That no person shall be imprisoned for debt in any State, on process issuing out of a court of the United States, where by the laws of such State, imprisonment for debt has been abolished; and where by the laws of a State, imprisonment for debt shall be allowed, under certain conditions and restrictions, the same conditions and restrictions shall be applicable to the process issuing out of the courts of the United States; and the same proceedings*

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shall be had therein, as are adopted in the courts of such State." Congress amended DPRA in 1837, '39, '40, '41, and '43. "*Connecticut followed in 1837, Louisiana in 1840, Missouri in 1845, and Alabama in 1848.*" (McMaster, 1903). "*All 6 Southern colonies Maryland, Virginia, Delaware, the 2 Carolinas, and Georgia modified the creditor's right to imprison his defaulting debtor, but Georgia granted jail delivery only belatedly and temporarily. After Independence, all 6 States carried the process of modification to its logical conclusion the abolition of the debtors' prison but the first state did not do so until 1841 and the trend was not complete until more than a generation later, in 1873. Thus abolition began later than in the North, though some northern states were also late corners to reform and some never formally abandoned the imprisonment principle.*" (Coleman, 1974).

737 "*In the traditional accounts of labor in the Old South, slavery has been treated as the sole form of compulsory labor in operation in the ante-bellum slave states. This widely held view ignores the very considerable amount of white servitude that was perpetuated in the states clinging to the institution of slavery. A very good illustration is Delaware, a borderland slave state which failed to abolish that institution before the Civil War. Since Negro labor was insufficient to supply the demand for farm hands in Delaware, both white and Negro peonage demonstrated a degree of persistence perhaps unequaled in the remaining original states. On reflection, the presence of Negro peonage in Delaware should cause no great surprise, for, while the momentum toward freedom for the Negro was much more perceptible there than in Maryland, the mobility of the free person of color was seriously circumscribed... [In Delaware,] During the first few decades of the 19th century white debtors still took advantage of the insolvency laws, which authorized servitude as a legal alternative to imprisonment... A 7-year time limit on the servitude into which debtors might be sold was found in the colonial act [of 1739 & 1797], but no limit for ordinary debtors was included in the law of 1808. [In 1827, Delaware modified the Act:] '...shall be remanded unless he shall in writing under his hand endorsed on his petition declare his consent... but this consent shall not be required from any female nor from any white man.' Under the operation of this law numerous instances of debt servitude by Negro males arose. Fathers sold sons into servitude to satisfy their creditor.*" (Morris, 1950). "*The substitution of indentured servitude for imprisonment, a common 18th century jail-delivery practice in the Middle Atlantic and New England colonies, was the exception rather than the rule in the South. Again, Delaware was an exception. In the colonial period it began requiring that defaulters work off their debts, it retained the practice in the 19th century, and in 1827 it turned servitude for debt into a peonage system directed against blacks. In common with some northern states, some southern legislatures first abolished the imprisonment of female debtors, only later extending the protection to males, but only Delaware copied the common northern practice of initially abolishing the imprisonment of Revolutionary veterans and petty debtors. However, the southern view of imprisonment as a punishment for defaulting lingered into the 19th century in much the same way that it did in the North and helps to explain the reluctance to abolish the debtors' prison. Partly because of the lack of economic diversification in the South and the resulting dependence on single-crop staples and distant markets, legislatures proved unusually prone to enact temporary relief measures, especially stay, valuation, and commodity laws...*" (Coleman, 1999).

738 Although the proximate cause of *Panic of 1839* was domestic, Van Buren framed it as international and compared it to the *Revolution*: "*[Van Buren's refusal to abandon the goal of divorce ultimately paid off as the political tide turned in late 1839. When a second suspension of specie payments spread to half the country's banks that Oct, it seemed to verify the administration's suspicion of State depositories. The Democrats managed to retain control of both houses of the 26th Congress, which met for its first session in Dec. The president's annual message renewed the call for an Independent Treasury, reinforcing it with new arguments... that only divorce could free the U.S. economy from 'this chain of dependence' on credit flows of 'the money power in Great Britain' ... Senator Wright again introduced a divorce bill in the Senate, this version including both special subtreasuries to hold government funds and Calhoun's specie requirement for receiving payments. The bill sailed through the Senate at the end of Jan 1840, but the House, experiencing more than its usual disorder and delay over disputed seats and choice of speaker, did not pass the measure until June. Van Buren waited until July 4, 1840, to sign the law, symbolically confirming the words of the Washington Globe, the administration mouthpiece, which nearly 3 years earlier had hailed the [ITS] as 'the second declaration of independence.'*" (Hummel, 1999).

739 "*The bank on [March 2, 1840], gave Thomas E. Davis a letter of credit… for which sum Davis was to draw bills on the Palmers at ninety days' sight, which were to be covered by him at maturity; with the right of renewal in a certain event. Davis drew the bills, and they were accepted by the Palmers: they were twice renewed, and the third set was running at the time the trust deed was executed. The bank was not then a debtor to Palmers Co. on account of this transaction; but was under a contingent liability which would make it a debtor in case the bills should not be provided for by Davis at maturity… the notes are illegal and void. They were issued in direct violation of a statute, which provides, that 'no banking association' 'shall issue or put in circulation any bill or note of said association,' 'unless the same shall be made payable on demand, and without interest;' and every violation of the section by any officer or member of a banking association is made a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (Statutes of 1840, p306, §4) The notes were not made payable 'on demand,' nor 'without interest;' but had a year to run, and were then payable with interest. It is said on the part of the defendants, that the prohibition only applies to bills and notes which are capable of circulating as money. But the statute contains no such qualification… the fact that such paper may enter into the currency of the country is matter of history. Witness the post notes of the late [SBUS], and the negotiable notes and bills of some of our own banks, which followed, though on a more humble scale, both the frauds and the bankruptcy of the national institution. The issuing of such paper belongs to mercantile and commercial transactions; and not to the business of banking. Experience has shown that the banks which engage in such enterprises are rotten, and sooner or later will end in defrauding the community. In addition to [NAT], several others of the general law banks had been engaged in issuing such paper before the act of 1840 was passed; and such of those institutions as had not already failed, were soon afterwards in a state of bankruptcy. Great frauds upon the public had been committed. The legislature saw the evil; and evidently intended to cover the whole ground, by using the most general and comprehensive terms: 'No banking association shall issue or put in circulation any bill or note,' unless, c. There had long been a similar statute in relation to the safety fund banks; (Stat. 1829, p178, §35); and the act of 1840 was passed to extend the express prohibition to the general law banks, which had come into existence at a later period.*" (Leavitt v. Palmer (3 N.Y. 19 [1849])). "*The suit was begun 15 years ago [in 1842], and involved no less than [$2 M]. It grew out of certain trust deeds made by [NAT], previous to its failure, to Richard M. Blatchford and others, trustees, to secure a large indebtedness, principally due to Palmers, McKillop, Dent & Co., of London, and [BUSP] and Girard Bank, in Philadelphia.*" (The Bankers Magazine, 1857).

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740 "*The Bank, when it failed, had 8 agencies outside of Pennsylvania and 3 offices in that State. The number of stockholders in Europe and elsewhere abroad was 1,390; in Pennsylvania, 1,481; in the United States, outside of Pennsylvania, 1,658. Out of $35 M capital, $27 M were held abroad, $6 M in New York, and $2 M in Philadelphia. The number of persons owning five shares or less was 864; between five and ten, 661; between ten and twenty, 732; between twenty and fifty, 994; between fifty and one hundred, 588; between one hundred and five hundred, 614; over five hundred, 80. A great amount was held on the islands of Guernsey and Jersey. It was equal to 3 or 4 pounds per head of the population.*" (Sumner, 1896)

741 "*Our hopes of its passage strengths daily, notwithstanding the disposition of several Senators to consider any such law which shall take cognizance of preexisting contracts and liabilities as unconstitutional… Congress does not abolish debts (as is vulgarly supposed) in enacting a Bankrupt Law, but simply abolishes certain remedies for the collection of the debts of insolvents... The prostate interests, the paralyzed energies of the Country urgently demand this law should take effect upon past as well as future contracts"* (July 17); "*The proposition to include Corporations will not prevail... on account of the difficulty of shaping the provisions so as to reach them. The law says a bankrupt shall be cited before a judge, shall be required to make certain oaths, which a Corporation could not do, except by proxy. Our own opinion is that a process of compulsory Bankruptcy against non-paying Corporations would exert a salutary influence on the Currency and Business of the Country; but it seems evident that a distinct act, or at least distinct provisions of the act, will be required to effect this end.*" (July 31); "*The whole business of insolvency has been a rouge's lottery from beginning to end. It cannot be made worse; it must, it will be made better by the General Bankrupt Law. The infamous 'confidential system' will be broken up. The compromise iniquity goes with it... We firmly believe that had this law been in force since 1837, it would have saved [$50 M] to creditors of the City, and added twice as much to the wealth of the Country from the earnings of men crippled and paralyzed by Bankruptcy*" (Aug 28).

742 "*The law which authorized the imprisonment of non-resident debtors against whom no fraud was alleged, was repealed at the last session upon the ground that the practice operated injuriously to trade, and was inconsistent with the benign spirit of our code. That remains now only one relic of that usage in this State. Imprisonment for debt is allowed in actions brought in the federal courts; and by the laws of this State, our jails are designed only for the custtvidy of criminals, are permitted to be used as prisons for the confinement of debtors under process issued, by the authority of the United Stats. If you shall be of the option that no principle of the Federal Union requires us to extend our courtesy so far, we shall no longer be witness to the imprisonment of honest, but unfortunate debtors, with the sanction of this State... The Legislature at its last session, communicated to our representatives the opinion that Congress was imperatively required to exercise its constitutional power of passing uniform laws on the subject of bankruptcy.*" (Seward, 1841).

743 "*The Whig program under the leadership of Clay at this time was to put through three great measures — a bill for the distribution of Government lands and their proceeds, a bill for preservation of the protective tariff revenues, and a bill for a National Fiscal Bank and the over-riding of President Tyler's veto of it. A subsidiary of this program was the passage of the Bankrupt Bill. No one of these measures had the same body of supporters; but each could possibly be carried by a promise of votes for the other three. Tyler's veto had arrived in the Senate on Aug 16, 1841, and had been greeted by hisses in the gallery. On the next day (the day when the House had rejected the Bankrupt Bill), the Senate moved to lay aside the veto of the Fiscal Bank bill and take up the Distribution Bill. Meanwhile, in the House on the next morning after the Bankrupt Bill's defeat, reconsideration of the vote was moved, a call of the House was ordered, the doors and windows of the Hall were closed, the names of absentees were again called, excuses were received, and most of the absentees presented themselves at the door; whereupon, the motion to reconsider was carried by a vote of 168 to 98, and the Bankrupt Bill was taken up from the table and passed by a vote of 110 to 106 — almost exactly the reverse of the opposite vote of the previous day (110 to 97)... The House bill arrived in the Senate on Aug 18, in the midst of a debate on the motion to postpone consideration of the Fiscal Bank veto. Lewis F. Linn of Missouri said he understood that the Bankrupt Bill had been forced through in the House by a majority of 5 votes, while 'many of its Whig opponents were dodging behind columns' to escape voting. 'This is the measure', said William R. King of Alabama, 'which is to hurry this Land Distribution Bill to its final passage without amendment or debate; when the Bankrupt Bill was laid on the table yesterday in the House, the Distribution Bill could not by any possibility be passed in this Senate; the Distribution Bill is the price of the Bankrupt Law; the screws have been put on. I have never seen legislation so openly and shamefully disgraced by a system of bargain and sale.' Robert J. Walker of Mississippi then moved to lay the Distribution Bill on the table and to take up the bankruptcy measure, and thereupon, over the strong objections of Benton and Buchanan, the House amendments were concurred in and the bill sent back to the House... It became the Bankrupt Act of Aug 19, 1841 (5 Stat. 1440), the second in our history, after a lapse of 38 years since the repeal of [BA00]."* (Warren, 1935).

744 "*The operation of the general bankrupt law aided in clearing away the wreck of over two hundred banks that had failed, and which failures involved that of several sovereign States that had loaned their credits for bank capital.*" (Kennedy, 1862). BA41 "*applied to bankers and those who underwrote insurance policies. But while the statute initially included banks—the entity as opposed to the individual—and all other corporations among those who could file bankruptcy, the provision was removed on "States' rights" grounds before the Act received final approval… Implicit in the States' rights argument was a fear that northern banks would be the only banks left standing if western and southern institutions were subject to bankruptcy petitions.*" (Lubben, 2010). "*Its only limitation in application was to natural persons. There was an earnest endeavor to extend the privileges to artificial persons, but this effort was bitterly opposed, and in order to have the Congress pass some relief measure, the promoters of the bill had to be content to omit corporations. This law introduced the principle of voluntary bankruptcy into our legislation, and its advantages extended to all persons residing in the United States and not owing debts contracted in a fiduciary capacity. Its provisions were not enforceable against others than merchants, bankers, brokers, factors and underwriters. The law was substantially for the benefit of debtors and was originally reported as a purely voluntary measure.*" (Noel, 1919).

745 A Congressional report from 1846 into the bankruptcies from 1841 shows that debtors had on average 31 creditors, 97% of debtor applications for relief were approved (with 10% still pending); and 10% of total debt was recovered as surrendered property (of which 2% was paid out to creditors). See Davis (1846). According to Tabb (1995): "*Even though in operation the law worked well, from the viewpoint of creditors, [BA41 like BA00], was a dismal failure. Many thousands of debtors were discharged, minimal dividends were paid to creditors, and administrative fees were high. Control was in the hands of the courts and the assignees, not creditors. With the immediate goal of relieving the plight of the mass of insolvent debtors accomplished, and with little continuing political capital to be gained from the law, [BA41] was repealed in early 1843 after*

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little more than a year of operation. Nonetheless, [BA41] established the fact of voluntary bankruptcy for all debtors. Voluntary proceedings have been a feature of all subsequent bankruptcy laws. Never again was the constitutionality of voluntary bankruptcy seriously questioned. [BA41], with its marriage of the concepts of 'bankruptcy' and 'insolvency,' could be called the first modem bankruptcy law." On BA41, Warren States "*At all events, 33,739 persons took advantage of its benefits, of whom only 765 were refused discharge (with 1,468 still pending in 1862). The amount of debt involved was $441 M, and the amount of property surrendered by the debtor $44 M. Owing to expenses of administration, and also owing to the fact that large numbers of the debtors had already been through the State Insolvency Courts, very small dividends were paid to the creditors*." (Warren, 1935).

746 "*The most obvious explanation is that Congress's Bankruptcy Clause authority was clouded by a serious constitutional issue that would have directly implicated the railroads. In the early and middle decades of the 19th century, there was heated debate whether the Bankruptcy Clause gave Congress the power to regulate troubled corporations, rather than just individuals. The principal argument against congressional authority was quite simple: since corporations were chartered and regulated by the states, states should also be the ones to step in when firms defaulted on their obligations. "Corporations are artificial beings, created by the States," Senator Henry Clay thundered. "[The states] know when it is best to make or abolish them.*" (1840 speech quoted in Skeel, 2014).

747 "*The law of 1841 was copied in the main from the English acts on the same subject, but with such modifications as to put out of sight altogether the main object of the British Bankrupt Code —an object which has been kept steadily in view through nearly two centuries of somewhat confused and patchwork legislation— the fair and equitable division of the assets of the insolvent amongst his bona fide creditors. The British law also makes one most important distinction between 2 classes of debtors, of which no notice whatever was taken in our act of 1841 —an omission which inspired Colonel Benton with some of his fiercest philippics against it. We allude to the distribution between bankrupt traders and insolvent debtors. A general release of all debtors from their obligations to their creditors is viewed in the abstract, as a very bold interference with the rights of property and the sanctity of contracts. It can only be justified by considerations of public good of the very highest kind, and should only be exercised with the greatest care and caution. Inevitable and unforeseen misfortune, or innocent incapacity, furnishes a fair ease for its operation, but no such claim can be put forward on behalf of wilful extravagance. In other words, the man whose income is dependent on the good faith of others, on contingencies over which ho has no control, on the chances of the money market, and the calculations or miscalculations of his debtors, stands in a totally different position before the law, from the man whose income is fixed and certain, and who knows beforehand what his means of meeting hie liabilities will be a year or half a year hence.*" (NYTimes, 1857).

748 "*Federal money was finally placed in [ITS]—basically a safe for federal funds that did not allow the circulation of currency—but only until after the 1840 election, which Whig candidate William Henry Harrison won. They repealed the act that had created the [ITS], and the federal funds were returned to the State banks*." (Northrup, 2003)." *The third Whig measure was not successful — the Fiscal Bank Bill. It had passed the Senate, July 28, 1841, by a vote of 26 to 23 and the House, Aug 6,1841, by a vote of 128 to 97, at which vote (the Reporter says) 'the galleries resounded with plaudits, clapping of hands, bravos, hisses', etc.; it was vetoed by President Tyler, Aug 16, 1841, and on motion to pass over his veto, the vote was 25 to 24, and so the bill was lost.*." (Warren, 1935).

749 "*In 1841, Lewis Tappan, a New York dry goods and silk merchant who in the course of his business had compiled extensive records on the creditworthiness of his customers, decided to specialize on the provision of commercial information. Tappan founded the Mercantile Agency, which gathered through a network of agents and sold to subscribers information on the business standing and creditworthiness of businesses all over the United States. The Mercantile Agency became R.G. Dun and Co. in 1859... John Bradstreet of Cincinnati founded a similar firm in 1849, and by 1857 was publishing what apparently was the world's first commercial rating book.*" (Sylla, 2001).

750 According to Cohen-Mitchell (1998): *"The States required only that the notes be backed by municipal bonds, which had to be purchased prior to a bank's issuing its own notes. This ensured that bankers seeking incorporation were sufficiently capitalized and would not issue more notes than they could redeem… [The 1839 Panic] sent the value of municipal bonds on a downward spiral."* Wallis et al. (2004) add more detail to these: "*By 1842, 8 States and the Territory of Florida were in default on their loans. 4 States would ultimately repudiate all or part of their debts… They defaulted because land values in 1841 were half of what they had been in 1837… The method of borrowing used by Southern States epitomized by Mississippi was chosen because southern debt was issued in favor of banks. These banks were closely tied to the land.... land banks. Private shareholders purchased stock in these banks by giving mortgages on their lands; the stock purchased was usually limited to half the value of the lands mortgaged. Stockholders were then able to borrow from the bank to buy new lands as well. The State purchased its share of stock by issuing State bonds. The bank's liquidity came from sale of the bonds; their primary assets were the mortgages… In no case was a State directly responsible for paying interest on State bonds. Southern State investment in land banks was… Unlike the transportation investments in the North, which raised land values generally throughout the State, southern land banks benefited only the shareholders who were able to mortgage land to buy slaves or more land. Domestic and foreign investors who purchased southern State bonds thinking they were the safest investment available would be bitterly disappointed. When land values fell after 1839, the land banks collapsed, and southern voters who had never expected to pay debt service and who had not received any benefits from the creation of the banks, repudiated the bonds*."

751 "*These debts are properly seen as sovereign debts both because the United States Constitution precludes suits against states to enforce the payment of debts, and because most of the state debts were held by residents of other states and other countries (primarily Britain). The U.S. states, however, were insulated from direct sanctions that could have been imposed on individual countries because they were part of a powerful union of states. Going to war to recover the debts would have been very expensive given the relative wealth and power of the United States at the time. Cutting off trade with an individual state was difficult because, with free trade between the states, goods could be exported through another state. Cutting off trade with the entire United States in order to retaliate against a defaulting state would have been very expensive for the British, however, since the United States provided a significant market for British exports. Moreover, the most important U.S. export was cotton-the raw material input into one of the most important British industries.*" (English, 1996).

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[752] "*The newly independent Republic of Texas gained a reputation as a popular destination for dishonorable failures. Historians estimate that the population of Texas doubled in the 4 years after 1837. Once in Texas, no extradition laws would force absconders to return to the United States for trial. Failed speculators fled to 'that common sewer of the west & south,' complained one Louisianan, 'if a man is taken up here for any infamous crime and escapes, we always hear of him in Texas.' 'Gone to Texas," abbreviated in 'three ominous letters G.T.T." became a shorthand symbol found on abandoned businesses. Like Frank Fulton in Lee's 3 Experiments of Living, failed speculators hoped for rebirth inside and beyond America's borders.*" (Lepler, 2013).

[753] See Trask (2002, Appendix) and Wallis (2002, Appendix).

[754] "*Our currency was sustained in 1839 and 1840, during a period of suspension in most other States. For this advantage we are indebted to supervision of the banks and to the establishment of a free banking system, to the repeal of the act prohibiting the circulation of smell bills, and to the law of the last Legislature regulating the redemption of bank notes. The policy found most conducive to the public welfare, his been to desist equally from increasing the number of chartered banks, and from legislation hostile to those in existence: to correct the defects in the new system of free banking and to give it a fair trial; to require of all banking institutions and associations, not only a prompt redemption of their circulating notes, but also that such notes shall be at all times kept in good credit throughout the State. These views having prevailed in the Legislature during the last 2 years, the public inconveniences which heretofore existed, have ceased; and it has happened for the first time with in thirty tears, that the Legislature is relieved alike from applications for banking privileges and from complaints against those by whom such privileges are held.*" (Seward, 1841).

[755] New York, had "*enacted the first government-sponsored insurance plan for bank liabilities in 1829… The failure to protect the payments system from 1839 to 1841...was the fault of the [insurance] Fund and not of the Panic. New York's system failed because it was neither credible nor broadly based, and did not create proper incentives for prudent risk-taking.*" (Calomiris, 1989). "*The safety fund was practically intact in 1840… The redemption of notes was suspended after the first 4 failures, because the fund was deemed no more than sufficient to cover their liabilities... It was not until 1842, after the failure of 9 of the banks incorporated under the safety fund system, that an act was passed making the circulating notes only a charge against the safety fund and leaving the other liabilities of the failed bank to be paid from the assets... the Act of 1842 permitted the banks to anticipate their annual contributions by as much as 6 years in some cases and to pay into the fund at par the notes of the failed banks. The banks very generally took advantage of this provision and made a good profit on notes of the failed banks which had fallen into their hands at a considerable discount. Their advance payments did not involve a loss of interest, as the original law required the investment of the bank fund and the payment of interest to the banks, and the Act of 1842 granted 7% interest on the advance payments.*" (Conant, 1915). "*By 1841 almost all of the insured banks had suspended and the insurance system came to an end a year later. During its 6 years of operation it made no payments to creditors of failed banks. The New York insurance system... was able to handle the first few failures in 1840-1. However, when the Bank of Buffalo failed in Nov of 1841 the insurance fund had already been so far drawn down that the State Comptroller hesitated to make provision for the payment of the bank's insured creditors. When 7 additional failures followed very soon, it was clear that the insurance fund would be insufficient. In 1842 insurance protection was limited to circulating bank notes, and in 1845 the legislature remedied a defect in the insurance plan—the lack of borrowing power—by authorizing a bond issue to meet obligations due as a result of failures during the depression.*" (Golembe, 1960).

[756] "*Vermont's insurance fund suffered many of the weaknesses of New York's system. Like New York's, its coverage was only partial. While the Vermont system insured notes and deposits of member banks, it did not require bank membership in the system. In 1839, Vermont exempted several banks from joining the system, and in 1840 liability insurance became voluntary. Banks could withdraw from the system with the full value of their contributions to the fund. The establishment of a free banking statute in 1851 created a further alternative to insured banking in Vermont. The insurance fund covered 56% of bank liabilities in 1840; this rose to 78% in 1845.*" (Calomiris, 1989).

[757] "*The insurance system last established soon collapsed [in 1842], as numerous bank failures in Michigan threw on the insurance fund obligations which could not possibly be met…*" (Golembe, 1960).

[758] Indiana's plan *"was the most successful of the 4. Only 1 branch bank suspended (in 1843) and it was swiftly reorganized and reopened, with no loss to depositors or noteholders. By the end of the depression the Indiana banking system was recognized as the strongest in the West."* (Golembe, 1960). "*Indiana's insured banks were not able to avoid nationwide suspensions of convertibility that occurred from May 1837 to Aug 1838 and Nov 1839 to June 1842... [it] weathered the Panic of 1837 admirably, even though the Panic came only 3 years after the system was enacted. The mutual-guarantee provision removed the dependence on pre-existing funds that proved fatal to Michigan's system.*" (Calomiris, 1989).

[759] "*Under [ITS], the government did not use banks to handle its payments. [UST] ceased relation with bank notes, deposit accounts, and bills of exchange, which had become the common mode of effecting payments. Instead, subtreasuries received and paid out specie. In surplus years, this meant that the amount paid by the banks on behalf of taxpayers into the subtreasury was a reduction in their loanable funds for that amount. While [UST] adopted this method of payments, the general public continued to rely on banks and left the gold and silver to the government. They continued to rely on bills of exchange, checks, and bank notes to conduct their own payments. Regardless of its merits, it was not possible to retain enough specie or move it from place to place with sufficient speed. Apart from [UST's] new demand for it, specie was otherwise used only in the payment of balances of foreign trade, in occasional domestic settlements, and in very small retail transactions. It accounted for one hundredth of the total value of property transferred in the payments and settlements of debts made by domestic industry and commerce. Its continued decline in use over the previous century was due to the increased demand for payments in trade, with more efficient methods taking its place.*" (Kirsch, 2016).

[760] "*But in 1841 the old method of deposit in State banks was resumed under the practice which had been introduced in 1833... This arrangement-that is, deposits secured by collateral-continued until the Sub-Treasury Act of 1846, led to the withdrawal of Government funds from private banks.*" (Frankfurter, 1938). "*[T]he arrangement imposed large and periodic reserve imbalances upon the banking system, with the result that public funds were often placed with State banks anyway.*" (Goodhart et al., 1994).

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[761] "*Determined to stave off any more disastrous federal laws, States experimented even more with stay and insolvency laws*" (Tabb, 1995).. "*[I]n the decade following the Panic of 1837 many States had passed stay-laws and appraisal-laws for the protection of debtors, forbidding sale on execution or foreclosure unless the property should be sold for one half... Prior to 1840, less than one half of the States possessed [insolvency laws]; but after 1840 many more passed this kind of legislation; Pennsylvania adopted an insolvency law in 1836 and again in 1842; Georgia in 1851; Missouri and California in 1852; Connecticut in 1853; Maryland and North Carolina in 1854; Kentucky in 1855.*" (Warren, 1935).

[762] "*The underlying prevailing view, linked especially with Blackstone, was that credit was unjustified and, indeed, almost a species of fraud. In the commercial context, however, reality eventually forced the recognition of credit as a necessary evil. Of course, once credit is used, problems with repayment can develop even for the best-intentioned debtor, because of accidental and unforeseen losses. In order to encourage risk-taking, which was in the good of the nation, exposure to such enterprise risk needed to be limited. Since the corporate form of organization was not then generally available as a risk-limiting device, the bankruptcy discharge was used to perform the same function. This whole line of argument is wholly inapplicable, of course, to non-merchants, to whom the general principal that credit was 'bad' continued to apply. Since non-merchants were considered to be at fault for having used credit in the first place, society was not inclined to forgive them for any consequential losses via discharge of debt.*" (Tabb, 1991).

[763] "*Until 1844 there were no arrangements in England for speedy and cheap incorporation… But, although America was earlier in her recognition of the distinctive roles of partnerships and corporations, she never drew the distinction between them with the same clarity as England has since 1844. We then recognized that the partnership form was not intrinsically suited to large joint-stock enterprise, for partnership principles presuppose mutual trust and confidence among the members which is impossible if their number is unduly large. The English legislature therefore prescribed a limit — a limit which is now 20. If the number of members exceeds 20, the association must register as a corporation. By a stroke of the pen the formerly common unincorporated joint-stock company with a large membership became impossible. In America no such development occurred, and in states where incorporation for certain purposes was not recognized until a late date the unincorporated association continued to flourish. Hence the Massachusetts or business trust which represents the final evolution of the unincorporated company, distinguished now from the partnership in that the members are free from personal liability—a refinement which England never succeeded in attaining. At this time a further development took place which may have had some significance. During the course of the 19th century (starting with New York and Connecticut in 1822), most American states borrowed from continental Europe the device of the limited partnership. England did not do so until 1907; until then legal freedom from personal liability could be attained only through incorporation. Accordingly, the business world and its astute legal advisers proceeded to adapt the corporate form for use by the one-man firm or small family concern, thus defeating the obvious legislative intent to restrict corporations to large associations and partnerships to small ones. This development, finally sanctified by the House of Lords in the famous case of Salomon v. Salomon in 1897, led to the private company to which a few years later the legislature itself granted special immunities. American efforts to evolve the close corporation as a suitable substitute for the partnership, limited or unlimited, did not come until somewhat later and met with difficulties to which I shall refer later.*" (Gower, 1955). "*It may well be that eventual discharge was easier to obtain in England in the 18th and early 19th centuries; probably the rights to trade were likewise easier to recover. But as far as creditors' rights are concerned, the major divergence with continental practices only emerged in 1843: discretion on discharge was then transferred to the courts, with no veto power to the assembly of creditors. This step toward weaker property rights, as a counterpart to an easier fresh start for failed entrepreneurs, was never taken by any other country during the whole period under review.*" (Sgard, 2014).

[764] "*Note that, historically, bankruptcy law in England and the United States stems from statutory law, whereas case law has never produced a coherent body of rules on this issue: the only major exception in this respect is the US equity receivership, which emerged in the late 19th century.*" (Sgard, 2014). Except during BA67 (see Exhibit 13.)

[765] The Court noted "*It was urged at the bar, the court should adopt the rule in cases of bankruptcy for its government; in this case, that notwithstanding a party purchases a bill, or note, for less than its nominal value, yet, in the distribution of the bankrupt's effects, he is entitled to receive the full amount thereof; and Cooper's Bankrupt Law [from 1801], was cited. Whatever may be the rule in cases of bankruptcy, we think this case stands on a very different footing. Here is a fund, raised under a decree made by a court of chancery; and a distribution of that fund is being made, in accordance with the terms of that decree. The court having the jurisdiction anti authority to direct a sale of the property, and thereby create the fund, has also the same power and authority, to direct the manner in which such fund shall he distributed. One of the grounds of application to the court for a sale of the road was, that the company was insolvent, and unable to pay its debts.*" (Harrison, 1847).

[766] The *Monroe (Munroe) Railroad Co.* was incorporated by an act of the Georgia Legislature in 1833 and, to finance expansion, was conferred banking privileges and became the *Monroe Railroad & Banking Co.* in 1836 (Thomas, 1895, p176). "*In 1836, by an amendment of the charter, the company was authorized to extend the road in a westerly direction... The company went forward with the work and with banking, too fast for their means, so that by the time the road reached Griffin, in Pike county, there was a grand blow up, and the road was finally sold, in 1845, under a decree of court [of chancery in May 1845], for $155,000. At the session of the legislature for this year, the purchase was confirmed, and a change to its present name ranted to the road.*" (DeBow, 1852).

[767] According to Lubben (2004): "*some receiverships occurred as early as the late 1830s...The first reorganization through receivership is often said to have occurred in 1846.*" Georgia's State Supreme Court held bill and notes issued by said *Monroe Railroad and Banking Co.* (*Collins v The Central Bank of Georgia*) as well as suppliers extending trade credit (*Bullard v The Central Bank of Georgia*) to be junior to the bill holders per the founding Act: "*The railroad to be built by said company, from Macon to Forsyth, together with all the revenue arising therefrom, and all the property, equipments and effects therewith connected, shall be pledged and bound for the redemption of the notes or bills, issued by or from said company; and for the redemption of the same, the private property and, individual persons of the stockholders shall likewise be pledged and bound in proportion to the number of shares held by each, in the same manner as in commercial cases or actions of debt.*" (Harrison, 1847). Following the decision, a creditor attacked the court's jurisdiction in *Macon & Ry. v. Parker* (1851); the court sustained and noted that the situation was analogous to that in which equitable principles allow an executor or administrator to file such a bill: "t*he whole history of Equity jurisprudence does not*

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present a case which made the interposition of its powers not only highly expedient, but so indispensably necessary in adjusting the rights of creditors to an insolvent's estate, as this did. The Chancellor, then, in taking this matter in hand and directing a sale of the entire interest for the benefit of all concerned, was but invoking the powers of Equity to aid the defects of the Law, and applying analogous principles to the existing emergency; and so far from transcending his authority, he is entitled to the thanks of the parties and the country, for the correct and enlightened policy which he adopted. Had he faltered or shunned the responsibility thus cast upon him, he would have shown himself unworthy of the high office which he filled. As it is, this precedent will stand out in bold relief, as a landmark for future adjudications." (Glenn, 1925).

768 This process was subsequently adopted for private railroads: "*Unlike the credit supplied by merchants and manufacturers, much of the debt of railroads was secured. For example, bondholders might have a mortgage that said they could claim a specific line of track if the railroad failed to make its bond payments. If a railroad became insolvent different groups of bondholders might claim different parts of the railroad. Such piecemeal liquidation of a business presented two problems in the case of railroads. First, many people believed that piecemeal liquidation would destroy much of the value of the assets. In his 1859 Treatise on the Law of Railways, Isaac Redfield explained that, 'The railway, like a complicated machine, consists of a great number of parts, the combined action of which is necessary to produce revenue.' Second, railroads were regarded as quasi-public corporations. They were given subsidies and special privileges. Their charters often Stated that their corporate status had been granted in exchange for service to the public. Courts were reluctant to treat railroads like other enterprises when they became insolvent and instead used receivership proceedings to make sure that the railroad continued to operate while its finances were reorganized.*" (Hansen, 2001).

769 "*The financial problems which faced the railroads of this country... in the era preceding 1850, were comparatively simple and easy of solution. During this time financing was usually accomplished by the sale of capital stock, rarely by the corporate mortgage. Underestimation of the cost of the project was the chief source of financial difficulty. When funds ran out, the entrepreneurs put up or raised more money, issued additional stock, and carried the construction to completion. It was with the advent of the corporate mortgage in railroad financing in the era following 1850 that the law and technique of corporate reorganization in the United States had its real beginning. In this period the mortgage was used with an increasingly lavish hand. The result was that railroad financial troubles and the railroad mortgage became indissolubly associated as the Siamese twins.*" (Fuller, 1940). "*State and corporate bonds, of the type so widely known today, made their appearance more than a century ago in the financing of canals and railroads. By 1840, corporate bonds similar to the modern instrument were being issued in considerable numbers, and by 1850, were daily listed on the Stock Exchanges. Such bonds, payable to bearer and under seal, were uniformly held negotiable.*" (Steffen and Russell, 1932)

770 "*[T]he first great boom of railroad construction began in the 1840s. To a total of 2,818 miles of track in 1840, nearly 5,000 miles were added in the 1840s, and even more—nearly 22,000 miles—in the decade that followed. Although the states played a central role in these developments, the tight relationship between state government and the corporations they chartered had already begun to loosen by this time. State lawmakers faced strong political and economic pressures to grant corporate charters more freely. Not only was strict state control over charters assailed as undemocratic, but business was growing so rapidly that individualized review of each charter application made less and less sense. State legislators could increase their patronage opportunities, and overall support, by expanding access to corporate franchises. Legislators still had enormous influence over railroad development, but the railroads, like other state-chartered firms, acted more and more like private businesses, rather than simply arms of the state.*" (Skeel, 2014).

771 "*Between 1842 and 1852, 12 existing States wrote new constitutions and 11 of the 12 contained provisions mandating that state legislatures pass general incorporation laws and that legislatures adopt new procedures for authorizing government borrowing… The importance of corporations and debt issue for the public finance of state governments, working through the alternative ways of financing canal and banks used by States in the 1820s and 1830s, is the link connecting the 2 reforms. When state finances collapsed, states looked to their own histories of borrowing and spending to comprehend how they got into their predicament: in 1842, 8 States and the Territory of Florida were in default on their debts and 3 other states were in perilous financial condition. How they interpreted the causes of the crisis in 1842 informed how they changed their constitutions between 1842 and 1852.*" (Wallis, 2004).

772 "*[T]he New York convention of 1845 took care to place a prohibition to future debt in the new constitution. This example has been followed by nearly all the other States in the Union, in but few of which can the legislature contract debts, or loan their credits to corporate companies. The railroad speculations that of late have been so rife, have therefore been confined to private means, and as a result they have been more cheaply and efficiently built than if constructed in the wasteful manner which usually attends government operations.*" (United States Economist, 1853).

773 "*In the early stages of the American economy there were grants of special franchises reminiscent of royal charters, but during the mid-19th century, there was a revulsion against them as anti-egalitarian, monopolistic, and scandalous. For this reason, in revising its constitution of 1846, New York provided that corporations might not be created by special act 'except... in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws.' By 1867 provisions of this character appeared in the constitutions of many states.*" (Cary, 1974). "*Incorporation in America required a special act of a state legislature until approximately the mid-19th century. Following the economic depression of 1837-44, many states held constitutional conventions where the states added provisions separating corporate business opportunities from state politics. Legislatures began to enact general incorporation statutes under which anyone could organize a business corporation by preparing and filing articles of incorporation, resulting in a watershed moment in the development of the modem American corporation... New York, for example, amended its constitution in 1846 to allow corporations, in all but limited, special circumstances, to be formed under the general laws, versus special acts of the legislature.*" (Sprague, 2010).

774 Although bank stockholders were subject to the same liability as non-banks under the 1846 New York Constitution, in 1865 the NBA adopted the same construction (following New York's more specific Free Banking Law) to National Banks (and the practice spread to all banks) even though New York eventually abandoned the rule for general application. "*While the double liability statutes of general application gradually disappeared, double liability for shareholders of bank corporations survived until well into the present century. Designed as a measure of protection for bank depositors, such statutes had been enacted widely and survived until after the Great Depression.*" (Blumberg, 1986)."*Empirical evidence substantiates the inference that double liability was an effective regulatory system. Over the life of the system, the recovery rate on national bank assessments was just about 51%-about half the assessed amounts were collected. This rate appears remarkably good when one considers*

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that many bank shareholders were also managers who were forced into personal insolvency when their institutions failed. Moreover-remarkably-the recovery rate on assessments was not significantly lower during the difficult years 1930-4 than it was at other times." (Macey, 1992).

775 "*[T]he safety fund banks [of 1829] were made subject to all of the other terms of the Revised Statutes, as were all other subsequent financial incorporations… The provision of the Revised Statutes that changed the jurisdiction of the court of chancery had an enduring impact... In particular, stockholders in banks frequently used the provisions empowering them to seek injunctions to halt the operations of financial companies, and to appoint a receiver to liquidate their assets, when firms violated the law or became insolvent. Reported examples include Ferry v. Bank of Central New York (N.Y. Sup. 1858); Gaffney v. Covill (N.Y. Sup. 1844); and Gillett v. Moody (N.Y. 1850)*." (Hilt, 2009).

776 See Kennedy (1866, p. 293).

777 "*The pioneer Texas homestead exemption law extended its influence far beyond the lower South. When California entered the Union in 1850, it included homestead exemption in its constitution and immediately enacted legislation giving the provision specificity. From Maine to Wisconsin, homestead exemption laws swept the North in the late 1840s and early 1850s. But unlike southerners, who embraced the idea in the depths of depression, northerners enacted those laws during a period of expansion, though advocates were still mindful of the devastating suffering flowing from the panic of 1837. (See table 1.)*" (Goodman, 1993).

778 "*The currency void was filled by unchartered 'private' banks that could not issue currency, but would supply currency from banks in other States. One George Smith founded a private bank in Chicago in 1839 that circulated 'certificates of deposit' from his insurance company in Wisconsin that were redeemable in specie (but illegal)... [the] money was very popular through the 1840s [to the 1850s]… because of Smith's wealth and reputation*" (McDonald, 2015). "*The Illinois Constitution of 1848 provided that the Legislature should have 'no power to authorize lotteries for any purpose, nor to revive or extend the charter of the State Bank or the charter of any other bank heretofore existing in this State.' The credit of the State might not be loaned to anybody; furthermore 'no State bank shall hereafter be created, nor shall the State own or be liable for any stock in any corporation or joint stock association for banking purposes, to be hereafter created. The stockholders in every corporation or joint stock association for banking purposes issuing bank notes, or any kind of paper credit to circulate as money, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association for all its debts and liabilities of every kind.' No act to grant banking powers should go into effect until after it had been approved by a majority of the votes at a general election… Illinois adopted a general banking law on the New York model, over a veto, Feb 15, 1851.*" (Sumner, 1896). Illinois "*adopted a 'free banking' law in 1851 that permitted the secretary of State to issue incorporation charters for banks (instead of requiring an act of the legislature for each bank)*." (McDonald, 2015).

779 "*In California banks are termed private, probably because our Constitution prohibits the creation of public banks ; but they possess and exercise all the functions of a public or general bank, except that of issuing bills for circulation as currency. They receive money on deposit, discount bills of exchange, and loan money on bond and mortgage and upon other securities. Nearly the whole exchanges of the State are transacted through the agency of these banks. So intimately are their operations connected with the general interest and welfare of the people of this State, that we are bound to consider them as institutions so directly and universally related to the public good as to fully justify the Legislature in passing 'an act to regulate the business of banking.'*" (Sacramento Daily Union, 1856). "*When Texas was annexed in 1845, its constitution prohibited the legislature from incorporating banks… Louisiana, adopted in the same year, prohibited the legislature from incorporating banks. Similar clauses were adopted by the conventions that framed constitutions for Iowa and Arkansas in 184… In 1852, the secretary of [UST] reported that there were no incorporated banks operating in Florida, Arkansas, Texas, Illinois, Iowa, Wisconsin, and California. 7 of the 31 States were without incorporated banks*." (NYTimes, 1860).

780 "*No banks were incorporated using the general incorporation statutes in Massachusetts, Vermont, Pennsylvania, Iowa, Alabama, Georgia, and Florida because of excessive restraints... The principal restraint of these statutes was unlimited liability for bank officers and stockholders*." (Seavoy, 2013).

781 *"In 1845 Ohio was faced with essentially the same situation with which New York had to deal in 1829. The charters of many banks had expired in 1843-4, and the difficulties encountered during the depression had led to demands for a reorganization of the banking system. Had this situation developed ten years earlier, it is quite possible that Ohio would have followed the New York precedent, but by 1845 the reputation of Indiana banks was particularly high in Ohio. Consequently, Ohio organized a banking system similar to that of her western neighbor, that is, a State bank which did no banking and 'branches' which did the banking and were, for all practical purposes, independent banks. The Ohio insurance system, while similar to Indiana's, provided for the establishment of an insurance fund. The fund, however, was merely a segregation of a portion of the assets of each bank, to be used to reimburse the banks for any special assessments levied to pay the creditors of failed banks. Ohio also borrowed from the revised New York plan in limiting insurance protection to circulating notes. The experience of the State insurance systems after 1845 was generally good. Noteholders of failed insured banks in Ohio were paid swiftly and in full."* (Golembe, 1960). "*Liabilities of failed banks not covered by liquidated assets were redeemable by surviving banks without limit. Both notes and deposits were insured. This 'mutual guarantee' system became the basis for similar legislation in Ohio in 1845 and Iowa in 1858*." (Calomiris, 1989). While "*trustee-managed [mutual SBs] predominated in the Northeast, while joint-stock [SBs] and commercial banks predominated in the South and West...As was the case with joint-stock [SBs], commercial bank expansion into savings deposits began in the South and West, where such smaller institutions had strong incentives to offer savings accounts, and fewer barriers to establishing them… The initial wave of mutual savings bank incorporations was followed in the 1830s with a wave of incorporations of joint-stock savings banks, though many of these failed in the subsequent panic and depression of the late 1830s and early 1840s. A similar boom and bust pattern in stock savings bank incorporations followed in the 1850s*." (*Wadhani, 2011b*)

782 *"The story is the same, in general outline, in each of the States of Pennsylvania, New York, and Massachusetts. But the wildest swindling was in New York. In that State, the law of 1849, which formed the pattern for the insurance legislation of other States, provided that mutual companies in New-York and Kings Counties must not start without a hundred applicants, nor with less than… premiums, for which notes must have been already given. Elsewhere in the State, only $100,000 in notes were required…[According to] James M. Cook, comptroller of the State… 'One of the fundamental errors of the*

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law of 1849 was in the method of aggregating the original capital, by placing no reasonable limit to the amount of each of the notes forming it… and actually commence the business of insurance without a dollar in money, even while the property actually insured under the bogus notes was of less value than the notes represented…This defect is remedied by the law of 1853... Of the 42 organized from 1849 to 1853, 33 were swindles, and failed outrageously." (Bolles, 1879).

783 "*In every case, the land bank was responsible for servicing the state debt that had been issued to it from dividends paid on the state's stock in the bank. In no case was a state directly responsible for servicing its debt, although when Louisiana chartered its first planter banks in 1824 the state assumed a contingent liability. Louisiana did not repudiate that liability after the bank failed, although it did repudiate other state debts issued to banks whose charters did not have the contingent state liability... In Louisiana, neither the integrity of the land banks nor the bond marketing methods were questioned. The charter of the Bank of Louisiana pledged the credit of the state to service the bonds and did not secure the bonds by the mortgages of stockholder-borrowers; Louisiana accepted its obligation to pay those bonds after the bank failed. 3 other Louisiana land-bank charters — those of the Consolidated Association of Planters, the Union Bank, and the Citizens Bank — secured state bonds with mortgages on stockholder-borrower lands. When these banks failed, the state required that bondholders pursue liquidation of the mortgaged property of stockholder-borrowers before the state would meet obligations to them. Louisiana's repudiation was de facto rather than de jure. The state never paid interest on $21 M of bonds issued in favor of the 3 banks.*" (Wallis, Sylla, Grinah, 2004). "*The state of Louisiana was the third most heavily indebted state in 1841, after Pennsylvania and New York. Its debts had been accumulated primarily to provide the capital for 3 banks. In 1842, 2 of the 3 banks were put into liquidation, and the legislature made no effort to pay the coupons on the state bonds issued for them. The governor claimed that the shareholders of the banks should be forced to pay before the state was required to step in... As noted above, Louisiana defaulted on its bank bonds, yet by paying its state debt proper it managed to recover its reputation in the bond market… Louisiana repudiated its bank debt, but paid its remaining debt. In addition, the banks ultimately repaid much of the bank debt. The fraction of debts paid (by the banks as well as the state) may have been quite high, but I still count Louisiana as a partially repudiating state because the eventual outcome was not known in the early 1840's… One could argue that the Louisiana default would have been more costly except for the ability of the Louisiana banks ultimately to pay back much of the debt that had been guaranteed by the state.*" (English, 1996).

784 "*The State Legislature, anticipating that the situation of the Consolidated Association would not be favorable to meet the payments and interest on its bonds pledged by the State, and knowing that the borrowing stockholders of the property bank were in a distressed situation, acted to relieve the bank. It passed an Act on April 5, 1843, to facilitate the liquidation of property banks chartered by the State… This Law of 1843, therefore, did more than merely facilitate or provide the machinery for liquidation. It was permitting the debtors to pay off their debts, and it was designed to relieve the State from contingent liability. Moreover, it was aimed at overcoming the handicaps existing in the export of American cotton… Because the English resented the American defaults and repudiations after 1837, a boycott had been declared on American cotton exports. Furthermore, the policies of [BOE] had continued to make foreign bills of exchange scarce, thus curtailing the ease of export of American goods, especially cotton. The provisions of the Act of 1843 helped to break the boycott. For instance, Louisiana cotton exporters could ship their cotton to England and sell or exchange it for bonds of the State of Louisiana; and the transactions did not necessarily require specie or bills of exchange. Since the bonds were quoted on the London money market at somewhere about 50 or 60, the owners were willing, even anxious, to sell or exchange the bonds for cotton, especially if somewhat more than the market price was offered for the bonds… The Act further provided that the Consolidated Association could, with the consent of the bondholders, extend and prolong the time of payment of any of the bonds for a period of 15 years, provided the extension did not exceed ten years after 1846… The Consolidated Association and the Citizens Bank, though insolvent, continued to operate, unhampered by the State, until the end of 1843; afterwards they existed as liquidating banks until 1882 and 1902, respectively.*" (Grenier, 1942).

785 "*Prosperity did not come with these measures of relief, however, but, instead, the condition of the banks became worse with each year, until in 1842 they were placed in liquidation. The State was responsible for their bills and most of their obligations, and the settlement left her with a considerable debt, the interest and principal of which, however, she proved herself entirely able to pay by resorting to heavy taxation. She met her interest charge regularly each year before the war, and paid principal enough to reduce the debt in 1861 to $ 3.4 M. During the war she paid that portion of the interest which was due on the bonds held in London, but paid no interest in New York after Jan, 1861."* (Scott, 1893). "*Rather than direct sanctions, the cost of default appears to have been loss of access to new loans. The loss of access, in turn, appears to have been the result of damage to defaulting states' reputations in credit markets. The states that serviced their debts were able to borrow again in the 1840's and 50's while those that repudiated found it difficult to do so. Of the eleven states that repaid without interruption in the early 1840's, all were able to borrow. Indeed, all but 3 of these states (Maine, South Carolina, and Alabama) had larger debts in 1860 than in 1841. Maine and South Carolina paid off a substantial fraction of their debts in the 1840's, but borrowed again in the 1850's.*" (English, 1996).

786 Between 1845 and 1847, Alabama produced 77 case laws regarding fraudulent conveyance (relative to 24 by New York); corresponding figures for attachment are 45 (13) and for garnishment are 40 (0). (various volumes from West Publishing, 1900). Of the 87 attachment related case laws produced in 1845, Alabama represents 26% (West Law, 1898). "*Alabama [abolished debt imprisonment] in 1848.*" (McMaster, 1903). See Exhibit 13.

787 "*Various cases in which slaves are objects of property, ranging from negligence resulting in injury and death to slaves, to attachments, garnishments, executions, wills and trusts, indicate the pervasive nature of slavery reflected in the courts, and also show the continuing economic disincentives to emancipate slaves whose status as labor and capital rendered them too valuable to slaveholders, heirs, and creditors… As a broad category, many cases involving slaves were related to collections. Along with other types of cases noted herein, collections cases indicate that slaves as property were ubiquitous and prominent in the courts whenever money was involved, which in practice meant numerous civil cases as well as many chancery cases. In this category were attachments, levies, garnishments, and executions, all devices and methods used to satisfy judgments. These collection devices, used to directly seize property of a judgment debtor or property held by a third party for the judgment debtor to satisfy a judgment, were initiated by writs, such as writ of attachment, writ of execution, and writ of garnishment. Attachments and executions were related to seizure of land and tangible personal property. Garnishments were used to seize money*

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or accounts held by third parties for the benefit of the judgment debtor. Frequently the property seized through these types of legal process was slaves. A significant factor in the prominence of the justice courts at all levels of the court system was the writ system prevalent in 19th-century jurisprudence, associated with the issuance of attachments and executions in the process of obtaining satisfaction of judgments. Attachment and execution cases show the central role of justice courts and their ongoing relationship with various officials of the court system, such as constables and sheriffs, as well as slave patrols, which performed a quasi-judicial role." (Farnell, 2007).

788 "*Alabama, which had the highest debt burden of the states that did not default, did not increase its debt but did issue new bonds in order to retire old bonds.*" (English, 1996). See Exhibit 11 for market share of exporting ports.

789 "*Mining was a minor industry in the agriculture-dominated 18th century, though small-scale mines operated in several eastern and north-central states before the Revolutionary War. While a few corporations for mining and other purposes were established by 1800, most people in the United States viewed government-chartered business corporations with suspicion. State laws made incorporation for private profit a difficult process, which initially required passage of a special legislative act they also placed severe restrictions on corporate size and span of operations. Partnerships were the dominant form of commercial enterprise in this country for much of the 19th century, adequately serving business interests from 'small country storekeepers to the great merchant bankers.' Larger business ventures often organized as joint-stock companies, a type of group partnership. Joint-stock companies offered 2 distinct advantages over traditional partnerships: ownership interest was divided into shares and the death or withdrawal of one partner did not end the partnership. Unlike corporations, which were rooted in state authority, partnerships were based on individuals' freedom to associate, to pool their energies and capital for mutual advantage. This freedom was understood as a 'right of business bodies, not… a privilege to be granted or withheld' by government rules. Partners participated in company operations on an equal footing. They maintained direct control over their ownership interests and often voted on company decisions. By contrast, corporate shareholders possessed only indirect, limited control over their investments—the ability to sell their shares, should they find a willing buyer. Despite the advantage of greater control, however, partnerships had one great drawback: each partner was fully liable for debts incurred by the company, an onerous burden in large-scale ventures. Large-scale businesses such as railroads, mines, banks, and insurance companies pressed the state legislature for broader rights, including the ability to organize under general incorporation laws. Gradually legislatures relented, extending the term of life allowed corporations and limiting shareholder liability. Such changes gave corporations several distinct advantages over partnerships, which also made corporate stock a more attractive investment. Nonetheless, early shareholders were vulnerable to assessment calls when company management decided additional investment was necessary. Shareholders who neglected to pay the levied assessment forfeited their stock, and ownership reverted to the company.*" (Smith-Baranzini, 1999).

790 "*The discovery of gold at Sutter's Mill in the middle fork of the American River in 1848 triggered a massive influx of miners into California. By 1852 a special state census reported that the non-Indian population of the state totaled over 250,000, of which over 47% resided in the 7 most important mining counties —Calaveras, El Dorado, Mariposa, Nevada, Placer, Sierra, and Tuolumne. Among these miners were significant numbers from foreign countries such as Mexico, Chile, Australia, various European countries, and of course, China... In total there were about 25,000 Chinese immigrants, who would have comprised 10% of the total non-Indian population and over 35% of the total foreign-born population. By 1860 the Chinese were the single largest foreign-born ethnic group in California and comprised from 12 to 23% of the population of various mining counties... This article examines early state attempts at the exclusion of Chinese workers after the first major wave of Chinese immigration during the California Gold Rush. Opposition to exclusion occurred in California in the early 1850s because Chinese immigrants were important taxpayers when both the state and localities were experiencing major fiscal difficulties. State attempts to legislate exclusion were successful only after financial conditions improved in the late 1850s... Finally, a commonly heard argument against exclusion during the early Gold Rush concerned its ramifications for the public finances of the state and localities. Many viewed Chinese miners as an important source of tax revenues vital to the financial stability of both the state and the counties in which they resided. In 1855, the Alta Californian asked the rhetorical question: 'Are the Chinese Injuring the State?' Its answer was assuredly not, that on the contrary: 'Were it not for the taxes paid by the Chinese, the credit of nearly every mining county would now be verging on bankruptcy.'*" (Kanazawa, 2005).

791 "*This paper considers why the Chinese migrants who came to California in the late 19th century were not indentured, and what their contractual status in the United States actually was. We argue that existing American laws prevented the effective use of a legal indenture system when Chinese laborers began to arrive in California in the 1850s, but that Chinese merchants in San Francisco developed extralegal means of operating a bound labor system. We explore the conduct of this system, with particular attention to the methods used by the merchants to enforce the repayment of the workers' debts for advances of passage fares... The form of the system under which Chinese immigrants came to California originated in 'credit-ticket' emigration. Under the credit-ticket system, brokers advanced the cost of migration to workers. The broker then retained a lien on the worker's services until the debt was repaid. The worker was not bound for a fixed period of years, as would have been done in a system of contract labor, nor was his obligation normally sold by the broker to a third party... Existing American law therefore prevented the effective use of a legal indenture system when tens of thousands of Chinese laborers began to flow into San Francisco in the 1850s. The question of whether the Chinese typically worked under contracts of service for fixed periods or for only the repayment of debt is an elusive one; the very lack of direct evidence to settle the issue might suggest that the workers actually had agreed to a form of contract labor that was concealed from public view because it violated American law. The illegality of contract labor appears to have influenced the operation of the Chinese system of immigration in a number of ways. Unlike in colonial America, labor importers in 19th-century California could not legally sell labor contracts to employers. As a result, the Chinese merchants who dominated the trade in imported labor, the Six Companies, appear to have retained the debts of the migrants themselves. The importers then effectively rented out the workers, often to large companies. The absence of a legal system of contract labor also meant that importers had to devise extralegal means of enforcing the repayment of the workers' debts to them. When workers were rented out in large groups or gangs, the importer would send an agent to act as the foreman... Many observers appear to have believed that the Chinese immigrants whose passage was paid by brokers were normally obligated simply to repay the debt, rather than to serve a term of years. [S U.S. Senate (1877): 'They often borrow money to get here, and agree to pay high premiums or interest, but the agreement is in the amount of money rather than in the number of years of service.' Also see U.S. Senate testimony of Low: 'If I am correct in my supposition, these contracts do not bind them (i.e., the Chinese to work for any specific length of time; they only bind them to refund a certain sum of money, and when that money is paid they are as free as you and I.' Barth notes,*

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however, that a shipload of Chinese migrants in 1852 had contracted... to serve for a period of 5 years (1964). The major Chinese labor importers in San Francisco, the Six Companies, admitted in 1853 that they had earlier imported workers under contracts of fixed duration, but claimed that they had by then stopped the practice, and they continued to deny the existence of contract labor for fixed terms in later years] Nevertheless, for many of the Chinese the issue of debt obligation rather than service obligation may have been unimportant, for their dependence on the brokerage companies that brought them to America was great. In testimony given in 1876, S. Clinton Hastings, former attorney general of California and Chief Justice of the California Supreme Court, described the relationship as peonage, for in his view the Chinese laborers belonged to the brokerage companies until their debts were repaid. Although as will be seen, this view requires some qualification, Hastings argued that the Chinese immigrants were in a very different position than Europeans who came under promises to repay advances; unlike the Europeans, the Chinese workers did not realize that the companies' power over them was not absolute." (Cloud and Galenson, 1987).

792 "*A comparison of mining institutions in the American West and in Victoria indicates that institutional change in Victoria's gold fields follows American patterns in many respects, yet also accommodates significant differences. The most significant differences stem from the presence of an established provincial government in Victoria and the lack of established governmental authorities at the start of the California (1848) and Nevada (1859) rushes. In both Nevada and California, miners held local meetings to devise their own rules to establish and enforce property rights in the mineral deposits.[Shinn, 1884; Libecap, 1989; and Umbeck, 1981]... By contrast, the absence in California and Nevada of functioning governments beholden to other established constituencies allowed different sets of mining rules to develop in each mining camp and miners to keep the rents stemming from their mineral discoveries.*" (La Croix, 1992; WIP).

793 "*California is the capital of ABCs. Assignments for the benefit of creditors in California are governed by common law and are subject to various specific statutory provisions. In states, like California, where common law (with specific statutory supplements) governs the ABC process, the process is non-judicial. The basis for applicability of common law in California is set forth in California Civil Code §22.2 which provides that '[t]he common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State'... The liquidation process in an ABC can take many different forms. In some instances, negotiations between the buyer and the Assignee commence before the assignment is made and a prepackaged transaction is agreed on and implemented contemporaneously with the execution of the assignment. This type of turnkey sale can effectively allow the purchaser of a business to acquire the business without assuming the former owner's unsecured debt in a manner where the business operations continue uninterrupted. In some instances, the Assignee may operate the Assignors business post-ABC with the intent of selling the business as a going concern even if an agreement has not been reached with a purchaser. However, the Assignee must weigh the risks and costs of continuing to operate the business against the anticipated benefits to be received from a going concern sale.*" (Kupetz, 2003). Although "*Chapter 7 was a poor fit for a company with valuable technology assets because that technology needs to be 'kept with the engineers who developed it' and 'packaged with the specialized research equipment.' Because everybody would be laid off immediately in a Chapter 7, she suggested that an auction works better in that situation. Similarly, her view was that a Chapter 11 generally would not be a useful option unless the company had sufficient resources to survive for about 6 months, which seems unlikely for most of the smaller high-tech companies...*" (Mann, 2004).

794 "*One of the most important survivals of shareholder liability occurred in California from 1849 to 1931. The California experience is particularly interesting because it continued at an advanced stage of commercial and industrial development for more than 3 quarters of a century, well into comparatively recent times. The California Constitutions of 1849 and 1879 and implementing statutes' imposed on shareholders pro rata liability for all corporate debts and obligations incurred while they were shareholders. California law imposed liability on all shareholders both of corporations incorporated under California law, without regard to the law of the jurisdiction in which the debt was incurred, and foreign corporations doing business in California with respect to debts arising in California. Direct shareholder liability thus survived in California from 1849 to 1931 in an economic world overwhelmingly committed to limited liability. California law imposed liability on a shareholder for the shareholder's proportion of the total debts of the corporation. It was a direct, primary obligation that any creditor could assert directly against the shareholder without first instituting an action against the corporation."* (Blumberg, 1986).

795 "*California was admitted as a state of the Union, Sep 9, 1850. The act of admission contained no reference to mineral lands, and the new state came into existence with the local systems in full force and operation in the mining districts. The legislature of the state in 1851 gave recognition to the existing conditions and the controlling force of the local system by inserting a provision in the civil practice act to the effect that the 'customs, usages, or regulations, when not in conflict with the constitution and laws of the state, shall govern the decision of the action.*'" (Lindley, 1914).

796 "*Direct shareholder liability thus survived in California from 1849 to 1931 in an economic world overwhelmingly committed to limited liability. California law imposed liability on a shareholder for the shareholder's proportion of the total debts of the corporation. It was a direct, primary obligation that any creditor could assert directly against the shareholder without first instituting an action against the corporation. After 1850, the California general corporation statutes provided for pro rata liability for which the shareholder was liable only for the proportion of each creditor's claim represented by the shareholder's proportional ownership of the stock of the corporation."* (Blumberg, 1986).

797 "*In the 19th century, most mining companies were established to exploit single ore deposits. The firms generally were viewed, not as going concerns, but rather as high risk businesses that were in the process of liquidation (Godden and Robertson, 1902, p46). Shareholders were primarily interested in a mine's ability to pay dividends. These attitudes had a profound influence on mine accounting. The costs of acquiring a mine, developing it, and equipping it were sunk costs that would never be available for dividends. As a consequence there was great variation and little concern regarding the accounting for property, plant and equipment."* (Vent, 1991).

798 "*The legal system afforded both debtor and creditor leverage in their economic parrying. The game for the creditor was to obtain a quiet settlement of debts without creating an atmosphere that had other creditors smothering the assets in an avalanche of attachments. Debtors, on the other hand, could play the game with excuses, conveyances, hiding assets, and, finally, bankruptcy. The universal complaint of the early 1850s was that the state bankruptcy laws made it ludicrously easy to defraud creditors and still come out rich... California did provide for insolvency proceedings through assignments for the benefit of creditors. This process involved a general assignment of all or substantially all of the debtor's property to a trustee, who would marshall assets, distribute*

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them to creditors, and return the surplus to the debtor. The assignment for the benefit of creditors was an alternative allowed under state law that was attractive to debtors... There were problems, however, with the procedure. Graves and O'Melveny set out some of them in an 1885 letter... 'The machinery for discharge of an assignee for the benefit of creditors can call him to a/c [account]. Then he can give notice and be discharged just as an assignee in insolvency. We doubt whether he can free himself of his liability to creditors in any other manner unless in an action in Equity. This would be too expensive a course to pursue in so small an estate. The only reason that we do not seek the recovery now is that we are afraid that you would go to distributing and getting signatures [re-leasing assignee & debtor] at the same time and that some few might object to signing and we would be in the same position as in Starises case where all have received their money and one had not released the assignee.' These were legal as well as logistical problems, but lawyers were in the business of solving them. Debtors also created legal and logistical problems by making arrangements with certain creditors just ahead of other creditors, pushing themselves involuntarily into insolvency proceedings." (Bakken, 1991). "*The claims of both resident and non-resident creditors are discharged upon the debtors making an assignment of all his property, and giving notice thereof by publication.*" (Spofford, 1879).

799 "*California Act of 1853 applicable only to mining corporations, however, utilized a very different form of pro rata liability. Under this early mining corporation act, pro rata liability meant that a creditor was empowered to collect from any shareholder the entire amount of a corporate obligation, but not in excess of the shareholder's aggregate obligation, as measured by the shareholder's proportional ownership of the outstanding shares."* (Blumberg, 1986).

800 "*Adams & Co. were first in the field, opening their business in Oct 1849. Connections were promptly established with the leading mining camps. Assays were made for the miners. Through their influence private coinage of gold was authorized… Between 1849 and 1852, 5 express companies were put in operation in San Francisco. These were Adams & Co., [PBC], Palmer, Cook & Co., Todd & Co. and Wells, Fargo & Co. Millions upon millions of gold dust and bullion were handled by these companies for account of the miners and parties interested in the industry. Naturally these companies did considerable banking business of a certain kind, as buying bullion, receiving deposits, selling drafts on all parts of the world and making loans. These companies did a thriving business during the few years that the first 4 were in operation, and turned in large profits to their operators. The first serious bank troubles in San Francisco occurred in 1855. Previous to that there had been some failures, notably in 1851, but none of a general character. The failures in 1855 started with the suspension of [PBC], one of the express companies that had been handling a large amount of the bullion business of the State. On the following day Adams & Co., controlling another important express and banking business, suspended. Palmer, Cook & Co., also in the express and banking business, followed in the wake of the other two.*" (Wright, 1910). "*The exorbitant prices then paid for goods in store induced large shipments hither on speculation, the market became glutted, and prices fell as much below their actual value as they had been above it. In 1850 Naglee closed his doors owing to this pressure, and a 'run,' the first recorded in the financial history of California. In 1851 Wells & Co suspended. That was pre-eminently a wild and speculative period, and the banks lived in an atmosphere entirely uncongenial to a healthy existence and the wonder is that they survived so well.*"(Bankers Magazine, 1877).

801 "*In the event that an exchange dealer could not produce the value of the notes, a bill was protested and the holder held his note as evidence that could be used in bankruptcy or other legal proceedings. How then did the importance of confidence in the exchange business impact [PBC's] dealings in California? When [PBC] entered California, the lucrative gold dust and exchange business primarily catered to miners remitting funds and paying debts. Merchants, many of whom had gold (both dust and bullion), preferred to ship and insure their own gold east and direct it to merchants to whom they owed debts. This was primarily because California lacked reliable exchange dealers. Taking notice at the absence of reliable paper in 1851, The Marysville (California) Daily Herald advocated that 'the enormous quantity of spurious bank paper... into the purchase of which so many returning immigrants had been duped' could be prevented 'if confidence existed in the exchange dealers of California.' Desperate miners, needing to send money home so their families could survive, had no choice but to exchange their gold for exchange notes, but merchants preferred the risk of shipping gold themselves to trading it for paper that could be worthless tomorrow. They did not have confidence in the ability of California's exchange dealers to pay their bills at correspondent banks. Furthermore, it was advantageous for a merchant's reputations to ship their own gold dust. As the Sacramento Daily Union noted, merchants 'benefitted by having their names appear as shippers of treasure.' [PBC], along with a few other firms, radically altered this system of commerce by offering confidence-generating exchange notes for gold dust and bullion… There was nothing revolutionary about selling exchange notes for gold; it was one of the earliest functions of California banks. What distinguished [PBC] was the reliability of these notes. These characteristics emanated [PBC's] connection to Page & Bacon in St. Louis. Of the connections, the St. Louis Missouri Democrat noted that the San Francisco branch 'had scarcely opened its doors, when on account of the high credit of the house here (St. Louis), business flowed to it almost without an effort, before it was the shipper of gold dust in California, to the amount of millions a month.' The confidence in [PBC's] notes was thus a direct result of confidence in the St. Louis house. Because [PBC's] liabilities were backed by the wealth of Page & Bacon, exchange-related confidence in [PBC] appeared to be well founded.*" (Nadler, 2015). In 1849, "*Page & Bacon sent Francis W. Page, son of the senior partner, to establish an express company in San Francisco. In June 1850, it became the bank of [PBC]. David Chambers and Henry Haight (governor of California, 1867-71) were made the agents in San Francisco, while the younger Page represented the company in Sacramento. Page & Bacon was the leading bank of St. Louis; and [PBC] was, as long as both lasted, the same in San Francisco. When large-scale railroad construction began in earnest in the eastern part of the country, Page & Bacon was the first St. Louis business house to aid the Missouri Pacific R. R. It also advanced money to the Belleville (Illinois) and St. Louis and the Northern Missouri railroads... Transportation, cheap and slow, from the East to St. Louis came down the Ohio and up the Mississippi to St. Louis. As one of the few men in 1853 to see the necessity of a direct railroad route, Bacon advanced funds to complete the greater portion of the Ohio & Mississippi R.R. from Cincinnati to St. Louis.*" (Shutes, 1947).

802 "*The San Francisco Alta California observed in the autumn of 1851 that 'the miners are beginning to discover that they are engaged in a science and a profession, and not in a mere adventure.' This prescient observation could serve well as an epigraph for Maureen A. Jung's essay on the rise of corporate enterprise in the Gold Rush. As the Argonauts headed to California, they organized simple partnerships and joint-stock companies. But rapid technological advances in the 1850s —most notably the rise of river, quartz, and hydraulic mining— required far greater capital resources. To meet the growing need for capital, large-scale corporations soon became the dominant form of economic organization, and speculation in mining securities became a regional obsession. The mining corporations played a key role in the economic development of California and the West, but they also had their downside. 'Corporate power,'*

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Jung reminds us, 'won out over individual rights, as insiders manipulated share prices, bilked investors, and drained companies. These activities diverted funds from more productive investments, injured workers' livelihoods, and damaged the economy as a whole.'" (Rawls, 1999). "*In July 1851 the same newspaper stated that 'now we hear of the complete exhaustion and abandonment of many of the diggings' while everywhere 'there was [sic] exhibited strong indications of failing resources, in the increasing necessity for systematic labor and the application of science and practical improvements to assist manual labor'... Since the great majority of the early backers and operators were ill-qualified for this most technical of all kinds of mining, the first enterprises failed in a general wave of bankruptcy in 1852-3.*" (Rodman and West, 2001).

803 "*Credit granted by eastern or European 'correspondents' was all-important to the young merchant, for to an unhealthy degree California ran its business on credit. The miner bought on credit from his local storekeeper, the storekeeper was carried on credit by the country wholesalers or jobbers, the latter received their goods on credit from San Francisco importers or wholesalers, who, in turn, were dependent on local banks and on the banks' 'correspondents' in New York, Philadelphia, Boston, or Britain. With this long chain of credit relationships, and with all borrowing at a very high rate of interest.*" (Paul, 1982). "*In the 1830s the cobweb fluctuation had a 2-year periodicity. 'Each merchant would be ignorant of the amount other merchants would be bringing forward by the time his own merchandise was on the market.' The same was true in the United States in the 1850s following the discovery of gold in California: 'The extraordinary and undue expectations entertained not only in the United States but in this country [Britain] as to the capability of California—after the 1849 gold discovery—unquestionably aided in multiplying and extending the disaster consequent on the American crisis. When it was again and again stated, both in London and in Boston, in regard to all shipments to San Francisco, that 6, or at most 8, moderately-sized or assorted cargos per month were all that were required or could be consumed; instead of that eastern shippers dispatch 12 to 15 first-class ships a month, fully laden.*" (Kindleberger and Aliber, 2005).

804 "*De facto bimetallism of American gold and American and foreign silver continued until the mid-century increase in the world output of gold caused its market value to decline precipitously. Although a premium on silver sufficient to warrant export appeared in 1847, the European famine caused a net import of $1,677,255 of silver and $20,537,010 of gold into the United States. In 1848, the world price of gold appreciated, and the silver premium fell below export costs. The net export of gold in 1848 was four times that of silver. Commencing in the summer of 1850, the world price of gold began to slip rapidly to a low of 15.19 in 1859. As silver appreciated, even the worn Spanish fractions became more valuable as commodities than as money, and de facto bimetallism which had prevailed in the United States since 1834 disappeared.*" (Martin, 1973)

805 "*Containing the answers of the Presidents or Cashiers of the several Banks to the following interrogatory: 'No. 18. What do you make the par standard in estimating the value of paper money?'... [OLIT]:—This bank makes Indiana paper the par standard in estimating the value of paper money... Dayton Bank—We consider specie as the standard, yet we receive the notes of Indiana and Kentucky at par, in payment of debts, notwithstanding they are not now redeemed with specie... Bank of Zanesville:—I name Indiana State Bank notes, and the Franklin Bank of Columbus... Bank of Marietta:—At present, the paper of the State Bank of Indiana. We are governed, to some extent, by Cincinnati in that.*" (State of Ohio, 1842)

806 "*The branches are required to receive the notes of any failing branch, and, at all times to take them in payment of debts. 25% of the circulation outstanding, must be kept on hand in coin, and in addition 5% subject to sight checks in specie, in one or all of the cities of Baltimore, Philadelphia or New York. No branch can suspend specie payments without a forfeiture of its charter... Each branch is examined once every 6 months by some member of the board, whose report is filed in the office of the board, subject to examination by any member thereof; and the books and papers in their office are open to examination by a committee for that purpose appointed by the legislature.*" (Bankers Magazine, 1848). "*In some former remarks on this subject, we asserted that the great defect in the Ohio system of banking was the practice of keeping bank accounts in 'currency,' as it is termed, instead of par funds. The law establishing the 'State Bank of Ohio, and other banking companies.' requires that all notes issued by them shall be payable at the branch by which they are issued, in gold and silver coin, or either, at the option of the branch, on demand. Theoretically, then, these notes are par funds, but practically they are not so, since the bills of the nearest branches will not command the specie in Cincinnati at the par value.*" (Bankers Magazine, 1857).

807 By Jan, 1851, "*there was quite a diversity of bank taxation in the State. [OLIT]... under its charter was taxed but 5% on its dividends, the new banks organized under the State Bank law of 1845 paid 6% upon their profits, except those that accepted the terms of the act of March 23, 1850; these paid the regular property tax rate on their capital stock and surplus fund. On March 21, 1851, the legislature passed a law taxing banks and other stocks the same as other property in the State was taxed. This placed the tax on capital stock and surplus the same as the law of March 23, 1850, but its provisions were general and applied to all banks then existing or afterwards to be established in the state, unless exempted by contract. That this law did increase the taxes on the banks is shown by the state auditor's report for 1851 which gives the total taxes paid by the banks under the act of March 21, as $129,723, while if they had been taxed on their profits alone the tax would have been only $64,105.*" (Huntington, 1915). Ohio "*enacted a comprehensive free banking law, March 21, 1851... This made 4 systems of banks in Ohio: those chartered before 1845, which in 1854 had $1.55 M capital; the State Bank and branches, with $4.1 M capital at that time; the independent banks, with $720 [K] capital, and the free banks, with $695 [K] capital. During these years repeated laws were passed to try to stop the circulation of out-of-State notes.*" (Sumner, 1896). "*A large part of the decrease in the number of banks during the years following the new constitution was attributed by the banks to adverse legislation. The party then in power was credited with a hostility to all banks. Their opponents had charged them with trying to frame the new constitution so as to admit of legislation which would crush the banks. That plan failing, these critics assert, they then turned to the taxing power as a means of waging war on the banks.' That this party the same year the new constitution was adopted passed the free banking law, thus throwing open the opportunities to engage in banking, did not prevent even the free banks themselves from heaping criticisms upon the tax laws… While in 1854 the banks themselves almost uniformly held up the tax law as the scapegoat of all their financial troubles. [Report of Bank Examiner Reemelin, Oct. 15, 1854.]*" (Huntington, 1915).

808 Frustration over favoritism and zest for equality as "*much partiality was shown by the legislature in enacting tax laws, with the result that in 1851 the 'Uniform rule' was written into the State Constitution. The adoption of the 'uniform rule' was hailed as a great tax reform. It embodied the principles of equality and democracy, and represented the practical 19th Century application of Adam Smith's first maxim of taxation, that 'the subjects of every state ought to contribute towards the support of government, as nearly as possible, in proportion to their respective abilities.'*" (Compton, 1931).

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"*This condition continued for almost 50 years, but with the passage of time abuses crept in and with the adoption of the present Constitution in 1851, legislative discretion in matters of taxation and tax exemption was drastically restricted. The strongest curbs were contained in Article 12, § 2, which then read as follows: 'Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money; but burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value [$200], for each individual, may, by general laws, be exempted from taxation;' The plain intent of this section was to cut off practically all of the legislature's discretionary powers. All property was required to be subjected to ad valorem taxation by uniform rule. Nothing was to be exempted except specified classes of property.*" (Caren, 1950).

809 "*Ohio has adopted a law whereby the banks are taxed according to their loans, instead of their capital; and the banking capital of the State is thus liable to a severe and disproportionate burden*." (Bankers Magazine, 1854). Secretary Mylander of the *Ohio Bankers' Association,* "*I can say without successful contradiction that Ohio is the only State left in the Union in which all property, real and personal, tangible and intangible, must pay same tax upon the same valuation. We have absolutely no classes of properties in the State of Ohio, and all property therefore is taxed at the same rate and upon the full value… The ad valorem taxes are the same rate on all classes of property and upon the same valuation*." (United States Congress, 1928). "*With respect to the question of equity, it is widely recognized that a general tax on intangibles would bear with considerably greater weight on banks and other depositary institutions than on non-financial businesses. Virtually all the assets of such institutions are in the form of intangibles, whereas this class of property is much less important for nonfinancial businesses. Depositary institutions are unable to move their base of operations from State to State; they are closely regulated and supervised, with published balance sheets; and tax assessors cannot readily undervalue fixed claims, such as bank assets, to the degree that they can and generally do undervalue other types of assets. However equal the treatment provided in the tax laws, in practice depositary institutions would be at a marked disadvantage compared with other businesses and individuals, particularly where intangibles are blanketed into a general property tax that purports to apply the same valuation standards and rates to real property and all varieties of tangible and intangible personal property. An intangibles tax applied to banks and other depositary institutions would have a number of adverse economic consequences, depending in magnitude on the level and geographic coverage of the tax. In the first instance, the principal effects would be on the functioning of financial intermediaries in gathering savings and allocating funds for productive investment—locally, regionally, and nationally—but ultimately any impediments to this process would have a bearing on the performance of the entire economy. The process of financial intermediation performed by banks and other depositary institutions is particularly vulnerable to an intangibles tax since the duplication of financial assets that is inherent in the flow of savings, first into deposits of those institutions and then into customer loans, would expose savings flowing through intermediaries to an additional layer of taxation not encountered where funds flow directly from savers to ultimate borrowers. A tax on intangible assets would tend to induce banks and other depositary institutions to divert funds from taxable to tax-exempt forms of assets—that is, from the financing of consumers and businesses, particularly local businesses, to the acquisition of Federal, State, and local obligations*." (Federal Reserve, 1971).

810 "*Contrast the policy of Massachusetts and Ohio. The former imposes a tax of 1% on her banking capital, and the amount invested in it steadily advances with the increasing prosperity of the State. But Ohio pursues an opposite course, and levies an exorbitant and unconstitutional tax, and cripples the trade of her own citizens, but enables the residents of other States to profit by her mischievous measures. Ohio takes a retrograde step in the financial movements of the present day, and allows the States of Kentucky, Indiana, Illinois, Virginia, and Tennessee, and finally the New-England States, to supply her with currency, who derive a large income therefrom… By the quarterly returns of Nov last, the whole amount of the circulation of the banks in Ohio was $11 M, of which the 5 banks in Cincinnati had only $353,000, and one third of even this paltry amount is now withdrawn by the closing of the Lafayette Bank. The other cities and towns in the State, Cleveland, Columbus, Sandusky, etc., require a large proportion of their issues for their own use, and there is to meet the engagements of a single day's active business.*" (Bankers Magazine, 1855). "*During the 3 years 1852-4, 14 of the authorized banks in Ohio failed, or closed up for other reasons. Of these, 10 disappeared from the state auditor's reports in the year 1854, 3 of them being old banks, 3 free banks, 2 independent banks, and 2 branches of the state bank.*" (Huntington, 1915). "*The severe tax laws of Ohio, adopted within the last 2 years, have had a depressing effect upon the banking system and facilities of that State. It will be seen by the above table, that the bank capital, of Ohio has actually diminished within the past 3 years. The specie and State Bonds have also decreased. The item of circulation has increased only 10%; individual deposits, 75%. The contrast with the progressive movements in other States is quite marked... While New York, Kentucky, Virginia, and other States, have increased their banking facilities from 50 to 100%, Ohio is taking a retrograde step. The result is attributable entirely to the unfavorable legislation that has taken place in that State, and the vexation and litigation to which it has given rise, and which are not yet ended, will serve to drive away not only the capital held by their own citizens, but that of non-residents.*"(Bankers Magazine, 1854).

811 "*[U]nless Ohio possesses, or rather concentrates a bank capital of [$25 M] paid up in specie, or its equivalent, the currency there will continue to be as heterogeneous and uncertain as it has been since 1852. For 3 years, Indiana, Illinois, Kentucky, Virginia, Louisiana and Michigan have supplied the currency, to the exclusion of Ohio bank notes. Thus a depreciated currency was imposed upon Ohio, Eastern exchange rose, and, with its advance, there was a rush for the redemption of all the Ohio notes that were accessible, and which was constantly presented for coin. The exchange drawn from Ohio supplied new foreign issues, and through them a draft upon Ohio was most steadily kept up by brokers, who were playing into the hands of half Ohio, half Indiana bankers. Ohio paper had therefore to be redeemed 5 or 6 times a year, and each redemption cost 1%, or 6% to maintain it, and until a specie standard is introduced, Ohio circulation cannot be advantageously sustained.*" (Bankers Magazine, 1857)

812 See Table 1 on p273 of Hasan and Dwyer (1994).

813 "*Should it be determined that this company is liable to this additional taxation, the interest of its stockholders will require that the business of the concern should be closed as soon as possible. The capital invested will no longer yield a reasonable fit, and will, of course, seek investment in some more advantageous business. At least such would seem to be the reasonable expectation. All of which is respectfully submitted.*" (Bankers Magazine, 1853).

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814 "*The effort to tax the banks in Virtue of this act provoked strenuous resistance. In the litigations which at once followed the supreme court of the state decided that the tax was valid and must be paid. It held: (1) That § 60 of the banking act of 1845 contained no pledge by the state not to alter or change the method or rate of taxation, and had none of the elements of an irrepealable contract between the state and the banks; (2) that if that section could be construed to the contrary, it would amount to a surrender of the sovereign power of taxation, and thus be inoperative and void for want of any power in the general assembly to make it. Debolt v. [OLIT] 1 Ohio St. 563; Mechanics & T. Branch of State Bank v. Debolt, 1 Ohio St. 591; Knoop v. Piqua Branch of State Bank, 1 Ohio St. 603; Bank of Toledo v. Toledo, 1 Ohio St. 622. These cases were decided at the Jan term in 1853, and the opinions in them were written by 4 different members of the court… The whole case is made to depend upon whether § 60 of the act of 1845 constituted an irrepealable contract respecting taxation which the legislature enacting it had constitutional power to make.*" (Lawyers Report, 1903). "*The cases in 16 How. and 18 How. (Piqua Bank v. Knoop, 16 How. 369; [OLIT], Id. 416; Dodge v. Woolsey, 18 Id. 331; Mechanics' and Traders' Bank v. Thomas, Id. 384; Same v. Debolt, Id. 380), were all cases under the Banking Act of Ohio, where a special tax was agreed to be paid by the corporators for their charter, which contained an exemption from all further taxation... A number of cases were decided at the Jan Term 1853 of the Supreme Court of Ohio, arising upon [§ 60] of the Banking Act of 1852, in which the view is taken and argued with great force, that a charter of incorporation is not a contract. The view of Burke as to the charter of the East India Co, that it was a 'charter to establish monopoly and create power,' and not entitled to the protection of the various charters of English liberty, is approved; and the charters of incorporation granted by the state, were thought in a similar manner not to be entitled to the protection of the provision of the Constitution prohibiting the impairing the obligation of contracts: Knoop v. The Piqua Bank, 1 Ohio N. S. 603; Toledo Bank v. Bond, Id. 697; Debolt v. [OLIT], Id. 563. These cases were reversed by the Supreme Court of the United States in 16 How.*" (Burroughs, 1876).

815 Coe: "*In 1838, he accepted an invitation to remove to [NYC] and enter the service of Prime, Ward & King, then the leading banking house of the country, where he continued some 6 years, when, in connection with and under the patronage of that firm, he removed to Cincinnati, Ohio, doing with them a limited banking and commission business. He subsequently became cashier of [OLIT], in New York, which position he resigned to enter into the banking business there on his own account, as partner in a house already established. This not proving successful, after a short interval he received. in the winter of 1854, a call to be cashier of [AEB], of which institution in 1855 he became vice-president, and afterwards, in the summer of 1860, president, which office he held continuously for nearly 34 years until Jan 1894.*" (Bankers Magazine, 1894).

816 "*After Coe's resignation, Charles W. Rockwell, who served as United States Commissioner of Customs with the Taylor and Fillmore administrations, was appointed cashier… 11/18/1852: Coe announces his resignation. (669), 12/31/1852: Charles W. Rockwell appointed cashier. (717-8)… Whereas Coe was respectful and tactful with the home office, Rockwell, brother of Connecticut Congressman John A. Rockwell, was more direct and forceful, if a less talented banker than Coe. To the great annoyance of Ohio office managers and trustees, after his appointment Rockwell argued for closing the Ohio operation and focusing efforts on building up the New York office… 4/11/1853: Rockwell tells Stetson that taxation in Ohio is such that the home office should cease business there and continuing in New York. (670-671)... Even more troubling was that Rockwell's statements to the home office regarding the financial condition of the New York agency were suspected to be deliberately deceptive, with reported financial positions frequently questioned by the home office… 3/26/1853: Rockwell bristles at home office bookkeeper telling him how to keep accounts. (670)… The bookkeeper at the New York office testified that Rockwell would direct him to 'deduct the money borrowed in the streets, so the home office did not know the amount of street borrowings; Mr. Rockwell also contending, that to do so, was giving the home office the information necessary to enable them to understand the real earnings of the New York office… But given the persistent liquidity demands placed on Rockwell, and what turned out to be a relatively short tenure as cashier, the home office chose to wait until a new cashier was appointed to address concerns the home office had of the New York office.*" (Riddiough and Thompson, 2016).

817 "*The Lafayette Bank of Cincinnati, of late years under a State charter, has now re-organized as a private institution. This bank was originally established in 1834, under special charter from the State of Ohio; at the expiration of charter in 1853, continued under individual responsibility by George Carlisle, Samuel Wiggins, Rensselaer W. Lee, C. F. Cassilly, Henry Peachey, and Joseph C. Butler; in 1863, organized under Free-Banking Law of Ohio; has again been merged into a private bank, with individual responsibility, with R. Springer, Chas. P. Cassilly, Henry Peachey, and Joseph C. Butler as partners, under the firm-name of 'The Lafayette Bank.*"(Bankers Magazine, 1869)

818 Following the Supreme Court decision on ABC in lieu of bankruptcy in 1833, "*Preference law first appeared in the Ohio statutes in 1835… In 1838, the statute was amended and reenacted, and a 'design to prefer,' literally, was prescribed for the first time...The 1838 statute was reenacted in substantially the same form in 1853… In the courts, however, the idea that prevailed was that the statute's real target was a debtor's attempt to put assets out of reach of creditors by means of a trust. Judicial emphasis on assignments in trust reflected not only the precise words of the statute, but also the continuing attitude that what was wrong was not granting or taking a preference but using a trust to put assets beyond the reach of other creditors… When some creditors, through their vigilance, got more than a pro rata share of an insolvent debtor's assets, a 'just preference' was the result, and the courts did not interfere.*" (Buckley, 1981). "*In 1851 we adopted the new constitution of Ohio. In this new constitution, under article 4, §7, the probate court is established and organized, and under §8 the jurisdiction of the probate court is prescribed… That section does not give jurisdiction to the probate court over assignments for the benefit of creditors under the Insolvent Debtors' Acts. After the adoption of that constitution of 1851, the legislature passed an act, to-wit: on March 14, 1853... as follows: '§16. That all assignments of property in trust, which shall be made by debtors to trustees, in contemplation of insolvency, with the design to prefer one or more creditors, to the exclusion of others, shall be held to inure to the benefit of all the creditors, in proportion to their respective demands; and such trusts shall be subject to the control of the courts, which may require security of the trustees for the faithful execution of the trust, or remove them and appoint others, as justice may require'… This last act of 1853, however, drops out the reference to the court of chancery, and places the jurisdiction 'subject to the control of the courts.' At that time, in 1853, the common pleas court took jurisdiction under that section of the act.*" (*In re Assignment of John W. Jones*, 1897).

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819 The Bank of Massillon *"was chartered in 1835, with 20 years to run, simultaneously with the Wooster, Clinton, and Circleville banks. It belonged neither to the State banks, the independents, nor the free banks, but was a sort of freebooter, with license to sink or swim as it found most advantageous."* (Bankers Magazine, 1855). "*The charters of 2 others, the Bank of Circleville and the Bank of Massillon, were to expire in 1855, but both became insolvent and were ranked among the broken banks of the state before the end of 1854.*" (Huntington, 1915).

820 Dwight's failure was announced on Tues and the Bank of Massillon failed that Fri (Homans, 1856, p.xxii). The Bank of Massillon "*according to the Aug report of $377,682, against which it held $71,000 in specie, and $350,000 in the hands of its principal proprietor in New-York (now bankrupt) has recently failed... [CPR] borrowed $200,000 of its notes of circulation, and the Chicago and Mississippi Railroad $200,000 more, and these sums were probably scattered broadcast among the Western farmers and traders... How far the principal proprietor in New-York may be able to refund the $350,000 in his possession will determine the ultimate value of these notes of circulation.*" (Bankers Magazine, 1855). "*Henry Dwight, Jr., an Important broker-agent, heavily engaged in Ohio and Indiana railroads. His chief promotion during 1852 and 1853, however, was the Chicago and Mississippi railroad… To obtain the necessary funds Dwight negotiated a $2 M loan for the company through the American Exchange Bank and the Metropolitan Bank of [NYC... Dwight] obtained control and floated a first bond issue for [$2 M] through the American Exchange and Metropolitan Banks of New York and a second issue for [$1.5 M]... Dwight's 'operations in western railroad bonds' extended to Ohio railroads and it was reported 'one or two have stopped in consequence' of his failure. Dwight, who owned [$170 of the $200 K] capital of the Bank of Massillon, Ohio, had used the bank's circulation to help.*" (Morgan, 1964). "*The Bank of Massillon failed in Nov, 1853, close upon the failure of H. Dwight of [NYC] its principal owner, who had used practically all its circulation in building [CPR] and the Chicago & Mississippi Railroads. The last report of the bank showed that Dwight had $350,000 of its means subject to sight draft.*" (Huntington, 1915). "*The Western papers speak in strong terms of the failure of the bank Massillon, which blew under 'very peculiar circumstances.'... H. Dwight, of New York, bought enough of its stock to give him entire control of the concern. He employed about $200,000 of its bills in building the Chicago and Mississippi Railroad; so that that amount amount of its bills is in the pockets of the Western farmers and laborers. Dwight has possession of about $350,000 of its assets, it is said, and has lately failed in N.Y. the bank goes down, of course, with no means to redeem its bills. Nearly the entire funds of the bank appear, from this representation, to have been monopolized by one man. The Cleveland Herald says: 'The officers of this one-man bank must have known where the funds were, they must have been aware that the least jar to the credit of the man who owned would involve in a serious loss the innocent, credulous bill holders, who, looking upon the miserable farce of bank government as a genuine reality, had salted down the promises to pay issued by these dummies.*" (The Jeffersonian, 1953).

821 "*When the bank closed, it was found that all its assets had been transferred to the city of New York, that it had in circulation $400,000, which was its full limit according to its charter, it capital stock being all paid up and it being allowed to issue two to one on its paid-up stock. As soon as it was ascertained that a crisis in the affairs of the bank had come, the President and Directors made an assignment to Charles D. Smith, Dwight Jarvis and M. D. Wellman who were afterward removed by the Court of Common Pleas on a motion by E. P. Grant, Esq., counsel for parties in interest, and Hon. George Harsh, Dr. Isaac Steese and Hon. P. C. Hull, now of Oneida, Carroll County, substituted… Whatever there was of its assets was faithfully accounted for to the last cent, and the records of the Common Pleas of Stark County show an honorable discharge of the assignees after having discharged their trust. The assets of the bank, not stolen by the Dwight management, paid about 30 cents on the dollar, 70% being plundered from the holders of the liabilities of the bank.*" (Perrin, 1881)

822 There is no mention of banks or Ohio in *Metropolitan Bank v. Godfrey*, 23 Ill. 579 (1860) and the only event around this period was "*on Oct 29, 1853, Dwight conveyed, by quit claim deed, to Edward Keating, all his interest in the property described in the deed of Oct 3, 1851, except certain property conveyed to Olden in trust for Mrs. Godfrey.*"

823 "*Similarly, in determining whether a statute of the state of incorporation should limit the activities of the corporation in other states, the policy of the act needs to be examined. If it is to regulate the corporation, as such, it will be enforced regardless of where the activities took place… In Metropolitan Bank v. Godfrey, 23 Ill. 579 (1860), a New York statute regulating banks was held applicable to a New York bank's activities in Illinois.*" (Harper, 1946) "*[T]he bank was organized under the general banking law of New York, it was held incompetent to take and convey lands in its corporate name, and that as it had no legal capacity to receive the title, the conveyance was absolutely void for want of a grantee capable of taking and holding the land.*" (Bissell, 1880).

824 After a year of NYCHA, "*Its results have been highly satisfactory to the banks. It has saved them a vast deal of labor, risk, loss, and trouble. At the same time, it has enabled the cashiers and tellers and bookkeepers to give closer attention to other matters before them. It was also the means of closing about 50 accounts in each bank in the city: an aggregate of 2,500 accounts. But the principal convenience has been in the mode of adjusting balances, all which has been done with the intervention of only small sum in coin. The aggregate payments through [NYCHA] for the 52 weeks ending 10th inst, were nearly [$ 6 B], or about [$19 M] per day. The average payments in coin or in coin certificates being somewhat less than [$1 M] per day. The effect of [NYCHA] has been to create more prompt settlements by and between the numerous banks of the city, and to compel the smaller and weaker ones to restrict their business.*" (Bankers Magazine, 1855). "*In the cities that have clearing houses there are settlement days, but no collection days. In the interval between these days, the business of a clearing house in San Francisco would be very small. He would favor the abolition of the collection day if the clearing house were established, and the adoption of a system credits.*" (San Francisco Examiner, Dec 17, 1875). "*Previous to Oct 11,1853 (the date of the organization of [NYCHA]), the banks doing business in the city of New York were subject to great risk, inconvenience, and loss of time in effecting their settlements with one another under the methods then prevailing. Each bank was obliged to keep a ledger account with every other bank, involving a large number of entries daily, the settlements between them being made by cashiers' drafts every Friday; while the distance between some of them was also a serious difficulty. As the number of banks and the amount of their business increased, it became apparent to all that some plan or system should be devised which would remedy the evil, and avert not only the delay but the risk involved in daily transactions. After much study by leading spirits among the bank officers the present clearing-house system was adopted, and put into operation as an experiment, with the result of marked success, and it has since proved so valuable as to be recognized as a necessity. When organized, its object was simply (as the constitution states) 'to be the effecting at one place of the daily*

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exchanges between the several associated banks, and the payment at the same place and day of the balances resulting from such exchanges.' But it was destined to develop into a tower of strength in times of financial distress, and a source of mutual protection to its members at all times. Even the most sanguine and enthusiastic of its projectors." (Camp, 1992).

825 "*The fluctuation in the amount of clearings shows the effect of the 'panic' to a remarkable extent. The amount of paper credits to be exchanged increased very rapidly until the close of 1857, and the Clearinghouse year ended in the midst of the panic, almost at the date of the suspension. The following shows a decline of one-half in the clearings, but singularly but little decline in the 'balances.' In [1859] a marked recovery has taken place… Connected with the Clearinghouse is a bank selected for a deposit bank—the Bank of America acting for the association in that capacity. In this bank any bank deposits such an amount of coin as it may see fit, taking from them a certificate of deposit in amounts of $500, $2,000, $5,000, and $10,000, certifying that they have received and hold such amounts as a special deposit, payable to the order of any of the associated banks, and that they hold such amounts in trust as a special deposit. The Bank of America now holds in this way $6.5 M. These certificates are used in the settlement of balances. At one o'clock all the banks which are debtor come to the Clearing-house and pay in these certificates, and in bills and change, sums less than $500, the balance against them.*" (Hunts, 1860, p212-4). "*Clearinghouse certificates must be distinguished from clearinghouse loan certificates. The former were the conventional issues made strictly in lieu of specie, legal tender notes, or other legal reserves for settlement of clearinghouse balances. The latter were issued only in emergencies on the basis of loans made to member banks by clearinghouse policy committees… The precedent established in 1857 was made the basis for all the subsequent issues of loan certificates through 1907...*" (Timberlake, 1984)

826 "*Under the old special charters, our banks were allowed to issue currency to twice the amount of their capital stock, and bills of the higher denominations of one, five, and ten thousand dollars were in common use. Checks were then mostly paid in bank bills, and certification was rather exceptional. But since the enactment of the General Banking Law in 1838, the old charters have gradually expired, and their circulation has been withdrawn. There is no fact that better indicates the improved character of our banking system, than its diminished paper issues. The old laws would give to our present city capital an issue of more than [$120 M], whereas we have now (in 1858) less than 10% of this sum registered, and less than the 7% part in actual circulation. The result of this decrease of bank currency is that business is transacted mostly by checks. In an average market the daily exchanges of the Clearing House alone are near [$25 M], and our entire city circulation is but [$7 M], which is principally absorbed in the retail trade. The amount of bank bills redeemed daily through the exchanges does not average over [$0.2-0.3 M]; the balance consists of the checks of individuals, and of bank checks on each other... On the old plan, the dealer's ledger account was not actually charged with certified checks until they were returned. They might be in transit long enough for the memory of the Teller and the Book-keeper to become dim, or for other transactions to throw them out of sight. A pencil memorandum on the Ledger (a usual method of noting them) might easily be effaced by accident or design. In fact, it was such abuse and accident that led to the adoption of the present plan of posting certifications*." (Gibbons, 1859).

827 "*By March 1852, 5 independent and 7 branch banks had placed themselves under these acts of 1850 and 1851. The majority of the banks organized under the law of 1845, however, opposed the law, and May 22, 1851, the board of control of the state bank adopted resolutions asserting that it was inexpedient for the branches to waive their constitutional and chartered rights and consent to be taxed under the act of March 21, 1851. A test case was submitted to the State Supreme Court, which held that the act of 1845 contained no contract on the part of the state not to change the mode or amount of taxation. The Supreme Court of the United States, however, at the Dec term 1853, overruled this decision, and held that the act of 1851 impaired the obligation of a contract and was therefore void.*" (Huntington, 1915). "*In the meantime, the banks carried the cases to the United States Supreme Court on writs of error. The first case to be decided in that tribunal was that of the Piqua Branch Bank. It was therein held that § 60 of the act of 1845 did not merely prescribe a rule for taxing the banks which the state might change at pleasure, but that it was a contract which could not be impaired by subsequent legislation. That the act of 1851 to tax banks and bank and other stocks the same as other property was taxable, under which the Piqua Branch Bank had been assessed upon its capital stock and contingent and surplus funds, impaired the obligation of that contract, and was void for conflict with the Federal Constitution. A state, it was said, in granting privileges to a bank with a view of affording a sound currency, or of advancing any policy connected with the public interest, exercises its sovereignty, and for a public purpose of which it is the exclusive judge. Under such circumstances, a contract made for a specific tax is binding. This tax continues although all other banks should be exempted from taxation. Having the power to make it, and rights becoming vested under it, it can no more be disregarded, nor set aside by a subsequent legislature, than can a grant of land. (McLean, J.) And again: Every valuable privilege given by the charter, and which conduced to an acceptance of it and an organization under it, is a contract which cannot be changed by the legislature where the power to do so is not reserved in the charter. The rate of discount, the duration of the charter, the specific tax agreed to be paid, and other provisions essentially connected with the franchise and necessary to the business of the bank cannot, without its consent, become a subject for legislative action. [Piqua Branch State Bank vs. Knoop, 16 Howard 369]*" (Lawyers Report, 1903).

828 "*[OLIT] was unsuccessful in its efforts to escape the same tax. It was held that the provision in its charter that no higher taxes should be levied on its capital stock or dividends than were or might be levied upon those of other incorporated banking institutions in the state only entitled it to the same rate of taxation as was, or might be, imposed by general laws upon banks and banking institutions, and not to the benefit of any special or particular rate that might be levied pursuant to a special contract with one or more favored bodies corporate….[Chief Justice Taney. said:] 'But this rule of interpretation is confined to ordinary acts of legislation, and does not extend to the contracts of the state although they should be made in the form of a law. For it would be impossible for this court to exercise any appellate power in a case of this kind unless it was at liberty to interpret for itself the instrument relied on as the contract between the parties. It must necessarily decide whether the words used are words of contract, and what is their true meaning, before it can determine whether the obligation the instrument created has or has not been impaired by the law complained of. And informing its judgment on this subject it can make no difference whether the instrument claimed to be a contract is in the form of a law passed by the legislature or of a contract or agreement by one of its agents acting under the authority of the state.' [OLIT v. Debolt, 16 How. 416, 14 L. ed. 997]... It was admitted that the only difference between the Piqua Branch Bank Case and this case, granting that the complainant was rectus in curia, was that the former involved a tax assessed under a statute of 1851 enacted when the Ohio Constitution of 1802 was in force, while the latter was concerned with a tax levied under an act of 1852 passed after such*

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Constitution had been amended in 1851. The two acts were the same in effect, and both were challenged as impairing the same statutory contract, viz., §60 of the act of 1845. These laws were intended to tax, not the profits, but the business, capital, circulation, credits, and dues of the banks. They professed an intention to equalize the tax to be paid by the banks with that required to be paid upon personal property in general. The court said they did not accomplish this result, as they really subjected the banks to a much higher rate of taxation but this circumstance was not material in the view taken of the obligatory force of the contract statute. That contract was declared to be so plain and clear that no critical examination of §60 could make its words more exact in meaning. The words, 'would otherwise be subject,' contained there in, relate to the legislative power to tax, and the section was a relinquishment of that power, binding upon the legislature which enacted it, and upon succeeding legislatures as a contract not to tax the banks during their continuance more than 6% upon their semiannual profits." (Lawyers Report, 1903). According to Chief Justice Taney, "*In 1851, the Legislature of Ohio passed an act 'to tax banks and bank and other stocks, the same as other property'… And by [§3] of this act [OLIT] was brought within its provisions, and subjected to the payment of a like tax in all the several counties where its capital stock was loaned.. The payment of this tax was resisted by the plaintiff... upon the ground that the law imposing it impaired the obligation of certain contracts previously made… if the contract was within the scope of the authority conferred by the constitution of the State, it is like any other contract made by competent authority, binding upon the parties. Nor can the people or their representatives, by any act of theirs afterwards, impair its obligation. When the contract is made, the Constitution of the United States acts upon it, and declares that it shall not be impaired, and makes it the duty of this court to carry it into execution. That duty must be performed… [However] They cannot... by contract, deprive a future legislature of the power of imposing any tax it may deem necessary for the public service — or of exercising any other act of sovereignty confided to the legislative body, unless the power to make such a contract is conferred upon them by the constitution of the State.*" (*[OLIT] v. Debolt, 57 US 416*).

829 "*The decision...subjecting [OLIT] to the rule of taxation laid down in [the 1851 law], and imposing upon it a burden amounting, under the [1852 law], to about [$100 K] per annum, will probably render the winding up of its affairs a matter of necessity. The loans of the institution upon bond and mortgage amount, we are told, to about [$3 M], due on the first day of the present month; and as the notice required by law was given in June of last year, proceedings to enforce their collection may, and probably will be instituted immediately; especially as it will become a matter of pecuniary importance to the company to escape as rapidly as possible the operation of a law which absorbs so large a share of the interest due upon these chooses in action. It is evident that upon the winding up of this institution, a large part of the capital now invested in its operations will seek employment in other quarters, where profits are equally secure and taxation less burdensome... To call in so large a sum of money, cannot otherwise than produce much individual distress, while it will tend to constrict and unsettle the money market of the State. And when we take into consideration the fact that there are not only no means at home to supply the monetary vacuum thus created, and that stringent penal laws were enacted by the last legislature to prevent the influx of currency from abroad, we may be excused for suspecting that but a few more turns of the screw will be required to bring on a condition of things bad enough to suit the tastes of even constitution-makers and law-manufacturers.*" (Bankers Magazine, 1855).

830 "*This sequence of events originated in Ohio. In early 1854, much of the currency in Ohio was Indiana banknotes, and only one chartered bank in Cincinnati, the major trading center and port in Ohio, issued currency. Banking apparently was less attractive in Ohio than in Indiana because Ohio banks paid substantially higher property taxes. On May 1, 1854, the Ohio Legislature passed a law that made it illegal after October 1 for any individual in Ohio to use small banknotes issued by banks with charters from other states. The penalty for violating this law was a fine of $100 and, for a bank, revocation of its charter. To smooth the transition, bankers in Cincinnati met on August 21 and decided on a schedule for returning banknotes. All banknotes issued by Indiana banks were to be no longer treated as current by September 20. The notes were returned to the banks and, given the law, the demand was for specie to replace the notes. This demand for specie was sufficiently large that, when the law went into effect in October, two or three private banks in Cincinnati restricted specie payments despite planning for the notes' expulsion.*" (Hasan and Dwyer, 1994)

831 "*From about the first of May, last, from several relative causes, a heavy run commenced on the State Stock Banks of Indiana, for coin. The scarcity and demand for Eastern Exchange, which yielded a sufficient profit to the Brokers of our neighboring cities to induce them to collect and assort the notes of our banks, and to send them home in large sums for redemption in coin, caused such a drain upon their specie as to give them great trouble to keep an adequate supply on hand. So inveterate was the demand for coin and nothing but coin, that many of the banks which had provided themselves with Eastern exchange, and offered it to those who presented large amounts of their paper, were told in reply, that the notes promised to pay dollars, and that exchange would not be taken instead thereof. This unprecedented, and almost unheard of run, continued to increase for more than 60 days, before any one of those banks declined to furnish to the numerous bands of brokers and bankers who continued to assort and send home their paper, the heavy sums demanded by them in specie. A crisis then showed itself in the whole monetary operations of the Western country. A large number of bankers and brokers in Cincinnati, who had supplied themselves in a great measure, with exchange and coin drawn from the Indiana Banks, under their assorting system, were compelled to suspend business, when they could no longer use the Indiana Banks as the fountains of their existence. Indeed, several of the Ohio banks, in other cities than Cincinnati, felt the same want of a place for the supply of the precious metals, and at Cleveland, Columbus, Circleville, Toledo and Sandusky, banks which had hitherto been in full confidence, were also brought to suspension, and their notes to a very -severe and ruinous rate of discount. Chicago and Illinois generally were next the theater of the effects of this combined demand for coin, also, resulting in the failure of several banking houses, and a depreciation of their notes. The fact that the notes of the Indiana banks, under the General Banking Law, were secured by interest paying bonds of the several States of the Union, and in many instances by the very best securities that any State issues seemed to be of no value in the estimate put upon their notes by the public. A general depreciation ensued. Those banks which continued through all the pressure that was made upon them, to redeem in coin, were alike discredited with those which had refused to pay to brokers, bankers, and their agents.*" (General Assembly of Indiana, 1855). "*The logic of Chief Justice Taney's comity [from the 1839 Bank of Augusta v. Earle] was given its due in Lafayette Insurance Co. v. French, decided in 1855. The Ohio plaintiffs sued in Indiana to enforce an Ohio judgment against an Indiana corporation which maintained an agent in Ohio authorized to make contracts of insurance. Original process in the Ohio action was served on the agent in Ohio under a statute providing that service of process on a resident insurance agent was 'effectual as though the same were served on the principal.' In his opinion, Justice Curtis cited the Bank of Augusta case and wrote*

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that 'a corporation created by Indiana can transact business in Ohio only with the consent, express or implied, of the latter State.' Then in a contribution of his own Justice Curtis said that 'this consent may be accompanied by such conditions as Ohio may think fit to impose.' The Court held that the Ohio statute amounted to a condition upon entry that bound the defendant. Justice Curtis's reasoning was central to the establishment of foreign corporation laws." (Walker, 1968).

832 *"The amount of eastern bank notes circulating in Cincinnati declined, and Indiana 11 free bank notes filled the circulation. But in Aug after the failure of 2 Indiana free banks, the Cincinnati banks refused all of the Indiana notes."* (Rockoff, 2013). "*When the regional panic of 1854-5 hit, [Indiana's] insured banks all survived without suspending convertibility, while 55 of Indiana's 94 newly created free banks failed.*" (Calomiris, 1989). *"The fact that the notes of the Indiana banks, under the general law, were secured by interest-paying bonds of the several States of the Union, and in many instances by the very best securities that any State issues, seemed to be of no value in the estimate put upon their notes by the public. A general depreciation ensued."* (Sumner, 1896).

833 "*In 1854 the Ohio valley was the scene of a bank crisis at the time of the crisis in the stock market at New York. The Auditor Stated, in his report, that a heavy run commenced in May upon the State stock banks for coin. Nothing but coin would be taken. This continued for 60 days before any of the banks suspended. 'A crisis then showed itself in the whole monetary operations of the western country.' The notes of many banks in Ohio fell to a discount and the banks suspended.*" (Sumner, 1896). *"At the same time, the deposited stocks declined in value on the New York market, so that if they had been forced to sale by the Bank Department, to redeem the notes of banks which had failed, there would have been a deficiency. It seemed to him that if notes secured by the best stocks could not command confidence, it was doubtful whether any system of paper currency would be regarded with public favor.*"(Sumner, 1896). "*In 1854 the Akron Branch [of the State Bank of Ohio] was found to be unsound and the Mechanics' and Traders' Branch at Cincinnati was reported to have suspended; both were wound up by the board of control. On May 23, 1855, the Commercial Branch of Toledo was taken under the care of the executive committee. Funds were provided to redeem its notes and the branch was closed. The notes of all these, however, as those of the Licking County Branch, which was closed in May 1852, continued to pass at par and were redeemed as promptly as those of the most thoroughly solvent bank. The State Bank of Ohio— 7. J. Janney.*" (Huntington, 1915). "*The run on Ohio State Stock Banks appears to have commenced in May; it was soon transferred to the institutions of Illinois and Indiana. At the same time, the West was denuded of the eastern banknotes which had constituted a fair share of the circulation in the preceding year. Cincinnati was left to rely upon Kentucky and Indiana notes, and, of these, the Indiana free banks came to be the most common.*" (Berry, 1943).

834 *"Chicago and Illinois generally were next the theater of the effects of this combined demand for coin; also resulting in the failure of several banking houses, and a depreciation of their notes."* (Sumner, 1896). *"Chicago, according to Berry (1943) suffered during the summer of 1854 from real estate 12 speculation and from a panic in Oct caused by the 'throwing out' of Indiana free bank notes. In Nov, 8 Illinois banks were forced to close their doors. The problem was that the value of the state bonds that the secured the note issue in Illinois was falling, and the state auditor was compelled to demand more collateral from the banks (James, 1938), a circumstance known to the public."* (Rockoff, 2013). Free banking in Illinois, adopted 3 years earlier had chased out private money, but the regulatory arbitrage returned due to unlimited liability of incorporated banks: "*The opportunity to form banks in growing Chicago led to the creation of ten incorporated banks by the end of 1854… As of 1854 Mr. Smith's illegal 'money' had been retired… by 1856 only 3 of the incorporated banks had survived. 25 'private' banks had stepped in…*" (McDonald, 2015).

835 "*The important event of the present month, and in fact of the year, has been the development of extraordinary frauds on the New-York & New-Haven Railroad Co and the New-York & Harlem Railroad Co. The frauds have been to such an extent, and by parties hitherto in such credit, that the discovery has had a very severe effect upon the money market and upon commercial credit and confidence. The suspension of Messrs. R.& G. L. Schuyler, of this city, was known on the first day of July, and created much surprise in the community, although the firm had not enjoyed good credit for 12 or 18 months past.*" (Bankers Magazine, 1855). "*The railroad construction in the Ohio States was checked for a time by the Schuyler frauds which were discovered in July, 1854. The president of the New York and New Haven Railroad was likewise transfer agent, whereby he was enabled to issue spurious stock to the amount of $2 M. The genuine stock was only [$3 M], and the total cost of the road only about [$5 M]. Frauds were also discovered in the Harlem and Vermont Central, consisting likewise in over-issues. These occurrences were well calculated to produce a panic in railroad shares, and to restrict the new enterprises which relied on an active demand for their shares... The abstraction of capital to a large extent for the construction of long lines of railroad in Ohio, Indiana, Illinois and other States has hampered this market for a year past. Such has been the pressing demand for capital for these new concerns that railroad paper has been amongst the heaviest in the market. Some companies have paid as high as 1.5 or 2 % per month for a series of months, and that too on large sums.* (Sumner, 1896).

836 *"The first headline in the New York Times to use the word panic occurred in Oct (NYTimes, Oct 23, 1854... from the Cincinnati Gazette) when several failures occurred almost simultaneously. "The Kentucky Trust Co of Covington failed, and that led to a run on the Ohio Savings Bank in Cincinnati which had the same president. A private bank, P.B. Manchester also failed, and Ellis and Sturges, another private bank suspended. In Nov Ellis and Sturges and two other private banks closed. The run on Ellis & Sturges was sparked by a rumor that Ellis had died, but the revelation that he was simply very very ill did not save the bank. According to Huntington (1915), the private banks were 'well thought of houses.' On Dec 1, 1854, according to Berry (1943) 'the merchants and manufacturers found no bank accommodations whatsoever.' And according to Smith and Cole (1935) the price of Cincinnati exchange in New York went from a normal discount of 1-1.5% to 2.25-2.5% in the autumn to 3.5-3.75% in Dec. The Cincinnati economy recovered quickly after the first of the year 1855. The maximum discount on good commercial paper in Cincinnati which had risen from 12% in Aug to 18% in Oct, when the panic hit, was back to 18% in Jan 1855 and back to 12% in June."* (Rockoff, 2013). "*In the United States the money market and share market were feverish and unsettled from the panic of 1854 until that of 1857. There is no real interval between the two.*" (Sumner, 1896).

837 "*The suspension of the Eighth Avenue Bank in N. Y. had for some days created an unfavorable feeling towards the Knickerbocker Bank, corner of 8th Avenue and 14th street. Unfortunately for the latter institution, it had become the recipient of the deposits of the Knickerbocker Savings Bank. Such deposits are apt to be fluctuating, and the Bank in the present case was drawn upon heavily. At a meeting of [NYCHA] on the 17th, the Knickerbocker*

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Bank was excluded from the Association by virtue of their 19th rule, as follows: 'For cause deemed sufficient by the Associated Banks, at any meeting thereof, a bank may be expelled from the Association, and debarred from all the privileges of [NYCHA], provided a majority of the whole number of Associated Banks vote in flavor thereof.' The action of the Committee was confirmed on the following day at a general meeting. The connection between Banks of Issue and Savings Banks should be avoided. The latter are no advantage to the former, and in times like the present when excitement is easily created and a run easily and unnecessarily produced, they jeopardize the safety of the former. Independently of this consideration, savings deposits should never be hazarded with the operations of a Bank of issue. Savings deposits should be carefully invested as trust funds, in the most solid securities; and in such securities as can be readily converted into cash at a few hours' notice." (Bankers Magazine, 1855).

838 SBs in "*New York enjoyed an immunity from failure from 1819 until 1854. In the latter year the Knickerbocker Savings Institution failed with deposits amounting to about $475 [K], on which there was realized from the assets about 86%... The failure was caused by the intimate connection between the [SB] and a bank of issue and deposit of the same name, organized the same year. The 2 institutions were carried on in the same building, under the same directors, so that when the bank of issue became embarrassed, the [SB] was naturally involved. Here was no violation of law, nor any purpose to wrong depositors, but an easy-going, slip-shod management which invited the disaster that befell.*" (Keyes, 1878b, p.535-6). "*The 1854 run began on Dec 12 with the news that, for the second week running, the Knickerbocker Bank (parent of the Knickerbocker Savings Bank, the only New York savings bank to fail in the antebellum era) had not produced a weekly statement for the New York bankers' clearinghouse (Olmstead, 1976 pp. 142-43).*" (cited in Kelly and Ó Gráda, 2000).

839 Judge Roosevelt of the New York Supreme Court concluded "*This is a controversy arising out of the incongruous alliance, and subsequent very natural bankruptcy, of the Knickerbocker Bank and the so-called Knickerbocker Savings Institution… This loan he now says his friends in the Savings Institution had no legal right to make, and therefore, however much he was accommodated at the time, there is no legal obligation to repay it; and he accordingly files this bill in equity. The conjunction can hardly fail to provoke a smile— very modestly praying that the Supreme Court, sitting in its character of Chancellor, and as such the guardian of charities, will order the Receiver, without payment, or any offer of payment, to deliver up the note and certificate on the pretended faith of which with the concurrence of the friendly managers of the charity,— unlawfully as he contends,— he had abstracted of the savings of the poor the large amount $10,000 and upwards…. When this cause comes to a final hearing, therefore— it has now been discussed only on an informal motion— the plaintiff, instead of being entitled to the decree he asks for, will be adjudged by way of counterclaim to pay to the Receiver of the Savings Institution the whole $10,200, with interest and costs.*" (Merchants' Magazine, 1855).

840 In the 1846 New York Constitution: "*Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws… The legislature shall have no power to pass 'any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws"* so when *"the subject of a general law for the incorporation of [SBs] was first considered in the legislature in 1848… The question evidently arose under the provisions of the new constitution… concerning the creation of corporations by special laws… In 1850 the opinion of the Attorney-General… [answered] these were not corporations for banking purposes within the meaning of that term … Whether their objects could be attained under general laws as defined by [§1], was wholly within the province of the legislature to determine… [In 1851, a committee advocating for] the passage of the bill upon constitutional grounds, as also upon the ground of expediency. A minority of the committee also reported adversely to the passage of the bill, claiming that special acts of incorporation of [SBs] were not opposed to the provisions of the constitution, and opposing the passage of the bill upon grounds of expediency. The views of the minority prevailed...under a general law… The fallacy consisted in the assumption that a general law for the incorporation of Savings Banks must needs open the way for any persons to organize a Savings Bank, regardless of character or fitness, or of any needs in the community, to be served by such an institution. The error of fact consisted in taking it for granted that any legislature, in passing special acts of incorporation, always had exercised, and always would exercise, an amount of caution in the selection of the corporators, and of wisdom in the restraints which they would impose upon the corporation, such as should assure to every institution integrity and conservatism in its management.*" (Keyes, 1878b).

841 "*Messrs. Page & Bacon have carried on a very profitable business in bullion for some time, and but for its engagements with the depreciated securities of Western railroad companies, would have maintained itself and passed through the present stringency in financial affairs unscathed. The firm of Page & Bacon, of St. Louis, some time since became involved in the finances of the Ohio and Mississippi Railroad Co.*" (NY Herald, Jan 14, 1855). "*The year 1854 brought signs of a business recession. Page & Bacon experienced its first difficulties. When the contractors who were building the road from Vincennes, Indiana, to St. Louis were unable to repay their loans, Page & Bacon was compelled to take over the contract and its liabilities. By fall, one of the largest sugar companies in the country failed in St. Louis; Page & Bacon held much of their discredited paper. Alarmed, Page came to San Francisco to raise and transport to St. Louis all available gold from [PBC] Approximately $1 M in gold dust was sent on 2 steamers. Bacon applied in person to his New York banking allies, Duncan, Sherman & Co.; as he was accompanied by the well-known capitalist William H. Aspinwall, and was armed with excellent securities, he was promised a loan of $100,000. Upon his arrival home he found a telegram from his fair-weather friends canceling all promises, to which Bacon replied by wire: 'For God's sake do not desert us; if you do we are ruined and half of St. Louis with us.'* (Shutes, 1947).

842 "*Refused to Pay Drafts — New York, Jan 12— Duncan, Sherman & Co. today refused to pay or accept drafts upon them by Page, Bacon, & Co.*" (Pittsburgh Daily Post, Jan 13, 1855). "*Arrangements have been made for aid from the California branch of the house, which will in a short time be realized, and it was the knowledge of this fact that makes the conduct of certain parties so contrary to all custom, to say the least. With temporary aid to a moderate extent, the house could have continued its business. The effect of this failure upon California remittances must be most disastrous. This house was the largest recipient of California gold in the Atlantic States, and an immense amount of drafts drawn on remittances must be in the hands of the public. It is estimated that there are now and will be on the way to this port from San Francisco, before the news of the failure reaches California, full $3 M in gold, consigned to this house, drafts for which will come along with the gold.*" (NY Herald, Jan 14, 1855).

843 "*The most important case in federal practice is, of course, the pioneering decision of Booth v. Clark. The facts presented to the court may be briefly stated: the creditor of an individual obtained a judgment and the appointment of a receiver in the court of New York; thereafter the debtor filed a petition*

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in bankruptcy in the district court of New Hampshire and a trustee was appointed. The New York receiver brought suit in D.C. to recover a fund held by the United States for the debtor and it was resisted by the trustee. The suit was dismissed and the Supreme Court, in affirming, said: 'He is not within that comity which nations have permitted, after the manner of such nations as practice it, in respect to the judgments and decrees of foreign tribunals, for all of them do not permit it in the same manner and to the same extent, to make such comity international or a part of the laws of nations.' The actual result of the decision is not surprising. It is doubtful if any court would permit the privilege of suing to a foreign receiver under such circumstances… A statement in Sterrett v. Second Nat. Bank presents a more accurate outline of the federal doctrine: 'The system established in Booth v. Clark has become the settled law of the federal courts, and if the powers of chancery receivers are to be enlarged in such wise as to give them authority to sue beyond the jurisdiction of the appointing court, such extension of authority must come from legislation and not from judicial action.'" (Laughlin, 1932). "*The case turned on the receiver's privilege of suing in a foreign court. Booth urged that the New York decree entitled him as domiciliary receiver to all of Clark's assets. These included this chose in action on the theory that it followed Clark's person and was within the jurisdiction of the appointing court. The comity of nations permitted him to maintain his action. The Supreme Court, however, held that although Booth's appointment was under a statute, his interest in the fund was merely that of an equity receiver. Equity acting in personam could have forced an assignment but did not do so. The court's industry was taxed in vain 'to find a case in which a receiver has been permitted to sue in a foreign jurisdiction for the property of a debtor'…This was the birth of the federal doctrine that an equity receiver may not sue outside of the jurisdiction in which he is appointed.*" (Rose, 1933).

844 "*Page & Bacon locked their St. Louis doors on Jan 13, 1855, but reopened them on Feb 15, in anticipation of receiving gold from San Francisco. Storms and accidents, however, delayed the steamers. On Feb 17 the news of the Jan 13 closing in St. Louis reached Sail Francisco on the Pacific Mail S.S.Oregon and started a short run on [PBC's] depleted resources… In its issue of Feb 23 the paper ran an editorial headlined, 'The Crisis Past'; but in another column appeared the announcement by [PBC]. that, 'We must suspend... to prevent a run and to pay all obligations… House is solvent.'*" (Shutes, 1947).

845 "*The month has been prolific in financial reverses. The steamer which left San Francisco on the 26th ultimo, brings Intelligence of the suspension of 4 banking-houses in that city, besides several of their branches in the interior. During the week ending Feb 26, 3 of the leading banking houses in San Francisco suspended, namely [PBC], Wells, Fargo & Co, Adams & Co. A run upon these houses continued several days, draining them of their immediate cash resources to a very large amount. A run took place upon all the other firms. Of the latter, Messrs. Drexel & Co. ably sustained themselves and after paying out $339,000 in 2 days, depositors began to return to them. Mr. Davidson, the correspondent of Rothschild, also paid through, and Messrs. Tallant & Wild, with whom Mr. James Robb, of New-Orleans, is a special partner, and Messrs. Lucas, Turner & Ca, a branch of Lucas & Simmonds, of St. Louis. The steamer that left San Francisco on the 1st March brings further intelligence. Messrs. Wells, Fargo & Co., of San Francisco, resumed payment on the 27th ultimo, and no further interruption to business on their part was anticipated. [PBC] announced that they would in a few days be able to resume. Their friends are combining to sustain the house in its attempts to resume their ordinary banking business. Messrs. Adams & Co. have gone into bankruptcy, so far as their money affairs are concerned, but announce that their Express operations will not be interrupted. Their Express business in the Atlantic States and in the Interior, it is announced, will undergo no change.*" (Bankers Magazine, 1855). "*Feb 23, 1855, was long remembered in California as Black Friday, because a general banking collapse was precipitated by [PBC's] suspension the previous day (not then observed as a holiday in San Francisco). Adams & Co., mismanaged by that aberrant character Isaiah C. Woods, went into immediate receivership. Only the name of Wells Fargo has survived to the present day. [PBC], with local moral and financial support, made a valorous attempt at reorganization; but the vicious circle that had developed between the St. Louis house and its San Francisco affiliate (coupled with their mutual dependence upon gold shipments that were riding the uncertain waves) forced the latter to close its doors on May 2, 1855, the day after the news at last reached San Francisco that the St. Louis house had been closed for a month (since April third).*" (Shutes, 1947). "*Mercantile hard times started in 1853-4 but were greatly intensified in 1855 when the important banking house of [PBC] failed, followed quickly by the even more disastrous collapse of the leading express company, Adams & Co., which was described by Hittell as being: 'In 1853, unquestionably the leading business house of the state, dealing with more people, furnishing more accommodation to commerce and industry, handling more money, and probably making more profit than any other establishment.' A chain reaction set off by the failure of these 2 giants pulled down a series of lesser financial institutions and ruined many individual merchants. Even if not destroyed in the panic, businessmen and ordinary citizens lost their deposits, their usual sources of credit dried up, and their accustomed financial services disappeared.*" (Paul, 1982).

846 "*The financial panic of 1855 and the fall of the major financial institutions of San Francisco made it clear that statutes protected few creditors and jeopardized the financial partnership structure. In the midst of the panic, Alvin Adams, one of its victims, received a letter from his lawyers telling him of 'the suspension of the house of Adams & Co., San Francisco, in the midst of a general and unheard of financial disaster. Your friends here understood your peculiar position as a partner of the house. They were aware of your apprehension lest under the law of California while designing to be a special partner, you had in fact rendered yourself liable as a general partner, and of your anxiety often expressed to be relieved of a risk so serious. Upon close examination of the case there seemed to be too much ground for these apprehensions on your part. A failure of the house must consequently make you liable for its debts. After as thorough and anxious a consideration of the whole matter as the urgency of the occasion allowed it was decided to adopt a course of action which should make the assets of the house most available for the payment of creditors and at the same time for the protection of the partners. A suit has been commenced in your name as plaintiff against Messrs. Haskell and Wood as defendants for a dissolution of the partnership, the settlement of its accounts and the liquidation of its debts.' The fall of Adams & Co. indicated both the financial fragility of the San Francisco market and the problems of partnership business organizations*" (Bakken, 1991). "*When I found that this money had been taken from the funds of the bank before my appointment, and without my knowledge, I informed the court of the fact, and desired to be released from the office of receiver. I gave notice to the parties that I desired to withdraw, and got an order from the court directing them to show cause why a new receiver should not be appointed. About this time the attorneys of Adams & Co., finding that the affairs of the firm must be wound up, and not being able to get anyone who would accept the office of receiver and give the necessary bonds, conceived the idea of settling the estate by a proceeding in bankruptcy, and for that purpose they filed the petition of the partners of the firm to have*

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their estate administered under the provisions of the insolvent law. The court entertained the petition, and ordered under the provisions of the then law an election to be held by the creditors for the appointment of 3 assignees who should take charge of the estate…" (Armstrong and Denny, 1917).

847 "*Mr. H. D. Bacon, of the firm of Page, Bacon & Co. [PBC], it is announced, has executed a general deed of assignment to S. L. M. Barlow, Attorney, of this city, of all the firm and his own individual property, real and personal, at St. Louis, New-York, in the Western States, and in California, for the benefit of the creditors of both houses and of his own. A telegraphic dispatch from St. Louis states that the firm there have issued a card, assuring their friends that their assets largely exceed their liabilities, although they, are not immediately available, and that they will be faithfully applied to the payment of the demands against them.*" (Bankers Magazine, 1855). PBC "*claimed that if all of its assets were liquidated, it would be able to pay back depositors and still have a balance of [$0.87 M]. However, balance sheets are notoriously prone to manipulation. G. skeptically looked beyond the numbers on the balance sheet and declared: 'Now, if these assets were all reliable and could be applied at once to California requirements, there would undoubtedly be a balance of [$0.83] (he made some of his own excess deductions); but unfortunately [$0.44 M] of this outside hope, is already shipwrecked in the bankruptcy of the St. Louis house: and the rules of probability instruct us that the sinking Western firm, esteeming most highly the reputation of their house at home, having long ere this appropriated the [$0.86 M] represented to be in the hands of D. Hoadly(sic), in New York, for their own relief. I insist that if we are to depend on probabilities for our comfort, we are entitled to entertain one for our safety, and it is more reasonable to receive such a doubt as this, in making a money calculation, than to be put to sleep by Mr. Crockett's eulogy on good old Mr. Page, and his acres in 'Morton's Addition' and 'Big Mound.'*" (Nadler, 2015).

848 "*In Sep of 1854, the Foreign Trade Division of the French Ministry of Commerce requested the prefect of the Paris police to look into the activities of the California societies. It had come to its attention rather belatedly that many French citizens had been duped by individuals who offered shares for the exploitation of California gold mines. About 6 months later [March 1855,] the minister of commerce commented on the margin of the prefect's report: 'interesting communication.' All 83 companies founded in 1849 and 1850 had either gone into bankruptcy or become the victims of fraudulent manipulations. Some of these companies announced an intention of going into gold mining or the transportation of emigrants. Others hoped to make profits in such fields as banking, fire insurance, and rooming houses… By no means all of the 'Sociétés Californiennes' violated the good faith of their clients. Inadequate financial resources and various mishaps, generally due to faulty preparations and investigations, accounted for some of the failures. Furthermore, the prefect made special reference to 8 amicable liquidations by general consent of the shareholders. In these instances losses were limited to actual expenditures. 10 companies claimed to have sent expeditions which were not successful.*" (Blumenthal, 1956).

849 "*Companies formed to carry out gold mining in California and Australia during the late 1840s and early 1850s were established under a number of corporate structures. In Britain, where most of the companies were domiciled, 3 structures were then in use: joint stock companies, cost book companies and incorporation by Royal Charter, the last requiring prior incorporation as a joint stock company. 8 companies with British involvement were for convenience incorporated in France as societes en commandite ("SOC"). 3 joint stock companies were incorporated under private Acts passed by the Legislative Council of New South Wales, 3 by the State of California and 1 by the State of New York… In 1844, Parliament passed the Joint Stock Companies Act, which enabled companies to be incorporated without an Act of Parliament or Royal Charter… Only those companies incorporated under Royal Charter, acts of colonial or United States' legislatures, or as [SOCs], limited their shareholders' liability to the paid-up value of their shares. These forms of protection extended to only 18 of the gold bubble companies: 8 of these were [SOCs] domiciled in France, with their attendant difficulties for British shareholders in gaining information from their respective gerants; 3 were British joint stock companies with Royal Charters of incorporation; 4 were incorporated under American state legislation [Burns Ranche Gold Mining Co of New York, Carsons Creek Cons Mining Co, Rocky Bar Mining Co, Union Gold Mining Co]; and… 3 under private Acts of the New South Wales Government.*" (Woodland, 2014).

850 "*The lamentable fate of these promising enterprises, combined with the failures in commercial speculation, served to bring discredit on California, and caused the withdrawal of almost all English, and a great deal of other European, capital from our market. In the quartz veins, however, undoubtedly lies an almost inexhaustible store of wealth: practical skill and economical management are alone necessary to develop their resources; and it is with all confidence that we would direct the attention of capitalists to them as one of the best fields for investment.*" (Seyd, 1858). "*It was not merely archaic legal procedures that limited the formation of limited companies in the 1850s. Laws can be changed. The British Companies Act of 1855 could have been adopted in Victoria after a relatively short delay, just as the Victorian Trading Companies Statute of 1864 followed the British Act of 1862. Outside the goldmining industry, the special conditions of which will be examined in the next chapter, there was no widespread pressure for general limited liability legislation in Victoria of the 1850s. This lack of interest reflected the prevailing view that limited companies were appropriate only under special conditions. The dictum of Adam Smith, that joint stock companies should be confined to a limited range of activities, to those 'capable of being reduced to what is called a routine, or to such a uniformity of method as admits of little or no variation' such as banks, insurance, canals, and water works, was still widely accepted, though it had long been recognized that the same conditions applied in public utilities like gas and railways. It is therefore no accident that the Melbourne share lists of the 1850s consist predominantly of financial institutions, banks and insurance, and of public utilities, gas and railways. Outside these fields the generally held view, not only in Victoria but also in Britain, was that the form of business organization that was generally appropriate was that of the individual trader or of the small partnership. While this view prevailed, and it did for long after the 1850s in Victoria, there existed a significant limitation on the growth of the share market.*" (Hall, 1968).

851 "*At last real estate fell to one-half its previous value. Still the tenacity of speculators continued throughout an entire year. It soon fell to one-third of its previous value, and then foreclosures and failures became numerous. What, however, served to bring matters to a crisis was the failure, in Feb 1855, of the well-known bank of [PBC], which had for a consequence that of many other banks and houses, whose assets in real estate had shrunk to quite insignificant proportions. The confusion that followed cannot be described. Ruin and disaster stared one in the face on all sides; the markets were over stocked, and shippers in foreign countries had, consequently, become heavy losers; and, at the same time, many of the quartz-mining enterprises turned out little or no better than swindles. 'What has become of California, the El Dorado of the world, with its inexhaustible treasures?' was the universal question… Their failure arose as above stated—from extravagant anticipations and injudicious management. They ran away with the idea that mountains of gold were to*

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be obtained, and that every holder of a £5 share would speedily become a millionaire. They seem to have considered that all that was necessary to be done to become thus suddenly rich was to create stock, nominate a board of directors, appoint a regular staff of managers, engineers, mining captains, &c, at enormous salaries, equal in the aggregate to over 25% of the subscribed capital, and to send them out with costly machinery, constructed on the soundest theoretical principles, and then sit down and receive in their laps the shower of gold that was to be the immediate result of these sage proceedings. Instead, however, of these rosy dreams receiving their realization, the shareholders received accounts stating that the transport of the machinery had absorbed their remaining capital; that the machinery itself (in most cases) was impracticable; that there was perhaps a want of water; that the men required to work demanded wages—a circumstance they seem, one and all, to have left entirely out of their calculation—and wages running from $150 to 200 a month at that time, besides board at equally high rates. They appear not to have made any allowance for the possible delays in getting their works into operation, but to have relied upon their immediate productiveness to meet all immediate expenses. Their expensive machinery mostly turned out impracticable, as above stated, and was sold in San Francisco for old iron; while one company lost a really good quartz-crushing machine by the sinking of a vessel in the Sacramento river." (Seyd, 1858). "*Credit granted by eastern or European 'correspondents' was all-important to the young merchant, for to an unhealthy degree California ran its business on credit. The miner bought on credit from his local storekeeper, the storekeeper was carried on credit by the country wholesalers or jobbers, the latter received their goods on credit from San Francisco importers or wholesalers, who, in turn, were dependent on local banks and on the banks' 'correspondents' in New York, Philadelphia, Boston, or Britain. With this long chain of credit relationships, and with all borrowing at very high rates of interest, it took only an error of judgment, or the default of a few supposedly good customers, to plunge a San Francisco merchant into bankruptcy. A modern scholar has concluded that during the decade of the 1850s 'the rate of failure was probably somewhere between half and two-thirds of all merchants.' Part of the trouble was the unavoidable lapse of months between dispatching an order to New York and receiving a consignment in return. By the time the cargo arrived, the market might be utterly unlike the merchant's original expectations. The likelihood of disaster was the greater because in the intensely speculative atmosphere of San Francisco, little cabals of merchants were always trying to 'break down' a competitor, or to 'corner' the supply of some necessary item, be it flour, sugar, or shovels, so as to force up the price at the expense of the consumer."* (Paul, 1982). "*From 1854 to 1855, banks in San Francisco experienced several panics, particularly when [PBC] failed, triggering a disastrous run. The main office of Page & Bacon in St. Louis had heavy losses on a midwestern railroad loan, but had raised sufficient gold in California to keep the office open, shipping back to St. Louis by steamer. While the gold was en route, word reached San Francisco that the St. Louis branch of Page & Bacon had folded, and the subsequent run shut down the company, as well as other San Francisco banks, including Adams & Co. and Wright's Miner's Exchange Bank. Eventually, even most offices of Wells Fargo were closed. The Daily Herald reported that 'No day so gloomy has been witnessed in San Francisco since that disastrous fire of the 4th of May, 1851. Every bank was said to have suspended, and rumors of mercantile failures —most of them false, we are glad to say— came thick and heavy in the afternoon.' Another panic occurred when prominent San Francisco citizen Henry Meiggs, who had supplied much of the city's lumber and built Meiggs Wharf, unexpectedly left town owing $0.8 M secured with forged city warrants."* (Schweikart and Doti,1999).

852 Eureka stockade "*Australia's nearest approximation to a war of independence. The 5 stars of the Southern Cross were identified and admired. These had come to symbolically represent Australian independence and protest against unjust administration. The rebellion of disaffected miners against British authority occurred on the Ballarat goldfield on 3 Dec 1854. A few days earlier, on Bakery Hill, the diggers had burned their gold licenses as a gesture of defiance against perceived government corruption and inequitable administration. The diggers' cry was 'no taxation without representation' and they raised a specially designed flag of the Southern Cross. swearing an oath 'to fight to defend our rights and liberties.' The colonial government, under Governor Charles Hotham, moved to suppress the rebellion by a dawn attack on the diggers. The diggers were routed in 20 minutes, 22 protesters were killed, along with 4 members of the military. The flag was torn down and 113 men were taken prisoner. Hotham reported to his superior in London that he feared republican revolution. Some contemporaries saw it simply as a protest against an inept and corrupt administration. Karl Marx saw it as a precursor to his socialist revolution. Almost immediately Eureka began to be incorporated into the national myth of democracy, equality and mateship. For some it represented the triumph of parliamentary democracy, for others the right of ordinary workers to 'a fair go.' The flag became a metaphor for radical action — used by nationalists, trade unionists, civil libertarians and republicans*." (Sunter, 2009).

853 "*As the pressure increased, rates of interest as high as 15% were promised, but, unless the prices at which title-deeds changed hands continued to soar steeply, such rates would soon ruin speculators using borrowed funds. In 1839 financial stringency in London checked the flow of capital to Australia. In the new province of South Australia land sales and credit collapsed, and 'scourging drought' in New South Wales from 1838 to 1840 accentuated the mistrust felt in England about the future of all the colonies. Within the colonies, the drought undermined credit by forcing heavy exports' of coin to India, Java and Chili to pay for rice, maize and wheat. Governor Gipps relieve the banks' need for a time by placing on deposit with them the cash it had been customary to hold in the Treasury, but the cessation of land sales soon forced him to call up his deposits. 0.25 M was withdrawn between July 1840 and Nov 1841 to pay the public service. Heavy payments by government of bonuses to assisted immigrants came due as the delayed result of activity in sending them out during the boom period. The banks called in advances and stopped all 'cash credits'; spending ceased, save on bare necessaries. The regular merchants found their business paralyzed by the sale of speculators' consignments at auction without reserve. Banks which nursed trader-clients whose stocks were unsaleable only added to their losses. Farmers and pastoralists who offered bullocks or wool in payment for stores had to sacrifice them on a glutted market into which all were forced by drought. Sheep had brought 35s a head in 1839: in 1843 they were sold at 'sixpence a head and the station given in.' Horses worth '£50 to 70 for the commonest hack' in 1839 went for £7 in 1843. Fat cattle went at 50s as compared with £10 to 12. Settlers, merchants, storekeepers and working householders were alike glad of the shelter of a new Bankruptcy Act passed by Council in 1842 at the instance of Judge Burton. It left debtors their freedom on condition that they surrendered their estates to their creditors. The estates as a rule fetched little. When in 1843 the Banks of Australia, Port Phillip and Sydney failed, the assets of the first, in which many leading colonists had already lost their share-capital, were. liquidated by a lottery-the only way that would attract a little cash. Financial oracles, including the majority in the Legislative Council, were insistent that the Governor should 'stem the tide of disaster' by issuing new cash, notes backed by mortgages on land. The distant Colonial Office, however, put a veto on such heterodox money. But out of 'the Bad Times', as these years of despair were long called, came two expedients that helped the insolvents set free*

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by Burton's Seisachtheia to find their feet again. To start wool-growing the first requisite was a wagonload of stores and some sheep with which to make the westward march. How could pastoralists give security for payment? They had no land, and in any event, it was almost unsaleable. In Sep 1843 an Act of Council was passed permitting banks to lend against liens on live-stock and wool. Again, the Colonial Office demurred. It relied on London ideas of sound banking, the first rule of which was that the banker must draw a firm line between commercial bills and mortgages on property. Bills, to London financiers, had behind them goods on their way to consumers. Before the bill was due, the sale of the goods would put the drawee in funds to meet his obligation. Land might be drought-stricken movable property might prove sterile or perishable. In a crude new country, however, such bills were not to be found. Behind the best of the bills which the banks had discounted during the boom the assets were often land, stock and wool; and if banks could not or would not lend on such security, they would not lend at all-their capital would lie idle. The Council stood its ground and the Act was maintained against every threat of disallowance. As it had already given the relief intended, the Colonial Office let well alone. In finance accomplished facts must be respected." (Shann, 1930).

854 "*Victoria thereafter took the lead in enacting mining company legislation. The Goldfields Commission Report (1855), which followed the Eureka Stockade incident, led to Australia's first mining companies' legislation (Hall, 1968). The Report recommended that the cost book system of mining organization be adopted for the numerous small mining enterprises then in existence in Victoria. It was envisaged that the cost book organization would be suitable for individual and puddling machine mining (alluvial mining) enterprises which were small and of limited duration. Each company could be registered for a small fee and it was to keep a book of expenditure and receipts. Interestingly, the Commission thought that such organizations were 'aided by a legal protection to the association from liabilities which any of the proprietors might contract with the general public.' If that meant limited liability, the Report was incorrect as the discussion in §2 showed that the shareholders of British cost book companies actually had unlimited liability. Haines' Act, 1855 Australia's first mining company legislation, the Victorian Mining Companies Act 1855 (18 Vic. No. 42)… reflected the recommendations of the Goldfields Commission Report (1855). The legislation adopted the cost book system of organization. Mining companies formed under the Act were to have a maximum life of 7 years. As in British cost book companies, shares had no par value. Each company's rules were to contain provisions for transfer.*" (Morris, 1998). "*…Mining Companies necessarily differ in the ends aimed at from those of Trading Companies. The latter companies, in 9 cases out of 10, contemplate permanency; their business is expected to grow from day to day, and their undertaking usually has a value inherent in itself in the shape of goodwill, trade connection, exclusive rights to trade, monopoly, &c. But none of these conditions apply to the business of a Mining Company, as its whole existence is bounded by the extent of the ore bodies or mineral deposits it is formed to work, and therefore its business is of a wasting nature. Though these remarks refer mainly to No Liability Companies, they are not altogether inapplicable to the larger ventures, which are mostly registered as Trading Companies, and whose accounts follow the lines of such companies. Still, these companies would be wise in not placing too much value on their often very extensive and costly mining and ore-treating plants, even though such would have an ultimate but largely reduced value for removal*." (Godden and Robertson, 1902). "*For reasons which are not yet clear the 1855 Act, despite its granting of limited liability to companies formed under it, failed to gain much acceptance. This was probably because of deep-seated political and economic conditions. Apart from the chance of 'striking it rich' the surface alluvial gold rushes of California and Australia of the mid-19th century presented independent-minded workers with the opportunity of earning a reasonable income on their own account or, as we have just seen, as an equal partner in a co-operative enterprise. Once freedom of this type was tasted by large numbers of diggers many of them were loath to return to normal wage labor*." (Hall, 1968).

855 "*The cost book system originated when tin was the only metal worked in Cornwall and Devon and mining or streaming operations were still small in scale. A group of working tinners would come together, obtain the rights to a mineral lode, and start operations with little or no fixed capital investment. To keep the accounts of their venture, assess and pay royalties, and occasionally to advance money, they employed a 'purser' who entered all inward and outward payments in the mine's cost book. This also bore the names and number of shares of all those involved in the venture and specified the rules and arrangements for its operation. Every 1 or 2 months the purser balanced the accounts and called a meeting at which profits were distributed, or calls made, according to these shares. As other minerals, such as copper and lead, came to be mined in the district, they also adopted the same form of organization. The increasing scale and costs of mining from the early 18th century caused the working miners to be joined, and later largely replaced by, groups of speculative capitalists who took over the leading role in the projection of mining companies. However, the gradual process of this change, and the proved utility of the old system of association, ensured its continuation with only minor alterations. In the larger mines, 'captains' were appointed for the direction of the labor force, but the purser remained the most important officer. Usually chosen from among the adventurers, the purser assumed responsibility for the general management of the mine, as well as the traditional functions of treasurer and bookkeeper. Occasionally, particularly at the larger copper mines, their managerial functions were usurped by a 'managerial committee' of the largest local shareholders or 'in adventures.' The purser or the management committee were regarded legally as the officers of the Cost Book companies and gave to those companies a form of legal identity, being able to sue or be sued on behalf of the company. At their quarterly, 4 monthly, or half-yearly meetings the shareholders had the power to make regulations for the future working of the mine and to appoint or remove agents. All resolutions were carried by a simple majority, with proxy voting rights if desired. Special general meetings attended by a majority of shareholders were required to change the detailed rules of association entered in the cost book on the formation of the venture. A unanimous vote of all shareholders was required if the venture was to be suspended or wound up. Every shareholder or his agent had the right to inspect the mine or its books at any time... The ever-increasing demand for capital and the multiplication of mine shares carried knowledge of the Cost Book system outside the mining districts of Cornwall and Devon. From the beginning of the period, speculators in neighboring centers, such as Plymouth and Exeter, began to invest in mining companies in the hope of obtaining a share of the vast profits sometimes returned and by the early 19th century shares in cost book mines were being freely exchanged on the London market. It was from here, as much as Cornwall itself, that the system was carried to other mining fields in Wales, the Isle of Man, and Ireland. The family partnership of John Taylor and Sons, for example, with national and world wide mining interests, greatly favored the system and employed it wherever possible. Indeed the system was so well known and liked in London by the second quarter of the 19th century that even companies for mining gold in Australia were formed on its principles*." (Burt and Kudo, 1983). "*The Stannaries Court jurisdiction, like the Cost Book system of the present day, is founded on immemorial customs. Over 2,800 years past, B.C. 1,000, the Phoenicians are stated to have first reached this*

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country, and to have instituted, with all the energy by which that adventurous people were characterized, a search for tin, copper, and lead along the coasts of Cornwall and others of our maritime districts. Cornwall seems indeed to have been made, owing no doubt to their conviction of its great mineral richness, the main point of their operations; and their intimate intercourse with the country can be easily traced by the antiquary of the present day, through ancient habits, names of localities, and words still extant, and evidently derived from Hebrew or Phoenician *origin… The 'Customs' which first convoked the tinners of Cornwall, and organized them into a body enjoying the direct and special patronage and protection of the crown, no doubt arose from the remote and classical eras just now alluded to; and, consequently, upon the first foot-print of human civilization in the sands of time have been found some of those golden grains which now form the 'hour glass' and regulator of our mineral labors... Where a land-owner digs for, procures, and sells the ore of mines on his own estate, or a tenant, or joint tenants, or tenants in common of land work mines, either by their several means, or by a union of capital in one common fund, neither proprietors or tenants come under the denomination of 'Trader,' so considered by the bankrupt laws; but in those cases where a [tenancy] is established for the sole or chief purpose of mining as a primary object, or companies formed expressly and essentially to promote such speculation, obtain licenses to dig or work lodes, or leases of land, or minerals, or both, they are held by courts of equity to be trading partnerships [Crawshaw v. Maule (1818) 1 Swan 495]; but owing to the peculiar risks, difficulties, and expenses attendant on mining, they are considered such in a modified sense ; discipline is relaxed, and they possess the freedom of action which the law, under all circumstances, appears to accord, in a greater or lesser degree, to associations founded for mineral labor... To use the dictum of Baron Parke, 'A mining concern is a trading concern.'*" (Bartlett, 1850). "*The dissolution of partnerships so numerous by the death, bankruptcy, outlawry, or felony of any one partner, would have been incompatible with that continuous working of a mine which is necessary to success. It would have been highly inconvenient if no partner had been allowed to part with his share with-out the consent of each of his co-partners, moreover the spirit of speculation and adventure, without which concerns so hazardous as those of mining would seldom be commenced or persevered in, and the fluctuating nature of the property indicated the expediency of a ready transferability of shares. Again it would have been somewhat hard upon the mining adventurer if each of his numerous associates whom he had not the means of selecting, had power to bind him by engagements with the public, as extensive as those of partners in ordinary trading concerns. Accordingly mining partnerships were early recognised as differing from ordinary trading partnerships, in not being founded on the delectus persona, from which principle the rights and obligations of ordinary trading partners are mainly derived. It was decided, after many doubts, that the mining partner had a right either to relinquish or transfer his share without the consent of his co-partners—and that upon his death or bankruptcy, the law, instead of dissolving the partnership, would transfer it to his executors or assignees—and the power of partners to bind each other by engagements entered into with non-partners were restricted.*" (Collier, 1849).

856 "*Shareholders in these 'new' companies did not, however, have the limited liability afforded by the 'old' incorporated companies. This would not be remedied until the passage of the Limited Liability Act in 1855. Almost 66% (80) of the British-funded Californian and Australian gold bubble companies whose corporate structure has been identified were registered as joint stock companies. Despite their popularity at the time, their shareholders lacked the protection of limited liability unless other measures were taken. These were incorporation by Royal Charter, by colonial Act of Incorporation, by United States legislation or by incorporation under French legislation as a [SOC]. While offering shareholders security in the event of company bankruptcy, each of these structures had its own particular advantages and disadvantages. Joint stock companies' shares were freely tradeable and such companies could gain listing on the Stock Exchange subject to meeting its requirements, such as those covering the minimum number of shares on issue and actually subscribed for. All matters relating to the conduct of a joint stock company were laid out in its memorandum of association, known in the 1850s as its deed of settlement… legislation providing limited liability for shareholders in British joint stock companies was not enacted until [August] 1855. Therefore, at the time of the gold bubble shareholders in unincorporated joint stock companies or cost book companies faced unlimited liability in the event of their failure.*" (Woodland, 2014).

857 "*The Victorian gold yield rose again in 1855 to a value of £11.7 M, and in the following year to almost £14 M; but gold mining, as Governor Fitzroy had predicted in Aug 1851, had become an industry of companies and capitalists. The number of alluvial miners continued to increase. It rose from 68,790 in 1854 to 82,428 in 1857 and 83,116 in 1861, but the Victorian yield fell off again to less than £11 M in 1857 and less than £8 M in 1861. An ever-increasing proportion of the gold became the property of the companies' shareholders, who installed machinery to work the ground systematically and at depths the diggers could not reach. Steam was first used in crushing quartz during 1855. By Nov 1861, 711 steam engines were generating 10,782 horsepower on the fields.*" (Shann, 1930).

858 "*The boom leading up to the panic of 1857 was worldwide. Gold discoveries in California (1849) and Australia (1851) led to export spurts to those countries and enlarged the credit bases in Europe and the United States. It would have done so to a greater extent had it not been for the fact that India was exporting far more than it was importing and beginning to receive, along with the United States, the capital flow from Britain which had been discouraged from investing on the Continent by the revolutions of 1848. The balance of payments surplus was taken in silver, replaced in Europe by newly-mined gold. Both Europe and the United States had railroad and banking booms. Expansion also came from joint-stock banks in Great Britain and Germany and.... France which made large loans to trade and industry.*" (Kindelberger and Aliber, 2005). During the contraction of 1839-43, banks increased reserves to 29%; this declined to 13% by 1857 and the money supply increased from $171 to $647 M (Trask, 2002).

859 By April 1857, "*settlers arrived [to Kansas] at the rate of 1,000 per day. The link between immigrant traffic and expectations of railroad profitability is visible in the responses to this great influx. As passengers to Kansas increased, the roads lowered rates for through traffic, indicating expectations of a lasting increase in the volume of business (and perhaps the railroads' desire to encourage immigration to stimulate development). They advertised rate reductions of up to 25 %. Entrepreneurs laid ambitious plans for new railroads.*" (Calomiris and Schweikart, 1991).

860 The Panic "*was fueled by declines in the global economy and fear of a recurrence of another economic recession like the one that rocked the Union two decades before. To complicate matters even further, the British government circumvented the stipulations of the Peel Banking Act of 1844, which required adequate gold and silver reserves to support money in circulation [also known as the Bank Charter Act as it implemented BOE]. News of this circumvention sparked rumors of economic recession, and a subsequent panic reverberated across the Atlantic. In 1857, a ship transporting a shipment of gold that*

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American banks desperately depended on to remain financially solvent, sank, a tragic event from which many American banks did not immediately recover until after the conflict between the States ended almost a decade later." (Tinker, 2018).

861 "*The 'advises' on European market conditions, transmitted by trading vessels, uniformly stated that American grains were unneeded. As one editor in Indianapolis explained to his readers, prices would stay low because although the United States had a full harvest, so did England, France, and Russia. Even though Russia struggled with the aftereffects of the Crimean War, she would still 'have millions of bushels [of wheat] for exportation' and thus be able to sell at a lower price than American shippers. Many easterners maintained that if western farmers would sell their crops, the financial strain would disappear. The cycle of credit, they believed, ultimately ended with the farmer. Bankers loaned money to merchants who in turn extended credit to farmers; if westerners sold their crop, they could repay the merchants who could then retire their debts to the banks. But western farmers were evidently unconvinced that they had lost their position in the European market. They refused to sell their crops because they felt the price was too low. As financial conditions in the East deteriorated, many individuals, like the editor of the Milwaukee Daily Free Democrat, exhorted the farmers to 'sell your Grain and pay your Debts' in order to revive the economy."* (Huston, 1999).

862 "*A new act for the incorporation of a Bank of Ohio, with branches, was passed April 14, 1857. After 5 branches should be organized, each... should procure and furnish to the branches their circulating notes. 10% on the circulation was to be paid over to the Directory in money or in bonds of the United States or of Ohio, to constitute a safety fund; the money part to be invested in bonds or mortgages. On the first $100 [K] of capital notes might be issued only for double the amount; on the second $100 [K], for 175% of the amount; and so on; lowest note, $1; non-redemption on the part of any branch constitutes insolvency, and thereupon its assets vest in the Bank of Ohio, and a receiver is to be appointed; all the branches are to contribute to pay the notes of an insolvent branch. The chief Directory is to get an injunction against any disobedient branch; the bank is to have offices at Cleveland, Cincinnati, and New York, and is to act at New York as the transfer agent of the State. At least half of the capital of each branch is to be in specie or its equivalent. Any existing bank or branch of the Bank of the State may come into this one, and the old corporation is dissolved. 30% of the circulation is to be kept in specie funds, of which at least half must be real specie; the balance in New York or other eastern cities may be counted as cash. Bank Commissioners are appointed to set this bank in operation.*" (Sumner, 1896). It had a personal liability clause (Bolles, 1881, p.806).

863 "*Prices [on securities] were rising or flat from the beginning of 1857 until March, and an upward trend is particularly pronounced for 3 of the 4 trunk-line stocks for which data exist for early 1857 and for [OLIT]. Prices remained flat or fell for these stocks from March to the end of May. By late July a substantial depreciation in trunk-line stocks occurred, while other securities' prices remained constant or fell slightly.*" (Calomiris and Schweikart, 1991). "*In July 1857, in the wake of the economic panic, the N. H. Wolfe and Co, the oldest flour and grain marketing company... collapsed. Grain prices had fallen from $2.19 in 1855 to $0.80 in 1857. Investor confidence in the grain industry was shaken, and many began to divest their interests for fear of suffering continued losses if the slump in the grain market remained. In Aug of that year, [*OLIT*] announced the suspension of payments for liabilities. The New York Daily Times reported: '[NYC] and Cincinnati branches were suspended with liabilities it is said, of $7 M.' As grain prices fell and demand for that commodity decreased, the railroads, which were heavily financed by regional banks, suffered a slowdown in business and faced an inability to service outstanding debts. Ironically, in the domino-like economic fallout, the vastly agrarian Southern States suffered little from the economic depression. Profits from grain were systematically covered by the expanded cultivation of cotton. The situation in the industrial North, on the other hand, was adversely impacted.*" (Tinker, 2018). "*On Aug 19... president of the Michigan Central, resigned, 'in order to spend more time on personal matters.' Securities prices had been drifting downward since the beginning of the month. Now, as Bennett's [of the NY Herald] predictions came true, prices began to tumble. Again the Times argued that the economic situation was bright. Bennett responded on Aug 23, stating flatly that 'in all human probability, every railroad in the United States will become bankrupt in the course of the next 6 or 8 years. There may be a few exceptions; but they will be uncommonly few. The following morning, [OLIT]... suspended payments."* (Sobel, 1999).

864 See NYTimes, Feb 19, 1855, p8. "*The largest railroad entanglement was with [CPR], at which the former cashier Charles Rockwell was now president, and for which Ludlow acted as sales agent for C&P stock. Records indicate that Ludlow had been altering C&P-related accounting information going back to the earlier part of 1856, if not longer. After the account was 'fully adjusted' after suspension, the loans to [CPR] totaled [$0.8 M]. There was also another account, which the home office knew nothing about, that exceeded [$0.1 M] and represented interest paid by Ohio Life to bondholders on behalf of C&P. Other transactions for the Railroad were disguised in Ludlow's reports. For example, he paid off loans made to the Railroad by various New York dealers and hid the transactions.*"(Riddiough and Thompson, 2018).

865 "*In May of 1856, another [$0.22 M] in maturing long-term bonds had to be paid off, now totaling over a [$0.5 M] reduction in Ohio Life's permanent capital base. Coincidently, Ludlow called on the New York trustees for help in convincing the home office of risks in meeting their increased liquidity demands. Coe and fellow trustees Robert Bayard and Charles J. Stedman, wrote to Stetson in Ohio spelling out the problem in more detail. They pointed out that all of the firm's liabilities were subject to instant demand. They then estimated that 'liabilities of this office, on any one day, without notice, to be not less than [$1.5 M], as it now stands.' The trustees then looked at all of the possible methods available to them to meet such a demand, concluding that only [$0.35 M] of loans that could be counted upon for immediate collection in case of a run on the bank deposits.*"(Riddiough and Thompson, 2018).

866 *"[G]iven [OLIT's] immediate western railroad connections, and that at least one-fourth of its capital was tied up in a single faltering western road (the Cleveland & Pittsburgh stock fell from 39 cents a share in July to 20 cents a share in Aug before the failure of [OLIT], and later dropped to 15 cents a share), it is understandable that of all the banks in the country [OLIT] would be first to fail."* (Calomiris and Schweikart, 1991).

867 See Cashier Ludlow's *Final Settlement Account* (Riddiough and Thompson, 2016, p39). In 1859, OLIT held $263,485 of CPR bonds as follows: 20 Income Bonds [20,000], Dividend Bonds [20,000], 38 Bonds (3rd mortgage)[17,500], 200 Bonds (4th mortgage) [200,000], and 171 Coupons [5,985] (Spiegelman, 1948).

868 "*The loans by the New York agency of [OLIT], it is understood, have been made upon stock collaterals and 'on call.' The heavy decline in many of these securities will entail a loss upon the Co, but only to affect the capital (not the creditors) of the Co. This business of loaning 'on call' is °by nearly every*

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bank and banker in the city. Such loans are made with the understanding that they shall be returned promptly on the demand; but the lenders are usually cautious enough to require a liberal margin, which it seems was not done in the present case." (Bankers' Magazine, 1857). OLIT "*had been in excellent credit. McCulloch says that its failure was like a thunderbolt from a clear sky, and that its New York agents had speculated with its funds and ruined it, while the directors in Cincinnati thought it absolutely sound. The real trouble with it, however, and with the other banks also, was that they had advanced funds for railroad building... This passive debt of the Ohio Co was Stated at $5 M.*" (Sumner, 1896). "*A fall of stocks in the summer of 1857 caused great embarrassment to many eastern bankers and others who held call loans for which they had taken stock collateral. And on Aug. 24, the crisis was occasioned by the failure of [OLIT], with liabilities running into millions. This institution had enjoyed excellent credit; its home business had been well and carefully managed; and its directors as well as the public thought it sound and prosperous. Its failure was due to big speculative operations by the cashier of its New York office. The deposit balances in New York had been employed in common by the Cincinnati and New York offices, discounted upon to some extent in the West and the remainder loaned by the New York cashier under the advice of a sub-board of eastern trustees. Large amounts had been borrowed on call in New York and loaned on financial securities where they were not immediately available.*" (Huntington, 1915).

869 "*[In 1/3/1852: Coe] Complains that the assistant cashier at the home office had been drawing heavily on the New York agency… 9/21/1853: Rockwell complains about loans to western railroads that the home office has made with drafts on the New York agency. Rockwell suggested that the home office draw upon itself. (P.674-675) Rest of the year. More complaints about the home office drawing on the New York agency. (P.676-677).*" (Riddiough and Thompson, 2016). "*The most persistent issue Coe had with the home office was the latter's propensity to overdraw their account with the New York agency. Coe frequently brought up the liquidity demand issue, pleading with Stetson and Bishop (the assistant cashier in Cincinnati), that the actions of the home office required him to constantly struggle to avoid funding shortfalls and resort to 'second-rate sources' to borrow when money was tight on Wall Street. For example, in early 1849 Coe informed Stetson that, 'your paper [to serve as collateral for short-term call loans] is not of the available and No. 1 character that the banks here most seek.' Coe hoped he would never have to 'go to the streets for accommodations.' Coe was also concerned about the home office investments in railroads, stating, 'that railroad securities must, from excessive creation, by and by, meet the same fate of similar securities in England [which were at the center of a financial crisis in 1847].'*" (Riddiough and Thompson, 2018)

870 "*Ludlow initially put on a brave face, stating in his letter that he was "happy that Bayard was out." But the move was devastating. As the Commission Report related, '…its direct, as well as indirect effects were damaging in the highest degree.' Bayard's sale 'threw Ludlow out of balance' and caused him to protect the Trust Co when it was already weak from its railroad investments. Half of all OLIT stock trades for the entire year up to suspension occurred in April, with a majority of those occurring between the 15th and 23rd— shortly after Bayard's sale. The Commission Report further describes how the sale emboldened the bears to go after western railroads that had affiliations with OLIT, most notably the Cleveland and Pittsburgh Railroad, and finishes by saying that it was basically all downhill for the Trust Co from there on, being just a matter of time before collapse. (p.187)... To see in part why the OLIT suspension was such a surprise, in Figure 1 we show stock prices of OLIT and the Cleveland & Pittsburgh (C&P) Railroad from the beginning of 1856 through the end of 1857. It was widely known that OLIT actively lent to and held securities of a number of western railroads, including the C&P whose president, Charles Rockwell, was the former cashier at OLIT. There had been concerns about C&P's declining profitability for some time (as with many western railroads), where the downward drift in stock performance revealed those concerns. Yet, over that same time frame, OLIT stock prices held up remarkably well and actually increased beginning the early 1857, trading around the par value of $100 per share. It was only in the few days leading up to suspension that OLIT's stock price displayed any visible weakness whatsoever. Prominent banks showed stock price performance (in levels and stability) analogous to OLIT's. Hence, simply based on its stock prices shown in Figure 1, OLIT's suspension looks to be a complete surprise, supporting the notion that confidence in banks and the bank system was widespread prior to OLIT's demise.*" (Riddiough and Thompson, 2016).

871 "*July 1, 1857 Meeting of Eastern and Midwestern railroads held at the Clarendon Hotel in Buffalo to combat the recent rate-cutting by the New York & Erie Railroad; Rockwell of the Cleveland & Pittsburgh Railroad is Pres.; no delegates from the Erie attend; agree to maintain the rates of May 20, 1857. (AJR, July, 1857, p419- may be 6/24).*" (Baer, 2013).

872 "*One of the most vexing questions which arose in connection with brokers' borrowings from banks was that of the over-certification of checks. In order to obtain the securities which had been purchased for his customers' account, it was necessary for the broker to pay the seller by check. But in order to obtain the deposit against which to draw such a check, the broker had first to borrow from his bank. It was impossible for both operations to be performed simultaneously, and to bridge the gap, banks were accustomed to certify the broker's check, permit him to take it to the seller and bring back the securities which were to serve as collateral, and then to deposit the proceeds of the loan to meet the draft. For several hours the bank was therefore in the position of having an unsecured loan on its books. Bank credit had been increased without a corresponding increase in deposit liabilities and reserves, for certified checks were not included in total liabilities, and were subtracted from deposits in computing the reserve ratio. The practice of over-certification of checks had developed gradually with the growth of stock trading, and had been common for at least a quarter-century before the passage of the National Bank Act [so by 1839]. It seems to have been an extension of the well recognized custom of extending bank credit in the form of overdrafts, which was permitted, or at least not forbidden, by most of the state banking laws. Certified checks were sometimes issued to merchants in advance of their deposits, but it was in connection with security trading that such checks usually came into existence and they became an integral part of the financial machinery of New York. By 1868 it was estimated that 75% of the checks going through the Clearing House were certified checks issued in advance of deposits.*" (Myers, 1931). "*A bank creates a certified check by escrowing funds from a check writer's account, and then endorsing the check to certify that the funds are in escrow. Certification substitutes the bank's creditworthiness for that of the check writer. With overcertification, the endorsement by the bank was often for an amount far in excess of the broker's deposit. A broker used the certified check to settle NYSE trades, and then cover the overdrafted check through a loan collateralized by the acquired securities. Repeating this process throughout the trading day created the large amount of financing needed to settle trades [intra-day liquidity to the security settlement process of exchanges]... By 1868 it was estimated that 75% of the checks going through [NYCHA] were certified checks issued in advance of deposits... Congressional investigation into the Gold Panic of 1869 found that overcertification provided leverage to speculators seeking to inflate asset prices.*" (McSherry and Wilson, 2013). "*The ledger shows that his balance was less than $50 on the day before when he drew his check for [$1,500],*

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and it is apparent that he had obtained the use of that much money one day in advance of his deposit. The process is well known to bank officers and clerks under the name of 'kiting.' It is often resorted to as a last expedient to raise funds, by parties who know better." (Gibbons, 1859). "*Overcertification appears to have been more or less common at one period. Bank of Republic v. Baxter, 31 Vt. 101 (1858).*" (Steffen, 1935). "*S., a broker in New York city, had an arrangement with the Bank of the Republic, the orators, with whom he kept his bank account, that they should from day to day certify his checks for a larger sum than he actually had on deposit, with the express understanding that he should, before the close of banking hours on each day, deposit with them a sum sufficient to make good his checks certified on that day. This arrangement was entered into and continued by the orators in reliance upon the representations of S., that ho was abundantly solvent, and fully able to make his checks good on each day, and that he would do so. This arrangement was acted upon for some time, each party complying with its terms, until the 31st of March, 1855, when S. having become insolvent...*" (Bank of Republic v. Baxter, 31 Vt. 101 (1858)).

873 "*Overnight settlement was in force since the earliest days of the NYSE, but prior to 1857 most trades were settled by buyer's and seller's options (time contracts), which allowed negotiated delayed settlement. Time contracts allowed traders to trade in and out of positions before settlement was required… [In 1879, NYCHA banks called NYSE to create a stock clearinghouse or for the use of time options as an alternative to overnight settlement:] A return to the old fashion of dealing in buyers and sellers options, for short or long periods, would undoubtedly not only relieve members of many daily anxieties & troubles & perhaps have the effect, at some time, of averting serious embarrassments likely to occur to them out of the excitements often attending these daily settlements of stock loans.*" (McSherry and Wilson, 2013).

874 "*However, broker failures and time-contract defaults during the Panic of 1857 curtailed their use, and overnight settlement became preferred to limit settlement risk.*" (McSherry and Wilson, 2013). During the height of the crisis in Aug "*Additional excitement was produced by the Board of Brokers [in Philadelphia] passing a resolution this morning to the effect that all settlements in the purchase of stocks may be made by certified checks on any of the city banks current on the day of settlement.*" (Chicago Tribune, 1857). "*Certified checks are mostly returned in the debit exchange of the following day, through the Clearing House. They are used either for deposit, or to pay notes in other banks than that on which they are drawn. Being of nearly equal credibility with bank drafts, they are used also in remittance to distant parts of the country, in which case they do not appear for redemption for several days. They are, however, charged to the drawers immediately, certification being equivalent to payment. The Paying Teller's record of certified checks is a facsimile of the Receiving Teller's deposit book in its rulings, extension columns, postings, and method of proof–the one being a credit, and the other a debit entry to the dealer... This manner of posting certifications is of recent origin. The certification check list is a new book not yet generally adopted in our city banks. The aggregate is posted to Certification. Account, which balances the separate charges to individuals. When the checks are finally redeemed, they are carried to the debit of this account, which thus always shows the balance of certified checks remaining out. This, or some equivalent plan, is indispensable to prevent fraud or error by the duplication of checks.*" (Gibbons, 1859).

875 "*A series of cases in the Court of Appeals on interpretation of the New York banking laws and involving [NAT], a bank in receivership, illustrates the establishment of a precedent; its gradual weakening by distinguishment and its ultimate abandonment. There were in this period 2 types of New York banks, those chartered specifically by the legislature and those organized under the on-going provisions of the General Banking Law of 1838. Different statutory regulations affected the 2 types. The banks specifically created by the legislature were prohibited from issuing any bill or note unless payable on demand without interest. [NAT] had been organized under the general statute and not by the legislature and hence was not literally within the statutory prohibition on notes and bills payable without interest. In Leavitt v. Palmer (3 NY 19 [1849]), the court held in an action by Leavitt, as trustee of [NAT], that notes issued by the bank to a London bank on account of a prior debt and secured by a deed of trust for certain securities were void because they did not state that they were payable on demand without interest. Consistent with this decision was Talmage v. Pell (7 NY 320 [1852]). The court held that the statute prohibiting this type of notes and bills applied to banks organized under the general banking statute. These decisions, tending to narrow the scope of activity of banks organized under the general banking statute, assumed importance in the New York banking community. The court itself began to be concerned about the decisions. In Tracy v. Talmage (14 NY 162 [1856]) the court was able to distinguish them. The affairs of [NAT] were again before the court the following year in Curtis v. Leavitt (15 NY 2 [1857]). The judicial examination of this case ranks among the most elaborate and extensive in the court's history and suggests both the judicial concern and the business community's concern with this problem. 5 judges wrote opinions that run nearly 300 pages in volume 15 NY. The reporter's headnotes alone take up 6 pages and the statement of facts 26 pages. The court upheld the power of the bank, and while not overruling Leavitt v. Palmer, it indicated that the statute did not prohibit [NAT] from issuing the particular obligations at issue. Finally, in Leavitt v. Blatchford (17 NY 521 [1858]), still involving [NAT], the court met the problem head on and overruled Palmer. The court now stated that 'the provisions of the revised statutes in relation to moneyed corporations have no application to banking corporations organized under the act of 1838 and that 'the regulations by the Legislature for the purpose of preventing insolvency of moneyed corporations are entirely unsuited to the free banking system.' In a concurring opinion, Chief Judge Johnson addressed the stare decisis problem on overruling precedent. He said that the doctrine, 'although entitled to great weight, does not furnish an absolute rule which can never be departed from.' When the court is persuaded 'that there is no one reason why such a decision should not be made again except that it was once made before, then I think a court would be sacrificing substance to shadow if it refused to correct its error. Nor do I believe that in so doing a court would disturb the public confidence in the stability of its judgments... I do not think this court bound to persist in that which it sees clearly to be erroneous.'*" (Bergan et al., 1985). "*This case has been before the courts of this State for several years, involving a large sum of money... The Court of Appeals closed its term on Fri, July 3, 1857... The import of the ruling in these [NAT] cases is, that the claims of foreign creditors are established with slight modifications, and the million trust, also the first half million trust, which secured these foreign creditors, are declared valid... The decision given a few days since in the New York Court of Appeals, in the great [NAT] suit, will create a great sensation in the financial circles of England, where a very large proportion of the bonds of [NAT] were owned. The suit was begun 15 years ago, and involved no less than [$2 M]. It grew out of certain trust deeds made by [NAT], previous to its failure, to Richard M. Blatchford and others, trustees, to secure a large indebtedness, principally due to Palmers, McKillop, Dent & Co., of London, and the Bank of the United States and Girard Bank, in Philadelphia. David Leavitt, on the failure of the company, was appointed receiver. He desired to set aside these 2 trust deeds, and plead their invalidity.*

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This plea was carried to the courts, and has been pushed from that time to this, through all the tribunals having jurisdiction. The Supreme Court decided against the receiver, and in favor of the validity of the bonds. This decision was carried up, and the entire of the Jan term of the Court of Appeals was occupied by eminent counsel in arguing the appeal. The decision just now made public, fully sustains the unanimous conclusions of the Supreme Court, and irrevocably establishes the validity of the bonds. The decision now made involves a greater amount of money than any one cause ever decided in the courts of New York..." (The Bankers Magazine, 1857). "*Since under the decision of Curtis v. Leavitt, the New York banks had all powers incident to the banking business, and since the banking business (as practiced by British and other European banks for over 200 years) included the issuance of letters of credit and the acceptance of bills of exchange, the New York banks had legal authority to similarly issue letters of credit and accept bills. The [1864 NBA] was preceded by the Act enacted Feb 25, 1863 which first provided for a national banking system. Section 11 of the 1863 Act adopted verbatim...*" (Trimble, 1949). COTC Camp later wrote that "*[T]he New York Free Banking Act of 1837, which gave banks the '...power to carry on the business of banking... by exercising such incidental powers as shall be necessary to carry on such business.' In construing this section of the New York Act in 1857, the New York Court of Appeals held in Curtis v. Leavitt, 15 N.Y. 9, that the implied powers of a bank 'are not enumerated and defined; because no human sagacity can foresee what implied powers may, in the progress of time, the discovery and perfection of better methods of business, and the ever-varying attitude of human relations, be required to give effect to the expressed powers. They are therefore left to implication.' This decision in Curtis v. Leavitt was a landmark one which was quite well known at the time.*" (GPO, 1969).

876 "*The circumstances of an old country like England and Ireland are so different to America, that the same system, to the same extent, cannot arise here as there, though our banks might be disposed to adopt the American system of discounting accommodation paper, knowing that its proceeds were to be invested in permanent wealth. Our merchants and traders are not house, and town-lot, and land jobbers, like the American... The general principle of business with the United States Bank, and all others, with the exception of a few, in the United States, was to give accommodation to merchants and dealers, or jobbers in land and real estate, such as town lots, and houses in cities, and not the discounting of real bills of exchange, which was a minor branch of their business. By prudent management in giving accommodation, and discounting notes at 3 months, they enabled individuals to build houses, and factories, and so forth... And thus make an apparent prosperity. But, the houses, and ships, and factories were not paid for, they were all built with borrowed capital. No man, or very few indeed, in the towns could call anything in his possession his own, when I left the United States about 3 years since.*" (Clibborn, 1837)

877 "*We shall first distinguish between two types of discounts—single-name and double-name paper. In the antebellum period commercial transactions were usually financed by the trade acceptance, which is a bill of exchange drawn to order, with a definite maturity date, where the obligation to pay at maturity has been accepted by the person upon whom it is drawn. The seller may then take the trade acceptance to a bank to be discounted. The trade acceptance arises from a specific commercial transaction and is a form of two-name paper. Two-name paper is an instrument carrying the obligation of a drawer in addition to that of an acceptor, or of an endorser in addition to the maker. At maturity payment will be sought from the buyer, or maker of the acceptance. If payment is not forth-coming, however, the seller, who obtained the discount, is liable to the bank for the amount involved. Similarly, the endorser is liable for the amount of the discount if the maker defaults. In contrast, only one party, the maker, is liable for payment of single-name paper, which is in effect an unsecured promissory note. When discounts were offered for sale on the open market, usually through a broker, as opposed to being presented at the local bank, they became known as commercial paper. The trade acceptance was widely used in the antebellum period to finance commercial transactions. Before the Civil War retail dealers customarily made 1 or 2 trips per year to commercial centers, such as New York or Boston, to purchase merchandise. Since the size of these orders was fairly large, they usually issued a trade acceptance in payment, with maturities running from about 4 months to a year. The sellers then endorsed these notes and discounted them at a local bank or else sold them to note brokers... The trade acceptance had been losing favor even before the Civil War, and the change in credit methods brought about by the war hastened its demise. By the middle of the 1860s, single-name promissory notes constituted the majority of Chicago merchants' bankable paper. By the end of the century, only about 3% of all domestic credit transactions were financed by the issuance of a trade acceptance. The most convenient method of borrowing to pay cash for merchandise was by issuing a promissory note. Thus, the single-name promissory note began to displace double-name paper, the trade acceptance. Another force that contributed to the decline of the trade acceptance after the Civil War was the changing system of distribution. The growth of traveling salesmen meant that it was no longer necessary for the merchant to go to New York once or twice a year.*" (James, 2015).

878 "*Some economists were firmly opposed to 'accommodation paper' because it was believed to be of lower quality than self-liquidating commercial bills since there was less assurance that the firms that issued the bills would have the cash to pay the holders of the bills on the dates that the bills matured. [For an early example of such attitudes, see the hypothetical discussion of the board of directors at a New York bank in the 1850s by Gibbons (1859, p. 50). A director is pleading the loan application of a Mr Black, 'rich beyond a contingency', who wants to build a new house on 5th Avenue for $60,000 and to spend $40,000 to furnish it, and proposes expanding his firm's discount line at the bank by the whole amount. Another director objects: Mr. President, my notion is, that we have no right to discount anything at the Board but a bona fide commercial note that will be paid when due. And on top of that the endorser must be able to take it up himself, if the drawer should fail or die. Don't you see that we are discounting this paper to pay for Mr. Black's house and furniture, just for his single enjoyment? This isn't commercial paper, sir! It's accommodation paper in the true sense.]*" (Kindelberger and Aliber, 2005).

879 "*In a period of falling prices, however, the merits of the higher quality commercial bills were exaggerated, since the buyers of the goods might not have the cash to settle their obligations on the due dates because they might not be able to sell the goods at a profit. [Hawtrey (1932)]... If one house in the chain of houses that had endorsed the bill failed, the chain collapsed and might bring down good names, those with a reasonable ratio of debt to capital as well as those with much higher ratios. Each endorser on the bill was liable for the full payment. Accommodation bills enabled traders with limited capital to borrow large amounts of money, and these short-term loans in effect stretched into longer-term loans because they were rolled over and over when they mature.*" (Kindelberger and Aliber, 2005). "*[Banks'] embarrassment usually arises from the embarrassments of their customers. Debts due from traders have become temporarily or perhaps permanently irrecoverable. It is at a time of pressure, when there has been a general decline of commodity prices, that such*

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embarrassments become widespread, and banks which have been prudently conducted according to accepted standards find themselves nevertheless in difficulties. Their difficulties will undoubtedly be concealed, so long as concealment is possible... The need has therefore been felt for some further criterion of the soundness of bills to supplement that of the credit of the names upon them. And a code of morality has grown up in the bill market. The virtuous bill is that which is drawn by the seller of goods dispatched to a buyer who is himself in a position to sell them without delay. The bank which buys the bill is financing the seller and the buyer for the strictly limited interval required for the transport and disposal of the goods. Provided all goes according to plan, the bill is 'self-liquidating.' And in any case the buyer, on whom or on whose account the bill has been drawn, has in the goods an asset to hold against his liability. (The goods can actually supply a collateral security for the bill so long as bills of lading are attached to it, but the bills of lading have to be detached to permit of the goods being sold before the maturity of the bill.) By contrast with the self-liquidating commodity bill the finance bill or accommodation bill, which is no more than a device to enable the drawer to borrow temporarily on the credit of the acceptor, is an object of suspicion and condemnation. It has very commonly been the practice of central banks to favor commodity bills, and they have sometimes been bound by their statutes to confine their rediscounts to such bills. The discrimination is not entirely without justification. The commodity bill is a normal outcome of commercial business; the reason for its existence is the time necessarily occupied by the transportation and marketing of goods. Any other bill may be a signal of distress, or the outcome of some imprudence or vagary. Like all temporary borrowing, it ought to be no more than an anticipation of forthcoming receipts. But in practice forthcoming receipts are apt to be offset by forthcoming liabilities, and it may be that the bill has to be paid at maturity by the proceeds of another temporary borrowing operation. But if it is legitimate for any business to be financed by a bank advance, it is difficult to give any good reason why it should not as legitimately be financed by a bill. That the bill is marketable and that there are special sanctions for prompt payment at maturity, these are advantages to the lender who discounts it, in virtue of which the borrower obtains more favorable terms than for a bank advance. The special merits of the 'self-liquidating' commodity bill are in reality very dubious. Any bill which is drawn to meet a genuinely temporary need for cash is self-liquidating. And the expectation that commodities can be promptly sold or can be sold without loss is liable to disappointment just as much as any other expectation of forthcoming receipts... The real point is that the accommodation bill is a sign of distress. It is not drawn to supply funds for the acquisition of an asset, but to make good a deficiency of cash due to disappointed expectations. And this is precisely the case which throws a special responsibility on the central bank as the lender of last resort. The commodity bill is a fair-weather security. So long as the central bank only requires suitable machinery for bringing about expansions and contractions of credit for the normal purposes of monetary regulation, it serves very well. But at moments of discredit, such as occur when a heavy fall of commodity prices has impaired the position of many debtors, the commodity bill has two defects. In the first place, in an unfavorable market it ceases to be self-liquidating; there may be both delay and loss in selling the goods financed by the bill. And secondly, there may be applicants for loans, whose position is ultimately sound and solvent, and who ought to be assisted, but who cannot furnish commodity bills sufficient in amount to cover the loans needed. That does not mean that finance bills then become a desirable form of security. In fact, there is an obvious danger that a finance bill may be drawn and accepted by people whose credit though reputed good has in reality been weakened. The right course is rather to accept any security representing a sufficient amount of wealth to cover the loan with adequate margin, without being too particular in defining the form of the security or even in insisting on its immediate marketability." (Hawtrey, 1932).

880 "*This state of things may be primarily ascribed to two things. 1st. Unfavorable foreign trade. 2d. Unsound banking. Over 32 M of gold were shipped from this port alone for the 37 weeks ending 19th inst.; thereby draining the city banks of their specie reserve, and forcing them to draw upon other cities, in turn, for coin. At the same time there were systematic efforts on the part of one or two New York journals to create a panic in the money market, by a discredit of rail-road securities and rumors prejudicial to the credit of the city and country banks. Secondly. The crisis may be traced to unsound banking, in which we include— 1st. The efforts of various banks and bankers to obtain large deposits from the interior by offers of a high rate of interest on balances. These offers made for 12 or 18 months past have induced Western banks and bankers to maintain larger balances in the hands of their New York correspondents than they otherwise would, and the effect was to increase the bank balances in New York from $72 M, as in Feb, 1855, to within a fraction of $100 M, as in May and Aug, 1857. The loans, of course, kept pace with this increase of capital; or from $88 M in Feb, 1855, to $122 M in Aug, 1857. These deposits were sought by New York parties for the purpose of loaning out at a profit of 2 or 3% per annum; the average rate of interest paid being 4%, while the loans were ordinarily made at 7% on call, or in extraordinary cases at 8 to 12%. At the same time the wants of several of our rail-road companies have forced them to obtain loans in Wall-street at high rates of interest. The New York and Erie Rail-Road Co, the Hudson River Rail-Road Co, the Michigan Southern Rail-Road Co, and other railroad companies, have been large borrowers; whose paper as collaterals (either in the shape of acceptances, of bonds or of shares) has been sold at 1 to 3% per month. Thus loaded with an accumulation of rail-road paper, upon which loans on call had been made, and to which loans the borrowers could not, on demand, respond, the lenders were unable to meet their engagements when suddenly a pressure arose. The suspension of [OLIT], who were borrowers of the banks to the extent of [$2 M], may be traced to this source; and that of Messrs. Beebee & Co., and Messrs. Atwood & Co., (we mention as instances,) also to the same cause. If the loans of these parties had been upon bona fide business paper of short dates, judiciously selected; of houses well known, and in moderate sums, no such calamity would have occurred, nor would the suspension of numerous other firms (elsewhere recorded) have occurred. In our opinion, the contraction by our banks, the diminution of bank circulation, the fall in stocks, the lamentable series of mercantile suspensions and bank failures, the panic and contraction in various cities, are mainly owing to these departures of 2 or 3 houses from their legitimate course as bankers. It is a sound principle of banking, now a legal statute in some States, that not over 8 or 10% of their capital shall be loaned to any one concern.*" (Bankers' Magazine, 1857).

881 "*[NY] banks failed to cooperate to halt the run. The Mercantile Agency of [NY] took the position that if 4 or 5 of the strongest banks had come to the assistance of the [OLTI], enabling it to meet its obligations, the business and credit of the country would have been preserved.*" (quoted in Kindelberger and Aliber, 2005). See stock prices on Figure 1 of Riddiough and Thompson, 2018, p297.

882 "*Ohio was one of the very few States to avoid general suspension of specie convertibility during the Panic of 1857, and only one Ohio bank failed. Ohio's success is remarkable, because many Ohio banks had substantial deposits on account with [OLIT]... Moreover, each member of the insured system was obligated to redeem all other member banks' notes on demand, a move which could have accelerated the rate of disintermediation. This exceptional performance can be traced to the wise and timely policies of the Board of Control. First, the board acted quickly to insulate the banks from [OLIT's]*

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failure. Assets of the failed bank were transferred directly to its depositor banks to secure their deposits. This effectively subordinated the debts of individual depositors and other creditors of [OLIT] to those of the Ohio banks. Some of these assets were liquidated to help keep the banks afloat during the crisis. Next, the board established a program of mutual assistance among the banks. Within a few days after the failure of [OLIT], the first letter from the secretary of the board was dispatched instructing the Commercial Branch in Cleveland to render aid to the Merchants Branch of Cleveland. Over the next 2 months 4 insured banks received $56 [K] in assistance. All of these transactions were treated explicitly as interest-bearing loans, backed by collateral in the form of time notes or paper currency, and guaranteed by the insurance system as a whole. More important than the amount transferred, however, was the clear signal the board's policy sent." (Calomiris, 1989).

883 "*The Indiana system was imitated in Ohio and Iowa, with similarly successful results. Ohio's law granted its Board of Control even greater authority than Indiana's board, allowing it virtually unlimited discretionary powers during a banking crisis, including the right to force banks to make loans to one another. Interbank loans were successfully used during the Panic of 1857 to avoid suspension of convertibility. The insured banks, it seems, even came to the assistance of nonmember banks during the Panic, as indicated by flows of interbank loans. Only one Ohio bank failed during the crisis, and it was not a member of the insured system. Iowa's system was in place for a shorter and more stable period, but its operation was similarly successful.*" (Calomiris, 1990). By "*Sep 30, 1857, the Board of Control of the Bank of the State of Ohio resolved that its branches could and would maintain specie payments, and they did. There was great complaint all through this period of the anti-bank legislation in this State. 'The suspension was preceded by a desperate struggle between all the banks themselves, and distrust and fear of currency was more apparent among them than with the public generally.' The banks began a savage contraction, being in no position whatever to meet the crisis by bold loans to solvent borrowers. It was afterwards said, with great good reason, that the panic was entirely unnecessary and need not have occurred*" (Sumner, 1896). "*[T]he Ohio banking system suffered a severe shock, not only from the general effect of the panic of that year but in particular because one of the key bank failures in the country was that of the [OLIT], the New York agency of which held the correspondent bank balances of many of the insured Ohio banks. In this situation Ohio insurance authorities rapidly devised a procedure for extending aid to the distressed banks in the form of loans. The purpose of the loans, of course, was to prevent the suspension of the banks and in this respect was completely successful, since not a single insured bank in Ohio failed during the panic or subsequent depression. It is interesting that the long-time secretary of the State bank system chose, years later, to appraise the system in the following terms 'It did what it was designed to do, furnish a safe circulating medium for the people of the State*.'" (Golembe, 1960).

884 "*In Aug, 1857, the business of the country had got into such a condition that it needed but the failure of [OLIT] to make every person look his neighbor in the face with the mutual inquiry, 'Do you go next?' Nearly every branch of the State Bank of Ohio had made [OLIT] its New York agent, and by the reports of the branches, Feb 2, 1857, they had in eastern exchange [$1.1 M], very nearly all of which was with [OLIT]. Some of the branches had the whole amount of their capital so deposited. Fortunately for the State Bank, Noah L. Wilson of Marietta and Daniel Applegate of Zanesville, two influential and able members of the board of control, were in New York at the time and got from the cashier a contract setting aside assets sufficient to meet the demands of the branches, thus saving some of them from impending ruin.*" (Janney in Williams, 1885, p156-175). "*Many of the Ohio banks had kept their New York accounts with [OLIT] and its failure seriously crippled them. Almost all the branches of the State Bank had made the Trust company their New York agent. On Feb. 2, 1857, the branches had in eastern exchange $1.1 M, nearly all with the Trust company. These deposits of some of the branches equaled their entire capital. Fortunately 2 influential members of the board of control were in New York at the time of the failure, and got from the cashier a contract setting aside assets enough to meet the demands of the branches. This saved some of them from ruin.[State Bank of Ohio —Janney, p. 170.]*" (Huntington, 1915).

885 "*Beginning on the day of suspension, attachments were filed in New York Supreme Court by Ohio Life's various creditors. The speed at which the attachments were filed meant that some creditors were not caught off guard by the suspension announcement. On 27 Aug, Judge Peabody granted attachments to 15 parties, which are shown in Table 1. Most of the attachment pleadings were from banks or bankers in [NYC], with total attachments filed amounting to $1 M.* " (Riddiough and Thompson, 2018). See NYTimes (1857) and Bankers' Magazine (1857, p323)."*[T]hat all its assets in New York, to a very large amount, were seized under process of foreign attachment, and a very large number of suits were commenced against it in Ohio.*"(*Spinning & Brown v. OLIT*). "*Brown Bros. & Co. and others placed an attachment upon the assets of the Co here as a foreign corporation, and the Sheriff and his deputies are in charge of the office and property.* " (NY Tribune, Aug 25, 1857, cited in Perine, 1916).

886 "*Aug. 25, 1857. Cleveland & Pittsburgh Railroad Board meets in office of Pres. Charles W. Rockwell in New York; resolves to apply all funds first, to current expenses, second to interest, and third to debts. (MB)*" (Baer, 2013). "*Henry Coit Kingsley… In 1854 he was elected a Director of the Cleveland and Pittsburgh Railroad Co, which was then seriously, embarrassed, and in 1857 became insolvent. From 1857 to 1866 Mr. Kingsley had the principal charge of the financial affairs of the company, which in 1862 regained a sound position*." (Yale College). The railroad was reorganized under new management (Railroad Record, Feb 1859, p.32).

887 "*Statement by the President.—Having returned from New York, after an absence of 3 months diligently employed in the investigation of the affairs of this Co in said city, it will, no doubt, be expected that I am prepared to render a statement of its present condition and prospects. It pains me to state that such is the confused and intricate condition of the Co's books and papers at the New York Agency, that it is utterly impossible now to present any statement which will enable those interested to form any correct estimate of the ultimate value, either of the stock of the company, or of any claims they may hold. Accounts with parties having business with the Agency have been made out and furnished them. In many instances no response or acknowledgment has been received; many have been returned, pointing out numerous errors and discrepancies. It will readily be seen that these various differences in the accounts must be reconciled and adjusted before the actual condition of the company can be ascertained. One serious source of embarrassment arises from the unwarrantable hypothecation by the Cashier in New York, of a large amount of paper sent to the agency for collection, only. It is impossible at this time to conjecture for how much of this the Co may be ultimately liable… In addition to the foregoing, is the almost endless litigation, caused by numerous attachments and other legal proceedings, causing additional embarrassment in the liquidation and settlement of claims in favor of, as well as against [OLIT]. The various assets of the Co, pledged and unpledged, are of such a mixed and varied character, that in the present unfixed and unsettled state of money*

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matters, it is wholly impossible now to fix a value upon them. The causes which have brought the Co to insolvency, are wholly owing to the unauthorized and disastrous transactions of the Cashier in New York. 1st. In his dealings with and large advances to [CPR], to aid in the completion of said road—this account has not been adjusted… In speculations on his own account in the stock of this Co as well as of other Companies, as also in State securities. - 3d. In the depreciation of stocks and securities held by him, as collateral to un authorized loans made by him in New York. These are the prominent items, and the loss sustained on them alone, will I fear be of sufficient amount to absorb the entire capital of the Co—[$2 M]." (Bankers' Magazine, 1857). "*This company suspended payment at New York, on Mon, Aug 24. The President, Mr. Charles Stetson, was telegraphed a few days since, and arrived here yesterday; and after consultation with the New York Cashier and Trustees, was forced to the following announcement:—Office of [OLIT], New York, Aug 24, 1857.-The unpleasant duty has devolved upon me to state that this company had suspended payment. This event has mainly been brought about in consequence of making loans here to parties who are unable to respond at this time. I would add, that the capital of the company, [$2 M], is sound and reliable, exclusive of such loss as may arise from insufficiency of securities pledged for loans above referred to.—C. Stetson, President. The deposit balances in New York have been employed in common by the Cincinnati and New York offices; discounted upon, to a partial extent, in the West, and the remainder loaned out here by the Cashier, under advice of a Sub-Board of Eastern Trustees. The banking department has at no time, employed actively even a moiety of the capital, though having the whole as the basis of security for its depositors and other dealers.*" (Bankers' Magazine, 1857).

888 "*Wall Street was taken by surprise on Mon, 24th Aug, by the announcement that the New York agency of [OLIT] had suspended payment and closed its doors. Payments hitherto by this agency (as well as by private bankers generally) have not been made in money but by checks upon banking institutions. Parties having checks drawn upon by [OLIT] agency, upon their deposit bank, (the American Exchange Bank,) presented them for certification, which endorsement was refused, and the checks, therefore, went to protest. In some cases these checks were drawn on the morning of failure, in payment of drafts drawn upon [OLIT] by their Western correspondents. Finding the checks not 'good,' the holders, in one or more cases, demanded the return of the original draft or drafts, which at first was refused by [OLIT], but finally acceded to under a writ of replevin. It was known on the Sat preceding that the agency was in some trouble, as certified checks upon it, dated one day ahead, were offered to brokers on Fri, for the purpose of raising gold. The most serious inconvenience has resulted to the Western correspondents of the agency, consisting of a large number of private bankers and banking institutions, who have kept accounts with the agency for a number of years, and their balances must for a short time be unavailable.*" (Bankers' Magazine, 1857). "*[T]he Ohio banking system suffered a severe shock, not only from the general effect of the panic of that year but in particular because one of the key bank failures in the country was that of the [OLIT], the New York agency of which held the correspondent bank balances of many of the insured Ohio banks.*" (Golembe, 1960).

889 OLIT "*specialized in placing Eastern and foreign funds in Western investments, especially land, railroads, and commodity futures. Its failure reached into all sections of the country; as Bennett and others had predicted, the web of credit was about to collapse. Prices fell sharply on Wall Street that morning, but recovered some of the loss in the afternoon auction. The decline continued steady and regular for the rest of the week, as news of more failures appeared daily.*" (Sobel, 1999). "*It was soon known, however, that the entire capital of [OLIT] institution had been virtually embezzled, and serious alarm was immediately manifested in banking circles. On the day after the failure, our merchants found that the terms of business between them and the banks were changed. The discounting of commercial paper was stopt. The certification of checks was imposed with unaccustomed rigor. It suddenly dawned on financial managers, that the city loans were $10 M higher than ever before… ripened into symptoms of alarm. The Weekly Statement of Aug 29 showed a reduction in the loans of $4M, and that of Sep 5 as much more.*" (Moodys, 1907). "*In 1857 New York Central stock went from 93 to 61, Reading from 96 to 36. The price of pork fell from $24 a barrel to $13; flour, from $10 to $5 or $6.64 In Sep interest rates rose from 15 to 24%, as 150 banks in Pennsylvania, Maryland, Rhode Island, and Virginia failed in the last 4 days of the month. The panic reached a peak in Oct, when 1,415 banks in the United States failed and interest rates rose from 60 to 100% per annum. This, of course, was for monies borrowed for a few days.*" (Kindelberger and Aliber, 2005). "*Towards the end of Sep, the pressure upon the country banks in New York to redeem their notes was very great, and they began to return their circulation and take up their bonds in order to execute their redemptions. If notes of any bank were presented at the redemption agencies at the Metropolitan and [AEB] when there were not funds, those notes were immediately thrown out and the bank was posted in all the newspapers of the State as having failed.*" (Sumner, 1896). However, Calomiris and Schweikart (1991) note that "*From July to early Sep, trunk-line securities, Kansas land warrants, and stock in [OLIT] fell dramatically ([OLIT] suspended on Aug 24). Meanwhile, the values of other securities show little or no change. The free fall in trunk-line stocks continued up to Sep 23 with little or no effect on other securities prices;*" they use Thompson's recorder data to show that, although OLIT suspended on Aug 24, it's price was stable on Aug 27th and only collapsed after. This delay may be due to a delay in reporting or hope for a fair resolution. They note that *"[O]ur explanation for the origin of the Panic of 1857 revolves around the financing of western railroad and land speculation in eastern financial markets. The proximate cause of the panic was the bankruptcy of securities brokers who borrowed from eastern banks to finance their dealings in the stock and bond markets*." *"The Stock market was very active today, the aggregate sales in and out of the Board exceeding 25,000 shares. Some parties at the First Board had knowledge of the impend ing suspension of [OLIT] and sold freely on the anticipated effect. After the suspension was made public the market, as will be seen by the transactions of the Second Board, exhibited a quasi panic, most marked in [CPR] which sold down to 20, having been 29% on Sat. At the close a sale was made at 22. The decline in Pittsburgh was occasioned by the apprehension that [OLIT] held a large amount of the stock as collateral, which would be thrown upon the market… The immediate embarrassment of this Co arose, we understand, from its inability to meet loans made by it of some banking houses in the street. The proceeds of these loans had been used in sustaining Western Railroad Companies, one of which is said to have received advances exceeding [$0.5 M]… The announcement between the boards that [OLIT] had been obliged to suspend payment threw the street into great excitement and it became at once the engrossing subject of conversation. The magnitude of the operations of this institution throughout the West renders its suspension one of the most important financial events since the Schuyler fraud, and fears are expressed that it may produce further commercial disasters. The house is by far the most important banking institution in Cincinnati, and the locking up, even temporarily, of its large deposits must prove very embarrassing to its dealers in that city. The amount of its liabilities is not stated, but they are estimated at from [$5-7 M].*" (NY Tribune, Aug 25, 1857, cited in Perine, 1916). "*It was not a bank of issue, nor, to any considerable*

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extent, of deposit, in this city. Its principal business was to receive remittances from the home office in Cincinnati, and numerous correspondents in the West, and to hold them subject to draft. It was not a discounter of bills receivable; but on the contrary, a large borrower from other institutions. The consequences of its stoppage, therefore, did not fall directly on our merchants, aa in the case of a bank on which they are depending for continuous loans… On the day after the failure, our merchants found that the terms of business between them and the banks were changed. The discounting of commercial paper was stopped. The certification of checks was imposed with unaccustomed rigor. It suddenly dawned on financial managers, that the city loans were ten millions of dollars higher than ever before— a very gratifying fact during their accession, but now inspiring only fear and distrust, which in a few hours, comparatively, ripened into symptoms of alarm… The [NYCHA] report for [Aug 29]—the first after the suspension of [OLIT]—showed a reduction of [$4 M] in the bank loans during the previous week. The most substantial securities of the market fell rapidly in price at public sale. The safety of banknotes in circulation was suspected or denied. The publishers of counterfeit detectors spread alarm among the shopkeepers and laborers, by selling handbills with lists of broken banks, which were cried about the streets by boys, at 'a penny a piece.' One of the Associated Banks fell into default at the end of Aug, and a fraud of [$72 K] by the Paying Teller, roused suspicion of similar misconduct in other institutions. The regular discount of bills by the banks had mostly been suspended, and the street rates for money, even on unquestionable securities, rose to 3, 4 and 5% a month. On the ordinary securities of merchants, such as promissory notes and bills of exchange, money was not to be had at any rate." (Morris, 1870).

890 "*There were a few failures here at the beginning of Aug. Aug 24th, [OLIT] failed, and a few days later the Mechanics' Banking Association at New York. The Pennsylvania and Maryland banks suspended immediately afterwards. A panic, however, did not at once develop.*" (Sumner, 1896). "*Philadelphia, Sept. 26. Third and Chesnut streets are again the scenes of excitement—crowds surrounding the Saving's Institution before 9 A.M. They decline paying out deposits, requiring 2 weeks notice. The banks were besieged before 10 o'clock. The Pennsylvania Bank reopened, and is transacting business, but paying no specie. The Mechanic's Bank is paying specie for 10s. The Girard Bank refuses to do any business, and renders no satisfaction to depositors and bill holders. The Girard Bank has now come to terms, partially redeeming 5's with specie, but refusing to honor checks of depositors. Most of the other banks were making checks good. There is no concert of action among the banks —each apparently taking a different course. The Bank of North America is paying specie for 10s, but is issuing no notes or cheeks. The Bank of Commerce is refusing specle, but is paying notes for checks… 11:15 am. The Girard Bank is now paying specie for 5s and certified cheeks. Additional excitement was produced by the Board of Brokers passing a resolution this morning to the effect that all settlements in the purchase of stocks may be made by certified checks on any of the city banks current on the day of settlement.*" (Chicago Tribune, 1857). "*The collapse of the 'Ohio Life,' which had the best New York connection, was the first muttering of the storm, and was soon followed by the suspension of the Mechanics' Banking Association, one of the oldest banks in the country. The suspension of the Pennsylvania and Maryland banks followed. Public confidence remained unshaken—it relied upon the circulating medium.*" (Jugular, 1915). "*On Sept. 12 and 13 the banks of Philadelphia, Washington, Baltimore, and many interior towns suspended. Within a fortnight stocks fell 40 or 50% and 20,000 persons were thrown out of work in New York City.*" (Huntington, 1915).

891 "*A great financial storm breaks upon the country; [OLIT] suspends, 24 Aug., for the enormous sum of $7 M; this is followed by the suspension of the Philadelphia banks (25, 26 Sep.), and a general suspension in Pennsylvania, Maryland, the District of Columbia, and Rhode Island; a run upon the banks leads the New York Legislature, 13, 14 Oct., to authorize a suspension of specie payments by the banks for one year; the city banks resume payment, 24 Dec, and on the same day the Massachusetts banks suspend; the panic becomes universal throughout the country, thousands of manufactories an compelled to stop work, and prompt measures are taken in the large cities to relieve the suffering of the unemployed and to guard against bread riots; the failures during the year amount to 5,123, and the liabilities to $292 M.*" (Jones, 1888).

892 "*Although the Clearing House banks were instrumental in the recovery of the banking system, one might fault them for postponing suspension in the face of massive mercantile failures. Had they suspended in mid-Sep or even early Oct, they might have been able to extend the necessary loans to keep the securities market afloat. Focusing on their banks' reputations, rather than the health of the markets as a whole, the bankers chose the path of tight credit, falling prices, and commercial failures.*" (Calomiris and Schweikart, 1991).

893 "*[A]fter said failure, for about a month, they, with their co-trustees continued to manage the affairs of said company, and with out making a thorough investigation of the condition of the affairs thereof, or waiting for the report of a committee, discharged large debts of the company in full, by allowing them to be used at par, in payment of the claims of said company against good and responsible men, and by allowing solvent debtors of the company to purchase at a discount checks of depositors, and use the same at par in payment of their debts; that, in this way, they disposed of by far the greater portion of the valuable assets of the company, and being all, or nearly all, debtors of said company, they paid their own debts in the same way; that they conveyed the banking house and other real estate of the company to the Merchants' Bank of Cleveland, in payment in full of a large indebtedness… they made no provision therefor, nor for the large sums which had been deposited with them by order of this and other courts, and by guardians, administrators, executors and master commissioners; that they paid in full a debt due to the county of Hamilton, for which the said trustees, or some of them, were responsible as indorsers for said company; and thus having disposed of the larger portion of the means of said company, the trustees, on [Sep 22, 1857] in the name of said company, made an assignment of the remaining assets and property of said company... in trust, for the equal benefit ot the creditors, to be reduced to money and divided proportionately among said creditors; and the plaintiffs state that thereupon said defendants accepted said trust, and commenced the discharge thereof, and have ever since been professing to be engaged therein; that more than a year has elapsed, and, as yet, no dividend has been declared to the creditors—no statement or report made to the creditors of the condition of the company until with in a few weeks, and that said report was prepared more with reference to a justification of the acts of the defendants as trustees, than for the purpose of informing the creditors as to the condition of the company.*" (*Spinning & Brown v. OLIT*). "*Later in Sep lawsuits bringing attachments by 3 Ohio banks were dissolved. [Plain Dealer, Sep 19, 1857]... The state of Ohio had jurisdiction over the bankruptcy proceeding, and 26 Sept1857 marked the formal start of the process. The Ohio-based trustees, 'being satisfied by the pressure of the unexpected circumstances which surround them, that they cannot discharge at this time all their obligations, yielding to a sense of duty,' decided to appoint themselves as assignees with court approval coming shortly thereafter.[Cincinnati Daily Commercial, Oct 19, 1858; Spiegelman, 'The Failure of OLIT, 1857,' 255.] Assignees act as the day-to-day managers in the 'orderly' discharge of debts and otherwise deal with the*

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immediate details of the bankruptcy process. This would appear to be a direct conflict of interest, and was called out as such by certain creditors, but nevertheless was allowed with the expectation that a court-appointed receiver would be identified shortly thereafter.[According to a 2 Oct article from the Cincinnati Gazette, certain creditors had generated a document which showed their concern that: (1) The assignees did not consult with creditors in making decisions as to repayment priorities and how assets would be sold; (2) Such assignment 'greatly outraged our rights and was a mistaken sense of their duty'; (3) The assignees should relinquish control to those more qualified.] Due to legal wrangling over jurisdiction and undoubtedly the political influence of [OLIT] trustees, an undisputed receiver was not appointed until late Oct 1858. This allowed the Ohio-based trustees to maintain full control of the bankrupt company for over a year, self-dealing and settling claims as they saw fit. For example, the trustees 'purchased' the company's assets at deep discounts and then turned around to value them at face to retire their own debts. Ohio banks that kept funds on deposit in Cincinnati and other well-connected local creditors were paid ahead of New York creditors, which infuriated those further east." (Riddiough and Thompson, 2018).

894 "*he first week of Oct found the financial structure crumbling and trade at a standstill. Noteholders and depositors jammed into banks demanding payment in coin. Between Sep 26 and Oct 10 banks reduced loans and discounts from $108 M to $102 M, while deposits fell from $73 M to $63 M. The failures that attended this contraction of credit were 'massive.' In the West previously unquestioned securities and bank paper were rejected. St. Louis bankers, for example, at first refused to accept Illinois paper currency until persuaded otherwise by the Illinois bank commissioner. As the seriousness of the situation increased, various individuals pleaded for calm, rational thinking. But by early Oct the Panic of 1857 was earning its nomenclature; men, especially in banking circles, seemed utterly possessed by some demonic force... Journalists demanded a stop to the credit contraction —to the reduction of loans and discounts— because this policy was destroying 'legitimate' industry and commerce. No one complained about the havoc the Panic wreaked upon speculators in Aug and early Sep, but many cries were raised when the Panic started to bankrupt reputable firms in Oct. Merchants in the large cities held meetings to demand that the banks open lines of credit and end the pressure on the business community. In New York the middlemen tried to obtain a pledge for an increase of $6-10 M in discounts from the bankers, but the hard-pressed financiers were unable to comply… Financiers faced a dilemma that made it virtually impossible for them to meet the credit demands of the public. The development of deposit banking during the decade had created a generally unrecognized danger to the system. Bankers enticed customers to their institutions by offering interest on deposits. In order to profit from this practice, the financiers used the deposits as a basis upon which they could offer short-term loans, referred to as call loans. These loans were most commonly made to stockbrokers and were to be repaid immediately upon request by the bank. In addition, the loans usually took the form of discounts or bank notes, and as a result the issuing agency might be called upon to redeem the notes in specie. The hazardous element in the process was that depositors could withdraw their money in gold and silver at their own caprice. A sudden withdrawal of deposits left the bank with large liabilities in the form of bank notes, which had to be paid in gold when brought to the bank for redemption. In order to protect their specie holdings, bankers curtailed their loans and discounts and demanded payment of call loans. If the individuals who contracted the call loans were unable to pay, then the bank's position became more precarious. In the Panic of 1857 this situation was compounded by a general fear that the banks were unsafe, which induced large numbers of depositors to reclaim their money. Bankers thus had no other resource than to refuse credit to merchants and others if they expected to keep enough gold to maintain specie payment.*" (Huston, 1999).

895 "*Banks around the country began to suspend, drawing down deposits in New York. On Oct 9, there were heavy runs on several banks. Deposits in New York banks fell to $50 M and specie dropped to $12 M. On the same day the Erie, Michigan Central, and Illinois Central railroad failed to meet their obligations. Bank runs continued to drain specie...*" (Ó Gráda and White, 2002).

896 "*3 destabilizing elements combined to transform the securities collapse into a banking panic. First, the initial increase in bank risk prompted some noteholders and depositors in New York State to convert their bank debt into specie. New York's free banks met this demand through sales of bonds in New York, which helped to depress bond prices further. Second, New York banks outside [NYC] converted their notes into specie mainly through their city correspondents. A regulation of June 1857 regulated city banks' trading in country notes, restricted the discount rate which city banks could charge, and limited the amount of notes that could be returned to peripheral banks without sufficient notice. This regulation, along with rising bank risk, caused a flood of peripheral banks' notes into the city for redemption. This added to the drain of specie from [NYC] to its correspondents in other eastern financial centers. Third, as [NYC] banks came to doubt the solvency of some prominent securities dealers, and as city banks' gold reserves fell in response to the accelerating demand for redemption of peripheral banks' notes, the city banks refused to rollover the debt of the brokers. This forced brokers to sell their bond holdings at rock bottom prices and forced many into bankruptcy. As these bankruptcies mounted, and as securities prices continued to fall, the solvency of [NYC] banks-whose loans to brokers and dealers often were backed by bonds-came into question. This was the proximate cause of the run on the city banks in mid-Oct. Thus the declining fortunes of western railroads and declines in western land values, along with a concentration of asset risk and reserve drain in [NYC] banks, ultimately explain the origins of the panic. Evidence to support this account comes from securities and bank note prices, flows of funds into and out of the city banks, and the timing of broker failures and bank suspension.*" (Calomiris and Schweikart, 1991).

897 Banks "*put all the pressure on their loans to merchants because they could not recall those to the railroads. The loans were $95 M Jan 5, 1856; $122 M Aug 8, 1857; but were reduced to $101 M on the 10th of Oct. At that time the rate for loans had advanced so far that it could not be quoted. Loans were not to be had, and during the following week the bank loans were reduced to $67 M, with a run on the banks for gold, which carried the specie stock down from $13.5 M, on the 19th of Sep, to $7.8 M on the 17th of Oct; but this was comparatively unimportant. The circulation of the city banks fluctuated hardly $1.5 M. The merchants organized a run on the banks for the deposits. 'In [NYC] it became a question of the suspension of the banks or of the merchants as a body. Capital in the shape of deposits, for the first time in the history of this country, and l think I may say in the world, sided with the business men and against the banks. The great concentrated call loan was demanded, and in such amounts that a single day's struggle ended the battle; and the banks went down before a storm they could not postpone or resist.*" (Sumner, 1896). "*By the first week of Sep, discount rates on bank notes trading in [NYC] doubled for many banks, but they remained low. They rose from 1 to 2% on Ohio banks, and from 0.125 to 0.25% on New England banks. Discount rates on Pennsylvania and Maryland banks, and banks in the South, remained unchanged. Within the next week, despite a few significant failures by banks and brokers, [NYC's] banks on the whole 'remained unshaken' as 'little or no panic had seized depositors or noteholders.'*

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On Sep 12 it was learned that the Central America, a ship carrying $1.5 M in gold from California, had sunk en route to New York, but this had little effect on prices. In the succeeding two weeks, however, with the suspension of banks in Philadelphia, discount rates in [NYC] rose to levels substantially above normal for banks in every State, indicating an increased fear of possible nationwide suspension. Still, discount rates remained low for most States through the third week of Sep: 0.25% for New England, 0.375% for New York banks outside of [NYC], 3% for most of the South, and 4% for Ohio… During the onset of the liquidity crisis in early Oct (after general bank suspension in Philadelphia, Baltimore, and Washington, and before suspension in New York), the prices of New York State bonds and eastern railroad stocks declined along with trunk-line stocks." (Calomiris and Schweikart, 1991).

898 "*Res., With the view to liquidate the Indebtedness of the Interior, and to hasten the shipment of produce to the seaboard, that it is the duty of New York merchants and of the Banks to afford every facility In their power without delay. Res., That in the judgment of the New York merchants assembled, looking at those great elements of wealth, the varied and large crops of the United States, the existing monetary derangement may with certainly be speedily corrected, and he followed by a restoration of confidence to the ordinary machinery and credit of business; so flint while the severity of the crisis will be long remembered, so, too, will the speedy at rival of prosperity*"(NYTimes, 1857b).

899 "*The Times' correspondent thus describes the scene: —The first run yesterday was made upon the smaller banks outside of Wall Street that afford accommodation and circulation for the tradespeople, artisans, &c. These institutions were naturally in a less strong position than the banks doing business with the mercantile classes, and less able to stand a run. They opened at 10, and before 12 had fallen. Up to 1 o'clock everything was quiet in Wall-street—as quiet, that is, as it had been any day for the past 3 weeks. There was a steady payment of specie over the counters to depositors, but nothing indicating a general alarm. Almost in an instant the street was crowded and a run began upon [AEB], the weakest of the large institutions. I had passed the Exchange a few minutes before there was no appearance of unusual commotion. When I looked from my window there was a crowd of some hundreds (or thousands rather) gathered in front and a long line of bill holders and depositors formed en queue From every direction men now poured into Wall Street. The marble steps of the Customhouse—the classic entrance to the banks—the noble spaces around the Exchange—the ugly stoops were all alike quickly covered with curious spectators. The desks of the offices were deserted and the windows crowded. From [AEB] the attack was shifted to 3 or 3 banks further up the street. From Wall Street, the rush extended into Pine and Nassau and the large Broadway banks, and before 3 o'clock the specie reserve was reduced to $5.5 M. The whole thing was as sudden as a tornado; the comparison also bears good as to the effect. 18 banks fell, with a united limit of loans of $21 M.*" (Callender, 1858, p11)

900 "*[T]he period immediately prior to the panic was one of unusual calm in the markets for commercial bills. From Jan through Aug of 1857, interest rates on commercial bills reported in Bankers' Magazine varied well within the ranges of previous years.*" (Calomiris and Schweikart, 1991).

901 "*The panic of 1857 stimulated the extension of clearinghouse issues. Reserves in New York banks had declined during Aug of that year, and, when a prominent bank failed, commercial-paper rates approached panic levels [the highest since then, see Exhibit 2]. At first, the banks wanted to curtail loans the usual means of meeting an internal currency drain. However, the clearinghouse banks agreed to 'increase their loans so that the clearing-house balances of all of them would be increased proportionately and would cancel each other without reducing the slender stock of specie' (Myers 1931, p. 97); that is, the banks agreed in concert to 'cry down' their reserve ratios. Concomitantly, the country banks had drawn down the balances with which their notes were customarily redeemed in [NYC]. So the city banks refused to honor the notes, that is, accept them as means of payment. A policy committee of [NYCHA] then issued a circular suggesting the propriety of including in the clearinghouse settlements the currently irredeemable notes of the country banks. The committee subsequently allowed the issue of clearinghouse loan certificates against these notes, which the creditor city banks had deposited in the bank acting as the 'central' bank (the Metropolitan Bank). The country banks, who could not redeem their notes immediately, agreed to pay 6% interest on them as 'loans' from their city correspondents, and the city banks then used them as collateral for the new clearinghouse loan certificates. Thus, the notes as a basis for issues of certificates became equivalent to specie in the settlement of clearinghouse balances (Myers 1931, p. 98; Redlich 1951, pp. 158-59)... Clearinghouse certificates must be distinguished from clearinghouse loan certificates. The former were the conventional issues made strictly in lieu of specie, legal tender notes, or other legal reserves for settlement of clearinghouse balances. The latter were issued only in emergencies on the basis of loans made to member banks by clearinghouse policy committees… The precedent established in 1857 was made the basis for all the subsequent issues of loan certificates through 1907.*" (Timberlake, 1984).

902 "*In the evening, the day's disasters assumed a jocular tendency... Humorists, with a faint quaver of discomfiture, proposed that men out of employment, and utterly without capital, should be allowed by act of Legislature to issue their individual shinplasters, to be regarded as legal currency. But among sound and well-reasoning men, the opinion was that the Banks had taken a Judicious course, and that the result of a complete suspension, which it was generally believed would come about today, would be a more perfect confidence, or at least a harmonizing of difficulties. 'We shall all row in the same boat,' they remarked, 'and the bills of one bank will be as good as another.' By this class of men the very idea of shinplasters was repudiated, and their adoption, under any straits to which we might be driven, was universally discredited.*" (NYTimes, 1857a).

903 "*The banks of [NYC] all suspended but 1 - Chemical. The suspension became general except in the Ohio Valley, at New Orleans, in South Carolina, and some scattered exceptions elsewhere. 14 railroad companies, amongst which were some of those which are now the strongest in the world, suspended payments. The failures were put at 5,123, with, liabilities for $300 M. A meeting of representatives of the banks was held Oct 13th, at which it was resolved to send a committee to Albany 'to ask the Governor to call an extra session of the Legislature 'to consider the necessity of enacting some law to give relief in the present financial emergency.' The Governor excused himself from action. The Constitution, in fact, explicitly forbade anything which the Legislature might have proposed to do. Resort to the judiciary was more successful. During the run, Oct 14th, 2 $100 notes were presented... with a demand for specie, which was refused. Application was made to a Judge of the Supreme Court for an injunction, which was refused, on the ground that, although, during a period of general suspension, a bank may refuse to redeem its notes, yet that does not prove that it is insolvent, since it may have assets greatly in excess of its liabilities. This was in accordance with an agreement which the Judges had entered into, and it was in line with earlier decisions interpreting State laws which provided for an injunction when note redemption was refused... The Constitution had explicitly provided against any suspension of specie*

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payments, on any pretext whatever, and this constitutional provision now proved as ineffective as all the old legislative enactments… It had been hoped that the severe constitutional prohibition would prevent the banks from ever putting themselves in a position to suspend... It was said that the terror of forfeiture was what made them adopt their policy of self-protection, to the ruin of the mercantile world, although the construction of the bankers was that the public was in a panic lest the banks should all be wound up in case they suspended." (Sumner, 1896). "*In 1849 the New York legislature enacted a statute whose purpose was evidently to authorize corrective action against delinquent banks but which in the panic of 1857 the courts would not so use. The banks having agreed in that crisis not to convert their notes into specie on demand, a note-holder brought suit against the Bank of New York for its refusal to redeem notes issued by it which he owned and had presented for payment. This case was Livingston v. The Bank of New York. The plaintiff, alleging that the bank was insolvent, as indicated by its refusal, asked the court to institute proceed-ings for it to be put in receivership. The court refused. Traditionally and in principle, a debtor who openly and flatly refused to pay an obligation was culpable, and the legislature had evidently adopted the law under some such conviction. The court, however, took a different view. It would not admit the refusal to be evidence that the bank was insolvent, especially when all the banks were united in action. This was tantamount to judicial recognition of the fact long established in practice and accepted by all but the most conservative business men, agrarians, and die-hard theorists, that bank notes were money and no longer simply promissory notes to be dealt with as individual obligations between debtor and creditor*." (Hammond, 1957, p. 573). "*When there is a crisis, banks cannot possibly honor all their debt claims; they do not have enough cash. Starting in the early 19th century a policy evolved of not liquidating the banking system during a financial crisis. The best articulation of this is in a legal case, Livingston v. The Bank of New York. Livingston clarified that in times of crisis, bank debt should not be enforced, and banks should not be forced into insolvency. I call this the Livingston Doctrine. In line with this doctrine, the Federal Reserve System helped save Bear Stearns; counter to the doctrine, it let Lehman fail*." (Gorton, 2012).

904 In 1856, UST Secretary Guthrie reported contractionary policy "*The independent treasury, when over-trading takes place, gradually fills its vaults, withdraws the [private] deposits, and, pressing the banks, the merchants and the dealers, exercises that temperate and timely control, which serves to secure the fortunes of individuals, and preserve the general prosperity.*" (quoted in UST, 1952). In 1857, UST Secretary Cobb "*confidently expected the revulsion would be short-lived. His recovery strategy had several components and focused on restoring order and stability to financial markets and establishing a sound currency. He believed the real side of the economy had an innate capacity for recovery, and the previous high level of activity would be restored within the year. Further, he argued that the government had little or no legitimate role to play in reviving the industrial sector. Cobb's initial move was to inject gold reserves into the New York banking system by purchasing government securities, thereby restoring specie payments. Many observers have judged this a successful maneuver and credit Cobb with restored monetary stability by year's end. Some authors, however, attribute the recovery in the [NYC] banking system to private sector initiatives.*"

905 "*Most of the money paid out was in specie [by the SBs]. A large quantity of gold from the Sub-Treasury was taken to the Bank early in the morning*." (NYTimes, 1857a). The stocks are now called bonds: "*Stocks each day found a lower depth, and there was no exception to this rule... The Secretary of the Treasury, Hon. Howell Cobb, did what he legally could for the public relief, and his action saved an immense amount of suffering. He bought in several million dollars of United States stocks due in 1868, thus enabling savings banks to provide gold for their depositors who run upon them, without sacrifice of their securities. State stocks, however, declined considerably, being thrown upon the market by the banks, who were obliged to sell them to redeem their circulation*." (Hunts, Nov 1857). (McKinney, 1996)."*During the financial year, 1858, bond purchases were continued to the amount of nearly $4 M, and contributed somewhat to the mitigation of the disasters of the revulsion. However, in view of the fact that the excess of exports of specie over imports for the year amounted to over $33 M it is clear that the influence produced on the whole volume of currency by the amount set free from the Treasury must have been very insignificant*." (Kinley, 1910, p75).

906 After a call for information on SBs in 1856, the *General Act of 1857* passed in March; all SBs in New York were required to report semi-annually, but standards were very low (Keyes, 1878b, p.22-7). "*In 1857 the Six-penny [SB] of Rochester failed during the memorable financial revulsion of that year. Its deposits amounted to only about $70,000, of which depositors received 95%. Doubtless with more confidence or forbearance, the institution need not have been closed. For a young and small institution out of such a panic as that of 1857, to emerge from suspension and pay 95 cents on the dollar is to make a rather remarkable record. There are very few [SBs] in the country that have not seen the time when, if compelled to go into liquidation they would not have sustained a greater loss than 5%.*" (Keyes, 1878b, p.536).

907 "*Whereas, The Banks of Discount and Deposit in our City having suspended payment, the Savings Banks are necessarily compelled to pay the depositors only in the Bank notes of these Institutions, though while they paid specie, the Savings Banks paid gold to their depositors, and they will now pay in the currency of these Institutions, which is secured by stocks with the Comptroller of the State.*" (NYTimes, 1857b).

908 "*New York's savings institutions were far more seriously affected in 1857 than they had been in 1854. Although the press and the financial establishment were dismissive of the fears of the crowds who gathered around banks, the declines in railway stock and state and municipal bonds were such as to threaten the solvency of at least some of the banks (Ó Gráda and White, 1999). For several days thousands of account holders lined up to withdraw most or all of their savings. On Oct 13 the savings banks invoked a rarely imposed clause in their articles of agreement limiting withdrawals on demand to 10% of the outstanding balance, and brought the panic to a close. Between Sep 28 and Oct 13, 1857 over 500 EISB savers closed their accounts, nearly two-fifths of them on Oct 12 and 13 alone.*" (Kelly and Ó Gráda, 2000). Bowery SB in New York noted that "*The financial crisis of 1857 found our institution in a most gratifying State of preparation, with a large cash capital in the bank and on deposit, and with a large amount of United States securities, which then sold for 15% above par. The resources on hand seemed to be adequate for any emergency, but nothing could stem the torrent of that moment. The bank filled to overflowing, and the street in front was nearly impassable from the number of anxious and terrified depositors. But as all conventionalities are swept away by a dire necessity, so in this case, the excess of the malady worked its own cure, and promises became for a short time the equivalent of gold. The remedy adopted by our own, as well as other savings institutions, was to pay a small percentage of the demands; and the remedy was effectual. Indeed, it was hailed by the depositors as an evidence that protection was to be extended equally to all, and not limited to the more important who*

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might have the first opportunity to press their claims. In the course of 3 days a large portion of the money drawn out in the fury of haste was returned to the bank." (Keyes, 1878b, p196).

909 Referring to the 1857 restriction which had occurred in the United States but not in Canada, "*As usual, the immediate effect of stopping specie payments in the States was ease. The banks, relieved of having to pay their own debts, ceased their harsh pressure on their borrowers. The general understanding that specie payments must sooner or later be resumed impelled a continuance of liquidation but of milder sort.*" (Hammond, 1957, p. 713).

910 "*In my judgment, the period has arrived for Congress to employ the powers conferred by the Constitution upon it to mitigate the present evil, arid to prevent a catastrophe of a similar kind in future; and for this purpose, a compulsory bankrupt law, to include 2 classes of corporations and companies is necessary. It should be a law for the protection, of creditors, not the relief of debtors; to prevent improper credit, not to pay improvident debts; compulsory, not voluntary. The effect of such a law would be felt more in its restraining influence than in its practical execution… The 2 eases which it is now proposed to bring under the operation of a compulsory bankrupt law are banks and railroad corporations. The immense capital employed by these companies, their controlling power and influence in the commercial and business operations of the country, their disposition to expand and enlarge their credit, and the ruinous effects produced by their operations when carried beyond legitimate bounds, impose upon the government the duty of providing, by every constitutional means in their power, for the safe, proper, and legitimate conduct of such corporations. The facts which are presented in other, portions of this report, developing the condition and operations of these two classes of corporations, will fully justify the policy now recommended. The object is not to injure them, but to protect the community. The effect will be to restrain their operations within proper limits, and thereby insure to the country all the benefits they are capable of conferring, without the accompanying hazards of wild speculations and ruinous revulsions.*" (UST, 1857).

911 "*The success the administration gained in its fiscal policy did not extend to the proposal of a national bankruptcy law. The idea of legislating such a relief measure found a certain degree of popular approval. Robert Toombs [D-GA, and later first Secretary of State of the Confederate States] tried to guide the proposal through the Senate. He labored in the Judiciary Committee for legislation along the lines proposed by the president, and the bill he sponsored would have prohibited any bank from ever suspending specie payment. However, the committee could not fashion an enactment that met the members' economic and constitutional scruples, and so the president's recommendation came to naught. But questions over the Panic and national economic policies quickly disappeared from congressional consciousness. By Jan Horace Greeley wrote, with a sigh of relief, that the expected Democratic onslaught on banking institutions had faltered and died. [New York Daily Tribune, Jan 21, 1858]*" (Huston, 1999).

912 "*[F]rom 1857 to 1861, the failures in the Middle States ($377 M) were nearly 3 times those of the Eastern States ($140 M); the Western States came next ($154 M); and the Southern States had the fewest failures ($87 M).*" (Warren, 1935). *Dun's* reports New York alone constituted 46% of the nearly $300 M of failure liabilities in 1857 and less in the subsequent years (The Public, 1877, pg. 245). "*It is evident that the effects of the disasters of 1857 still remain, and that they exhibit themselves in the heavy suspended indebtedness of the West remaining uncanceled. At the time of the crisis it was very generally believed by both creditor and debtor that the latter possessed the ability to pay in full, or very nearly so ; and a very general spirit of accommodation, that, under the circum-stances, was most praiseworthy, existed, and was proffered and accepted. Circumstances, however, have shown that this hope was a fallacious one, and that a spirit of speculation which prevailed generally had driven capital from its legitimate channels, and that a large proportion of the traders at the West had made investments in real estate, which the inflated times of 1856 seemed to promise safe, but which were in fact injudicious, unsound, and have largely contributed to the depressed condition which that portion of our country now exhibits. Our merchants, understanding that the prospects are not brightening, are now pushing their claims, and assignments follow—the assets in most cases exhibiting themselves in lands as Stated, which have been bought at an over-value, and which, in the end, will net but a small percentage on the debt involved. Our observation of the cause and effect of a crisis shows that heretofore it has taken fully 4 or 5 years for the country to recover itself, and we are not disposed to look for much enlargement of business the coming year. The effects of disease are not readily overcome. They linger long after the cause is removed, and the relapse is to he feared and guarded against.*" (Merchant's Magazine, 1860, p.201). The failures were significantly higher in 1857 ($292 M) than in 1858 ($ 96 M) (Bankers' Magazine, 1859, p. 641). "*In 1859 more than a score of corporations, owning, in the aggregate, over 2,500 miles of railroad, that is, about 10% of the total mileage of the country, were in receiverships.*" (Swain, 1898).

913 "*It is interesting to note that from 1857 to 1861, the failures in the Middle States ($377 M) were nearly 3x those of the Eastern States ($140.5 M); the Western States came next ($154 M); and the Southern States had the fewest failures ($87 M).*"(Warren, 1935).

914 "*[N]o insured bank in Ohio suspended, although a number required and received aid from the insurance system. Iowa managed to handle successfully what few troubles it encountered. The Indiana system continued its remarkable record, with not a single bank suspension during the remainder of its period of operation. Bank-obligation insurance in New York was hampered by the need to redeem bonds issued during the depression, deferring the payment of claims. Eventually all insured claims were paid, including new claims arising out of suspensions in 1854 and 1857, although with considerable delay in the last cases and probably some loss.*" (Golembe, 1960). "*[T]he insured banks again avoided failure and suspension of convertibility, while 14 of the 32 free banks in Indiana failed.*" (Calomiris, 1989).

915 "*Only in Vermont did the insured claimants of a failed bank fail to receive full payment from the insurance fund, and this was owing in large part to unauthorized refunds to withdrawing banks of a portion of the insurance fund by the State Treasurer, so depleting the fund that it was unable to pay all claims in the case which later developed... The insurance fund… [covered 8% of bank liabilities in 1858]. In 1859, the last bank withdrew and the fund was closed. Outstanding obligations of $17,000— some 28% of total claims on the fund were never paid.*" (Calomiris, 1989).

916 "*The shortage of a reliable currency in Iowa forced some counties and cities to issue certificates (good for paying taxes) in order to have a currency to conduct local business. Additional currency of dubious quality was supplied by banks incorporated in Nebraska Territory and other States... The new constitution, ratified by the Iowa electorate in 1857, permitted banking provided the statute was ratified by a referendum. 2 banking statutes were passed by the legislature and ratified by a referendum: a general incorporation statute for banks and a statute incorporating the Bank of Iowa. No banks were incorporated under the general incorporation statute because of its severe restrictions, but the Bank of Iowa was immediately organized and functioned as a*

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monopoly until 1865. It had 15 branches. Each branch bank had to keep a 35% specie reserve for the banknotes it put into circulation and the maximum length of loans was 120 days. These 2 provisions were major constraints on lending practices. In 1865 the Bank of Iowa and its branches reincorporated with national charters in order to be able to create more credit." (Seavoy, 2013). "*Probably no State in the Union felt more severely the effects of the terrible financial tornado of 1857, with the almost entire failure of the crops through her whole length and breadth, during that and the year immediately following, (1858,) than young Iowa... Scarce as money was in Iowa, amounting to an actual dearth during 1858 and the latter part of 1859, until the fair average crop of that year began to afford relief, the loss of those of 1857 and 1858 rendered necessary, of course, the importation of breadstuffs into Iowa to keep her people from starving*" (NYTimes, 1860). "*Liabilities of failed banks not covered by liquidated assets were redeemable by surviving banks without limit. Both notes and deposits were insured. This 'mutual guarantee' system became the basis for similar legislation in Ohio in 1845 and Iowa in 1858*." (Calomiris, 1989). In 1858, *"Iowa was the last of the 6 States to adopt an insurance program prior to the Civil War… basing both its banking and insurance systems on the Ohio model."* (Golembe, 1960).

917 Of the 230 attachment related case laws produced in 1859, Iowa represents 26% (West Law,1898).

918 "*Insolvent laws… prevailed throughout the Union, the various States instituting their own bankrupt systems. In Maine, New Hampshire, Massachusetts, Virginia, and Kentucky the laws were confined to the relief of debtors charged in execution. In New Jersey, Delaware, Maryland, Tennessee, North and South Carolina, Georgia, Alabama, Mississippi, and Illinois the insolvent laws extended to debtors in prison on mesne or final process. In New York, Connecticut, Rhode Island, Pennsylvania, Ohio, Indiana, Missouri, and Louisiana they were still more extensive and reached the debtor whether in or out of prison*." (Bankers' Magazine cited by Van Vleck, 1943).

919 "*In short, it may be lately said that there really exists in most States of the Union—and above all perhaps, in this [New York State]—no machinery for making a man pay what he owes who does not want to pay. A man who is determined not to pay, as hundreds of our readers must know to their cost, has only to make a fraudulent assignment to set the courts at defiance. There is in this City at the present moment a very large percentage of thorough-paced scoundrels, doing a good business, of whom it is impossible to collect one cent of liabilities, and who boast of their being execution proof. To reach these, a bankrupt law is absolutely necessary, and it is necessary, moreover, to give a little purity of tone to our commercial morality, and to bring about some sort of connection between success in life and common honesty."* (NYTimes, 1858). *"Under these circumstances, there will be good hope that a majority of those among the firms lately broken by tens and hundreds, who have previously conducted their business on honest principles, will be able to resume, and that the ultimate prospects of creditors on this side, will prove far less gloomy than has been recently apprehended. This will be a point to test the honor of the American mercantile community. In Massachusetts, there are stringent bankruptcy laws, but there are none in New York, and any house that has suspended can easily force its creditors to any kind of settlement. If the recovery from the crisis should be characterized by a faithful resumption of obligations, the credit to the community will be proportionably strong; and, judging thus far from every communication received, there is not a single sign that an opposite course is likely to be pursued*." (Bankers' Magazine, 1858). Mercantile Agency data (Bankers' Magazine, 1858, p674) show that while a similar percentage of stores failed in NYC (6.6%) and Boston (5.8%), a much greater percentage of the failed stores made arrangements with creditors in Boston (72%) than in NYC (24%); out of a total 695 arrangements, 182 were in Boston and 218 in NYC, even though NYC had over 3x as many stores. Similarly, if the distribution of States with involuntary (full bankruptcy) laws in 1857 were similar to those in 1898 (Williston, 1906, p6), then the average percentage of stores failures is the same (1.9 and 1.8%) but arrangements were significantly higher (12.3 and 6.5%) for States with full bankruptcy laws than for those without.

920 "*After Oct 21, recovery began, and by the end of the year (by which time New York banks had resumed convertibility) securities prices were roughly at their Sep 2 levels. Data from the beginning and end of 1859 show that trunk-line stocks continued on a downward trend after the panic had passed, while other securities followed an upward or flat trend. The decline in speculative railroads' earnings and prospects forced several companies into default, including the Illinois Central, the Erie & Pittsburgh, the Fort Wayne & Chicago, and the Reading lines. Several thinly capitalized railroad companies-including the Delaware, the Lackawanna & Western, and the Fond du Lac — went bankrupt."* (Calomiris and Schweikart, 1991)

921 "*Railroad bonds were also for the first time decided to be negotiable instruments, in White v. Vermont and Massachusetts [1858] R. R. Co., 21 How. 575, Judge Nelson saying that 'within the last few years, large masses of them have gone into general circulation and in which capitalists have invested their money'; and if the quality of negotiability were not conceded to them, the value of such securities 'as a means of furnishing the funds for the accomplishment of many of the greatest and most useful enterprises of the day would be impaired.'*" (Warren, 1922c).

922 Skeel argues that the creation of railroad receivership was spurred by general agreement that railroads were worth more as ongoing enterprises than in liquidation (Skeel, 2001, p.60-63). It was essential for preserving access to capital: "*In 1842, at the depth of the depression, the Boston and Worcester accepted lower rates for freight and passenger traffic originating west of Springfield because it was necessary to keep the Boston and Albany from bankruptcy. It was strongly in the interests of managers of both railroads and the State of Massachusetts to prevent bankruptcy. Bankruptcy would undermine the confidence of European bankers that investments in American railroad bonds were safe if they were underwritten by State governments. If bankruptcy occurred in a leading industrial State with a record of fiscal integrity, then investment risks were much greater in less affluent States. Preventing the bankruptcy of the Boston and Albany was essential for preserving access to European capital to construct future internal improvement projects*." (Seavoy, 2013). According to Lubben (2004): "*courts routinely referred to railroads as 'utilities' that simply could not be allowed to fail… By the panic of 1857, these concerns led to general acceptance of the railroad or equity receivership, which remained the predominant means of corporate reorganization until the New Deal... When the country slumped into depression after the panic of 1857, [bankers] took further steps to protect bondholder interests and gained their first experience in the intricacies of railroad bankruptcy, receivership, and reorganization...*" "*The panic of 1857 was severe in its effects on railroads. In 1859 more than a score of corporations, owning, in the aggregate, over 2,500 miles of railroad, that is, about 10% of the total mileage of the country, were in receiverships*." (Swain, 1898).

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923 "*At the Dec Term of 1858, important questions of business law came before the Court. In* Covington Drawbridge Co. v. Shepherd, 21 How. 112*... the question of the power of a Court in equity to appoint a receiver for a corporation to collect tolls and hold them for creditors, was presented for the first time; and though now so familiar a practice, it was then said to be a 'question of great importance and some difficulty*.'" (Warren, 1922c).
924 In "*1859, a federal circuit court directed that, before any revenue of the company for which the receiver was appointed, could be diverted to pay bonds, all debts to employees and to persons who had advanced money for current expenses or payment of interest, should be paid.*'" (Swain, 1898).
925 "*The question, therefore, is, whether the certificates in this case are such instruments for the payment or forbearance of money, as are intended to be embraced in the sections of the act which have been quoted. And we think that they are not... It certifies a deposit in trust; a low rate of interest is to be paid on the return of money deposited in trust ; but there is another matter to be considered, the supposed special care and safety of the money, guarded by the provisions of the charter, and in which it may be fairly inferred that the depositor on trust relied, and without which he would never have consented to receive so low a rate of interest... Trust certificates issued by [OLIT], bearing interest at 3% per annum, when dishonored, bear 6%, interest, and when reduced to judgment, bear the same legal rate.*" (*Tuffli v. OLIT*).
926 "*The Superior Court has fully maintained the position previously assumed in relation to the assets of [OLIT]. Judge Storer, in giving the opinion, emphatically asserted its jurisdiction, and held [creditors' attorneys] in contempt, in their efforts through the United States Court, to compel the delivery of the assets in the hands of the Sheriff to the receiver of that court. It was Stated however, that an attachment would not be issued at present—the court probably being disposed to wait the next movement in the United States Court. Though not in so many words, the course of the Superior Court, in effect, admonishes the Federal Court to meddle no more with the receiver of the former, or vengeance will fall upon the attorney and innocent receiver of the latter court... the attorneys… have agreed upon a general basis for a compromise of the matters in dispute, and the controversy will be settled without the further interference of the Courts, so far as the assets now in the hands of the Sheriff are involved. This course will save the expense of litigation, prevent a further conflict of the Courts, and insure the creditors at least a small dividend upon the sums originally deposited within a reasonable time.*" (Bankers' Magazine, 1859, p.567). "*Creditors of [OLIT] representing claims to the amount of half a million, hare commenced suits in the United States District Court of Ohio, against the trustees and assignees personally. It is stated that the trustees of the Co gave the N. Y. cashier in Aug, 1858, an unconditional release from every liability connected with his administration of the affairs of the Co in New York.* "(Bankers' Magazine, 1859).
927 "*In 1859, the legislature repealed the 1838 statute and replaced it with a preference law that was part of a comprehensive legislative treatment of assignments for the benefit of creditors. In the same 1859 enactment, the legislature also provided for the avoidance of fraudulent conveyances. The law thus acquired the basic features that it has retained up until the present time, voiding both preferences and fraudulent conveyances and allowing for the appointment of a receiver.*" (Buckley, 1981). "*It was not until April 1859, that laws including the present insolvent debtors' law of Ohio, were passed. On April 6, 1859, the legislature passed the first general act regulating the mode of administering assignments in trust for the benefit of creditors... Thus, we learn that in 1859 the jurisdiction over insolvent debtors, and assignments for the benefit of creditors, was first placed in the probate court. Prior to that time all such deeds and conveyances came within the jurisdiction of the chancery side of the common pleas court, but under the act of 1859 the entire jurisdiction was removed from the common pleas court and placed in the probate court. All decisions, therefore, which were made prior to 1859, do not fall within the present assignment laws of Ohio.*" (*In re Assignment of John W. Jones*, 1897).
928 *"[A]s early as 1859 a federal circuit court [for The Central Ohio and Steubenville & Indiana Railroads] directed that, before any revenue of the company for which the receiver was appointed, could be diverted to pay bonds, all debts to employees and to persons who had advanced money for current expenses or payment of interest, should be paid.*" (Swain, 1898).
929 "*The financial situation became so strained that even before Lincoln's inauguration the bankers met at the Subtreasury and resolved to suspend specie payments. The first issue of Clearing-House loan certificates was made at this time, and from 1860 to 1864 a total of $59 M were issued, the largest amount outstanding at one time being $22 M in 1862.*" (Pratt, 1916). "*There were two uses for this new credit instrument. First, these instruments were used only among members of the clearinghouse as a substitute for cash in the clearing process. Later, as their use evolved, clearinghouse loan certifi-cates were issued directly to the public as money. Clearinghouse loan certifi-cates were a way of creating safe collateral by bank coalitions—the clearinghouses—during crises. These credit instruments were liabilities of the clearinghouse members jointly, rather than of any individual member. The first issue of loan certificates occurred in 1860, though the origins were in the response of New York City banks to the Panic of 1857. In 1860, just after the election of Abraham Lincoln as president, the economic situa-tion in the country was deteriorating. Banks were hesitant to loan, and some of the best banks could not finance themselves, even offering high interest rates. George S. Coe (1817-96), who was for many years the president of the American Exchange National Bank of New York, had the idea of a new credit instrument. The proceedings of [NYCHA] of Nov 21, 1860, explained Coe's proposals (see Bankers Magazine 15 [1860-61]: 500).*" (Gorton, 2012)
930 See Seavoy (2013) and NYTimes (1860).
931 *"After 1860 the business was conducted more prudently throughout the country, owing to the enactment of judicious laws, and the establishment of State supervision of the companies in New York and Massachusetts. The insurance department of the latter was founded in 1854; that of New York, in 1859. In imitation of those 2 States, Connecticut established a department in 1866; Ohio, in 1867; Iowa and California, in 1868; Illinois and Missouri, in 1869; Wisconsin and Kentucky, in 1870; and Michigan, in 1871. The wild-cat companies have been nearly driven out of existence by these successive enactments and the action taken under them.*" (Bolles, 1879).
932 "*In the case of commodities, forward contracts for corn, wheat, and other grains came into common use by 1850 in Chicago, where they were known as 'to arrive' contracts. The first organized futures exchange in the United States, the Chicago Board of Trade, evolved through the progressive standardization of the terms of 'to arrive' contracts, including lot sizes, grades of grain, and delivery periods. Trading apparently was centralized on the Board of Trade by 1859, and in 1865 it set out detailed rules for the trading of highly standardized contracts quite similar to the grain futures contracts traded today.*" (Greenspan, 1997).

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933 Illinois' *Free Banking Act of 1851 "was amended... Feb 14, 1857... From 1859 to 1861 the bank note currency of this State fell into the utmost confusion and discredit, in common with the rest of the currency of the northern Mississippi valley. Apparently from a belief that the Bank of the State of Indiana had rescued that State from the similar condition into which it had fallen in the early 50s, a charter for the Union Bank of Illinois was passed Feb 20, 1861. It was a disguised Bank of the State which the Constitution forbade...The law was rejected at the referendum in Nov, by a large majority. In June, 1861, the Bank Commissioners made a call on 23 banks for additional securities, leaving only 17 which were not under call. The 'stump tail' currency, as it was called, was then disappearing; specie was coming into use, and bank notes were treated as merchandise. The Wisconsin paper was treated in the same way. In Aug all new banks were required to redeem their circulation… at not more than 0.75% discount, and after Jan 1st at not more than 0.50 %. The old banks were allowed to adopt the plan of central redemption and to increase their circulation by the deposit of Illinois bonds at par without regard to their market value. In Sep the Illinois banks were not able to maintain their circulation. The Chicago Times said: 'We believe the fiat has gone forth, and that all banks organized under the present banking law are worse than useless, either to the public or the owners.' In Sep and Oct, under the influence of the political disturbances, a very thorough reform of the currency of the Northwest was accomplished. The Illinois Constitutional Convention of 1862... forbade the creation of any banking corporation for any of the functions of banking. Notes under $10 were forbidden at once... In July, 1862, the Auditor of Illinois advertised the rates at which he would redeem the notes of 93 free banks. 5 were at par, the others at from 49 to 95 cents—most of them at from 50 to 60%.*" (Sumner, 1896). Free banking "*was an entire failure, and the new constitutional convention adopted a clause looking to the prohibition of any more banks and to the suppression of the existing circulation.*" (Kennedy, 1866). Illinois was the most populous private banking State (COTC, 1908, p. 53, 88, 406-9).

934 From 1850 to 1860, "*The incorporated bank capital increased nearly $200 M, and the private bank capital half as much. The report of [UST] gave the latter amount at $118 M... It is probable that a large portion of the increase in banking, particularly in the west, has been due to the introduction of the security system of New York, the idea of which seemed to popularize that which had previously been in bad odor… The principle cannot be said to have worked well except in New York, where it required constant alterations for many years to bring it to perfection..*" (Kennedy, 1866).

935 "*Any citizen could incorporate a bank under a State's general incorporation laws and issue redeemable notes that could circulate as money. The States required only that the notes be backed by municipal bonds, which had to be purchased prior to a bank's issuing its own notes. This ensured that bankers… were sufficiently capitalized and would not issue more notes than they could redeem.*" (Cohen-Mitchell, 1998).

936 "*The statement that slavery was ultimately the cause of the Civil War is simply my general understanding of the current historiographical trend in antebellum American scholarship. To say that slavery caused the Civil War, however, is not to say how slavery caused the Civil War—whether by economic confrontation, cultural antagonism, political machinations, or the like. See Eric Foner, 'The Causes of the American Civil War: Recent Interpretations and New Directions,' CW11, XX (1974); Eric Foner, 'Politics, Ideology, and the Origins of the American Civil War,' in George M. Fredrickson (ed.), A Nation Divided: Problems and Issues of the Civil War and Reconstruction (Minneapolis, 1975); Don E. Fehrenbacher, The South and 3 Sectional Crises (Baton Rouge, 1980), and passim. There have been recent attempts to explain the origins of the Civil War without emphasizing the slavery issue: Ronald P. Formisano, The Birth of Mass Political Parties stresses the rise of ethnocultural politics in the North, the spirit of anti-partyism, and anti-southernism; Michael F. Holt, The Political Crisis of the 1850s, ingeniously and persuasively argues that the collapse of the second party system ended the ability of American politics to contain the slavery issue; and Joel H. Silbey, 'The Surge of Republican Power,' theorizes that the growth of evangelism in the North drove southerners to fear that northerners sought to impose Yankee standards on the southern mode of living—a fear of cultural imperialism. There are merits in all these interpretations, but also some difficulties as well. Why northerners would be anti-South without reference to slavery begs elucidation. Although the demise of the Jacksonian party system may have indeed enabled slavery to become the dominant national issue, it still needs to be demonstrated why the elevation of that subject was so inherently dangerous that it could wreck a government. And one could quite easily explain southerners' fear of the meddling nature of northern evangelism precisely because that cultural disposition of the Yankees threatened to meddle with slavery*." (Huston, 1999).

937 "*Then, in 1861, just when business was beginning to revive from the effects of the Panic of 1857, the outbreak of the Civil War gave rise to great commercial distress. The planters and traders of the South were largely indebted to Northern merchants, and their debts were suddenly and completely wiped out. This indebtedness of the South to the North in 1861 was carefully estimated at $300 M, of which $159 M was due to New York, $24 M to Philadelphia, $19 M to Baltimore, and $7.6 M to Boston; and the practical annihilation of this large amount of assets produced widespread, undeserved, and unexpected insolvency in the chief commercial cities of the North. In 1861, 913 mercantile houses in New York became insolvent with liabilities in no case under $50,000. Out of 56 solvent dry goods houses in New York at the beginning of the war, only 16 were solvent at the end of the first year… Of the 6,993 insolvencies in 1861, 5,935 were in the Northern States and 1,088 in the Southern. Under these circumstances, Congress should have moved; but its non-action was thus explained by Roscoe Conkling of New York: The commercial disasters of 1857 had occasioned a demand for a bankruptcy law more or less extensive throughout the country. At the extra session of July 1861, many petitions numerously signed were introduced. The unexpected brevity of that session and its throng of urgent duties afforded ample apology to petitioners and others for denying the subject final consideration then. The Judiciary Committee was fully occupied with grave and immediate questions and it was thought wise to intrust this subject to a Select Committee of 5. After the adjournment, the Committee gathered with some labor from at home and from abroad the materials that would aid them to decide wisely whether the report should be favorable or not.' Congress did not even find the time to consider bills introduced in both Senate and House in the spring of 1862 'for the relief of honest but unfortunate debtors.' In Dec 1862, and Jan 1863, however, bills introduced by Lafayette S. Foster of Connecticut in the Senate and by Conkling in the House were vigorously debated. Foster stated that: 'For 2 years past, trade and business have been so embarrassed in this country that failures among mercantile men, indeed among all men who were engaged in any trade or business, have been greatly more numerous than they ever were before in this country, great as have been the previous shocks to business and credit. The failures in 1861, where the liabilities were over $5,000 each, amount, from returns actually made, to nearly 9,000 representing an amount of debts between $200 M and $300 M. . . . The number of bankrupts under*

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these circumstances is thousands. . .. The great mass are, I believe honestly, hopelessly insolvent. It is desirable that we should relieve them of an intolerable burden." (Warren, 1935).

938 "*The Suffolk Bank and its successor continued a central banking function until the beginning of the Civil War in 1861. The banknotes of the [500] banks in New England in 1860 circulated at par.*" (Seavoy, 2013).

939 "*[The Union] government [was] strapped for cash and legally barred from obtaining emergency bank loans. Lincoln's [UST] Secretary, Salmon P. Chase, obtained congressional authorization to borrow from Northern banks but the law still required him to obtain payment in specie rather than bank credit. Depleting banks' specie reserves constricted the monetary supply and prompted massive hoarding of gold.... The specie shortage eventually forced banks and the government to suspend specie payments altogether*" (Carnell, Macey, and Miller, 2009). "*The main writers attribute much of the responsibility for suspension to the methods used by the U.S. Treasury under Secretary Salmon P. Chase in borrowing funds to finance war expenditures in 1861-in particular, to the failure of Secretary Chase to suspend the provision of [ITS] that required proceeds of loans to be paid at once into the Treasury in specie. See Mitchell, A History of the Greenbacks, pp. 23-7, 42-3; and Don C. Barrett, The Greenbacks and Resumption of Specie Payments, 1862-1879, 1931, especially Chap. II. Detailed mistakes of policy of this kind may indeed have led to suspension earlier and in a different manner than a more sophisticated policy would have done. In our opinion, however, their effect has been grossly overrated for the usual reason that, though they deal with superficials, they are newsworthy and prominent in the records of the period, whereas the basic forces at work are concealed from view. In view of the effect of the war on the foreign trade of the U.S., discussed below, the prevention of suspension required a decline in domestic prices in the U.S. This in turn would have required that the government refrain from financing any war expenditures by the tax on money balances implicit in the inflationary creation of money for government purposes. Indeed, the prevention of suspension would have required that the government use funds raised in other ways—from taxation in other forms and from borrowing at home and abroad at whatever interest rates were necessary—not only to finance war expenditures but also to force down the price level. Given the obvious unwillingness or inability to follow so Spartan a policy, suspension was inevitable sooner or later. We do not, incidentally, mean to imply that so Spartan a policy, even if technically feasible, would necessarily have been desirable. On the contrary, in contrast to most earlier writers, we are inclined to believe that suspension itself was probably desirable, though an optimum financial policy would have involved more taxation and less inflation than was experienced. At the same time, in light of the U.S. experience in two world wars, especially World War I, the financing of the Civil War involved surprisingly little inflation, thanks more to accident than to policy. The tendency in the literature before World War I—of which Mitchell's work is by far the most important part—to regard the financing of the Civil War as a disgracefully inflationary episode reflects the implicit application of standards of monetary rectitude that, to the modern student, seem almost utopian in light of the monetary vagaries of the past half-century. See Friedman, 'Prices, Income and Monetary Changes in Three Wartime Periods', 1952, pp. 623-5. The most persuasive argument against the use of inflationary finance that we have encountered is in Newcomb, Financial Policy during the Southern Rebellion. Newcomb explicitly recognized the distinction between borrowing at a zero rate of interest through currency issue-to the extent that it displaced gold and did not raise prices or force suspension—and imposing a tax through a still larger issue. He estimated the amount that could have been borrowed at a zero rate through currency issue at about $250 M (p. 161). Implicitly approving of such an issue and explicitly deploring issues beyond that amount, he argued that it would promote the war effort and raise fewer problems for the future to finance the remaining war expenses by explicit taxation and by borrowing at whatever interest rate was necessary to avoid suspension. Given the probably greater flexibility of wages and prices at that time than in World Wars I and II, Newcomb's conclusions may well have been correct for the Civil War, even if they would not be for the later wars*." (Friedman and Schwartz, 1963).

940 "*In Nov 1860, when a stringency developed in anticipation of the Civil War, the NYCHA took in New York State Bonds, U.S. Treasury notes, and bills receivable as collateral for the issue of loan certificates. The terms for this and future issues were that the maximum value of the loan certificates was limited to 75% of the collateral securities face value, and the rate a borrower bank paid was at an annual rate of 6%."* (Timberlake, 1984). "*Within a very few years after its conception and formation it even became a powerful factor in the financial administration of the Government. Upon the breaking out of the Civil War in 1861, the banks of New York, by combination and equalization of their resources, were enabled, through the facilities afforded by the Clearing House, to unite in advancing to the United States Government $150 M, which at once restored its declining credit and enabled it to equip and arm its newly-formed military forces and provide for its other immediate requirements. Independently of the great advantages such a system affords the banks in their dealings with each other, experience has proved it to be, in times of emergency, a power for the suppression and avoidance of financial panics, unequalled in the history of this country or in that of the world, as instanced notably in 1873,1886, and 1890, and on several other occasions*." (Camp, 1992).

941 Young (1924) posits these policies, "*...taught the country the danger of an irredeemable currency, [as] Among the particularly heavy sufferers were those whose incomes were derived from fixed investments, investments made prior to the war. Labor also suffered, for the time being, in that wages did not advance proportionately with the general rise in prices, even though, as it is only fair to add, wages did not fall as rapidly or as far as did prices after the effects of inflation had passed*." The architect of the *Legal Tender Act* (and the subsequent *National Currency Act*), Rep. Spaulding (R-NY) (1869) later described USLTN as "*at once a loan to the government without interest and a national currency, which was so much needed for disbursement in small sums during the pressing exigencies of the war*."

942 In 1862, the California Supreme Court, in its opinion delivered by Chief Justice Field in *Perry u. Washburn, 20 Cal. 318-352*, ruled that USLTN could not be accepted in State or county taxes, since the State constitution prohibited any acceptance of paper money for taxes, as in the United States Constitution notes refers to obligations other than those to the United States, "*it only uses the term 'debts'; the notes, it declares, shall be 'a legal tender in payment of all debts, public and private.' Taxes are not debts within the meaning of this provision. A debt is a sum of money due by contract, express or implied. A tax is a charge upon persons or property to raise money for public purposes. It is not founded upon contract; it does not establish the relation of debtor and creditor between the tax-payer and the State; it does not draw interest; it is not the subject of attachment; and it is not liable to set off. It owes its existence to the action of the legislative power, and does not depend for its validity or enforcement upon the individual assent of the tax-payer. It operates in invitum. If authority for the distinction is required, it will be found in the cases of... The term*

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'debt,' it is true, is popularly used in a far more comprehensive sense, as embracing not merely money due by contract, but whatever one is bound to render to another, whether from contract or the requirements of the law. But the legal technical meaning of the term, as used in statutes, and in the Constitution both of the United States and of this State, is as we have defined it.... But whatever view may be taken of taxes under our statute —whether in the provisions for their enforcement they can be treated as debts due the State— the question still recurs, What did Congress intend by the act under consideration? And upon this question we are clear that it only intended by the terms 'debts, public and private,' such obligations for the payment of money as are found upon contract." (quoted in Moses, 1892). Then on March 17, 1863, the State Senate passed the *Specific Contract Act* providing that contracts for the payment of specific kinds of money would be enforceable in the courts "*Not a word was said in the bill about gold or silver or paper currency; but a creditor might stipulate to have the payment made in English sovereigns or Spanish doubloons, just as the parties might agree, and the contract would be enforced. Under the law, as it stood before the passage of this act, a man owing $100 could pay it with $50, which was inequitable, contrary to justice, and ought to be contrary to law. There was nothing unconstitutional or wrong in enabling the courts to enforce the carrying out of a contract according to its spirit and letter… In July, 1863, in the case of Carpenter v. Atherton, the Specific Contract Act was pronounced constitutional; and it was held that the specific contract to pay in gold, which was the foundation of the judgment in this case, was more than a contract for the payment of money merely, but went to the extent of defining by what specific act the contract should be perform.*" (Moses, 1892). Oregon passed a similar law on contracts (pg. 888) and another requiring that "*all taxes levied by State, counties, or municipal corporations therein, shall be collected and paid in gold and silver coin of the United States and not otherwise.*" (Deady, 1866, pg. 915). "*In the rest of the country, prices were quoted in greenbacks, and gold offered in payment was valued at its current market premium in greenbacks. On the West Coast, by contrast, prices were quoted in gold, and greenbacks offered in payment were valued at their current market discount in gold. Mitchell noted that a 'specific contract act' was passed in California in 1863 providing that contracts for the payment of specific kinds of money should be enforceable. 'Greenbacks were not prevented from circulating, but when they were passed it was usually at their gold, not at their nominal, value' (Mitchell, 1903, p144).*" (Freidman and Schwartz, 1963).

943 "*Stay laws passed by some Southern states during the Civil War were held unconstitutional because the period of operation of the law was until twelve months after the conclusion of a treaty of peace between the United States and the Confederate States. [Burt v. Williams, 24 Ark. 91 (1862); Hudspeth & Co. v. Davis, 41 Ala. 389 (1867); Luter v. Hunter, 30 Tex. 688 (1868); Garlington v. Priest, 13 Fla. 559 (1869-71). Compare the decisions on the stay laws in favor of persons in military service, where it was generally held that statutes granting exemption during service or during the war, were invalid. See Dunham (1917). In Breitenbach v. Bush, 44 Pa. 313 (1863), a statute providing a stay during enlistment was upheld since the maximum term of enlistment was three years. A subsequent act of Congress extended enlistments to the duration of the war, and the stay law was then held to be unconstitutional. Clark v. Martin, 3 Grant's Cas. 393 (Pa. 1863).]*" (Feller, 1933). See Appendix 1 on page 1081.

944 "*When no one could foresee with confidence what would be the relative purchasing power of a dollar three months in advance, it was obviously risky for a merchant to accept a note due in 90 days for goods sold, or to give such a note for goods bought. Consequently, cash business increased in importance and credit operations diminished — a condition of affairs that was remarked in mercantile circles as early as Aug 1862. In proportion as the fluctuations of prices became more marked, credits were more strictly curtailed. 'Even the West,' said the New York Times of November 28, 1863, 'which has long been wont to strain credit to its utmost, is now buying and selling for cash to an unprecedented degree.' The circular published in 1864 by Dun's Mercantile Agency ascribed the small number of bankruptcies in large part 'to that rigid caution which has obtained in our business community in dispensing credits.' Mr. McCulloch in his report as secretary of the treasury, Dec 1865, said that 'it is undoubtedly true that trade is carried on much more largely for cash than was ever the case previous to 1861.' In the autumn of the same year the Commercial and Financial Chronicle made a careful inquiry into the credits being granted to the South and West, and reached the following conclusions: 'The great bulk of jobbing sales now being made are on short time, say from 60 days to 4 months... Half of the buyers pay in cash, and a large portion of the remainder average less than 3 months in their credits, while but a very few obtain 6 or 8 months.' Of course, the increase in cash business meant that the demand for commercial loans was less, and this diminution in the quantity of commercial paper on the market may not improbably have offset the great increase in public securities offered to investors. It must be noticed, however, that in explaining the cause of the contraction of credit one finds himself brought back again to men's conscious inability to foresee the future course of prices as the controlling factor in the loan market... During the Civil War the uncertainty was so great that such foresight was hardly possible. As a consequence it seems probable from what information is available that men made their bargains for borrowing and lending money upon terms not very unlike the terms prevailing in less unquiet times... What scraps of information are available, however, support the view that profits were uncommonly large. Mr. David A. Wells, for example, in his reports as special commissioner of the revenue, has stories of 'most anomalous and extraordinary' profits that were realized in the paper, woolen, pig-iron, and salt industries. A more general indication of the profitableness of business is afforded by the remark in the annual circular of Dun's Mercantile Aug for 1864, that 'it is generally conceded that the average profits on trade range from 12 to 15%.' But the most important piece of evidence is found in the statistics of failures compiled by the same agency. The following table shows Dun's report of the number of bankruptcies and the amount of liabilities in the loyal states from the panic year 1857 to the end of the war... The very great decrease both in the number and the liabilities of firms that failed is the best proof that almost all business enterprises were 'making money.' From one point of view the small number of failures is surprising. An unstable currency is generally held to make business unsafe, and seldom has the standard money of a mercantile community proven so unstable, undergone such violent fluctuations in so short a time, as in the United States of the Civil War. Yet, instead of being extremely hazardous, business seems from the statistics of failures to have been more than usually safe. The explanation of the anomaly seems to be that the very extremity of the danger proved a safeguard. Businessmen realized that the inflation of prices was due to the depreciation of the currency, and that when the war was over gold would fall and prices follow. They realized very clearly the necessity of taking precautions against being caught in a position where a sudden decline of prices would ruin them. How they did this by curtailing credits has been shown in the preceding chapter. So long as prices continued to rise such precautions were really not needed by the man in active business except, in so far as he was a creditor of other men; but when prices commenced to fall prudence had its reward. Such a sudden and violent drop of prices as occurred between Jan and July 1865, would have brought a financial revulsion of a most serious character upon a business community under ordinary circumstances. But so well had the change been prepared for, that the number of failures was actually less than it had been in*

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the preceding year of rap idly rising prices. The whole situation can hardly be explained better than it was by a New York businessman writing in Harper's Monthly Magazine: 'When the war ended,' he said, 'We all knew we should have a panic." (Mitchell, 1903).

945 Osborne (2014): "*only rarely did the ads for government bonds [during the Civil War] mention the importance of patriotism, citizenship, the war, or even Union.' Instead, they catered to 'the customer's business sense' and 'self-interest.' Financier Jay Cooke, in particular, made a personal fortune by being the first person to successfully market low-denomination US government securities to a large group of low-volume purchasers, in part because he recognized the existence of a market where others had not. Yet Cooke's debt to savings banks for this inspiration was explicit: the impending loss of business signaled by the war's conclusion led his firm to distribute a tract arguing that 'the National Debt should be retained as a National Savings Bank for the earnings of laboring men and women—as a National guardianship for… all those who are inexperienced in [financial] affairs.*" "*Before the war was opened the National debt was under $65 M, but in 1866 it amounted to $2,773 M. This enormous issue of bonds was floated for the most part in Wall Street, and this was the most extraordinary of all the legitimate achievements of the market. The credit of the country was so low that it was very difficult to float the first loan. The Chamber of Commerce issued an appeal to capitalists to invest in the bonds, and Secretary Chase visited the Street and conferred with bankers in the interests of the loan.*" (Pratt, 1916).

946 According to Alta California: "*A new light has dawned upon the great champion of national debts the larger the better, and of paper money, 'the more the merrier.' It was only a short time ago that he was at the head of the paper movement, proclaiming that greenbacks constituted the soundest currency ever known, and denouncing the slightest hankering after gold and silver as treason, the blackest and most damnable… It now turns out, that Mr. Jay Cooke, who... sowed greenback seed all over the State, is in favor of getting rid of irredeemable paper money and returning to specie payments everywhere. Under these circumstances, we do not know exactly what is to become of these ardent but insolvent patriots, who believe that it is the duty of the government to supply them with pocket money, when paper is the circulating medium, and treason to oppose their wishes*" (Dec 15, 1865 quoted in Oberholtzer, 1907).

947 "*[A] major reason for Congressional establishment of the National Banking System during the Civil War was the desire to provide a system of banks which would, by their very existence, provide a market for government bonds. The legislators also hoped that all commercial banks would join the new system, and with this in mind they enacted in 1866 a prohibitive tax on non-national-bank note issues. This retarded the growth of state-banking systems, but did not promote a unified banking development under federal law because high minimum-capital requirements and prohibition of real-estate loans served at the same time as long-term barriers to bank entry into the National System.*" (Sylla, 1970).

948 "*In the form that [ITS] had assumed by 1867, disbursing officers were permitted to use national banks as depositories and [UST] was permitted to deposit receipts from internal revenues in national banks provided the banks furnished security by depositing United States and other bonds with [UST]. However, [UST] was prohibited from depositing customs receipts (which were paid in gold). [UST's] deposits remained small relative to either its currency holdings or the public's deposits until near the end of the century, except for isolated occasions when they were built up as a deliberate act of monetary policy. For some years after the tum of the century, they remained relatively high as part of a deliberate policy of continuous [UST] intervention in the money market. They then relapsed until they rose to unprecedented levels as a result of the bond-selling drives of World War I.*" (Friedman and Schwartz, 1963).

949 "*In 1837 New York city banks had resisted a similar state proposal to compel their par acceptance of upstate notes on the grounds that it would allow the country notes to 'engross the circulation in New York'... National bank notes from other parts of the country appear to have initially traded at a discount in New York City. As early as Feb 1864, the banks of [NYCHA] resolved to accept at par only those national bank notes redeemed at par by a member bank. Other notes were to be traded as 'uncurrent money,' accepted only at a discount, if at all. Notes from all parts of the country accumulated in New York, particularly when demand to hold notes in the interior was below the spring and fall peaks.*" (Selgin and Lawrence H. White, 1994).

950 "*The North is growing tired of the drafts that are being made upon her, in such rapid succession, by the Lincoln Administration. The rebellion is not yet nigh 'crushed,' and still Mr. Lincoln's calls for the army alone foot up not up nearly [$2.5 M]!... [The Journal of Commerce says] Mr. Chase will, probably, let up his grip on the paper in a few days, as this will be necessary to float his loan to advantage at its par value. It is really curious to watch the effect of a partial withdrawal of the paper currency. It will be remembered that the banks here hold a large amount of 5% 2 year Treasury notes, with coupons attached. A large portion of these they deposited with the loan committee of [NYCHA], taking out loan certificates, which were to be used in settlement of balances between the banks. The notes themselves cannot be withdrawn until the first week is June, when the first coupon matures. As many of the banks are short of everything but, these certificates, they seek to have all claims on them presented through the regular exchanges at the clearing-house, in order that they may pay them with the certificates, instead of currency. The latter is now worth 1% more than the certificates. The most superficial observer must see why the banks are short.*" (Charleston Mercury, 1864). "*The Associated Banks of this City have run so short of Greenbacks as, under the recent sales of Gold and Exchange by the Treasury, to produce a sudden and violent panic in the Money and Stock Markets. Greenbacks were yesterday at a premium over Certified Bank Checks, and sellers of Gold or Exchange made a difference of 1@1.5%. The Stock circles were agitated almost beyond precedent. About noon the failure of Messrs. Morse & Co., heavy speculators in Fort Wayne and other Railway and Mining Stocks, was announced. Other less important suspensions followed. Gold left off at 168.5@170. The Railways went down 5 to 25% on actual sales through the day.*" (NYTimes, 1864). "*Greenbacks commanded a premium of 2% yesterday over certified checks, and the banks exercised extreme caution in transacting business even with these evidences of deposit. Indeed, in some instances their care was attended with the most vexatious results to the dealer, who depended for his safety upon the expedition with which his business could be transacted. About noon rumors of failures of well-known and prominent houses flew thick and fast about the street. The most exaggerated stories were related of the amount for which certain firms had failed, and the extent of the disaster. Each announcement of this character fell like a knell of doom upon many a heart, for there were hundreds in the anxious throng who did not know how soon their turn might come. Business friends were at a discount. Each one had quite enough to do to take care of himself and keep his own head above water. The most extravagant and usurious rates were offered for money, and those who had it —and they were comparatively few— exacted the most undoubted security, in some cases to double the amount of their loan. The Herald says: The firm of Morse & Co., stock brokers, gave notice to the board that they were forced to suspend,*

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and requested an extension of 60 days. They were what are termed bull operators, and their heaviest liabilities were in Pittsburg and Fort Wayne railroad, which, after the announcement of the failure, fell to 110—a decline of 33% since last Mon. Another young house of the regular exchange bolted gave way, and several active members of the public board were unable to respond to their contracts." (The Sun, 1864). "*The fluctuations in the stock market during the war period were extremely rapid. Among the numerous important speculative operations, none attracted more attention at the time than one in Fort Wayne stock. A. W. Morse began to accumulate the stock below 90 in Feb, 1864. Early in April the stock had been advanced to 152. About this time the Secretary of the Treasury made an endeavor to contract the currency in order to lessen the premium on gold, (gold then selling at 170.) This caused a contraction of loans, resulting in the "Morse panic", Fort Wayne declining rapidly to par, causing numerous failures.*" (Eames, 1894).

951 "*The committee's blunt solution, included in the revised National Currency Act of 3 June 1864... was to require all national banks to receive all national bank notes at par. This measure-which banned any national bank from discounting or refusing any national bank note-secured the uniformity of the national currency, but with unfortunate consequences for redemption. Discount charges had been instrumental in financing what little volume of note redemption there was. Once out-of-town notes could no longer be acquired at a discount, no spread remained to cover the transportation and transaction costs of redeeming them. The abolition of discounts also allowed a national bank's notes to circulate well beyond the area within which they could be returned to their issuer at relatively low cost.*" (Selgin and Lawrence H. White, 1994).

952 The Act of June 8, 1864, signed 5 days after the *NBA Amendment*, covered the creation and use of "*...any coins of gold or silver, or other metals or alloys of metals, intended for the use and purpose of current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design...*" Although the Constitution prohibited *States* from issuing money, "*There was nothing in the Constitution prohibiting privately-issued currency, however, so local currency (coin and note) continued to circulate next to federal coinage as money, these issued by a growing number of commercial banks. Following the proliferation of privately issued coins during the Gold Rush period of the mid-1850s, however, Congress prohibited private coinage through the [Act]....in the case of United States v. Gellman [1942], the court concluded that the ...Act was 'primarily adopted to prevent the coining of money in competition with the United States.' The same did not hold true for paper money, and its private issuance continued unabated.*"(Cohen-Mitchell, 1998).

953 "*The first recorded instance of federal government regulation of derivatives was the Anti-Gold Futures Act of 1864, which prohibited the trading of gold futures. The government had been unhappy that its fiat currency issues, the infamous greenbacks, were at that time trading at a substantial discount to gold. Unwilling to accept this result as evidence of failure of the government's monetary policies, Congress concluded that it was evidence of a serious failure of private market regulation. In the event, Congress's action was followed by a further sharp drop in the value of the greenbacks. Although it took the government many years to restore monetary policy to a sound footing, it took Congress only 2 weeks to conclude that its prohibition of gold futures was having unintended consequences and to repeal the act.*" (Greenspan, 1997).

954 "*In pre-Civil War banking, bank charters had limited terms (usually 20 years), so states would appoint a receiver to wind up the affairs of a bank whose charter was not renewed, or which had forfeited its charter prior to expiration. Judicially accountable receivers were created voluntarily by a vote of the partners, shareholders, or other owners of a bank to terminate their responsibility for the bank's liabilities or to make an equitable distribution of its remaining assets. Bank insolvencies generally were treated no differently under state law than the insolvencies of commercial enterprises, with the exception of particular protections for holders of failed banks' circulating currency notes. Unpaid depositors usually had no better rights in the liquidation of a failed bank man did other general creditors, and banks usually were prohibited from giving security for deposits, other man deposits of public funds.*" (Todd, 1994). UST Secretary Chase and COTC McCulloch proposed "*Instead of the liability of the stockholders, many of whom have little voice in the management of their banks, I would suggest that… the failure of a national bank be declared prima facie fraudulent, and that the officers and directors, under whose administration each insolvency shall occur, be made personally liable for the debts of the bank, and be punished criminally, unless it shall appear, upon investigation, that its affairs were honestly administered.*" (McCulloch, 1863). According to Young (1924): "*The amount of a bank's note issue was made to depend upon the amount of government bonds deposited with [at UST]. Furthermore, note issues were limited to the amount of the bank's capital stock. Finally, in case of insolvency, the government would assume responsibility for the redemption of the notes, but to safeguard itself, was given a prior lien on the assets of the failed bank. That is, in case of liquidation, the bank's resources would first be made available for the protection of the noteholders.*" The NBA "*began the federal practice of giving bank receivers extraordinary powers. Procedurally, [COTC], rather than a court, gained the power to appoint a receiver for national banks. Over time, doctrine developed that courts had only limited powers to interfere with actions of these 'statutory receivers.*'" (Swire, 1992).

955 "*The national currency—secured as it is to be by the entire resources of the government, receivable for all public dues except duties upon imports, and for all obligations of the government, except the interest on the public debt, and in case of the failure of the banks to be promptly redeemed at the treasury of the United States, can never be much depreciated, no matter what may be the location of the banks by which it is issued. If, in addition to. all this, the National currency is, in the commercial cities of the Union, kept absolutely and always at par, it will attain a perfection never yet reached by a bank note circulation. That this may be done without prejudice to the banks, but rather to their advantage… But whatever mismanagement of the affairs of any particular national bank may exist, the holders of its notes will not be prejudiced by it. If the banks fail, and the bonds of the government are depressed in the market, the notes of the national banks must still be redeemed in full at the treasury of the United States. The holder has not only the public securities, but the faith of the nation pledged for their redemption.*" (McCulloch, 1863).

956 "*The NBA divided banks into Central Reserve City banks (those chartered in New York City, Chicago & St. Louis), Reserve City banks (those chartered in regional trade hubs) and country banks (those chartered outside of Reserve and Central Reserve cities). Country banks were required to hold 15% of their deposits plus notes outstanding as liquid reserves (specie or treasury notes). This 15% reserve requirement placed a limit on bank leverage but to encourage an interbank market country banks were allowed to keep 3/5ths of this 15% on deposit in reserve or central reserve cities. Reserve City banks were required to hold 25% reserves but they could keep half of their reserves on deposit with Central Reserve City banks. These regulations encouraged banks to pool excess reserves that could not be employed profitably at home and deposit them at interest in Reserve and Central Reserve City banks. In*

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practice, excess reserves migrated to [NYC] to be employed in the overnight repo market. Banks have always desired liquid low-risk investments for their excess reserves. Before the Federal Reserve System and the development of the modern federal funds market, national banking era banks looked to the New York securities market for low risk, overnight lending of excess reserves. Country banks embraced the opportunity to deposit reserves in New York city banks and gain access to the New York money market. By holding a portion of their reserves in New York, country banks were able to manage their reserve ratios by accessing the New York call money market." (Chabot, 2011). "*I further suggest that the national banks shall be required to prevent their notes from being depreciated in the commercial cities of the country, and that the national banks in those cities be required to keep their reserve of lawful money in their own vaults*." (McCulloch, 1863).

957 "*[T]he NBA created explicit lenders of last resort by allowing clearing house certificates issued by reserve and central reserve city clearing houses to be counted as lawful money toward reserve requirements... NBA or 1864 sec 31. Gorton (1985) argues these are the origin of central banks in the United States*." (Chabot, 2011).

958 "*The essential feature of the new banking law, so far as concerns circulation, was the provision that circulating notes should be issued by [COTC] upon deposits of United States bonds, to the amount of 90% of the face value of the bonds. No bank could be organized with a less capital than $100 [K], except in places with a population not exceeding 6,000, where a bank might be organized, with the approval of the [UST Secretary], with a capital of not less than $50 [K]. At least 50% of the capital was required to be paid up before beginning business and the remainder in instalments of 10% of the whole amount of the capital at the end of each month. The bond deposit was fixed at not less than $30 [K] nor less than 33% the capital stock*." (Conant, 1915). "*On the federal scene, double liability for shareholders of national banks first appeared in the [NBA] of 1864, which was reenacted in §23 of the Federal Reserve Act of 1913. The federal statute applied to the actual beneficial owner or the owner of record of shares of national banks. Double liability for bank shareholders was the common pattern under state law for state banks as well*." (Blumberg, 1986).

959 "*One result of this decline in the number and importance of state banks was the cessation of state banking legislation. The old laws regulating state banks of issue were swept away by code revisions, or remained obsolete and unchanged on the statute books*." (Barnett, 1911).

960 New York's deposit insurance "*system was undercut by a 1838 law which allowed entry into banking by uninsured 'free banks.' whose notes were backed by reserved holdings of bonds, but whose deposit issues were unregulated and uninsured. After the establishment of free banking, no new Safety Funds charters were granted... in 1840 more than 90% of bank liabilities were covered by the Safety Fund, by 1860, only 2% were covered*." (Calomiris, 1989).

961 "*When, in 1865, Congress placed a prohibitive tax on the notes of State banks, those of national banks remained the only circulating bank notes. At about that time most insured banks in Ohio, Indiana and Iowa converted to national banks. After 1866 there was a halt in State plans to insure bank obligations, owing in large part to the guaranty of circulating notes under the national bank system. The notes of national banks were secured by United States bonds but in addition, and more important, they were directly guaranteed by [UST]. As [COTC] pointed out in his first report to Congress, even if the pledged securities were insufficient to redeem the notes of failed national banks, 'the notes... must still be redeemed in full at [UST].' Direct federal guaranty of the notes of national banks meant, if the pre-1860 ratio of bank notes to deposits was maintained, that approximately 40% of the circulating medium would be fully protected. However, deposit banking grew rapidly after the Civil War; by 1870 deposits were twice the circulating Notes, and by the end of the century 7 times*." (Golembe, 1960). "*[T]he last of these insurance programs went out of existence in 1866 when the great majority of state-chartered banks became national banks*." (FDIC, 1998). See Table 1 on pg5.

962 Banks were a source of speculative capital and risky for bank note and deposit creditors: "*...before FDIC insurance or the Glass-Steagall Act's separation of banking functions... bankers often engaged in activities that we would now ascribe to broker-dealers or investment banks. This was especially true during the Gilded Age, when the growth of large railroads led to a concomitant growth of high finance*" (Lubben, 2010). "*Prior to [NBA], commercial banks were regulated by the states; after 1863, some also came to be regulated by the federal government. While commercial banks were extremely important for conducting business, they were only rarely used by individuals of modest means who wished to set aside small sums for future needs. The needs of small savers were met by a variety of other financial institutions, of which the most important were the mutual savings banks... A critical element of the development of this credibility was the innovative corporate governance structure of mutual savings banks, which (like their British counterparts) were established as trusteeships on behalf of depositors, without a conflicting class of joint-stock shareholders...*" (Wadhwani, 2011a). "*Mutual savings bank trustees were legally prohibited from receiving any compensation in their function as trustees. Salaries, when paid to presidents, treasurers, and other officers who spent most of their time managing a savings bank, were sometimes regulated by state governments (Keyes, 1876, pp. 136-137). 6 More importantly, regulations prevented or limited trustees from borrowing their own institution's funds (Willcox, 1916, p. 219). In Massachusetts, where insider lending was quite common among commercial banks, the restrictions on borrowing by trustees were somewhat more relaxed. But even in that state, legislation prohibited trustees involved in lending decisions from borrowing funds (Keyes, 1876, pp. 47-50). Moreover, by the late nineteenth century trustee obligations and duties became increasingly well elaborated in the fiduciary standards set by common law. Table 2 summarises some of the key legal safeguards against opportunistic behaviour by trustees that the governance structure of mutual savings banks sought to ensure*." (Wadhwani, 2011b).

963 "*One notable feature of state reserve requirements was the very low reserve requirements on time deposits. This naturally led state banks to hold a much higher per-centage of their liabilities as time deposits than national banks*." (White, 1983).

964 "*Commercial banks in antebellum America had traditionally raised capital through equity offerings and banknote issues, not deposits; though commercial bank demand deposits had been introduced and had begun to grow before the Civil War, bank balance sheets show that they were unlike the highly leveraged intermediaries with which we are familiar with today... As State bank notes became taxed out of existence following the [NBA], State chartered banks began to actively search for new sources of liabilities. By the 1880s and 1890s, the rapidly proliferating number of State banks in the US began to offer interest-bearing deposit accounts that mimicked the essential features of the savings banks' core product: the savings account. Though national banks were prohibited from offering similar services, many of them managed to circumvent the regulation until the law itself was relaxed by the Federal Reserve Act*." (Wadhwani, 2011a).

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965 "*The federal government... sought to secure the safety of the circulating medium through direct guaranty by [UST] of national bank notes, beginning in the 1860s. However, the subsequent rapid growth of bank deposits relative to bank notes once again aroused concern regarding the safety of the circulating medium in the event of a bank failure*" (FDIC, 1998).

966 According to Goodhart et al. (1994): "*Whilst this effectively created a uniform national currency (and provided the government with a ready source of revenue), the arrangement rendered the supply of currency (notes) 'inelastic' since it meant that banks first had to obtain government debt before they could expand their note issue. Restrictions on branch banking compounded this problem, making it even more difficult for banks to meet sudden increases in the demand for notes. Finally, banks faced strict reserve requirements, which meant that they could not even use the notes which they had. Not surprisingly, the National Banking System was prone to frequent banking panics.*"

967 Ames (1897) notes that in "*1866, Mr. Thomas had introduced a resolution into the House instructing the Committee on the Judiciary to inquire into the expediency of proposing an amendment to the Constitution restricting the power of Congress to issue a paper circulating medium. The resolution was agreed to, but nothing further was heard of…*" (Ames, 1897).

968 Rep. Henderson (R-MO): "*[I]s it intended by gentlemen to go on contracting the currency until paper comes upon a perfect equality in value with gold? ls that the object? Is that the design? I should like to know from the history of the gold transactions in New York at what particular period it is likely that we shall arrive at that result. Looking back at the price of gold during the war, a Statement of which I hold in my hand, I find that on the 20th a July, 1864, gold sold for 285 in the market in New York ; and on the lot day of Sep of that year it told for 189, and the circulating medium had been considerably increased in the meantime. Will Senators tell me how this extraordinary fact occurred? I suppose that it was in consequence of other causes than the amount of the circulating medium. Perhaps it was owing to the general credit of the nation. Perhaps somebody feared at that time that General Sherman would not be successful in his tight with General Hood at Atlanta; and hence it was that gold went up to 263. It depends upon the general credit of the Government and not so much upon the amount of circulating medium as the time… I desire to protest against the condition of affairs which is being forced upon the country, and which, in my judgment, will ruin or bring to bankruptcy the western States. In the establishment of the national banking system you limited the currency to $300 M. It might have been very well at that time to limit it. Why? Merely because you had then some $0.7-0.8 B of United States paper as a circulating medium. Congress got us into this difficulty by assuming to know how much currency the people wanted…t he amount of currency that will be needed by the business interests of this wide-extended country.*"(Congressional Globe, 1868, p531)

969 Rep. Cary (R-OH): "*[T]he President in his late message well and truthfully says 'we want: a stable and secure circulating medium. A disordered currency is one of the greatest political evils.' Is a greenback circulation necessarily unstable and insecure? It may be and it is as stable a circulating medium as gold, and is as secure as a mortgage upon the entire property of the nation can make it. Treasury notes am not a 'disordered currency.' They do not belong to the class denominated by the gentleman from Illinois as 'wild cat' or 'stump-tail.' They are not bank issues, that miserable contrivance for cheating the laboring classes; that ingenious intention 'to fertilize the rich man's field by the sweat of the poor man's brow.' Treasury certificates are veritable, lawful money, and involve the Government in no chance of failure. They pay all debts, public and private, until the interest or convenience of the people call for their withdrawal. Jay Cooke... will find it difficult to satisfy the people that national bank notes are better or safer than greenbacks. National bank notes are good because [they are] indorsed by the Government. They are good because they are backed up by Uncle Sam's bonds; and these are good because they are redeemable in 'lawful money.*" (Congressional Globe, 1868, p370).

970 This followed New York Banking Superintendent Schuyler found vast differences in charters and changes from year to year: "*The powers of trustees under these various charters are as diverse as the charters themselves, and in the same institution they vary from time to time, through divers amendments, that uniformly enlarge, never more rigidly control, the power and discretion of the trustees….*" (Keyes, 1878b, p.100-102). Citing Keyes, Wadhani (2011b) notes that: "*General savings bank laws passed in Wisconsin in 1858 and Minnesota in 1867 held mutual savings bank trustees personally liable for the losses of the institution. Emerson Keyes... a New York bank regulator, dubbed these 'disabling acts' for they set such a high standard for mutual savings bank trustees and exposed them to such significant risks that few were willing to incorporate mutual savings banks under such terms.*"

971 "*Early in 1867 certain members of the Gold Exchange established the "New York Gold Exchange Bank" as a clearing-house for transactions in gold. The success of the gold clearings was so manifest that later in the year an endeavor was made to secure a clearing system for stocks.*" (Eames, 1894). "*New York Gold Exchange. Financial exchange that began in 1862 as Gilpin's Gold Room in a basement on New Street. At the time the Union was financing the Civil War by issuing paper money rather than raising taxes, and trading in gold was a popular means of speculating on the course of the war. Although such trading was banned by [NYSE] as unpatriotic and Gilpin's Gold Room itself was briefly banned in 1864, gold speculation continued in brokerage offices and shops along Broad and New streets and the room reopened as the New York Gold Exchange in Oct… From 1865 the New York Gold Exchange was part of [NYSE].*" (Flood et al., 2010).

972 According to Tabb (1995): "*After the Panic of 1857 and the financial cataclysm caused by the American Civil War, overwhelming pressure for another federal bankruptcy law led to the enactment of [BA67].' The inability of State laws to discharge preexisting debts' or debts of nonresident creditors' contributed to the need for a federal law. Northern creditors pushed hard for the bankruptcy bill, viewing such a law as essential to their ability to collect anything from southern debtors. The compromise bill that eventually passed was described as 'unwieldy because of too great attention to details. [BA67] included both voluntary' and involuntary' bankruptcy. The constitutionality of voluntary bankruptcy was now taken for granted. Unlike [BA41], corporations were permitted to take advantage of the act.' In keeping with the times, an oath of allegiance to the United States had to be taken by a petitioning bankrupt. [BA41]'s restriction of involuntary bankruptcy to merchants was dropped. Now 'any person' was subject to the threat of involuntary bankruptcy. The list of 'acts of bankruptcy' that would support an involuntary petition was greatly extended as well.' The judicial machinery for dealing with bankruptcy cases was much closer to the system in place today. The district courts were given original jurisdiction as 'courts of bankruptcy.' The district courts were directed, however, to appoint one or more 'registers in bankruptcy, to assist the judge of the district court in the performance of his duties.' These registers thus were the predecessors of the twentieth century referee and bankruptcy judge. Assignees superintended the liquidation itself.*"

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973 Warren (1935, p105) cites Senator Doolittle (R-WI) as saying "...*the change of the currency from year to year has been so great, so violent, that the word 'dollar' in which all contracts are made and in which they must be enforced has been continually changing in meaning...and therefore it is utterly unjust to endeavor to enforce literally contracts...*" and Senator Stewart (R-NV) as saying "...*values have changed so rapidly in the last 6 years, men's property has fluctuated to such an extent that there is a large number of persons who are insolvent, with large indebtedness hanging over them, which is merely the result of the fluctuation in prices...*" Warren argues that Northern creditors to Southern debtors drove BA67, seeing it as their best change of repayment (1935, p106).

974 "*[C]reditors would have preferred to pass a bankruptcy law that made exemptions a matter of federal law. [BA67] had deferred to State exemptions, and creditors complained bitterly about the results. Not only were the exemptions in some States remarkably generous, but several southern States had the audacity to expand their exemptions after [BA67] was enacted. A single set of federal exemptions would have eliminated the confusion of dealing with laws that varied from State to State, and limited debtors to a more modest safety net...The exemptions issue had generated enormous debate before the 1867 act, and incorporating State exemptions was the only way to assure that the legislation would pass.*" (Skeel, 2014).

975 According to Rep. Willis (D-KY) "...*[T]he vast increase of bankruptcy under this new law may be seen. From March 2, 1867 to the 31st of Dec 1867, out of 7,345 petitions filed there were only 230 petitions in Involuntary bankruptcy; from the 1st of Jan to the 31st of Dec 1868 out of 29,539 petitions there were 443 for involuntary bankruptcy; from the 1st of Jan 1869 to the 31st of Dec 1869, out 5,921 there were 527 cases of involuntary bankruptcy; out of 4,301 petitions in 1870 there were but 884 petitions for Involuntary bankruptcy filed, and in 1871 out of 5,424 petitions tiled there were 1,299 petitions for Involuntary bankruptcy. The whole number of petitions filed during the period named was 58,618, but only [4%] of them were involuntary petitions.*" (Willis, 1878, p.194).

976 Thompson (2004, p54) and for State data, see (GPO, 1874).

977 "*One of the most significant of these departures from earlier legislation was the provision of bankruptcy relief for corporations. [BA67] was the first federal bankruptcy legislation to allow for corporate bankruptcy. Indeed, under [BA67], corporations enjoyed the greatest degree of flexibility with respect to filing bankruptcy petitions of any bankruptcy legislation passed in the 19th century. Under [BA00] and [BA41], corporate filings were not permitted; even [BA98] did not permit voluntary petitions by corporations (though it did allow involuntary filings against corporations) until an amendment in 1910. Moreover, corporations of all types were permitted to file under [BA67], whereas railroads, banks and insurance companies were excluded in 1898, and indeed remain excluded today.*" (Lubben, 2013). "*The bankruptcy laws that Congress did pass were not well designed to deal with the railroad problem. [BA67], the first bankruptcy law to include corporations, assumed that bankrupt corporations would simply be shut down and their assets liquidated. Such an approach did not make much sense for railroads, since everyone agreed that it was important to keep the railroads running.*" (Skeel, 2014). "*[R]ailroads were subject to adjudication in bankruptcy, [New Orleans, Spanish Fort and Lake* R. R. *v. Delamore, 114 U. S. 501 (1885)].*" (Virginia Law Review, 1934).

978 The Court held that creditors objecting at the outset could defeat a bill for general liquidation filed by an insolvent debtor in *Hugh v. McRae* (1869): "*Chief Justice Chase, sitting on Circuit in South Carolina… [decided that] an alert creditor, by objecting at the outset, can defeat such a suit. In that case an insolvent banking company's bill was dismissed on demurrer, the Chief justice stating that insolvency was not a ground upon which a debtor might ask equity to stay the hands of creditors, although 'in a proper case' it would be within the power of equity to take control at the suit of creditors.*" (Glenn, 1925). Foster (1935) notes the importance of the Supreme Court decision condemning practical compromises of creditors with stockholders at the cost to other creditors in *Chicago, Rock Island & Pacific Railroad Co. v. Howard* (1868); "*Upon appeal, it was contended in the Supreme Court that there was no pretense of fraud as against the stockholders, and that the substantial rights of the general creditors were not in the slightest degree affected, since it was admitted that the mortgaged property was insufficient to pay the secured creditors, and that the 16%, fund resulted solely from their voluntary agreement to abate in favor of the stockholders a part of what they had a perfect right to demand and appropriate as against the general creditors. The supreme court, however, without dissent, affirmed the decree below. And Judge Clifford, speaking for the whole court said that 'Equity regards the property of a corporation as held in trust for the payment of the debts of the corporation, and recognizes the right of creditors to pursue it into whosesoever possession it may be transferred, unless it has passed into the hands of a bona fide purchaser; and the rule is well settled that the stockholders are not entitled to any share of the capital stock, nor any dividend of the profits. until all the debts of the corporation are paid.*" (West, 1896). *"It must be conceded that, admitting the undoubted right of the bondholders to foreclosure, the sale might, nevertheless, be rendered invalid by reason of a previous agreement for its purchase, provided that agreement was illegal. In [Howard], which is the first important case on the subject, a sale under a mortgage was held invalidated by a previous agreement between the mortgagees and the stockholders, under which the stockholders were entitled to a share of the proceeds of the sale-and this although the road was mortgaged so far above its real value that on a sale in open market it did not bring nearly enough to pay the mortgage debt.*" (Brown, 1897).

979 *"[BA] introduced the concept of 'non-judicial 'registers in bankruptcy' to assist the district courts in administering bankruptcy proceedings.' [Kennedy, D.S. & Clift, R.S., An Historical Analysis of Insolvency Laws and Their Impact on the Role, Power, and Jurisdiction of Today's United States Bankruptcy Court and its Judicial Officers, 9 J. Bankr. L. & Prac. 165, 172 (2000).] The Act required each district court judge to appoint 'one or more registers in bankruptcy, to assist the judge... in the performance of his duties under [the Act].' These appointments were for an indefinite term, and [BA67's] §3 required that such registers in bankruptcy be 'counsellors' of the court and learned in the law. The registers were intended to expedite the bankruptcy process, because it was widely believed that one weakness of earlier bankruptcy legislation had been too much involvement by the judges themselves.[(Noel, 1919, p150)] Under the Act, registers had the power to conduct preliminary proceedings in the absence of an opposing interest by any party. If, however, any issue of fact or law was raised or contested, the register was required to memorialize the dispute in writing and submit the issue to the court for adjudication. In an attempt to depoliticize appointments made in connection with the Act, publications such as the American Law Review advocated for term limits of 3 years for the office of 'Register in Bankruptcy.' One article bluntly stated: 'We should not then have (for Registers) broken-down politicians in whom the prickings of the stomach far exceed the prickings of conscience, nor poor, witless nurselings'… see also [Cong. Globe, (1866)]*

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(senators debating similar concerns, with one senator proposing that administration of bankruptcies under the new act be placed under state courts, 'where the operation of it could be brought home to the people at their own doors'). Some in the Senate sought to have registers appointed by the Chief Justice of the Supreme Court or the circuit court judges, but the plans were denied by the conference committees.'" (Lubben, 2013).

980 "*State banks challenged the tax but the Supreme Court sustained it in 1869 [Veazie Bank v. Fenno], establishing an important precedent for the federal government's power to discriminate for regulatory purposes against an otherwise lawful industry.*" (Carnell, Macey, and Miller, 2009). In a 5–2 opinion, Chief Justice Salmon P. Chase held that this use of Congress' taxing power was authorized: "*It cannot be doubted that under the Constitution the power to provide a circulation of coin is given to Congress. And it is settled by the uniform practice of the government and by repeated decisions, that Congress may constitutionally authorize the emission of bills of credit. ... Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. To this end, Congress has denied the quality of [USLTN] to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same end, Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile.*" "*It was long held that the instruments of State sovereignty were exempt from Federal taxation upon the same grounds that the instruments of Federal sovereignty were exempt from State taxation, but this view was overruled in regard to the circulating notes of State banks in the case of [1879] Veazie Bank vs. Fenno.*" (Conant, 1915).

981 "*Constitution justify making greenbacks legal tender for past debts. [Chief Justice] Chase, who had been secretary of the treasury under Lincoln, now claimed that by making greenbacks legal tender for all debts, Congress violated perhaps the 'most valuable provision of the Constitution of the United States, ever recognized as an efficient safeguard against injustice,' that 'no State shall pass any law impairing the obligation of contracts.' To make this argument, he had to overcome the fact that the contracts clause applied only to state, and not federal, laws. To do so, he went out on a limb, claiming that the contracts clause represented the 'spirit' of the who adopted the Constitution. It was clear, he wrote, that 'those who framed and those, intended the spirit of this prohibition should pervade the entire body of legislation,' and that any federal law 'not made in pursuance of an express power' which 'impairs the obligation of contracts, is inconsistent with the spirit of the Constitution.' This was a new and expansive interpretation that had the potential to circumscribe congressional authority for years to come... At a time when voices calling for repudiation of debts echoed across the country, Chase's language must have warmed the hearts of nervous creditors. 'A very large proportion of the property of civilized men exists in the form of contracts,' he wrote, and it was thus essential that contracts be protected. The Legal Tender Act was passed during a national emergency when the 'time was not favorable to considerate reflection upon the Constitutional limits of legislative or executive authority.' In a veiled reference to his own wartime support of the act, he acknowledged, 'Not a few who then insisted upon its necessity, or acquiesced in that view, have since the return of peace, and under the influence of the calmer time, reconsidered their conclu-sions and now concur' that the legal tender portion of the act violated the 'letter and spirit of the Constitution.' For Chase and the majority, creditors' interests and the 'spirit' of the Constitution were the same. Debts needed to be paid in full, and the Constitution could and should be used to bring about that result... Satisfied that the Legal Tender Act could be fully justified as a war power, Miller then expressed his discomfort with Chase's insinuation that the Constitution was a creditors' document. He took issue with Chase's argument that the act, as it applied to past debts, was 'in conflict with the spirit if not the letter, of several provisions of the Constitution.' While he agreed that the Legal Tender Act impaired contracts like Griswold's, he was certain that Congress had the constitutional authority to pass such a law. 'While the Constitution forbids the States to pass such laws,' Miller wrote, 'it does not forbid Congress.' Congress, he believed, could do so in times of war and peace alike. The Constitution expressly authorized Congress 'to establish a uniform system of bankruptcy, the essence of which is to discharge debtors from the obligation of their contracts.' If Congress could set up bankruptcy laws to wipe away individuals' debts during peacetime, how could Chase conclude that a creditors' contract could not be impaired to save the nation? 'How it can be in accordance with the spirit of the Constitution,' Miller continued, 'to destroy directly the creditor's contract for the sake of the individual debtor, but contrary to its spirit to affect remotely its value for the safety of the nation, it is difficult to perceive.' Rather than being a document to protect creditors, Miller's Constitution allowed Congress to side with the have-nots rather than the haves.*" (Ross, 2003). In dissenting, Justice Miller noted that the Constitution empowers Congress to define money and impair contracts: "*...undoubtedly contracts were impaired, but the States, not Congress, were prohibited by the Constitution from enacting laws impairing the validity of contracts; national bankruptcy laws are constitutional although they clearly impair contracts... In conclusion, the choice of means, the degree of necessity, lay with Congress, and were not questions for the Court to determine.*"

982 Almost immediately after this decision, the composition of the Supreme Court changed and, in a few months, overturned *Hepburn* in *Knox v. Lee* and *Parker v. Davis*. USLTN could still be used as money. In dissenting, Justice Clifford wrote: "*Money, in the constitutional sense, means coins of gold and silver fabricated and stamped by authority of law as a measure of value, pursuant to the power vested in Congress by the Constitution...Intrinsic value exists in gold and silver... an act of Congress making mere paper promises to pay dollars a [USLTN] in payment of debts previously contracted is unconstitutional and void...Delegated power ought never to be enlarged beyond the fair scope of its terms, … Restrictions may at times be inconvenient... but the power to remove the difficulty by amendment is vested in the people…*"

983 "*Mr. Ingersoll of Illinois, Feb 14, 1870, [proposed an amendment] empowering Congress to issue United States notes and make them legal tender in payment of debts. Soon after this the Supreme Court in the second of the legal tender cases reversed its decision, and accordingly it is not surprising to find an amendment introduced in 1873 forbidding Congress to make anything but gold and silver legal tender in payment of debts*." (Ames, 1897). Ames missed the linked bill requiring specie reserves. In 1870, Rep. Ingersoll (R-IL) simultaneously proposed H.R. 2513 (making UST notes receivable in part payment of customs duties) and H.R. 442 (prohibiting the sale of coin on behalf of the United States and to provide for the redemption of the United States legal-tender notes, in coin, at par). In 1871 and 1872, amendments "*proposed prohibiting Congress from hereafter chartering private corporations to carry on business within the States. The same resolution suggested that the Constitution should be so amended as to prohibit Congress as well as the States from passing any law impairing the obligation of contracts*." (Ames, 1897). This would outlaw national banks and all bankruptcy laws.

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984 "*Commercial banks in antebellum America had traditionally raised capital through equity offerings and banknote issues, not deposits; though commercial bank demand deposits had been introduced and had begun to grow before the Civil War, bank balance sheets show that they were unlike the highly leveraged intermediaries with which we are familiar with today… As State bank notes became taxed out of existence following the [NBA], State chartered banks began to actively search for new sources of liabilities. By the 1880s and 1890s, the rapidly proliferating number of State banks in the US began to offer interest-bearing deposit accounts that mimicked the essential features of the savings banks' core product: the savings account. Though national banks were prohibited from offering similar services, many of them managed to circumvent the regulation until the law itself was relaxed by the Federal Reserve Act of 1907*" (Wadhwani, 2011). "*...before FDIC insurance or the Glass-Steagall Act's separation of banking functions... bankers often engaged in activities that we would now ascribe to broker-dealers or investment banks. This was especially true during the Gilded Age, when the growth of large railroads led to a concomitant growth of high finance*" (Lubben, 2010).

985 In 1878, Rep. Tipton (R-IL) emphasized that: "*[P]eople all over the country will be afforded an opportunity to invest their savings with assurance that the principal will be returned with a small interest... The failure of savings banks and consequent loss, especially to the poorer class, makes the demand greater than ever before.... They simply desire a safe depository of their small earnings until the accumulation shall enable them to purchase a lot of ground on which in time they can build a home for themselves and their families*" (quoted in Sprick Schuster et al., 2019).

986 It offered "*absolute security to the depositor. Money-orders are to be issued to depositors without interest, it is true, but negotiable by indorsement, and therefore valuable and convenient as a circulating medium and receivable in exchange for United States bonds bearing interest…[and denominated in] ten, twenty, fifty, and one hundred dollars. These bonds have all the attributes of a medium and an investment. The amount, the facility with which the interest can be computed, and their negotiability by delivery will give them popularity with the people as money and as an investment*" (Bell, 1878, p.2834).

987 "*If they should not circulate as a medium they are exchangeable for United States notes, so that they could be readily converted into money at the will or convenience of the holder. This exchangeable quality would make the currency adjust itself to the demands of trade and maintain steadiness in the value of property and products. During the business seasons, when crops are put upon the market, they could and would be exchanged for notes. And in the intervals of quiet the notes would be exchanged for bonds. The markets in this way would be relieved from the extortion and speculation of the banks. Thus the business necessities of the country would be supplied with a currency as occasion required and capitalist, large and small, with the means of a safe investment at a seasonably remunerative interest*." (Bell, 1878, p.2834).

988 "*Have you ever thought what a dead thing money is when it is not in use? It is the deadest thing in the universe. There are many millions of such dead money in the country. It is hoarded away in stockings, buried under the hearthstones, tucked away behind the rafters and planted here and there in the earth, because the owners have no faith in 5 private savings institutions. They have faith in the government, and they would bring the money out and deposit it in the postal savings banks*" (quoted in Sprick Schuster et al., 2019).

989 "*The idea of establishing postal savings banks was regarded by Colonel D. N. Foster, a Fort Wayne banker, as 'a policy fraught with the most dangerous consequences to the vital interests of the American people... It is socialistic and contrary to the spirit of our institutions. It is an uncalled-for invasion of private rights.' Concerning the advocates of such legislation, L. R. Gurney, a banker of Fremont, Nebraska, said: 'They would have the Government cut loose from its moorings of protection for the individual and plunge into the frightful slough of socialism... Socialism is not a mere harmless dream, impossible of fulfillment, to be tolerated as the well wishings of people more poetical than practical; it is a hideous growth of positive malevolence, and it is directly opposed to every fundamental principle of our Government. It is an ingrate knocking at our doors, a thief creeping into our domiciles. It takes from industry its every reward, and dampens energy and ambition with the stifling of the incentive for success. Well may we wake to the hidden currents of the stream of socialistic banking before we take the plunge*.'" (Page, 1934). "*The suggestion was made that Federal banks under supervision of the general government be authorized to establish savings departments segregating the assets and designating the class of investments to be held against the liabilities so incurred, such as sets to be held for the protection of those deposits, at the same time reducing the reserve requirements of savings department to correspond with the reserve of state institutions. This we believe would afford the same security now accorded by mutual savings banks in New York and other eastern states. These banks have been a bulwark for the working men and a boon to the country. We would recommend the adoption of the following resolution: Resolved. That it is the sense of this association that we should con demn in unqualified terms the proposi tion for the establishment of Postal Savings Banks or any other system by which the government enters directly into banking relations with the people*." (United States Investor, 1910)

990 Young (1924) argues that "*very little silver had been coined since 1806, when the minting of the silver dollar was suspended by action of President Jefferson…[and although] Nominally the mints were reopened to the coinage of silver in 1834, but only at a ratio which made silver coinage unprofitable.*"

991 According to Young (1924): "*There is every evidence that the committee deliberately intended to render gold, legally, as in fact, the sole standard. In the words of Representative Kelley, who reported the bill from the committee—it was 'impossible to retain the double standard.' And, furthermore, 'every coin that is not gold is subsidiary.' This act, which became known as the 'Crime of 1873,' merely gave legal recognition to the fact that the silver dollar was not a part of our circulating medium.*" The Act established the USD as the unit of account rather than just gold, §14 of the Act "*enumerates the authorized gold coins, and says of the one dollar piece, that 'it shall be the unit of value.' It is thought by many persons that this language, of itself, and without reference to anything else contained in the Act, establishes the single gold standard. But by the same rule of construction, it would be necessary to maintain that the first mint law, that of April 2, 1792, established the single standard of silver... that 'the money of the United States shall be expressed in dollars or units, to be of the value of a Spanish milled dollar as the same is now current,'... Nobody ever supposed that this language established a single silver standard in this country.*" (Banker's Magazine, 1878, p. 861).

992 "*In 1869 the gold market became unsettled when financier Jay Gould made an attempt to corner it by secretly buying up all available supplies and bribing members of President Ulysses S. Grant's inner circle to prevent sales of gold by [UST]. Informed on 23 Sep by his contacts in the White House that [UST] planned to sell gold nevertheless, Gould arranged for his associate Jim Fisk to execute numerous buy orders the next day to support the price while Gould sold his holdings. Gould and other members of his group made as much as $40 M in profits, but when it became widely known that gold was being sold by [UST], its price quickly fell: the ensuing panic ruined a number of brokers and many speculators (not including Fisk, who refused to honor*

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his agreement to buy gold at a higher price), prompted an investigation by the U.S. Congress, and became known as 'Black Fri.' Gold trading slowed after 1870 as speculators turned their attention to Wall Street and as the price of gold stabilized, making speculation less profitable... It ceased operations after specie resumption on 1 Jan 1879." (Flood et al., 2010).

993 "*A bank creates a certified check by escrowing funds from a check writer's account, and then endorsing the check to certify that the funds are in escrow. Certification substitutes the bank's creditworthiness for that of the check writer. With overcertification, the endorsement by the bank was often for an amount far in excess of the broker's deposit. A broker used the certified check to settle NYSE trades, and then cover the overdrafted check through a loan collateralized by the acquired securities. Repeating this process throughout the trading day created the large amount of financing needed to settle trades [intra-day liquidity to the security settlement process of exchanges]… By 1868 it was estimated that 75% of the checks going through [NYCHA] were certified checks issued in advance of deposits... Congressional investigation into the Gold Panic of 1869 found that overcertification provided leverage to speculators seeking to inflate asset prices... Legislation was passed in March 1869 prohibiting national banks from overcertifying checks... Overcertification could be legally pursued by State banks and trust companies, and, although illegal, continued among national banks. This was similar to the legal limbo of the suspension of convertibility and the issuance of clearinghouse certificates..*" (McSherry and Wilson, 2013).

994 According to Rep. Willis (D-KY) "*...[T]he vast increase of bankruptcy under this new law may be seen. From March 2, 1867 to the 31st of Dec 1867, out of 7,345 petitions filed there were only 230 petitions in Involuntary bankruptcy; from the 1st of Jan to the 31st of Dec 1868 out of 29,539 petitions there were 443 for involuntary bankruptcy; from the 1st of Jan 1869 to the 31st of Dec 1869, out 5,921 there were 527 cases of involuntary bankruptcy; out of 4,301 petitions in 1870 there were but 884 petitions for Involuntary bankruptcy filed, and in 1871 out of 5,424 petitions tiled there were 1,299 petitions for Involuntary bankruptcy. The whole number of petitions filed during the period named was 58,618, but only [4%] of them were involuntary petitions.*" (Willis, 1878, p.194). For State data, see (GPO, 1874).

995 "*Due to the inclusion of numerous grounds for denying discharge, only about one-third of the debtors received a discharge. Procedurally, the discharge was obtained after application by the debtor, upon notice to creditors and a court hearing. The discharge still had to be raised as an affirmative defense to subsequent collection efforts… An important benefit of [BA67] to debtors, however, was that it allowed debtors to elect the benefit of generous State exemption laws as an alternative to the federal scheme.*" (Tabb, 1995).

996 "*On July 14, 1870, an act was approved which so extended the law that a banker, broker, merchant, trader, manufacturer or minor who stopped payment of his commercial paper for a period of 14 days, whether with fraudulent intent or not, committed an act of bankruptcy. Bankruptcy legislation had previously noticed only fraud.*" (Noel, 1919). Remington posits that under this expansive definition every merchant would be considered insolvent during the Panic of 1893 when liquidity evaporated (and banks had to resort to creating NYCHA scrip in the face of rampant money hoarding.) Compare *Buchanan v. Smith, 16 Wall. 277, 308 (U. S. 1872)* "*Insolvency in the sense of [BA67] means that the party whose business affairs are in question is unable to pay his debts as they become due in the ordinary course of his daily transactions.*" to the post-BA98 *Marvin v. Anderson, 111 Wis. 387, 390, 87 N. W. 226, 227 (1901)*, "*Counsel makes the common mistake of failing to distinguish between the meaning of the term 'insolvent', as the subject of insolvency is dealt with by insolvent and bankruptcy laws, and the general meaning thereof. The former is inability of a person to pay his debts as they mature in the ordinary course of business; the latter is a substantial excess of a person's liabilities over the fair cash value of his property.*"

997 "*Insolvency, as the term is used in the present Bankruptcy Act, is different from what is usually meant in bankruptcy and insolvency law by the term. Its time honored, legal meaning as used in insolvency proceedings, is inability of the debtor to meet his obligations as they mature in the usual course of business. And this was what was meant by the law of 1867. [Carson v. Chicago Title & Trust Co.]: 'It is pointed out that insolvency has a different meaning under [BA98] than it had under [BA67]. Under the latter, the debtor was insolvent when he was unable to pay his debts in the ordinary course of business. Under the former, when the aggregate of his property at a fair valuation is insufficient to pay his debts.' However, such a definition would make almost every merchant insolvent in the eyes of the law during seasons of panic and financial stringency such as occurred in the United States, for instance, during the dark days of 1893 and 1894, when the wealthiest and most prosperous business men were unable to pay their notes and bills as they became due. Money itself, the medium of payment, was hoarded. Banks had to resort to the artifice of clearing-house scrip—had to create a new kind of money in fact. It was next to impossible to raise money on the best collateral security, and real estate loans of so-called 'gilt-edged' value went begging for takers. Almost every merchant was insolvent if the usual legal definition was the test, for everyone, almost, was unable to meet his obligations as they matured in the due course of business. The likelihood that such financial stringencies and industrial depressions are to be recurring and frequently recurring phenomena in the commercial world, undoubtedly was the reason that the framers of [BA98], coming to their work only 2 or 3 years after the crisis of 1893, rejected as intolerable a definition of insolvency such as this, as a basis for bankruptcy proceedings. Indeed, this sweeping definition of insolvency was one of the causes of the popular hatred that grew up against the [BA67], and was one of the causes of the downfall of that law and of the reluctance of Congress to pass another Bankruptcy Act.*" (Remington, 1915). "*Another reason for the Act's unpopularity with debtors was a construction which the Supreme Court in 1871 (in Toof v. Martin, 13 Wall. 40) put upon the word 'insolvency.' To the ordinary man that word denoted lack of assets of value sufficient to pay debts; but the Court held it to mean inability to pay debts as they become due in ordinary course of business. This definition, while possibly suited to commercial men in the cities, was utterly out of line with the usual business methods of the farmers, planters, and country merchants.*" (Warren, 1935).

998 Between 1863 and 1875, 38 national banks with circulation of $6 M, failed with proven claims of $15 M, of which $8 M was returned as dividend (56%) and estimated loss of $4 M (27%) (Dana,1876, pg. 9).

999"*[F]ederally chartered banks could not file under the Act, while state-chartered banks and insurance companies could and did.*" (Lubben, 2011). "*Ninth. — Who being a banker, merchant, or trader, has fraudulently stopped or suspended, and not resumed, payment of his commercial paper within a period of 14 days. This act of bankruptcy is confined exclusively to bankers, merchants, and other traders. It is the first time in legislation here or in England that such an act of bankruptcy has been created. By the English Bankrupt Acts, the suspension of payment by a banker, merchant, or trader of his commercial paper and liabilities, is resolved into an act of bankruptcy by summoning him before the Court of Bankruptcy, and if the debt or demand*

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be not paid or arranged to the satisfaction of the creditor within a prescribed time, the non-arrangement or non-payment within such prescribed period constitutes an act of bankruptcy. This provision of the section will apply immediately to the case of banking and trading corporations and joint-stocks companies... The provision will also include any banker, merchant, or trader who may be liable upon bills of exchange or promissory notes which are usually denominated commercial paper. The act of bankruptcy is confined to fraudulently stopping or suspending, and not resuming payment of commercial paper within a period of 14 days. It will not apply, therefore, to stopping or suspending payment of usual and ordinary debts which have not assumed the form of negotiable securities. It will be observed that the stopping and suspension must have occurred with a fraudulent intent, and the creditor who petitions against any banker, merchant, or trader for adjudication in bankruptcy must establish that fact. Mere inability on the part of a banker, merchant, or trader to meet his commercial paper at maturity is not created an act of bankruptcy. If, therefore, such suspension of payment and non-resumption of payment within 14 days can be proved to have been caused by circumstances over which the debtor had no control, either from temporary pressure, or embarrassment, or the failure of other parties, by which he has become involved, without any fraud upon his part, such a transaction would not amount to an act of bankruptcy. Where a creditor, availing himself of this provision of the section, seeks a compulsory adjudication of bankruptcy by reason of the debtor having committed this particular act of bankruptcy, he must establish the fact that the debt was incurred by the debtor in the character of a merchant, a banker, or a trader. The two former definitions need no comment, but it will be necessary to ascertain accurately what constitutes a trader within the meaning of the Bankrupt Law." (James, 1867).

1000 "*The supreme test of the capacity of the law of 1867 was the memorable panic of 1873... Between 1873 and 1876 mercantile failures amounted to $775 M, and defaults by railroads to the sum of $779 M. Before the condition had subsided in 1878, 47,000 failures had occurred. The money loss was $1,201 M. The severity and extent of this crisis was aggravated by the insolvency section of the bankruptcy law by which were forced into the financial maelstrom thousands who with a little patience of creditors could have remained in business.*" (Noel, 1919).

1001Justice Miller "*by 1872 was himself preoccupied with the dramatic increase in the docket of the Court, 'an increase of which very few persons have any just conception'.. [he] complained about the 'vast increase' in the Court's docket.*" (Aynes, 1994). "*For a decade, [BA67] added considerably to the business of the district courts and the Supreme Court. War claims against the government led to the establishment of the modern Court of Claims. Soon appeals from the Court of Claims began to swell the Supreme Court docket. Finally, the political issues of the War begot legislation that for a time flooded the lower courts, and constitutional amendments that to this day are among the main sources of the Supreme Court's business... Thus, from many sources flowed new and deeper streams of business to the federal courts. All of them were powerfully reinforced by the Removal Act of 1875. From 1789 down to the Civil War the lower federal courts were, in the main, designed as protection to citizens litigating outside of their own States and thereby exposed to the threatened prejudice of unfriendly tribunals. Barring admiralty jurisdiction, the federal courts were subsidiary courts. The Act of 1875 marks a revolution in their function. Sensitiveness to 'States' rights', fear of rivalry with State courts and respect for State sentiment, were swept aside by the great impulse of national feeling born of the Civil War… In the Act of March 3, 1875, Congress gave the federal courts the vast range of power which had lain dormant in the Constitution since 1789. These courts ceased to be restricted tribunals of fair dealing between citizens of different States and became the primary and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States.*" (Frankfurter and Landis, 1972).

1002 "*On May 27, 1872, the law was so amended that a person or corporation could not involuntarily be declared a bankrupt unless the provable indebtedness exceeded $3,000. It was also provided that a promise to pay a balance after discharge, in order legally to revive the claim, was required to be in writing. This amendment also extended jurisdiction to the Supreme Court of the United States' Territories, and regardless of the percentage paid, prolonged to July 1, 1873, the time limit of discharge.. [After the Panic,] The most heroic yet unsuccessful effort at amendment was that made by Senator John A. Logan, of Illinois, to preserve the law by striking out the involuntary feature, which was the chief cause of complaint.*" (Noel, 1919).

1003 "*[R]ailroad building was carried to excess, and that the roads constructed were more numerous than the traffic of the country through which they not could support... The roads were built almost entirely from the proceeds of bonds issued, and the capital stock was in many cases given away. Even when the bonds were sold with a success which surpassed all reasonable expectations, it was in very few cases that the proends sufficed to complete and equip the roads—the cost was almost invariably underestimated.*" (Dana, 1876, pg. 17). According to Kindgleberger (1978), "*the Credit Mobilier [scandal]... diverted profits from Union Pacific stockholders..[and] The Granger movement...started in the late 1860s and early 1870s as activists for legislation that would control intrastate transportation… and setting maximum freight rates. A very large volume of railroad securities had been sold on credit – including a number of 'superfluous and ridiculous' enterprises like the Rockford, Rock Island and St Louis line which had been sold at par and then declined to 6 cents on the dollar – so the prospect of local control of freight rates put an end to optimism and triggered sales and then liquidation of these bonds....the Missouri, Kansas and Texas, the Canada Southern, and the Northern Pacific... railroads were unable to sell bonds to obtain the funds they needed to complete construction that was already under way because Berlin and Vienna had stopped lending to the United States…the failures of the New York Warehouse and Security Co, of Kenyon, Cox & Co., and of Jay Cooke and Co. in Sep 1873, because of loans made to railroads*." "*In 1872 the number of railroad defaults was small. Record is found of only 16, of which the Alabama & Chattanooga, the Little Rock & Ft. Smith, and the Vermont Central were the most important, each having over $10 M of stock and bonds outstanding at the time of the failure. Yet the 16 had in operation 3,998 miles of railroad, with $118 M of bonds and $84 M of stock, in all $202 M of nominal capital represented..*" (Grosvenor, 1885, p. 195).

1004 "*The construction of [UPR], among others, was subsidized by the United States Government, which took a second lien upon all that company's property to secure its loan. In 1873, in order to prevent the impairment of the government's lien, Congress passed a law prohibiting [UPR] from increasing the bonded debt of the property subject to this lien. Now railroads are built largely out of the proceeds of bond sales. The result of this law was that [UPR] could build no branch lines or extensions under its charter.*" (Mitchell, 1906). "*The revelations and disclosures made by the Wilson committee of that year were the direct cause of the enactment of this statute...*" (GPO, 1897, p587).

1005 Rep. Burchard (R-IL, Director of Mint '79), who later became Director of the Mint, presented a study of crises, concluding that "*The panic and present depression in business arose from causes disconnected from the currency. The high prices, the unprofitable investments, the overproduction and diminished consumption of clothing, tools, implements, and manufactures in 1872 and previous years, may have been aided but were*

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not occasioned by previous currency inflation. The collapse of values was but the sudden and violent return to the normal standard of prices. It left speculators possessed of lands and goods and stocks on a falling market." (Burchard, 1876, pg. 4982).

1006 "*The monetary crisis of 1873 may be said to have had its beginning in [NYC] on Sept 8 by the failure of the Warehouse Security Co and of 2 houses which had left their regular business to embark in enterprises foreign thereto, which were followed on the 13th by the failure of a large firm of stockbrokers. On the 18th and 19th 2 of the largest banking houses in the city, well known throughout the country, and which were interested in the negotiations of large amounts of railroad securities, also failed; and on the 20th of the same month the failures of the Union Trust Co, the National Trust Co, the National Bank of the Commonwealth, and 3 other well-known banking houses were announced."* (Sprague, 1910). "*For some years prior to 1873 railway construction had progressed with great rapidity, far more rapidly than general conditions had warranted. Banking houses were advancing to the railways large sums of money for construction purposes, in advance of the sales of bonds. In 1873 the market had been unable to absorb the large amount of new railway bonds offered.*" (Eames, 1894). "*The important stocks were held by powerful cliques, who would not sell but stubbornly resisted a decline. The banks were overloaded and commercial credits expanded far beyond the limit of safety. The railroad properties, less prosperous than they had been, were threatened by hostile [granger] legislation. The sales of bonds, upon which many companies had relied for the supply of their need in any emergency, had been stopped by the prevailing distrust. Early in the month of Sep a premium of one-sixteenth per day was demanded for money, and an extraordinary decline in gold indicated that the powerful speculators who had been operating for an advance in that market had at last sold out. The failure of the New York Warehouse & Security Co, Sept 8th, led to some alarm and depression, but it was still supposed by most dealers that the disturbance was not one of general importance. On Sat, the 13th, however, the inability of the Canada Southern Railway to meet its obligations caused the failure of Kenyon, Cox & Co., and in the apprehension, which then prevailed firms previously of great credit found themselves unable to raise money. On Thurs the failure of Jay Cook & Co. occurred, in consequence of large advances to the Northern Pacific Railroad, and from that time the prostration of funds and of banks continued for weeks.*" (Grosvenor, 1885).

1007 In 1872, 4 national banks with a combined capital stock of $581 K; in 1873, in the pre- and post-Sep periods, the number of banks that failed were 2 and 9 and their capital stock was 138% and 473%, respectively; over the 5 years from 1874 through 1878, these figures are 3, 3, 10, 11, and 11 and 52%, 138%, 175%, 730%, and 277% (COTC, 1910). The uptick in 1877 is due to the failure of the *Bank of the State of Missouri* (430% out of the 730%), which went into receivership following a declaration of insolvency by an examiner due to speculative railroads investing before the crisis (Cable, 1923).

1008 "*Legislation was passed in March 1869 prohibiting national banks from overcertifying checks… Overcertification could be legally pursued by State banks and trust companies, and, although illegal, continued among national banks. This was similar to the legal limbo of the suspension of convertibility and the issuance of clearinghouse certificates... As with suspension of convertibility, the overcertification privilege could be suspended. Indeed, in 1873 the NYCHA suspended overcertification, forcing the NYSE to close for an unprecedented 9 trading days. NYCHA was concerned with the heightened counterparty risk from broker defaults during the 1873 panic… Certification of brokers' checks concentrated settlement risk among the NYCHA member banks... The 1873 panic was the last time that the NYCHA suspended overcertification, but thereafter undertook a dialog with the NYSE concerning settlement and risk management practices... The NYCHA banks continued to pressure for a stock clearinghouse, or the use of time options as an alternative to overnight settlement [1879]… An additional proposal was to create a clearinghouse within the NYCHA, where the NYSE member brokers would jointly guarantee the checks used by brokers to clear trades, thus obviating the need for bank certification of such checks or the need for a separate stock clearinghouse [1882]… A related proposal was to create a safety fund within the NYSE that would insure the checks of member brokers.[1884]* " (McSherry and Wilson, 2013).

1009 On Sep 20th the NYSE, "*for the first time in its existence, closed its doors, and they were not again opened for a period of ten days, during which period legal-tender notes commanded a premium over certified checks of from 0.25 to 3 %. An active demand for deposits commenced on the 18th, and increased rapidly during the 19th and 20th, chiefly from the country correspondents of the banks; and their drafts continued to such an extent, 'calling back their deposits in a medium never before received,' that the reserves of the banks were alarmingly reduced. The 'call loans,' amounting to more than $60 M, upon which the banks relied to place themselves in funds in such an emergency, were entirely unavailable, because the means of the borrowers upon the realization of which they depended to repay their loans were, to a great extent, pledged with the banks. These collaterals could in ordinary times have been sold, but at that moment no market could be found except at ruinous sacrifices… A meeting of the clearing-house association was called, and on Sat evening, Sep 20, the plan for facilitating the settlement of balances at the clearing house was unanimously adopted*." (Sprague, 1910). The NYTimes (1873) "*The adherents of the bear clique thought that Western Union ought to sell at 70 and graded their bids accordingly. The few believers in a bull movement thought it was cheap at 80, and accordingly stood at that figure. When an average was reached, it appeared that the bears were the strongest, and so prices began to decline... The failure of Jay Cooke & Co. on the previous day had inspired such a distrust in wealthy banking-firms... that it soon became evident that the street was completely demoralized, and that there was not the slightest chance for the bulls to resist the onset. The Vanderbilt stocks, which are held at high prices, and which in ordinary times are regarded as among the safest of all investments, gave way shortly, and a tumble of a remarkable nature ensued. While prices were falling off rapidly, the news came of the suspension of Fisk & Hatch... one of the strongest and most careful banking-houses in Wall street. Up to this time, everything had been going in favor of the bears. As soon as the failure was announced on the Exchange, a tremendous panic ensued… a sort of retreat on the part of the bulls and holders of stocks was turned into a frightful rout. There were no quotable prices for stocks for several minutes. Then a kind of 'bottom' was found... 5 to 25 % below the quotations of Thurs. Money too grew stringent, everyone being afraid to loan upon any kind of stocks… Money closed at 1.5% per day and interest. The person who finally sustained the market and kept it from breaking to a point where half of the street would have been inevitably ruined - was Jay Gould. He bought during the low prices several hundred thousand shares of railroad stocks, principally of the Vanderbilt stripe, and in this way put a check on the ruinous decline. These stocks were bought principally for cash, and the large clerical force of… brokers, was employed until 5 [PM] in taking care of the deliveries and mating out the checks in payment.*"

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1010 "*35 companies issuing $91.7 M of the bonds defaulted between Jan. 1, 1878, and Sept. 20, 1873; 25 companies issuing $152.6 M bonds defaulted between Sept. 20, 1873, and Dec. 1, 1878*." (Dana, 1876, pg.17). For the second time period, an associated table has an identical amount but with a date ending Dec. 31, 1873.

1011 "*On Oct 19, 1873, the firm of Jay Cooke, McCulloch & Co. of London, England, were indebted to the Navy Department of the United States for a balance placed in their hands for disbursement… On Nov 26, 1873, all the persons composing the American firm were adjudicated bankrupts, and Lewis was appointed trustee of the estate of the individual bankrupts and of the firm. The assets were insufficient to pay all the indebtedness, and suit in equity was brought by the United States against the trustee to enforce its preference. It was held that the United States was entitled to the payment of its debt out of the separate property of the individual members of the firm in preference and priority to all other debts due by them or either of them or by the firm. And it was further held that the United States was under no obligation to prove its debt in the bankruptcy proceedings or pursue the partnership effects of the firm in London before filing its bill in equity against the trustee in the Circuit Court and that that court had original jurisdiction of the case thereby made, although the fund arose and the trustee was appointed under the Bankruptcy Act*." (United States v. Wood cited in Bender, 1924); discusses legal precedent. GPO, 1897, p587 discusses contemporary litigations.

1012 "*[T]he great want of the merchants at present was foreign exchange. No business could be done; no foreign shipments made… The Western dealers would not send their grain to New York, as there was no money to pay drafts… A great measure of relief could be afforded if the Government would include in its purchases the bonds… Gradually the fact leaked out that over $24 M had been paid out by Gen. Hillhouse, and that the figure to which he was limited had been reached, neither had he power to purchase [5-20 Treasuries] so long as such were offered. It was also announced that the Government would not anticipate the payment of the interest on the bonds of 1874, and added to this [UST's] gold sale was postponed… Many claimed that the government purchase of bonds simply gave cash to frightened holders of securities, and aided the savings banks. Leading bankers expressed dissatisfaction with regard to aiding smaller concerns, and being obliged to 'pool' with them; they considered that it would have been better to struggle through, and let those who could not meet demands go into liquidation. Others argued, however, that as these certificates had to be made good… The wholesale trade commenced to feel the squeeze too; they felt that the banks which had virtually suspended could do little for them should customers fail to meet paper falling due, and that renewals would be difficult to secure; the banks, as a general thing, did not encourage accounts which would necessitate discounts or aid in any way... There had been a shrinkage in the value of various securities of a great many millions; the banks had pooled their funds, but that money was payable… [and] commercial paper in large amounts fell due [soon]…if the banks were cramped and money in the interior tight, a commercial crisis must follow. The crops were locked up, shipments to foreign countries and cash returns were delayed, and altogether, although the wholesale men spoke hopefully, they yet discussed all those points, and felt uneasy as to the future."* (Journalist, 1873).

1013 NYCHA reported "*It must always be remembered that in the absence of any important central institution, such as exists in other commercial nations, the associated banks are the last resort in this country, in times of financial extremity, and upon their stability and sound conduct the national prosperity greatly depends*" and so "*the New York banks were ready to accept payment on cleared checks in clearinghouse certificates rather than in currency or bank notes. The advantage of the use of these certificates was that the incentive for any bank to bid deposits away from its competitors was reduced. Sprague insisted that this system had to be accompanied by an agreement to pool bank reserves; otherwise, a bank that was not subject to a net drain might be forced to suspend payments after it paid cash to its own depositors if it had not received cash in settlements from other banks. In 1873 reserves were pooled. One serious drawback of clearinghouse certificates was that they were acceptable only in the local area – New York, Philadelphia, Baltimore. Thus these certificates helped maintain domestic payments such as payrolls and retail sales within a city but they dampened the effective flow of payments between cities... Another device [used in 1873 was] to suspend the publication of bank Statements… in the hope that 'what you don't know won't hurt you'. The technique was designed to hide the large losses of reserves of a few banks since the fear was that accurate news would further reduce depositor confidence*." (Kindelberger and Aliber, 2005). Whereas any single bank may have been risky, the aggregate NYCHA was significantly stronger and more trustworthy *"centralized and regulated member banks' distribution of currency to the public by issuing a quasi-currency directly to the public. When depositors arrived at banks demanding currency, banks were authorized to stamp depositor's checks as 'Payable through [NYCHA]"* (Gorton, 1985). Following the Panic of 1857, President AEB Coe (former-Cashier of OLIT) proposed the new credit instrument in 1860 (Gorton, 2012). "*[An] innovation during the panic of 1873 was the issue of irredeemable 'certified' checks to stretch the reserve base. These checks did not have cash on deposit as the basis for their issue. They were simply a quasi-currency. To prevent anyone from cashing them and thereby reducing bank reserves, the clearinghouse policy committee adopted this resolution: 'All checks when certified by any bank shall be first stamped or written 'Payable through the Clearing House' (Sprague 1910, p. 54). This resolution put certified checks on a par with clearinghouse loan certificates. The banks accepted them as settlement media by common consent through their clearinghouse association, but did not have to redeem them with legal tender*." (Timberlake, 1984).

1014 By 1873, 10 States were in default: VA, NC, SC, GA, FL, AL, MS, LA, AK, and TN. Reviewing these States from 1860 and 1870, Scott (1893) finds that the Civil War greatly reduced their taxable basis and greatly increased their debt to finance railroads and banks (pg. 231); moreover, a review of security prices from States from 1872 to 1879 shows "*the money-loaning public does not distinguish between cases of justifiable and unjustifiable repudiation, but has condemned all indiscriminately.*" (pg. Scott, 1893, pg. 214). After a railroad failed to pay interest in 1871, Alabama "*took possession of the road, and ultimately sold it, after having paid out nearly $1 M in interest on its bonds, and after having become responsible for the payment of $312 [K] in receiver's fees, and $140 [K] in employees' wages... she was still liable for the indorsed and direct bonds, and was obliged subsequently to compromise them all. By 1873 the other subsidized railroad companies had defaulted, and she became responsible for the interest on over $18 M bonds in addition to the burden of her regular debt... she was obliged to suspend the payment of interest, and her debt thus increased with frightful rapidity;*" and in 1868, the Arkansas "*legislature passed an act authorizing the loan of the State's credit to railroads. It provided that the railroads should pay the interest on the bonds loaned them, and, in case they defaulted, the State was authorized to take possession of them and, if need be, to sell them for her reimbursement. Under authority of this act, railroad bonds were issued to the amount of $5.3*

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M. The history of these bonds is merely a repetition of the history of similar issues by other States. All the railroads aided defaulted in the payment of interest in 1873, and they were temporarily handed over to receivers appointed at the request of the State treasurer. In May, 1874, however, the legislature repealed the law authorizing the roads to be put into the hands of receivers, and they drifted back into the possession of their original owners, leaving the State under obligations to pay the interest and principal of the $5.3 M of bonds. Being entirely unable to meet the increased interest charge which these bonds threw upon her, she adopted the policy which has been noted in connection with the bank bonds, and allowed the interest to accumulate." (Scott, 1893). Settlement took years (e.g. W. Virginia in 1919).

1015 From 1872 to 1875 "*railroads having at the time outstanding... $835 M in bonds and... $626 M in stock... not only defaulted on their obligations, but failed to effect any compromise with creditors so that operations were continued by amicable settlements. In most of these cases foreclosure ultimately became necessary; in others, after long delay and serious loss to all parties concerned, the property was surrendered to the bondholders, or the interests of stockholders were completely extinguished by leases in which only provision for the payment of interest on the bonds was made.*" (Grosvenor, 1885).

1016 "*Instances were not uncommon of the preferential payment of pre-receivership operating expenses with the concurrence of the bondholders.[See, for example, Gurney v. Atlantic and Great Western Ry. Co., (1874) 58 N. Y. 354] Probably the most influential figure in the development of the rule was Circuit Justice Thomas Drummond of the 7th circuit. Though at first committed to the belief that a railroad mortgage is the same as an ordinary real property mortgage his experience with railroad receiverships brought about a change in his views. It is said that the order made by him and his associate, District Judge Gresham, appointing a receivership for the Louisville, New Albany and Chicago Railroad Co in 1870 was the first order ever made in a contested suit which directed preferential payment of pre-receivership operating expenses. (1 Gresham, Life of Walter Quinton Gresham 370, 371.) Mrs. Gresham records that as early as 1859 in appointing a receiver in the Chicago and Alton receivership Judge Drummond had directed payment of certain accrued operating expenses but with the consent of the bondholders.*" (Fordham, 1931).

1017 "*When the public interest requires the continuance of the business, these certificates create a prior lien on all the corporate assets, ranking ahead of mortgages; but otherwise it appears they are not so secured. [Wallace v. Loomis (1877) 97 U. S. 146; Cake v. Mohun (1896) 17 Sup. Ct. 100]*" (Rosenberg, 1917). "*The distinction between quasi-public corporations, like railroads, and other corporations was also made explicit in the special treatment given to railroad receivers' certificates. Only the certificates issued by receivers of railroads were given priority over secured debt by the courts. Receivers' certificates of other types of corporations were not so privileged. Most states passed legislation that put the problem of insolvent corporations into courts of equity and empowered the courts to appoint receivers to oversee the liquidation of the firm. Receivers were appointed for insolvent corporations in manufacturing, mining, and trade, but these receivers were not allowed to issue certificates with priority over secured creditors. Receivers of private corporations were expected to liquidate the firm's assets and distribute them among the creditors, in contrast to railroad receiverships whose primary objective was to continue to operate the road. Decisions rejecting attempts by receivers of purely private corporations to issue receivers' certificates emphasized that the difference between the two was the quasi-public nature of railroads. The courts declared it their duty to protect the contractual rights of creditors, a duty that was only outweighed by the interest of the public in the case of railroads. The issuance of receivers' certificates to facilitate the reorganization of an insolvent corporation in manufacturing required the consent of all the creditors. Denial of the right to issue receivers' certificates made clear that rehabilitation of the firm was not yet the primary goal in the case of industrial receiverships. Although the courts continued to distinguish between railroad and other receiverships, James Rosenberg speculated that all that was needed was the failure of a large-enough firm for the courts to uphold the issue of receivers' certificates for industrial corporations. Although courts did not put railroad and industrial corporations on the same footing, Congress did. With the additions of §77 and 77b to the Bankruptcy Act in 1933 and 1934, and following the Chandler Act, which was enacted in 1938, reorganization became a part of federal bankruptcy law.*" (Hansen, 2000).

1018 *"Where the revenues are insufficient to pay the wages, the court is apt to authorize the receiver to incur a debt in order to keep tip wage payments, sometimes even directing the issuance, for this purpose, of receivers' certificates' which become a first lien on all the property… Where receivers' certificates, made a first lien on property, are issued to an amount in excess of the increase in the value of the property which the proceeds of the certificates occasion, the value of the other securities is, of course, correspondingly decreased… Funds for building a road may sometimes be raised by receivers' certificates where they could not be secured on ordinary mortgage bonds, since no method has yet been discovered for adding later liens which will take precedence of the receivers' certificates... Strikers on the New York & Oswego Midland Railroad in 1874 complained that the receivers' certificates in which they were paid were worthless.*" (Swain, 1898). "*In one of the earliest decisions in support of the use of receivers' certificates, Meyer v. Johnston (1875), the Alabama Supreme Court relied upon a public interest justification. The Court declared that neither it nor other courts had been forced to determine the extent of a receiver's powers before: 'But these properties with their appurtenances, vast in extent and value, yet very perishable if unused and neglected, existing as the estate of private individuals associated into corporations, but essentially public works, in whose operations the public and the state are concerned, when drawn into litigation must be dealt with by the courts according to the nature and circumstances of the subject.'… the Alabama Court emphasized the importance of protecting not just the creditors but also the public and the state. The U.S. Supreme Court expressed similar views regarding receivers' certificates. In Wallace v. Loomis (1877), the Court upheld the issuance of receivers' certificates with priority over mortgage bonds.*"

1019 "*'Alas for the day when the owner's right and title to property can be subjected to the discretion of any court, and when a constitutional provision can be made subject to the idea of undefined necessity! It has been said that you cannot measure a live snake: that is quite as easy a task as to measure the necessities of a railroad for money when in the hands of a receiver.' [(Clayton, 1878)] Nevertheless receivers' certificates continued to be more widely used. In the reorganization of the Wabash, occurring in 1915, there were receiver's certificates to the extent of more than [$16 M].*" (Levi and Moore, 1938). "*It hardly needs mention that if no regard is had for continued solvency and the protection of the stockholder, the lowest cost of money might be obtained by bankruptcy proceedings and the use of receivers certificates. The equity money would thus be obtained cost free. The objective of low money costs must, therefore, be pursued within the limits made possible by maintenance of the capital contributions of investors.*" (Morton, 1954). "*Receivers' Certificates are non-negotiable evidences of debt issued by order of the court. Without the order express or implied or subsequent ratification of the court, the receivers' creditors are entitled to no preference over other creditors.[Myers v. Johnson 58 Ala. 237]*" (NLW, 1896). "*Students of constitutional law ask whether*

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these certificates do not impair the obligation of contracts, and whether by their issue courts of equity are not taking private property for public use without due process of law. A correct decision of this question involves a definition of the scope of the judicial function. The State of Alabama has given us the leading case on this subject. It leads all others, prior or subsequent, in the powers it would confer upon receivers in the matter of these receivers' certificates." (Walker, 1992). "*[T]he debtor-in-possession ('DIP') financers who now figure prominently in many of the most high-profile Chapter 11 cases—isn't new at all. Chapter 11's distinctive post-petition financing rules trace their ancestry back to the origins of large-scale corporate reorganization in America in the 19th century. Corporate reorganization began with the common law 'equity receiverships' that were used to reorganize America's troubled railroads) Almost from the beginning, courts promised special priority to lenders who would help finance reorganization efforts. Originally known as 'receiver's certificates', these loans helped to keep the railroads going during the often-lengthy restructuring process, much as DIP financing does today.*" (Skeel, 2004).

1020 By 1876, of the $789 M of railroad debt in default, creditors failed to receive settlement on $538 M (68%) (Dana, 1876, pg.17). "*The foreclosure of railroads followed after the defaults, and often at a long distance in time... [The] record of foreclosures for [1873 to 1875] will show how slowly the failures of 1873 found expression in final decisions of the courts.*" (Grosvenor, 1885).

1021 Receivers were *"the principal officers of the company. Out of 150 cases spread [from 1868-98], were 80 in which the president... was appointed receiver; 25 others were general managers; 17 superintendents; and 16 vice-presidents. Other officers represented were the auditor, the treasurer, the chief engineer, and individual directors.*" (Swain, 1898).

1022 "*As with the prior federal bankruptcy acts, criticisms levied by creditors included small dividends, high fees and expenses, and lengthy delays. Northern creditors who had hoped to use the bankruptcy law to facilitate collection from southern debtors were disappointed. Indeed, most of the pressure for repeal came from creditors… An important benefit of [BA67] to debtors, however, was that it allowed debtors to elect the benefit of generous State exemption laws as an alternative to the federal scheme.*" (Tabb, 1995). In 1877, the *Banker's Magazine* featured a speech from the *Bankers' Association Convention* by the Cashier of the *New York State National Bank at Albany* on the "*the propriety of trying, by concert of action, to secure uniform collection laws, both National and State, to supersede the chaos now existing in them, and thus mollify the evils bank and other creditors are exposed to in trying to collect their just dues from debtors under the present system. Next to the tax question I think this is the most important one on which bankers should bring the influences of their combined action to bear.... extravagant allowances to counsel and assignee—practically countenance the confiscation of debtors' estates, which are eaten up by 'costs' and 'legal expenses,' leaving almost nothing for the creditors, no matter how large the assets or how reasonable expectations of the creditors for a fair dividend... A large concern fails and at once the opposing legal machinery of the United States Bankruptcy Court and the State courts are put in motion. Between the two the claims of the creditors are ground to powder.*" (Antwerp, 1877)

1023 "*The enormous costs of bankruptcy proceedings are notorious. Both In England and America, for hundreds of years, frequent and unavailing efforts have been made to remove this objection. The success with which these extravagant charges are made and collected is due partly to the imperfect machinery of the law, but chiefly to the want of active, personal interest on the part of the creditors and of the assignee. The Principle claimed by Its friends to be the basis of the bankrupt law - equality among creditors in case of insolvency — may be sound and just, but while the provisions for carrying it out are too defective and the costs and expenses are so great the assets are absorbed before the principle can be put into practice… This voluntary feature of doubtful legality, which has been everywhere denounced as the prolific source of fraud and commercial dishonor..., while the involuntary feature, which accomplishes the original and only objects of a bankrupt law… Of doubtful constitutionality in its voluntary principle, of undoubted unconstitutionality in its practice; wanting in uniformity both in its property exemptions and judicial construction; no-equal otherwise in its operations and iniquitous in its consequences; directly subversive of one of the plainest and most obvious doctrines of common honesty a constant allurement to fraud and incitement to reckless speculations; failing, as it unquestionably dart, to prevent those 'preferences' which are complained of under the State laws; a constant obstruction to regular, legitimate trade by its frequent forced sales and impairment of confidence; executing itself through an elaborate and costly machinery whose running expenses are coextensive in a large proportion of cases with the available assets of the bankrupt; requiring for its administration a large increase of officers dependent for appointment upon the executive department, thus magnifying and centralizing its power—the bankrupt law, from whatever stand-point it be considered, whether political, moral, commercial, upon principle, precedent, and practice is adverse to the best interests of the community and should not be continued an hour longer as law of this land… As part of this remedial legislation I regard the repeal of the bankrupt law. It will restore confidence and commercial courage; it will call forth capital from its corners of concealment; it will stir the sluggish pulses of trade and bring back to our country once more an era of honesty, economy, and justice, with their attendant blessings of peace, progress, and prosperity.*" (Willis, 1878, p.194). Following the Senate's request for the expenses of bankruptcy proceedings on Feb 24, 1873, the Attorney General prepared a report in (GPO, 1874).

1024 According to Juglar (1916), The amount of national banks' discounts from 1870 to 1873 was $725, $831, $885, and $944 M, respectively; then "*The rise in prices stopped, and incipient liquidation became apparent at the end of the year, and reduced the amount of paper on hand to $846 M... a movement of revival... The amount of discounts rose from $856 M to $984 M in 1875, and... reduced the amount of the discounts to $814 M in 1879, simultaneously... when prices had reached the lowest quotations, and when a resumption of business was about to occur.*" The UST Secretary "*was easily prevailed upon to issue (March, 1873—Jan, 1874) $26 M of legal-tender notes in the purchase of bonds in order to relieve a stringent money market ; and when Congress met in Dec, 1873, demands for government action took every form known to finance. So great was the impetus to the activity of expansionists and greenbackers, that for a brief period any positive action looking toward resumption seemed indefinitely postponed. Only by the veto of President Grant, which has been referred to, was actual inflation checked.*" (Dewey, 1918). "*The year 1874 was marked by the passage of the inflation bill, 'which was vetoed by President Grant,' and an amendment [requiring legal tender to be only gold and silver was] introduced the previous year was shortly afterward presented.*" (Ames, 1897). John Jay, COTC Knox observes that the permanence of USTLTNs depended upon UST officials: *"the position of the National Banking Bureau in [UST] was at the commencement very strong. With Secretaries Chase, Fessenden, and McCulloch the legal-tender note was but a temporary expedient, while the national bank currency was to be the permanent money of the country. With Boutwell and Richardson the importance of the legal-tender note as a financial factor in increasing the power of the secretary began to gain on the national bank-note. This tendency began to be felt in the subordinate offices… In fact, there were from a very early day two factions in [UST], the legal-tender*

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faction and the national bank faction. The former, whenever they had the opportunity, did what they could to prevent the retirement of legal-tender notes and the substitution therefor of national bank currency." (Dewey, 1918).

1025 Since 1864, "*The bond deposit was fixed at not less than $30,000 nor less than one-third the capital stock. Provision was afterwards made by the Act of June 20, 1874, for the withdrawal of circulating notes at the option of the banks and the surrender of an equivalent amount of bonds by the Treasury, provided that the amount of bonds on deposit should not be reduced below $50,000…* " (Conant, 1915).

1026 "*It has been the trading of agricultural futures, however, that from its inception has produced calls for government intervention. Throughout the late 19th and early 20th centuries, farmers were often opposed to futures trading, particularly during periods when prices of their products were low or declining. They presumed that dreaded speculators were depressing their prices. The States were the first to respond to calls for government regulation of futures. For the most part, State legislation on futures was limited to prohibitions on bucket shops, that is, operations that purport to act as brokers of exchange-traded futures but 'bucket' rather than execute their clients' trades. An Illinois statute of 1874 signaled early concerns about market integrity. The statute criminalized the spreading of false rumors to influence commodity prices and attempts to corner commodity markets.*" (Greenspan, 1997).

1027 "*The Freedman's Savings & Trust Co, although this was a savings bank rather than a trust company… was established through the efforts of [Senator (R-MA)] Sumner and others, in 1865, as a measure of philanthropy to aid the negroes in accumulating property for support in their newly-gained State of freedom. For some years its business prospered greatly, and 30 branches were established in the Southern States. In 1870 its charter was amended so as to loosen the restrictions on its investments; and this action, together with the panic of 1873, proved disastrous. The company became in solvent in July 1874, and its failure was the source of great distress among the poor negroes who had trusted the institution fathered by the Government. The depositors numbered 72,000, scattered over thirteen States. The liabilities at the time of failure were $3 M; the amount paid creditors, after a delay of several years, finally amounted to 62% of their claims... Among other companies that suspended during the panic of 1878 were the Brooklyn Trust Co, the Union Trust Co, the National Trust Co, and the Warehouse Security Co, of New York.*" (Herrick, 1915). Rise and fall of SBs after 1873: "*Again they will become attractive to the eye of speculation ; new [SBs] will spring up like mushrooms, prepared to compete with old institutions, in the advantages they offer; again the strain will come, some day the test will be applied, they will be called upon to stand and deliver, dollar for dollar, all that they have received in deposits and credited as profits. Their inability to do this will be apparent upon inspection; on this insolvency will be predicated, receivers will be appointed, lawyers will be retained, courts will be set in 'motion,' and the whole paraphernalia of legal proceedings, with their costs, expenses, and disbursements, eating the life out of the deposits, will be set in array, and the same wretched experience of the last few years will be gone over again...*" (Keyes, 1878b, p.603).

1028 "*The Superintendent of Banking of New York, in his report of Dec 1873, recommended that the trust companies be brought under stricter State supervision. At. this time some of them were under no supervision at all, while some reported either to the State Comptroller, the Superintendent, or to a Judge of the Supreme Court. The Super intendent's recommendation was adopted, and the companies were brought under his supervision in 1874.*" (Herrick, 1915). "*New York passed a general incorporation law in 1875 that indirectly discouraged the formation of new [SBs] and increased their safeguards. Among other new regulations, the State required all [SBs] to maintain reserve funds, limited the rate of interest they could charge before that fund was established, and held [SB] trustees personally liable for any interest payments to depositors that exceeded the bank's earnings. Each of these provisions increased the safety of new banks while making it more difficult for them to compete with established institutions. While a movement to institute similar laws had been developing in New York and New England since the late antebellum years, mutual [SBs] advocates who clung to the original notion of these institutions as anti-poverty and social reform efforts viewed the 1875 New York law as a model for future regulation and many other States that already had mutual [SBs] followed with their own legislation.*" (Osborne, 2014).

1029 "*In California we have no bankers—that is, no dealers in money. Our banking system, or rather want of system, enables a few men with little or no capital to start a bank—that is, a place where those who are so disposed can deposit their money; because the Constitution of the State prohibits the establishment of banks, such as exist in every other State in the American Union, and in every commercial town in Europe. The effect of our peculiar plan of banking is, that the banker has everything to gain and nothing to lose. It is well known that such is the potency of bank rings, that constitutional pro visions for the protection of creditors are practically inadequate; that vast fortunes are amassed at the expense of depositors; that stocks rise and fall irrespective of their values, while industry suffers, and legitimate business is demoralized. The farmers cannot guard their interests too carefully against these evils. [BOC] a is not a dealer in money, but deals in stocks, mines, purchases coal mines, runs quartz and lumber mills, contracts for and controls the supply of quicksilver, silver and, gold coin, tonnage and grain, and is directly or indirectly connected with every speculative enterprise in the State. The savings banks, which control $40 M, are not banks at all, but establishments where people place their money on deposit, subject to be withdrawn on specified notice, provided the funds are on hand. Every depositor in a savings bank signs a paper when making his deposit, to the effect that if the bank has not got the money when he demands it, he is content to wait till it obtains it.*" (Carr, 1875). "*The oldest chartered commercial bank in California (now no longer in existence) was the Pacific Bank of San Francisco, which was established in 1863, the outcome of a financial organization of another name incorporated in Feb 1862. Peter H. Burnett, first Governor of California after its admission into the Union, was the first president… The only other incorporated banks doing business in San Francisco at the time the Pacific Bank entered the field were the Bank of British Columbia, incorporated by royal charter in 1862, The Bank of British North America, incorporated by royal charter in 1840. These banks were simply branches of the above named. Wells, Fargo & Co., incorporated under the laws of Colorado, was also in the banking business here at that time, and had been so engaged from 1852. The Bank of California was incorporated in June, 1864. by W. C. Ralston and his friends.*" (Wright, 1910).

1030 "*The directors of [BOC] had determined, in the spring of 1864, to establish a branch bank at Virginia City, and it was necessary for them to select some agent to whom this important trust could be confided… When the agent of [BOC] came to Virginia City [in 1864] the local banking-houses were loaning money to the mill owners and other business men of the district at high rates of interest, ranging usually from 3 to 5% per month, and it was commonly believed that they had entered into an informal agreement to fix and sustain this exorbitant tariff. Mr. Sharon at once offered loans on good security at 2% per month, and existing combination was dissolved in consequence.*" (Lord, 1883)

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1031 "*The organic law of California forbids the issue of paper money, and more than almost any other part of the world the State has exclusively adhered to the use of a coin currency. There was also considerable sentiment about this, as was manifested by the opposition to the use of legal-tender notes and National bank notes, not so much during and immediately after the war when they were at a discount as compared with gold and silver, but even since the resumption of specie payments.*" (Knox et al., 1900).

1032 Senator Sherman (R-OH) noted "*This provision in regard to the limitation of the circulation of a gold bank to $1 M was put in in the House; as I understand, on the motion of a member from California to prevent [BOC] from coming in and absorbing the great amount of circulation. I always thought it was wrong to make this special discrimination to exclude a particular bank; and therefore, we have once or twice reported a proposition to repeal this provision, but so far as I have known it has never yet passed the House. Certainly, I would not desire to put on this bill a provision that would be likely to encounter local opposition in the other House if not here. The Senators seem to agree to it; but the members may not agree to it in the other House. At any rate, it is a proper provision for a separate bill, and· I shall vote for it at any time in that form*." (GPO, 1875).

1033 "*California bankers had been criticized for their refusal to organize national banks and handle a paper currency of variable value. In reply they said, 'Give us a paper currency redeemable in gold coin, and we will give hospitality to the national bank system.' After much discussion, Congress passed a special Act authorizing the issue of $45 M in gold notes redeemable in gold coin by the issuing bank upon demand. This was a special concession to California. Some Boston parties applied for the privilege of organizing such a bank, but not one ever went into operation on the other side of the country. The First National Gold Bank of San Francisco was the first of the kind to go into business [in 1871].*" (Wright, 1910). "*This feeling had the effect of retarding the organization of National banks in California, and in deference to it, and yet with a wish to extend the benefits of the system to the State, Congress on July 12, 1870, enacted a law for the creation of National gold banks, that is banks the currency of which should be redeemable on demand in gold coin. These banks were to be organized in every respect similar to other National banks, but the bonds deposited by them as a basis for circulation bearing interest in gold, were permitted to be a basis for circulation to the extent of 80%, of their par value only, instead of 90%, as in the case of other National banks. This had the effect of rendering the circulation unprofitable. Their reserves on circulation were to be 25%, of the aggregate amount outstanding. Gold banks in San Francisco were not required to redeem their notes in New York city as were other National banks in the redemption cities then existing. There was nothing in the law preventing gold banks from being organized elsewhere than in California, and one such, the Kidder National Gold Bank, was organized in Boston, Mass., but never did any business. The First National Gold Bank and [NGBT] were organized in San Francisco, and only 9 were organized in all in the State.*" (Knox et al., 1900).

1034 "*The corporate form of business was first used extensively by Californians to raise capital needed to develop the recently discovered silver bonanzas of the Comstock Lode in Virginia City, Nevada. The shares of the Comstock mining corporations were popular investments in San Francisco. Unfortunately, the nature and organization of the Comstock Lode encouraged the public to speculate rather than invest in mining stocks. As a result, the market for Comstock shares degenerated into a large and often dishonest lottery. The abuses of Comstock management rings were as bad as anything witnessed in Western Australia. The American method of correcting the problem was to enact accounting reform laws. In 1874 the California legislature passed a mining law that required the monthly preparation of balance sheets and a semiannual report of all transactions. This act was rather vague with regard to the form and content of these financial reports. The law was amended in 1880 such that the mine managers were required to prepare monthly reports that showed the sources of all cash receipts, to whom all disbursements were made, and for what purpose all disbursements were made (Thompson, 1918, p156-8). These requirements reflected the existing financial reporting practices of Virginia City's leading mines.*" (Vent, 1991). "*Another point of interest in the gold market has been the excitement in mining stocks, which has spread ruin and distress throughout the Pacific States. Tempted by the stories of sudden fortunes acquired by investments in the bonanza mines, thousands of persons mortgaged their houses and farms, or otherwise sacrificed their property, in order to buy shares at speculative prices. The oscillations of the shares were extraordinary. In Oct 1874, Ophir ranged in price in the San Francisco market at from $43 to 64. Through the adroit management of the speculators. by Jan. 13, Ophir ran up to $230, and we find them quoted as high as 300. In 2.5 months, the nominal value of the mine increased, according to the quotations of the San Francisco Brokers, from $5 to 23 M, a gain of over $17 M. On Feb 5, Ophir was once more selling at $61 per share. band of unprincipled speculators, as it now appears, had obtained control of the Ophir mine by the purchase of 20,000 shares at $80 per share. They also had to buy in the open market more shares to make their total investment in this single mine about $3 M. This was the first step in the manipulation. The second step was to report extraordinary developments in this and other mines, so as to force up the price of the stock, and when it reached 250, the third stage commenced. The clique endeavored to make all the profits they could; they began unloading, and they continued to sell steadily until the bubble burst.*" (Bankers Magazine, 1857). "*The bank, through its late president, had loaned heavily on mining and water stocks, which immediately previous to the suspension had declined in an alarming ratio, and which were utterly unavailable when most needed. Extraordinary purchases of wheat had been made from the farmers. and as much as $6 M had been withdrawn from the coffers of the banks, primarily from those of [BOC], to meet them. The decline in stocks caused the big brokers who had heavy balances in the bank to make haste to withdraw them, and this becoming public caused the run resulting in suspension.*" (GPO, 1876).

1035 President Grant, in his 5th Annual Message on Dec 1, 1873 wrote "*I have become impressed with the belief that the act approved March 2, 1867, entitled "An act to establish a uniform system of bankruptcy throughout the United States," is productive of more evil than good at this time. Many considerations might be urged for its total repeal, but, if this is not considered advisable, I think it will not be seriously questioned that those portions of said act providing for what is called involuntary bankruptcy operate to increase the financial embarrassments of the country. Careful and prudent men very often become involved in debt in the transaction of their business, and though they may possess ample property, if it could be made available for that purpose, to meet all their liabilities, yet, on account of the extraordinary scarcity of money, they may be unable to meet all their pecuniary obligations as they become due, in consequence of which they are liable to be prostrated in their business by proceedings in bankruptcy at the instance of unrelenting creditors. People are now so easily alarmed as to monetary matters that the mere filing of a petition in bankruptcy by an unfriendly creditor will necessarily embarrass, and oftentimes accomplish the financial ruin, of a responsible businessman. Those who otherwise might make lawful and just arrangements to relieve themselves from difficulties produced by the present stringency in money are prevented by their constant exposure to attack and disappointment by proceedings*

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against them in bankruptcy, and, besides, the law is made use of in many cases by obdurate creditors to frighten or force debtors into a compliance with their wishes and into acts of injustice to other creditors and to themselves. I recommend that so much of said act as provides for involuntary bankruptcy on account of the suspension of payment be repealed." (Richardson, 1898). "*President Grant cited the 1867 Act as the cause of the Panic of 1873, arguing that [BA67] 'is productive of more evil than good at this time.' [Warren, 1935, p115] The panic is more conventionally traced to the failure of financier Jay Cooke's bank. But it was evident that the 'conditions of the times clearly demanded relief to debtors...'[Warren, 1935, p117]*" (Lubben, 2013).

1036 "*Thus, when the Senate considered [B67] for repeal, it determined that a need for uniform bankruptcy legislation continued to exist and, accordingly, struck out the repeal clause. Instead of repeal, the Senate opted to include several monumental amendments... This reform and overhaul of [BA67] so greatly altered the thrust of the legislation that it could be deemed the 4th federal bankruptcy act.*" (Lubben, 2013).

1037 Rep. Tremain (R-NY): "*No bankrupt law on earth has been so severe as this... It is enough that any man's commercial paper shall remain unpaid for 14 days; no matter though he may have been prevented from payment by such sickness that it would be unsafe to have any business relations with him or by any other unavoidable necessity; no matter though the banks, as they have recently done, withheld from him their usual facilities, if for 14 days he fails to meet his commercial paper his estate is liable to be thrown into bankruptcy... It is believed that the compulsory operations of this law, and the fact of its existence, tended very greatly to aggravate the recent panic, commencing in New York, extending to other commercial centers, and finally prevailing to a greater or less extent throughout the length and breadth of the land. Under the present bankrupt law, the moment a petition is filed the Federal judge has power, upon ex parte Statements, without security, to issue an injunction and order a restraint of the disposition of any property which the alleged bankrupt may have made in good faith, the validity of which is challenged; and in a recent instance $10 M worth of securities was thus tied up in New York on the ex parte order of the Federal judge, acting in entire accordance with the provisions of this law, when those securities consisted of stocks and the markets were falling. By means of that injunction it is alleged that many men were injured and others absolutely ruined.*" (Congressional Record, 1873, p.229). Rep. White (R-AL): "*I propose briefly to suggest the defect in the law and the remedies for them as they have presented themselves to my mind. Under the original bankrupt law a failure to pay commercial paper for 14 days was an act of bankruptcy, provided that failure was the result of fraud; or, in other words, if there was a fraudulent failure to pay commercial paper for 14 days, that was an act of bankruptcy. By the amendment of April 14, 1870, the mere failure to pay was an act of bankruptcy. Now, I suggest that this joint amendment of this law should be the restoration of the original clause, so as to make this fraudulent failure to pay, or the fraudulent conveyance of property, an act of bankruptcy.*" (Congressional Record, 1873, p. 233).

1038 "*In 1874, this law was amended by Congress in a way that made it very difficult and expensive for creditors to force a debtor into bankruptcy; and at the same time there was borrowed from the English law of 1869 a mode of discharge by composition that was objected to both in England and in this country as giving too much power to the debtor and too little to the courts. As we have seen, the dissatisfaction which this system aroused in England has led to its modification by the law of 1883, in which the theory of 'officialism' has replaced that of 'voluntarism.'*" (Dunscomb, 1893).

1039 Limited composition for corporations was added: *"As an alternative to liquidation, this provision permitted a bankrupt firm to restructure its unsecured obligations. But the provision had small, mom-and-pop businesses in mind and would not have proven helpful for railroads, whose capital structure was dominated by mortgage (that is, secured) bonds.*" (Skeel, 2014). "*An 1874 amendment added alternative provisions for compositions and extensions which would be binding on all unsecured creditors when accepted by a majority in number and 75% in amount.*" (Countryman, 1976). "*The provision of the 1874 amendment which was regarded at the time as its best feature, was that for a 'Composition with Creditors.' In nearly every insolvency there will be found some intractable creditors, generally those whose claims are the smallest, who will persistently refuse to compromise , and thus force into bankruptcy an honest and unfortunate debtor, who if allowed to continue his business under some satisfactory arrangement with his creditors, might eventually succeed in discharging his indebtedness. The purpose of this clause was to effect a composition that would be obligatory upon such a refractory minority. It partook of the nature both of a preventive composition and of an ordinary composition after bankruptcy. It provided , that in all cases of bankruptcy now or hereafter pending, whether an adjudication in bankruptcy shall have been had or not, the creditors may at a meeting to be called under the direction of the court, upon not less than ten days' notice to each known creditor of the time, place, and purpose of such meeting, resolve that a composition proposed by the debtor shall be accepted in satisfaction of the debts due to them from the debtor.*" (Dunscomb, 1893). "*Most importantly, the 1874 Amendments introduced a composition procedure [Bump, 1877], which in some ways resembled the reorganization provisions contained in modern bankruptcy acts. The provisions in question were modeled on provisions contained in the English Bankruptcy Act of 1869. The provisions allowed a debtor to remain in possession of his property if a sufficient number of creditors (majority in number and 75% in value) accepted the composition proposal. If the proposal was accepted, it was binding on all unsecured creditors named in the composition agreement. Those creditors who 'dissented' from the composition were paid according to a 'best interests' test. The 'best interests' test required that dissenting creditors receive as much payment as they would have received in a liquidation of the assets. As with the voluntary provision in 1841, some suggested that the composition provision of 1874 was beyond Congress's power under the Bankruptcy Clause. In rejecting this arguing, future Supreme Court Justice Blatchford explained: 'It cannot be doubted, that Congress, in passing laws on the subject of bankruptcies, is not restricted to laws with such scope only as the English bankruptcy laws had when the constitution was adopted. The authority of text writers, and the adjudged cases cited, and the practical construction of the provision of the constitution, by the fact of the enactment of provisions for voluntary bankruptcy, and for putting into involuntary bankruptcy others than traders, and for granting discharges without the consent of any creditor, are satisfactory evidence that the power to establish laws on 'the subject of bankruptcies' gives an authority over the subject, that is not restricted by the limitation found in the English statutes in force when the constitution was adopted. The power given must, indeed, be held to be general, unlimited and unrestricted over the subject. But the question recurs—what is the subject? The subject is 'the subject of bankruptcies.' What is 'the subject of bankruptcies?' It is not, properly, anything less than the subject of the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief. It comprises the satisfaction of the debt for a sum less than its amount, with the relief of the debtor from liability for the unpaid balance, and the right of the creditor to require that the amount paid in satisfaction shall be substantially as great a pro rata share of the property possessed by the debtor as it can pay, or can reasonably be expected to pay.' [In re Reiman, 20 F. Cas. 490, 496–7 (SDNY, 1874)]"* (Lubben, 2013).

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[1040] "*The amendatory act of June 22nd, 1874 introduced some radical changes. Under the former law a petition could be filed by any creditor whose claim exceeded $250 against a debtor who had committed an act of bankruptcy. This was changed so that, to obtain an adjudication, it was requisite that 25% in number and 33% in value of the creditors should unite in the petition. Recognizing the difficulty, if not impossibility, of knowing the number of creditors and the amounts of their claims, it was provided that if the debtor denied the allegation that the requisite number had joined in the petition, he must file in court a full list of his creditors with their places of residence and the sums due them respectively, whereupon the court should ascertain upon reasonable notice to the creditors whether 25% in number and 33% in amount had petitioned... Many objections were raised to the practical operation of this amendment. It was found difficult to procure creditors to this amendment. It was found difficult to procure creditors to join in the petition, and if more than 66% of the creditors were beyond reach by virtue of their residence, it would be impossible to secure an adjudication. In any event, much time would be lost, and in the interim a fraudulent debtor might dispose of all his property or give preferences, and the short interval during which such acts were voidable would have expired. Rather than submit to such trouble and delay, creditors preferred to rely upon the ordinary legal remedies of judgment and attachment, although they might be obliged subsequently to restore such property as a preference. But even this risk was lessened, for by the amendment such an act would not be invalid as a preference unless performed within 2 months (instead of 4 as in the law of 1867) before the filing of a petition against the debtor. And even though a preference had been so obtained by actual fraud, yet the creditor would only be debarred from proving more than one half his claim, instead of the whole amount as previously. But in case a bankruptcy proceeding had been commenced, the in disposition of the creditors to expend time and money in exercising a proper supervision, exposed the estate to losses by unnecessary litigation, exorbitant fees, etc... In the matter of the bankrupt's discharge, the Amendment of 1874 also made radical changes, and drew a distinction between the treatment of involuntary and voluntary bankrupts, rather difficult to explain. An involuntary bankrupt might obtain a discharge from the court regardless of the proportion of his debts paid or of any assent on the part of the creditors, provided he was otherwise entitled thereto by reason of having kept regular books, committed no fraud, given no preferences, etc.; whereas a voluntary bankrupt had to pay 30% of his debts, or obtain the consent of 25% in number, or 33% in value of his creditors. In other words, it would seem as if the intention of the lawmakers had been that the debtor who compelled the creditors to force him into bankruptcy was to be rewarded, while the debtor who voluntarily surrendered his property for the benefit of his creditors was to be punished. To obtain a discharge without paying any dividends or procuring the assent of the creditors, a man was obliged to commit some one of the various acts of bankruptcy, many of which were in their nature fraudulent. This criticism, however, is directed at the unreasonable distinction, rather than at the liberal treatment of the involuntary bankrupt.*" (Dunscomb, 1893). "*The most important provisions of the new Bankrupt act, approved by the President June 22d, are as follows: No proceedings can be taken in involuntary or compulsory bankruptcy excepting by the action of at least 25% in number of creditors and 33% in value of claims against the debtor. The provision of the present law is repealed, which requires that the assets of an involuntary bankrupt shall be equal to 50% of his indebtedness; the new law enacting that the payment of no proportion of the bankrupt's debts, nor the assent of any of his creditors shall be necessary to his discharge. In voluntary bankruptcy the bankrupt may be discharged on the payment of 30% upon his liability, provided that 25% of his creditors in number, and they representing 33% of the amount of provable indebtedness, agree thereto. The periods during which transactions intended to give preference are made inoperative, are changed, from 4 and 6 months under the old law, to 2 and 3 by the new. Hypothecated pledges or liens on the bankrupt's estate can only be set aside when it is shown that the party dealing with the bankrupt knew he intended to commit a fraud upon the Bankrupt law, and to go into bankruptcy. When a loan is made to a bankrupt in good faith and security taken, for the purpose of saving him from failure, the security shall not be invalidated by proceedings in bankruptcy. The specification defining acts of bankruptcy is materially amended in regard to suspension of payments, a fraudulent sus pension for any length of time, and actual suspension without resumption within 40 days, being considered such. All cases of involuntary bankruptcy begun since Dec 1, 1873, on the petition of creditors less than 25% in number and 33% in value, may, on the petition of the debtor, be dismissed. In computing the number of creditors who shall join in the petition, those whose respective debts do not exceed $250 shall not be reckoned. Proceedings may be discontinued whenever the debtor pays those secured debts which were the ground of throwing him into bankruptcy, or whenever, with the consent of the court, he and a majority of the creditors shall ask for a discontinuance. A majority in number and 75% in value of the creditors, in cases now pending or adjudicated, as well as those hereafter begun, may, at a meeting called by the court, agree to accept a composition offered by the debtor, and thus agreed upon, it shall be binding upon all creditors brought in according to the pro visions of the act. The court, however, may refuse to confirm such composition, for good cause. The important reduction is made of 50% in all existing fees, commissions, charges and allowances, except necessary disbursements, until the Supreme Court shall arrange a new tariff of charges.*" (Bankers Magazine, 1875).

[1041] "*Mill and mine plant was accounted good security; and having faith in the value and development of the Comstock Lode he did not hesitate to make large advances to both mine and mill owners—by direct loans and by the allowance of over drafts. There was a sharp competition among the mill-men to secure custom, but the charges for the reduction of ore were so high that the interest on the loans could be paid regularly while the mills were working continuously; but when the ore-supply failed from any cause, and mills were kept at work intermittently or stood idle, arrears of interest were allowed to accumulate, and in several instances mill owners were constrained to make over their property to [BOC] in default of payment. The bank would undoubtedly have been willing to extend its accommodation to any reasonable point, as the mills while standing idle were simply a burden upon the corporation; but the mill-owners, in view of the uncertain prospect of obtaining ore enough for their needs, preferred to make an assignment of their mills rather than incur the accumulation of debt which threatened them. No property deteriorates more rapidly in value than mill property when in disuse. The expense of a watchman and the accumulating taxes and insurance dues must be paid. The heavy machinery, the pans, shoes, and dies require constant attention to keep them in good order; for if left without care they will rapidly rust and become unserviceable. The very framework of the mill, even, being frequently made of poorly seasoned or unfit stuff, will crack and warp if neglected, so that in a short time it must be extensively repaired or replaced. If, furthermore, the supply of ore should totally fail, the mill would become practically worthless no matter how complete and serviceable its machinery might be. Thus, in the White Pine mining district, a mill in perfect order which had cost $200,000 was offered for sale at $5,000 without finding a purchaser; and Mr. Sharon sold a mill near the Comstock Lode which had cost him $60,000 for one-twentieth of that sum.*" (Lord, 1883).

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1042 "*Under [BA67] there were several interesting cases bearing upon this problem of distinguishing between regulatory general assignment laws and laws which were in conflict with the Act. The first of these was Mayer v. Hellman, decided in 1875. In question were several Ohio statutes which, among other things, required trustees under deeds of assignments to post bonds for the security of creditors and to file statements disclosing the disposition of the property. In sustaining the statutes the Supreme Court relied on the fact that the statutes neither compelled assignments nor did they discharge the debtor from further liability.*" (ELN, 1950). "*Are state laws regulating general assignments mere voluntary bankruptcy acts and hence suspended? Assuming the answer is in the negative, is the answer the same where the regulatory law is a part of a more comprehensive insolvency statute? The assumption that the first of the foregoing questions must be answered in the negative is clearly in accord with the decisions of the Supreme Court. In Mayer v. Hellman, during the existence of [BA67], a general assignment was made in Ohio where there was a statute regulating general assignments. The assignment was made more than 4 months prior to a petition in bankruptcy. The assignment could not be superseded unless the Ohio statute had been suspended by the Bankruptcy Act. The court held for the assignee under the general assignment, remarking that the Ohio statute did not compel assignments and was in no sense an insolvency law. The subsequent case of Boese v. King [in 1882] involved a New Jersey general assignment statute providing for a discharge of the debtor as to the proven claims of creditors in excess of dividends they received… While the majority of the Court apparently did not regard the whole statute as suspended, Mr. Justice Harlan observed that even if the statute were suspended, this would not make the assignment invalid. 4 justices dissented, taking the position that the New Jersey statute was entirely suspended, that the assignment was made under the statute and hence invalid. The case is frequently cited for the dictum that the discharge provisions in a state statute may be suspended without affecting other provisions*."(Hanna, 1949).

1043 "*A careful examination of our business and affairs shows us, most unexpectedly, that through losses and misfortunes our available assets are so reduced that we are compelled to go into liquidation. We reach this conclusion with the deepest regret, but the fact is that as to the latest moment our most unexampled credit, having remained unimpaired, would be compelled us, if we continued business, to hazard new obligations and incur new confidences which we were unwilling to assume. For the protection of all our creditors. without distinction or preference, we have this day made a general assignment to Hon. William D. Shipman, of this City, whose address for all matters connected with our affairs will be at our late banking house*." (NYTimes, July 28, 1875).

1044 "*It is probably the first instance within the memory of living man, either in this country or in Europe, that a large house, with ample means to pay their current liabilities, and who could have borrowed $10 M yesterday on their own unsecured notes, have voluntarily determined not to risk any new engagements, not to issue any more paper, and not to receive any more deposits, because they became satisfied in their own minds of their actual insolvency.*" (NYTimes, July 28, 1875).

1045 "*Some time ago, after the failure of the New York banking-house Duncan, Sherman, & Co., Mr. William Butler Duncan [the senior partner] offered to give his notes for one-third of the debts, to run from 4 to 24 months, in settlement, the liquidation of the assets to be in charge of 2 New York bank presidents. This proposition was submitted to the creditors, but may a very limited number of them accepted it, and notice has now been given of its withdrawal. There are various suits pending against the house in the New York Courts, and its affairs will probably be adjusted in the Bankruptcy Court.*" (London Times, Oct 23, 1875). Duncan's offer circular: Philadelphia Inquirer, Aug 19, 1875. "*New York—Feb 26—On the 18th of Dec in a petition in bankruptcy filed against Duncan, Sherman by 205 creditors. On the 21th an injunction and stay of proceedings were obtained by Mexico and other creditors. Today Judge Blatchford decided to dissolve injunctions and dismiss all proceedings except those in bankruptcy.*" (Leavenworth Daily Commercial, Feb 26, 1876). In the list of leading creditors, claims from California were small (NY Herald, Dec 21, 1875). "*New York—Oct 18—Judge Choate, of the United States District Court, has filed his decision on the application of Duncan, Sherman, & Co., for a discharge in bankruptcy, to which objections had been interposed by a number of creditors. The Judge says: 'No evidence is offered that sustains the specifications of the opposing creditors. Specifications found not proved, and discharge granted," Discharges accordingly have been issued to the several members of the firm.*" (Harrisburg Telegraph, Oct 18, 1878).

1046 See Bankers' Magazine, 1875, p679. "*The enormous development of mining in the Comstock Lode in Nevada in 1874 gave a fresh impetus to speculation. It was then estimated by an expert that the value of the ore in sight was not less than $1.5 B.*" (Knox et al., 1900).

1047 "*The public demand for money with which to buy shares was felt by the banks, and this pressure was aggravated by the shipment of $20 M of gold to the East, against $300,000 in the previous year.*"(Knox et al., 1900). "*The depletion of our coin balances it was which immediately led to the suspension of [BOC] on the afternoon of Aug 26 last, an event which has prostrated almost every kind of business since then, and which, but for the extraordinary soundness of our financial and commercial system, would have been productive of results fully as disastrous as those that followed the great eastern panic of 1873. We have said that the heavy coin export was the immediate cause of the failure; it was not, of course, the underlying one, and there were several collateral causes."* (GPO, 1876).

1048 In 1869, Thomas Ewing (NR/W-OH) - a former Secretary of UST and senator - warned that resumption "*would be productive of much hardship and injustice to the debtor class of our community... those who combine their own personal energies with borrowed capital, and... give prosperity to the country. Now if we resume specie payments....we ruin this whole class of business men at once and drive them to bankruptcy.*" (quoted in Unger, 1965, p185). However, in 1874 promises mattered more as only they could increase bank credit and so a contraction was the medicine. The following are discussions of *H. R. No. 1572: To Amend the Several Acts Providing a National Currency and to Establish Free Banking*. Senator Buckingham (R-CT) stressed the importance of promises: "*Here is a concession - not that we will demand specie payment today, not that we will demand it in 1875 or 1876, but in 1878 if it shall be perfectly convenient for the Government to pay, not otherwise. Here is also a concession on the part of those who are in favor of inflation or of free banking equally wonderful to me. What is conceded here? The bill provides for free banking. It opens the door perfectly free and wide enough for people to enter in and engage in the business of banking… but be it known to every Senator that there can be no organization of men to establish a bank unless there shall be in connection with it a reasonable prospect of remuneration… I challenge any man who knows anything about dollars and cents, to engage in free banking under this bill with the prospect of making money, unless he shall be convinced that the Congress of the United State will not be true to its promise [to redeem]... I am in favor of specie redemption. I think it is the duty of this Government to redeem its promises. Just as I think it is my duty, if I have made a promise to pay, when the time comes for me to pay according*

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to my promise, to make any pecuniary sacrifice that my creditor shall demand in order to meet that promise, so I believe this Government is under obligations equally sacred and equally binding."(GPO, 1874, p.4857). Similarly, Senator Jones (R-NV): "*I do know one thing, that the inflation is immediate, that the redemption is very remote… It is utterly impossible to resume specie payments and keep that resumption permanent with the great volume of paper currency now afloat. Specie will not remain with us as long as the price of everything that is produced, as long as the price of everything that we manufacture and of everything we raise here is so much higher than the prices of the same commodities and the same materials in every other portion of the world…. When an inflated currency is in a country, when prices have risen in proportion to that expansion, contraction is the only remedy for it, and specie payment can never be maintained without a contraction of that currency... It makes very little difference whether gold rates at $1.12 or $1.03 so long as your paper is not immediately convertible into gold; all the grievances we complain of, all the hardships upon the workers of this country upon the constant fluctuation that is robbing them day by day of the fruits of their labor, will be just as active as ever.*"(GPO, 1874, p.4860-2).

1049 "*The act, save for fixing a distant date for resumption, contained but little definite provision for pressing the country on in its progress toward specie payments. It was regarded by some indeed as distinctly an inflation measure: the day of resumption was so remote that no inflationist need feel anxiety, and there was plenty of opportunity for more paper currency under the provision of free banking. The measure was purposely left vague, and by command of the party caucus there was practically no discussion of the bill in the Senate*." (Dewey, 1918)

1050 "*It was argued, and with a good show of reason, that if Eastern cities, where comparatively nothing but paper money was handled, found this a good and necessary way of settling the balances between the local banks, it was surely a desirable plan to adopt in California, where coin was almost exclusively the medium of such settlements. Of course, all this was readily and universally conceded, but it was argued that the interests here were too varied and too conflicting to expect any harmonious action on a proposition of this sort. It is true there was some force to this reasoning. The bankers of San Francisco, as well as the businessmen of San Francisco, lacked a good deal in that unity of feeling and purpose so desirable in promoting enterprises and plans even when generally conceded to be for the public good. At that time considerable banking business was still in the hands of private bankers. The incorporated part of the business was divided between State, foreign and national systems and each was trying to get the best of the other instead of working together for a common end. It was feared that if the checks of all these banks were turned into one common center each bank would get some idea of what the other was doing and the names of their clients, and so be in a condition to divert business one from the other."* (Wright, 1910).

1051 "*This failure, while immediately called by a depositors' run, was directly the outcome of a conflict between 2 classes of California speculators, one the [BOC] party, headed by Sir. Ralston and Mr. Sharon, and the other headed by Messrs. Flood, O'Brien and Heydenfelt. The latter party have established a bank in San Francisco, called The Bank of Nevada, with a cash capital of $5 M gold and a right to increase to $30 M. Incidental to this conflict have been the mining properties known as the Savage, the Caledonia, the California, the Ophir and the Consolidated Virginia. The 3 latter are known as the Big Bonanza mines, and the [BOC] party obtained control of them... [BOC] seems to have fallen because it had locked up its funds in unbankable securities. Its managers were, the victims of the old malady which has mined so many banking reputations in this country and abroad. They are said to have invested their means in ventures of various sorts—in real estate, silver mines, hotel shares, bank shares, and in a miscellaneous mass of securities, whereby the floating capital was not only converted into fixed capital, but was rendered almost wholly unavailable for banking purposes*." (CFC, Aug 28, 1875). "*In previous years there had been spurts in mining stocks because of rich ore discoveries, followed in each instance by a season of depression and losses. But this last one was the worst of all, on account of the greater magnitude and longer duration of the deal. There never has been a duplication of that excitement in the Comstock mines though 35 years have since elapsed, and from present appearances there will never be another. Previous to the discovery of the ore bodies in the California and Con Virginia mines, [BOC] had been prominently associated in the development of the Comstock mines. It was not interested, however, in this last and biggest bonanza, which had been discovered and operated by a quartette of gentlemen who, in the summer of 1875, were forming a big bank as a rival to [BOC], and which opened for business simultaneously with the reopening of [BOC] on Oct 2, 1875… In 1898, [the Nevada Bank] was re-organized as the Nevada National, and in 1905 it absorbed the Wells Fargo Bank with its large resources, and was then christened as the Wells Fargo Nevada National*." (Wright, 1910). "*It is evident from the operations preceding the suspension of [BOC] that Flood & O'Brien crowded it mercilessly to the wall in one of the most stupendous and systematic financial sieges on record in the country. They want to establish the Bank of Nevada and [BOC] was in the way. It went down quicker and heavier than they expected*." (New North West, Sep 3, 1875).

1052 "*The Commercial Advertiser says: 'The failure of [BOC] was not a surprise to us. We had known for some little time past of numerous thorns in the path of the chief manager and his rich clique, not the least of which was their rapidly sinking credit as foreign bill drawers. Their recent sales of sterling in this market were on borrowed bills of English Colonial Banks and of the London & San Francisco Bank, which they endorsed to New York buyers. The British North America and the British Columbia advanced considerable sums of exchange, but our advices here state that they were careful to take ample collaterals. The London & San Francisco is managed by Milton B. Latham, whose lucid knowledge of securities advanced upon ought to protect his London principals against ultimate loss. The London and East Indies correspondent of [BOC] is the Oriental Banking Corporation, an old and influential concern, not likely we should suppose, to give extensive open credits to the [BOC]. Indeed, it seems probable that their transatlantic, it not their Oriental facilities, were practically checked if no exhausted of late, and hence the operations in exchange referred to in this market in endorsed bills of [BOC].*" (San Francisco Examiner, Aug 28, 1875). "*That the bank has been strained of late and pinched has been evident to bankers here, who have shunned their bills. From the fact that in the past 60 days most of the bills offered in this market have been those of other institutions, endorsed by [BOC]. The inference has been that [BOC] had hypothecated securities with those who lent their bills, and that this borrowed exchange was used to obtain funds needed to carry on the large operations of the bank. In the borrowed bills which have so appeared were those of the Bank of British Columbia and the Bank of British North America*." (CFC, Aug 28, 1875).

1053 "*There were rumors in circulation detrimental to the credit of William C. Ralston, the Cashier and active Manager of [BOC] ensued upon that institution, causing it to close its doors on Aug 26. Mr. Ralston was requested to resign, and unable to stand the strain of his situation, he committed suicide*." (Knox et al., 1900). "*Premature Statements • It as being stated about town and generally circulated, that [BOC] Will positively resume business. This statement is diligently used here as a factor in the political problem Within the last half hour a personal interview was held with one of the*

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most prominent gentlemen of the Board of Directors, who says directly, that all such statements are premature, that an effort is being made to reorganize by forming a guarantee fund to liquidate the affairs of the bank and afford means to rename business, and that the responses of those who have been approached are of an encouraging nature…• The Ralston Inquest • The Coroner's inquest in the case of Ralston was resumed this afternoon. The report of the physician who made the post-mortem, stated that deceased died of asphyxia. The analysis of the stomach is not yet completed, but will be given to the jury Friday afternoon • Attachment Issued • This afternoon an attachment was levied on the real estate of [BOC] at the stance of Adolphe E. Shirk, who claims to be a creditor to the amount of $10,156." (St. Louis Globe-Democrat, Sep 1, 1875).

1054 "*The immediate result of the panic was an almost universal suspension of business, the suspension of 1 or 2 large and well-known firms, and the temporary embarrassment of some of the greatest operators in produce on the coast… [NGBT], however, since sustaining a second run, has finally gone into liquidation, but will pay all depositors dollar for dollar.*" (GPO, 1876). "*The financial crisis of 1875 gave the gold banks a set-back on account of the suspension of [NGBT], which was aggravated by the refusal of the other banks in California to take the gold notes, although they were amply secured.*" (Knox et al., 1900).

1055 "*California entered one of her oft repeated depressions when on Aug 26, 1875, [BOC], considered one of the most substantial institutions in the state, closed its doors. Frenzy and panic gripped the state and depositors demanded their money in such a run on the banks that they were all forced to close their doors. I. W. Hellman was enroute to Europe and Downey and Temple were at a loss for advice in such a crisis, so they decided to close the doors of their respective banks and apprise Hellman by telegraph. The 2 banks in Los Angeles had such a monopoly on every transaction that business was temporarily paralyzed. Hellman returned to Los Angeles immediately and opened his bank continuing business as usual, while Temple hastened north to borrow money on his own and his father-in-law's personal properties to weather the storm. E. J. 'Lucky' Baldwin agreed to advance Temple $210,000 at 1% per month interest, security for the loan being a blanket mortgage on the Temple and Workman properties together with that of Juan M. Sanchez, a close personal friend of the 2 men. The Temple-Workman bank opened briefly before its final tragedy, for $210,000 scurried as a snow-flake in a blizzard. Baldwin's foreclosure took the broad acres of Puente that belonged to Workman, the Merced of Temple and 2,200 acres of the finest land around the old mission San Gabriel belonging to Sanchez. As a result Sanchez died a poor man, Temple died in April of 1877 a ruined man and Workman committed suicide May 17, 1876, ending in tragedy and sorrow the careers of 3 of Los Angeles' most esteemed citizens*." (Tyler, 1954). "*In 1872 the Temple & Workman Bank was organized. It had varying fortunes until 1875 when, owing to the failure of [BOC] in San Francisco, the wave of uneasiness spread to Los Angeles and the Temple & Workman Bank had to close its doors permanently. One of the disastrous banking failures of Los Angeles was that of Temple & Workman. It closed its doors in 1875, as did nearly every other banking house in California. The lack of State supervision caused this private banking house to be liquidated under the United States bankrupt laws, with the result that some of the most valuable real estate in Los Angeles County was sacrificed for a pitiful sum, and that many of the promissory notes in the bank's assets, which were sold at auction for one-tenth of 1% of their face value were collected in full by the purchasers when times improved.*" (Armstrong and Denny, 1917). "*We are assured by those who are debtors of the bank of Temple & Workman and would like to postpone payment until the end of time, that to tittle the estate in the bankruptcy court will be more expensive than to leave it in the hands of the assignees. This is not true and we will produce a single item of assignee expense that will prove that it is not true, There are now, as we are informed, 4 legal firms of this city employed by the assignees... Here are 12 lawyers in the employ of the assignees and we have reason to believe that all those lawyers not now employed need do to receive a retainer is to drop a remark in favor of throwing the estate into bankruptcy. The creditors of the bank will see by this item how little truth there is in the assertions of the assignee's organ that the business will be more cheaply settled up by them than the bankruptcy court. As things now appear It will not be long before every lawyer of note in this city will be retained by assignees. The thing has already gone so far that one of the firms above named is reported to be acting as counsel for the assignee, and attorney for one of the principal creditors of the estate. After this let us hear no more about the economy of settling the business of the firm by the assignee process.*" (LA Herald, Feb 20, 1876).

1056 "*William Ralston had died in San Francisco on Aug 27, 1875. 2 months later, on Oct 26, 1875, Virginia City, the town that had been the source of his wealth, burned to the ground. An overturned oil lamp in one of the many boardinghouses ignited the wooden building, and the flames, driven by the ever-present wind, spread to adjacent buildings. With no rain for several weeks, the wooden buildings that comprised most of the town needed only a spark to set them ablaze. Even the few brick buildings could not withstand the heat and wind and collapsed in piles of rubble. Despite the valiant efforts of firemen and citizens, the main business district was a total loss. Miners attempted to create a firebreak by dynamiting dwellings and other buildings near the mines, but the flames leaped over the break. The great hoisting houses at the mouth of the mines burned, exposing massive piles of cordwood meant to fuel steam boilers, along with timbers for supporting underground drifts. All this wood caught fire, sending flames, smoke, and sparks upward. At the Consolidated Virginia, more than 1 M feet of lumber burned to ashes. At the Ophir Mine, 1,000 cords of wood and 400,000 feet of timber burned. The last great treasure, the mineshafts themselves, were in danger. Only a concerted effort by miners and firemen and a continuous stream of water down the shaft for 36 hours stopped the flames at 400 feet below the surface of the Ophir Mine. 2000 buildings were destroyed; property damage totaled $10 M; and hundreds of people were made homeless and destitute. Rebuilding started the next day and continued the next and far into the night. A tornado blew down much of the newly created buildings during the week after the fire, but the wrecks were cleared as soon as the storm passed and building resumed. 60 days after the fire, the principal streets of the business district were lined with new buildings. Recovery at the mines, mainly the Ophir and the Consolidated Virginia, was equally impressive. At the Ophir, timber and machinery were ordered, new engine foundations built, and the burnt shaft restored. By Dec 15, 1875, the Ophir was back in business. Workers at the Consolidated Virginia rebuilt the hoisting works and ore house and were raising 600 tons of ore daily by the same date*." (Huber, 2020).

1057 "*The general bank difficulties of the fall of 1875 brought the local bankers together, or at least most of them, on common ground for the common good and protection of all. [SFCHA] was organized by the leading commercial banks and began operations in March 1876. [Los Angeles adopted the 2nd in 1887]*." (Wright, 1910).

1058 "*At first only 15 banks were represented in the organization. 5 other banks became members in July 1877, making 20 members at that time. Other banks were admitted later on, but they only served to fill vacancies caused by withdrawals or mergers, so that at no time perhaps has there been over 20*

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members. The original 15 members were as follows: [BOC], The Bank of British Columbia, The Bank of British North America, The Bank of San Francisco, B. Davidson & Co., Ir. Belloc, Donohoe, Kelly & Co., The First National Gold Bank of San Francisco, Hickox & Spear, London and San Francisco Bank, Limited, The Merchants' Exchange Bank, Sather & Co., Swiss-American Bank, The Anglo-Californian Bank, Limited, and Wells Fargo & Co. 6 of these were private banks, 4 were foreign incorporated banks, 1 national and 4 State banks." (Wright, 1910). See San Francisco Examiner, Dec 17, 1875.

1059 "*We note with pleasure the re-opening of [NGBT], which has paid off its entire liabilities to depositors, with interest at 10% per annum since Nov 1st, 1875, the date of its suspension. The bank continues under the same organization and with the same amount of capital. but only $ 40,000 circulation.*" (Bankers Magazine, 1877).

1060 "*A panic of the most fearful nature was the result; almost every bank in the city had a run which ended in the temporary suspension of all affected save the London & San Francisco Bank and the Anglo-California Bank, which, aided by the transfer of $700,000 from their friends in the East, paid every demand presented until the feverish public feeling existing had calmed down. Then turned the tide —the savings-banks had protected themselves by enforcing the agreement requiring notice to be given on the withdrawal of large deposits, and one by one the banks that bad temporarily closed their doors again re-opened them... [BOC] reopened a month later with a subscribed capital of upward of $7 M— the subscribers being financially the soundest men on the coast, and its directors, having effected arrangements with the larger depositors, announced their intention of immediately satisfying the smaller, and of ultimately not only paying dollar for dollar, but also a reasonable interest. While all this tended to restore confidence, the opening on Oct 4 of one of the greatest banks in the world, the Bank of Nevada, popularly known as the Flood & O'Brien bank, with a capital in gold coin of $5 M, had an immediate effect in establishing our credit both at home and abroad on a firmer foundation than ever. This was soon followed by the announcement, first made by the San Francisco Journal of Commerce, that a new bank with a capital of $5 M was to be opened by Lazard Freres, heretofore reckoned as among the largest importers of the city, and people felt that what elsewhere would have been a most serious blow to the general prosperity for years would here have only a temporary effect.. [BOC] had been to this State and coast what [BOE] is to the financial system of Great Britain and its dependencies, and we believe that in no other country in the world would a similar instance of almost immediate recuperation have boon exhibited. The only drawback that bas since occurrence has been the suspension of the Commercial Bank, which has boasted a nominal capital of $5 M, but which has never had deposits to exceed $30,000, and whose demise has been in no sense felt by the community. Such a crisis could not have occurred in any other country in the world without failure after failure; and the fact that only 2 or 3 have occurred in our city is one of the greatest testimonials in favor of the soundness of our financial and commercial systems.*" (GPO, 1876).

1061 "*[T]he San Francisco Board of Trade, founded in 1877. However, only 2 others are known to have existed prior to the passage of the Bankruptcy Act of 1898—those operated by the Boards of Trade of Portland, Oregon, and Los Angeles, California*." (Hansen, 1998). "*A striking aspect of the informal dealing by creditors' groups with debtors is that wherever possible they not only avoid the bankruptcy courts, but they ignore the state law as well. In California, for example, the state law on general assignments apparently might as well be eliminated from the statute, so little does it affect actual practice. Creditors want a range of devices of their own selection and it is an advantage to shift from one to another as the occasion demands. They are irked by the delays and inflexibility of court supervision. They feel this supervision does little in the way of protection of anybody and it adds materially to the costs. In some cities insolvent estates are a recognized objective of the distributors of political patronage. The creditors' organization has no fear of secret action by the debtor to the detriment of creditors. It probably has kept closely in touch with him from the moment his business began to slip. If he is tricky, the creditors can fall back on the bankruptcy court. In most instances the debtor is honest. In a minor percentage of other cases where his character is infirm, he does not dare to attempt sharp practice. The Board of Trade of San Francisco affords an admirable example of successful cooperative effort in dealing with embarrassed and failing debtors. The Board is not an organization of traders like its Chicago namesake, nor a Chamber of Commerce. It is a voluntary association of representative manufacturers and other distributors in central and northern California, operated by its members and with its own counsel and other staff for the purpose of dealing on a mutual basis with the affairs of debtors whose insolvency is actual or threatened. It also collects debts outside the regular course of business of its members. The primary purpose of the Board of Trade is to consider and adjust the affairs of debtors without any court intervention whatever, although where it is impossible to effectuate this purpose the Board will invoke bankruptcy jurisdiction. Where expedient it preserves a business. Where this is unadvisable, liquidation is accomplished expeditiously and economically*." (Hanna, 1949).

1062 "*The bank troubles which started in Aug 1875, left baleful influences in operation for the next 4 years. Perhaps one reason for the continuance of these difficulties was the introduction of an entirely new element in the nature of official bank examinations through an act of the Legislature creating a Board of Bank Commissioners. These commissioners were appointed in the spring of 1878, and made their first examination in the fall. Up to that time there had been no official oversight of the banks*." (Wright, 1910).

1063 "*The public condemnation of the Inflation Measure was strikingly indicated in the elections of 1874, in which the Republicans lost heavily. A reversal of policy was clearly demanded by the people. The net result was the passage of the Resumption Act in 1875. By this law the Secretary of [UST] was authorized to sell bonds without limit in order to obtain gold sufficient in amount to redeem the notes. By the first of Jan 1879, the Secretary had accumulated $133 M of gold to be used for that purpose. By the latter part of Dec 1878, the premium on gold had disappeared, and speculation in currency was discontinued... Under the terms of the Bland Allison Act of 1878 great quantities of silver were added to the country's circulation... In fact it was not until the passage of the Bland-Allison Act of 1878, more than 50 years later, that there was any considerable coinage of silver dollars*." (Young, 1924).

1064 In 1878, Ames (1897) notes: "*[T]he Greenback party, which was opposed to the resumption of specie payments, an amendment was presented by Judge Ewing of Ohio, and Mr. Oliver of Iowa, in 1878, providing for the issue of [*USLTN*] and regulating the amounts thereof.*"" By 1884, the Supreme Court ruled in *Juilliard v. Greenman*, that "*Congress had the right to issue notes to be legal tender for the payment of public and private debt. Legal-tender notes are treasury notes or banknotes that, in the eyes of the law, must be accepted in the payment of debts.*" Ames (1897) elaborates that the case "*decided that Congress may make Government notes legal tender in time of peace as well as war. Just 1 week later 4 resolutions proposing amendments to the Constitution, relative to the issue of legal-tender notes, were presented. That these were directly suggested by the recent decision of the*

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Supreme Court is shown by the text of the amendment proposed by Mr. Potter of New York. This provided that Congress should not have power to make anything but 'gold or silver coin a tender in payment of debts, except after a declaration of war, when the public safety may require it."

1065 "*The monetary system was... threatened with the free coinage of silver. Surrounded by embarrassments it was inevitable that Sherman should find difficulty in selling bonds: European financiers, alarmed by the greenback and silver coinage agitations, movements to be subsequently described, expected American finances to be deranged, and returned a considerable block of bonds which competed with the new issue. In spite of all obstacles, Sherman persisted in the policy of gold accumulation. He concluded that 40% of the notes was the smallest safe reserve of gold ; on this basis $138 M in coin was necessary. On Jan 1, 1879, [UST] had gathered together $133 M of coin over and above all matured liabilities. To do this $95.5 M of bonds were sold, the balance being met from surplus revenue. Slowly but gradually the value of the notes approached parity with gold, and on Dec17, 1878, a fortnight before the date set, paper currency was quoted at par.*" (Dewey, 1918).

1066 "*At the assembling of the 43rd Congress there were introduced 13 bills to amend the law and 8 to repeal it… During this Congress there were 47 petitions concerning the repeal of the law which received formal attention, while hundreds of thousands got no farther than committees. Nearly every member was dissatisfied with the law. Some wanted to amend it, and they were opposed by those who were determined to repeal it. Between these conflicting interests the law continued until the 45th Congress. By the opening of the 2nd session of the Congress just mentioned nearly all had realized that successfully to amend the measure was impossible.*" (Noel, 1919).

1067 Senator McCreery (D-KY) introduced a bill to repeal BA67 in language evoking the payment nightmare that drove the need for it, "*For more than 10 years past a bankrupt certificate has been a legal tender in the discharge of private indebtedness. This method of settlement has sunk lower and lower in public estimation until it is now regarded as worse than no settlement at all… Surfeited and gorged with bankrupt certificates, in their stead they seek to restore 'the dollar of the fathers' to be used in the payment of debts*" (McCreery, 1878, p2512). After a short debate, large bipartisan majorities in both chambers adopted the repeal bill. Remington (1915) conjectures that the memory of it kept Congress from a new version for 20 years.

1068 "*From the foregoing, it is seen, that the most complete bankrupt laws are found in the New England States. This may be partly accounted for by the fact that in those states action may be begun directly by attachment without notice or leave of court, so that the most vigilant creditor will obtain a great advantage. The New England merchants have, therefore, felt the need of laws that would dissolve all attachments made within a short period (usually 4 months) before the bankruptcy. In the agricultural states and territories of the West and South, on the contrary, with the notable exception of California, where a very full law was passed in 1880, the necessity for such legislation has not been so urgent… A voluntary assignment for the benefit of creditors, which is almost peculiarly an American institution, differs from bankruptcy in that it does not necessarily discharge the assignor from his debts. Such assignments have been defined as voluntary transfers by a debtor of all or a part of his property to an assignee or assignees, in trust to apply the same or the proceeds thereof to the payment of some or all of the assignor's debts and to return the surplus, if any, to him. They 'come into being not by operation of law or by force of any previous proceedings either by or against the debtor. They are purely the act of the debtor. They are contracts, and rest like all contracts upon the consent of the parties.' Nearly all the states have passed laws to regulate the right of making assignments under the common law, by forbidding preferences in many cases and in all cases by prescribing more or less in detail the forms to be followed.*" (Dunscomb, 1893).

1069 "*By reason of the financial crisis, the Granger legislation, and the corrupt manipulations of promoters and stock jobbers, applications to these Courts for the appointment of receivers and for the liberal exercise of this extraordinary jurisdiction in behalf of judgment creditors, bondholders and mortgagees, increased enormously in number between 1871 and 1878. 'No branch of equity jurisprudence has developed more rapidly during the past 3 years than the law of receivers,' said a leading law review in 1876, and another spoke of 'the magnitude of the proportion of railroad litigation.'*"" (Warren, 1922c).

1070 "*When a receivership is established, the receiver is commonly directed to apply the earnings to payment of wages before paying any of the fixed charges, even where the wages are not protected by positive statute... The reasons for such a practice were reviewed by Judge Drummond of the federal circuit court in 1878… Finally, the principle was reaffirmed by the Supreme Court the same year… Chief Justice Waite based the decision partly on public policy, but also on the equities of the case. On the latter point he said: 'The mortgagee has his strict rights which he may enforce in the ordinary way. If lie asks no favor, he need grant none. But if he calls upon a court of chancery to put forth its extraordinary powers and grant him purely equitable relief, he may with propriety be required to submit to the operation of a rule which always applies in such cases, and do equity in order to get equity.'*" (Swain, 1898). "*In 1879, Chief Justice Waite remarked... that: 'Railroad mortgages and the rights of railroad mortgagees are comparatively new in the history of judicial proceedings. They are peculiar in their character and affect peculiar interests.' And he pointed out that, in receivership proceedings in equity, concessions from strict legal rights must oftentimes be made, to secure advantages that would operate for the general good of all interested. 'This results almost as a matter of necessity from the peculiar circumstances which surround such litigation.' The case was an interesting example of the flexibility of the law of equity and its adaptation to new and modern conditions of life and business; for the Court held that a railroad receiver might be authorized to pay debts incurred for labor, supplies, and permanent improvements, in priority to the claims of the mortgage bondholders.*" (Warren, 1922c). "S*ince railroad mortgages almost universally embrace income the only way to give operating expenses a favored position was effectually to displace pre-existing contract liens to the extent of such expenses. The judicial solution of the problem was the rule now commonly termed the '6 months' rule. Though first enunciated by the Supreme Court in 1879 in the case of Fosdick v. Schall the general idea upon which the rule was grounded had already undergone some development in lower federal and in state courts.*" (Fordham, 1931). "*The courts lent a helping hand to railroad debtors by developing a doctrine known as the '6 months' rule. The 6 months rule, which was endorsed by the Supreme Court in 1878, permitted the debtor to pay suppliers in full, rather than treating them like other non-priority creditors, for supplies that were provided within 6 months of the initiation of a receivership. Courts assumed that the railroad's priority creditors would be happy for the suppliers to get paid, since suppliers might cut the railroad off at the first sign of financial distress if they weren't sure about repayment in the event of a receivership. 'Every railroad mortgagee in accepting his security,' the Supreme Court concluded, 'impliedly agrees that the current debts made in the ordinary course of business shall be paid from the current receipts before he has any claim upon the income.' In its initial incarnation, the 6*

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month rule applied to wages, supplies and essential services. It was later expanded to include key trade creditors under the 'doctrine of necessity,' 'so long as the claimant is in position to demand payment as the price of future labor and materials.'" (Skeel, 2004).

1071 "*An account of the origin of the collateral trust mortgage is of interest because it furnishes an illustration of corporate ingenuity in the matter of doing illegal things in a legal way. The construction of [UPR], among others, was subsidized by the United States Government, which took a second lien upon all that company's property to secure its loan. In 1873, in order to prevent the impairment of the government's lien, Congress passed a law prohibiting [UPR] from increasing the bonded debt of the property subject to this lien. Now railroads are built largely out of the proceeds of bond sales. The result of this law was that [UPR] could build no branch lines or extensions under its charter. If built at all, these branches must be built under separate charters and legally distinct companies. But these companies must be controlled by [UPR], or they might fall into the hands of its competitors. Further, the bonds of small subsidiary companies could not be sold directly to the public unless their interest and principal were guaranteed by the parent company, and this the latter could not legally do because that would be placing at least a contingent fixed charge upon its own earnings... This situation resulted in [UPR] 6% collateral trust bonds of 1879. Legally distinct companies were organized and chartered to build the desired branches. [UPR] advanced the funds with which to construct these lines out of its current earnings, and received in compensation the capital stock and first mortgage 7% bonds of the smaller companies, which thus became subsidiary… The idea of the collateral trust mortgage was probably suggested by the practice, long current among stock brokers, business men generally, and railway companies as well, of borrowing upon corporate securities as collateral. Such debts, in the form of ordinary promissory notes, ran for short periods of 30 or 60 days only. The question is naturally suggested, If such collateral is adequate security for ordinary commercial paper, why would it not also be adequate security for long-time loans?*" (Mitchell, 1906). Government financing for the subsidy bonds (issued for the railroads in 1862) were repayable through services rendered for the Government:"*Issued by the Government in aid of the construction of said roads. Sections 2 and 3 of the act of 1878 provided that the whole amount of compensation which may from time to time be due to said Several railroad companies for services rendered for the Government shall be retained by the United States; one-half thereof to be applied at once to the liquidation of the interest which the United States had paid on the subsidy bonds issued in aid of the roads, and the other half turned into a sinking fund, and to be annually invested by the Secretary of the Treasury in bonds of the United States, and to be applied at the maturity of the debt due the United States to its payment and to the payment of the first-mortgage bonds upon the roads.*" (GPO, 1897, p586). Also see (1884, p337)

1072 "*The stock market has been active and decidedly strong. The salient transaction of the week, and the most important single operation that the market has witnessed for some years, took place in the transfer of 100,000 shares of [UPR] stock at 70 by Mr. Jay Gould to a party of leading stock operators who thus agreed to take from him a heavy block of stock which had virtually been unmarketable ever since the control of the company went into his possession. It was reported also that as a part of the same operation, or connected with it, Mr. Gould was to purchase a large amount of the Northwest stocks—chiefly the preferred. Whatever the result of this transaction may be in the immediate present, it seems clear that it will place Mr. Gould in a position to become a more active operator in the general market. Northwest common has been conspicuously weak since the above agreement was consummated, and since the directors declared a quarterly dividend of 1.75% on the preferred, but nothing on the common.*" (CFC, 1879). "*The committee of the bondholders of the Denver Extension of the Kansas Pacific Railroad Co are considering a proposition made by [UPR] management. The proposition has been favorably received and it is said will probably be accepted. It is understood that [UPR] parties propose to pay a proportion of the arrearages of interest on the Denver Extension mortgage, equal to about $150 per bond. In consideration of this, the bondholders are to agree to reduce the rate of interest on their securities from 7 to 6%. They are also to retain full possession of the Kansas Pacific road until the agreement is carried out, and the foreclosure is to proceed according to the original scheme of reorganization. The principal point in the proposition which the committee is considering is in regard to the security to be given by [UPR] for its faithful performance of the agreement.*" (CFC, 1879).

1073 The Tribune as follows "*From trustworthy sources it was understood that a [UPR-]Russell syndicate had been formed, composed of James R. Keene,. David Sage, Frank Work, D. P. Morgan, Charles G. Osborn,. Jones, Addison Cammack and William L. Scott. It is stated the that the entire number of shares purchased of Mr. Gould by syndicate was 100,000, at between 70 and 75%, 70,000 shares being delivered yesterday, and 30,000 shares previously purchased by individual members [Mr. Sage or Mr. Keene], It is also stated that Mr. Gould sold 50,000 shares of his stock for cash, and 50,000 shares on call. Mr. Gould then invested in the common and preferred stock of Chicago & Northwest. Another provision of the contract, it is said, binds Mr. Gould not to become a seller in the market-until the stock reaches 90. It is also provided, it is understood, that there shall be a reorganization of the directory of the company at the annual election on March 6, at Boston. It was also stated that S. H. Clark, of Omaha, W. A. H. Loveland, of Denver, and John Sharp, of Salt Lake City, would retire, and that James R. Keene, of San Francisco, would Addison Cammack and Solon Humphreys, of this city,, be the new directors.' A friend of Mr. Gould said: 'This is a Napoleonic move, and may be termed the masterstroke of Mr. Gould's life. The 100,000 shares of [UPR] stock which he sold to the Syndicate cost him about $3 M, with & par value of $10 M. He has sold it for $7 M, realizing by the transaction a profit of $4 M, and retaining 90,000 shares of [UPR] stock, worth about $7 M more*." (CFC, 1879). NYTimes described in less glowing terms.

1074 "*The ordinary railroad mortgage is a direct lien upon the road-bed, track, right-of-way, franchises, real estate, and other tangible property of the corporation. A collateral trust mortgage is a mortgage not upon tangible property or franchises, but upon other mortgage bonds which are direct liens upon property, or upon corporate shares which represent ownership in such property and franchises.*"(Mitchell, 1906).

1075 "*In 'consolidation,' as the term is here used, one company loses its identity, its property-being sold to the other company in consideration of the assumption of its debts by that company, or distributed to its stockholders, which consist of the parent company. The method of consolidation is rarely followed in practice. It has the advantage of simplifying accounts by avoiding the necessity of keeping a distinct set of accounts for each part of the system. But a connecting line may become a burden instead of a blessing to the system, and under consolidation there is no way in which to remove such a burden except insolvency and reorganization. Whereas, if control is exercised through stock ownership, the burdensome line may be dropped off by redeeming the collateral trust mortgage and selling the underlying securities. Further, consolidation may lead to legal complications. There is always that danger that the courts will declare the consolidation illegal; and, since a case testing its legality may not come up at once, but several years later, when everything has been adjusted to the new*

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order, it is considered advisable not to resort to this method of control. Finally, in case a consolidation were not declared illegal, there is still grave doubt as to the charter rights of the consolidated company."(Mitchell, 1906).

1076 "*The chief reason for the partial supplanting of the private bank by the small State bank is the advantage of the corporate form of organization in giving greater security to the depositor and consequently in increasing the credit of the bank. The desire to obtain a charter can not become effective, however, unless the amount of capital required is small enough to permit the private banks to make the conversion. If the business of a locality will only support a bank with a capital of $10 [K], and the State banking laws require a minimum capital of $25 [K] for an incorporated bank, the additional credit which might be obtained through incorporation will not be a sufficient inducement to bring about the change to the State system. In several of the Eastern and Middle Western States the decrease in recent years in the amount of capital required for the incorporation of State banks has been largely responsible for the diminution in the number of private banks... Missouri was the first State to adopt the policy of requiring private bankers to have a specified minimum capital. By an act passed in 1877 private bankers were prohibited from engaging in the business of banking without a paid-up capital of at least $5,000… The great mass of the State banks with a capital of less than $50,000 are in the Southern, Middle Western, and Western States. In 1888 there were in these 3 groups of States 3,300 private banks and 700 State banks with a capital of less than $50,000. In 1909 in the same groups there were 2,673 private banks, 8,300 State banks with less than $50,000 capital, and 5,600 State banks with less than $25,000 capital*." (Barnett, 1911). In 1908 "*from 1,007 private banks with capital of $21M and aggregate resources of $161M… 79% , or 791 of the reporting private banks, are located in the Middle Western States, the private banks in this section having 63% of the capital and holding 80% of the deposits of all reporting banks in this class. Over one-half... are located in the 3 States of Ohio, Indiana, and Illinois, and these States have 45% of the capital and over 62% of deposits of all private banks. There are 551 private banks in the States named with a capital of $10M, and deposits of $79M. Iowa has 111 private banks with capital of $2M and over $13M deposits*." (COTC, 1908, p53, 88, 406-9).

1077 "*In the New England and Eastern States neither small State banks nor private banks, except brokers' banks, have been numerous during the period under consideration... As early as 1882, in New York, persons doing a banking business, if unincorporated, were forbidden to use a corporate title*." (Barnett, 1911).

1078 "*The fatal shooting of President Garfield in July, which was widely regarded as an event unfavorable to business interests, became the occasion for recognizing these weaknesses... The stock market went into a year-long decline, never in this cycle to regain the peak of mid-1881. It became more difficult to float new securities... The railroads built even more miles in 1882 than in 1881. But this added to the belief, which was already gaining ground at the beginning of the year, that railroads were multiplying too rapidly to be profitable... Apparently, capitalists were unwilling to put money into railroads. Their unwillingness evidently stemmed from the belief that further building would not prove profitable. Their money did not find outlets in other forms of permanent investment but either remained idle or went into the money market*." (Fels, 1952).

1079 With the July 12, 1882 amendment of the NBA, Congress extended national banks' corporate existence unless two-thirds of shareholders voted for dissolution. "*The charters of the national banks began to run out in 1883 and 1884. In anticipation of this, the act of July 12, 1882, provided for their extension for another twenty years… One of the chief subjects of complaint was that... Every bank of issue gets double interest on its capital, minus such deductions as must be taken into account for taxes, specie reserve, and so on. If the bonds must be bought at a premium, and only 90 cents on $1 of their par value can be obtained in circulation, the deductions are so important that the special advantages of being in the national system are very slight. The greatest amount of national bank notes outstanding at the end of any fiscal year was, in 1882, $359 M. In spite of the formation of new banks, the voluntary withdrawals reduced the national currency*." (Sumner, 1896). Since the 1864 NBA Act, "*Before 1882 every bank with a capital not exceeding $150 [K] was required to place and keep on deposit with the Treasurer such bonds to the amount of at least 1/3 of its capital; but the act of July 12, 1882, reduced this minimum requirement to 1/4 the capital. Under the act of June 20, 1874, $50 [K] of bonds is the minimum requirement for all other banks, however large the capital*." (COTC, 1886). "*The law repealing the tax on capital and deposits of State banks and private bankers went into effect on Nov 30, 1882*." (COTC, 1884). Since 1864 "*A tax of 1% per annum was laid on the average amount of the circulation, and 0.5% on the deposits, and the same rate on the capital stock not invested in United States bonds. The two last were repealed March 3, 1883*." (Sumner, 1896).

1080 "*Revised Statutes governing these firms remained on the books until the 1880s.[New York (1909). The entire title regulating financial incorporations was repealed in 1882, and replaced with a new banking law*." (Hilt, 2009). "*In the New England and Eastern States neither small State banks nor private banks, except brokers' banks, have been numerous during the period under consideration... As early as 1882, in New York, persons doing a banking business, if unincorporated, were forbidden to use a corporate title*." (Barnett, 1911).

1081 "*The downsizing gathered momentum slowly in 1883. The decline in railroad construction not only eliminated the jobs of many workers directly employed in railroad-building but also spread depression to other industries… Profit prospects declined more than actual profits because of the general business depression, poor crops, and increasing competition among railroads*." (Fels, 1952).

1082 "*Under an act of 1878 the [UST Secretary] had to buy and coin [$2 to 4 M] worth of silver every month. In practice he always bought the minimum, but, as silver sold at a discount, this meant coining upward of $24 M of silver a year. The depression in 1883 made money redundant. The banks therefore held onto their gold and made payments to [UST] in silver. This led to fears that the gold standard could not be maintained, especially when the subtreasurer in [NYC] hinted that [UST] might have to start settling its clearing-house balances in silver. Foreigners started selling American securities, and gold flowed out, depleting [UST] reserves still further. Beginning in the fall of 1884, [UST] found various ways of complying with the act without endangering the currency, and there were no serious repercussions from the silver policy until the 1890's*." (Fels, 1952)

1083 "*To add further to the discomfiture of dealers, money became exceedingly stringent, and at one time commanded as much as 4% for 24 hours' use. This caused a further sacrifice of stocks, since few could afford to pay the high rate asked. The exorbitant charge was, of course, the direct result of the distrust prevailing, since there was no actual scarcity. There was no improvement until it was understood in the afternoon that the banks had taken action similar to that of 1873, and that no further bank suspensions were therefore likely… To State briefly the causes of the disturbance in the market, it may*

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be said that they were strictly due to a complete loss of confidence, not so much in the market prices of securities as in the stability and soundness of various institutions and firms. The difficulty of obtaining ready cash, as a result of disquietude prevailing, also contributed to intensify the troubles that had developed. It is to this latter fact, namely, the desire to realize and obtain cash, that the large decline on Thurs and Fri of nearly 7% on United States Government bonds is to be attributed. There was no loss of confidence in the value of these, nor was there in good railroad bonds and stocks." (quoted in Sprague, 1910). "*The year 1884 was also marred by a bank panic in New York. On May 8 a brokerage firm named Grant and Ward failed, dragging down with it the Marine National Bank, which had overcertified a Grant and Ward check for $750 [K.] 5 days later the Second National Bank had to close its doors because the president had stolen[$3 M]. A run caused the Metropolitan Bank to dose the next day, and panic ensued: stock prices plummeted as attempts were made to raise cash and recall call loans. interest at one point rose to 4% for 24 hours, country banks started to recall their funds, and there were many more failures or suspensions. It is plausible to think that the coincidence of the Marine and Second National Bank failures started panic only because it occurred at a time of increasing business depression; but the government's silver policy, which undermined confidence, was a contributory cause. The panic did not last long. Steps were taken immediately to issue clearing-house certificates. The defalcation of the Second National was made good, and both it and the Metropolitan reopened at once. Capital flowed in from Europe to take advantage of high interest rates and low stock prices. Confidence returned quickly.*" (Fels, 1952).

1084 *"Clearing-house, loan certificates were issued by [NYCHA, after a] resolution adopted May 15, 1884, to banks who were members, upon their securities or bills receivable, at the rate of 75 cents on the dollar. The total amount issued was $25 M and the balance outstanding was canceled and redeemed during the present year."* (COTC, 1886). "*Wicker (2000) and Sprague (1910) reported that Metropolitan National had two-thirds of its deposits as correspondent balances. This large role as a correspondent bank suggests that other banks withdrew the majority of the Metropolitan National Bank deposits. What was most notable is that there was apparently no evidence of a contagion effect. We note that the Metropolitan National Bank was able to withstand the run with the aid of clearing-house loan certificates in an amount approximately equal to their net deposit liabilities at the beginning of the financial distress ($7.54 M was its maximum indebtedness).*" (Gorton & Tallman, 2018)

1085 Banks in Pennsylvania, Indiana, and Virginia failed or suspended; for example, "*In consequence of the heavy runs made on it, as well as on other banks here, the Planters and Mechanics' Bank this morning temporarily suspended operations. The following notice, signed by the Board of Directors and President of the Bank, was posted on the door: 'Owing to the stringency in the money market, caused in great part by the present financial crisis, this bank is forced temporarily to suspend operations. A statement of the condition of the bunk is now being prepared which will be made public as soon as possible, and we feel assured it will prove satisfactory to the must scrutinizing.' The bank is believed to be perfectly solvent and able to pay every cent it owes. Thomas Whyte, Cashier of the bank, says the suspension is due, among other causes, to the fact that during his absence in New-York last week a large number of certificates of deposit on which the bank requires from 10 to 60 days notice were paid without the requisite notice being given, and that within the past few days $64,000 of State funds which had been deposited in the bank had been checked out. He thought the bank would resume In a few days.*" (NYTimes, May 20, 1884). "*During the panic the New York banks contracted their loans noticeably, but this was largely made up by an inflow of funds from country banks. It would be dangerous to reason that, because the downswing seemed to accelerate during and after the panic, the panic intensified the downswing. Any significant influence of the panic on business must have operated through increasing pessimism. However, the fact that the panic did not dangerously affect the financial position of business is further indication of the comparatively sound condition of business at the onset of the depression… As the prospects for business in general improved, so did the prospects for railroad investment. The first half of 1885 was marred by railroad rate wars, prominent among which was the attempt of the New York Central to crush the competing West Shore road. This particular battle was settled in Aug, whereupon the trunk lines formed a strong pool to maintain—and soon to raise—rates. Harmony among railroads then spread throughout the country, considerably improving prospects. The stock market rose, making possible large speculative profits out of worthless stocks. Meanwhile, those few roads in default on bonds were successfully reorganized, and traffic continued to increase with the growth of the country. Thus the stage was set for revival of railroad investment in 1886. But it seems more than coincidence that railroad-building turned up after the cyclical upturn. The improvement in general business was one of the causes of railroad revival.*" (Fels, 1952). "*11 New York banks and more than 100 State banks went under. Business bankruptcies rose to nearly 10,000 in 1884 alone.*" (Skrabec, 2014).

1086 After repeal of BA67 in 1878, "*a national campaign by merchants and manufacturers to obtain bankruptcy legislation began in 1881 when The New York Board of Trade and Transportation organized a National Convention of Boards of Trade. The participants at the Convention endorsed a bankruptcy bill prepared by John Lowell, a judge from Massachusetts. They continued to lobby for the bill throughout the 1880s.*" (Hansen, 2001).

1087 "*[T]he special Committee on Bankruptcy Laws, submitted a report. The committee say that a general sentiment exists in New York in favor of some kind of a national bankrupt act, but it is evident that a large majority of merchants engaged in legitimate trade in the distribution of goods to the interior for consumption are either opposed or afraid of any bankrupt law yet presented. Importers and manufacturers engaged in large transactions in and with the large cities appear inclined to favor almost any law that will control State legislation and place the liquidation of insolvent estates in the hands of the creditors.*" (The Inter Ocean, Feb 3, 1882). A "*wholesale grocer... was opposed to any change in existing laws. A bankruptcy law might be to the advantage of Eastern merchants, but would certainly not prove so to Western wholesalers. The policy of Eastern dealers has always been to put a man into bankruptcy whenever he fails to meet his paper, while Detroit merchants pursue an entirely different course, unless they become convinced that the retailer is dishonest, or incompetent to transact business. In a majority of instances where a country dealer becomes embarrassed by dull times or misfortune, so that, if thrown into bankruptcy, his creditors would not realize [50%], by giving him more time and a helping hand he pulls through and pays every dollar of his indebtedness... were to apply to the State of New York alone, the merchants of [NYC] would not desire its passage. They want it so that if a Western buyer fails to meet his paper, they can seize his stock of goods and become preferred creditors. New York merchants sell upon short time and receive paper in settlement, while Western merchants usually keep an open account. The result of this is that if a country dealer owes a bill in New York and one in Detroit he knows that he must meet the first named obligation promptly, and every dollar he can get together goes to meet his paper. This is a discrimination against the Detroit merchant.*" (Detroit Free Press, March 4, 1882).

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1088 "*Meanwhile we notice that popular sentiment which 2 years ago was decidedly unfavorable to any national legislation concerning bankruptcy, has whipped about completely. State laws have failed to grapple with the question successfully. Creditors in protecting themselves have forced many a poor debtor whose embarrassment was merely temporary into ruin, and in their turn have suffered in the general 'devil take the hindmost' scramble that has been the rule since the repeal of the old law.*" (Benton Weekly, March 9, 1882). "*A uniform and just national bankrupt law is essential for the well-being of the commercial nation. The credit system which underlies our commercial transactions alone finds security in a Uniform law for equitable distribution of estates of insolvent debtors. A protection of the credit system will in make low prices, as risky credits must cause high prices. The increasing commerce between citizens of various States gives greater need for a uniform system of this nature. The State laws upon this subject differ so greatly that they cannot be relied upon in a general inter-State business. A commercial Nation should protect foreign creditors in dealing with its citizens, and give them one law which they can rely, instead of 38 unreliable State laws as now exist. The present laws breed roguery, promote perjury and place a premium upon fraud. Failure in the United States increased from $65 M in 1880 to $173 M in 1883 largely because of the inefficiency of the State system of bankruptcy.*" (St. Louis Post Dispatch, April 7, 1884). "*The record of business failures in the United States for the first quarter of 1884 is very unsatisfactory, indicating a very large increase over previous years. The total for the first 3 months amounts to 3,320. With the record of the past 5 years its a guide, it is estimated by a writer in Bradstreet's that the failures for 1884 may exceed the heaviest on the list, 1878. On the other hand, it is gratifying to note that these failures were generally among small merchants, 84% of them representing enterprise employing a capital of $5,000 or less; there being only 12 failures between [$0.25 to 0.5 M], and 3 over the latter sum. 'Notwithstanding the lengthy list of failures for the past quarter,' says Bradstreet, 'It must not be overlooked that the list has been materially declining for some weeks, and during this period with no noteworthy exception, there have been no really heavy failures, and as a commercial panic as defined as a time when solvent firms fail, we are drifting further and further the nearest approach we have had to a panic.' A uniform bankruptcy law, however, would undoubtedly be a great benefit to merchants, and probably have the effect of reducing the number of mercantile failures and restoring a better business feeling.*" (Montogomery Advisor, April 17, 1884). "*The inequalities and the injustice of various State proceedings in cases of insolvency have been growing more and more apparent and irksome during the last year. Perhaps the climax was reached by the introduction of the Chicago method of selling out to a 'successor' whenever a business concern was on its last legs and thereby leaving most of the creditors to whistle for their money or accept any terms which might be offered to them. If the present irregular and irresponsible [process] of liquidation should continue a term of years the result would be almost to destroy the credit system and thereby to put a blight upon business enterprise and commercial probity in this country.*" (Chicago Tribune, April 16, 1884). "*The repeal of [BA67] relegated cases of bankruptcy to the States, and revived anew all the troubles that the general bankrupt law was enacted to prevent. One of the worst features of some of the State insolvent laws is the preferential assignments the debtor is permitted to make, by which the claim of one creditor may be preferred to that of another. Of this privilege many debtors have been prompt to take advantage, the preferences in the case of certain bankruptcies in New York last year being for very large sums. Although there are instances in which such preferences may be justifiable, as, for example, in securing to a friendly creditor the return of borrowed money, yet it is obvious that this provision of the State insolvent law offers at all times opportunities for collusion and fraud. The State insolvent laws have these further defects: They cannot release a debtor from obligations incurred before the passage of the law, nor act upon the rights of citizens of other States. The power of Congress is derived from the Constitution and is plenary. It can pass a general bankrupt law which shall affect existing debts, as well as those which are contracted after its enactment, while the discharge of the debtor is operative not only in the State in which he resides, but in all the States of the Union. Another embarrassment to which creditors are subjected under State insolvent laws is their diversity. A general bankrupt law being uniform in its effects and operation throughout all the States, all controversies similar to those which may now at any time arise in regard to the effect in one State of decisions under the insolvency laws of another can no longer occur. It being also against the policy of such a law to allow the debtor, in contemplation of bankruptcy, to give preference to creditor over another, all such preferences are void, and an attempt to make them was, under [BA67] held to be an act of bankruptcy.*" (Charlotte Observer, April 19, 1884).

1089 "*As a matter of precedent, a system of voluntary, unaccompanied by involuntary, bankruptcy exists nowhere in Europe; and there are only 4 states in this country which have anything approaching it — namely, Oregon, Wisconsin, Idaho and New York. On the other hand, the double system is found in England, in all the continental European countries and in California, Connecticut, Maine, Massachusetts, Maryland, Minnesota, Nevada and Vermont.*" (Dunscomb, 1898). "*The State legislation in force at the time of the passage of [BA98] may be briefly summarized as follows: (1) Some States had what may be called a real bankrupt law; that is, provision was made for involuntary as well as voluntary distribution of a debtor's property, and a discharge from all provable debts was granted. These States are California, Connecticut, Georgia, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, North Dakota, Rhode Island. (2) In the other States the insolvency laws were in general merely regulations and changes of more or less importance of the law of assignments in trust for creditors. In Kentucky, New Mexico, Tennessee, and Wisconsin a preference by an insolvent debtor operated itself as an assignment or afforded ground for the appointment of a receiver. But with this exception no involuntary proceedings were provided for. A few States belonging to this class allowed a debtor making a voluntary assignment a discharge from all provable debts; namely, Colorado, Idaho, New York, Oregon, Washington, Wisconsin. Others allowed such a debtor a discharge from debts actually proved; namely, Arizona, Arkansas, Indian Territory, New Jersey, South Carolina, Texas (if creditors received 33.3%), Wyoming. A majority of the States of this class forbade assignments with preferences, but a considerable minority allowed them; namely, Arkansas, Georgia, Indian Territory, Mississippi, Montana, New York (only to the extent of one-third of the estate), North Carolina, Utah, Virginia. In many other States there was nothing to prevent a debtor from giving preferences when in solvent, and then making a general assignment of such property as remained.*" (Williston, 1906). "*From the foregoing, it is seen, that the most complete bankrupt laws are found in the New England States. This may be partly accounted for by the fact that in those states action may be begun directly by attachment without notice or leave of court, so that the most vigilant creditor will obtain a great advantage. The New England merchants have, therefore, felt the need of laws that would dissolve all attachments made within a short period (usually 4 months) before the bankruptcy. In the agricultural states and territories of the West and South, on the contrary, with the notable exception of California, where a very full law was passed in 1880, the necessity for such legislation has not been so urgent… A voluntary assignment for the benefit of creditors, which is almost peculiarly an American institution, differs from*

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bankruptcy in that it does not necessarily discharge the assignor from his debts. Such assignments have been defined as voluntary transfers by a debtor of all or a part of his property to an assignee or assignees, in trust to apply the same or the proceeds thereof to the payment of some or all of the assignor's debts and to return the surplus, if any, to him. They 'come into being not by operation of law or by force of any previous proceedings either by or against the debtor. They are purely the act of the debtor. They are contracts, and rest like all contracts upon the consent of the parties.' Nearly all the states have passed laws to regulate the right of making assignments under the common law, by forbidding preferences in many cases and in all cases by prescribing more or less in detail the forms to be followed." (Dunscomb, 1893).

1090 "*There are 2 broad principles upon which a bankrupt-law should be based, to divide the debtor's property equally among his creditors, and to discharge him from the unpaid residue of his debts. The former of these principles rests upon strict justice and is universally recognized upon the Continent, as well as in England and the United States. The latter rests upon grounds of public policy and expediency, as well as of humanity, and is by no means so generally adopted. Viewed from the standpoint of the public interest, the theory of a discharge is that an undischarged bankrupt, burdened with the incubus of debt, will have no incentive to gain more than a mere livelihood, nor will he be likely to receive assistance from relatives or friends, when hordes of hungry creditors stand ready to pounce upon his acquisitions. The creditors, therefore, will reap no advantage from such a condition of affairs. On the other hand, the discharged bankrupt will begin afresh with renewed courage, and the community will not be deprived of his industry. A discharge will, of course, on this theory, be refused to a fraudulent bankrupt, since his labors are not deemed of any value to the community. The idea of a discharge is not generally approved upon the Continent, but has become firmly embedded in the laws of England and the United States... The right of a debtor to obtain a discharge differs in the several states. In some, an honest debtor may obtain a discharge without regard to the amount of the dividends. In others, this may be granted only upon payment of a certain percentage; or upon obtaining the assent of a majority of the creditors. In some states, also, the statutes declare that a 2nd or 3rd discharge either shall not be granted, or shall be granted only upon different and more severe conditions than the 1st. It is also provided that a fraudulent debtor shall not receive a discharge and certain acts are enumerated which shall be presumptive evidence of fraud; for example, giving security for debts within a certain period previous to the application for a discharge. 1 effect of a discharge is that the debtor cannot sue or be sued in respect to the property transferred under such law for the benefit of creditors. A discharge, however, will protect a debtor only when he pleads it, and an obligation so barred is a sufficient consideration to support a new promise to pay."* (Dunscomb, 1893).

1091 "*In 1831, Parliament enacted a bankruptcy law that introduced 'officialism' to English bankruptcy law. Previous bankruptcy acts had largely been creditor collection devices, invoked and pursued by individual creditors. Often referred to as 'Lord Brougham's Act' after the reformer most influential to its enactment, the English Bankruptcy Act of 1831 replaced creditor control with a governmental official who would administer the bankruptcy system. Rather than individual creditors, the bankruptcy official would be the principal overseer of the bankruptcy process. Although initially viewed as a success, the 1831 Act had come under attack by the 1850s... Buoyed by favorable reports about the success of the creditor-run system in Scotland, creditors' groups then achieved a more complete victory in 1869. With the English Bankruptcy Act of 1869, 'officialism' gave way to creditor control. To the surprise of many, England's Bankruptcy Act of 1869 proved to be a complete failure. In cases with small amounts at stake, creditors had little interest or incentive to participate. Many observers believed that debtors were not being scrutinized carefully enough, and there were loud complaints about a variety of abuses. In 1883, the pendulum swung once again. Although many creditor groups continued to lobby for a creditor-run system, the Bankruptcy Act of 1883 brought a return to 'officialism.' The Bankruptcy Act of 1883 authorized the Board of Trade to appoint an official receiver to conduct most of the administrative functions of the bankruptcy case. Unlike its predecessors, the Bankruptcy Act of 1883 endured and established what are still the basic parameters of English bankruptcy law… [and] also is far less generous to debtors than its American counterpart. A debtor who files for bankruptcy in England is subject to searching scrutiny, and courts routinely delay the debtor's discharge for a period of several years.*" (Skeel, 1999). "*For the most part the major English reforms of 1883, which established the general model of English bankruptcy and discharge still in effect today, were not followed in the 1898 legislation [in the United States]. Under the 1883 English law control over the discharge was removed once and for all from creditors. Instead the English court was given a broad discretion to grant or deny discharges, to condition them on making certain payments to creditors, or to suspend them for a period of time*." (Tabb, 1991). "*[I]n England the distribution to creditors is the principal concern… [as] credit is more restricted, the major user of the bankruptcy process is the small shop-keeperr, is to whom may be attributed a higher standard of financial responsibility and so be more justifiably held to a stricter accounting than would be the case of the financially distressed wage earner*." (Joslin, 1966).

1092 "*The Lowell bankruptcy bill is now before the Senate, and will probably be acted on at an early day. It is the same bill that met with the approval of the Senate last session, and was favorably reported to the House some 2 months ago. The prospect of its passing both Houses is therefore good. Of all the bills to provide for a general bankruptcy law, the Lowell bill has received the widest sanction from the mercantile community. It avoids the errors of the old general bankruptcy law. While dealing equitably with the debtor it is just to the creditor, and it reduces the delays and expenditures within reasonable bounds. Not only under [BA67] were the assets of debtors seriously reduced by the costs and fees of assignees and receivers, but the operation of winding up an estate was so slow and the dividends so uncertain that many creditors preferred to make almost any kind of composition with their debtors rather than risk the doubtful chances of getting a larger percentage at some remote day… The Lowell bill has not only been reported favorably in both houses of Congress. but has met with the approval of businessmen and commercial bodies generally. It is regarded by them as approaching in its provisions more closely to what such a bill ought to be than any of the 3 bills that Congress has enacted at different times into laws, and if is be, as its framers asserted, equitable alike to the debtor and creditor, there ought to be no hesitation in passing it*." (Charlotte Observer, April 19, 1884). "*May 19—There will be no bankruptcy legislation this session. The House today refused to suspend the rules and adopt a resolution making the Lowell bill a special order for Tues, June 10. The motion to suspend the rules lacked many votes of the necessary two thirds. There were 137 in the affirmative, and 113 in the negative. Some of those who voted in favor of fixing a day for consideration of the bill would vote against its passage, if it should be taken up. Hence, it is extremely doubtful whether a majority of the House is really in favor of a bankrupt law The opposition comes largely from the West and South. Over half the Pennsylvania delegation voted in the negative today. It is now taken for granted on all hands that the Lowell bill, which is buried on the calendar, cannot be reached this season*." (Detroit Free Press, May 20, 1884). "*[T]he Lowell bill made little progress in Congress during the 1880s. Although it was passed by a Republican*

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controlled Senate in 1884, it failed in the Democratic controlled House." (Hansen, 1998). "*For a time after the Civil War and Reconstruction, some modicum of peace and prosperity descended on the nation. 'Manifest destiny' and the move westward provided seemingly endless bounty and opportunity. But all turned awry beginning in 1883, as rampant speculation in western lands collapsed, and by [May] 1884 a panic had ensued. President Chester Arthur urged the passage of a federal bankruptcy law in his second annual message in 1882 and again in his final annual message in [Dec] 1884. In 1884 the Senate passed by a vote of 32-15 an innovative bankruptcy bill drafted by Judge John Lowell of Boston. Judge Lowell had drafted the bill at the request of Boston merchants after the 1867 Act was repealed in 1878. This bill was patterned in large part after the widely-admired Massachusetts insolvency law. The Lowell Bill, the early favorite of the commercial credit community, was introduced by Senator George Hoar of Massachusetts in 1882, again in 1884, and yet again in 1885… However, despite Senate passage of the Lowell bill, and the support of the Arthur administration, sectional differences reared their ugly head. Southern and Western senators and congressmen, mostly Democrats, vigorously opposed the Lowell bill or anything like it. Those congressmen viewed the Lowell Bill as a Republican-sponsored attempt by the Northern and Eastern creditors to throw Southern and Western debtors into involuntary bankruptcy and to seize their lands and other property. Due to this strident opposition, the Lowell Bill died in the House. The Southern Democrats also viewed with deep suspicion what they saw as a not-so-subtle attempt to federalize the whole realm of debt collection, transferring the control and supervision of collection efforts from the able hands of trusted local state judges to the undesirable clutches of federal judges."* (Tabb, 1999). "*No sooner, however, had [BA67] been repealed in 1878 than the merchants of the country commenced the agitation for a bankruptcy law, and the so-called 'Lowell Bill' was introduced into Congress as early as 1882, and in the 47 Congress Senator George F. Hoar championed it in the following language: 'Commerce and manufactures know no state lines.' President Arthur, in his second annual message of Dec 4, 1882, expressed a desire that Congress would act so as 'to afford the commercial community the benefits of a national bankrupt law;' and, again, in his 4th annual message of Dec 1, 1884, expressed a further desire for such legislation 'in view of the general and persistent demand throughout the commercial community for a national bankrupt law"* (Olmstead, 1902).

1093 "*Nearly 3 hours of today's session were devoted to final action on the 3 appropriation bills passed in committee of whole last week, and the result was that the Banking and Currency Committee failed to secure an opportunity to move to suspend the rules and fix a day for consideration of Bank bills. The committee will now have to wait till the third Mon in June to present a motion to suspend the rules either to pass their bills or fix a day for their consideration. Hence, the chances are that neither the McPherson bill permitting banks to issue circulation equal to the par value of the bonds deposited as security, nor the Dingley bill, authorizing the Secretary of the Treasury to invest the national bank redemption fund in bonds to be purchased in open market, will be this session. It is very doubtful whether two-thirds of the House would have voted today in favor of making these bills special orders, and it is equally doubtful whether two-thirds of the House will hereafter vote to pass the bills if they should be brought forward on any Mon when it is in order to suspend the rules. Neither bill is as strong in the House as it was before the defeat of the Morrison bill. Not a few supporters of the latter bill maintain that the best and most justifiable way to prevent contraction of the bank circulation is to reduce the customs revenue, and they will not favor any other plan in the present financial condition of the government.*" (Detroit Free Press, May 20, 1884).

1094 "*The production of confidence during a financial crisis is a challenging feat.... In the 3 most severe panics [between 1863 and 1913], [NYCHA] stretched their power and suspended or restricted the convertibility of deposits into cash, an action that was strictly prohibited by law. The action slowed the liquidation of deposits and allowed [NYCHA] members to assemble their coordinated responses to the crisis. Suspension also gave rise to a currency premium, which led to the importation of gold - a needed infusion of persistent and durable liquidity into the banking system*" (Gorton & Tallman, 2018).

1095 Timeline from Gorton & Tallman (2018). The National bank examiner began his investigation of *Marine National Bank* on May 6 and NYCHA suspended the bank for an indefinite period the following day and appointed a receiver on May 13th. The bank closed the following day and the National bank examiner took possession of the bank's property. That same day the National bank examiner reviewed *Metropolitan National Bank* and the next day announced that the bank's capital is unimpaired and was able to pay off its debts. As *Metropolitan* was solvent, NYCHA loaned it $3 M in a show of public confidence so it could withstand the run and not crash. These successful actions were able to reassure the public that their money was safe, and the panic came to an end. *Metropolitan Bank* entered voluntary liquidation proceedings in Nov.

1096 "*A more important purpose of the collateral trust mortgage is to serve as a means of acquiring control of connecting lines. There are 3three ways in which this may be accomplished, namely: (1) one railroad company may purchase a controlling interest in the securities of a second company, paying for them in cash, and reimburse itself by mortgaging the securities thus purchased and selling collateral trust bonds against them; (2) the purchasing company may exchange its collateral trust -bonds directly for the desired securities of the second company, and deposit these securities obtained in the exchange under the collateral trust mortgage; (3) the trustee of the mortgage may sell the collateral trust bonds on the market, and with the proceeds purchase the desired securities of the connecting lines, and deposit them under the mortgage. The first method, the cash purchase, will usually be followed when there is reason for a quick purchase of the desired securities."* (Mitchell, 1906).

1097 "*During the last 26 years there have been about 90 issues of collateral trust bonds, ranging in amount from [$ 0.7 to $75 M] each, put forth for a variety of purposes, and covering from 60 miles to 4,000 miles in a single issue, while a large number of mortgages bearing other names have collateral trust features.*" (Mitchell, 1906). "*It is important to the holder of collateral trust mortgages to ascertain whether or not the capital stock of the companies, whose bonds may be pledged thereunder, is deposited with the trustee. If it is so deposited, the holders of the collateral bonds, in case of foreclosure, come into possession of the immediate control of the physical property. Those collateral trust mortgages which best protect the interests of the bondholder provide, where the parent company has made use of its voting power to effect a lease of the subsidiary company's properties, that, upon default in the payment of interest on the collateral trust bonds, such lease shall immediately terminate. Provisions are frequently found in... restricting the powers which would naturally belong to the parent company as owner of the capital stock of a subsidiary company; such provisions relate to the power to consolidate, to sell property, to issue bonds, etc. Some collateral trust mortgages provide for the sale of the collateral without the necessity of foreclosure.*" (Mundy, 1907).

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1098 "*The old Wabash, St. Louis & Pacific funded a similar floating debt in 1883. That company had been seized with the mania for expansion. Organized in 1879, it had in 3 years' time increased its mileage from 1,578 to 3,518 miles, its debt from [$35 to 70 M], and had accomplished this partly by construction under subsidiary companies, mostly by annexing all the odds and ends of railway lines lying loose in its vicinity. In the same process it had collected a large and miscellaneous mass of railway securities in its treasury. Aided by destructive washouts, poor crops, and the poor condition of the roads acquired, it had piled up a floating debt of over $5 M. About $18 M worth of these stocks and bonds were bundled together under a collateral trust mortgage and $10 M of 6% notes issued against them, part of which was to provide for this floating debt and part to pay off certain car trust certificates which were to mature during the ensuing 9 years. These bonds of the Wabash were to run 30 years....The Wabash, St. Louis & Pacific 6% collateral trust bonds of 1883 were subsequently converted into a little more than their par value of 6% Debenture 'B' Bonds, the holders paying 2% in cash upon the face of the debentures received. These bonds later sank to a merely nominal value. The general mortgage bonds of the old Wabash received precisely similar treatment, however. As before stated, the Wabash, St. Louis & Pacific, owing to its policy of rapid expansion by in- discriminately annexing all the loose odds and ends of railway lines in its vicinity, was in a very poor condition not only financially, but physically. The branches which were represented in the collateral trust bonds were very low in earning power.*" (Mitchell, 1906). "*Immediately upon such consolidation the Wabash, St. Louis and Pacific Railway Co entered upon the sole use of the premises demised by said lease, and on June 1, 1880, issued $17 M of what were known as its general mortgage bonds, secured by a mortgage to the Central Trust Co of New York and James Cheney as trustees. This mortgage covered all its railway, leasehold, and other property. By a later mortgage, dated May 1, 1883, to the Mercantile Trust Co of New York, 11,089 shares of stock of the Council Bluffs and St. Louis Railway Co were pledged with a large amount of other property to secure $10 M of what were called the collateral trust bonds of the Wabash Co.*" See United States Trust Co. v. Wabash Railway 150 U.S. 287 (Nov 20, 1893).

1099 "*To analogize to current bankruptcy law, appointing a receiver pursuant to a creditor's bill served the same purpose, though in a more limited way, as the automatic stay does now. It forced most creditors to halt their collection efforts and provided a breathing space for the parties to try to work out [a] plan of reorganization… Unlike the current automatic stay, 11 U.S.C., sec. 362, the receivership bill did not freeze all obligations. Under established case law, the railroad was required to continue paying its obligations under any mortgage superior in priority to that of the mortgage holders who had petitioned for foreclosure. James Byrne, "The Foreclosure of Railroad Mortgages in the United States Courts," in Some Legal Phases, 77, 98.*" (Skeel, 2014). *"It is interesting to note that American courts have held that equity will not enjoin a sale under mortgage or pledge because a financial depression makes it impossible to sell the property at a fair market price. Park v. Musgrave, 2 Thomp. & C. 571 (N. Y. 1874); Albers Comm. Co. v. Spencer, 205 Mo. 105, 103 S. W. 523 (1907); Bolich et ux. v. Prudential Ins. Co., 164 S. E. 335 (N. C. 1932), (1932) 81 U. OF PA. L. REV. 87. But compare the decision of Schmuck, J., of the Supreme Court of N. Y., N. Y. Times, April 7, 1933, at 21."*(Feller, 1933)

1100 "*[A] new form of receivership was originated in the Circuit Courts in the Wabash Railroad Cases, through an application made for the first time by the railroad company itself for the appointment of a receiver. This new precedent was soon followed by most railroads in financial straits. The result of this new and modern development of an old equitable doctrine was an enormous increase in the work of these Courts and the assumption of new duties and new responsibilities, presenting many novel questions for decision, and, above all, requiring the control of railroads to be taken from the hands of State commissions and State officials and placed in the custody and direction of the judicial branch of the National Government.*" (Warren, 1922c). "*In 1884, the Wabash Railroad Co, finding itself in trouble, filed a 'conformity bill', the defendants being the trustee under its general mortgage, and the lessors of certain leased lines and equipment. The original bill was filed in the Eastern District of Missouri, and ancillary bills were filed in other districts. These suits were opposed; but the courts sustained them, appointing receivers, and making decrees to the end of liquidation… the Supreme Court, while deeming the Wabash decision as 'of an unusual character', considered the receivers as clothed with all conceivable powers as to matters collaterally arising, and that a similar receivership was upheld, as against collateral attack, in the case of the Cleveland, Canton & Southern Railroad. All that this comes to, then, is the proposition that, as a matter of practice, it is more logical for a creditor to file the bill than for the debtor to file it, for then the court can treat the plaintiff as representative of his class; and, in so doing, it can temporarily remove the assets from the reach of all creditors in order to effectuate a distribution on the basis of equality.*" (Glenn, 1925). Hansen (2000) notes that the Wabash receivership was a natural progression rather than a revolution; the latter interpretation created by the losing side in the Wabash case, and gained widespread acceptance due to the notoriety of Jay Gould, who was associated with railroad: "*Neither the response of the markets nor the historical record suggests that the Wabash receivership relied on a novel interpretation of receivership or significantly altered the rights of bondholders. The elements... that have traditionally been singled out as innovations all existed well before 1884. Judges routinely declared that these enterprises had a duty to the public, a concept that was invoked when the railroad receiverships were introduced and was reiterated when receivers' certificates were first issued and the Wabash receiver was appointed… Analysis of railroad bond prices supports the conclusion that creditors' rights were not transformed by the courts in the mid-1880s.*" (Hansen, 2000).

1101 "*The Co got into business by taking an interest in the management of concerns in which its investments were large when these concerns failed or were about to fail. In the depression of 1893 railroads were hit so hard that by 1895 20% of the total mileage of the country was in the hands of receivers. Inasmuch as The Mutual Life's holdings in railroad securities amounted to $56 M in 1896, the depression was bound to impair some of the investment. Consequently, the Co played an active role in bankruptcy proceedings, on bondholders' protective committees, and in reorganization plans. The policy usually pursued in such cases was established in 1890; it consisted of getting a member of the Finance Committee to represent the Co's interests. This was done, for example, in the case of the South Carolina Railway Co and the Indianapolis, Decatur, and Springfield. Sometimes the Co had to cut deeper than this. A considerable sum was loaned to David C. Robinson, who was a trustee from 1891 to 1893, on the security of mortgages and bonds of the Elmira Municipal Improvement Society. This society was a holding company for the Elmira Gas and Illuminating Co, The Elmira Illuminating Co, and the Elmira Waterworks, and had a controlling interest in the Elmira and Horseheads Railroad Co. When these companies reached the verge of insolvency, The Mutual Life stepped in, appointed new managers, and for years nursed the entire enterprise until the holdings could be sold.*" (Clough, 1946).

1102 "*Sprague (1910, 128) thought that there would have been no panic in the United States if it had not been for the Baring Crisis in Britain. There were, however, important failures in the United States before news of the Baring crisis crossed the Atlantic. The stock market panic, which led to the*

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banking difficulties, was triggered, according to Wicker (2000, 45) *by the failure of 'the large and well respected brokerage firm of Decker Howell and Co.' Decker and Howell and the Boston brokerage of C. M. Whitney which also failed had been investing heavily in railroad securities.*" (Rockoff, 2013). Following Decker Howell's liquidation creditors received 100% by Jan 5, 1891 (NYTimes, 1897).

1103 NYCHA "*recognized the critical situation' on the afternoon of Tues, Nov 11, and authorized a resolution to issue loan certificates after the Bank of North America (a clearing house member) was short [$ 0.9 M] at the clearing house because of large advances made to Decker Howell, a brokerage firm that suspended earlier in the day. In total, 3 firms failed and 3 banks were unable to meet their clearinghouse obligations. (Commercial & Financial Chronicle, Nov15, 1890, page 667. NYTimes, Nov 12, 1890)*" (Gorton and Tallman, 2016).

1104 Prior to the introduction of multilateral trading using a clearinghouse in 1892, NYSE equities settled on a bilateral basis, where brokers were required to write and receive checks and securities for every transaction. A "*fundamental change in the organization in the New York money market came with the establishment of the stock-exchange clearing house in May, 1892. It led to a very considerable reduction in the clearing-house exchanges of the banks and also, and more important, in the volume of certified checks. Over-certification ceased to be a factor of the first magnitude in the banking methods of the city. Had not this arrangement for stock-exchange dealings been set up, it is probable that it would have been necessary to close the stock exchange in 1893 and in 1907, and it is also probable that the volume of business transacted in the years after 1897 could not have been handled.*" (Sprague, 1910). "*The pressure for a stock clearinghouse continued, and the NYSE finally agreed to found its first stock clearinghouse, which began operations May 17, 1892. Francis L. Eames, founder of the NYSE Clearing House, reflected back on the pressure from the NYCHA banks: 'Early in 1892, it became known that many of the banks were alarmed at the immense certifications necessary for stockbrokers. It also became known that a resolution was to be introduced in the Clearing-House of the banks, to restrict the volume of certifications for brokers, and it was thought that the resolution would be carried.' Somewhat ironically, the stock clearinghouse established by the NYSE in 1892 was not a central counterparty. That is, it did not guarantee the settlement of trades of member brokers. Rather, the stock clearinghouse netted trades between brokers, which in the process greatly decreased the amount of certification required and thus eased pressure on NYCHA banks... the stock clearinghouse was able to net over 90% of the NYSE's trade volume, leaving a greatly reduced volume for clearing through the traditional (pre-clearinghouse) mechanism. Thus the banking sector continued to bear the risk of overcertification but at a greatly reduced level of certification.*" (McSherry and Wilson, 2013).

1105 "*Address of Mr. Walter B. Hill of Georgia delivered at the Annual Meeting of the American Bar Association at Chicago... Uncertainty, a cause of litigation. This delay is a great source of increase of litiga tion. It is an evil that is self-productive Bankrupt Act of 1867. the question was raised. whether under the phraseology of the Act, which differed from that of the Act of 184-0, a factor or other similar fiduciary was released by a discharge in bankruptcy from his liability as such. The question presented was diffi cult of decision. It was decided one way by numerous registers in bankruptcy. and in the opposite way by many others. The District Judges likewise difiered about it, and also the Circuit Judges. The question arose in the state courts where a discharge was plead and the State Supreme Court decisions show authorities like Swiss troops fighting on both sides. The question was heard in the Circuit Courts in which Associate Justices of the Supreme Court presided. One of them decided one way, and one of them the other way. The question was not settled until 1883, by a decision of the Supreme Court of the United States in the case of Hennequin et al., vs. Clews et al., 111 U. S. p 676. It is no exaggeration to say that there are at least to be found 50 reported cases, dealing with this question, between the time it was first agitated and the time when it received a final solution by the Supreme Court. [need not cite them. Are they not written in the chronicles of the law? A prompt decision would have saved 49 unnecessary cases. During that period no bankrupt factor, even if he were honest as Caesar Birotteau, could possibly know what was the effect of his discharge in bankruptcy."* (ABA, 1889). "*July 1, 1878, several leading lawyers in different states, public spirited men, issued a call for a meeting, to form an American Bar Association... In 1887 this Committee submitted a report on Uniformity of pleading and practice in the Courts of the United States. At this meeting the Committee on Commercial Law submitted a report upon the need for a national bankruptcy act and for national legislation to regulate commercial transactions between citizens of different states. Their fourth conclusion was as follows: 'That in the exercise of the same power' (over interstate commercial transactions) 'Congress should enact a statute defining the law relating to bills of exchange and other commercial paper, so far as the same is involved in interstate commerce.' The Act proposed is given in full in the Reports of the American Bar Association for 1887. It merits study as the precursor of the Negotiable Instruments.*" (Eaton, 1904).

1106 "*The ability to form a national organization had been crucial to the success of the business people seeking bankruptcy legislation. It enabled them to speak as one about the desirability of such a law and about the specific features the law should contain. The means of organizing these business people, the amalgamation of commercial associations from all over the country, was a key innovation. The local bodies provided a means for the national organization to obtain information about the preferences of their members as well as to organize their lobbying efforts. The system of organization made it possible for a large number of businessmen throughout the country to form a united front on the issue of bankruptcy. This new form of organization had been made possible by the rapid growth of commercial associations after the Civil War.*" (Hansen, 1998). "*After failing to obtain passage of the Lowell bill, associations of merchants and manufacturers met again in 1889. Under the name of The National Convention of Representatives of Commercial Bodies they held meetings in St. Louis and in Minneapolis. The president of the Convention, a lawyer and businessman named Jay Torrey, drafted a bill that the Convention lobbied for throughout the 1890s.*" (Hansen, 2001).

1107 Rep. Davis (R-Ma): "*The provisions of this bill for the regulation of interstate commerce by rail-carriage apply to a subject of enormous magnitude and of vital moment to the material interests of our country... Undoubtedly there have been two periods in the history of our railroad system when it was extended beyond the natural requirements of the time, and when the vast sums expended in construction and equipment, followed by a sudden cessation of operations and the consequent decline in prices of material, leading to the stoppage of mills and the throwing out of employment of thousands of workmen, have tended to produce general business depression. From the results of one of these periods of morbid activity we are still laboring. There have been also serious evils connected with the building of railroads and the manipulation of their stocks, from which stockholders and bondholders have each suffered and which have driven many railroad corporations into bankruptcy... Of course, when this process is pursued long enough it becomes a question of the survival of the fittest. One or more roads which were perhaps always weak become insolvent and are placed in the hands of a receiver, but even this catastrophe may*

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not stop a railroad war; the receiver manages the bankrupt road in the interest of the bondholders, and so long as even a small percentage is paid upon them, or if the road will simply pay running expenses, or even if the running nets a small loss, it may continue to be operated for a time. Of course, this must end at last or the insolvent road or roads will drag down with them those that up to that time had been in good financial condition. But the process may be long and distressing. It must be borne in mind that competition does not follow the same rule in industries where there is a large fixed capital that it does in ordinary commercial transactions. In the latter the merchant can stop selling when goods cannot be disposed of at a profit, or at the worst without loss. He can wait, expecting that his competitor will soon either fail or weary of selling below cost, and in either case he can resume business profitably. A manufacturer or a railroad cannot stop without serious loss. The former has a large capital in building and machinery, the latter in its roadbed and equipment, and they each have large numbers of workmen to whom idleness means poverty and distress, and who will seek work elsewhere in case of a stoppage of operations. The mill or railroad will therefore continue to run beyond the safety line indicated by the results of competition." (Davis, 1886, p8287-9)

1108 The Supreme Court in *ICC v. Chicago GW Ry., 209 US 108* in 1908 noted that the ICC "*did not find whether the rates were reasonable or unreasonable per se. Its omission may have been owing, partly at least, to the decision in*" the 1896 decision of *C., N.O. & T.P. Ry. v. ICC, 162 US 184*, which adopted "*the view expressed by the late Justice Jackson, when Circuit Judge, in the 1892 case of ICC. v. B. & O. Railroad, 145 US 263*" concluding that: "*The principal objects of the Interstate Commerce Act were to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions; to prevent undue or unreasonable preferences to persons, corporations or localities; to inhibit greater compensation for a shorter than for a longer distance over the same line; and to abolish combinations for the pooling of freights. It was not designed, however, to prevent competition between different roads, or to interfere with the customary arrangements made by railway companies for reduced fares in consideration of increased mileage, where such reduction did not operate as an unjust discrimination against other persons travelling over the road. In other words, it was not intended to ignore the principle that one can sell at wholesale cheaper than at retail. It is not all discriminations or preferences that fall within the inhibition of the statute; only such as are unjust or unreasonable.*"

1109 Many railroads provided no annual reports until the 1890s. In response to the NYSE, the *Delaware, Lackawana & Western Railroad* wrote that it "*makes no report [and] publishes no Statements.*"; exceptions did so on a voluntary, unaudited basis; according to the *Railroad Gazette* put it in 1893, "*The annual report of a railroad is often a very blind document and the average shareholder taking one of these reports generally gives up before he begins.*" (quoted in Bordo et al., 1999). "*One of the key provisions of the Interstate Commerce Act required carriers to submit regular reports, on which the ICC based its determinations. But whether freight rates were disproportionate to the railroads' operating costs was an accounting question, and different railways accounted for costs in different ways. The lack of a uniform accounting standard thus impeded the ICC's early operation.*" (Bordo et al., 1999).

1110 "*Throughout the [postbellum] period, the U.S. commitment to remaining on the gold standard was questioned, which may explain the general tendency for the United States to lose gold. The gold outflow was temporarily interrupted in 1891-92, however, when U.S. commodity exports soared. Both the money stock and commodity prices increased in these two years, and the cost-of-living stabilized. The gold outflow resumed late in 1892, however, and a financial crisis ensued in the spring of 1893.*" (Bordo and Wheelock, 1988). The Act superseded the Bland-Allison Act and created the Treasury note to purchase silver and be redeemable in gold or silver - a huge strain on the gold reserve which made more difficult the task of maintaining parity to gold: "*As the Sherman Act operated, the government was expending gold, which it could ill spare, for enormous stores of silver which it could not force the community to use as money*" (Young, 1924).

1111 "*It was not until 1892, 3 years after the reorganization had been consummated, that cases involving the Wabash receivership reached the Supreme Court. The case of Quincy, Missouri and Pacific Railroad Co. v. Humphreys, 145 U.S. 82 (1892), involved questions of the obligation of railroad receivers to pay rent for lines leased prior to their appointment. Chief Justice Fuller began his opinion by describing the principle upon which the receiver was appointed. He observed, 'The bill was obviously framed upon the theory that an insolvent railroad corporation has a standing in a court of equity to surrender its property into the custody of the court, to be preserved and disposed of according to the rights of its various creditors, and, in the meantime, operated in the public interest.' He also pointed out that one of the counsels opposing the Wabash had described the bill as 'without precedent,' but he declared that the Court did not need to address that issue. He agreed with the counsels opposing the railroad that it would be 'dangerous in the extreme' to give the managers of a railroad the power to issue certificates that had priority over lien holders, but he observed that this had not been done. The receivers had no discretion to issue receivers' certificates but were merely the instruments of the court that had directed the issue of receivers' certificates.*" (Hansen, 2000).

1112 "*The Act to Regulate Commerce of 1887 deprived the railroads of the right to pool freights which, however unsatisfactory, had been their only device for cooperatively removing the effects of destructive, rate-slashing competition.*" (Martin, 1974). The President of the Railroad "*had succeeded in carrying out his plans for a combination of coal producing roads and for the extension of the Reading into New England, but… [it had] become a burden because of the insufficient funds behind it. Matters came to a head in Feb with an attempt to borrow on $10 M collateral trust bonds. Speyer & Co. accepted the issue, but the Drexels refused to handle it, and began to sell the company's securities at any price. Quotations dropped from 461 to 401 on Feb 17, and continued to fall the two succeeding days, reaching 28 on Feb 20. On this last day application was made to the United States Circuit Court in Philadelphia, and Messrs. McLeod, Wilbur, and Paxon were appointed receivers. 'I am very sorry,' said President McLeod, 'that we were driven to the necessity for a receivership, but it was the only thing to do. Our credit was attacked in a way which made it impossible for us to meet our obligations, and we had the receivership established before the property was further injured… The trouble was brought about by the fact that we were doing an enormous business on a small capital, and when this attack was made . . . it hurt our credit so that we could not borrow money.*'" (Daggett, 1908)."*On Feb 20th, the Philadelphia & Reading Railway Co, with a capital of $40 M and a debt of more than $125 M, went into bankruptcy.*" (Noyes, 1909).

1113 Congress established regulation railroads with the ICC of 1887 and gradually expanded the definition of safe assets according to States' savings banks regulations. On "*March 25, 1907. The Secretary of the Treasury announced this morning that he would accept in substitution for United States 4% bonds of 1907 now held to secure public deposits any other Government bonds, Philippine bonds and certificates, city of*

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Manila bonds, Porto Rican bonds, District of Columbia bonds at par, and Hawaiian bonds at 90%; also State, municipal, and high-grade railroad bonds such as are legal investments for savings banks in the States of New York and Massachusetts on a basis of 90% of their market value." (Cortelyou, 1908, pgs., 26-7, 225-6).

1114 "*Since 1891, New Jersey corporations had been allowed to purchase the stock of other corporations by payment in their own stock.*" (Seligman, 1976). "*The National Cordage Association used the trust form to attempt to maintain an existing cartel. It moved to centralize purchases and control sales, but it made no attempt to consolidate and centralize the administration of its constituent cordage and twine companies, nor did it try to consolidate or reorganize production facilities. The cordage trust (which became a New Jersey holding company in 1890), unlike the trusts in the processing industries, had to borrow large amounts of working capital because 80% of its production went into binder twine and therefore cash flowed in only at harvest time. With no economies of speed resulting from consolidation and with recurring heavy demands for working capital, the new enterprise had difficulty in making a return on the large amount of capital obtained to carry out its continuing strategy of buying out competition—a strategy that was weakened when a number of manufacturers who had joined the merger used their payments as capital to start new companies. In May 1893 the cordage company's sensational financial failure helped to precipitate the panic that ushered in the depression of the middle 1890s.*" (Chandler, 1977).

1115 The firm conducted "*business in the States of New Jersey, New York, Massachusetts, Ohio, Pennsylvania, and Illinois, in all of which States it is now operating cordage and binder twine mills, with the exception of the State of New Jersey, its mill in that State having been destroyed by fire, and the said Corporation has real or personal property in all of the States above mentioned… The greater part of the assets of said Corporation are outside of the State of New Jersey, and are likely to be attached by creditors in the State of New York and elsewhere, on the ground that the Corporation is a foreign corporation. An attachment has already been threatened in [NYC], for a matured debt, and your orator verily believes that unless a receiver is speedily appointed for the equal protection of the creditors, other attachments will be issued in different States to the great embarrassment of the operations of the Co and wasting of its assets, and that preferences will be obtained by certain creditors, which ought not, in equity, to be obtained... In Kansas City, May 10, William Deering & Co, manufacturers of Chicago, through their attorneys, levied attachment upon 1.25 M pounds of binding twine, the property of [NCC]. The twine is in the possession of the Kansas City branch of the concern. It was attached by the Deerings to secure a debt of $100 K. (56 Chron. 793, May 13, 1893).*" (Dewing, 1913).

1116 "*The commercial failure of a stock market favorite in May 1893, after months of depressed stock market prices, touched off the panic for which the stage had been set by the general uneasiness about the currency. There had been no distrust of the banks up to this time*." (Friedman and Schwartz, 1963). NCC was the most actively traded stock at the time, and rumors of distress and a dilutive preferred share issue, caused its lenders to call in their loans, and the company collapsed as a result (NYTimes, 1893). On May 5th, NCC *"with $20 M capital and $10 M liabilities [failed]. The management of both these enterprises had been marked by the rashest sort of speculation; both had been favorites on the speculative markets. [NCC] in particular had kept in the race for debt up to the moment of its ruin. In the very month of [NCC's] insolvency, its directors declared a heavy cash dividend; paid, as may be supposed, out of capital. As it turned out, the failure of this notorious undertaking was the blow that undermined the structure of speculative credit. In Jan, [NCC] stock had advanced 12%, on the New York market, selling at 147. Sixteen weeks later, it fell below $10 per share, and with it, during the opening week of May, the whole stock market collapsed.*" (Noyes, 1909).

1117 "*[Following Cordage there was] rapid withdrawal of cash reserves from the city banks. There are 2 classes of deposits on the basis of which these larger banks conduct their business: deposits by individuals and deposits by other banking institutions. A country bank in the West or South, for instance, is required by law to hold in cash a sum 15%, as large as the sum of its deposits; but it may entrust to other banks at certain designated cities 60% of this cash reserve. Since demand for loans at these interior points is nominal except in the harvest season, and since the city banks are always willing to pay 2% for the use of such interior funds, it follows that the bulk of the country bank reserves is kept perpetually on deposit in the cities.*" (Noyes, 1909). "*On Mon, May 8, 1893 the Chemical National Bank ["CNB"] of Chicago suspended and soon went into receivership. Shortly thereafter the Capital National Bank of Indianapolis, which was closely associated with [CNB], and the Evanston National Bank, also went into receivership. [CNB] was widely regarded as an unsound institution by Chicago bankers, many of the loans being notes of insiders and the Clearing House Committee refused to aid the bank. As things turned out, however, some of the bank's depositors were protected. [CNB] had won the right to have a branch at the Chicago World's Fair (World's Columbian Exposition). The branch had $100 [K] in deposits, many from foreign exhibitors, and so a committee of wealthy Chicagoans was formed to guarantee the deposits. The managers of the Fair did 'not desire an exhibition of a failed national bank among the interesting collection on the Midway Pleasance' (James 1938). A few days later the Columbia National Bank and United States Loan & Trust Co with which it was intimately connected closed their doors. The Columbia National and the United States Loan & Trust were both controlled by Zimri Dwiggins who had created a financial house of cards. The base was the Trust Co which issued bonds the proceeds from which he used to purchase stock in country banks. When Dwiggins banks failed, the country banks went with them. Again, the Chicago Clearing House refused to aid the Bank. With banks in Chicago and rural Illinois and Indiana failing, the panic seemed to be well underway. The public, however, retained some confidence in the Chicago banks, despite the failures of [CNB], Evanston National, and Columbia National. But then on Sat June 3, Herman Schaffner and company broke. The firm initially had specialized in commercial paper, but had been drawn into financing local businesses including speculators in street-railway stocks and real estate developers (Judy 2013). Schaffner hired a boat and rowed into Lake Michigan from which his body was later recovered. Following Schaffner's failure a near panic, concentrated among the savings banks, took hold. It is said that 35,000 depositors in the Illinois Trust and Savings Bank presented themselves. For a time, the banks in Chicago once more seemed to be on the mend. But then the panic spread. On Mon July 17, The Missouri National Bank failed, bringing with it a string of failures, and on July 25, the Wisconsin Marine & Fire Insurance Co. Bank of Milwaukee... [especially since it had] a lot of stock of Northwest and St. Paul which had been coming on the market to provide funds… [and led to] an unusual number of failures among our banks and private firms... in various parts of the country, but especially in the West, some of them being concerns of long standing and high repute."* (Rockoff, 2013).

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1118 "*[I]n June 1893, the external drain of gold ceased temporarily as information was made public that the administration would press for the repeal of the purchase clause in the Sherman Silver Act…. Due to a filibuster, the purchase clause in the Silver Act of 1890 was not actually repealed until Nov. 1, although Congress was called into special session for that purpose on Aug. 7.*" (Friedman and Schwartz, 1963).

1119 "*The proximate cause of the runs was distrust of the solvency of the banks, rather than dissatisfaction with the currency. A large number of mercantile failures during the first half of 1893 had excited alarm concerning the quality of bank loans. As in many such cases, however, a deeper cause was doubtless the preceding price deflation. Loans that would have been good and banks that would have been solvent if prices had been stable or rising became bad loans and insolvent banks under the pressure of price deflation. And doubtless, also, the collapse of some banks caused runs on others and their suspension, in turn, even though many would have remained fully solvent in the absence of the runs.*" (Friedman and Schwartz, 1963). "*The crisis itself was a result of complex causes, among which the monetary situation was by no means certainly the most important. This is especially true of the causes of the long years of depression which followed its outbreak. Among these causes may be mentioned unremunerative prices for agricultural staples, and the heavy load of farm-mortgage indebtedness; also railway receiverships, which were due to the oversanguine estimates of the future and reckless financing of the wildest sort. Even the unsatisfactory banking position at the time of the crisis seems to have been far less a product of monetary conditions than has been usually supposed.*" (Sprague, 1910).

1120 "*The first direct signs of the financial crisis occurred during the week of Oct 14 when 5 banks that were members of [NYCHA] and 3 outside banks required assistance, which was given... Order seemed to have been restored by Mon, Oct 21, when the Knickerbocker Trust Co, the third largest trust company in New York with deposits of $62 M, began to experience unfavorable clearing house balances as a result of connections with the banks that were initially in trouble. A run on the company the next day forced it to suspend. Had the Knickerbocker been a member of [NYCHA], it probably would have been helped, and the further crisis developments might thereby have been prevented. On Oct 23, a run began on the second largest trust company in the city, with deposits of $64 M, and on the following day on still another trust company. Those companies were given assistance, because it was now clear that the entire credit structure was in danger. However, assistance was granted slowly and without dramatic effect; the assistance saved those two companies from failure but did not allay general alarm outside New York. During the heavy runs on the trust companies, Oct 21 to 23, [NYCHA] banks had to furnish currency required by the trust companies whose reserves were deposited with them, and were also shipping currency to interior banks and paying it out over their counters to their own frightened depositors. On Oct 24 the Secretary of the Treasury-since March, George Cortelyou - came to their aid by depositing $25 M with the chief central reserve city banks in New York.*" (Friedman and Schwartz, 1963, pg. 159).

1121 "*[By Oct,] bonds coming within the provisions of these laws [of the States of New York and Massachusetts] became very scarce. Banks were then informed that bonds would be acceptable which came within the laws of Connecticut and New Jersey, thus making available many millions of bonds which were considered as good security.*" (Cortelyou, 1908, pgs., 26-7, 225-6). In 1908, Senator Aldrich (R-RI) (1908a) noted that "*the bonds of railroads that are, by recent legislation, under government regulation"* - likely the ICC of 1887; the article editor noted that *"During the panic many millions of them were accepted by the Secretary of [UST] as security for government deposits, and if Mr. Cortelyou had had the same unreasoning prejudice against railroad bonds that the friends of the commercial paper asset currency have the panic might have been worse and many more banks might have gone to the wall*" (Aldrich, 1908a).

1122 *"Thus, during the panic of 1893, the preferred and common stock, the second mortgage and equipment trust bonds of the Chesapeake, Ohio & South, western took a sudden and large drop. The Illinois Central snatched them up at their low prices, at the same time buying that company's floating debt and overdue interest coupons, and thus obtaining control. This move gave the Illinois Central an outlet from Memphis toward the Northwest for the traffic coming up over its Yazoo & Mississippi Valley Division, and also connected that division of its system with the main line at Fulton, Kentucky. The Illinois Central reimbursed itself for these cash appropriations by selling an issue of collateral trust bonds secured by a mortgage upon the Chesapeake, Ohio & Southwestern securities.*" (Mitchell, 1906). "*When the Chicago, Rock Island and Pacific Railway Co bought the Choctaw, Oklahoma and Gulf it issued for that stock its collateral trust bonds, payable in series up to 1918. No provision was made at the time for paying the annual installments, amounting to about $11.5 M, except from the earnings of the Chicago, Rock Island and Pacific. It was soon seen, however, that the payment out of income was a burden, and surely an unjust one, for why should the stockholders sacrifice a large part of their surplus to buy stocks for the capital account? Therefore, when the refunding mortgage was made, in 1904, provision was made under it for the payment of these serial installments. Today the Rock Island appropriates its income surplus directly for the purchase of equipment and for improvements. Who will say that the change is not to the benefit both of the property and its stockholders?*" (Keys, 1907).

1123 "*By the time the panic in New York was under control, alarm had spread throughout the country. Although there were runs on some banks in scattered parts of the country due to local causes, loss of confidence was displayed less by the public than by country banks. Past experience had taught country banks the difficulty of obtaining currency from their city correspondents in times of crisis. Country banks therefore demanded currency for the funds on deposit or on call in New York. At that point, Oct 26, [NYCHA] began issuing clearing house loan certificates, a device that had been developed in earlier crises as a means of providing a substitute for currency at least for settling local interbank balances. Clearing house loan certificates, obligations of Clearing House banks, which members and other banks agreed to accept in lieu of currency in settling adverse clearing balances, were issued to individual banks in return for their own obligations secured by assets acceptable to a committee of bankers. 'Clearing house certificates' were issued by banks as currency for the public's use.*" (Friedman and Schwartz, 1963).

1124 It was the third bill in a month and tenth since 1886. The two previous attempts covered only depositors with frequent regulatory examinations (similar to the FDIC system), while earlier versions also covered bank notes and other proved claims). However, Bryan's plan would cover "*depositors and creditors [at national banks,] except [for] officers, directors, and stockholders…[and be paid for with] Treasury notes to be issued in an amount equal to special fund, and used for government expenses, to provide against contraction of the currency*" (FDIC, 1950, p81-2).

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1125 "*The national banks created under the Act of June 3, 1864, for many years availed themselves of this condition to have as large a proportion of their reserves as possible in United States notes at the times when their property became subject to assessment for taxation under State laws. This practice led to an act of Congress in 1894, authorizing the States to tax such notes at the same rate as other money. It was long held that the instruments of State sovereignty were exempt from Federal taxation upon the same grounds that the instruments of Federal sovereignty were exempt from State taxation, but this view was overruled in regard to the circulating notes of State banks in the case of Veazie Bank vs. Fenno.*" (Conant, 1915).

1126 "*By the 1890s, populist lawmakers were the standard bearers for the pro-debtor perspective, and the debates that led to the 1898 act were full of their exchanges with proponents of a federal bankruptcy law. In the populist imagination, bankruptcy law was often linked with the gold standard as the two greatest scourges of the common laborer. Creditors preferred that America yoke its currency solely to gold in order to minimize inflationary pressures and promote exchange. Populist lawmakers complained that this 'sound money' strategy would hurt farmers. In the words of Senator Stewart of Nevada, the gold standard would 'depreciate the property and increase the burden of debt' on the common man. (Populists were not worried about the possibility of inflation under a 'bimetallist' approach that included silver as well as gold, because inflation would increase property values and decrease the burden on debtors of previously contracted debt.)*" (Skeel, 2003). Populists proposed a "*policy of 'free silver' intended not only to increase the amount of specie in circulation, but also to fix its value in relation to gold in such a way as to cheapen the dollar and reverse the transfer of wealth effect of previous deflationary policies, so that now debtors would be the gainers*" (Sauer, 1994).

1127 "*Bryan's defeat marks the end of the period, rather than simply a minor setback on the road to ultimate success, because it happened to follow gold discoveries in South Africa and Alaska and the perfection of the cyanide process for extracting gold. These developments doomed Bryan to political failure, far more than any waning in the effectiveness of his oratory or any shortcomings in his political organization. They produced a rapid expansion of the world's production of gold, sufficiently large to force an upward price movement over the next two decades despite a continued growth in world output. In the United States, the stock of money was approximately constant from 1890 to 1896. During those years, uncertainty about the monetary standard and associated banking and international payment difficulties prevented any expansion in the U.S. stock of gold despite a moderate acceleration in the growth of the world's stock of gold. The money stock then rose over the next two decades at a rate decidedly above that from 1881 to 1896. The accompanying gradual rise in prices rendered the gold standard secure and unquestioned in the United States until World War I... A combination of events, including a slowing of the rate of increase of the world's stock of gold, the adoption of the gold standard by a widening circle of countries, and a rapid increase in aggregate economic output, produced a secular decline from the 1860's almost to the end of the century in the world price level measured in gold, despite the rapid extension of commercial banking and of other devices for erecting an ever larger stock of money on a given gold base. That trend was reversed in the 1890's by fresh discoveries of gold in South Africa, Alaska, and Colorado combined with the development of improved methods of mining and refining, especially the introduction of the cyanide process. These occurred during a period when there were few further important extensions of the gold standard yet a continued development of devices for 'economizing' gold. In consequence, the prior declining trend in world prices was replaced by a rising trend despite a continued rapid increase in physical output.*" (Friedman and Schwartz, 1963)

1128 *"[I]t was challenging to get gold into the United States, but once suspension was imposed and the currency premium arose, gold flowed rapidly in*" (Gorton & Tallman, 2018)

1129 132 entered receivership (15% of miles), exceeding aggregate failures since 1884 (Swain, 1898).

1130 "*The refinancing which took place following the panic of 1893, the trust mortgage, trust indenture, equipment trust agreement and similar security devices came into prominence and the accompanying money instruments took substantially their present forms.*" (Steffen and Russell, 1932)

1131 "*[L]ack of a uniform accounting standard… impeded the ICC's early operation... [so it] established a uniform accounting standard for railroads in 1894. Since the ICC released the financial reports submitted by the railroads to the public, its standard became a focal point for investors seeking to encourage the establishment of uniform practices.*" (Bordo et al., 1999).

1132 "*Whatever objections may be discovered, there are strong considerations to be found in favor of the establishment of a federal bureau or commission charged with judicial powers, to have exclusive charge of such railroad receiverships as might be brought under federal jurisdiction. On the side of the interest of the railroad properties, several things may be said in favor of a complete separation of these cases from the circuit courts... [in 1896 ALR noted]: 'The manner of dealing with insolvent railways is a very large question, manifestly too large for State action, except in the case of railways which lie wholly within the limits of a single State. We have half a notion that the best way to deal with it would be for Congress to clothe the [ICC] with judicial powers, constituting it a sort of railway court of bankruptcy, under such safe-guards as should maintain, on the one hand, the right of the public to have the insolvent interstate railroad safely operated, and such as should, on the other hand, conserve, as far as possible, the rights of creditors according to their respective priorities.*" (Swain, 1898)

1133 "*2 rival practitioner groups, the American Association of Public Accountants and the New York Institute of Accountants. Throughout the 1880s, the AAPA and NYIA had competed to control the new profession, promoting rival accounting standards. They had submitted a series of rival bills to the New York State Senate in the 1890s proposing a uniform State examination and a 3-man examining board for certifying professional competency and limiting the use of the title 'certified public accountant.' The NYIA's version was adopted in 1896. State certification thus did much to accelerate the emergence of a uniform accounting standard. By 1905 8 other States had followed New York in establishing State licensing laws which required candidates for certification to pass a written exam or appear before an examining board. It remained to transform these State standards into a uniform national accountancy standard. This was facilitated by inclusion in the 1903 Illinois licensing law of a reciprocity clause which granted licenses to practitioners licensed in other jurisdictions.*" (Bordo et al., 1999).

1134 "*Federal railroad receiverships was a source of complaint in the business world. State Legislatures, lawyers and Judges questioned the freedom of assumption of jurisdiction by the United States Circuit Courts 'the innate viciousness of a receivership regime.'*" (see footnote for list, Warren, 1922c, p.427). Hon. Caldwell notes that the receiver is an "*agent of the court. He is an officer of the court and his possession of the property is the possession of the court. He is not the agent of either party to the suit and neither party is responsible for his contracts or for his malfeasance or misfeasance in office,*"

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and that by "*the Act of March 3, 1887, which reads as follows 'That every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such receiver or manager was appointed, so far as the same shall be necessary to the ends of justice.' After a long struggle, the rule announced in Dow v. Memphis & Little Rock T. Co., and vigorously and ably contended for by Mr. Justice Miller in his dissenting opinion in Barton v. Barbour, has, by act of Congress, become the law of the land and obligatory on all Federal courts*." (Caldwell, 1896, pg. 166).

1135 In 1896, the American Law Review printed an article by Hon. Caldwell, President of the United States Circuit Court of Appeals for the 8th Circuit and said of its author: "*For 15 years he has steadily departed from the old idea, which was once paramount in the Federal judicial mind in railway receivership cases, which placed the rights of the bondholder in the fore and ignored the rights of general creditors whose labor skill and materials had maintained the property for the benefit of the bondholders. During that length of time he has steadily refused to grant receiverships over insolvent railway properties, unless the applicants would consent to insert in the order appointing the receiver, a clause providing for the payment of meritorious claims of the character above indicated, and also of meritorious claims arising from the destruction of property by railway torts and like*." (Notes to Caldwell, 1896, pg. 282). Note that receivers were *"the principal officers of the company. Out of 150 cases spread [from 1868-98], were 80 in which the president of the road in question was appointed receiver; 25 others were general managers; 17 superintendents; and 16 vice-presidents. Other officers represented were the auditor, the treasurer, the chief engineer, and individual directors*." (Swain, 1898).

1136 "*By 1897 the Sherman Anti-Trust Act had been interpreted as outlawing rate-fixing bureaus as a means of achieving rate stability, and there remained no alternative to the massive consolidation of hundreds of small, independent railroads into the familiar few railroad systems of modem times. Indeed, the process had been gathering speed ever since the mid-1880's, and only the tempo, but not the trend, was altered after 1893. The large number of receiverships—Swain counted 343 between 1891 and 1897—compared with barely 200 in each of the two preceding decades; but the receiverships were not the cause of these consolidations... The equity receivership, however, so vastly changed as an Anglo-American legal institution in the new era of the railroad, served efficiently to bring about the transfer of control of America's railroads, with a few notable exceptions, to a handful of experienced, professional railroad men like [Hill and Harriman] in the north and west, to J.P. Morgan's lieutenants in the south-east, and to the established professional heads of two of the most powerful economic enterprises in the country, the New York Central and Pennsylvania Railroads*." (Martin, 1974).

1137 "*With the onset of the Panic of 1893 and a sagging in the economy from 1893 to 1897, a mess ensued in the railroad industry. At that time, approximately 60% of the companies trading on [NYSE] were railroads and many had become unable to pay their creditors. The [ICC] counted 192 insolvent railroad corporations, which represented roughly 25% of the country's combined railroad capitalization. Thousands of workers were thrown out of work. Those companies that survived barely limped along. The industry was in chaos. Investment banker J.P. Morgan stepped into the breach. Over the next several years, working to advance the interests of his many European clients who had loaned money to the railroads he played a key role in merging and restructuring their operations... By 1893, Morgan's clients held a large volume of American railroad bonds. Understandably, then, when the railroads began to default on their obligations, Morgan became quite concerned. To Morgan, the railroads' grief seemed self-inflicted. There were simply too many competing lines, resulting in harrowing competition and razor-thin profit margins. Railroad companies in this hyper-competitive market had become vulnerable to every economic downdraft. Morgan and his father had both devoted their lives to developing a mature capital market, the maintenance of which depended on preserving the trust of European investors. The idea that sniping competition between the railroads could destroy this trust incensed Morgan. Rather than sit by and watch this happen, Morgan set about restructuring the roads in a process that came to be known as 'Morganization.' In the usual Morgan restructuring, the stockholders placed their shares in a voting trust to be controlled by Morgan until the railroad's debts were paid. Then, fixed costs were slashed and Morgan's people carefully projected the railroad's future cash flow. Bondholders received new replacement debt that provided payments in line with the railroad's projected cash flow. New stock was also issued to the stockholders and bondholders which, while of only speculative value at the time of issue, would be quite valuable if the railroad survived*." (Wasserstein, 2009).

1138 "*The need for a federal bankruptcy law arose from the inadequacies of state laws in the face of expanded interstate trade. A federal law was needed to overcome discriminatory state laws, reduce the number of commercial failures, and lower the cost of providing credit. The key to the ability to organize nationally was the dramatic growth in commercial associations in the last three decades of the 19th century. Chambers of commerce, boards of trade, trade associations and other commercial associations were formed at an unprecedented rate in that period. Although these associations were not created with the intention of seeking federal legislation, they provided a means for organizing businesspeople from all over the country. Because these associations already existed, proponents of bankruptcy legislation did not have to incur the expenses of organizing businesspeople in cities throughout the country. The national organization that sought bankruptcy legislation in the late nineteenth century could not have existed without the growth of commercial associations in the preceding decades... If, as Charles McCurdy has argued, 'a nation is defined in terms of a free trade unit, rather than in terms of an integrated transport network', much of the work of creating a national economy remained to be done after the railroads were built. Diverse and often discriminatory state laws impeded the flow of goods as surely as high transport costs. McCurdy emphasized the role of the big businesses acting through the courts to eliminate taxes that discriminated against foreign merchants. In contrast, the story of bankruptcy law was one of many businesspeople acting through commercial associations to influence Congress. Despite the differences in these stories they were both part of the same process-the creation a national economy*." (Hansen, 1998).

1139 "*The chief opposition came from the Southerners, who said that the bill was not needed by farmers and that the demand for it 'comes only from rich and powerful commercial corporations, wholesale dealers and boards of trade and associated jobbers.' Charles A. Culbertson of Texas offered as a substitute a short bill providing only for voluntary bankruptcy; and such a bill undoubtedly met with favor in the West, for, from 1883 to 1889, a spirit of speculation had swept over the whole country west of the Missouri River, and lands had been purchased and farm mortgages given in enormous amount; the boom had now collapsed, property was depreciated and could not be sold, interest was defaulted, depression was rampant, and debtors cried out for relief... 6 months after the defeat of the general bill, Bailey, in July, 1894, again offered his voluntary bankruptcy bill, drafted on the simple lines of the Ingalls and Culbertson bills of ten years previous; and this bill was passed with a united Democratic support by a vote of 129 to 81. It applied to all debtors, both individuals and*

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corporations (including National banks). The Senate failed to act on the bill, as it was displaced by the bill for the free coinage of silver, pressed by Senator Jones of Arkansas. In the next Congress, the Republicans having regained possession of the House, a much liberalized Torrey Bill was passed by a vote of 157 to 81, on May 2, 1896; and the House's previous action as to Bailey's voluntary bankruptcy bill was reversed by a vote of 113 to 129. The Senate, however, again failed to act." (Warren, 1935). "*As had been true throughout much of the 19th century, southern and western congressmen, in particular, opposed a national bankruptcy bill. Their opposition focused on the use of involuntary bankruptcy as a means of collection by northern and eastern creditors. An alternative bill, introduced by Bailey of Texas, provided only for voluntary bankruptcy. In 1894, it actually was passed by the House. Ironically, in half a century the debate had come full circle; bankruptcy was now being urged only as a relief measure for debtors."* (Tabb, 1995). "*Judge Henry D. Clayton, distinguished United States District Judge at Montgomery, Alabama... recently, pulled aside the curtains of congressional history and deliberation, and explained to a crowded courtroom how [BA98] was adopted and brought about largely because of a local condition in the State of Texas, following the collapse of a boom that demonstrated the need for such a law.*" (Feibelman, 1928). "*In the wake of the Panic of 1893, a Democrat-controlled House passed a bankruptcy bill that would have been temporary—2 years—and purely voluntary. But despite the fact that the country was in the midst of a depression, the Democrat-controlled Senate did not consider the bill.*" (Hansen, 1998).

1140 After the repeal of BA68 in 1878,*"influential creditor groups called for new legislation. Boards of trade, chambers of commerce, and other business associations petitioned Congress, urging the lawmakers to pass a lasting bankruptcy law. Many of these bodies had not even existed when [BA67] was passed, but by 1880, such creditor groups were numerous. Together they formed the National Organization of Members of Commercial Bodies to promote national bankruptcy legislation. Even more than the desire to provide relief to debtors, these groups' strong advocacy made possible [BA98]. Passage was difficult because the interests that arrayed for and against the act seemed as hopelessly divided as ever. Democrats wanted a temporary bill; they objected that the new law extended the federal courts' jurisdiction over bankruptcy proceedings (even though many railroad receiverships were already in federal courts). Republicans argued that a permanent law was a necessary part of the nation's commercial law. Fortunately for the law's advocates, control of both houses of Congress swung to the Republicans in 1895 and remained there until 1911.*" (Olegario, 2016). "*Throughout the 19th century, merchants and manufacturers involved in interstate commerce sought federal bankruptcy legislation to overcome diverse and discriminatory state laws that raised the cost of credit and impeded interstate trade. In the last two decades of the 19th century, they formed a national organization to lobby for bankruptcy legislation. While many scholars have seen the passage of federal bankruptcy legislation as a response to the economic depression of the 1890s, this article shows that it was the formation of this national organization, rather than the economic crisis, that was the primary force behind [BA98.]"* (Hansen, 1998).

1141 In 1898, Supporter Rep. Ray (R-NY) said: "*We have tried to so frame the bill as to promote business intercourse and the giving of credit. Under its provisions, when in operation, the manufacturer and merchant in New England will not hesitate to extend credit to the trader in New Orleans. The merchants and traders of the great Northwest will not fear to extend it to those asking it all throughout the South*" (cited in Hansen and Hansen, 2020).

1142 Railroads continued to be subject to equity receivership until Depression-era reforms with the enactment of §77 in 1933 (Lubben, 2004). "*[L]awmakers could have tailored any bankruptcy provisions they designed for railroads to the special circumstances of this industry. But the Bankruptcy Clause was not nearly so obvious a way to address railroad failure... At the end of the 19th century, one of the leading proponents of [BA98] still questioned whether Congress could include railroads in the act even if it wanted to. "I do not understand," said Senator George Hoar of Massachusetts, 'that the Supreme Court of the United States has ever held that a railroad corporation established by State authority is a fit subject for insolvency.' (In fact, Congress explicitly excluded railroads when it added corporations to the 1898 act.)*" (Skeel, 2014).

1143 While the Senate's version held that "*Voluntary bankruptcy was closed to all corporations; involuntary was open to all corporations except national banks...The conference committee's bill, which became [BA98], retained the bar against voluntary bankruptcy for corporations, supplemented the exclusion of national banks from involuntary bankruptcy by excluding banks incorporated under state or territorial law as well, and limited involuntary bankruptcy in general to corporations 'engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits.' This list of corporations subject to involuntary bankruptcy bears a strong resemblance to the list originally inserted on the Senate floor, but it is improbable that the conference committee, like the Senate, adopted the list merely to avoid the involuntary adjudication of governmental corporations...The committee's explanation for excluding from involuntary bankruptcy banks and all corporations not enumerated appears in a statement accompanying the conference report: 'The great railroad and transportation companies and banks incorporated under any law are left to be dealt with by the laws of the State creating them. It would lead to much confusion and hardship and many complications should we undertake to subject the great railroad and. transportation corporations to the provisions of this act. It is believed that they can be better dealt with under other laws.*" (Sovern, 1957). "*There is a law now in force for the control and regulation of national banks, and it was thought. best not to interfere with that law. In certain contingencies the Government is responsible for the assets of such banks, and it is but reasonable that it should have entire control of them and of their liquidation in cases of dishonesty or insolvency.*" (Congressional Record, 1897).

1144 "*Businesses serving the national market wanted uniform rules governing bankruptcy, and Congress was eager to act. [BA98] was carefully drafted and continues to operate. It allows all persons (but not corporations) to seek voluntary bankruptcy. Involuntary bankruptcy could not be forced on wage laborers or farmers. Furthermore, wage laborers had a priority claim on the assets of bankrupt corporations (workman liens) for wages earned within 3 months of bankruptcy. The law became noncontroversial because it accepted exemptions that State legislatures had written into their bankruptcy laws. People who petitioned for voluntary bankruptcy would not be dispossessed of their homes and other property necessary to maintain households. Corporations, like railroads, that were part of the national infrastructure could petition for temporary bankruptcy until improved business and/or new management returned them to profitability. [BA98] statute was a success because it recognized that in fully commercial cultures lenders must assume most of the risks in making loans. If lenders used poor judgment by extending credit to speculative enterprises, or to persons with minimal management or technical skills, they must assume most or all of the loss. The principal purpose of personal bankruptcy laws in fully commercial cultures is debt relief—exactly as desired by agrarians because over-hanging debts arc a huge restraint on normal commercial activities.*" (Seavoy, 2013). "*The chief interest of the nation lies in*

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the continuance of a man's business and the conservation of his property for the benefit of creditors and himself, and not in the sale and distribution of his assets among his creditors ...Forced sale of property and stoppage of a business in times of depression constitute loss to the nation at large, as well as to the individual debtors and creditors." (Warren, 1935). "*For 4 months in 1898, a group composed of representatives from the House and Senate attempted to hammer out a compromise bill that would reconcile the creditor-supported Henderson bill passed by the House and the much more debtor-friendly Nelson bill that had emerged from the Senate. The key issue in the negotiations was the 8 acts of bankruptcy. The House team, led by Senator Henderson, fought to preserve all 8 of the acts of bankruptcy in order to protect creditors' right to invoke the bankruptcy laws. Nelson and the Senate team, by contrast, chaffed at any basis for involuntary bankruptcy other than fraud. In the end, the 2 men reached an 11th hour compromise that eliminated 3 more acts of bankruptcy, reducing the final list to 5. The compromise also reduced the grounds for denying a debtor's discharge... In 1897, the House passed a version of the Torrey bill known as the Henderson bill, and the Senate passed a much more debtor-friendly bill known as the Nelson bill. For 4 months, House and Senate conferees sought to resolve their differences. This they finally did, and President McKinley signed the legislation in July 1898... Many creditors who had promoted the bankruptcy later chafed at the compromises that had been made to appease debtor-oriented lawmakers, and their disaffection was shared by at least a few Republican lawmakers. Some observers believe that the act might have been repealed if Congress had not taken steps to tighten the discharge in 1903. (The act had also gotten an important boost the year earlier, when the Supreme Court held in 1902 that incorporating state law on exemptions did not violate the uniformity requirement)... Because southerners feared that northern creditors would use bankruptcy law as a collection device to displace southern farmers from their homesteads, the strongest opposition to federal bankruptcy came from the South. Many western lawmakers opposed bankruptcy legislation for similar reasons. Lawmakers from the commercial northeastern states, by contrast, were much more likely to view federal bankruptcy legislation as essential to the promotion of commercial enterprise... It would be difficult to overstate the importance of scaling back the administrative structure, and of creditors' concessions on exemptions and involuntary bankruptcy, to the tenor of [BA98]. Rather than a creditor collection device, as most previous bankruptcy laws had been, the first permanent U.S. law would be as sympathetic to debtors' interests as to those of creditors. By downsizing the administrative machinery, [BA98] set up an adversarial, judicial process as the American model for bankruptcy.*" (Skeel, 1998). "*In 1881, 3 years after the repeal of [BA67], The New York Board of Trade and Transportation organized a National Convention of Boards of Trade and asked Judge John Lowell to draft a bankruptcy bill. Merchants and manufacturers were concerned with bankruptcy law because they typically provided unsecured trade credit to their customers. Their desire for a federal bankruptcy law arose from 3 features of state collection laws. First, the details of collection laws varied from state to state, forcing merchants and manufacturers offering trade credit to learn the laws in all the states in which they wished to sell goods. Second, many state laws discriminated against creditors who were not citizens of the state. Third, many of the state laws were codified versions of common law remedies and provided a first-come, first-served distribution of assets. The first-come, first-served rule of collection created incentives for creditors to race to be the first to file a claim... [BA98] was not regarded as debtor-friendly at the time of its enactment, but the enactment of the law gave rise to changes in interest groups, beliefs about the purpose of bankruptcy law, and political party positions on bankruptcy that set the United States on a path to debtor-friendly bankruptcy law... In 1898, Democrats argued that [BA98] was nothing more than a national collection law. After [BA98] was enacted, Democratic members of Congress continued to argue that it was oppressive for debtors and continued to seek its repeal. Opponents of [BA98] did not believe there had been any compromise... In the first 20 years after it was enacted, the law was widely used by creditors and most cases were business bankruptcies. In the 1920s, expanded access to consumer credit led to an increase in wage earner insolvency. Because there were no assets in most wage earner cases creditors had no incentive to be involved, and wage earners found that creditor control in the administration of bankruptcy meant an almost certain discharge in bankruptcy court. Under the changed economic circumstances, the creditors' collection tool of the 1890s became a tool of debt relief for insolvent wage earners. In the late 1920s and early 1930s, critics of the law proposed moving away from creditor control, but by then [BA98] had given rise to three forces that prevented major amendment. First, a well-organized group of legal professionals had an interest in preventing changes in bankruptcy administration. Second, the Democratic Party had dropped its opposition to the bankruptcy law as it became increasingly clear that the law was actually used more by debtors than by creditors. Third, the change in the way the law was used prompted people to change their beliefs about the purpose of bankruptcy law. By the 1930s, legislators, judges, and even creditors stated that the primary purpose of bankruptcy law was to aid debtors. We, therefore, argue that the debtor-friendliness that emerged in the 20th century was an unintended and path-dependent outcome of [BA98].*" (Hansen and Hansen, 2005).

1145 "*For the most part the major English reforms of 1883, which established the general model of English bankruptcy and discharge still in effect today, were not followed in the 1898 legislation [in the United States]. Under the 1883 English law control over the discharge was removed once and for all from creditors. Instead the English court was given a broad discretion to grant or deny discharges, to condition them on making certain payments to creditors, or to suspend them for a period of time. Such discretion was not given to United States bankruptcy judges in 1898 or thereafter; rather, the discharge rules have been fixed by the Congress. With few exceptions the role of the court has been to rule on whether the statutory grounds for denial of or exception to the discharge have been proven, and no more.*" (Tabb, 1991). "*In the United States, then, the major concern is the debtor and his rehabilitation, with distribution to creditors a consideration subordinate to and allowed so far as consistent with this major concern. This attitude may be better evaluated if it is understood that the bankruptcy process in the United States is concerned primarily with the working class as debtors and the fact that a great volume of credit is extended to that class. Having observed that the present philosophy of bankruptcy in the United States is oriented to the release and rehabilitation of the debtor, while in England the distribution to creditors is the principal concern, notice should be made of the differences in the economic background of the two countries which may in some degree justify these disparate approaches. The economic background in the United States is one which might be termed an, 'easy credit,' 'high pressure sales' system with the thought of a controlled gradual economic improvement… On the other hand, in England, where credit is more restricted, the major user of the bankruptcy process is the small shopkeeper, is to whom may be attributed a higher standard of financial responsibility and so be more justifiably held to a stricter accounting than would be the case of the financially distressed wage earner. Yet it may be that with the changing economic pattern in England, a greater interest in the plight of the small shopkeepers may be necessary to prevent too harsh a treatment as they find themselves unable to fit into these changes for which they are not responsible. Then, too, as England shifts to an economy wherein the small shopkeeper is*

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displaced, leaving the wage-earner as the principal concern of the bankruptcy process, a need for the re-examination of that process may become more urgent." (Joslin, 1966).

1146 "*The operation of the bankruptcy law reflected another sort of victory for the commercial associations, a victory over the excessive fees and expenses that had plagued bankruptcy law in the past. In its first year in operation, 22,446 petitions were filed involving over $350 M worth of liabilities. The average cost per petition in 1899 was $21.81; the lowest average cost per petition under the 1867 law was $72 in 1868.*" (Hansen, 1998).

1147 "*Insolvency, as the term is used in the present [BA98], is different from what is usually meant in bankruptcy and insolvency law by the term. Its time honored, legal meaning as used in insolvency proceedings, is inability of the debtor to meet his obligations as they mature in the usual course of business. And this was what was meant by [BA67]... However, such a definition would make almost every merchant insolvent in the eyes of the law during seasons of panic and financial stringency such as occurred in the United States, for instance, during the dark days of 1893 and 1894, when the wealthiest and most prosperous business men were unable to pay their notes and bills as they became due. Money itself, the medium of payment, was hoarded. Banks had to resort to the artifice of clearing-house scrip—had to create a new kind of money in fact. It was next to impossible to raise money on the best collateral security, and real estate loans of so-called 'gilt-edged' value went begging for takers. Almost every merchant was insolvent if the usual legal definition was the test, for everyone, almost, was unable to meet his obligations as they matured in the due course of business. The likelihood that such financial stringencies and industrial depressions are to be recurring and frequently recurring phenomena in the commercial world, undoubtedly was the reason that the framers of [BA98], coming to their work only 2 or 3 years after the crisis of 1893, rejected as intolerable a definition of insolvency such as this, as a basis for bankruptcy proceedings. Indeed, this sweeping definition of insolvency was one of the causes of the popular hatred that grew up against the old [BA67], and was one of the causes of the downfall of that law and of the reluctance of Congress to pass another Bankruptcy Act… And it is to be noted that the definition adopted in the present law is the same as that which for centuries has been the accepted meaning of the term insolvency as used in the law of fraudulent transfers. The term 'insolvency,' as understood in dealing with contracts and transfers challenged on the ground of fraud, actual or constructive, has always had reference to the insufficiency of the debtors assets to cover his liabilities, although as understood in the administration of insolvent and former bankrupt laws, it has usually referred to the mere inability of the debtor to pay his debts as they matured in the usual course of business.*" (Remington, 1915).

1148 "*The power to stay suits concerning the person or property of the bankrupt is essential to the orderly administration of a bankruptcy law. This principle has always been recognized in England; and, while it is not yet authoritatively settled, it seems that there even an inferior county court, sitting in bankruptcy, may stay a suit on a debt in a superior, i. e., the High Court. The English statute also deprives a creditor whose debt is provable in bankruptcy of all remedies against the bankrupt, including the right to sue, during the pendency of the proceeding, save with the consent of the court. In this country, for obvious reasons, stays on proceedings in state courts have been regarded with some alarm, and, as a rule, only those authorized by 'any law relating to proceedings in bankruptcy' are permitted. [BA41] contained no clause like that now under discussion, but, under it, the assignee was empowered to prosecute or defend all pending suits, and the filing of a claim was deemed a waiver of all other remedies. Not so [BA67], which, by a specific grant of power to order stays, supplemented § 720 of the Revised Statutes and rendered the jurisdiction to enjoin both affirmative and virile. There is, however, a marked difference between the provisions of that and the present law. Differences Between Them and the Present Law [BA98].— These differences may be summarized thus: Stays under the former law were mandatory, if against a suit on a provable debt brought either before or during the pendency of the proceeding and lasted until the time of discharge, unless there was unreasonable delay in obtaining it; provided, however, that the court might permit the suit to go as far as judgment, thus to measure up the amount of the debt. Stays of suits under the present law are, strictly speaking, confined to actions pending at the time of the bankruptcy, are mandatory if before the adjudication, and discretionary after it, cannot be granted against suits founded on provable debts that are not dischargeable, if granted, put an end to all further proceedings, and only if after the adjudication continue in force to the determination of the bankrupt's right to a discharge.*" (Collier and Hotchkiss,1903). "*In Mueller v. Nugent [1901], decided shortly after the enactment of [BA98], the United States Supreme Court declared that a petition in bankruptcy is 'a caveat to all the world, and in effect an attachment and injunction.' This judicial gloss, much quoted and applied since, was an early recognition that a stay of creditors from collecting their claims against the debtor and his property from and after the filing of a petition under the Bankruptcy Act is indispensable to bankruptcy administration. Unless the creditors are stayed, the debtor's estate will be dismembered and the objective of equality of distribution defeated.*" (Kennedy, 1978).

1149 Diamond and Dybvig (1983) point out that creditor financing entails liquidity transformation and that "*the protection from creditors provided by the bankruptcy laws serves a function similar to the suspension of convertibility. The firm which is viable but illiquid is guaranteed survival.*" In a banking context, suspension of convertibility was carried out by private NYCHA in resolving banking panics before the establishment of the Federal Reserve (Gorton, 1985). Combining these perspectives, Witt (2003) characterizes the bankruptcy function as "*a kind of "creditors' bargain"…a mechanism that maximized creditors' recovery of their interests by means of a legal clearinghouse in which creditors' interests could be advanced in an orderly fashion*." Using Gorton's parlance, uniform bankruptcy process made creditors less sensitive to information about debtors. The voluntary nature of bankruptcy empowered debtors to work with creditors, while organized liquidation reduced the need to be first in line and encouraged collective action. Hansen and Hansen (2005) describes creditors as being "*particularly pleased that the law ended the race of diligence and facilitated out-of-court settlements that had been difficult to obtain before.*"

1150 "*Spurred by [BA98], and by the need of both debtors and creditors for bankruptcy attorneys, the bankruptcy bar sprang almost immediately into existence. As we have seen, the ingredients for a bankruptcy bar had long been in place in the collection activities that dominated many lawyers' practice. Perhaps the best testimony on the rapid rise of a distinctive bankruptcy practice... In contrast to England, where a governmental official plays a pervasive role, the referees under [BA98] would have little incentive to get actively involved; and the process would be left largely to the parties themselves. This created an enormous demand for a bankruptcy bar, and, as we shall see, lawyers came out of the woodwork to fill the need. These characteristics—the generally*

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debtor friendly approach to bankruptcy, and the primacy of lawyers rather than an administrator—distinguish U.S. bankruptcy law from every other insolvency law in the world." (Skeel, 1998).

1151 "*In 1898, the Republican party controlled the presidency and both houses of Congress for the first time in years. The Republicans retained this control for more than a decade, as Theodore Roosevelt took over for President McKinley, and subsequently won a second term. Republican control helped put bankruptcy legislation on the front burner in 1898, and it helped keep [BA98] in place long enough for the bankruptcy bar to develop and cement the coalition in favor of its retention. Party control alone is not enough to assure the permanence of a law whose support is unstable, of course. Party dominance invariably comes to an end, as the Republicans found on losing the House in 1910. Even before this time, Republican support for [BA98] was far from unanimous. The two Republican bills that were reconciled to create [BA98] (the Henderson bill in the House, the Nelson bill in the Senate) differed dramatically in tone, as we have seen... In 1905, the fate of [BA98] was very much up for grabs as the Republican-controlled House Judiciary Committee advocated repeal. But the center held, and the continuing efforts for repeal had lost much of their force by the time the Republicans finally lost control of the levers of power in the second decade of the new century. The most important effect of continued Republican control was that it enabled a federal bankruptcy bar to develop. Although bankruptcy lawyers immediately answered the call for their expertise, it takes time for a bar to mature. Republican control provided the necessary stability, and that turned out to make all the difference. In less than a decade, bankruptcy professionals supplied the final piece of the bankruptcy puzzle. Together with—and in time, even more than—the commercial interests that had inspired the act, the bankruptcy bar made sure that Complete Bankruptcy prevailed for good.*" (Skeel, 1998).

1152 "*The increase in circulation was stimulated to some extent by the issue of 3% bonds in 1898 to the amount of $199 M to meet the expenses of war with Spain; but these issues had been out only about a year and a half when the act of March 14, 1900, permitted their conversion into 2%s. By an act of June 28, 1902, Congress authorized the issue of $130 M 2% bonds for the construction of the Panama Canal, and of these $30 M was issued in July 1906, and $24 M in Dec, 1907. These increases in the public debt were offset by the redemption of maturing 4% bonds in 1907 to the amount of about $61 M; but the fact that the bulk of the debt was now in the form of 2% obligations made the banks the chief holders of the bonds and promoted the upward movement of note circulation.*" (Conant, 1915).

1153 "*[T]he reduction of the minimum capital required to create a national bank from $50 [K] to $25 [K]. Many State banking institutions availed themselves of this provision to enter the national system. From March 14, 1900, to Oct 31, 1907, the number of banks admitted to the national system with a capital of less than $50,000 was 2389, with total capital issues of $62 M; but of these only 1365 were primary organizations, with total capital of $35 M, the remainder being conversions and reorganizations of State and private banks.*" (Conant, 1915). Moreover, since 1882, "*limitations were set upon both the retirement and the issue of new circulation... This limitation proved troublesome to a few banks which desired to take out circulation quickly during the panic of 1893. The limitation upon taking new circulation was repealed by the Act of March 14, 1900… The recommendation was several times made by [COTC] and embodied in bills introduced in Congress, after the resumption of specie payments, that the banks be authorized to issue circulation to the face value of the bonds deposited as security, instead of 90% of that value; and such a provision was finally made in...the Gold Standard Act did not essentially change the basis of the bank-note currency and did not provide for retiring the government notes. In establishing the gold standard, however... it failed to provide for the redemption of standard silver dollars in gold. A Division of Issue and Redemption was established in [UST]. The gold reserve was definitely fixed at $150 M, and was to be maintained, if necessary, by the sale of 4% gold bonds. All the bonded obligations of the United States were made payable in gold. Limitations were imposed upon the denominations of paper currency, with a view to converting silver certificates into denominations below $10, and the greenbacks into notes for $10 and higher denominations, leaving the minimum denominations of gold certificates, as under previous law, at $20.*" (Conant, 1915). "*[T]he currency act of 1900… made the issue of bank notes somewhat more profitable to the banks, and between Feb 13, 1900, and Aug 22, 1907, bank-note circulation rose from $205 M to $552 M.*" (Sprague, 1910). The "*number of State banks had been on the rise, from 9,500 in 1900 to near 13,000 in 1907. While their liabilities had risen by $5 B, their cash reserves had only increased by $171 MFriedman and Schwartz (1963) note that the ratio of deposits to cash reserves rose from 2:1 in 1897 to 6:1 in 1907. In addition, there was speculation in the stock and real estate markets.*" (Bordo and Eichengreen, 1999).

1154 "*[T]he growth in the relative importance of nonnational banks, particularly loan and trust companies. The mushrooming trust companies in [NYC], where they could operate with lower reserves and looser supervision than other commercial banks, were destined to play a notable part in the panic of 1907.*" (Friedman and Schwartz, 1963). According to Senator La Follette (R-WI), "*[t]he plain truth is that legitimate commercial banking is being eaten up by financial banking. The greatest banks of the financial center of the country have ceased to be agents of commerce and have become primarily agencies of promotion and speculation.*" (GPO, 1908, p.3449).

1155 "*[UST] intervention reached its peak after Leslie M. Shaw was appointed [UST Secretary] in 1902. He was a vigorous and explicit advocate of using [UST] powers to control the money market and had great confidence in [UST's] ability… Shaw kept out of the money market in late 1905, despite severe strain in it. One reason may have been his reluctance to intervene in what he regarded as a stringency produced by speculative activity in the stock market. Another was that he could intervene only by altering [UST] balances or using a revenue surplus. [UST] deficits, partly as a result of heavy disbursements for the Panama Canal, had reduced [UST] balances to unusually low levels. An increase in [UST's] receipts in 1906 facilitated its re-entry into the market, and Shaw acted to ease the market in Feb and April, withdrew funds in the summer and again eased the market in the fall, when extreme tightness developed. Both in the spring and fall he tried to multiply the effect of his easing measures by using government deposits as an inducement to banks to import gold… In his final report to the Congress, written at the end of 1906... he wrote: 'If the [UST Secretary] were given $100 M to be deposited with the banks or withdrawn as he might deem expedient, and if in addition he were clothed with authority over the reserves of the several banks, with power to contract the national-bank circulation at pleasure, in my judgment no panic as distinguished from industrial stagnation could threaten either the United States or Europe that he could not avert. No central or Government bank in the world can so readily influence financial conditions throughout the world as can the Secretary under the authority with which he is now clothed.*" (Friedman and Schwartz, 1963).

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1156 "*Under the head of insolvency business are included the duties of [a] assignee, [b] trustee in bankruptcy and [r] receiver. Trust companies are, in many States, authorized to act in these capacities. The enactment of [BA98] largely suspended the operation of the State insolvency laws, with the result that [a] assignments have become less frequent than formerly. The duties of an assignee and of a trustee in bankruptcy [a & b] are similar, and consist in securing a just distribution of the assets of an insolvent person, firm or corporation among the creditors. For this purpose the trust company assuming such duties takes charge of the property of whatever kind, if necessary converts it into cash, pays preferred claims, and distributes the remainder pro rata among the creditors, acting all the time under the direction and authority of the court having jurisdiction in the case. The duties of a [r] receiver may be of quite a different character. A receiver is a person or corporation appointed by a court of equity to take charge of property in dispute. Such appointment does not necessarily imply insolvency… It frequently happens that the affairs of concerns become temporarily embarrassed, or that there is such friction between the managers that it becomes necessary to have a receiver to adjust matters. For such duties, as well as for those of assignee or trustee, the trust company is specially fitted, and this class of work has been the field of some of the most successful operations of these companies... The receivership may be cancelled if the enterprise is put upon a satisfactory basis, and the property be handed over again to its owners. Or it may be necessary to effect a sale of the property, settle the debts, and pay the balance to the owners. Sometimes, when the circumstances warrant, large advances of money are made, thereby tiding the concern over its difficulties and reestablishing it as a profitable enterprise, or saving the assets for creditors or stockholders. Often the circumstances make advisable a readjustment of corporate indebtedness, and the trust company is peculiarly adapted to the work of formulating plans, recalling outstanding stocks or bonds and issuing new securities*." (Herrick, 1915).

1157 "*[I]n states where incorporation for certain purposes was not recognized until a late date the unincorporated association continued to flourish. Hence the Massachusetts or business trust which represents the final evolution of the unincorporated company, distinguished now from the partnership in that the members are free from personal liability—a refinement which England never succeeded in attaining.*" (Gower, 1955).

1158 "*[B]y revising capitalization requirements, New Jersey eased the financing of consolidations and mergers. Since 1891, New Jersey corporations had been allowed to purchase the stock of other corporations by payment in their own stock. In 1896, they were given carte blanche to exaggerate or 'water' the value of the acquired company, for 'the judgment of directors as to the value of property purchased shall be conclusive.' This meant putative monopolists could buy up competing corporations without paying a penny in cash while offering the owners of the acquired corporation stock worth far more than the assets of the acquired firm. Everyone profited but the public investor. He or she was then induced to pay cash for shares in a giant 'sound' corporation some of whose assets were imaginary.*" (Seligman, 1976).

1159 "*The most significant municipal consolidation ever undertaken in North America was that of New York in 1898. In that year 15 cities and towns and 11 villages in 5 separate counties were merged to form the new city of New York, with a population of 3.5 M. The story of New York's consolidation contains many twists and turns, and comprises most of the factors with which we are familiar in today's debates — except the claim that it would reduce overall municipal expenditures. Its long-term lessons are far from clear. New York was a major world city in 1898.*"(Sancton, 2000),

1160 "*Until June 1911 trust companies were not members of [NYCHA]. It adopted a rule in 1903 which required all trust companies clearing through members of the Association to accumulate reserves, smaller than those of the banks but larger than those held by most of the trust companies. The Knickerbocker was one of the few trust companies that accepted that requirement in order to maintain its clearing arrangements.*" (Friedman and Schwartz, 1963). "*The Knickerbocker, like other Trusts, did a banking business under a state charter, and competed aggressively with the national banks in New York. The trusts were not allowed to issue bank notes, but in general they were less regulated than the national banks. Some underwrote security issues, but they also wrote mortgages and invested directly in real estate, a field where the participation of National banks was limited.*" (Rockoff, 2013).

1161 "*The section was amended in June, 1910, extending the application of the Act to all moneyed, business or commercial corporations, excepting municipal, railroad, insurance and banking corporations. This amendment eliminates a question, over which there has been much contrariety of opinion in the lower Federal courts, and which has but recently been settled by the Supreme Court...*" (Michigan Law Review, 1910).

1162 "*For all practical purposes the appointment of a receiver of a corporation, or firm engaged in manufacturing, transportation or other commercial business, means practically absolute destruction of its business. Not only is its credit destroyed, but its organization as a going concern, its trade and its good will is in most instances… The recklessness with which receivers are sometimes appointed by courts has caused such a widespread feeling of uneasiness among large corporations and commercial houses that the mere threat to apply for a receiver, especially when the application is to be made to a court whose judges are known to grant them easily, is frequently sufficient to cause the parties threatened, even if there be no substantial cause for such an appointment, to submit to any terms demanded rather than take the chances of having business destroyed by the appointment of a receiver.*" (Trieber, 1910).

1163 "*In the last half of 1906 not less than $500 M of railway stocks alone were thrown upon the market, dividend issues keeping step with tock issues. It was designed to betoken a carnival of prosperity. It was expected that the country investors would respond in the old way and their money be drawn into this financial center to prop it up. But the public did not come in. Railroad securities had fallen into disrepute. Watered when the roads were built, watered when they were merged into systems, watered again when the systems were grouped, railroad stocks and bonds were regarded by the public with a suspicion bordering on contempt… The bonds issued out of these nefarious manipulations were made eligible for deposit to secure Government deposits. Although the railroad-bond proposition has disappeared for the time being, I pause just a moment to repeat that the bonds growing out of these nefarious manipulations are not only eligible but large amounts of them have been accepted and placed in [UST] to secure deposits of Government money. They are first-mortgage bonds, legal for savings bank investment in New York and Massachusetts. They would be eligible to secure circulation under this bill, as the bill stood and was contended for by its friends up to almost the present moment, as soon as the dividends could be fixed up. They are first-mortgage bonds at the rate of about $85 K per mile, or about 3 times the average value of railroad property in the country.*" (GPO, 1908).

1164 "*In London, gold exports as a result of American borrowing led to advances in the bank rate in Oct 1906, followed by [BOE's] advice to the market that further acceptance of American finance bills was a menace to stability and unwelcome... The vice of the accommodation bill, according to Hawtrey, was its 'use for construction of fixed capital when the necessary supply of bonafide long-run savings cannot be obtained from the investment market'. Hawtrey*

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claimed the system was particularly abused in… the New York crisis of 1907… If one house in the chain of houses that had endorsed the bill failed, the chain collapsed and might bring down good names, those with a reasonable ratio of debt to capital as well as those with much higher ratios. Each endorser on the bill was liable for the full payment. Accommodation bills enabled traders with limited capital to borrow large amounts of money, and these short-term loans in effect stretched into longer-term loans because they were rolled over and over when they matured." (Kindelberger and Aliber, 2005). "*Global credit stringency and domestic financial excesses helped to set the stage for the 1907 panic. Britain had required funds for its war in South Africa, and now Japan and Russia similarly raised funding for their war. The price of British consols dropped from 114 in 1896 to near 80 in 1907.*" (Bordo and Eichengreen, 1999). There was "*an increase from 3.5 to 6% in [BOE's] discount rate in Sep 1906, as the bank sought to stem a serious outflow of gold from London. The action had the effect of reversing the flow of gold... and severely tightening U.S. money market conditions.*" (Bordo and Wheelock, 1998).

1165 "*Union Pacific stock, the security most widely used as collateral for finance bill operations, dropped 50 points.*" (Kindelberger and Aliber, 2005).

1166 (1) Mortimer Schiff, of *Kuhn, Loeb & Co.*, was a director of the *Mercantile Trust Co.,* of the *Provident Loan Association*, and the *United States Loan and Trust Co.*, one of the principal *Standard Oil* financial institutions; (2) George J. Gould, the director of the *National Bank of Commerce*, the great Morgan institution; (3) James Stillman, the financier of the *Standard Oil* institutions, the president of the *National City* and the director of the *Bank of the Metropolis*, *Bowery Savings Bank*, *Columbia Park*, *Farmers' Loan and Trust Co.*, the *Fidelity Bank*, the *Fifth Avenue Safe Deposit Co*, the *Hanover National Bank*, the *Lincoln National Bank*, the *National Butchers and Drovers' Bank*, the *New York Trust Co.*, the *Riggs National Bank of Washington*, the *Second National Bank of New York*, and a member of NYCHA's clearing house committee; and (4) Edward Harriann of the *Union Pacific Railway*, who said: "*When they got control of the property the capital stock was $22 M and bonded debt [$8.5 M]. They mortgaged the property and issued about $40 M of bonds. As officers of the Chicago and Alton Railroad they sold these bonds to themselves at 65 cents on the dollar. Then as individuals they turned about and sold the bonds at a profit of about $300 apiece, principally to insurance companies and trust institutions which they controlled.*" (GPO, 1908, p.3450).

1167 "*In the Northern District of Illinois, Aug. 27, 1906, against the Standard Oil Co. of Indiana, 1903 and 134 indictments on shipments over the Chicago and Alton Railway… [and was joined by others.] The trial of this case began in Chicago, on March 4, 1907... the jury returned a verdict of guilty on 1462 counts, on April 14, 1907.*" (Reiley, 1913, p.123). The Supreme Court saw the appeal that week in *ICC v. Chicago GW Ry.*, and affirmed, after the Panic ended, on March 23, 1908.

1168 "*[I]n the early part of 1907, the foreign markets showing distrust in our securities, the resources of trust companies and banks likewise showing the strain, the deposit bill of March 4, 1907, was crowded through this body in the closing days of the last session, furnishing the money of the Government free of interest to the national banks.*" (GPO, 1908, p.3450). "*The great demand for small notes arising in the period of business expansion which culminated in 1907 led to a modification of these provisions, by which the minimum denomination of gold certificates was reduced to $10 and authority was given to the [UST Secretary], whenever he deemed the supply of small silver certificates insufficient, to issue United States notes of the denominations of $1, $2, and $5 in substitution for larger denominations to be cancelled.— Act of March 4, 1907 [The Act increased the limit upon withdrawals set last in 1882 from $3 M] to $9M per month.*" (Conant, 1915).

1169 The 'rich man's panic' on March 14 "*It was not a drop in the bucket. Stocks had to go down. The market collapse of March, 1907, came with a smash. Union Pacific dropped $40 M in a single day. Reading, Amalgamated Copper, and Steel followed. Says one financial writer, in two days stocks traded in on Wall street shrunk more than $1.8 M. What this means may be understood from the fact that it is equal to the value of the entire export trade of the United States in 1906.*" (GPO, 1908, p.3450). The value of claims in bankruptcy had grown 30% over the same month a year earlier, with the sharpest growth in manufacturing; Dun's April 1907 commercial failure data show "*that, though the aggregate number is about the same as a year ago, the total liabilities this year reached $11.1 M, against only $8 M a year ago... the important increase in liabilities this year is largely from the aug-mentation of liabilities arising through manufacturing bankruptcies, that branch of industry reporting $6 M in 1907 against but $2 M in 1906. The volume of liabilities among general traders were also moderately larger than last year, the total being $3.5 M against $3.2 M. For the 4 months of 1907 the aggregate liabilities of failed firms reached $43 M, which contrasts with $42 M in 1906 and $38 M in 1905.*" (Dana, 1907).

1170 In 1906, railroad bonds and stocks represented 2% of trusts' assets and 10% of (regulated) savings banks' assets, while State and private held negligible amounts. Between 1896 and 1906, trusts' assets increased by 3.5x and their due-from-other-banks' asset increased by 3.6x, while their due-to-other-banks liability grew by 25x to 53% of assets. For comparison, the equivalent of that last ratio for State, savings, and private banks is 37, 5, and 8%, respectively. (GPO, 1907, p.4522-3).

1171 Heinze, a copper magnate competing with the Standard Oil Trust, partnered with a New York investor, Morse; "*Through Morse's influence, Heinze used a portion of his buyout money from Amalgamated to purchase the Mercantile National Bank ["MNB"] in New York, becoming its president in Feb 1907. Thereafter, Heinze joined Morse as a director in a chain of other financial institutions that included at least 6 national banks, 10 or 12 state banks, 5 or 6 trust companies, and 4 insurance concerns. Heinze, who still had a number of properties in Nevada, California, Mexico, and elsewhere, consolidated his remaining mining interests within a holding company he had previously incorporated in 1902 for tax reasons, called United Copper Co.*" (Bruner and Carr, 2007).

1172 "*Markets recovered from this blow and from the failure of an offering of [NYC] bonds in June (only $2 M was tendered for an offering of $29 M of 4% bonds) and from the collapse of the copper market in July, and from the $29 M fine levied against the Standard Oil Co for antitrust law violations in Aug.*" (Kindelberger and Aliber, 2005). "*The first direct signs of the financial crisis occurred during the week of Oct 14 when 5 banks that were members of [NYCHA] and 3 outside banks required assistance, which was given them by a group of [NYCHA] banks.*" (Friedman and Schwartz, 1963). "*According to Sprague (1910) the precipitating event was a 'copper gamble,' a failed attempt to corner the copper market. F. Augustus Heinze who was behind the copper speculations had gained control of [MNB]. This led to withdrawals by depositors concerned about Heinze's solvency. The bank*

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requested assistance from [NYCHA] which was granted on the condition that Heinze and his board resign. The Bank was able to open under these conditions, but was closed in Jan 1908. In the wake of the troubles at [MNB, NYCHA] was called upon to aid a number of other banks that had suffered withdrawals because of their relationships with Heinze. The aid provided by [NYCHA] was successful." (Rockoff, 2013).

1173 "*Until June 1911[, after the 1910 amendment to BA98 included them,] trust companies were not members of [NYCHA]. It adopted a rule in 1903 which required all trust companies clearing through members of the Association to accumulate reserves, smaller than those of the banks but larger than those held by most of the trust companies. The Knickerbocker was one of the few trust companies that accepted that requirement in order to maintain its clearing arrangements… Had the Knickerbocker been a member of [NYCHA], it probably would have been helped, and the further crisis developments might thereby have been prevented.'*"" (Friedman and Schwartz, 1963).

1174 "*The Knickerbocker Trust Co was the third largest trust company in New York, having deposits of $62 M. The connection of its president with some of the Morse enterprises engendered distrust, which made itself felt in a succession of unfavorable clearing balances. On Mon, Oct 21, the National Bank of Commerce announced that it would discontinue clearing for the Knickerbocker on the following day. An unofficial committee representing a few trust companies and banks was not given an opportunity to examine its affairs until the last moment, so that it would have been difficult if not impossible to take definite action.*" (Sprague, 1910). "*The problem for the Knickerbocker was the ties of its President, Charles T. Barney to Charles W. Morse, a financier in turn tied to Heinze and the latter's attempt to corner the copper market. On Mon Oct 21, Barney was forced out at a directors meeting closely watched by J.P. Morgan. About the same time one of the New York national banks announced that it would not clear for the Knickerbocker. A heavy run which forced the Knickerbocker to suspend came on Tues. From there the panic spread rapidly, although the heaviest damage was done to the Trust Companies. The Knickerbocker was able to resume in March 1908.*" (Rockoff, 2013). "*Order seemed to have been restored by Mon, Oct 21, when the Knickerbocker Trust Co, the third largest trust company in New York with deposits of $62M, began to experience unfavorable clearing house balances as a result of connections with the banks that were initially in trouble. A run on the company the next day forced it to suspend."* (Friedman and Schwartz, 1963).

1175 "*On 24 Oct 1907, a bankers' pool, headed by J.P. Morgan, loaned $25 M at 10 % in call money in an attempt to stem the collapse of the stock market.*" (Kindelberger and Aliber, 2005).

1176 *"On Oct 23, a run began on the second largest trust company in the city, with deposits of $64 M, and on the following day on still another trust company. Those companies were given assistance, because it was now clear that the entire credit structure was in danger. However, assistance was granted slowly and without dramatic effect; the assistance saved those 2 companies from failure but did not allay general alarm outside New York.*" (Friedman and Schwartz, 1963).

1177 The *"decline in the money stock from Sept 1907 to Feb 1908... has all the earmarks of an active scramble for liquidity on the part of both the public and the banks... In Oct came the banking panic, culminating in the restriction of payments by the banking system, i.e., in a concerted refusal, as in 1893, by the banking system to convert deposits into currency or specie at the request of the depositors. The contraction simultaneously became much more severe. Production, freight car loadings, bank clearings, and the like all declined sharply and the liabilities of commercial failures increased sharply… The stock of high-powered money rose by 10% over that 5-month period, yet the money stock fell by 5%…the public's distrust of the banks and the reduced usefulness of deposits after the restriction of their convertibility were reflected in the combination of a rise in currency in the hands of the public, this time by 11%, and a decline in deposits, this time by 8%… Restriction of payments by banks was lifted in early 1908, and a few months thereafter recovery got under way*" (Friedman and Schwartz, 1963).

1178 "*One serious drawback of clearinghouse certificates was that they were acceptable only in the local area... Thus these certificates helped maintain domestic payments such as payrolls and retail sales within a city but they dampened the effective flow of payments between cities. In the 1907 panic, 60 of the 160 clearinghouses in the United States adopted clearinghouse certificates to facilitate local payments. Nevertheless Sprague claimed that the dislocations of the domestic exchanges were no less complete and disturbing than on previous occasions. The prices of New York funds in Boston, Philadelphia, Chicago, St Louis, Cincinnati, Kansas City, and New Orleans between 26 Oct and 15 Dec 1907 varied from a discount of 1.25% in Chicago on 2 Nov to a 7% premium in St Louis on 26 Nov, an increase from 1.5% the previous week. In Dec 1907 Jacob H. Schiff wrote: 'The one lesson we should learn from recent experience is that the issuing of clearinghouse certificates in the different bank centers has also worked considerable harm. It has broken down domestic exchange and paralyzed to a large extent the business of the country.*" (Kindelberger and Aliber, 2005).

1179 "*The declaration of a legal holiday by the government is another technique for closing the market, which was used during the panic of 1907 in Oklahoma, Nevada, Washington, Oregon, and California. The device was the forerunner of the bank holidays that started at the local level in the fall of 1932 and were generalized throughout the country on 3 March 1933, the day that Franklin D. Roosevelt was inaugurated as president. (A bank holiday closes only the banks, while a legal holiday shuts down all business.)"* (Kindelberger and Aliber, 2005). "*The most extreme instances were the legal holidays declared by some of the Western governors, which were intended to authorize banks, as well as other firms and individuals, to decline payment when unduly pressed or wherever they saw fit. The governor of Nevada was the first to resort to this measure. Beginning on Oct 24, he declared legal holidays continuously up to and including Nov 4. On Oct 28 the governor of Oregon also began declaring such holidays, and he continued to declare them by subsequent proclamations until Dec 14…[Also, there was a] proclamation issued by the acting governor of Oklahoma on Mon, Oct 28... In California such holidays were proclaimed without interruption for a still longer period, from Oct 31 to Dec 21, thus suspending all debts for more than 7 weeks.*" (Sprague, 1910).

1180 "*A remarkable feature of the financial stringency of last year and its resultant industrial depression, from which we are now happily emerging, was the comparatively little increase of litigation over mercantile failures occasioned thereby. Naturally it would be thought the courts would have become clogged with a multitude of insolvent estates, as one business house after another became involved in financial difficulties. On the contrary, it was remarked with surprise that in most sections of the country there was by no means any great increase in litigation concerning mercantile failures. Such a condition is decidedly unprecedented. It was not so during the industrial depression of 1893. During that depression the courts were crowded with insolvency litigation.*"

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(Remington, 1909). "*In the years after the law was passed, many other observers of mercantile credit conditions also perceived that the incentives for creditors to file suits, and thereby initiate liquidation, had diminished. After the Panic of 1907, the National Association of Credit Men reported, 'The law undoubtedly stayed the hand of many an anxious creditor who, unable to secure a preference to himself, joined in extending help to his embarrassed debtor, thus tiding over many a deserving business man.' The National Association of Manufacturers Committee on Bankruptcy Laws concluded that, 'Many thousands of worthy men were saved by it, who, if it had been absent would have been forced into insolvency and ruin.' Similar conclusions were reached by the Los Angeles Board of Trade and the journal Bradstreet's… The counterpart to this decline in commercial failures was an increase in the private settlement of debts, which was regarded as part of a new business practice of trying to assist debtors. This new effort, as Stanley F. Brewster noted, 'contrasted with the hasty and intolerant policy of creditors prior to the enactment of the National Bankruptcy Act.' The growth in the private settlement of credit problems was reflected in the rise of adjustment bureaus. These bureaus formed in the first decades of the 20th century to facilitate the extension or adjustment of debt when there were several creditors involved… Figure 1 shows the growth of adjustment bureaus recognized by [NACM] from 5 in 1904 to 84 in 1922... The bankruptcy law reduced the incentives for individual creditors to initiate liquidation and made it possible for creditors to assist debtors who were only temporarily insolvent. As the merchants quoted above suggested, it was no longer necessary to race to be first… Furthermore, the evidence provided by the expansion of adjustment bureaus indicates that the law also had a measure of success in reducing the 'race of diligence' and promoting private settlements.*" (Hansen, 1998). Chairman Johnson of the *National Association of Manufacturers* supported the BA98 against efforts to repeal it, as the Act "*stood guard over the business interests of the country… By heading off all summary seizures of the debtor's property by legal process, this law gave him time to realize on his outstanding accounts, allowed him a chance to get accommodation from the banks, and thus cleared the way for him to gradually meet all his obligations... In this way the area of the financial disturbance was narrowed, the destruction was materially diminished, and the return of business confidence and the renewal of prosperity will be hastened… by giving balance and stability to business during the money scare of the last two and a half months of 1907 it saved thousands of tradesmen from financial ruin...*" (Johnson, 1908). Data on bond defaults and business failures corroborate the relatively benign effects on business. Business failures and bond defaults for non-financial firms fell after 1898 and barely reached pre-1898 levels during the *Panic of 1907* (Exhibit 3.) A simple linear regression does not find changes of annual failure rates of firm after 1898 to be different than the period before controlling for inflation (see Exhibit 6.)

1181 "*[According to] Bradstreet Commercial Agency... For the year ended June 30, 1907, there were 34 failures of banks... with assets of $13M and liabilities of $22M... in the year ended June 30, 1908... there were 132 failures during the year, the assets of the banks being $177M and liabilities $210M. The number of failures reported... exceed those of any previous year since 1893 and the liabilities are greater than in any other year since 1864... Included in the 132 failures in 1908 are 42 State banks, 12 savings banks, 25 trust companies, and 53 private banks. The failures by geographical sections were as follows: 3 in the New England States, with liabilities of $25M; 43 in the Eastern States, with liabilities of $139M; 29 in the Southern States, with liabilities of $11M; 29 in the Middle Western States, with liabilities of $9M; 7 in the Western States, with liabilities of $8M; and 21 in the Pacific States, with liabilities of $23M. There were 32 failures in the State of New York among this class of banks, the assets of which aggregated $114M and liabilities $133M. Of the failures in that State 7 were State banks with liabilities of $34M; 4 trust companies, with liabilities of $95M; and 21 private banks, with liabilities of $24M.*" (COTC, 1908, p. 53, 88, 406-9).

1182 "*Of the 17 trust companies reported suspended in 1907, about one half re-opened for business, while several others were liquidated without loss to depositors. These include the larger companies which suspended, with one exception. As to the figures involved, 3 companies,—the Knickerbocker Trust Co of New York, the Union Trust Co of Providence and [CSDTC],—account for considerably over $100 M of the $118 M liabilities shown in the table, and the first two of these have long since resumed business and are today prospering, no loss to depositors having resulted. One competent authority estimates the actual losses due to failures of trust companies during the year following the panic of 1907 at about $5.5M, of which 80% was due to the failure of one company - CSDTC. New York having been the storm center of the panic of 1907, it is significant that on Aug 10, 1908, the Superintendent of Banking of the State of New York, Clark Williams, reported 'So far as the records of this Department are concerned, we know of no case of a failure of a trust company resulting in loss to the depositors.'*" (Herrick, 1915). Halloween edition of the New York Times (1907) covered all 3: "*Attorney General Jackson rejected depositors' plea and installed a third receiver for Knickerbocker without consulting them… assets [were] stronger than had been thought and likely to provide a surplus – reorganization plans*;" the temporary receiver of the Union Trust Co of Providence issued a Statement saying "*It is generally believed to be for the interest of depositors and the community at large that the company resume business at the earliest day possible. Many large depositors have already shown their confidence in the company's ability to discharge its obligations by agreeing, if it shall resume to deposit their funds and do business with the company in the future in the same manner as before it suspended payments;*" and finally, the CSDTC closed its doors with a notice posted stating "*Owing to the fact that the bank was not a member of the Clearing House Association, and was unable to take advantage of Clearing House certificates, It would close for a few days.*"

1183 According to the *Board of Bank Commissioners of the State of California (1908)*: "*At the date of the suspension, [CSDTC] hail many trusts in its charge. It was trustee for many issues of bonds by corporations, had much property in its hands for safe-keeping and under escrow agreements, was acting as executor, administrator, guardian, and in other fiduciary capacities for many estates, was the custodian of many wills wherein it was named as executor, and was otherwise conducting a large trust department in its business. Many of these trusts are surrounded with serious complications because of the failure of this bank, and likewise by the destruction of the books and papers of [CSDTC] at the time of the fire in April 1906. An inventory of the 'trusts' in the hands of the bank on Jan 20, 1908, shows that there were at that date 482 different cases in the trust department of the bank and intrusted to its care, in various stages of liquidation and completion; and also 114 wills on deposit, a number of which were badly charred by the fire. In a number of cases, the trusts have already been closed out by the receiver. In the other cases, the receiver has continued to protect the trust property until a new trustee in the several cases is appointed. The managers of [CSDTC] seem to have made great efforts to secure trust business of every character, contenting themselves with very small compensation—the real object being no doubt to have the handling of outside money... In many of these cases there was a felonious appropriation of funds and securities…*" "*The bank lost its building in the fire of April 1906, except the walls of the first story, which were roofed. The*

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safe deposit vaults in the basement were uninjured, though covered with tons of debris. The bank secured temporary quarters in the unharmed residence district immediately after the fire, and went on with its business. There temporary quarters, with 3 other similar establishments were maintained even after the main office had been re-opened. The bank was a hustler for deposit accounts, and took much pride in indicating this growth in frequent statements. In 4 years ending June 30, 1907, the deposit credits had increased from $2.1 to 9.3 M. Such marvelous expansion astonished the more conservative bankers. The drawing force in securing these deposits, in addition to personal and persistent effort, was the remuneration offered for the same. In the official statement for July 1, 1907, the bank offered to pay 4 % per annum on savings deposits. 2 % on open accounts subject to check, interest credited monthly; 2.5% on certificates of deposit, repayable in 30 days; 3, 3, 3, and 4% on the same, repayable in 60 days, 90 days, 6 months and 1 year respectively. After calling attention to an increase of $1.4 M in deposits for the year ending July 1, 1906, depositors were assured that the liberal rates paid for the use of money would be continued. Before the management had the privilege of issuing another semi-annual statement, the doors of the bank were closed. This event happened a little after 2 o'clock on Oct 30, 1907… For the 12 months ending Oct 1, 1908, the Bank Commissioners were obliged to close 16 banks, exclusive of the 4 branch banks of 1 of the 16, thus really putting their seal of disapproval on the doors of 20 banks. 1 of these and the most important of all in the matter of resources was [CSDTC] with its 4 branches in different parts of the city. This bank had not returned a dollar to depositors up to May 1910, though always during the interval in the hands of a receiver. The bank was incorporated in 1882, and at the time of suspension had a capital of $2.6 M with resources of $12.6 M and was owing its depositors $9.1 M. First dividend of 10% June 1, 1910. 4 other San Francisco banks were in the list, all small concerns, the removal of which entailed no serious loss." (Wright, 1910).

1184 UST "*could absorb money in deposits and pay out cash surpluses it had acquired in previous periods but apart from the greenback period it could not create money. For this reason, [UST] was unsatisfactory as a lender of last resort, unless it had previously had budget surpluses and built up its holdings of cash. In 1907, when its cash holdings were low, [UST] issued new bonds – $50 M of Panama Canal bonds, which were eligible for collateral for national bank notes, and $100 M of 3 % certificates], placed deposits with national banks with the goal of replenishing their liquidity. In the west, goods could not be transported due to difficulties in the conversion of bills of exchange; the Bank of Montreal promptly deposited gold at the Treasury of New York to grease these wheels. The French loaned nearly $16 M in silver eagles on the security of French commercial paper.*" (Bordo and Eichengreen, 1999).

1185 "*Most of the 8 insurance plans were particularly hard hit by the agricultural depression that followed World War I. The numerous bank failures spawned by that depression placed severe financial stress on the insurance funds. By the mid 1920s, all of the State insurance programs were in difficulty, and by early 1930 none remained in operation*" (FDIC, 1998). In 1911, the United States Supreme Court, in considering the constitutionality of the deposit insurance laws of Oklahoma, Kansas and Nebraska in *Noble State Bank v. Haskell, 219 US 104*, distinguished between the monetary function of protecting the circulating medium and the limited objective of protecting depositors; as Justice Holmes wrote "*probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of these conditions at the present time is the possibility of payment by checks drawn against bank deposits,to such an extent do checks replace currency in daily business . . .the primary object of the required assessment is not a private benefit ... [but] is to make the currency of checks secure, and by the same stroke to make safe the almost compulsory resort of depositors to banks as the only available means of keeping money on hand.*"

1186 "*In 1909, the [California State] banking law was completely rewritten and the Board of Bank Commissioners was replaced with a State Superintendent of Banks. Capital requirements were increased and made partially dependent upon location. A reserve requirement was initiated and a large number of detailed requirements concerning the asset portfolio were written. Unregulated banking had become a part of California's history.*" Relative to the period between 1878 and 1909 to the period between 1910 and 1924, bank's capital ratios decreased (pg. 159), reserve ratios decreased (pg. 160), and failed asset ratio fell (pg. 162). "*The Banking Act of March 1878 was the next attempt to regulate bankers. This act created a Board of Bank Commissioners, required all banks to pay a license fee, file reports, and be examined twice yearly. Only 4 New England States, Indiana, and Iowa preceded California in the examination requirement. In the 1879 revision of the State constitution the banking sections were dropped. In 1895, the State required that all banking corporations have a minimum capital of $25 K, although it did not have to be in the form of cash. The same year, the California Supreme Court found commercial banks were not forbidden to lend on real estate (a practice they were engaging in extensively). The 1878 California Banking Act was suspended in 1903 and quickly replaced with a very similar law which was amended extensively in 1905. The 1905 act initiated a reserve requirement for commercial banks, made bank examination optional for the commissioners, required licenses of private bankers, allowed the State to deposit funds in banks and instituted capital requirements of $25 [K] to $200 [K], dependent on city size. This last provision was declared unconstitutional and was replaced in 1907 with a statute requiring a minimum of $25 [K] capital or ten percent of total liabilities up to $100 [K] maximum.*"(Doti and Runyon, 1996).

1187 "*For more than a generation-between 1911 and 1933-securities sales in the United States were regulated nearly exclusively by specialized state statutes known colloquially as 'blue sky' laws... The derivation of the term 'blue sky law' is a matter of considerable uncertainty. The most plausible explanation in the literature, advanced by a careful and informed student of blue sky laws, is that the term referred to the fact that the fly-by-night operators in Kansas operated so blatantly that they would 'sell building lots in the blue sky in fee simple.' The author supplies no authority for this etymology, however. An earlier explanation, offered by a prominent investment banker and opponent of blue sky laws, is that the term referred to the idea that the 'maker of bad paper might just as well be capitalizing the blue sky and selling shares therein.'... Dolley successfully lobbied the Kansas legislature in 1911 for passage of his proposal. The Kansas law generally required that firms selling securities in Kansas obtain a license from the bank commissioner and file regular reports of financial condition. Investment companies were also required to file reports of their business plan and financial condition and to file a copy of all securities they proposed to sell in Kansas. The bank commissioner was authorized to bar an investment company from the state if he concluded, upon examining these documents, that the information about the investment company or security proposed to be sold contained any 'unfair, unjust, inequitable or oppressive provision', or that the investment company was 'not solvent and d[id] not intend to do a fair and honest business, and... d[id] not promise a fair return on*

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the stocks, bonds or other securities... offered for sale.' The bank commissioner was also authorized to conduct examinations of investment companies and to seek appointment of a receiver to wind up the affairs of any investment company found to be insolvent or to be run in an "unsafe, inequitable, or unauthorized manner.' State and national banks, trust companies, building and loan associations, real estate mortgage companies, and nonprofit corporations were exempted from the requirements of this statute.' The statute also exempted a few classes of securities: federal, state, and municipal bonds and notes secured by mortgages on Kansas real estate."(Macey and Miller, 1991)

1188 President Roosevely noted "*As to these, in my judgment there should now be either a national incorporation act or a law licensing railway companies to engage in interstate commerce upon certain conditions. The law should be so framed as to give to the [ICC] power to pass upon the future issue of securities, while ample means should be provided to enable the Commission, whenever in its judgment it is necessary, to make a physical valuation of any railroad… Therefore, it is clear that (unless a National incorporation law can be forthwith enacted) some body or bodies in the Executive service should be given power to pass upon any combination or agreement in relation to interstate commerce, and every such combination or agreement not thus approved should be treated as in violation of law and prosecuted accordingly. The issuance of the securities of any combination doing interstate business should be under the supervision of the National Government… My personal belief is that ultimately we shall have to adopt a National incorporation law, though I am well aware that this may be impossible at present.*" President Taft wrote "*There has been a marked tendency in business in this country for 40 years last past toward combination of capital and plant in manufacture, sale, and transportation… A combination successful in achieving complete control over a particular line of manufacture has frequently been called a 'trust.' I presume that the derivation of the word is to be explained by the fact that a usual method of carrying out the plan of the combination has been to put the capital and plants of various individuals, firms, or corporations engaged in the same business under the control of trustees… Such a national incorporation law will be opposed, first, by those who believe that trusts should be completely broken up and their property destroyed. It will be opposed, second, by those who doubt the constitutionality of such federal incorporation, and even if it is valid, object to it as too great federal centralization. It will be opposed, third, by those who will insist that a mere voluntary incorporation like this will not attract to its acceptance the worst of the offenders against the antitrust statute and who will, therefore, propose instead of it a system of compulsory licenses for all federal corporations engaged in interstate business… A federal compulsory license law, urged as a substitute for a federal incorporation law, is unnecessary except to reach that kind of corporation which, by virtue of the considerations already advanced, will take advantage voluntarily of an incorporation law, while the other state corporations doing an interstate business do not need the supervision or the regulation of a federal license and would only be unnecessarily burdened thereby.*" (Richardson, 1910). In Congress, Rep. Hill (R-CT) noted that "*The federal incorporation law which the administration has suggested to Congress is planned to bring the great industrial corporations in interstate and international trade under the supervision of the Federal Government. It would be possible under it for such a concern as the Standard Oil Co to reorganize such part of its business as is actually engaged in the manufacture and distribution of refined oil. This reorganization would, however, give no corporations immunity from prosecution for acts violating the antitrust law; they could not extend themselves as holding companies, as so many trusts and monopolies have done in the past; they could not issue stock except for money or against property of its full value ; and they would be compelled to file full and complete reports of their business operations with the Department of Commerce and Labor and to give special reports whenever the Commissioner of Corporations so ordered.*" (GPO, 1910).

1189 Corporate reorganization under federal statutes would not come until the 1930s (Lubben, 2004).

1190 In 1910, Congressman Bodine noted it "*embraces insurance companies...; it embraces building and loan associations, trust companies, savings banks, and all other State banks.*" (Sovern, 1957). The courts interpreted it as such: "*which have held that a business trust, for instance, may be petitioned into involuntary bankruptcy, [In re Associated Trust (1914), In re Parker (1921), Matter of Rainbow Family Laundry Co. (1922]*." (Colin, 1926).

1191 "*It admitted to membership most of the trust companies of the city, under a satisfactory agreement as to the amount of reserves the trust companies should be compelled to carry in their own vaults, and the amount which could be held on deposit with member banks. The admission to the Clearing-House immensely strengthened the financial position of the whole country; and it had also the incidental and by no means inconsequential advantage of making the weekly Clearing-House bank Statement more valuable by making it a more complete exhibit of banking conditions in New York. This, therefore, is a notable expansion of financial publicity.*" (Pratt, 1912). Clearing houses continued mushrooming (Jaremski, 2014).

1192 "*Decade by decade the courts have made less rigorous the terms under which equity will undertake the administration of the assets of a corporation in financial difficulties. Now the corporations need not be solely of the class which cannot be administered in bankruptcy. Now the creditor need have no judgment; though the debt to him must be acknowledged by the answer of the corporation [Horn v. Pere Marquette Ry. (1907, C. C. E. D. Mich.) 151 Fed. 626]; nor is it even necessary that the corporation be declared insolvent in the bill.[Cincinnati Equipment Co. v. Degnan (1910, C. C. A. 6th) 184 Fed. 834.] It is sufficient that it be unable at the date when the bill is filed to meet its obligations with a money-payment… There are no grounds of priority in payment granted by the federal courts to any class of unsecured creditors of the usual industrial corporation except in those cases where by statute employees have been given such rights in varying degrees… During the last decade, however, a tendency can be discovered to favor the tort creditors. In 1911 the tort creditors of the Metropolitan Railway system were accorded, on reorganization, the rights of bondholders. Certainly every humanitarian impulse is in his favor. In the opinion of the writer, it would cause surprise to few should the courts reverse their former decisions refusing a preference to tort creditors of railroad corporations. A public enterprise may well be considered a public trust even to recompensing members of the public for personal injuries. The argument that injuries to persons resulting from operation of a railroad are unavoidable and constant concomitants of such operation has a strong appeal.*" (Payne, 1922).

1193 "*After the election, some of the leaders of the Republican party, particularly President Taft, who had for years been a believer in postal savings banks, began to urge upon Congress compliance with the Republican platform pledge to establish a postal savings-bank system... The advocates of a postal savings bank claimed that adequate savings facilities were not and could not be provided by private enterprise. because of the expense of conducting savings banks in small communities, and also in larger communities where the people were not yet educated to the saving habit; and they pointed particularly to the lack of savings facilities in the southern and western states*." (Kemmerer, 1911).

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1194 Sprick Schuster et al. (2019) find that USPSBs were "*initially used by non-farming immigrant populations for short-term saving, then as a safe haven during the Great Depression, and finally as long-term investment for the wealthy during the 1940s. However, even during the earliest period, Postal Savings was only a partial substitute for traditional banks, as locations with banks often still heavily used postal savings ...Though postal savings was not particularly large before the 1930s, it initially reached some of the more marginalized population as was intended. Immigrants tended to be wary of commercial banks and thus took the chance to save in the federally insured system. After 1929, the role of Postal Savings drifted far from the purposes for which it was designed, first becoming attractive to the wider population as the banking system destabilized and then becoming a high interest savings vehicle.*"

1195 Senator Owen (1913, p5595) attributed the success of the United States to the breadth and locality of its banking system: "*banks can kill any enterprise they choose if they deny credit*" and so a system of independent banks – while more unstable and subject to runs - enables fair access to credit to entrepreneurs. Hence, banking diversity deserves the protection of the government..

1196 "*At the time the Fed was established, the perceived defect of the National Banking System was that currency was not 'elastic', that is, there was no way to obtain more currency to meet depositors' demand in times of bank runs, or to meet seasonal demands. The private bank clearing houses issued "money" in the form of certified checks and loan certificates in times of panic. But this joint response of the clearing house member banks was only triggered by the panic itself. William Ridgely, the U.S. [COTC] from 1901 to 1908 put the issue this way: 'The real need is for something that will prevent panics, not for something that will relieve them; and the only way to attain this is through the agency of a Governmental bank.'... Congressmen repeatedly stressed that the new discounting authority of the Federal Reserve Banks would prevent the occurrence of banking panics. Representative Carter Glass, who sponsored the Federal Reserve Act in the House of Representatives, wrote that the most important accomplishments of the legislation were to remove 'seasonals' in interest rates and to prevent panics. Senator Robert Owen, sponsor of the bill in the Senate said that the Federal Reserve Act '... gives assurance to the businessmen of the country that they never need fear a currency famine. It assures them absolutely against the danger of financial panic..." Senator Claude Swanson argued that the legislation made 'impossible another panic in this country.' Congressman Michael Phelan of Massachusetts, chairman of the House Committee on Banking and Currency, argued that 'In times of stress, when a bank needs cash, it can obtain it by a simple process of rediscounting paper with the Federal reserve [sic] banks. Many a bank will thus be enabled to get relief in time of serious need.' Businessmen and regulators agreed. Magnus Alexander, the president of the National Industrial Conference Board announced that 'there is no reason why there should be any more panics.' The [COTC] announced in 1914 that, with the new Federal Reserve Act, 'financial and commercial crises, or 'panics'... with their attendant misfortunes and prostrations, seem to be mathematically impossible.' Finally, in the Federal Reserve System's first Annual Report it states that 'its duty is not to await emergencies but by anticipation to do what it can to prevent them.' So, the intention was not (just) to establish a LOLR that would act during a crisis. Private bank clearinghouses were capable of playing this role."* (Gorton and Metrick, 2013).

1197 Senator Aldrich (R-RI) (1908a), "*The plan of the bill restricts the securities to be accepted under its provisions to government issues and the bonds of railroads that are, by recent legislation, under government regulation. I think I am justified in designating the bonds of States and communities as government securities."* The source went on saying *"Subsequently to [Senator Aldrich's] speech the provision making railroad bonds a basis for the emergency currency was stricken from the bill by the Committee on Finance, on motion of Senator Aldrich. Most of the friends of the bill believe that in the end railroad bonds will be restored. During the panic many millions of them were accepted by the Secretary of [UST] as security for government deposits, and if Mr. Cortelyou had had the same unreasoning prejudice against railroad bonds that the friends of the commercial paper asset currency have the panic might have been worse and many more banks might have gone to the wall*" (Aldrich, 1908a). In Congress a month later, Senator Aldrich said: "*The term "securities" would include bonds of any character; would include railroad bonds or any other bonds that the bank held. It includes whatever would be understood to be securities, within the meaning of that term, by the association and the Secretary of [UST]*" (Aldrich, 1908b, p.7109).

1198 "*What greater power could be lodged in the hands of one man? Absolute and undeniable control of the issuance of $500 M of currency! The power to discriminate as to securities, the right to say that certain securities will be accepted and that certain other securities will not be accepted! Under this provision, Mr. Speaker, the Secretary of [UST] has the right, in his capacity, to become a bull on the market one day and a bear upon the market the next day. He may say, for instance, that the bonds of the steel trust are amply sufficient as a security for this circulation and that the bonds of another corporation are not good. He has the power to say that he will issue 75% of the value of certain securities, stocks, bonds; and commercial paper, and upon and other class of security that he will issue only 25% of its value. So, we see that under the provisions of this bill 3 great discretionary powers are given to the Secretary of [UST]. First, he may say that the locality does or does not need additional circulation; second, he can say that some securities are good and some are bad; third, he can say that he will issue the maximum amount of currency upon one class of security and the minimum amount upon another class of security. For instance, he may say that in New York, around Wall street, there is an emergency, local in its character, and he may give them all the money they need; while down in my part of the country, in Kentucky he may say to the banks there, 'Your locality does not need any money, and therefore I will withhold it from you and deny you the right to issue it.'*" (James, 1908).

1199 Senator Newlands (D-NV): "*[Aldrich offers] a measure simply to inflate the currency, to exaggerate still further the bank loans of the country ...It lies in the power of the State banks, if they are permitted to go on and conduct business in this irrational way without proper reserves, to paralyze the national banking system itself, for if their system is not protected. if they do not keep the proper amount of cash on hand to meet the ordinary demands of their depositors, a panic is sure to come, and the panic will involve national banks as well, for panics are always unreasoning, and, of course, if the depositors all call upon the banks for their money at one time liquidation and bankruptcy will ensue*" (Newlands, 1908, p7115-6).

1200 "*The agitation for the correction of evils attributed to changes in prices comes from different sources, according as the trend of the change is upward or downward... But the question of equity as commonly thought of in connection with price changes concerns the relative claims of debtors and creditors, sellers and buyers, wage-payers and wage-receivers, the payers and receivers of fixed money incomes. The problem is to prevent one of these parties from securing at the expense of the other any advantage that originates in price changes. What, from this point of view, would constitute a fair standard of value—one*

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which will preserve the equities of exchange between the payer and receiver of money?... What we need is a scheme of anticipatory action, whereas all proposals thus far are to cure ills that have been suffered. Forces have already largely adjusted themselves to the changes before the remedy is applied. To try to cure the evil now is to undo the adjustment. Or else the attempt to cure the hardship will be foreseen and discounted, so that the adjustment again will do more harm than good." (Kinley, 1913)

1201 Following the declaration of war on July 28, 1914, the Aug 1st NYTimes (1914a) noted the NYSE "*suspended trading as a measure of protection against foreign liquidation... At the moment the closing of the Stock Exchange prevents further liquidation until the European situation assumes calmer aspect…it was felt the as an additional measure of protection of our gold supplies that the banks should be prepared to set in motion the machinery for additional circulation provided for under the Aldrich-Vreeland act, and which will supply and local demand for cash without putting it out in form in which it could be immediately take for export... Notes to the amount of $500 M were printed shortly after the passage of the Aldrich-Vreeland act...It was found that some of the banks could not qualify as applicants for the issue to them of currency under this because of a provision restricting such issues to member banks 'having circulating notes outstanding secured by the deposit of the bonds of the United States to an amount not less than 40% of their capital stock.'...The amendment was passed in the Senate yesterday, and, it is expected to be passed by the House today.... the feeling prevailed in banking circles... that gold exports should be discouraged as much as possible... by the risks involved in shipping gold under the conditions which threaten to prevail.*" By Aug 4th, NYTimes (1914b) reported trades using the paper certificates: *"The completing of Thurs's transactions was entirely optional with all parties, and was confined mostly to those purchases which could be handled without having recourse to fresh loans... By far the greatest bulk of deliverables of stocks was in odd lots. In many cases customers who bought from 5 to 25 shares in the days of low prices appeared at the brokers' offices with checks covering the amount due. The broker then called up the odd-lot dealer from whom the purchase was made on the Exchange and notified him that the stock could be delivered immediately. Upon delivery the messenger carrying the stock frequently took back the checks of the investor instead of the purchasing broker's check. In some brokerage offices which had stocks to deliver and others to receive both ends of the work was kept up throughout the day on a moderate scale*," with unanimous support for an irredeemable paper currency: "*Republicans and Democrats call for unanimous support of measure to meet the unprecedented emergency...As finally agreed to, the amendment provides for an issues of the Aldrich-Vreeland emergency currency limited to 125% of the capital stock and surplus of the banks issuing it, and with a provision that after $500 M of it has been issued the requirement of the present law that banks... must have outstanding currency secured by Government bonds to a value equaling 40% of their capital stock shall become effective...The result was that at the end of the day the banking community felt that effective measures had been taken to prevent a continued drain of gold to Europe and to provide for the maintenance of domestic exchanges on a normal basis. The issue of additional banknotes was not demanded so much by domestic currency needs as it was desired to supply the place of gold and its equivalents, leaving the banks in possession of the gold, with as little paper money in circulation on which gold might be demanded as possible. The banks aim to keep gold certificates out of circulation as far as feasible, in order to prevent gold being drawn for export… They acted with equal promptness in providing for the issue of Clearing House certificates, to be used in the daily settlement between he banks and not to be put into general circulation*." In 3 months on Dec 8th, NYTimes (1914c) explained how trading cleared and noted that the that the Exchange was reopening and that dealings in "*190 stocks out of the 565 issues on the board will be permitted under price restrictions…"At stocks admitted to dealings which were being cleared through the Clearing House of the Exchange on July 30 will be admitted to clearance through the regular channels when business starts up. The shares which have been bought and sold through the Clearing House since the Exchange closed will no longer be handled through this medium when open trading starts*."

1202 "*And whereas it is provided by section 1 of the act approved Aug 29, 1916. entitled 'An act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes', as follows: 'The President in time of war is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary, of all other traffic thereon, for the transfer or transportation of troops, war material, and equipment, or for such other purposes connected with the emergency as may be needful or desirable.' And whereas it has now become necessary in the national defense to take pos session and assume control of certain systems of transportation and to utilize the same, to the exclusion, as far as may be necessary, of other than war traffic thereon, for the transportation of troops, war material, and equipment therefor, and for other needful and desirable purposes connected with the prosecution of the war: Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolutions and statute, and by virtue of all other powers thereto me enabling, do hereby. through Newton D. Baker, Secretary of War, take possession and assume control at 12 o'clock noon on the 28th day of Dec 1917, of each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States and consisting of railroads and owned or controlled systems of coast wise and inland transportation engaged in general transportation, whether operated by steam or by electric power, including also terminals, terminal companies, and terminal associations, sleeping and parlor cars, private cars and private car lines, elevators warehouses, telegraph and telephone lines, and all other equipment and appurtenances commonly used upon or operated as a part of such rail or combined rail-and-water systems of transportation: to the end that such systems of transportation be utilized for the transfer and transportation of troops, war material, and equipment, to the exclusion so far as may be necessary of all other traffic thereon; and that so far as such exclusive use be not necessary or desirable such systems of transportation be operated and utilized in the performance of such other services as the national interest may require and of the usual and ordinary business and duties of common carriers. It is hereby directed that the possession, control, operation, and utilization of such transportation systems, hereby by me undertaken, shall be exercised by and through William G. McAdoo, who is hereby appointed and designated Director General of Railroads. Said director may perform the duties imposed upon him, so long and to such extent as he shall determine, through the boards of directors, receivers, officers, and employees of said systems of transportation. Until and except so far as said director shall from time to time by general or special orders otherwise provide, the boards of directors, receivers, officers, and employees of the various transportation systems shall continue the operation thereof in the usual and ordinary course of the business of common carriers, in the names of their respective companies. Until and except so far as said director shall from time to time otherwise by general or special orders determine, such systems of transportation shall remain subject to all existing statutes and orders of [ICC] and to all statutes and orders of regulating commissions of the various States in which said systems or any part*

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thereof may be situated. But any order, general or special, hereafter made by said director shall have paramount authority and be obeyed as such." (United States Senate Committee on Interstate Commerce, 1918)

1203 "*[T]he Fed leveraged its position as a lender to the banking system to facilitate war bond sales... by lending to member banks at low interest rates when the proceeds were used to buy bonds. Between bond drives, the Federal Reserve also lent at preferential rates to banks purchasing Treasury certificates - short-term borrowings issued in anticipation of tax receipts. These fundraising efforts were very successful... As a result of Fed lending at low interest rates, credit conditions eased throughout the domestic economy, which was thriving on increased exports to Europe. Extensive borrowing by businesses and households stimulated economic growth but also increased the money supply, fueling inflation... However, Fed leaders did not take steps to raise interest rates to fight inflation. Congress created the Fed as an independent central bank to isolate it from political pressure, but during the war monetary policy was beholden to the needs of [UST].*" (Fed. Res. Bank of Richmond, 2013). "*Independence was sacrificed to maintain interest rates that lowered [UST's] cost of debt finance.*" (Meltzer, 2003).

1204 Although USPSB accounts were initially limited a balance of $500, the limit was raised to $1,000 in 1916 and $2,500 in 1918; deposit increases did not occur after the last increase suggesting that the limit was no longer a binding constraint (Sprick Schuster et al., 2019); still USPSBs remained small (see Exhibit 10).

1205 "*[T]he War Finance Corporation (WFC), created by Congress in 1918 to make loans to industries and banks finding it difficult to borrow in wartime.*" (Eichengreen, 2016).

1206 While the Clayton Antitrust Act of 1916 delegalized interlocking directorates for National banks, there were no prohibitions for State and nonmember banks (Cartinhour, 1931).

1207 "*The legal development that initiated the postwar merger boom was the Act of Nov 7, 1918, which established a formal procedure for the consolidation of national banks. Before the act, if 2 national banks wanted to merge, 1 had to be liquidated while the other purchased its assets and assumed its liabilities. After 1918, 2 banks could consolidate under either's charter, subject to the approval of [COTC]. Considerable flexibility was allowed in devising a merger agreement. The basic requirement was that the banks had to specify the amount of capital, surplus, and undivided profits in the new organization and what assets, if any, would be eliminated.*" (White, 1985). "*Until comparatively recent years insolvencies of state banking institutions were handled just as were any other business failures. Application was made to the local court for the appointment of a receiver, and upon the proper showing before the court, the appointment was made by the presiding judge.*" (Upham and Lamke, 1934).

1208 The *Federal Farm Loan Act of 1916* aimed to increase credit to rural family farmers by creating FFLB, 12 regional FFLBs and 10s of farm loan associations. "*Government involvement in agricultural credit markets began with the establishment of the Farm Credit System (FCS) as a government-sponsored enterprise (GSE) by the Federal Farm Loan Act of 1916. Under this act,the FCS was established as a system of farmer-owned cooperatives with the purpose of providing long-term mortgage loans to agriculture. The act was intended to overcome perceived market failures in agricultural credit markets by creating a stable source of long-term funding with lower interest rates and terms more compatible with the unique qualities of agricultural production… The FCS was established in 1916 when the Federal Farm Loan Act was passed. This act created Federal Land Banks, structured as borrower-owned agricultural cooperatives, located in 12 regions in the United States. Long-term funds for mortgage loans to agricultural producers were provided by the Federal Land Banks to local lending associations,the Federal Land Bank Associations. Local associations were the direct contact with agricultural producers, and banks provided funding for loans made by associations. Agricultural borrowers purchased stock in the associations based on the size of the loans, and associations purchased stock in the banks. Supervision of all FCS institutions was the responsibility of the Farm Credit Administration (FCA), an independent federal regulatory agency. The FCA was given responsibility to issue regulations and initiate enforcement action to ensure safe and sound operation of FCS institutions..*" (Jensen, 2000).

1209 "*As there is no joint liability among the joint-stock land banks, each bank being responsible only for its own obligations, no particular purpose would be served by analyzing a consolidated statement of their condition.*" (FHLB, 1928).

1210 "*In ordinary years the death rate in the United States is about 15 per 1,000, or, roughly, 1.5 M persons. The deaths of soldiers during the war are given as under 0.06 M. Even the influenza epidemic resulted in only about 0.08 M deaths, according to the common newspaper estimates. No one can tell how many of these 0.14 M cases would have died anyway during the year. In any case they are few by comparison with the regular annual loss.*" (Tucker, 1919). "*By the contemporary reckoning of the English economist T.E. Gregory, the world in 1921 was 'nearer collapse than it has been at any time since the downfall of the Roman Empire.' Certainly, in America, there was no mistaking the postwar zeitgeist with the Era of Good Feelings. Preceding the race riots and Red scare of 1919-20 was the worldwide influenza pandemic of 1918-19; it killed 40 M people, including 0.675 M Americans… The population of the United States stood at 103 M; American battlefield deaths in World War I totaled 0.117 M… With the advent of Prohibition in Jan 1920, a major industry was outlawed (yes, said the evangelist Billy Sunday, but 'Hell will be forever for rent.') On Sep 16, 1920, a terrorist explosion on Wall Street killed 38 and wounded 300. Later, in Sep, a grand jury started hearing evidence into the Chicago White Sox's alleged fixing of the 1919 World Series.*" (Grant, 2015)

1211 *"[I]t was probably… [a] mistake to raise the discount rates a further notch in June 1920, and it was certainly a mistake to maintain those rates so long. Though easier money in the second half of 1920 might not have prevented a sizable price decline, it certainly would have moderated its magnitude… Despite the sharp rise in discount rates in Jan and June 1920, Federal Reserve credit outstanding, seasonally adjusted, continued to rise until Aug 1920 as a result of a continued increase in discounts, then declined drastically, being halved in less than a year. The decline was produced by a sharp decrease in member bank borrowing from the Federal Reserve Banks, which in turn produced a sharp curtailment in customer loans by member banks. From the last week in Oct 1920 to the end of 1921, weekly reporting member banks cut their loans by one-sixth.*" (Friedman and Schwartz, 1963). "*Beginning 1919, tight money policy initiated by the Fed. Recession of 1920-1921, asymmetric shock to FR Districts, some FR Banks continue contractionary policy, others pursue expansionary policy. We document internal struggle between FR Banks... We show that the 'Dovish' FR Banks [New York, Boston,*

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Philadelphia, and Cleveland] bolstered lending to their member banks by borrowing from 'Hawkish' FR *Banks [all others] and that member banks then increased lending to their customers.*" (Tallman and White, 2017). Data on slides 16-20.

1212 "*The system of friendly adjustment takes the form of an assignment by the debtor of all his property to a trustee for the benefit of creditors. This trustee is generally the local branch manager of the credit association and the assignment takes place at the instigation of either the creditors or the debtor. The purpose of such assignment may be either to work out an 'extension' whereby the business will be continued, or to effect a liquidation of the assets of the debtor.*" (Douglas and Marshall, 1932). "*During the period of business readjustment following the reaction of 1920 the creditors' committee method of dealing with embarrassed businesses of considerable size became well-nigh universal throughout the country. The writer's attention has been drawn to the case of a western bank which had representatives on 88 committees at one time. So general, indeed, did this course become that such phrases as 'in the hands of the banks' or 'in the hands of the creditors' almost entirely superseded in the vernacular of the street the old phrase, 'in the hands of a receiver.' Undoubtedly the court receiver was used in certain sections of the country, even for large failures, when the advantages of the creditors' committee were not understood or clearly apparent; but taking even these exceptions into account, it is no exaggeration to say that 75% of the business embarrassments, following the reversion of 1920, involving more than a hundred thousand dollars of liabilities, were handled by committees of creditors rather than by court-appointed receivers. There are two circumstances that together very largely explained the prevalence of creditors' committees during this last crisis. These had to do with the manner in which the reversion of prosperity affected individual businesses and with the influence of the federal banking system. Business difficulties were largely concerned with a sudden stoppage of sales, accompanied by a fall in inventory values. The Federal Reserve System gave the banker-creditors a feeling of confidence in their own powers of resistance, which enabled them to continue and sometimes increase loans to embarrassed businesses.*" (Dewing, 1926). "*Figure 1 shows the growth of adjustment bureaus recognized by [NACM] from 5 in 1904 to 84 in 1922... The bankruptcy law reduced the incentives for individual creditors to initiate liquidation and made it possible for creditors to assist debtors who were only temporarily insolvent. As the merchants quoted above suggested, it was no longer necessary to race to be first… Furthermore, the evidence provided by the expansion of adjustment bureaus indicates that the law also had a measure of success in reducing the 'race of diligence' and promoting private settlements.*" (Hansen, 1998). "*The dissatisfaction in which our judicial machinery stands is such that any process of settlement labelled popularly 'out of court' or technically 'extra-legal' or 'extra-judicial' has come to have a connotation synonymous with, if not perfection, at least unquestioned superiority. Because of court delays, cumbersome machinery, questionable attorney methods, incompetence of judges, and the expense incident to judicial settlements, conciliation, arbitration and extrajudicial settlements are assuming positions of undeniable importance in all branches of the law. It has recently attained prominence in the field of insolvency liquidation… The 'Friendly Adjustment' considered here is that type of extralegal insolvent estate settlement or liquidation which is carried out by means of adjustment bureaus approved by and operated under a businessmen's association [NACM]. This method, the most outstanding of any of the extra-legal settlements that fall under the head of 'friendly adjustment,' briefly, is as follows: When the case is once accepted by the bureau, the liquidation is carried out by means of an assignment for the benefit of creditors or deed of trust, made to the bureau liquidator as trustee. The trust deed invariably empowers the trustee to sell the assets of the estate, and distribute the proceeds to creditors after deducting the expenses of administration. These expenses normally consist of approximately 10% fee of the net assets realized.*" (Gamer, 1930). "*[NACM], originally one of the major sponsors of the Bankruptcy Act, has in many instances abandoned the use of the machinery provided for in that Act, and now adjusts a vast number of merchant insolvencies in its own commercial forum. The reason for this result is simply that business men find the adjustment plan free from the large expenditure of time and money which attends the prescribed technique of bankruptcy in the average case.*" (Billig, 1930).

1213 "*The underlying objection to the present bankruptcy administration of insolvent estates is that it is said to be treated as essentially a legal and not an economic function; whereas friendly adjustment is allegedly founded upon the hypothesis that 'the disposition of an insolvent debtor is a business and not a legal function.*'" (Gamer, 1930)

1214 "*There are several reasons which have led to this change of opinion toward committee reorganizations since 1922… By nurturing these permanently unprofitable businesses, the failures of which, in the end, were inevitable, the committees not only wasted capital but they perpetrated, unknowingly, a fraud upon the public. Creditors, investors and customers believed, because of the financial standing of the members of the protecting committee, that there was hope of the ultimate recovery of the business. When the crash finally came, 2, 3 or 4 years later, not only were there greater losses than if the business had been wound up at the time of the original crisis but all the energy and effort which might have been spent on productive effort was wasted in the attempt to repair on the surface what should have been rebuilt from the foundation. Such a rebuilding from the foundation could have occurred only after a thoroughgoing reorganization accompanied by receivership, the investment of new money by stockholders and an entirely new and able management. In brief then, the committee reorganizations did not, except in the few cases where the crisis was attributable primarily to a decline in inventories—penetrate deep enough into the causes of failure or bring about sufficiently revolutionary changes in management to accomplish a permanent rehabilitation of the business… The second objection to the committee treatment of ailing businesses is their difficulty in dealing with 'strikers.' In order to succeed in their proposed plans of giving the business a rest it was absolutely necessary for all the creditors to agree not to bring legal action for at least a predetermined period... When there were only a few creditors—practically all of them influential banks—it was a simple and easy matter to receive unanimous consent to the creditors' agreement. But when, as was more often the case in 1921, the creditors were numerous and widely scattered, it was almost certain that at least a few would refuse to sign the agreement. These few would be advised by their counsel that, through attachments which the committee would allow to remain undischarged for the statutory period, they could secure a priority over other creditors. In other words, by refusing to 'play' with the other creditors they could obtain, ultimately, the payment of their claims in preference to the creditors who did 'play.*'" (Dewing, 1926).

1215 "*[T]he post-World War I deflation in the United States was short lived, though steep. The money stock began to grow again in 1922, and the economy quickly revived. Moreover, despite the large price level decline, there was no banking panic in 1921 or later in the decade, perhaps because the post-war deflation had been anticipated. Many banks failed in 1921 and throughout the 1920s, however. But the failures were confined almost exclusively to small banks located in the rural Midwest and South. The high number of rural bank failures during the 1920s reflected dramatic shifts in relative prices—rising real prices of commodities during the war and falling real prices after the war—and unit banking. Rural economies boomed during the war, with rising*

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incomes and land prices. Many farmers expanded their operations, buying new land and improving land that had not been farmed previously. Much of this expansion was financed with money borrowed from banks, whose numbers and assets in rural regions grew as rapidly as did their region's booming economies. As had occurred so often before, a sharp increase in commodity prices during the war years was matched by an equally sharp decline in the postwar — a decline that exceeded the decline in the aggregate price level. Once again, expectations of continued high output prices, which had justified the rising price of farmland and the borrowing to finance expansion, had been dashed. Falling incomes left borrowers unable to repay their loans, causing banks to fail. Bank failures were most numerous in the regions where farmland prices and the expansion of agricultural acreage had increased the most during the war. The banking distress of the 1920s was caused primarily by sudden changes in relative prices that first favored and then hurt commodity producers and their lenders. Aggregate price inflation and deflation could well have contributed to the distress, but the absence of financial disruption outside of commodity-producing regions suggests that relative price shifts had more to do with the rise of bank failures during the 1920s than did movements in the aggregate price level." (Bordo and Wheelock, 1998). "*During the 10 years before World War I, there had been 714 suspensions; from 1921 to 1929, 5,712 banks — one-fifth the number active in 1920— suspended operations. The highest number of failures in any one year was 976 in 1926, the fewest was 366 in 1922, and the average per year was 635. The most obvious characteristic of the failed banks was that the great majority were small banks in small, rural communities. 62% had loans and investments of less than $250,000. 63% had a capital stock of no more than $25,000, while 85% were capitalized at $50,000 or less. 93% were in communities no greater than 500 people, and 79% in towns of 2,500 or smaller. National banks accounted for only 13% of the failures, and only 17% were members of the Federal Reserve system. The suspensions were also concentrated in a handful of agricultural states. 41% of the failures came in the 7 western grain states of Minnesota, Iowa, North Dakota, South Dakota, Missouri, Nebraska, and Kansas. 70% were in these states and 5 others: Oklahoma, Texas, Montana, South Carolina, and Georgia. In terms of federal reserve districts, the Kansas City and Minneapolis districts had the most failures, with 44% of the total number. The industrial Northeast, by contrast, rarely experienced a bank failure. Of the 5,712 closings, only 64 occurred in the New York, Philadelphia, and Boston districts.*" (Hamilton, 1985).

1216 "*[F]rom 1922-5, about 25,000 [U.S.] farmers went bankrupt, and about [3 M] people left the farms in 1922, 7.3% of the farms were ascertained to have been given up by their owners. Starting from the United States, the crisis involved all other countries producing grain and meat.*" (Hart, 1929).

1217 "*The WFC was repurposed as an emergency finance corporation for making loans to banks, industries, and local credit agencies during the recession of 1920-1, and then to help farmers struggling with low crop prices... [and was] dissolved in 1929.*" (Eichengreen, 2016).

1218 "*When the Agriculture Department reviewed the Congressional Record in 1920, it found that 164 measures [to regulate trading of futures and options on agricultural products] had previously been introduced. These efforts culminated in passage of the Futures Trading Act of 1921. That act was promptly declared unconstitutional by the Supreme Court, on the grounds that it was a regulatory measure masquerading as a tax measure. But in 1922 Congress restated the purpose of the 1921 act as 'an act for the prevention and removal of obstructions and burdens upon interstate commerce in grain, by regulating transactions on grain futures exchanges,' and renamed it the Grain Futures Act of 1922. As an explicitly regulatory measure, it was later upheld by the Court. The objective of [GFA] was to reduce or eliminate 'sudden or unreasonable fluctuations' in the prices of grain on futures exchanges. The framers of the act believed that such sudden or unreasonable fluctuations of grain futures prices reflected their susceptibility to 'speculation, manipulation, or control'... such fluctuations in price were seen to have broad ramifications that affected the national public interest. Grain futures contracts were widely used by producers and distributors of grain to hedge the risks of price fluctuations. Futures prices also were widely disseminated and widely used as the basis for pricing grain transactions off the futures exchanges... given the relative size of the agricultural sector of the time, fluctuations in futures prices no doubt had the potential to affect the economy as a whole... market participants talked incessantly about corners and bear raids... [GFA] established many of the key elements of our current regulatory framework for derivatives. In general, the act was designed to confine futures trading to regulated futures exchanges. The act made it unlawful to trade futures on exchanges other than those designated as contract markets by the Secretary of Agriculture... [who] was permitted to so designate an exchange only if certain conditions were met... [e.g.,] the establishment of procedures for recordkeeping and reporting of futures transactions, for prevention of dissemination of false or misleading crop or market information, and for prevention of price manipulation or cornering of markets. Finally, the act recognized the need to permit bona fide derivatives transactions to be executed off of the regulated exchanges; it explicitly excluded forward contracts for the delivery of grain from the exchange-trading requirement. Forward contracts were essentially defined as contracts for future delivery to which farmers or farm interests were counterparties or in which the seller, if not a farmer, owned the grain at the time of making the contract.*" (Greenspan, 1997).

1219 "*Examining the table, the UNLIA shock in June 1920 was large enough to have precipitated a panic had it come during the National Banking Era, but there was no panic under the Federal Reserve system.*" (Gorton, 1988). See table 6 on page 245.

1220 "*Another obstacle to the success of a Southern municipal bond house was more local in character. It was that municipal bonds of the South were not regarded with unreserved approval in the bond markets of the country. The stigma attached to such bonds, due to a rather long history of defaulted issues, remained a sufficiently potent influence to make them relatively unattractive to investors. Municipal bond defaults in the South began at least as early as 1839 when Mobile, Alabama defaulted its bonds and the practice reached its peak after the Civil of carpetbag administrations in most of the Southern states, manly the experience during this latter period that resulted in generally lower standing of Southern issues. With the bond market overshadowed by Government financing and Southern bonds even in normal times considered inferior to bonds of most other sections of the country, the time seemed hardly appropriate for establishing a Southern municipal bond house.*" (McFerrin, 1969).

1221 "*The first was the position of Nashville as a security market. Security trading in Nashville dated at least from 1857, when the security house of Thomas S. Marr was established. This house and its direct successor, the firm of Goulding Marr and Brother, owned by 2 sons of Thomas S. Marr, still continued in the security business there in 1917. Trading in securities had long been the chief interest of investors and speculators in the town. Whereas in certain Southern cities speculation in cotton was the dominant trading interest and in others real estate operations were most prominent, securities have received primary attention in Nashville. This has taken the form of trading in stocks and bonds listed on the New York and other exchanges as well as in local securities. Stocks of certain Nashville banks, and securities of railroads with their chief offices in Nashville, of the local street railways, of the old Cumberland Telephone & Telegraph Co, and of some local industrial firms had at various times been quite actively exchanged. Also a substantial part of*

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the bonds of Tennessee municipalities, as well as those from neighboring states, was handled through Nashville each year. Due to this traditional interest in securities, Nashville appears to have been the logical place for establishing an investment banking house." (McFerrin, 1969).

1222 "*Caldwell & Co. operations in the municipal bond field were at first closely restricted to a few Southern states. Issues from Tennessee accounted for most of the business for several years. Expansion into other states soon followed, however, and by 1925 the company was well established in Alabama, Louisiana, and Florida. During the next 5 years these states continued to contribute a large volume of bonds to the company's total purchases, yet at the same time its activities were extended into almost all of the remaining Southern states. Greatest gains were made in North Carolina, South Carolina, Kentucky, Mississippi, and Texas. This growth in area is indicative of the expanding size and importance of the company… In offering bids for municipal bonds, Caldwell & Co. almost always specified the condition that funds payable to the community from the purchase of its bonds should be deposited with banks chosen by Caldwell & Co. The desire to secure control of these funds more easily, led to the establishment of the Bank of Tennessee. The bids further specified that the funds should be drawn out only when needed to pay for actual construction on the project being financed by the bonds. In the meantime Caldwell & Co. controlled the funds, a fact which helped the company in 1 of 2 ways. If the funds were actually needed in the company's operations, they would be deposited in the Bank of Tennessee or directly with Caldwell & Co. and used as the company saw fit. If they were not needed they could be deposited in some bank that would pay interest to Caldwell & Co. for the deposit. Rogers Caldwell claimed that by using such a system the house could offer the bonds to the public at a somewhat lower price and thus aid in the development of a market for Southern bonds in general. He also claimed that, in offering bonds of small Southern communities to Eastern buyers, sale could be facilitated if the funds were on deposit with the Bank of Tennessee rather than in some local bank with capital of $10,000 to $25,000... The increasing volume of bonds from the South that were sold during the twenties should indicate an improved position for these bonds. This is substantiated by the reduced differential in coupon rates between Southern bonds and those from the whole country. Thus, in 1923, 18.8% of all new issues were sold with coupon rates of between 4 and 4.25%, yet only 2.8% of Southern issues could be sold at rates that low. On the other hand, while 19.1% of all bonds had coupon rates of above 5%, 34.8% of Southern bonds were in this group. By 1929 the coupon differential was reduced to such an extent that, while issues with coupon rates of 4 and 4.2% accounted for 16.8% of the total for the nation and 6.7%t of the total from the South, issues with coupon rates above 5% accounted for 19.6% of the total for the nation and 21.5% of the issues from the South. In spite of the fact that the regional differential existed throughout the period and more Southern issues were sold at the higher rates than at the lower, nevertheless the spread between rates on bonds from this section and from the country as a whole definitely narrowed by 1929... The deposit of the proceeds of the sale of municipal issues with the Bank of Tennessee or with Caldwell & Co. did not give unrestricted use of these funds to the investment house. In practically all cases trust agreements were executed covering the deposits. These provided that while funds were on deposit they would be secured by collateral, pledged with a trustee, sufficient to cover the deposit. Frequently Caldwell & Co. served as trustee for deposits in the Bank of Tennessee, and the Bank of Tennessee was trustee for deposits with Caldwell & Co. Also, the Fourth and First National Bank, headed by Rogers Caldwell's father, acted as trustee on numerous trust agreements. The system worked out by Caldwell & Co. to pay for issues purchased involved little more than operations between itself and the Bank of Tennessee. Caldwell & Co. would purchase an issue of municipal securities and pledge them with the Bank of Tennessee as collateral for funds borrowed to pay for the issue. Then this borrowed credit would be deposited in the bank for the issuing municipality and the bank would pledge the bonds with Caldwell & Co., as trustee, to secure the deposit. The sale of the bonds to the public would furnish which resulted in the trust agreement, would be pledged, but these bonds could always be replaced by other collateral. When the company first made use of these trust agreements, substitutions could be made only with other municipal bonds. As long as this was the case Caldwell & Co.'s municipal bond business was not furnishing funds to carry on other parts of its operations. As it widened the scope of its business, however, it became imperative to use the funds in more speculative ventures. Hence, other types of substitution provisions would, whenever possible, be inserted in the trust agreements... Among the assets of the Bank of Tennessee was the entire capital of stock of Rogers Caldwell & Co., Incorp., of New York, which had been turned over to the bank by Caldwell & Co. after its examination by the State Banking Department in Sep 1930. The New York company had a very small volume of business during 1930 and the small amount of funds needed for its operations had been furnished by Caldwell & Co., these advances constituting its chief liabilities.*" (McFerrin, 1969). "*Defendant was a very large investment corporation, with its main office in Nashville, but it had 27 branch offices throughout the United States, extending from New York to New Orleans, and as far west as California; in addition, it owned many subsidiaries. It handled approximately $100 M of securities annually, and employed many agents, employees, etc. One of its subsidiaries was the Bank of Tennessee, which was organized as a banking corporation, but it never engaged in general banking business. It was located in the building owned and occupied by the defendant, in Nashville, and paid no rent; its entire capital stock was owned by defendant. The officers and directors of defendant and the Bank of Tennessee (with but one exception) were the same. The bank owned no property, not even a vault, or other fixtures. It was created and existed for the benefit of Caldwell & Co., in prosecuting its extensive business, and its organization was essential to the successful operation of Caldwell & Co… Practically the entire business of the branch offices was in making sales of stocks and bonds, and all stocks and bonds sold at these branch offices were delivered from the Nashville office, and all inventories and bookkeeping were done in Nashville. The success of defendant's business was dependent upon immediate delivery of the stocks and bonds sold.*" (Dean v Caldwell, 1934).

1223 "*Not to be outdone by the larger and older investment houses, Caldwell & Co. in 1928 established its investment trust. Having done so much to popularize the securities of the South, and having progressed so rapidly under its slogan, 'We Bank on the South,' it christened its new venture 'Shares-in-the-South, Incorporated.' The trust was chartered under the laws of Delaware on Aug 9, 1928, as a general man-agement trust and authorized to issue 250,000 shares of no par common stock. It was completely dominated by Caldwell & Co. with Rogers Caldwell serving as president for $5,000 a year, J. D. Carter and E. J. Heitzeberg holding offices as vice presidents, and all other officers and directors selected from the Caldwell personnel. The only thing about the company that was non-Caldwellian was that the securities bought had to be kept with the trust department of the National Park Bank of New York… The price of the stock of Shares-in-the-South reached its high of 51 in March, 1929. After this time, some 6 months before the stock market broke, the price drifted downward slowly. In June Caldwell & Co. attempted to peg the stock at 42.5, the level held until Oct, 1929, when, following the crash of the stock market, the pegged price was lowered to 40. In its effort to maintain the market for these share; Caldwell & Co, between June 30 and*

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Dec 31, 1929, bought 13,861 shares at an average price of 40%, with its investment in the stock of Shares-in-the-South increasing from $0.5 to $1.1 M between the two dates." (McFerrin, 1969).

1224 "*It may be observed that Alabama (with a population in 1930 of 2.7 M) had a greater number of wage earner bankruptcies in 1931 than any other state in the group-greater than Illinois (with a population of 7.6 M in 1930), greater than Massachusetts (with a population of 4.3 M in 1930), greater than New York (with a population of 12.6 M in 1930), greater than Ohio (with a population of 6.7 M in 1930). Concededly, this fact suggests the existence of varying, highly complex backgrounds of credit, economic, legal and social factors. But what of it for purposes of one or more Bankruptcy reforms?... It is interesting to note that perhaps the most impassioned plea made in the hearings upon the amendments to the Bankruptcy Act as proposed by the Attorney-General, opposing the provision for amortization by wage earners (§ 75 proposed), and suspension of discharges, was made by Edmund H. Dryer, Esq., of Birmingham, Alabama, and Referee in Bankruptcy for over 20 years. See Part 3, Joint Hearings Before the Subcommittees of the Committee on the Judiciary on Senate Bill No. 3866... There were fewer wage earner bankruptcies in the whole of New England in 1931 than in either Alabama, Ohio or Tennessee. Does the Bankruptcy Act, or its administration especially favor New England, or unduly prejudice Alabama, Ohio and Tennessee?... On the other hand, there is no basis for the conclusion that a state makes a record of few wage earner bankruptcies merely because its collection remedies or exemptions may be more adverse to creditors. Witness, for example, Tennessee and Arizona (Tennessee with 2474 wage earner bankruptcies in 1931, Arizona with 24) with garnishments apparently more readily obtainable and wage exemptions not appreciably larger in Arizona.*" (Sturges and Cooper, 1933). "*In 1905 the Annual Report of the Attorney General laid the blame for Alabama's high wage earner bankruptcy rate on its garnishment laws. '[Due to] a state statute affecting the right to attach or garnish wages or salary of the laboring class, hundreds of poor unfortunates with liabilities in many instances less than $500, have been driven to seek relief under the federal law as a matter of preservation.*"(Hansen and Hansen, 2012). "*During floor debate on a 1910 bill to repeal [BA98], Representative Clayton of Alabama high-lighted this problem: 'Mr. Speaker, I can not refrain from calling attention to the fact that there is all over this country complaint against the bankruptcy law by the retail merchants, because some dishonest people make it a practice to go into debt to these merchants for the necessaries of life and then seek the bankruptcy courts to get relief from the payment of such debts... We ought to go back to the old-fashioned primitive doctrine that requires the payment of all honest debts... Let us go back to honest and fundamental principles and repeal this law. Although this effort to repeal the federal bankruptcy law failed in 1910, the problem of consumer bankruptcy only intensified over subsequent years as new forms of consumer credit were institutionalized.*" (David and Gibbs, 1999).

1225 "*The crisis of 1929/30 did not send as many wage earners to bankruptcy court as the conventional view has presumed. It was primarily wage earners in states with pro-creditor garnishment laws who sought the protection of the federal bankruptcy court in order to avoid losing part of their income, some of their assets, or, in some cases, their employment. In most states, though, traditional creditors' remedies were relatively unthreatening and workers had little need to halt collection actions by filing a bankruptcy petition. In most states, bankruptcy was not countercyclical.*" (Hansen and Hansen, 2012). "*In the 1920s and 1930s, some states exempted all or most of the debtor's wages from garnishment while others exempted little from garnishment. The variation in garnishment law has been considerably diminished by the federal government. The 1968 Consumer Credit Protection Act limited garnishment to 25% of take-home pay or the excess of the debtor's take-home pay over 30 times the federal minimum wage. As of 1992, 34 states limited garnishment to the federal maximum of 25% (White 1998). In 1969, the Supreme Court also reduced some of the variation in garnishment by restricting the use of prejudgment attachments of wages (Sniadich vs. Family Finance Corp 395 U.S. 337). In sum, the legal rules in the 1920s and 1930s exhibited greater variation than has been the case since the late 1960s. Exploiting historical data allows us to more accurately assess the extent to which state legal rules are capable of influencing the bankruptcy rate.*" (Hansen and Hansen, 2006).

1226 "*As the present Massachusetts act goes back with no substantial change to Oct. 7, 1640... We may, therefore, safely conclude that the American registry system as it prevails at present throughout the country had its origin in Massachusetts legislation; only the provision for acknowledging the deed before its record being derived from the Plymouth Colony... The most distinctive feature of the American system, the priority given to the earliest recorded deed, appears to have no prototype among foreign systems... The distinctive features of the American recording system are therefore indigenous.*" (Beale, 1907). "*So far as I know the only modern state which provides for recording an abstract of deeds, mortgages, etc., instead of the full and complete deed is Louisiana. In New Orleans, at least, this system is in vogue and if you want to examine the complete deed you must go to the office of the notary before whom the transaction was had. You can imagine the troubles of a title examiner in New Orleans.*" (White, 1929).

1227 "*A defect in ownership or title is said to exist when the aggregate of rights, privileges, powers, and immunities known as ownership is subject to the claims of others. Such claims may restrict the use which can be made of the property and as a corollary may reduce its market value. The possible types of title defects are myriad. Some defects will be disclosed by a search of the public transfer records; others will be disclosed only by a physical examination or a survey of the property itself; still others may remain undisclosed even after physical examination and consultation of public records. Often the existence of title defects will depend upon complex and confusing legal doctrines*." (Comment, 1962).

1228 "*According to this tale many lay conveyancers were operating in Philadelphia after the Civil War, these laymen carrying on a tradition that arose during colonial days when a shortage of lawyers caused literate members of the community to assume the conveyancer's function. Be that as it may, in the year 1867 one Watson, a vendee, brought an action of negligence against Muirhead, a lay conveyancer. Watson had recently purchased an interest in real estate, and Muirhead had searched the title for him and had approved it. The title was not free and clear, however, and the execution of a judgment of record shortly wiped out Watson's purchase. Muirhead had been aware of the judgment but he had relied in turn on the opinion of 'Eminent Counsel' that it was not a final one. To make a long story short, the highest court of Pennsylvania ultimately ruled that Muirhead owed Watson the duty of reasonable care, thereby equating lay conveyancers and lawyers, and, further, that Muirhead had proceeded reasonably, relying as he did on counsel's advice. Convention has it that this decision shocked the conscience of both bench and bar in Philadelphia, revealing as it did a glaring defect in the conveyancing system. That is, absent recourse against the vendor on warranties, the vendee was forced to suffer the entire loss should an adverse claimant appear upon the scene after the vendee's conveyancer had, in the exercise of due care, advised vendee that the title was free and clear. Shocking as this may be, it is somewhat difficult to imagine why it should have upset the bench and bar in the 19th century when, after all, this result was axiomatic in any common law jurisdiction. More*

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pertinent may have been the fact that Philadelphia was preparing for its Centennial Exposition of 1876 and that a land boom was anticipated. Relevant also was the fact that the public record system pertaining to land in Philadelphia was in an appalling state. As chance would have it, Watson v. Muirhead warned potential land buyers off lay conveyancers just at this moment." (Comment, 1962). "*Before the First World War title insurance had spread to other cities like New York, Washington and Chicago... Had there been no title companies, other expedients, such as reform of the public record centers, would have had to have been found. As it was title insurance tied in with lending money and it has been suggested that: 'A powerful factor in the growth of the New York companies was their early combining with the evidencing of titles the lending of money on mortgage; the 2 businesses so supplemented each other as to give dominating positions in both fields'*" (Roberts, 1963).

1229 "*Critical to the development of the real estate bond market was New York State's legalization of private mortgage insurance in 1904, after which securitization blossomed in the state. Title and mortgage guarantee companies were permitted to offer insurance not just against a defect in a land title but also against the non-payment of mortgages. These companies began to originate and sell mortgages, servicing them after sale. In a development similar to the contemporary growth of the Credit Default Swaps, these firms provided explicit default insurance policies, promising purchasers that they would have a default-free income stream from investing in participation certificates in mortgage pools. In the absence of a secondary market, the bond houses offered to repurchase the securities, in effect giving a put to their customers. These policies were apparently unhedged and concentrated risk in the originating companies, contributing to widespread failures, resembling the contemporary disaster of American International Group (AIG).*" (White, 2009). "*With the advent of the national mortgage market, however, title insurance became a national institution itself. Conveyancers outside the megalopolis on each coast were used to put title insurance into every state... a number of new 'title insurance companies' were formed in many states, particularly New York, again because title insurance companies possessed the power to insure mortgages.*" (Roberts, 1963). "*During the 1920's and 1930's lending institutions were issued title insurance policies which not only protected against defects in title and title marketability, but which guaranteed payment of mortgage principal and interest.*" (Johnson, 1966). "*The methods, instruments, and practices used in acquiring title to land and improvements are simplest when all of the purchase price can be provided at the time of transfer in cash or its equivalent from the purchaser's resources, that is, with 'equity funds.'... One type is represented by the organization of a trust, similar to the Massachusetts Common Law Trust. Title, in fee, to the land and improvements is taken by a trustee in accordance with the terms of a trust agreement. The trustee issues certificates of beneficial interest to participants, each of which carries rights to the occupancy and use of a specified apartment. The certificates of interest and the trust agreement also contain provision for payments by the holders to meet operating costs, taxes, and debt service and to cover other contingencies. Ordinarily, provision is made for a board of advisers, selected from the certificate holders, to advise the trustee, although final authority usually rests in him. Among the contingencies provided for are dissolution of the trust, and of the certificate and its privileges. Operating rules are also included. This organization is complex and is used less than the more familiar form, which has tax advantages in a number of states. When the corporate form is employed, the corporation (instead of a trustee as in the Common Law plan) holds title to the land and improvements in fee. Stock, in an agreed amount, is issued and made transferable only in blocks, each block representing a part of the equity proportionate to the value of the use of a particular apartment. Each block of stock carries with it the right to a proprietary lease of an assigned apartment. The conditions of the lease and the charter and by-laws of the corporation govern its operation and stipulate the rights and privileges of proprietary leaseholders as well as of stockholders. Assessments are made against lease-stockholders to meet the cost of operation, taxes, and debt service, and the stock stands as security for the payment of these assessments. Other provisions in the lease and by-laws cover the same contingencies as does the trust form of organization*." (Fisher, 1951). "*The characteristics of our recording system which distinguish it from other systems are these: the document recorded is a deed, not a memorandum of a transfer or an agreement for a transfer; the deed is operative without record, the title passing before the deed is recorded; the record is not a mere device for preserving evidence, but gives a legal priority to the grantee of the recorded deed. In the first particular it differs from the medieval registry system; in the second from the continental registry systems and our own Torrens system of registration; in the third from the recording system in England under local customs, like those of Middlesex and Yorkshire*." (Beale, 1907). "*The business of mortgage investment guaranty was born out of wedlock with the law, in an arrangement of convenience whereby a poorly worded stretch of the New York State 1885 Statutes in regard to title insurance was misinterpreted to permit the guaranty of mortgages against loss for reasons other than title defect. By 1895, at least four large mortgage banking firms allied with title companies were offering guaranties of 'prompt" payment of the interest for mortgages which they had marketed to small investors. In 1904, the statutes adopted the ill-starred infant by amendment, granting title insurance firms legal standing to insure 'the payment of' bonds and mortgages. The phrase was inserted in the prior title insurance law of 1892, which had been drafted to disenfranchise the guaranty by restricting the 1885 law to traditional title insurance. Since title insurers had traditionally experienced only negligible losses, their required reserves were minimal in relation to gross liability. Entry capital was generally less than for any other insurance line. As a result, the guarantor was required to maintain no other reserve funds except the non-segregated guaranty fund to equal two-thirds of its original capital or about $67,000, as required to write title insurance. In 1911, the insurance law was further amended to permit title companies 'to invest in, to purchase, and to sell with guaranty of interest and principal or with guaranty of title, such bonds and mortgages as were legal for insurance companies.' Rather than require an investment banker or trust department which wished to sell guaranty mortgages, to be licensed as an insurance company, a guarantor could be organized under either the insurance or banking laws of New York, or both... An ill-defined legislative afterthought was added in 1913, to the effect that the power to guaranty mortgages was applicable only to those sold by the originating mortgage banker-guarantor on 'improved and unencumbered single property worth 50% more than the amount loaned thereon.' Note that loan decisions and guaranty underwriting were all under one roof. This provision not only created unresolved debates on the definition of 'improved' property, but also encouraged accommodating appraisers to win mortgage banking business by inflating appraised values in relation to actual construction cost*." (Graaskamp, 1967).

1230 "*The Florida real estate boom was an amplified version of the more general boom throughout the country, much as the recent booms in Las Vegas, Phoenix, and Miami were amplified versions of similar booms around the country... real estate transactions in Miami had increased by a factor of 5 in only 14 months—from 5,000 transfers in July 1924 to 25,000 transfers in Sep 1925. Although the increase was remarkably rapid in Miami, its peak differed by only one month from the peak for the average of nine widely dispersed jurisdictions...*" (Gjerstad and Smith, 2014). "*Simpson (1933) found that there was an excessive expansion of residential construction in 1920s' Chicago, abetted by an unholy alliance of real estate promoters, banks, and local*

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politicians. In Cook County, he claimed that there were 151,000 improved lots and 335,000 vacant lots in the bust year of 1928, estimating it would take until 1960 to sell these properties based on his projection of future population growth. He considered Chicago to be an important example of the bubble, although Florida was the most conspicuous." (White, 2009). "*The curves for Jacksonville and Miami started at about the same level, but, with the close of the war, that for Miami began an impressive advance which did not culminate until the fall of 1925. The Jacksonville curve moved much less steadily, and it failed to advance sharply until 1924. Real estate activity in Orlando, like that in Miami, increased steadily after 1918, and by the fall of 1925 actually exceeded that of Jacksonville*." (Vanderblue, 1927b). "*We find that all nominal housing value series show a strong decline between the late 1920s and the early 1930s. However, there are sharp differences between the Shiller-GBW hybrid and the rest of the series circa 1920 and 1940. All of the series except the Shiller-GBW hybrid imply that housing values in 1920 were well below the 1930 value and thus imply much stronger growth rates in housing values during the 1920s housing boom. Only the Shiller-GBW hybrid predicts a strong recovery in housing values… the two GBW series suggest conflicting stories about the path of nominal housing values during the 1920s housing boom. The unadjusted series combined into the Shiller-GBW hybrid has housing values in 1920 that were 7.3% higher than in 1930, while the GBW adjusted series has values that were 6.5% lower; therefore, they describe drastically different pictures of growth rates in nominal housing prices during the 1920s... [Shiller-GBW] suggests a very strong recovery by 1940 of housing values to 95% of the level seen in 1930. Recent hedonic price indices created for Manhattan… find housing values in 1939 that are roughly 70% of the 1930 level and [NYC] is among the 5 cities in the Shiller-GBW*." (Fishback and Kollmann, 2014).

1231 "*Of the 3 theories of mortgages, that which obtains in Florida is the lien theory. The legal title or right of possession is not in the mortgagee [lender], he merely holds a specific lien on the property described in the mortgage. Title to the property conveyed by the mortgagor [borrower] to the mortgagee, to secure the mortgage debt, does not however vest in the mortgagee upon failure of the mortgagor to perform the covenants and stipulations set out in the mortgage deed. The title of the mortgagor is not divested until after sale in a foreclosure suit. This is true although the usual form of mortgage used in Florida is called a mortgage deed, and contains the apt words of conveyance found in the warranty deed. In addition to the description of the property conveyed there are covenants and stipulations and a defeasance clause. Among the usual covenants and stipulations are those providing for the prompt payment of taxes, assessments, interest and principal in the notes as may severally become due, and upon failure to do so, the so-called 'acceleration clause' takes effect... it provides if the payment of taxes, interest, principal or assessment is not paid within a given number of days after it becomes due, the whole amount secured by the mortgage shall immediately become payable... Attached to the mortgage is a copy of the notes secured. Because of these provisions, when default has been made in an interest payment or taxes or assessments, or any of the stipulations or covenants in the mortgage have been breached, the mortgagee usually exercises his option under the acceleration clause and declares the whole sum secured to be immediately due and payable, and proceeds to foreclose the mortgage. This must be in chancery and in the Circuit Court, as this Court has exclusive original Chancery jurisdiction... the Act of 1919 [made it] obligatory for the judge to enter a deficiency decree...*" (Willock, 1927).

1232 "*The decline in the percentage of bonds from the South after 1927 can be attributed... the collapse of the Florida land boom dried up the source of a substantial part of new Southern municipal issues, bonds from this state falling from $32 M in 1928 to $13 M in 1929 and $3.5 M in 1930.*" (McFerrin, 1969). Appendix A —replicated in Exhibit 15 infra— notes sample purchases of $5.5, 2.0, and 4.0 M from 1924 to 1926 — the largest of any other State. Appendix B (not replicated) lists mortgage real estate bonds originated and underwritten by *Caldwell*; the Florida issues are: *Citizens Bank Building* in West Palm Beach in 1922 for $0.28 M and the *Carling Hotel* in Jacksonville in 1925 for $1.0 M.

1233 "*The Guarantee Title & Mortgage Co is the result of years of tireless effort on the part of its president, H. Jerome Carty, who realized the value and necessity of this class of service in the State of Florida, in which state there are more realty operations and transactions than in almost any other of the Union at the present time. Many land titles are derived from old Spanish grants and from early United States patents, but through the years complications in ownership, together with litigations, etc., have put some titles in rather bad shape. These titles need to be straightened out and curatives procured to lift any and all clouds from same, giving the present owners good and marketable title in fee simple. Tracing down the line of titles is the business of the Guarantee Title & Mortgage Co, and after this is done all data is furnished to the Union & Planters Bank & Trust Co of Memphis, Tennessee, of the title guaranty policies, of which company the Jacksonville concern has the state agency. These title guaranty policies are backed by over $29 M of resources of the Union & Planters Bank & Trust Co, and the parties who avail themselves of the service and get a policy have one of real intrinsic value. The states throughout the North and West have had title insurance for many years, and the investors who locate in Florida for the purpose of settling or of buying real estate from an investment stand point do not hesitate to close the transactions if offered a title insurance policy guaranteeing the title to the land which they are purchasing, for they are used to this class of service and know that they are safe in closing the transactions. Subdivision owners in Florida are realizing the benefits to be derived from the service of this concern and have shown their appreciation in a very material way by the volume of business which they have so far given the company and by the inquiries which the company is receiving daily from almost every section of the state... the Guarantee Title & Mortgage Co of Jacksonville, Florida state agents for the Union & Planters Bank & Trust Co of Memphis, Tennessee. This institution is one of the strongest in the South, with capital stock of $1.8 M; surplus of $0.7M; and deposits of $19.3 M.*" (Cutler, 1923) "*Spain had it from 1559 to 1718. France had it from 1718 to 1723. Spain again had it from 1723 to 1763. Great Britain had it from 1763 to 1781. Spain again had it from 1781 to 1818. United States had it from 1818 to 1819. Spain again had it from 1819 to 1821. United States had it from 1821 to 1861. Southern Confederacy had it from 1861 to 1865. United States again had it from 1865 to present time*." (Fox, 1925).

1234 "*At a general election in 1924, the electorate of Florida, by a vote of a little over 4 to 1, set a precedent when they caused to be written into the fundamental law of the state, a short, simple and unequivocal, though highly significant provision expressed in these words: 'No tax upon inheritance or upon the income of residents or citizens of this State shall be levied by the State of Florida, or under its authority, and there shall exempt from taxation to the head of a family residing in this State, household goods and personal effects to the value of $500.'*" (Fox, 1925). See Frazer and Guthrie (1995).

1235 "*The trafficking in options and contracts for the purchase and sale of real estate became distinctive features of the boom. By the time that a 30-day option or 'binder' for the purchase of real estate at a given price had expired, frequently, the property would have advanced so in price that the holder of the*

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option could make a neat cash profit by disposing of it to someone else. Where the option holder chose to exercise his privilege of purchasing the land a contract to purchase the land would be drawn up preliminary to the abstract of title, the opinion of counsel as to title and the preparation of the necessary deeds and mortgages. By the time that the overworked abstracting companies and attorneys could complete their work, so that the purchaser would feel safe in accepting his deed and closing the transaction, weeks had elapsed, during which time the contract of purchase and sale or new binders may have changed hands several times." (Boyd, 1926). "*Although the 'binder boys' were usually sneered at by the promoters, most of the latter maintained 'resale' departments, which undertook to market lots 'bought for a turn.' The story of the 'trimming of the binder boys' is told by Mr. Roberts, Florida, pp. 257-64. The use of the binders arose in part because of the great delays in securing and recording abstracts. The office forces of the Florida counties were literally swamped when the boom was at its height, and the delay entailed in completing a transfer of title was so great that trading in 'binders' followed. Observers generally agree that this unregulated trading marked the wildest phase of the boom*." (Vanderblue, 1927a). "*Whenever a new 'development' was conceived, the promoters immediately advertised it in the newspapers and by handbills, giving descriptions of the location, extent, special features and the approximate prices of the lots. Reservations were made by depositing 10% of the proposed price, and these reservations were taken up in the order received, and attended to before the regular sale of lots was opened. The holder of the reservation was thus permitted to select from a beautifully drawn plan, on which lots and prices were marked, the sites he desired. He then got a 'binder', i.e., an option on the selected lot, which he could resell immediately. This gave him a thrill, for he felt that he was the owner of Florida real estate—even if actually in a swamp—and he hoped to transfer his 'purchase' at a fabulous profit to an absentee or latecomer. This quick turnover was frequently a necessity to the 'binder-boy' (i.e., the 'option buyer') because he had not the cash required to make the first payment of one-fourth the purchase price within 30 days after the 'binder' was issued to him. Speculation in 'binders' was a leading occupation in Florida, and those who indulged in it were popularly termed 'binder-boys'... When lots were bought by dealers or local speculators, they were almost immediately offered for resale in the 'real estate offices' of the city*." (Sakolski, 1932).

"*Not so long ago it was possible for a buyer to purchase a piece of property costing, let us say, $50,000, with a binding deposit of as little as $250. This deposit would bind the contract until the abstract was delivered to the purchaser by the seller. Not infrequently it required as long as sixty days to deliver the abstract when an additional lengthy period was allowed for the 'cash payment' on the purchase. The deposit was known as a binder, and inasmuch as until quite recently the cash payment was usually very small, the purchaser was enabled to tie up many valuable tracts with a minimum investment. With valuable acres tied up on contract and with the purchaser paying off this indebtedness in small payments, the state grew so rapidly, what with the tremendous development of Florida real estate and the activity in gambling in Florida lands, that in countless instances fortunes were made by holders of tracts who had in reality invested but a few hundred dollars. These 'shoe-string' operators became known as 'binder boys', and it was not until they had reaped a harvest and had tied up thousands of acres and plots, actually worth millions of dollars according to present values, that the regular realtors awoke to the fact that they had been made the victims of their own desire to earn commissions on the sales they had consummated. Though the activities of the 'binder boys' were legitimate, the realtors saw that something would have to be done to either thwart their continued efforts to gain possession of land or to discourage their activities. Therefore, in a session which was attended by representative real estate operators in and about Miami, a very clever plan of action was devised and put into operation. Some weeks were spent in preparing for immediate use abstracts on hundreds of parcels of very desirable land in and about Miami. Those realtors who were interested in the new plan kept mum about their activities, with the result that no one was the wiser. Then one fine day a group of would-be land purchasers arrived from New York. With them came a very considerable fortune which was to be used in snapping up on binders as much desirable land as was available. Inquiry at leading real estate agencies in Miami revealed the fact that much of such land was obtainable, and the New York operators were jubilant. They purchased as much land on binders as their funds could command, and when their capital was exhausted those realtors who had so carefully laid their plans some time before their arrival swooped down upon the luckless band and demanded their 'cash payment.' The northerners asked for their abstracts, and lo and behold, these were instantly forthcoming, having been prepared weeks before. Since the binder agreement provided that immediate cash payment be made upon delivery of the abstracts, the group found themselves unable to meet their obligations, and as well, unable to offer for sale the lands they held on 'binder.' The result was they were completely wiped out, and from that day to this, buying land on 'binder' has been practically discontinued."* (Fox, 1925)

1236 "*Walter W. Rose, Chairman of the Real Estate Brokers' Registration Board, told me recently that one of the best means of foiling the illegitimate realty broker is the new act of the legislature which went into effect on Sep 30th, 1925. Now all brokers and salesmen must have a new license for which application must be made to the county judge of the district where the applicant resides. Each application for a license must be accompanied by an affidavit of two citizens who are freeholders, stating that the applicant bears a good reputation for honesty and fair dealings. The county judge forwards the Registration Board one copy of the application and the copy of the affidavit. If no objection to the granting of the license is made within ten days from date of filing, then the county judge shall issue the license. If the Board or any individual under oath files objections, then the county judge must set a date for a hearing on the application not less than ten nor more than twenty days from date of objection filed. Written notice is given the applicant in order that he may be heard in person or by counsel. It will be the purpose of the Real Estate Brokers' Registration Board to exercise relentlessly all powers granted it under the law. As provided in the act the Board is empowered to investigate all persons doing a real estate business in the state without a license and to investigate those brokers and salesmen who have a license to ascertain if they are violating any of the provisions of the law. The office of the Board has been established in Orlando, and an efficient staff, including field men, is being organized to put the law in full operation immediately. General counsel will be employed to assist in the prosecution of all violations of the law. Henceforth only real estate brokers can advertise or offer land for sale. §11 of the new law makes it a criminal offense for any person to knowingly authorize or direct the publication, advertising or distribution of any false written statements or representation concerning any land or subdivision offered for sale. It has been suggested that the law could be materially improved by requiring any person or corporation putting on a subdivision to file with the Real Estate Board a plan showing in detail the improvements to be made as an inducement to the public to buy land and require the approval of the Board. It is not certain whether this amendment to the new act will be ratified, but whether it is or not, it is plain that the purpose of this new Florida legislation is to protect the investors, large and small, and have the real estate activity so general in Florida recognized as worthy of the public's esteem and confidence. (A complete transcript will be found in the Appendix.)"* (Fox, 1925).

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1237 "*[BA00] defined unworthiness in terms of fraud, refused to cooperate and gambling. [BA41 and B67] expanded the worthiness concept to disallow irresponsible business conduct. But none of these Acts dealt with consumers; a condition to discharge was the payment of a 70% dividend in liquidation, an unheard of result in consumer (popularly called 'no asset') cases… [BA98], for the first time made unconditional discharges available to honest debtors, without any limitation to frequency of use. It was subsequent amendment which first added the 6-year limitation as to voluntary petitioners [in 1903], and then [in 1926] as to involuntary positions… n.b. involuntary bankruptcies constitute less than 1% of total filings, and a statistically negligible number of consumer bankruptcy filings. The 6-year limitation was held in Perry v. Commerce Loan Co., 383 U.S. 392, 15 L. Ed. 827, reh. den. 384 U.S. 934 (1966), not to apply to Chapter 13 cases by way of extension, the overwhelmingly larger group of those cases… These amendments, coming after serious financial crises, were directed toward the professional bankrupt who obtained business credit irresponsibly. They did not contemplate the (subsequent) rise of consumer insolvency as an economic phenomenon. The professional bankrupts proceeded to turn to the corporation as the legal device for the successful evasion of the 6-year limitation and, more recently, if personal signature becomes a condition to corporate credit, to Chapter XI.*" (Meth, 1967).

1238 "*The American system of bankruptcy is almost unique in the complete rehabilitation which it affords to the honest debtor who falls into insolvency. The conditions which he must meet in order to receive his discharge are much less stringest than those in the English law of bankruptcy, and vastly out of comparison with the political and business incapacities that are incurred by the discharged bankrupt in France and in most of the countries of Europe. To the Continental jurist this benevolence of our law toward the insolvent debtor is both puzzling and amusing.*" (Trieman, 1927).

1239 "*The American Bar Association, at its annual meeting in 1923 had followed the recommendation of Chief Justice Taft and others by creating a Special Committee on Practice in Bankruptcy Matters, to recommend amendments to the Bankruptcy Law designed to 'bring about a cessation of the frauds and abuses that are complained of under the present practice.'… [A] bill which on Aug 27, 1926, after subsequent amendments became effective in amendment, of [BA98]… The amendments are concerned chiefly with promoting the equal and economical distribution of the debtor's property among his creditors. The other object of bankruptcy legislation, namely, the relief of the honest debtor from his misfortune, was regarded as substantially secured by the original act*" (Robinson, 1926).

1240 There were 9 amendments to BA98 between 1903 and 1926 [1903, -06, -10, -15, -16, -17, -22, -25, and 26],"*Several of the acts added grounds for denial of discharge [1903, 1917, 1922], or added debts excepted from the discharge [1910], and the number of acts of bankruptcy was increased. The penal provisions were strengthened considerably in 1926. Corporations were made eligible for voluntary bankruptcy in 1910. The act extended eligibility for voluntary bankruptcy to "[a]ny person except a municipal, railroad, insurance, or banking corporation… Preferences were another favorite subject of congressional tinkering.[1903, 1910, 1926]... The most comprehensive of these amendatory acts was that of 1926. For a detailed discussion of those amendments, see (McLaughlin, 1927).*" (Tabb, 1995). Bankruptcy revisions: *Act of Feb. 5, 1903, ch. 487, 32 Stat. 797*; *Act of June 15, 1906, ch. 3333, 34 Stat. 267*; *Act of June 25, 1910 ch. 412, 36 Stat. 838*; *Act of Jan. 28, 1915, ch. 22, § 4, 38 Stat. 803; Act of Sept. 6, 1916, ch. 448, § 3, 39 Stat. 726*; *Act of Mar. 2, 1917, ch. 153, 39 Stat. 999*; *Act of Jan. 7, 1922, ch. 22, 42 Stat. 354*; *Act of Feb. 13, 1925, ch. 229, 43 Stat. 936*; *Act of May 27, 1926, ch. 406, 44 Stat. 662*.

1241 "*A second important amendment to §3… Under the former wording of the section, an act of bankruptcy would have been committed only if, 'being insolvent,' the alleged bankrupt had applied for a receiver or trustee, or 'because of insolvency' a receiver or trustee had been put in charge of his property on the application of others. In the second alternative where the application was made by persons other than the bankrupt, mere actual insolvency was insufficient, if the application for the receiver was not made on that ground. Under §3(a)(5) as amended, a debtor commits an act of bankruptcy if, 'while insolvent, a receiver or trustee has been appointed or put in charge of his property' irrespective of by whom the application is made or the reason stated for it. As a result of this change, the ordinary 'federal equity receivership' becomes an act of bankruptcy if the defendant is in fact insolvent. Before the amendment, the fact that a receiver had been appointed in an equity suit was not in itself an act of bankruptcy, because, though the defendant might actually have been insolvent, the application for the receiver had not been made by him; on the other hand the complainant's application in such a case is not only not made 'because of insolvency' of the defendant, but it is a necessary allegation of the bill that the defendant is solvent and is simply unable to meet its current cash requirements.*" (Colin, 1926). "*Under §3 (5) of the Bankruptcy Act, 'any general assignment for the benefit of creditors' constitutes an 'act of bankruptcy.' In other words, if a debtor desires to work out an 'extension' with his creditors or to proceed to liquidate his assets with their cooperation or under their direction and does not secure practically 100% consent of creditors, dissatisfied creditors or creditors made more disgruntled by fee chasing lawyers may petition the case into bankruptcy. Or unless 100% consent has been obtained, one dissatisfied creditor may by threats create a high nuisance value or perhaps even proceed to enforce his claims without reference to the cooperative arrangements of the debtor and other creditors.*" (Douglas and Marshall, 1932).

1242 "*§1(a)(6) extends the definition of 'corporation' to include 'joint stock companies, unincorporated companies and associations, and any business conducted by a trustee, or trustees, where-in beneficial interest or ownership is evidenced by certificate or other written instrument. This amendment in turn results in broadening the scope of §4 of the Act defining 'Who may become bankrupts.' Although the amendment codifies the interpretation already placed on §4(b) by the courts, which have held that a business trust, for instance, may be petitioned into involuntary bankruptcy, it is interesting to note that the cases have included the business trust within the scope of the term 'unincorporated company' as used in §4(b), while by the amendment it must now be deemed covered by the term 'any moneyed, business or commercial corporation.*" (Colin, 1926).

1243 "*§1(6) defining corporations has been extended so as to cover 'joint-stock companies, unincorporated companies and associations, and any business conducted by a trustee or trustees, wherein beneficial interest or ownership is evidenced by certificate or other written instrument.' This provision, unlike most of the amendments of 1926, is likely to be more confusing than helpful. The only explanation of it offered in the* Congressional Record *is that it was designed to make certain that 'those businesses conducted under the guise of so-called trusts' were amenable to bankruptcy proceedings. Several points may be made with reference to this statement. In the first place a business conducted under the 'guise of a so-called trust' is presumably not a trust but a partnership. Its members are directly liable upon its debts. The assets of the individuals ought to be distributed in bankruptcy under the provisions of §5 relating to partnerships, and a statement that such businesses are corporations can only tend to obstruct proper administration.*" (McLaughlin, 1927).

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1244 "*The legal effect of the dealings between stockbrokers and their customers is based, in part, upon custom. It may, however, be controlled by special agreements, and in the great majority of cases brokers on the regular exchanges, who purchase securities for customers on margin, collateral, or partial payment, now require the customers to sign agreements permitting the broker to rehypothecate the securities for any purpose, in miscellaneous loans, and for any amount. In bankruptcy cases, the federal courts, in determining the construction and validity of contracts for the purchase and sale of securities, follow the local law… Much of the confusion in the cases which deal with the position in bankruptcy of various classes of customers of stockbrokerage houses can be traced to... the rights and obligations of customers in these cases are essentially relative, whereas the courts, being called upon to deal only with certain isolated facts, have laid down the rules applicable to those specific facts in too absolute language. As Judge Rose said in [In re Archer, Harvey & Co. (1923)]: 'Perhaps, however, the chief cause of the apparent logical inconsistencies in the utterances of the appellate courts is that they have been compelled to deal with this class of cases in piecemeal fashion. The record as it came to them seldom justified and never required them to go into the accounting problems essential to a full adjustment of the conflicting rights and equities of all the parties concerned. They dealt with the particular issues raised by those before them, and in giving the reasons for such decisions as they might make, they usually were not thinking about anything else, and were therefore not careful to guard what they said against the possibility of misunderstandings when there was occasion to apply what appeared to be its logic to a different state of facts.*" (Oppenheimer, 1924).

1245 For law overview see Marr (1925). "*[T]he Senate amended the bill by striking out that proviso which was designed to abolish the priorities of residents and domestic corporations of a given state… [The American Bar Association's Special Bankruptcy Committee noted that] 'The reasons for this amendment grow out of the fact that there is now existing in Tennessee, and, perhaps, in other states, a statute which provides that resident creditors shall have priority in distribution of assets over residents of other states or countries. The U. S. Supreme Court held this act unconstitutional, except in so far as it related to foreign corporations, with the result that a foreign corporation, doing business in Tennessee, is subordinated to all the Tennessee creditors, as was held in Standard Oak Veneer Co., (173 Fed. 103) (1909). Clearly such an unfair discrimination and preferential outcome should not be perpetuated or left possible.'*" (Robinson, 1926). "*Under the law of Tennessee, resident creditors of an insolvent foreign corporation have priority over non-resident simple contract corporation creditors (not registered in Tennessee) in the distribution of its assets located in that state. § 2552 of Shannon's Code of the State of Tennessee, now § 4134 of the Code of Tennessee, Vol. 2, p. 496... In Blake v. McClung, 172 U. S. 239, 19 S. Ct. 165, 43 L. Ed. 432, it was held that, while "the act was unconstitutional in so far as it gave the claims of Tennessee creditors of a foreign corporation priority over those of natural persons who were citizens of other states, it was a constitutional exercise of the power of the state to prescribe the conditions upon which a foreign corporation might enter its territory for purposes of business, in so far as it gave the claims of Tennessee creditors priority over those of other foreign corporations not doing business in Tennessee under the act" In re Standard Oak Veneer Co (D. C.)… [The statute gives creditors resident in Tennessee] priority in the distribution of the assets in Tennessee over all unregistered general corporation creditors resident or domiciled elsewhere... In doing this the purpose of the legislature is quite clear, namely; to prescribe conditions upon which a foreign corporation may do business in Tennessee and, in case of its insolvency, to protect local creditors against discrimination in other jurisdictions; and in providing that local courts shall so enforce the statute, it was entirely within its rights..*" (*Carpenter v. Ludlum, - Circuit Court of Appeals, 3rd Circuit 1934*). Remington, the bankruptcy expert, noted the issue during hearings but was ignored "*This clause relating to State priorities was put in there to meet a decision of the Supreme Court of Tennessee granting, most strangely, you will all believe, priority to the claims of creditors resident in Tennessee over creditors resident elsewhere. It has nothing to do with taxes; it has nothing to do with mechanics' liens; it is just the general claims of Tennesseans in whose favor are granted priorities in the distribution of insolvent estates over nonresidents. That has been held by the Supreme Court of the United States to come under the bankruptcy law, § 64,835, granting priority to themselves, priorities granted by the State; and that should be corrected. We do not need any argument on that. General creditors should be treated the same whether they are Tennesseeans or even New Yorkers*." (United States Congress, 1926).

1246 "*Chain store systems... have flung their stores into all of the 48 states... Meantime, the judicial machinery provided for the reorganization of such manufacturing, merchandising and transportation businesses, temporarily financially embarrassed, is that adapted to the era of the localized factory, the butcher shop with the proprietor at the block, and the railroad venturing into but 1 or 2 states beyond the borders of that of its incorporation... [N]otwithstanding absence of insolvency in the present bankruptcy sense... there is serious likelihood that some member of the bar, alert to the possibilities of the situation, will have gotten together 3 creditors with claims sufficient to enable him to file an involuntary petition in bankruptcy. Often numerous such petitions are filed in various courts... For the result of such attacks, unless defeated or bought off, is bound to be the disintegration of the enterprise and the substantial destruction of its going-concern value... Levy of execution upon its properties or the snap appointment of receivers in the state courts of one state may be a signal for appointments of receivers in local courts in all the states in which the corporation's properties lie, and in such situations it is a substantial certainty that in each of the state receiverships the receivers will be different persons... [In a] chain store receivership, May Hosiery Mills, Inc. v. F. & W. Grand 5-10-25 Cent Stores, [1932] separate proceedings were required in the various districts in which the properties lay... In 25 districts one or more different persons were appointed ancillary receivers, and in no 2 districts were these additional receivers the same person. The business was thus, in effect, broken up into 26 separate businesses.*" (Swaine, 1933).

1247 "*One of the greatest changes in the practice comes in permitting, under the new law, voluntary bankrupts to file their schedules within 10 days after adjudication in the same manner as the Act now provides with respect to involuntary bankrupts. Heretofore voluntary bankrupts have been obliged to file schedules disclosing their assets and liabilities with their petitions for adjudication, thus revealing at the very inception of the proceedings the persons to whom the petitioner was indebted, and thereby adding an attraction for the so-called bankruptcy 'runners.'*" (Cook, 1926). "*Perhaps the most salutary of the amendments is that change in §7(a)(8) of the Act which now makes it possible for a debtor to file a voluntary petition in bankruptcy and to file his schedules 10 days thereafter, instead of simultaneously with the petition as heretofore required. The difficulty of complying with the heretofore existing requirement has made it practically impossible for a person of any means, not to mention a corporation or partnership engaged in an active business in which its assets and liabilities are ever changing, to become a voluntary bankrupt. The result has been the development of the 'voluntary involuntary' proceeding in which the prospective bankrupt procures the filing of an involuntary petition against himself by 3 friendly creditors. The evil of that proceeding lies in the fact that the*

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administration of the bankrupt estate for its creditors is frequently set up in advance by the bankrupt himself. While there is nothing in the Act as amended which prevents the continued use of that device, the amendment affords the opportunity to the honest debtor of avoiding collusion with certain of his creditors and of permitting the administration of his estate to rest entirely with all his creditors… An additional advantage to creditors of the voluntary proceeding is that it eliminates the expense of the allowances to attorneys for the petitioning creditors, small as these usually are." (Colin, 1926).

1248 "*A prior discharge within 6 years is now a bar whether obtained in voluntary or involuntary proceedings. This is of importance as removing an excuse for a collusive involuntary bankruptcy. The only remaining excuse has been removed by an amendment to §7(8) allowing a voluntary bankrupt 10 days after adjudication in which to file his schedules, which period may be extended in the discretion of the court. Consequently, voluntary and involuntary bankruptcies are put upon as similar a basis as possible. It was too easy to get a discharge under the Act as it stood, and it may be that all the above changes are on the whole desirable. It should not be overlooked, however, that every additional bar to a discharge limits its effectiveness to perform its original function.*" (McLaughlin, 1927). "*Subdiv. (5) now omits the words 'involuntary proceedings,' so that now in both voluntary proceedings and involuntary proceedings, no applicant can get a discharge within 6 years of a previous discharge. This amendment bars the habitual or chronic bankrupt from bringing 'involuntary' bankruptcy upon himself to avoid the 6-year limitation formerly applicable to voluntary proceedings alone. Subdiv. (6) still denies discharge to an applicant who has refused to obey court orders... Subdiv. (7) is new. By it the judge denies discharge if the applicant has failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities.*" (Robinson, 1926). "*Another amendment is designed to protect the estate during the term of 4 months prior to bankruptcy against seizures through legal proceedings as well as against preferential payments out of the estate. The purpose of another amendment is to place the voluntary bankrupt on a parity with the involuntary bankrupt with respect to the filing of schedules and serves to eliminate the excuse for collusive petitions. The adoption of this amendment will do away with many so-called 'voluntary-involuntary' bankruptcy proceedings. Still another amendment will prevent a debtor in bankruptcy from making an offer of composition which ipso facto stays further proceedings, very often to the detriment of the creditors. Under the law before amendment a false financial statement to constitute ground for denying a discharge had to be given directly to the complaining creditor or his representative. The amendatory provision serves to prevent those evasions of the law, which now occur, by having false statements made to and distributed by commercial agencies. The purpose of another amendment is to prevent fraudulent transfers occurring any time within 12 months preceding the filing of the bankruptcy petition, as being ground for denial of discharge. In other words, the amendment requires the bankrupt to be honest for a period of 12 months preceding his bankruptcy instead of 4 months as now provided, if he is to receive the benefits of the bankruptcy law.*" (CFC, 1926).

1249 "*The distinction between quasi-public corporations, like railroads, and other corporations was also made explicit in the special treatment given to railroad receivers' certificates. Only the certificates issued by receivers of railroads were given priority over secured debt by the courts. Receivers' certificates of other types of corporations were not so privileged. Most states passed legislation that put the problem of insolvent corporations into courts of equity and empowered the courts to appoint receivers to oversee the liquidation of the firm. Receivers were appointed for insolvent corporations in manufacturing, mining, and trade, but these receivers were not allowed to issue certificates with priority over secured creditors. Receivers of private corporations were expected to liquidate the firm's assets and distribute them among the creditors, in contrast to railroad receiverships whose primary objective was to continue to operate the road. Decisions rejecting attempts by receivers of purely private corporations to issue receivers' certificates emphasized that the difference between the two was the quasi-public nature of railroads. The courts declared it their duty to protect the contractual rights of creditors, a duty that was only outweighed by the interest of the public in the case of railroads. The issuance of receivers' certificates to facilitate the reorganization of an insolvent corporation in manufacturing required the consent of all the creditors. Denial of the right to issue receivers' certificates made clear that rehabilitation of the firm was not yet the primary goal in the case of industrial receiverships.*" (Hansen, 2000). "*The public interest in safe and continued operation of railroads as a basis for receivers' certificates was not strictly in accord with the theory that they were merely for the protection of property in the hands of the court. This theory did, however, enable the courts to limit the authorization of such securities to the railroad receiverships. The courts hesitated, but by 1895 it had become established... on an application for receivers' certificates with a lien on the property of a private corporation, wrote: 'If the junior creditors of an insolvent corporation, could do what has been attempted in this case, every private corporation operating a sawmill, gristmill, mine, factory, hotel, elevator, irrigating ditches, or carrying on any other business pursuit would speedily seek the protection of a chancery court and those courts would soon be conducting the business of all the insolvent private corporations in the country.*" (Thacher, 1915). "*In almost every case involving the receivership of an insolvent corporation there arises some question concerning the power of the court to authorize the issuance of receivers' certificates which shall, when issued, be made a lien upon the property of the corporation prior to subsisting liens. This power has always been exercised with a great deal of caution, generally being confined, except in the case of railroad corporations, to the purpose of raising money necessary for preserving the actual existence of property. But in a very recent case, the Court of Chancery of New Jersey has enunciated a doctrine which, if followed, will result in extending the power of the court in this regard to a point far beyond any that has yet been reached… [In Lockport Felt v. United Box Board & Paper (1908)], a private corporation, formed for the purpose of manufacturing paper boxes, was insolvent and in the hands of a receiver. Upon a mill known as the 'Wabash mill,' valued at [$0.5], 1 of 18 owned by the corporation, there was a first mortgage standing as security for the payment of bonds amounting to [$0.2], and subject to foreclosure in case of default in payment of interest and a portion of the bonded indebtedness. The receiver applied to the court for authority to issue receivers' certificates to provide a fund for paying insurance premiums, interest on the bonds, and an installment of $13,000 on the mortgage debt; such certificates to be made a lien upon all the property of the corporation, prior to that of a subsisting mortgage, the latter mortgage being junior to the former as to the Wabash mill, but a first mortgage upon the other property. The court held that the receiver should be given such authority, on the ground that... it had been shown that no other course could be adopted successfully to preserve the property.'*" (DLW, 1909).

1250 Professor Douglas investigated equity receiverships in Connecticut between 1920 and 1929 and noted that "*In the conduct of the receivership the receiver usually found it necessary to issue receivers' certificates in order to pay the expenses of the receivership. These certificates in most of the cases studied were paid in full… It will be noted that none of these businesses was a public utility. While it is not shown in the table, none of the issues were contested. In a number of cases certificates were issued for operating purposes and not merely for the preservation of the property. This extensive use of*

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receivers' certificates in private businesses is establishing a precedent which over a period of years may well have an effect on the law of the subject." (Douglas and Weir, 1930).

1251 "*The state tribunals have experienced a similar 'rush of business', especially in those jurisdictions where statutes facilitate the appointment of receivers. In Ohio, for example, during the 4 years ending Dec 31, 1930, some 1474 petitions praying the appointment of a receiver either for a corporation, a partnership or an individual were filed in the Common Pleas Court… [In Ohio] the common pleas courts are liberal in appointing receivers for individuals on petitions brought under §11,894 of the General Code… The method of bankruptcy was at least predicated upon the theory that the creditors should control the administration of the estate. The method of equity (certainly under some of the state statutes) is frankly predicated upon no such assumption. In those sections of Ohio, for example, where the statutory equity receivership has all but replaced bankruptcy, certain law firms control the receivership practice; and the creditors well know that the lawyer who brings the bill, the lawyer who is appointed receiver, and the lawyer who is counsel for the receiver may all be members of the coterie that is in power.*" (Billig and Billig, 1931). "*While some difference of opinion prevails on the point, I take it to be at least partially conceded that the court of chancery has no peculiar concern with insolvent estates that require immediate liquidation! It is true that in certain parts of the country —southern Ohio for example— an extensive state equity machine has grown up which rivals the bankruptcy court as a forum for liquidating businesses that are insolvent beyond all hope of redemption. But, as I have pointed out in a recent study [Equity Receiverships in Franklin County, Ohio (1932)], I see no valid reason, save an historical one, for the existence in the same district of two courts —one federal and one state— which are both engaged in liquidating defunct businesses. In fact sometimes it may be possible to liquidate the estate without resorting to any court at all through the use of an assignment for the benefit of creditors.*" (Billig, 1933). Toledo, Lucas County, is in Ohio's north. "*The litigation in Lucas County has never differed materially from that in the other counties of the state.*" (Killits, 1923). Columbus, Franklin County, is in central Ohio.

1252 In Franklin County, Professor Billig "*found a certain nominal deference to the notion that a receivership is ancillary in character but a considerable tendency in practice to regard receivership as the actual remedy of the creditor. There was no strict enforcement of the rule that a judgment was a condition precedent to the obtaining of a receiver for an individual debtor. Most of the debtors appeared to have consented readily to the receivership proceedings and in general it was obvious that the receiverships were for the most part voluntary in character. The receivership device was used instead of bankruptcy although liquidation was expected in most receiverships because of the local feeling that bankruptcy machinery was slow in operation and awkward in producing desired results. The administration of the receiverships including the assembling of assets, filing of claims and sale of assets moved rapidly. Appointment of appraisers was apparently influenced occasionally by political reasons and other considerations of favoritism. Where the business was operated the receivers on the whole made a satisfactory record of profits rather than of losses. Administration was expensive, rarely costing less than 30% of the realized assets. Satisfactory local figures relating to the comparative expense of bankruptcy administration are not available, but such as Professor Billig quotes indicate that administration in bankruptcy costs somewhat less than administration by receivership in equity. Receivers' reports left much to be desired although the condition of the records seemed to indicate carelessness and ineffective supervision rather than dishonesty. Lawyers rather than creditors controlled the smaller receiverships although in the larger receiverships where business operation was essential, the operating receiver' was generally a layman*." (Hanna, 1933).

1253 "*A summary comparison of these 2 cases brings out the following facts of extreme importance in our study: (i) the estates varied little in size; (2) both cigar stores were in Cleveland, and were closed within 2 years of each other; (3) in the bankruptcy, 43% of the money received from the sale of the assets was paid to creditors, and 57% went to expenses of administration; (4) in the friendly adjustment, 96% of the money received from the sale of the assets was paid to creditors and only 4% went to expenses of administration; (5) the bankruptcy required more than 15 months for liquidation, while the friendly adjustment was completed in 29 days. The significance of this comparison is that, at least where small cases of the character herein discussed are concerned, bankruptcy is an unwieldy, expensive procedure which leaves little for the creditors. The distribution analysis of the money collected from sale of assets in 22 friendly adjustments and 98 bankruptcies closed by the Cleveland bureau during the year ending April 30, 1929, [shows that bankruptcy uses 3x as much of the proceeds as 'friendly adjustments' do on rent.]*" (Billig, 1930).

1254 Professor Billig notes that only Ohio had the most locations of adjustment bureaus remaining in 1929 and 1930: States with 5 locations: *OH [Cincinnati, Cleveland, Columbus, Toledo, Youngstown]*. States with 4 locations: *CA [Los Angeles, Oakland, San Diego, San Francisco], TX [Dallas, El Paso, Houston, San Antonio]*. States with 3 locations: *FL [Tampa, Jacksonville, Miami], VA [Lynchburg, Norfolk, Richmond], WA [Seattle, Spokane, Tacoma], TN [Chattanooga, Knoxville, Memphis], PA [Allentown, Philadelphia, Pittsburgh], IN [Evansville, Indianapolis, South Bend], WI [Milwaukee, Green Bay, Oshkosh], IA [Davenport, Des Moines, Sioux City]*. States with 2 locations: *GA [Atlanta, Augusta], KY [Lexington, Louisville], MA [Boston, Springfield], MI [Detroit, Grand Rapids], MN [Duluth, St. Paul], MO [Billings, Great Falls], NY [Buffalo, New York City], WV [Clarksburg, Huntington]*. States with 1 location: *Denver [CO], DC [Washington], ID [Boise], IL [Chicago], KS [Wichita], LA [New Orleans], MD [Baltimore], MO [Kansas City], NE [Omaha], NC [Charlotte], NJ [Newark], OK [Oklahoma City], OR [Portland], RI [Providence], UT [Salt Lake City]*. (Billig, 1929, p426 ; Billig, 1930, p295). *"The credit department representatives of business houses scattered all over the United States are linked in a powerful nation-wide body known as the National Association of Credit Men, which was organized at Toledo, Ohio, in 1896.*" (Billig, 1929). "*1929, the adjustment bureaus associated with [NACM] were handling non-bankruptcy adjustment cases involving total liabilities of over $31 M. The bankruptcy law reduced the incentives for individual creditors to initiate liquidation and made it possible for creditors to assist debtors who were only temporarily insolvent.*" (Hansen, 1998).

1255 "*[T]he Credit Men's Adjustment Bureau, affiliated with the Cleveland Association of Credit Men… covers the Northern Ohio territory bounded roughly by Painesville, Akron, Mansfield, and Sandusky. It liquidates insolvent estates wherever possible under the friendly adjustment plan, but also participates extensively in Cleveland bankruptcies. During the 3-year period ending April 30, 1929, the bureau closed 103 friendly adjustments with unsecured liabilities of $0.78 M and cash recoveries of $0.31 M [40%]. In the same period, it controlled 306 bankruptcies with unsecured liabilities of $6.63 M and cash recoveries of $1.23 M [19%]. All of the insolvent stocks figuring in these cases were sold at public auction, irrespective of whether the case was closed in bankruptcy or outside of court."* (Billig, 1930).

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1256 "*The rapid uprush of deposits in 1925 was the result of an abnormally heavy transfer of funds from other sections of the country. In 1926, therefore, the drop was certain to be very sharp for both deposits and loans. Indeed, the condition faced by the Florida bankers in 1924 and 1925 was quite unprecedented, and it is the more remarkable, and greatly to their credit, that most of them were prepared for the shrinkage in deposits when it came. The plethora of funds had not been allowed to flow into land speculation but was invested mainly in corporation and government bonds or commercial paper and in loans at call in New York. The bank failures were relatively few in number, therefore, and especially, when the extent of the Florida land speculation is taken into account, the attendant losses quite small.*" (Vanderblue, 1927b).

1257 "*In April 1925, word of a disaster circulated at the Florida Bankers Association convention in West Palm Beach. Affiliated bankers feared the Manley-Anthony system was near the brink because of insider loans. And by Dec 1925, Manley's Farmers & Traders Bank of Atlanta had stopped making payments to Florida banks.*" (Vickers, 1994).

1258 "*The chain system grew by attracting member banks with its services. [BTC] operated as a financial agent for member banks, which placed demand deposits at 6% interest and made loans to other member banks and their customers. It also provided fidelity insurance to members and supervised them with a staff of examiners, who regularly audited the banks and then reported the findings to their boards of directors.*" (Vickers, 1994). "*Officials of the State Banking Dept pointed out that virtually all of the Georgia banks that have closed were of the trust company chain. [BTC], they said, was a corporation and not under the supervision of the State Banking Department. The banks themselves, however, Judge Orville Park of Macon, chief counsel for the Georgia Bankers Assn, said, are under the jurisdiction of the State Banking Dept and not within that of the Federal Court.*" (CFC, 1926).

1259 "*[In July 1926,] Depositors ran to get their money after the Bank of Umatilla, Florida, filed an involuntary bankruptcy petition against [BTC], which accused Manley of fraud... Florida and Georgia experienced a banking Panic in 1926 when in a 10-day period in July, after uncontrollable depositor runs, 117 banks closed in the two states.*" (Vickers, 1994). "*Announcement was made in press advices from Atlanta on July 14 of the closing of 49 small banking institutions in Georgia since Monday, July 12, their closing being attributed to the petition for the appointment of a receiver for [BTC]. The latter, it is stated, operated 120 banks in the State. On July 15 Atlanta press advices stated that 15 additional State banks in Georgia and 4 State banks in Florida were listed as having closed their doors following the bankruptcy proceedings instituted against [BTC]. This brought the total number of banks in Georgia to 68... This action was taken following the filing of a suit brought by the Bank of Umatilla, Fla., against the trust company and Manley. Hearing on the petition for permanent receivers and a permanent injunction was set for July 24... A suit in bankruptcy was filed against [BTC] yesterday morning in the Northern District Federal Court for Georgia. The petition asking for the appointment of a receiver will be heard tomorrow morning before Judge Samuel H. Sibley. The plaintiffs, 4 Atlanta concerns, are the Tidwell Co., Bankers Financial Co., Smith, Hammond & Smith, attorneys, and Foote & Davies Co. The suit charged that [BTC] committed acts of bankruptcy when it allowed the appointment of a receiver in Fulton Superior Court upon petition of the Bank of Umatilla and that it had 'preferred' certain creditors by retiring debts without the knowledge of the plaintiffs... Opinion was expressed in financial circles that most of the banks which closed were not insolvent, but, because of the closing of [BTC], upon which they relied for funds, were forced to close.*" (CFC, 1926).

1260 "*In April 1927, the Coral Gables Corporation announced a policy of filing foreclosure and cancellation act in the courts against purchasers of property who were delinquent in payments. For the first time in its history of 5 years' development, this corporation, feeling that leniency had been exploited, resorted to litigation against its debtors. This was stated to be the beginning of definite action upon a substantial basis aimed at bringing all purchase contracts to a current basis or putting them into litigation.*" (Vanderblue, 1927b).

1261 "*Florida has gone so far as to say that land contracts executed there known as 'binders' are not enforceable, so that deficiency judgments may be rendered after the property is taken on foreclosure. The courts of our Southern sister state have recognized conditions and circumstances in framing the issue raised in the rendition of their decision. If it is the law of the land that a man may buy a piece of real estate and take as evidence of his title a Union Trust Co. land contract with the acceleration provision therein, agreeing to pay for instance, $20,000 and paying down 50% of same and then by reason of forced circumstances becomes in default of $300, more or less, if we say he can then by foreclosure proceedings be caused to lose his entire payment and the property as well, then if it is not the law it ought to be, that the contract be declared one that should be outlawed by public policy, invalid and unenforceable along the same lines as contracts executed for a gambling debt, or one given under misapprehension in the purchase of lightning rods... [The Supreme Court in Brody v Crozier concluded:] 'Counsel for defendant contends that the accelerative provision is Inequitable, invalid and unenforceable. The provision Is harsh but a part of the contract and is not outlawed by public policy nor invalid or unenforceable. It was probably unwise for defendant to so place his interest in the property at the mercy of plaintiff, but we are powerless to extend to him anything more than commiseration.'*" (George, 1928). "*On May 7, 1927, the Governor of Florida signed Senate Bill No. 11; this put in the form of legislative enactment, the rule in Mattair vs. Card, 18 Fla. 767, that if a sale of mortgaged property has realized a sum less than sufficient to satisfy the mortgage, and there is no judgment for a deficiency in the foreclosure suit, an action at law will lie at the suit of the mortgagee to recover the balance owing and modified the Act of 1919 so that instead of being obligatory for the judge to enter a deficiency decree, under the new law, the entry of a decree for a deficiency is left to the sound judicial discretion of the Court.*" (Willock, 1927). "*As time goes on, the liabilities of individuals under notes given for the purchase price of real estate are being given further concern. Many of the notes given are finding their way into the hands of those who claim to be innocent holders, and the holders are seeking to prevent personal defenses, such as fraud and the like. Substantial headway has been made by many holders in the collection of notes and to the credit of the legal profession, many attorneys have profited through the collection of such indebtednesses, but they have received recently a rather sudden jolt by the Supreme Court of Pennsylvania, in a decision found in Volume 147, Atlantic Reporter, Page 74, in which it was held that a typical Florida real estate note was nonnegotiable. This decision has been previously referred to by the writer in a former issue of the Journal. In that case, the note provided for 8% interest, until paid, but stated that 'deferred payments were to bear interest from maturity at 10% per annum.' The Supreme Court held that such a promise was not 'an unconditional promise to pay a sum certain', and therefore the note was nonnegotiable. Such ruling, therefore, opens the floodgate of personal defenses... People often signed notes without the thought of themselves paying. In one instance responsible parties signed notes which got into the hands of a third party, carrying the august cognomen of an 'investment company.' The makers became somewhat terrified at the idea, and New York counsel, fearing the rigors of a New York summary judgment,*

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promptly pleaded with the 'investment company' to accept a substantial settlement, only to procure counsel well informed in such matters, who cautioned patience. The matter was thereafter taken up with local parties in interest and copies of the documents in question requested. While copies were promised, they were not forthcoming, and at last reports no further efforts were made to collect the notes. The request for the copies convinced the collecting attorneys of the wisdom of letting well enough alone. The local attorney found that the subdivision had been foreclosed under a blanket mortgage, and the holder of the notes could not possibly deliver title. The ingenuity of the bar has been taxed to devise defenses of Florida real estate liabilities. Resourceful attorneys in the case of E. J. Sparks Enterprises, Inc., vs. Christman, 117 So. 388, sought to set forth by parole testimony that, although the maker of notes signed them, it was 'understood' that he was not to be bound thereby, and that as the maker had -signed a mortgage, the mortgagee could not discard the mortgage and resort to an action at law on the note, but both such pleas, in the opinion of the Supreme Court of Florida, were held insufficient, and permitted the holder to recover. A well-to-do lady undertook to buy a Florida lot, little thinking of the real estate liability, for in the good days of 1925, could there be any liability on Florida real estate? But the day of reckoning came around, and she desired to escape payment. Luckily for her, her contract embodied the provisions that the subdivision in which she bought was to be used solely for high grade residential purposes. Counsel undertook to investigate whether or not this covenant had been respected, and had to hire a surveyor to locate the subdivision! The subdivision was somewhere close to the Everglades, and it was found that it had been turned into a high-grade farm. The furrows were higher than the sidewalks and when this fact was reported to the lady, she breathed an air of relief, for the property undoubtedly had been used for commercial purposes. Many who assumed Florida real estate liabilities took a shorter cut to relief and went by way of the bankruptcy court. There they threw in their liabilities as well as their assets, believing that if they could not collect, they should not be called upon to pay. In instances, such bankrupt estates, although presenting a schedule of elaborate figures, both as to assets and liabilities, would not even pay the costs of administration. A typical case required an extensive examination of the bankrupt and there were not enough assets to pay even the stenographer's charges." (Feibelman, 1930).*"In 1928, at the close of a real estate 'boom' in which transfers had increased to such an extent that transactions could not be closed till after a delay of from 5 to 6 months, the Florida Association of Real Estate Boards instituted a campaign for a Torrens system as a speedier method of making transfers. The complaint was that the realtors had made no income for their work for the last 6 months preceding collapse of the boom, due to inability to close their transactions. See, Florida Realty Journal, Jan 1930."* (Patton, 1935).

1262 *"The result was disastrous. In New York, for example, of the 40 new title insurance companies founded during this period, 31 had to be taken over for rehabilitation after the crash and all of these companies were eventually liquidated... Still other lawyers began to reason that the best way to fight fire was with fire. Thus, a group of lawyers in Florida organized a title insurance device of their own, the Lawyers' Title Guaranty Fund. The Fund is a business trust established by 1,400 members of the Florida Bar to conduct a title insurance business. Administered by a board of 15 member trustees, the Fund issues title insurance policies written by its members, who must be members of the Florida Bar."* (Roberts, 1963). *"After 1929, many title insurance companies which were doing a mortgage guarantee business, suffered severe financial setbacks. For example, in New York, 44 title insurance companies were organized in the 1920's to enter the real estate financing field. During the subsequent depression of the 1930s, 31 of these companies were taken over by the New York State Insurance Department for rehabilitation and subsequent liquidation. Because of such disastrous financial experience, most states now prohibit the sale of guaranteed mortgages or participation certificates by title insurance companies*." (Johnson, 1966). *"The guarantor generally served the portfolio in the double role of trustee and depository, reserving the right to with- draw and substitute any mortgage in the group. These substitution privileges were intended to permit management of the portfolio and refinancing of what were short-term balloon mortgages without disrupting the continuity of the investment trust. These powers were not seen as dangerous so long as the unblemished record of the guarantors led to tremendous expansion of the industry during the 1920's. However, the right of substitution enabled the guarantors on the brink of insolvency to loot portfolios of good mortgages for sale to insurance companies in exchange for cash and sometimes weakly secured or defaulted mortgages as boot. [Some of the larger insurance companies took advantage of the guarantors to dump defaulted mortgages and purchase good securities at discounted cash prices.] The cash was paid as periodic interest to certificate holders who seldom knew that the actual mortgage loan, in which they held a beneficial interest, was in default or that their collateral was being diluted or liquidated. [Mortgage investment guaranty management always assumed a short depression and thereby justified any move which produced cash in the short run or fostered public confidence to save the company until prices rose magically to former levels.]... The disintegration of the real estate market from 1928-34 led to wholesale mortgage defaults which, in turn, led to intolerable cash drains on investment guaranty resources. Liquid assets were sufficient to make 'on-time payments' of interest on defaulted mortgages for several years, so that many investors in guaranty securities were unaware of the status of the underlying collateral. The stripping of cash resources from the guaranty network enhanced the image of the guaranty with the small investor by 1932, whose continued purchases of such securities prolonged the agony and postponed decisive regulatory action. In 1934, the State of New York found it necessary to take over 47 guaranty firms having a nominal \$184 M in capital and surplus, with which to secure \$1.7 B in mortgage and real estate security guaranties for 225,000 individual investors in that state alone. New Jersey, California, and Massachusetts, and a few other states had additional losses to an unknown degree."* (Graaskamp, 1967). *"Residential mortgage pass-through securities, known at the time as guaranteed mortgage participation certificates (GMPCs), are tangentially included in this study to bring attention to the prominence of more complex securitization. These securities represented pools of residential mortgage cash flows from geographically diversified baskets of cities and towns across the United States. They were issued by large title and insurance companies, who generally guaranteed their coupon at 5%. In essence, GMPCs functioned similarly to agency mortgage-backed securities, and while the guarantee did carry any implicit support by the government, the title and insurance companies were considered among the most stable financial intermediaries. White (2009) likens these companies to modern financial intermediaries and outlines the risks they posed to the broader financial system... Over the period 1917-31, the total outstanding par value of GMPCs issued by these two companies grew nominally from \$187 M to over \$1.16 B, or 522%."* (Goetzmann, 2010).

1263 *"In cases filed between Sep 1, 1926, and March 1, 1929, 85,252 bankrupts were granted a discharge, and 776 were denied a discharge. In the cases closed during the fiscal year ended June 30, 1930 approximately 37,277 bankrupts (non-corporate) were granted a discharge and approximately 319 (non-corporate) were denied one. About 98% of the mercantile bankrupts who asked for a discharge were granted it. In case of non-mercantile bankrupts 99.5% received the discharge. In wage-earner cases only .004% were denied the discharge…"* (Douglas, 1932).

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1264 In Feb 1932, President Hoover wrote "*For some time the prevailing opinion has been that our present bankruptcy act has failed in its purpose and needs thorough revision… The present bankruptcy act is defective in that it holds out every inducement for waste of assets long after business failure has become inevitable. It permits exploitation of its own process and wasteful administration by those who are neither truly representative of the creditor nor the bankrupt. Except in rare cases it results in the grant of a full discharge of all debts without sufficient inquiry as to the conduct of the bankrupt or of the causes of failure. It discharges from their debts large numbers of persons who might have paid without hardship had the law discriminated between those overwhelmed by misfortune and those needing only temporary relief and the opportunity to deal fairly with their creditors.*" (GPO, 1932).

1265 "*The act is bottomed on the theory of creditor control… But the experience of the last 33 years has disproved conclusively the desirability of such great reliance upon creditors. Their lethargy has become notorious. Instead of fulfilling vigilantly and energetically the role provided for them, they have become paralyzed into inactivity and unconcern. And the reasons therefor are not difficult to divine. The predominance of absentee creditors makes it difficult for the creditors as a group to know intimately the affairs of the debtor or, even if they knew, to give to the administration a personal and dominating influence. But perhaps more important is the fact that dividends on the average have been so small, and in so many cases non-existent, that the time and expense of an active interest and concern would be tantamount to throwing good money after bad… [But there is some evidence] that until the assets reach $5000 very little participation in the election of a trustee is present. Accordingly, it is tentatively suggested that in all cases having no assets or assets below $5000 the trustee should be appointed by the court or referee; and only in all other cases should creditors elect. In this detail at least, bankruptcy procedure could be made to conform more closely to the realities of the situation with which it deals.*" (Douglas and Marshall, 1932).

1266 "*The criticism frequently has been made that discharges are granted all too freely. Defects in the present statute have been made apparent. The opposition to a discharge is a matter of private initiative of the creditors and their lethargy is notorious. If there is no opposition the court has no discretion but to grant the discharge. Certainly, it seems clear that additional supervision over the dispensing of discharges is needed. Granted, however, that adequate surveillance is furnished and machinery for the control provided, two additional major questions are suggested… Meanwhile the only regulatory provision is contained in §14 of [BA98], set forth above, providing that the court shall grant a discharge unless the bankrupt has 'failed to keep books of account, or records, from which his financial condition and business transactions might be ascertained; unless the court deem such failure or acts to have been justified under all the circumstances of the case.' As pointed out above the lethargy of creditors in opposing a discharge is notorious. As a result, extremely few discharges are denied. How many are actually denied because of the failure to keep books is not known. But if the cases of fraud were eliminated the number would probably be infinitesimal. In a study made of 1004 bankruptcy cases closed in New Jersey during the fiscal year ended June 30, 1929, no discharge was refused for failure to keep books [29% had no records]... In this connection the operation of the criminal provision of the English Act is of interest. During the years 1924-9 inclusive there were 246 convictions for bankruptcy offenses. Of these 55 or 22% were for failure to keep proper books. These data from England indicate how seriously both in theory and in practice the failure to keep proper accounts is considered… In about 5% of the New Jersey cases (29 out of 600) and 6% of the Boston cases (51 out of 910) the elements of speculation and gambling were present… Under the English Act it seems likely that but few of these bankrupts would have been granted an unconditional discharge.*" (Douglas, 1932). "*That so many bankrupts are going through the courts without any examination or questioning as to whence they came and whither they are going is a serious indictment against the system and is evidence of the unconcern with which one of the greatest of present social and economic problems is faced. Under the bankruptcy act of England quite different conditions prevail. The examination takes place automatically when a receiving order is made against a debtor, i.e., before the adjudication. On that event the debtor must submit in a prescribed form a verified statement of his affairs.*" (Douglas and Marshall, 1932). '*In England the adjustment of medieval society security law to the needs of an industrialized society was accomplished in an altogether simpler fashion than it was on this side of the Atlantic. The state of almost intolerable complexity which our security law reached by the end of the century was not matched in England. The specialized devices which grew up in this country —the trust receipt, the factor's lien, the equipment trust, the bailment lease and so on— were American exclusives. English law and American law, in this area, split apart in the course of this century.' [Gilmore (1965)] 2 points deserve special attention. First, that England and America 'split apart' in a process that took place at the end of the last century. Second, that the outcome differed not only in procedure but also in style as the American system reached a state of 'almost intolerable complexity.'*"' (Franks and Sussman, 1998).

1267 New York Fed Governor "*Strong, in particular, emphasized the importance of Britain resorting not just gold convertibility but also the prewar exchange rate… [which] was important for sterling's prestige and, Strong believed, [BOE's] credibility… Thus, the low interest-rate-policy advocated by Strong starting in 1924 was designed to help [BOE] acquire the reserves needed to return to gold. Low interest rates in New York encouraged funds to flow toward London, where rates were higher… the New York Fed purchased US treasury bonds, pushing down yields and encouraging additional funds to flow across the Atlantic.*" (Eichengreen, 2016).

1268 "*Overcertification continued to grow as NYSE trade volume grew... despite the netting of trades by the NYSE clearinghouse. On Nov. 3, 1913 the U.S. Supreme Court ruled that National City Bank and other banks were not entitled to redress losses incurred through overcertification of checks, related to the 1911 failure of brokerage firms: Lathrop, Haskins & Co. and J.M. Fiske & Co. As a result, the New York banks finally moved to end overcertification. The NYSE was able to forestall this action until an alternative plan could be formulated. After some deliberation, the [SCC] was incorporated by the NYSE on Jan. 9, 1920 as a wholly owned subsidiary of the NYSE. The SCC began clearing all stocks on Sept. 15, 1922, and... SCC operations reduced needed settlement funds from $140 to $21 B over the period Oct 1922 to Dec 1926.* " (McSherry and Wilson, 2013).

1269 From 1922 to 1929, stocks rose by 219%. In addition to new technology (cars, television), the stock market was an alternative to bonds. "*Edgar Lawrence Smith's 1924 book Common Stocks as Long Term Investments is the first significant attempt to advocate equity investing as a means to achieve higher investment returns. Smith collected price and dividend data for U.S. stocks over the period 1837 to 1923 and computed a total return index, which he compared to a fixed rate of interest over the corresponding period… Smith's book was not only widely read by investors but also closely studied by scholars. It was immediately cited by Yale's Irving Fisher as an argument for investing in a diversified portfolio of equities over bonds. Based on Smith's findings, Fisher theorized that the trend toward investment in diversified portfolios of common stock had actually changed the equity premium in the 1920s.*" (Goetzmann and Ibbotson, 2006). Smith summarized as "*I have been unable to find any twenty-year period within*

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which diversification of common stocks has not, in the end, shown better results, both as to income return and safety of principal, than a similar investment in bonds. It was a surprise to me, for my studies were undertaken with the intention of proving the probably future advantage to be gained from bonds over stocks… [the bond tradition was supported] up to 1897, when the purchasing power of the dollar reached its highest point [but failed to take into account the fact that the dollar] is a fluctuating measure of value." (NYTimes, Feb, 1925).

1270 Sold at a premium to underlying stock —averaging 50% in 1929 and new issues traded at 200% of NAV— although portfolios and net asset values were rarely calculated. "*Closed-end funds were owned through elaborate pyramid structures that magnified leverage at each level of the structures.*" (Morley, 2013). "*An important development of the bull market of the twenties was the creation of investment trusts by investment banking houses, one important purpose being to unload the bankers' unmarketable securities on the trust and then sell the securities of the trust to the public. Through such activities the bankers were creating what they hoped would be a perpetual buyer for their securities. The question as to whether it was ethical for the buyer and seller to be controlled by the same party does not seem to have been given a great deal of consideration, judging from the number of investment houses that established their own investment trusts. Among these houses were Dillon Read and their United States and Foreign Securities Co. and their United States and International Securities Corp., Lehman Brothers with their Lehman Corp., Goldman Sachs with their Goldman Sachs Trading Corp., to say nothing of Kidder-Peabody's Kidder Participations, Incorp., Numbers 1, 2, and 3."* (McFerrin, 1969).

1271 IPOs increased from $275 M in 1921 to $6.56 B in 1929. "*Increases in brokers' loans in 1929...were related to the increasing amount of 'undigested securities.*'" (Smiley and Keehn, 1988). Firms had to carry unsold new securities to support prices. New stock issuance in the first 9 months of 1929 was 50% larger than what national income could support (Bankers' Trust Director on Nov 11, 1929 in Fisher, 1930).

1272 States experimented with double liability until the 1830s and then several —New York (1850) and Ohio (1851)— adopted the practice while stocks were thinly traded (Bodenhorn, 2015). The 1903 Ohio Constitution did away with double liability until the *Panic of 1907*. After that States began enacting double liability (Ohio since 1912, New York since 1846) and waves followed subsequent panics (GPO, 1930, p178-81). "*Following the implementation of the federal double liability system, states continued to adopt similar programs for their state-chartered banks; by 1931, all states had implemented double liability rules for bank shareholders except Alabama, Connecticut, Delaware, Louisiana, Massachusetts, Missouri, New Jersey, Rhode Island, Vermont and Virginia. Most of these state provisions were closely modeled on the National Bank Act, and the courts in construing them tended to look to the federal statute even when there were substantial differences in wording between state and federal law... There can be little doubt but that many of these voluntary liquidations were motivated in part-sometimes in substantial part-by a desire on the part of the banks' shareholders to avoid assessment liability through continued operation of a money-losing bank... The wave of bank failures that occurred between 1929 and 1933 placed heavy strains on the double liability system and ultimately precipitated its downfall. Shareholders were assessed in large numbers at a time when many were already in serious financial difficulty. Meanwhile, the dispersal of bank shares among the public, which had progressed rapidly during the economic boom of 1923-9, meant that many of the shareholders being assessed had no insider connection with the failed bank, either by way of family relationships or employment status. Many had purchased their shares in prosperous times without serious consideration of their potential liability in the event of bank failure.*" (Macey and Miller, 1992). "*As late as 1926, 35 states had statutes imposing double liability (and in Colorado, triple liability) on shareholders of state banks. The development of banking groups inevitably led to the question of whether shareholders in bank holding companies were subject to the statutory double liability imposed on bank shareholders when the holding company was unable to satisfy the obligation... The collection rate on bank shareholder statutory assessments during the Depression was 48%... As a result of such factors as this low collection rate, a 10 to 1 ratio of deposits to stock, and litigation expense, double liability provided protection for less than 5% of deposits as a practical matter.*" (Blumberg, 1986).

1273 National banks' security loans rose from $2.5 B in 1926 to a peak of $8.5 B in 1929 (Fortune, 2002). Broad loan call rates rose from 1% to high 6% in Aug 1929. "*The call rate and the time rate for brokers' loans rose well above other rates, suggesting that lenders no longer regarded brokers' loans as very safe ...We view the premia on brokers' loans as reflecting fears of a crash.*" (Rappoport and White, 1993). Banks competed with investment banks, which rose from 277 in 1912 to 1,902 by 1929. In an attempt to limit this growth, the McFadden Act of 1927 amended the NBA and the Federal Reserve Act to prohibit interstate banking.

1274 "*By the end of 1923, however, there were 91 national and 580 state banks with a total of 2,054 branches. The McFadden Act was enacted in 1927 in an effort to promote 'competitive equality' between state and national banks by permitting national banks to have branches in those cities where state law permits state banks to have branches.*" (Antognoli, 2015). *"While mergers between national banks were made easier, any merger of a national bank and a state-chartered bank, trust company, or savings bank had to employ the old method or consolidate by taking out a state charter... Federal authorities became alarmed when many leading banks abandoned their national charters to merge. The problem was eventually remedied by the McFadden Act of 1927, which allowed a national bank to consolidate with a state bank under the same rules.*" (White, 1985).

1275 "*Although the deflation of the 1930s was unusually protracted, there had been a similar episode as recently as 1921-22 which had not led to mass insolvency. The seriousness of the problem in the Great Depression was due not only to the extent of the deflation but also to the large and broad-based expansion of inside debt in the 1920s. Persons surveyed the credit expansion of the pre-Depression decade in a 1930 article: He reported that outstanding corporate bonds and notes increased from $26.1 B in 1920 to $47.1 B in 1928, and that non-Federal public securities grew from $11.8 B to $33.6 B over the same period. (This may be compared with a 1929 national income of $86.8 B.) Perhaps more significantly, during the twenties small borrowers, such as households and unincorporated businesses, greatly increased their debts. For example, the value of urban real estate mortgages outstanding increased from $11 B in 1920 to $27 B in 1929, while the growth of consumer installment debt reflected the introduction of major consumer durables to the mass market… Given that debt contracts were written in nominal terms, the protracted fall in prices and money incomes greatly increased debt burdens. According to Clark (1933), the ratio of debt service to national income went from 9% in 1929 to 20% in 1932—33. The resulting high rates of default caused problems for both borrowers and lenders.*" (Bernanke, 1983).

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1276 "*Previously, the vast majority of consumer credit had likely been extended on a fairly informal basis by local retailers to their regular customers. The 1920s saw a dramatic rise of installment credit for big-ticket items (such as cars, refrigerators, automatic furnaces, and radios) as well as a considerable expansion of direct cash lending. According to one contemporary account, consumer credit reached the countryside as well as the big cities, and '[all] income classes up to the richest [had] succumbed to the allurements of easy possession and 'pay as you earn." A study conducted by the National Bureau of Economic Research in the late 1930s estimated that installment sales as a percent of total sales during the latter half of the 1920s reached 8% for department stores, 16% for jewelry stores, 38% for furniture stores, 50% for household appliance stores, and between 60 and 65% for new and used automobiles. Installment credit, moreover, was not even the most prevalent form of consumer credit. A study conducted by the Department of Commerce covering 1931 and 1932 suggested that over 50% of all consumer sales in urban areas were conducted on credit, with installment credit accounting for just under 10% of the total and 'open credit' accounting for over 40%. In real terms (adjusted for inflation), consumer credit grew at a compound rate of 11.9% per year from 1920 to 1929, reaching a nominal value of $7.1 B in the last year of the decade. Over the same period, the number of nonbusiness (or consumer) cases closed in the bankruptcy courts grew at a compound rate of 18.2% per year, reaching the record level of 25,576 in 1929.*" (David and Gibbs, 1999).

1277 "*Suppose the monetary authorities tighten credit to raise the cost of speculating. When commodity and asset markets move together, up or down, the direction that monetary policy should take is clear. But when share prices or real estate or both soar while commodity prices are stable or falling the authorities face a dilemma. The Federal Reserve encountered this dilemma in the 1920s; President Benjamin Strong had agonized over the appropriate policy in 1925 and again in 1927. The dilemma is that the policymakers cannot kill two birds with one stone, or more precisely they cannot achieve two policy targets with one policy instrument, or in what is perhaps a better metaphor, it is difficult to pick off a target if it is standing next to another one that one wants to leave untouched and the weapon is a shotgun rather than a rifle.*" (Kindelberger and Aliber, 2005).

1278 "*While nearly any other person eligible to file a bankruptcy case may be involuntarily subjected to bankruptcy by a group of creditors, the farmer has nearly always been exempt from the provisions regarding involuntary bankruptcy. The rationale expressed in [BA98] for protecting farmers from involuntary bankruptcy is that the success or failure of a farming enterprise is uniquely subject to factors beyond the farmer's control, particularly the hazards of natural disasters. If a farmer could be forced into an involuntary bankruptcy by creditors, the farmer's assets conceivably could be subjected to liquidation immediately upon the failure of one year's crop. Prohibiting involuntary bankruptcies allows the farmer to retain the assets and to overcome natural disasters by successfully continuing in farming. It permits the farmer to decide the necessity for, and the timing of, bankruptcy relief. Protection from involuntary bankruptcies was more valuable to farmers before the advent of modern agricultural finance. Today nearly all farmers in financial difficulty have a substantial portion of both their real and personal property assets encumbered by liens and security interests. Having generous State homestead law exemptions and being exempt from involuntary bankruptcy will not prevent the farmer's assets from being involuntarily liquidated by foreclosure of a lien or security interest. The involuntary bankruptcy protection thus constitutes only a limited benefit to most financially distressed farmers and holds less value today than it did historically." (Stam and Dixon, 2002). "Farmer bankruptcies considered in relation to the total number of farmers have never occurred in large numbers. They have been relatively more numerous in periods of depression following periods in which debt had increased substantially, and this increase has exceeded the growth in number of farms. But the farmer cases per year considered as a proportion of the total number of farmers have averaged less than 0.1%. The most extensive use of [BA98] by farmers occurred in 1925, when the cases numbered only 7,872. This relatively limited use of the law even in record years indicates that farmers have not been disposed to resort to the courts even when their indebtedness has been in excess of the value of their property. Experience has shown that farmers generally do not favor using the legal provisions at their disposal to obtain relief from financial obligations. The small proportion of farmers who have used the provisions of [BA98] becomes clear by a comparison with the total number of farms reported by the census in the corresponding census years. In 1925 farmer bankruptcies equaled only 0.12% and in 1910 they were 0.01% of the total number of farms.*" (Wickens, 1935).

1279 "*Expansion of the FCS was provided by the Farm Credit Act of 1923, which established the Federal Intermediate Credit Banks for the purpose of making loans to agricultural cooperatives and other agricultural lenders.*" (Jensen, 2000).

1280 "*Following the marked turn in the price trend in 1920, the favorable view of the farm mortgage has given way to a more discriminating attitude toward borrowing. The fixed obligations of many farms have become heavy items of expense, and rates of return on the invested capital often have been less than rates on the borrowed capital. By 1925, the mortgage debt had become 19% of the value of all farm real estate, but the outlay for interest on this debt was equal to about one-third of the net return from farm real estate and equal to about one-half of the net return on the equity of all such real estate.*" (Wickens, 1922). "*The all-time high single year farmer bankruptcy total was registered in 1925, when 7,872 farmers filed for bankruptcy, a rate of 12.2 per 10,000 farms based on 6.37 M farms.*" (Stam and Dixon, 2004, see fig 2 on p11). Farmer bankruptcies dominated all others in 1925 until 1930, particularly in Iowa and Georgia (Wickens, 1936, p6, 7). "*The most dramatic increases occurred in the southern cotton-producing states and some of the midwestern states, most notably Iowa and Minnesota. In many of these states land values increased by over 100% from 1912 to 1920… The average debt-to-value ratio for all states in 1925 was 19%. The range was from 6% in West Virginia and Florida to 30% in Iowa.… The average size of a mortgage in 1920 in Iowa was $11,080, while in Georgia it was $2,680... Except for damage from the boll weevil in Georgia and South Carolina and periodic droughts in the Great Plains and Mountain States, poor yields were not the cause of the farmers' malady.[Jones and Durand, Mortgage Lending Experience] In fact, many first-hand observers believed overproduction to be at the core of the farm problem. Secretary of Agriculture Henry A. Wallace stated, 'our surpluses of food crops seem to have had as disastrous effect upon national well-being as crop shortages used to have on the isolated communities of a simpler age.*" (Alston, 1982).

1281 "*During the latter part of the fiscal year 1926, additional funds were made available by the Congress to [FHLB], and an examining division was organized, with a chief examiner in charge and an enlarged examining staff. The rules and regulations of [FHLB] also were revised in June, 1926, and other improvements in practice and procedure were effected. On May 4, 1927, 6 days before the board was reorganized, the Kansas City [JSLB], of Kansas City, Mo., one of the largest banks in the system, was placed in the hands of a receiver. This action was followed by the appointment of receivers for the*

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Bankers [JSLB] of Milwaukee on July 1, 1927, and the Ohio [JSLB] of Cincinnati on Sep 1, 1927. These were the first receiverships in the history of the system, and naturally impaired public confidence in the situation." (FHLB, 1928).

1282 Representative Fitzgerald (OH), a State bank stockholder who wanted the government sponsored entities to protect investors against double liability said all of 47 S&Ls were insolvent. In April 1928 the President of the Denver JSLB altered Congress that "*Reports quote Representative Fitzgerald, of Ohio, as asserting to your committee that practically all of 47 joint stock land bunks could be shown insolvent. Such a statement if made is unwarranted and malicious and if not corrected will do irreparable injury to all banks. [FFLB] or their representative should be called before you and are in position to prove that the statement is unwarranted and incorrect in every respect. Not necessary to call attention to the damage which must accrue to all banks of such a statement is allowed to go uncorrected; such an unwarranted and malicious statement by anybody and certainly a Congressman under some statutes would be criminal if made maliciously. We can think of no other reason for such statement. You have sufficient information to know that this statement if made must be malicious and without information; you understand the effect such statement by a Congressman will have on [JSLB .FFLB] can correct this statement and brand is as unwarranted and malicious, I hope you will take sufficient interest in this matter to have this statement corrected and investigated as to the grounds of his making such statement.*" (United States Congress, 1928). In Feb 1930, Rep. Fitzgerald (OH-R) pleaded for himself against double-liability; the House resolved "*to inquire into the causes of the failure of [FFLB] act to fulfill its mission; the causes for the great depreciation of the Securities of [JSLB]; the causes for the crippled condition of some and the failure of others of such banks; the responsibility of the board for the issue, sale, and distribution of the stocks and bonds without adequate assets or security; the extent, if any, to which the Federal Government may be obligated legally, equitably, or morally to protect from loss, especially double-liability loss, persons who may have been victimized by the purchase of instrumentalities of the Government through any misfeasance or malfeasance of the board and the issue of false official statements and to propose remedies which may seem practical to rehabilitate the banks and salvage the many millions of assets of such banks; and to propose legislation dealing with the future land-loan policy as to such banks or Otherwise.*" (United States Congress, 1930). House Majority Leader Rainey (IL-D) noted that bank stockholders "*The law as it stands, if you are going to enforce this double liability, provides a remedy in court of equity, and the Supreme Court in this opinion says in effect that is the proper forum. They compliment Congress on its good judgment its humanity and its statesmanship in stopping short of conferring this arbitrary power upon a bureau of the Government, and give excellent reasons for thus leaving it to a court of equity where the stockholders can have their day and find out what these assets are really worth. Here is the statement I called your attention to yesterday, which says on its face that the Kansas City [JSLB] is not insolvent; and yet they go ahead attempt to impose double liability against those stockholders, but they are enforcing it now in a court of equity just exactly as the Supreme Court requires that they shall enforce it.*" (United States Congress, 1928). Ohio JSLBs held 10% of the total farm-mortgage debt in the State in 1929 (Horton et al., 1942, p16).

1283 "*The board, in its last annual report, pointed out that, in response to communications from the Secretary of [UST] to the President of the Senate and the Speaker of the House, there was presented to the Congress a bill clarifying the powers of [FFLB] with respect to the administration of receiverships under the farm loan act. This bill would vest [FFLB] with the powers possessed by [COTC] in connection with receiverships under the national bank act. in this connection, House bill 9433, entitled 'A bill to amend the [FFLB] act, and for other purposes', relating to receiver-ships under the [FFLB] act, was reported favorably to the House by the Committee on Banking and Currency on April 29, 1930, with an amendment concerning the enforcement of the double liability of shareholders of banks heretofore placed in receivership. This bill is on the House calendar. The companion bill introduced in the Senate (S. 3444) entitled, 'An act to amend the [FFLB] act with respect to receiverships of [JSLBs], and for other purposes', passed the Senate on June 24, 1930, and in the House of Representatives was referred to the Committee on Banking and Currency under date of July 3, 1930, where it is now pending…* [*Three stock banks were taken into receivership in 1927 with no change. One had a presence in Ohio.*] *Ohio [JSLB] of Cincinnati, Ohio (with headquarters now at Indianapolis, Ind.), Sep 1, 1927 [. As stated in the board's report for 1929, it is desirable, in the best interests of the system as a whole, for these receiverships to be brought to a close at the earliest date practicable...The parties in interest in the Ohio [JSLB] have evidenced no desire to change the plan of liquidation of that bank under the receiver appointed by the board. It is a relatively small institution and is not an important factor in the general situation… The Ohio [JSLB] was made defendant in a suit instituted by Emilie K Crane, a bondholder of the bank, instituted in 1929 in the United States District Court for the Southern District of Ohio, western division, in which the statutory liability of share-holders of the bank was similarly sought to be enforced. On March 8, 1930, the court appointed F. L. Rogers, the board's receiver, to act as court receiver. The suit is still pending as to shareholders who have not paid. Arrangements are being made for the transfer to the court receiver of funds collected by the statutory receiver on account of the double liability of stockholders. These funds amounted on Dec 31, 1930, to $39,725 principal and $3,315.55 interest and increment received in connection therewith.*" (FFLB, 1931).

1284 "*§ 8 of the act approved Oct 15, 1914, as amended, known as the Clayton Antitrust Act, containing restrictions in certain circumstances regarding officers and directors serving in connection with 2 or more banks, has been construed by the Attorney General of the United States as being applicable to [JSLBs]. Upon the recommendation of the Federal Reserve Board, upon whom certain responsibilities are imposed by that act, a bill (S. 4039), was introduced to except [JSLBs] from the operation of this provision of the law. This bill was favorably reported by the Committee on Banking and Currency of the Senate and passed the Senate on April 20, 1928. It was favorably reported to the House of Representatives by its Committee on Banking and Currency and passed the House on March 1, 1929.*" (FFLB, 1929).

1285 "*Friedman and Schwartz contend, in essence, that a change in policy regime occurred with the death in 1928 of Benjamin Strong, governor of the Federal Reserve Bank of New York and the Federal Reserve System's leading figure. Strong pursued stabilizing policies during the 1920s, according to Friedman and Schwartz, and his death explains the apparent contrast in policy performance between the 1920s and early 1930s.*" (Bordo and Wheelock, 1998).

1286 See Table 3 on page 5 (Morison, 1931).

1287 "*Beginning in 1928, there was a series of Supreme Court statements throwing doubt on 'consent' receiverships. The reorganization bar had thought that whatever question had previously existed as to the validity of the 'consent' receivership practice had been set at rest by the decision in 1908 of the*

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Supreme Court in Re Metropolitan Receivership. But in 1928 the reorganization bar had been severely jolted by the caveat uttered by Chief Justice Taft in Harkin v. Brundage: 'We do not wish what we have said to be taken as a general approval of the appointment of a receiver under the prayer of a bill brought by a simple contract creditor simply because it is consented to at the time by a defendant corporation… When a receiver has been thus irregularly appointed on such a bill without objection, and the administration has proceeded to such a point that it would be detrimental to all concerned to discharge the receiver, the receivership has been permitted to continue because not seasonably objected to.' [Pusey & Jones Co v. Hanssen] And in 1932 Mr. Justice Cardozo warned that the Supreme Court could not countenance the evils which arise from friendly receiverships which forestall the 'normal process of administration in bankruptcy, enabling the tottering business to continue while creditors were held at bay,' and affirmed the principle that receivership is not a remedy to be granted loosely but 'is to be watched with jealous eyes.' Finally Mr. Justice… stated [in 1934]: 'All the cases in which this court appears to have exercised this power in aid of reorganization upon the ground of insolvency dealt with railroads or other public utilities where continued operation of the property and preservation of its unity seemed to be required in the public interest.' The effect of these cases was twofold: First, they threw doubt on the 'consent' receivership in all reorganizations, and secondly, they seemed definitely to limit the judicial sanction of this procedure to railroads and other utilities when continued operation 'seemed to be required in the public interest.'" (Dean, 1941).

1288 "*In 1929, at the outset of the Great Depression, simmering complaints about bankruptcy administration erupted into a full-scale scandal in the Southern District of New York. A district court investigation headed by William Donovan and a follow-up investigation launched by the Hoover administration produced a pair of highly critical reports…[leading to] the Hastings-Michener bill that called for sweeping reform of the administrative process of bankruptcy.*" (Skeel, 2014). "*By 1929 doubts concerning the Federal courts in New York were coining to the attention of Congress. Investigations into the conduct of Judge Grover Moscowitz of the eastern district and Judge Francis A. Winslow of the southern district had begun. In Judge Moscowitz' case, there were protracted hearings before the House Judiciary Committee which explored the judge's relations with his old law firm and his appointment of bankruptcy officials. Judge Moscowitz ultimately was exonerated by the committee, but not without a serious reprimand in the committee report and not without the vigorous dissent of Congressmen La Guardia and Sumners, who voted for impeachment. In the matter of Judge Winslow, the major criticism stemmed from his appointment of receivers in bankruptcy and his relations with some of the lawyers involved. The court and the bar association began to hear rumblings of discontent from credit associations, lawyers, bankrupts, and other interested parties indicating unmistakably that all was not well in the southern district of New York*." (United States Congress, 1966).

1289 "*When prices in the New York stock market began to increase in March 1928 and especially after June, US purchases of foreign bonds came to a halt… An open-market program undertaken by the Federal Reserve Bank of New York on its own initiative, over the protest of the Federal Reserve Board in Washington, alleviated the credit squeeze early in 1929*." (Kindelberger and Aliber, 2005).

1290 "*Douglas was teaching bankruptcy law when Joe Kennedy asked him to head an SEC investigation into a scandal in the oversight of corporate reorganizations. Douglas's report castigated 'the old crowd of financiers which monopolized the bankrupt's real estate and squeezed out investors and, in addition, the bank trustees who sat idly by while this happened.' Kennedy was highly pleased with the report and promoted Douglas as an SEC commissioner.*" (Bremner, 2008).

1291 "*Caldwell had a controlling interest in banks, insurance companies, industrial enterprises, investment trusts, and newspapers whose combined assets equalled [$ 500 M]... [T]he collapse of Caldwell & Co. of Nashville, Tennessee, the largest investment banking house in the South, provoked the autonomous disturbance in the currency-deposit ratio postulated by Friedman and Schwartz, thereby supplying the missing clue as to why the monetary character of the contraction changed dramatically in Nov 1930. The failure of Caldwell & Co. pinpoints the origin of the 'contagion of fear' that spread among depositors. Not only do we know the event that precipitated the crisis, but we also know precisely how and why the panic spread during a 2-week period engulfing at least 120 banks in Tennessee, Arkansas, Kentucky, and North Carolina*." (Wicker, 1980). "*Much more important as a cause of the company's increasing distress was the steadily accumulating net withdrawals of funds. From July 1, 1929, until the failure of Caldwell & Co. and the Bank of Tennessee, $16 M more was withdrawn from than was advanced to them. Certain liability accounts showed increases during the period, which indicated a greater inflow than outflow of funds from these sources. Notes payable to banks, obligations to repurchase securities on demand, and funds held in trust subject to withdrawal increased $5 M. On the other hand, net decreases in demand deposits of $12 M and of time deposits of $0.4 M, payments to Kidder-Peabody of $5 M more than received, a decrease in notes payable other than to banks of $1.4 M, a net withdrawal of $0.6 M by controlled companies, and important decreases in several other liability items brought the total of these decreases to $21 M and the net decrease to $16 M. It was in this huge withdrawal of funds that the basic factors bringing about the downfall of Caldwell & Co. made themselves felt.*" (McFerrin, 1969).

1292 Attorney General Thatcher's 1932 report reiterated the call to void this priority (GPO, 1932, p135).

1293 "*The funds which the Bank of Tennessee obtained from the State without having to give collateral enabled it, as well as Caldwell & Co., to continue operations for at least 4 or 5 months longer than they otherwise would have… On Wed, Nov 5, 1930, the morning papers of the State carried an article branding as false the rumors concerning the weak financial condition of Caldwell & Co… The news about Caldwell & Co., however, reported that a meeting of the Nashville Clearing House Association had been called on the previous day to discuss the condition of the investment house and that Governor E. R. Black of the Atlanta Federal Reserve had attended. After this meeting the Clearing House issued a through an investigation, they had found all the loans of Caldwell & Co. in the banks in Nashville well secured and in no case exceeded the limit allowed by law. However, the seriousness of the situation, had appointed a committee, with the consent of Caldwell & Co., to conserve and protect the interests of the company and its creditors… [The committee appealed for a merger with BankcoKentucy and] had called in the Tennessee superintendent banks, D.D. Robertson, to examine the Bank of Tennessee. This examination, which was begun on Nov 5 and completed the following afternoon, showed clearly that the only thing left to do was to close the bank; so at 7:45 on Fri morning, Nov 7 Robertson filed a bill in the Chancery Court in Nashville pointing out the condition of the bank and asking that he be appointed receiver in accordance with the law of the State which then provided that the superintendent of banks be made receiver for all closed state banks, a petition which the Court granted. When the bank closed it had deposits of approximately $10 M, roughly one third of which were those of the state of Tennessee; 'due from' items amounting to $72,900; cash items of $1,000; but actual cash of only $32.55. Few, if any, of its $12 M of securities were*

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readily marketable. A report of the failure of the Bank of Tennessee was carried in the papers of the State on Sat morning, Nov 8. The bankers' committee approved the step in a public statement, erroneously claiming that the Bank of Tennessee had no connection with any other banks in the State, apparently not taking into consideration bankers' balances involved, nor did they mention the State's deposit of over $3 M. On the following day, however, it was announced that the State had deposits in the bank and Governor Horton issued a statement that he was using all of his powers to protect the State's interests… When the Superintendent of Banks, D. D. Robertson, was appointed receiver of the Bank of Tennessee on Nov 5, 1930, an audit of the bank revealed assets with a book value of $14 M, of which $12.7 M or 90% were stocks and bonds. That this bank was a dumping ground for nonsalable Caldwell securities is shown by the fact that all national banks in 1930 had only 23.7% of their assets invested in stocks and bonds. The principal liabilities of the bank were deposits of approximately $9.9 M and bills payable to banks of $2.9 M. Of the deposits, approximately $2.6 M were of controlled companies, of which $1.5 M were secured; and $3.4 M were of the state of Tennessee secured only by the personal surety bonds of the officers of the bank." (McFerrin, 1969).

1294 "*[A]ll of the Caldwell insurance companies, except the Southeastern Life, the Shenandoah Life, and the Southwestern Life, all three of which were under Caldwell control for a relatively short time, were forced into receivership which resulted in wiping out the value of their stocks, a large part of which had been sold to the public, as well as in heavy losses to the policyholders... The period following the crash of Caldwell & Co proved extremely difficult for a large proportion of the industrial corporations it had financed. While some of these difficulties can be traced to the depression, even more important factors were the high overcapitalization relative to normal earnings of many of them and the losses of deposits suffered by some when the Bank of Tennessee and other Caldwell banks failed. A few of these enterprises had ceased operations prior to the collapse, two of which were Frank Silk Mills and Cadet Hosiery Co. However, most of the companies went into receivership after the Caldwell failure and were reorganized... It is thus seen that, with few major exceptions, all of the companies connected with Caldwell & Co, either through direct control or merely through financing carried on by the investment house, have become involved in financial difficulties which resulted in tremendous losses to investors, depositors, and policyholders, and that the infection due to Caldwell control continued to make itself felt in many instances long after the banking house closed in Nov 1930. That these losses, which constitute the great tragedy in the failure of Caldwell & Co, brought about an impairment of resources in the South and certain sections of the Mid-West sufficient to cause an intensification of the depression in these regions cannot well be controverted.*" (McFerrin, 1969).

1295 "*Under the bankruptcy law of the period, receivers were not imbued with any responsibility for resuscitating the bank, only managing the liquidation of its assets and appropriately distributing the funds from that liquidation to creditors. Similarly, trustees responsible for voluntary liquidations were concerned only with the efficient liquidation of the bank and the legally appropriate distribution of the proceeds to creditors… Liquidations during the Depression took longer and resulted in more severe losses than in previous bank failure episodes. Bank supervisors were often caught unprepared for the task of liquidating massive amounts of bank assets, not only in terms of personnel, but also in terms of legal precedent and market depth… The New York Superintendent noted that one additional source of delays was legal frictions that slowed the process of liquidation and disbursement of funds to depositors: 'Our State is unaccustomed to bank closings and consequently the means which we have today to meet such conditions are those which have been in existence for decades past. The Banking Law relating to liquidation of closed institutions by the Superintendent as it now stands places legal encumbrances on liquidation procedures which are a deterrent to a prompt distribution of funds to depositors.' Indeed, a brief scan of important cases reported in the Banking Law Journal indicates that many significant bankruptcy law developments took place in New York courts during 1931. In summary, since the average liquidation time among national banks during the Great Depression was slightly more than 6 years (at about a straight-line average rate), customers could remain illiquid.*" (Anari et al., 2002).

1296 "*[BOUS] was the largest commercial bank, as measured by volume of deposits, ever to have failed up to that time in U.S. history. Moreover, though an ordinary commercial bank, its name had led many at home and abroad to regard it somehow as an official bank, hence its failure constituted more of a blow to confidence than would have been administered by the fall of a bank with a less distinctive name.*" (Friedman and Schwartz, 1963). "*The panic subsided during the final week of Nov and the first week of Dec, but there was a resurgence of the bank failure rate coincidental with the closing of [BOUS] in Dec. Temin views the Nov-Dec bank suspensions as originating from two separate disturbances: the 'bank failures in cotton-growing areas' in Nov and the closing of [BOUS] the following month... I prefer to view the Nov-Dec bank suspensions as originating from a single disturbance the failure of Caldwell & Co. — the effects of which were concentrated mainly in 10 to 12 states. The failure of [BOUS] had a highly localized impact in the [NYC] area: it probably contributed little to the explanation of the Dec bank failure rate. The resurgence of the failure rate in Dec resulted from the secondary effects of the diffusion of uncertainty and fear in the same areas as those affected earlier as well as from effects transmitted subsequently to contiguous areas.*" (Wicker, 1980).

1297 "*The [BOUS] was allowed to fail in New York in Dec 1930 by a syndicate of banks amid accusations that the Bank was being punished for its pushy ways.*" (Kindelberger and Aliber, 2005). "*The failure of 256 banks with $180 M of deposits in Nov 1930 was followed by the failure of 352 with over $370 M of deposits in Dec (all figures seasonally unadjusted), the most dramatic being the failure on Dec 11 of [BOUS] with over $200 M of deposits [Annual Report of Superintendent of Banks, State of New York, Part I, Dec. 31, 1930, p. 46.] That failure was of especial importance... In addition, it was a member of the Federal Reserve System. The withdrawal of support by [NYCHA] banks from the concerted measures sponsored by the Federal Reserve Bank of New York to save the bank measures of a kind the banking community had often taken in similar circumstances in the past-was a serious blow to the System's prestige... Currency held by the public stopped declining and started to rise, so that deposits and currency began to move in opposite directions, as in earlier banking crises. Banks reacted as they always had under such circumstances, each seeking to strengthen its own liquidity position. Despite the withdrawal of deposits, which worked to deplete reserves, there was a small increase in seasonally adjusted reserves, so the ratio of deposits to bank reserves declined sharply from Oct 1930 to Jan 1931. We have already expressed the view (p167-8) that under the preFederal Reserve banking system, the final months of 1930 would probably have seen a restriction, of the kind that occurred in 1907, of convertibility of deposits into currency. By cutting the vicious circle set in train by the search for liquidity, restriction would almost certainly have prevented the subsequent waves of bank failures that were destined to come in 1931, 1932, and 1933, just as restriction in 1893 and 1907 had quickly ended bank suspensions arising primarily*

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from lack of liquidity. Indeed, under such circumstances, [BOUS] itself might have been able to reopen, as the Knickerbocker Trust Co did in 1908. After all, [BOUS] ultimately paid off 83.5% of its adjusted liabilities at its closing on Dec 11, 1930, despite its having to liquidate so large a fraction of its assets during the extraordinarily difficult financial conditions that prevailed during the next 2 years. [80% of the total recovered by depositors and other creditors was paid out within 2 years of the bank's closing]... For 2.5 months before its closing, Joseph A. Broderick, New York State Superintendent of Banks, had sponsored various merger plans—some virtually to the point of consummation-which would have saved the bank. Governor Harrison devised the final reorganization plan, the success of which seemed so sure that, two days before the bank closed, the Federal Reserve Bank had issued a statement naming proposed directors for the merger. The plan would have become operative had not [NYCHA] banks at the last moment withdrawn from the arrangement whereby they would have subscribed $30 M in new capital funds to the reorganized institution. Under Harrison's plan, [BOUS] would have merged with Manufacturers Trust, Public National, and International Trust—a group of banks that had a majority of stockholders and directors of the same ethnic origin and social and financial background as most of the stockholders and directors of [BOUS] —with J. Herbert Case, chairman of the board and Federal Reserve agent of the New York Bank, as head. The decision of [NYCHA] banks not to save [BOUS] was reached at a meeting held at the New York Bank and was not changed despite personal appeals by Broderick and New York State Lieutenant Governor Herbert H. Lehman. Broderick, after waiting in an anteroom for hours despite repeated requests to be allowed to join the bankers in their conference room, was finally admitted through the intercession of Thomas W. Lamont, of J. P. Morgan & Co, and Owen D. Young, a director of the New York Federal Reserve Bank. Broderick's account of his statement of the bankers follows in part: 'I said it [BOUS] had thousands of borrowers, that it financed small merchants, especially Jewish merchants, and that its closing might and probably would result in widespread bankruptcy among those it served. I warned that its closing would result in the closing of at least 10 other banks in the city and that it might even affect the savings banks. The influence of the closing might even extend outside the city, I told them. I reminded them that only 2 or 3 weeks before they had rescued two of the largest private bankers of the city and had willingly put up the money needed. I recalled that only 7 or 8 years before that they had come to the aid of one of the biggest trust companies in New York, putting up many times the sum needed to save [BOUS] but only after some of their heads had been knocked together. I asked them if their decision to drop the plan was still final. They told me it was. Then I warned them that they were making the most colossal mistake in the banking history of New York. Broderick's warning failed to impress Jackson Reynolds, president of the First National Bank and of [NYCHA], who informed Broderick that the effect of the closing would be only 'local.' It was not the actual collapse of the reorganization plan but runs on several of the bank's branches, which had started on Dec. 9 and which he believed would become increasingly serious, that led Broderick to order the closing of the bank to conserve its assets. At a meeting with the directors after leaving the conference with the bankers, Broderick recalled that he said: 'I considered the bank solvent as a going concern and... I was at a loss to understand the attitude of askance which [NYCHA] banks had adopted toward the real estate holdings of [BOUS]. I told them I thought it was because none of the other banks had ever been interested in this field and therefore knew nothing of it.' Until that time, he said he never had proper reason to close the bank. Broderick did succeed in persuading the conference of bankers to approve immediately the pending applications for membership in [NYCHA] of 2 of the banks in the proposed merger, so that they would have the full resources of [NYCHA] when the next day he announced the closing of [BOUS]. As a result, the 2 banks, which like [BOUS] had been affected by runs, did not succumb. The details of the effort to save the bank were revealed in the second of two trials of Broderick upon his indictment by a New York County grand jury for alleged neglect of duty in failing to close the bank before he did. The first proceedings ended in a mistrial in Feb. 1932. Broderick was acquitted on May 28." (Friedman and Schwartz, 1963).

1298 "*2 of the 12 Federal Reserve Districts (Chicago and Cleveland) contained 66% of the suspended bank deposits, and bank suspensions in Toledo and Chicago alone account for 75% and 25%, respectively, of suspended bank deposits in those 2 Districts.*" (Calomiris and Mason, 2000). The low figure for Chicago might be because the outlying banks were outside city limits.

1299 "*More generally, debts from creditors located in the Chicago and Cleveland Federal Reserve regions, which were also strong proponents of the so-called 'Real Bills' doctrine that limited intervention to stem bank runs, were also heavily overrepresented. We interpret these results as showing that distressed creditors pursued collection primarily from nearby debtors where the cost of collection is lowest… Northern firms owe more to wholesalers or manufacturers based in the St. Louis, Chicago, or Cleveland Federal Reserve regions (Real Bills regions)... As noted above, regional Fed policy fell along a continuum of conservatism, with the Chicago and Cleveland Feds nearest to the St. Louis Fed (Wicker 1996). We conclude by extending the analysis beyond the borders of the natural experiment to consider whether the effects of the Caldwell crisis that we observe in Mississippi are visible in other Real Bills region.*" (Hansen and Ziebarth, 2017).

1300 "*A mortgage debt evidenced primarily by a negotiable promissory note is peculiarly an American business transaction. In England and Canada, the primary obligation which is secured by mortgage is usually represented by a non-negotiable bond, consequently, in these countries no cases have arisen involving the rights of a bona fide assignee before maturity of a negotiable note secured by mortgage. The two opposing doctrines have therefore been worked out by American courts, unaided by English decisions except in so far as the general principles governing assignment of mortgages, irrespective of the character of the primary obligation, are applicable... Where a negotiable note secured by mortgage has been assigned to one taking in good faith and before maturity the prevailing doctrine in the United States is that such an assignee takes the mortgage as he does the note free from all equities existing between the mortgagor and the mortgagee. A contrary rule, however, obtains in a few states in which it is held that a mortgage under all circumstances, whether securing negotiable or non-negotiable instruments, is to be treated as an ordinary chose in action, and when assigned the assignee takes subject to all defenses which the mortgagor had against the mortgagee. That is, by the majority rule, a mortgage when assigned along with a negotiable note is clothed thereby with the usual incidents of negotiability. The minority rule stands for the proposition that a mortgage can never be treated as a negotiable instrument, that it is essentially a chose in action and under the general rule governing the assignment of choses in action the assignee must necessarily take the mortgage subject to all equities and defenses existing between the original parties... 23 states and the federal courts have passed definitely upon the point, 20 of which and the federal courts follow the majority doctrine, the remaining 3 represent the minority rule... The majority rule by which a bona fide assignee before maturity of a negotiable note secured by mortgage is regarded as taking the mortgage as he does the note free from all personal defenses which the mortgagor had against the mortgagee, has been adopted in the following states: Colorado, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Missouri,*

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Nebraska, North Carolina, New Hampshire, New York, North Dakota, Oklahoma, South Carolina, Tennessee, Texas and Wisconsin. The United States Supreme Court, followed by the lower federal courts, is also very emphatic in affirming the soundness of the rule. The minority rule, by which the assignee before maturity of a note and mortgage takes subject to all personal defenses between the original parties, is supported by Illinois, Minnesota and Ohio... In the following states the existence of the rule may be of some doubt, but by dictum the majority rule seems to be preferred: Alabama, California, and Louisiana... In the following states the case apparently has not arisen: Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Idaho, Maryland, Mississippi, Montana, Nevada, New Mexico, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming." (Britton, 1915). "*When the law of assignment and the concept of negotiability are combined in the transfer of a mortgagee's interest in real property, they conflict and confusion abounds... Two divergent views have been developed to determine the defenses that may be asserted against an assignee who attempts to foreclose on the mortgage or sue on the note. The pivotal question to be answered is whether the assignee holds the note and mortgage as a holder in due course or merely as an assignee. The majority rule is founded upon the principal-debt doctrine. The debt, as the principal, has the effect of imparting its own characteristics to the mortgage, and the assignee takes the security as he does the note. In the leading case of Carpenter v. Longan the United States Supreme Court stated that 'all authorities agree that the debt is the principal and the mortgage the accessory. Equity puts the principal and accessory upon a footing of equality and gives the assignee of the evidence of the debt the same rights in regard to both.' This theory has been asserted by almost every court that has adopted the majority rule, but it is not the only argument that supports the majority position. Under the majority view an assignee of a mortgage securing a negotiable note who takes the assignment in good faith and before maturity is free from all personal defenses and equities existing between the mortgagor and the mortgagee. The mortgage itself is not negotiable, but as an incident to a negotiable instrument it partakes of its negotiable characteristics. On the other hand, if the mortgage secures a non-negotiable note, the assignee takes it subject to all the defenses, both legal and equitable, that the mortgagor had against the mortgagee at the time of the assignment. The minority view takes the position that a mortgage under all circumstances, whether securing negotiable or non-negotiable instruments, is to be treated in the same manner as an ordinary chose in action. Under this view the assignee stands in the shoes of his assignor in every case, just as the assignee of a mortgage securing a non-negotiable note does under the majority view.*" (Swigert, 1961). "*When a negotiable note secured by a mortgage is transferred to an innocent purchaser, the basic problem arises as to whether the mortgage travels by the law of assignment or by the law of negotiable paper. The problem becomes increasingly apparent where the mortgagor's interest in the mortgaged property is conveyed to a grantee whose liability in foreclosure extends only to the mortgaged property and not to the negotiable note, and who is able to present a defense which is only available against a non-negotiable instrument representing an interest in land. Authorities in the field of mortgages claim the majority rule to be that a mortgage securing a negotiable note partakes of the character of negotiability of the note. This rule, which will be designated throughout this note as the majority rule, is developed as follows: The mortgage is mere security for the debt which is represented by the note. A mortgage to exist must secure a debt. Since a note evidences the debt, the holder of the note owns the debt, and where the evidence of the debt (the note) is negotiable, the debt is negotiable. The note, then, becomes the principal factor so that the holder of the note must necessarily also own the mortgage. It is thus inferred that the mortgage, being incidental to the note, partakes of the negotiability of the note and therefore only defenses which may be raised against the note may be raised against the mortgage. Conceded by those authorities as the minority rule is the theory that, although the debt is negotiable and the mortgage follows the debt, they are separate instruments and the mortgage is a mere chose-in-action...*" (Grossman, and Nielsen, 1949). "*The Negotiable Instruments Law provides that 'instruments payable on or before a fixed or determinable future time specified therein' are negotiable. It has been held in Iowa that this validates acceleration by a contingent event, since the instrument is payable either on a fixed day or before it. By this argument any acceleration provision would be valid, yet, as we shall see, many such provisions are held invalid under the Act, and the Iowa court itself has construed the Act to forbid a chattel note with an acceleration provision, because of uncertainty in time. It seems impossible that the Act would be held to permit notes payable 'in 100 years or sooner when the peace conference is over'; 'in 20 years or when an airplane crosses the Atlantic.' This clause of the Act must be restricted to instruments which are literally payable 'on or before' a day without further contingencies, so that the holder or maker accelerates by his election; or else we must construe the clause in the light of the law merchant to include other acts of acceleration, if they are business acts incidental to the collection of the instrument. The clause cannot authorize uncommercial acts of acceleration. Indeed, the instruments just considered bear the aspect of agricultural paper rather than commercial. They are open to all the objections which can be urged against notes payable on a contingency without any fixed time limit. They ought to be regarded as simple contracts for the repayment of a loan on peculiar conditions, and not as paper to circulate as a substitute for money... The question whether the promise is enforceable before maturity does not determine whether it is additional, but only whether it renders the time uncertain, an independent problem already considered. A promise to furnish collateral at issue of the instrument may be included in it. Why not a promise to furnish it between issue and maturity? Such a promise for continued adequacy of the security is supported by authority, for example, a promise to insure mortgaged property or keep it free from waste, or even to mortgage future crops. Therefore, the formal requisite as to additional promises is not violated by a collateral note. A strong argument for this view is made by Judge Baker in the United States Circuit Court of Appeals for the Seventh Circuit: 'Two separate and distinct matters are involved. Each is to be considered and interpreted as a complete entity, whether they be written upon one paper or several. An unconditional promise to pay a certain sum at a certain time is a matter apart from security by way of deed of trust or mortgage of land or pledge or mortgage of chattels. One is governed by the law merchant, the other by property laws. The owner may rely, if he chooses, exclusively upon the promise to pay, according to its terms. Conditions for his benefit in the mortgage or pledge agreement may be availed of only in his capacity of mortgagee or pledgee; they are limited to the purposes of the mortgage or pledge; they cannot be read into the promise to pay, and so render a certain promise uncertain, convert a negotiable into a non-negotiable instrument... But even if the two matters were to be read together, it is clear that the stipulations for additional collaterals and the sale of collaterals are pertinent only to the pledge part of the transaction, and that the only condition which could, in any event, be carried into the promise to pay part is the one by which maturity might be anticipate."* (Chafee, 1919).

1301 "*In the 1870s and 1880s, legislation and court rulings combined to prevent creditors from seizing almost all of the wages of a head of household. Yet... by the 1930s Illinois was one of the states where it was easiest for a creditor to claim a large share of a debtor's wages. This dramatic shift arose from the interaction of legislative and judicial activity and was driven by both interest group politics and judicial action… In the first decades of the twentieth century,*

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small loan lenders —popularly referred to as loan sharks— came into conflict with Progressive reformers over the restrictions on the use of wage assignments. The reformers were successful in the legislature but not in the courts. In 1909, the Illinois Supreme Court ruled [in Massie v. Cessna] that the restrictions on wage assignments violated the due process clause of the State's constitution. Later the Court ruled that even private attempts to prevent employees from assigning their wages were invalid. [The Illinois Supreme Court blocked employer renegotiation of assignment in Staehl v. Postal Telegraph Cable Co. (1914) and then blocked employer attempt to pre-empt wage assignments in State Street Furniture Co. v. Armour (1931)] Not surprisingly, by the eve of the Great Depression, wage earners and their creditors in Illinois used wage assignment regularly and garnishment rarely… Wage earner debt collection was one of the primary activities of Chicago's courts in the early 20th century. A 1933-4 survey of industrial establishments in Chicago found, for example, that garnishment and wage assignment occurred at a rate of 75 per 1,000 employees." (Hansen and Hansen, 2014).

1302 "*Concentration of control in banking takes several different forms, one of the most important being the merging of various banks from time to time into larger institutions. This movement has been going on for many years and continues down to the present day. Branch banking, another type of concentration, is commanding widespread notice through its rapid increase in the areas where permitted. Still a third form of concentration in control is found in the use of the holding company to purchase controlling interest in a number of banks. This is sometimes referred to as 'chain' or 'group' banking, the latter name being preferred by some writers on the subject. Finally, another form of concentration, also referred to as 'chain' or 'group' banking, appears in the affiliation of banks through interlocking directorates, common officers, and sometimes common individual stock-ownership… [A] branch bank has a source of strength in its legal obligation to support all of its branches for which group and chain banking have no adequate counterpart… The local development in affiliation of unit banks probably reached its peak to date in 1930. In Chicago and the immediate surrounding territory there were at that time at least 117 banks affiliated in one manner or another with a chain or group of banks. This count does not include, of course, the non-banking affiliates such as security companies, safety-deposit companies, and the like.*"(Thomas, 1933).

1303 "*On the side of the interlocking directorate type of affiliation it may be argued that in the event of failure the depositors are perhaps in a better position than those of a holding-company type so long as double liability is not enforced against the stockholders of the companies holding bank stock. On the other hand, it seems probable that more responsible oversight over the affairs of the affiliated banks will be exercised by those in position of control where the holding company or some other form of common ownership of stock is involved than in the case of the looser form of affiliation through interlocking directorates. A holding company, or the bankers sponsoring it, can hardly allow one of the members to become insolvent and fail without taking strenuous measures to prevent it. True, there is no particular legal obligation to do this, but the failure in such a dose association tends to be fatal to all. But affiliates tied by common officers and interlocking directorates may be allowed to fail without any great danger to the other banks of the chain. This is particularly true if the control is not too apparent. For example, any weakness which might have appeared among the banks controlled by the National Republic Bancorporation would have caused considerable alarm and induced active preventive measures on the part of the National Bank of the Republic with which the holding company was affiliated. However, during 1931 two outlying banks, whose president (at least at the end of the year 1930) was a vice-president and a director in the National Bank of the Republic, were allowed to suspend. The parent-bank, if it can be so designated, probably gained as much through affiliation in the latter matter as in the first but assumed less responsibility. One may conclude, then, that holding-company control is probably preferable to control through interlocking directorates. This would be particularly true if effective provision should be made for double liability of holding companies. This might be obtained by requiring the accumulation of sufficient surplus by the holding company or by applying double liability to the holding company's stockholders.*" (Thomas, 1933). "*Branch banking can be contrasted to group or chain-banking as branches of the same bank can pool their assets and liabilities together. When there is a liquidity shortage at one of the banks in a chain, other member banks cannot simply transfer funds to that bank for help, a problem which does not even arise in the branch banking system. This may partly explain the collapse of the Bain chain in June 1931 which triggered the banking crisis at that time (James, 1938, p. 994).*" (Postel-Vinay, 2013).

1304 "*At that time the big clearinghouse Loop banks voted $10 M of clearing-house support to the First National Bank, which assumed the obligations of the Foreman loop bank, but they dropped the 4 big Foreman affiliates, as much Foreman banks as the parent bank itself and clearing-house banks as well... and these 4 big outlying banks did not open for business the next morning. This precipitated terrific runs on all other outlying banks without regard to their classification, whether they were State or national or clearing-house banks, and closed 75 of them in the week.*" (GPO, 1934).

1305 "*The Clearing House came into the arrangement through its indorsement of the absorption of the Foreman institutions and its guaranty of $10 M of Foreman deposits during readjustment of its affairs into those of the First National. The Chicago Journal of Commerce stated that to indemnify the First National Bank against loss in the liquidation of Foreman assets a fund of $12.5 M in cash was set up, this fund being contributed in amount of $10 M by the Chicago Clearing House banks and $2.5 M by leading individuals in the Foreman bank group… Over 20 of these outlying banks went to the wall, 12 of these belonging to the chain of banks known as the John Bain group, and the others being mostly identified with the Foreman-State banks, but which were so seriously embarrassed that they were beyond hope of saving, and, accordingly, were left to their fate. As it happened, however, owing to the failure of all these institutions serious runs were experienced by other of the outlying banks, but these, being solvent, received every assistance needed to tide them over the emergency. 6 outlying small banks, allied with Foreman, closed voluntarily on Mon pending adjustment of their status resulting from the taking over of the Foreman banks by the First National… The 12 outlying banks under the sponsorship of John Bain, South Part Commissioner, with deposits of approximately $16 M, closed their doors on Tues as a result of runs on those institutions. Then on Wed 6 more outlying banks with combined deposits of nearly $20 M either did not open or were closed during the day when they encountered unusually heavy withdrawals. 2 of these were affiliated with the Foreman-State banks and were 'orphaned' when the Foreman institutions were taken over by the First National Bank group… A statement issued by John Bain… said "The Bain banking organisation deemed it best to dose their banks this morning to conserve the interest of their depositors and stockholders. The closing of the banks is due to their inability readily to dispose of the assets of the bank without undue losses due to prevailing conditions. It is expected that the depositors and the stockholders will be paid in full."*" (CFC, 1931)."*Federal Reserve agents indicated that of the 25 banks which suspended in Chicago between June 6th and 10th [1931], 11 belonged to the John Bain Group, 7 belonged to the Foreman Group, and 1 belonged to the Ralph E. Ballou and E. L. Wagner Group.*" (Richardson, 2006)."*Between Jan 1, 1931, and Nov 16, 1932, 151 banks suspended in Cook County,*

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114 of which were located in Chicago. 58 of the 114 were members of chains or groups. In the 58 were included 2 merged banks which were formerly chain members, making 60 banks affiliated with chains in 1930 which had suspended by Nov 19, 1932. In addition, 3 members of the Foreman group were merged with members of the First National group to avert failure. Actually, then, 63 of the 94 members of chain or group affiliations in Chicago at the end of 1930 had disappeared by Nov 19, 1932, through actual or threatened suspension. If we compare the total failures in the city with the total number of banks at the end of 1930, we find that 58% of all the banks in the city suspended or merged to avoid it. On the other hand, 67% of the chain and group affiliates were so removed." (Thomas, 1933).

1306 "*B&Ls in Dayton, Ohio were the first nonfarm lenders in the country to adopt amortized loans, to the best of our knowledge. Such loans were introduced as part of a set of important innovations in B&L operations that took place during the 1870s and 1880s in Dayton. Over the next few decades Ohio B&Ls in general became the national leaders in amortized lending. These associations also dropped the compulsory payment requirement for savers by introducing 'optiona'" shares. Together, these two developments fundamentally shifted B&L operations away from compulsory share installment contracts*." (Rose and Snowden, 2012).

1307 See OCC, 1925, p115; OCC, 1930, p135; OCC, 1931, p143.

1308 For B&LS see State of Ohio(1924, p.lxxxiii) and for banks see Braun and Bosworth in Exhibit 15.

1309 "*Such a comparison shows that where bank failures between 1921 and 1930 were relatively unimportant (New England, Middle Atlantic and East North Central States) Postal Savings steadily declined during those years. The relatively large proportion of Postal Savings held in these three geographic divisions was, however, so great as to conceal the changes in the opposite direction taking place in the rest of the country. It was in 1930-3 when the widespread bank failures aroused general fear for the safety of the banks that even these sections, where Postal Savings had previously been unaffected by bank suspensions, began to register a marked growth in Postal Savings.*" (Sissman, 1936)

1310 "*A building and loan association is certainly not a municipal or railroad corporation. The Supreme Court of Alabama in a recognized case has held that a building and loan association is not a banking corporation. Lomb v. Pioneer Savings and Loan Co., 106 Ala. 591 (17 Sou. 670). In Florida building and loan associations are placed under the jurisdiction of the state banking department, and yet by their very charters they, are prohibited from using the words 'banks' or 'banking' in their dealings, and the records of the government disclose that they are not taxed as banks. They do not come within the definition of 'banking corporations': The amendment of May 27, 1926, to the national bankruptcy act defines what corporations are subject thereto: '(6) 'Corporations' shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint stock companies, unincorporated companies and associations, and any business conducted by a trustee, or trustees, wherein beneficial interest or ownership is evidenced by certificate or other written instrument.' It can be observed from a reading of the 2 important decisions cited above that unless indebtedness to withdrawing stockholders of a building and loan association is considered in computing liabilities, such a corporation can never be insolvent. The Supreme Court of Florida in the case of Continental Building & Loan Association v. Miller, 44 P.757 (33 Sou. 404), which has been cited approvingly by leading texts and reference books and encyclopedias, employs the following significant language: 'Insolvency of a building and loan association is sui generis. They can have few creditors outside of their own membership, and frequently have none. It is such a condition as reduces the available and collectible assets below the level of the stock already paid in. The association is said to be insolvent when it cannot pay back to the stockholders the amount of their contribution dollar for dollar.' The language of this decision follows that of the case of Towle v. American Building Loan & Investment Society, 61 Federal Reporter 446, in which liability to withdrawing stockholders—the indebtedness of the association to such members—is the deciding factor in determining the solvency or insolvency of the business. It is important that I quote from the decision at length: 'These associations are essentially corporate co-partnerships. They have no function except to gather together from small, stated contributions, sums large enough to justify loans. Their officers are the agents of every stockholder. They have no debtors or creditors except the stockholders, and whether a stockholder is a creditor or debtor depends on whether he has exercised his privilege of borrowing money from the common fund. The insolvency of such an institution is sui generis. There can be, strictly speaking, no insolvency for the only creditors are the stockholders by virtue of their stock. The so-called insolvency is such a condition of the affairs of the association as reduces the available and collectible funds below the level of the stock already paid in. The association is said to be insolvent when it cannot pay back to its stockholders the amount of their actual contributions, dollar for dollar.' If, therefore, the liability of a building and loan association to its members and stockholders who have given notice of withdrawal, must be reckoned in determining its solvency, surely the liability is a provable debt; and, being a provable debt, it entitles the holder thereof to every vestige of privilege which any creditor has, even the right to becoming a petitioning creditor. I am convinced that if this proposition is ever squarely submitted to an appellate court, it will agree with my contention. The conception of withdrawing stockholders as creditors, armed with all the rights of creditors in bankruptcy, is predicated undoubtedly upon the theory that insolvency effectuates a rescission of contractual relations. If the association is unable to honor its withdrawals 'dollar for dollar' it is insolvent, and if the corporation be insolvent its contractual obligations to its members are severed. Our courts have almost universally recognized that insolvency of a building and loan association effectuates a rescission of its contracts. See 9 Corpus Juris 991 and the many decisions therein cited. The transcendent jurisdiction of bankruptcy, therefore, brings into its fold this species of quasi-public corporation, and time may be expected to give an example of bankruptcy jurisdiction dealing with such an institution*." (Feibelman, 1928).

1311 "*Ohio is the only State in the Union... where the building and loan association, organized and chartered as a building and loan association, may accept deposits as such, and where the person entrusting his money to the association becomes a creditor of the association and not a shareholder therein. That is our problem in Ohio. It is not anything that can be corrected by Federal legislation... But the point I am trying to make is that in a bank with demand deposits, the minute that, bank can not meet the demand it is closed. It goes into forced liquidation. Its assets are sold for whatever they will bring. Here, however, is another institution right alongside that has been telling the people that it was a demand deposit institution, but when it gets into trouble and the people want to get their money they are told, 'No, you can not have it. We will take our time and liquidate our assets in an orderly manner.' So that I am perfectly willing to admit that past history has shown that there have probably been smaller losses to depositors or shareholders in building and loan associations than there have been in banks because of the fact, Senator, that there isn't any necessity for the forced liquidation of assets in the building and*

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loan association that there is in the case of the bank... [which] diverted a larger amount of money into buildings, into real estate operations, than it should have... The building and loan associations of Ohio on Dec 31, 1930, had deposits and accrued interest of $508 M" (FHLB, 1932). "*It will be seen from that, that building and loan associations have gone very far afield in many places from the type of organization that was originally described by that term. As has been said here this morning, in a recent case decided in Ohio, in a case decided in the State of Washington, in the State of Montana, and in several other States, building and loan associations have been held to be in actual competition with national banks. Now, the type of association with which I am most familiar, namely, that in the State of Ohio, is one where we have a type of stock known as permanent or nonwith drawable stock, in many of our building and loan associations. The investor in this type of stock can not withdraw his money from the association. If he wants to get his money out of the association, he must sell that stock to some other investor on the outside*." (GPO, 1931, p230-1)

1312 "*The onset of the Great Depression did not spark a surge in personal bankruptcy. For debtors in default, state garnishment law played a significant role in the decision to file for bankruptcy. Only states that made it easy to garnish a debtor's wages experienced significant increases in bankruptcy as a consequence of the Depression*." (Hansen and Hansen, 2012). Table 1 on pg452 shows that Ohio had limited garnishment law and a moderate homestead exemption.

1313 "*Professor Durfee offers less encouragement to simple classification of the American states. Writing in 1912, he says: 'There are probably no 2 states in which the law of mortgages is the same in all particulars, but they may be broadly classified into 3 groups: (1) those in which the mortgage is held to pass the legal title to the land at its execution; (2) those in which it is held to pass the title on default, and (3) those in which it is held to pass no title until foreclosure. The first view is commonly called the legal or title theory, and the last the equitable or lien theory, while the second, which is maintained in only a few states, has no distinctive name' It may also be noted that Professor Campbell, has a 'Title' theory, a 'Lien' theory, and an 'Intermediate' theory as a series of sub-topic headings in the introductory part of his case book on mortgages. Under the last topic-heading is reported the case of Bradfield v. Hale, decided by the Supreme Court of Ohio in 1902. In the opinion this statement appears: 'The ground on which ejectment may be brought, is that, as between the mortgagor and mortgagee, after condition broken, the legal title is in the mortgagee.' The court also expressly approves this further statement: 'The mortgage being in equity regarded as a mere security for the debt, the legal title to the mortgaged premises remains in the mortgagor as against all the world, except the mortgagee, and also against him until condition broken, but after condition broken, the legal title, as between mortgagor and mortgagee, is vested in the mortgagee."* (Sturges and Clark, 1928). "*A vast deal of learning has been expended on the various theories of a mortgage. There is said to be at least 2 theories, possibly a third. The best brief statement of the matter is that of Professor Durfee: 'There are probably no 2 states in which the law of mortgages is the same in all particulars, but they may be broadly classified into 3 groups: (1) those in which the mortgage is held to pass the legal title to the land at its execution; (2) those in which it is held to pass the title on default, and (3) those in which it is held to pass no title until foreclosure. The first view is commonly called the legal or title theory, and the last the equitable or lien theory, while the second, which is maintained in only a few states, has no distinctive name.' Jones classifies Ohio as a 'title theory' state. So does Pomeroy. Professor Campbell's puts Ohio in Professor Durfee's second class and calls it the 'intermediate theory'. None of the text writers have ventured to put Ohio into the 'lien theory' class... [and he went on to do so.]*" (White, 1929). "*This theory, named by Professor Campbell, is an effort to maintain the title theory without any of its consequences. In some title theory states the mortgagee does not acquire title upon the execution. This only occurs when the mortgage condition has been broken. It is when the mortgagor is in default that the legal title passes by operation of law from the mortgagor to the mortgagee. This point of transfer of title is the distinguishing element between the two theories. What was an offspring of the title notion has now become a clearly developed theory. It states that the mortgagor retains the legal title and right to possession of the mortgaged premises, at least, until the mortgage condition is broken. The mortgagee, until that time, retains a lien as security for his debt. Upon breach of condition, title and right of possession are automatically transferred*." (See meta-analysis in Brown, 1962). Also see Pugh (1930).

1314 "*There were fewer wage earner bankruptcies in the whole of New England in 1931 than in either Alabama, Ohio or Tennessee. Does the Bankruptcy Act, or its administration especially favor New England, or unduly prejudice Alabama, Ohio and Tennessee?*" (Sturges and Cooper, 1933).

1315 "*Moreover, foreclosure statistics underestimate both homeowner and lender distress, since many homeowners surrendered their homes before the foreclosure process was undertaken or completed. Fisher (1951, 48), citing Hoad (1942) notes that 'during the 8-year period, 1931-8, 10.1% of all single-family homes in the [Toledo] area were foreclosed, and 9.6% were surrendered in lieu of foreclosure*." (White et al., 2014).

1316 "*Because its economy was dominated by one industry, Toledo was hard hit by the Great Depression. A large inventory of unsold cars forced [WOC] to lay off thousands of workers in April 1929, resulting in cutbacks in production and employment by parts suppliers..*" (Bingham et al., 2013). "*Production of [WOC] in April established a new high record. Shipments totaled 40,248 cars. Earnings were estimated to be 60% higher than in April 1928. All plants are now operating at capacity, the company announced. Current unfilled orders indicate a continuance of the present record production.*" (NYTimes, 1929). "*In the spring of 1929, [WOC] laid off the first of several thousand workers, bringing the abstract idea of the collapse of [NYSE's] house of cards into sharp reality in the Toledo area. [WOC] was a major economic force in the Toledo area; the company's $27 M payroll in 1925 represented about 41% of the city's total annual payroll. The 1929 layoffs forced thousands of people into poverty, pushing the numbers of individuals receiving direct federal assistance to record highs. Although the jobless rate in Ohio reached 37%, in Toledo that number was nearly 80%.*" (Grillot). See Croxton and Croxton, 1930 for employment data in Lucas County.

1317 "*Feb. 5.—(UP)— Effects of the stock market crash on American industry will have completely disappeared within 30 or 60 days and automobile manufacturers will make more cars than last near. John N. Willys, Toledo. O., nationally known motor manufacturer, told President Hoover today. Willys said he had originally estimated that 4 M automobiles would be manufactured this year, but that now he is confident this would be increased by at least [0.5 M] and possibly [1 M] cars. 'There has been so much overhead saved by efficient processes of the automotive industry that I believe our profits this year will be just as large as last year,' the manufacturer said.*" (Daily Independent, 1930). "*Inside the auto factories a great emphasis was placed on efficiency and cost cutting as the antidote to falling profits. Whereas the auto industry had prided itself on its modern techniques and increasingly high productivity during the 1920s, it saw efficiency in the early depression as the key to survival. 'There has been so much saved by the efficient processes in the automotive industry,' boasted John Willys of [WOC's] Toledo plant in late 1930 [this is wrong as previous source lists Feb 1930], 'that I believe our*

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profits this year will be just as large as last year.' The pace of work intensified even over the high speed of the 1920s, with lay-offs serving to weed out those who could not maintain the pace… In March 1929 [WOC] in Toledo employed 28,000; by the spring of 1932 it employed 3,000." (Peterson, 1987). "*...whereas in April 1929, which set a high record in business prosperity and employment, the dividends paid out amounted to about $240 M, in April 1930, in spite of the industrial depression and the widespread unemployment, dividends had increased to more than $290 M. In other words, corporations continue to dole out dividends to their stockholders and investors even when their investment is idle and when they are laying off instead of employing labor. [WOC] of Toledo announced in Feb a distribution of [$0.9 M] in quarterly dividends for the months of Nov, Dec and Jan when the company was employing only about 5,000 people. In the preceding March this company had employed close to 30,000 workers. While the vast majority of the employees were unemployed and being supported by the Community Chest of Toledo[, WOC] continued to dole out dividends to its stockholders. Their investment wasn't earning dividends any more than their employees were earning wages, but they received income just the same while the employees were supported by the community. Just why it should be considered bad to hand out meager doles to unemployed workers and good to distribute great amounts of money to stockholders whose factories are not working remains an enigma. Perhaps it isn't a dole if a business corporation gives away money to people who haven't earned it. If that is true, then perhaps if the corporation continued to pay wages during slack periods these would cease to be doles. This raises the question: Who is responsible for unemployment and who should bear the burden of it?*" (Leiserson, 1930).

1318 "*The 1930 federal census revealed that in April a total of 16,173 Toledoans had no work at all. Many of these people had purchased homes during the prosperous 1920s when credit was easy and new neighborhoods replaced farmland all around the city. Banks in Toledo held the mortgages on many of the new homes. The banks repossessed the houses when the unemployed owners could no longer make the payments, but with no new buyers. the banks found themselves with huge real estate holdings and no money. In 1931 Toledo's banks held the mortgages on 72 subdivisions..*" (Porter, 1987). "*By Jan 1930, 18,000 Toledoans were unemployed. The city's banks survived 1930 but subsequently found themselves with large real estate holdings and no money as they repossessed houses on which unemployed owners could no longer make payments; most closed in 1931. Unemployment reached 50% by Nov 1931. Numerous public works projects were completed by the Civil Works Administration, Federal Emergency Relief Administration, and Works Progress Administration, including construction of new schools, buildings at the Toledo Zoo, a new public library, the city's first public housing project, and repairs and improvements to schools, parks, streets, sewers, and water lines.*"(Bingham et al., 2013).

1319 "*While mergers between national banks were made easier, any merger of a national bank and a state-chartered bank, trust company, or savings bank had to employ the old method or consolidate by taking out a state charter... for many rural banks, particularly those in the Midwest and West, consolidation with another bank was a means of avoiding failure. The depressed agricultural conditions in the twenties weakened many banks in these regions. Faced with declining demand, rural bankers urged their brethren to merge or risk failure*." (White, 1985). In 1919, there were 4 National and 14 State banks (with 1869 and 1897 being the average establishment dates, respectively); in 1921 and 1924, 2 of the 4 national banks, respectively, left the system by merging with State banks (Doyle, 1919; Braun Bosworth). Established in 1898 as Toledo's first trust, the *Security Trust Co.*, employed more mergers than competitors (possibly as roll-up strategy to give the appearance growth in the early years and as forbearance in the latter); these include *State Savings* (~1918, see Doyle, 1919), *Opeika Savings Bank* (1923, see Braun Bosworth), *Merchants and Clerks Savings Bank Co.* (1926, see Braun Bosworth), *Bankers Trust* (~1928, see CFC, 1930, p1039), and *Home Savings Bank* (1930, see Braun Bosworth).

1320 Secretary Mylander of the *Ohio Bankers' Association:* "*I can say without successful contradiction that Ohio is the only State left in the Union in which all property, real and personal, tangible and intangible, must pay same tax upon the same valuation. We have absolutely no classes of properties in the State of Ohio, and all property therefore is taxed at the same rate and upon the full value… The ad valorem taxes are the same rate on all classes of property and upon the same valuation*." (United States Congress, 1928). "*With respect to the question of equity, it is widely recognized that a general tax on intangibles would bear with considerably greater weight on banks and other depositary institutions than on non-financial businesses. Virtually all the assets of such institutions are in the form of intangibles, whereas this class of property is much less important for nonfinancial businesses. Depositary institutions are unable to move their base of operations from State to State; they are closely regulated and supervised, with published balance sheets; and tax assessors cannot readily undervalue fixed claims, such as bank assets, to the degree that they can and generally do undervalue other types of assets. However equal the treatment provided in the tax laws, in practice depositary institutions would be at a marked disadvantage compared with other businesses and individuals, particularly where intangibles are blanketed into a general property tax that purports to apply the same valuation standards and rates to real property and all varieties of tangible and intangible personal property. An intangibles tax applied to banks and other depositary institutions would have a number of adverse economic consequences, depending in magnitude on the level and geographic coverage of the tax. In the first instance, the principal effects would be on the functioning of financial intermediaries in gathering savings and allocating funds for productive investment—locally, regionally, and nationally—but ultimately any impediments to this process would have a bearing on the performance of the entire economy. The process of financial intermediation performed by banks and other depositary institutions is particularly vulnerable to an intangibles tax since the duplication of financial assets that is inherent in the flow of savings, first into deposits of those institutions and then into customer loans, would expose savings flowing through intermediaries to an additional layer of taxation not encountered where funds flow directly from savers to ultimate borrowers. A tax on intangible assets would tend to induce banks and other depositary institutions to divert funds from taxable to tax-exempt forms of assets—that is, from the financing of consumers and businesses, particularly local businesses, to the acquisition of Federal, State, and local obligations*." (Federal Reserve, 1971).

1321 "*From 1852 to Jan 1, 1931, the taxation of Ohio property was governed by the 'uniform rule.' Immediately prior to its amendment, this rule was set forth in… the Ohio Constitution in the following words: 'Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property according to its true value in money.' As early as 1925, the Ohio General Assembly recognized that tax laws enacted pursuant to this rule were difficult to administer, imposed inequitable tax burdens on certain taxpayers, and placed Ohio businessmen and farmers at a competitive disadvantage with… neighboring states. Therefore, by Amended Senate Joint Resolution Number 29 of 1925, the legislature authorized the appointment of a joint committee to investigate and study the laws of Ohio… Upon receipt of this report, the*

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legislature proposed a constitutional amendment... This proposed amendment was submitted to the people and adopted by them at the election of 1929, the schedule to the amendment providing that it should become effective Jan 1, 1931. This amendment removed the constitutional direction to tax the various kinds of property theretofore included under the uniform rule and replaced it with the following language. 'Land and improvements thereon shall be taxed by uniform rule according to value.'" (Holden, 1950). The "*amendment to the constitution in 1929… Article XII, §2 effective Jan 1, 1931… Prior to the changes made in the property tax law in 1931 Ohio had been known as a 'uniform rule' state.*" (Smart, 1958). "*Whereas in 1851 the voters had made it mandatory for the general assembly to pass laws taxing all forms of property by uniform rule and had left only the fixing of the rate to legislative discretion, in 1929 they voted to limit the amount of taxes that could be levied on any property and left everything else to the discretion of the general assembly, subject only to the requirement that real property be taxed by uniform rule. In other words, the legislature was back where it was before 1851 except for having to observe the uniform rule in taxing real estate and the 15 mill limitation in taxing all property.*" (Caren, 1950). It was still around as of 2005 (Ohio, 2005).

1322 "*McNary's achievement of building Security-Home into the city's third largest bank had come at a high cost. Each of the smaller banks that were taken over brought with them a heavy load of rotten loans that had not been properly depreciated in the bank's books. Each merger expanded the size of the board of directors, increasing the number of men in a position to favor themselves and their companies with sweetheart loans. In 1926, the Security bank had 19 directors. 5 years later the boardroom was nearly twice as crowded, with 34 directors… Each time McNary absorbed a smaller bank, he acquired its financial skeletons as well. By 1931 McNary's closet had become quite full. There was the phony $96,000 loan that McNary and his fellow directors had put on the books to cover a huge stock loss. There were the mortgage loans issued to a company controlled by a former director that were based on forged mortgage papers. There were the loans given to companies controlled by directors without collateral and then forgiven. There were the bundles of worthless South American bonds that were still carried at their face value on the bank's accounts. Now the skeletons were coming to life. While rumors of the embezzlement at the Opieka Branch prompted a few working-class Toledoans to remove the tens or hundreds of dollars in their savings accounts to some hiding place in their homes, these didn't amount to much. The real trouble came when a few major corporations, tipped off by bank insiders, decided to pull the Plug. The Electric Auto-Lite Co withdrew $56,000 on June 11. American National Co., which had as much as a [$100 K] on account, began drawing it down until only [$ 3.4 K] remained at the end of the week. Libbey-Owens-Ford, the world's largest maker of auto glass and one of the largest corporate depositors, began making substantial withdrawals. Fearing collapse, McNary met with his bank's largest shareholder, the industrialist Clement 0. Miniger, and told him that a merger was the only Play to save the bank. There were only two other banks in the city with assets large enough to submerge whatever rotten liabilities Security-Home carried.*" (Messer-Kruse, 2004)

1323 "*Incident to the approaching union of the Security Savings Bank & Trust Co. and the Home Bank & Trust Co., both of Toledo, Ohio.. the stockholders of both banks on June 5 ratified the consolidation, to become effective July 1, according to the Toledo 'Blade' on June 6. The new organization, which will be known as the Security-Home Trust Co., will be capitalized at $1.5 M, with surplus and undivided profits of $2 M, and will have deposits of more than $30 M and total resources of approximately $36 M. Stacey L. McNary, now President of the Security Savings Bank & Trust Co., will head the enlarged bank. After stating that the stockholders of the Home Bank & Trust Co. on July 1 will receive the regular dividend of $2 a share quarterly on their old shares of Home Bank stock in addition to the special dividend of $10 a share under the merger agreement, the paper mentioned went on to say: 'Quarterly dividend of the Security Savings Bank & Trust Co. would be paid July 15 but an adjusting dividend will be paid on July 1 on old shares. Each stockholder of the Home bank will receive 254 shares of new Security-Home stock for each share now held. Security stockholders will receive 1.0937 shares for each share held. This will give Home stockholders 23.000 shares of the new Security-Home stock and Security stockholders 35.000 shares of the 60.000 shares of $25 par stock.'*" (CFC, 1930). Braun Bosworth (1930) notes that *Home B&T* stockholders received a $10 cash dividend; this is the only mention of a dividend paid in the 5 consolidations in the data available from Braun Bosworth (1919-30, missing the critical 1927-8 which had several consolidations.) "*Marion M. Miller, President of the Home Bank & Trust Co., after many years of accomplishment in the Toledo banking field, announced… several months ago that he would retire from active business during the present year. He said that on May 1, just passed, he would complete 50 years of active business and would insist on being relieved of the management and direction of the bank.. Youngstown, Ohio, advices on' May 18 to the New York 'Times' stated that the respective directors of the Home Savings & Loan Co. and the Central Savings & Loan Co., both of that city, are considering plans looking towards the union of the institutions. The dispatch went on to say: With this acquisition the Home Savings would increase its resources to about $50 M. The Central controls resources of $6 M... Formation of a commercial bank, to operate in the Central Savings head-quarters. is also contemplated.*" (CFC, 1930).

1324 "*The WFC was repurposed as an emergency finance corporation for making loans to banks, industries, and local credit agencies during the recession of 1920-21, and then to help farmers struggling with low crop prices… [and was] dissolved in 1929.*" (Eichengreen, 2016).

1325 Between Sep 30, 1930 and 1931, the clearing house in the reserve city of Toledo showed a decrease of exchange from $908 to 589 M (COTC, 1931, p1030). While these banks were likely insolvent, the too big to fail doctrine had not been created, there were also political reasons (GPO, 1933, p4034-6).

1326 The state audit appears to have found the bank insolvent in the spring (see Exhibit 15 for deposit withdrawals) and by mid-June, the board and the state superintendent of banks decided to suspend operations of all branches the night before (Toledo Gazette, 2011, Toledo Bee, June 17, 1931). Between 1929 and 1932, with regards to insolvent banks, Ohio and the majority of States gave supervisors the option to liquidate or apply for the appointment of a receiver; neither Ohio nor many others had the power to appoint receivers (Goldenweiser, 1931, p90, 148).

1327 "*In the State of Ohio, a Toledo dispatch to the New York 'Times' on June 17 stated that the Security-Home Trust Co., the third largest bank in Toledo, had failed to open on that day. Heavy withdrawals from other banks in the city followed and as a result 3 other institutions announced in the afternoon that 60 days' written notice would be required for withdrawals of savings deposits. These institutions were the Commerce-Guardian Trust & Savings Bank, the Ohio Savings Bank & Trust Co., and the Commercial Savings Bank & Trust Co. The latest statement of the closed Security-Home*

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Trust Co., according to the dispatch, showed combined capital and surplus of $3 M With undivided profits of $545 [K], and total resources of $4 M. The dispatch furthermore stated that Ira J. Fulton, State Superintendent of Banks for Ohio, had taken over the institution and its 10 branches." (CFC, 1931). "*On June 17, 1931, the Security-Home Trust Co failed to open. When fearful depositors tried to withdraw their money from other Toledo banks, the bankers imposed a waiting period of 60 days for savings account withdrawals… On Aug 17, 1931, the date the 60 days expired, 4 other banks, the Ohio Savings Bank and Trust Co, the Commercial Bank, the Commerce Guardian Trust and Savings Bank, and the American Bank, remained closed.*." (Porter, 1987). By Aug 17, the superintendent closed these (1 was a State bank and the other 2 nonmember banks) (GPO, 1931, p19). "*Directors of the Ohio, Commerce Guardian and Commercial tried to merge before expiration of the 60-day notification period tomorrow, then suspended when negotiations were uncompleted.*" (NY Herald, 1931).

1328 "*Many smaller companies and shops went bankrupt. Doctors, lawyers, and others in the professions lost everything, as did the stockholders and employees of the banks. Large employers and some department stores banked outside the city. assuring them of cash for payrolls. Some stores offered credit to employed customers, but with little money in circulation, most business in Toledo stopped. In Sep 1931 a record 5,261 Toledoans accepted direct relief. More than 8 [K] people received direct relief in Dec 1931, and more than 13 [K] in Dec 1932.*" (Porter, 1987).

1329 "*On June 5 and 6, Chancellor Brüning increased taxes, decreased social spending, and announced that Germany would be unable to transfer its next instalment of reparation payments. The Reichsbank's President, Luther, had anticipated a capital flight to follow in the wake of the announcement. He was right, and the Reichsbank lost more than 730 M RM in hard currency within the space of one week. As a result, the central bank boosted its fight for the currency and increased the discount rate from 5 to 7%. In the heat of the moment, more bad news from the business sector was published. Most notably, Nordwolle, the largest textile firm in continental Europe, announced substantial losses. It turned out that Nordwolle had cumulated liabilities of 380 M RM, whereas its assets were only worth 140 M RM. Nordwolle's main bank, the Danatbank, lost 50 M RM — more than its share capital and reserves. Consequently, the bank became insolvent. However, it took several weeks before the full scale of the bankruptcy became apparent: Nordwolle's first announcement, made on 10 June, estimated a loss of 20 M RIM, the final figure was published on 6 July*." (Burhop, 2016).

1330 "*A cessation of payments will not, however, in every system of legislation necessarily result in an adjudication of bankruptcy. In France, Austria and Germany, it will; for their laws take no account of temporary embarrassments in which a trader may be placed, although his assets may be sufficient to ultimately meet his engagements. But there are a few countries (Belgium, Italy and Spain) that cover such a case by recognizing suspension of payments... In Germany, debtors who have stopped payment or against whom a bankruptcy proceeding has been commenced are punished as fraudulent bankrupts, with penal servitude (Zuchthaus), if with the intention of injuring their creditors they have concealed or removed articles of property , acknowledged debts that are wholly or in part fictitious, failed to keep books of account when such duty is imposed by law , destroyed or concealed their books, or so kept or altered them that they furnish no true statement of the condition of their affairs. They are punished as simple bankrupts, with imprisonment at labor for not more than two years, if they have employed excessive sums or become indebted by means of extravagant expenditure, gambling, or trading on differences (Differenz handel) in goods or stock-exchange papers; if they have neglected to keep commercial books, which they were bound by law to keep, or have concealed, destroyed or kept such books in such a disorderly manner that they do not convey a clear idea of the condition of the property, or contrary to the regulations of the commercial code, have neglected to draw up a balance sheet of their property within the time pre scribed. It is further provided that debtors who have stopped payment or with regard to whose property proceedings in bankruptcy have been instituted, shall be punished by imprisonment at labor up to 2 years, if they , although aware of their insolvency, have, with a view to favor a creditor above the rest, guaranteed such creditor a security or satisfaction to which he had no claim in such manner or at such time. In Austria, this matter is not regulated in the bankrupt law, and it is in the Penal Code that we must look for the punishment meted out to simple and fraudulent bankrupts. If a debtor becomes bankrupt and cannot prove that it was through misfortune alone that he has become unable to pay his creditors in full; or if he has been guilty of extravagance , or if after he is already insolvent he has not announced the fact immediately to the court, but contracted new debts, made fresh payments , or assigned a pledge or other security, such person , in so far as he has not committed what the law regards as fraud (Betrug) is guilty of a misdemeanor (Vergehen) and is to be punished with strict arrest (strenger Arrest) for from 3 months to 1 year.*" (Dunscomb, 1893). "*After the union of the German Reich in 1871, the Government at once endeavored to bring about an early unification of the law applicable in Germany As a result of the reforms the German Bankruptcy Code (Deutsche Konkursordnung) was passed on Feb 10, 1877, which on Oct 1, 1879 entered into force simultaneously with the new civil procedure code, the criminal procedure code and the law on forced sales. When on Jan 1, 1900, the German Civil Code came into force which consolidated the entire civil law throughout Germany, the Bankruptcy Code was amended in some details in order to conform with the new provisions of the Civil Code. Apart from that, the Bankruptcy Code since its enactment has remained almost unchanged… [in addition to the Konkursordnung bankruptcy statute, there was the composition law] of July 5, 1927 so-called Deed of Arrangement Statute (Vergleichsordnung).*" (Hauss, 1931). "*In the case in which the capitalization of the corporate enterprise is such that the business can be rehabilitated only by a complete overhauling of its whole capital structure, American law offers the far reaching and intricate process of corporate reorganization regulated separately for railroads and other private corporations. The Italian law, even under the new statute [of 1942], has not felt it possible or advisable to provide for such radical and far reaching procedure. It has contented itself with the rather feeble device of preventive compositions, which in Italy, as we mentioned, has degenerated practically into a method for the debtor to obtain an honorable discharge for the price of sacrificing the enterprise. However, the new law has added an additional rehabilitation procedure which goes by the name of 'supervised management.' It is hard to say whether this should be considered as a new experiment or a legal anachronism. Germany, for instance, during the first World War introduced a similar procedure [Ordinance of Aug 8, 1914]. 2 years later preventive compositions were added [Ordinance of Dec 14, 1916]. Finally, only a strengthened law of preventive compositions was maintained. [Vergleichsordnung of July 5, 1927, revised July 26, 1935, cf. 2 Jaeger Kommentar zur Konkursordnung, (1936) sec. 173, note 15.]*" (Riesenfeld, 1947)..

1331 "*The bankruptcy of Germany's second-largest bank, caused by its condemnable credit policy, was the final blow to Germany's financial system. The Hoover moratorium. which came into effect a day later, could not save the German currency. It became clear to international investors, by looking at the Reichsbank's weekly balance sheet, that Germany could either leave the gold standard or control the international transfer of hard currencies. International*

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treaties blocked the first option. Consequently, foreigners started to transfer their money out of Germany at the end of June. When Danatbank's insolvency was made public, German depositors also withdrew their RM deposits... the Reichsbank's currency reserves were very low when the Danatbank's problems were made public. Consequently, when the Danatbank ran out of bills eligible for rediscounting at the Reichsbank, the Reichsbank stopped its support for the bank. Only a change in Reichsbank law which would effectively imply an abandonment of the gold standard — could have saved the Danatbank. However, such a move was out of reach of the Reichsbank and politically difficult to implement, since the German exchange rate was fixed by the Dawes- and Young-agreements. The Reichsbank aside, the government could guarantee the Danatbank's deposits. However, a guarantee from a distressed government would not be particularly credible. In summary, Hardach concludes that the 1931 crisis was a banking crisis, as well as a foreign-exchange crisis. More specifically he argues that the bad credit policies of certain banks, low liquidity levels in the banking system, the deep economic depression, the integration of Germany's banks into the international interbank market, and the constraints of the gold standard were the interlinked causes of the crisis." (Burhop, 2016).

1332 "*In this paper, we show that the German banking crisis in the summer of 1931 was crucial in boosting the Nazi movement's electoral fortunes. It not only aggravated the German economy's downturn, leading to more radical voting because of declining incomes. It also increased the Nazis' popularity directly: Their central, long-standing claim that 'the Jews are our [Germany's] misfortune' was seemingly borne out by indisputable fact. The bank at the center of the crisis, Danat, was led by a prominent Jewish banker, Jakob Goldschmidt. We first present new evidence on the real effects of the German banking crisis, and then document the crisis' consequences for Nazi support and anti-Semitic attitudes... After a severe banking crisis in 1931, caused by foreign shocks and political inaction, radical voting increased sharply in the following year. Democracy collapsed 6 months later. We collect new data on pre-crisis bank-firm connections and show that banking distress led to markedly more radical voting, both through economic and non-economic channels. Firms linked to two large banks that failed experienced a bank-driven fall in lending, which caused reductions in their wage bill and a fall in city-level incomes. This in turn increased Nazi Party support between 1930 and 1932/33, especially in cities with a history of anti-Semitism. While both failing banks had a large negative economic impact, only exposure to the bank led by a Jewish chairman strongly predicts Nazi voting. Local exposure to the banking crisis simultaneously led to a decline in Jewish-gentile marriages and is associated with more deportations and attacks on synagogues after 1933*." (Doerr et al., 2018).

1333 "*There was an increase in international lending in the first half of 1930; the volume of international lending in the April–June quarter was larger than in any other quarter in the 1920s and the 1930s. However, the lowered level of prices and the loss of confidence in Germany, especially after the National Socialist gains in the Sep 1930 elections, meant that the world remained in distress. Banks in Central Europe, largely Austria and Germany, tried to improve their positions by bidding up the prices of their own stocks. 2 private banks, the Banque Adam and the Banque Oustric, failed in Paris, the latter unleashing a scandal that implicated 3 government officials and led to the fall of the government. The deflationary Laval government came to power early in 1931. And then the rolling deflation started: the failure of the Credit Anstalt in Vienna in May, the failure of the Danatbank in Germany in July, the German standstill agreement of July, a series of withdrawals from London in Aug, culminating in the decision of the British in Sep 1931 to break the link between the pound and gold. At this stage the gold bloc of France, Belgium, the Netherlands, and Switzerland started buying gold with US dollars and the withdrawal of gold from the United States reduced the reserves of US banks... Deflation in the United States came from appreciation of the US dollar (that is, the depreciation of the British pound and the currencies of the sterling area countries that were pegged to the pound) and from the reduction of bank reserves*." (Kindelberger and Aliber, 2005).

1334 "*Like the previous 2 crises, the incidence of bank failure in Sep and Oct 1931 is highly geographically concentrated (in the states of Ohio, Pennsylvania, West Virginia, Missouri, and Illinois), and as before, particular cities dominated the list of failures (Philadelphia, Pittsburgh, and Chicago are the most important examples). The Pittsburgh bank failures account for 84% of the deposits of suspended banks in the Cleveland District in Sep 1931. Philadelphia bank failures account for 74% of the deposits of suspended banks in the Philadelphia District in Oct 1931 (Wicker 1996, p. 80). Chicago bank failures only accounted for 11% of the deposits of suspended banks in Sep 1931, owing to the large number of Illinois bank failures in that month outside of Chicago. To quote Wicker (1996, pp. 74-75), 'it would not be imprudent to conclude that multibank failures within one town or city within a one week interval were not numerous.'... Bank failures did coincide with the departure of Great Britain from gold, but as Wicker points out, it would be hard to explain why the pressures of an external drain on gold would cause bank failures in West Virginia, Missouri, Pennsylvania, Illinois, and Ohio, while leaving the major cities of the Northeast (and New York, in particular) unaffected*." (Calomiris and Mason, 2000). The *Cleveland Federal Reserve District* covered all clearinghouses in Ohio and West Virginia as well as Pittsburgh in Pennsylvania, with Philadelphia as a separate district (Heckelman and Wood, 2018; Miller and Genc, 2001). A receiver was appointed for the *Bank of Pittsburgh N. A.* on Sep 21, 1931; it was the largest bank failure in terms of capital since Nov 1930 and the first Pennsylvanian national bank since Aug 24, 1931(COTC, 1935). "*Owing to the continued withdrawal of deposits the board of directors of the Bank of Pittsburgh, N. A. has adopted a resolution to suspend operations and to request the [COTC] to take charge of its assets in order that the interests of all depositors, creditors and stockholders may be conserved… It is pointed out that the action was taken voluntarily by the board and not under orders of the [COTC]. Assurance of the full cooperation of the Clearing House Association and the general strength of the Pittsburgh banking situation was given in a statement by James C. Chaplin, President of the Colonial Trust Co. and Vice-Chairman of the Association, following the action of the Bank of Pittsburgh's board, Mr. Chaplin said: 'While the voluntary closing of the Bank of Pittsburgh by its board of directors is a source of regret to all of us. the directors are to be commended for their courage in taking this step in order to protect and conserve the interest of depositors, creditors and stockholders. The drain upon the bank has arisen most largely from withdrawals of deposits made by banks in other sections of the country who have been called upon to make use of their funds at home in the present stringency. Those of us who have examined the bank's condition have found nothing to alarm depositors in the end. Furthermore, it should be emphasized that the general banking situation in Pittsburgh is among the best of any city in the country due to Pittsburgh's old-fashioned caution and conservatism.' The Clearing House action to help depositors was made public in the following statement: 'The board of directors of the Bank of Pittsburgh, N. A. having requested the [COTC] to take charge of the bank in order to conserve the interests of depositors, creditors and stockholders, the Clearing House member*

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banks have agreed to advance 50% of the face value of receiver's certificates immediately upon the issuance of the same.'...With reference to the two other closed Pittsburgh banks, the Highland National Bank and the Franklin Savings & Trust Co., a dispatch to the New York Times.. stated that the former, which recently put its deposits at $3.9 M and its assets at $4.5 M, was closely identified with the Bank of Pittsburgh, N. A., while the Franklin Savings & Trust Co. had its assets largely tied up in the Bank of Pittsburgh, N. A., according to a statement of the State bank examiner. This bank, a State institution with deposits of $2.9 M and assets listed at $3.7 M in its last statement, was closed as a protection measure. A Pittsburgh dispatch by the Associated Press regarding the closing of the Highland National Bank had the following to say: 'The directors of the Highland National Bank said that institution was threatened with large withdrawals due to the closing of the affiliated bank. and that It was their opinion that the best interests of the depositors and creditors would be most fully protected by suspension. They therefore decided to place the institution's affairs in the hands of the [COTC]'"(CFC, 1931, citing Post-Gazette).

1335 Debt deflation brought down the banks by destroying real estate loan values: "*that slowly but inexorably the speculators in real estate are ground down. The lenders to the real estate speculators, and especially the bank lenders, incur large loan losses... Real estate loans in default, not failed stockbrokers' accounts, were the largest single element in the failure of 4,800 banks in the years from 1930 to 1933.*" (Kindelberger and Aliber, 2005).

1336 "*Hoover encouraged a number of major banks to form the [NCC], to lend money to other banks experiencing difficulties. The NCC was announced on Oct 13, 1931, and began operations on Nov 11, 1931. However, the banks in the NCC were not enthusiastic about this endeavor, and made loans very reluctantly, requiring that borrowing banks pledge their best assets as collateral, or security for the loan.*" (Butkiewicz, 2002). "*In fall 1931… President Hoover proposed to the Federal Reserve System's Federal Advisory Council (FAC) the formation of a $500 M credit pool, to be funded entirely by commercial banks and to have the authority to borrow another $1 B, if necessary, for the purpose of refinancing assets on the books of distressed banks.... 'Describing his abandonment of free-market principles to bail out the commercial banking system, Hoover wrote: '[When I met with a group of Congressional leaders on Oct 6, 1931, I presented a program for Congressional action if the bankers' movement [NCC] did not suffice. I hoped those present would approve my program in order to restore confidence which was rapidly degenerating into panic. The group seemed stunned. Only [Speaker of the House Nance] Garner and [Senate Majority Leader William] Borah reserved approval. The others seemed shocked at the revelation that our government for the first time in peacetime history might have to intervene to support private enterprise [the RFC and expansion of collateral for discounting].*" (Todd, 1992).

1337 "*Hoover quickly recognized that the NCC would not provide the necessary relief to the troubled banking system. Eugene Meyer, Governor of the Federal Reserve Board, convinced the President that a public agency was needed to make loans to troubled banks. On Dec 7, 1931, a bill was introduced to establish the [RFC]. The legislation was approved on Jan 22, 1932, and the RFC opened for business on Feb 2, 1932.*" (Butkiewicz, 2002). The RFC "*established a government finance corporation—on Jan 22, 1932, the [RFC] came into existence with $2 B to be loaned to business. The RFC could lend against appropriate collateral to a wide range of financial institutions: commercial banks, savings banks, trust companies, savings and loan associations, and insurance companies. The initial [UST] subscription to the capital of the RFC was $500 M. The RFC could issue debt instruments and would also be expected to come to the aid of the railroads. The RFC was independent of Congress, the director of the budget and the public. Managed properly, the RFC could operate indefinitely without further Congressional appropriations*." (Phillips, 1995). *"By Feb 2, with a skeletal staff of former employees of the WFC, the RFC was up and running. [UST] supplied $500 M of capital and was prepared to issue an additional $1.5 B of bonds on the corporation's behalf. [In June, the Central Republic bank connected to the powerful President of the RFC, Dawes, was in trouble.] The decision to extend the loan, taken over a weekend under intense time pressure, was made at the highest level. President Hoover himself helped organize it… Not only was this the single largest loan the RFC had made, but it was 3x the size of all the loans the Federal government made to the States in 1932 for relief for the unemployed and homeless…There is no evidence that the officers of Central Republic were even required to complete the standard loan application…The RFC was authorized to lend only if it expected that it would be repaid—that is, only if it believed that the bank it was helping was solvent. The RFC's inspectors had their doubts… Lobbying by Traylor and Jesse Jones, an influential RFC director who, conveniently, was a delegate to the Democratic National Convention and on the scene, convinced Hoover and the RFC to go ahead. The RFC's bazooka reassured depositors... bank runs now quickly came to a halt.*" (Eichengreen, 2016). However, the practice loss efficiency due to stigmatizing transparency "*During the first months following the establishment of the RFC, bank failures and currency holdings outside of banks both declined. However, several loans aroused political and public controversy, which was the reason the July 21, 1932 legislation included the provision that the identity of banks receiving RFC loans from this date forward be reported to Congress. [Speaker of the House Garner], ordered that the identity of the borrowing banks be made public. The publication of the identity of banks receiving RFC loans, which began in Aug 1932, reduced the effectiveness of RFC lending. Bankers became reluctant to borrow from the RFC, fearing that public revelation of a RFC loan would cause depositors to fear the bank was in danger of failing, and possibly start a panic. Legislation passed in Jan 1933 required that the RFC publish a list of all loans made from its inception through July 21, 1932, the effective date for the publication of new loan recipients*." (Butkiewicz, 2002).

1338 *"Prior to 1932, the Federal Reserve Banks were not authorized to make advances against assets other than 'real bills' or government securities, and they could not lend for longer than 15 days on the government securities owned by member banks. The proposed credit pool [NCC]... was to make extraordinary advances until… Congress could act upon Hoover's recommendation to authorize Reserve Banks' emergency advances for up to 120 days collateralized by government securities or any other satisfactory assets.*" (Todd, 1992). "*Hoover Stated 'our people have a right to a banking system in which their deposits shall be safeguarded and the flow of credit less subject to storms.'.. On Jan 27, Hoover summoned Senator Glass and asked him to introduce legislation for temporary expansion of eligible assets under the Federal Reserve Act. The president hoped that government bonds could become security for currency*" (Phillips, 1995). *"In Feb 1932… [UST Secretary Mills] warned Hoover that the country was within weeks of being forced off the gold standard owing to the shortage of eligible securities. Hoover convened an emergency meeting of Harrison, Meyer, and Dawes, who agreed that the solution was legislation, which the president invited Senator Carter Glass and Representative Henry Steagall, chairmen of their respective chambers' banking committees, to draft. Their bill modifying the supposedly sacrosanct gold standard, allowing the Fed to discount a wider range of securities, passed on Feb*

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27 without debate" (Eichengreen, 2016). "*In Feb 1932 the Glass-Steagall Act made it possible to reflate through open-market operations, but it was too late. Bank failures continued to spread in a positive feedback debt deflation process of declining goods prices, bankruptcies, and bank failures.*" (Kindelberger and Aliber, 2005).

1339 "*In Jan 1932, Hoover asked for a strengthening of the Federal Land Bank System, the creation of Home Loan Discount Banks, an enlargement of the discount privileges of the Federal Reserve Banks, a plan to safeguard depositors, and a swifter means of paying off those who held deposits in closed banks.*" (Phillips, 1995). "*Federal regulation of the savings and loan industry developed under a legislative framework separate from that for commercial banks and mutual savings banks. Legislation for S&Ls was driven by the public policy goal of encouraging home ownership. It began with the Federal Home Loan Bank Act of 1932, which established the Federal Home Loan Bank System as a source of liquidity and low-cost financing for S&Ls. This system comprised 12 regional Home Loan Banks under the supervision of the FHLBB. The regional Banks were federally sponsored but were owned by their [S&L] members through stock holdings.*" (FDIC, 1997).

1340 *"Hoover also urged amendment of the Federal Bankruptcy Act to alleviate the impact of widespread bankruptcies on the economy. He requested an amendment that would allow bankruptcy to proceed with a majority of support by the creditors, rather than an unanimous agreement. Congress agreed to this proposal for individuals and railways, but did not extend it to corporate reorganizations until 1935.*" (Phillips, 1995). *"Congress enacted part of the legislation at the end of the Hoover administration in [the Act of March 3,] 1933—including provisions for individual and farmer rehabilitation and the first codification of railroad reorganization.*" (Skeel, 2014).

1341 An alternative to receiverships for national banks: "*In 1933, as an alternative to receiverships, conservatorships for national banks were created under Title II of the Emergency Banking Act of March 9,1933. The condition then provided for appointment of a conservator 'whenever [COTC] shall deem it necessary in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof...' In other words, no explicit finding of actual or potential insolvency or existing violation of [NBA] was required -findings that would have been required for the appointment of a receiver. However, that former version of the national bank conservatorship statute provided explicitly that a conservator was to have all the powers of a receiver, in addition to powers necessary to operate the failing bank. The principal significance of the 1933 conservatorship statute for our purposes is that it established a new regime allowing a receiver-like entity to take control of a national bank's affairs involuntarily and for the explicit purpose of protecting depositors and general creditors. Jesse Jones, the chairman of the former [RFC], wrote that in drafting me conservatorship statute, the Hoover Administration and involved Federal Reserve officials believed that the title conservator was 'akin to receiver but less harsh on the public ear,' adding that the original object of conservatorship was 'to stave off creditors long enough to rehabilitate a bank rather than let it go into receivership.' Thus, the first blurring of the distinctions between living and dead or dying banks was introduced into federal banking law in 1933. An important provision of this statute required conservators to segregate new deposits (those received after appointment) from previously existing deposits, to make such prior deposits available for withdrawal only on a ratable basis (which could be estimated), and not to use new deposits to liquidate any indebtedness of the bank existing prior to appointment This provision enabled the conservator to satisfy old claims only insofar as they would have been satisfied in receivership, while still preserving the option of handing over the entire bank to new ownership (or even returning the bank to the former management) with a body of protected new deposits intact.*" (Todd, 1994).

1342 President Roosevelt signed *Executive Order 6102* on April 5, 1933, "*forbidding the hoarding of gold coin, gold bullion, and gold certificates within the continental United States.*" The order was under authority of *Trading with the Enemy Act of 1917*, as amended by the *Emergency Banking Act* the previous month. *Order 6102* was modified by *Order 6111* on April 20, and both revoked and superseded by *Executive Orders 6260* and *6261* on Aug 28 and 29. By Jan 30, 1934, Congress passed the *United States Gold Reserve Act*, which required all gold and gold certificates held by the Fed to be surrendered to UST. The Act prohibited UST and financial institutions from redeeming dollars for gold, established the *Exchange Stabilization Fund* under control of UST to control the dollar's value without the assistance (or approval) of the *Federal Reserve*, and authorized the president to establish the gold value of the dollar by proclamation.

1343 "*Deposit guarantees were rejected as conducive to bad banking as late as 2 March 1933, when the Board of Governors of the Federal Reserve was not prepared to recommend such a guarantee, or any other measures, on the eve of the national bank holiday.*" (Kindelberger and Aliber, 2005). "*[T]he U.S. economy degenerated into virtual chaos during the 4 months from Roosevelt's election in Nov of 1932 to his inauguration on March 4, 1933. Aspects of this chaotic downward process included an unprecedented wave of bank failures, a collapse of output and asset prices, and an explosion of unemployment… The banks in more than 30 States had been closed by their governors before inauguration day. After his inauguration, which was on a Sat, the new President was confronted with the news that the New York banks would not be able to open on the following Mon. The closing of the banks was a preemptive strike, aimed to prevent a further cataclysmic explosion of bank and financial institution failures which would be accompanied by a horrendous decline of asset prices. The closing of the banks moved the solution of the immediate problem of broad insolvency of banks to the legislative sphere of Washington, rather than leaving it to the machinations of the financial community. The resolution of the bank holiday took the form of a quick examination of the closed banks, which divided banks into 3 classes: those that could reopen without any aid, those that were deemed so thoroughly bankrupt that they were to remain closed and be liquidated and those that were reopened after an infusion of equity from the [RFC]... Some 50% of the banks that reopened after the bank holiday received an equity infusion.*" (Phillips, 1995).

1344 "*It is the general belief that under present economic conditions very many debtors... will be unable to meet their obligations... there are two remedies which are most prominent in the minds of our people. One of these is to be found in the proposition that our currency shall be inflated by abandonment of the gold standard, or otherwise, so that money will become cheaper and in this way the debtors will be relieved. The other suggestion is that our present monetary standard be maintained but that an opportunity be given to the debtors to obtain time within which to discharge their obligations; and, that in the event that they are unable to do so, the amount of their debts may be equitably reduced. These contrasting procedures may be called, on the one hand, the policy of inflation of our currency and, on the other, the policy of deflation of our debt obligations. The difficulty with inflation of the currency is that it not only diminishes the obligations of the debtors unable to bear their burdens; but it has other effects and repercussions, many of which will be deeply injurious to our economic life. Such a policy will destroy public confidence in our investments and will make it difficult, if not impossible, to float issues of*

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public and private securities... Without attempting to discuss at any length the detailed provisions of the proposed statute, it is evident that the purpose of the legislation is to extend relief to those debtors who may be merely insolvent and not technically bankrupt. This seems an eminently fair proposition. Any debtor who cannot meet his just obligations should be entitled to the protection of the courts against unjust preferences which may be obtained by creditors who will be sometimes harsh and rapacious." (Battle, 1933).

1345 "*On June 7, 1933, Roosevelt had signed legislation that permitted an insolvent corporation to reorganize if 25% of its creditors in each class of claims and 10% of its total creditors agreed*." (Phillips, 1995). Congress "*amended [BA98], by adopting [§ 77 in 1933] to govern railroad reorganization, and [§ 77B in 1934] to govern other reorganizations. But, these amendments had largely codified existing receivership practice*." (Skeel, 2019).

1346 The 1933 Act established the FDIC as a temporary agency and the 1935 Act made the FDIC as a permanent agency. Between 1886 and 1934, there were over 150 bills proposed for bank deposit insurance alone: "*Three general methods of providing depositor protection were proposed in the bills. Of the 150 bills [from 1886 and 1933], 118 provided for the establishment of an insurance fund out of which depositors' losses would be paid, 22 provided for United States government guaranty of deposits, and 10 required banks to purchase surety bonds guaranteeing deposits in full*" (FDIC, 1998). For analysis, see FDIC (1950). "*Deposit insurance was included in the original Federal Reserve Act [of 1913] as passed by the Senate, but was omitted from the bill passed by the House and eliminated in the Conference report*." (Golembe, 1960). The issue was championed by Rep. Steagall (Golembe, 1960). Thrifts were managed separately. "*[T]he Home Owners Loan Act of 1933 empowered the FHLBB to charter and regulate federal savings and loan associations. Historically, the Bank Board promoted expansion of the S&L industry to ensure the availability of home mortgage loans...[T]he National Housing Act of 1934 created the FSLIC to provide federal deposit insurance for S&Ls similar to what the FDIC provided for commercial banks and mutual savings banks. However, in contrast to the FDIC, which was established as an independent agency, the FSLIC was placed under the authority of the FHLBB. Therefore, for commercial banks and mutual savings banks the chartering and insurance functions were kept separate, whereas for federally chartered S&Ls the two functions were housed within the same agency*." (FDIC, 1997).

1347 The issue was championed by Senator Glass as part of a general desire to 'restore' commercial banking to the purposes envisioned by the *Federal Reserve Act of 1913* (Perkins, 1971). The Act separated investment and commercial banking and prevented deposit-taking commercial banks from engaging in security and insurance underwriting (this has become associated with *the Glass Steagall Act*). For commercial banks, *" the Federal Reserve Board adopted 'Regulation Q,' prohibiting banks from paying interest on demand deposits (essentially, checking accounts), while placing ceilings on permissible rates on time and savings accounts...The contemporary perception was that excessive competition for funds on the part of commercial banks had driven up the cost of attracting demand deposits and encouraged the banks to engage in risky investments, contributing to the banking crisis. In addition, Regulation Q was seen as a means of enabling community banks to compete for deposits and lend to their local communities."* (Eichengreen, 2016). The '33 Act also created the *Federal Open Market Committee*, with only presidents as members, and the *Banking Act of 1935* created the modern FOMC power distribution (with adjustments in 1942). This solved a problem caused by the death of NY Fed President Strong in 1928 which may have been critical to the mishandling of the early Great Depression (Friedman and Schwartz, 1963). Emergency lending to nonbanks was added in 1934 (13(3) lending) - which was critical during the Great Recession: "*The only other later addition worth noting—and it has been of little importance—is direct lending to domestic borrowers in a limited class of circumstances, enacted in 1934*." (Friedman and Schwartz, 1963).

1348 "*In 1934, after establishment of the [FDIC], about 47% of the circulating medium was protected by insurance or government guaranty. Insured deposits were protected by the [FDIC], while all circulating notes, including national bank notes and Federal Reserve notes, were guaranteed by, or direct obligations of, the [UST]. Thus, some 7 decades after [the] establishment of the national banking system, the proportion of the circulating medium protected was at approximately the level which it had been hoped to achieve when the notes of national banks were guaranteed by the government and made the only circulating bank notes*." (Golembe, 1960).

1349 "*Within 6 months… some 97% of all commercial bank deposits, were covered by insurance… Mutual [SBs], which were also eligible for insurance, found it much less attractive. In mid-1934 only 66 out of 565 banks, accounting for only a bit over one-tenth of all mutual savings deposits, were insured. The coverage of mutual [SBs] rose slowly until World War II, then accelerated, so that by the end of 1945, 192 out of 542 banks accounting for two-thirds of all deposits were insured, and by the end of 1960, 325 out of 515 accounting for 87% of all deposits… The wartime increase is attributable to the admission to membership of 125 New York State mutual [SBs] on July 1, 1943. They and others had withdrawn from the temporary deposit insurance plan in June 1934. They wanted a premium rate that recognized the lower factor of risk in insuring [SB] and, in addition, believed that the [SBs'] own insurance agency could safeguard depositors better than any national agency. In New York the mutual [SBs] created their own insurance fund on July 1, 1934. Mutual [SBs] in two New England States also organized Statewide insurance plans. The New York plan and the arguments for it were abandoned in favor of membership in the FDIC in 1943. It was then held that in a real emergency Statewide protection would not be strong enough and federal assistance would be required*" (Friedman & Schwartz, 1963).

1350 "*Between 1930 and 1934, the amount on deposit increased by almost 760% in real 1913 dollars (584% in nominal dollars) from $103 to $887 M. The number of postal depositors increased from 0.9% of all bank savings accounts to 6%*" (Sprick Schuster et al., 2019). "*Postal savings deposits grew to a peak of 4% of savings deposits in mutual savings banks in 1919, declined to 2% in 1929, then rose to 13% in 1933, and remained in that neighborhood until World War II. They thenrose to 20% in 1947. By the end of 1960 they had fallen back to 2%*." (Friedman & Schwartz, 1963).

1351 It took awhile and banks assisted. SBs' "*... total number of depositors and nominal balances increased until every year until 1938. This increase was driven by the Midwest…[and] tied to banking safety: 54% of all FDIC-reported bank failures took place between 1934 and 1939 happened in the Midwest…[Meanwhile, in t]he 1930s, banks began to refuse Postal Savings funds, finding the 2.5% interest that they had to pay for postal deposits too costly*" (Sprick Schuster et al., 2019). In 1967, Congress prohibiting the United States Post Office from accepting deposits.

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1352*In the summer and fall of 1933, the Roosevelt administration pushed the view that banks should sell preferred stock to the RFC in order to enable the banks to give 'the credit necessary for the recovery program.' On Oct 23, Roosevelt said that he hoped all banks would take advantage of the RFC capital purchase program to put themselves in a position to aid the recovery. By Sep 1934, the RFC owned stock in one-half of the nation's banks. By the end of the capital purchase program in June 1935, the RFC owned more than 33% of all the outstanding capital in the entire banking system.*" (Phillips, 1995).

1353 On June 7, 1934, *H.R. 5884 corporate reorganization law* was enacted: *"[L]awmakers then added codified large-scale corporate [not just railroad] reorganization for the first time in 1934.*" (Selbst, 2009). And on June 28, 1934, the *S. 3580 farm bankruptcy law* was enacted: "*The Frazier-Lemke [Farm Bankruptcy] Act of 1934 permitted the scaling down of farm debts to a value in line with the appraised value of the farm property."* (Phillips, 1995). According to *Dun and Bradstreet*, the failure rate fell from a 154 high in 1932 to 100 the following year and down to 61 in 1934 — the lowest since 192; however, the Index of American Business Activity reached a low of 77.9 in 1923, a high of 116 in 1932, and crashed after to 55 in 1934 and by 1939 was only at 89.

1354 The inflationary NIRA decreased competition: "*The Roosevelt administration argued that two changes were required to lead the economy out of the Depression: limit competition and raise wages. They believed that limiting competition kept prices at reasonable levels, which in turn led to higher wages, higher household income, and higher consumer spending…[The NIRA of 1933] directed firms and workers in most of the private, non-agricultural economy to negotiate industry 'Codes of Fair Competition' under the guidance of the National Recovery Administration (NRA). These codes defined the operating rules for all firms in that industry. The codes were administered by a code authority, which was often the industry trade association. Code compliance was assessed by the NRA. The codes had two types of provisions: labor provisions and trade practice provisions. The labor provisions required that firms pay higher wages and accept collective bargaining. Codes of fair competition required Presidential approval, and approval was granted only if the codes included industry acceptance of these wage and collective bargaining provisions. In return, the Act suspended antitrust law and firms in each industry were encouraged to adopt trade practices that limited competition and raised prices. The NRA was directed by World War I planner Hugh Johnson. By 1934, NRA codes covered over 500 industries employing over 22 M workers... NRA codes covered nearly 80% of private, non-agricultural employment, and over 50% of total employment.*" (Cole and Ohanian, 2000). NIRA was struck down in 1935 as unconstitutional without increased antitrust controls. There was no need to test the so-called failing firm doctrine of the pre-Depression *International Shoe Co. v. FTC* in 1930 (Low, 1966; Low, 1969).

1355 "*The Crash, thought by some to have been precipitated by the collapse of Krueger and Toll, whose head Ivar Krueger had deceived the public about his companies' financial condition, convinced many observers that inadequate public information was a factor in the volatility of asset markets. It will be recalled that Berle and Means' influential book [of 1932] on the separation of ownership and control in the modern corporation stressed the need for more objective financial information to ensure the efficient functioning of financial markets… Miranti argues that this book had an important influence on the public-policy debate leading ultimately to the creation of the Securities and Exchange Commission… [the 1933 Act] required all companies issuing publicly traded securities to file financial Statements certified by independent public accountants. The Securities Act of 1934 (the Securities Exchange Act) then mandated the filing of annual audited financial Statements for all companies whose investment securities had been previously issued to the public. Reaching agreement between federal authorities and certified public accountants on what constituted acceptable accounting practice would take time, but the SEC legislation provided strong impetus for the development of a uniform standard.*" (Bordo et al., 1999). "*Federal lawmakers took note of the State blue sky laws [post the Panic of 1907]. Congress passed the Securities Act of 1933 to regulate interstate sales of securities at the federal level, and the ['34 Act] to regulate sales of securities in the secondary market and create the [SEC] to enforce federal securities laws. The '33 Act addressed a system of dual regulation. Congress deferred to the State laws, not only by choosing not to duplicate 'merit review' under the jurisdiction of State law, but also by expressly preserving State regulation in the Act… [Additionally,] the Public Utility Holding Act of 1935 [following the collapse of Samuel Insull's highly leveraged utility empire, gave the SEC authority to regulate, license and break up electric holding companies, while limiting holding company operations to a single state, and thus subjecting them to effective state regulation].*" (NASAA, 2011).

1356 "*As in the case of the Grain Futures Act [of 1922], an important objective of the [Commodity Exchange Act (CEA) of 1936] was to discourage forms of speculation that were seen as exacerbating price volatility. In addition, the CEA introduced provisions designed primarily to protect small investors in commodity futures, whose participation had been increasing and was viewed as beneficial. These provisions included requirements for the registration of futures commission merchants (FCMs), that is, futures brokers, and for the segregation of customer funds from FCM funds. The CEA also expanded the coverage of futures regulation to cover contracts for cotton, rice, and certain other specifically enumerated commodities traded on futures exchanges, and prohibited the trading of options on commodities traded on futures exchanges.*" (Greenspan, 1997).

1357 "*A century ago, securities law and corporate reorganization were flip sides of the same coin. When a company sold stock and bonds to the public, an investment bank—usually J.P. Morgan or another of a small handful of dominant banks—underwrote the issuance with the help of its Wall Street lawyers. If the company later defaulted, the same Wall Street investment bank formed a committee to represent the investors who held the bonds or stock it had underwritten. It then negotiated over the terms of a reorganization with the company's managers and with the banks that had underwritten other securities on their behalf. Equity receivership, as corporate reorganization was known then, was simply one facet of corporate and securities law. The legislative reforms of the New Deal drove a sharp wedge between these two previously connected areas of law. The most significant blow was struck by the Chandler Act of 1938, which purposely ended the old equity receivership practice. In addition to displacing a debtor's managers, the Chandler Act prohibited the investment banks and lawyers that had represented a debtor prior to bankruptcy from participating in the bankruptcy case. Within a few years, Wall Street corporate reorganization practice had largely disappeared. The main source of continuity between securities law and bankruptcy practice was the [SEC], which was given a prominent role in corporate reorganization by the Chandler Act.*" (Skeel, 2019).

1358 *"After the 1932 hearings, a group of bankruptcy lawyers, academics, and judges banded together to form the National Bankruptcy Conference for the purpose of 'perfecting' the bankruptcy laws. By 1935, the conference persuaded Representative Chandler to join the effort, and for the next several years*

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they developed legislation that became known as the Chandler bill. At the end of 1936, … [future-Supreme Court Justice] Douglas and the [SEC]… urging Chandler and the National Bankruptcy Conference to replace the Chandler bill recommendations that dealt with large corporate reorganizations with a far more dramatic overhaul. Although many members of conference protested, and several criticized the SEC reforms in the legislative hearings that followed, the conference lent its formal support to the SEC's reorganization proposals in return for the SEC's support for the rest of the legislation." (Skeel, 2014). "*The large number of business failures led to a congressional determination that the principles developed in the railroad receiverships should apply to a broader spectrum of distressed businesses. At the same time, concern mounted that the protective committees and their advisors were favoring management and influential insiders at the expense of unrepresented creditors and shareholders. Congress asked the SEC to develop a comprehensive legislative response and the result was the Chandler Act of 1938. The Chandler Act had two chapters relevant to business reorganizations—Chapter X, which dealt with public company cases, and Chapter XI, which was intended to deal with smaller business cases. In Chapter X, a trustee was mandatory and the SEC had a major role. These changes were designed to reduce the power of the protective committees and their lawyers and investment bankers. Notably, Chapter XI also formalized the role of creditors committees.*" (Selbst, 2009). "*Chapter X, the successor of the equity receivership, created additional procedural protections. A Chapter X petition could be filed either by the creditors or by the debtors. If the judge approved the petition, he or she would appoint a trustee, who was supposed to operate the debtor's business. The trustee and the creditors could propose plans, but they had to meet elaborate requirements for disclosure of information concerning the relationships of the parties… Thanks to some aggressive interpretation by the Supreme Court, the absolute priority rule prevailed. [Cons. Rock Prods. Co. v. Du Bois (1941); Case v. Los Angeles Lumber Prod. (1939)] The judge was required to dismiss Chapter X petitions if adequate relief existed under Chapter XI. The SEC had the duty to evaluate the plan and in practice had an important role in the proceedings*." (Posner, 1997). "*In corporate bankruptcy the New Deal injected sweeping governmental controls into a regime that had previously relied on contract and private negotiations, and the reformers ushered the Wall Street banks and bar out of large-scale reorganization… the managers of troubled firms had an enormous disincentive to file for Chapter X under the Chandler Act, since the bankruptcy petition… required that the managers of the firm be replaced by an independent trustee, which gave managers an incentive to avoid Chapter X at all costs… Firms that could avoid Chapter X did precisely that, either by filing for Chapter XI or by struggling to stay out of bankruptcy. This, together with the fact that the depression had already winnowed out many firms, caused the number of Chapter X filings to plummet… In 1939, there were 577 Chapter X cases; in the next 5 years, the number would drop to less than 100 per year and remain there in most years. The dearth of Chapter X cases and the elimination the Wall Street reorganization bar made bankruptcy an obvious place to cut, and cut the SEC did—even after the SEC's budget began to increase again… the Chandler Act of 1938 devastated the Wall Street reorganization bar. Within a few years, firms like Cravath, Swaine & Moore and the predecessor of today's Davis, Polk & Wardwell had disappeared from the bankruptcy courts… By ushering Wall Street out of corporate reorganization, the Chandler Act severed the ties between bankruptcy and finance. Even in the best of times, at least some large firms still encountered financial distress and might have benefited from a thoroughgoing reorganization process. But troubled firms no longer viewed bankruptcy as part of the ordinary arsenal of weapons for solving corporate problems, and the managers of these firms had good reason to file for bankruptcy (and face immediate displacement in Chapter X) only as an absolute last resort… Although concerns about the general bankruptcy bar had inspired the sweeping investigations that first put bankruptcy on the legislative agenda in the 1930s, the general bar emerged from the era largely unscathed… the general bankruptcy bar filled the void, in large part through a remarkable manipulation of the chapter for small corporations, Chapter XI; but the process was fraught with uncertainty, and the bar yearned for a more flexible approach. In the words of one prominent bankruptcy lawyer, the SEC's authority to insist that cases be transferred to Chapter X hung 'like the sword of Damocles' over the proceedings… Yet in a decade filled with bankruptcy hearings and bankruptcy reforms, there was almost no mention of exemptions... even in an era of federal ascendancy over the States, everyone assumed that proposing to federalize exemptions was politically untenable."* (Skeel, 2003).

1359 "*The legal effect of the dealings between stockbrokers and their customers is based, in part, upon custom. It may, however, be controlled by special agreements, and in the great majority of cases brokers on the regular exchanges, who purchase securities for customers on margin, collateral, or partial payment, now require the customers to sign agreements permitting the broker to rehypothecate the securities for any purpose, in miscellaneous loans, and for any amount. In bankruptcy cases, the federal courts, in determining the construction and validity of contracts for the purchase and sale of securities, follow the local law… Much of the confusion in the cases which deal with the position in bankruptcy of various classes of customers of stockbrokerage houses can be traced to... the rights and obligations of customers in these cases are essentially relative, whereas the courts, being called upon to deal only with certain isolated facts, have laid down the rules applicable to those specific facts in too absolute language. As Judge Rose said in [In re Archer, Harvey & Co., 289 Fed. 267, 268 (1923)]: 'Perhaps, however, the chief cause of the apparent logical inconsistencies in the utterances of the appellate courts is that they have been compelled to deal with this class of cases in piece meal fashion. The record as it came to them seldom justified and never required them to go into the accounting problems essential to a full adjustment of the conflicting rights and equities of all the parties concerned. They dealt with the particular issues raised by those before them, and in giving the reasons for such decisions as they might make, they usually were not thinking about anything else, and were therefore not careful to guard what they said against the possibility of misunderstandings when there was occasion to apply what appeared to be its logic to a different state of facts.*" (Oppenheimer, 1924). After the 1938 Chandler Act, "§ *60(e) of the amended Bankruptcy Law is designed to effect a uniform administration of the estates of bankrupt stockbrokers in accordance with Congressional notions of what constitutes a fair distribution of the assets remaining after the debacle, rather than through the formerly prevailing system built upon the concept of legal title to the securities in question with the aid of certain 'equitable' presumptions.*" (Columbia Law Review, 1939).

1360 *"[T]the Trust Indenture Act of 1939 [public bondholders represented as group by independent trustee; regulates use of collateral in borrowings], the Investment Co Act of 1940 [regulates mutual fund companies; requires material disclosures] and the Investment Advisors Act of 1940 [registration; anti-fraud provisions].*" (NASAA, 2011).

1361 "*For three quarters of a century, the decision of the Supreme Court in* Paul v. Virginia *had stood unchallenged: writing a contract of insurance was not 'commerce' under the Constitution, the Court relying strongly on a decision of Justice McLean which had excluded transactions in money from the conception of 'commerce'... [that case being* Nathan v. Louisiana*, (1850), which noted:] 'The individual who uses his money and credit in buying and*

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selling bills of exchange... is not engaged in commerce, but in supplying an instrument of commerce.' Moreover, Federal banking law derived its authority from powers considered to have been delegated to the Congress for general fiscal and currency purposes an authority declared to exist in the famous decision of McCullough v. Maryland. Banking being considered 'a convenient and useful and an essential instrument in the prosecuting of its [the Government's] fiscal operations', Chief Justice Marshall spelled out power to establish banks and banking corporations as being 'laws which shall be necessary and proper to carry into execution' the powers of the government', though it is hardly likely that Marshall would have excluded transactions in money, generically, from 'commerce'. A generation later, in passing upon a section of the [NBA] of 1864, Justice Swayne observed that the constitutionality of that Act was not questioned, basing his decision on McCullough v. Maryland, and on Osborne v. [SBUS] which upheld the constitutional existence of [SBUS], its right to sue in the courts, and its immunity from state taxation. The effect of these decisions was to establish control of banking as a power necessary to the Government of the United States. Taking this together with Paul v. Virginia, lawyers, not unnaturally, tended to consider banking as a field apart; separately dealt with; not to be considered 'commerce' in the strict sense of the word; in part a government operation, and outside the scope of the Sherman Act. This illusion was rudely shaken by the Supreme Court in the South-Eastern Underwriters case (1944)… The business of writing insurance was flatly declared to be 'commerce'" (Berle, 1949).

1362 "*During the Depression, bankruptcy filings peaked in the early 1930s at approximately just under 60 per 100,000 population. Beginning with the entry of the United States into World War II and the subsequent post-War boom, filing numbers plunged, bottoming out to less than 10 per 100,000 filings by 1945. Following the return home after the War and the mild post-War recession, consumer bankruptcies began a brief rise before leveling out at around 20 per 100,000 per year in the late 1940s. During this entire period, however, annual filings never exceeded 70,000 total, as compared to more than 1.5 M filings in 2004 (or over 500 per 100,000 population). Indeed, it was not until 1955 that consumer bankruptcy filings eclipsed the record set in 1931 at the height of the Great Depression.*" (Zywicki, 2005). "*On June 23, 1959…. the President signed Public Law 86-49 (H. R. 4345), which amended various sections of the Bankruptcy Act to provide for an automatic adjudication and reference in involuntary, as well as voluntary, cases. An interesting procedural development, which has arisen as a direct consequence of this amendment, is commented on at a later part of this report… Prior to June, 1959, where a voluntary petition in bankruptcy was filed, this resulted in an immediate adjudication and the judge made a prompt reference of the proceedings to a referee in bankruptcy. Concomitantly, where an involuntary petition was filed, jurisdiction was reserved by the judge over the proceeding until the question of adjudication was determined. In the case of a contested adjudication (i.e., where the alleged bankrupt resisted adjudication (i.e., where the alleged bankrupt resisted adjudication) bankrupt was entitled to a jury trial on the questions of (a) insolvency and (b) act oí bankruptcy.6 By Public Law 86-64, approved June 23, 1959, §18 of the act was amended to provide for an automatic reference by the clerk in involuntary, as well as voluntary, cases. Upon the enactment of this law there was speculation as to how the right to a jury trial could be preserved where the clerk made an immediate reference to the Referee in an involuntary case and the alleged bankrupt contested the petition and demanded a jury trial. Such a situation arose before Referee William Lipkin, of Camden, New Jersey. Referee Lipkin had the deputy clerk use the same panel of jurors used by the District Court. A deputy marshal was in attendance and two other deputy marshals were sworn as bailiffs to take charge of the jury while it was in the jury room. In this particular case the jury returned a verdict against the petitioning creditors and found the alleged bankrupt not a bankrupt. This seemingly innocuous proceeding may well set a precedent as to the future conduct of jury trials before referees in bankruptcy.*" (Krause, 1960).

1363 Before 1950, the FDIC resolved insolvent institutions in two ways: 1) closure, with liquidation of assets and payouts for insured depositors; or 2) purchase and assumption (P&A), encouraging the acquisition of assets and assumption of liabilities by another firm. "*During the 1930s and 1940s, the P&A was employed more often because it frequently proved more cost effective. Over time, however, the political attractiveness of the P&A led to its exclusive use in resolving failures, whether or not it was the most cost-effective policy. By 1950, de facto, previous FDIC policy was reversed; a purchase and assumption was to be transacted unless it was impossible to find a buyer due to prohibitive branching or holding company laws, or if contingent liabilities or fraud were extensive enough to render the cost-test inaccurate. The almost exclusive use of P&As in failure resolution, irrespective of cost or market discipline considerations, prompted a revision of policy in the 1950.*" (Caliguire and Thomson, 1987). In 1950, the statutory provisions creating the FDIC codified as § 12B of the *Banking Act of 1933* was withdrawn and reconstituted in FDIA in §11 of the FDIA: "*For the purpose of determining the net amount due to any depositor…, the [FDIC] shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other person*." FDIA created a third resolution option: providing assistance through loans or direct federal acquisition of assets, until the institution recovered: "*The cost test was named explicitly as the primary criterion for determining FDIC action in individual bank failures. Congress felt that such a restatement of purpose was a necessary reminder... Under [FDIA], the FDIC obtained authority to intervene prior to a bank's failure in order to 1) facilitate the merger of a failing bank or 2) prevent failure of a bank that is deemed 'essential.' Up to this time, capital assistance to open banks to prevent failure, had been the job of the [RFC]*." (Caliguire and Thomson, 1987). A 1951 amendment created the '*Essentiality Doctrine*,' which allowed the FDIC to provide support to a bank to keep it open "*when in the opinion of the [FDIC] Board of Directors the continued operation of such bank is essential to provide adequate banking service in the community*" and so gave the FDIC authority to bail out banks. FDIA revised and consolidated earlier FDIC legislation into one act and embodied the basic authority for the FDIC's operations. "*Under the FDIA, the FDIC, acting as receiver or conservator, succeeds to the rights of the institution and proceeds to marshal its assets. Shareholders and managers cease to have operational control of the bank. As receiver, the FDIC can liquidate the institution, organize a new bank or a temporary bridge bank, take over some or all of the assets and liabilities of the failed institution, or arrange a merger or purchase of assets and assumption of liabilities.*" (Lubben, 2011).

1364 "*Concern for the preservation of competition in banking was demonstrated in 1956 by the enactment of the Bank Holding Co Act… The House simply included banks in the 1950 Celler-Kefauver Act's ban on asset acquisitions, the effect of which 'may be substantially to lessen competition or to tend to create a monopoly.' This antitrust test contrasted with a Senate amendment to the [FDIA] passed several months later which proposed a public utility type of test: the federal agencies were to consider whether the effect of a bank merger 'may be to lessen competition unduly or to tend unduly to create a*

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monopoly,'… [The FDIC] said that banking agencies ought not to be bound by precedents established in unregulated industries not comparable to banking. Merger transactions duly consummated pursuant to the authority of the [ICC, FCC, and FPC] are excluded from the scope of the Clayton Act. Analogous treatment should be extended to banking… The 'unduly' test was intended to permit mergers in the public interest which might substantially lessen competition. To illustrate, Senator Fulbright cited 5 situations where bank mergers would serve the national welfare despite the fact that competition might be substantially lessened… The FDIC also feared that the adoption of the Clayton test would seriously hamper its rescue operations: the conditions under which the International Shoe [1930] precedent permitted failing firms to merge were too restrictive. The agency considered action desirable when a bank is merely heading towards insolvency rather than on the brink of disaster... [The FDIC] pointed to the 1955 assumption of the deposits of the Frontier Trust Co, the larger of the two banks in Fort Fairfield, Maine, by the Northern National Bank of Presque Isle as an example, recognized by the Department of Justice itself, of an action not permitted by the International Shoe doctrine." (Klebaner, 1962).

1365 "I*n 1956, an attempt was made to standardize certain aspects of State securities regulation. In addition to 'bringing consistency' to State blue sky law, the Uniform Securities Act of 1956 (USA) sought to integrate the State securities system as much as possible with federal securities laws*." (NASAA, 2011).

1366 Strict antitrust laws blocked horizontal M&A as anti-competitive, while the bankruptcy process drove the conglomerate M&A strategy to diversify into unrelated businesses for growth. In the 1960s, mergers could be accounted for as a 'pooling' rather than as a purchase, which caused a misleading growth trend and artificially stimulated merger activity, encouraged corporations to issue excessive debt or preferred stock securities, misled investors; 82% of NYSE listing applications 1960-8 involved pooling (Rayburn and Powers, 1991). The demand for these mergers came from over 100 new aggressive growth funds established in the 1960s; these '*Go-Go Funds*' with 'gunslinger' fund managers bought high-beta 'glamour' growth stocks; they outperformed (344%) the S&P 500 (98%) over 1963-8, over which period assets increased from $0.2 to $3.4 B (Bogle, 2008). In 1969, SEC Chairman Brudege raised concerns about 1968 merger pace being 12x that of 1950, 3x the 1960 level: "W*e have felt that improvements are needed in accounting practices... to provide more meaningful information for investors and the securities markets.*"(cited in Rayburn and Powers, 1991).

1367 "*In the 1950s a tremendous resurgence in mergers resulted in further banking concentration. This consolidation… brought into conflict the two opposing philosophies… [about] whether the antitrust laws should be applicable to bank mergers. One side felt, in the words of the Attorney General, that 'because of the central role of banks in relation to other businesses, the traditional antitrust goal of prevention of undue concentration is as important in banking as in any other field!' The other side countered with the argument that 'to permit unregulated and unrestricted competition to become the business philosophy of banking could only have dire consequences for the general public which prefers a stable financial structure' and that increased concentration results in stronger institutions and 'therefore serves as a safeguard against failure.' For 5 years bills that sought to check banking concentration were introduced. Finally, in 1960, the Bank Merger Act was passed. This act can be viewed as something of a compromise between the 2 philosophies since it recognized the unique nature of banking and also… the need for competition.*" (Kintner and Hansen, 1972).

1368 "*Recent years have witnessed significant changes in federal policy with respect to bank mergers and bank holding companies. Of most importance is the shift from the view that banks were largely immune from action under the antitrust laws to the holding of the Supreme Court that the merger provisions of the Clayton Act [United States v. Philadelphia Natl Bank, (1963)] as well as the monopolization and restraint of trade standards of the Sherman Act [United States v. First Natl Bank & Trust Co., (1964)] are applicable to banks.*" (Phillips, 1967).

1369 COTC Saxon stated "*The decision [to close a bank] is made in our office after consultation with the examiner, the regional comptroller, the deputy comptrollers and myself, and all the many people involved in such a determination, as to how liquid it is, can it meet its liabilities? In the case of the San Francisco National Bank, except for an additional advance of [$1.5 M] by the Federal Reserve Bank in San Francisco late on Fri, the bank would have opened up Mon with a $100,000 deficiency in its cash position. Right up until that point, we were hoping that there was a chance for improvement to save the institution, and by saving it a lot of people who otherwise would have been hurt would have been protected. We get to the question of when, which is a very, very difficult value judgment. There is also, finally, the question of whether conservatorship rather than receivership should have been employed in this case. This was also the question in Brighton. We do not have in the banking business the flexibility of tools available to the nonbanking business, such as chapters 10 and 11 of the bankruptcy act which afford a process for composition and adjust ment. We have either receivership or conservatorship. The only vehicle which offers a realistic possibility of composition is the conservatorship… That is provided by law, a vehicle whereby the COTC may declare a bank in conservatorship. A man is appointed by the OCC as conservator and it is his responsibility to conserve the assets until a determination is made as to the extent of the losses, the difficulties in volved, and whether or not it is possible to reconstitute. We have used that twice since I have been there and successfully.*" (GPO, 1965). "*The years since 1965 have seen failures among banks considerably larger than those that failed in the first 30 years of the FDIC's existence. [In 1965, the largest bank failure had deposits of $40 M — the most since 1940.]*" (Horvitz, 1975). "*It did not reflect well on the OCC when a new national bank, like San Francisco National, got itself into trouble. Under pressure from its regulators, the Board of Directors voted to limit Silverthorne's lending authority and then to remove him from the bank altogether. Silverthorne would later go to prison for his crimes. But it was too late for the bank, which failed in Jan 1965, joining 4 others that went under that year. For a nation still scarred by the Great Depression, those numbers, while modest by today's standards, brought back haunting memories. It was certainly an embarrassment to Saxon to be called before a Senate subcommittee, as he was in March 1965, to justify his liberal chartering policies generally and the OCC's supervision of San Francisco National specifically.*"(OCC).

1370 "*The two main topics in discussions of economic stabilization policy in 1966 were as follows: (1) the sharply rising level of Government spending for the Vietnam war, and (2) the emergence of inflation… In the summer of 1966 a policy of monetary restraint led to conditions popularly called the Credit Crunch of 1966. The most publicized features of this period were (1) the development in Aug of an alleged near liquidity crisis in the bond markets and (2) a record decrease in savings inflows into nonbank financial intermediaries and the resulting reduced rate of residential construction… In 1966, for the first time, commercial banks experienced a period when the Federal Reserve actively used Regulation Q ceiling rates on time deposits as a means to restrict the banks' ability to extend credit. Since that time commercial banks have actively sought new methods, such as Eurodollar borrowings, to obviate the*

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constraint of Q ceilings." (Burger, 1969). *"[T]he 'credit crunch' of 1966... the [Fed's] stated intent was... to prevent outward shifts in aggregate demand that it believed would otherwise have occurred. In Dec 1965... the System raised the discount rate and acted to increase other interest rates in response to evidence that 'economic activity was increasing vigorously and that the outlook appeared more expansive than previously,' not out of a desire to induce a contraction. The perception of the economy's strength was based not just on current data but also on projections of growing military expenditures because of the Vietnam War and survey evidence that consumers and firms were planning to increase their spending. The [Fed] Stated explicitly that the purpose of the shift in policy 'was not to cut back the pace of credit flows but to dampen mounting demands on banks for still further credit extensions'. The same pattern continued through Aug 1966. In Feb, the Committee's perception was that 'business activity continued to advance vigorously-and the outlook was becoming increasingly expansive… recent and prospective economic developments clearly called for added policy measures to dampen the rise in aggregate demands'. In Aug, 'the economic outlook remained expansive, and prospects were for continuing high levels of resource use and strong upward pressures on wages and prices.' Military, investment, and consumption spending were all viewed as contributing to the expansion... From mid-1967 to late 1968, the [Fed] gradually tried to adopt tighter policies as it became clear that the 'mini recession' of 1966-67 would not turn into a full-fledged downturn and as growth became stronger... But at roughly the end of 1968 there appears to have been a change in the goals of policy: the [Fed] began to feel that it should act to reduce inflation. There were frequent references to 'the prevailing inflationary psychology,' to the fact that 'inflationary expectations remained widespread,' to 'expectations of continuing inflation,' and so on. Concern about inflation caused the Federal Reserve to attempt to maintain tight monetary policy despite evidence of considerably weaker real growth." (Romer and Romer, 1989).*

1371 "*The years since 1965 have seen failures among banks considerably larger than those that failed in the first 30 years of the FDIC's existence. [In 1965, the largest bank failure had deposits of $40 M — the most since 1940.] The Public Bank of Detroit ($93 M in deposits) failed in 1966... This change in bank failure experience is reflective of trends in the banking system since the early 1960s. Many banks, and particularly the larger banks, abandoned their traditional conservatism and began to strive for more rapid growth in assets, deposits, and income. Large banks have been striving for growth as never before and pressing at the boundaries of allowable activities for banks. This development accelerated during the tenure of [COTC Saxon], when national banks were expanding their activities into fields which some felt involved more than the traditional degree of risk for commercial banks. These included such activities as direct lease financing, underwriting of revenue bonds, foreign operations, and others. These are but examples of the general trend toward increased aggressiveness and increased willingness to bear risk on the part of the banking system in general and large banks in particular… [B]ank financial ratios which have traditionally been viewed as measures of risk [deteriorated: Loans-to-Deposits and Total Capital-to-Assets increased while Cash and U.S. Govt Obligations-to-Assets fell]... Some of the explanation for the change in failure experience also lies in the general economic climate in which banks have operated. Rapid inflation, high interest rates, and high variability in the rate of growth of the money supply are difficult conditions in which to run a bank.*" (Horvitz, 1975).

1372 The *Financial Institutions Supervisory Act of 1966* expanded bank enforcement powers of the Federal banking agencies, permitting regulators to bring cease and desist orders against banks engaged in unsafe and unsound banking practices or other violations of law. Granted the Federal banking agencies authority to remove bank officers and directors for breach of fiduciary duty.

1373 "*[T]he more rigid rules of Chapter X discouraged businesses from using it, and by the 1960s, most reorganization cases were being filed as Chapter XI cases, which became a source of controversy.*" (Selbst, 2009). "*Chapter X and XI proceedings evolved in ways not foreseen by the drafters… [T]he drafters intended Chapter XI for close corporations and Chapter X for public corporations, they did not put rules reflecting these intentions in the statute… [Chapter XI] was intended to be used by small, closely held firms. It applied to cases in which all the debt is unsecured; the plan could not affect secured debt. The debtor alone had the power to commence proceedings in Chapter XI... Judicial approval of the petition was not necessary. Creditors were supposed to be represented by a creditors' committee, but the latter was often dominated by the more powerful creditors. The plan did not have to satisfy the absolute priority rule; it could be confirmed as long as creditors would receive no less under the plan than they would receive from liquidation... Debtors of both kinds preferred Chapter XI, and helped along by a controversial Supreme Court case [General Stores Corp. v. Shlensky (1956)], usually succeeded in reorganizing under Chapter XI, despite the SEC's time-consuming efforts to convert to Chapter X [The SEC had no role in Chapter XI]. The benign interpretation of this development is that Chapter XI proved to be more flexible than Chapter X; the skeptical interpretation... is that Chapter XI gave certain powerful interests — managers, managers' lawyers, large creditors — advantages during reorganization... The SEC routinely exercised its right to intervene and be heard on Chapter X matters, participated in meetings and conferences, challenged the qualifications of trustees, attacked the representation of interests on creditors' committees, scrutinized the trustee's administration of the estate, challenged attempts to sell the debtor's property, opposed plans of reorganization that did not adhere to the absolute priority rule, and criticized compensation arrangements. These interventions were time consuming, and they were considered a nuisance by those who sought to push through a reorganization plan. But they may also have protected bondholders and equity holders who did not have a large enough stake to participate in the reorganization. The main disadvantage of Chapter XI — that debtors could not modify the rights of secured creditors — was overcome through common law development. A stay would prevent secured creditors from repossessing collateral until the debtor had negotiated a plan with the unsecured creditors, after which the debtor could pay off the secured creditor. The debtor did not have to compensate the secured creditor for the lost opportunity to use the collateral and so had leverage with which to extract concessions from the secured creditor.*" (Posner, 1997). "*Generally speaking, Chapter X was designed for firms with public debt or equity, while Chapter XI governed the reorganization of private companies. Chapter X required the appointment of a trustee to manage the bankrupt firm and assigned to the [SEC] a significant oversight role to ensure the fairness of the reorganization plan. Chapter XI left incumbent management in charge of the bankrupt company and contemplated no such role for the SEC.*" (Bradley and Rosenzweig, 1992).

1374 "*I am concerned only with two rather remarkable —even audacious— provisions of Article 2 of the Uniform Commercial Code designed to obtain for unsecured buyers and sellers of goods better treatment in the bankruptcy proceedings of their opposite numbers than other unsecured creditors will receive… I have attempted to demonstrate that, in § 2-502 and § 2-702 of the Code, the draftsmen have taken unwarranted liberties with the provisions and policies of the Bankruptcy Act. I have earlier made a similar criticism of certain provisions of Article 9 of the Code. The earlier effort has provoked from one of*

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the Code's proponents the observation that I apparently view Article 9 as 'the work of the devil' and from another that I have insulted the memory of Karl Llewellyn. While I consider both of these observations inaccurate, I do believe the draftsmen tended too much to regard the people with whose problems they were concerned as constituents who were entitled to the full measure of the draftsmen's considerable talents to forge protection against the vicissitudes of bankruptcy-even where that meant protecting one constituent from the bankruptcy of another. Perhaps if the Code had included additional Articles dealing with the rights of unsecured creditors other than unsecured buyers and sellers of goods and with the rights of debtors, all of the usual cast of characters in a bankruptcy proceeding would have received even-handed treatment under the Code… §2-402(1) provides that rights of 'unsecured creditors of the seller with respect to goods' are subject to the buyer's rights, but the term 'unsecured creditor' is not defined in Article 2 or elsewhere. The term may be intended only to exclude a creditor secured by a contractual security interest, who is a 'purchaser' throughout the Code' and a 'secured party' under Article 9. Or the term may be taken to exclude levying creditors also." (Countryman, 1976)

1375 After the 1938 Chandler Act, "*§60(e) of the amended Bankruptcy Law is designed to effect a uniform administration of the estates of bankrupt stockbrokers in accordance with Congressional notions of what constitutes a fair distribution of the assets remaining after the debacle, rather than through the formerly prevailing system built upon the concept of legal title to the securities in question with the aid of certain 'equitable' presumptions.*" (Columbia Law Review, 1939). "*§60e was specifically added to standardize the liquidation rules applicable to the bankrupt stockbroker's assets and to improve the position of margin customers. Under the then-prevailing 'New York rule,' the margin customer was thought of as the owner of stock in the broker's possession [Richardson v. Shaw, 209 U.S. 365 (1908)]… In effect, the 'New York rule'-premised on ownership-was rejected, at least with respect to margin customers, and the so-called 'Massachusetts rule,' which treated the relationship between stockbroker and customer as that of debtor and creditor, was adopted instead. Equality of distribution among margin customers pervades both the history and the ultimate form of § 60e.*" (Black, 1969).

1376 "*Formal proceedings under the Federal Bankruptcy Act have not been instituted in the 10 other liquidations involving Big Board member firms in the fast year or so, mainly because the exchange has appointed its own liquidators in most of these cases and has offered protection from its Special Trust Fund, which was established because of the Haupt collapse 7 years ago.*" (NYTimes, 1970). "*Of the 17 firms which attracted widespread public attention because of their severe financial difficulties, 10 went into liquidation under the supervision and control [NYSE]-appointed liquidators (including 1 in 1968 and 2 in late 1969); 3 went into liquidation under their own direction but with financial assistance from [NYSE]; 2 went into liquidation without need for [NYSE] financial assistance; and 2 averted liquidation through [NYSE]-supported intervention by third parties with the assistance of conditionally pledged [NYSE] funds (1 in 1971)... The principal instrument of [NYSE's] voluntary financial assistance to the customers of member firms in liquidation has been the Special Trust Fund originally established by [NYSE] in 1964, following the liquidation of Ira Haupt & Co. The Special Trust Fund program reached its initial goal of $10 M, supplemented by $15 M in standby credit, in 1965. The Fund was augmented by an [NYSE] contribution of $5 M at the end of 1969, at which time the standby credit was reduced to $10 M.*" (Congress, 1971).

1377 "*Monetary policy again shifted toward restraint in late 1968, and this restraint intensified in 1969. Interest rates rose sharply and exceeded Regulation Q rate ceilings on large CD's throughout the year and into 1970. As a result, the banks experienced a massive CD outflow. From the peak of $24 B on Dec 4, 1968, large CD's at weekly reporting banks fell steadily to a low of $10.3 B on Feb 4, 1970, a decline of $14 B in little more than a year. With loan demand still strong, the banks sought funds through other channels in an effort to meet customer needs… No doubt Regulation Q ceiling rates on large CD's—which were below open market rates in the latter part of 1966, the first half of 1968, and from the spring of 1969 to mid-1970... played an important role in inducing corporate treasurers to shift into commercial paper and away from CD's. In other words, the inability of commercial banks to compete for corporate and other funds for protracted periods in the late 1960's facilitated the rapid growth of the commercial paper market.*" (Schadrack and Breimyer, 1970).

1378 The *Williams Act of 1968* amended the *1934 Banking Ac*t to require reporting in tender offers; it was designed to limit abusive takeover tactics through disclosures. The *1969 Tax Reform* brought an end to accounting practices artificially inflating earnings. The SEC required management's discussion and analysis (1968) and adopted segment reporting for all new companies (1969) and soon all companies. The 1970 reforms to *Investment Co Act of 1940* regulated sales charges and withdrawal penalties. While the Accounting Principles Board failed to issue a decisive standard on pooling of interests (1970), academic advances by Sharpe (1966) and others led to greater attention to market risk.

1379 "*The paperwork logjam which currently cripples securities market transactions will be eliminated on [NYSE] with the advent of [CCS]. Because the new system will, for the most part, replace the physical transfer of securities with automated bookkeeping entries, its implementation has occasioned revision of existing rules governing the custody and transfer of securities. Still to be amended, however, is §60e of [BA98], which conditions the right of a cash customer to reclaim his fully-paid securities, in the event of a stockbrokerage bankruptcy, upon physical identification of his property*" (Black, 1969).

1380 "*As we understand it, these hearings will deal with the background of the problems faced by broker/dealers during the 1967 to 1970 period. These 4 years comprised one of the most difficult periods in the history of the securities industry. It was characterized by a crushing burden of paperwork followed by a severe cost-income squeeze that brought financial disaster to many brokerage firms… During this period [NYSE] intervened directly in the affairs of nearly 200 member organizations — more than half the total number of firms dealing with the public. The most important result of this intervention was that the cash and securities of the customers of these firms were saved from loss that might well have been incurred. During the 2-year period — 1969 and 1970 — a total of 129 member organizations went out of business, merged or were otherwise acquired by other firms… Of the 17 firms which attracted widespread public attention because of their severe financial difficulties, 10 went into liquidation under the supervision and control [NYSE]-appointed liquidators (including 1 in 1968 and 2 in late 1969); 3 went into liquidation under their own direction but with financial assistance from [NYSE]; 2 went into liquidation without need for [NYSE] financial assistance; and 2 averted liquidation through [NYSE]-supported intervention by third parties with the assistance of conditionally pledged [NYSE] funds (1 in 1971).*" (Congress, 1971)

1381 "*Reclamation of securities held in bulk segregation systems seems no more useful as a means of distributing assets than does recovery of individual cash balances from brokers' accounts. Specific identification in either instance is both difficult and irrational as a basis for establishing priorities of distribution.*

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Practices vary, but generally the broker's stock records are the only means of identifying an individual customer's interest in the mass. Although NYSE counsel has stated that securities segregated in this manner are sufficiently identified by allocation in the records to subject them to reclamation under 60e(4) ownership of physically identifiable shares appears too tenuous a theory to support such claims. Underlining this doubt, the SEC's Special Study recommended amending 60e to make reclamation from bulk segregation explicitly permissible… Section 60e fails to define adequately the circumstances under which free credit balance cash can be reclaimed. Cash is theoretically subject to reclamation because it is expressly included in the 60e(1) definition of reclaimable property. However, the specified identification requirements of 60e(4) are virtually impossible to satisfy with respect to cash claims because there are no NYSE rules requiring segregation of free credit balances. Since such cash is usually commingled with other funds in the brokers' operating accounts, the right of reclamation is largely illusory. Moreover, free credit balances will be outside the CCS system, so no change is impending" (Black, 1969)."

1382 "*The public was unaware of the magnitude of the cash drain. This cash drain was particularly important information about the condition of the company and the direction in which it was headed. The drain cut through the optimistic statements and the inflated earnings because it was a reality which could not be denied even by management. The cash drain also indicated at a very early date that Penn Central was a likely prospect for bankruptcy. Penn Central's ability to borrow was very limited despite its huge corporate size. It could not raise money through long-term debt because most of its property was already encumbered by debt and Penn Central's poor earnings would assure poor reception for long-term debt in the financial markets. Penn Central could meet its cash drain only by short-term borrowing or by a liquidation of assets and these two courses were restricted in their own right. There were few assets that could be liquidated. The real estate holdings in [NYC], formerly owned by the Now York Central, were heavily mortgaged and would not produce much cash upon sale. The other likely area for salable assets would be the Pennsylvania company, but many of these assets were pledged, and some, like Great Southwest Corp. and Macco Corp., were not what they appeared to be on the surface. Faced with these problems and the poor image that would be created by trying to liquidate, Penn Central decided to use some of these assets indirectly by pledging them as collateral for short-term loans. The short-term borrowing had severe limitations, however. The money market was tight and interest rates were high even for a large 'blue chip' such as Penn Central. Then, too, the pledging of assets in connection with borrowings such as the revolving credit, quickly narrowed any future possibility for financing while the use of unsecured financing such as the commercial paper put out by the Transportation Co. exposed the railroad to an immediate runoff if adverse information about the company became public. Penn Central very quickly painted itself into a corner from which there was no escape short of a very dramatic and immediate reversal in the direction of the railroad earnings.*" (SEC, 1972).

1383 "*In 1970, the Penn Central Transportation Co, the 5th-largest nonfinancial corporation in the U.S., filed for bankruptcy with $200 M in commercial paper outstanding. The railroad's default caused investors to worry about the broader commercial paper market; holders of that paper—the lenders—refused to roll over their loans to other corporate borrowers. The commercial paper market virtually shut down. In response, the Federal Reserve supported the commercial banks with almost $600 M in emergency loans and with interest rate cuts. The Fed's actions enabled the banks, in turn, to lend to corporations so that they could pay off their commercial paper. After the Penn Central crisis, the issuers of commercial paper—the borrowers—typically set up standby lines of credit with major banks to enable them to pay off their debts should there be another shock. These moves reassured investors that commercial paper was a safe investment.*"(FCIC, 2011). "*I argue that there is little current role for the discount window to protect against bank panics. The main role of the discount window is in defusing disruptive liquidity crises that occur in particular nonbank financial markets. I discuss evidence from the Penn Central crisis of 1970, which seems consistent with that view… As Penn Central's cash flow declined, its debt holders and their agents appealed to the federal government for financial assistance, which the Nixon Administration supported. The Administration proposed a $200 M loan guarantee to a syndicate of some 70 banks, which was to provide a loan in that amount… Contrary to the Wall Street Journal report, no such memorandum existed, and that same Fri the Penn Central plan was rejected by Congress. The Nixon Administration then asked the Federal Reserve Board (through the New York Fed) to make a loan to Penn Central to help it meet immediate obligations. The New York Fed recommended against the loan, and it was denied. This news forced Penn Central's bankruptcy on Sun, June 21…. which was associated with substantial contraction of outstanding paper (that is, a 'run').*" (Calomiris, 1994). "*When Penn Central went into bankruptcy in mid-1970, American corporations had some $40 B of commercial paper outstanding. You will remember that the shock waves set off by the $80 M loss in Penn Central paper placed enormous strain on our banking system as more than $2 B in bank money went to help corporations payoff maturing commercial paper. Only strong and prompt action by the Federal Reserve Board prevented what could have been a liquidity crisis disastrous to the health of the entire economy*." (SEC, 1972). "*One clear example of an exogenous shock coming from a financial disturbance is the commercial paper crisis of June 1970 (the Penn Central Crisis). While the collapse of Penn Central was the result of fundamental insolvency rather than a financial shock, the reverberations of its failure constituted a financial shock for other commercial paper issuers. The crisis is described in detail in Calomiris (1994). In June 1970, Penn Central, a large railroad firm with significant real estate holdings, declared bankruptcy and defaulted on its outstanding debts, including a substantial amount of commercial paper. The surprising, unprecedented failure of so prominent an issuer as Penn Central sent shock waves through the commercial paper market, and set the stage for a reevaluation of the requirements for access to this market, the method for rating issuers, and the 'backup' arrangements (from banks) that were necessary for commercial paper programs. The immediate effect of the crisis was the refusal to roll over large quantities of the maturing commercial paper of other firms, that is, a 'run' on commercial paper, as shown in figure 3. This forced issuers to seek emergency loans from banks en masse, a process that could have had important macroeconomic consequences for interest rates and the availability of credit. The intervention of the Fed, which encouraged banks to borrow at the discount window to finance loans to issuers, prevented the crisis from materializing, by targeting subsidized credit (indirectly through banks) to issuers with maturing paper*." (Calomiris, 1995).

1384 "*[T]he growth of bank-related paper was halted in mid-1970, when the Board of Governors of the Federal Reserve System suspended Reg Q interest rate ceilings on short-maturity large negotiable certificates of deposit (CD's) and then placed reserve requirements on bank funds derived from commercial paper. The amount of bank-related paper outstanding has subsequently declined sharply... Member bank borrowings through the discount window, which had averaged about $660 M in the week ended June 17, rose to a peak of $1.7 B during the week ended July 15, then gradually fell back to the $660 M level by the end of Aug. In addition, on Tues, June 23, the Board of Governors suspended Reg Q interest rate ceilings, effective the following day, on large*

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CD's of 30- to 89-day maturities, thus enabling banks to bid for funds that might be needed by corporations unable to renew maturing commercial paper. In the 3 weeks ended July 15, banks were able to acquire $3.0 B of new CD money" (Schadrack and Breimyer, 1970).

1385 "*In 1968, Bruce Bent went into business for himself, opening a Wall Street firm to help raise capital for corporations... But here Bent ran into a major stumbling block — the Federal Reserve Board's Regulation Q, which imposed a 5.25% [ceiling]... In Feb 1970, Bent filed his registration statement for a money market fund with the Securities and Exchange Commission.*" (Rowland, 1990). "*The result appears, from a distance, as a golden age of financial stability. Between the end of World War II and the 1970s, bank failures were rare. Financial institutions specialized in different types of lending. Banks extended corporate and consumer loans. S&Ls engaged in mortgage lending. Each type of institution was overseen by its respective regulator. The stock market rose and fell, as stock markets do. But when it fell, it did not bring down the financial system and the economy with it... The thrift industry, enjoying tax and regulatory advantages, gained market share at the expense of the banks. Deposit taking and lending in London—what came to be known as the Eurodollar market—subjected the banks to additional competition. A further source of competition, whose existence would have profound implications in 2008, came in the form of money market mutual funds. The first of the breed, the Reserve Fund, was created in 1971 by a pair of failed New York financial consultants, Harry Brown and Bruce Bent. Money market funds invested in treasury bills and commercial paper, not corporate, consumer, and mortgage loans in the manner of a bank. Free of Regulation Q ceilings, they were able to offer savers a more attractive combination of liquidity and interest than on bank accounts, but without, it should be noted, the protection of deposit insurance. The innovation was heralded as a significant step in the direction of financial democracy, given the miserly returns available on bank accounts. The MIT economist Paul Samuelson, himself a Nobel Laureate, proclaimed that Bent and Brown similarly deserved a Nobel Prize for their innovation... [Brown said] 'I wish I could say that our invention resulted from any brilliance on our part... but it was actually a combination of the threat of starvation and pure greed that drove us to it.' The absence of deposit insurance and of any requirement for money market funds to hold reserves as a buffer against risk was justified on the grounds that fund managers invested only in safe assets and managed their shareholders' money conservatively. One dollar invested in a money market fund would always be worth $1... The presumption did not anticipate the tendency for fund managers to move into riskier investments as Regulation Q was relaxed and competition created pressure to boost yields, something that regulators first failed to notice and then were reluctant to address, given an increasingly powerful mutual fund lobby. The presumption that shares in money market funds would never fall below par did not anticipate the failure of Lehman Brothers, Lehman being a consequential issuer of the kind of high-yielding short-term notes that he managers of money found irresistible.*" (Eichengreen, 2016).

1386 "*In June 1970, the program was expanded to $55 M to permit assistance to firms which had recently been placed in liquidation by [NYSE].*" (Congress, 1971)

1387 "*In the case of Goodbody & Co., the largest member organization to face the prospect of liquidation up to that time, a separate arrangement was developed outside the Special Trust Fund, under which another member firm, Merrill Lynch... agreed to acquire the troubled firm. As part of the program worked out with Merrill Lynch, [NYSE] agreed to indemnify Merrill Lynch up to a maximum of $30 M in connection with specified possible losses and liabilities the firm might incur in connection with the acquisition. [NYSE] would raise the necessary funds through assessments on its membership. It may be noted that the membership agreed to this course of action by a margin of better than 6 to 1, and the acquisition was accomplished as of Dec 11.*" (Congress, 1971)

1388 "*In extenuation of the hypothecation violations involving Sections 8(c) and l5(c)(2) of the Exchange Act, it should be noted that Jaegerman lacked requisite back office experience, and that in taking action which could have resulted in correcting these problems through the sale of proprietary securities and exchange seats to generate working capital -- he suffered from impediments stemming from the nature of his contractual arrangement with the firm. The divorce of control over capital from control over operations proved artificial and unworkable. It was further a source of antagonism among the partners. While Jaegerman himself insisted upon this division of responsibility, and it is easy to conclude now, on the basis of hindsight, that it was unworkable; it would have been more difficult at the time to foresee its flaws. Jaegerman did call the attention of the Exchange to the hypothecation problem in general and did urge Plohn, Sr. to put more cash in the firm… After the refusal to follow his instructions as to the sale of firm assets, Jaegerman continued to assert his other management prerogatives and, proceeding according to Exchange direction, a large number of accounts were liquidated and the business substantially wound down. On or about Aug 18, 1970 the Exchange suspended Plohn & Co. and on that date Jaegerman resigned as a managing and general partner of the firm, stating as his reason in this proceeding that there was no longer a need for a Managing Partner since the firm was not doing any business. Thereafter, the Commission obtained the appointment by the Federal District Court in New York of a receiver for Plohn & Co. referred to earlier in this initial decision. On June 17, 1975 District Court Judge MacMahon in a Memorandum Opinion discharged the receiver and directed him to turn the remaining assets over to Charles Plohn, Jr. as liquidator of the partnership under a plan of liquidation approved by the limited partners and subordinated lenders of Plohn & Co.*" (SEC v Plohn, 1975).

1389 "*[N]o serious difficulties came to light prior to July, since the stock exchange suspends member firms that do not comply with its net capital rules. The last Big Board examination of Robinson occurred April 30 and apparently uncovered no violations… On July 14, Philips, Appel & Walden announced it had entered into an agreement to acquire the bulk of Robinson's business… [Philips] confirmed Fri that Robinson's seat on the exchange had been acquired by his firm as part of the consolidation agreement. 'It wasn't a merger, it was an acquisition of assets,' he said. He noted that the entire matter had been in limbo since it was discovered in mid-Aug that Robinson may have had a problem with its internal finances… Robinson & Co. quietly filed a petition for reorganization under Chapter XI of the Federal Bankruptcy Act Sept. 1, within hours after the [SEC], had charged the firm with improperly pledging customer securities for bank loans, illegally transferring assets and other infractions. Robinson's insolvency is believed by securities lawyers to be the first of the post-Depression era involving an exchange member in formal proceedings under the Bankruptcy Act, but, this point is disputed by the exchange The basis for the dispute appears to be at the heart of a budding controversy, for, in effect, the exchange has disowned Robinson's customers. It has taken the position that it owes them no assistance on the ground that the firm had ceased to be a member when it went under. 'Robinson & Co. withdrew as a member firm of the exchange as of July 24,' a Big Board spokesman said Fri. 'We have assumed no commitment for Robinson & Co.' Robinson's failure*

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promises to spread shock waves through the legal and financial communities in New York and has overtones in Washington, where Congress has been urged to pass investor-insurance legislation." (New York Times, 1970).

1390 "*The First Devonshire Corporation, a suspended member of [NYSE], has been adjudicated bankrupt by a Federal court referee in what may be the first involuntary bankruptcy case involving a stock exchange firm since the Depression...The concern's difficulties first came to light Aug. 18, when [NYSE] suspended it from membership on the ground that it was in such financial condition that it could not be permitted to continue in business 'with safety' to its creditors or to the exchange… The losses apparently were large enough to put First Devonshire into violation of the stock exchange's net capital rules and to jeopardize its ability to pay off creditors. Internal record-keeping problems are said to have compounded the difficulties by making it hard to identify securities not held in the customers' own names. It is a common practice on Wall Street to keep customers' securities in a 'street name,' or the name of the brokerage house, to facilitate the transfer of the securities when they are sold. But this can create problems with identification if a firm goes under… Controversy has surrounded the exchange's refusal to extend Trust Fund protection to the customers of Charles Plohn & Co. and Robinson, as well as First Devonshire. When Plohn and First Devonshire were suspended, the exchange indicated that each had sufficient assets to cover liabilities. Plohn has since been almost completely liquidated. But the First Devonshire bankruptcy proceeding implies that the exchange was mistaken in its assessment of this situation. Mr. Cahill said yesterday that he hoped the exchange might eventually decide to step into the First Devonshire case.* (NYTimes, 1970). "*The failure, in recent months, of the First Devonshire Corp., Plohn & Co., and Robinson & Co. has received a great deal of attention from the press and from the committee because [NYSE] has declined to make available from its trust fund moneys to protect the customers of these 3 firms.*" (Congress, 1970).

1391 "*[B]oth chapter 11 and SIPA proceedings draw on the same general parts of the Bankruptcy Code to resolve claims and define the basic elements of the process. But SIPA is strictly a liquidation procedure, which makes its outcome both more certain and less flexible than a chapter 11 case. SIPA proceedings are typically commenced in district court and then removed to the local bankruptcy court. A trustee is appointed and directed to distribute securities to customers to the greatest extent practicable in satisfaction of their claims against the debtor. Through such distributions, the customers of a broker-dealer receive a priority over other general unsecured creditors who have to await a more bankruptcy-like distribution, if there are any assets to make such a distribution.*" (Lubben, 2011).

1392 "*In another action reported by the Washington Star, a lawsuit has been filed in the U.S. District Court in Philadelphia by 2 bondholders of the Pennsylvania Co accusing 10 banks and officials of using their inside knowledge in financial affairs of the bankrupt Penn-Central Transportation Co. in an attempt to keep the railroad solvent temporarily while they liquidated their holdings. I remind the Members of the House the Pennsylvania Co. is not in bankruptcy. It is not subject to jurisdictions of Judge Fullam. It is not subject to the control of the trustees. Mr. Speaker, all of the Penn-Central conglomerate from top to bottom should be considered as one pot and all of the assets should be in this one pot to keep the Penn-Central Railroad running.*"(GPO, 1970).

1393 "*In 1970, the Penn Central Transportation Co, the 6th-largest nonfinancial corporation in the U.S., filed for bankruptcy with $200 M in commercial paper outstanding. The railroad's default caused investors to worry about the broader commercial paper market; holders of that paper—the lenders—refused to roll over their loans to other corporate borrowers. The commercial paper market virtually shut down. In response, the Federal Reserve supported the commercial banks with almost $600 M in emergency loans and with interest rate cuts. The Fed's actions enabled the banks, in turn, to lend to corporations so that they could pay off their commercial paper. After the Penn Central crisis, the issuers of commercial paper—the borrowers—typically set up standby lines of credit with major banks to enable them to pay off their debts should there be another shock. These moves reassured investors that commercial paper was a safe investment.*" (FCIC, 2011). "*I argue that there is little current role for the discount window to protect against bank panics. The main role of the discount window is in defusing disruptive liquidity crises that occur in particular nonbank financial markets. I discuss evidence from the Penn Central crisis of 1970, which seems consistent with that view… As Penn Central's cash flow declined, its debt holders and their agents appealed to the federal government for financial assistance, which the Nixon Administration supported. The Administration proposed a $200 M loan guarantee to a syndicate of some 70 banks, which was to provide a 2 loan in that amount… Contrary to the Wall Street Journal report, no such memorandum existed, and that same Fri the Penn Central plan was rejected by Congress. The Nixon Administration then asked the Federal Reserve Board (through the New York Fed) to make a loan to Penn Central to help it meet immediate obligations. The New York Fed recommended against the loan, and it was denied. This news forced Penn Central's bankruptcy on Sun, June 21… which was associated with substantial contraction of outstanding paper (that is, a 'run').*" (Calomiris, 1994).

1394 For Consumers, "*A significant reform advocated by the Commission is to eliminate the enormous diversity in exemptions that results from the present deference by [BA98] to State exemption laws. The Commission proposed a uniform exemption law for debtors under the Act so that it would make no difference whether the debtor filed in Texas, where exemptions are exceedingly generous, or in New England, where they are skimpy;*" while for businesses "*Business bankruptcies are typically asset bankruptcies. When the business is owned by a corporation, the discharge is unimportant, and the Commission recommended that no discharge be given to any corporation or partnership. Involuntary petitions, i.e., petitions by creditors, are filed against debtors only when there is a reasonable prospect for some distribution to creditors. The Commission was impressed by testimony that both voluntary and involuntary petitions in business cases are postponed too long. As a result, assets are dissipated, and the debtor becomes hopelessly insolvent before administration is commenced. One reason involuntary proceedings are delayed is that creditors have difficulty finding and proving an act of bankruptcy, which the present law requires to be shown as a basis for an involuntary adjudication of a debtor as bankrupt.' An act of bankruptcy is typically a fraudulent transfer or preferential transfer by the debtor, and usually proof of insolvency is required as of the date of the commission of the act of bankruptcy. Insolvency is a deficiency of assets to pay liabilities,' but it is frequently a matter difficult to prove. The Commission concluded that one answer to this problem is to allow an involuntary bankruptcy petition to be filed by one creditor having a claim of $2,500, if he can allege and prove simply that the debtor is unable generally to pay — his debts or has failed to pay his current liabilities. 3 creditors are usually required for an involuntary petition under present law. In order to protect the debtor against hasty or ill-founded petitions, the court would be required to hold a prompt preliminary hearing to determine whether it appears that the filing of the petition and proceeding thereon will be in the best interests of the debtor and creditors.' If the court determines that*

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the case should proceed, no jury trial of any issue will be permitted. This is contrary to present law, which provides for trial by jury on the demand of the debtor." (Kennedy, 1974).

1395 "*The Commission does not believe that the Bankruptcy Act is the vehicle by which all of these problems can be or should be attempted to be solved. This is primarily because the problems affect the entire industry and afflict virtually all carriers, both in and out of the bankruptcy court. Nevertheless, the Commission believes that substantial improvements can be made in the procedures available under present § 77, which will en- hance the possibility that a reorganization can be achieved with respect to those railroads operating under the protection of the Bankruptcy Act. Fundamentally, the Commission believes that the defects in § 77 stem from divided responsibility and an elaborate procedure which assumes that the time available in which to effect a cure is infinite. However, time may run out, as is painfully evident from the proposal submitted by the trustees of the Penn Central to liquidate the railroad.*" (Commission on the Bankruptcy, 1973).

1396 ERISA established minimum standards for pension plans in private industry to protect the interests of employee benefit plan participants and their beneficiaries though tax breaks. Under the original application, each investment was expected to adhere to risk standards on its own merits, limiting the ability of investment managers to make any investments deemed potentially risky (e.g., LBOs.) ERISA chartered the *Pension Benefit Guaranty Corporation* (PBGC) corporation to encourage the continuation and maintenance of voluntary private defined benefit pension plans, provide timely and uninterrupted payment of pension benefits, and keep pension insurance premiums at the lowest level necessary to carry out its operations.

1397 This *"encouraged speculators... [and when]The Herstatt Bank of Cologne and the Franklin National Bank of New York lost money trading foreign exchange and each failed in June 1974. The closing of the Herstatt Bank in the middle of the trading day created a new problem because Herstatt had collected sums due to it on foreign exchange transactions but was closed before it had paid out... the [FDIC] took over Franklin National deposits up to the limit of $40 [K], and the Federal Reserve System, acting as lender of last resort, guaranteed the remaining liabilities. The arrangements worked out at the Bank for International Settlements in the so-called Basel Protocol of March 1975 were supposed to settle the issue of national responsibility in the case of bank failure.*"

1398 "*The rapid increases in money supply growth in the United States and other industrial countries in the early 1970s contributed to a global economic boom, surges in demand for primary products, and sharp increases in the prices of oil and other commodities. The rates of growth of GDP in the countries that produced these commodities increased. The Saudi Arabian embargo of oil shipments to the United States... following the Yom Kippur War of Oct 1973 triggered a surge in the demand for petroleum and the oil price increased sharply; the decline in oil supplies following the Iraqi invasion of Iran in 1980 had a much larger impact on global inflation. Investors responded to the increases in the anticipated global inflation rate by increasing their purchases of gold and other precious metals, collectibles, real estate, and other 'hard assets'. As the world inflation rate increased in the early 1970s, there was a credit market shock that led to a surge in bank loans to Mexico, Brazil, Argentina, and other developing countries; these loans increased at the rate of 30% a year during the decade. Banks headquartered in many European countries and in Japan used US dollars obtained in the offshore deposit markets in London, Zurich, and Luxembourg to make loans to governments and government-owned firms in Latin America and 'poach' on what had been the traditional turf of US banks. The US banks responded by competing aggressively to avoid an erosion of their share of this loan market. They also wanted to circumvent the regulations that limited the growth of their domestic loans and assets. The external indebtedness of this group of borrowers increased at the rate of 20% a year… The sharp increases in the price of oil in 1973 and again in 1979 led to a surge in the export earnings of the oil-producing countries and in their holdings of international reserve assets. Spending by the oil-producing countries also surged, including their purchases of real estate, office buildings, and shopping malls. Borrowing by oil importing countries increased. The increase in the price of oil accelerated oil exploration and production*." (Kindelberger and Aliber, 2005). In response to the foreign competition, the *International Banking Act of 1978* brought foreign banks within the federal regulatory framework by requiring deposit insurance for branches of foreign banks engaged in retail deposit taking in the U.S. "*Enforcing terms of sovereign debt contracts had complications relative to enforcing corporate debt... sovereign immunity prevented sovereigns from being sued in foreign courts without their consent… The Paris and London Clubs, acting as the primary avenues of negotiation between developing-country governments and their creditors, attempted to fill the vacuum caused by difficulties enforcing sovereign debt contracts in the event of default. Established in 1956, the Paris Club structured negotiations in which official creditors rescheduled payments and resolved debt problems associated with intergovernmental loans... The London Club used a similar framework for rescheduling debt payments and servicing, but was geared toward commercial bank creditors rather than official creditors… In order to distance the executive from direct responsibility for the fate of private-sector lenders to sovereign debtors governments introduced more restricted views of sovereign immunity, such as the U.S. Foreign Sovereign Immunities Act of 1976 (FSIA)... By clarifying the rights of sovereign creditors in the event of default and allowing private individuals to sue a foreign government in U.S. courts for activities related to commerce, including sovereign bonds, these laws were argued to have helped the sovereign lending market develop."* (Alfaro and Vogel, 2018).

1399 "*First, there is the conservative camp. The central feature in the bankruptcy regime of countries belonging to this camp is the conspicuous absence of any debt forgiveness provision to consumers. The policies of these countries take one of two forms. In the first form, countries simply hold that nonmerchant individuals are ineligible to file for bankruptcy protection and therefore are not entitled to any debt forgiveness… this camp is primarily composed of South and Central American countries such as Brazil, Mexico, Argentina, Bolivia, El Salvador, Honduras, Panama and Venezuela… While countries in the moderate camp avail debt relief to their petitioners, the debt forgiveness feature is neither certain nor prompt. In contrast, countries belonging to the liberal camp offer debt forgiveness with a high degree of certainty and with relative promptness. This is accomplished primarily through the automatic granting of discharge within a relatively short period of time. The most liberal country in this camp is the United States. Under Chapter 7 of the United States Bankruptcy Code, most of the debtor's prepetition debts will be forgiven and the debtor will keep all of her postpetition earnings."* (Efrat, 2002).

1400 "*The federal regulatory framework for derivatives market regulation [since 1936] remained substantially unchanged until 1974, when Congress enacted the Commodity Futures Trading Commission [CFTC] Act. The act did not make any fundamental changes in the objectives of derivatives regulation. However, it expanded the scope of the CEA quite significantly. In addition to creating [CFTC] as an independent agency and giving the CFTC*

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exclusive jurisdiction over commodity futures and options, the 1974 amendments expanded the CEA's definition of 'commodity' beyond a specific list of agricultural commodities to include 'all other goods and articles, except onions, . . . and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' In one respect, this was sweeping deregulation, in that it explicitly allowed the trading on futures exchanges of contracts on virtually any underlying assets, including financial instruments. Only onion futures, banned in 1958 as the presumed favorite plaything of manipulators, remained beyond the pale. In another respect, however, this was a sweeping extension of regulation. Given this broad definition of a commodity and an equally broad interpretation of what constitutes a futures contract, this change brought a tremendous range of off-exchange transactions potentially within the scope of the CEA. In particular, it could be interpreted to extend the broad prohibition on off-exchange trading of futures to an immense volume of diverse transactions that never had been traded on exchanges. The potential for the legality of a wider range of transactions to be called into question did not go unnoticed during debate on the 1974 act. In particular, [UST] proposed language excluding off-exchange derivative transactions in foreign currency, government securities, and certain other financial instruments from the newly expanded CEA... In proposing the amendment, [UST] was primarily concerned with protecting foreign exchange markets from what it considered unnecessary and potentially harmful regulation. The foreign exchange markets clearly have quite different characteristics from markets for agricultural futures--the markets for the major currencies are deep and, as some central banks have learned the hard way, they are extremely difficult to manipulate. Furthermore, participants in those markets, primarily banks and other financial institutions, and large corporations, would not seem to need, and certainly are not seeking, the protection of the CEA. Thus, there was, and is, no reason to presume that the regulatory framework of the CEA needs to be applied to the foreign exchange markets to achieve the public policy objectives that motivated the CEA. Indeed, the wholesale foreign exchange markets provide a clear and compelling example of how private parties can regulate markets quite effectively without government assistance." (Greenspan, 1997).

1401 In response to rising unemployment levels in the 1970s, Representative Hawkins and Senator Humphrey created the *Full Employment and Balanced Growth Act*, and was signed into law by President Carter on Oct 27, 1978. The Act explicitly instructs the nation to strive toward 4 ultimate goals: full employment, growth in production, price stability, and balance of trade and budget. Unlike its 1946 predecessor, which concentrated on employment, the 1978 Act de-emphasized full employment as the sole economic goal and specified 4 competing goals. The Act mandates the Fed to establish a monetary policy that maintains long-run growth, minimizes inflation, and promotes price stability. Moreover, it instructs the Fed to transmit a *Monetary Policy Report* to the Congress twice a year outlining its monetary policy and requires the Fed Chair to connect the monetary policy with the Presidential economic policy. Additionally, the *Financial Institutions Regulatory and Interest Rate Control Act of 1978* created the *Federal Financial Institutions Examination Council* to promote uniformity in the supervision of financial institutions.

1402 US inflation peaked at 14.8% in March 1980 and fell below 3% by 1983. The Fed led by Volcker raised the federal funds rate from 11.2% in 1979 to a peak of 20% in June 1981; this increased the prime rate rose to 21.5% in 1981 and lead to the 1980–1982 recession, in which unemployment rose to over 10%. "*The next major shock was the change in the operating procedures of the Federal Reserve in Oct 1979 (the so-called 'Volcker shock') that almost immediately shattered the anticipations of accelerating inflation; the market price of gold peaked ten weeks after this policy had been adopted. Previously the Federal Reserve had stabilized interest rates and market forces had determined the rate of growth of credit; under the new policy the Fed sought to limit the rate of growth of credit. The sharp decline in the rate of growth of bank loans led to a surge in interest rates on US dollar securities. Investment spending fell, a world recession followed, and the prices of petroleum and other commodities dropped sharply. Mexico and other developing countries were squeezed by the scissors-like increase in the interest rates on their foreign loans and the decline in both the volumes and the prices for their exports. The surge in interest rates on US dollar securities and the subsequent decline in the price of petroleum led to massive failures of US banks in Texas and the other oil-producing areas. Similarly many banks in the grain-producing Midwestern States failed as the prices of farmland fell. Interest rates paid by US thrift institutions on their short-term deposits increased rapidly and in many cases began to exceed the interest rates that the thrifts were earning on their long-term mortgage loans, thus depleting their capital. The combination of the much higher interest rates on US dollar securities and the sharp reduction in the anticipated US inflation rate led to an increase in investor demand for US dollar securities and the US dollar began to appreciate at a rapid rate.*" (Kindelberger and Aliber, 2005).

1403 "*Alternative legal mechanisms do exist for the orderly downsizing of corporate assets and liabilities in the face of a generally falling price level or a significantly reduced demand in specific markets. Those alternatives include assignments for the benefit of creditors, corporate liquidations, and corporate dissolutions and reorganizations under State law, as well as contractual agreements for nonbankruptcy lending (workouts). However, those alternatives often are unsatisfactory because they do not provide a convenient method for debtors to stay all creditors' claims automatically or to reject burdensome contingent liabilities… Under the new Chapter 11, the stay of creditors' claims became automatic upon the filing of the petition. The automatic stay was seen as a procedural improvement from the debtors' perspective because, previously, the stay had to be requested separately, and creditors could resist the application for a stay, even after the Chapter 11 petition was filed. Also, the requirement of actual insolvency at the time of filing under the 1938 act was eliminated in the new Chapter 11... A potentially disturbing trend of filings under the Bankruptcy Code began with... the Johns-Manville Corporation in 1982… the use of Chapter 11 filings as a sword rather than a shield was not traditionally contemplated under the 1978 Bankruptcy Code or the prior United States bankruptcy acts.*" (Todd, 1986). "*Although the Code does not expressly provide for the dismissal of a voluntary chapter 11 petition filed in bad faith, courts have regularly presumed this inherent power…The impact of the legislative changes to the standard for commencement of involuntary cases is most evident in involuntary [Chapter 11] reorganization cases. The average number of involuntary reorganization petitions filed since 1978 is more than 14 times the average number for the preceding period and is effectively responsible for the increase in the total number of involuntary filings.*" (Block-Lieb, 1991). "*Since managers naturally preferred Chapter XI to Chapter X, there was a good deal of litigation under the Chandler Act (often initiated by the SEC) over which chapter was appropriate. It was partly to eliminate this litigation that Congress in the 1978 Act consolidated Chapters X and XI (as well as Chapter XII, dealing with real estate reorganizations) into a single chapter, Chapter 11. Chapter 11 significantly changed the law and practice of corporate reorganization, making it easier for managers to invoke bankruptcy protection and strengthening their control of the bankrupt firm.*

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Most notably, Chapter 11 does not require that a debtor be insolvent in order to qualify for reorganization, and it includes a strong presumption favoring retention of management throughout the reorganization process. Thus, in the ordinary case, a Chapter 11 filing transforms a corporate debtor into the 'debtor-in-possession' and leaves existing management in control of the firm's resources. Congress apparently believed that a management team already familiar with the company's business would be more likely to reorganize a troubled firm successfully than would a newly appointed trustee, particularly since the need for reorganization often arose from 'simple business reverses' that were not management's fault." (Bradley and Rosenzweig, 1992).

1404 An empirical study found that, after 3 years of enactment, the Bankruptcy Code of 1978 left too many large firms to fail again after emerging from Chapter 11 bankruptcy, largely due to the inappropriate amount of control maintained by the debtor during the process; corporate debtors and their managers had so many protections that creditors were stymied and debtors were in 'full control.' (LoPucki, 1983). It "*facilitated a bondholder coordination on a value-conserving reorganization of a failing firm reversed the advantage that banks had previously enjoyed in restructuring the debt of a distressed corporate debtor… If an issuer fell into financial distress, the bond fund could sell the bond to a hedge fund that specialized in managing distressed credit situations; in effect, the bond fund could outsource this element of credit transformation.… Shares in the bond funds were redeemable daily on the basis of the proportionate share of the fund's current net asset value (NAV). Because a fund's obligation to the investor was to redeem at NAV, the fund was not transforming maturity or credit risk. An investor in a bond fund had what might be regarded as 'imperfect liquidity' - the right to receive cash, as with a bank deposit, but not a sum certain, because the value of the bond portfolio could fluctuate with interest rate or credit factors. In short, this was not bank-like liquidity transformation. The fund might include a certain level of cash in its portfolio to satisfy redemption requests without the need to sell credit assets into the market at possibly depressed prices, but this was principally as a matter of protection for non-redeeming investors, not to avoid the insolvency of the fund.* " (Armour et al., 2016). Also, in 1979, UST bailed out the *Chrysler Corporation* with a loan guarantee (possibly for national security reasons).

1405 The *1978 Amendment* used the concept of portfolio diversification of risk, measuring risk at the aggregate portfolio level rather than at the individual investment level to satisfy fiduciary standards. KKR raised $ 30 M in its first institutional fund. Additionally, pension investors bought junk bonds necessary to complete LBOs; by the end of 1988, 35% of junk bonds were owned by mutual and pension funds (Sobel, 2000).

1406 "*Bankruptcy is a booming business-in practice and in theory. From headlines about LTV's 10,000-page filing to feature stories about bankrupt consumers (usually Joe-and-Ethel-whose-nameshave-been-changed-to-protect-their-privacy), bankruptcy has become an increasingly popular news item in the past few years. Both organized labor and the consumer credit industry made concerted efforts to put bankruptcy issues before the public in their recent pushes to amend the new Bankruptcy Code. Lawyers have been drawn to the bright lights. Firms that did not have a single bankruptcy practitioner 5 years ago now field large bankruptcy sections. Bankruptcy seminars have been sellouts. And-perhaps the most reliable indicator of increased attention and activity-bankruptcy jokes have begun to make the rounds*." (Warren, 1987).

1407 "[*T*]*he variability of quarterly growth in real output... has declined by half since the mid-1980s, while the variability of quarterly inflation has declined by about two thirds. Several writers on the topic have dubbed this remarkable decline in the variability of both output and inflation 'the Great Moderation.' Similar declines in the volatility of output and inflation occurred at about the same time in other major industrial countries, with the recent exception of Japan, a country that has faced a distinctive set of economic problems in the past decade*." (Bernanke, 2004).

1408 "*Most striking was the productivity surge in capital, as Milken, [KKR], Forstmann Little, and others took the vast sums trapped in old-line businesses and put them back into the markets. Not only was the productivity of the capital left behind hugely enhanced by the disciplines of restructuring, but the newly freed capital flowed into venture funds and high-yield markets where it fueled what Jensen calls 'a third Industrial Revolution*.'" (Gilder, 2000). "*When liquidation or reorganization is the firm's highest-valued alternative, default creates value by providing an event that triggers change. Financial distress gives creditors the right to demand restructuring because their contract with the firm has been breached. They can push the firm to liquidate or reorganize. Leverage can, therefore, lead to value-maximization by triggering liquidation (Titman, 1984). The value of a firm likely to liquidate too soon or linger too long is reduced. Where firm value is deteriorating, high leverage leads to an earlier default, and simultaneously accomplishes two objectives. It preserves value when the alternative is a continued erosion of value, and in doing so increases the likelihood that the firm will reorganize quickly and efficiently*." (Altman, 1999).

1409 "*Bankruptcy court use is limited to a small fraction of all corporate bankruptcies in Japan in large part because of gatekeeping features which apply to all or most of the proceedings. For instance, an advance payment of costs requirement not only keeps out those bankruptcies of negligible assets, but encumbers reorganization applications as well. The discretionary, not automatic, granting of stay, and certain courts' interpretation of their discretionary powers, further limits reorganization court petitions. Applications to the most powerful reorganization court in Japan —itself based on now-defunct U.S. reorganization law —are further limited by the fact that the law forces the management to relinquish their power upon entry into the procedure... Strict court gatekeeping which turns away most potential applicants carries with it the same sort of potential costs as a repeal of bankruptcy protection altogether: near-default costs caused by non-optimal operating strategies undertaken by managers to avoid default. An aspect of the Japanese system which has lowered such costs has been the existence of private actors which increase the relative efficiency of private ordering and facilitate the resolution of business failure outside of court. In contrast to the well-documented 'main bank' rescues, business failures in Japan are dominated by cases which result in the private liquidation of the bankrupt, and those cases which are privately organized are generally managed by trade creditors of the bankrupt, operating to a large degree within "the shadow of the law." (Mnooking and Kornhauser, 1979, Ellickson, 1991)*" (Packer and Ryser, 1992). *"[T]he present-day Chapter 11 in the United States cannot be accounted for unless the huge development and sophistication of capital markets is brought into the picture (buy-out finance, markets for mergers and acquisition, distress firm finance, and so on). By the same token, the slow resolution of the insolvency crisis in Japan, since the early 1990s, was also conditioned by the creation of a market that would help to dispose of large stocks of real assets*. [Ohashi and Singh, 2004]" (Sgard, 2006).

1410 "*[I]n order for economies to grow, you need to have obsolescent capital move out, usually through depreciation charges, into cutting-edge technologies. That's the way productivity grows. That's the way economies grow. Japan did exceptionally well for 40 years because they never had to confront the problem*

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which is a serious problem today, namely, discharging people and causing companies to go bankrupt, both of which very significantly induce a loss of face, which is culturally unacceptable in Japan. For 40 years, the number of bankruptcies were negligible and they had lifetime employment because their growth rate was so spectacular... As soon as they slowed down, as they inevitably had to slow down, having become as large as they were, they ran into the problems of creative destruction. And they are culturally having difficulties addressing those issues. And the result is that banks are very reluctant to take collateral and sell it because that would bankrupt the borrower, or discharge people... Remember that a very significant part of the loans that are made by Japanese banks are collateralized by real estate or by other types of business assets. So long as the collateral is held in the bank, the individual borrower can function as though it had full control of the collateral. If, however, the loan is to be written off, the collateral has to be sold, which means that you take the building away from the company or you do other things with respect to their assets, which effectively throws them into bankruptcy. And that's been a very reluctant activity on the part of Japanese banking." (Greenspan, 2003).

1411 "*During the onset of the Korean financial crisis in 1997, an inefficient corporate bankruptcy system had a detrimental effect on Korea's economy. Prior to the crisis, in 1996 and the first three-quarters of 1997, many large sized firms facing bankruptcy actively sought shelter under the court administered rehabilitation procedures. However, the inadequacies of the bankruptcy system led to poor discipline in targeting the appropriate financially distressed firms to undergo the rehabilitation procedure. Meanwhile, before the outbreak of the economic crisis, the uncertainty and delay encountered in dealing with failing firms clearly added to the distortion of the resource allocation process in Korea's economy. In other words, the exit barriers for large firms seemed to have decreased the efficiency of resource allocation before the onset of the crisis. Prior to the crisis, Korea's corporate bankruptcy system had a tendency to work as a de facto exit barrier. For example, before the reform, producers with persistently declining productivity were more likely to be accepted in some rehabilitation procedure if they were deemed as having high social value, such as a large output or employment share in the economy... The frequent abuse of the corporate reorganization procedure, highlighted by several notorious cases involving controlling shareholders of failing firms, forced the court to amend the system in 1996. In particular, the court argued for wiping out shares held by controlling shareholders responsible for a firm's failure. The introduction of the amendment in 1996 produced an unintended consequence: Controlling shareholders of failing firms pursued other means that would allow them to retain their ownership and control. Controlling shareholders found a loophole in the bankruptcy proceedings through the composition procedure, which was originally designed for small and medium-sized firms with less complex capital structures. However, before the law's revision after the crisis, the composition procedure did not contain an explicit limit on a firm's size and enabled existing management of larger firms to retain control. As shown in table 9.1, there was a dramatic rise in bankruptcy filings for the composition procedure. The number of cases increased from nine cases in 1996 to 322 in 1997 and to 728 in 1998. In the first three-quarters of 1997, before the onset of the crisis, many large firms on the verge of financial collapse sought to file for bankruptcy under the composition procedure. The economic crisis of 1997 placed tremendous strain on the existing corporate bankruptcy system for both in-court and out-of-court proceedings because of the soaring number and scale of bankruptcies. Table 9.1 shows that the filings for judicial bankruptcy procedures rose dramatically in 1997. The fallout from the economic crisis on the bankruptcy system was the main driving force in implementing revisions in the bankruptcy laws and procedures. In addition, the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD) required that improvements be made in the corporate bankruptcy system as a condition for the bailout package. After the economic crisis, the Korean government implemented reform efforts to remove exit barriers along two separate lines: One involved the court-administered bankruptcy procedure, and the other included the prebankruptcy informal arrangements for corporate restructuring. Whereas the workout procedure had a significant impact on the corporate restructuring of larger failing firms, the court-administered procedures focused on the restructuring of medium-sized failing firms.*" (Hahn and Lim, 2019). "*Export earnings failed to maintain their growth rate in 1996, increasing only 3% in dollar terms, as falling prices for semiconductors and a number of other factors resulted in the slowdown. Then, early in 1997, a number of events took place that surely eroded confidence. One of the large chaebol, Hanbo, went bankrupt early in the year. Given that the large chaebol were widely believed to be 'too big to fail', this in and of itself must have resulted in some loss of confidence and a reexamination of Korea's creditworthiness. Moreover, 1997 was an election year, with the presidential elections scheduled for early in Dec... However, although the net and gross foreign (and especially short-term) liabilities of the banking and financial systems were continuing to increase, there was no visible evidence of crisis until the final quarter of the year. The Thai crisis had exploded in June, and the Indonesian crisis had begun during the summer of 1997, but most foreign observers were confident, given Korea's past history, that Korea would not be affected. Korea's offshore banks were holding paper from Indonesia, Russia, and other countries with dollar liabilities, which would further deteriorate the net foreign asset position, but that was not widely known at the time. However, capital flight began early in the fourth quarter of the year. In many instances, it was simply due to a refusal to roll over short-term debt, but other factors contributed: Korea's sovereign risk status was downgraded by Standard & Poor's in Oct; reported NPLs in the banking system doubled between the end of 1996 and the fourth quarter of 1998, reaching 7.5% of total loans by that time, owing largely to the bankruptcy of 6 chaebol and the sharp drop in the Korean stock exchange. However, once it became known that reserves were decreasing, others sought to get out of won, and the capital outflow intensified rapidly... Bank restructuring required a prior, or at least concurrent, restructuring of the chaebol finances. Given their very high debt-equity ratios (for one chaebol at the height of the crisis, the debt-equity ratio reached 12:1), financial viability, where feasible at all, would surely require swaps of debt by the chaebol to the banks, giving the banks equity in return. For this reason, it was predictable that the restructuring would require time... The standby also addressed corporate governance and corporate financial structure issues, focusing on improving incentives and supervision for banking operations and reforming bankruptcy laws. The government also agreed to refrain from providing financial support, providing tax privileges, or forcing mergers for individual companies.*" (Krueger and Yoo, 2002).

1412 In 1978, with *Marquette Nat'l Bank v. First of Omaha Serv. Corp., 439 U.S. 299*, the Supreme Court ruled that State usury limits on credit card rates would apply in the State where the credit card lender was based, not where the card holder resided. This allowed banks to export interest rates across State lines and created usury law arbitrage incentives for lenders to relocate to States with high usury limits and for State legislatures in turn to relax usury legislation. Bankruptcy Judge Lee (KY) notes that *Marquette* "*was a catalyst for the enormous expansion of consumer debt-particularly credit card debt-as well as the accompanying increase in consumer bankruptcy filings*." (quoted in USGPO, 2000, p119). The case "*fundamentally altered the market for credit card loans in a way that significantly expanded the availability of*

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credit and increased the average risk profile of borrowers... The result was a substantial expansion in credit card availability, a reduction in average credit quality, and a secular increase in personal bankruptcies" (FDIC, 1998 cited in USGPO, 2000, p112)."*Moss and Johnson argue that the prior stability of State usury laws may have stabilized the incidence of consumer bankruptcy by effectively making it uneconomical for credit card companies to extend credit to lower income borrowers, preventing consumer credit from concentrating among higher-risk debtors.*" (USGPO, 2000, p112).

1413 "*Since 1911, Sears has offered some form of credit plan to its customers. Our early credit plans were all closed-end. In 1953, the times had changed and so did Sears. That year we offered our first open-end credit plan. Today, Sears has approximately 24 M active customer accounts representing total balances of over $8 B. When it comes to the subject of American consumer credit, Sears has been around a long time. Sears credit managers have observed consumer credit behavior in both good and bad economic times. With over 70 years experience in the granting of consumer credit, Sears is now quite concerned about the increase in the number of its customers taking bankruptcy and the apparent change in attitude of some consumers toward repayment of debt. Since the enactment of the Bankruptcy Reform Act of 1978, Sears and other retailers have seen dramatic increases in the number of accounts involved with the bankruptcy process. During 1979, Sears charged off 38,578 accounts representing balances of $20 M due to bankruptcies. In 1980, this increased to 76,562 accounts representing balances of $43 M. This upward trend continued and in 1981 Sears charged off 83,500 accounts representing balances of $52 M. Increases of this magnitude caused a good deal of concern, reflection and study among credit executives in our company who wanted to understand the reasons for these extraordinary numbers. We saw several contributing factors: a recessionary economy, the ability of lawyers to advertise their services, an apparent changing of attitudes of some consumers toward the repayment of debt and a new liberalized bankruptcy law which reduced the disincentives to file bankruptcy.*" (United States Congress, 1982)

1414 "*The legal infrastructure facilitating the use of repos as money has evolved as their volume has grown. Since 1978, the year a new bankruptcy code was adopted, both the U.S. Bankruptcy Code and [FDIA] have provided exemptions for certain kinds of financial contracts. It was in 1984 that the bankruptcy code was amended to allow parties to a repo to liquidate collateral without the counterparty going into bankruptcy… The amendment was motivated by the Lombard-Wall decision (see Lombard-Wall, Inc. v. Columbus Bank & Trust Co., No. 82 B 11556 (Bankr. S.D.N.Y. 1982)), which held that an automatic stay provision prevented the depositor who held the collateral from selling the collateral without court permission. See, for example, Garbade (2006) and Krimminger (2006)… But this applied only to repos based on Treasury securities, agency securities, bank certificates of deposit, and bankers' acceptances… It is not clear that actual market practice was limited to this set of securities. In fact, the evidence is that it was not. For example, according to Liu (2003), "In recent years market participants have turned to money market instruments, mortgage and asset-backed securities, corporate bonds and foreign sovereign bonds as collateral for repo agreements." No court cases have tested this.*" (Gorton and Metrick, 2010). "*The regulatory history of money market mutual funds also underscores how law-makers and regulators can give certain financial instruments regulatory privileges. Moreover, many of these privileges endow those instruments with enough apparent safety and liquidity to make them 'money-like.' Gary Gorton and Andrew Metrick provide another example from the early 1980s of legal privileges creating money. They point to how, in 1984, the U.S. Congress granted repurchase agreements ('repos') various exemptions from the Bankruptcy Code. These statutory changes meant that lenders/creditors under repos enjoyed various privileges, such as not being subject to the Code's 'automatic stay' when the debtor filed for bankruptcy, that lenders under other instruments did not. Gorton and Metrick argue that these bankruptcy exemptions made repos more 'informationally insensitive.' In other words, repo lenders no longer had to analyze as carefully the creditworthiness and bankruptcy risk of their borrowers. This, according to Gorton and Metrick, enabled repos to take on more of the features of money. After this statutory change, the market for repos enjoyed explosive growth.*" (Gerding, 2013).

1415 "*[T]he 1984 amendments also restricted the extent of discharges in consumer bankruptcies, established standards for judging the reasonableness of employers' rejections of collective bargaining agreements, reordered the priority of distributions of stored grain to farmers, and exempted certain repurchase agreements covering financial instruments from the automatic stay provisions of the Code*." (Todd, 1986).

1416 "*While nearly any other person eligible to file a bankruptcy case may be involuntarily subjected to bankruptcy by a group of creditors, the farmer has nearly always been exempt from the provisions regarding involuntary bankruptcy. The rationale expressed in [BA98] for protecting farmers from involuntary bankruptcy is that the success or failure of a farming enterprise is uniquely subject to factors beyond the farmer's control, particularly the hazards of natural disasters. If a farmer could be forced into an involuntary bankruptcy by creditors, the farmer's assets conceivably could be subjected to liquidation immediately upon the failure of one year's crop. Prohibiting involuntary bankruptcies allows the farmer to retain the assets and to overcome natural disasters by successfully continuing in farming. It permits the farmer to decide the necessity for, and the timing of, bankruptcy relief. Protection from involuntary bankruptcies was more valuable to farmers before the advent of modern agricultural finance. Today nearly all farmers in financial difficulty have a substantial portion of both their real and personal property assets encumbered by liens and security interests. Having generous State homestead law exemptions and being exempt from involuntary bankruptcy will not prevent the farmer's assets from being involuntarily liquidated by foreclosure of a lien or security interest. The involuntary bankruptcy protection thus constitutes only a limited benefit to most financially distressed farmers and holds less value today than it did historically*." (Stam and Dixon, 2002). "*Farmer bankruptcies considered in relation to the total number of farmers have never occurred in large numbers. They have been relatively more numerous in periods of depression following periods in which debt had increased substantially, and this increase has exceeded the growth in number of farms. But the farmer cases per year considered as a proportion of the total number of farmers have averaged less than 0.1%. The most extensive use of [BA98] by farmers occurred in 1925, when the cases numbered only 7,872. This relatively limited use of the law even in record years indicates that farmers have not been disposed to resort to the courts even when their indebtedness has been in excess of the value of their property. Experience has shown that farmers generally do not favor using the legal provisions at their disposal to obtain relief from financial obligations. The small proportion of farmers who have used the provisions of [BA98] becomes clear by a comparison with the total number of farms reported by the census in the corresponding census years. In 1925 farmer bankruptcies equaled only 0.12% and in 1910 they were 0.01% of the total number of farms*." (Wickens, 1935).

1417 "*Protection from involuntary bankruptcies was more valuable to farmers before the advent of modern agricultural finance. Today nearly all farmers in financial difficulty have a substantial portion of both their real and personal property assets encumbered by liens and security interests. Having generous State homestead law exemptions and being exempt from involuntary bankruptcy will not prevent the farmer's assets from being involuntarily liquidated by*

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foreclosure of a lien or security interest. The involuntary bankruptcy protection thus constitutes only a limited benefit to most financially distressed farmers and holds less value today than it did historically." (Stam and Dixon, 2002).

1418 "*My practice of bankruptcy law began in 1980... with an economic recession in the offing. Farm real estate values were high, farm products brought relatively good prices, interest rates were high, and farms tended to be highly leveraged with debt. Shortly thereafter, the bubble burst on the farm economy, with farm product prices dropping sharply and real estate values tumbling but with interest rates remaining high and credit becoming increasingly hard to obtain. Many farmers faced grave financial difficulty. Some were willing to liquidate and move on to other endeavors, but many found they would face severe tax consequences from liquidation that would leave them in even worse financial shape. Many farmers decided to address their financial problems by filing Chapter 11 bankruptcy, only to learn the hard way that the 'absolute priority rule' would prevent them from confirming a Chapter 11 plan. Many farmers who filed Chapter 11 were, ultimately, forced to liquidate anyway—few were able to preserve the family farm. Because of the failure of Chapter 11 to meet the needs of farmers in financial distress, Congress adopted Chapter 12 of the Bankruptcy Code in 1986. Chapter 12 actually brought some helpful and much-needed relief to many financially-distressed farmers: they were able to confirm Chapter 12 plans that (a) reduced debt burdens to the current (and much-lower) asset values, (b) reduced interest rates dramatically, and (c) stretched amortization schedules out over significant periods of time. Further, a subsequent rebound in farm product prices and real estate values assured that the confirmed Chapter 12 plans would prove to be feasible, workable and effective for the intended purpose of preserving the family farm*." (Swanson, 2015).

1419 "*With respect to the Limited Resource program, the Administration's initial strategy was to ask Congress to eliminate the entire program in 1981 and 1982. This, Congress refused to do. When it failed in the Congress, the Department of Agriculture accomplished administratively most of what it was unable to do legislatively, at least until 1984. Beginning in 1982, FmHA simply declined to spend a substantial portion of the Limited Resource loan authority appropriated by the Congress each year, notwithstanding quotas set in the legislation. In 1982 alone, $120 M, or 46% of the Limited Resource authority, went unspent and was lost at the end of the fiscal year. In 1983, the results were similar. During 1982-3, the Administration declined to utilize subsidized loan assistance that could have served over 10,000 average FmHA borrowers. During the same period of time, the FmHA's rate of farm acquisition-through 'voluntary liquidation', foreclosure and bankruptcy-first doubled, then tripled. In fiscal year 1982, 8,227 FmHA borrowers went out of business. In 1983, that number was 7,529. Thus, while the farmers whom Congress intended to assist with these programs were going out of business, the Administration was refusing to act. Congress finally mandated in 1984 that the Administration utilize all of the funds appropriated for the Limited Resource program. The Administration's refusal to implement the deferral statute led initially to the federal courts, and not to Congress. Beginning in 1982, a string of federal courts declared that the Secretary of Agriculture had violated the 1978 Act by refusing to implement the deferral statute, and enjoined any agency farm loan liquidation or foreclosure of FmHA loans until the statute was implemented. In one of these cases, Coleman v. Block, filed initially as a North Dakota class action and later enlarged to become a national class action encompassing virtually every state, the United States District Court issued several injunctions from 1983-7 which virtually precluded any FmHA liquidations or foreclosures of its borrowers during that period of time. The Coleman decisions also mandated notice and due process procedures that were required to be implemented by the USDA before it could foreclose on any FmHA borrowers, and before it could refuse to release farm proceeds from the sale of crops or livestock in which the United States held a security interest through the Farmers Home Administration. Both the pre-Coleman and Coleman decisions laid the groundwork for the next decade of FmHA activity, in the administration, the Congress, and the federal courts. A closer look at the Coleman decisions identifies the context in which the legislation evolved. Following the government's defeat of the plaintiff's preliminary injunction motion in 1986, the government filed a motion for summary judgment asking the North Dakota court to dismiss the continuing Coleman litigation altogether. In an order issued on the government's motion for summary judgment in 1987, however, the court again declared the new agency regulations to be unconstitutional as applied, and, in June of 1987, issued a sweeping injunction again halting all FmHA loan liquidations and foreclosures throughout the country. At this point, the court's injunction stopped the 75,000 to 80,000 loan liquidation proceedings, including foreclosures, and halted the government's refusal to release security proceeds to the tens of thousands of FmHA borrowers whose loans the government sought to accelerate. It was estimated by the USDA that the 1987 Coleman injunction resulted in approximately $1.5 B in farm proceeds being left in the hands of borrowers each year the injunction was in place. Eventually, the injunction and its statutory sequel-the Agricultural Credit Act of 1987 provided procedural protections and opportunities for loan restructuring to these tens of thousands of borrowers through the late 1980s and into the early 1990s."* (Massey, 1994)

1420 "*Farm bankruptcy rates spiked to unusually high levels twice during the past century. From 1920, with the post-World War I decline in the farm economy, through the Great Depression of the 1930s, farm bankruptcy rates were double to triple those of previous years and peaked at 13.7 per 10,000 farms in 1925. During that time, farmers had 3 bankruptcy options available to them. 50 years later, during the farm financial crisis of the early to mid-1980s, farm numbers declined to about 2.3 M, and the rate of bankruptcy filings rose to 23.1 per 10,000 farms in 1987. By this time, a new bankruptcy category had been established by Congress and had become a frequently used option of farmers who declare bankruptcy.*" (USDA, 2004).

1421 "*In passing Chapter 12 of the Bankruptcy Reform Act, Congress has effectively invalidated certain important provisions of existing farm mortgages. Equally significant, Congress has disabled farmers from granting binding mortgages on the full, value of their property. Although no court is likely to find the Chapter to violate the fifth amendment, the Chapter constitutes a substantial and retroactive alteration of the rights of existing mortgagees and a restriction on the powers of prospective mortgagors to grant valid mortgages... It seems plausible that Chapter 12 will make current farm debtors richer and current farm creditors poorer. As I have indicated above, Chapter 12 has deprived the current mortgagee of at least two rights. First, Chapter 12 has deprived the creditor of an effective way to lay claim to the farmer's consumer surplus in his land. Formerly, the creditor could do that in Chapter 11 by insisting upon the letter of the fair and equitable rule. Second, Chapter 12 has diminished the creditor's rights by removing the possibility of the § 111l(b)(2) election and, thus, foreclosing the possibility that the creditor could carry his mortgage against the land to the full value of the pre-bankruptcy debt. By making the election, the creditor could lay claim to the appreciation in the land that would occur after the plan had been confirmed. To the extent that the consumer surplus now belongs to the debtor and that the creditor has been deprived of the right to threaten the debtor with its loss, the value of the creditor's collateral is reduced. To the extent that the creditor cannot claim future appreciation in the land (except to the extent that an appraiser raises the current*

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value because of the prospect of appreciation), he has lost. I conclude, therefore, the effect of the enactment of Chapter 12 will redistribute wealth from the creditors to the debtors." (White, 1987). "*Cramdown under the New Chapter 12 of the Bankruptcy Code: A Boon to the Farmer, a Bust to the Lender… Chapter 11 includes secured creditor protection through the § 1111(b) election of the claim amount and unsecured creditor protection through the Absolute Priority Rule. Chapter 13 protects mortgage lenders by precluding any modification of residential loans. These protections are unavailable in Chapter 12.*" (Belcher, 1988).

1422 "*Financial problems within the FCS provided the impetus for the Agricultural Credit Act of 1987, which altered the FCS substantially. Several factors contributed to financial problems within the FCS (Collender and Erickson). Operating procedures emphasized value of collateral to support loans more than ability to pay through cash flows. When land prices fell, the value of collateral supporting loans was eroded,and many loans could not be sustained by cash flows of agricultural borrowers. In addition,the FCS used a practice of average cost pricing rather than marginal cost pricing,which allowed it to set interest rates on loans lower than competition when interest rates were increasing. Competitors were pricing loans on the marginal cost of funds. The FCS strategy backfired when interest rates began to decline and then average cost pricing coupled with a large number of uncallable bonds at high interest rates meant the FCS was no longer competitive with its loan interest rates. As would be expected, this caused a flight of qualified borrowers from the system because they could obtain loans at lower rates from FCS competitors. Changes stipulated in the 1987 act were intended to improve financial soundness and safety of the FCS while making it more efficient, competitive, and responsive to market conditions. This was done by consolidating organizations and services provided by agencies within the system. Under the 1987 act, institutions in the FCS could compete with each other over services. There has been consolidation of the Federal Intermediate Credit Banks and the Federal Land Banks. Also,there has been a reduction in the number of districts as a result of mergers. Federal Land Bank Associations and Production Credit Associations were given the opportunity to merge into Agricultural Credit Associations,which would make loans of various term lengths and serve as direct lenders to agriculture. Funds that Agricultural Credit Associations lend are provided by the district Farm Credit Banks. The Federal Land Bank Associations could opt to become Federal Land Credit Associations for the purpose of making real estate loans. Likewise,their funding is from the district Farm Credit Banks. The Agricultural Credit Associations and the Federal Land Credit Associations are direct lenders that hold and service their loan portfolios. The Federal Land Bank Associations continue in their traditional role as originating and servicing real estate loans for the district Farm Credit Banks (Barry et al.).*" (Jensen, 2000)..

1423 "*Commercial banks, concerned about the erosion of their deposit base, had been lobbying for the removal of [Reg] Q for years. Their calls gained urgency with this new competition and even more when inflation rose, undermining their ability to compete for savings. [Reg] Q ceilings were finally phased out by the... Depository Institutions Deregulating and Monetary Control Act of 1980 - ironic since its passage resulted from the Fed's loss of monetary control.*" (Eichengreen, 2016).

1424 "*ERTA included several provisions that improved the rate of return on commercial real estate and increased demand for these investments… [ERTA introduced] an Accelerated Cost Recovery System (ACRS)... [which] allowed investors in commercial property to depreciate a building over 15 years…[and] had the effect of increasing the after-tax return on commercial real estate investments relative to other classes of assets.... These provisions were a major reason for the accelerated production cycle of commercial real estate during the first half of the 1980s.*" (FDIC, 1997).

1425 "*Although the use of loan participations is by no means new to the financial world, this type of transaction has yet to be defined as a matter of law. The absence of legal definition has traditionally been tolerated because the banks originating the loans were perceived to be institutions of such stature and stability that the participating banks did not fear for either the solvency of the originating banks or the safety of their participation interests. A more precise legal characterization of loan participations appears imminent since the millions of dollars involved in these transactions demand that the parties involved legally substantiate their positions. Until that characterization is made, however, counsel for the participating bank is confronted with the difficult task of devising an effective loan participation structure that can withstand even the insolvency of the lead bank thus protecting the participating bank from some of the problems that the Penn Square failure has brought to light. The Penn Square Bank collapse is unique in that it presents for the first time the failure of a bank that was almost entirely dependent on loan participations for its very existence.*" (Fisher and Muratet, 1982). "*As a result of the participation network constructed by Penn Square, however, a participation in a Penn Square borrower's loan probably had been sold to a money center bank. The participant bank then argued that the participated portion of the borrower's outstanding loan indebtedness no longer constituted an obligation owned by Penn Square; rather, it represented an obligation now owned by the participant bank that purchased the loan from Penn Square. Therefore, the argument continued, to set off a Penn Square borrower's account balance against its loan indebtedness meant canceling debt no longer owned by Penn Square, but debt owned instead by the participant. Unpersuaded by this argument, the FDIC concluded that the Penn Square depositor/borrower setoff arrangement was an efficient and expedient method for assisting it to fulfill its obligations as receiver of the insolvent Penn Square.*" (Fisher, 1990)

1426 "*The abolition of Regulation Q unleashed a cascade of unintended consequences. A first consequence was to intensify the pressure on S&Ls, which had previously been permitted to offer higher deposit rates than other financial institutions. To limit the damage, the Garn-St. Germain Act of 1982 allowed S&Ls to engage in a range of commercial banking activities, those related to consumer lending, for example, above and beyond their traditional remit of taking deposits and extending mortgage loans. Among its other provisions was one authorizing the extension of adjustable rate mortgage loans. President Reagan, on signing the bill, called it the first step in a 'comprehensive program of financial deregulation.'" (Eichengreen, 2016). "In the effort to break runaway inflation in the 1970s, the Fed (under Chairman Volcker) pushed short-term rates to record levels. Since thrift's assets were almost entirely long-term fixed-rate mortgages, the interest rate mismatch with deposits was devastating… the deposit insurance fund for thrifts was insufficiently funded to provide protection for insured thrift depositors. A Congressional appropriation would have been required to close down insolvent thrifts because many were insolvent. The alternative was to expand the thrift's powers beyond housing finance. Regulatory forbearance, insured deposits, and new powers created an industry that 'gambled for resurrection' on commercial real estate and junk bonds, which multiplied the ultimate loss..*" (Armour et al., 2016).

1427 "*The prevailing view was that S&Ls should be granted regulatory forbearance until interest rates returned to normal levels, when thrifts would be able to restructure their portfolios with new asset powers. To forestall actual insolvency, therefore, the FHLBB lowered net worth requirements… Perhaps the most far-reaching regulatory change affecting net worth was the liberalization of the accounting rules for supervisory goodwill. Effective in July 1982, the*

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Bank Board eliminated the existing 10-year amortization restriction on goodwill, thereby allowing S&Ls to use the general GAAP standard of no more than 40 years in effect at the time. This change was intended to encourage healthy S&Ls to take over insolvent institutions, whose liabilities far exceeded the market value of their assets, without the FSLIC having to compensate the acquirer for the entire negative net worth of the insolvent institution. Not surprisingly, between June 1982 and Dec 1983 goodwill rose from a total of $7.9 to $22 B, the latter amount representing 67% of total RAP capital. The FHLBB also actively encouraged use of this accounting treatment as a low-cost method of resolving troubled institutions. Unfortunately, like other Bank Board policies that resulted in the overStatement of capital, the liberal treatment of supervisory goodwill restricted the FHLBB's ability to crack down on thinly capitalized or insolvent institutions, because enforcement actions were based on regulatory and not tangible capital." (FDIC, 1997). "In 1982, the FDIC lowered the minimum amount of money S&Ls were required to have on deposit to cover their loans and changed the ownership requirements. S&Ls could lend $33 for each $1 of cash capital as compared to $17 before deregulation. In addition, a single, nonresident individual could own an S&L, whereas before deregulation, no individual was allowed to own more than 10% of a S&L's stock, no family or group could control more than 25%, and 125 of the required 400 stockholders had to reside and do business in the community." (Stearns and Allan, 1996). "*The decline of federal deposit insurance funds for the thrift and commercial banking industries in the 1980s was the first occasion since the 1930s for a crisis-related review of receivership and conservatorship structures. Confronting large-scale but officially unrecognized insolvency in the thrift industry in the Congress initially attempted to avoid creating large numbers of conservatorships and receiverships. Instead, they responded by allowing regulatory accounting principles that diverged widely from generally accepted accounting principles and by issuing [FSLIC] certificates that generated positive net worth under regulatory accounting.*" (Todd, 1994).

1428 "*Garn-St. Germain helped set the stage for the S&L crisis... by allowing thrifts to take on additional risk without at the same time doing anything to restrain them. But equally important was how the provision of additional financial services by the thrifts intensified the pressure on the banks…That the S&L industry had already plunged into crisis by the combination of high interest rates and soft housing prices gave the commercial banks little relief. Thrifts responded to their distress by gambling for redemption – and plunging even more aggressively into commercial banking activities*" (Eichengreen, 2016).

1429 "*Milken [told] potential investors... he would rather sell paper with a poor record that could be improved than equity in superb companies, whose prices reflected this circumstance but might fall sharply on the slightest hint of trouble. Further, bonds with high yields behaved more like stocks than bonds of very secure companies, in that their prices rose and fell in relation to the company's prospects, and not in relation to changes in interest rates, inflation, and the like... 'There is far less risk in LTV 5s at 57 cents on the dollar than there is in Polaroid, IBM, Xerox, you name it.' ...Milken also told investors that effective control of a company belonged to those who owned debt, and not to the stockholders... Milken asserted that Drexel and its clients controlled Rapid-American, not Riklis, its biggest shareholder... 'We own $100 M of your bonds, and if you miss one payment, we'll take your company away.' ...Milken claimed the bonds issued by MCI were safer than those issued by any sovereign government. 'You can seize MCI for failure to pay interest.'*" (Sobel, 2000). The first published research found a very low default rate on junk bonds, but their measurement had several flaws - including (1) not differentiating between bonds that were junk at issuance and "fallen angels", (2) presenting the default rate as a percentage of total debt outstanding, (3) defining default formally and narrowly (Altman and Nammacher, 1985). Altman's later work recognized the flaws in this approach, but this recognition came after his initial work was used to promote the safety of a diversified junk bond portfolio (Altman, 1992).

1430 "*Milken sold $125 M of (worthless) ACC junk bonds to... investors in 1984. S&L control frauds frequently sold subordinated debt because it could count as regulatory 'capital.' Subordinated debt is uninsured and inherently risky because the buyer receives nothing until all other creditors are paid. S&L sub debt issued by traditional, healthy S&Ls was Far riskier than the norm because S&Ls had minimal capital. The risk from sub debt issued by the high fliers was off the charts. Such S&Ls always defaulted. ACC is the only exception I recall, and it proves the rule. Milken sold, as I noted, $125 M in ACC sub debt at a high interest rate to the usual subjects: if Milken sold one's junk bonds, it was understood that one bought junk bonds issued by other Milken clients. The key to Milken's scheme was to reduce the apparent default rate, so it would not do to let ACC default on its Drexel-issued junk bonds. The situation was as elegant as it was cynical: ACC would sell junk bonds to widows (at a ludicrously low rate of interest) and use the proceeds to retire the Drexel-issued junk bonds sold (at a very high rate of interest) to Milken's This scam simultaneously (1) avoided a default on Drexel-issued junk bonds, (2) considerably reduced ACC's interest expense, and (3) allowed ACC to book a gain from refinancing its debt at a lower interest rate. We also should have learned from the debacle that junk bonds actually had fewer debt covenants than less risky debt (which contradicts the theory of private market discipline by creditors). In no case did sub debt holders exercise effective discipline over an S&L. Indeed, I do not recall any case in which they even attempted to impose discipline. All of these facts refute the theory that private creditors exercise effective discipline through debt covenants or similar means. The other form of private market discipline that failed during the debacle was private deposit insurance. Control frauds caused the failure of private insurance systems for thrifts (State-chartered S&Ls that were not insured by the FSLIC) in Ohio, Maryland, and Utah. In no case did private insurers adopt regulations that conventional economists would consider rational, but that is hardly a defense of the concept of private deposit insurance, for the theory relies on the assumption that they will act rationally. There is no known case where a private thrift insurer successfully stopped a control fraud in time to avoid the collapse of the fund. All the private thrift-insurance funds that did not collapse saw their members convert to FSLIC- or FDIC-insured status because depositors lost confidence in them… 'Daisy chains' of control frauds operated in some parts of the country. This was not some vast, directed conspiracy, but a large mutual aid society. Daisy chains allowed S&L* A *to buy S&L C's problem asset, while S&L B bought* A*'s and* C *bought* B*'s. No examiner, no manner how suspicious, could find from the records of A, B, or C that the purchases were linked, because no single S&L's records could demonstrate the link. …The cover-up phase of the ADC Ponzis made bad developers (and informal alliances with other control frauds) critical. Adverse selection and the perverse incentive of control frauds to increase their ADC lending in the teeth of a glut of commercial real estate meant that the ADC projects were likely to fail and the loans would default at maturity. Control frauds hid these defaults and turned them into new sources of fraudulent income and new means of deceiving the regulators. In increasing order of elegance: S&Ls would refinance their ADC loans, engage in 'cash for trash' deals with bad*

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borrowers, trade 'my dead horse for your dead cow' with other control frauds, and perform intricate trans-actions with 'daisy chains' of control frauds. The fundamental gambit was to remove the real loss and create fictitious income through fraudulent loans and sales. Control frauds used equity kickers to create fictitious profits from sham sales." (Black, 2014).

1431 According to Yago, Junk had lower rates, more liquidity, less regulation than private placements and grew from $10 B in 1979 to $189 B in 1989, funding 25-30% of LBOs. "*Milken reinvented junk bonds as a financing mechanism for new ventures, and his support of a market for the new issues that he placed, enabled small firms to acquire large ones previously considered impervious to unsolicited bids.*" (Romano, 2005).

1432 "*Prior to the Chandler Act of 1938, the Wall Street investment bankers who had underwritten a corporate debtor's securities, together with the bankers' attorneys, played a central role in any large-scale corporate reorganization. The Chandler Act's new reorganization provision, which were drafted by future Supreme Court Justice William Douglas and his staff at the [SEC], dramatically altered the existing regime by mandating that the managers of a corporate debtor be replaced by an independent trustee. The Chandler Act also prohibited the debtor's current bankers and lawyers from serving as trustee or trustee's counsel. Because of these and other structures, Wall Street quickly disappeared from the corporate reorganization process.*" (Skeel, 2000).

1433 Since the "*Constitution of 1876, the banks had been unshackled with the advent of multibank holding companies in Texas beginning in 1970. The passage of the Bank Holding Co Act in 1956 had permitted one-bank holding companies. Amendments to the act in 1970 allowed a single holding company to own more than one bank, thus providing a structure for the creation of banking 'systems' under common ownership, which provided an alternative to branch banking in unit-banking states such as Texas. Subsequently, large holding-company systems of banks were formed in Texas through mergers and acquisitions.*" (Grant, 1996).

1434 "*The Texas Deceptive Trade Practices-Consumer Protection Act (DTPA), enacted in 1973, is a fearsome weapon in the arsenal of attorneys representing commercial plaintiffs… While a number of other states have enacted deceptive trade practice legislation, the Texas statute is unique both in the amount of litigation it has spawned [According to one 1984 survey, about half of all reported deceptive trade practices decisions nationwide involve the Texas statute] and in the frequency of legislative amendment [The Texas DTPA has been amended or supplemented in some respect at every legislative session since its adoption in 1973].*" (Paulsen, 1995).

1435 "*Financial institutions have not been specifically exempted from DTPA coverage and the Act cannot be regarded as being facially inapplicable to them. Financial institutions however, have enjoyed a degree of freedom from DTPA liability on the theory that bank customers are not 'consumers' for DTPA purposes. The DTPA grants a private right of action only to 'consumers' as defined in the Act. 50 § 17.45(4) of the Act defines a 'consumer' as 'an individual, partnership, corporation, this state, or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services....' The Texas courts have maintained that money is not a 'good' and that the simple extension of credit is not a 'service.' Consequently, bank customers asserting claims otherwise cognizable under the DTPA have often been frustrated in their attempts to establish consumer status with regard to banking institutions… The Texas courts have maintained that money is not a 'good' and that the simple extension of credit is not a 'service.' Consequently, bank customers asserting claims otherwise cognizable under the DTPA have often been frustrated in their attempts to establish consumer status with regard to banking institutions… Texas law supplements and significantly expands upon federal requirements. The Texas Consumer Credit Code contains detailed regulations and required disclosures for certain small loans, installment loans and sales, revolving loans and secondary mortgage loans, as well as mobile home and auto loans*" (Krahmer et al., 1987)

1436 "*Recent years have witnessed a rapid increase in problem loans. In response, banks and other commercial lending institutions in the United States have used a number of workout practices to improve or secure their position vis-a-vis their debtors. Such practices, however, have come under increasing attack by debtors, shareholders, creditors, bankruptcy trustees, and others. In [Farah] the plaintiff-debtor received a jury award of approximately $19 M in compensatory damages against a group of financial institutions as a result of an alleged conspiratorial course… The foregoing discussion reveals that, for the most part, the theories applied in Farah are not unique. Farah is significant, however, because of its application of the traditional theories of fraud, duress, and interference in the context of a debtor-creditor relationship.*" (Ebke and Griffin, 1986).

1437 "*The current economic problems in Texas have made bankruptcies, foreclosures, and loan restructuring routine. Litigation by lenders against financially troubled borrowers has increased. Borrowers in serious trouble have responded by filing huge counter-claims against their lenders, sometimes under novel theories. A series of lender-borrower cases has significantly expanded the potential liabilities of lenders to their borrowers, and some have resulted in awards of tens of millions of dollars to defaulting borrowers. Success by previous borrowers has prompted a cascade of lender liability suits in Texas.*"(Tyler, 1987).

1438 "*Bankers' increasing concern over these issues can be demonstrated by the rise in the number of citations of 'lender liability' in the American Banker over the past 7 years. The sharp rise in citations that began in 1986 is a clear indicator of bankers' interest and concern. The timing of the increase is likely related to a 1985 case on wrongful termination of credit. One of the biggest legal problems for banks is that uncertainty in the law makes it difficult to determine what actions create liability. Uncertainty raises the risk of extending loans, because banks are unable to estimate their exposure to lawsuits. Increased risk discourages lending and exacerbates problems in credit availability.*" (Clair & Tucker, 1993).

1439 "*In 1984, the FRB promulgated § 225.4(a)(1) [as part of the comprehensive revisions to Regulation Y] providing that '[a BHC] shall serve as a source of financial and managerial strength to its subsidiary banks and shall not [conduct] its operations in an unsafe or unsound manner.' The new regulation was promulgated without explanatory remarks. Industry analysts simply assumed that the regulation was a mere codification of the original Source-of-Strength policy.*" (Brown, 1992).

1440 "*The Tax Reform Act of 1986 further lowered all marginal tax rates, including the rate for the highest earners (from 50 to 38.5 %), but it countered that change by eliminating not only the ACRS but also the ability of taxpayers to offset other income with tax losses from passive investments in commercial real estate. Deductions and losses from one business or rental activity had generally been allowed to offset income from other business activities and investments. After 1986, losses from passive activities (generally defined as those activities in which the taxpayer does not materially participate, and any rental activity) were allowed to offset only income from other passive activities, and credits from passive activities were applicable only to the tax attributable to income from such activities.*" (FDIC, 1997).

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1441 "*Longstanding tension divides the needs of a bankruptcy reorganization and the securities laws. The nature of [SEC's] right to participate in a bankruptcy reorganization has been particularly important.*" (Eisenberg, 1987).

1442 The GAO "*declared the FSLIC insolvent on the basis of its contingent liabilities at year-end 1986. In 1987, Congress passed the Competitive Equality Banking Act of 1987 [CEBA], which authorized the FSLIC to borrow up to $10.825 B but placed a $3.75 B limit on borrowing in any 12-month period.*" (FDIC, 1997).

1443 "*Bank regulation has been replete with many other forms of forbearance, as the following 5 examples illustrate. First, [CEBA] allows a bank to operate temporarily with a capital ratio as low as 0.5% under an authorized capital forbearance program. In 1987 the FDIC broadened its 1986 forbearance eligibility guidelines, formerly applicable only to banks heavily involved in agricultural and energy lending, to include any bank with difficulties attributable primarily to 'economic problems beyond management control.' The FDIC has extended forbearance to 135 banks under this program. Second, the FDIC established its first bridge bank in 1987. A bridge bank is an insolvent institution that instead of being closed in a traditional manner may remain open but operate under a board of directors appointed by the FDIC. Third, the FDIC, the Federal Reserve Board, and [COTC] adopted rules in 1987 that permit agricultural banks with assets of $100 M or less to amortize farm-related losses over a period as long as 7 years instead of having to recognize them in the year in which they occurred.*" (Brumbaugh, Carron, and Litan, 1989).

1444 CEBA established new standards for expedited funds availability, recapitalized FSLIC, and expanded FDIC authority for open bank assistance transactions, including bridge banks. "*After the failure of Continental Illinois Corporation and its banking subsidiary in 1984 and the demise of several large southwestern banks after 1986, federal bank regulators began to explore ways to enable failing banks to continue to offer banking services without having to reduce the ultimate payouts to prior uninsured depositors. For commercial banks and, after 1987, mutual savings banks, the first new device for this purpose was bridge banks. Bridge banks share many common attributes with and serve many of the same economic objectives as national bank conservatorships, but are more amorphous. Because bridge banks provide no segregation of post-organization deposits or 'safe bank' restrictions on the investment of those deposits, an accounting and legal nightmare can ensue if these banks are not sold or recapitalized as going concerns. The principal difference in legal authority is that bridge banks are organized and administered by [FDIC], while [COTC] appoints national bank conservators. In effect, a bridge bank is a hybrid creation that enables the FDIC to take over and maintain ongoing banking services at failing banks, including the commingling of post-organization with preorganization deposits, even though the FDIC does not issue bank charters. This additional power is important to the FDIC because before 1987, it had no statutory way to induce state regulators to close failing state-chartered banks while ensuring that their banking services would continue."* (Todd, 1994). "*The FDIC had in most cases arranged for takeovers of the failed banks so that the few depositors with deposits above the maximum insured amounts did not incur losses. Beginning in the late 1970s the problems of the FDIC and those of the [FSLIC] mounted sharply. The FDIC rescued a considerable number of banks including two giants, the Continental Illinois of Chicago [1984] and the First Republic Bank of Dallas [1988]; honoring the deposit insurance guarantee cost these agencies billions.*" (Kindelberger and Aliber, 2005).

1445 "*This article examines the market reaction to announcements leading to the eventual passage of [CEBA] using portfolios of savings and loans. Negative announcement effects of the CEBA legislation are observed for well capitalized savings and loans and positive announcement effects are observed for less capitalized savings and loans. The evidence also indicates that the market risk for the less capitalized savings and loans decreased following the passage of the CEBA legislation.*" (Alexander and Spivey, 1994).

1446 "*Commercial banks had long been frustrated by their inability underwrite corporate municipal bonds. Securities markets now having recovered from the 1930s and World War II, big corporate borrowers took to issuing commercial paper and junk bonds. With these instruments offering corporate borrowers new ways of financing themselves, reducing their dependence on bank credit, bank profits were squeezed. The big banks that were the big traditional interlocutors were hurt the most… At first, money-center banks, with Citibank… in the vanguard, found a new market in syndicate loans to governments in Latin America and Eastern Europe.. But by the early 1980s these loans had gone bad. For the regulators to insist that the banks acknowledge their losses was not an option, however, doing so would have bankrupted the [FDIC]. Instead the banks were allowed to earn their way back to health, and regulation was loosened to facilitate their efforts… In Dec 1986, in response to a petition from J. P. Morgan, Bankers Trust, and Citicorp (the holding company parent of Citibank), the Fed creatively reinterpreted the Glass-Steagall Act to allow commercial banks to derive up to 5% of their income from investment banking activities. The investment banking activities in question included underwriting municipal bonds, commercial paper and, fatefully, mortgage-backed securities. In 1987, over the opposition of its deregulation-skeptical, soon-to-be-former chairman, Paul Volcker, the [Fed] authorized several large banks to further expand their underwriting businesses. If ever there was an illustration of how lame-duck status can weaken a Fed chair, this was it.*" (Eichengreen, 2016). "*The onset of the emerging market debt crisis in 1982, precipitated by Mexico's announcement that it was no longer able to service its external debt, put these institutions to the test… During debt restructurings in the 1980s, banks often provided refinancing to distressed debtor countries rather than forcing them into default. Banks adopted this tactic because, first, they perceived the debt crisis that began in the late 1970s as related to problems of liquidity rather than solvency. Second, banks had a regulatory incentive against declaring a creditor in default—a prerequisite for litigation—since they would be required to write down the value of the loans on their books. A legal academic noted that the "effect of these pressures was a de facto replication of the U.S. Bankruptcy Code's automatic stay of collection actions against a debtor. The banks were effectively unable to pursue their collection rights even though those rights were fully enforceable… In retrospect, academics argued that economic impacts on debtor countries were prolonged due to the failure of affected commercial banks and their own governments to reach agreement on who should bear the costs of debtor defaults. In 1985, [UST Secretary Baker] proposed the Baker Plan… The U.S. agreed to an expansion of World Bank funds to support such programs. By encouraging reform and promoting growth, the Baker Plan aimed to restore private capital inflows. Despite these initiatives, between 1982 and 1987, the 15 most heavily indebted countries demonstrated little or no growth under the Baker Plan… The failure of the Baker Plan forced the international financial community to consider debt forgiveness in addition to debt rescheduling. The most prominent proposal was the Brady Plan, suggested by [UST Secretary Brady] in 1989, which encouraged banks to restructure past loans to developing-country governments with the ultimate objective of cultivating a climate of sustained economic*

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growth… In total, around $203 B of debt was restructured under Brady deals in around 18 countries, resulting in $64 B of debt relief." (Alfaro and Vogel, 2018).

1447 "*... FDIC's experience with large Texas [BHCs], including MCorp and Texas American Bankshares. These [BHCs] had set up numerous separately incorporated banks in order to comply. In the FDIC's opinion, these [BHCs] employed a strategy of dumping liabilities into a few of their banks, which became deeply insolvent, while retaining assets and shareholder worth in other banks. When some banks neared insolvency, the [BHCs] and solvent banks refused regulators' demands to support the weak banks. The FDIC and the Federal Reserve then attempted novel legal means, with limited success, for gaining the value in the [BHC] and solvent affiliates. Meanwhile, the FDIC sought and received from Congress the cross-guarantees powers, to avoid similar problems in the future…. the FDIC and RTC gain powers in insolvency that would not have been available to the institution pre-insolvency, or to a non-bank in insolvency-to the disadvantage of third parties.* " (Swire, 1992). "*In a sense, MCorp's strategy had backfired. The company had sold assets to build a warehouse of cash to assure its survival. Instead, that cash had become a source of contention between the company and federal regulators. Management wanted to keep it in the parent company, whereas the regulators wanted the company to use it to recapitalize its subsidiary banks. In fall 1988, MCorp said that it might either have to file for bank-ruptcy protection or be forced into bankruptcy in order to shield the cash from the regulators, which ultimately led to the standstill agreement of Nov 1988. But that much cash became an irresistible lure for creditors, who had continuously threatened to file on the company. Finally, 3 bondholders from S. N. Phelps & Co, a Greenwich, Connecticut, bond broker, filed for involuntary liquidation under Chapter 7 of the U.S. Bankruptcy Code on Fri, March 24. Stan Phelps... filed in fear that MCorp would be forced by the regulators to use its cash to recapitalize its banks. In response to Phelps's action, MCorp had no choice but to file its own petition to transfer the bankruptcy from involuntary liquidation under Chapter 7 to reorganization under Chapter 11… When we did speak after the accord had been reached with the regulators, he told me that the mention of bankruptcy had really spooked their depositors, who assumed that it meant the company—and thus its banks—were broke. As a result, a run of massive proportions developed, necessitating the borrowings from the Federal Reserve. I felt a lot of sympathy for MCorp, but this was good intelligence for me to have, as it would help us avoid the mistake of taking TAB into Chapter 11 bankruptcy…. [When time came for survival, in addition to filing with FDIC,] instructed Sullivan & Cromwell to begin preparing a Chapter 11 bankruptcy filing, just so we would be prepared to take the offensive should we need to. An integral part of this strategy would be to file a lawsuit against the regulators enjoining them from illegally grabbing our solvent banks.* " (Grant, 1996).

1448 "[T]*he Federal Reserve commenced two administrative actions against MCorp. In the first action, the Federal Reserve alleged that MCorp violated the Federal Reserve's Source of Strength Policy Statement. This policy statement provides that [BHCs] are required to serve as a 'source of strength' to their subsidiary banks. The violation reputedly arose because MCorp had failed to inject over $400 M in cash, which it then held at the [BHC] level, into its subsidiary banks. The Federal Reserve sought to require MCorp to devise a capital plan that would provide for all of MCorp's assets to be used to recapitalize its subsidiary banks. In the second action, the Federal Reserve alleged that MCorp violated § 23A of the Federal Reserve Act (the statute restricting transactions between a bank and its affiliates). The alleged violation arose when the former MBank Houston and MBank Preston made 'unsecured extensions of credit' to MBank Management, a nonbank subsidiary of MCorp. MCorp sought to avail itself of the protections afforded debtors under the Bankruptcy Code in order to avoid the Federal Reserve's assessment of administrative penalties… [In MCorp v. Board of Governors of the Federal Reserve System 1990 WL 52582 (5th Cir. (Tex.)),] The court stated that requiring MCorp to make a capital injection of its funds would require MCorp to disregard its own separate corporate status. This would constitute a wasting of corporate assets and a breach of duty to MCorp's shareholders. Congress, in adopting § 23A of the Federal Reserve Act, specifically defined the permissible relationship between banks and their affiliates, including their parent [BHCs]. Congress, however, never mandated that [BHCs] inject capital into their subsidiary banks. The court noted that Congress empowered the bank regulators to issue capital directives to the institutions under their supervision, but did not provide the Federal Reserve with the authority to issue such directives to [BHCs]… The MCorp decision has eliminated the Federal Reserve's asserted authority to mandate that existing [BHCs] use their available resources to recapitalize their subsidiary banks*." (Weinstock, 1990). The following year, the Supreme Court "*in Board of Governors, FRS v. MCorp Financial, Inc., 502 US 32 - 1991 effectively reinstated the Federal Reserve Board's controversial 'Source-of-Strength' doctrine by reversing the Fifth Circuit which had struck down the doctrine one year earlier. Although seldom litigated, the Source-of-Strength doctrine posed significant problems for managers of a [BHC] who were, after 1987, required to recapitalize ailing subsidiaries with parent corporation funds. Moreover, the [FIRREA] of 1989 and the [FDIC] Improvement Act of 1991 both contain provisions increasing the BHC's responsibility for reviving an ailing subsidiary, as well as providing partial funding of [FDIC] liquidations*." (Brown, 1992).

1449 *"Even though Bank of New York had filed against us, we had effectively stayed their suit by filing a counter suit alleging usury, among other things. This was clearly a delaying tactic on our part, but it worked—we had learned something from the millions of dollars in lender liability suits filed against us. On Thurs, March 16, we received another shock when we were contacted by the press seeking confirmation that FDIC examiners were in both TAB and NBC. Our gravest concerns about the presence of the examiners had been realized. The stories reporting the exam speculated that the examinations could be the precursor of a 'closed bank' deal? The March 17 edition of American Banker quoted sources as saying that Pohlad now wanted to buy the franchises on a 'closed bank' basis, which would remove the necessity of negotiating with creditors and shareholders. A 'closed bank' purchase would also cut off litigation claims against both companies, thus removing a major obstacle in the negotiations between Pohlad and the FDIC. Lender liability lawsuits filed against TAB alone totaled $650 M. Such lawsuits had become a favorite ploy used by attorneys...*" (Grant, 1996).

1450 "*A majority of states have recently added credit agreements to their respective Statutes of Frauds in an attempt to preclude borrowers from asserting [lender liability claims]. This legislation, adopted in some form by a majority of states [1989-91]... Under several statutes a credit agreement is conclusively presumed to be a complete integration and evidence of oral terms is inadmissible... the Texas statute provides that: The rights and obligations of the parties . .. shall be determined solely from the written loan agreement, and any prior oral agreements between the parties are superseded by and merged into the loan agreement... An agreement... may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the agreement*." (Pearson, 1991).

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1451 FIRREA (1) abolished the Federal Home Loan Bank Board (FHLBB), (2) vested regulatory power into the new Office of Thrift Supervision (OTS) and placed the formerly independent agency under the UST, (2) created the Federal Housing Finance Board (FHFB) as an independent agency to take the place of the FHLBB in overseeing the 12 Federal Home Loan Banks, (3) abolished FSLIC and all assets and liabilities were assumed and administered by the FDIC, taking the place of the FSLIC as an ongoing insurance fund for thrift institution, and the Resolution Trust Corporation (RTC) was established to dispose of failed thrift institutions taken over by regulators.

1452 Under FIRREA, '*no court shall have jurisdiction over . . . any claim relating to any act or omission of a bank*' under control of the FDIC. This is an affirmative defense in litigation that Congress created in response to the savings and loan crisis of the 1980s. It enables the FDIC to wind up the affairs of failed financial institutions. Specifically, FIRREA allows successor banks to avoid liability for the wrongful acts of lending institutions they buy out of receivership. "*The usual operating procedure was to close the bank or the thrift institution when its capital had been depleted, and then to carve a 'good bank' from the rescued institution while the remaining assets of the failed institution would be retained for eventual sale by another newly-created government agency, the [RTC]. Both the insurance agencies incurred large losses in honoring their guarantees; eventually they would obtain the funds to pay for these losses by borrowing from [UST]. In the early 1990s, the estimates were that the total losses to the US taxpayers would amount to $150 B but the pick up in the growth rate of the US economy meant that the RTC received more money than anticipated from the sale of collateral and bad loans so the losses totaled about $100 B. There was some question whether a portion of this cost to the taxpayers could be reduced by increasing the insurance premiums on bank deposits – a suggestion resoundingly opposed by sound banks.*" (Kindelberger and Aliber, 2005).

1453 "*One report indicated that, of the $200 B of junk outstanding by the end of 1988, some [35%] was owned by mutual and pension funds, [31%] by insurance companies, ... [and 6% was held] by thrifts... As of March 31, 1988, 55% of thrift junk was owned by 4 institutions. The book value of defaulted junk bonds at these thrifts was $184 M, or 2% of their portfolios. Another report, by the General Accounting Office (GAO), indicated that, as of Sep 30, 1988, 161 of the country's approximately 2,000 thrifts had invested $13.2 B in junk bonds, with 25 owning 91% of the total...[J]unk bonds had performed well for the thrifts. In March 1989, the GAO found that the returns on these bonds exceeded risks and that 'high yield bonds have not caused the current thrift industry problems.'*" (Sobel, 2000).

1454 "*FIRREA required the thrifts to mark their junk bonds to market. Some would have to show large losses. In addition, they would have to sell their junk portfolios by Aug 1994, which meant that 6% of all junk would come to market around the same time. Moreover, the thrifts were prohibited from purchasing new junk issues, and that restriction effectively removed a major player from the market. Almost at once, the thrifts started liquidating their portfolios.*" (Sobel, 2000).

1455 "*The beginning of the end for Drexel came in June 1989, when it was unable to roll over a mere $40 M of commercial paper for Integrated Resources. In Milken's day, some rescue would have been fashioned, if only to maintain Drexel's reputation for supporting clients. Indeed, Milken once had saved the day for IR through an equity infusion from another client. Not now. Its back to the wall, on June 15, Integrated Resources defaulted on $1 B of debt, most of it held by Drexel customers like Perelman ($24 M) and First Executive ($49 M), which had guarantees on their investment from Drexel, which itself owned $41 M of the paper… 'When Drexel didn't stand behind Integrated, there was a sea change. Other companies said, 'They won't stand behind us, either.' Now there was a whiff of panic in the air.*" (Sobel, 2000).

1456 "*The high leverage incurred in the 80s contributed to an increase in the bankruptcy rate of large firms in the early 1990s. That increase was also encouraged by the recession (which in turn was at least partly caused by the restriction in the credit markets implemented in late 1989 and 1990 to offset the trend toward higher leverage), and the revisions in bankruptcy procedures and the tax code (which made it much more difficult to restructure financially distressed firms outside the courts (Wruck, 1990). The unwise public policy and court decisions that contributed significantly to hampering private adjustment to this financial distress seemed to be at least partially motivated by the general antagonism towards the control market at the time.*" (Jensen, 1993).

1457 "*[The SEC] and Federal Reserve closely monitored its travails. The regulators' principal concern was the stability of the financial markets and the banking system. Once they concluded that neither would be jeopardized by a Drexel bankruptcy, 'the officials saw no reason to launch any heroic efforts to keep the company alive' when Drexel's prospects for a loan or sale fell through. On Feb 13, 1990, Drexel's holding company filed for Chapter 11. 'In allowing the fall,' [WSJ] wrote, 'the government backed away from a policy that has guided regulation since the New Deal: that some financial institutions are just too big to fail…'… Savings and loan (S&L) regulators also thrust themselves into the case, claiming that Drexel owed $6.8 B to compensate S&Ls that regulators took over for the losses they suffered from Drexel-related investments. The most obvious effect of this intense government involvement was to limit Drexel's options for reorganization… Drexel's trip through the bankruptcy courts offers several early lessons about resolving the financial distress of investment banks and other financial institutions. The first was simply that investment banks are not precluded from reorganizing in bankruptcy. Although brokerages theoretically must be liquidated under Chapter 7 if they file for bankruptcy, Drexel sidestepped this obstacle by putting its holding company rather than the brokerage subsidiary into bankruptcy. The brokerage subsidiary was kept out until all of the customer accounts had been moved to other entities. Second, Drexel showed, nearly two decades before Lehman, that bankruptcy need not take too long to effectively resolve the financial distress of a financial institution. Drexel filed for bankruptcy in 1990, at a time when delay was seen as a great shortcoming of Chapter 11. To be sure, the case did take more than 2 years to complete. But even in an era of long cases, Drexel's most time sensitive assets were redeployed almost immediately, long before the eventual reorganization.*" (Ayotte and Skeel, 2009).

1458 "*This caused deep distress for several of the institutions, which promptly filed for bankruptcy… FIRREA exacerbated an already troublesome situation at the thrifts. As recently as 1987, only 47 thrifts had failed. Failures the following year came to 223, and in 1989, when FIRREA went into effect, there were 328 failures. Yet, until then, not a single thrift had failed due to its junk holdings. A year later, when there were 217 failures, a Fortune writer estimated that losses related to junk bonds accounted for 2% of total thrift losses. What the government had done with FIRREA was to set off a junk-selling panic at the thrifts, which rippled through the market, impacting on existing issues and holding up pending financing… All the while, there*

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were failures of junk issuers and weakness in the market. On July 14, 1989, Southmark filed for bankruptcy. Seaman's Furniture missed a debt payment. Ramada Inc. scrapped a $400 M offering. Resorts International defaulted on its $325 M in debt in late Aug. On Sep 13, Robert Campeau, who had gobbled up Allied Stores and Federated Department Stores through junk financing, declared that he lacked enough capital to satisfy debt payments and was sweating units to raise badly needed cash. Fears surfaced regarding junk liquidity, prompting increased selling in Oct. The spread between junk and government bonds widened alarmingly, from slightly more than 200 basis points in Jan 1989, to 372 on Nov 15." (Sobel, 2000). Although the number of mergers surpassed records, the massive growth in business concerns muted the merger rate; it's unclear if the rate fell during this crisis (see Exhibit 14).

1459 "*From 1938 until the early 1970s, corporate debtors were not permitted to use state of incorporation as a basis for bankruptcy venue. The drafters of the Bankruptcy Rules reintroduced state of incorporation as a venue option in 1973… Yet few firms took advantage of this option. Then everything changed. In the absence of a more attractive venue option, Continental Airlines filed for bankruptcy in Delaware in 1990. The Delaware bankruptcy court's successful handling of Continental put Delaware on the bankruptcy map, and Delaware quickly displaced New York as the venue of choice for large scale reorganization. Delaware's rapid ascent prompted a sharp backlash from bankruptcy professionals. Critics grumbled that the Delaware bankruptcy judges had cultivated too cozy a relationship with debtors and the local bankruptcy bar, and insisted that Delaware's location was inconvenient for many creditors. In 1997, these critics persuaded the National Bankruptcy Review Commission to adopt a provision proposing to remove state of incorporation, and thus Delaware, from a corporate debtor's choice of filing locations. A similar prohibition has made its way into proposed bankruptcy legislation, but it was subsequently removed*." (Skeel, 2000).

1460 "*Although critics often suggest that judges in Delaware and New York are debtor-friendly in the same way, the two districts actually have established quite different reputations among practitioners — reputations that are amply borne out by their track records in large cases. The New York judges are known for their willingness to repeatedly extend the exclusivity period during which the managers of a large debtor are the only ones who can propose a reorganization plan. Because extended exclusivity reduces the pressure for a debtor's managers to act quickly, it can encourage long, drawn-out, costly bankruptcy cases. Delaware's judges, on the other hand, have established precisely the opposite reputation. Rather than lengthy cases, Delaware is known for its speedy confirmation of reorganization plans. Many of the large firms that file in Delaware seek to confirm prepackaged bankruptcy plans, and more traditional cases also tend to reach confirmation quite quickly.*" (Skeel, 1998).

1461 "*The firm that put Delaware back on the map was Continental [Airlines]. According to widely repeated rumor, when Continental was considering its second bankruptcy filing in 1990, its managers wanted to file either in New York or Atlanta. Because neither of these locations was viable, the managers debated other possible choices on the eastern seaboard, and through a process of elimination seeded on Delaware. In the wake of Continental's remarkably smooth reorganization, other publicly held corporations followed suit...*" (Skeel, 1998). "*A closer look at Delaware precedent reveals, however, that, although well developed, it is far from clear and predictable. Recent work demonstrates a degree of indeterminacy in Delaware law that casts substantial doubt on the transaction cost model... his article offers a solution to the puzzle and an alternative explanation for Delaware's success in attracting corporate charters—the unique lawmaking function of the Delaware courts. The article focuses on the peculiar role of the Delaware judiciary in corporate lawmaking, a role that has received little attention from corporate law scholars. The article demonstrates that Delaware uses an unusual process to make corporate law. Delaware relies heavily on judge-made law, but the structure and operation of the Delaware courts causes Delaware's judicial lawmaking to differ from that in other states. Indeed, the process by which Delaware courts make corporate law resembles legislation in some ways*." (Fisch, 2000).

1462 The *Housing and Community Development Act of 1992* provided regulatory relief to financial institutions, established regulatory structure for GSEs, and combated money laundering.

1463 The *Riegle-Neal InterState Banking and Branch Efficiency Act of 1994* opened the door to mega-banks. "*US banks have historically been subject to geographic restrictions on the scope of their operation. Until federal legislative change in 1994, interState bank operations were tightly circumscribed by a mix of federal and State laws. Indeed, the most common bank had been the 'unit' bank, a single location in a single State. These restrictions may have facilitated monitoring of local bank activity by in-State regulators (or protected the local banking monopolies of local elites), but they also impeded the extent to which commercial banks were able to offer finance at a scale appropriate for large US public companies. This had the effect of steering corporate finance-raising away from bank loans and towards bond markets. To raise substantial sums through bank loans required the formation of a syndicate of dozens, sometimes hundreds, of banks, typically organized by a lead 'money centre' bank. The transaction costs were quite high, especially if a debt-restructuring proved necessary. By contrast, a small group of investment banks could readily tap into a nationwide bond market of large institutional investors to raise funds through a securities issuance*." (Armour et al., 2016). Prior to the deregulation of the 1990s, banks in the US were subject to geographic restrictions that limited their scale and impeded their ability to offer financing to large companies. To raise the sums required by borrowers, banks organized into syndicates– sometimes numbering in the hundreds – which was an expensive process. There generally was no secondary market for these loans (Webb, 2016). By contrast, investment banks were able to offer market-based intermediation by tapping into the bond market (established for the junk market by Milken). In other words, unlike bonds, loans were not designed for wide distribution but for retention by their arrangers. This enabled "*consents or amendments to loan documents [to be] relatively easy to obtain…[and] encouraged lenders to allow only limited exceptions to the negative covenants.*" (O'Sullivan and Cheng, 2012). Hence, loans offered banks and borrowers relatively less risk than bonds through negotiation rather than bankruptcy.

1464 "*Under Volcker's successor, the liberalization-minded Alan Greenspan, the Fed then allowed [BHCs] to derive as much as 25% of their revenues from investment banking operations. By the 1990s, then, Glass-Steagall was already weakened. The fatal blow was struck by the merger wave that swept investment banking and brokerage toward the end of the decade. Morgan Stanley, an investment bank, merged with Dean, Witter, Discover & Co., a brokerage and credit card company, in 1997, while the trust company and derivatives house Bankers Trust acquired Alex. Brown & Sons, an investment and brokerage firm. This consolidation of investment houses, brokers, and insurance companies threatened to further disadvantage the banks, which responded by lobbying even more intensely for the removal of remaining restrictions on their operations. And if lobbying was not enough, there were other*

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ways of forcing the issue. Citicorp moved in 1998 to purchase Travelers Insurance Group, notwithstanding Glass-Steagall provisions requiring it to sell off Travelers' insurance business within 2 years. The merger would allow Travelers to market to Citicorp's retail customers not just insurance but also its in-house money market funds while giving Citicorp access to an expanded clientele of investors and insurance policyholders. Its main shortcoming was its incompatibility with Glass-Steagall. The chairmen and co-CEOs of the merged company, John Reed and Sanford Weill, mounted a furious campaign to remove Glass-Steagall's nettlesome restrictions before the 2-year window closed. Weill formed an alliance with David Komansky of Merrill Lynch and Phil Purcell of Morgan Stanley to lobby for change. Their arguments received a sympathetic hearing from the Greenspan Fed and also from the White House, in the person of President Clinton's advisor for financial reform, Gene Sperling, and from [UST], especially when Lawrence Summers succeeded Robert Rubin as secretary in mid-1999. (Rubin left for an advisory position... Citigroup; he started in Oct.)… Glass-Steagall was finally euthanized by Gramm-Leach-Bliley, which repealed residual restrictions on combining commercial banking, investment banking, and insurance underwriting, in Nov 1999."' (Eichengreen, 2016). "*An Immediate consequence was that the balance sheets of the US [BHCs] that these securities firm joined became much larger and more complex - and thus more of a supervisory challenge. Nevertheless, in its origins, market-based credit intermediation looks to have been motivated by efficiency.*" (Armour et al., 2016).

1465 The *Crime Control Act of 1990* increased the powers and authority of the FDIC to take enforcement actions against institutions operating in an unsafe or unsound manner, and gave regulators new procedural powers to recover assets improperly diverted from financial institutions.. The *Federal Deposit Insurance Corporation Improvement Act of 1991* ("FDICIA") recapitalized the Bank Insurance Fund and allowed the FDIC to strengthen the fund by borrowing from UST. The Act mandated a least-cost resolution method and prompt resolution approach to problem and failing banks and ordered the creation of a risk-based deposit insurance assessment scheme. Brokered deposits and the solicitation of deposits were restricted, as were the non-bank activities of insured State banks. FDICIA created new supervisory and regulatory examination standards and put forth new capital requirements for banks, while expanding prohibitions against insider activities and disclosure provisions. The RTC Completion Act provided final funding for the RTC and established a transition plan for transfer of RTC resources to the FDIC. The RTC sunset at the end of 1995, at which time the FDIC assumed its conservatorship and receivership functions. The *Economic Growth and Regulatory Paperwork Reduction Act of 1996* directed FDIC to impose a special assessment on depository institutions to recapitalize the Savings Association Insurance Fund (SAIF), and aligned SAIF assessment rates. The Act also required the Federal Financial Institutions Examination Council and its member agencies to review their regulations at least every 10 years to identify any outdated or unnecessary regulatory requirements imposed on insured depository institutions. Within a decade, the *Federal Deposit Insurance Reform Act of 2005* required the merger of the Bank Insurance Fund and the Savings Association Insurance Fund into the Deposit Insurance Fund. The Act also increased the coverage limit for retirement accounts to $250 K and indexed the coverage limit for retirement accounts to inflation as with the general deposit insurance coverage limit. The Act granted the FDIC Board the discretion to price deposit insurance according to risk for all insured institutions regardless of the level of the reserve ratio. Soon after enactment, the *Federal Deposit Insurance Reform Conforming Amendments Act of 2005* provided amendments that were necessary for the complete implementation of Federal Deposit Insurance Reform Act of 2005.

1466 "*The National Securities Markets Improvement Act of 1996 (NSMIA) sought to uniformly regulate certain national securities offerings among States. NSMIA amended § 18 of the '33 Act, preempting State-level registration of securities that qualify for listing.*" (NASAA, 2011). "*[T]he Commodity Futures Modernization Act (CFMA) of 2000 eliminated federal and State regulatory oversight of financial derivatives. CFMA relieved issuers of credit default swaps from having to hold reserves against the possibility that they would actually have to make pay-ments to purchasers of those instruments. Credit default swaps (CDS) had been designed to allow investors in mortgage-backed securities to insure themselves against default on the mortgages in the underlying pool. Now, however, CDS were purchased by buyers who did not also purchase the asset against whose default the insurance was written but simply wished to bet against the housing market. The decision in 2000 to relieve issuers of the obligation to hold reserves against liabilities associated with these contracts would have momentous implications for what followed. And where deregulation could not be achieved by legislation, it proceeded by fiat. The activist chair of the [CFTC], Brooksley Born, was forced out in 1999 by a hostile Fed chairman and treasury secretary after recommending against further deregulation of derivatives. The [SEC], under the more accommodating Harvey Pitt and William Donaldson, then loosened its rules for the financial reserves that had to be held by the brokerage units of banks. Nor was deregulation limited to the United States.*" (Eichengreen, 2016). "*In Dec 2000, in response, Congress passed and President Clinton signed [CFMA], which in essence deregulated the OTC derivatives market and eliminated oversight by both the CFTC and the SEC. The law also preempted application of State laws on gaming and on bucket shops (illegal brokerage operations) that otherwise could have made OTC derivatives transactions illegal. The SEC did retain antifraud authority over securities-based OTC derivatives such as stock options. In addition, the regulatory powers of the CFTC relating to exchange-traded derivatives were weakened but not eliminated. The CFMA effectively shielded OTC derivatives from virtually all regulation or oversight. Subsequently, other laws enabled the expansion of the market.*" (FCIC, 2011).

1467 "*The originate-to-distribute model and the securitization of credit and its transfer to investors through traded capital market instruments has been part of the financial landscape since the 1970s, when the first mortgage-backed securities were issued. But this model has grown increasingly more complex over the past decade, as securitization expanded to riskier loans and came in increasingly more opaque and less liquid forms such as structured finance collateralized debt obligations… The 1988 Basel Accord was the main catalyst for the growth and development of credit risk transfer instruments. Following the banking crises of the late 1980s, which were triggered by loan defaults by Latin American governments, the accord applied a minimum capital requirement to bank balance sheets and required more capital protection for riskier assets. These rules prompted banks to reconfigure their assets using credit risk transfer instruments such as credit default swaps or CDOs. This was done either by purchasing insurance against credit losses using CDSs (reducing the gross risk of a loan portfolio) or by removing the riskiest (first loss) portions of a loan portfolio using CDOs… Growth in the volume of*

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CDOs outstanding was especially strong during 2005 and 2006. The CDO market kept on growing as their tranches offered fatter yields than comparably rated sovereign or corporate securities, which was a sure sell to investors such as pension funds that were struggling to match their fixed obligations with low-yielding government and corporate bonds. Meanwhile, broker-dealers earned hefty fee incomes for originating and managing CDOs and trading their tranches. Demand for CDOs was so strong, in fact, that they ended up driving demand for underlying mortgages in and of themselves. Due to this demand, prices of MBSs and mortgage loans remained extremely buoyant, cheating investors into a false sense of security as underwriting standards were collapsing." (Pozsar, 2008).

1468 "*The rise of life insurers, pension funds, and bond funds thus generated a vast pool of funds looking for debt-like claims but not needing the transformation services that banks supplied. This was the precondition for the growth of market-based credit intermediation. The key institutional catalyst in the creation of this market was the investment bank, which could replace commercial banks in the 'origination' of loans, except that the form of this origination was the underwriting of debt securities of the corporate issuer. Unlike a commercial bank, which held credit claims that it originated, the investment bank would 'distribute' debt securities to willing institutional buyers, which would bear credit risk, albeit in diversified portfolios. Investment-grade companies quickly learned that they could obtain more favorable interest rates and other credit terms through securities issuance to pension funds and life insurers than through bank loans, whose interest charge would have to cover the costs of the bank's transformation services (including the cost of regulatory capital). The investment banks could earn substantial profits from the underwriting fees, while distributing the risk-bearing substantial to institutional buyers. Thus, the key fact: market-based credit intermediation undercuts a core lending business of large commercial banks. The rise of institution investor intermediaries - pension funds, life insurers, and bond funds - provided an alternative to banks in the holding of debt claims. And a particular sort of market intermediary, investment banks, provided an alternative to bank-based loan origination in the form of underwriting.*" (Armour et al., 2016).

1469 "[*T*]*he separation of investment banking from commercial banking that followed Glass-Stegall created a set of market-focused intermediaries: the investment banks. Equity issuances are infrequent, but firms are continually raising debt—if only to roll-over maturing indebtedness. Because investment banks were blocked from conventional commercial banking, they had strong incentives to figure out how to propagate market-based credit intermediation and then pursued the cost advantages relentlessly. As European finance demonstrates, a universal bank with a strong commercial lending franchise will be reluctant to cannibalize its existing business through market-finance innovations.*" (Armour et al., 2016)

1470 Mutual and exchange traded funds greatly increased the range of investment opportunities to investors. The fragility of the technology behind it was made evident in 1987. "*[I]n the stock market meltdown of Oct 1987, the Fidelity group of mutual funds of Boston was a large seller in the London market before [NYSE] opened on the 19th. These orders were communicated back to New York, where they had accumulated into a mountain of sell orders by the time the market opened for trading. Fidelity's sales were a response to the redemptions by the holders of its mutual funds rather than to its own position, although it may have wanted to raise cash in anticipation of future redemptions —and before stock prices fell further… The sharp decline in stock prices... proved to be a correction rather than a panic because it did not spread to other US markets, although there were nearly simultaneous sharp declines in most other national stock markets (the exception being Tokyo). Distress lasted for several weeks while investors waited to see whether the decline in stock prices would have significant impacts on other markets… Specialists in individual stocks have often taken a 'time out' whenever the imbalance between the buy orders and the sell orders has been exceptionally large. This 'circuit breaker' was recommended for US stock markets after the meltdown.... The proposal for [NYSE] was to postpone trading for a Stated interval —such as 20 minutes— in those stocks whose prices increased above or declined below the limit… The stock market's troubles... cleared up brilliantly as the monetary authorities rapidly increased bank liquidity to forestall any shortage of credit. Margin requirements of 50% helped… There was no hint of criticism or second-guessing when the [Fed], under the new chairmanship of Alan Greenspan set about expansive open-market operations immediately after 19 Oct 1987, and poured in high-powered money 'right and left' to use Bagehot's expression.*" (Kindelberger and Aliber, 2005). The media deemed the market's anticipation of Greenspan's commitment to supporting equity prices the 'Greenspan Put.' Borio et al. (2012) argue that policymakers' focus on equity prices and standard business cycle measures made them lose sight of the continued build-up of the financial cycle that resulted in a larger downturn in the early 1990s. "*In 1981, Leland O'Brien Rubinstein Associates (LOR) "created a product that would provide insurance for large portfolios of stocks, with the Black-Scholes formula as a guidepost... By 1984, business was booming. The product grew even more popular after the Chicago Mercantile Exchange started trading futures contracts tied to the S&P 500 index in April 1982. The financial wizards at LOR could replicate their portfolio insurance product by shorting S&P index futures. If stocks fell, they would short more futures contracts... By the autumn of 1987, the company's portfolio insurance protected $50 B in assets held by institutional investors, mostly pension funds. Add in LOR copycats and the total amount of equity backed by portfolio insurance was roughly $100 B. The Dow industrials had soared through the first half of 1987, gaining more than 40% by late Aug... By mid-Oct, the market had been knocked for a loop, tumbling 15% in just a few months… Early on Mon, Oct 19, investors in New York were bracing for an onslaught well before trading began... All eyes were on Chicago's 'shadow markets': whose futures anticipate the behavior of actual prices. Seconds after the open at the Merc—15 minutes ahead of trading in New York—S&P 500 index futures dropped 14 points, indicating a 70-point slump in the Dow industrials. Over the next 15 minutes before trading began on the NYSE, massive pressure built up on index futures, almost entirely from portfolio insurance firms. The big drop by index futures triggered a signal for another new breed of trader: index arbitrageurs, investors taking advantage of small discrepancies between indexes and underlying stocks. When trading opened in New York, a brick wall of short selling slammed the market. As stocks tumbled, pressure increased on portfolio insurers to sell futures, racing to keep up with the widely gapping market in a devastating feedback loop. The arbs scrambled to put on their trades but were overwhelmed: futures and stocks were falling in unison... In the final 75 minutes of trading on Oct 19, the decline hit full throttle as portfolio insurance sellers dumped futures and sell orders flowed in from brokerage accounts around the country. The Dow snapped, sliding 300 points, triple the amount it had ever dropped in a single day in history.*" (Patterson, 2010).

1471 "*In 1974, Congress amended the act to require that futures and options contracts on virtually all commodities, including financial instruments, be traded on a regulated exchange, and created a new federal independent agency, the [CFTC], to regulate and supervise the market. Outside of this regulated market, an over-the-counter market began to develop and grow rapidly in the 1980s. The large financial institutions acting as OTC derivatives dealers*

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worried that the [CEA's] requirement that trading occur on a regulated exchange might be applied to the products they were buying and selling. In 1993, the CFTC sought to address these concerns by exempting certain nonstandardized OTC derivatives from that requirement and from certain other provisions of the [CEA], except for prohibitions against fraud and manipulation. As the OTC market grew following the CFTC's exemption, a wave of significant losses and scandals hit the market. Among many examples, in 1994 Procter & Gamble, a leading consumer products company, reported a pretax loss of $157 M, the largest derivatives loss by a nonfinancial firm, stemming from OTC interest and foreign exchange rate derivatives sold to it by Bankers Trust. Procter & Gamble sued Bankers Trust for fraud—a suit settled when Bankers Trust forgave most of the money that Procter & Gamble owed it. That year, the CFTC and the [SEC] fined Bankers Trust $10 M for misleading Gibson Greeting Cards on interest rate swaps resulting in a mark-to-market loss of $23 M, larger than Gibson's prior-year profits. In late 1994, Orange County, California, announced it had lost $1.5 B speculating in OTC derivatives. The county filed for bankruptcy—the largest by a municipality in U.S. history. Its derivatives dealer, Merrill Lynch, paid $400 M to settle claims. In response, the [GAO] issued a report on financial derivatives that found dangers in the concentration of OTC derivatives activity among 15 major dealers, concluding that 'the sudden failure or abrupt withdrawal from trading of any one of these large dealers could cause liquidity problems in the markets and could also pose risks to the others, including federally insured banks and the financial system as a whole.' While Congress then held hearings on the OTC derivatives market, the adoption of regulatory legislation failed amid intense lobbying by the OTC derivatives dealers and opposition by Fed Chairman Greenspan." (FCIC, 2011). "*What [UST] did not envision and the Treasury Amendment [of 1974] did not protect was the subsequent development and spectacular growth of privately negotiated derivative contracts--swaps, forwards, and options on interest rates, exchange rates, and prices of commodities and securities. The rapid growth of these instruments primarily reflected the value-added in specially crafted, individualized contracts that the standardized, one-size-fits-all contracts traded on exchanges did not provide. By the mid-1980s, concerns already had surfaced that such contracts could prove unenforceable if they were found to be illegal off-exchange futures. The CFTC recognized that the development of swaps and similar contracts provided important public benefits and eventually issued various rules and interpretations intended to allay concerns about their enforceability. Nonetheless, substantial legal uncertainty about the reach of the CEA persisted. Moreover, some were questioning the CFTC's interpretations of the CEA and its authority to exempt transactions that were futures from the exchange-trading requirement. Congress sought to provide legal certainty for interest rate swaps and many of the other questioned transactions through a provision in the Futures Trading Practices Act of 1992. That provision granted the CFTC explicit authority to exempt off-exchange transactions between ''appropriate persons' from most provisions of the CEA, including the exchange-trading requirement; 'appropriate persons' are regulated financial intermediaries, other larger businesses, and others deemed appropriate by the CFTC. The CFTC promptly utilized this authority to exempt interest rate swaps and most other OTC derivative contracts from the exchange-trading requirement and most other provisions of the CEA. However, the CFTC reserved its anti-fraud and anti-manipulation authority with respect to any swaps that might be regarded as futures and also included provisions that would deny legal certainty to swaps that were executed through an exchange or cleared through a clearing house. Later, the CFTC, which had been directed by Congress to promote fair competition between futures exchanges and the off-exchange markets, initiated a pilot program under which the futures exchanges would be permitted to develop a new class of exchange-traded markets that would be exempt from some provisions of the CEA. However, no exchange has taken advantage of this opportunity. Despite the CFTC's efforts, uncertainty about the scope of the CEA and debate about the appropriateness of the CEA regulatory framework have continued. Litigation has called into question the types of contracts and counterparties that are covered by the Treasury Amendment. Because Congress prohibited the CFTC from exempting equity derivatives from the CEA, the enforceability of some OTC equity swaps has remained uncertain. And the futures exchanges continue to argue that unnecessary and burdensome regulation is making it impossible for them to compete with off-exchange markets in the United States and with foreign futures exchanges.*" (Greenspan, 1997).

1472 "*Although LTCM was usually considered a hedge fund, it was in effect an unregulated bank... It had $5 B of capital and $125 B of debt so it was much more highly leveraged than traditional banks and most other hedge funds. Moreover LTCM had [10s B] of positions in derivatives contracts like futures and options that sometimes were hedges or offsets against its assets and liabilities... For example, the 30 year US Treasury bond was extensively traded but the 29 year bond was not, so the interest rate on the 29 year bond was modestly higher than that on the 30 year bond because the 29 year bond was less liquid. So LTCM would buy [$100s M] worth of the 29 year bond and sell short more or less the same amount of the 30 year bond, and profit from the interest rate differential... Some of the major banks that were large lenders to LTCM tended to mimic some of its portfolio positions. The positions of LTCM and its banks in some securities dominated the markets for these securities. In the spring of 1998, LTCM had a long position in emerging market bonds that it hedged by shorting US Treasury bonds. As investors became increasingly apprehensive about Russia's financial future, the prices of emerging market bonds declined as the contagion effect came into play. The [Fed] responded with greater monetary ease and the prices of US Treasury bonds increased. LTCM lost money on both legs of its hedge, which eroded its capital base... if it sold any of its holdings of individual securities, their prices would fall further and its net worth would decline even more rapidly. The [Fed] was concerned that if LTCM failed there would be an extended period of significant uncertainty – distress – in the capital markets while its positions were unwound and bond prices would fall further. The Fed used its muscle... to induce the major banks that were lenders to LTCM to invest their own capital in LTCM and the banks then acquired 90% ownership of the firm.*" (Kindelberger and Aliber, 2005). "*[B]ecause many other firms had begun trying to copy [LTCM's] strategies, when things went wrong it was not just the Long-Term portfolio that was hit... There was a herd-like stampede for the exits, with senior managers at the big banks insisting that positions be closed down at any price. Everything suddenly went down at once... The firm's value at risk (VaR) models had implied that the loss Long-Term suffered in Aug was so unlikely that it ought never to have happened in the entire life of the universe. But that was because the models were working with just 5 years' worth of data. If the models had gone back even 11 years, they would have captured the 1987 stock market crash. If they had gone back 80 years they would have captured the last great Russian default, after the 1917 Revolution… [At the time of the insolvency,] J.P. Morgan offered $200 M. Goldman Sachs also offered to help. But others held back. Their trading desks scented blood. If Long-Term was going bust, they just wanted their collateral, not to buy Long-Term's positions. And they didn't give a damn if volatility went through the roof. In the end, fearful that Long-Term's failure could trigger a generalized meltdown on Wall Street, the Federal Reserve Bank of New York hastily brokered a $3.625 B bail-out by 14 Wall Street banks. But the*

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original investors — who included some of the self-same banks, but also some smaller players like the University of Pittsburgh — had meanwhile seen their holdings cut from $4.9 B to just $0.40 B." (Ferguson, 2008).

1473 For 16 years until 1994, "*One of the significant structural features of the Bankruptcy Reform Act of 1978 was its commitment to a single reorganization chapter for all types of businesses. This one chapter would encompass businesses whether large or small, publicly or closely held, corporations or partnerships, and also would cover individuals, whether in business or not. Although lauded in the legislative history to the Code as both an important departure from prior law and a reform expressly designed to make the reorganization alternative more efficient and less costly, the 'one size fits all' choice is no longer above criticism.*" (Clark, 1996). Senator Grassley (R-IA) "*Our aim is to encourage commercial lenders and landlords to extend credit to smaller business entities,*" and Senator Heflin (D-AL) added that "*The establishment of provisions within chapter 11 which are designed to help small businesses reorganize quickly and more efficiently*" (GPO, 1994).

1474 "*In the years since the Bankruptcy Code's passage, a number of bankruptcy courts affected their own reforms, attempting to streamline reorganization for small businesses, and Congress in 1994 passed what proved to be an unsatisfactory attempt to tailor Chapter 11's processes to the needs of small business cases… [and] a statutory definition of 'small business' as operating companies with aggregate, noncontingent, liquidated, secured, and unsecured debts less than [$2 M]… The 1994 amendments to the Bankruptcy Code provided clear statutory authority for such reforms, but left it to the debtor to elect small business, or 'fast track,' treatment. Experience proved that, although the fast-track treatment could be the best medicine to enhance a reorganizing debtor's prospects, it was not a medicine debtor were inclined to self-administer. The treatment required prescription… The 1994 amendments imposed limited exclusivity and short-term limitations on small business debtors attempting to confirm a plan. It is, therefore, understandable that experienced bankruptcy counsel have avoided using the small business statutory scheme. Unfortunately, Congress has now mandated that almost all businesses that seek Chapter 11 relief with secured and unsecured debts of less than [$2 M] use the small business provisions. Congress, perhaps unintentionally, failed to recognize that 'small business' today encompasses much more than the ubiquitous mom-and-pop enterprises… Few bankruptcy lawyers used the 1994 small business provisions, as there were simply no tangible benefits to the debtor.*" (Haines and Hendel, 2005).

1475 According to the US Census (1995, p551-2; 1999, p560-1), in 1993 and 1997, as a percentage of the nation, California had 23 & 24% of business failures and 17 & 15% of bankruptcy filings under the *Bankruptcy Reform Act of 1978*, while the corresponding figures for next 3 largest States (New York, Texas, and Florida) were 22 & 18% and 16 & 16% (using *Dun & Bradstreet* data). At these points, the populations of California and the 3 other States accounted for 12 & 22% of the nation, respectively. Taking these into account, business failures per 100 people for 1993 & 1997 were 6.6 & 6.0% in California and 4.0 & 2.7% in the other 3 States. The corresponding figures for bankruptcy filings per 1,000 people were 5.4 & 5.9% and 3.0 & 3.7%. In terms of business starts net of failures per 100 people for 1993 & 1997, California had 6.83 & 0.66% while the other 3 States had 36.25 & 4.35%, respectively. Of the 4 States, California had the lowest total and net starts per 100 people and the highest failures. These data do not represent assignments for the benefit of creditors or small firms. "*First, to the extent that the non-bankruptcy methods involve filings, the filings typically are not easily retrievable or searchable. For example, the filings for ABCs generally are not in the Secretary of State's Office, but rather in the offices of city and county clerks. That significantly increases the number of places at which searches must be conducted. Moreover, many of those offices do not maintain their records online; in many cases, they will not respond to search inquiries by telephone or email; in some cases, they will not even respond to inquiries by conventional mail. Also, because the filings are made so rarely, office staff have so little familiarity with them that they typically deny the possibility of such a filing: it is of course difficult to conduct a search for something in a public office that denies that it is obligated to accept such filings. Finally, and most importantly, many of the alternatives do not require public filings; there is no public filing, for example, associated with a foreclosure under UCC Article 9 [and there are no there is no public filing requirements in some States for an ABC — particularly in California]. The combination of those problems makes it impractical to rely on public records… In general, the New York and Texas systems seem most hostile to ABCs, while the Massachusetts statute seems to fall in between the most receptive system in California and the least receptive systems in New York and Texas.*" (Mann, 2004). "*[W]e estimate that rather than the 37,000 business filings reported by the Administrative Office of the U.S. Courts (AO) for 2003, there were between [260-315 K] bankruptcies that historically would have been counted as business filings but that were not in 2003. Thus, we estimate that the AO failed to count as business filings approximately [220-280 K] filings by entrepreneurs, self-employed individuals, and independent contractors who needed bankruptcy relief as part of their efforts to recover from failed undertakings... A data series on business terminations maintained by the Small Business Administration (SBA) also shows the absence of a relation with the AO numbers. Using census data, the SBA's Office of Advocacy compiled data on 'employer firm terminations' from 1990 to 2002. An 'employer firm' is one with employees, and the SBA counts any business closure as a termination, regardless of whether it resulted from a retirement or other reasons not connected to financial distress. Consequently, the SBA numbers are of a much larger magnitude than the AO statistics for business bankrupt…. Most significantly, the SBA data set contains some firms that did not fail but instead closed for other reasons. Nonetheless, the 2 data sets should bear some relationship to each other. In fact, the 2 data sets actually tend to move in the opposite direction relative to each other (r = -0.60, p = 0.03). From 1990 to 2002, the SBA shows employer firm terminations increasing 10.0%, from 531,400 in 1990 to 584,500 in 2002. During the same time period, the AO shows a 39.4% decrease in business bankruptcies, from 64,688 in 1990 to 39,201 in 2002.*" (Lawless and Warren, 2005).

1476 "*The forecasted bankruptcy of Internet companies, whose business plans include generating market attraction rather than profits and whose currency is stock or stock options, will stretch the creativity of bankruptcy lawyers. These non-traditional bankruptcy proceedings will confound persons and entities who believe that they are secured creditors of bankrupt Internet companies and entitled to payment out of the proceeds of the liquidation or sale of an Internet company's assets. Moreover, these 'secured creditors' may be shocked to find that they are deemed equity holders or unsecured creditors because their security interest was never perfected. The Internet company itself may discover that under bankruptcy law it does not have anything to sell because it does not own the assets used to operate its business.*"(Chertok and Agin, 2000). "*Because a dot-com's primary assets are intangible, however, the value of its primary asset tends to decline with the company. In addition, the Revised U.C.C. Article 9 has changed the rules for perfecting security interests in intellectual*

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property [in 1998]." (Brady et al., 2003). "*...Chapter 7 was a poor fit for a company with valuable technology assets because that technology needs to be 'kept with the engineers who developed it' and 'packaged with the specialized research equipment.' Because everybody would be laid off immediately in a Chapter 7, she suggested that an auction works better in that situation. Similarly, her view was that a Chapter 11 generally would not be a useful option unless the company had sufficient resources to survive for about 6 months, which seems unlikely for most of the smaller high-tech companies...*" (Mann, 2004).

1477 "*In its most unqualified form, my argument is that California high-tech firms—an important group given the role of California in high-tech industries—systematically use bankruptcy less than firms in other states, and that this practice follows directly from California legal rules that make the process for ABCs more streamlined in California than it is in other states... The interviews with lawyers and turnaround professionals in California reflect a consistent understanding that an ABC often is superior to bankruptcy as a mechanism for liquidating a failed high-tech company. The basic point is that an experienced assignee is superior to a Chapter 7 trustee because of 3 advantages the assignee has over the trustee in Chapter 7: the assignee can act more quickly; the assignee is likely to be more experienced at dealing with technology-related assets; and the use of an assignee involves lower transaction costs... My efforts to locate similar filings in Massachusetts, New York, and Texas (the next 3 largest states in the data set) indicate that 1 firm in Massachusetts (out of about 75) and that none of the approximately 100 firms in New York and Texas used the ABC procedure... [In terms of industry,] bankruptcy filings in the software sector are significantly lower than the filings in the biopharm and communications sectors, even controlling for firm location and size.*" (Mann, 2004). "*Unlike federal bankruptcy proceedings, assignments for the benefit of creditors are governed by state law... California is the capital of ABCs. Assignments for the benefit of creditors in California are governed by common law and are subject to various specific statutory provisions... Compared to bankruptcy liquidation, assignments may involve less administrative expense and are a substantially faster and more flexible liquidation process. In addition, unlike a chapter 7 liquidation, where generally an unknown trustee will be appointed to administer the liquidation process, in an [ABC] of creditors, the Assignor can select an Assignee with appropriate experience and expertise to conduct the wind down of its business and liquidation of its assets. In prepackaged ABCs where an immediate going concern sale will be implemented, the Assignee will be involved prior to the ABC going effective. Further, in states that have adopted the common law ABC process, court procedures, requirements, and oversight are not involved... ABCs have become a particularly popular method for liquidating troubled dot-com, technology, and healthcare companies... In the state of California, there is no comprehensive priority scheme for distributions from an assignment estate like the priority scheme in bankruptcy or priority schemes under assignment laws in certain other states. Instead, California has various statutes which provide that certain claims should receive priority status over general unsecured claims, such as taxes, priority labor wages, lease deposits, etc. However, the order of priority amongst the various priority claims is not clear.*" (Kupetz, 2003).

1478 "*Unlike bankruptcy, where the publicity for the company and its officers and directors will be negative, in an assignment, the press generally reads 'assets of ABC.com acquired by XYZ.com', instead of 'ABC.com files bankruptcy' or 'ABC.com shuts its doors.' Moreover, the assignment process removes from the board of directors and management of the troubled company the responsibility for and burden of winding down the business and disposing of the assets. Further, SEC requirements obliging directors to disclose their involvement with companies that previously filed bankruptcy may not be triggered by an assignment for the benefit of creditors (however, this issue requires evaluation by counsel with securities law expertise).*" (Kuptez, 2002).

1479 "*If all parties were rational, if negotiating were costless, and if the application of those provisions were entirely predictable, people would never file for bankruptcy to take advantage of those provisions. The ABC process (or any other out-of-court workout) would result in an allocation of claims negotiated in the shadow of the federal provisions. Because those assumptions are not always true, however, parties often need to use a judicial process to resolve those problems. The states, of course, cannot directly adopt statutes to alter contractual rights in that way. Thus, the bankruptcy process is the only forum available to enforce a pro rata distribution of losses attendant on financial distress. Here, a federal forum is necessary because the parties cannot resolve the issue by contract... [Moreover,] the bankruptcy forum provides a cheaper and more effective forum for [complex commercial] litigation. It is easy to see how Chapter 11 provides a major benefit on that score. The ability of a single court to handle what amounts to a series of related pieces of commercial litigation is a valuable attribute not readily replicated in a state court system that does not have nationwide authority or any likelihood of repeat expertise on those questions… it is 'hard' for a state trial court 'to swallow' the idea that it should retract funds received by a creditor in perfectly legitimate circumstances that amount to a preference under federal bankruptcy law… In some cases, the benefits that the bankruptcy court provides are not so much swift resolution of the dispute as they are a classic benefit of a stay that can hold the firm in stasis while the litigation is resolved.*" (Mann, 2004). "*Trade credit is a major competitive tool for small businesses. However, there are risks in advancing it. The late-payment of trade credit can adversely affect a firm's working capital, which may jeopardize its very existence. This study examines tile association between trade credit and the filing for bankruptcy by 131 small businesses. The findings suggest that there is a relationship between poor working capital management and organizational failure.*" (Bradley and Rubach, 2002).

1480 "*The bubble in US stock prices in the second half of the 1990s was associated with a remarkable US economic boom; the unemployment rate declined sharply, the inflation rate declined, and the rates of economic growth and productivity both accelerated. The US government developed its largest-ever fiscal surplus in 2000 after having had its largest-ever fiscal deficit in 1990. The remarkable performance of the real economy contributed to the surge in US stock prices that in turn led to the increase in investment spending and consumption spending and an increase in the rate of US economic growth and the spurt in fiscal revenues. US stock prices began to decline in the spring of 2000; in the next 3 years US stocks as a group lost about 40% of their value while the prices of NASDAQ stocks declined by 80%.*" (Kindelberger and Aliber, 2005). "*When venture capital disbursements are divided by industry, about 60% in 1999 went to information technology industries, especially communications and networking, software, and information services. About 10% went into life sciences and medical companies, and the rest is spread over all other types of companies. When venture capital disbursements are viewed geographically, a little more than one-third of venture capital went to California. A little less than one third went to Massachusetts, Texas, New York, New Jersey, Colorado, Pennsylvania, and Illinois, combined. The remaining third was spread between the other 42 states. The concentration on high technology industries and in California and Massachusetts has been a consistent feature of venture capital investments since at least the mid-1960s.*" (Gompers and Lerner, 2001).

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1481 In 2000, the US set out on a modernized the checking system in a 5-year program set to cost $250 M. In 2011, the 9/11 disruption spurred the Fed to ask Congress to allow paper representations of digital images via *The Check Clearing for the 21st Century Act*. The Act directly affected insured depository institutions and their customers by providing a Federal statutory framework for electronic check processing. The Act allows an original paper check to be removed from the check collection or return process and an image of the paper check to be transmitted electronically. The Act also allows the transmitting bank to create a substitute check which contains the electronic picture and payment information if a receiving bank or a customer requires a paper check. By 2003, check use declined so much that the modernization plan was replaced by a cost cutting restructuring. The Terrorist attacks also spurred passage of the *International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001*. Title III of the *USA PATRIOT Act*. Legislation designed to prevent terrorists and others from using the U.S. financial system anonymously to move funds obtained from or destined for illegal activity. It authorizes and requires record keeping and reporting by financial institutions and greater scrutiny of accounts held for foreign banks and of private banking conducted for foreign persons.

1482 Including Enron, Tyco, and Adelphia that came to light and led Congress to pass the S*arbanes-Oxley Public Co Accounting Reform and Investor Protection Act of 2002*, which was designed for accounting accuracy by holding executives and accountants liable.

1483 Borio et al. (2012) argue that this strong reaction led to an 'unfinished recession' as credit growth and property price increases continued. When the financial cycle turned a few years later, it ushered in financial stress and a more severe recession.

1484 "*Loss of lender confidence, together with other factors such as overvalued fixed exchange rates and debt that was both short-term and denominated in foreign currencies, ultimately culminated in painful financial crises, including those in Mexico in 1994, in a number of East Asian countries in 1997-8, in Russia in 1998, in Brazil in 1999, and in Argentina in 2002. The effects of these crises included rapid capital outflows, currency depreciation, sharp declines in domestic asset prices, weakened banking systems, and recession. In response to these crises, emerging-market nations either chose or were forced into new strategies for managing international capital flows.. Countries in the region that had escaped the worst effects of the crisis but remained concerned about future crises, notably China, also built up reserves. These 'war chests' of foreign reserves have been used as a buffer against potential capital outflows. Additionally, reserves were accumulated in the context of foreign exchange interventions intended to promote export-led growth by preventing exchange-rate appreciation. Countries typically pursue export-led growth because domestic demand is thought to be insufficient to employ fully domestic resources. Following the 1997-98 financial crisis, many of the East Asian countries seeking to stimulate their exports had high domestic rates of saving and, relative to historical norms, depressed levels of domestic capital investment— also consistent, of course, with strengthened current accounts. In practice, these countries increased reserves through the expedient of issuing debt to their citizens, thereby mobilizing domestic saving, and then using the proceeds to buy [UST] securities and other assets. Effectively, governments have acted as financial intermediaries, channeling domestic saving away from local uses and into international capital markets… the special international status of the U.S. dollar. Because the dollar is the leading international reserve currency, and because some emerging-market countries use the dollar as a reference point when managing the values of their own currencies, the saving flowing out of the developing world has been directed relatively more into dollar-denominated assets, such as [UST] securities.*" (Bernanke, 2005).

1485 "*In the present context, Treasury bills (or more broadly, short-term government guaranteed instruments) are like gold. Just as in the 1960s there were too many dollars relative to U.S. gold reserves, today there is too much demand for safe, short-term and liquid instruments relative to the volume of (i) short-term, government guaranteed instruments; (ii) high-quality collateral to "manufacture" alternatives to short-term, government guaranteed instruments; and (iii) capital to support the safety, short maturity and liquidity of such alternatives)... the transformation of term private collateral into safe, short-term, liquid instruments requires the performance of credit, maturity and liquidity transformation, which were conducted across a highly diverse set of institutions in the 'shadow' banking system and backstopped by a diverse set of banks globally... In this context, the highly counterparty-intense nature of the 'shadow' banking system could be rationalized as an 'evolutionary' response to the counterparty diversification needs of ever larger institutional cash pools in a financial system with ever fewer large banks. This search for counterparty diversification occurred through various channels. One such channel was the provision of more and more short-term funding to the GSEs and broker-dealers instead of banks. Another channel was European banks increasing their market share in selling liquidity puts to dollar-funded asset-backed commercial paper conduits sponsored by banks and other entities in the United States. And another channel was prime money market funds' gradual evolution over time into entities that intermediate vast amounts of dollar funding from institutional cash pools in the U.S. to banks in Europe, and thereby function as 'portals' through which ever larger institutional cash pools could attain adequate levels of counterparty diversification across many banks globally that was becoming increasingly difficult (if not altogether impossible) to obtain with a shrinking number of large banks domestically in the United States.*" (Pozsar, 2011). "*There are 4 core institutions engaged in the issuance of money claims in the modern financial ecosystem: the central bank, banks (small and large), dealer banks and money market funds. These institutions issue 4 core types of money claims. The central bank issues reserves. Banks issue deposits. Dealer banks issue repos. Money funds issue constant net asset value (NAV) shares. Each of these money claims is backed by assets and we can categorize money claims first according to whether the assets backing them are public or private. Public assets are U.S. Treasury bills and notes, and more broadly, agency debt and residential mortgage-backed securities (RMBS). Private assets are dollar-denominated bills, bonds, asset-backed securities (ABS), and loans issued globally. Money claims backed by public assets include: (1) currency and reserves, which are liabilities of the central bank backed by Treasury notes and agency debt and RMBS; (2) government repos, which are liabilities issued by dealers' government bond trading desks collateralized by public assets; and (3) constant NAV shares issued by government-only money funds, backed by Treasury bills and other short-term assets. Money claims backed by private assets include: (1) deposits, which are liabilities of banks backed by loans; (2) private repos, which are liabilities issued by dealers' credit trading desks, collateralized by private assets, such as corporate bonds, ABS and private-label RMBS; and (3) constant NAV shares issued by prime funds, backed by private bills, such as commercial paper, and other assets. These instruments have one common attribute, which is that they promise to trade at par on demand. This makes them money… Borrowing short and lending long(er) on net is the essence of any form of banking and the source of intermediaries' interest margin, or carry. But running a maturity mismatch (that is, being in the maturity transformation business) involves rollover risks, and in case of a panic, survival depends on one's stock of overnight money*

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assets (that is, liquidity) and access to emergency funding, which is not the same for all — this is the hierarchy of liquidity puts. At the bottom of the hierarchy are money funds, which can raise only limited amounts of additional liquidity either by lending securities or via committed or uncommitted credit lines from banks… At the top of the hierarchy are Treasury bills which are backed by the government's full faith and credit and authority to tax." (Pozsar, 2014).

1486 "*In the United States it is not possible to waive the right to have access to the government's bankruptcy procedure, but it is possible to structure an SPV so that there cannot be "an event of default" that would throw the SPV into bankruptcy. This means that debt issued by the SPV should not include a premium reflecting expected bankruptcy costs, as there never will be any such costs… An SPV, or a special purpose entity (SPE), is a legal entity created by a firm (known as the sponsor or originator) by transferring assets to the SPV, to carry out some specific purpose or circumscribed activity, or a series of such transactions. SPVs have no purpose other than the transaction(s) for which they were created, and they can make no substantive decisions; the rules governing them are set down in advance and carefully circumscribe their activities. Indeed, no one works at an SPV and it has no physical location… SPVs are not subject to bankruptcy costs because they cannot in practice go bankrupt, as a matter of design. Bankruptcy is a process of transferring control rights over corporate assets. Securitization reduces the amount of assets that are subject to this expensive and lengthy process. We argue that the existence of SPVs depends on implicit contractual arrangements that avoid accounting and regulatory impediments to reducing bankruptcy costs."* (Gorton and Souleles, 2007). SPVs offered off-balance sheet financing, but when the investment banks bailed out their SPVs in 2007, it was clear that these belonged on the balance sheet.

1487 "*In Oct 2001, [the Fed] introduced the 'Recourse Rule' governing how much capital a bank needed to hold against securitized assets. If a bank retained an interest in a residual tranche of a mortgage security... it would have to keep a dollar in capital for every dollar of residual interest. That seemed to make sense, since the bank, in this instance, would be the first to take losses on the loans in the pool. Under the old rules, banks held only 8% in capital to protect against losses on residual interests and any other exposures they retained in securitizations... because the new rule made the capital charge on residual interests 100%, it increased banks' incentive to sell the residual interests in securitizations—so that they were no longer the first to lose when the loans went bad… a credit default swap [CDS] with AIG could… lower American banks' capital requirements. In 2004 and 2005, AIG sold protection on super-senior CDO tranches valued at $54 B, up from just $2 B in 2003. In an interview with the FCIC, one AIG executive described [AIGFP's] principal swap salesman, Alan Frost, as 'the golden goose for the entire Street.'*" (FCIC, 2011).

1488 "*In the fall of 2002, Governor Barnes (D-GA) signed into law the Georgia Fair Lending Act which prohibited loans from being made without regard for the borrower's ability to repay. It also provided 'assignee liability,' meaning that the investment bank that securitized the loans—and the investors who wound up owning the mortgage—could both be sued if the loan violated the law. The outcry was instantaneous. Mozilo called the new law 'egregious.' Ameriquest said that it could no longer do business in Georgia. A group of Atlanta lenders filed a class action lawsuit. The rating agencies jumped in on the side of the bankers, with S&P and Moody's both saying they would no longer rate bonds backed by loans that were originated in Georgia. But the most crushing blow came from the national regulators—especially the Office of Thrift Supervision and the OCC, which oversaw roughly 66% of the assets in national banks. Siding with the banks against the States and cities that were trying to stop abusive lending, the two federal regulators asserted something called preemption. What that meant, in effect, was that institutions that were regulated by the OTS or the OCC were immune from State or local laws… The OTS had long asserted preemption when States passed laws that it didn't think its thrifts should have to follow. But in early 2004, the OCC went all in, decreeing that all institutions under its watch would be exempt from all State and local laws aimed at predatory lending. After Wachovia moved its mortgage company into its federally chartered bank in order to take advantage of the OCC's preemption policy, the State of Michigan argued that it should still be able to regulate Wachovia's local lending unit. Wachovia sued. The OCC filed a supporting brief. The fight went all the way to the Supreme Court, which in 2007 sided with Wachovia. And so it went. New Jersey, which passed a predatory lending law in the fall of 2003, repealed it a year later after the lending community, along with the rating agencies, followed the Georgia playbook."* (McLean and Nocera, 2011).

1489 "*[I]nstitutions had the ability, under certain circumstances, to switch regulators—an idea that had long been promoted by Alan Greenspan. His essential belief was that having multiple, overlapping regulators was good for the system because, as he once put it in testimony before the Senate banking committee, it served as a 'valuable restraint on any one regulator conducting inflexible, excessively rigid policies… The present structure provides banks with a method . . . of shifting their regulator, an effective test that provides a limit on the arbitrary position or excessive rigid posture of any one regulator.'... Jerry Hawke, [COTC], took that idea a step further—rather than sit back and wait for institutions to come to the OCC, he actively talked up the 'advantages' of being regulated by the agency he headed. In early 2002, for instance, the OCC issued a press release with this startling headline: 'Comptroller Calls Preemption a Major Advantage of National Bank Charter.' A former regulator says that he viewed his job as 'a salesman for the national charter. He would make sales calls. The OCC used preemption as its advertising.' Just about a year after the OCC first began trumpeting the virtues of preemption, the OTS joined in, announcing that the thrifts it oversaw were exempt from the key provisions of Georgia's new law. The OTS's move helped make the State's law moot. 'Either we will have an unlevel playing field and a rush of people to go get OTS charters or we will see a leveling out of the playing field by having the State legislature change the law, said a spokesman for the mortgage lobby. Sure enough, by the spring of 2003, the law had been replaced by a much weaker one.*" (McLean and Nocera, 2011).

1490 Although "*national banks originated 12.1% of nonprime loans between 2005 and 2007… Preemption created competition between the OCC and the OTS—and the OTS, which regulated institutions like IndyMac and WaMu, was indisputably a weaker regulator. Secondly, preemption meant that even the State-chartered lenders didn't have to curb their abuses, because States were reluctant to pass or enforce strict rules for their institutions that federally regulated institutions were allowed to duck. Says Kevin Stein, the associate director of the California Reinvestment Coalition: 'Banks said, 'We don't have to comply.' The OCC said, 'They don't have to comply.' The State legislatures said, 'If we can't pass a law that regulates federally chartered banks operating in our State, then we're not going to regulate State-chartered lenders, because then they can't compete.' It was a legislative and regulatory race to the bottom.*'" (McLean and Nocera, 2011).

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[1491] While the MMFs provided the maturity and liquidity transformation, there was still the need for safe assets that also offered yield. Starting in 2001, the competition for clients intensified among MMFs. The Reserve Fund reallocated from high-quality short-term corporate debt to high yielding MBS. In other words, MMFs competed on yield while still under the requirement to hold safe assets. According to Gorton & Metrick (2012a, 2012b), prime MMFs (as opposed to government-only) represented a significant source of supply for financial (subprime mortgages) and non-financial corporate funding. Of all the borrowers, American real estate had the biggest potential. The securitization engine translated the MMFs' need for AAAs into a need for subprime borrowers by enabling "*the transformation of risky mortgages into highly rated MBS by the financial services industry, increased the effective demand for "raw materials" - that is, new mortgage originations*." (Bernanke et al., 2011). Decades of nominal real estate price increases combined with broad political support for home ownership fueled the housing bubble – which fed off the MMFs' thirst of securitize-able cash flow. Armour et al. (2016) explains the market-based credit intermediation that ensued. Sponsors – using off-balance sheet vehicles – acted as market-makers by purchasing whole loans from originators and issuing asset-backed commercial paper ("ABCP"). This transformed the maturities of long-term, illiquid products into short-term assets. In order to make them safe, the sponsoring entities of ABCP provided private deposit insurance to investors against default. Moreover, even after the repeal of Glass-Stegall, banks were not allowed to fund these assets with deposits and so relied on secured short-term wholesale funding (repos) for their inventory. Both of these short-term safe assets —ABCP and the repos— were suitable for MMFs, who themselves were often sponsored by banks. The use of the 'bank' term is due to the overlap between commercial and investment banks and the regulated and shadow banking systems. Tarullo (2013) highlights that many activities that were formally outside the regulatory oversight perimeter were actually dependent upon regulated banks. In some circumstances regulated banks extended credit and liquidity beyond to the market-based system, while in other times they were the sponsors and provided the private insurance for ABCP and MMFs. In short, the market-based banking performed maturity, liquidity, and credit transformation. The fact that it was under-regulated enabled it massively to leverage these bets. (Kalemli-Ozcan et al, 2012) Many of these were kept off the books as it was 'safe' and allowed it to lever up even more. The safety, however, depended on the private insurance that the system provided to itself. Hence, trust in one another was paramount to the continued stability of the system.

[1492] Professor Warren's "*critique had its beginnings in 1998, when Congress was contemplating an overhaul to the bankruptcy system. Ms. Warren... wrote an Op-Ed piece for The New York Times warning that under such an overhaul, a woman owed child support could lose some of her ability to collect it if the child's father declared bankruptcy. [First Lady Clinton], Ms. Warren later recalled, asked to meet with her. Sitting down for a lunch of a hamburger and French fries after giving a speech in Boston, Mrs. Clinton peppered Ms. Warren with questions about bankruptcy law. 'She said, 'Professor Warren, we've got to stop that awful bill,'' Ms. Warren said in a 2004 interview with Bill Moyers. Mrs. Clinton took a strong interest in the fate of the bankruptcy legislation, and President Bill Clinton vetoed it in late 2000. But its supporters pressed on, and in 2001, as a senator from New York, Mrs. Clinton was among 83 senators who voted in favor of overhauling the bankruptcy system, a group that included 36 Democrats*." (NY Times, Feb 7, 2016). "*The United States is extremely unusual among industrialized nations for its very pro-debtor bankruptcy laws. The United States also stands alone in having a high—and rapidly increasing—bankruptcy filing rate... This Article considers why consumer bankruptcy is so common in the United States, focusing particularly on the role of property exemptions and how strategic behavior can make filing for bankruptcy attractive even to high-income households. To avoid such pathologies, this Article proposes changes to the bankruptcy system that would appropriately limit the attractiveness of the bankruptcy process*." (White, 1998). "*Lenders responded with a major lobbying campaign for bankruptcy reform that lasted nearly a decade and cost more than $100 M*." (White, 2007). "*Press releases and lobbying were well-funded and well-orchestrated. But it was never a fully-balanced group. The credit card issuers took the lead, both in Washington and in the press, in developing the opening agenda and framing the issues. The initial legislative proposals, such as the McCollum bill and the original Gekas bill, were designed to help credit card issuers almost to the exclusion of other creditor groups... Mastercard and Visa were prominently featured in virtually every story on bankruptcy, deflecting attention from other credit issuers, and sparing their individual member banks any difficulties that might be caused by banks calling their own customers 'deadbeats.' The credit card issuers led the charge on Capitol Hill, exercising a form of leadership and discipline that had not marked the earlier legislative assaults*." (Warren, 1999).

[1493] "*In the late 1990s, policymakers became concerned first about the falling number of Dutch voluntary debt arrangements and then about the rising number of U.S. consumer bankruptcy filings. As a result, the Dutch government and parliament began an 8-year-long process of implementing a more forgiving approach to consumer debt relief, while the U.S. Congress began an 8-year-long debate about restricting access to debt relief. The Netherlands joined France and Germany in moving decisively toward the U.S. model by introducing a statutory discharge of unpaid consumer debt and a 'fresh start.' The United States, in contrast, moved toward a more restrictive, European approach to consumer debt relief... [and so] years of experience under the Dutch consumer debt relief system can act as a sort of crystal ball, providing a rare glimpse into the future of the new U.S. system. The Dutch law 'on the ground' has diverged in significant ways from legislative expectations, and such divergences might well be repeated—for better or worse—in the United States in coming years. In particular, comparison with Dutch experience reveals latent weaknesses and portends an impending breakdown in the 'credit counseling' and 'means testing' parts of our new system. In particular, the new U.S. system will likely face serious challenges due to mandatory participation by the financially troubled credit counseling industry and mandatory payment plans that hold some debtors to quite restrictive household budgets for 5 long years. Credit counseling will likely delay but not avoid bankruptcy, and many of those forced into payment plans face likely failure in their steep climb out of financial distress... Ironically, 'credit counseling' in the United States was initiated not by welfare organizations, but by commercial banks. In response to rising default rates and personal bankruptcy filings among their consumer customers, banks funded the initial setup of a network of credit counseling agencies throughout the United States beginning in the 1950s. Creditors sought to redirect consumers away from a quick discharge of debt in the bankruptcy system and toward compromise repayment arrangements, so-called 'debt management plans' (DMPs). These DMPs generally call for 100% payment of outstanding debt (excluding secured debt, like home mortgage and car loans) over 3 to 5 years*." (Kilborn, 2006). In Sweden, "*Like in other continental European*

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states, the existing Bankruptcy Law (Konkurslagen) benefited neither creditors nor debtors, as most consumers had no non-exempt assets that could form a bankruptcy estate for creditors, and the law offered no discharge of unfulfilled obligations. On the heels of several government reports of a growing consumer economic crisis, the legislature commissioned an official investigation to explore alternatives to bankruptcy for consumers. In Oct 1990, the investigative commission submitted its report proposing the institution of a new legal scheme of debt adjustment for individuals, similar to the one adopted in Denmark in 1984. The driving idea behind the new system was largely based on detached economics, not necessarily individual social welfare or humanitarian concern for consumers. The proponents of the law reasoned that offering such relief would benefit society by avoiding the loss of economic productivity and tax receipts from debtors robbed of incentives to work in the mainstream labor market, as well as the burdens of such debtors on the social service and criminal enforcement systems. At the same time, the system would benefit creditors by offering debtors an incentive to produce value for them and by placing a single neutral administrator in charge of the system who could credibly assure creditors of the folly of their continuing to waste time and money attempting to collect otherwise unenforceable debts. Ultimately, the system would force a rational cost-benefit analysis of creditors' continuing ability to pursue insolvent debtors… After over a decade of trial and error under its original law, Sweden has just adopted a streamlined new law to make its system more straightforward and efficient. Of particular interest to U.S. readers, Sweden's 'original law' functioned very much like the revised consumer bankruptcy system just adopted in the United States. An analysis of 12 years of Swedish experience thus offers a glimpse into the future of the new U.S. regime… Before the mid-1980s, the United States had to go it alone in crafting solutions to consumer debt problems. This is true no more. Indeed, rapid developments in Europe seem to threaten to leave the United States behind. European lawmakers are implementing, carefully monitoring, and responding to observed inefficiencies in their consumer debt relief systems, as very recent developments in Sweden demonstrate. The 2005 reform of U.S. consumer bankruptcy law moved our system decisively in the direction of European practice. If U.S. reformers remain oblivious to years of developments in similarly situated European systems, our law risks falling into the same traps that snared our neighbors in Europe—or worse, our law might reflect outmoded approaches, leading to a loss of respect for U.S. ingenuity and effectiveness in law reform. " (Kilborn, 2006).

1494 In April 2007, the *National Association of Consumer Bankruptcy Attorneys* ("NACBA"), the *Consumer Federation of America*, and the *Center for Responsible Lending* released a joint Statement: "*The only chance many of these (subprime) borrowers have is through declaring bankruptcy. The problem is that as currently enacted, [BACPA] favors home mortgage lenders over virtually all other secured and unsecured creditors. The amendment disfavoring protection of the debtor's principal residence was added at a time —1978— when home mortgages were nearly all fixed-interest rate instruments with low loan-to-value ratios and were rarely themselves the source of a family's financial distress. As a result, bankruptcy law singled out the home mortgage loan as the major debt for which the bankruptcy court is powerless to provide relief. Since that time, the mortgage market has shifted considerably. Subprime lending practices of the last 6 years, which have relied on property appreciation, and in many cases appraisal fraud, have left many borrowers with mortgages larger than the value of their homes. If the borrowers cannot restructure these debts, then they cannot get back on their feet financially.*" (Consumer Fed, 2007).

1495 The NACBA joint Statement in 2007 went on to say "*As a result of [BACPA] there are now several hurdles a debtor must clear in order to file for chapter 13 bankruptcy, as Credit Suisse notes in its analysis of the impact of [BACPA] on subprime borrowers and the subprime market. For example, as a result of the 2005 amendments, an individual cannot even meet the definition of a 'debtor' (and so cannot file for bankruptcy) without first receiving credit counseling from an approved credit counseling agency. Requirements like these cost precious time, which a borrower facing foreclosure cannot afford to lose, and were clearly not designed for dealing with an immediate crisis regarding the borrower's home… The remedy to the counseling requirement is simply to eliminate it for debtors facing foreclosure.*" (quoted in Consumer Fed, 2007). NACBA also released the findings of a national survey of 640 bankruptcy attorneys, 81% of whom said that BACPA made it tougher for clients to keep homes; NACBA President Sommer said: "*For most of these families, bankruptcy is the only viable option to save their home, and this option will be available only if the Bankruptcy Code is revised to eliminate or limit the provisions that exclude home loans from bankruptcy protection. This current exclusion is contrary to sound policy, and operates to disadvantage low wealth and middle-income borrowers as compared to debtors with the wealth to own more than one home.*" (quoted in Consumer Fed, 2007). Similarly, New York Fed research note "*Our specific argument is that [BACPA] contributed to the surge in subprime foreclosures by shifting risk from unsecured credit card lenders to secured mortgage lenders. Before [BACPA], any household could file Ch. 7 bankruptcy and have credit cards and other unsecured debts discharged. Sidestepping unsecured debts left more income to pay the mortgage. [BACPA] blocked that maneuver by way of a means test that forces better-off households who demand bankruptcy to file Ch. 13, where they must continue paying unsecured lenders. When the means test binds, cash constrained mortgagors who might have saved their home by filing Ch. 7 are more likely to face foreclosure or to have to sell their home.*" (Morgan et al., 2009). In an updated version the researchers find that "*Before [BACPA], any household could file Chapter 7 bankruptcy and have its credit card and other unsecured debts discharged. By sidestepping their unsecured debts, households retained more income to pay their secured debts, such as mortgages. [BACPA] blocks that maneuver by presenting a variety of obstacles, including a means test that forces better-off households that demand bankruptcy protection to file Chapter 13, where they must continue paying unsecured lenders. When the means test binds, cash-flow-constrained mortgagors who might have saved their home by filing Chapter 7 are more likely to face foreclosure… After [BACPA] took effect in Oct 2005, foreclosures on subprime mortgages surged nationwide... A study of the reform suggests that [BACPA] was associated with more subprime foreclosures; [BACPA's] effects were greater in States with high bankruptcy exemptions, as theory predicts. For a State with an average home equity exemption, the subprime foreclosure rate after [BACPA] rose 11% relative to average before the reform… [BACPA] may have indirectly contributed to foreclosures via lower home prices. To the extent that cash-flow-constrained borrowers were forced to sell their homes in lieu of filing Chapter 7, the downward pressure on home prices would contribute to foreclosures by leading to 'underwater' mortgages*." (Morgan et al., 2012). "*Most troubling, BAPCPA not only failed to solve any problems, it created a mass of expensive, burdensome, and distracting challenges for debtors, their lawyers, trustees, and the courts. 3 key problems relate to (1) required pre-filing credit counseling, (2) the 'means test' for ferreting out "abusive" filers, and (3) poorly drafted provisions of law that have come to dominate the precious time and resources of the courts, including the Supreme Court*." (Kilborn, 2012). Others estimate that

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BACPA caused about 800 K additional mortgage defaults and 250 K additional foreclosures to occur in each of the past several years, contributing to the severity of the financial crisis (Li, White, and Zhu, 2010; Li and White, 2009).

1496 BACPA "*expanded the definition of a repo to make transactions based on any stock, bond, or other security eligible for bankruptcy safe harbor protection. [Krimminger (2006), Garbade (2006), Smith (2007), Sissoko (2010), Johnson (1997), Schroeder (1996), and Walters (1984)]. The unfortunate reality is that no official data on repos exist other than what the Federal Reserve collects with regard to the amounts transacted by the 18 primary dealer banks. According to these data, primary dealers reported financing $4.5 T in fixed-income securities with repos as of March 4, 2008. However, these data are known to cover only a fraction of the U.S. market. BIS economists Peter Hördahl and Michael King (2008, p. 37) report that repo markets doubled in size from 2002 to 2007, 'with gross amounts outstanding at year-end 2007 of roughly $10 T in each of the US and euro repo markets, and another $1 T in the UK repo market.' They also report that the U.S. repo market exceeded $10 T in mid-2008, including double counting. The European repo market, generally viewed as smaller than the U.S. market, was 65 T in June 2009, having peaked at 67 T in June 2007, according to the International Capital Market Association (ICMA) European Repo Market Survey (2010). According to figures published in ICMA's June 2009 survey, the repo market globally grew at an average annual rate of 25% between 2001 and 2007. Although the available evidence strongly suggests that the repo market is very large, it is impossible to say how large it is in the United States*." (Gorton and Metrick, 2010). BACPA amends to "*clarify and expand the existing policy of providing special treatment for parties to financial markets contracts, including securities contracts, futures contracts, forward contracts, repurchase agreements, swaps and related derivatives. That special treatment includes exceptions from the automatic stay to permit setoff and liquidation and exceptions from the avoiding powers for certain kinds of prepetition payments. The principal effect of the BAPCPA amendments is to extend these 'safe harbor' provisions to additional parties and additional kinds of financial markets contracts by expanding on the Code's definitions to include new kinds of derivatives and new kinds of transactions in them. In addition, BAPCPA makes some changes to substantive treatment, corrects prior omissions and changes the law with respect to the date of calculation of damages in certain circumstances*." (Campbell, 2005). "*The CFMA effectively shielded OTC derivatives from virtually all regulation or oversight. Subsequently, other laws enabled the expansion of the market. For example, under a 2005 amendment to the bankruptcy laws, derivatives counterparties were given the advantage over other creditors of being able to immediately terminate their contracts and seize collateral at the time of bankruptcy.*" (FCIC, 2011).

1497 "*Regulatory changes—in this case, changes in the bankruptcy laws—also boosted growth in the repo market by transforming the types of repo collateral. Prior to 2005, repo lenders had clear and immediate rights to their collateral following the borrower's bankruptcy only if that collateral was Treasury or GSE securities. In [BACPA], Congress expanded that provision to include many other assets, including mortgage loans, mortgage-backed securities, collateralized debt obligations, and certain derivatives... dramatically expanded protections for repo lenders holding collateral, such as mortgage-related securities, that was riskier than government or highly rated corporate debt. These protections gave lenders confidence that they had clear, immediate rights to collateral if a borrower should declare bankruptcy... The result was a short-term repo market increasingly reliant on highly rated non-agency mortgage-backed securities; but beginning in mid-2007, when banks and investors became skittish about the mortgage market, they would prove to be an unstable funding source... Despite the bankruptcy provisions in [BACPA], lenders were reluctant to risk the hassle of seizing collateral, even good collateral, from a bankrupt borrower. Steven Meier of State Street testified to the FCIC: 'I would say the counterparties are a first line of defense, and we don't want to go through that uncomfortable process of having to liquidate collateral.' William Dudley of the New York Fed told the FCIC, 'At the first sign of trouble, these investors in tri-party repo tend to run rather than take the collateral that they've lent against... So high-quality collateral itself is not sufficient when and if an institution gets in trouble.' Moreover, if a borrower in the repo market defaults, money market funds—frequent lenders in this market—may have to seize collateral that they cannot legally own.*" (FCIC, 2011).

1498 Roe (2011) argues that this preferential treatment of derivatives under the U.S. Bankruptcy Code contributed to the financial crisis: "*Chapter 11 bars bankrupt debtors from immediately repaying their creditors, so that the bankrupt firm can reorganize without creditors' cash demands shredding the bankrupt's business. Not so for the bankrupt's derivatives counterparties, who, unlike most other secured creditors, can seize and immediately liquidate collateral, readily net out gains and losses in their dealings with the bankrupt, terminate their contracts with the bankrupt, and keep both preferential eve-of-bankruptcy payments and fraudulent conveyances they obtained from the debtor, all in ways that favor them over the bankrupt's other creditors. Their right to jump to the head of the bankruptcy repayment line, in ways that even ordinary secured creditors cannot, weakens their incentives for market discipline in managing their dealings with the debtor because the rules reduce their concern for the risk of counterparty failure and bankruptcy… Bankruptcy policy should harness private incentives for counterparty market discipline by cutting back the extensive advantages Chapter 11 and related laws now bestow on these investment channels. More generally, when we subsidize derivatives and similar financial activity via bankruptcy benefits unavailable to other creditors, we get more of the activity than we otherwise would. Repeal would induce these burgeoning financial markets to better recognize the risks of counterparty financial failure… [and] would end the de facto bankruptcy subsidy of these financing channels.*"

1499 "*[P]references helped foster liquidity in 'shadow banking' instruments. For example, the Congress provided repos [with the 1984 Bankruptcy Amendment] and [, with BACPA,] various derivatives ('swaps') exemptions from the Bankruptcy Code that reduced the need for creditors under those contracts to assess the bankruptcy risk of their counterparties. These regulatory preferences helped create a deep, liquid market for these instruments… In 2005, the U.S. Congress returned to this repo playbook [from 1984] and granted derivatives (or 'swaps') similar exemptions from the Bankruptcy Code. Major financial institutions active in the derivatives market lobbied hard for these exemptions. [Law professor Mark Roe argues that these changes allow derivative creditors to 'jump to the head of the bankruptcy repayment line.' As with repos, these exemptions dulled the incentives of those who entered into derivative contracts to monitor the risk-taking of their counterparties. [Roe (2011)] [BACPA] exemptions (together with a 2000 federal statute described below that deregulated derivatives markets) turbocharged the growth of the swaps market… [as it was] no longer subject to the automatic stay and voidable preferences provisions of the bankruptcy code that would restrict their remedies as a creditor should their counterparty enter bankruptcy. This means that should the counterparty file for bankruptcy, the creditor party in a derivative contract does not face the normal legal restrictions on terminating the derivative contract, accelerating the debtor's obligations, foreclosing on collateral, and exercising set-off rights. Nor is the creditor subject to potential claw-back of pre-*

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bankruptcy payments from the debtor. [See Roe (2011) explaining bankruptcy 'preferences' for swaps.] The market volume of repos and swaps skyrocketed after Congress granted each of these exemptions. These legal exemptions or preferences did more than just stimulate the markets for these 2 types of financial contract. They also made them liquid. Economists Gary Gorton and Andrew Metrick argue that these exemptions made repos more attractive as an investment substitute for the demand deposits offered by banks. According to Gorton and Metrick, repos offer firms a short-term investment backed by collateral that has many of the same features of demand deposits, namely low risk and the ability to withdraw funds quickly [Gorton and Metrick, 2010]. Gorton and Metrick explain that bankruptcy exemptions allowed repos to become 'informationally insensitive debt,' just like bank deposits [Gorton and Metrick, 2010; Gorton, 2010, p27.]. Informationally insensitive debt describes obligations that are 'immune to adverse selection by privately informed traders.' [Gorton and Metrick, 2012] In other words, investors do not have to worry that more informed traders can reap a profit at their expense by using private information. Information insensitivity also translates into very low search costs for investors seeking to value the debt instrument. Under normal circumstances (and thanks in part to government insurance), customers do not need to expend considerable resources in assessing the risk of losing money in a bank deposit account. Similarly, the bankruptcy exemptions mean that parties to repo and swap contracts must spend less time assessing the risk that their counterparties will become insolvent... [I]nterpretations of bank regulators that allowed lenders to lower their regulatory capital requirements by securitizing assets depended on the securitization qualifying as a true sale for bankruptcy and accounting purposes. Thus, the gaming of bankruptcy and accounting rules also contributed to regulatory capital arbitrage." (Gerding, 2013).

1500 The Fed switched to a tightening regime in 2004 but the impact did not translate to higher long-term debt rates around 2006. Bernanke (2005) explains this phenomenon with the global savings glut hypothesis; there were not enough Treasuries to satisfy institutional cash pools' demand and the continued demand to lend to longer-dated mortgages depressed their yields. By late 2006, long-term rates finally increased and popped the housing bubble. As housing prices fell, borrowers increasingly defaulted on their underwater mortgages and cash flow to the securitized MBS dropped.

1501 "*A primary finding of this Article is that a high concentration of construction and development loans in a bank's portfolio is significantly associated with the probability that a bank will obtain relief from the automatic stay in bankruptcy to pursue foreclosure. This result holds after controlling for housing prices, asset quality-indicators and debtor characteristics. The implication is that financial regulatory policy, in the form of capital adequacy requirements, does influence bank behavior in bankruptcy… These findings include regression analyses demonstrating that a bank's choice to obtain relief from a bankruptcy stay to pursue liquidation and foreclosure is significantly associated with the bank's own concentration risk profile. The central finding is that an exogenous factor, associated with a bank's capital adequacy, can affect a traditional bank creditor's decision making in Chapter 11 bankruptcy cases. Put broadly, the introduction of a new factor driving bank behavior re-conceptualizes the bankruptcy debate, as creditor actions can no longer be explained simply by the economics within the 4 corners of each standalone case.*" (Woo, 2011). "*Some evidence of fire sale-like dynamics during the Panic comes from the work of the late legal scholar Sarah Woo. She argued that in the late 2000s concerns of bank regulators with the concentration risk of banks with respect to real estate loans drove individual banks to take individually rational but collectively counterproductive measures. Woo contended that this regulatory preoccupation prompted banks to force borrowers into foreclosure or bankruptcy even when banks could have recovered more from individual borrowers through less drastic measures, such as renegotiating loans. These actions by banks depressed the value of real estate loans and real estate generally, triggering further write-downs by banks and reductions in capital. This in turn sparked subsequent waves of foreclosures and created a downward price spiral in the real estate market. Concerns with the concentration risk of individual banks thus contributed to real estate market declines that afflicted the banking industry collectively [Woo, 2011]. Woo's work, however, only infers that banks took these actions because of capital regulations. She demonstrates that banks were more likely to push borrowers into bankruptcy when the banks had high concentration ratios, that is, highly concentrated exposures to particular real estate markets. Although bank regulators track these ratios carefully and factor them into regulatory decisions, Woo's data do not show a direct causal link: she does not demonstrate that regulators forced fire sale behavior by banks. Banks may have individually taken harsh actions with respect to borrowers in order to withdraw money quickly from a collapsing market, before other lenders. This would mirror the rational logic that animates bank runs.*" (Gerding, 2013).

1502 After BNP Paribas suspended fund redemption in Aug of 2007, the $1.3 T ABCP market disruption that ensued was described as a 'run on the shadow banking system' at the Jackson Hole Symposium (McCulley, 2007). Similar to conventional banking, this system performed (1) credit intermediation between borrowers and lenders, (2) maturity transformation between long-term loans and short-term funding, and (3) liquidity transformation of illiquid assets into readily marketable securities. The value of MBS securities, as implied by ABX indices, fell for lower level tranches in early 2007 and for AAA in the middle of the year. In Aug 2007, BNP Paribas suspended funds primarily invested in MMFs because of liquidity problems - insisting they would recover as the market normalized. This resulted in a run on MMFs - at least 43 had to be bailed out by sponsors. While global central banks united to provide liquidity. The Fed decided to lend assistance to depository institutions instead of the massive market-based banking sector that was imploding. Eichengreen (2015) notes that this was due to traditional approaches to bank runs and to a greater extent to moral hazard alarms within the FOMC and their concerns about political responses. This was not a traditional bank run, but policymakers treated it like one.

1503 The interventions did not solve underlying issues of information asymmetry and distrust festered: "*interbank markets were slow to recover, with spreads between secured and unsecured funding remaining at high levels throughout the next year. This pressure also manifested itself in repo markets, where haircuts grew steadily throughout the year, adding to the funding pressure on financial intermediaries*." (Gorton and Metrick, 2012a) The sponsors increased their propensity to hoard liquidity. The bailouts also damaged their capital and created the perception for investors – and perhaps regulators - that the asset class was safe as MMFs saw massive inflows.

1504 "*The bailout of Bear Steams had sent a strong signal to the markets that the government would rescue any large nonbank financial institution that stumbled. Lehman, its potential buyers, and just about everyone else fully expected a bailout as the bank desperately trolled for buyers in its final days. By*

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refusing to provide funding, Treasury Secretary Paulson and other regulators essentially dumped Lehman into bankruptcy. Lehman could hardly have been less prepared for Chapter 11… Some commentators have argued that Chapter 11 is an inappropriate solution to distress because the process is too slow and costly. The Lehman case shows exactly the opposite: faced with extreme time pressure, buyers materialized, and Lehman quickly sold its viable subsidiaries, allowing them to remain in business under different ownership. Other commentators have expressed the opposite concern: that bankruptcy leads to an immediate dumping of assets. The 'fire sale' of valuable assets at depressed prices in a bankruptcy reduces creditor recoveries and can lead to failures in other firms that hold the same assets. This concern was an important motivation for the decision to extend rescue financing to AIG." (Ayotte and Skeel, 2009).

1505 "*Bankruptcy is initiated by a debtor firm or its creditors. Under bankruptcy law, a firm's creditors may force an insolvent firm into bankruptcy, and its estate may be liquidated under the direction of a trustee. But more commonly, a debtor firm remains in control and possession of its assets, subject to creditor input and court supervision, while it either winds down or attempts to reorganize and return to normal operation…. [SIPA] provide[s] only for the seizure of a firm by a government or quasi-government agency, and its liquidation by that agency with significantly reduced input from creditors and courts. SIPA is, in many respects, a bankruptcy proceeding directed by a SIPC-appointed trustee... [it did not contain] provisions for the rehabilitation of a failing firm… [After Lehman was] not rescued by the government [it] went into Chapter 11 bankruptcy, despite the fact that the Bankruptcy Code nominally excludes securities brokers and dealers from Chapter 11 and requires them to liquidate under special Chapter 7 provisions or SIPA… [The firm] evaded the exclusion by employing 'roughly the same strategy': their holding companies filed for Chapter 11 but their brokerage subsidiaries did not file for bankruptcy until after transferring their customer accounts. In Lehman's case, this involved some questionable manipulation of statutory procedures. Thus, although Lehman's parent holding company… is being liquidated, it is doing so as a debtor-in-possession (DIP) under Chapter 11 rather than under the direction of a Chapter 7 or SIPA trustee… [the firm was] resolved primarily under Chapter 11, despite SIPA and the nominal exception of brokerages from Chapter 11.*" (Joo, 2011). "*Unlike most other countries, the United States uses different procedures to resolve insolvent banks and nonbank firms. The Bankruptcy Code divides control over nonbank firms among the various claimants, and a judge supervises the resolution process. By contrast, the FDIC acts as the receiver for an insolvent bank and has almost complete control. Other claimants can sue the FDIC, but they cannot obtain injunctive relief, and their damages are limited to the amount that they would have received in liquidation… Bank receiverships and bankruptcy proceedings operate under significantly different rules. The differences include the procedure for determining claims, the right to repudiate contracts, stays of litigation, and the power to avoid certain transactions. Claims against a nonbank debtor are allowed or disallowed by the bankruptcy court, and its determination can be appealed. By contrast, the authority to disallow claims is given to the FDIC, as receiver; its determination is subject to limited judicial review. The FDIC has to power to repudiate or perform contracts entered into by the failed bank; the bankruptcy trustee can reject or assume only contracts that… Only a bank's primary regulator, and the FDIC in some cases, can place it in receivership. By contrast, a nonbank firm can voluntarily file for bankruptcy, or a coalition of its creditors can force it into bankruptcy if it is not paying its debts.*" (Hynes and Walt, 2010). Skeel (1998) , Jackson (2010), and others have argued in favor of a reorganization option for financial firms; FDIC Chairman Bair: "*I believe that we need a special receivership process for investment banks that is outside the bankruptcy process, just as it is for commercial banks and thrifts. The reason goes back to the public versus private interest. The bankruptcy process focuses on protecting creditors. When the public interest is at stake, as it would be here, we need a process to protect it.*" (Bair, 2008).

1506 In March 2008 Bear Stearns had to be rescued and then in Sep 2008 Lehman Brothers failed as the values of their assets fell and could no longer be used as collateral to access liquidity. The MMFs were not prepared for bankruptcies. In Sep 2008, just 1% of the Reserve Fund assets were in Lehman's ABCP; that month Lehman's bankruptcy led the Reserve Fund to 'break the buck' and – without a sponsor to rescue it – collapsed, inciting a run on other MMFs. According to Gorton & Metrick (2012a, 2012b) the runs were on prime funds and they saw massive outflows in favor of government-funds. The prime funds, however, were essential suppliers of capital to corporations and financial intermediaries who in turn lost liquidity from private credit markets. From residential mortgages to multinational corporate behemoths, secured borrowers were suddenly limited in access to liquidity on a grand scale.

1507 *The Housing and Economic Recovery Act of 2008* included provisions addressing foreclosure prevention, community development block grants, and housing counseling. The Act established a temporary *Federal Housing Administration* refinancing program —the *HOPE for Homeowners Program*. The Act required the FDIC, working with other Federal banking agencies, to develop and maintain a system for registering with the *Nationwide Mortgage Licensing System & Registry*, residential mortgage loan originators who are employees of depository institutions, and subsidiaries. The Act also amended the *Truth in Lending Act* to expand the types of home loans subject to good faith disclosures. The *Emergency Economic Stabilization Act of 2008* authorized the UST to spend up to $700 B to purchase distressed assets, particularly mortgage-backed securities, and supply banks with cash (being more efficient than bailing out homeowners). The *Helping Families Save Their Homes Act of 2009* intended to reduce mortgage foreclosures and increase mortgage credit. With respect to the FDIC, the Act lengthened the *Deposit Insurance Fund* restoration plan period to 8 years, increased the FDIC's borrowing authority to $100 B, and expanded the FDIC's assessment authority for systemic risk actions.

1508 The pre-crisis *Financial Services Regulatory Relief Act of 2006*, among other things, authorized interest payments on balances held at the Fed, increased the flexibility of the Fed to set institution reserve ratios, extended the examination cycle for certain depository institutions, reduced the reporting requirements for financial institutions related to insider lending, and expanded enforcement and removal authority of the federal banking agencies, such as the FDIC. UST kept deposits at commercial banks until the Fed started paying interest on excess reserves.

1509 The *Dodd-Frank Wall Street Reform and Consumer Protection Act* implemented changes affecting the oversight and supervision of financial institutions and systemically important financial companies. It also created a new agency (the Consumer Financial

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Protection Bureau), introduced (for nonbank financial companies) or codified (for bank holding companies) more stringent regulatory capital requirements, merged the OTS (AIG's regulator) into the OCC, and set forth significant changes in the regulation of derivatives, credit ratings, corporate governance, executive compensation, and the securitization market. None of the big 5 investment banks survived in their original form as they converted to bank holding companies (GS & MS), were acquired (ML & BS), or went bankrupt (LHB). In return for access to the discount window for liquidity, the parent companies of survivors became subject to heightened scrutiny due to their systemic importance status - including increased capital requirements (buffers for systemic importance and for countercyclical reasons and bringing SIVs back on to their balance sheets), liquidity requirements (Net Stable Funding Ratio and the Liquidity Coverage Ratio), prohibitions on risk activities (Volcker Rule), and provisions for resolution. In other words, these institutions face significant barriers to performing maturity transformation on a highly leverage scale using unpredictable short-term funding.

1510 OLA *"is designed to set out a procedure for regulators to address the specter of failure in the future. OLA, which resembles the [FDIC] bank-resolution authority in many respects, authorizes the appointment of the FDIC as a receiver to liquidate a failing financial company, but has no provisions for the rehabilitation of a failing company.*" (Joo, 2011).

1511 "*In the crisis, the US Government found it politic to bail out Bear Steans, an investment bank (and broker-dealer), which was not a deposit-taking institution and thus not a bank as legally defined. It also bailed out AIG, an insurance company, because of fear of the impact of its failure on its bank and broker-dealer counterparties and on money market funds. And, as we have noted, its failure to bail out Lehman Brothers, again a non-deposit-taker, is thought to have contributed to the severity of the crisis. However, it is debated whether the transfer procedure is appropriate for such institutions. There is some reason to be skeptical. Although the FDIC, the main exemplar in this field, has resolved some large banks in recent years (for example, Continental Illinois), the main staple for its resolution activities has been small banks and banks that are relatively simple businesses, both on the liabilities side (mainly deposit funding) and the assets side (mainly retail and commercial loans). There is therefore a serious question about how effectively a FDIC-type procedure will work in relation to large and complex banks. Nevertheless… a great deal of faith has been placed on the application of the transfer procedure to large banks and bank-like financial institutions. Title II of the Dodd-Frank legislation creates an 'Orderly Liquidation Authority' (OLA) for large bank holding companies (which are not themselves 'banks') and large non-bank financial institutions… Under Dodd-Frank, where any covered institution is determined (through a complex mechanism involving several regulators or government agencies) to be in danger of default and that default is determined to threaten the financial stability of the United States, OLA will be invoked. Despite the separateness of this piece of legislation, it is the FDIC which administers the procedure and the Act gives the FDIC similar tools to the ones it has under [FDIA] to deal with smaller banks (sale of assets, assumption of liabilities, establishment of a bridge bank.) A notable feature of OLA is the legislature's insistence that public funds are not to be used under this procedure to bail out large financial institutions. The OLA name suggest that 'liquidation' of the financial institution is the principal objective of the procedure, but it is clear that the FDIC-expects, if all goes well, that is only the rump of the failing institution that will be liquidated and that the viable parts of the failing institution's business will be transferred to a new owner, probably via a bridge bank – just as under the FDIA… One obvious issue arising out of the extension of resolution procedures to complex banks and non-banks is funding. For non-banks, there is no DGS that can be used to find the resolution; and even for complex banks, deposits may constitute only a small fraction of the short-term funding which needs to be replaced in the resolution procedure. For example, the repo funding of the failing bank's assets may dry up entirely, leading ot the risk of a fire-sale of those assets, unless the wholesale short-term funding is replaced. The Dodd-Frank legislation addresses this issues by permitting the FDIC to borrow money from [UST] to provide liquidity support (but only liquidity) to the bridge bank transferee in the OLA, the money being claimed back from the industry ex post if the institution's collateral proves insufficient for the amount borrowed. The FDIC can also guarantee the issuances of the bridge institution, which should permit it to turn to private capital markets for financing… A second criticism of the 'freewheeling' administrative process in resolution as against court-controlled bankruptcy—is that creditors may be unfairly treated in resolution. In traditional FDIC resolution of small banks, there is only one significant creditor class—the depositors—which the FDIC in practice acted to protect, whether insured or not. With multiple classes of creditor in a large financial institution, their treatment in the OLA is much more difficult to predict. It is standard to provide creditors with the 'no worse off' guarantee (as compared with ordinary bankruptcy) but that may not be worth very much if the bank would lose a substantial part of its value in standard bankruptcy. Overall, then, the FDIC-type resolution-by-transfer process can be seen as the big winner in the post-crisis reforms, as it has been extended to an ever-widening range of financial institutions in a wide range of countries. As we have seen, however, some doubt it will be successful in this broader role. David Skeel has put these doubts powerfully, commenting that 'the resolution process is spectacularly ill-suited to large institutions', partly because of the likely unavailability of purchasers and partly because non-depositor creditors may not be fairly treated in the discretionary FDIC process.*" (Armour et al., 2016).

1512 "*[T]he recovery and resolution plan ("RRP"), colloquially termed the 'living will'… They are required to be produced for systemically important banks and other financial institutions under the Dodd-Frank legislation... The regulator can ultimately impose structural sanctions in order to arrive at a credible RRP. As its name indicates, RRPs comprise both a 'recovery' and a 'resolution' plan—respectively, a plan the institution itself might implement after a financial reverse (for example, to exit certain risky activities), and steps to facilitate resolution. Concentrating here on the latter, a central purpose of the RRP is to facilitate the speedy break-up of the bank's various activities in resolution, so that core functions can be maintained, saleable activities preserved, and the rest liquidated. The problems the RRP seeks to address are two fold. First, the business activities of groups of companies rarely map onto the legal entities within the group in a simple manner. Single business lines may spread across a number of legal entities, while single entities may engage in (parts of) a number of business lines. For the purposes of the transfer of particular activities to purchasers or a bridge bank, a simpler mapping of activities onto corporate structures would be immensely helpful. Second, some crucial services, such as information technology, may be provided centrally or outsourced to a third party, so that the RRP has to indicate how they would continue to be supplied to a part of the business which has been transferred. Although the RRP comes into effect only when the bank faces financial difficulty, it generates a potentially significant ex ante impact on the way the bank is run as a going concern. Although certain elements of the plan may be triggered only at the resolution stage (for example, continued provision of information technology*

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services), better alignment of business activities and corporate structures would need to be put in place in advance. Insofar as the lack of fit between activities and structure is the result of the historical happenstance, such reorganization, while expensive in one-off terms, may carry no continuing costs. But, if there are good cost reasons for the existing complexity, banks may be expected to resist the change (for example, the centralized management of cash in Lehman Brothers, which meant that its UK subsidiary was without cash when the parent collapsed). The RRP could thus operate as an indirect way of undermining the universal or investment banking model, if regulators take a tough line on what an acceptable RRP must contain. Perhaps for these reasons, progress towards agreeing RRPs with regulators appears to be slow." (Armour et al., 2016).

1513 "*No matter whether the resolution procedure covers only simple banks or more complex financial institutions as well, the procedure comes into operation only when it is triggered by a regulator. Can one be sure that the regulator will pull the trigger at the appropriate time? Too early intervention (to the potential detriment of shareholders and creditors other than insured depositors) is normally controlled by specifying resolution as a procedure available only where the bank is likely to breach the regulatory conditions necessary for its continued operation, for example, its minimum capital requirements. The opposite risk of regulatory forbearance (that is, unjustified delay) may particularly arise if the regulator responsible for the trigger is also the regulator which carries prudential responsibility for the industry. Pulling the trigger may be thought to reveal the failure of prudential regulation and so the regulator will have an incentive to delay in the hope the institution will recover (even if delay makes subsequent resolution more costly and potentially exposes the regulator to more intense criticism). This might be thought of as the public sector equivalent of 'gambling for resurrection' in the case of insolvent private companies... For present purposes the most important changes were two-fold. First, if a bank fails and causes substantial loss to the insurance fund, the bank's prudential regulator has to undergo a public enquiry into the effectiveness of its regulatory procedures. This 'cost' of delay for the regulator is aimed to counteract the incentives otherwise operating in favor of delay. Second, as the bank declines, the law increasingly constrains the regulator's discretion over handling of the bank and eventually mandates the pulling of the resolution trigger. This process, usually termed 'prompt corrective action,' is set out in what is now §38 of FDIA. The pints at which regulatory action have to be taken are defined by reference to the bank's capital, using capital and leverage ratios… Title II of the Dodd-Frank Act does not apply §38 to systemically important financial institutions within its scope, being more concerned to control the process by which the resolution procedure is triggered by reference to a standard that permits consideration of the likelihood of capital depletion. The 'Enhanced Prudential Supervision' by Title I of Dodd-Frank should produce pressure on these companies to repair diminished capital or face the risk of triggering a resolution proceeding."* (Armour et al., 2016).

1514 "*The broad picture that emerges of the role of European global banks in determining US financial conditions can be depicted in terms of the schematic in Figure 1. European banks draw wholesale funding from the United States and then lend it back to US residents. Although European banks' presence in the domestic US commercial banking sector is small, their impact on overall credit conditions looms much larger through the shadow banking system in the United States that relies on capital market-based financial intermediaries who intermediate funds through securitization of claims… Further work may uncover the extent to which the current account surplus countries drove European banks into private label securities, but a more plausible mechanism for the expansion of European banks' assets against US borrowers appears to be the increase in the overall size of their balance sheets driven by lower measured risks and increased balance sheet capacity. Rather than the 'Global Savings Glut', it seems more plausible to attribute the lowering of credit standards prior to the subprime crisis to the 'Global Banking Glut' generated by the overcapacity in the banking sector. We derive a formal model of the Global Banking Glut in our theory section below.*" (Shin, 2011).

1515 "*In the late 1990s, policymakers became concerned first about the falling number of Dutch voluntary debt arrangements and then about the rising number of U.S. consumer bankruptcy filings. As a result, the Dutch government and parliament began an 8-year-long process of implementing a more forgiving approach to consumer debt relief, while the U.S. Congress began an 8-year-long debate about restricting access to debt relief. The Netherlands joined France and Germany in moving decisively toward the U.S. model by introducing a statutory discharge of unpaid consumer debt and a 'fresh start.' The United States, in contrast, moved toward a more restrictive, European approach to consumer debt relief.*" (Kilborn, 2006). "*On Dec 31, 1989, France became the second continental European nation to enact legislation to deal with the rising problem of financially overburdened consumers. Between Dec 1989 and Aug 2003, the new law evolved through 3 significant amendments, each of which offered increasingly substantial relief.*" (Kilborn, 2005). "*In 1999, for the first time in German history, a new law had gone into effect in Germany that offered overburdened consumer debtors hope for a new life without debt. The debt counselor explained that the young family could erase their unpaid debts by agreeing to give up a small portion of their income over several years. Indeed, the law would require them to give up substantially less than they had already been paying to creditors up to that point.*" (Kilborn, 2004).

1516 "*First, there is the conservative camp. The central feature in the bankruptcy regime of countries belonging to this camp is the conspicuous absence of any debt forgiveness provision to consumers. The policies of these countries take one of two forms. In the first form, countries simply hold that nonmerchant individuals are ineligible to file for bankruptcy protection and therefore are not entitled to any debt forgiveness. Included in this camp are… some Mediterranean countries such as Italy and*

… In Italy, bankruptcy relief is available only to merchants... Merchants in Italy who seek bankruptcy relief are subjected to significant penalties… a bankrupt merchant in Italy can go to prison for period of 6 months to 2 years if during the 3-year period prior to bankruptcy declaration she did not keep proper business books, or if prior to bankruptcy she spent excessively, or if she wasted a significant part of her assets in imprudent activities.. the bankrupt is not entitled to debt forgiveness … While countries in the moderate camp avail debt relief to their petitioners, the debt forgiveness feature is neither certain nor prompt. In contrast, countries belonging to the liberal camp offer debt forgiveness with a high degree of certainty and with relative promptness. This is accomplished primarily through the automatic granting of discharge within a relatively short period of time. The most liberal country in this camp is the United States. Under Chapter 7 of the United States Bankruptcy Code, most of the debtor's prepetition debts will be forgiven and the debtor will keep all of her post-petition earnings." (Efrat, 2002). "*In addition, the development of consumer debt relief systems in Belgium and Luxembourg is a harbinger of what is likely to come as other countries with civil law systems, like Spain and Portugal —not to mention the entire South American continent— begin to grapple with the problem of rising consumer indebtedness. These new laws offer alternatives to the highly maligned 'debtor-friendly' model of Anglo-*

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American consumer 'bankruptcy.' To the civilian mind, the Anglo-American common law tends to take a rather sterilely economic approach to analyzing contractual obligations, which contrasts sharply with the deep moral commitment to the sanctity of contracts in the civil law. Recent experience in Belgium and Luxembourg shows that consumer debt relief laws need not undermine civilian dedication to the sanctity of contracts and can successfully integrate into a 'French civil law' system." (Kilborn, 2006).

1517 "*When investors pull out from the domestic bond market, the interest rate on government bonds increases. Since the domestic banks are usually the main investors in the domestic sovereign bond market, this shows up as significant losses on their balance sheets. In addition, domestic banks are caught up in a funding problem. As argued earlier, domestic liquidity dries up (the money stock declines), making it difficult for the domestic banks to roll-over their deposits, except by paying prohibitive interest rates. Thus, the sovereign debt crisis spills over into a domestic banking crisis, even if the domestic banks were sound to start with. This feature has played an important role in the case of Greece and Portugal, where the sovereign debt crisis has led to a full-blown banking crisis. In the case of Ireland, there was a banking problem prior to the sovereign debt crisis (which, in fact, triggered the sovereign debt crisis). The latter, however, intensified the banking crisis... Note that I am not arguing that all solvency problems in the Eurozone are of this nature. In the case of Greece, for example, one can argue that the Greek Government was insolvent before investors made their moves and triggered a liquidity crisis in May 2010. What I am arguing is that, in a monetary union, countries become vulnerable to self-fulfilling movements of distrust that set in motion a devilish interaction between liquidity and solvency crises.*" (De Grauwe, 2012). "*The euro area is currently in a banking crisis, where banks face a capital shortfall, interbank liquidity is restrained, and future losses are uncertain. At the same time, it faces a sovereign debt crisis, where at least one country (Greece) will not pay its debts in full, and bondholders are displaying increasing concern about other sovereigns. Finally, it also faces a macroeconomic crisis, where slow growth and relative uncompetitiveness in the periphery add to the burden of some of the indebted nations. This last crisis is one primarily about the level and distribution of growth within the euro area. The crises are interlinked in several ways. First, the sovereign debt holdings of euro-area banks are so large that if some of the debt-stressed sovereigns (Greece, Ireland, Italy, Portugal, and Spain, hereafter referred to as the GIIPS) cannot pay their debts, the banking system as a whole is insolvent. Second, and at the same time, attempts at fiscal austerity to relieve the problems due to sovereign stress are slowing growth. Yet without growth, especially in the stressed sovereigns, the sovereign debt crisis will persist. To complete the circle, continued troubles for the banks could bankrupt certain sovereigns, already struggling under the weight of supporting the banks within their jurisdictions, and failure of these banks could lead to a broken credit channel, which in turn could become a further constraint on growth... Locally funded bank bailouts can aid bank solvency, but at the expense of sovereign solvency. Increased bank capital requirements can calm fears of bank insolvency, but at the expense of lending and growth... On the financial side, delinking sovereign balance sheets from those of the banks, to prevent bank insolvency from leading to sovereign insolvency, would require much more aggressive intervention by the ECB in sovereign bond markets...*" (Shambaugh, 2002).

1518 "*Under ordinary circumstances, the fiscal implications of central bank policies tend to be seen as relatively minor and escape close scrutiny. The global financial crisis of 2008, however, demanded an extraordinary response by central banks which brought to light the immense power of central bank balance sheet policies as well as their major fiscal implications. Once the zero-lower bound on interest rates is reached, expanding a central bank's balance sheet becomes the central instrument for providing additional monetary policy accommodation. However, with interest rates near zero, the line separating fiscal and monetary policy is blurred. Furthermore, discretionary decisions associated with asset purchases and liquidity provision, as well as with lender-of-last-resort operations benefiting private entities, can have major distributional effects that are ordinarily associated with fiscal policy... These resources could be used for asset purchases and bailout operations without the delays associated with fiscal deliberations in democracies and served a useful role in containing some adverse effects of the crisis... Central banks also engaged in preferential lending operations: Lending to government-related or other entities at terms not available to others in the economy. Perhaps most controversial, in some cases central banks became the central actors in bailout operations: Lending to potentially insolvent private firms or government entities with compromised market access... Does an independent central bank have the legitimacy to discriminate in favor of specific private interests and against others? In a monetary union, does the central bank have the legitimacy to take discretionary decisions that favor specific member states over others or decisions that penalize member states for what the central bank views as moral-hazard-induced actions by democratically elected governments?*" (Orphanides, 2016).

1519 "*Whenever a government faces the prospect of a high debt trap, money printing can be a tempting way out. Relying on inflation to eat away the real value of the debt may be far more appealing politically than raising more taxes to repay it... By injecting risk in euro-denominated debt issued by other governments (debt that was considered safe before the crisis), the beneficiary states managed to divert the global demand for euro-denominated safe assets away from the other member states and towards their debt. The shift in relative demands had a predictable effect on relative prices, inducing a windfall gain in the form of a lower premium on government debt for states such as Germany and an implicit tax in the form of a higher premium on government debt for states such as Italy*." (Orphanides, 2017).

1520 "*Within our mandate, the ECB is ready to do whatever it takes to preserve the euro. And believe me, it will be enough*." (Draghi, 2012). The ECB's commitment to purchase the sovereign debt of troubled countries if it thinks the market is not functioning appropriately immediately reduced the sovereign debt yields of peripheral European countries without actually having to be used.

1521 With respect to the wholesale short-term funding channels, regulators eliminated rather than insured. Tarullo (2013) describes how the Fed reduced reliance on intraday credit in the tri-party repo market by 90%. While prime MMFs did not receive insurance, regulation to decrease runnability has destroyed their information insensitivity. In 2016, along with later amendments, the SEC's *Money Fund Reforms* required MMFs to float the NAV, gave the directors an ability to impose fees/gate the funds in case of runs, and subjected them to stress testing and diversification requirements. According to Crane Data, the reforms triggered a $1.1 T shift out of Prime MMFs and into Govt, but that Prime funds are now up 30% since their nadir of $0.6 T in late 2016; it's suspected that these are small retail investors looking for yield.

1522 "*There was one significant, although not universal, change in American practice in the interim between our first and second Bankruptcy Acts. Imprisonment for debt was widely employed in this country until the early 19th century. Thus, there were in Massachusetts, Maryland, New York, and*

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Pennsylvania in 1830 from 3 to 5 times as many persons imprisoned for debt as for crime. For the decade 1820-1830 the Suffolk County Jail in Boston alone contained 11,818 imprisoned debtors from a total population ranging from 43,000 to 63,000. But a wave of reform in the 1830's led to state constitutional provisions forbidding imprisonment for debt." (Countryman, 1976). "*[I]mprisonment for debt save where fraud was shown or suspected, was abolished in Kentucky in 1821, in Ohio in 1828, in New Jersey and Vermont in 1830, in Maryland, for debts less than [$30], in 1830. Massachusetts, in 1831, exempted all males from imprisonment for debts under [$10], and females for debts of any amount. New York, after a long and bitter contest fought out in the press and in the legislature, abolished imprisonment for debt in 1832.*" (McMaster, 1903).

1523 "*Beginning in 1818, the Suffolk Bank of Boston acted as the central bank of New England. It regulated the credit practices of banks in interior villages by requiring them to keep a permanent deposit of their banknotes with the Suffolk Bank. If an interior bank issued too many banknotes, the Suffolk Bank, after accepting them for deposit, would carry them to the head office of the bank and demand that they be exchanged for specie. If these banks were unable to redeem them, the Suffolk Bank initiated bankruptcy proceedings. The threat of bankruptcy restrained excessive issues of banknote. The Suffolk system ensured that banknotes of all New England banks circulated at par. President Jackson's veto of the charter of [SBUS] in 1832 was a license for all States to incorporate more banks. Massachusetts was no exception. Between 1836-7 the Massachusetts legislature chartered 32 new banks (72 between 1830 and 1837). Too many banks were chartered in too short a time for the Suffolk Bank to adequately restrain their credit practices... [In 1837,] all New England banks suspended specie redemption of their banknotes and many bankruptcies followed. A year later, surviving New England banks resumed specie redemption... The Suffolk Bank and its successor continued a central banking function until the beginning of the Civil War in 1861. The banknotes of the [500] banks in New England in 1860 circulated at par.*" (Seavoy, 2013).

1524 For law overview see Marr (1925). "*Under the law of Tennessee, resident creditors of an insolvent foreign corporation have priority over non-resident simple contract corporation creditors (not registered in Tennessee) in the distribution of its assets located in that state. § 2552 of Shannon's Code of the State of Tennessee, now § 4134 of the Code of Tennessee, Vol. 2, p. 496... In Blake v. McClung, 172 U. S. 239, 19 S. Ct. 165, 43 L. Ed. 432, it was held that, while "the act was unconstitutional in so far as it gave the claims of Tennessee creditors of a foreign corporation priority over those of natural persons who were citizens of other states, it was a constitutional exercise of the power of the state to prescribe the conditions upon which a foreign corporation might enter its territory for purposes of business, in so far as it gave the claims of Tennessee creditors priority over those of other foreign corporations not doing business in Tennessee under the act" In re Standard Oak Veneer Co (D. C.)… [The statute gives creditors resident in Tennessee] priority in the distribution of the assets in Tennessee over all unregistered general corporation creditors resident or domiciled elsewhere... In doing this the purpose of the legislature is quite clear, namely; to prescribe conditions upon which a foreign corporation may do business in Tennessee and, in case of its insolvency, to protect local creditors against discrimination in other jurisdictions; and in providing that local courts shall so enforce the statute, it was entirely within its rights..*" (Carpenter v. Ludlum, - Circuit Court of Appeals, 3rd Circuit 1934).

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