INSOLVENCY AND REFORM OF ENGLISH BANKRUPTCY LAW, 1831-1914

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Short Abstract

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This thesis is a history of the reform of English bankruptcy law 1831-1914 and a statistical analysis of the insolvency the reforms sought to limit. The first two chapters describe the historiography of government growth in nineteenth-century Britain and outline the history of English bankruptcy legislation until 1831. Using statistics from bankruptcy reports published by the Board of Trade after 1883 and returns issued by other government entities prior to that date, chapters three and four define the extent and the characteristics of insolvency. These chapters analyze the aggregate level of bankruptcy in particular occupations and geographic areas; they also examine the effect of trade cycles on bankruptcy levels, both in terms of numbers of bankruptcies and losses occasioned. The remaining chapters trace the history of bankruptcy legislation and examine why Parliament embraced the concept of government supervision of bankrupt estates in 1831, then dismantled the system in the 1860s, only to reimpose it once again a short time later. The roles of three groups in this story -- the business community, the legal profession, and the government -- are examined in detail using the records of the local chambers of commerce, law societies, and other organizations.

The thesis concludes that, while the aggregate level of losses declined after the Bankruptcy Act of 1883, the loss rates for some occupations did not reflect this decline. Also, trade cycles did not uniformly affect the rate of bankruptcy for all occupations and geographic areas. Random factors rather than trade cycles had the greatest effect on annual bankruptcy rates. The thesis also argues that the extension of government brought about by bankruptcy reforms was largely a pragmatic attempt to manage bankrupt estates efficiently and had little philosophical basis. Further, the close resemblances between bankruptcy reforms and other Victorian extensions of government add to the evidence that, while there may not be a strict pattern to government growth, such growth may be considered as a distinct and identifiable process.

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Abstract

Insolvency and Reform of English Bankruptcy Law, 1831-1914

This thesis examines the history of English bankruptcy legislation during the nineteenth and early twentieth centuries and defines the extent and nature of the financial insolvency the bankruptcy statutes sought to curb. During the nineteenth-century Parliament injected into the centuries old bankruptcy system a new notion, described at the time by the pejorative term 'officialism'. Under the Bankruptcy Act of 1831, for the first time the government became directly involved in the management of bankrupt estates. The court, not the creditors, appointed 'official assignees' with the primary responsibility to collect and distribute bankrupts' assets. Less than forty years later in 1869, at the urging of an increasingly organized business community, Parliament dismantled the official system, only to reverse course again a short time later in 1883 and reimpose government supervision of bankruptcy administration. The system established by the Bankruptcy Act of 1883 remained the basis for the supervision and administration of bankrupt estates until the passage of the Insolvency Acts of 1985 and 1986.

Questions raised

This thesis addresses four questions. First, how extensive was the problem of bankruptcy in the nineteenth-century?

Based upon the statistics available, a series is constructed for part of the last century showing annually not only the aggregate number of bankruptcies, but also an estimate of the total losses. In addition, this series includes statistics for compositions, deeds of arrangement, and company winding-up, although these areas of insolvency are largely out of the scope of this study. With data from the series, an attempt is made to determine whether or not insolvency tended to increase or decrease from 1883 until the First World War and whether or not legislation, particularly the Bankruptcy Act of 1883, had any effect on the level of bankruptcy. The series and other statistics are also used to observe the levels of bankruptcy in particular occupations and geographic areas and the effect that trade cycles had on bankruptcy levels after 1883, both in terms of aggregate numbers of bankruptcies and losses occasioned.

Second, what was the primary stimulus for reform of the English bankruptcy system? Using the historical debate on the nature of nineteenth-century government growth as a starting point, this thesis examines whether or not the record of bankruptcy reform tends to support those historians who argue that increased state intervention in the Victorian era primarily resulted from philosophical movements such as Benthamism or those who contend that reforms were merely pragmatic responses to particular social problems.

Taking this historical debate to a more practical level, the third area this thesis examines is the groups and individuals that had the major influence on reform of the bankruptcy system. Two groups were principally concerned with

reforming the administration of bankrupt estates: the legal profession and the business community. Later in the century, civil servants can be added to the list. In addition, individuals, most notably Sir Samuel Romilly, Lord Brougham, Richard Bethell, later Lord Westbury, and Joseph Chamberlain, greatly affected the direction of bankruptcy reform. This thesis weighs the relative influence of these groups and individuals and, in the case of groups, examines how the relative influence changed over time. Particular attention is paid to the growing organization of the business community through chambers of commerce and other organizations. Important primary sources used are the records of local chambers of commerce, the national Associated Chambers of Commerce, the Institute of Bankers, and the Institute of Chartered Accountants.

Finally, this thesis examines the extent to which the pattern of bankruptcy reform was similar to the development of reforms in other areas of English society. Many historians of nineteenth-century government growth have described similarities between various extensions of government during the Victorian period. Some have seen a predominance of continuity in reform as opposed to change. Can the bankruptcy reform, where an entirely new system of 'officialism' was put into place in 1831, totally abandoned in 1869, only to be reinstituted in a different form in 1883, fit within any of the patterns which historians have discovered?

Significance of the study of bankruptcy reform

The history of nineteenth-century bankruptcy reform is significant for several reasons. Although highly technical in nature, bankruptcy law was one of the major concerns of the business community, the legal profession, and the government throughout the last century. Business failure provided a major theme for many Victorian novels, among them Dickens' Little Dorrit, Thackeray's Vanity Fair, and Trollope's The Way We Live Now. More to the point, between 1817 and 1883 there were three royal commissions, at least ten parliamentary select committees, and one Lord Chancellor's committee appointed to study the problem of bankruptcy and recommend remedial measures. The eighty-year period between 1831 and 1914 covered by this thesis saw the introduction of almost one hundred bankruptcy bills in Parliament. Nearly a third of those became law.

Throughout the last century, bankruptcy trustees managed assets valued in millions of pounds and the sheer size of the government bureaucracy that supervised and administered bankruptcy estates during the Victorian period was significant. In the 1890s the budget of the Bankruptcy Department of the Board of Trade (which did not include judges' or other court officials' salaries) was larger than that of the Home Office or the Treasury and was the fifth largest item under salaries and expenses of public departments.

Further, bankruptcy also provides a unique opportunity for study because it is an area of Victorian reform that involves both the business community and the legal profession. Concern over bankruptcy legislation was one of the

causes, if not the immediate cause, for the formation of two important national business or business-related organizations: the Associated Chambers of Commerce of the United Kingdom in 1860 and the Institute of Chartered Accountants in 1870.

In a broader context, this study of bankruptcy reform sheds light on the nature of Victorian government growth. Numerous studies have examined various departments of government and their roles in increased state intervention. These studies have added flesh to earlier skeletal theories on government growth by providing evidence to support more accurate conclusions about the nature of the expanding role of government. In a similar vein, this thesis analyzes how the phenomenon of government growth affected the administration of bankrupt estates. In an important respect, however, it charts a new and significant course. No previous work has sought to analyze the part the English legal system played in the growth of British government.

As to the organization of the thesis, the first chapter briefly describes the historiography of government growth in nineteenth-century Britain. The second chapter continues to set the stage by tracing the history of bankruptcy legislation prior to 1831 revealing that by 1800 the most important principles of bankruptcy law had been established, and that the task left for Victorian reformers was to improve the system of administration of bankruptcy estates.

Chapters three and four consist of a statistical analysis of bankruptcy in the last century and continuing until the First World War. The aggregate levels of bankruptcy, both

in terms of numbers of cases and losses, are set out and analyzed. Since the statistical record after 1883 is more complete, an attempt is made in chapter four to gain a more detailed understanding of the character of bankruptcy by studying the effect of trade cycles on the bankruptcy levels in particular occupations and geographic areas.

Chapter five describes the period between 1831 and 1856 when 'officialism' was first introduced into the bankruptcy system. This was largely accomplished through the passage of Lord Brougham's Bankruptcy Act of 1831, and for twenty years the use of 'officialism' was little questioned. In the 1850s, however, the official system began to be challenged, and chapter six traces the development of this disenchantment, paying particular attention to the role played by the business community. Chapter seven completes the legislative history by analyzing the passage of the Bankruptcy Act of 1883 and its direct origins ten years before. Finally, chapter eight describes the aftermath of nineteenth-century bankruptcy reform and summarizes the conclusions of the thesis.

Conclusions reached

Statistics analyzed in this thesis support the Victorian's notion that financial failure was a significant problem for English society. In the first half of the nineteenth-century, losses from formal bankruptcies alone are estimated to have been between £4 and £5 million per year, not including the losses resulting from seven to eleven thousand compositions that debtors entered into each year. Toward the end of

the century until the First World War, estimated losses from all three components of insolvency -- bankruptcy, deeds of arrangement, and company winding-up -- averaged approximately £28 million annually or between one and two percent of gross domestic product each year. Although there was a shift in the amount of insolvency represented by bankruptcy to that represented by company winding-up, the level of all three insolvency components declined from the passage of the Bankruptcy Act of 1883 until the First World War.

The extent to which bankruptcy legislation affected insolvency levels will never be fully known. What is certain is that legislation had an effect on the method creditors chose to manage bankruptcy estates, that is, either through bankruptcy, compositions or deeds of arrangement. As to the effect of legislation on the insolvency level itself, there is no evidence to confirm or deny the claim of bankruptcy officials that the 1883 act had the effect of reducing financial failure. It seems likely, however, that the provisions of the act requiring investigations of the circumstances of bankruptcies, examinations of bankrupts, and penalties for misconduct could not help but have had a favourable effect.

As to some of the characteristics of insolvency, while the bankruptcy level declined in the three decades before the First World War, the rate of bankruptcy in certain occupations clearly did not reflect this decline. With regard to the impact of trade cycles, evidence shows that random factors such as illness or injury of proprietors, dishonesty of employees, or lack of credit may have played just as great

a role as trade cycles in affecting bankruptcy levels. There was a tendency for bankruptcies to increase in number during trade slumps and decline as the trade cycle improved, but the more dramatic pattern in bankruptcies is the almost continuous fluctuation in the numbers of bankrupts irregardless of the trade cycle. This thesis concludes that, to a large extent, the cause of this pattern was the fact that most bankruptcies represented failures of small firms that were subject to random factors unrelated to the performance of the economy as a whole.

The problem of insolvency during the last century was addressed by a movement to reform the English system of bankruptcy administration. It is shown that this movement was only part of a much broader effort to reform many areas of English law. Numerous factors stimulated the movement, including Benthamite utilitarian, humanitarian and evangelical forces. Yet a combination of two elements was the principal stimulus. First, in a broad sense, change in the system of bankruptcy administration resulted from a Benthamite spirit of inquiry seeking to improve many aspects of the English legal system. Second, the various nineteenth-century bankruptcy acts reflect an attempt to respond pragmatically to the problem of effectively and efficiently managing bankrupt estates.

Of these two elements, the second was the most important. The desire to have bankrupt estates managed in the most efficient and inexpensive way possible was not only behind the establishment of officialism in 1831, but also caused business interests to pressure Parliament in the 1860s to

abandon 'officialism' for the chimerical economic benefits of the 'Scottish system'. The lack of collection of assets in smaller bankruptcies was the Achilles heel of the creditor-managed system, and the reintroduction of an official system in 1883 rose from, in part, the economic benefits of allowing assets of small estates to be collected by a government official on behalf of all creditors.

Although elements of both philosophical and pragmatic elements influenced the reform of the bankruptcy system, the efforts of specific groups and individuals cannot be ignored. The influence of the business community on bankruptcy reform dates back at least to the early eighteenth-century, when Parliament received petitions from various merchant and trader groups. The influence of business reached its zenith with the rejection of officialism in the 1860s and the imposition of a creditor-managed system. This influence was largely the result of the increased organization of large segments of the business community through groups such as the Associated Chambers of Commerce, the Institute of Bankers, the Institute of Accountants, and certain committees of the National Association for the Promotion of Social Science. The influence of the organized business community waned in the 1870s and 1880s, however, principally because of its inability to recognize the needs of smaller creditors who suffered from not having an official assignee to collect assets in the more marginal bankruptcies.

Another trend this study highlights is the decline of the influence of the legal profession in bankruptcy reform during the course of the century. Lawyers on the whole were

responsible for the provisions of the bankruptcy act of 1831. Subsequent bankruptcy acts, at least until 1869, were also largely the handiwork of lawyers, as in the case of Lord Lyndhurst's efforts in 1842, Brougham's again in 1849, and Sir Richard Bethell's work on the Bankruptcy Act of 1861. After the mid-1860s the legal profession, acting through such groups as the Law Society, showed little interest in the reform of the bankruptcy system, provided reforms did not encroach upon the livelihood barristers and solicitors earned from the system.

The void in leading bankruptcy reform left in the 1880s as a result of the decline of business influence and the widespread indifference of the legal profession was filled by Joseph Chamberlain and the senior staff of the Board of Trade, principally the board's permanent secretary, T. H. Farrer. These men grasped the conceptual key to successful bankruptcy legislation. From an economic standpoint, they understood that government must play a role in the administration of bankrupt estates, especially smaller ones, if such estates were to be managed in the most inexpensive manner and yield the largest possible dividends to creditors. Chamberlain and Farrer also realized that bankruptcy was not merely a problem for creditors but affected society as a whole. Financial failures like any other public calamity should be investigated so that measures could be taken to lessen the chances for occurrence in the future.

This thesis also demonstrates that bankruptcy reform bears many resemblances to the history of other Victorian reform movements. To begin with, as with other nineteenth-

century reforms, Parliamentary select committees and royal commissions played a critical role in identifying the problems with the system. In addition, the reformed bankruptcy system had its version of a centrally operated inspectorate, the hallmark of other Victorian administrative systems. The official assignee under the 1831 act and the official receiver under the 1883 act were directed to monitor the progress of individual bankruptcies and to report to the court any evidence of wrongdoing, either before or after the filing of the bankruptcy petition. After 1883, the Bankruptcy Department of the Board of Trade filled the role of central controlling body, a role also found in the organization of poor relief, the implementation of sanitary regulations, and other areas of increased state intervention.

Another common feature of nineteenth-century reform movements was the pressure for reform applied by organized voluntary groups. Just as the Health of Towns Association lobbied for sanitary reform, so the London committee, local chambers of commerce, the Associated Chambers of Commerce, the Law Society, and other groups petitioned Parliament to reform the system of bankruptcy administration.

Finally, the arguments used in the debate over bankruptcy reform in many respects resembled those in debates over other reforms in the Victorian period. The criticism that bankruptcy officialism would mean increased patronage and government corruption that Brougham faced in 1831 and Chamberlain in 1883 would have been familiar to the proponents of poor laws, public health acts, and railroad regulation. Similarly, Chamberlain's distinction between

'supervision' and 'administration' was a tactic used by many Victorian reformers to overcome objections to increased state intervention.

While all Victorian reforms may not fit exactly into any strict pattern, nevertheless this study adds to the evidence that they have enough similarities to constitute a distinct and identifiable process, one which laid the foundation for the modern British state. In this process bankruptcy reform played a definite and influential role.

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V. M. Lester

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ABBREVIATIONS USED

A. H. R.	The American Historical Review
Amer. J. Legal Hist.	American Journal of Legal History
Cambridge Hist. J.	Cambridge Historical Journal
Canadian J. Hist.	Canadian Journal of History
E. H. R.	The English Historical Review
Econ. H. R.	The Economic History Review
Hist. J.	The Historical Journal
J. Brit. Studies	Journal of British Studies
J. Econ. Hist.	The Journal of Economic History
Vict. Studies	Victorian Studies

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Chapter One

Introduction

During the nineteenth-century, Parliament injected into the centuries-old English bankruptcy system a new notion, described at the time by the pejorative term 'officialism'. Under the Bankruptcy Act of 1831, for the first time the government became directly involved in the management of bankrupt estates. The court, not the creditors, appointed 'official assignees' with primary responsibility to collect and distribute bankrupts' assets. Less than forty years later in 1869, at the urging of an increasingly organized business community, Parliament dismantled the official system, only to reverse course again a short time later in 1883 and reimpose government supervision of bankruptcy administration. The system established by the Bankruptcy Act of 1883 remained the basis for the supervision and administration of bankrupt estates until passage of the Insolvency Acts of 1985 and 1986.[1]

This thesis examines the history of English bankruptcy legislation during the nineteenth and early twentieth centuries and defines the extent and nature of the financial insolvency the bankruptcy statutes sought to curb. In particular, this thesis addresses four questions. First, how extensive was the problem of bankruptcy in the nineteenth-

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[1] 32 & 33 Vict., c. 71 (1869); 46 & 47 Vict., c. 52 (1883); Insolvency Act of 1985 (1985,c. 65); Insolvency Act of 1986 (1986, c. 45).

century? Second, what was the primary stimulus for reform of the English bankruptcy system? Third, what groups and individuals had the major influence on bankruptcy reform? Fourth, to what extent was the pattern of bankruptcy reform similar to the development of reforms in other areas of English society?

The history of nineteenth-century bankruptcy reform is significant for several reasons. Although highly technical in nature, bankruptcy law was one of the major concerns of the business community, the legal profession, and the government throughout the last century. One contemporary commentator on the law referred to the bankruptcy system as forming 'the most extensive and important branch of the mercantile law of the United Kingdom...'.[2] Between 1817 and 1883 there were three royal commissions, at least ten parliamentary select committees, and one special Lord Chancellor's committee appointed to study the problem of bankruptcy and recommend remedial measures. The eighty-year period between 1831 and 1914 covered by this thesis saw the introduction of almost one hundred bankruptcy bills in Parliament. Nearly a third of those became law. Joseph Chamberlain accurately declared in introducing his 1883 bankruptcy bill that the subject 'had a deep interest for great masses of our people, and especially for the great body of industrious tradesmen ...'.[3]

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[2] Edward Christian, The Origins, Progress and Present Practice of the Bankrupt Law, Both in England and in Ireland, 2 vols. (London, 1812), 1. xi.

[3] Hansard, 3rd series, 1883, cclxxvii. 835.

Throughout the nineteenth-century, bankruptcy trustees managed assets valued in millions of pounds. Under the bankruptcy system, if a debtor failed to pay his creditors, they could file a formal bankruptcy petition in court that triggered the seizure of the debtor's assets; the court distributed the assets on a pro rata basis among creditors after payment of expenses; and, in appropriate cases, the court with creditor approval discharged the debtor from further liability to his creditors. As part of this process, between the filing of the petition and the closing of the case, the bankrupt 'estate' had to be administered according to the provisions of bankruptcy law. Assets had to be collected, managed, and distributed. With larger bankruptcies, assignees or trustees of the estate might have acquired considerable responsibilities, for it was often necessary to continue the operation of the bankrupt's business until it could be profitably sold or otherwise liquidated. In some instances, the administration of a bankrupt estate continued for as long as twenty years.

Seen from another perspective, the sheer size of the government bureaucracy that supervised and administered bankruptcy estates during the Victorian period was significant, a fact that has been ignored in studies of nineteenth-century government growth. In 1843, fifty-three commissioners, registrars, clerks, and other officers tended the administration of bankruptcy estates with a budget of just over £52,000. By contrast, the Home Office in the 1840s had only nineteen employees operating with a budget of approximately

£20,000.[4] Compared to the size of other executive departments, the relative size of the bankruptcy administration continued to be large for the remainder of the Victorian period. In 1892 the budget of the Bankruptcy Department of the Board of Trade (which did not include judges' or other court officials' salaries) surpassed £121,000, and the department had over eighty full-time employees plus numerous official receivers paid by the Board of Trade on a commission basis.[5] This budget was the fifth largest item under Class II (salaries and expenses of public departments), coming behind only the Board of Trade and subordinate departments (not including the Bankruptcy Department), Local Government Board, Register General's office and the Stationery Office and Printing. By contrast, the estimate for the budget of the entire Home Office was only £95,000. This budget covered 179 employees involved in, among other things, inspectorates of factories, workshops, explosives, and mines. Likewise, the Treasury's budget during the 1890s was substantially less than the Bankruptcy Department's.[6]

Besides the significance of the size of bankruptcy administration, bankruptcy law stood prominently in the mind of the business community. Concern over bankruptcy legislation was one of the causes, if not the immediate cause, for the formation of two important national business or

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[4] Parl. Papers 1843, xli (303), pp. 5-6 'Return relating to Bankruptcy, 2 June 1843.

[5] Parl. Papers 1890-91, liii (50), pp. 125-27: 'Estimates for Civil Services for the Year Ending 31 March 1892', 26 Jan. 1891.

[6] Ibid., pp. 101-09.

business-related organizations: the Associated Chambers of Commerce of the United Kingdom in 1860 and the Institute of Chartered Accountants in 1870. The first resolution of the Associated Chambers of Commerce dealt with bankruptcy reform, and most meetings of the organization in its first twenty years discussed at length the current status of bankruptcy law.[7] The accountants organized themselves largely in an attempt to establish professional standards that might stem the tide of abuses of so-called 'accountants' in the management of bankruptcy estates.[8]

Bankruptcy also provides a unique opportunity for study because it is an area of Victorian reform that involves both the business community and the legal profession. The concern of business for the maintenance and operation of the bankruptcy system is apparent, but lawyers too had a vested interest, an interest not solely professional. The operation of the system was vital to the livelihood of many solicitors and barristers. More important, such a study can offer new information about the reaction of the business community and legal profession to reform and increased government intervention in the private sector, and the relationship between these two groups.

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[7] Associated Chambers of Commerce of the United Kingdom papers (hereinafter 'ACC Papers'), 14,476(1), meeting 2 Feb. 1860; A. R. Ilersic and P. F. B. Liddle, Parliament of Commerce: The Story of the Association of British Chambers of Commerce (London, 1960), p. 67.

[8] Institute of Chartered Accountants in England and Wales papers (hereinafter 'ICA Papers'), Minutes of General Meetings, 1880-1901, Book A; Tom Margerison, The Making of a Profession (London, 1980).

In a broader context, the study of bankruptcy reform can also shed light on the nature of Victorian government growth. Since the publication some thirty years ago of Oliver MacDonagh's seminal article, 'The Nineteenth-Century Revolution in Government: A Reappraisal', that launched the modern historical debate on the subject, numerous studies have examined the growth of various executive departments.[9] These works encompass a wide range of governmental activity, including sanitary administration, the army, local government boards, the Treasury, Colonial Office, Foreign Office, and Board of Trade.[10] These studies have added flesh to earlier skeletal theories on government growth by providing evidence to support more accurate conclusions about the nature of the expanding role of government. In a similar vein, this thesis attempts to analyze how the phenomenon of government growth affected the administration of bankrupt estates. In one important respect, however, it charts a new and significant course. With the exception of a general discussion in MacDonagh's Early Victorian Government, no previous work has sought to analyze the part the English legal system played in

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[9] Oliver MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' Hist. J., i (1958), 52-67.

[10] Some of the works include Royston Lambert, Sir John Simon, 1816-1914, and English Sanitary Administration (London, 1963); Roy MacLeod, Treasury Control and Social Administration: A Study of Establishment Growth and the Local Government Board, 1871-1905 (L. S. E. Occasional Papers in Social Administration, no. 23, 1968); Maurice Wright, Treasury Control of the Civil Service, 1854-1874 (Oxford, 1969); Henry Roseveare, The Treasury: The Evolution of a British Institution (New York, 1969); Brian L. Blakely, The Colonial Office, 1868-1892 (Durham, N. C., 1972); Ray Jones, The Nineteenth Century Foreign Office: An Administrative History, L. S. E. Research Monographs, No. 9 (London, 1971); Hew Strachan, 'The early Victorian army and nineteenth-century revolution in government', E. H. R., xcv (1980), 782-809.

the growth of British government.[11] As David Sugarman and G. R. Rubin have observed in Law, Economy and Society, 1750-1914, the role of law has been separated from the historical debate about the nature of increased state intervention in society.[12] This study attempts to correct this omission by studying the extent to which the tendency toward increased government activity affected one of the most significant legal reforms of the period, the reform of the bankruptcy system.

Considering the extent of the nineteenth-century law reform movement and its effect on the English legal system, the omission of such a movement from the study of the expanding role of government is surprising. Law reform was one of the first areas that caught the attention and the imagination of early nineteenth-century reformers. Less than one hundred years later, almost every aspect of the administration of the judicial system had been altered. From rules of evidence, to punishment for crimes, to the very organization of the court system itself, reform significantly altered the English legal system. The absence of any study seeking to gauge the effect of government growth on legal reform in the nineteenth-century may result from an incorrect assumption: that law reform revised penalties for crimes, altered the jurisdiction of courts, and reshaped procedural rules but did not expand the size of the legal administration. This is not the case. Just

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[11] Oliver MacDonagh, Early Victorian Government 1830-1970 (London, 1977), pp. 162-77.

[12] David Sugarman and G. R. Rubin, 'Towards a New History of Law and Material Society in England 1750-1914' in G. R. Rubin and David Sugarman, eds., Law, Economy and Society, 1750-1914: Essays in the History of English Law (Abingdon, 1984), p. 72.

as in other areas of government, the legal administration in the nineteenth-century expanded. This is true not only in the case of bankruptcy administration, but also in other areas such as the establishment of a new county court system with extended jurisdiction.[13]

Bankruptcy, however, offers perhaps the best example of the extension of the role of government caused by legal reforms. Unlike some law reforms in the last century, such as the establishment of county courts, the alteration of the English bankruptcy system directly involved the judiciary in the private sector. For the first time, bankruptcy courts, acting through their appointed official receivers, became intimately involved in the management of bankrupt estates. Later the Board of Trade replaced the judiciary as the government's instrument to control the administration of bankruptcies.

Historiography of the growth of government in the nineteenth-century

Since one of the reasons for the significance of the study of bankruptcy reform is the light it can shed on the nature of government growth in Victorian England, it is important to look briefly at the historical debate which has surrounded the subject. Several works thoroughly describe the historiography of this controversial subject and to do so

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[13] See, for example, 9 & 10 Vict., c. 95 (1846) (increasing the number of county courts).

again would be superfluous.[14] A brief sketch of historians' views about the nature of increased state intervention in Victorian England, however, will help explain the unique contribution the study of bankruptcy reform can make in understanding the origins of the modern British state.

At the beginning of the last century, government played little part in the everyday life of the English citizen and was unconcerned with his well-being.[15] It is an exaggeration, however, for Elie Halévy to claim that England in 1800 was largely 'a country without officials and without police'.[16] There existed the remains of merc antilism in forms such as tariffs, navigation laws, poor laws and apprentice regulations. Even so, by the end of the century, the situation had changed dramatically. Although still small by modern standards, the role of government was much greater than it had been only a hundred years before. Factory Acts set the number of hours an employee could work in a plant. Poor laws established central supervision of the distribution of relief to the poor. Government inspectors, with varying degrees of success, monitored activities from education to the production of alkali. In terms of numbers, there were just over 15,000 'persons in public offices' in 1797, most of whom were

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[14] See, for example, Valerie Cromwell, 'Interpretations of Nineteenth-Century Administration: An Analysis', Vict. Studies, ix (1966), 246-55; Roy Macleod, ed., Government and Expertise: Specialists, administrators and professionals, 1860-1919 (Cambridge, 1988), pp. 1-18.

[15] David Roberts, Victorian Origins of the British Welfare State (New Haven, 1960), p. 13.

[16] Elie Halévy, A History of the English People, quoted in W. H. Greenleaf, The British Political Tradition (London, 1983), 1. 29.

customs, excise, and post office officials. By 1869, this figure had grown to 108,000 of whom about 16,700 were central department officers and clerks. Public peacetime expenditure (local and national) at fixed prices grew approximately fifteen-fold during the nineteenth-century.[17] While historians generally agree that the character of the English government changed during the last century, debate continues as to the exact nature of such change and the reasons for it.[18]

Oliver MacDonagh's article on the 'nineteenth-century revolution in government' published in 1958[19] caused what one historian has described as a 'paradigm shift' in the historiography of Victorian government.[20] The article is particularly significant because it gave rise to two questions that subsequently dominated the debate concerning the nature of government growth in the last century. First, is there any pattern to the many examples of increased state intervention during the Victorian period? Second, was the

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[17] Harold Perkin, The Origins of Modern English Society 1780-1880 (London, 1969), pp. 123-24 citing E. W. Cohen, Growth of the British Civil Service, 1780-1939 (1912), p. 23n and H. Mann, 'On the Cost and Organization of the Civil Service', Stat. J., xxxii (1869), 49.

[18] Henry Parris, Constitutional Bureaucracy: The Development of British Central Administration Since the Eighteenth Century (London, 1969), p. 16; William O. Aydelotte, 'The Conservative and Radical Interpretations of Early Victorian Social Legislation', Vict. Studies, xi (1967), 225-36; Geoffrey K. Fry, however, has challanged the notion of a 'revolution' in government in the nineteenth-century. According to Fry, not until the final years of the century was there a substantial growth in government; government's role in the economy remained limited until 1914. Geoffrey K. Fry, The Growth of Government: The Development of Ideas About the Role of the State and the Machinery and Functions of Government in Britain Since 1780 (London, 1979), p. 151.

[19] MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal', op.cit.

[20] MacLeod, Government and Expertise, p. 5.

primary stimulus to government growth pragmatism or rather philosophical movements such as Benthamite utilitarianism?

To answer the first question, MacDonagh suggests a model or pattern to describe the operation of what he terms the 'legislative-cum-administrative' process. He bases his analysis on a detailed study of the early Victorian 'passenger' acts that regulated the transportation of immigrants and a comparison of the history of these acts with other examples of state intervention.[21] Although MacDonagh bluntly admits that his model does not necessarily predict in detail other historical examples, he nevertheless asserts that enough resemblances between the numerous examples of state intervention reveal a 'very powerful impulse or tendency'. According to the MacDonagh model, an initial stage saw the exposure of a social evil and the passage of enabling legislation to deal with the problem. Such legislation usually failed and in the second stage inspectors and other executive officers charged with the enforcement of the legislation pressed for further compulsory statutes to encourage more effective enforcement. In a third stage, Parliament passed more efficient legislation, and in most cases there appeared greater centralization and the establishment of a superintending body. A fourth stage occurred when Parliament and others realized that additional legislation could not solve the problem and the application of further expertise would be needed. In the fifth and final stage, civil servants widened the scope of

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[21] MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal', op.cit., pp. 58-61.

government even more by attempting to prevent, rather than merely solve problems, through the framing of regulations and the imposition of penalties.

Following the publication of MacDonagh's article, which he later incorporated into A Pattern of Government Growth, 1800-1860, historians focused attention on the extent to which MacDonagh's model applied to specific areas of government growth and whether or not a 'pattern' actually existed.[22] Henry Parris, in a direct challenge to the MacDonagh model, claims that not even a 'reasonable degree of fit' exists between the model and the development of numerous other branches of administration. He offers his own model, which emphasizes the role of utilitarianism in the growth of government.[23] Peter Dunkley recently questioned the applicability of MacDonagh's model even to the passenger acts upon which it was first based.[24] Other historians, though, have found the model more useful and have applied it with varying degrees of success to the areas of government they have studied.[25]

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[22] Oliver MacDonagh, A Pattern of Government Growth, 1800-60: The Passenger Acts and their Enforcement (London, 1961).

[23] Henry Parris, 'The Nineteenth-Century Revolution in Government: A Reappraisal Reappraised', Hist. J., iii (1960), 11-37. The areas to which Parris claimed the MacDonagh model was inapplicable included: the creation of the Metropolitan Police (1929), the appointment of the first factory inspectors (1833), the setting-up of the Poor Law Commissioners (1834), the beginning of prison inspection (1835), regulation of railways (1840), inspection of mines (1842), inspection of steamships (1846), public health (1848), and the administration of exchequer grants to local police forces (1856).

[24] Peter Dunkley, 'Emigration and the State, 1803-1842: The Nineteenth-Century Revolution in Government Reconsidered', Hist. J., xxiii (1980), 353-80.

[25] See, for example, Jill H. Pellew, 'The Home Office and the Explosives Act of 1875', Vict. Studies, xviii (1974), 175-94. Also, the MacDonagh model seems to apply closely to

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Studies demonstrating that the MacDonagh model rarely coincides exactly with the circumstances surrounding a particular example of increased state intervention do not diminish MacDonagh's overall concept of government growth. He himself concedes that the model does not necessarily correspond to the events in every case. MacDonagh's real contribution was to establish that the transformation of the executive department was a 'genuine historical process' and that there were similarities, although perhaps not congruence, between the various examples of government growth during the last century.[26]

The second of MacDonagh's questions was a direct corollary to the first: what constituted the primary stimulus for government growth? To understand fully the implications of this question, it is necessary to go back half a century before the publication of MacDonagh's article to A. V. Dicey's Lectures on the Relation Between Law and Public Opinion in England During the Nineteenth Century, published in 1905.[27]

Dicey's book gives a general description of the transition of the British government during the nineteenth-century, outlining three distinct stages in this transition: 1800-1830, a period marked by 'legislative quiescence';

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the increased role of government in the prevention of food adulteration. Perkin, op.cit., pp. 440-42. On the other hand, Alan Heesom found more complex motivations than the MacDonagh model in the passage of the Coal Miners Act of 1842. Alan Heesom, 'The Coal Mines Act of 1842, Social Reform, and Social Control', Hist. J., xxiv (1981), 69-88.

[26] Dunkley, op.cit., p. 353.

[27] A. V. Dicey, Lectures on the Relation Between Law and Public Opinion in England During the Nineteenth Century (1905; London, 1981).

1825-1870, a period dominated by laissez-faire individualism; and finally, 1865-1900, a period characterized by 'collectivism'. In terms of the future historiography of government growth, the second stage would cause the most controversy. According to Dicey, the influence of Jeremy Bentham and his followers dominated this period and laissez-faire philosophy was the most vital part of Bentham's legislative doctrine.[28] Dicey never intended that his book should be accepted as the definitive account of government growth, but for the most part it was so received for nearly fifty years.[29]

The puzzle about Dicey's thesis for later historians was his characterization of the second stage (1825-1860) as dominated by laissez-faire thought. To begin with, much legislation during the period (the poor laws, factory acts, railway acts, etc.) seemed to run counter to laissez faire doctrine by extending, rather than contracting, the role of government. A second part of the puzzle was the apparent paradox of Bentham and his supporters promoting the free pursuit of individual interest while advocating state intervention in many areas.[30] J. B. Brebner resolves this apparent contradiction by asserting that, contrary to Dicey's assertion, Benthamism was not synonymous with the principle of laissez-faire, and in fact Bentham was 'the archetype of

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[28] Dicey, op. cit., p. 147.

[29] Richard A. Cosgrove, The Rule of Law: Albert Venn Dicey, Victorian Jurist (London and Bassingstoke, 1980), p. 192.

[30] Elie Halevy, The Growth of Pilisophic Radicalism (London, 1928), pp. 479-514; Sir Cecil Thomas Carr, Concerning English Administrative Law (London, 1941), pp. 8-9.

British collectivism'.[31] Lionel Robbins takes a different approach and concludes that it was not necessary to assume that laissez-faire and state intervention contradicted each other. State intervention could be just as important to a Benthamite as the doctrine of laissez-faire, since the application of either to a particular problem was possible under the guiding direction of pragmatic utility.[32]

MacDonagh attempts to solve, or at least mitigate, the conundrum by asserting that, although Benthamism may have played some part in reform, most changes in government administration were merely 'natural answers to concrete day to day problems, pressed eventually to the surface by the sheer exigencies of the case'.[33] In other words, government growth rose not from Benthamite ideas but merely as a pragmatic response to social problems. As a part of this concept, MacDonagh also believes that much governmental growth was 'creative and self-generating'; it had the ability to gather its own momentum in an attempt to answer specific problems.

Parris and Jenifer Hart vigorously attack MacDonagh's relegation of Benthamite theory to a subordinate role in influencing Victorian reforms.[34] To supporters of this

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[31] J. Barlet Brebner, 'Laissez-Faire and State Intervention in Nineteenth Century Britain', J. Econ. Hist., 8, Supp. (1948), 61.

[32] Lionel Robbins, The Theory of Economic Policy in the English Classical Period (London, 1952), p. 39.

[33] MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal', op.cit., p. 65.

[34] Parris, op.cit.; Jenifer Hart, 'Nineteenth-Century Social Reform: A Tory Interpretation of History', Past and Present, xxxi (July 1965), 39-61; Henry Parris, Government and the Railways in Nineteenth Century Britain (London, 1965). See also,

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'Benthamite-under-every-bed' interpretation, as one of Bentham's recent biographers has called it, the existence of numerous utilitarians, such as Edwin Chadwick and Thomas Southwood Smith in positions of influence in the various reform movements was evidence enough of their power.[35] In a work that briefly discusses the influence of Bentham on debt law in general in the early nineteenth-century, Ian P. H. Duffy reaches the conclusion that, although reforms were in response to current problems, their eventual form reflected Bentham's influence.[36] As Parris states, the admission that Bentham's abstract thought alone did not revolutionize British government did not necessarily mean the same solutions would have been reached had Bentham never lived.[37]

Others, such as David Roberts and G. Kitson Clark, firmly disagree and support MacDonagh's position.[38] To Roberts, concepts such as central inspection, as well as the utilitarian notion that legislation was to promote the general good, were commonplace at the time and would have

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Cromwell, op.cit.; R. L. Crouch, 'Laissez-Faire in Nineteenth Century Britain: Myth or Reality?', Manchester School of Economic and Social Studies, xxxv (1967), 199-215; H. Scott Gardner, 'The ideology of laissez-faire' in A. W. Coats, ed., The Classical Economists and Economic Policy (London, 1971), pp. 180-205.

[35] John Dinwiddy, Bentham (Oxford, 1989), p. 118.

[36] Ian P. H. Duffy, 'Bankruptcy and Insolvency in London in the Late Eighteenth and Early Nineteenth Centuries' (Univ. of Oxford D. Phil. thesis 1973), p. 143.

[37] Parris, 'The Nineteenth-Century Revolution in Government: A Reappraisal Reappraised', op.cit., p. 36.

[38] David Roberts, 'Jeremy Bentham and the Victorian Administrative State', Vict. Studies, ii (1959), 193-210; Roberts, Victorian Origins of the British Welfare State, op.cit.; G. S. R. Kitson Clark, An Expanding Society: Britain 1830-1900 (Melbourne, 1967), p. 163. See also, Roy M. MacLeod, 'The Alkali Acts Administration, 1863-84: The Emergence of the Civil Scientist', Vict. Studies, ix (1965), 85-112.

almost certainly come to the fore anyway. Economic, social, scientific, and governmental forces stemming from the transformation of English society, not political theory, caused the growth of England's central government.[39] The influence of theory on reform is also questioned in William Aydellote's study of voting patterns in Parliamentary division lists on select issues between 1841 and 1847.[40] In this attempt to offer quantifiable evidence on the issue, Aydelotte concludes in his study of various issues that, if indeed there were some overall conceptual scheme behind reform, it was neither utilitarianism nor opposition to it. Boyd Hilton has recently joined the ranks of those who see Benthamite ideas as subordinate to other influences and argues in favour of an 'evangelical' ideology as key to the formation of new economic policy.[41] There have also been those who, while granting Bentham's influence, believe it impossible to trace completely such influence with the available historical evidence.[42]

Historians continued to explore the relationship between Benthamism and government growth in numerous studies.[43] In

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[39] Roberts, Victorian Origins of the British Welfare State, op.cit., p. 101; see also, Jose Harris, Unemployement and Politics: A Study of English Social Policy, 1886-1914 (Oxford, 1972).

[40] Aydelotte, op.cit., pp. 234-36.

[41] Boyd Hilton, The Age of Atonement: The Influence of Evangelicalism on Social and Economic Thought (Oxford, 1988), p. viii.

[42] William Thomas, The Philisopic Radicals: Nine Studies in Theory and Practice 1817-1841 (Oxford, 1979), p. 11.

[43] For example, L. J. Hume, 'Jeremy Bentham and the Nineteenth-Century Revolution in Government', Hist. J., x (1967), 361-75; Arthur J. Taylor, Laissez-faire and State Intervention in Nineteenth Century Britain (London, 1972); Ursula Henriques, 'Jeremy Bentham and the Machinery of Social Reform', in H. Hearder and H. R. Lyon, eds., British

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the mid 1970s, there were attempts to synthesize the two opposing positions of pragmatism and Benthamism as the primary influence on government growth. Harold Perkin argues that the process of reform was never a 'one-way' influence but rather a continuous interaction between ideology and the 'pressure of facts'. Giving credit to men such as Bentham for 'crystallizing' thought, Perkin also states that ideology continuously adjusts to practical experience.[44] In a similar vein, Anthony Brundage argues in his recent biography of Edwin Chadwick, that Bentham's contribution was not the creation of a specific blue print that followers attempted to follow in every detail, but rather setting an example of rigorous critical analysis.[45]

In his latest work, The Rise of Professional Society, Perkin offers yet another perspective on the stimulus for the reforms that increased state intervention. To Perkin, many reforms, such as the factory and mines acts, public health legislation, and increasing support for education, can be seen as an attack on the part of what Perkin defines as 'the professional class' against the vested interests of the propertied classes.[46]

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Government and Administration: Studies Presented to S. B. Chrimes (Cardiff, 1974); John Roach, Social Reform in England, 1780-1880 (London, 1978); R. V. Jackson, Jeremy Bentham and the New South Wales Penal Settlement (Adelaid, 1986).

[44] Harold Perkin, 'Individualism Versus Collectivism in Nineteenth Century Britain: A False Antithesis', J. Brit. Studies, xvii (1977-78), 105-118.

[45] Anthony, Brundage, England's "Prussian Prime Minister": Edwin Chadwick and the Politics of Government Growth 1832-1854 (University Park, 1988), p. 2.

[46] Harold Perkin, The Rise of Professional Society: England Since 1880 (London, 1990), p. 121.

Gillian Sutherland tends to downplay both perspectives, claiming that those urging reform did not hold consistent enough views to be described as an ideology, Benthamism or otherwise, and that MacDonagh's pragmatism theory insufficiently explained many areas of government growth.[47] In Early Victorian Government 1830-1870, published in 1977, even MacDonagh makes an attempt at synthesis, proffering the thesis that there were three 'assisting forces' of government growth.[48] The 'theoretical' force included utilitarianism as well as other influences like humanism. This force, according to MacDonagh, often opened the way to a 'change of opinion'. 'Political' force was necessary to press the reform and was often assisted by a 'technical' force consisting of social investigation through a centralized executive.

Questions raised

This thesis is in large measure a legal history since it deals with reforms in the law of bankruptcy. It is not, however, a legal history in the strict traditional sense, offering a narrow perspective of technical developments of the law based largely upon case law sources. Particular technical changes in the law of bankruptcy are only discussed to the extent that they have affected the reform of the entire bankruptcy system. Rather, this study strives to be what Sugarman and Rubin have described as a 'modern legal

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[47] Gillian Sutherland, ed., Studies in the growth of nineteenth-century government (London, 1972), p. 3.

[48] MacDonagh, Early Victorian Government 1830-1870, op.cit., pp. 3-8.

history', one that transcends traditional boundaries of social, intellectual, business and economic history.[50]

Although a broad perspective is the larger goal, the focal point of this study of necessity must be the changes in statutory law largely between 1831 and 1914 and how those changes either tended to increase or decrease the role of government in the administration of the bankruptcy system. Bankruptcy is an exception to the common law and is, therefore, the creature of statute, especially the part of the law that controls the degree to which the government is to be involved in the administration of bankrupt estates. There have been calls for studies of the 'directed sequences of legislation', and the advantages of such research are apparent.[51] As MacDonagh pointed out in his study of the early Victorian passenger acts, the advantages of concentrating on a 'single continuous line' are twofold. Not only does such a focus allow for development to be studied over a long and varied period, but it also allows for an examination in enough detail to be able to understand the precise causes of change.[52]

As mentioned, in tracing the development of nineteenth-century bankruptcy reform, this thesis addresses four specific questions. To understand fully the increased role of government brought about by reform of the bankruptcy

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[50] Sugarman and Rubin, op.cit., pp. 1-2.

[51] Roy MacLeod, 'Statesmen Undisguised, A. H. R., 78 (1973), 1402.

[52] MacDonagh, A Pattern of Government Growth, 1800-60, op.cit., p. 17.

system in the last century, the first question is how widespread was financial failure in Victorian England?

Unfortunately, the statistical evidence necessary to answer this question accurately and completely is not available for most of the century, at least not until the passage of the Bankruptcy Act of 1883, which required the collection of some statistics. Even for the period after 1883, the statistical record is not wholly satisfactory. Based upon the statistics available, a series will be constructed for part of the century showing annually not only the aggregate number of bankruptcies, but also an estimate of the total losses. In addition, this series will include statistics for compositions, deeds of arrangement, and company winding-up, although these areas of insolvency are largely outside the scope of this study.[53] With the data from the series, an attempt will be made to determine whether or not insolvency tended to increase or decrease from 1883 until the First World War and whether or not legislation, particularly the Bankruptcy Act of 1883, had any effect on the level of bankruptcy. Finally, the series and other statistics will be used to observe the levels of bankruptcy in particular occupations and geographic areas and the effect that trade cycles had on bankruptcy levels after 1883, both in terms of aggregate numbers of bankruptcies and losses occasioned.

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[53] As an alternative to bankruptcy, there were several types of private arrangements available to debtors and creditors. Creditors could enter into a 'composition' with their debtor, where debts would be compromised and creditors paid a certain sum in the pound. Also, an arrangement through a 'deed of arrangement' or 'deed of inspectorship' could be made, whereby a debtor could continue to stay in business and pay his creditors back overtime. The administration of bankrupt companies was handled under company 'winding-up' statutes, which were separate from bankruptcy laws. See, Chapter Three, pp. 73-4.

Next, what was the primary stimulus for reform of the English bankruptcy system? Does the record of bankruptcy reform in the last century tend to support the argument that increased state intervention in the Victorian era primarily resulted from philosophical movements such as Benthamism or was it merely a pragmatic response to particular social problems? While the extent of Bentham's influence on social reforms has been seriously questioned, the traditional acceptance of his influence on legal reforms has largely gone unchallenged. It is true that some of the great supporters of bankruptcy reform in the early Victorian period such as Sir Samuel Romilly and Lord Brougham were close friends of Bentham, but can this friendship necessarily be translated into influence? Bankruptcy administration by its nature is a practical problem linked to the everyday affairs of business and largely affected by various economic considerations. In other reforms, such as public health measures and the factory acts, the influence of economic factors has been demonstrated.[54] To what extent did economic considerations affect bankruptcy reform and what can the answer to this question reveal about the relationship between law and economic determinism?

Taking the debate to a more practical level, this thesis examines which specific groups and individuals most influenced bankruptcy reform. Two groups were principally concerned with reforming the administration of bankrupt estates:

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[54] William C. Lubenow, The Politics of Government Growth: Early Victorian Attitudes Toward State Intervention, 1833-48 (Newton Abbot, 1971), pp. 102, 149.

the legal profession and the business community. Later in the century, civil servants can be added to this list. In addition, individuals, most notably Sir Samuel Romilly, Lord Brougham, Richard Bethell, later Lord Westbury, and Joseph Chamberlain, greatly affected the direction of bankruptcy reform. This thesis will weigh the relative influence of these groups and individuals and, in the case of groups, will examine how the relative influence changed over time. Particular attention is paid to the growing organization of the business community through chambers of commerce and other organizations. Important primary sources used in this thesis are the records of local chambers of commerce, the national Associated Chambers of Commerce, the Institute of Bankers and the Institute of Chartered Accountants. Is it true, as Victor Batzel has argued, that the relationship between the business community and Parliament regarding bankruptcy reform was one of 'middle class alienation'?[55] Finally, MacDonagh astutely observes in Early Victorian Government 1830-1870 that administrative revolutions are also the product of overcoming, circumventing or compromising with opposition.[56] In each stage of the development of bankruptcy reform, comment will be made about those groups or individuals who influenced such reforms through their opposition to them.

The final question is the extent to which the pattern of bankruptcy reform resembled the pattern of development in

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[55] Victor M. Batzel, 'Parliament, Businessmen and Bankruptcy, 1825-1883: A Study in Middle Class Alienation', Canadian J. Hist., xviii (1983), 171-86.

[56] MacDonagh, Early Victorian Government 1830-1870, op.cit., p. 20.

other areas of government growth in the nineteenth-century. In her review of the literature on government growth, Cromwell concluded that the practice of government departments that have been studied reveals a pattern of existing government gradually coping with new problems as opposed to a pattern of new organs being established.[57] Can the same be said of bankruptcy reform, where an entirely new system of 'officialism' was put into place in 1831, totally abandoned in 1869, only to be reinstituted in a different form in 1883? With the possible exceptions of the abandonment of passenger act reforms in 1827 for one year and the attempt to establish a central board of health in the 1830s and 1840s, bankruptcy law provides the sole example in the nineteenth-century where a government administration was created, abandoned, and then reimposed. Yet the uniqueness of the bankruptcy system can be overemphasized. Although the experience of bankruptcy reform may not fit into any strict model of government growth, are there similarities with other reforms that can be identified?

The aim of this thesis is to present a chronological history of bankruptcy legislation affecting England and Wales. The evolution of Scottish or Irish bankruptcy law is not analyzed since, throughout the last century, Parliament considered bankruptcy law in Scotland and Ireland apart from that of England and Wales. There were separate bankruptcy acts for each jurisdiction, and these acts differed from each other in many respects. The study of these differences is more properly the subject of a work of comparative law rather

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[57] Cromwell, op. cit., p. 246.

than a study of government growth. Scottish bankruptcy law, however, profoundly affected the development of English bankruptcy law, and it will be necessary to discuss briefly several aspects of the Scottish system.

Likewise, 'insolvency' law, which dealt with small debts and was an entirely separate branch of the law from bankruptcy until 1861, is not considered in this thesis. To do so would require a detailed discussion of the history of imprisonment for debt which was intimately involved with insolvency law, and which has already been the subject of previous study.[58] Similarly, while deeds of arrangement and company winding-up are touched upon in the statistical analysis of insolvency, developments in these areas of the law are not discussed in detail.

Further, this thesis is not an administrative history. As will be seen, Parliament did not establish the Bankruptcy Department of the Board of Trade until 1883. By that time, the issue of the increased role of government in bankruptcy administration had been settled. This study focuses on the legislative history of the bankruptcy acts. Traditional questions of administrative histories such as the objectives or the structure and rules of the Bankruptcy Department must be left to other historians.

Chapter two begins this case study of bankruptcy reform by pointing out that in 1800 bankruptcy law had already been established in England for almost 250 years. Almost all

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[58] For a recent example of such studies, see G. R. Rubin, 'Law, Poverty and Imprisonment for Debt, 1869-1914', in Rubin and Sugarman, op.cit., pp. 241-99.

secondary sources on the history of bankruptcy law concern its development before 1800.[59] These sources, along with some primary material, are used to trace the early history of bankruptcy law and place nineteenth-century bankruptcy reform in the context of a long history.

Chapters three and four consist of a statistical analysis of bankruptcy in the last century and continuing until the First World War. The aggregate levels of bankruptcy, both in terms of numbers of cases and losses, are set out and analyzed. Since the statistical record after 1883 is more complete, an attempt is made in chapter four to gain a more detailed understanding of the character of bankruptcy by studying the effect of trade cycles on the bankruptcy levels in particular occupations and geographic areas.

Chapter five describes the period between 1831 and 1856 when 'officialism' was first introduced into the bankruptcy system. This was largely accomplished through the passage of Lord Brougham's Bankruptcy Act of 1831, and for twenty years the use of 'officialism' was little questioned. In the 1850s, however, the official system began to be challenged, and

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[59] The only article dealing directly with the history of bankruptcy law after 1800 is Batzel, op.cit. Works on the history of bankruptcy law prior to 1800 include: Francis John James, 'In Pursuit of the Merchant Debtor and Bankrupt: 1066-1732' (Uni. College London Ph.D. thesis 1965); R. M. Cooke, 'The Foundations of the Law of Bankruptcy', (Uni. Manchester LLM thesis 1924); Duffy, op.cit.; I. P. H. Duffy, 'English Bankrupts, 1571-1861', Amer. J. Legal Hist., 24 (1980), 283-305; Julian Hoppit, Risk and Failure in English Business 1700-1800 (Cambridge, 1987); W. J. Jones, 'The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period', Transactions of the American Philosophical Society, 69 (Part 3) (1979); M. S. Servian, 'Eighteenth Century Bankruptcy Law: From Crime to Process' (Univ. of Kent Ph.D. thesis 1985); I. Treiman, 'A History of the English Law of Bankruptcy, With Special Reference to the Origins, Continental Sources, and Early Development of the Principal Features of the Law', (Uni. of Oxford D.Phil. thesis 1927); E. Welbourne, 'Bankruptcy Before the Era of Victorian Reform', Cambridge Hist. J. 4 (1932), 51-62.

Chapter six traces the development of this disenchantment, paying particular attention to the role played by the business community. Chapter seven completes the legislative history by analyzing the passage of the Bankruptcy Act of 1883 and its direct origins ten years before. Finally, chapter eight describes the aftermath of nineteenth-century bankruptcy reform and summarizes the conclusions of this thesis.

Chapter Two

Development of English Bankruptcy Law Prior to 1831

Although other studies have described in detail selected aspects of the early history of English bankruptcy law, it is necessary to outline briefly the origin and development of this area of the law to demonstrate that those who sought a more efficient system of bankruptcy administration in the nineteenth-century were not writing on a clean slate. Unlike other areas of the law, such as railway and factory regulation, which opened wide new fields of legislative activity, bankruptcy reform in the nineteenth-century required revision of laws dating back two hundred and fifty years. This caused particular difficulties. As Attorney General Sir Richard Bethell explained in introducing the government's bankruptcy bill in 1860, 'the whole ground [is] encumbered with the remains of the previous alterations of the law... '. While Bethell wished he could construct 'a new and simple edifice', he had to 'adopt the building that exists, and construct entirely out of old materials'.[1] Some of the materials with which Bethell was forced to work dated back as far as 1543, when Parliament passed the first English bankruptcy statute.

This chapter will set the stage for discussing nineteenth-century reform of English bankruptcy law by establishing that much of the substantive bankruptcy law was already in place and generally accepted by 1800. As a result,

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[1] Hansard, 3rd series, 1860, clvii. 650.

most of those concerned with bankruptcy law reform in the Victorian period concentrated on emending bankruptcy administration. This chapter also reveals that the active involvement of the Victorian business community in bankruptcy legislation, far from being a novel phenomenon, was actually part of a tradition stretching back at least to 1700. In addition, the bankruptcy law reform movement must be understood in the larger context of legal reform in general, since after 1800 efforts to improve bankruptcy administration were part of a much wider movement to reform numerous areas of English law.

Establishment of the substantive principles of ratable distribution and discharge, 1543-1800

Before the concept of bankruptcy became a part of the English legal system in the mid-sixteenth century, creditors attempting to collect their accounts took what measures they could by means of the ordinary process of the courts. Under this common law system, a creditor reaped rewards for promptly collecting his own account because no provision could be made for securing or distributing the debtor's estate for the benefit of all creditors. It is not known whether or not during this period an informal bankruptcy process existed at common law or in any of the courts administering the Law Merchant. The availability of a system that allowed an individual creditor to attempt to collect his own debts, however, makes it doubtful that an informal process existed

to force creditors to distribute an insolvent person's assets among themselves on a ratable basis.[2]

Despite existing remedies, sixteenth-century creditors faced difficult obstacles in the collection of their accounts. A debtor's home provided a legal haven from creditors, and once an insolvent debtor had gathered his assets inside his house and barred his door, it was almost impossible to enter the premises legally to execute civil process, much less seize the assets.[3] Besides, the debtor always had the simple option of running away from his creditors and leaving them empty-handed.

To confront these twin evils, Parliament passed in 1543 'An Act Against Such Persons As Do Make Bankrupts'.[4] As stated in the preamble to the act, the legislation aimed at those,

> who craftily obtaining into their hands great substance of other mens [sic] goods, do suddenly flee to parts unknown, or keep their houses, not minding to pay or return to any their creditors, their debts and duties, but at their own wills and pleasures consume the substance obtained by credit from other men, for their own pleasure and delicate living, against all reason, equity, and good conscience...

To reach these culprits, the act established a new legal process to be initiated by a creditor's written complaint to any three of the officials named in the statute.[5] Upon the

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[2] Edward Jenks, A Short History of English Law, 6th edn. (London, 1949), p. 382.

[3] Jones, op.cit., p. 15.

[4] 34 &35 Hen. VIII, c. 4 (1543).

[5] The Lord Chancellor, the Lord President, the Lord Privy Seal, members of the Privy Council and the two chief justices, provided, however, one of the officials named was the

(Footnote Continued)

lodging of the complaint, the officials would summon the bankrupt by proclamation. If he failed to appear for as long as three months, he might be deemed 'out of the King's protection' and his assets immediately sold for the benefit of his creditors.[6]

Most significantly, the act required that assets of the estate be paid to creditors in 'a portion rate and rate like, according to the quantity of their debts'.[7] During the Middle Ages, Italian city states adopted the bankruptcy procedure of Roman law (Vendito Bonorum), under which a debtor's property was equally divided among his creditors.[8] These procedures spread from Italy to other regions and the act of 1543 represents acceptance of this concept in England.[9]

The new legal process, once initiated, barred other creditors from attempting to collect their debts for an unspecified time. Even so, bankruptcy did not extinguish a debtor's liabilities, and a creditor could employ common law remedies to collect his debts after the close of the bankruptcy case. Those suspected of concealing assets of the bankrupt could be summoned and required to make a disclosure under oath. If allegations of concealment proved true, the

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(Footnote Continued)
Lord Chancellor or keeper of the great seal, the Lord President, or the Lord Privy Seal. Ibid., s. 1.

[6] 34 & 35 Hen. VIII, c. 4, s. 5 (1543).

[7] Ibid., s. 1.

[8] W. S. Holdworth, A History of English Law, 16 vols. (London, 1956), 8: 229-30.

[9] For a detailed description of the origins of English bankruptcy law, see Treiman, op.cit.

guilty person could be fined double the value of the hidden goods.

In his history of English law, Sir William Holdsworth did not recognize the act of 1543 as the first bankruptcy law in England because its principal object, according to Holdsworth, was merely to prevent frauds rather than establish a law of bankruptcy.[10] Whatever the principal object of the 1543 act, the statute laid the foundation of bankruptcy law in England. Its significance cannot be overlooked. The act marked England's acceptance of one of the substantive principles of bankruptcy law: when a debtor becomes insolvent, his remaining property rightfully belongs to all of his creditors and should be distributed ratably among them.

As early as the 1560s, the system already needed revision. Bankruptcy bills were introduced in the House of Commons in 1563 and in the House of Lords in 1566.[11] Not until 1571, however, did Parliament enact the second bankruptcy statute.[12] Even though the English experienced economic and financial problems that year, the act probably stemmed more from a need to alter existing procedures than from economic conditions.[13] This Elizabethan act was notable for limiting the definition of persons subject to bankruptcy law

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[10] Holdsworth, op.cit., 1: 470. On the other hand, other legal historians have described the Henrican statute as the first bankruptcy act in England. Edward Stanley Roscoe, The Growth of English Law: Being Studies in the Evolution of Law and Procedure in England (London, 1911), p. 170.

[11] Journals of the House of Commons, i. 72 (6 Apr. 1563); Ibid., 1. 80 (19 Dec. 1566).

[12] 13 Eliz. I, c. 7 (1571).

[13] Jones, op.cit., p. 18.

by applying it only to traders who had committed specific 'acts of bankruptcy' listed in the act. These acts included leaving the country or otherwise absenting oneself, being arrested for debt, or departing from one's house with the intention of defrauding creditors. This important procedural concept of 'acts of bankruptcy' remained a part of all bankruptcy legislation until the Insolvency Act of 1985.[14]

As to the limitation to traders, the 1571 act applied only to 'any merchant or other person, using or exercising the trade of merchandize [sic] by way of bargaining, exchange, rechange, bartry, chevisance, or otherwise, in gross or by retail, ... or seeking his or her trade or living by buying and selling'.[15] This departed from the 1543 act, which was not limited in its application, although some legal historians have suggested actual practice confined the application of the earlier act to merchants.[16] The decision to limit bankruptcy to a particular class of persons set in motion a battle in the courts as to the definition of exactly whom Parliament intended to be subject to the provisions of the act. For almost three hundred years, case after case in bankruptcy became mired in the legal technicalities of determining whether or not a particular occupation constituted a 'trade' within the definition of the law and was,

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[14] Insolvency Act of 1985 (c. 65).

[15] 13 Eliz. I, c. 7, s. 1 (2), 1 (3) (1571).

[16] Jenks, op.cit., p. 383, Ian P. H. Duffy apparently does not accept this view and mentions no limitation on the application of the bankruptcy act until the passage of the act of 1571. Duffy, 'English Bankrupts, 1571-1861', op.cit., p. 283.

therefore, subject to legal bankruptcy.[17] Parliament also continued to be involved in the controversy by redefining on numerous occasions the class of persons who could become subject to bankruptcy.

In 1705 Parliament enacted into law relief for the bankrupt debtor for the first time.[18] Under this act, a bankrupt could be discharged from all debts due and owing when he became bankrupt, without approval of his creditors, provided the bankrupt surrendered himself to his creditors in the time allowed in the act and 'in all things conform as in and by this act is directed...'.[19] As an additional incentive to the bankrupt to cooperate, if he paid his debts to the extent of at least eight shillings in the pound, he would receive five per cent of the net product of the estate recovered, such total amount received not to exceed £200.[20] This provision meant that courts were now charged with the responsibility of determining, on an equitable basis, whether or not a particular bankrupt had conformed with the act and deserved a discharge.

The discharge feature of the 1705 act is significant for its bold experiment of trusting the bankrupt, placing no restriction on his discharge other than cooperating with his

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[17] In some instances it became necessary to amend the statute to insure that certain persons were not brought within its ambit. For example, in 1662 it was necessary to amend the act to declare that, among others, shareholders in the East India and Guinea joint-stock companies would not be liable to become bankrupt simply because they were shareholders in the companies. 13 & 14 Car. II, c. 24 (1662).

[18] 4 Anne, c. 17 (1705).

[19] Ibid., s. 7.

[20] Ibid., ss. 7-8.

creditors and otherwise conforming to the act. Future bankruptcy legislation not only placed additional prerequisites on the bankrupt's discharge, but also required the approval of the creditors, government officials or both.

The generosity of Parliament during the reign of Queen Anne, however, should not be exaggerated. Indeed, the act that provided for discharge also spelled out penal provisions under which a bankrupt who concealed property was fined £100 plus twice the value of the property concealed.[21] In providing for a discharge, Parliament was motivated not by generosity but by the belief that such a provision would invite the debtor's cooperation. Daniel Defoe, himself a bankrupt, suggested in his Review that repayment of creditors lay behind the provision of a discharge.[22] The act itself plainly states such view in the section providing benefits for adjudged bankrupts. Such provision would encourage 'such persons as already [have] ... become bankrupts, to make a true and just discovery of their estates, and to deliver the same up for the use and benefit of their creditors'.[23]

Apparently the strategy failed, for Parliament only the next year observed that bankrupts 'hath not answered the good intent...' of the previous act, 'but to the contrary, many notorious frauds and abuses have been committed...'.[24] As a

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[21] 4 Anne, c. 17, s. 9 (1705).

[22] Daniel Defoe, A Review of the State and of the English Nation, iii (28 Feb. 1706), 101.

[23] 4 Anne, c. 17, s. 17 (1705).

[24] 5 Anne, c. 22, preamble (1706).

result, the bankrupt's discharge required the approval of four-fifths of the creditors in number and value.[25] Parliament also anticipated an area of potential abuse and declared void any contract between a debtor and his creditors to induce a creditor to assent to discharge.[26]

After the passage of additional legislation dealing with minor points of bankruptcy administration,[27] Parliament in 1732 consolidated all laws dealing with bankruptcy into 'An Act to Prevent the Committing of Frauds by Bankrupts'.[28] This act was the statutory basis for bankruptcy law for the remainder of the eighteenth-century.

In addition to consolidating past laws, the act of 1732 significantly refined the system of assignees originally introduced in the act of 1706. From the time of the Elizabethan bankruptcy statute of 1571, the actual management of bankrupt estates, that is, principally the collection and distribution of the bankrupt's assets, had been entrusted to commissioners chosen by the Lord Chancellor from candidates submitted by the creditors. To prevent the appointment of improper persons, Lord Harcourt, who became Lord Chancellor in 1713, abolished this practice, at least in London, and

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[25] 5 Anne, c. 22, s. 2.

[26] Ibid., s. 3.

[27] 10 Anne c. 15 (1711) (discharge of a bankrupt not considered a discharge of his partners); 5 Geo. I, c. 24 (1718) (Lord Chancellor allowed to dismiss unsuitable assignees); 6 Geo. I, c. 22 (1719) (imprisoned bankrupts allowed to be released after receipt of certificate of discharge); 7 Geo. I, c. 31 (1720) (creditors holding bills, bonds, notes, or other securities of the bankrupt and not due on the date of the bankruptcy permitted to make a claim against the debtor's assets).

[28] 5 Geo. II, c. 30 (1732).

replaced it with a list of commissioners he himself selected. In the county courts, however, the custom of creditors suggesting commissioners continued until 1830.[29] Under the scheme introduced in 1732, immediately upon the issuance of their commission, commissioners could appoint an assignee to manage the affairs of the estate. Later at a general meeting of creditors called for such a purpose, creditors could select their own assignee to replace the one appointed by the commissioners. The Lord Chancellor retained the power to remove assignees upon application from a creditor.[30] The duties of the assignee included keeping proper books for the inspection of creditors and otherwise managing the affairs of the estate.

What role did the business community play in the formation of early bankruptcy legislation? This is a difficult question, for little evidence exists from which to draw any definite conclusions. On the one hand, it seems fair to assume that complaints of the merchant and trading classes must have played some part not only in introducing the concept of bankruptcy to the English legal system, but also in developing bankruptcy law prior to 1800. On the other, hand the historian who has made the most detailed study of bankruptcy law during the fifteenth and sixteenth centuries has concluded that the small merchants and traders affected

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[29] C. P. Cooper, A Brief Account of some of the most important proceedings in Parliament, relative to the defects in the administration of justice in the Court of Chancery, the House of Lords, and the Court of the Commissioners of Bankrupt [sic] ... (London, 1828), pp. 261-62.

[30] 5 Geo. II, c. 30, s. 31 (1732).

most by bankruptcy laws played only a minimum part in the construction of early bankruptcy statutes.[31] For the eighteenth-century, if petitions recorded in the Journals of the House of Commons and the House of Lords indicate the influence on, or at least interest in, bankruptcy legislation, there are signs of activity on the part of the business community. A group of London merchants and traders testified before a committee of the House of Lords considering the 1705 bankruptcy act.[32] The discontent of the business community, apparently with the generous discharge provisions of the 1705 act, surfaces in three separate petitions in 1706 from London merchants and traders; 'Merchants, Clothiers, Serge-Makers, Fullers, Mercers, Grocers and other principal traders in Taunton'; and the 'incorporated Company of Mercers, Grocers, Apothecaries and Haberdashers' in Worcester.[33] A petition to Parliament from 'Traders of the City of Norwich' protested in 1718 the lack of penalties for failure of bankrupts to deliver effects. Another from the merchants and traders from Kingston-upon-Hull supported a bill in 1767 to improve the method of securing assets. A petition from 'merchants' of an unnamed locality opposed a bill in 1721 allowing the crown to collect its debts from a bankrupt.[34]

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[31] Jones, op.cit., p. 9.

[32] Journals of the House of Lords, xviii. 145 (11 Mar. 1705).

[33] Journals of the House of Commons, xv. 240 (17 Jan. 1706); ibid., p. 254 (27 Jan. 1706); ibid., p. 280 (8 Feb. 1706).

[34] Ibid., xix. 124 (9 Mar. 1718); ibid., xxxi. 58 (22 Jan. 1767); Journals of the House of Lords, xxi. 558 (6 July 1721).

These petitions pointed out what businessmen saw as the dangers of the current bankruptcy act to the 'Nation's Credit both at home and abroad'.[35] The extent to which these petitions influenced Parliament's actions is difficult to determine. According to one commentator on the history of bankruptcy law writing in 1828, a petition to Parliament from merchants and traders in London complaining of excessive charges of commissioners in bankruptcy and of bankruptcy proceedings in general led to an act passed in 1718 placing restrictions on commissioners.[36] Although the mere presence of petitions to Parliament cannot automatically be translated into actual influence, they do prove an interest on the part of the business community in the proper functioning of the nascent bankruptcy system.

As the eighteenth-century progressed, the increasing number of bankruptcies began to impede the proper functioning of the system. Julian Hoppit has calculated that between 1700 and 1800 approximately 33,000 businesses went bankrupt in England and Wales.[37] In real terms, Hoppit has estimated that the number of bankruptcies grew roughly at a rate of 0.21 percent per annum, 1700-1760, 3.55 percent, 1760-1780, and 1.08 percent, 1780-1801.[38] Despite these numbers, it should be kept in mind that formal bankruptcy, to which the statutes

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[35] Journals of the House of Commons, xv. 240 (17 Jan. 1706).

[36] Cooper, op.cit., p. 265; Journals of the House of Commons, xix, 128 (11 Mar. 1718); 5 Geo. I, c. 24 (1718).

[37] Hoppit, op.cit., p. 42.

[38] Ibid., p. 49.

under discussion applied, was only one method whereby creditors could collect their accounts. In fact, the formal legal process of bankruptcy applied to relatively few debtors. Under the 1732 act, bankruptcy only pertained to 'traders' owing at least £100 to one creditor or partners, £150 to two individual creditors or £200 to three or more.[39] A variety of processes, both official and unofficial, dealt with insolvency.[40] Outside the law, insolvency could be dealt with by agreements between a debtor and all his creditors through letters of licence, deeds of inspection, or compositions.[41] Within the legal process, the courts of Requests or Courts of Conscience supervised attempts to collect debts usually under five pounds.[42] Nevertheless, the ever increasing number of bankruptcies in the eighteenth-century placed an intolerable burden on the system, and it began to crack under the weight.[43]

Movement for reform of the English legal system in the early nineteenth-century

Before specifically considering English bankruptcy law reform between 1800 and 1825, one should place such reforms in a broader context. The movement to revitalize England's bankruptcy system was a significant part of a much wider

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[39] 5 Geo. II, c. 30, s. 23 (1732).

[40] Hoppit, op.cit, pp. 29-41.

[41] Ibid., pp. 29-30.

[42] Ibid., p. 32.

[43] Duffy, 'Bankruptcy and Insolvency ...', op.cit., p. 15.

movement to reform almost all aspects of the English legal system. This movement was itself part of a general trend throughout English society that has caused this era to be characterized as the 'age of reform'.[44]

The English legal system in 1800 had stagnated. Broadly speaking, complacency settled in after the constitutional settlement of 1689, and in the late eighteenth-century a reaction to the excesses of Jacobinism stymied efforts at reform.[45] With the beginning of the nineteenth-century, however, the legal reform movement finally began to gain momentum, and by the 1870s, reforms affecting almost every area of English law had taken place.

One of the major influences on the law reform movement was Jeremy Bentham. 'I do not know a single law reform affected since Bentham's day...', Sir Henry Maine declared, 'which cannot be traced to his influence'.[46] One of the salient aspects of Bentham's utilitarian philosophy, according to Halevy, was Bentham's love of simplicity.[47] Certainly simplification was the watchword of Bentham's writings on reform of the legal system. Witness his attacks on the multiplicity of judges, call for codification of laws, and denunciation of archaic rules of evidence. Writings on these and many other legal subjects, all urging simplification of

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[44] E. L. Woodward, The Age of Reform 1815-1870 (Oxford, 1939).

[45] Dean Alfange, Jr., 'Jeremy Bentham and the Codification of Law', Cornell Law Review, 55 (1969), 60.

[46] Sir Henry Sumner Maine, Lectures On the Early History of Institutions, 6th edn. (London, 1893), p. 397.

[47] Halévy, The Growth of Philosophic Radicalism, op.cit., pp. 374-75.

the legal system, educated those who reformed the law. While historians dispute the extent of Bentham's influence in other areas, few doubt his paramount influence on legal reform.[48] Reforms that, at least in part, have been attributed to his influence are the replacement of fees by salaries for court officials, simplification of the law of evidence, establishment of local courts and the mitigation of penal laws.[49]

Inspired in part by Bentham's call for simplification, early reformers set to work to change many areas of the law. During the early part of the century, these reformers concentrated on reforming criminal law. To their minds, the criminal justice system suffered from two immediate problems. The punishments called for in ancient statutes were no longer appropriate for the crimes committed, and generally speaking the entire corpus of criminal laws needed modern codification. In the first two decades of the nineteenth-century, reformers began to attack and slowly humanize the more excessive punishments for various crimes. Citing the Italian Bonesana Beccaria's teaching that certainty more than severity renders punishments more efficacious, Sir Samuel Romilly in 1808 attacked the excessive application of capital punishment for lesser crimes.[50] By 1816, the efforts of law

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[48] Sir William Holdsworth, Some Makers of English Law (Cambridge, 1938), pp. 253-54.

[49] Dinwiddy, op.cit., p. 117.

[50] Hansard, 1st series, 1808, xi. 395. Beccaria was an early exponent of utilitarian theory. 'Pleasure and pain are the only springs of action in beings endowed with sensibility', Beccaria asserted, therefore, '... the means made use by the legislature to prevent crimes, should be more powerful, in proportion as they are destructive of public safety and happiness, and as inducements to commit them are stronger'. Bonesana Beccaria, An Essay on Crimes and Punishments, Translated from the Italian; with a Commentary Attributed to Mons. De Voltaire, Translated from the French (London, 1767), pp. 21, 25.

reformers such as Romilly and Michael Angelo Taylor began to bear fruit. In that year, Parliament removed the use of the pillory for all offenses except perjury and subornation of perjury.[51] After the death of Romilly in 1818, Sir James Mackintosh took up the crusade against indiscriminate use of capital punishment, and upon MacIntosh's motion in 1819 Parliament appointed a select committee to study the imposition of capital punishment under current laws.[52] Founded on the report of this committee, bills introduced in 1820 abolished capital punishment for certain crimes. In the same year, Parliament abolished the whipping of female criminals[53] and reduced the number of items on the list of capital offenses. The reformers of criminal law did not win at every turn. Parliament continually refused to abolish capital punishment for certain crimes and, in 1821, defeated an attempt to reduce the penalty imposed for forgery. But despite occasional setbacks and the slow pace of reform in this early period, some positive changes took place in the criminal justice system.

In addition to looking at punishments imposed under the criminal laws, reformers also believed that the law in this area needed consolidation and codification. Discussed in more detail later in this chapter in the specific context of bankruptcy reform, early nineteenth-century legal reformers,

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[51] 56 Geo. III, c. 138 (1816). The total abolishment of the use of the pillory occurred in 1837. 7 Wm. IV and 1 Vict., c. 23 (1837).

[52] Hansard, 1st series, 1819, xxxix. 84.

[53] 1 Geo. IV, c. 57 (1820).

especially Bentham, became enamoured of codification of the law. Under the influence of Bentham and others, Parliament set about codifying large parts of English criminal law. In 1824, Anthony Hammond, the author of several books on pleading and practice, prepared a draft measure and submitted it to an 1824 select committee considering the consolidation and amendment of the criminal law. Hammond's work became the digest and code that Sir Robert Peel presented to Parliament between 1825 and 1829.[54] Generally referred to as the 'Peel Acts', these laws consolidated, amended, and codified the law relating to larceny (1827), malicious injuries to property (1827), offenses against the person (1828), and, later, forgery (1830).[55]

The early movement for legal reform was not limited however, to the areas of criminal and bankruptcy law. Parliament in 1812 passed Sir Samuel Romilly's act reforming the law as to charitable trusts.[56] Amendments to real estate law dealing with copyholds passed in 1815.[57] From 1811 onwards, Michael Angelo Taylor worked to expose the abuses of the Chancery Court. Delays in this court became so notorious that in 1813 Taylor moved for the appointment of a special committee to inspect the journals of the House of Lords to determine the number of appeals actually being handled. The Lord

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[54] Holdsworth, A History of English Law, op.cit., 13. 286.

[55] 7 & 8 Geo. IV, c. 29 (1827) (larceny); 7 & 8 Geo. IV, c. 30 (1827) (malicious injury to property); 9 Geo. IV, c. 31 (1828) (offenses against the person); 11 Geo. IV and 1 Wm. IV, c. 66 (1830) (forgery).

[56] 52 Geo. III, c. 102 (1812).

[57] 55 Geo. III, c. 192 (1815).

Chancellor, Lord Eldon, finally introduced a bill to create a Vice Lord Chancellor to assist him with the case load. The idea received a mixed reaction. Romilly opposed the measure, as did Henry Brougham, who argued that the problem stemmed from too many cases but rather Lord Eldon's inaction.[58] In any case, the vice chancellorship became law.[59] In the 1820s, Lord Redesdale and Lord Althrop attempted to establish a system of county courts. While the measure emphasized more the collection of debts than making courts available to outlying districts, the bill still marks an attempt to make the legal system function more effectively.[60]

The numerous efforts before 1830 to reform the English legal system paralleled initial attempts during the same period to reform other aspects of English society. The first Factory Act in 1802 is often pointed to as one of the earliest examples of social legislation, although meaningful reform in factory regulation did not occur until 1833.[61] There is also the example of the passenger acts. As early as 1803, Parliament passed legislation regulating the condition of emigrants' accommodation on board ships.[62] Although this legislation was significant for its innovation of legislative

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[58] Henry Brougham, 'Project for Creating a Vice Chancellor', The Edinburgh Review, 21 (21 Feb. 1813), 103-29. The article is unsigned but has been attributed to Brougham. The Wellesley Index to Victorian Periodicals: 1824-1900 (Toronto, 1979), i. 450.

[59] 53 Geo. III, c. 24 (1813).

[60] Holdsworth, A History of English Law, op.cit., 13. 263-64.

[61] 42 Geo. III, c. 73 (1802); 3 & 4 Wm. IV, c. 103 (1833); Thomas Maurice Walton, The Early Factory Legislation (London, 1848).

[62] 43 Geo. III, c. 56 (1803).

interference with contract, extensive regulation did not come about until 1835.[63] In the area of constitutional reform, the repeal of the Test and Corporation Acts in 1828, and the Catholic Emancipation Act of 1829 adumbrated the great Reform Bill of 1832.[64] In short, in both the area of legal reform and social reform, it is possible to see the ripplings of reform in the first three decades of the century that would crest at the high watermark in the middle decades of the century.

Not only did the interest in law reform came to fruition at generally the same time as did the interest in social reform, but also the economic, utilitarian, and humanitarian forces stimulating social reform heavily influenced legal reform. Certainly, reform legislation such as the factory acts, poor laws, passenger acts, railway regulation and numerous other reforms have origins in economic changes occurring at the time. Likewise, many legal reforms during the period can be directly attributed to economic factors, including in addition to bankruptcy law reforms the relaxation and ultimate repeal of usury laws (1833, 1839, and 1854), the Copyright Act (1842), the Joint Stock Companies Act (1844), the patent law amendment (1852), and the Limited Liability of Companies Act (1855).[65] As for utilitarian

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[63] 5 & 6 Wm. IV, c. 53 (1835); MacDonagh, A Pattern of Government Growth, op.cit., p. 59.

[64] 9 Geo. IV, c. 17 (1828); 10 Geo. IV, c. 7 (1829).

[65] 3 & 4 Wm. IV, c. 98, s. 6 (1833) (usury); 2 & 3 Vict., c. 37 (1839) (usury); 17 & 18 Vict., c. 90 (1854) (usury); 5 & 6 Vict., c. 45 (1842) (Copyright Act); 7 & 8 Vict., c. 110 (1844) (Joint Stock Companies Act); 15 & 16 Vict., c. 83 (1852) (Patent Law Amendment Act); 18 & 19 Vict., c. 133 (1855) (Limited Liability of Companies Act).

influence, Bentham's impact on legal reform has already been mentioned. Humanitarianism was also a source of both social and legal reform legislation. Concern for the safety of the factory worker, the railroad passenger, the immigrant or the poor certainly motivated reformers in these areas. Likewise, sympathy for the prisoner facing capital punishment for petty crime or a petitioner facing untold delay in the chancery courts motivated legal reformers to seek change in the legal system.

Bankruptcy law reform, 1800-1825

The Lord Chancellor, Lord Eldon, summarized in 1801 the current condition of the English bankruptcy system. The abuse of the bankruptcy laws and the frauds committed under those laws, the Lord Chancellor declared, were 'a disgrace to the country...' and, he concluded, 'it would be better at once to repeal all the statutes than suffer them to be applied to such purposes'.[66] An example of one of the more egregious cases of abuse, cited by the 1817-1818 Parliamentary select committee appointed to study bankruptcy laws, was Ex Parte Story.[67] The firm of Linskill, Holland, Fenwick and Cockerell agreed to build a boat for Cornfoot and Story. Linskill, who also had a separate firm, agreed to provide cordage for the new vessel. When the boat was not paid for, Cockerell, a principal in the ship building firm and a solicitor, caused a

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[66] Regulations in Bankruptcy, VI Vesey 1 (1801).

[67] Ex Parte Story, 1 Buck's Reports 70 (1817).

bankruptcy commission to be issued against Cornfoot and served as the commissioners' counsel. Fenwick, also a partner in the shipbuilding firm, served as one of the commissioners who declared Cornfoot a bankrupt. Linskill employed the same procedure against Story to collect for the cordage using his partners as solicitor and commissioner. Hearing the case on appeal, the incensed Lord Eldon struck down the bankruptcy commissions, refusing to allow a situation where 'one partner is the petitioning creditor, another an acting commissioner, another the solicitor to the commission, and the remaining one the sole assignee...'.[68] Abuse and fraud were not the only problems with the bankruptcy system. The law itself created difficulties.[69] As has been noted, bankruptcy law applied only to 'traders'. Over the years, the definition of exactly what occupations this term included became confused. 'Acts of bankruptcy', necessary to declare an individual bankrupt, were difficult to prove. There were ever increasing delays and costs in the administration of a bankruptcy case. Commissioners were not paid sufficiently and, as a result, did not enthusiastically pursue their duties. Other problems included the expiration of temporary statutes dealing with bankruptcy and insolvency. In this context of inefficiency, abuse, and fraud the first attempts at reform began.

Sir Samuel Romilly's name, more than any other, is associated with the attempts during the first two decades of

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[68] Ex Parte Story, op.cit., p. 74.

[69] For a detailed description of the problems with the bankruptcy system in the late eighteenth and early nineteenth centuries see, Duffy, 'Bankruptcy and Insolvency', op.cit., pp. 18-46.

the nineteenth-century to reform bankruptcy law. Called to the bar in 1783, Romilly by 1802 had become one of the recognized leaders of the chancery bar and had a large bankruptcy practice.[70] In 1806, he served as Solicitor General in the Ministry of 'All the Talents'. Romilly's grandfather, an immigrant from France, himself became a bankrupt, dying in poverty.[71] Whether or not this is the source of Romilly's interest in bankruptcy reform is not known.

One of the greatest influences on Romilly was his friend, Jeremy Bentham. According to Bentham, 'Romilly was among the earliest, and, for a time, the only efficient one of my disciples'. There was not one reform Romilly brought forward, declared Bentham, that he 'had not first brought to me, and conned over with me'.[72] Romilly, for his part, stated that it was impossible not to admire and revere Bentham and, on occasion, urged Parliament to pay attention to Bentham's works.[73] As an example of the strength of their thirty-year friendship, Romilly, in an extreme example of friendly forbearance, did not hold it against Bentham for publishing a

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[70] James McMullen Rigg, 'Sir Samuel Romilly', The Dictionary of National Biography (London, 1967-68), xvii, 188; Robert Henley Eden, A Digest of the Bankrupt Law: With An Appendix of Precedents Framed with a Reference to the New Act of the 1 & 2 William IV. c. 56 (London, 1832), p. iv.

[71] Patrick Medd, Romilly: A Life of Sir Samuel Romilly Lawyer and Reformer (London, 1968), p. 20.

[72] John Bowring, ed., The Works of Jeremy Bentham, 11 vols. (London, 1843), v. 370 ('Indications Respecting Lord Eldon' published in 1825).

[73] Sir Samuel Romilly, Memoirs of the Life of Sir Samuel Romilly Written by Himself, 3 vols. (London, 1840), iii. 316; see for example, Hansard, 1st series, xix. 659 (debate on dwelling house robbery bill).

handbill during Romilly's 1818 bid for election to Parliament alleging that Romilly was unfit to hold office.[74]

In June 1806, Solicitor General Romilly moved the introduction of the first bankruptcy reform legislation in the nineteenth-century.[75] It was not an auspicious beginning. The narrowly drawn bill only attempted to correct the problem of secret acts of bankruptcy. Under the current law, if a debtor had committed an act of bankruptcy before a particular transaction with a creditor, even if the act were unknown to the creditor, it could be made the basis of the filing of a bankruptcy commission. If a commission issued based on the prior act, the creditor would be unable to make a claim, his debt being incurred after the act of bankruptcy.

After Romilly introduced his limited measure, he learned quickly of the public's profound dissatisfaction with the bankruptcy system as a whole. He complained in his diary of being so swamped with suggestions about how to reform the bankruptcy laws that he felt he had become 'a kind of public property'.[76] The entry in Romilly's diary continues with a description of contemporary complaints about the bankruptcy system that deserves to be quoted at length.

> A day has not passed without my receiving five or six long letters; some signed, some anonymous, but all suggesting some evil in the Bankruptcy Law, and proposing a supposed remedy, or leaving it to me to find one out. One man recommends it to me to

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[74] Romilly, op.cit., iii. 365.

[75] Hansard, 1st series, vii. 839. Another bill was introduced and passed in the same session touching upon bankruptcy law. 45 Geo. III, c. 125 (1806). This act allowed a bankruptcy commission to be taken out against any trader having privilege of Parliament; however, such persons were exempt from arrest during the term of the privilege.

[76] Romilly, op.cit., ii. 153.

> abolish the whole system, and substitute a new one in its place; another would make the obtaining of certificates more easy; a third would enlarge the description of persons who may be made bankrupts; a fourth would have permanent official assignees; a fifth suggests that my Bill will so much diminish the business, and consequently the profits of the Commissioners, that I ought, in justice to them, to propose to increase their fees to twice their present amount.[77]

In a passage his friend Bentham would have found difficult to understand, Romilly concluded, 'All this importunity satisfies me that a man cannot, even as to reforms which ever body [sic] agrees are proper, do good with perfect impunity'.[78] Romilly avoided the temptation to broaden the scope of his bill and the measure became law within a month of its introduction.[79]

Three years later in 1809, Romilly, no longer solicitor general, introduced his second bankruptcy reform measure, which became law in the same year.[80] According to his diary, Romilly wanted to see adopted four principal reforms: allowing proofs of debts due sureties and persons liable for the bankrupt, preventing assignees from keeping the estate in their own hands, diminishing expense, and taking away the creditors' power to withhold discharge without appeal.[81] The bill Romilly actually introduced in 1809, however, for the most part made only technical improvements to the existing

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[77] Romilly, op.cit., ii. 152.

[78] Ibid., ii. 153.

[79] 45 Geo. III, c. 124 (1805).

[80] 49 Geo. III, c. 121 (1809).

[81] Romilly, op.cit., ii. 262-63.

structure, despite pressure to offer an entirely new system.[82]

The measure's primary concern was with the malfeasance of creditors' assignees appointed to manage bankruptcy estates. If the assignee willfully retained funds, contrary to the directions of the creditors or the commissioners, the act made him liable for interest at the annual rate of twenty percent on the sums withheld. Should the assignee himself become a bankrupt, any claims of the bankruptcy estate he had managed could not be discharged.

One of the more important aspects of debate on the bill, especially regarding legal reform, however, dealt with the presentation of evidence in bankruptcy cases. The simplification of evidentiary rules in all areas of the law preoccupied early law reformers. Bentham focused his attention between 1803 and 1806 on the subject, writing a large part of the material that later became Rationale of Judicial Evidence.[83] Romilly first proposed that bankrupts who had been discharged of their debts, but whose allowances had not been released be allowed to testify in cases where their assignees were attempting to recover the bankrupt's assets. The attorney general and the solicitor general opposed the clause, arguing that it made inroads upon the existing law and rules of evidence. Romilly readily admitted 'it is a principle I was very glad to break in upon...'. He claimed that such an

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[82] Hansard, 1st series, 1809, xii. 1141-47.

[83] Dinwiddy, op.cit., p. 10; Jeremy Bentham, Rationale of Judicial Evidence Specially Applied to English Practice from the Manuscripts of Jeremy Bentham, Esq. (London, 1827).

inroad was necessary because the rule merely forced bankrupts to execute nominal releases to avoid its prohibition. The government reached a compromise with Romilly, whereby the bankrupt would only be allowed to testify in cases where he had released any interest in the particular matter in dispute.[84]

It is questionable whether Romilly's efforts in 1806 and 1809 improved the bankruptcy system to any considerable extent. Most probably they did not. But the question remains whether, considering the temper of the times, Romilly did as much as he could to further bankruptcy reform. Henry Brougham, who as will be seen was principally responsible for major reforms in the bankruptcy system in the 1830s and 1840s, charged in a letter to a friend that Romilly was overly timid in his efforts at legal reform and believed this timidity sprang from Romilly's fear of offending Lord Eldon.[85] At least in regard to bankruptcy reform, no evidence of this alleged fear appears in Romilly's diary or in his speeches in Parliament. What does appear in Romilly's writings and speeches is a deliberate and incremental approach to bankruptcy reform. He never intended a total reform of the system, despite the need for such action. More than likely, his correct perception of the possibilities, rather than a fear of Lord Eldon, guided Romilly's actions.

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[84] Hansard, 1st series, 1809, xiv. 96.

[85] Undated letter from Henry Brougham to Henry Bellenden Kerr, quoted in Sir Cecil Carr, A Victorian Law Reformer's Correspondence (London, 1955), p. 10.

There was little activity in the area of bankruptcy reform between 1809 and 1816.[86] The merchants and traders did present a petition to Parliament urging bankruptcy reform. In May 1811, the merchants and traders of the city of Waterford presented a petition to the House of Commons setting out more than a few complaints about the bankruptcy system: commissioners were paid too little to do work; charges on the bankrupt's fund were too high; acts of bankruptcy were too difficult to prove; property was sold too cheaply; the death penalty for fraudulent bankrupts was too severe; the law on fraudulent liens was not comprehensive enough; and finally, the lack of means of support for the bankrupt during the case promoted concealment of property.[87] No legislation resulted from the Waterford petition, but it marks the first recorded attempt on part of the business community in the nineteenth-century to petition Parliament with complaints about the bankruptcy system.

Six years after the Waterford memorial, a group of merchants, bankers and traders in London presented a petition to Parliament that painted a picture of bankruptcy laws 'very much evaded and abused', where 'in many cases, the Assignees and their Solicitor are friendly to the Bankrupt, and are desirous of preventing any inquiry into his conduct ...'. Creditors, according to the 1817 London petition, could not

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[86] Parliament passed only two bankruptcy acts during the period, neither of which significantly changed the substance of the administration of the bankruptcy laws. 52 Geo. III, c. 144 (1812) (member of Parliament suspended from voting upon the issuance of a bankruptcy commission against him); 56 Geo. III, c. 137 (1816) (bona fide delivery of goods before knowledge of bankruptcy protected).

[87] Hansard, 1st series, 1811, xx. 303-05.

investigate the bankrupt's affairs because the books were often in the hands of a friendly assignee. Moreover, debtors with little property conspired with fictitious creditors to have a bankruptcy commission issued with the sole object of having legitimate debts discharged. To provide an adequate remedy, the London merchants and traders believed 'a complete revision and correction of the Bankrupt Laws will be requisite...'.[88] The petitioners specifically called for a system to detect and reject fraudulent and illegal claims by a full investigation into the conduct of the bankrupt and provide for inquiry into the conduct of assignees in the collection, disposal and management of the bankrupt's estate.

In quite a change from its response to the Waterford petition, the House of Commons reacted immediately to the London petition by appointing a special committee to inquire into the bankruptcy laws.[89] The committee, which met for two months and was reappointed in 1818 to make further investigation, heard the testimony of forty witnesses, including merchants, solicitors, bankruptcy officials, and accountants from throughout the country.

In its final report, the select committee divided the faults it discovered in the bankruptcy system into nine 'prominent evils'.[90] The first group of these evils comprised problems encountered in administering bankrupts' estates.

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88 Journals of House of Commons, lxxii. 296 (22 May 1817).

89 Hansard, 1st series, 1817, xxxvi. 932-33. Romilly mentioned in his diary the presentation of the 1817 London petition. Romilly, op.cit., iii. 295.

90 Parl. Papers 1818, vi (276), p. 7: 'Report from the Select Committee on the Bankrupt Laws', 8 May 1818.

There was lack of care in securing the property of the estate, imperfect provision for investigating debts, and difficulty in securing an early and full division of bankrupts' property. The second set of complaints dealt with the bankrupt himself and his discharge. The committee found insufficient means of inquiring into the bankrupt's conduct and that undeserving creditors obtained a discharge too easily.

Many witnesses addressing problems of the administration of the estate emphasized the importance of securing assets of the bankrupts as soon as possible. Samuel Amory, a solicitor who served as secretary of a Scottish trade group interested in reform of the Scottish sequestration act, recommended appointment of a provisional assignee with power to take possession of all the bankrupt's property immediately upon the filing of a commission.[91] Suggesting an idea much ahead of its time, a London solicitor, Henry Rivington, testified that a debtor should be allowed to file his own petition, the assumption being that the law would encourage debtors to recognize their insolvency rather than continue in business to the further detriment of creditors.[92] Predictably, the committee rejected Rivington's plan but did recommend that a provisional assignee be appointed in all cases in order that assets might be quickly collected.[93]

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[91] Parl. Papers 1818, vi (276), op.cit., p. 82.

[92] Parl. Papers 1817, v (486), pp. 60-61: 'Report from the Select Committee on the Bankrupt Laws', 11 July 1817.

[93] Parl. Papers 1818, vi (276), op.cit., p. 15.

Sir Samuel Romilly, a member of the committee, and other witnesses testified about the 'extremely common' practice, described in the London petition, of a trader conspiring with a fictitious trader to have a commission taken out for the sole purpose of discharging legitimate debts.[94] Traders created most of these fictitious debts through bills of accommodation, and one witness recommended that no debt based upon accommodation paper be allowed as the basis of a proof of claim in bankruptcy unless it could be proven there was consideration for the bill.[95] Despite lengthy testimony on this fictitious debt problem, the committee made no recommendation.

Also related to debtor fraud was the issue of the circumstances under which bankrupts' debts should be discharged. Several witnesses urged that absolutely no discharge be granted if evidence existed of fraud on the part of the debtor.[96] A Cornwall solicitor, however, testified that certificates were being easily obtained, not so much because of instances of collusion or fraud, but because of pity on the bankrupt.[97] Witnesses' recommendations regarding discharge included prohibiting any certificate of discharge unless there was some payment in the pound, not allowing the creditors any say in the decision of whether or not to

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[94] Parl. Papers 1818, vi (276), op.cit., p. 73.

[95] Parl. Papers 1817, v (486), op.cit., pp. 77-78.

[96] See, for example, testimony of solicitor J. V. Vandercom, Parl. Papers 1818, vi (276), op.cit., p.62.

[97] Parl. Papers 1817, v (486), op.cit., p. 46.

discharge, and disallowing discharge, even where creditors acquiesced, if there was evidence of fraud.[98] The committee recommended that the commissioners be given the ultimate authority as to whether or not to grant a discharge, provided a discharge would only be possible with the concurrence of four-fifths of the creditors in number and value.[99]

Based upon testimony before the committee, one of the 'prominent evils' listed in the final report was '[t]he defective management of the bankrupt's estate, in consequence of the absence of any sufficient motive to secure activity on the part of assignees ...'.[100] A Bristol merchant suggested that assignees should be paid a percentage allowance of the amount distributed, so that they would have 'a more direct and considerable interest in the diligent and steady discharge of their trust...'.[101] The committee, however, only recognized that the problem existed and made no specific recommendations for its remedy.

The 1817-1818 select committee was Parliament's first attempt to study extensively the problems of the bankruptcy system. The report did not so much recommend specific remedies as identify problems and the wide range of solutions suggested by various witnesses. The committee's specific recommendations were conservative and addressed only the most

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[98] Parl. Papers 1818, vi (276), op.cit., pp. 61, 111; Parl. Papers 1817, v (486), op.cit., p. 62.

[99] Parl. Papers 1818, vi (276), op.cit., pp. 18-19.

[100] Ibid., p. 7.

[101] Parl. Papers 1817, v (486), op. cit., p. 41.

grievous abuses. On the positive side, the description in the report of the 'prominent evils' seems to be an honest attempt to summarize the major problems with the system, and many recommendations of witnesses became the basis of future legislation.

Upon issuance of the select committee's report, the chairman of the committee, John Smith, moved the introduction of a bankruptcy bill. Smith, a Whig banker and East India proprietor, stated that the select committee had 'incontrovertibly demonstrated' the necessity of revising the bankruptcy laws.[102] Among the many provisions of the extensive bill were those permitting the debtor himself to trigger his own bankruptcy by filing a declaration of insolvency, lowering the minimum amount of debt required to file a petition, paying commissioners a fixed salary, allowing a provisional assignee to be appointed immediately upon the filing of the commission, and giving commissioners, with concurrence of four-fifths of the creditors in number and value, final authority over whether or not to discharge a bankrupt's debts.[103]

The Commons took no action on Smith's bill in the 1818 session. The following year the bill passed the Commons in the form of two bills, but the Lords took no action other than requesting to see the 1817-1818 select committee's

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[102] Hansard, 1st series, 1818, xxxviii. 982-88; Dod's Parliamentary Companion (London, 1833), p. 160.

[103] Parl. Papers 1818, ii (403), p. 191-236: 'A Bill to alter and amend the Laws relating to Bankrupts', 2 June 1818.

report.[104] In 1820, when asked whether or not he intended to reintroduce his measure, Smith replied that he had learned that many of the evils his bill sought to remedy could be cured through rules issued by the Lord Chancellor. He did not intend to reintroduce the bill because he understood the Lord Chancellor was in the process of drawing up the necessary orders.[105] Either Smith had been misinformed, or the Lord Chancellor merely failed to promulgate the rules, since no such rules were forthcoming. In 1821 Smith reintroduced his bill. It again died in the Lords, at the request of Lord Eldon, who promised to bring before Parliament his own bill. This he did in the following session.[106] Actually Eldon presented two 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.[107]

The weakness of Lord Eldon's 1822 reforms should not, however, suggest that he opposed substantive bankruptcy law reform. To the 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

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[104] Journals of the House of Lords, lii. 891 (9 July 1819).

[105] Hansard, 2nd series, 1820, i. 1008.

[106] Hansard, 2nd series, 1822, vii. 1028-29 (Lord Eldon describing the background of his 1822 bill).

[107] 3 Geo. IV, c. 74 (1822); 3 Geo. IV, c. 81 (1822).

a bill that went much further than John Smith's earlier effort.[108] 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.[109]

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 seventeenth-century of passing acts of temporary duration to test particular legislation before making it permanent. Over two hundred such acts passed in the seventeenth-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...'.[110] In 1814, Earl Stanhope, presenting a petition from an aggrieved bankrupt, strongly recommended that some eminent lawyers or three judges be appointed 'to form the several laws upon

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[108] Robert Henley Eden, Observations Upon the Bill Now Depending in Parliament For the Consolidation and Amendment of the Bankrupt Laws (London, 1824), p. 6.

[109] Eden, op.cit., p. 7. Eden, a barrister and one of the bankruptcy commissioners, was one of the principal drafters of the bill.

[110] Hansard's Parliamentary History, 1789, xxxiv. 516-18.

particular subjects into one bill or act...'.[111] 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.[112]

The bill introduced in February 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 six to seven thousand words.[113] Holdsworth calls the bankruptcy amendment and consolidation bill which became law in 1825[114] 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.[115]

At least since the introduction of the discharge in 1705, an insolvent debtor had some incentive to arrange with

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[111] Hansard, 1st series, 1814, xxviii. 797-98. 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. Hansard, 1st series, 1816, xxxiv. 173-83, 425.

[112] Robert Henley Eden, Observations, op.cit., p. 2.

[113] Hansard, 2nd series, 1824, x. 214; Eden, Observations, op.cit., p. 9.

[114] Actually, the 1824 act (5 Geo. IV, c. 98) became law on 21 June 1824; however, it was not to take effect until 1 May 1825. In the interim, there were so many proposed amendments that it was thought expedient to replace the 1824 act with an entirely new one, which received royal assent on 2 May 1825 (5 Geo. IV, c. 16). Robert Henley Eden, A Practical Treatise On the Bankrupt Law, As Amended by the New Act of the 6 Geo. IV, c. 16 With an Appendix of Precedents (London, 1826), p. lv.

[115] Holdsworth, A History of English Law, op.cit, 13. 377.

friendly creditors to have himself placed in bankruptcy. Such a conspiracy, however, had always been considered illegal. The first great innovation of the act of 1825 was to enable a debtor to be an accessory to his own bankruptcy.[116] A debtor could now legally conspire with a friendly creditor and have himself placed in bankruptcy by merely publicly declaring his own insolvency. The filing of record of such a declaration was made an act of bankruptcy and so could form the basis upon which a friendly creditor could have a commission issued. The question of an insolvent debtor placing himself in bankruptcy without any creditor approval, however, continued to be a vigorously contested issue until the 1880s.

Before 1825, bankruptcy law had not recognized any formal system whereby creditors could agree among themselves as to the distribution of a debtor's assets and avoid having to invoke what might prove to be an extremely cumbersome and expensive bankruptcy process. The 1825 act instituted the concept of a composition, adopted from the Scottish sequestration act.[117] On the issuance of a bankruptcy commission and the debtor having passed his last examination, nine-tenths of the creditors in number and value could agree to accept an offer of the debtor to pay a certain amount in the pound. If accepted, a new contract came into effect, and the bankruptcy commission could be superseded by the Lord Chancellor. The debtor then was free to carry out his business, subject only to the payment agreed upon in the composition.

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[116] 6 Geo. IV, c. 16, s. 6-7 (1825).

[117] 6 Geo. IV, c. 16, ss. 133-34 (1825).

Similarly, by stating that such action would not be considered an act of bankruptcy, the act indirectly recognized that an insolvent debtor could convey all of his assets by deed of assignment to a trustee for the benefit of all his creditors.[118] Under a composition or a deed of arrangement, bankruptcy law now formally recognized that the debtor and his creditors could settle their affairs and avoid the filing of a formal bankruptcy.

Although the evidence is sparse, there is some indication of interest among the business community in the 1825 bankruptcy act. A petition in May 1824 from bankers, merchants, and traders of Stafford complained of the landlord's power of distraining the effects of bankrupts for large and unlimited arrears in rent.[119] In April 1825, the Manchester Chamber of Commerce approved a petition to the House of Commons objecting to increasing the fees of barristers who served as bankruptcy commissioners.[120] Apparently, there were other complaints. In response to the Manchester petition, an official of the Master's Office stated that many had corresponded with the Lord Chancellor on the bankruptcy bill, and one of the things complained about most was 'the total want of control by them [the Commissioners] over the expenditure

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[118] 6 Geo. IV, c. 16, s. 4 (1825).

[119] Journals of the House of Commons, lxxix. 325 (5 May 1824).

[120] Manchester Chamber of Commerce and Industry papers (hereinafter 'Manchester CC Papers), M8/2/1, pp. 365-66: meeting, 13 Apr. 1825. The Lord Chancellor did not accept the suggestion of the Manchester Chamber of Commerce. According to W. Courtenay in the Master's Office, the Lord Chancellor believed it was best to give a liberal fee to commissioners and be strict as to expenses. Manchester CC Papers, M8/2/1, letter dated 3 May 1825 from W. Courtenay (Master's Office) to H. H. Birley, Manchester Chamber of Commerce.

of the Solicitor to the Commission, the negligent conduct of Assignees & want of power in the Commissioners to compel them to do their duty'.[121]

Summary

Much of the substantive law of bankruptcy was established by 1800. Modern definitions of English bankruptcy law usually contain two substantive principles: the ratable distribution of the bankrupt's assets among his creditors and the discharge of the worthy bankrupt from his indebtedness.[122] The principle of a ratable distribution of an insolvent debtor's property among his creditors was a part of the first bankruptcy legislation of 1543 and remained an integral part of all future bankruptcy statutes. Bankruptcy law originated from the need to solve the practical commercial problem created by failed businesses. Its roots were not in political philosophy or a particular theory of government, and there appears to be no evidence of it ever becoming a partisan political issue. Drafters of legislation hit early upon the practical solution for a trader's failure: treat all creditors equally, ratably dividing the bankrupt's estate as quickly and as inexpensively as possible.

The concept of a bankrupt's discharge became a part of the bankruptcy statutes in 1705. This principle originated, not from any concern for the bankrupt's future well-being,

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[121] Manchester CC Papers, M8/2/1, op.cit., p. 356.

[122] See, for example, E. R. Hardy Ivamy, Mozley and Whitelay's Law Dictionary, 10th edn. (London, 1988), p. 45; A Concise Dictionary of Law (Oxford, 1990), pp. 36, 129.

but from the hope that granting the debtor a release from future liability for his old indebtedness might encourage him to cooperate with the recovery of his assets for distribution to his creditors. From a discharge requiring little or no restrictions as first enacted, Parliament quickly tightened the reign on bankrupts. Within a short period, a debtor had to meet numerous requirements before being discharged. At first, the debtor needed only court approval, but creditors soon realized that such power of approval was best left in their own hands. Even with these restrictions, however, by the end of the eighteenth-century, the concept of discharge had become so ingrained in the law that it would have been difficult to have envisioned a statute without it.

With the substantive law of bankruptcy in place by 1800, reformers in the nineteenth-century focused their attention on improving the administration of bankrupt estates. Certainly, there were exceptions to this substantive-procedural division. One remaining issue, which may arguably be deemed a substantive aspect of bankruptcy law, was whether or not bankruptcy should be extended to apply to the non-trader. Also, as will be discussed in later chapters, there were those throughout the nineteenth-century who advocated a complete abandonment of the entire system of bankruptcy law. Nevertheless, the central issue for bankruptcy reformers after 1825 was a procedural one. Who could best administer the bankrupt estates, the creditors or government officials? Upon this ground the battles over bankruptcy reform were to be fought. In the period prior to 1800, some evidence appears of this coming dispute. The creditors were already arguing that they, and not the courts, should have the ultimate

authority to decide whether or not a bankrupt should be discharged. There were also growing complaints about the efficiency of court appointed commissioners.

From an early period, concern existed among members of the business community about efficient bankruptcy laws. Not only do petitions during the eighteenth-century appear during the debates on most bankruptcy legislation, but also they come from merchants and traders in several localities throughout England. The petition from London merchants in 1817 resulted in the appointment of a select committee that stimulated interest in bankruptcy reform. As a member of Parliament, businessman John Smith spearheaded between 1815 and 1826 the movement for bankruptcy reform. Even though the Lord Chancellor, Lord Eldon, controlled the passage of the great consolidation acts of 1825-26, they were identical in principle to Smith's earlier efforts. The efforts of the Victorian businessmen to improve the bankruptcy system were not novel but part of a long tradition of business interest in developing an efficient bankruptcy administration.

Finally, the early efforts after 1800 to reform bankruptcy procedure, such as Romilly's acts of 1806 and 1809 and Lord Eldon's reforms in the 1820s, were greatly influenced by, and, indeed, were a large part of, the wider movement toward reform of many aspects of English law. Under Bentham's influence, the watchword of the legal reform movement at this time was simplification, as can be seen in the efforts to consolidate and codify whole areas of the law, including bankruptcy. The pace of bankruptcy reform, like the pace of other legal and social reforms, was about to quicken considerably in the middle decades of the nineteenth-century.

Chapter Three

Aggregate Levels of Insolvency in England and Wales, 1800-1913

Before continuing the story of bankruptcy reform, it is necessary to look at the problem Parliament addressed in the bankruptcy statutes. Victorians viewed bankruptcy as a significant problem. Business failure provided a major theme for many Victorian novels, among them Dickens' Dombey and Son and Little Dorrit, Thackeray's Vanity Fair and The Newcomes, Brontë's Shirley, and Trollope's The Way we Live Now.[1] Between 1800 and 1883, three Royal Commissions, at least ten Parliamentary select committees, and one special Lord Chancellor's committee addressed the subject of bankruptcy reform. Many contemporaries saw bankruptcy as a national economic problem and not merely the concern of individual merchants who could not collect their debts. Since merchants ultimately had to pass along to the consumer their losses from bad debts, the Lord Chancellor, Lord Cairns, observed in 1879 that the loss from bankruptcy was 'a very considerable tax which the country must pay, because the price of articles is necessarily regulated in such a manner as to cover the bad debts, which consequently fall upon consumers'.[2] In a similar vein, the inspector-general for company winding-up asserted in 1893 that clearly 'under the Companies Acts a heavy tax is annually imposed upon the industries or savings of the

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[1] For a detailed discussion of bankruptcy and Victorian culture, see Barbara Weiss, The Hell of the English: Bankruptcy and the Victorian Novel (Lewisburg, Pa., 1986).

[2] Hansard, 3rd series, 1879, ccxliii. 1294.

community ...'.[3] Exactly how serious a problem was business failure for nineteenth-century England?

With the exception of the publication of some statistics and estimates from official sources and an occasional reference by historians to insolvency levels, there has been little attempt to determine just how extensive business failure was during the last century and especially during the late Victorian and Edwardian eras.[4] This chapter will attempt to describe -- to the greatest extent allowed by available statistics -- the level of insolvency in England in the nineteenth and early twentieth centuries. This is done both in terms of numbers of failures and in terms of estimated financial losses to shareholders and creditors.

The chapter will also examine the effect of bankruptcy reform legislation on insolvency levels. Because of the greater amount of statistical data available after 1883, this chapter will address the issue of whether or not the level of insolvency declined in the three decades after the passage of the Bankruptcy Act of 1883. One of the major objectives not only of this act, but also the Deed of Arrangements Act of 1887 and the Company (Winding-up) Act of 1890 was to decrease

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[3] Parl. Papers 1893-94, lxxxi (159), p. 95: 1st Annual Company (Winding-up) Report, 29 Mar. 1893.

[4] For works that have made some reference to insolvency levels, see Arthur D. Gayer, W. W. Rostow, and Anna Jacobson Schwartz, The Growth and Fluctuation of the British Economy 1790-1850 (Oxford, 1953), 2. 885-87; D. H. Macgregor, 'Joint Stock Companies and the Risk Factor', The Economic Journal, 39 (1929), 491-505; Michael Edelstein, Overseas Investment in the Age of High Imperialism: The United Kingdom, 1850-1914 (London, 1982), pp. 128-30; Sheila Marriner, 'English Bankruptcy Records and Statistics Before 1850', E. H. R., xxxiii (1980), 351-66 (principally reviewing types of data available at the Public Record Office). In addition, eighteenth-century bankruptcy levels are extensively analyzed in Hoppit, op.cit., and the numbers of bankruptcies in the first two decades of the nineteenth-century are briefly discussed in Duffy, op.cit.

insolvency by publicly exposing frauds. To what extent did these acts achieve this objective?

Two opposing positions have risen on the question of whether or not insolvency actually decreased after 1883. On one side stands the Board of Trade and some commentators at the time. They believed the level of insolvency did decline in the three decades before the First World War and that this decline was in part a direct result of reforms instituted by the Bankruptcy Act of 1883. In 1891, the Board of Trade stated that the bankruptcy system imposed in 1883 had been one of the causes for the decline in the level of insolvency, and favourably compared the performance of Britain in this regard with the performance of the United States.[5] While the passage of previous bankruptcy acts had always triggered a temporary decrease in the number of bankruptcies, the inspector-general in bankruptcy assured the public that the reduction caused by the 1883 act was of 'a more permanent character'.[6] This initial optimism was checked somewhat in 1892 when the effects of a general downturn in trade were beginning to be felt and the number of bankruptcies began to rise. The inspector-general admitted that it 'would have been strange if the depression which has attacked so many branches of industry had not been reflected in the Bankruptcy

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[5] The bankruptcy report of 1891 stated that, while the English losses from bankruptcy had declined from £8.7 million to £7.3 million between 1888 and 1890, the United States' losses had increased from $15.7 million to $22.6 million. Parl. Papers 1890-91, lxxvii [cmd. 6462], pp. 10-11, 23: 8th Annual Bankruptcy Report, 20 July 1891.

[6] Parl. Papers 1890, lxvii [cmd. 6151], p. 21: 7th Annual Bankruptcy Report, 8 Aug. 1890.

Returns'.[7] Even so, the optimism in earlier Board of Trade reports returned, and by 1897 the inspector-general stated that the reduction of insolvency since 1869 'has had an important bearing upon the condition of trade throughout the country'.[8] As late as 1908, the committee appointed by the Board of Trade to inquire into the bankruptcy law and its administration acknowledged that official statistics showed 'there has been a large reduction in the amount of insolvency throughout the country since the present system came into force'.[9]

Representing the other side, W. R. Cornish, G. de N. Clark, and others have challenged the conclusion that insolvency decreased following the passage of the Bankruptcy Act of 1883. According to these historians, insolvencies did not decrease; 'a more complex shift was at work'.[10] Insolvency was merely shifting to limited liability companies. Although not cited by Cornish and Clark, contemporaries evidently believed this might be the case. The bankruptcy report of 1897 drew attention to 'increased losses resulting from the growing practice of carrying on insolvent businesses with limited liability under the Companies Acts ...'.[11] The

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[7] Parl. Papers 1892, lxxii [cmd. 6825], p. 10: 10th Annual Bankruptcy Report, 9 Aug. 1892.

[8] Parl. Papers 1897, lxxix (338), p. 96: 14th Annual Bankruptcy Report, 23 July 1897.

[9] Parl. Papers 1908, xxxiv [cmd. 4068], p. 7: 'Report of the Committee Appointed by the Board of Trade to Inquire Into the Bankruptcy Law and Its Administration', 8 Apr. 1908.

[10] W. R. Cornish and G. de N. Clark, Law and Society in England 1750-1950 (London, 1989), p. 236.

[11] Parl. Papers 1897, lxxix (338), op.cit., p. 97. Similar concerns were expresses in

(Footnote Continued)

company winding-up report the next year alleged that 'more than a dozen' of the 108 companies compulsorily wound-up were those whose owners were trying to avoid personal bankruptcy.[12]

The overall conclusion of the present study is that the level of insolvency did decline during the last decades of the nineteenth-century and up until at least 1913, not only for bankruptcy and deeds of arrangement, but also for company winding-up. As will be seen, while Cornish and Clark correctly noted that insolvency tended to occur more and more in limited liability companies, statistical evidence now proves that total insolvency actually declined.

Statistical data base and the components of insolvency

A complete statistical account of insolvency between 1800 and 1913 is not possible, simply because the necessary statistical evidence does not exist. For the period before 1860, only the number of bankruptcies for each month can be stated with any confidence.[13] Any estimate of the loss to creditors or shareholders during the first half of the

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(Footnote Continued)
some of the companies reports. See, for example, Parl. Papers 1910, xciv (168), p. 371: 19th Annual Companies Report, 13 June 1910 ('Attention from time to time has been drawn in these Reports to the Board of Trade to the fact that undischarged bankrupts have not infrequently made use of the Companies Acts for the purpose of continuing to trade'.)

[12] Parl. Papers 1898, lxxxiv (337), p. 189: 7th Annual Company (Winding-up) Report, 2 Aug. 1898.

[13] The London Gazette attempted to report each bankruptcy commission or fiat issued, and official sources at various times reported bankruptcy statistics, usually for yearly periods. Gayer, Rostow and Schwartz apparently constructed a monthly series of the number of bankruptcies advertised in the London Gazette between 1790 and 1852, although this series was not published. Gayer et al, op.cit., 2. 984.

century must be largely speculative. Not until 1860 did officials begin to publish statistics describing the amount of assets and liabilities of bankrupt estates. Using this data, an estimate of losses to creditors is possible. Only after the passage of the Bankruptcy Act of 1883 were statistics as to losses to creditors systematically maintained. Even then, gaps exist for certain categories, particularly statistics on voluntarily wound-up joint stock companies.

It is necessary to define the various components of 'insolvency'. As used in this chapter, the term 'insolvency' encompasses four categories of personal and business financial failures in nineteenth and early twentieth-century England.

First, there was bankruptcy, which Parliament limited before 1861 to 'traders'[14] with an indebtedness of a minimum of £100 (later £50) to at least one creditor. After 1861, almost all insolvent debtors were subject to bankruptcy jurisdiction upon the petition of a creditor or, during the life of certain statutes, upon the debtor's own petition.

The insolvent debtors' court handled the second component, which contemporaries described as 'insolvency'. Before 1861, this category comprised all individuals not subject to bankruptcy and included anyone from 'traders' with small

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[14] The definition of what constituted a 'trader' was the subject of much litigation. A typical statutory definition of the term that was contained in the Bankruptcy Act of 1848 was '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 buying and letting for Hire, or by the Workmanship of Goods or Commodities ...'. The statute specifically listed certain occupations as being 'traders' and exempted farmers, graziers, common labourers and workman for hire from the statutory definition. 12 & 13 Vict., c. 106, s. 65 (1849).

debts to a 'non-trader' with substantial debts. Parliament abolished this category in the Bankruptcy Act of 1861 and merged the insolvent debtors' court jurisdiction with that of bankruptcy.

A third component of insolvency was the private arrangement between a debtor and his creditors. Filing a bankruptcy petition against a debtor or compelling him to be taken before an insolvent debtors' court was often the least advantageous path for creditors. In most cases, creditors were much better off to reach a private agreement with the debtor. Creditors could either compromise their debts and be paid a certain sum in the pound, an agreement called a 'composition', or make an arrangement where the debtor could continue to stay in business and pay his creditors back over time, either through a deed of arrangement or a deed of inspectorship. Board of Trade officials believed that deeds of arrangement tended to represent a larger percentage of the '<u>best</u> estates', those in which the debtor's failure was 'more clearly due to misfortune'.[15]

The final component of insolvency was the 'winding-up' of joint stock companies and partnerships. Parliament first established this statutory procedure in 1844, and until 1856 the bankruptcy and chancery courts had concurrent jurisdiction over the administration of the winding-up of insolvent companies and partnerships. For all practical purposes, after 1862 the same courts that had bankruptcy jurisdiction handled company winding-up.

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[15] <u>Parl. Papers 1892</u>, lxxii [cmd. 6825], <u>op.cit.</u>, p. 23.

This chapter will describe the level of insolvency in each of the component parts separately, excepting the insolvent debtor court component.[16] To the extent possible, insolvency levels will be described both in terms of numbers and in terms of losses to creditors and shareholders. Conclusions will then be drawn concerning the possible causes for the secular trends.

Bankruptcy levels, 1800-1913

Few statistics exist concerning the nineteenth-century level of bankruptcy before 1860. The most reliable information shows the numbers of bankruptcy commissions (termed 'fiats' after 1831 and 'petitions for adjudication' after 1849) (Table 3.1).

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[16] As far as failures handled by the insolvent debtors' court and under small debt law, the readily available statistical evidence is so minimal that it is not possible to reach any substantive conclusions as to creditors' losses represented by this category. Nevertheless, 'insolvency' was undoubtedly an important component of failures in the first half of the nineteenth-century. See Duffy, 'Bankruptcy and Insolvency ...', op.cit., pp. 57-121. Since this chapter concentrates on insolvency levels after the abolishment of the insolvent debtors' court in 1861, this 'insolvency' component is not discussed in detail.

Table 3.1 Number of commissions and fiats issued, 1801-1860

Year	Number	Year	Number	Year	Number
		1820	1,685	1840	1,887
1801	1,198 commissions	1821	1,572	1841	1,837
1802	1,092	1822	1.412	1842	1,655
1803	1,184	1823	1,238	1843	1,259
1804	1,123	1824	1,231	1844	1,099
1805	1,128	1825	1,469	1845	1,160
1806	1,306	1826	3,301	1846	1,532
1807	1,358	1827	1,680	1847	1,599
1808	1,424	1828	1,512	1848	1,942
1809	1,386	1829	2,161	1849	no statistics available
1810	2,282	1830	1,716	1850	" "
1811	2,483	1831	1,918	1851	" "
1812	3,309	1832	1,734 fiats	1852	" "
1813	1,945	1833	1,294	1853	" "
1814	1,598	1834	1,370	1854	1.155 petitions for
1815	2,271	1835	1,309	1855	1,272 adjudication
1816	2,701	1836	1,189	1856	1,065
1817	1,917	1837	1,954	1857	1,151
1818	1,241	1838	1,086	1858	1,293
1819	2,043	1839	1,468	1859	949
				1860	1,287

Source: Parl. Papers 1847-48, li (120), p. 171: 'A Return of the Bankrupts and Insolvent Debtors...', 23 Feb. 1848; Parl Papers 1857-58, xlvii (189), pp. 6, 10-13: 'Returns from the Accountant in Bankruptcy ...', 13 Apr. 1858; Parl. Papers 1860, lvii (164), pp. 37-50: 'Returns from Official Assignees of Courts of Bankruptcy ...', 22 Mar. 1860; Parl. Papers 1861, li (40), p. 3-17: 'Returns from Official Assignees of Courts of Bankruptcy, ... ', 19 Feb. 1861.

This particular categorization of 'commissions' or 'fiats' issued is important. Under the Bankruptcy Act of 1831, a creditor could petition the Lord Chancellor and allege that a trader had committed an act of bankruptcy. Upon presentation of the petition, together with an affidavit and a bond, a fiat would authorize the prosecution of the complaint.[17] Separate fiats could be issued upon the petitions of a number of creditors against the same debtor, and for this reason the number of fiats issued does not give an accurate picture of

[17] 1 & 2 Wm. IV, c. 56, ss. 12-13, 16 (1831).

insolvency. More important, creditors may have used the issuance of a fiat in bankruptcy merely as a collection technique against debtors who were only delinquent in payment of debts and not necessarily insolvent. It is important to distinguish among the various stages of bankruptcy procedure in attempting to discover an accurate level of insolvency. Table 3.2 compares the number of 'dockets struck' with the 'commissions sealed', 'commissions opened' and commissions actually advertised in the London Gazette for the period 1817-1826. These are the only statistics available describing bankruptcy in this part of the century, broken down into the numbers involved in the various stages of the bankruptcy process.

Table 3.2 Number of dockets struck, commissions sealed, and commissions opened and advertised in the London Gazette, from the year ending 1 October 1817 to the year ending 1 October 1826*

Year	Dockets struck	Commissions Sealed	Commissions opened and Gazetted
1817	2,480	2,311	1,879
1818	1,338	1,248	1,059
1819	2,054	1,913	1,416
1820	1,903	1,784	1,335
1821	1,773	1,665	1,287
1822	1,592	1,488	1,164
1823	1,381	1,273	964
1824	1,340	1,244	977
1825	1,345	1,226	846
1826	3,549	3,272	2,489

*The return does not state whether these figures include Ireland or Scotland, although it appears they do not.

Source: Parl. Papers 1826-27, xix (35), p. 45: 'Return to several Orders of The Honourable House of Commons...', 11 Dec. 1826.

According to these statistics, only about two-thirds of the 'commissions sealed' were finally opened. For each year between 1817 and 1826, the number of 'commissions opened and Gazetted' is substantially less than the number of 'commissions issued'. Thus the figures in Table 3.1 overstate the actual number of insolvent debtors who were bankrupted. Despite such limitations, the number of commissions and fiats issued is still perhaps the best description of the numbers of bankruptcies during the period.

An obvious drawback of using only numbers of bankruptcies to describe the level of insolvency is that they do not reveal the actual financial loss suffered. The addition of only one bankruptcy in any year could be insignificant to the

total number of bankruptcies but if such bankruptcy involved large losses for a number of creditors, it could be vital to an accurate understanding of the level of insolvency for a particular year. R. P. Harding, the chief official receiver in bankruptcy, made this point before the royal commission on the depression of trade and industry in 1885. To Harding, the number of bankruptcies was a 'very unsafe guide' for estimating the comparative depression or activity in trade, since only one large failure such as that of Overend and Gurney in the 1860s could have a significant impact on the financial condition of the country.[18] The opposite view can be taken. When losses to creditors are used as the only indicator of insolvency, the addition of just one atypical bankruptcy with large liabilities can distort the actual extent of a trade depression. This argument is especially valid when one is attempting to compare the annual level of bankruptcy over a period of time. The best method, of course, is to look at both the numbers of bankruptcies and the estimated loss to creditors.

No known statistics state the amount of assets and liabilities involved in bankruptcies before 1860. In a letter to The Times in 1842 a bankruptcy commissioner R. G. C. Fane estimated that in 1836, the only year for which he had statistics, the loss from bankruptcy alone (independent of insolvency, trust deeds, compositions etc.) was almost £4.5

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[18] Parl. Papers 1886, xxi [cmd. 4621], p. 44: 'First Report of the Royal Commission Appointed to Inquire Into the Depression of Trade and Industry', 7 Nov. 1885.

million.[19] The only statistics to shed any light on the amount of assets and liabilities involved in bankruptcy before 1860 are dividend account figures. The Bankruptcy Act of 1831 (as amended in 1835) required that all cash and securities of a bankrupt estate be transferred by the official assignee to the Bank of England to the credit of the Accountant General in the High Court of Chancery.[20] Officials kept a dividend account showing the amount paid each year from bankruptcy assets as dividends to creditors.[21]

Annual dividend figures can be used through a three-step process to estimate the yearly loss to creditors. First, an estimate of gross bankruptcy estate assets can be extrapolated from the dividends paid. Second, from gross assets, gross liabilities can be calculated. Finally, by subtracting the dividends paid from the gross liabilities, an estimate of actual losses can be reached.

Contemporaries gave various estimates of the cost of realizing assets, including the costs of administration. For example, John Gilmour, a Scottish barrister, addressing the first annual meeting of the National Association for the Promotion of Social Science in 1857, stated that expenses of bankruptcy administration in England were normally thirty percent of realized assets.[22] The annual report of the

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[19] The Times, 8 Apr. 1842, 'Bankruptcy Reform', 11.

[20] 1 & 2 Wm. IV, c. 56, s. 22 (1831); 5 & 6 Wm. IV, c. 29 (1835).

[21] These annual dividends, amounting to almost £15 million between 1835 and 1860, are given in Appendix A.

[22] National Association for the Promotion of Social Science (hereinafter N. A. P. S.

(Footnote Continued)

Wolverhampton Chamber of Commerce for 1858, though, reported that charges on realized assets ranged from forty to forty-nine percent.[23] It was reported to the Leeds Chamber of Commerce in July 1856 that only forty-nine percent of the assets collected between 1853 and 1855 reached the creditors.[24] Conservatively assuming the cost of realizing assets was thirty percent of the assets realized and by taking the almost £15 million in dividends paid during the twenty-two year period for which statistics are available, gross assets can be estimated to have been a little over £21 million.

Gross liabilities can be roughly estimated by applying the experience of a later period. Between 1870 and 1883, gross assets of bankruptcies were, on average, 15.6 percent of gross liabilities. The trend was for this ratio to improve. If an annual average is taken for 1870 to 1913, gross assets of bankruptcies increase to approximately thirty percent of gross liabilities. This trend may indicate that the ratio before 1870 was even less than the 15.6 percent average for 1870-1883. Nevertheless, applying the 15.6 percent figure to the approximately £21 million estimated as gross assets for the 1835-1860 period, gross liabilities can be estimated to be approximately £135 million.

For the final step, when dividends paid are subtracted from the estimate of gross liabilities, the loss to creditors

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(Footnote Continued)
S.), Transactions of the National Association for the Promotion of Social Science 1857 (London, 1858), p. 107.

[23] Wolverhampton Chamber of Commerce office, Wolverhampton Chamber of Commerce Papers (hereinafter 'Wolverhampton CC Papers'), Vol. I, 2nd Annual Report, 1858.

[24] M. W. Beresford, The Leeds Chambers of Commerce (Leeds, 1951), p. 42.

for the twenty-two years is estimated to be £120 million, an average of approximately £5.4 million per year. This figure is consistent with the estimate made for the year 1836 by bankruptcy commissioner Fane.

Only a rough estimate can be made from dividend figures, and such an estimate cannot be used to compare annual levels of bankruptcy. The amount of dividends paid in any one year is not related to the amount of bankruptcy in that year. Often there were delays of several years between the filing of the bankruptcy and the payment of dividends. Nevertheless, dividend statistics appear to be the only possible means to approximate the amount of creditor losses involved in bankruptcy in the second quarter of the nineteenth-century.

The Bankruptcy Act of 1861 required for the first time that courts file returns with bankruptcy statistics. From this data, it is possible to calculate not only the number of bankruptcies but also to estimate total losses to creditors. Estimates of creditor losses for the period 1862-1869 are, nevertheless, difficult to make because no direct data exists on assets and liabilities of bankrupt estates. Information is available on the amount of the 'gross produce' realized each year from bankruptcy estates filed under the Bankruptcy Act of 1861 (Table 3.3).

Table 3.3 Number of bankruptcies and 'gross produce realized' from bankruptcies, 1861-1869

Year (ending 11 October)	Number of bankruptcies	'gross produce realized'
1862	9,663	no data available
1863	8,470	"
1864	7,224	"
1865	8,305	£ 677,536
1866	8,126	856,955
1867	8,994	730,362
1868	9,195	583,520
1869	10,396	852,039

Sources: Parl. Papers 1878-79, lix (222), p. 1 'General Report by the Comptroller in Bankruptcy ...', 20 May 1879; Parl. Papers 1865, xlv (28), p. 1: 'General Return by the Chief Registrar of the Court ...'. 13 Feb. 1865; Parl. Papers 1866, lviii (35), p. 1: 'General Return by the Chief Registrar of the Court ...', 14 Feb. 1866; Parl. Papers 1867, lvii (61), p. 33: 'General Return by the Chief Registrar of the Court...', 18 Feb. 1867; Parl. Papers 1867-68, lvii (129), p. 1: 'General Return by the Chief Registrar of the Court ...', 6 Mar. 1868; Parl. Papers 1868-69, li (26), p. 89: 'General Return by the Chief Registrar of the Court ...', 19 Feb. 1869.

The large increase in the number of bankruptcies from under 2,000 annually before 1861 to over 8,000 annually after that results from abolition in the Bankruptcy Act of 1861 of the insolvent debtors' court and permission for debtors to file their own bankruptcy petitions. Contemporaries attributed the increase in the latter part of the decade to the failure of Overend and Gurney in 1866 and several other joint stock banks and financial companies, as well as the expectation of more stringent legislation.[25]

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[25] Parl. Papers 1886, 'First Report of the Royal Commission Appointed to Inquire Into the Depression of Trade and Industry', op.cit., p. 38.

While the term 'gross produce realized' appears in the published statistics, the amounts that make up this statistical category closely resemble gross assets. 'Gross produce realized' figures are available only for the years 1865 to 1869 (Table 3.3). For any one year, this total includes amounts realized on estates filed in previous years back to 1861 and, therefore, does not strictly represent gross assets of bankruptcies filed in any one year. Nevertheless, it is some indication of the asset value of bankruptcy estates during the period. An estimate of liabilities can be obtained by applying the average that assets represented of total liabilities for the period 1870-1883 (15.6 percent) to the gross produce realized. Estimated losses to creditors can then be calculated by using a formula later developed by the Board of Trade.[26] The results of these calculations yield a total loss for the 1865-1869 period of £21 million, an average annual loss of slightly over £4 million. This figure resembles the average annual estimated losses for the second quarter of the century.

The picture of bankruptcy levels becomes clearer after 1870. The number of persons 'adjudicated bankrupt' between 1870 and 1883 and the number of 'receiving orders entered' between 1884 and 1914, as well as the gross assets and liabilities involved each year, appear in Appendices B and C. These statistics are taken from official bankruptcy reports. For the period after 1883, the number of 'receiving orders entered' which is a combination of the number adjudicated

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[26] See, p. 86.

bankrupt, the number of arrangements and compositions under section 18 of the 1883 act, and the number of deceased debtors estates administered in bankruptcy (Appendix C) more accurately indicates the level of bankruptcy than the figure for just those 'adjudicated bankrupt', which must be used for 1870-1883 (Appendix B). Section 18 of the 1883 act allowed creditors to agree to a composition or a scheme of arrangement after the entry of the receiving order but before the actual adjudication of bankruptcy. These cases were not strictly speaking the same thing as a private arrangement outside of bankruptcy since a receiving order had been entered. In addition, the number of those 'adjudicated bankrupt' does not include cases of deceased insolvent debtors, whose estates could be handled as bankruptcies under section 125 of the 1883 act. This means that if only those 'adjudicated bankrupt' are used as the post-1883 statistical base (B. R. Mitchell pursues such a course in British Historical Statistics), between two and nine percent of the failures each year are not accounted for, and the level of insolvency will be slightly understated.[27]

On occasion between 1884 and 1913, the inspector-general in bankruptcy attempted to estimate the 'loss to creditors' for each year. Using asset and liability figures (reproduced in Appendices B and C) the Board of Trade obtained their

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[27] B. R. Mitchell, British Historical Statistics (Cambridge, 1988), pp. 695-97. Mitchell cites as his source the Statistical Abstract of the United Kingdom. This source does give the figures for arrangements, compositions, and deceased debtors' estates, but Mitchell does not include them, apparently to remain consistent with the 'adjudicated bankrupt' category used for the 1870-83 period. H. M. S. O., Statistical Abstract for the United Kingdom in Each of the Last Fifteen Years from 1885 to 1889 (London, 1900).

estimate by taking gross liabilities and subtracting net assets. Until 1899, officials defined net assets as gross assets less one-third, to take into account costs of realization of assets. Experience proved, however, that gross assets should actually be reduced by two-thirds to reflect accurately the costs of realization. The inspector-general explained in his 1899 report that

> ... comparison for eight years between estimated assets and assets distributed among creditors is now available, and the figures for that period indicate that the assets distributed to creditors form, on the average, about one-third of the assets as estimated in bankruptcy, and about three-fifths of the assets as estimated under deeds of arrangement. I therefore propose in future reports to reduce the estimated assets in bankruptcies by two-thirds and under deeds by two-fifths ....[28]

For shorthand purposes, this revised formula will be referred to as the 'Board of Trade's formula'. While this two-thirds reduction may at first appear to be excessive, more than likely it accurately reflects the costs of realizing assets. First, the cost of realizing assets could be large in cases where they must be sold immediately. Also, assets like accounts receivable, far from being collectable and of value, actually caused the bankruptcy in many cases and were uncollectible. In addition to the problems of collection, gross assets were originally estimated by the debtor, who had every incentive to inflate the value of assets so as to avoid censure and perhaps the denial of a discharge.

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[28] Parl. Papers 1899, lxxxviii (330), p. 116: 16th Annual Bankruptcy Report, 4 Aug. 1899. This decision reflected earlier experience under the 1869 act. The comptroller in bankruptcy reported in 1882 that trustees' estimates tended to be one-half those of the debtors. Parl. Papers 1882, liv (243), p. 2: 'General Report by the Comptroller in Bankruptcy ...', 21 June 1882.

Table 3.4 sets out estimated losses from bankruptcy for the years 1870 to 1913, using the Board of Trade's formula described. To give some measure of scaling over time, Table 3.4 includes such estimated losses as a percentage of gross domestic product (current prices) at factor cost.[29]

Table 3.4 Estimated losses from bankruptcies, 1870-1913

Year	Estimated Loss (% GDP)	Year	Estimated Loss (% GDP)	Year	Estimated Loss (%GDP)
1870	£7,283,876 (.69)	1885	£8,101,578 (.66)	1900	£5,611,569 (.30)
1871	3.791,693 (.33)	1886	7,035,823 (.58)	1901	5,713,505 (.30)
1872	2,444,337 (.20)	1887	8,101,578 (.64)	1902	4,646,042 (.25)
1873	3,882,370 (.28)	1888	6,396,824 (.50)	1903	4,475,823 (.24)
1874	3,628,442 (.28)	1889	5,714,053 (.43)	1904	6,027,305 (.32)
1875	6,664,191 (.54)	1890	5,437,952 (.39)	1905	5,134,658 (.26)
1876	3,662,467 (.30)	1891	7,545,738 (.53)	1906	5,133,325 (.26)
1877	2,763,319 (.23)	1892	7,862,232 (.57)	1907	5,034,510 (.25)
1878	8,633,513 (.72)	1893	6,602,943 (.48)	1908	4,808,785 (.24)
1879	4,110,386 (.37)	1894	6,226,874 (.44)	1909	5,086,131 (.25)
1880	2,621,970 (.21)	1895	5,865,491 (.40)	1910	7,255,989 (.35)
1881	2,622,959 (.21)	1896	5,139,219 (.34)	1911	6,114,514 (.28)
1882	3,234,971 (.25)	1897	4,837,357 (.31)	1912	4,304,913 (.19)
1883	4,168,712 (.32)	1898	5,953,564 (.36)	1913	4,494,444 (.19)
1884	12,465,608 (.90)	1899	5,279,499 (.30)		

Sources: for 1870-1883: Annual General Reports by the Comptroller in Bankruptcy, Parl. Papers, 1871- 1884; for 1884-1899: Parl. Papers 1900, lxxviii (316), p. 155: 17th Annual Bankruptcy Report, 2 Aug. 1900 (modified to reflect 1899 Board of Trade formula and adjusted to include administrations under section 125 of the Bankruptcy Act of 1883); for 1900-1913: Parl. Papers 1914, lxvii (413), p. 53: 31st Annual Bankruptcy Report, 4 Aug. 1914 (includes administrations under section 125 of the Bankruptcy Act of 1883).

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[29] Gross domestic product is based upon C. H. Feinstein, Statistical Tables of National Income, Expenditure and Output of the U. K., 1855-1965 (Cambridge, 1976).

Apparently bankruptcy losses as a percentage of gross domestic product markedly declined from 1870 to 1913.[30] After 1892, such losses never amounted to more than one-half of a percent of the gross domestic product.

Occasional interruptions in this secular trend resulted from either brief declines in economic activity in general or an exceptionally large individual bankruptcy. In the former category is the year 1904, in which losses from individual bankruptcies involving liabilities in excess of £20,000 almost doubled from the previous year. Although larger bankruptcies in 1904 were only a fraction of the total number of bankruptcies, they represented almost forty percent of the total liabilities in bankruptcy.[31] The following year, however, the number of bankruptcies returned to the 1903 level. The increase in losses in 1878 was of a different nature. This increase is attributable, in part, to one large failure, that of the City of Glasgow Bank.[32] Although 1910 saw the smallest number of failures since 1884, the exceptionally large failure of the Charing Cross Bank increased the total losses significantly. The Charing Cross Bank alone had liabilities of almost £3 million, with all assets deemed 'doubtful' by the Board of Trade.[33] Despite these occasional

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[30] E. J. Hobsbawm has noted the presence of this trend. E. J. Hobsbawm, Industry and Empire: From 1750 to the Present Day (1961; London, 1990), p. 184.

[31] Parl. Papers 1905, lxxii (250), p. 11: 22nd Annual Bankruptcy Report, 20 July 1905.

[32] Parl. Papers 1886, 'First Report of the Royal Commission Appointed to Inquire Into the Depression of Trade and Industry', op. cit., p. 38.

[33] Parl. Papers 1911, lxxxvi (282), p. 24: 28th Annual Bankruptcy Report, 16 Aug. 1911.

increases, however, there is a clear secular trend of decline in the level of bankruptcies from the mid-1880s until 1913.

Much of the decline can be explained by the growing use of joint stock companies, which tended to shift a larger share of insolvency into the category of company winding-up. This shift will be discussed in more detail in the section on company winding-up. In general, the number of companies registered in England was increasing significantly during the period. The number of registered companies increased from around 14,000 in 1892 to over 30,000 in 1903.[34] The growing use of joint stock companies was bound to affect the level of insolvency reflected in non-company bankruptcies. Yet it does not appear that such a dramatic decline in the number of bankruptcies, from an average of .56 percent of the gross domestic product in 1885-89 to less than half that in 1909-13, can be totally explained by such a shift. The estimated losses from company winding-up, as well as from private arrangements, were also declining in the thirty years before the First World War. It seems plausible that factors in addition to a shift to company winding-up worked to lower the level of bankruptcy losses.

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[34] Parl. Papers 1903, lxiv (357), p. 600: 'Return of the Companies Registered ...', 14 Aug. 1903.

Private Arrangement levels, 1842-1913

Filing a bankruptcy petition against an insolvent debtor was not the only option for a creditor. In most cases, formal bankruptcy was the least desirable action because of cost and delay. Creditors often worked out arrangements or schemes with an insolvent debtor to avoid bankruptcy. If a debtor and all his creditors agreed, a debtor's estate might be liquidated privately, each creditor being paid his pro rata share of the assets, a type of agreement commonly referred to as a 'composition'. In other instances, the debtor would continue to operate his business under restrictions imposed by the creditors and attempt to pay off his debts over time. The creditors' restrictions were usually set out in a deed of arrangement or deed of inspectorship. Total agreement among all the creditors was a prerequisite to the implementation of either type of deed. If the debtor and his creditors agreed to any type of arrangement, the court would have no involvement since the arrangements were private contracts.

A difficulty arose, however, when a minority of creditors did not want to accept the proposed composition or deed. Over time, the bankruptcy statutes began to compel the minority creditors to accept a plan the majority believed advisable. The first statute dealing with compositions was enacted in 1697; however, it only applied to those actually declared bankrupts, and Parliament repealed it the following

year.[35] The 1817-1818 Parliamentary select committee reported that the public strongly favoured compositions.[36]

The Bankruptcy Act of 1825 provided that nine-tenths of the creditors in number and value assembled in a meeting advertised in the London Gazette could accept an offer of composition and make it binding on all creditors.[37] In 1849, the requisite number to approve a composition prior to the adjudication of bankruptcy was reduced to three-fifths in number and value of creditors who proved debts in an amount of at least £10. Deeds of arrangement could be accepted by six-sevenths in number and value of creditors whose debts amounted to £10 or more.[38] In both cases, a majority decision bound the minority.

There is little information to show the exact extent to which these private arrangements prevailed before 1860, such arrangements did not have to be registered with any department of government. Although private arrangements were popular, solicitors apparently did not like to work with them because court officials frowned on such arrangements.[39] However, circulars returned to the 1854 royal commission appointed to study the operation of the bankruptcy law

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[35] 8 & 9 Wm. III, c. 18 (1697) (two-thirds of the creditors in number and value to confirm a composition).

[36] Parl. Papers 1818, vi (276), op.cit., p. 8.

[37] 6 Geo. IV, c. 16, s. 133 (1825). The statute does not mention arrangements.

[38] 12 & 13 Vict., c. 106 (1849). Compositions accepted after the adjudication of bankruptcy required the approval of nine-tenths of the creditors in number and value.

[39] Leeds Chamber of Commerce Papers (hereinafter 'Leeds CC Papers'), Vol 2, p. 231, 30 July 1856.

revealed many people avoided bankruptcy courts through the use of compositions. The royal commission reported that in the financial crisis of 1847 only nine out of one hundred and twenty commercial houses that suspended or stopped payment passed through the court of bankruptcy.[40] Sometime these compositions could represent large failures. The only nineteenth-century composition that is preserved in the Greater London Record office records £2030 in total debts for a Middlesex linen draper.[41]

There was a private concern that kept some record of these agreements during at least part of the 1840s and 1850s. For the convenience of creditors, Thomas Perry maintained an office in London called the 'Bankrupt and Insolvency Registry Office'. The 1854 royal commission on bankruptcy fees preserved a glimpse of these statistics (Table 3.5).[42]

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[40] Parl. Papers 1854, xxiii [cmd. 1770], p. 21: 'Copy of the Report of Her Majesty's Commissioners Appointed to Inquire Into Fees, Funds, and Establishments of the Court of Bankruptcy, and the Operation of the Bankruptcy Consolidation Act, 1849...', 10 Apr. 1854.

[41] Greater London Record Office, ACC 88619, Deed of Composition and release, Joseph Blake, 3 Mar. 1826.

[42] Parl. Papers 1854, xxiii [cmd. 1770], op.cit., p. 542.

Table 3.5 Number of compositions in England and Wales, 1843-1853, estimated by Thomas Perry, Change Alley, Cornhill from materials kept by him in his 'Bankrupt and Insolvent Registry Office'

Year	Compositions	Assignments inclusive of those Gazetted	Total
1842 to 11 November 1843	10,440	1,051	11,491
11 November 1843 to 9 August 1844	8,352	819	9,171
year ending 11 October 1846	6,960	1,391	8,351
" " 1847	9,860	1,589	11,449
" " 1848	8,932	1,331	10,263
" " 1849	7,192	915	8,107
" " 1850	6,972	1,388	8,360
" " 1851	6,032	1,063	7,095
" " 1852	6,032	1,182	7,214
" " 1853	6,264	952	7,216

Apparently this trend continued until the 1860s. A letter to the editor of The Times in 1859 stated that Perry's Bankrupt and Insolvent Weekly Gazette reported the number of compositions, assignments, and arrangements out of court to be ten to twelve thousand annually.[43]

The extent of the use of assignments and compositions can also be seen in a return produced by the Wholesale Drapers' and Grocers' Society for the 1854 royal commission. In each year between 1847 and 1852, out of the total number of failures of drapers and grocers (not just members of the society), between seventy-five and eighty-five percent were

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[43] The Times, 28 Feb. 1859, p. 6.

handled as assignments or compositions. Out of a total of 537 failures in 1850, 120 were arranged under deeds of assignment and 296 by composition.[44]

These statistics prove that creditors extensively used private arrangements. Any discussion of the level of insolvency during the period must take them into consideration. Unfortunately, the amount of creditors' losses involved in these private arrangements remains unknown.

The Bankruptcy Act of 1861 required the registration of 'Every Deed, Instrument or Agreement whatsoever' by which a bankrupt debtor conveyed property or made any agreement with creditors. If no registration took place then the document could not be received in evidence and would be legally unenforceable.[45] As a result of this requirement, statistics are available on private arrangements between 1862 and 1869, when Parliament abolished the requirement (Table 3.6).

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[44] Parl. Papers 1854, xxiii [cmd. 1770], op.cit., p. 543.

[45] 24 & 25 Vict., c. 134, s. 194 (1861).

Table 3.6 Assignments and compositions, 1862 -1870

Year	Assignments, arrangements etc.	Compositions	Total
1862*	2,011	640	2,651
1863	2,327	689	3.016
1864	2,256	1,348	3,604
1865	2,860	2,344	5,204
1866	2,744	2,714	5,458
1867	2,941	3,971	6,912
1868	2,799	5,246	8,045
1869**	2,141	2,527	4,668

* The Bankruptcy Act of 1861 commenced on 12 October 1861. This figure reflects bankruptcies from that date until 11 October 1862.

** to 11 October 1869

Source: Parl. Papers 1878-79, lix (222), p. 1: 'General Report by the Comptroller in Bankruptcy', 11 June 1879.

Compositions and assignments averaged a total of almost 5,000 per year between 1862 and 1868. The Perry figures for the period 1846 to 1853, to the contrary, show an average of over eight thousand annually. Even when the years 1847 and 1848 are not considered because of the unusually high numbers in these years, the average for the Perry figures is still over seven thousand per year. One reason for this discrepancy might be that Perry's figures were kept for the benefit of creditors who were considering extending credit to a particular debtor, making it necessary to have as complete a list as possible, including even insignificant insolvencies. In contrast, the prime motivation to register a private arrangement in the 1860s was to insure that the document was legally enforceable; therefore, many insignificant arrangements may not have been registered. Either this explanation, or some

other one based upon the incompatibility of the two series, seems to be more plausible than an explanation based upon a general improvement in the economy. It is difficult to believe that an improvement in the economy could explain a forty-two percent decrease in the number of private arrangements.

Evidence also exists which allows for a rough estimate of the loss to creditors from insolvencies handled through private arrangements during the 1860s. For the years 1864-1868, the records give the gross value of estates. For only two of these years, however, 1867-1868, are gross amount of unsecured debts under deeds of assignment, number of deeds of inspectorship, and number of compositions available (see Appendix D). Applying the 1867-1868 average percentage by which the gross amount of unsecured debts exceeded the gross value of the estate (40.5%) to the 1864-1867 gross value of estate figures, the gross amount of unsecured debts for the entire period 1864-1868 can be estimated. Then applying the Board of Trade's formula, an estimate of creditor losses can be made (Table 3.7).[46]

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[46] The Board of Trade's formula was not used to reduce the composition asset figure because this figure represents composition amounts actually paid.

Table 3.7 Estimated creditor losses under compositions, deeds of assignment and deeds of inspection, 1864-1868

Year	Compositions	Deeds of Assignment	Deeds of Inspection	Total
1864	£ 1,760,465	£ 2,138,600	£ 5,948	£ 3,905,013
1865	4,652,312	3,649,500	28,373	8,240,185
1866	4,205,842	3,619,800	15,304,500	23,130,142
1867	4,819,332	3,504,700	9,670,370	17,994,402
1868	5,683,645	2,499,500	4,919,103	13,102,248

For the period 1869 to 1883, as explained earlier, the provisions of the Bankruptcy Act of 1869 made private arrangements popular. As a result of the statute's requirement that all majority-imposed agreements be recorded, large numbers of such compositions and liquidations were registered. (The asset and liability figures for these registered private arrangements (1870-1883) are given in Appendix E.) In addition, the estimated loss to creditors from registered compositions and liquidations by arrangement from 1870 to 1883 based upon application of the Board of Trade's formula can be calculated (Table 3.8).

Table 3.8 Estimated loss to creditors from registered compositions and liquidations by arrangement, 1870-1883 based on the Board of Trade's formula

Year	Compositions Amount (% GDP)	Liquidations by arrangement Amount (% GDP)	Total Amount (% GDP)
1870	£ 2,112,869 (.20)	£ 4,889,172 (.46)	£ 7,002,041 (.66)
1871	2,435,493 (.21)	5,007,306 (.44)	7,445,234 (.65)
1872	2,173,800 (.18)	6,834,022 (.56)	9,007,822 (.74)
1873	2,891,769 (.23)	8,598,644 (.69)	11,490,413 (.92)
1874	3,731,606 (.29)	9,054,780 (.71)	12,786,386 (1.00)
1875	4,294,854 (.34)	9,724,916 (.79)	14,019,770 (1.13)
1876	4,107,831 (.33)	8,844,514 (.72)	12,952,345 (1.05)
1877	3,474,994 (.29)	9,184,882 (.76)	12,659,876 (1.05)
1878	4,273,272 (.36)	11,514,319 (.97)	15,787,591 (1.33)
1879	5,075,085 (.45)	13,604,683 (1.02)	18,679,768 (1.43)
1880	3,110,218 (.25)	7,315,868 (.59)	10,426,086 (.84)
1881	3,310,951 (.27)	8,501,041 (.69)	11,811,992 (.96)
1882	3,622,156 (.28)	8,590,517 (.68)	12,212,673 (.96)
1883	2,916,638 (.22)	10,318,494 (.79)	13,235,132 (1.01)

The Bankruptcy Act of 1883 had no requirement that all private arrangements be registered with the court. Thus there is no statistical record of the number of private arrangements unanimously approved by creditors between 1884 and 1887 when the law was changed again. In addition, the act imposed strict examinations of bankrupt debtors. Officials admitted at the time that this requirement drove debtors to reach unanimous agreements with their creditors and increased the numbers of insolvencies outside the statistics kept by

the Board of Trade.[47] The situation changed in 1887 when Parliament passed the Deeds of Arrangement Act, making all deeds of arrangement void, unless registered with the registrar of the bills of sale.[48] The act broadly defined 'deed of arrangement' to include assignments of property, a deed or agreement for a composition, and where creditors of a debtor obtained control over the debtor's property,

> ... any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorizing any other person to manage, carry on, realize, or dispose of the debtor's business, with a view to the payment of his debts.[49]

Registration included stating the 'amount of property and liabilities included under the deed, as estimated by the debtor ...'.[50]

The extent to which debtors and creditors after 1887 reached agreements outside both the bankruptcy act and the deed of arrangement act is unclear. The inspector-general in bankruptcy commented in his 1889 report that the passage of the Deeds of Arrangement Act made it possible for the first time to estimate the total amount of insolvency under deeds of arrangement.[51] The Accountant disagreed, stating that

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[47] Parl. Papers 1886, lx [cmd. 4815], p. 11: 3rd Annual Bankruptcy Report, 17 June 1886.

[48] 50 & 51 Vict., c. 57, s. 5 (1887).

[49] Ibid., s. 4 (2) (e).

[50] 50 & 51 Vict., c. 57, s. 7 (e). Since the Bankruptcy Act of 1890 required an annual report by the Board of Trade on deeds of arrangement similar to the report filed on bankruptcies, all trustees under deeds of arrangements had to transmit a verified account to the Board of Trade.

[51] Parl. Papers 1889, lxx [cmd. 5791], p. 9: 6th Annual Bankruptcy Report, 25 July 1889. The concern that large numbers of unwritten arrangements were being missed in the

(Footnote Continued)

'our experience ... leads to quite a different conclusion ... lawyers have long ago learnt to evade the [Deeds of Arrangement] Act to find a private arrangement effectually carried out without any document whatsoever'.[52]

Once again, applying the Board of Trade's formula to the asset and liability information on deeds of arrangement for 1888-1913 (Appendix F), one can estimate the losses to creditors from private arrangements from 1888 to 1913 (Table 3.9).

(Footnote Continued)
statistics continued. In response to a critical newspaper article, the inspector-general in his report for 1901, however, once again stated his belief that this was not the case and that most private agreements were being recorded. His opinions were based upon interviews with several bankers. Parl. Papers 1902, xciii (318), p. 11: 19th Annual Bankruptcy Report, 1 Aug. 1902.

[52] Quoted in The Times, 26 Sept. 1889, 'Money Market and City Intelligence', p. 12.

Table 3.9 Estimated loss to creditors from deeds of arrangement, 1888-1913

Year	Amount (% GDP)	Year	Amount (% GDP)	Year	Amount (% GDP)
1888	£3,353,428 (.26)				
1889	3,142,714 (.23)				
1890	2,948,506 (.21)	1900	£2,771,462 (.15)	1910	£2,228,438 (.11)
1891	3,228,395 (.22)	1901	2,647,434 (.14)	1911	2,755,793 (.12)
1892	4,194,633 (.30)	1902	2,829,082 (.15)	1912	2,147,258 (.09)
1893	5,509,535 (.40)	1903	2,850,914 (.15)	1913	1,858,178 (.07)
1894	4,522,094 (.32)	1904	3,344,475 (.17)		
1895	3,353,820 (.23)	1905	2,530,430 (.13)		
1896	3,076,659 (.20)	1906	2,792,886 (.14)		
1897	2,834,320 (.18)	1907	3,354,034 (.16)		
1898	2,659,404 (.16)	1908	3,731,223 (.19)		
1899	2,307,073 (.13)	1909	2,691,281 (.13)		

Source: for 1888-1892, Parl. Papers 1894, lxxvii (304), p. 9: 11th Annual Bankruptcy Report, 17 Aug. 1894 (modified to reflect 1899 Board of Trade formula); for 1894-1903, Parl. Papers 1904, lxxxvii (312), p. 9: 21st Annual Bankruptcy Report, 4 Aug. 1904; for 1904-1913, Parl. Papers 1914, lxvii (413), p. 11: 31st Annual Bankruptcy Report, 4 Aug. 1914.

A long range trend showing a decline in the estimated losses from deeds of arrangement between 1888 and 1913 is not as distinct as it was for bankruptcies (Table 3.9). Although the picture is complicated by the fluctuations in the series (which will be discussed in the following chapter), nevertheless, there is some suggestion that the rate of loss declined over the period. For example, between 1888 and 1892 the loss averaged 0.24 percent of GDP, while between 1907 and 1911, a comparable period, the average was only 0.14 percent.

Company Winding-up levels, 1844-1913

Paralleling the development of company law during the nineteenth-century was the evolution of law dealing with the 'winding-up' of companies and partnerships. In 1844, Parliament removed all necessity of obtaining letters patent from the Crown in order to form a company and required that only certain regulations be met.[53] In the same session, Parliament passed an act dealing with the winding-up of companies and partnerships, which provided that if bankruptcy occurred a fiat in bankruptcy could issue and, the court 'may proceed thereon in like Manner as against other Bankrupts, ...' subject to the provisions of the act.[54] In other words, the bankruptcy of a company was to be handled in the same manner as against an individual. Even so, the act provided that a bankruptcy proceeding against a company did not affect the creditors' rights to proceed against individual shareholders. The creditor before doing so, however, had to prove his debt against the company and receive leave of the Chancery Court to proceed against the shareholder.[55]

The Joint Stock Companies Winding-up Act of 1848 allowed any person claiming to be a contributory of a company to

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[53] 7 & 8 Vict., c. 110 (1844).

[54] 7 & 8 Vict., c. 111 (1844). The act applied to any commercial or trading company incorporated by a charter or act of Parliament or any compact to which privileges or powers had been granted. Also included were 'joint stock companies' as defined under 7 & 8 Vict., c. 110, namely every partnership where capital is divided into shares, every partnership which consists at its formation of twenty-five members and other specifically innumerated companies, ie. assurance companies, friendly societies etc.

[55] Holdsworth, A History of English Law, op.cit., 15. 51.

petition the Lord Chancellor or the Master of the Rolls 'in a summary Way for the Dissolution and Winding-up ...' where the company committed an act of bankruptcy, filed a declaration of insolvency, left a judgement unpaid, etc.[56] If a bankruptcy petition had already been filed, only the creditors' assignee could present this petition for summary Chancery procedure. Yet another act dealing with the winding-up of companies followed in 1849 that made certain technical amendments and extended the applicability of the company winding-up statute to partnerships of more than seven persons.[57]

These three acts of 1844, 1848, and 1849 created a conflict of jurisdiction between the Chancery and Bankruptcy Courts. On one hand, the Bankruptcy Court was not permitted to enforce contributions from shareholders. The Chancery Court, on the other hand, was helpless to stop individual actions against shareholders by creditors of the company so as to insure for each class of shareholders that their liabilities would be ratably adjusted.[58]

The 'Joint Stock Companies Act, 1856', which introduced limited liability to English company law also made far reaching changes in the way companies were to be wound-up.[59] The act allowed for a petition for the winding-up of a company to be filed with the Court of Bankruptcy having

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[56] 11 & 12 Vict., c. 45, s. 5 (1848).

[57] 12 & 13 Vict., c. 108 (1849).

[58] Holdsworth, A History of English Law, op.cit., 15. 53.

[59] 19 & 20 Vict., c. 47 (1856). This consolidating act repealed the company acts of 1844, 1847 and 1855 and the winding-up acts of 1844, 1848 and 1849.

jurisdiction in the location of the registered office of the company. The act took the Chancery Court out of the winding-up process and allowed it to refer its winding-up orders to the proper bankruptcy court. As with bankruptcy cases, upon the presentation of the petition, the court appointed an official liquidator to manage the affairs of the bankrupt company or partnership. Also, for the first time, the statute introduced regulations for the voluntary winding-up of a company outside of the auspices of court supervision.

With the Companies Act of 1862, Parliament expanded the regulation of the winding-up of companies. It made provision for the court to step in where a company was being voluntarily wound-up and to order that such liquidation be handled under the supervision of the court.[60] Following the success of the Bankruptcy Act of 1883, Parliament sought to have the provisions of the law dealing with company winding-up resemble those of the law pertaining to bankruptcy. The 'Companies (Winding-up) Act, 1890'[61] resulted, under which, as with bankruptcy procedure, immediately upon the filing of a petition for company winding-up, the official receiver in bankruptcy became the provisional liquidator of the company or partnership. The act gave the creditors the opportunity to decide at a later date whether to retain the official receiver as liquidator or appoint their own liquidator. Other

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[60] 25 & 26 Vict., c. 90 (1862). The act applied generally to any partnership, association, or company of more than seven persons whether of limited or unlimited liability, except railway companies incorporated by an act of Parliament. The act also applied to banking and insurance companies, which had been excluded under the 'Joint Stock Companies Act, 1856', 19 & 20 Vict., c. 47 (1856).

[61] 53 & 54 Vict., c. 63 (1890).

aspects of the bankruptcy system were adopted for company winding-up, including the appointment of a committee of inspection consisting of creditors. This statutory framework continued in force with only minor modification until the First World War.[62]

Statistics regarding company winding-up prior to the Company (Winding-up) Act of 1890 are rare[63]; no statistics regarding assets and liabilities of companies liquidated prior to 1893 have been published. The total number of compulsory, supervised, and voluntary liquidations from 1891 to 1913 (Appendix G) averaged over 1300 per year for the period 1891-1900, over 1700 for 1901-1910, and over 2000 for 1911-1913. Throughout the entire period from 1891 to 1913, compulsory liquidations annually represented around seven percent of the total. Between 1891 and 1894, this number averaged as much as twelve percent per year.

Since the government had access only to information concerning companies compulsorily wound up, and because these companies only represented a small proportion of the total companies liquidated each year, information on the extent of losses due to company liquidations is limited. Data exists as to the losses to creditors from companies compulsorily wound-up (Table 3.10) but not for those that were voluntarily wound up.

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[62] 8 Edw. VII, c. 69 (1908).

[63] H. A. Shannon, 'The Limited Companies of 1866-1883', Econ. H. R., iv (1933), 290-316.

Table 3.10 Losses to creditors from companies compulsorily wound-up by liquidators, 1893-1913

Year	Amount (% GDP)	Year	Amount (% GDP)	Year	Amount (% GDP)
		1900	£ 3,769,572 (.21)	1910	£3,589,890 (.17)
		1901	10,128,514 (.54)	1911	7,003,464 (.32)
		1902	13,410,628 (.72)	1912	4,566,811 (.21)
1893	£9,003,897 (.66)	1903	2,578,172 (.13)	1913	6,206,626 (.26)
1894	6,303,985 (.45)	1904	3,583,865 (.19)		
1895	2,942,990 (.20)	1905	3,455,577 (.18)		
1896	2,031,259 (.13)	1906	2,724,497 (.13)		
1897	3,942,931 (.25)	1907	2,607,788 (.13)		
1898	3,487,647 (.21)	1908	3,213,685 (.16)		
1899	3,369,238 (.19)	1909	5,816,085 (.29)		

Sources: for 1893-1895: Parl. Papers 1896, lxxvi (334), p. 172: 5th Annual Companies (Winding-up) Annual Report, 7 Aug. 1896; for 1896-1905: Parl Papers 1906, cix (232), p. 1139: 15th Annual Companies (Winding-up) Annual Report, 4 July 1906; for 1906-1913: Parl. Papers 1916, vi (134), p. 521: 25th Annual Companies (Winding-up) Annual Report, 14 Nov. 1916.

The ratio of companies compulsorily wound-up to those voluntarily wound-up declined from fourteen percent in 1891 to only seven percent in 1913.[64] The Board of Trade attributed the decline in the percentage of companies being compulsorily wound-up to several factors, including the independent investigation involved when the court ordered a company to be wound-up. Other factors the board pointed to were the increased number of 'one man companies', in which there was a strong desire to avoid making public the reason for failure,

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[64] Parl. Papers 1911, lxxxvi (216), p. 697: 20th Annual Companies Report, 5 July 1911; Parl. Papers 1918, vii (103), p. 726: 27th Annual Companies Report, 1 Aug. 1918.

the increased practice of issuing debentures beyond the value of assets, and finally the difficulty in quickly obtaining a winding-up order from the court where there was an absence of fraud and no assets for unsecured creditors.[65]

The Board of Trade was aware of the gap caused by voluntary company winding-up in the statistical picture of insolvency. The inspector-general in bankruptcy, in his report of 1894, regretted 'the lack of adequate information with regard to the large class of limited companies which annually go into involuntary liquidation, and many of which involve trading liabilities of large amounts, still leaves an important gap in the general statistics of insolvency ...'.[66]

Despite the lack of evidence regarding companies voluntarily wound-up, the Board of Trade did try to estimate, once in 1899 and again in 1903, the loss resulting from all companies being wound-up. A request from a member of Parliament Charles McArthur for the amount of paid-up capital, loss to shareholders, and loss to creditors for the year 1896 resulted in the first attempt at such an estimate. To prepare a return, the Board of Trade sent circulars to liquidators of all companies that went into liquidation in 1896, under the 1862 or the 1890 Companies Acts.[67] McArthur, in cooperation with the Board of Trade, selected the year 1896 apparently

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[65] Parl. Papers 1897, lxxx (339), p. 8: 6th Annual Companies (Winding-up) Report, 23 July 1897..

[66] Parl. Papers 1895, lxxxviii (418), p. 9: 12th Annual Bankruptcy Report, 16 Aug. 1895.

[67] Parl. Papers 1899, lxxxviii (331), pp. 316-17: 8th Annual Company (Winding-up) Report, 4 Aug. 1899.

because it was distant enough that a large number of liquidations would exist and because the year did not include any unusual insolvencies.[68] Not all liquidators responded to the circular, because the assets had been exhausted before liquidation, the assets depended on the results of liquidation proceedings, or the liquidator did not have the means to pay the expenses involved in preparing a response.[69] As for the circulars returned, the inspector-general for company winding-up noted that 'the information obtained in reply has, where it appeared desirable, been verified by a reference to other sources of information'.[70]

The results of the survey showed that out of a total of 1179 voluntary liquidations 595 companies were liquidated at a total loss of over £13 million, another 332 companies were liquidated with no loss, and with 252 of the companies, the information was wanting or incomplete.[71] To estimate the loss for the 252 companies where information was incomplete, the board applied the same ratio of number of companies to loss that existed among the known 595 voluntary liquidations. This yielded an estimated loss of £5.5 million. Combining these figures with known losses from compulsory liquidations, the board estimated the total losses from all companies

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[68] Parl. Papers 1899, lxxxviii (331), op.cit., p. 317.

[69] Ibid., p. 318.

[70] Ibid., p. 317. The Inspector-General in Bankruptcy and the Inspector-General for Company Winding-up were the same person.

[71] Parl. Papers 1899, lxxxviii (328), p. 456: 'Return of the Names of all the Companies registered in England which were ordered wound up by the Court ... during the Year ending 31 December 1896 ...', 4 Aug. 1899.

commencing liquidation in the year 1896 to be almost £21 million (Table 3.11).

Table 3.11 Total loss from all companies commencing liquidation in the year 1896

Companies wound-up by the court	£	2,009,749
595 companies wound-up under voluntary resolutions		13,105,662
252 companies wound-up under voluntary resolutions (estimated -- information wanting or incomplete)		5,550,632
TOTAL	£	20,666,043

There are at least two weaknesses in this estimate. First and most obvious is the blanket application of the loss ratio of the 595 companies for which information was complete to the 252 companies for which information was lacking. Officials took no account, for example, for the possibility that some of the 252 companies might have been liquidated without a loss, although such an occurrence was probably rare. Second and more important, the board made no deduction to reflect the true value of vendors' shares. Of the companies wound-up both voluntarily and compulsorily for which information was available, the amount of paid-up capital issued as paid-up, otherwise than for cash, totaled over £11 million. The loss on shares issued as paid-up otherwise than for cash was almost £7 million. The inspector-general's report states that while the value of vendors' shares may be fictitious, 'many of them were placed on the market and purchased by investors for cash, and so far as this was the

case the losses were sufficiently real'.[72] For the board's estimate to be accurate, however, some deduction must be made in the stated loss on vendors' shares to reflect the true value of those shares. D. H. Macgregor, in an article on the risk factor in joint stock companies, discounts vendors' shares during the late nineteenth and early twentieth-centuries at one-third their stated value.[73] This seems to be a minimum deduction. The company (winding-up) report for 1901 commented that 'the greater part of the vendors' capital may be regarded as fictitious'. The report explained that this was because 'the conditions on which companies are formed are determined, not by those who supply the actual capital, but by the vendors themselves'.[74]

If Macgregor's discount is applied to the board's estimate for losses in 1896, as it should be, to gain a more accurate estimate, then the losses for all companies liquidated was more likely around £14 million rather than just over £20 million.

In 1903, the Board of Trade tried again to estimate total losses from company winding-up, including voluntary liquidations. They frankly admitted that 'an accurate statement ... is impossible in regard to voluntary winding-up, owing to the fact that information in these cases is

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[72] Parl. Papers 1899, lxxxviii (331), op.cit., p. 318.

[73] Macgregor, op.cit., p. 501.

[74] Parl. Papers 1902, xciii (372), p. 206: 11th Annual Company (Winding-up) Report, 14 Nov. 1902.

extremely defective'.[75] The key to this estimate is section 15 of the Companies (Winding-up) Act of 1890, which required all companies being liquidated, including those being liquidated voluntarily, whose liquidation was not completed within one year, to make a return indicating estimated losses to shareholders and creditors. Within this class of liquidations, the Board found almost 4500 companies that went into liquidation after 31 December 1890 and that were finally wound-up between 1893 and 1902. These companies had a total estimated loss of over £120 million.[76] In the same period, there were almost eight thousand companies for which there was no information available because they were either wound-up within one year of the commencement of the liquidation or liquidations were still outstanding.[77] To come up with an estimated loss for this second category, the Board merely took a 'per case' figure of approximately £2,681 (calculated by dividing the 4,494 known liquidations into the £120,508,387 known loss) and multiplying it by the 7,984 cases for which there was no information. They estimated a loss of over £214 million for the class of companies for which there was no information.

When these estimated losses are combined with known losses under compulsory liquidations, the board's

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[75] Parl. Papers 1903, lxiv (291), p. 200: 12th Annual Company (Winding-up) Report, 30 July 1903.

[76] Parl. Papers 1903, lxiv (291), op.cit., p. 201.

[77] Ibid., p. 200.

calculations yielded a total estimated loss of over £382 million for the ten year-period (Table 3.12).

Table 3.12 Board of Trade's estimated losses to shareholders and creditors from all companies that went into liquidation after 31 December 1890 and that were finally wound-up between 1893 and 1902

	£ (millions)
Companies compulsorily wound-up by the court	£ 48
4,494 companies wound-up voluntarily and making returns under Sec. 15 of the Companies (Winding-up) Act of 1890	120
7,984 companies which were either wound-up within one year of the commencement of the liquidation or which are still outstanding (estimated -- no information available)	214
TOTAL	£ 382

This estimate repeats many of the problems that existed with the board's 1899 estimate. If this 1903 estimate is correct, losses averaged over £30 million per year between 1891 and 1902. This seems excessive when one considers that the board's only detailed estimate for one of the ten years studied, 1896, revealed a loss of only approximately £20 million. The year 1896 was one of average prosperity, mid-way between a peak and a trough in the trade cycle. It seems unlikely, therefore, that bankruptcy losses in 1896 would have been a third less than the ten year average predicted by the Board of Trade's 1903 survey.

Another problem lies with the almost £180 million attributed by the board to a loss on vendors' shares. As with the 1896 estimate, this loss on vendors' shares has not been reduced to take into account the actual value of the shares.

The inspector-general admitted that a large portion of the vendors' capital was originally inflated or 'that it never represented real assets'. Nonetheless he believed that some loss was involved.[78]

Finally, no account was taken of the fact that some of the companies for which no information was available might have been liquidated without a loss. Based upon the 1896 experience, some most certainly were.

If one assumes that the same percentage of companies for which there was no information were liquidated without a loss as there was with companies for which there was information, and if vendors' shares are taken at one-third their stated value, then the Board's 1893-1902 estimated loss falls from approximately £382.5 million to approximately £216 million, an average of £21 to £22 million annually.[79]

Using the Board's 1903 estimate, Macgregor calculated the average shareholder loss (excluding loss to creditors) for 1893-1902 to be 2.7 percent of the average capital at risk (2.8% of the average annual paid-up capital of registered operating companies).[80] Macgregor arrived at this estimate by dividing the average loss to shareholders (£35 million unadjusted to account for overvalued vendor shares) by £1,285 million, the annual average capital at risk (unadjusted to account for overvalued vendor shares). A slightly

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[78] Parl. Papers 1903, lxiv (291), op.cit., p. 199.

[79] The Board's estimate also failed to use the exact figures for losses represented by companies compulsorily wound-up by the court. The revised estimate uses the exact figures.

[80] Macgregor, loc.cit.

smaller estimate results from the revised figures in this thesis, which account for some liquidations without loss and discounting for inflated vendor shares. If one assumes that the total of vendors' shares represented the same percentage of total paid-up capital as it did in all liquidated companies, namely fifty-one percent, then the adjusted average annual paid-up capital would equal £811 million. Dividing this figure into the adjusted average annual loss of £17.6 million (£21.6 million less £4 million in creditors' losses) yields an annual average loss to shareholders of 2.17 percent of the average annual paid-up capital of registered operating companies, as compared to Macgregor's 2.8 percent. The same method applied to the 1896 estimate results in 1.94 percent.

From another perspective, the £21.6 million adjusted annual loss represents 58.5 percent of the average 'amount of capital involved' in all liquidations adjusted for overvaluation of vendors' shares.[81] Since statistics exist for the 'amount of capital involved' in the winding-up of companies in all categories (voluntary, compulsory, and supervised) through 1913, it is also possible to estimate a yearly loss due to company winding-up by applying the same method used with the 1893-1902 figures. That is, for each year, if one

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[81] From 1893, the Board of Trade published statistics for 'total capital involved in liquidations', that is, capital allotted to vendors and the public as fully or partly paid up. This information, at least as to voluntary liquidations, came from a 'private return furnished by the Registrar of Joint Stock Companies'. Parl. Papers 1894, lxxvii (305), p. 143: 3rd Annual Company (Winding-up) Report, 17 Aug. 1894. Since companies voluntarily wound-up within a year of the commencement of liquidation were under no obligation to file a return, and yet these companies were included in the statistics, it would seem that the 'private return' mentioned was filed at the inception of the company. It does not appear, therefore, that these statistics represent the amount of capital at the time of the liquidation (Appendix H).

adjusts the amount of capital involved by reducing vendors' shares by two-thirds and applies the 1893-1902 loss ratio (58.5 percent), a yearly estimate of losses can be made (Table 3.13).

Table 3.13 Estimates losses from all companies wound-up, 1892-1913

Year	Amount (% of GDP)	Year	Amount (% of GDP)
1892	£18,904,673 (1.37)	1900	£26,150,239 (1.43)
1893	17,118,034 (1.26)	1901	23,445,734 (1.24)
1894	18,051,813 (1.27)	1902	24,336,800 (1.31)
1895	14,040,500 (.97)	1903	23,745,154 (1.28)
1896	18,630,693 (1.24)	1904	19,498,835 (1.04)
1897	20,977,952 (1.38)	1905	19,640,758 (1.02)
1898	25,109,399 (1.55)	1906	19,387,802 (.98)
1899	28,198,621 (1.62)	1907	18,136,178 (.90)
		1908	22,518,179 (1.16)
		1909	24,797,538 (1.24)
		1910	18,856,247 (.89)
		1911	17,405,207 (.80)
		1912	21,907,981 (.99)
		1913	17,709,539 (.75)

These estimates have several weaknesses. The loss ratio for the 1893-1902 estimate (58.5 percent) is applied throughout, a ratio calculated on several questionable assumptions about the 1893-1902 period, especially concerning a large percentage of companies for which there was no information. In addition, there is no proof that the ratio is or is not applicable to the 1903-1913 period. This estimate also

assumes that the value of vendors' shares has been reduced by two-thirds throughout the period, a rough figure, considering that overvaluation of vendors' shares might well have declined over the period. Given the large number of reconstructions and amalgamations that occurred particularly between 1895 and 1900 (see Chapter Four), and since the capital of these companies was included in the category 'total capital involved in liquidations' whether or not they actually suffered a loss, the estimated losses during this five year period is probably inflated. Even with these reservations in mind, the estimates (Table 3.13) most closely approximate the total losses from company winding-up, though they are likely an upper bound.

The secular trend for losses from company winding-up, just as with bankruptcy and to some extent private arrangements, declines in the period from 1893 until the First World War. While the level of losses attributable to company winding-up fluctuated, the secular trend shows an overall decrease in the losses as a percentage of gross domestic product (Table 3.13). Peaking at 1.62 percent of the gross domestic product in 1899, losses steadily decline, with the exception of the period 1908-1909, to only .75 percent in 1913. This secular trend is also confirmed by the decline in the percentage of companies entering liquidation for all reasons from seven percent in 1883 to only 3.4 percent in 1913.[82]

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[82] Macgregor, op.cit., p. 499.

Despite this decline, the proportion of total insolvency made up by company winding-up increased during the period at the expense of bankruptcies and private arrangements. In 1893, company winding-up represented only fifty-seven percent of total insolvency losses. By 1913, that percentage had increased to over seventy percent annually. There were early warnings of this trend. In 1889, the inspector-general in bankruptcy noted the danger of debtors forming joint stock companies to transfer an insolvent business to the public.[83] In 1899, the company winding-up report cited numerous cases of companies being insolvent at their creation and having as their main object to escape the penalties of bankruptcy.[84] An insolvent debtor would form a company, creating fictitious capital by issuing paid-up shares without any tangible basis in assets and goodwill. The new company could incur debts with credit based upon the fictitious capital. Profit generated could gain the debtor release from his older liabilities for which he was individually liable. 'The object', the report stated, 'is to gain time for the transformation of business from a state of personal insolvency, liable to be dealt with under Bankruptcy Laws, into a form where these laws ceased to operate ...'.[85]

Savoy Press Limited exemplifies the abuse of joint stock companies. An undischarged bankrupt named Abbotts formed Savoy Press in January 1896 to take over his insolvent

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[83] Parl. Papers 1899, lxx [cmd. 5791], op.cit., pp. 27-28.

[84] Parl. Papers 1899, lxxxviii (331), op.cit., p. 320.

[85] Ibid., pp. 320-21.

publishing business. Abbotts' new company obtained subscriptions totaling £533. The new company paid Abbotts £1,500 in cash, shares, and debentures for his old business. Savoy Press during its brief two and one-half year existence contracted debts totalling over £6,000 from among twenty-two creditors. When the business could no longer continue, Abbotts, as vendor, took possession of the property of Savoy Press in a debenture action. To make matters worse, Abbotts had carried out the same scheme only a few years before under the company name Beaumont Company Limited.[86]

The use of voluntary winding-up increased as the Company (Winding-up) Act of 1890 legislation made involuntary liquidation with its investigation by authorities less attractive. Between 1891 and 1895, voluntary liquidations as a percentage of all liquidations averaged 89 percent. From 1896 until the First World War, the percentage of voluntary liquidations never fell below 92 percent annually.[87] Again, one of the motivations for this trend was the avoidance of investigation and supervision required for companies compulsorily wound-up under the Company (Winding-up) Act of 1890. By 1899, the situation had become so untenable that the inspector-general for company winding-up urged that voluntary liquidations be placed under some supervision.[88] There were other causes for this shift. The 1897 Company Winding-up annual report attributed the trend to two additional factors: the increased

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[86] Parl. Papers 1899, lxxxviii (331), op.cit., p. 321.

[87] Parl. Papers 1911, lxxxvi (216), op.cit., p. 697.

[88] Parl. Papers 1897, lxxx (339), op.cit., p. 9.

practice of issuing debentures beyond the value of assets and the difficulty of obtaining a winding-up order from the court where there were no assets for unsecured creditors and no evidence of fraud.[89]

Summary

The data on aggregate levels of bankruptcy, private arrangements, and company winding-up leads to several conclusions. First, the Victorians' concern about financial failure was not unfounded. Taking the period between 1800 and 1861, bankruptcies roughly numbered between 1100 and 2000 annually, and losses from bankruptcy alone averaged between £4 and £5 million a year. Added to this were what must have been substantial losses from insolvencies handled through numerous private arrangements. During the 1840s and 1850s, such arrangements numbered between seven to ten thousand annually. With the 1860s a clearer picture of losses emerges. Losses from bankruptcies remained around £4 to £5 million each year. There is evidence, however, that losses from private arrangements averaged over £13 million per year in the 1860s. One must add to these losses those of failed joint stock companies, for which no detailed information is available before 1892. In the 1870s and until the passage of the Bankruptcy Act of 1883, estimated annual losses from bankruptcies averaged just over £4 million, and losses from private

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[89] Parl. Papers 1897, lxxx (339), op.cit., p. 8.

arrangements averaged £12 million per year.[90] After 1892, when estimates can be made not only for losses from bankruptcy and private arrangements, but also for company winding-up, total losses from all three components of insolvency averaged over £28 million annually -- averaging around £5 million for bankruptcy, £3 million for private arrangements, and £20 million for company winding-up.

Second, there is some indication that the level of all three components -- bankruptcy, private arrangements, and company winding-up -- declined relative to the economy as a whole during the period between 1892 and 1913 (Table 3.14).

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[90] This figure is also confirmed by a Board of Trade estimate made in 1884. Parl. Papers 1884-85, lxiv [cmd. 4503], p. 57: 2nd Annual Bankruptcy Report, 30 July 1885.

Table 3.14 Summary of losses to shareholders and creditors from bankruptcy, private arrangements and company winding-up as a percentage of gross domestic product, 1892-1913

Year	Losses as a % of GDP	Year	Losses as a % of GDP
1892	2.24	1906	1.38
1893	2.14	1907	1.31
1894	2.03	1908	1.59
1895	1.60	1909	1.62
1896	1.78	1910	1.35
1897	1.87	1911	1.20
1898	2.07	1912	1.29
1899	2.05	1913	1.01
1900	1.88		
1901	1.68		
1902	1.69		
1903	1.67		
1904	1.53		
1905	1.37		

At least there is a downward trend in the peaks, 1892 (2.24), 1898 (2.07) and 1907 (1.31) and the troughs, 1895 (1.60), 1905 (1.37) and 1913 (1.01). The extent to which the figures in Table 3.14 may reflect the influence of cyclical fluctuations is discussed in the following chapter.

Prior to 1870, there is insufficient evidence upon which to base definite conclusions about the level of insolvency. Not only is information about losses from bankruptcies and private arrangements incomplete, but also there is virtually no information on losses attributable to failed joint-stock

companies. Whether or not the insolvency level was increasing or declining is difficult to say. If losses from bankruptcy and private arrangements are any indication, however, it does not appear that insolvency was on the decline before 1883.

The clearest picture emerges for the period after 1892, when at least some statistics exist on all three components of insolvency. Even though a large part of insolvency shifted from bankruptcy and deeds of arrangement to company winding-up, total losses declined as a percentage of gross domestic product during the period.

Next, there is the effect of legislation on bankruptcy levels. This subject actually involves two questions: to what extent did legislation affect the manner in which creditors or debtors chose to manage an insolvent estate? And did legislation actually cause the decrease in insolvency?

Regarding the first question, definite conclusions can be reached about the effect of legislation on the manner in which debtors or creditors chose to manage bankruptcy estates. For example, the surge in bankruptcies in 1826, almost doubling from the year before, was probably caused by creditors seeking advantages under the old law before the Bankruptcy Act of 1826 took effect. Likewise, the ebb in the level of bankruptcies during the 1870s, can be explained in large measure by the enactment of the Bankruptcy Act of 1869. This act provided that, with the approval of a majority in number and three-fourths in value, a composition or a liquidation by arrangement could be imposed on minority creditors and, most importantly, with the liquidation by arrangement, the closure of the bankruptcy, the discharge of the bankrupt,

and the release of the trustee did not need court approval.[91] This lack of supervision made such schemes popular and there was a distinct shift to their use during the period. These provisions were abolished in 1883 and court supervision was once again applied to majority-imposed private arrangements. The advantage to private arrangements taken away, creditors turned again to bankruptcy, and in 1884 the bankruptcy level rose, and the number of private arrangements fell accordingly. In 1883, before the new act came into force, losses from bankruptcies amounted to about £4 million; losses from private arrangements were over £12 million. The following year, with the new bankruptcy act in place, the amount for the two categories almost reversed. Bankruptcy losses amounted to almost £12.5 million and deeds of arrangement amounted to just over £7 million.

The second question is difficult, if not impossible, to answer fully. Many members of Parliament believed that effective bankruptcy legislation, with strong provisions for the inspection of circumstances surrounding the failure and penalties for wrongdoing, could actually reduce the level of insolvency. Except for the period after the passage of the Company (Winding-up) Act of 1890, there is insufficient statistical evidence to determine whether or not insolvency increased or decreased after the passage of a particular bankruptcy reform measure. But even if there were such evidence, as there is after 1892, it would be difficult to prove that elements of legislation actually caused a decline

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[91] 32 & 33 Vict., c. 71, s. 125 (1869).

in insolvency. The Board of Trade believed that not only the Bankruptcy Act of 1883 but also the Company (Winding-up) Act of 1890 assisted in exposing, and thus preventing, fraud. Indeed, these acts did introduce the public examination of the debtor under oath and the power of the court to asses damages against delinquent directors, officers, or promoters of companies ordered wound-up.[92] Officials believed that provisions such as these directly reduced the level of insolvency. There is no evidence to confirm or deny this claim, but it seems likely that the new provisions of the insolvency legislation passed in the last quarter of the nineteenth-century had something to do with the overall decline in insolvency.

There were other factors at work. It has been suggested that creditors were becoming more efficient in extending credit, although no evidence has been discovered to show whether or not this was actually happening.[93] There was also a tendency toward consolidation in some trades highly subject to bankruptcy that may have served to weed out inefficient traders over time. The influence of legislation on the form insolvency took makes the use of insolvency statistics problematical, especially in the period prior to 1883. On the whole, unless proper recognition is given to the effect of

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[92] 46 & 47 Vict., c. 52, s. 17 (1883); 53 & 54 Vict., c. 63, s. 10 (1890).

[93] See Rubin and Sugarman, op.cit., p. 45. The 'depersonalization' of credit has also been suggested as a factor affecting bankruptcy in the United States. Peter J. Coleman, Debtor and Creditors in America: Insolvency, Imprisonment for Debt and Bankruptcy, 1607-1900 (Madison, Wis., 1974), pp. 283-84.

changes in statutes, insolvency statistics can prove misleading.

Finally, contemporary observation, as well as statistical evidence, demonstrates that the legal advantages of limited liability caused many businessmen to incorporate so as to avoid personal liability. As a result, the form of insolvency tended to shift from bankruptcy to company winding-up.

In summary, the level of insolvency in the nineteenth-century was significant, although data on such levels prior to 1892 is far from complete. The manner in which creditors and debtors chose to manage failures depended on the advantages or disadvantages springing from the particular statute then in force. The evidence indicates that from 1892 to the First World War, the level of insolvency in England and Wales declined and its seems at least part of this decline can be attributed to the increased supervision established under the Bankruptcy Act of 1883 and the Company (Winding-up) Act of 1890.

Chapter Four

Some Characteristics of Insolvency Levels in Selected Cities and Occupations in England and Wales, 1884-1913

The level of insolvency in England and Wales declined during the late nineteenth-century and continued to decline at least until the First World War. Any description of the aggregate levels of bankruptcy, private arrangements, and company winding up, however, reveals little about the nature of insolvency during the period other than a general tendency toward smaller creditor losses each year from individual or company failures. Looking beyond this aggregate level, questions remain about the specific characteristics of the insolvency Parliament attempted to curb or at least have properly administered. For example, did the decline in insolvency seen in the aggregate occur in all occupations and geographical areas? If the level of bankruptcy declined in some occupations or regions, was the rate of decline similar? Did some trades on the whole suffer a higher rate of bankruptcy than others? Are the peaks and troughs of trade cycles reflected in the bankruptcy levels of various occupations and regions?

In addition to information on aggregate levels of insolvency, statistics are available on levels of bankruptcy both for certain occupations and for county court jurisdictions for the period following the passage of the Bankruptcy Act of 1883. Although the use of these statistics is problematical and they relate only to the period after the passage of the last major bankruptcy reform measure, such data can still provide some insight into the characteristics of

insolvency. Furthermore, in the process of examining these statistics, it is possible to learn something about the little known economics of common trades and occupations. M. J. Winstanley in a recent work on shopkeepers commented that often in search of the middle class or the working class, historians have relegated the shopkeeper to 'an onlooker or dependent in the historical process'.[1] The same status has also been the fate of many thousands of persons engaged in small trades and occupations who make up the bulk of bankrupts. Our knowledge of their occupations is limited. An analysis of the rate of bankruptcy among butchers, bakers, fishmongers, builders, drapers, and others can reveal something about the relative risk involved in particular trades and can provide some estimate of the relative impact of trade depressions.

Limitations of statistical data

Although analyzing the available data on bankruptcy levels in specific trades and regions can be informative, using such statistics is not without difficulties.

The Bankruptcy Act of 1883 required registrars and other officers of courts with bankruptcy jurisdiction to file returns with the Board of Trade concerning the business of their courts. The Board of Trade, in turn, had to file annual reports with Parliament on the operation of the bankruptcy

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[1] M. J. Winstanley, The shopkeeper's world, 1830-1914 (Manchester, 1983), p. viii.

act.[2] The annual bankruptcy reports provided: 1) the total number of receiving orders and orders for administration under section 125 of the act (insolvent decedents' estates) in England and Wales; 2) the total number of receiving orders in the High Court (London and vicinity) and in the one hundred and thirty-two county courts (adding an additional six courts during the period); and 3) the total number of receiving orders gazetted in approximately seventy to eighty principal trades and occupations.[3] Unfortunately, the annual bankruptcy reports do not break down bankruptcies by occupation in each county court but only give occupational statistics on a nationwide basis.[4] Monthly reckonings of the number of bankruptcies in selected trades and occupations were published in the Board of Trade Journal from September 1885 to at least December 1913. Since these statistics are especially susceptible to influence by a fortuitous bankruptcy filing in one month and there are few monthly series of statistics with which to compare this data, they are of little value.

With the passage of the Deeds of Arrangement Act of 1887, Parliament required the Board of Trade to begin to keep

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[2] 46 & 47 Vict. 52, s. 131 (1883).

[3] The listing according to principal trades and occupations in the annual bankruptcy reports of the number of receiving orders gazetted began in 1885.

[4] Other than the London Gazette entries, which do not consistently list occupations, few sources indicate the trade or occupations of bankrupts. Richard Seyd's Record of Failures and Liquidations ... In the United Kingdom from January 1865 to July 1876 (London 1876) lists bankrupts by occupation based upon London Gazette entries. Seyd's work, however, is limited to 'financial, international, wholesale and manufacturing branches, ignoring small mechanical and retail trades'. A later work of Seyd, Record of Failures & Liquidations ... In the United Kingdom From 1865 to 1884 (London, 1885), gives only an alphabetical list of bankrupts with no breakdown as to occupation.

statistics concerning deeds of arrangement, and the board reported these in the annual bankruptcy reports.[5] These deeds of arrangement statistics are not as detailed as those provided for bankruptcies. There was no report of the occupations or geographical location of the debtors who were the subject of deeds of arrangement. Other than the total number of deeds of arrangement filed, all that can be learned from these statistics is that between 1888 and 1913 deeds of arrangement consistently represented approximately forty to forty-five percent of the annual total number of bankruptcies and deeds of arrangement. Based upon this data, to determine whether or not the deeds of arrangement had the same occupational and geographical composition as bankruptcies is not possible.[6] The fact that the proportion of deeds of arrangement to bankruptcies remained consistent throughout the period can be taken as some evidence that they were following at least a similar pattern of peaks and troughs.

With regard to company insolvency, the Companies (Winding- up) Act of 1890 required the Board of Trade to prepare an annual report on company insolvency similar to the annual bankruptcy report.[7] These reports provide the total number of companies liquidated each year. Except for companies compulsorily wound-up by the court, which averaged only

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[5] 50 & 51 Vict., 57 (1887).

[6] At least for the period 1888-1912, information on the occupation of debtors subject to deeds of arrangement can sometimes be found in registers of deeds of arrangement that are preserved at the Public Record Office. P. R. O.. BT 39. This information, however, is incomplete.

[7] 53 & 54 Vict., c. 63, s. 29 (2) (1890).

about seven percent of the total each year, the reports do not indicate the type of company liquidated, its location, or the size of its liabilities.

To summarize, from the annual bankruptcy and company winding-up reports, it is possible to determine the annual number of bankruptcies after 1883, deeds of arrangement after 1888, and company insolvencies after 1890. With bankruptcies, we can tell the annual number of bankruptcies in a particular county court and the nationwide number in various trades or occupations in each year.

There are two problems with the use of this information. To begin with, it is difficult to obtain an accurate estimate of the population to use as a denominator. For instance, how does one know whether or not the ninety-seven draper and haberdasher bankruptcies in 1900 represent a percentage increase or decrease over the seventy-eight such bankruptcies in 1890, with no accurate figures as to the total number of drapers or haberdashers? The censuses of 1891, 1901, and 1911 for numbers of persons in various occupations both on a national and local basis do not always match. Does the census category 'grocers' include both the bankruptcy categories of 'green grocer and fruitier' and 'grocers -- tea, coffee and chocolate dealers'? Also, many of the categories change from census to census. For statistics on bankruptcy levels in specific regions, the problem is even greater. The statistics require that comparisons of regional bankruptcy be limited to a comparison of bankruptcy levels in large cities. Also, one simply cannot accurately estimate the population in the city at risk for bankruptcy in any one year. It is necessary, therefore, to base the bankruptcy levels for cities merely on

the total of all persons engaged in occupations. An additional component of the denominator problem is the extent to which women should be included. On the one hand, women were not subject to bankruptcy laws unless they possessed a separate estate and carried on business separate and apart from their husband.[8] As a result, female bankrupts averaged only five percent of the total bankruptcies each year. On the other hand, in certain trades such as drapers, women constituted as much as twenty percent of those that were either employers or working on their own account.

A second difficulty in using data on bankruptcy levels is the problem of the fortuitous filing alluded to earlier. Insolvency statistics, especially those showing estimated losses, are susceptible to misinterpretation because the filing of one bankruptcy with unusually large liabilities can distort the estimated losses for a particular year. This makes the use of aggregate loss statistics virtually useless in analyzing such problems as the effect of trade cycles on insolvency levels. For such aggregate loss statistics to be useful, one must understand each individual bankruptcy, something the data in most cases does not permit.

Despite these problems, the available statistics on bankruptcy levels in occupations and cities can still help to gain a better perspective on insolvency. This data will first help to describe some of the characteristics of the bankruptcy levels between 1884 and 1913 in selected occupations and cities in England and Wales. Second, the effect, if

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[8] Married Women's Property Act, 45 & 46 Vict., c. 75, s. 1(5) (1882).

any, of trade cycles during the same period on bankruptcy levels in occupations and cities will be studied.

Regarding the first issue, this chapter will look at whether or not bankruptcy levels in various occupations and cities tended to increase or decrease over time and whether or not there were consistent differences in the level of bankruptcy in one occupation or city as opposed to others. It will be argued that levels of bankruptcy did not decline in all occupations during the period. Also, evidence indicates that, among those occupations and cities that did witness a decline in the level of bankruptcy, the rate of decline differed. In addition to looking at trends over time, this chapter will examine the particular pattern that bankruptcy took in various occupations. What was it that made the building trade more prone to bankruptcy than, for instance, farming?

A description of the effect of trade cycles will focus on the extent to which the bankruptcy levels mirrored peaks and troughs in the economy. This study will show that while bankruptcy levels did tend to reflect the peaks and troughs of the trade cycle, such levels were more susceptible to random factors.

Characteristics of bankruptcy levels in selected occupations and cities

A. Occupations

During the late Victorian and Edwardian periods, most bankrupts were retail dealers or builders operating very small businesses. One of the most outstanding features of the period was the concentration of thirty-five to forty percent

of bankrupts in nine occupational categories: publicans and hotel keepers, grocers, farmers, builders, bakers, butchers, boot and shoe manufacturers and dealers, drapers and haberdashers etc., and tailors. These nine categories consistently had most of the larger number of bankruptcies in each of the thirty years studied.[9] Grocers, publicans, builders, and farmers each averaged over 200 bankruptcies annually, with publicans and grocers approaching averages of over 250 per year. Bakers, butchers, and boot and shoe manufacturers and dealers averaged about 100 bankruptcies a year. The numbers of bankruptcies in other occupations were much smaller. Architects and furniture dealers, for instance, averaged only seventeen and thirty bankruptcies each year. Most trades and occupations listed by the Board of Trade in the annual bankruptcy report showed less than ten bankruptcies annually. (See Appendix I for the annual number of bankruptcies (1885-1913) for the fifteen occupations mentioned in this study).

Another occupational characteristic of bankruptcy during the period is the number of stock traders and dealers among the larger bankruptcies. Between 1892 and 1913, the Board of Trade gave brief descriptions of the larger bankruptcies (liabilities in excess of £20,000 exclusive of secured and preferential claims). In this twenty-one year period, there were numerous examples of stock dealers suffering financial

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[9] There is indication that at least some of these occupations had always represented a large portion of bankrupts during the nineteenth-century. In an account listing the occupations of bankrupts for the years 1826-29, drapers, grocers, bakers, and builders figured prominently in the larger numbers of bankruptcies. Parl. Papers 1830, xxix (280), pp. 83-89: 'Accounts of the Number of Persons declared Bankrupt ...', 8 Apr. 1830.

failure because of losses on speculative accounts and fraudulent stock and share schemes.[10]

Also significant is the absence of manufacturers from the roll of bankrupts, except in the boot and shoe industry where it is impossible to separate 'manufacturers' from 'dealers' in the statistics. Among the larger bankruptcies, only twenty-six manufacturers are listed between 1892 and 1913. The type of manufacturers that is listed varies, and includes boot and shoe, motor body, piano, and sail manufacturers. The size of these manufacturing bankruptcies also varied, with the largest being that of a silk spinning concern listed in 1901 as having a loss of over £100,000.[11] For the most part, however, the manufacturers listed had losses estimated between £15,000 and £25,000. There was no common cause for the failure of these businesses. Often the report listed the cause of failure as over-extension of the business.[12] Other common causes included paying too much to purchase a partner's interest, selling goods for less than cost, and losses attributed to dishonest employees.[13]

Focusing on these larger bankruptcies, however, should not distract attention from the fact that most bankruptcies involved small businesses. Using the years 1890 and 1910 as

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[10] Parl. Papers 1914, lxvii (413), p. 21: 31st Annual Bankruptcy Report, 4 Aug. 1914 (losses of speculative accounts); Parl. Papers 1912-13, xciii (284), p. 36: 29th Annual Bankruptcy Report, 31 July 1912 (fraudulent stock and share scheme).

[11] Parl. Papers 1902, xciii (318), op.cit., p. 34.

[12] See, for example, Parl. Papers 1908, xcvi (254), p. 658: 25th Annual Bankruptcy Report, 24 July 1908; Parl. Papers 1900, lxxviii (316), op. cit., p. 99.

[13] Parl. Papers 1911, lxxxvi (282), op.cit., p. 22; Parl. Papers 1899, lxxxviii (330), op.cit., p. 139; Parl. Papers 1897, lxxix (338), op.cit., pp. 113-14.

examples, thirty-one and thirty-eight percent of the total bankruptcies had assets of less than £25 and in both years the cases with less than £200 in assets accounted for more than seventy-five percent of the total number (Table 4.1). At the other extreme, only four percent of the cases could be classified as having more than £1000 in gross assets, yet the total receipts from these cases represented between fifty and sixty percent of the gross receipts received from all cases. The pattern shown for 1890 and 1910 is not atypical and appears in each of the years between 1884 and 1913.

Table 4.1 Classification of bankruptcy estates finally wound-up in 1890 and 1910 in terms of gross assets

Class (gross assets)	1890 Number of cases	1890 Gross receipts (£ thousands)	1910 Number of cases	1910 Gross receipts (£ thousands)
Under 25 £	1399	£16.8	1488	£17.6
25£ and under 50£	695	30.0	634	26.3
50£ ' 100£	677	30.0	606	46.2
100£ ' 150£	414	53.1	297	40.3
150£ ' 200£	233	42.5	144	32.6
200£ ' 250£	146	36.1	129	32.0
250£ ' 300£	123	38.3	85	29.1
300£ ' 350£	110	28.4	73	29.0
350£ ' 400£	79	34.3	58	24.9
450£ ' 500£	129	63.3	79	45.2
500£ ' 1,000£	222	174.2	145	152.5
1,000£ ' 5,000£	168	392.8	124	307.4
5000£ ' 10,000£	11	109.6	12	150.5
above 10,000£	5	70.2	8	216.2
TOTAL	4,411	£1,119.6	3,882	£1,149.8

Sources: Parl. Papers 1890-91, lxxvii [cmd. 6462], pp. 30-33, 8th Annual Bankruptcy Report, 20 July 1891; Parl. Papers 1911, lxxxvi (282), pp. 40-43, 28th Annual Bankruptcy Report, 16 Aug. 1911.

The aggregate rate of bankruptcy as a percent of the gross domestic product declined from the passage of the Bankruptcy Act of 1883 to 1913 (Table 3.4), but did this decline occur in all occupations? Table 4.2 sets out the number of bankruptcies per thousand persons engaged in

selected occupations for the census years 1891, 1901, and 1911.[14]

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[14] The table was constructed by taking the average number of bankruptcies for each occupation reported in the bankruptcy reports for the census year and for the years immediately preceding and following the census year and dividing this average number by the census figures for the number of persons (male and female) engaged as 'employers' or 'working on own account' in the particular occupation. Parl. Papers 1893-94, cvi [cmd. 7058], pp. 10-25: 'Census of England and Wales, 1891 (Ages Conditions as to Marriage, Occupations ...)', 1893; Parl. Papers 1903, lxxxiv [cmd. 1523], p. 192-207, 'Census of England and Wales, 1901 (Summary Tables)' 1903; Parl. Papers 1913, lxxviii [cmd. 7018], pp. 484-97: 'Census of England and Wales (Occupations and Industries Part I)', 1914.

Table 4.2 Number of bankruptcies (per thousand) in selected occupations, 1891, 1901, and 1911

Occupation	1891	1901	1911
Architects & surveyors	2.27	1.39	2.09
Bakers	____	2.09	2.42
Boot & shoe manufacturers & dealers	2.50	2.17	1.63
Builders	10.43	11.40	8.06
Butchers	3.39	3.72	2.95
Drapers & haberdashers	3.49	3.13	2.61
Farmers	0.88	0.77	0.80
Furniture dealers & makers	____	5.42	3.72
Fishmongers	2.56	3.40	3.70
Grocers	3.14	2.13	2.14
Jewellers	3.05	3.50	4.05
Publicans	____	3.69	2.83
Tailors	2.23	2.27	2.37
Tobacconists	____	4.61	5.23
Wine & spirit merchants etc.	6.32	3.70	5.02

Table 4.3 below sets out the average annual liabilities under bankruptcy and deeds of arrangement for various trades and occupations for two five-year periods, 1894-1898 and 1909-1913.[15] Liability statistics, however, were not provided

[15] Begining in 1894, the Board of Trade published the total liability figures for selected trades, and Table 4.3 is constructed from this data. Parl. Papers 1899, lxxxviii

(Footnote Continued)

for each of the fifteen occupations listed in Table 4.1. The averages for 1894-1898 are slightly understated when compared to the 1909-1913 figures, because they do not include liabilities from estates of deceased insolvent debtors as does the later data. It should also be kept in mind that Table 4.1 was constructed from statistics dealing only with bankruptcies, while the liabilities shown in Table 4.2 are from bankruptcies and deeds of arrangements.

(Footnote Continued)
(330), op.cit., pp. 175-76; Parl. Papers 1904, lxxxvii (312), op.cit., pp. 64-65; Parl. Papers 1909, lxxxix (237), pp. 59-60: 26th Annual Bankruptcy Report, 28 July 1909; Parl. Papers 1914, lxvii (413), op.cit., pp. 69-70.

Table 4.3 Average amount of liabilities annually for bankruptcy and deeds of arrangement in selected occupations, 1894-1898 and 1909-1913

Occupation	1894-1898 annual average (£ thousands)	1909-1913 annual average (£ thousands)
Architects and surveyors	£ 18	£ 46
Bakers	88	127
Boot and shoe mfgrs. and dealers	363*	201
Butchers	100	132
Drapers and haberdashers	370	308
Farmers	542	326
Fishmongers and poulterers	36	44
Furniture dealers and makers	58	97
Grocery and provisions; green-grocers and fruiterers	706	609
Jewellers and watchmakers etc.	148	147
Tailors	160	128
Tobacconists	51	57

* represents 1898 only

As expected by the aggregate decline in bankruptcy in the three decades before the First World War, some occupations, such as drapers and grocers, show a trend from 1891 to 1911 of both decreasing numbers of bankruptcies and decreasing liabilities. The drapers' bankruptcy rate declined by twenty-five percent over the twenty year period, and the average liabilities involved in the draper bankruptcies and deeds of arrangement (1909-1913) was only just over eighty percent of what it was for the 1894-1898 period. Likewise,

although the level of grocer bankruptcies increased slightly in 1911 over 1901, grocers were still experiencing almost a third fewer bankruptcies in 1911 as they were twenty years before. This decline can also be seen in the farmers' bankruptcies whose average liabilities for 1909-1913 were only sixty percent of what they were twenty years before.

In contrast, among bakers and fishmongers not only numbers of bankruptcies but also the amount of liabilities tended to increase. With fishmongers, the increase of forty percent in numbers of bankruptcies over the two decades is rather dramatic. Similarly, the rate of bakers' bankruptcies increased and liabilities for baker bankruptcies were forty percent higher on average in 1909-1913 as opposed to 1894-1898.

Some occupations show a mixed response. The number of bankruptcies among architects varied over the period, but the average total liabilities increased from £18,000 to £46,000 over the twenty years. Bankruptcies among tailors increased slightly but declined in average liabilities, an indication of smaller bankruptcies.

What can be learned about the relative size of bankruptcies around the turn of the century? Apparently the creditors of such trades as bakers, butchers, fishmongers, tailors, grocers and tobacconists were not willing to extend large amounts of credit. The average liabilities for each bankruptcy and deed of arrangement for these trades were all less than £1000 (Table 4.4) and the size of bankruptcies stayed

roughly the same for these trades over the twenty-year period.[16]

Table 4.4 Average amount of liabilities per bankruptcy and deed of arrangement in selected occupations, 1894-1898 and 1909-1913

Occupation	1894-1898 annual average (£ thousands)	1909-1913 annual average (£ thousands)
Architects and surveyors	£ 1.0	£ 2.2
Bakers	0.4	0.5
Boot and shoe manufacturers and dealers	1.0*	1.0
Butchers	0.5	0.8
Drapers and haberdashers	1.0	1.2
Farmers	1.2	0.8
Fishmongers and poulterers	0.5	0.5
Furniture dealers and makers	0.8	1.2
Grocery and provisions; green grocer and fruiters	0.7	0.7
Jewellers and watchmakers	1.5	1.7
Tailors	0.8	0.7
Tobacconists	0.6	0.7

* represents 1898 only

Certainly it did not take a large amount of credit to stock a fishmongers shop or supply a tailor's business compared to the credit necessary to provide inventory for a jeweller. Consequently, bankruptcies among jewellers and

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[16] Average sizes were calculated by dividing the average number of bankruptcies into the average amount of liabilities. Parl. Papers 1899, lxxxviii (330), op.cit., p. 175; Parl. Papers 1914, lxvii (413), op.cit., pp. 69-70.

watchmakers were always substantially larger than those of the other trades studied. In the case of architects and surveyors, the demand for credit grew. The size of architect and surveyor bankruptcies more than doubled over the twenty-year period, even though the number of persons in these professions (employers or working on own account) increased only fifteen percent between the census years of 1891 and 1911.

The causes for the insolvency level in any particular occupation are, of course, numerous and include among a variety of factors the elasticity of demand for the product sold, and consolidation within the trade, the price of the product or services sold, and the availability of credit. It is beyond the scope of this study to discover all the causes for the insolvency levels in each trade and occupation. Three examples -- boot and shoe manufacturers, builders, and farmers -- however, can help illustrate how numerous factors may have affected the bankruptcy levels in particular trades and occupations.

Before the 1890s, Britain's share of the boot and shoe market was 'steady and unchallenged', but after 1890 Britain faced increased competition, especially from the United States.[17] As a result, the British boot and shoe industry around the turn of the century instituted more machine-powered production of footwear, and the decade after 1895 saw the most rapid period of technical advancement in the

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[17] P. Head, 'Boots and Shoes' in Derek H. Aldcroft, The Development of British Industry and Foreign Competition 1875-1914 (London, 1968), p. 158.

industry.[18] Among other things, these technological advances increased the average size of the firm.[19] The claim by the factory inspector in 1902 that 'the days of the small manufacturer in the shoe trade are numbered' is borne out in the bankruptcy statistics.[20] The rate of bankruptcy declined rapidly from 2.5 per thousand in 1891 to 2.17 per thousand in 1901, to only 1.63 per thousand in 1911. This parallels the decline in the number of persons who were either employers or working on their own account from over 58,000 in 1891 to only 44,000 in 1911. The amount of liabilities in boot and shoe bankruptcies also declined from over £350,000 in 1898 to an average of just over £200,000 for 1909-1913, even though the average size of the bankruptcies remained the same. In other words, there were fewer and fewer persons in the boot and shoe trade, and among those remaining in the trade the rate of bankruptcy became less and less. This is consistent with the fact that technology was driving out large numbers of shoe manufacturers who catered to the vast middle of the market share, leaving only small operators able to compete successfully for the very top or very bottom of the market.[21] When observing the level of bankruptcy in individual trades, one must realize that factors other than merely the general health of the economy can dominate. In the boot and shoe

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[18] Alan Fox, A History of the National Union of Boot and Shoe Operatives, 1874-1957 (Oxford, 1958), p. 245.

[19] Fox, op.cit., 262.

[20] Superintendent Factory Inspector's Report for the Midland Division, 1902, quoted in Fox, op.cit., p. 262.

[21] Fox, loc.cit.

industry, the introduction of new technology had the greatest impact on the level of insolvency.

The rate of bankruptcy in the building trade far exceeded that in other trades and occupations. Builder bankruptcies were over ten per thousand in 1891, over eleven per thousand in 1901, and still above eight per thousand in 1911. This sharply contrasted to the rates in all other occupations studied, which ranged from one to six per thousand (Table 4.2). The large numbers of bankruptcies in the building trade resulted from the speculative nature of the trade and the relative ease with which the occupation could be entered. S. B. Saul, who has studied the building trade during this period, concluded that fluctuations in building activity did not result from precise calculations by builders of demand, building costs, or borrowing costs but because the building trade was 'essentially a speculative activity operating within a wide margin of error'.[22] As contemporary bankruptcy reports document, builders with no capital would often lease land upon which to build. The lessor was indifferent to the builder's financial capabilities, since the lessor's land was improved once materials were brought onto the building site. The Bankruptcy Report for 1891 alleged that this indifference combined with easy credit from suppliers, allowed a builder to enter the trade with few obstacles.[23]

The relative ease of entry apparently increased the number of bankruptcies as building activity increased. Cycles

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[22] S. B. Saul, 'Home Building in England 1890-1914', E. H. R., xv (Aug. 1962), 120.

[23] Parl. Papers 1890-91, lxxvii [cmd. 6462], op.cit., p. 12.

in the building industry during the end of the nineteenth and the beginning of the twentieth century have been well studied. These works point to the unique nature of these cycles, their independence from trade cycles, and the numerous factors affecting demand for, and supply of, buildings including population growth or decline, emigration, interest rates, and the availability of funds generally.[24] After a trough in the building cycle in 1886, there appeared a more or less well sustained revival in the building industry which peaked at the end of the century. This was followed by a sharp downward trend until at least the First World War.[25] With additional demand and easy access to finance, more and more marginal builders vulnerable to a downturn in demand entered the industry. Bankruptcies among builders increased from 214 in 1897 to a peak of 374 in 1900 (Appendix I). A declining trend followed, with the exception of 1903-04, until 1913. The rate of builder bankruptcies declined from over eleven per thousand in 1901 to eight per thousand in 1911.

The third occupation that bears closer examination is farming. After the 'golden age' of high farming during the 1850s and 1860s when there was large investment and return, British agriculture in the last quarter of the nineteenth-

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[24] J. Parry Lewis, Building Cycles and Britain's Growth (London, 1965), pp. 199-210.

[25] Indexes of house building activity show a peak in 1898 with subsequent decline. B. Weber, 'A New Index of Residential Construction 1838-1950', Scottish J. of Political Economy, II, 2 (1955) and Lewis, op.cit., pp. 316-17 cited in Mitchell, op.cit., p. 390. The decline in the demand can also be seen in the value of empty property in England and Wales which increased from £5.5 million in 1900 to a peak of £8.36 million in 1909. A. K. Cairncross, Home and Foreign Investment, 1870-1913: Studies in Capital Accumulation (Brighton, 1975), pp. 152-53.

century suffered a period of what P. J. Perry has described as an 'agricultural crisis'.[26] This crisis period saw falling prices, lower rents, and untenanted land. The value of gross output declined from £129 million in 1867-71 to £112 million in 1894-95.[27] The bankruptcy statistics provide strong evidence of the improvement of the agricultural sector following the depression of the last quarter of the nineteenth-century. Liabilities for farmer bankruptcies and deeds of arrangement declined from an average of £542,000 annually between 1894-98, to £326,000 in the period 1909-1913 (Table 4.3). While the rate decreased slightly from .88 to .80 per thousand (Table 4.2), the size of farmer bankruptcies dropped from an average of £1,200 to £800 in liabilities per case. One is left with a paradox: why is the number of farmer bankruptcies per thousand the smallest of the occupations studied (Table 4.2)?

One explanation might be that bankruptcy was not the favoured method of creditors dealing with insolvent farmers. If this is true, then the rate of farmer bankruptcies does not accurately indicate the extent of insolvency in the agricultural sector. Most farmers in this period were tenants, and the lessee might have preferred merely to terminate the lease and seek back rent, not bothering to attempt to obtain what might be meager additional assets through a formal bankruptcy. Likewise, other creditors may have seen no

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[26] P. J. Perry, ed., British Agriculture 1875-1914 (London, 1973), p. xi.

[27] T. W. Fletcher, 'The Great Depression of English Agriculture, 1873-1896', in Perry, op.cit., p. 54.

benefit in filing a bankruptcy petition against a farmer who in fact had no substantial assets, since the land he farmed was leased. This theory seems to be supported by the relatively large size of farmer bankruptcies for the 1894-1898 period. Apparently creditors only used bankruptcy as a method of collection against the larger farming operations.

Before leaving a discussion of bankruptcy in individual occupations, reference should also be made to what appears to be a low level of bankruptcy in many of the occupations studied. Most occupations show an annual bankruptcy rate ranging between only two to five per thousand. Even when deeds of arrangement are taken into effect, which would increase bankruptcy levels by approximately seventy-five to eighty percent each year, the insolvency level in most trades does not rise above seven per thousand annually. The difficulty, of course, is that one cannot say what a 'normal' rate of bankruptcy would be for a particular occupation during this period. Nonetheless, the levels seem to be small, and this may indicate that they do not represent the total amount of insolvency.

Looking further at this problem, the statistical data -- the numbers of occupational bankruptcies reported in the annual bankruptcy reports and the totals of persons engaged in particular occupations as reported in the census -- should be relatively accurate. The number of bankruptcies was taken by the Board of Trade from reports in the London Gazette, and the Bankruptcy Act of 1883 required that all receiving orders

be published in the gazette.[28] Only the total of 'employer' and 'working on own accord' categories figure in the denominator in determining the levels in this thesis (Table 4.2), and this if anything would tend to increase the bankruptcy rate. There may have been some mismatching in the census and bankruptcy report categories with regard to some occupations, but very low bankruptcy rates appear in all occupational categories.

If indeed the rates of bankruptcy are low, the explanation may lie in the fact that only some of the insolvencies in any particular trade were being handled by the bankruptcy and deeds of arrangement systems, a problem already alluded to in the context of bankruptcies among farmers. Some of the tradesmen who failed, more than likely, simply walked away from their debts and were never pursued by their creditors. Another explanation might be that creditors used their own informal systems to deal with insolvent debtors. Victor M. Batzel suggested this possibility.[29] There is also evidence mentioned earlier that some contemporaries believed that not all private arrangements were being reported under the Deeds of Arrangement Act.[30] The statistics relating to the rate of bankruptcy in the fifteen occupations studied seem to support the proposition that creditors and debtors were handling a portion of insolvency outside the bankruptcy and deeds of arrangement systems. While it is impossible to estimate the

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[28] 46 & 47 Vict. 52, s. 13 (1883).

[29] Batzel, op.cit., p. 184.

[30] Chapter Three, pp. 99-100.

extent to which other systems were used, the fact that a portion of the liquidations were probably being handled outside of the official system weakens the reliability of estimated losses based upon bankruptcies and deeds of arrangements.

B. Cities

Little is known about the geographical distribution of bankruptcy prior to 1884. The level of bankruptcy was far from uniform throughout the country. In his general report for the year 1882, the comptroller of bankruptcy observed that while the number of bankruptcies had decreased by over 4000 from a high in 1879, almost all the decrease was in districts 'lying north and west of an almost straight line from Poole Harbour to the middle of the Wash, ...'.[31] An analysis of bankruptcy statistics for the period after the passage of the Bankruptcy Act of 1883 also indicates bankruptcy levels differed among regions.

To compare the level of bankruptcy among regions, one must estimate a rate of bankruptcy for each area. Regional statistics available derive from the over one hundred and thirty county courts throughout England and Wales. For a denominator, census figures are available for persons ten years old and upwards engaged in occupations, but this data is based upon registration districts or urban sanitary

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[31] Parl. Papers 1883, lv (286), p. 12: 'General Report by the Comptroller in Bankruptcy', 31 July 1883. London, Kent, Sussex, Surrey, and Middlesex actually showed an increase in the number of bankruptcies between 1879 and 1882, while Norfolk, Suffolk, Essex, Hertford, Bedford, Cambridge, and parts of adjacent counties showed a slight decrease. The remainder of England accounted for almost all the decline. The figures for Wales showed a large decline, but this was attributed to an unusual number of bankruptcies in mining districts in an earlier period.

districts. The mismatch of bankruptcy and census statistics makes comparison of bankruptcy levels in counties or other large geographical regions difficult. Larger cities, however, can be studied to advantage, since the bankruptcy statistics for the county courts in these cities can be matched with the census figures for the corresponding urban sanitary district. This is not to say, however, that the Liverpool county court jurisdiction, for example, corresponded exactly with the Liverpool urban sanitary district. More than likely they did not. Nevertheless, there is enough correlation to make a comparison of the two data sets yield at least an idea of bankruptcy rate in particular cities.

Based upon these data, a bankruptcy level has been estimated showing the number of bankruptcies per ten thousand persons, male and female ten years old and upwards, engaged in occupations in eleven selected cities in England and Wales for the census years 1891, 1901 and 1911 (Table 4.5).[32]

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[32] The annual number of bankruptcies (1885-1913) for the cities listed in Table 4.5 is given in Appendix J. The number 'engaged in occupations' includes all persons aged ten years old and upwards. Parl. Papers 1883, lxxx [cmd. 3722], pp. 1-582: 'Census of England and Wales, 1881 (Ages, Conditions of Marriage, Occupations)', 1883; Parl. Papers 1893-94, cvi [cmd. 7058], op.cit., pp. 1-628; Parl. Papers 1903, lxxxiv [cmd. 1523], pp. 1-312; Parl. Papers 1913, lxxviii [cmd. 7018], op.cit., pp. 321-1339.

Table 4.5 Number of bankruptcies per ten thousand engaged in occupations, 1891, 1901, and 1911

City	1891	1901	1911
Birmingham	5.4	4.5	2.5
Bristol	6.9	5.1	3.3
Ipswich	9.1	7.5	8.2
Leeds	5.9	5.9	4.4
Liverpool	4.2	2.5	1.9
London	4.2	3.3	3.2
Manchester	2.9	3.4	0.7
Newcastle-on-Tyne	9.0	6.4	4.4
Norwich	6.7	9.1	6.1
Nottingham	6.0	4.6	5.0
Swansea	8.7	8.0	6.1

With only minor exceptions, all cities show a decline in insolvency with each census year. There are, however, some large differences in the rates of decline. Birmingham, Bristol, Liverpool, and Newcastle all had a rate of insolvency in 1911 less than half the 1891 rate. With other cities, the rate of decline was much less. The differences in these rates do not seem to bear any correlation to factors such as the city's size, rate of growth, or principal industry. Liverpool was one of the larger, and Newcastle was one of the smaller, cities studied, yet both showed a large decrease in the amount of insolvency. By contrast, London and Norwich showed the smallest decrease.

Larger cities consistently have a smaller rate of bankruptcy (Table 4.5). Liverpool, London, and Manchester, all have annual average rates of under 3.5 per ten thousand. An

additional five cities -- Birmingham, Bristol, Leeds, Newcastle and Nottingham -- all have average annual levels of less than 6.5 per ten thousand. By contrast, Norwich and Ipswich, the two smallest cities studied, show an average over the three census years of 8.3 and 7.3 per ten thousand.

Many factors might have affected the bankruptcy rate, such as the indirect effect of the economic health of the dominant industry in the city. One explanation for the difference in rates, however, might be the composition of the total occupational pool. If one city had a higher proportion of occupations highly susceptible to bankruptcy, then this would have increased the bankruptcy rate for that city. This apparently was the case with some cities. Ipswich in 1891, for instance, had three times as many tailors and builders and one and a half times as many bakers as a percentage of the population engaged in occupations, as did either Birmingham or Liverpool.[33] Unfortunately the 1911 census did not give as extensive a breakdown of numbers of persons in occupations in cities as did the 1891 census. There is evidence, however, that there were more tailors, for example, in Norwich and Ipswich in 1911, as a percentage of the total population engaged in occupations, than in Birmingham, but not as many as in London.[34] While the make-up of the occupational pool cannot totally explain the differences in rates

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[33] Parl. Papers 1893-94, cvi [cmd. 7058], op.cit., pp. 220-27, 328-35, 416-23.

[34] Parl. Papers 1913, lxxviii [cmd. 7018], op.cit., pp. 874-75, 878-79, 884-87. The 1911 census did not include separate statistics for builders and bakers.

of bankruptcy among cities, it seems that it was a significant factor.

Relationship between trade cycles and insolvency levels

Between 1884 and 1913, the British economy suffered from four major cyclical 'troughs', when output, employment, and prices declined. Although there is debate as to the exact timing of the trade cycles, there is general agreement that troughs occurred around 1886, 1893, 1904 and 1908-1909.[35] Insolvency statistics, both in the aggregate and for selected occupations and cities, can give additional insight regarding these trade cycles in two respects. First, aggregate levels of bankruptcy, deeds of arrangement, and company winding-up can reveal the extent to which the insolvency represented by those rates corresponds to the general trade cycles. Did a slump in economic activity necessarily lead to a rise in bankruptcies, deeds of arrangement and company winding-ups? If so, what is the extent of the correlation? Second, bankruptcy statistics can explain to some degree the effect of trade cycle troughs, if any, on the bankruptcy levels of specific occupations and cities. Did economic downturns tend to affect tailors more than bakers or affect Manchester more than Leeds? Were there factors other than the trade cycle that had a greater effect on bankruptcy levels in occupations and cities?

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[35] A. G. Ford, 'The trade cycle in Britain 1860-1914', in Roderick Floud and Donald McClosky, eds., The Economic History of Britain since 1700 (Cambridge, 1981), 2. 27-49.

A. Relationship between trade cycles and aggregate rates of bankruptcy, deeds of arrangement, and company winding-up

Board of Trade officials in the last century realized the usefulness of bankruptcy levels as a barometer of economic activity. In the last report filed under the Bankruptcy Act of 1869, the bankruptcy commissioner noted that while 'not exactly proportioned to the variation in depression and prosperity ...', bankruptcy occurs 'most largely in bad times and not nearly so much at other times'. As the commissioner saw it, bankruptcy, with its level fluctuating to a greater degree than other economic indicators such as production, imports and exports, or railway traffic, was actually 'a better test of the state of credit at different times than other trade returns'.[36] To what extent was the commissioner correct? Do aggregate bankruptcy and deeds of arrangement levels accurately reflect general economic activity during the thirty-year period prior to the First World War?

To compare bankruptcy levels with the performance of the economy as a whole, an appropriate indicator of general economic performance during the period must be chosen. Economic historians, including A. G. Ford, have compared such series as gross national product, gross domestic product, unemployment, and average weekly wage earnings for the period 1860 to 1910 and have noted the well-defined and parallel patterns of economic fluctuations, which are especially

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[36] Parl. Papers 1884, lxiii (256), p. 17: 'General Report by the Acting Comptroller in Bankruptcy for the Year Ending 31st December 1883', 7 July 1884. The relationship between the economy as a whole and bankruptcy levels continued to be recognized by the Board of Trade in annual reports.

strong after 1873.[37] Based upon these comparisons, economic peaks and troughs have been plotted. These studies have shown that the unemployment rate closely parallels other indicators and clearly indicates the general movement of the economy. Accordingly, for comparative purposes, the annual unemployment rate will be adopted in this analysis as an indicator of the performance of the economy as a whole.

(1) Aggregate levels of bankruptcy and deeds of arrangement

To compare first the rate of bankruptcy and deeds of arrangement with the unemployment rate, linear regression analysis was performed, with the annual rate of unemployment as the independent variable and the combined level of bankruptcy and deeds of arrangement (1888-1913) as the dependent variable. The level of bankruptcy and deeds of arrangement was calculated by dividing the total number of bankruptcies and deeds of arrangement each year by the total number of male and female persons fifteen years old and upwards engaged in all occupations.[38] No statistically significant correlation between the two variables was found. The coefficient of determination (r^2) was only .12. Likewise, when regression analysis was performed comparing the losses from bankruptcies and deeds of arrangement as a percentage of gross domestic product to rates of unemployment, an r^2 of .19 was reached.

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[37] Ford, op.cit., pp. 30-31.

[38] Parl. Papers 1883, lxxx [cmd. 3722], loc.cit.; Parl. Papers 1893-94, cvi [cmd. 7058], loc.cit.; Parl. Papers 1903, lxxxiv [cmd. 1523], loc.sit.; Parl. Papers 1913, lxxviii [cmd. 7018], loc.cit. An annual figure was extrapolated assuming a steady rate of growth.

Since the ratio of bankruptcies to deeds of arrangement roughly remained the same each year, as expected, when regression analyses were performed on bankruptcy rates and deeds of arrangement rates separately, comparing them to the rate of unemployment, no significant correlation was found (Table 4.6).

Table 4.6 Summary of results of regression analyses comparing selected series with annual rate of unemployment

Series	Coefficient of determination (r^2)
Deeds of arrangement and bankruptcy rate (1888-1913)	0.11
Deeds of arrangement and bankruptcy losses as a % of GDP (1888-1913)	0.19
Bankruptcy rate (1888-1913)	0.06
Deeds of arrangement rate (1888-1913)	0.19
Bankruptcy losses as a % of GDP (1888-1913)	0.32
Deeds of arrangement losses as a % of GDP (1888-1913)	0.23

The failure of regression analyses to show any statistically significant correlation, however, does not necessarily mean that bankruptcy and deeds of arrangement levels are not linked in any way to the performance of the economy. They merely indicate that it cannot be said that an X per cent rise in unemployment will be correlated with a Y per cent rise in bankruptcy. In other words, unemployment rates and bankruptcy and deeds of arrangement rates neither rose nor fell in the same or similar proportions during the period. This could be caused by a number of factors including the problem of the fortuitous filing discussed in the beginning of this chapter. The filing of two or three bankruptcies at

the end of one year, rather than at the beginning of another, could lessen the exactness of any correlation. With bankruptcy or deeds of arrangement losses as a percent of gross national product, the filing of one bankruptcy with particularly large liabilities will distort any picture to be given of insolvency. In 1897, for instance, a large increase in losses for banks can be attributed solely to the failure of one private bank with several branches.[39] Losses from bankruptcies estimated to be £7.2 million in 1910 would fall to only £4.4 million if the losses attributable to the failure of the Charing Cross Bank were removed.[40]

Another cause for the failure of bankruptcy levels to show a statistically significant correlation with the performance of the economy as a whole is that bankruptcies may have lagged behind the troughs in the trade cycles. Typically, the most difficult period of a recession for a business is the end of the down-turn, and many bankruptcy petitions may not have been filed until after the economy was recovering and unemployment declining. When this fact is combined with the problem of the fortuitous filing, it is not surprising that regression analysis shows little correlation between bankruptcy levels and the performance of the economy as a whole.

There is an alternative method of comparing insolvency and unemployment rates. A trend line over a period of time can be calculated for the number of bankruptcies, and the extent to which a year's bankruptcy level deviates from the

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[39] Parl. Papers 1898, lxxxiv (336), p. 10: 15th Annual Bankruptcy Report, 2 Aug. 1898.

[40] Parl. Papers 1911, lxxxvi (282), op.cit., pp. 11, 13-14, 24.

trend can be shown (Figure 4.1).[41] This method of analysis has one advantage over regression analysis. In the regression analyses, it was necessary to construct a level of bankruptcy based upon a largely conjectural denominator. This problem is avoided by using a deviation from the trend line, since the trend line serves as the comparison and the denominator is unnecessary.

The number of bankruptcies and deeds of arrangement peaked with unemployment in the recession years of 1886, 1893, 1904 and 1908 (Figure 4.1). The correlation, however, is not exact. In two years, 1898 and 1900, both bankruptcies and deeds of arrangement peaked, but unemployment did not. In terms of actual numbers of bankruptcies and deeds of arrangements, the 1898 increase was only three percent over the previous year. The increase in 1900, however, was more significant, amounting to almost ten percent over the previous year. On the whole, when economic activity significantly declined, invariably the number of bankruptcies and deeds of arrangement increased.

In their study of the British economy in the first half of the nineteen-century, Gayer, Rostow and Schwartz found a similar pattern of a fall in bankruptcies during periods of prosperity and rise during depression.[42] They also discovered, however, that bankruptcies in their yearly series tended to anticipate a peak in general business and to fall off sometime before the business trough. Gayer and his

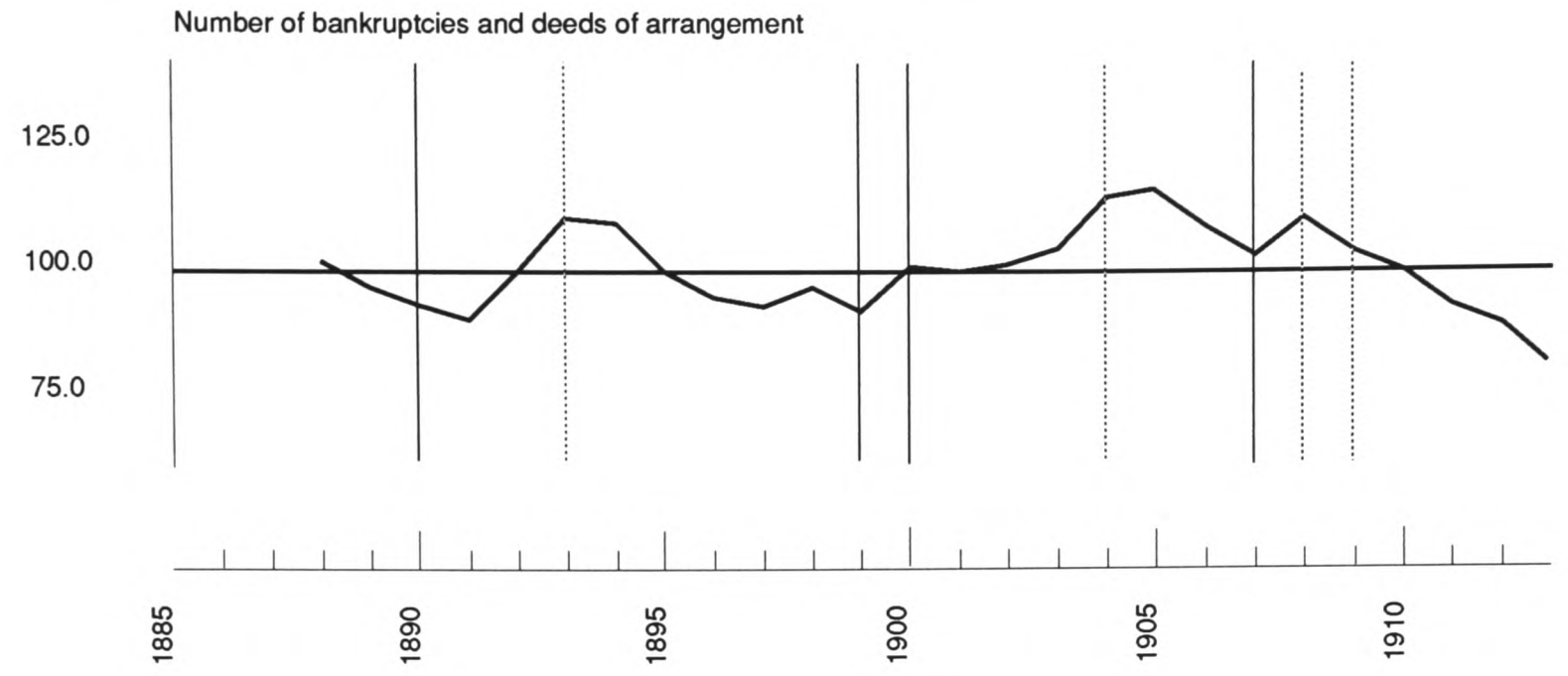
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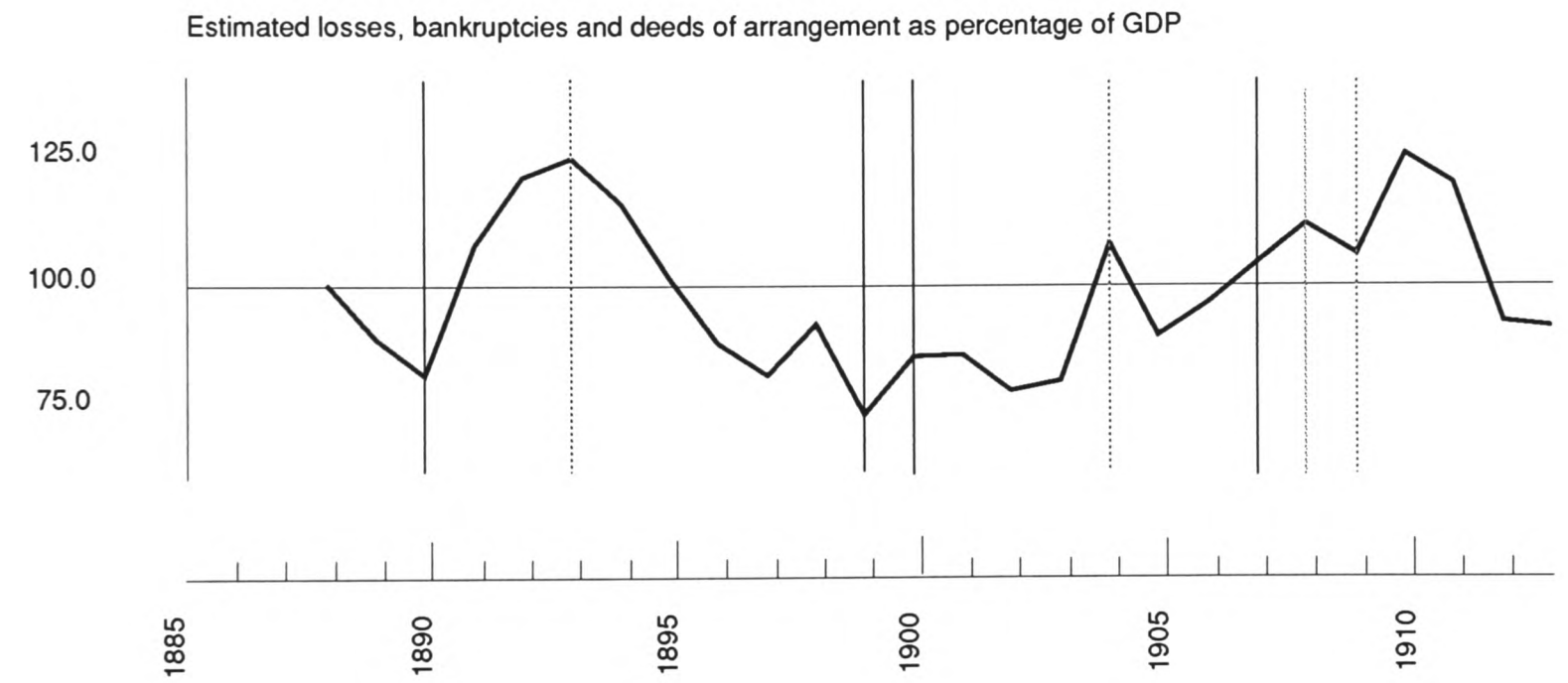
[41] The trend line is calculated least-squares method.

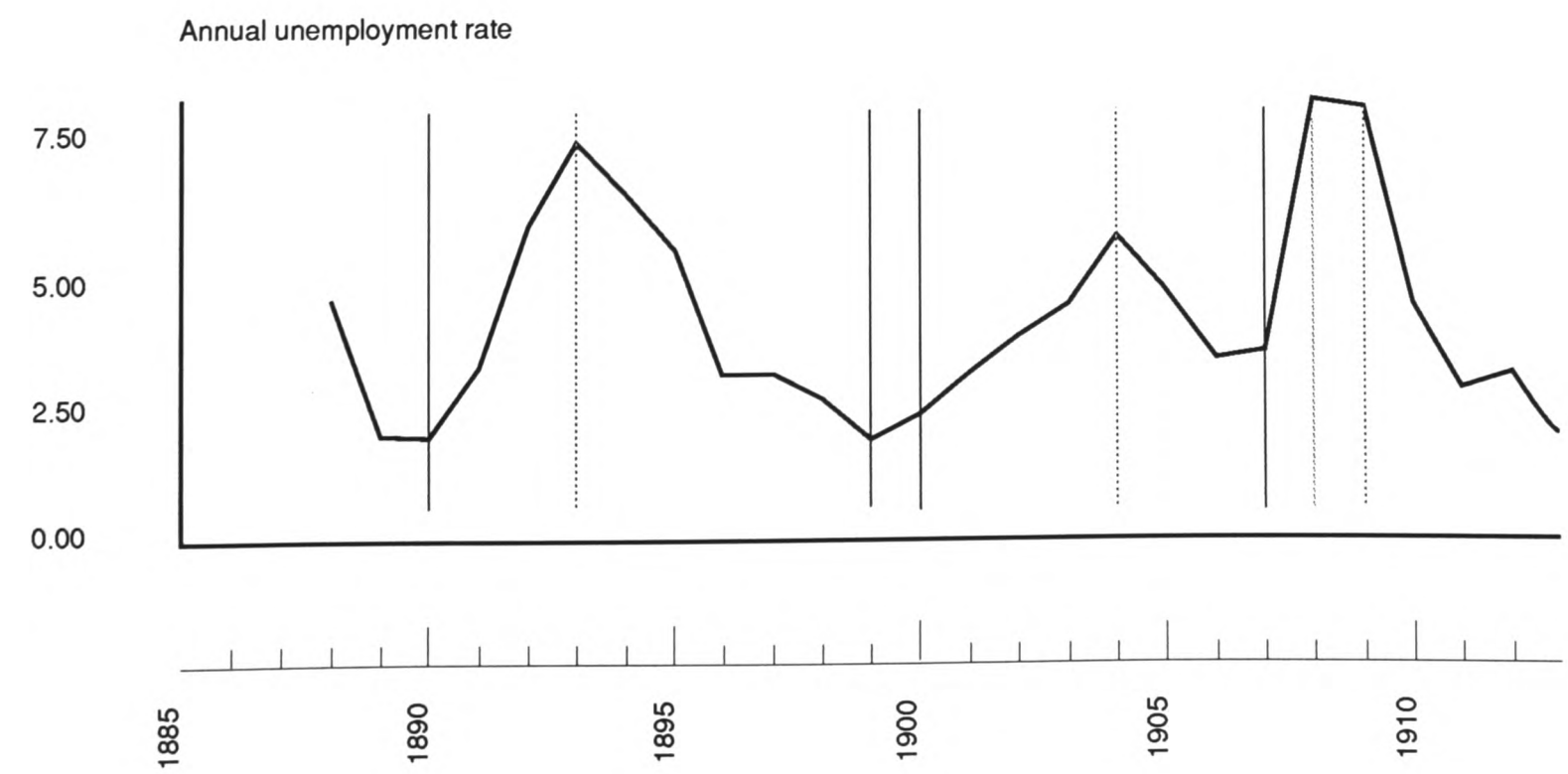
[42] Gayer et al, op.cit., 2. 885-87.

Figure 4.1 Bankruptcies and deeds of arrangement, 1888-1913:
Percentage deviation from trend line

(trade cycle peaks ——————— troughs ·····)







associates did not discuss this point at length, other than to say that the pattern appeared more prominently in their monthly bankruptcy series than their yearly series. The pattern of an anticipatory rise found by Gayer et al does not appear in the data examined in this study. The analysis here shows the numbers of bankruptcies and deeds of arrangement corresponding with the business cycles, rather than anticipating them (Figure 4.1).

Without access to the Gayer monthly series which was not published, it is difficult to say why the Gayer pattern does not appear in the 1883-1913 series. One explanation, of course, might be that business practices simply changed and there was no longer an increase in bankruptcies in advance of a business peak. There may be other explanations. Bankruptcies in the period Gayer studied were limited to 'traders' with fairly sizable debts. In the period studied here, however, bankruptcy was available to a much larger group of people and the average size of bankruptcies was much smaller. Accordingly, the Gayer pattern, which might only occur with larger merchants and traders, may be hidden by the broader group used in this study. The Gayer data may be skewed, since it does not take into account private arrangements that, as seen earlier, make up a large portion of total insolvency during the period. Gayer cannot be faulted for such an omission, since the statistics do not exist, but the absence may explain why Gayer saw a pattern that does not appear in the statistics for the latter part of the century.

Walter G. Hoffman has also compared bankruptcy statistics to general economic trends.[43] Hoffman found evidence of five long waves of bankruptcy between eighteen and twenty years duration between 1830 and 1930. The last three long waves in bankruptcy, according to Hoffman, occurred between 1872 and 1895, 1895 and 1912, and 1912 to 1932. The presence of these waves along with other factors, Hoffman argues, supports the thesis that there are similar waves in industrial output as a whole.

Although Hoffman does not fully explain how he constructed his bankruptcy index, apparently it is based on annual numbers of bankruptcies rather than on any loss estimates. By limiting the inquiry to the numbers of bankruptcies and ignoring numbers of deeds of arrangement and company winding-ups as well as the actual losses incurred with all forms of insolvency, Hoffman apparently did not observe the long term decline of bankruptcy and indeed all insolvency as a percentage of gross domestic product from at least 1892 to 1913 (Table 3.14). This is not to say that Hoffman is incorrect in asserting that there were long waves in industrial output, since his thesis is based upon more than merely bankruptcy numbers. What can be said is that insolvency statistics, when looked at in their entirety, do not lend weight to the proposition that a 'wave' existed between 1895 and 1913.

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[43] Walter G. Hoffman, British Industry 1700-1950 (Oxford, 1955), p. 154.

(2) Aggregate levels of company winding-up

A similar comparison of deviations from trend lines can be made with company winding-ups (Figure 4.2).[44] Unexpectedly, a peak in numbers of companies being wound-up only appears in the recession year of 1907. Losses peaked in the trough years of 1893 and 1908. Looking only at the statistics, any correlation between company winding-up and trade cycles appears to end here. An unusual feature of the series is the large increase in numbers of companies wound-up between 1897 and 1900, years in which there was actually a peak in the trade cycle. Unemployment actually fell from 3.3 percent in 1897 to only 2.5 percent in 1900. There is an explanation, however, for the apparent lack of correlation between company winding-up and the performance of the economy.

The first part of the explanation is the unusually large failures that distort the yearly loss figures. This presents special difficulties with company winding-up statistics, since no specific information exists about losses of companies voluntarily wound-up, which represented over ninety percent of the companies wound-up annually. The possibility of distortion, however, can be seen with the information

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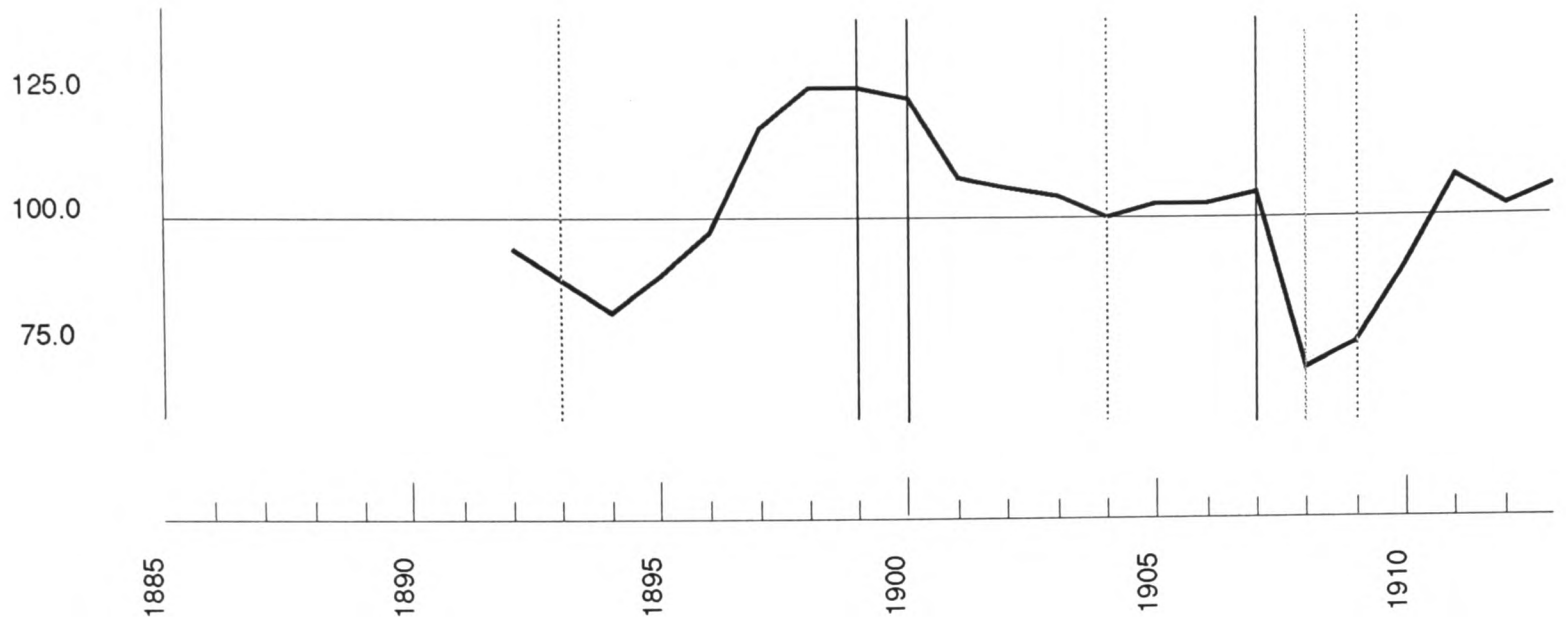
[44] The figure showing the percentage deviation from the trend line is based upon losses from companies wound-up (Table 3.13). As with bankruptcies and deeds of arrangement, regression analysis comparing company winding-up and annual unemployment rates showed no statistically significant correlation. In the regression analyses, the dependent variable was a rate of company winding-up. This rate was the number of companies annually liquidated for all purposes divided by the number of companies in existence in that year. Macgregor, op.cit., p. 499. The independent variable was the rate of unemployment. The coefficients of determination were as follows: company winding-up rate (0.001) and losses from companies wound-up as a percentage of gross domestic product (0.0001).

Figure 4.2 Company winding-up, 1892-1913:

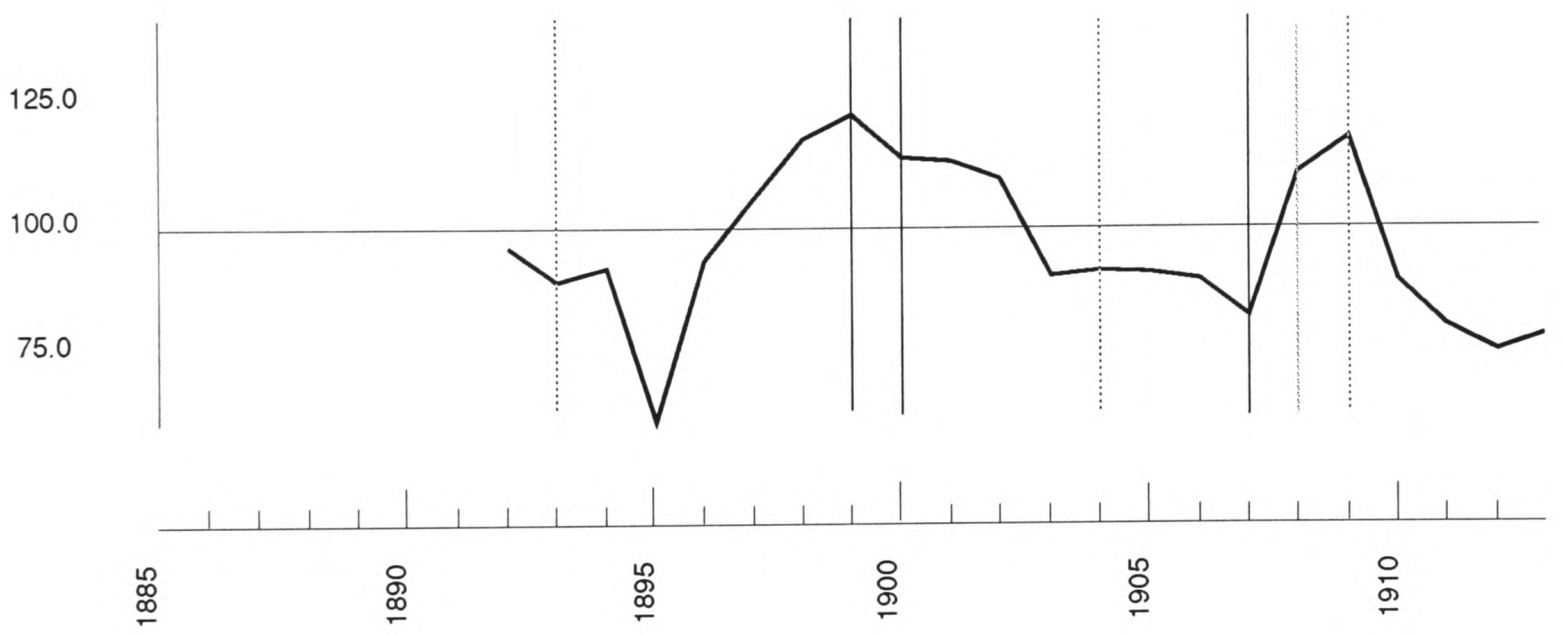
Percentage deviation from trend line

(trade cycle peaks ——————— troughs .....)

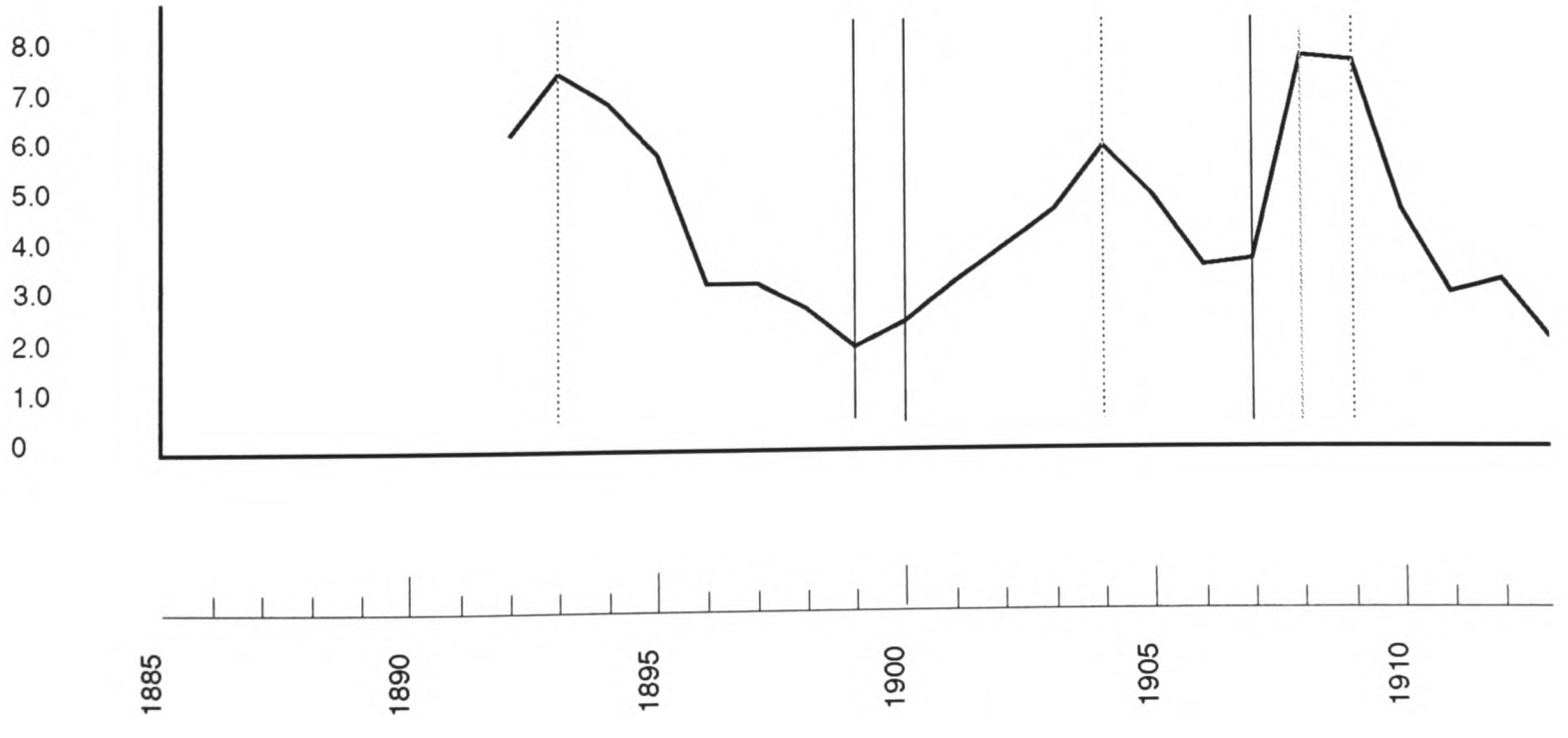
Number of companies wound-up) all categories



Estimated losses from companies wound-up (all categories) as a Percentage of GDP



Annual unemployment rate



available on companies compulsorily wound-up. Between 1895 and 1913, losses from companies compulsorily wound-up tended to be anywhere from £2.5 million to £6 million per year. Yet in 1901, losses (as estimated by liquidators) were reported to be approximately £10 million. In 1911 they were £7 million.[45] These aberrations were caused by unusual failures that inflated the normal rates. The failure of the London and Globe Finance Company and associated companies caused much of the 1901 increase.[46] Similarly, the failure of only two companies, the Birkbeck Permanent Building Society with an estimated loss of almost £1.5 million and The Bank of Egypt Limited with an estimated loss of well over £1 million, caused the 1911 increase.[47]

Large failures do not explain, however, the large increase between 1895 and 1900, not only in numbers of companies wound-up, but also in estimated losses. One cause of the increase in estimated losses in the last five years of the century might be traced to the large number of amalgamations and reconstructions of companies that took place during this five year period. It has been shown that merger activity in Britain reached one of its peaks in 1898-1900. There is no single cause for this amalgamation movement. Leslie Hannah has found a positive correlation between mergers and trade cycles. He has shown, however, that the predominant influence

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[45] Parl. Papers 1902, xciii (372), op.cit., p. 211; Parl. Papers 1912-13, xciii (267), p. 438: 21st Annual Companies Report, 22 July 1912.

[46] Parl. Papers 1902, xciii (372), op.cit., p. 199.

[47] Parl. Papers 1912-13, xciii (267), op.cit., p. 305-09.

on merger activity at the end of the last century was share prices.[48] This still does not totally explain why the sudden increase in amalgamations in the 1898-1900 period was not repeated until after the First World War. It may have been that there were few companies left that were attractive for amalgamation. Whatever the causes, reconstructions and amalgamations, as a percentage of all company insolvencies followed the trend and rose sharply from ten percent in 1894 to over twenty percent the following year. This trend continued in 1898 with reorganizations or amalgamations accounting for over twenty-two percent of all company insolvencies, and in 1900 the rate was still over fifteen percent. A 'normal' rate of just under ten percent resumed in 1906.[49] Yet not all amalgamations and consolidations that were reported represented insolvent companies. Unhappily, the companies that were actually insolvent cannot be extracted from the aggregate statistics of total companies wound-up in any one year. These aggregate statistics must be used, however, to estimate losses. As a result, the insolvency represented by company winding-up was probably much less for the 1895-1900 period than the numbers or estimated losses would indicate.

Another possible part of the answer to the 1895-1900 paradox of increased company winding-up in the face of general prosperity might be an overvaluation of that portion of the company winding-up losses attributable to vendors'

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[48] Leslie Hannah, 'Mergers in British Manufacturing Industry, 1880-1918', Oxford Economic Papers (n.s.), (1974), 5, 9. See also, P. L. Payne, 'The Emergence of the Large-scale Company in Great Britain, 1870-1914', Econ. H. R., 20 (1967), 519-42.

[49] Calculated from statistics on liquidations in Macgregor, op.cit., p. 505.

shares. The estimated losses from company insolvency rose from .97 percent of the gross domestic product in 1895 to 1.62 percent in 1899 and declined to 1.43 percent in 1900. The 1899 figure was the highest between 1892 and 1913. Apparently, the reason for this increase is an overvaluation of losses attributable to vendor shares. As explained earlier, company losses can only be accurately estimated by including some loss on vendors' shares. It is, of course, impossible to tell exactly how much vendors lost, but contemporaries said that such losses should be greatly discounted. Vendor shares, as a proportion of total capital in insolvent companies, were rapidly rising between 1895 and 1900. The annual company winding-up report for 1897 noted that in 1891 the vendors' share in all liquidated companies was a little more than one-half the public's share, while in 1897 the proportions were equal.[50] The trend continued and the vendors' share became greater than that of the public. If vendors did not lose as much on their shares, then the tendency to inflate losses would have been exacerbated during the period when the proportion of capital attributed to vendors dramatically increased.

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[50] Parl. Papers 1898, lxxxiv (337), op.cit., p. 184.

B. Relationship of trade cycles and bankruptcy rates in selected occupations

The relationship, if any, between trade cycles and bankruptcy rates in selected occupations between 1885 and 1913 is not clear.[51] Figure 4.3 demonstrates a great variety in the years in which peaks and troughs in the deviation from the trend line for bankruptcies occurred for fifteen selected occupations. Figure 4.3 also shows that each of these occupational series has more peaks and troughs than the number of trade cycles. Occupations witnessed between six and ten cycles between 1885 and 1913 while only four trade cycles occurred (Figure 4.3 and Table 4.7).

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[51] Regression analyses comparing bankruptcy 'rates' in thirteen selected occupations with annual unemployment rates between 1891 and 1911 showed no significant correlation in the case of any occupation. The coefficient of determination for each occupation was as follows: architects and surveyors (0.23), bakers (0.29), boot and shoe manufacturers and dealers (0.03), butchers (0.02), builders (0.15), china and glass dealers (0,004), drapers and haberdashers (0.03), farmers (0.15), fishmongers (0.003), grocers (0.06), jewellers ((0.15), publicans (0.11), tailors (0.28), and wine and spirit merchants (0.003). Regression analyses were also performed excluding females. The result was larger yet still statistically insignificant for each category. The annual 'rate' for each occupation was calculated by dividing the number of bankruptcies by the total number of 'employers' and those 'working on own account' age ten years and upwards. Parl. Papers 1893-94, cvi [cmd. 7058], loc.cit.; Parl. Papers 1903, lxxxiv [cmd. 1523], loc.cit.; Parl. Papers 1913, lxxviii [cmd. 7018], loc.cit. A steady rate of growth or decline was assumed between census years.

Figure 4.3 Number of bankruptcies, 1885-1913:
Percentage deviation from trend line for selected occupations
(trade cycle peaks ———— troughs .....)

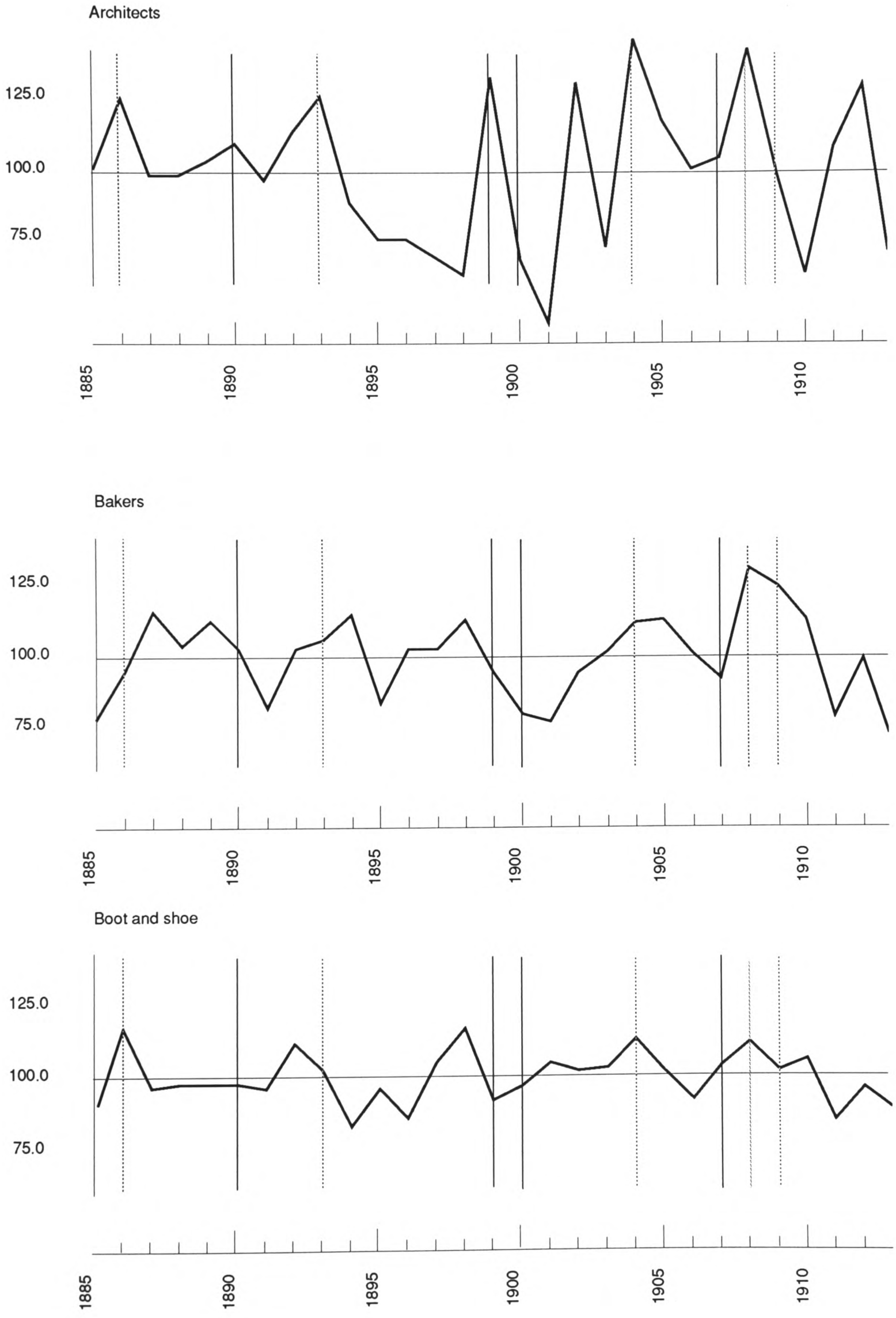


Figure 4.3 continued

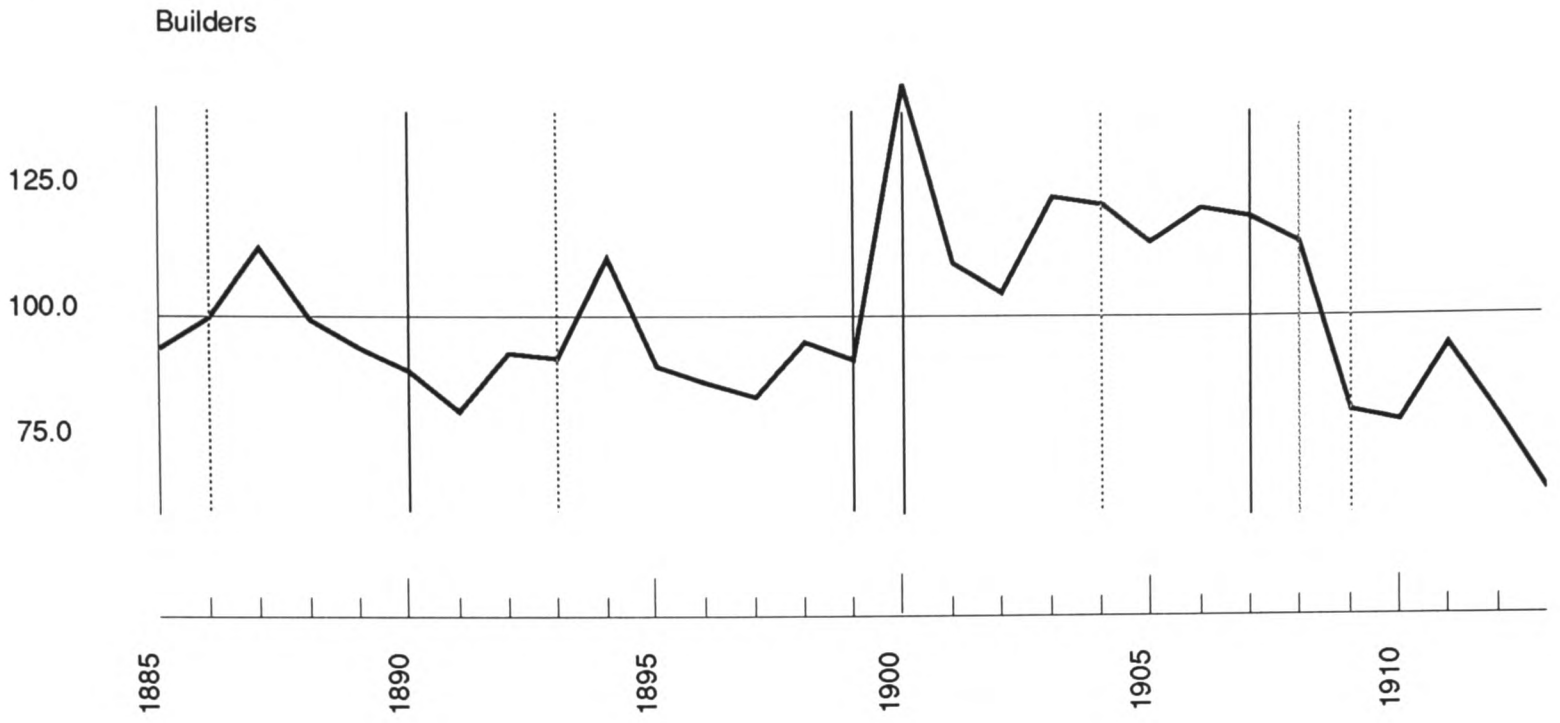






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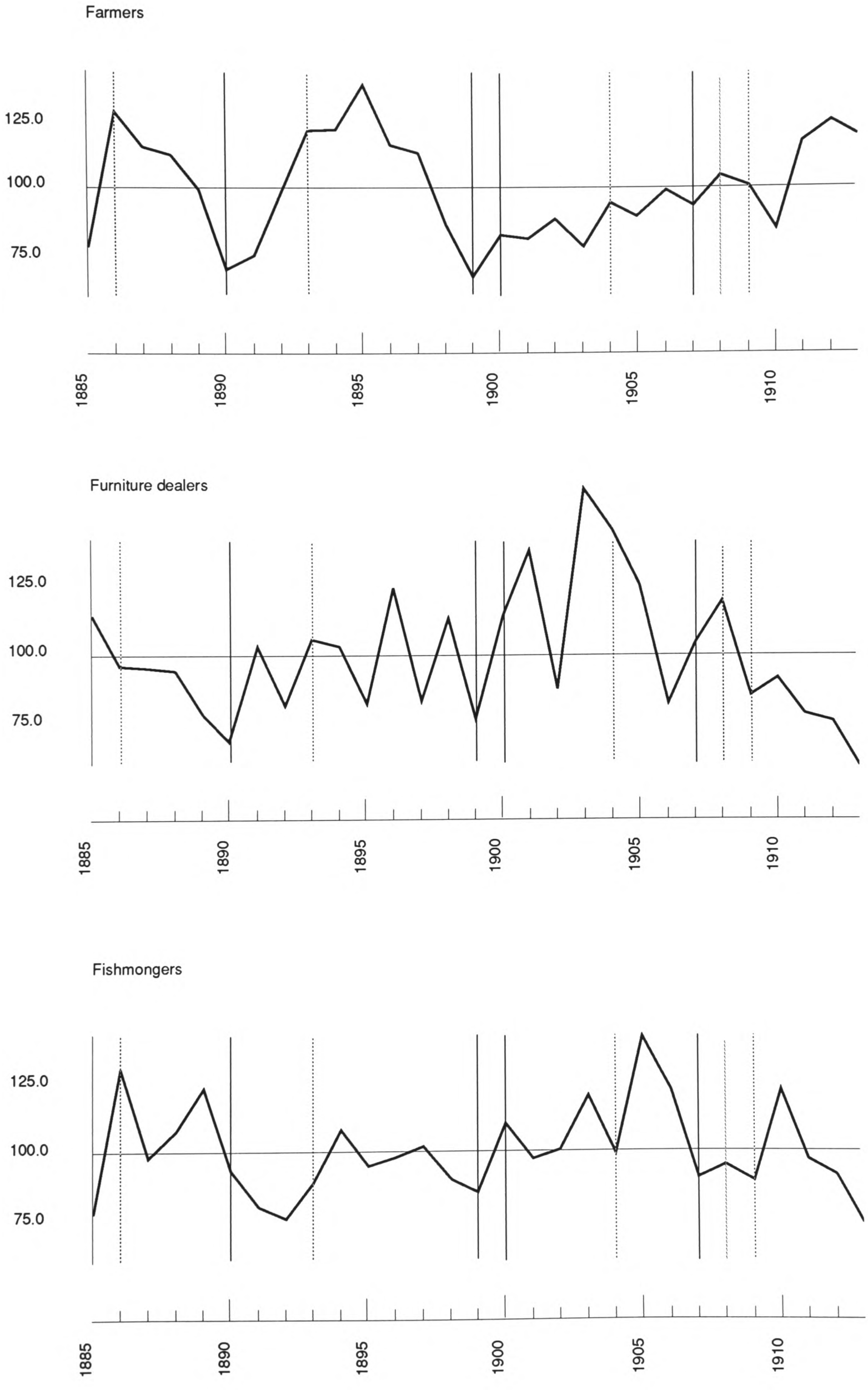
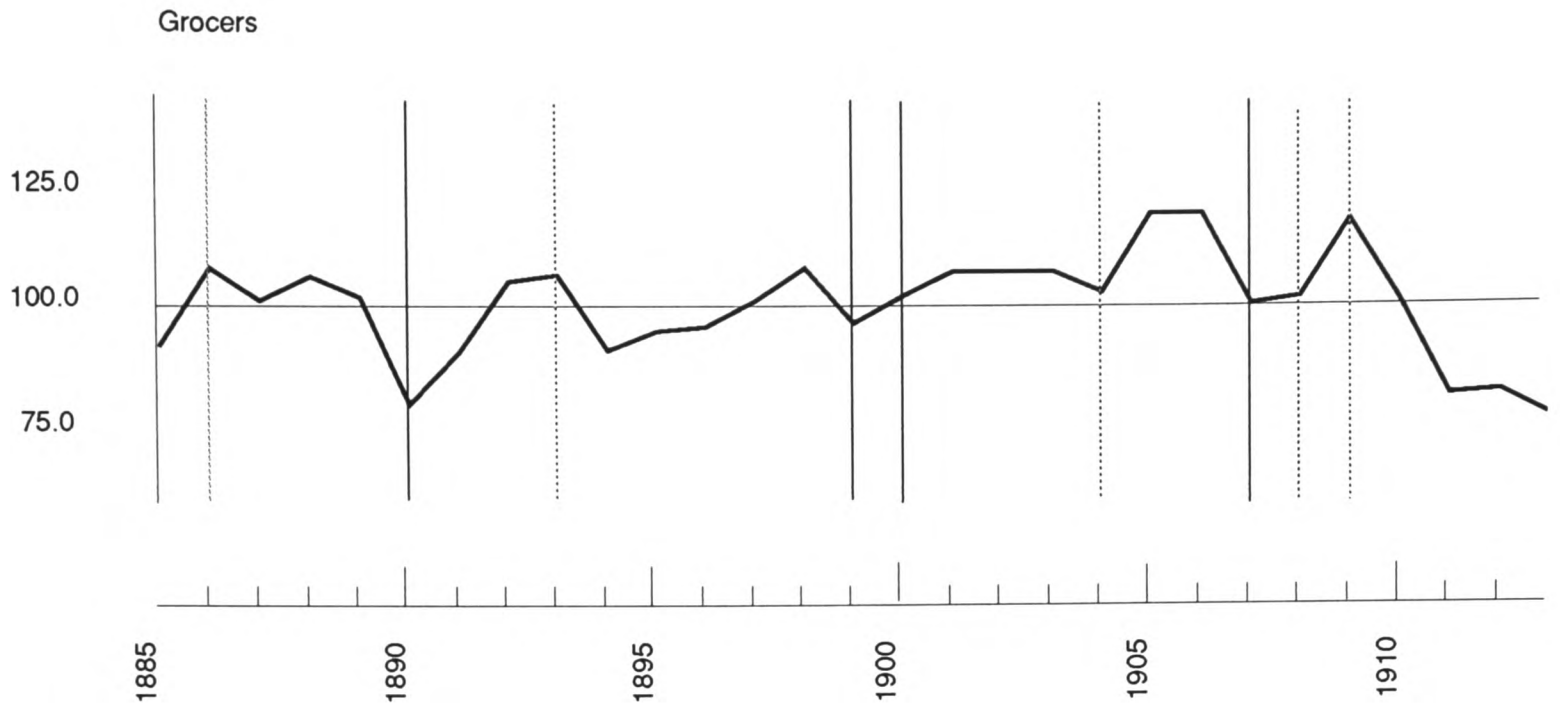


Figure 4.3 continued



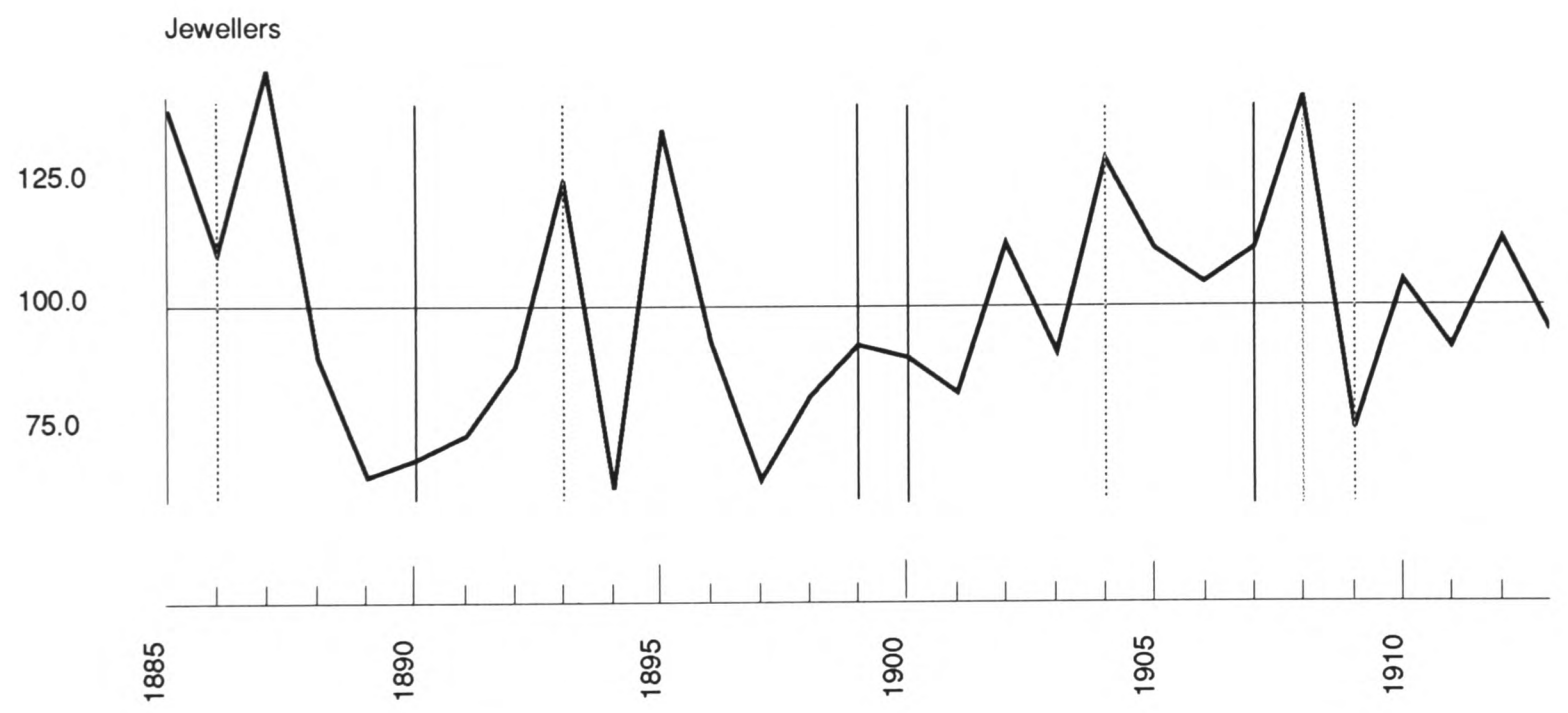
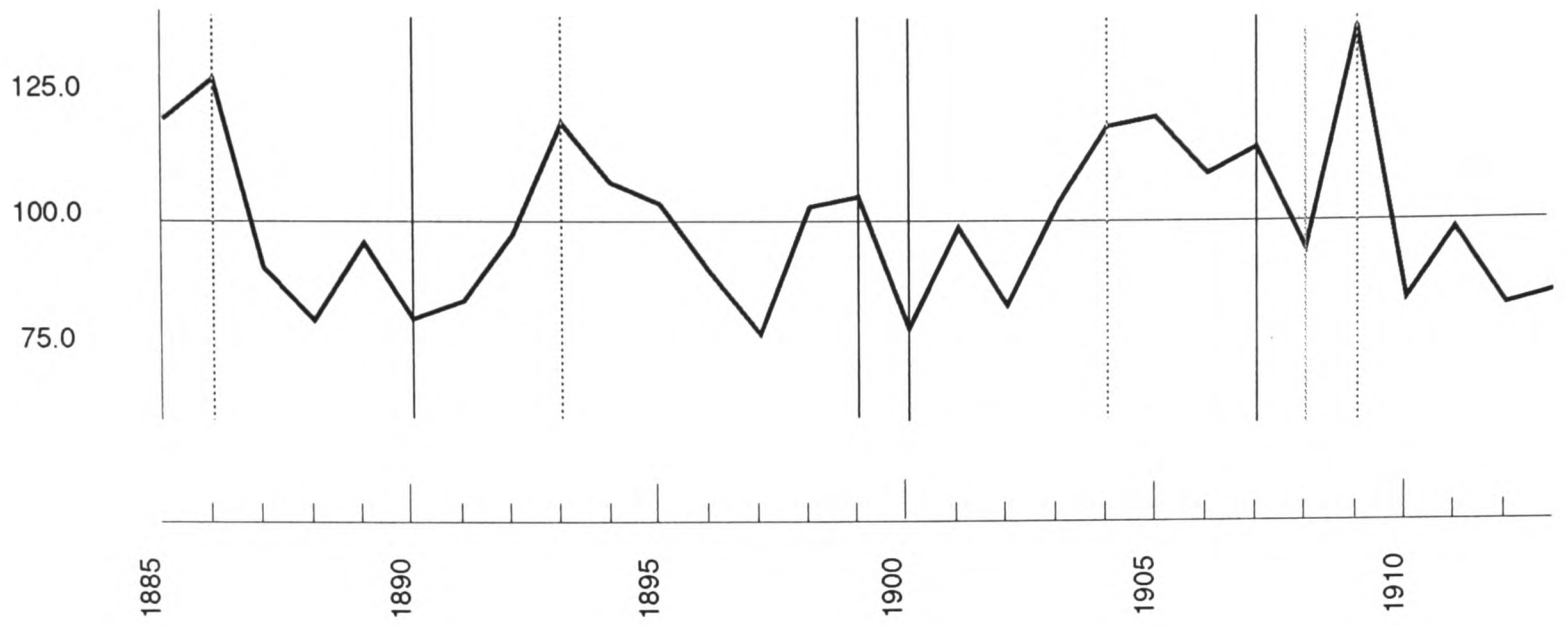


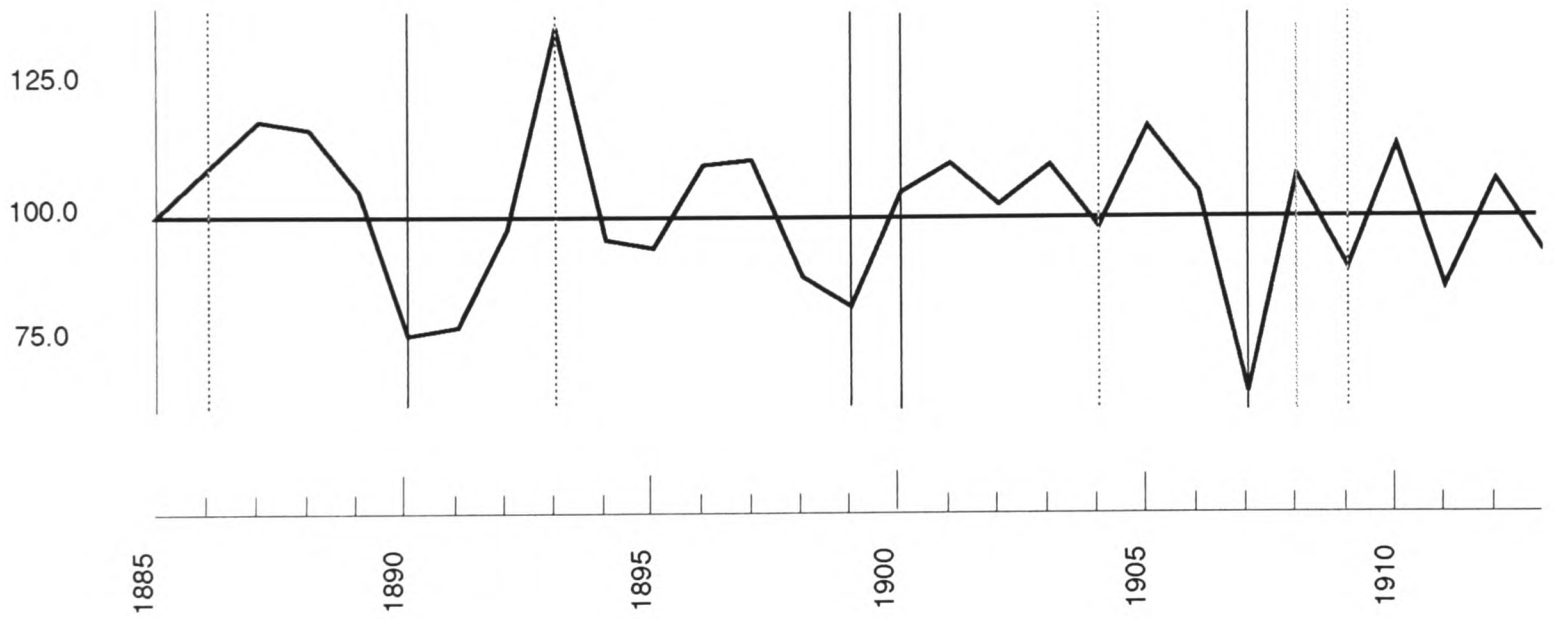


Figure 4.3 continued

Tailors



Tobacconists



Wine and spirit merchants

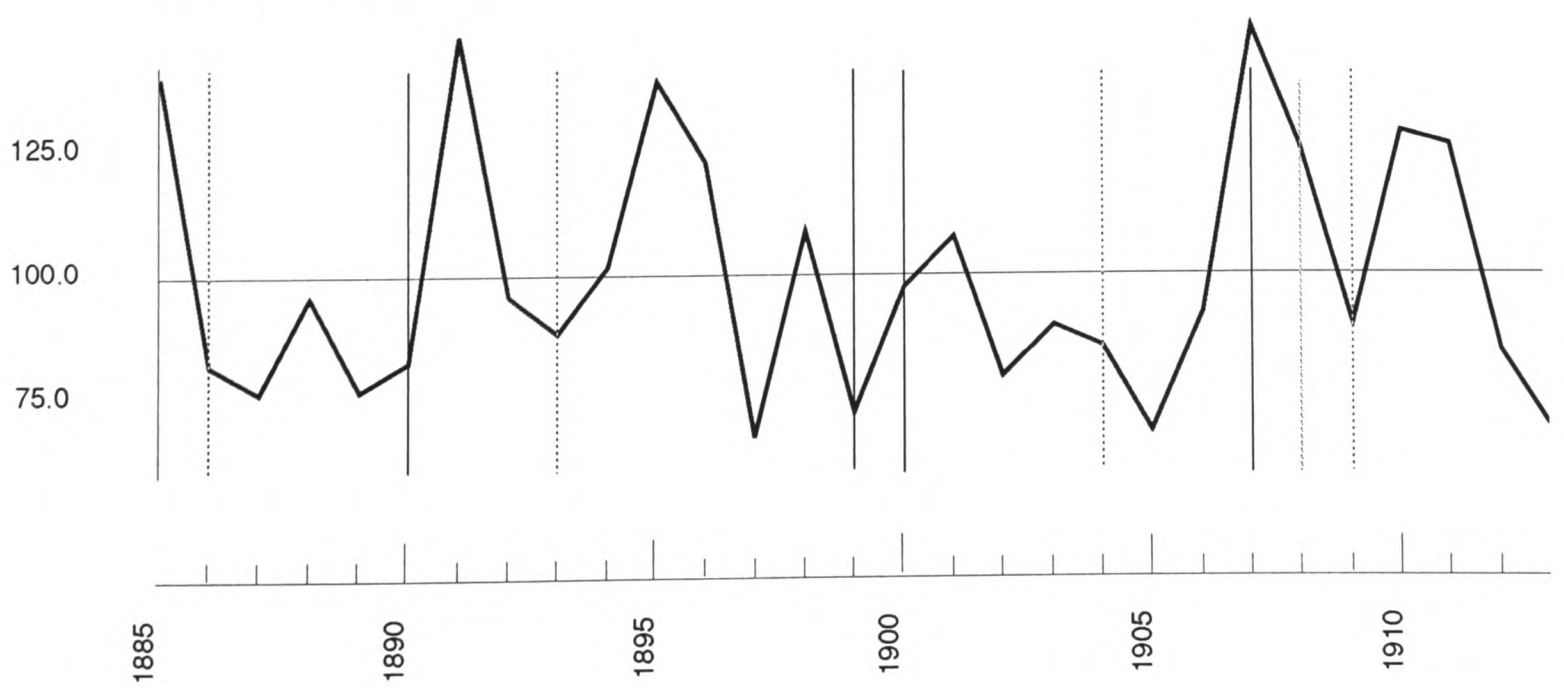


Table 4.7 Comparison of peaks and troughs in numbers of bankruptcies (deviation from trend line) in selected occupations with peaks and troughs in the trade cycle, 1885-1913

Occupation	Peaks in bankruptcies				Troughs in bankruptcies			
	Trade cycle trough year*	Year Before	Year After	Other Year	Trade cycle peak year**	Year Before	Year After	Other Year
Architects	4			4		2	2	5
Bakers	1		3	3	1		2	5
Boot & shoe	3	1	1	5	1	2		7
Builders		2	2	3			1	7
Butchers	2		2	5		2	1	7
Drapers		2	3	4	2		1	6
Farmers	3			5	3		1	5
Furniture dealers		4	1	4	2	1		7
Fishmongers	2	1	3	3	2	1		6
Grocers	3		1	4	3			6
Jewellers	2	2	2	4	1	2	1	7
Publicans		1	3	2	2			5
Tailors	3		1	5	2	1	1	6
Tobacconists	1	2	3	4	3			7
Wine & spirit		1	1	7	1	1		7
TOTAL	24	16	26	62	23	12	10	93

* trough years: 1886, 1893, 1904, 1908-09

** peak years: 1890, 1899-1900, 1907

With some occupations, this phenomenon was especially pronounced. Boot and shoe manufacturers and dealers went through ten cycles during the twenty-eight years studied (Figure 4.3 and Table 4.7). This pattern of numerous fluctuations

naturally meant that many bankruptcies were occurring that were totally unrelated to the trade cycle.

For all fifteen occupations there are only twenty-four occasions when a peak in the number of bankruptcies coincided with a cyclical trough, compared to sixty-two occasions when there was a peak in a year which was neither a trough year nor a year immediately before or after a trough (Table 4.7). At the upper turning point of the cycle the discrepancy is even more marked. On only twenty-three occasions did a trough in the number of bankruptcies coincide with a cyclical peak. Extending the effect of the cycle to the year before or the year after the peak adds only a further twenty-two instances, and there were ninety-three occasions when the low point in the number of bankruptcies was unrelated to the cycle.

The lack of relationship can be shown in another way. There were roughly three trade cycles averaging a little more than eight years each between the mid-1880s and 1910. During this period there were only 111 instances of a bankruptcy peak or trough occurring in the eighteen years represented by the six trade cycle peaks or troughs or the years immediately before or after. Yet for the seven out of twenty-five years representing no peak or trough in the trade cycle, there occurred a total of 155 instances of a bankruptcy peak or trough.

It is also notable that for some occupations there are relatively few instances where a peak or trough in the number of bankruptcies corresponded with a peak or trough in the trade cycle. With wine and spirit merchants there was only one correspondence -- and with five other occupations (bakers, butchers, drapers, furniture dealers, and publicans)

there was only a correspondence in two out of a possible seven occasions (Table 4.7).

It is true that some of the bankruptcy peaks and troughs that did not correspond to the trade cycle were minor, but this was not always the case. Furniture dealers in 1900, drapers in 1910, and jewellers in 1895 all experienced significant increases in the level of bankruptcy (Figure 4.3), even though there was no corresponding slump in the performance of the economy as a whole.

What is the explanation for these frequent fluctuations in the number of bankruptcies? Part of the answer is that specific factors independent of the trade cycle affected the bankruptcy level of some occupations. The unique circumstances of the boot and shoe industry have already been mentioned. The building trade is another obvious example. In 1900 when the trade cycle peaked, the number of bankruptcies among builders, rather than being at a low, also peaked. As previously mentioned, this spike in builder bankruptcies comes at an end of a five-year period of growth in housing construction. The decline in building activity predictably led to an increase in the number of bankruptcies among builders. Another factor related to builder insolvency was short term interest rates. S. B. Saul has noted that the availability of short term funds was extremely important to the marginal speculative builder.[52] Since the average annual bank rate had peaked in 1900 at 3.96 percent, from a low of two percent in

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[52] Saul, op.cit., p. 132.

1895, this may partly explain the surge in builder bankruptcies in 1900.

Farmers were generally affected by factors specific to agriculture. Bankruptcies among farmers were on the rise in 1893 but did not peak until the year 1895, when the level of bankruptcies in most other occupations was declining. This was undoubtedly due to falling prices for farm products and poor harvests during the period. Wheat production fell by twenty-five percent between 1893 and 1895[53] As Lord Ernle has described the period, 'two cold summers (1891-2), the drought in 1893, the unpropitious harvest of 1894, combined with the great fall in prices of corn, sheep, wool, butter, and milk produced a second crisis, scarcely, if at all less acute than that of 1879'.[54]

More generally, the key to the explanation of the pattern of continuous fluctuation in the number of bankruptcies is most likely the size of the firms involved. Between seventy-five and eighty percent of the bankruptcies each year had less than £200 in assets (Table 4.1). The small grocers, drapers, tailors and others who made up the vast majority of bankrupts did not operate large businesses. These small firms were more susceptible to random factors such as injury or illness of the proprietor than to fluctuations in the trade cycle. A tailor who became ill for a length of time would lose his business no matter what the current condition of the national economy. Similarly, a sole proprietor draper who

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[53] Mitchell, op.cit., p. 96.

[54] Lord Ernle, English Farming Past and Present, 6th edn. (London, 1961), p. 383.

chose the wrong fashion might be forced into bankruptcy while his competitor across town who made the right selection might prosper. A grocer might have his business destroyed by a single dishonest employee.

In addition to random factors which might have placed the smaller firms in trouble, once they were in financial difficulty, their size and the attending lack of bank credit continued to be a disadvantage. Where a large joint-stock company which suffered a temporary set back was in a better position to hold back its creditors with the hope that trade would improve, the small retailer had little such hope. Normally, his principal creditor was a wholesaler and not a large financial institution.

While the effect of the trade cycle cannot be totally dismissed and there were circumstances unique to particular occupations, nevertheless it seems that the overall pattern of frequent fluctuations in the numbers of bankruptcies can be largely attributed to the small size of the businesses concerned, their susceptibility to random factors, and their inability to obtain credit.

Another characteristic of the pattern of deviations from the trend line for occupations is that some occupations tend to have less degree of fluctuation from the trend line than others (Figure 4.3). Bankruptcies among grocers deviated only slightly each year from the trend line; bankruptcies among jewellers varied sharply from year to year. During the recession of 1904-1905, bankruptcies among grocers and bakers increased from roughly two to three percent to between ten and twenty percent above the trend line. Yet Bankruptcies among furniture dealers, on the other hand, dramatically

increased from twelve percent below (1902) to almost sixty percent above (1903) the trend line. With only minor exceptions, bankruptcies among bakers, boot and shoe manufacturers and dealers, builders (excepting the 1900 spike), drapers, fishmongers, and grocers did not vary more than ten percent above or below the trend line in any year. In contrast, bankruptcies among jewellers, tailors, farmers, butchers, furniture dealers and architects had wide swings from the trend line.

One possible explanation might be the elasticity of demand for the product sold by the tradesman or the service performed by those in certain occupations. On the one hand, many of the occupations that had large deviations from the trend line such as tailors, jewellers, furniture dealers, and architects are occupations whose service or product probably had elastic demand. Grocers, fishmongers, bakers, and boot and shoe manufacturers and dealers, on the other hand, are tradesmen dealing with products for which demand should be inelastic, and these occupations all show little deviation from the trend line.

Not all cases fit this pattern, and determining the elasticity of demand for particular goods and services during the period can be problematic. In short, it is not possible to state with certainty that the bankruptcy statistics prove that trades or occupations dealing with products or services with elastic demand were more likely to be affected by cyclical fluctuations than those dealing with products or occupations with inelastic demand. Nevertheless, it is certain that some occupations had continuously greater deviations from the trend line, and there are sufficient

grounds to suspect that this effect might have influenced by the degree of elasticity of demand of the goods or services offered by the trade or occupation.

C. Relationship of trade cycles and bankruptcy rates in selected cities

A comparison of the deviations from the bankruptcy trend in the cities studied with trade cycles reveals a picture similar to that found in occupations.[55] Although there were more instances of bankruptcy peaks and troughs in cities corresponding exactly with the trade cycle than in the case of occupations, there were still numerous fluctuations in the numbers of bankruptcies that had no relation to the trade cycle (Table 4.8).

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[55] Regression analyses comparing annual national unemployment rates and bankruptcy levels in eleven selected cities between 1891 and 1911 revealed no statistically significant correlation. The coefficient of determination was as follows: Birmingham (0.33), Bristol (0.08), Ipswich (0.01), Leeds (0.002), Liverpool (0.31), London (0.12), Manchester ((0.04), Newcastle-on-Tyne (0.34), Norwich (0.04), and Swansea (0.12). The annual bankruptcy 'rate' for each city was calculated by dividing the number of bankruptcies by the total number of persons engaged in occupations aged ten years and upwards. Parl. Papers 1893-94, cvi [cmd. 7058], loc.cit.; Parl. Papers 1903, lxxxiv [cmd. 1523], loc.cit., Parl. Papers 1913, lxxvii [cmd. 7018], loc.cit. A steady rate of growth or decline was assumed between census years.

Table 4.8 Comparison of peaks and troughs in numbers of bankruptcies (deviation from trend line) in selected cities with peaks and troughs in the trade cycle

City	Peaks in bankruptcies				Troughs in bankruptcies			
	Trade cycle trough year*	Year Before	Year After	Other Year	Trade cycle peak year**	Year Before	Year After	Other Year
Birmingham	2		2	1		2	1	3
Bristol		1	2	4	2	1		4
Ipswich	2	1	2	4	1	2	2	4
Leeds	2	1	1	5	1	1	2	5
Liverpool	2		2	6	2	1	1	6
London	1	1	2	2	1	1		5
Manchester	2			9	2	1		8
Newcastle on Tyne	3	1	1	3	2		1	6
Nottingham	3	1		7	2		1	8
Norwich	2	1	1	5		1	1	8
Swansea	3	1		6	3		1	7
TOTAL	22	8	13	52	16	10	10	64

* trough years: 1886, 1893, 1904, 1908-09

** peak years: 1890, 1899-1900, 1907

This can be attributed to the same factors that caused such numerous fluctuations in the occupational series. It is the same phenomenon being seen in the aggregate.

Figure 4.4 reveals that around the year 1886, Birmingham, Ipswich, Newcastle, Nottingham and Swansea showed a peak in the number of bankruptcies. The peak for London and Bristol did not occur until 1888. Ipswich and Norwich did not experience a peak in their bankruptcy rate until 1889.

During the depression of 1893, while most cities had more bankruptcies, the increases in four of the cities,

Figure 4.4 Number of bankruptcies 1885-1913:

Percentage deviation from trend line for selected cities

(trade cycle peaks ——— troughs ·····)

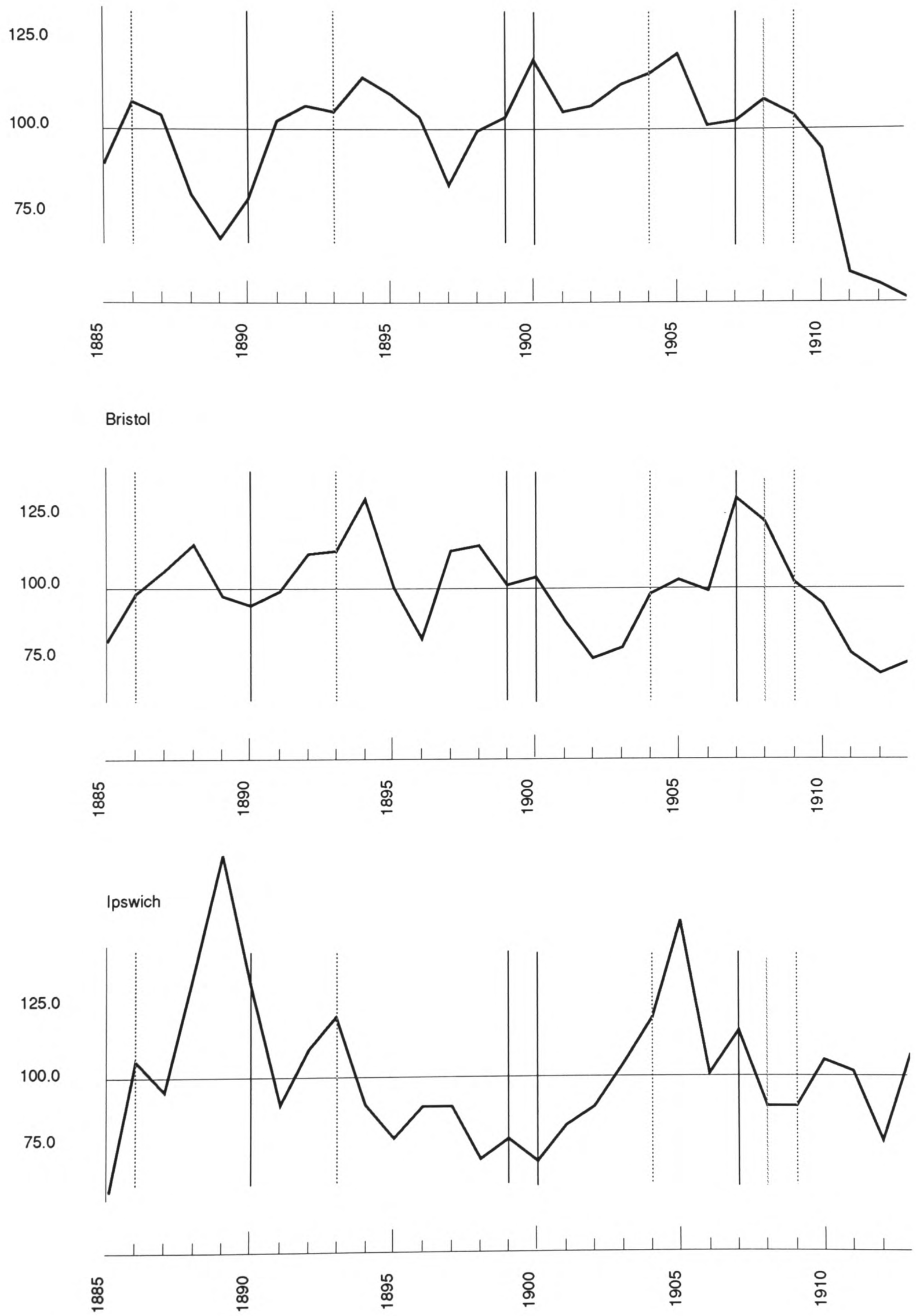


Figure 4.4 continued

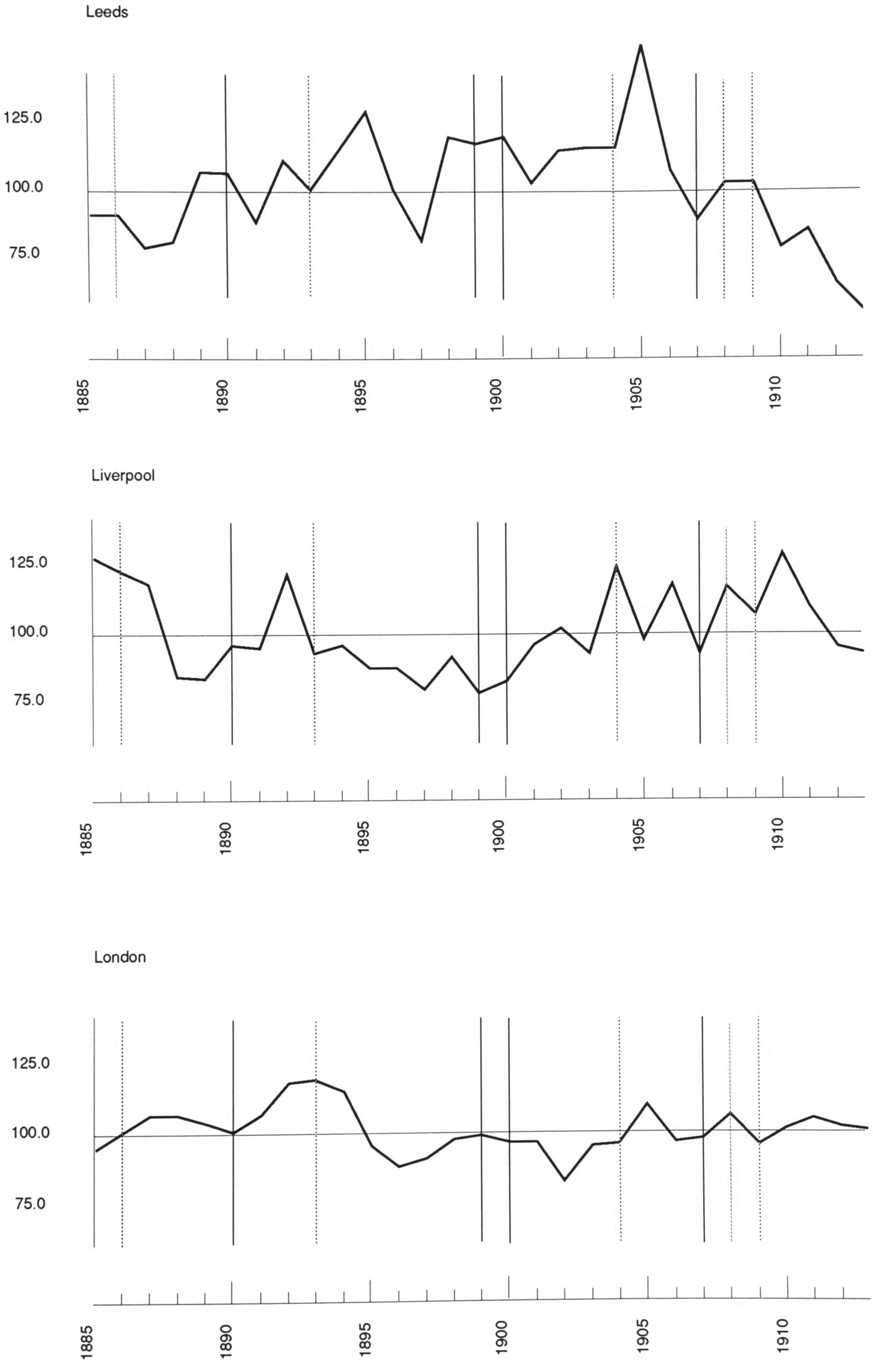
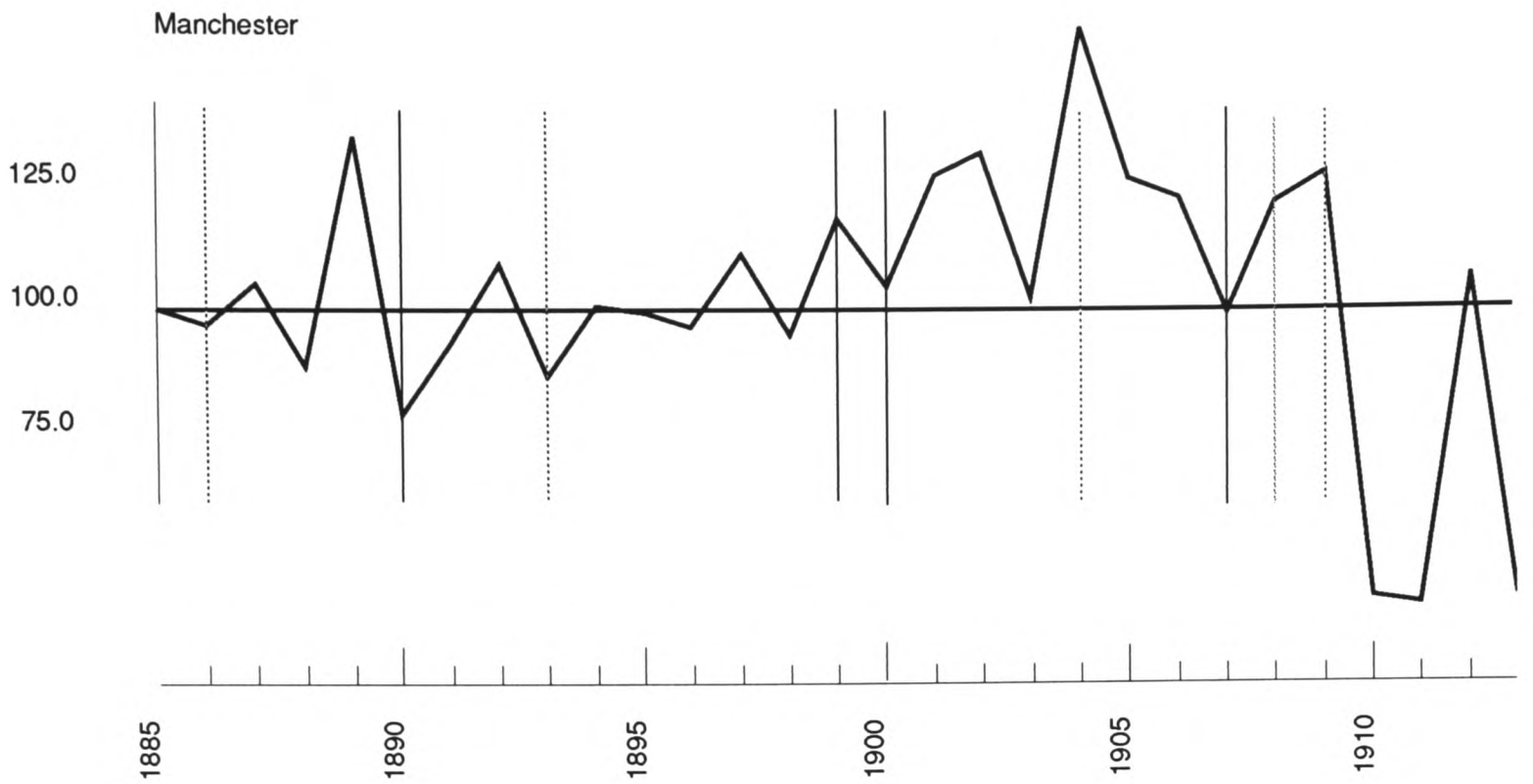


Figure 4.4 continued



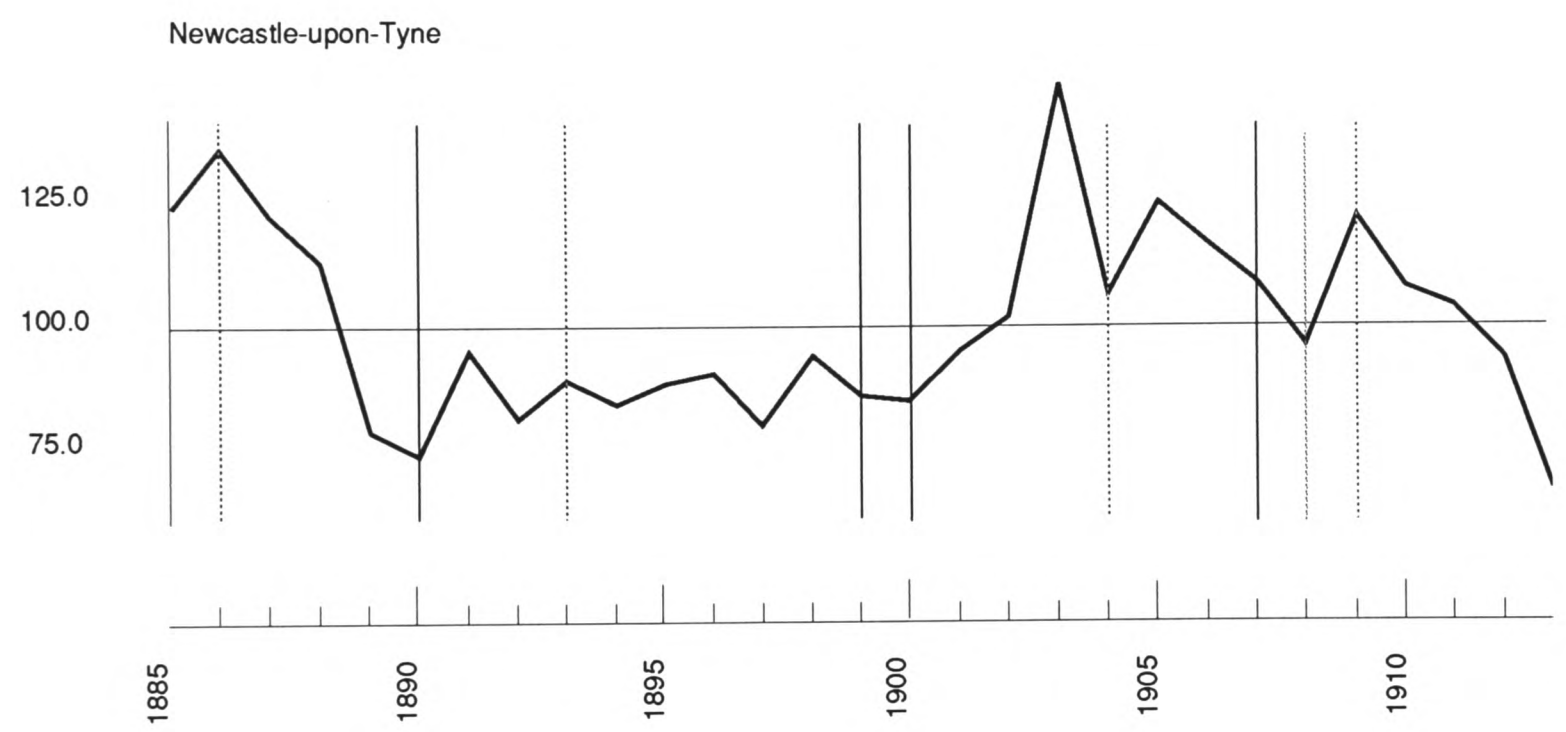
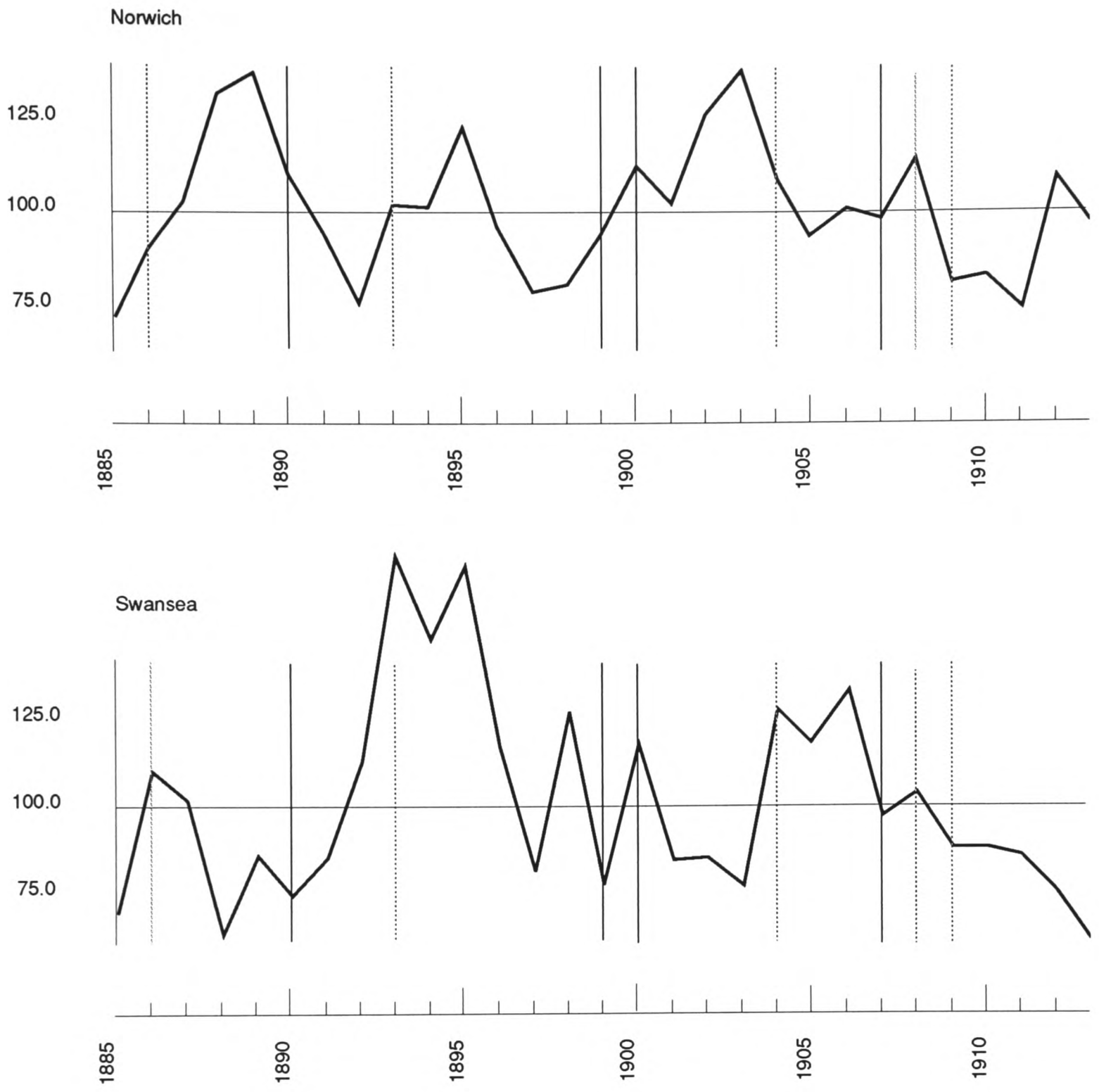




Figure 4.4 continued



Liverpool, Manchester, Newcastle, and Nottingham, did not rise to a level above the trend line. Although more bankruptcies occurred during this recession, in terms of the long range trend in these four cities, the increase was not severe. The effects of the depression did not reach Leeds and Norwich until as late as 1895.

In the bankruptcy report for the year 1904, the inspector-general of bankruptcy noted that the numbers of bankruptcies and deeds of arrangement, as well as the estimated loss to creditors, was the largest it had been in ten years.[56] The experience of the cities studied also reflects this overall increase. All the cities showed a peak in bankruptcies in either 1904 or 1905, except Norwich which had peaked in 1903. Likewise, the depression of 1907 uniformly affected all cities studied. Each showed a peak in bankruptcies in either 1907 or 1908, except for Manchester and Newcastle, whose deviation from the trend did not peak until 1909.

This comparison of unemployment rates with the bankruptcy rates of the eleven selected cities reveals the possibility that trade cycles based on nationwide aggregate data may not necessarily reflect the trade cycle experience of individual cities. The bankruptcy data indicate that in only three cities -- Birmingham, Liverpool, and Swansea -- did the number of bankruptcies as a percentage deviation from the trend line consistently increase in the years of nationwide trade slumps. In some cases, most notably the national economic downturn of 1886, many cities did not even

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[56] Parl. Papers 1905, lxxii (250), op.cit., p. 10.

experience an increase in bankruptcy, or if they did, it was not until some three years after the national slump. Caution should be shown, however, in equating increases in bankruptcy with economic downturns in a particular city. In Leeds for instance, according to a 'verbal appraisal' contained in the Leeds Chamber of Commerce's annual report for 1912, the worst years for the Leeds economy were 1885, 1893, 1897 (slight slump), 1904 and 1909.[57] Of these years, only in 1897 and 1904 was there an increase in bankruptcies. Nevertheless, the varied experiences of the cities studied emphasizes that there were factors other than the national trade cycle that may have affected the economy of an individual city and determined exactly when a city would bear the brunt of a national economic slump. For example, that Newcastle did not reach a peak in bankruptcies until 1909, may well be attributable to the trough in shipbuilding that did not occur until 1908.[58] In short, bankruptcy statistics tend to confirm other evidence that indicates national trade cycles did not necessarily affect all localities at the same time. Further, the large number of fluctuations in bankruptcy numbers for the selected cities reflects once again in the aggregate what was found with occupations studied individually, namely the susceptibility of the small firm to the random factors affecting its economic health.

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[57] Beresford, op.cit., p. 132.

[58] The tonnage of ships constructed in the United Kingdom for British citizens and companies reached a low point in tonnage in 1908 and the number of ships built in 1909. Mitchell, op.cit., p. 421.

Summary

If the study described in this chapter reveals one thing, it is that insolvency statistics, while they can be useful, must be employed with caution. Insolvency statistics, especially those showing estimated losses, are susceptible to misinterpretation because of the problem of the fortuitous filing. As in the case of both bankruptcy and company winding up statistics, the filing of one particularly large bankruptcy can distort the estimated losses for a particular year. This makes aggregate loss statistics virtually useless because, to be accurate, it is necessary to know each individual bankruptcy that composed the aggregate, and these data do not exist. Also, a careful analysis of bankruptcy statistics pertaining to individual trades and occupations reveals that, more than likely, not all failures ended up in a bankruptcy or a deed of arrangement. Estimated insolvency losses based upon such bankruptcy and deeds of arrangement are, therefore, most likely underestimated.

Even with these limitations, the analysis yields several significant conclusions. First, regarding the nature of insolvency in particular trades, the bankruptcy statistics indicate that some insolvency was being handled outside the system. Historians have suspected as much, and the analysis carried out here seems to confirm that theory quantitatively. Second, occupations had different levels of bankruptcy. It cannot be said for certain what exactly those levels were, but some occupations had a higher incidence of failure than others. Third, while there is little doubt that insolvency

declined in the two or three decades prior to 1913, the rate of bankruptcy did not decline in all occupations, and in at least some, it actually increased. Fourth, while the annual rate of bankruptcies in the selected occupations and cities studied bears some resemblance to trade cycles, the numerous fluctuations in level of bankruptcies points to other factors that might be equally as responsible for the number of bankruptcies in any given year. The small size of most firms that became bankrupt made them susceptible to a host of random events such as the illness or injury of the proprietor, the dishonesty of an employee, or a change in fashion. In addition, the small firms suffered from a lack of credit necessary to see them through a difficult period. While trade cycles may have had some effect on bankruptcy levels, the statistical evidence demonstrates that other factors may have had just as important an influence.

Chapter Five

Introduction of 'Officialism', 1831-1856

As with many areas of the law touching on English commercial life, like factory, railroad, and emigrant passenger regulation, the bankruptcy system underwent fundamental changes during the 1830s and 1840s. These twenty years of fast-paced reform, not only in the area of commercial law, but in so many aspects of English society, sharply contrasted with the hesitant steps taken during the first two decades of the century. Sir James Mackintosh, a leading law reformer during the earlier period who lived to see the new era of reform, commented that 'he almost thought he lived in two different countries, and conversed with people who spoke different languages'.[1] Dicey's notion in Law and Public Opinion that between 1830 and 1870 the growth of central control in Great Britain remained stationary, if not diminished, is simply not borne out by the facts.

With regard to bankruptcy in particular, the 1853 annual report of the council of the Law Society of the United Kingdom commented that alterations in debtor-creditor law and in the practice of the bankruptcy courts during the last twenty-five years were 'more frequent and extensive than in almost any other department of our jurisprudence'.[2] The

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[1] Hansard, 2nd series, 1830, xxiv. 1033, cited in Holdsworth, A History of English Law, op.cit., 13. 260.

[2] The Law Society of the United Kingdom, Annual Report of the Council of the Law Society of the United Kingdom, 21 June 1853, p.3.

reform of the bankruptcy system from 1826 to 1856, a period in which the system was characterized by the 'officialism' introduced by Lord Brougham's Act of 1831 is the story of telling legislation and determined reformers. Lord Brougham's act inaugurated direct official involvement in the day to day management of the bankrupts' estates.

To some extent, the government had been involved in the supervision and administration of bankrupt estates since the introduction of the concept of bankruptcy in England in the sixteenth-century. The rationale of bankruptcy procedure is that creditors need an impartial umpire to referee the equitable distribution of bankrupts' estates, and from the outset that umpire had been the government. Even so, at the end of the eighteenth-century, the actual day-to-day management of bankrupts' estates had become the province of the creditors themselves, acting through a creditors' assignee. This changed with Lord Brougham's act, and after 1831 the court-appointed official assignee began to replace the creditor-selected assignee as administrator. This era of 'officialism' lasted for three decades until the 1860s, when the pendulum swung in the other direction and creditors again took direct control.

In tracing the development of bankruptcy reform during this period of 'officialism', particular emphasis will be placed on the sources of the 1831 act and the influence of Henry Brougham, who as Lord Chancellor was instrumental in the implementation of the official system. In addition, the structure, size, and cost of the bankruptcy court will be described, and the size and cost will be compared to other agencies of the government at the time. Finally, throughout

the discussion of the reforms in this thirty-year period, the business community and its growing efforts to influence bankruptcy legislation will be examined.

Influence of Henry Brougham

At the end of the 1820s, Henry Brougham, one of the most ardent advocates of law reform in the nineteenth century, entered into the battle to improve the bankruptcy system. Arthur Aspinall has claimed that 'Brougham was one of the most remarkable men who have lived in modern times'.[3] While Professor Aspinall's claim may be exaggerated, it is no exaggeration to say that Brougham led a truly remarkable life and can be credited with numerous reforms in English law.[4] Brougham calculated in 1838 that fifty-five of the sixty defects catalogued in his famous law reform address to Parliament in 1828 had either been removed or were certain to be removed in bills during the 1838 session of Parliament.[5] Brougham obviously placed bankruptcy high on his reform agenda, for it was one of the few areas of the civil law mentioned in his 1828 address. 'The distribution of estates under bankruptcy law ... is capable of very great improvement ... ', Brougham declared, and despite recent reforms

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[3] Arthur Aspinall, Lord Brougham and the Whig Party (Manchester, 1927), p. v.

[4] Such reforms include, in addition to the establishment of the bankruptcy court, substitution of fixed salaries for fees in several courts, the abolition of the court of delegates and other sinecures in chancery court, the establishment of a central criminal court in London, and the setting up of the judicial committee of the privy council. MacDonagh, Early Victorian Government, op.cit., pp. 163-64; Robert Stewart, Henry Brougham 1778-1868: His Public Career (London, 1986), pp. 278-79.

[5] Henry Lord Brougham, Speeches of Henry Lord Brougham, 4 vols., (Edinburgh, 1838), 2. 314.

'remains full of contradictions, and the source of innumerable frauds and endless litigation'.[6] Since Brougham not only sponsored the bankruptcy act of 1831, but also wrote many subsequent bankruptcy bills until the mid-1850s, it is important to look briefly at his career and attempt to determine the source of his interest in bankruptcy and other legal reforms.

Born in Edinburgh in 1778, Brougham attended Edinburgh University, became a member of the Scottish bar in 1800, and after a period as a student at Lincoln's Inn, was called to the English bar in 1808. In the early years of his law practice when he had few briefs, young Brougham became one of the principal contributors to the Edinburgh Review and published a major treatise, An Inquiry Into the Colonial Policy of the European Powers.[7] The major breakthrough in his law practice came in 1807 when he represented Liverpool and Manchester merchants in support of their petition to Parliament against Orders in Council issued as a result of the United States' trade with the continent. Largely because of his efforts, the Orders were revoked in 1812. In addition to an ever growing success in the law, Brougham supported many other reforms, including the abolition of slavery and the slave trade, education, and Catholic emancipation. Brougham

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[6] Brougham, Speeches of Henry Lord Brougham, op.cit., 2. 478. Despite the importance Brougham placed on law reform and bankruptcy reform in particular at the time, he does not mention his efforts to reform the bankruptcy system in his autobiography, which ends with his term as Lord Chancellor. Henry, Lord Brougham, The Life and Times of Henry Lord Brougham (Edinburgh, 1871).

[7] Henry Brougham, An Inquiry Into the Colonial Policy of the European Powers (Edinburgh, 1803).

first sat in Parliament in 1810 and, after working tirelessly for more than a decade as a supporter of the Whigs, became Lord Chancellor in 1830. Earning a reputation for law reform, Brougham served as Lord Chancellor until 1834 and after his Lord Chancellorship continued his efforts for law reform in Parliament and through two organizations that he largely founded -- the Law Amendment Society (1844) and the Association for the Promotion of Social Science (1857).

Throughout his career, Brougham moved easily among the growing business class, and these contacts are important to an understanding of his interest in bankruptcy law reform. The relationship had an early beginning. The revocation of the Orders in Council, in which Brougham played such an important role, has been called the first parliamentary victory for the new industrialists in England.[8] In thanks for Brougham's efforts, the merchants and manufacturers showered him with gifts, and the merchants of Liverpool asked him to stand as their candidate for Parliament.[9] Once in Parliament, Brougham avoided more radical reforms and concentrated on non-party legislative goals like bankruptcy reform, popular education and the abolition of slavery. Brougham found that the advocacy of such causes gained him the support of the middle classes and thus a political power base from which to operate.[10] In addition, Brougham's advocacy of middle-class

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[8] Chester New, The Life of Henry Brougham to 1830 (Oxford, 1961), p. 67.

[9] Ibid., pp. 67, 69. Brougham lost his first election in Liverpool but later was returned for Camelford in 1810.

[10] Aspinall, op.cit., pp. 249-50.

issues also affected the Whig party. By taking a more moderate approach, Brougham helped to educate the Whigs and align at least the Whig's left wing with the expectations of the rising middle-class and business community.[11] This is not to take away from Brougham's sincerity. Brougham was of middle-class origin himself and no doubt naturally identified with the issues that concerned them, nevertheless, there was almost certainly more than altruism behind his interest in non-party reform issues.

Brougham's attraction to bankruptcy reform almost certainly resulted from the influence of Jeremy Bentham. Brougham met Bentham in 1811 and became a member of a small group, along with Sir Samuel Romilly, James Mill, and Etienne Dumont, that frequently dined with Bentham. In his biography of Brougham, Chester New asserts that membership in this group did not make Brougham a Benthamite, except in the important respect of law reform.[12] There is ample evidence to support this view of Bentham's influence on Brougham's law reforms. For example, Brougham's 1828 law reform address developed all of Bentham's theories on procedural changes in the law from simplification of pleading practice to the institution of local courts.[13] Brougham himself acknowledged an indebtedness to Bentham, and historians have often cited Brougham's passage in an introduction to a collection of his speeches: 'The age of Law Reform and the age of Jeremy

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[11] Holdsworth, A History of English Law, op.cit., 13. 198.

[12] New, op.cit., p. 152.

[13] Halévy, The Growth of Philosophic Radicalism, op.cit., p. 509.

Bentham are one and the same'.[14] 'All the great improvements in our system of jurisprudence which have been made during the last twenty years...', Brougham continued, 'may easily be traced to the long, and unwearied, and enlightened labours of Mr. Bentham and his school'.[15] But Brougham's admiration of Bentham can be carried too far. Largely ignored, for instance, are Brougham's qualifying comments contained in the introduction cited above. The former Lord Chancellor criticized Bentham for the boldness with which he pursued his reform efforts which 'prevented him from seeing real difficulties and solid objections to his proposals... ' and 'rendered many of his theories wholly impractical ...'.[16] To Brougham, Bentham often resembled the 'mechanician ... who should form his calculations and fashion his machinery upon the abstract consideration of the mechanical powers, and make no allowance for the friction or the resistance of air or strength of materials'.[17] In short, Brougham willingly acknowledged Bentham's theoretical contributions to the development of the law but, as will be seen with bankruptcy law reform, readily recognized and discarded Bentham's more impractical suggestions.[18]

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[14] Brougham, Speeches of Henry Lord Brougham, op.cit., 2. 287; for example, cited in Halevy, The Growth of Philosophic Radicalism, op.cit., p.509.

[15] Brougham, Speeches of Henry Lord Brougham, op.cit., 2. 301.

[16] Ibid., 2. 293.

[17] Ibid., 2. 294.

[18] As examples of such impractical positions, Brougham cited Bentham's unswerving adherence to single judge courts and universal suffrage, which would include 'not only women but persons of unsound mind'. Ibid.

Bentham's view of Brougham was much the other side of the same coin. On occasion, Bentham criticized Brougham's proposed reforms and, in the case of bankruptcy reform, quite harshly. Nevertheless, Bentham acknowledged that Brougham had done 'most valuable service to this country'.[19] In 1829 in the Westminster Review, Bentham catalogued his differences with Brougham. To Bentham, his pupil did not zealously enough advocate codification. Nor did he fervently enough oppose written pleadings, the jury system, and fees for the judiciary. In addition, Brougham opposed arrest for debt on mesne process, which Bentham, in principle at least, did not oppose.[20] Brougham, according to Bentham had 'lost a great occasion' for reform and would be replaced by those who 'will stand up only for the claims of justice -- superior to a barrister's hopes, as they are superior to a barrister's fears'.[21]

Neither man was wholly pleased with the other, but this should not take away from Professor New's conclusion that, at least in the area of law reform, Bentham had great influence on Brougham.

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[19] Bentham to Lord William Bentinck, 10 Apr. 1829, cited in Aspinall, op.cit., pp. 231-32.

[20] Arrest for a debt on mesne process was an important issue in debtor-creditor law during this period. Mesne process means 'preliminary and not final process' and referred to a creditor's ability to have the debtor or his property seized before the creditor had to prove the indebtedness in court. Ivamy, op.cit., p. 292; John S. James, Stroud's Judicial Dictionary of Words and Phrases, 5th edn. (London, 1986), p. 1592.

[21] Jeremy Bentham, 'Bentham, Brougham and Law Reform', Westminster Review, ii (Oct. 1829), 471. The article is unsigned but has been attributed to Bentham, with the assistance of his nephew, George Bentham. The Wellesley Index, op.cit., iii. 569.

'Lord Brougham's Act', 1831

When Lord Grey formed his cabinet in 1831, Brougham became Lord Chancellor and immediately confirmed his reputation for unbounded energy. Only a few months after assuming office, Brougham introduced his bankruptcy court bill in July 1831.[22]

Many of the proponents of the 1824-25 bankruptcy consolidation act realized that while organizing the law in a more rational fashion, it did not reform the system. A complete overhaul of bankruptcy law had to be undertaken. Business's cry for bankruptcy reform grew louder. A committee of the Common Council of the City of London inquired into the state of bankruptcy law in 1827. The committee heard direct testimony from merchants, bankers, traders, solicitors, and barristers and, in addition, sent to other cities a circular letter containing questions about the performance of the bankruptcy system. The principal recommendation was to establish a regular tribunal for bankruptcy in place of the part-time commissioner system.[23] Other business groups looked skeptically on previous reforms and claimed that, in some cases, they did more harm than good. In 1830, the Bristol Chamber of Commerce complained that earlier revisions in bankruptcy law doubled the expense of commissioners' meetings. The experience with such reforms proved 'the necessity of an examination into the practical results of new measures

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[22] Sessional Papers 1831, cclxxxix (27), pp. 435-50: 'An Act to establish a Court in Bankruptcy', 15 July 1831.

[23] Joseph Parkes, A History of the Court of Chancery (London, 1828), pp. 420-21.

in their minute details of operation to prevent disadvantages being engrafted countervailing the advantages afforded'.[24]

Brougham's 1831 bill departed radically from the existing bankruptcy system and sought to address many of the complaints business had with the administration of bankrupt estates. The bill called for the end of Chancery Court's jurisdiction over bankruptcy, which had existed for over two hundred and fifty years. In its place, the bill called for the establishment of a separate 'Court of Bankruptcy' consisting of a chief judge, and three other judges serving essentially as an appellate court. In addition, six commissioners, required to be barristers, were to be charged with overseeing the administration of the bankrupts' estates.

Brougham's bill was historic because it introduced 'officialism' into the bankruptcy system. Newly created permanent 'official assignees', appointed by the Lord Chancellor rather than by the creditors themselves, were to be responsible for the day-to-day management of the bankrupt estates. Though this official system was to apply only to London and vicinity, its introduction was significant because the London courts handled a majority of the bankruptcy cases. The counties were to continue to have the part-time commissioner system existing before 1831. The 'official assignees', not to exceed thirty in number, had to be 'Merchants, Brokers, or Accountants, or Persons who have been engaged in

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[24] Bristol Chamber of Commerce, Report from the Board of Directors of the Chamber at the Annual Meeting Held January 25th, 1830 (Bristol, 1830), p. 21.

Trade in the Cities of London or Westminster ...'.[25] The bill retained the position of creditors' assignee, who technically had some minor control over his official counterpart. In fact, real control over the management of the estate lay in the hands of the official assignee.[26]

The origins of many of the provisions of the bill date back several decades. As early as 1783, Sir James Bland Burges, in Considerations on the Law of Insolvency, attacked the 'formidable evils' of creditor-selected assignees. Burges proposed that the system of part-time commissioners be abolished and replaced with a 'Board of Insolvency' consisting of nine commissioners, three assignees, and other minor officials.[27] The most novel innovation offered by Burges, at least in terms of the future history of bankruptcy reform, was the idea that an assignee should be appointed, not by the creditors, but by the court to manage the bankrupt estate, receiving his compensation out of the estate itself. This appears to be the first indication of support for judicial involvement through a court assignee in the daily management of the affairs of bankrupt estates. Burges, a commissioner in Bankruptcy himself and also a member of Parliament, put his bankruptcy proposals in the form of a

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[25] Sessional Papers 1831, cclxxxix (27), op.cit., p. 442.

[26] Some of the controls left in the hands of the creditors' assignee appear to be significant. For example, the bill prohibited the official assignee from interfering with the creditors' assignee in the appointment or removal of a solicitor or attorney or in directing the time and manner of the sale of property. Practice under the act soon relegated the creditors' assignee to minor significance in the administration of estates.

[27] James Bland Burges, Considerations on the Law of Insolvency With a Proposal for a Reform (London, 1783), p. 366.

bill, although apparently he never actually introduced the measure.

Nor was Brougham's provision to remove bankruptcy from the jurisdiction of the Chancery Court original. There had been discussion for a number of years about the utility of this change. According to one member of Parliament during the debate on Lord Brougham's bill, Sir Samuel Romilly recommended that bankruptcy matters be severed from chancery jurisdiction in 1809, but the 1817-1818 select committee took a contrary view and did not question the Lord Chancellor's control of bankruptcy matters.[28]

One contemporary commentator on Brougham's 1831 act asserted that many of its reforms originated with a work by Sir W. D. Evans published in 1810 entitled A Letter to Sir Samuel Romilly on a Revision of the Bankrupt Laws, and indeed several of the bill's provisions bear a striking resemblance to Evan's proposals.[29] Since Evans practiced law in the same northern circuit as Brougham the two almost certainly knew each other. Also, Evans had built a reputation as a legal scholar and published numerous treatises on the law. Evans suggested, among other things, that the issuing of the process in bankruptcy be without the authority of the Lord Chancellor and that voluntary bankruptcy be allowed.

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[28] Hansard, 3rd series, 1831, viii. 729; Parl. Papers 1818, vi (276), op.cit., pp. 3-12.

[29] W. D. Evans, A Letter to Sir Samuel Romilly on A Revision of the Bankruptcy Laws (London, 1810); Robert Lord Henley, A Digest of the Bankrupt Law: With An Appendix of Precedents framed with a Reference to The New Act of the 1 & 2 William IV. c. 56 (London, 1832), p. v.

Another source of Brougham's 1831 reforms was the works of Basil Montagu, a bankruptcy commissioner at the time. In his Inquiries Respecting the Courts of Commissioners of Bankrupts, and Lord Chancellor's Court published in 1825, Montagu carefully set out the previous suggestions made by lawyers and politicians about reform of the bankruptcy system. He proposed that six salaried Commissioners sit daily in London, along with one salaried commissioner in each county, and that a permanent assignee be attached to each commissioner to handle the management of bankrupt estates.[30] There was nothing novel in Montagu's work, but it did provide a handy compendium of most of the previous proposals for reform.

Brougham's bill predictably bears some marks of Jeremy Bentham's influence. While probably not the originator of the idea, Bentham had, nevertheless, long advocated one of the two principal reforms of the bill, the separation of bankruptcy jurisdiction from the Chancery Court.[31] Bentham's long advocacy of the abolishment of a fee-supported judiciary is echoed in the bill's proposal that commissioners be paid salaries. Brougham's 1831 bankruptcy act nevertheless contained provisions that Bentham opposed, such as a three judge court of review. Bentham bitterly attacked the measure for allegedly increasing the patronage of the Lord Chancellor.

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[30] Basil Montagu, Inquiries Respecting the Courts of Commissioners of Bankrupts, and Lord Chancellor's Court (London, 1825), pp. vi-vii.

[31] W. D. Evans, A Letter to Sir Samuel Romilly on A Revision of the Bankruptcy Laws (London, 1810); Robert Lord Henley, A Digest of the Bankrupt Law: With An Appendix of Precedents framed with a Reference to the New Act of the 1 & 2 William IV. c. 56 (London, 1832), p. v.

Somewhat surprisingly, Bentham made no comment on the introduction of increased 'officialism' in the form of official assignees.

Considering the technical nature of Brougham's bill, as the Attorney General admitted, 'it was impossible that many should be able to understand it ...'.[32] It also must be remembered that debate over the bankruptcy bill was going on at the same time as the great Reform Bill, which dominated parliamentary activity. Even so, the bankruptcy bill engendered a considerable and heated debate over issues that would reappear throughout nineteenth-century debates on bankruptcy reform.

Brougham and supporters of the proposed new bankruptcy court argued that the part-time commissioner system under the Lord Chancellor was fundamentally defective because it precluded uniform principles of law. Each commission appointed for a specific bankruptcy operated under its own law. Commissioners were not bound by the precedents established by earlier commissions. The new bill proposed a court of review, consisting of four of the new bankruptcy judges, whose duty would be to insure that no inconsistency arose between opinions of the various bankruptcy judges. The solicitor general endorsed the new court because it would have the power to administer both law and equity.[33] Since only the Lord Chancellor could administer equity, and bankruptcy came under chancery jurisdiction, only equitable remedies could be

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[32] Hansard, 3rd series, 1831, viii. 750.

[33] Ibid., p. 676.

employed in bankruptcy. Finally, proponents of the bill pointed to the great advantage of limiting the new judges to bankruptcy business rather than handling numerous types of legal cases. According to one supporter, this reform alone would reduce the costs of hearings from ten pounds a hearing to only one pound.[34]

Tradition was the central theme of the arguments against Brougham's 1831 proposal. Why totally change the system, opponents argued, when few, if any, other than the Lord Chancellor, called for change? While admitting that some changes were needed, they noted that no previous Lord Chancellor had thought it necessary 'to strike the whole system', a system with which the commercial world was familiar.[35] This was a not so subtle reference to the revered former Lord Chancellor, Lord Eldon, whose opinion was still influential on issues of law reform.[36] Those arguing against change were also quick to point out that few petitions had been received seeking a change in the law.[37] Certainly the silence from the business community is curious and can probably be attributed, at least in part, to the lack of organization at the time. Some petitions did support the bill, and more importantly they came from influential groups such as the Lord Mayor,

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[34] Hansard, 3rd series, 1831, viii. 50.

[35] Ibid., pp. 561, 563.

[36] At least one opponent, Sir Edward Sugen, in an attempt to paint the Tories as not totally opposed to reform, did make the seemingly contradictory point that if the Tory administration had continued in power, 'bills were in preparation' for bankruptcy reform. Ibid., p. 24-25.

[37] Hansard, 3rd series, 1831, vii. 501.

aldermen, and Commons of the City of London, as well as from London bankers, merchants, solicitors, and wholesale and retail traders.[38]

Although few formal petitions came from the business community regarding Lord Brougham's act, when the radical nature of the act is considered, the influence of business on Brougham's measure must have been great. To business interests, at least as expressed in the 1827 recommendations of the London common council committee, the twin evils of the system were uncertainty and delay. Brougham addressed these two concerns directly by amputating from the jurisdiction of the Chancery Court an area of the law that had been under such jurisdiction for centuries. Changing the jurisdiction of the Chancery Court was not an everyday affair. Although the nature of the reforms was still very much in the hands of the legal community, the fact that a drastic alteration of Chancery Court jurisdiction was chosen as a remedy is itself indirect evidence of the power of the business community, at even this early date, to affect change. The legal community, left to its own devices, would never have moved so decisively.

One part of the 1831 act did not find universal support among businessmen -- establishing the position of official assignee. Acting through a number of permanent full-time assignees appointed by the Lord Chancellor, the government for the first time would be involved in the day-to-day

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[38] Journals of the House of Lords, lxiii. 226 (15 Feb. 1831); lxiii. 246 (21 Feb. 1831).

management of a bankrupt's estate. Brougham's plan would put court officials in the place of creditors as the central figures in the bankruptcy system. Given that all the assets of the debtor were, in effect, the property of the creditors, the concept of an official of the government managing such assets was novel indeed for 1830. The debate over this new official system of administration centered around three issues: the novelty of the idea, the degree to which the proposed system had the support of the commercial interests, and the patronage the new system would create.

Sir Edward Sugden claimed that the idea 'was against the very principle of the law of England ...'. He 'objected to the Government interfering in any case in which the property of individuals was at stake ... or of preventing any disposition that a man chose to make of his own'.[39] In one of the few references throughout the debate to laissez faire theory, Lord Wynford stated that if the 'modern theory' that the less government interference in men's affairs the better was right, then there was no need for official assignees. 'Why were creditors to be treated as children', Lord Wynford asked, 'and have persons appointed as guardians to manage their affairs?'[40]

According to one opponent, the allegation that the mercantile classes supported the bill was inaccurate and at

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[39] Hansard, 3rd series, 1831, viii. 33-34.

[40] Hansard, 3rd series, 1831, vii. 500. Although the actual term 'laissez-faire' was not used in the debates, this is not unusual, for it has been shown that the term was used much less in the nineteenth-century than has been supposed. Greenleaf, The British Political Tradition, op.cit., 1. 25.

best 'the opinions of practical men were equally divided on the subject'.[41] How creditors' reacted to the proposed establishment of official assignees is uncertain. There were few petitions from the business community on the bill, let alone any specifically addressing the official assignee provision. In one of the few chamber of commerce minute books for this period that still exist, that of the Manchester chamber, no reference is made at all, even in the annual reports, to the 1831 bankruptcy bill.[42] In February 1831, the bankers, merchants, solicitors, and wholesale and retail traders in London petitioned in favor of the abolishment of the existing commissioner system and the establishment of a bankruptcy court, but there is no record of their position on the establishment of an official assignee.[43] A anonymous letter to the editor of The Times in August 1831 supported Brougham's bill but opposed the official assignee system.[44] 'Who ... is so much interested in the expeditious and economical winding up of a bankrupt's estate', the author of the letter asked, 'as his creditor, who knows his affairs and has the best opportunity of judging of every circumstance connected with them?' The letter went on to claim that the author had polled the opinions of 'the highest merchant,

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[41] Hansard, 3rd series, 1831, viii. 817-18.

[42] Manchester CC Papers, M8/2/2, minutes of meetings (1830); ibid., Annual Report for 1830 (14 Feb. 1831), p. 271; ibid., Annual Report for 1831 (13 Feb. 1832), p. 351.

[43] Journals of the House of Lords, lxiii (15 Feb. 1831), 229. The House of Lords received an identical petition from the Lord Mayor, aldermen and Commons of the City of London six days later. Journals of the House of Lords, lxiii (21 Feb. 1831). 246.

[44] 'New Bankruptcy Court', The Times, 11 Aug. 1831, p. 7.

banker and solicitor in London, to the lowest retail trader' and had found only six in favour of the official system. Four of these had already asked to be appointed an official assignee.

Brougham himself admitted during the debate that 'some merchants' in the city thought that a bankrupt's affairs might be arranged without official assignees.[45] For Brougham to acknowledge that this opposition existed is a strong indication of extensive disapproval in the business community. Charles Wetherell, speaking in opposition, claimed that he had 'made some inquiry in the City ...' and found opposition to the system of official assignees who could overrule assignees appointed by the creditors.[46] Based upon the little evidence there is, the best that can be said is that the London business community generally supported the abolition of the current commissioner system and favoured the establishment of a new court but was either apprehensive of, or opposed outright, the proposed system of official assignees.

Others charged that the official assignee system, and indeed the whole new bankruptcy court, would create an unhealthy system of patronage. According to Tory attacks, the proposed bankruptcy court would be nothing but a 'political engine', and Whigs were sailing with their Lord Chancellor 'down the stream of unnecessary patronage'.[47] Such fears of

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[45] Hansard, 3rd series, 1831, iv. 317.

[46] Hansard, 3rd series, 1831, vii. 917.

[47] Hansard, 3rd series, 1831, viii. 29, 669.

impending patronage and political corruption were not uncommon during the period. Opponents raised similar arguments against the poor laws, public health acts, and railway legislation.[48]

Critics of Brougham's bill also challenged the qualification of the new official assignees. Since the bill required that the official assignees be former traders, it was certain, claimed one opponent, that, 'The office would be sought as a refuge for the destitute; it would be a hospital for incurables -- a provision for decayed merchants ...'.[49] Sir Charles Wetherell, one of the leaders of the opposition against the bill, alleged that he had heard that one of the new appointees, a reputable and learned man, 'figured as a leader in the cause of Reform at all the metropolitan county meetings ...', which confirmed to Wetherell that officers would be appointed for political motives.[50] By far the most bitter attack on the grounds of patronage, however, came from Lord Brougham's friend of twenty years Jeremy Bentham. There could be only one reason for the proposed bankruptcy court, according to Bentham in 'Lord Brougham Displayed', and that was 'profit to the Lord Chancellor -- the author of it: profit to him in the shape of patronage'.[51] The blistering attack continued. The four judges of the appeal court would do the work of one, and the proposed

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[48] Lubenow, op.cit., pp. 47, 87, 119.

[49] Hansard, 3rd series, 1831, viii. 727.

[50] Ibid., pp. 664-65.

[51] Bowring, op.cit., v. 565.

secretary of bankrupts was to do nothing and be assisted in doing nothing by two clerks.[52] When Brougham pointed out that the value of the patronage created was not as great as the expense of the seventy existing part-time commissioners, which were to be removed, Bentham caustically remarked: 'If you did your duty the patronage would not be worth anything to you'.[53]

Bentham did not directly address bankruptcy in his Constitutional Code; 'Lord Brougham Displayed' is Bentham's only published comment on the 1831 act. In this article, Bentham clearly opposed many of the reforms contained in the bill.[54] On one of the major reforms of the act, the introduction of official receivers, we have no evidence of his position, if any. Nevertheless, even though Bentham opposed many of the details of the bill, a Benthamite spirit imbues the measure. At its heart, Brougham's bill is a Benthamite attempt at simplification. It also contained many of Bentham's celebrated notions of reform. Yet, because of political realities, it did not contain all of Bentham's ideas for the bankruptcy system and represented, to a large extent, a political compromise.

The significance of Brougham's 1831 act is threefold. First, it introduced 'officialism' into the English

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[52] Bowring, op.cit., pp. 565-67.

[53] Ibid., p. 570.

[54] In the article, Bentham also claimed that the bill actually delayed justice and increased uncertainty by adding three additional stages to bankruptcy litigation. Other criticisms from Bentham included attacks on the bill's provision for multi-judge panels and for occasional private court sittings. Ibid., pp. 568-77.

bankruptcy system. In effect, the courts which in the past had settled only disputes among creditors, would now be managing bankruptcy estates through official assignees. In one sense bankruptcy was unlike other reforms during the period, such as the appointment of factory inspectors, because the bankruptcy system had always been rooted in a tradition of government involvement, through the supervision of the courts. Even so, the new official system was a significant incursion into the actual estate management that had always previously been considered a matter of private concern and was a radical expansion of government's role in the bankruptcy system.

Second, the debate over Brougham's 1831 bill saw for the first time the central arguments against bankruptcy reform that would reappear in future debates. The arguments in 1831 that creditors themselves were the most qualified to administer estates, that new laws violated legal tradition, and that a new system would lead to misuse of patronage, would fuel continual debate throughout the nineteenth-century.

Finally, the passage of the act signaled the growing influence of the business community on bankruptcy reform legislation. The acceptance of a radical alteration of the Chancery Court jurisdiction demonstrates the pressure of business for reform. Over the next fifty years, the influence of the business community would increase significantly, not only in the passage of bankruptcy legislation, but also in its formulation.

Revision of the official system, 1832-1856

Paradoxically, the first problem generated by Lord Brougham's act resulted from its success. Under the act's provisions, unused funds of bankrupt estates were placed in the Bank of England to the credit of the Accountant General of the Court of Chancery. By 1834, 'very large Sums of Money' had collected in the account.[55] During the debate on the 1831 act, fears arose that money once deposited with the Accountant General would be difficult to retrieve. 'The very name of that officer was an object of horror to commercial men, from the difficulty and expense of getting money out of his hands'.[56] Perhaps the fears were well founded. By 1834, a select committee of Parliament found that there was over £350,000 in cash alone to the credit of the Accountant General belonging to bankrupts' estates.[57] As a result, in 1834 Robert Rolfe, who later as Lord Cranworth became Lord Chancellor, introduced a measure to invest a large part of the money carried in the Bankruptcy Fund Account in government securities.[58] Evidently, this concept had been supported by some merchants as early as 1817.[59] The most novel part of

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[55] Parl. Papers 1834, i (7), pp. 87-92: 'A Bill for investing in Government Securities a Portion of the Cash lying unemployed in the Bank of England belonging to Bankrupt's Estates ...', 19 Feb. 1834.

[56] Hansard, 3rd series, 1831, viii. 735.

[57] Parl. Papers 1834, xviii (362), pp. 201-36: 'Report from the Select Committee on Bankrupts' Estates Bill ...', 10 June 1834.

[58] Parl. Papers 1834, i (37), op.cit.

[59] James Hunt, a merchant, recommended before the 1817 select committee on bankruptcy reform that the debtor's assets should be '... laid out in Government or other securities, so as to become productive ...' Parl. Papers 1817, v (486), op.cit., p. 91.

the bill, however, was the provision that the interest from such investments was to pay the salaries of bankruptcy officials. Like the creation of the official assignee, this was a significant incursion of the government into the creditors' affairs. Although the idea of requiring those who used government services to finance them was not new (Adam Smith had supported the concept), the funds on deposit were ultimately assets of the creditors.[60] It could certainly be argued that the interest earned on such assets belonged to the creditors and not to the government. Proponents did not disagree, but as the select committee studying the bill explained, the amount of interest earned, if divided among individual estates would be 'of a very small comparative amount... ' and 'may be employed more conveniently and more beneficially for Bankrupts' Estates in general if applied to pay the general expenses of the Court of Bankruptcy'.[61]

Despite the significance of this measure, there is a curious absence of debate in Parliament on the use of the interest, and no evidence can be found of the business community's reaction. This starkly contrasts to the highly vocal opposition to a similar provision introduced as part of Joseph Chamberlain's bankruptcy reform bills in the 1880s.

Success of the 1831 act, or perhaps increased economic prosperity in England, can also be seen in a bill introduced in 1838. Although it did not become law, the bill provided

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[60] Fry, op.cit., p. 14.

[61] Parl. Papers 1834, xviii (362), op.cit., p. 202.

that a number of bankruptcy offices be left vacant and the number of official assignees be reduced.[62] There were also complaints during this period about the management of bankrupt estates outside London. The 1831 act had not extended the new system outside the London area, and bills introduced in 1836 and 1837 sought to allow the Lord Chancellor to appoint district commissioners to inquire into the proceedings in the country and to appoint official assignees to serve.[63]

The introduction of bills in the late 1830s calling for the reduction in the number of bankruptcy officials or the extension of the 1831 act to the country, however, tends to paint an inaccurate picture of the success of the 1831 bill. One influential bankruptcy commissioner at the time complained that the 1831 act was supposed to commence bankruptcy reform, but it appeared to him that nothing more had been carried out. Much reform done by the act had actually been undone in the interim.[64]

In November 1839, the government allowed a royal commission to make a thorough inquiry into bankruptcy and insolvency law. Over the next few months, the commission heard the testimony of numerous witnesses, over five hundred pages of

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[62] Parl. Papers, 1837-38, i (484), pp. 71-77: 'A Bill to Diminish the Number of Commissioners and Deputy Registrars of the Court of Bankruptcy, ...', 13 June 1838.

[63] Parl. Papers 1836, i (447), pp. 19-25: 'A Bill to Amend the Law Relating to Bankrupts', 15 July 1836; Parl. Papers 1837, i (349), pp. 51-56, 'A Bill to Amend the Laws Relating to Bankrupts', 30 May 1837.

[64] C. Fane, Bankruptcy Reform: In a Series of Letters Addressed to Sir Robert Peel, Bart. (London, 1838), p. vi.

transcript, and issued its report in July 1840.[65] Business was not heavily represented on the commission. Five of the eleven commissioners were associated with the legal system as either judges of bankruptcy or insolvency commissioners, and three were members of Parliament, one of whom, Benjamin Hawes, however, would later be closely associated with the attempt by business to reform the bankruptcy system. Although the report did not challenge or question the official system established under the 1831 act, it made several suggestions for the improvement of the bankruptcy system. The major recommendations were to abolish the difference between bankruptcy and insolvency law and to extend the specific description of persons liable to bankruptcy law to 'all persons engaged in trade, or business requiring capital and credit'.[66] This merger of bankruptcy and insolvency laws continued to be one of the business community's major goals, and Parliament eventually merged the two branches of the law in 1861.[67] The commission also sought to broaden the base of those subject to bankruptcy law by reducing from £100 to £50 the minimum amount of debt to one creditor required for that creditor to file a bankruptcy petition.[68] To encourage traders to face up to their insolvency, the commission suggested debtors be allowed to file a bankruptcy petition

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[65] Parl. Papers 1840, xvi (274), pp. 1-600: 'Report of the Commissioners for Inquiring Into Bankruptcy and Insolvency', 30 July 1840.

[66] Ibid., p. 15.

[67] 24 & 25 Vict., c. 134 (1861).

[68] Parl. Papers 1840, xvi (274), op.cit., p. 14.

traders to face up to their insolvency, the commission suggested debtors be allowed to file a bankruptcy petition with the concurrence of one or more creditors, even if the debtor had not technically committed an 'act of bankruptcy'.[69] One of the creditors' oldest weapons, the requirement of their approval for discharge, the commission described as 'mischievous in its consequences and recommended that the granting of the certificate should be a purely judicial act'.[70] Finally,the commission stated that even though the current system provided efficient means for the discovery of property and the detection of frauds, there were insufficient means to punish wrongdoers and better means of direct punishment were needed.[71]

Largely as a result of the recommendations of the 1840 royal commission, the Tory Lord Chancellor, Lord Lyndhurst, introduced a major bankruptcy reform bill in March 1842 containing many of the reforms.[72] The act lowered the minimum amount of indebtedness required to file a petition and abolished the requirement of creditor approval for a certificate of discharge.[73] The government's measure also, in

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[69] Parl. Papers 1840, xvi (274), op.cit., p. 17.

[70] Ibid., p. 19.

[71] Ibid., p. 7.

[72] Sessional Papers 1842, ii (214), p. 167: 'A Bill intitules [sic] an Act for the Amendment of the Law of Bankruptcy', 14 Mar. 1842.

[73] Bankruptcy law also contained moral elements. The bill provided that no certificate of discharge could issue 'if such Bankrupt shall have lost any sort of Gaming or Wagering in One Day Twenty Pounds, or within One Year next proceeding his bankruptcy Two hundred Pounds ...'. Ibid., p. 180.

effect, permitted a bankrupt to cause his own formal bankruptcy and increased the penalties for uncooperative debtors.

The major reform sought by the royal commission, the merger of bankruptcy and insolvency law, the government did not incorporate into the bill. The bill did, however, broaden the jurisdiction of the bankruptcy statutes by adding a number of vocations to the list of 'traders' subject to bankruptcy.[74]

In addition to the reforms endorsed by the Royal Commission, the bill contained a provision introduced in earlier bills to extend the 1831 act's salaried full-time commissioner system to the country. In support of this provision, the attorney general noted that under the Brougham system collection of debts owed to bankrupts had been running at over seventy percent while under the old system still operating in the country only thirty-eight percent were being collected.[75] The business community had mixed reactions to this proposed extension. During debate on the bill, Sir J. Graham referred to a memorial addressed to the Lord Chancellor and signed by fifty-six bankers, various merchants, and 537 of the 'most respectable' traders in London urging extension of the system to rural districts.[76] Merchants from Liverpool opposed the measure outright, and the Hull Guardian Association for the Protection of Trade and the Manchester Chamber of Commerce

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[74] Sessional Papers 1842, ii (214), op.cit., p. 169.

[75] Hansard, 3rd series, 1842, lxv. 1129.

[76] Ibid., p. 1087.

urged postponement of consideration.[77] This difference of opinion probably resulted from the London merchants desire for a more uniform system so as to increase their chances of collecting debts and the country merchants reluctance to alter the traditional system.

There was little debate in Parliament on the government's bill and it received royal assent in August 1842. Besides introducing reforms, the legislation is also significant because it was the only major piece of bankruptcy legislation during the nineteenth-century introduced by a Tory government. When opposing major bankruptcy reforms, the Tories tended to argue against sweeping changes in the system and preferred the more gradual approach characterizing their 1842 bill. While the legislation made a number of substantive alterations in the bankruptcy system, it was not a measure, such as the Whigs' 1831 act or the Liberal's act of 1883, that changed the system altogether.

After 1842, businessmen's dissatisfaction with the bankruptcy system appears to have intensified. Between March and June 1843, representatives from twenty-nine cities delivered petitions to the House of Commons urging reform of the bankruptcy system.[78] These petitions, mostly from merchants, bankers, and solicitors, rather than suggesting specific reforms, asked Parliament in general to reform the law. Many of the petitions were identical in form. For example,

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[77] Journals of the House of Commons, xcvii. 574, 583, 589 (3 Aug. 1842).

[78] Ibid., xcvii (1843), 93-442; Four of the cities presented petitions to the House of Lords in addition to their petitions to the House of Commons. Ibid., lxxv (1843).

petitions from Leicester, Northampton, Nottingham and Chester contained the identical request 'to take Circumstances into serious Consideration, and to make such Alterations in the Bankrupt Law as may render the same effectual for securing a ready, satisfactory and inexpensive Distribution of a Bankrupt's Estate'.[79] Petitions were also forwarded to the House of Lords during the period from the Birmingham Law Society, the Northamptonshire Law Society, and the solicitors and attorneys practicing in the cities of Cambridge, Newark, and East Retford.[80] That so many similar or identical petitions could have been produced without some central coordination seems unlikely. Also surprising is that petitioners mounted the campaign ten months after the Tory bankruptcy reform act of 1842 became law. There was no petition campaign during the debate over the 1842 act and, thus the 1843 petition campaign appears to reflect disappointment that the 1842 act did not go far enough.

Efforts of the London committee, 1831-1856

Between the passage of Lord Brougham's act in 1831 and the efforts to repeal the official system in the late 1850s, a growing organization on the part of business interests tried to reform the system of bankruptcy administration. Isolated petitions from businessmen in various cities have been mentioned, as well as the 1843 petition campaign, but

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[79] Journals of the House of Lords, lxxv. 84 (13 Mar. 1883), 108 (24 Mar. 1843), 159 (27 Apr. 1843), 257 (8 May 1843).

[80] Ibid., lxxv. 108 (24 Mar. 1843), 373 (9 June 1843), 452 (26 June 1843), 580 (8 Aug. 1843).

the best example of growing organization is found in a London committee of merchants formed in the early 1830s and operating intermittently for over twenty years. Specifically formed to address legislation affecting debtor-creditor relations, the committee originated in 1833 after the abolition of arrest on mesne process.[81]

During the debate on the 1842 bankruptcy bill, the committee met to consider the bill and, while it is not certain, it seems likely that the memorial in that year to the Lord Chancellor urging the extension of the official system to rural districts was the product of the London committee.[82] In May 1845, the committee petitioned the House of Lords for legislation providing for 'greater Protection to the Creditor from Fraud, Extravagance, and willful Misconduct on the Part of the Debtor ...' and empowering the court to grant or withhold protection of the debtor pending inquiry into his previous conduct.[83] The London committee met again in February 1846 and, pursuant to resolutions at that meeting, resolved to use 'all the means at their power to awaken and impress on the mind of the public, and of the state, the serious evils resulting to commercial dishonesty and credit

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[81] The Times 4 Aug. 1849, 6 (Address by the chairman of the committee, William Hawes, describing the committee's origins).

[82] 'Court of Bankruptcy Bill', The Times 4 May 1842, 7; Hansard, 3rd series, 1842, lxv. 1087.

[83] The Law Times 27 Mar. 1847, 561-67 (describing a history of the committee); The Law Review and Quarterly Journal of British and Foreign Jurisprudence, vi (May-Aug. 1847), 149-50; Journals of the House of Lords, lxxvii. 1121 (5 Aug. 1845). Merchants, bankers and traders of Cambridge presented an identical petition. ibid., p. 867 (21 July 1845).

from the vicious and defective state of the law of bankruptcy and insolvency'.[84]

The committee was active and was not without funds to support its cause. The secretary of the committee reported as of February 1846 a balance of £600. Articles on the subject of bankruptcy reform were published in daily newspapers and other periodicals.[85] Most important, the committee prepared a bill that partly remedied specific abuses and circulated it to the Lord Chancellor, chambers of commerce and the Law Society. A liberal reformer and soap manufacturer, Benjamin Hawes, Jr., who had been a member of the 1840 royal commission, introduced the London committee's bill in Parliament in August 1845 and reintroduced it the following year.[86] Despite the support of law reform groups such as Lord Brougham's Law Amendment Society, the bill never became law.[87]

The London committee's proposal is nevertheless important for its reforms that many creditors apparently felt were urgently needed. For example, the collection of a bankrupt's assets was not being carried out as smoothly as the creditors wished, and several of the bill's provisions would have speeded up that process. The proposed act required bills of

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[84] The Law Times 27 Mar. 1847, 561.

[85] 'Bankruptcy and Insolvency Law', The Times 23 Nov. 1847, 6.

[86] Ibid.; Parl. Papers 1845, i (626), pp. 133-44: 'A Bill to Amend the Laws relating to Bankruptcy and Insolvency', 5 Aug. 1845; Parl. Papers 1846, i (199), pp. 109-24: 'A Bill to Amend the Laws relating to Bankruptcy and Insolvency', 8 Apr. 1846; Parl. Papers 1846, i (437), pp. 125-40: 'A Bill to amend the Laws relating to Bankruptcy and Insolvency (as amended by the committee)', 25 June 1846.

[87] The Law Review and Quarterly Journal of British and Foreign Jurisprudence, iii (Aug. 1845- May 1846), 124.

sale and mortgages of goods to be registered to be valid against assignees of the bankrupt.[88] To cut down on expenses of collection, the bill permitted an account and demand of payment and summons issued by the bankruptcy court to be served by post rather than personally.[89] Creditors also believed that the cost of prosecuting a fraudulent debtor should not have to be borne solely by his creditors. Accordingly the bill provided that the costs of prosecuting bankruptcy could be paid out of the Secretary of Bankrupts' Fund.[90]

The London committee's bill also addressed the delays encountered by creditors in Chancery Court. Unlucky creditors of an debtor who died insolvent faced the prospect of slowly grinding through the cumbersome procedure of the Chancery Court. Creditors wanted to have such estates removed to the bankruptcy court, where they could be dispensed with more promptly. The London committee's bill provided for this, and the issue became one of the key reforms supported by the commercial community for the next two decades.

Parliament in the 1840s, however, was more inclined to increase the Chancery Court's jurisdiction rather than restrict it. In 1847, Parliament returned bankruptcy jurisdiction to the Lord Chancellor acting through a Vice Chancellor designated for that purpose.[91] Parliament felt that the

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[88] Parl. Papers 1845, i (626), op.cit., p. 137.

[89] Parl. Papers 1845, i (626), op.cit. p. 133.

[90] Ibid., p. 137.

[91] 10 & 11 Vict., c. 102.

four bankruptcy judges created under the 1831 act had little appellate work, the number of these judges having already been reduced to one. The transfer of bankruptcy jurisdiction back to the Chancery Court was unpopular with large segments of the business community. During debate on the bill, Sir James Graham attacked it alleging that the government relied on the advice of the Lord Chancellor and not on the opinions of members of Parliament representing metropolitan constituencies.[92] Merchants, bankers, and traders submitted petitions against the transfer. These voices must have been heard, since the transfer of jurisdiction clause of the bill did pass, if by only a small majority.[93]

Petitions continued to call for reform. The London committee, which had offered a bill in 1845, petitioned the House of Lords in March 1847 for consolidation and amendment of 'the present unsatisfactory and defective bankruptcy laws'.[94] In November of the same year, the committee passed a resolution recognizing the advantages of the expanded jurisdiction of the Court, and again urging that there be no further delay in revision of the debtor-creditor laws.[95] In 1848, petitions were received by the House of Commons from Devonport, Exeter, Hull, Huddersfield, Kingston-upon-Hull, and Walsall complaining of the great inconvenience and expense of the bankruptcy system and urging alteration of the

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[92] Hansard, 3rd series, 1847, xciv. 204-06.

[93] Ibid., pp. 208, 212.

[94] Journals of the House of Lords, lxxix. 115 (29 Mar. 1847).

[95] 'Bankruptcy and Insolvency Law', The Times 23 Nov. 1847, 6.

current bankruptcy laws.[96] The Manchester Chamber of Commerce in its annual report dated February 1848 charged that previous changes in the bankruptcy law had failed to produce 'a whole that works satisfactorily' and resolved to cooperate with the London committee to see that the laws were amended.[97]

Bankruptcy Consolidation Act of 1849

As he had done twenty years earlier, Lord Brougham in the late 1840s took it upon himself to respond to the calls for reform. In February 1849, the former Lord Chancellor introduced a monumental bill containing over 250 sections, which consolidated into one measure all previous bankruptcy statutes.[98]

The measure also introduced several reforms, the tenor of which decidedly favoured the creditor. Lord Brougham stated the simple principle behind almost all the amendments proposed, namely '*Primâ facie* the creditor was in the right, and the debtor in the wrong'.[99] The bill's purpose was to give the creditor all the help possible to recover his debts. Brougham's bill assisted creditors by making failure to

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[96] *Journals of the House of Commons*, ciii. 146 (2 Feb. 1848), 382 (28 Mar. 1848), 524 (16 May 1848), 565 (26 May 1848). In addition, there is record of merchants in Huddersfield in 1848 petitioning the House of Lords specifically requesting that all bankruptcy jurisdiction be transferred to the county courts. *Journals of the House of Lords*, lxxx. 333 (2 June 1848).

[97] Manchester CC Papers, M8/2/4, p. 250: Annual Report, 14 Feb. 1848.

[98] *Parl. Papers 1849*, i (370), pp. 283-420: 'An Act to amend, methodize and consolidate the Laws relating to Bankrupts ...', 11 June 1849.

[99] *Hansard*, 3rd series, 1849, cv. 1142.

comply with a debtor's summons an act of bankruptcy. Also proposed was a system whereby certificates of conformity (discharge) were ranked in three classes according to the actions of the debtor. As this procedure developed in practice, the three classes of certificates distinguished between the 'virtuous' debtor whose insolvency was attributed to unavoidable losses and misfortune, the 'unfortunate' debtor whose conduct was generally satisfactory, and the 'spendthrift, speculating or fraudulent' debtor.[100] The bill also expanded the concept of deeds of arrangement. The insolvent debtor could reach an agreement as to the liquidation of his estate with six-sevenths of his creditors (having debts of at least £10 each) in number and value. Such an agreement was to be effectual and obligatory in most cases on all creditors whether or not they had signed the agreement.

The hallmark of the bill, however, was the codification of bankruptcy law, and it is in this codification the hand of Bentham appears. The inventor of the term 'codification', Bentham spent much of his career writing his Constitutional Code, only one of several codes Bentham intended as forming his 'Pannomion' or complete body of laws.[101] Brougham discarded the traditional manner of Parliamentary bill construction and carefully crafted his bill using the most modern techniques of codification. For example Brougham,

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[100] William Anderson Steel, 'An Outline of Bankruptcy Legislation in England During the Present Century, Together With That of Some of the Principal Commercial Countries of the World; With a Comparison of the Objects Sought For and the Results Obtained', Journal of the Institute of Bankers, ii (1881), 563.

[101] Dinwiddy, op.cit., pp. 16, 58.

according to Bentham's specific teaching, placed before every major section of the bill a short rationale stating its purpose and justification.[102] The House of Commons did not welcome such innovations, and most were deleted in amendments. 'We cannot but lament', stated Law Review, the arm of Brougham's Law Amendment Society, 'that the powers of one House of Parliament should have been exerted to undo what has been so well done by the other... '. The article also noted that 'the legislators of France and other nations have been clear-sighted enough to adopt such a form already'.[103] To Brougham, the Commons had 'recurred to ancient forms, and set their faces against all innovations'. Rather than face defeat of the entire bill, he grudgingly accepted the changes.[104]

The business community's reaction to Brougham's bill was mixed at first. Brougham presented a number of petitions, including one from the London Association for the Protection of Trade and one from Manchester containing 3,918 signatures of merchants and traders. According to Brougham, supporters of the bill in Manchester raised in ten minutes the £1000 necessary to defray the committee's expenses.[105] In opposition the London committee resolved that while it welcomed Brougham's bill, it could not approve of the measure at that time because it did not restore arrest on mesne process,

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[102] Dinwiddy, op.cit., p. 59.

[103] The Law Review and Quarterly Journal of British and Foreign Jurisprudence, xi (Nov. 1849- Feb. 1850), 145.

[104] Hansard, 3rd series, 1849, cvii. 1017.

[105] Hansard, 3rd series, 1849, cv. 1139.

provide for effecting an arrangement when approved by a large majority of creditors, or confront the disposition of property of deceased insolvents.[106] As the bill progressed, however, the opinion of businessmen began to coalesce behind the measure. In June, forty-two members of Parliament, the Lord Mayor of London, and the Mayor of Manchester met with Prime Minister Lord John Russell to urge that Brougham's bill be made a government measure. The delegation stated that bankruptcy affected 'the cost of almost every article of consumption'.[107] Testimony of business leaders before the House of Lord's select committee considering the bill also supported the legislation. Manchester, for example, presented a memorial stating that although they would suggest some modifications, they were 'decidedly opposed to any attempt at alteration or further inquiry which can prevent its passing during the present session of Parliament'.[108]

The legal profession was also involved with the 1849 bankruptcy bill. The annual report of the Law Society of the United Kingdom stated that the society had been in 'frequent communication' with Lord Brougham and that many unspecified alterations that it proposed were adopted.[109] The position of the lawyers continued to be one of caution, and both the Law Society and the Metropolitan and Provincial Law Association

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[106] 'Amendment of the Bankruptcy Laws', The Times 10 May 1849, 8.

[107] 'Bankruptcy Laws' Consolidation Bill', The Times 13 June 1849, 6.

[108] Manchester CC Papers, M8/2/5, pp. 24-27, report of subcommittee, 24 May 1849.

[109] The Law Society of the United Kingdom, Annual Report -- 13 June 1849 (London, 1849), p. 13.

complained that the bill was proceeding too rapidly through Parliament.[110]

As previously mentioned, the Commons rewrote the measure in the more traditional Parliamentary form, but it also struck from the bill all the clauses that strengthened powers to examine debtors and clauses dealing with the fraudulent transfers of property. When the bill returned to the Lords, Brougham reported that he had received two memorials, one from Manchester stating that the altered bill was not worth passing and another one from London and Yorkshire stating that while they did not like the amendments they did not want to loose the bill.[111] Brougham took the advice of London and Yorkshire, accepted the compromise, and the bill in its amended form became law in August 1849.[112]

Additional modifications of the bankruptcy system, 1850-1856

In the years immediately following the passage of the Bankruptcy Act of 1849, the system seemed to work well. In 1853, William Hawes, who for many years chaired the London committee to amend the bankruptcy and insolvency laws, stated,

> I believe I am speaking the unanimous opinion of our committee when I say that the amount of insolvency is now much less, and the dividends, as a whole are much larger than previously to 1849; and that the grossly fraudulent cases are

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[110] Hansard, 3rd series, 1849, ciii. 463, 1028.

[111] Hansard, 3rd series, 1849, cvii. 1018.

[112] 12 & 13 Vict., c. 106 (1849).

> principally confined to a lower class of tradesmen, who in fact have not a great amount of business.[113]

What is more, Hawes in making his statement said that he had been in communication with committees in the country that thoroughly supported this view.[114]

A bill was introduced in 1853 that among other things required any vacancies in the office of commissioner to remain unfilled unless needed for the work of the court, established a fee schedule for official assignees, abolished classification certificates, and allowed creditors of deceased insolvent traders to petition to have the Bankruptcy Court handle the distribution of the estate.[115] This bill, which eventually became law in modified form in 1854[116], was first referred to a select committee of the House of Lords. The committee chaired by Lord St. Leonards focused on the system of classifying certificates of conformity (discharge) that had been placed into operation under the 1849 act.

John Howell, a warehouseman, conceived of the classification idea and presented it to Parliament.[117] This classification plan is one example of the business community's direct influence on bankruptcy legislation. In this instance, the

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[113] Parl. Papers 1852-53, xxii (659), p. 8: 'Minutes of Evidence Taken Before the Select Committee of the House of Lords Appointed to Consider the Bankruptcy Bill', 24 June 1853.

[114] Ibid.

[115] Sessional Papers 1852-53, iii (57), p. 73: 'A Bill intitules [sic] An Act further to amend the Laws relating to Bankrupts, to extend the Jurisdiction of the Court of Bankruptcy, and to make such Court auxiliary to the Court of Chancery'. 10 Feb. 1853.

[116] 17 & 18 Vict., c. 119 (1854).

[117] Parl. Papers 1852-53, xxii (659), op.cit., pp. 34-35.

idea of a warehouseman became one of the major new features of Brougham's 1849 act. Secondly, it shows that to conclude, as some recent historians have done, that the business community saw bankruptcy merely as a form of 'systems management' is perhaps erroneous.[118] This was not the case with warehouseman Howell. Concerned, however naively, with the moral influence among traders, Howell expressed the hope that his scheme could distinguish the moral businessmen from the immoral and would lead tradesmen to deal more justly with one another.[119] If Howell was at all typical, at least some Victorian businessmen looked at bankruptcy as more than just 'systems management'.

Other witnesses -- a wine merchant, a wholesale hardware merchant, and other businessmen -- testified in favor of the system of classification. Several bankruptcy commissioners expressed qualified approval; one opposed outright the classification scheme. Most of the solicitor witnesses claimed that the system in their experience made little difference to their clients.[120]

Toward the end of the 1850s, court fees began to decline, and the bankruptcy court system, which depended on such fees, was in jeopardy. Accordingly, the government in August 1853 authorized a royal commission to 'inquire into the fees, funds and establishments of the court of

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[118] Batzel, op.cit., pp. 172-73.

[119] Parl. Papers 1852-53, xxii (659), op.cit., pp. 34-35.

[120] Ibid., pp. 25, 41, 49-50. The Birmingham Law Society opposed Lord St. Leonard's bill, although no reasons were stated in the minutes. Birmingham Law Society Papers, Book A, p. 573 (22 Oct. 1853).

bankruptcy'.[121] The commission heard testimony and polled interested parties. In responding to the commission's circular, the Birmingham Law Society stated that there was little chance of a creditor receiving a dividend except in larger bankruptcies, and as a result creditors do all they can to keep estates out of court.[122] As to the problem of reduced fees, the commission concluded that it was directly related to the 'general prosperity of trade and commerce which has recently prevailed... ' and 'a better and more prudent system of trading among the smaller traders'. Other reasons the commission found for the decrease in the number of bankruptcies were the avoidance of the system because of its expense, penal clauses that drove debtors to settle with the assistance of friends and an unwillingness among creditors to have the publicity inevitable with a proceeding.[123] To keep the system of fee support viable, the commission recommended that more persons be encouraged to file petitions by reducing the requirement that a debtor show assets of five shillings in the pound to proving only a total of £150 in assets. 'Administrative business', the commission suggested, should be handled in court chambers to help with creditors' fear of publicity. The commission also reaffirmed support for one of

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[121] The Royal Commission issued its report the following year. Parl. Papers 1854, xxiii [cmd. 1770], op.cit. pp. 1-56.

[122] Birmingham Law Society Papers, Book A, p. 577 (20 Jan. 1854).

[123] Parl. Papers 1854, xxiii [cmd. 1770], op.cit., p. 11.

the creditors' favorite reforms, that of allowing bankruptcy courts jurisdiction over insolvent decedent estates.[124]

The commission also inquired into the general operation of the bankruptcy system. The Manchester Association for the Protection of Trade complained of a 'general want of confidence in the law...' and alleged that penal clauses were not being used.[125] To improve the quality of official assignees, the Bradford Chamber of Commerce believed the chamber of commerce for each district should be granted the power to appoint them.[126] The Law Society strongly objected to one (or a minority) of creditors placing a tradesman into bankruptcy, when a majority preferred to handle the insolvency in another manner. This view found support from a group of merchants and traders in London, who filed a petition recommending that 'any mode of liquidation which shall be approved of a proper majority of creditors, whether by trust, composition, inspection, or otherwise, shall be binding of the rest...'.[127] All of these statements testify to a growing creditor dissatisfaction with the system. This dissatisfaction led in the late 1850s to a creditor movement to return the system of bankruptcy administration to their control and by the end of the 1860s, they had succeeded.

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[124] Parl. Papers 1854,xxiii [cmd. 1770], op.cit., p. 38.

[125] Ibid., pp. 524-25.

[126] Ibid., p. 516.

[127] Ibid., p. 133.

Size and cost of the bankruptcy system

From the structure of the bankruptcy courts established through Lord Brougham's 1831 act and subsequent legislation and from the debates on such legislation, one can understand the contemporary perception that the role of government was expanding in the area of bankruptcy supervision and administration, as in fact it was. This expansion can also be seen in even more concrete terms when the size and cost of the bankruptcy system are examined.

Before the period of bankruptcy reform legislation in the 1830s and 1840s, the seventy part-time commissioners and the creditors' assignees managed the bankruptcy system. The part-time commissioners were paid by fees assessed creditors and then paid to the office of Patentee for the Execution of Laws and Statutes Concerning Bankrupts. This patentee, in turn, would appropriate amounts to pay commissioners, office expenses and the like.[128] Few statistics exist upon which to estimate accurately the cost of bankruptcy administration before 1836. The gross amount of fees paid to the patentee between 1811 and 1826 averaged approximately £10,000 annually.[129] To this sum must be added fees received by the Lord Chancellor and his secretary of bankrupts for such things as the filing of the fiat. For the year ending 1 October 1826, fees for the filing of dockets alone amounted to

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[128] Parl. Papers 1826-27, xix (265), pp. 50-55: 'Returns and account of receipt and appropriation of fees in bankruptcy ...', 12 Apr. 1827.

[129] Ibid.

approximately £3,000 to £3,500 annually.[130] The absence of information on the aggregate amount paid to the creditors' assignees for their services makes an accurate estimate of the cost of the bankruptcy system as a whole for the period prior to 1831 impossible. These fees were worked out between the creditors and their assignee on a case by case basis. Even though no accurate estimate of the cost of the pre-1831 system can be made, it is more important to remember that it was run in large measure by part-time officials.

The structure of the bankruptcy system after the passage of Lord Brougham's act was radically different. At the center of the new system were the six permanent full-time bankruptcy commissioners appointed by the Lord Chancellor.[131] The 1831 act gave these commissioners the same extensive powers as commissioners had under the old system.[132] A commissioner could determine whether or not the debtor was indeed a bankrupt, order the seizure of the bankrupt's property, examine the bankrupt about his affairs, accept or reject creditors' proofs of claim, and otherwise supervise the bankrupt's estate.

Yet despite the similarities of their powers, there was a fundamental difference between pre- and post-1831 bankruptcy commissioners. Unlike their predecessors, the new

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[130] Parl. Papers 1826-27, xix (265), op.cit., p. 58.

[131] The 1831 act actually gave the ultimate superintendence and control of bankruptcy matters to a chief judge and three other judges who constituted a court of review (1 & 2 Wm. IV, c. 56, s. 2), however, the number of these judges was reduced later and then the court was completely abolished in 1847 (10 & 11 Vict., c. 102). Under the 1847 act, a Vice Chancellor was given appellate jurisdiction in bankruptcy matters.

[132] 1 & 2 Wm. IV, c. 56, s. vii (1831).

commissioners were full-time employees of the state, paid with a salary rather than fees. The new commissioners received £1500 per annum in 1831, an improvement over the average of approximately £380 per annum paid to the commissioners through fees under the old system.[133] It must be kept in mind, however, that pre-1831 commissioners could carry on an outside law practice, while Brougham's commissioners were prohibited from doing so.

The real novelty, however, in the administration of bankrupt estates brought about by the 1831 act was the institution of official assignees[134], who, like the commissioners, were prohibited from carrying on any other trade or business, and who served as the sole assignee of the bankrupt's estate until the creditors selected their own. After the selection of the creditors' assignee, the two assignees jointly administered the estate. The official assignee retained certain powers, such as the sole duty to collect all rents, profits, and proceeds of sale, that made his position one of first among equals.[135] Since the official assignee served in each case, no doubt creditors often wished to avoid unnecessary duplication of efforts and either did

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[133] Parl. Papers 1831, xv (314), pp. 74-76: 'Return of the Amount of Fees received by the Commissioners of Bankrupt in London ...', 10 Oct. 1831. This figure is based upon fees received by fifty-five commissioners in London for three years (Mar. 1828 - Apr. 1831). The individual amounts earned varied greatly from a high of roughly £800 per year to a low of £200 per year.

[134] Once Brougham's system was extended to the country in 1843, the number and location of official assignees, although these figures might vary slightly, were as follows: 10 London, 4 Birmingham, 4 Liverpool, 3 Manchester, 2 Bristol and one each for Exeter, Leeds, and Newcastle-upon-Tyne.

[135] 1 &2 Wm. IV, c. 56, s. 22 (1831).

not select their own assignee or limited his responsibilities. The official assignees had a great deal of power, bearing responsibility for assets valued at an average of £1 million per year during the period.[136]

Official assignees, while considered officers of the court, were not salaried employees but were paid out of the proceeds of the estate to such an extent as the bankruptcy commissioner deemed 'just and reasonable'.[137] The commissioners set up early a system for the payment of official assignees based upon a scale of the amount of assets collected. The annual amount official assignees received in fees varied greatly. For example, assignee John S. M. Fonblanque received only £146 in fees for the year 1841-42, while his colleague William Turquand received over £3000 in 1840.[138] The norm, however, floated between £1000 to £2000 per annum until the abolishment of the system in 1861. The ten London official assignees reported average net earnings of £2000 per year in 1858-59, while the eighteen county commissioners reported average earnings of approximately £1400 for the same year.[139]

Numerous other officials assisted in the operation of the bankruptcy system. Registrars and deputy registrars,

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[136] See Chapter Three, p. 81.

[137] 1 &2 Wm. IV., c. 56, s. 57 (1831).

[138] Under these scales, an official assignee might receive 2.5 percent for property with a total value of under £500 and .5 percent for property valued at over £1500, with the scale slightly higher for book debts collected. Parl. Papers 1843, xli (303), op.cit., pp. 541-89.

[139] Parl. Papers 1860, lvii (164), op.cit., pp. 37-50.

salaried employees of the bankruptcy court, attended the commissioners at all sittings, examined depositions and exhibits, assisted in taxing solicitors bills, and kept minutes of daily sittings.[140] Messengers seized the bankrupt's assets and provided safe keeping. These messengers, paid a fee rather than a salary, made a handsome sum for their services. In the years 1858-59, London messengers averaged £1,175 per year in net receipts, while in the country this figure was £740 per year.[141]

The officials that serviced the bankruptcy system tended to remain in their positions over a considerable period of time. As a result, the system was run by almost the same group of public servants throughout its thirty year existence. Of the six persons appointed commissioners in 1831, all six were still commissioners in 1844, and, even as late as 1858, four of the five commissioners (the total number had been reduced by one) were of the original six.[142] The same was the case with official assignees. In 1831, the Lord Chancellor appointed nineteen official assignees; in 1840,

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[140] Parl. Papers 1831-32, xxxv (366), pp. 12-13: 'Return of the Number of Issues tried by the Court of Review in Bankruptcy ...', 9 Apr. 1832. The 1831 act authorized the appointment of two registrars at £800 per annum each and eight deputy registrars at £600 per year. For a time, 'brokers' were given the responsibility of making an inventory, but this responsibility was later returned to the messengers. Parl. Papers 1854, xxiii [cmd. 1770], op.cit., p. 29.

[141] Parl. Papers 1860, lvii (82), pp. 15-19: 'Returns from the several messengers of the Court of Bankruptcy ...'. 14 Feb. 1860.

[142] Parl. Papers 1831-32, xxxv (110), p. 8: 'A Copy of Rules and Orders for Regulating the Practice Before His Majesty's Court of Bankruptcy', 2 Feb. 1832; Parl. Papers 1844, xxxviii (273), p. 480: 'A Statement of the Amount Transferred and Paid out as Dividends ...', 13 May 1844; Parl. Papers 1860, lvii (18), p. 2: 'Return showing the total amount of monies paid into the Bank of England ...', 26 Jan. 1860.

fifteen of these still stood firm at their posts.[143] Even as late as 1861, two of the ten London official assignees had been appointed in 1831 as part of the original group. Even in the lower positions, longevity in office was the norm. The five London messengers in 1861 had served an average of fourteen years, and five of the eleven country messengers had served since the system was extended to the country in 1842.[144] There are also examples of promotion within the system. Both chief registrars in 1858 had risen from the position of deputy registrar.[145] The high pay and relatively easy duties of the bankruptcy court solidified a motivated, generally effective, and long-serving work force.

What was the total cost of the bankruptcy court and how did it compare with the cost of other functions of government at the time? The cost of the bankruptcy court was borne by the creditors, either directly through fees charged to the creditor or indirectly through fees paid from the bankrupt's estate. A creditor had to pay a £10 fee to have the fiat granted.[146] Once the estate was opened, the assignees were required to pay a set £20 fee and then additional fees such as £3 for each sitting of the court or commissioner.[147] In addition to these fees, creditors were burdened with

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[143] Parl. Papers 1831-32, xxxv (366), op.cit., p. 12; Parl. Papers 1840, xvi (274), op.cit., p. 594.

[144] Parl. Papers 1861, li (124), pp. 39-41: 'Return of the Names of all Persons holding any office in the several Courts of Bankruptcy', 22 Mar. 1861.

[145] Parl. Papers 1860, lvii (18), op.cit., p. 2.

[146] 1 &2 Wm IV, c. 56, s. 45 (1831).

[147] Ibid., ss. 46, 47.

compensating bankruptcy officials made redundant by the 1831 act through a £10 per bankruptcy fee paid by the state.[148] The total amounts of these compensations were significant. From a yearly average of approximately £12,000 before 1843, the amount jumped to approximately £42,000 when the official system was extended to the country in 1843. The amount then declined to approximately £17,000 in 1858.[149]

Despite the number, bankruptcy fees during this period only accounted for about five percent of the total cost of the administration of the estate. At least this was the case according to a return from official assignee Edward Watkins Edwards for his cases from 1847-52.[150] There is no reason to believe Edwards's experience was atypical. The Edwards return showed total costs averaged twenty-nine percent of the gross amount of the estate collected by the official assignee. Costs in addition to court fees included solicitors' fees averaging ten percent of the gross estate; broker and auctioneer fees; messenger charges; and official assignee fees of four percent for each category. The remainder of the costs were miscellaneous expenses such as payments to the bankrupt for maintenance.

As to the cost of the system as a whole, before the jurisdiction of the bankruptcy court expanded to the country, salaries of bankruptcy court officials peaked in 1837 at over

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[148] 1 & 2 Wm. IV, c. 56, s. 55.

[149] Parl. Papers 1860, lvii (18), op.cit., p. 4. The major beneficiary of this largess was Lord Thurlow, former patentee of bankruptcy, who was still receiving £7,000 each year as compensation as late as 1858. Ibid., p. 3.

[150] Parl. Papers 1854, xxiii [cmd. 1770], op.cit., pp. 558-59.

£24,000 and then declined to £18,700 in 1841. In addition, compensations had to be paid which averaged approximately £13,000 per year. This does not included payments to official assignees, for which figures are not available before 1843.

After the expansion of jurisdiction to the country, costs naturally increased. By 1858, the cost of the bankruptcy court was almost £83,000 including approximately £20,000 in compensations and retiring annuities. This £83,000 figure, however, does not include fees paid to official assignees and messengers which were were considerable. In 1858, they amounted to over £50,000.[151] If the total costs are divided by the number of fiats, the costs amounted to approximately £100 per case.

The size of the bankruptcy court significantly exceeded other government organizations during the period. Taking the year 1858 for comparative purposes, a year for which statistics are complete, the estimates for the bankruptcy court showed £54,455 in salaries for eighty-seven employees.[152] To this figure must be added an additional approximately £50,000 in fees paid to forty-five official assignees and messengers. The overall cost of salaries for employees of the bankruptcy court was thus in the neighborhood of £100,000 paid to 132 persons. By comparison, in 1858 the salary estimates for the Treasury were £53,520 (ninety-four employees), Board of Trade

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[151] Parl. Papers 1860, lvii (18), op.cit., p. 4. The £50,000 total is reached by taking ten London assignees averaging £2,000 per year, eighteen country official assignees averaging £1,400 per year, five London messengers averaging £1,175 per year and twelve country messengers averaging £740 per year. Parl. Papers 1860, lvii (164), op.cit., pp. 37-50.

[152] Parl. Papers 1860, lvii (18), op.cit., p. 2.

£35,322 (ninety-eight employees), Poor Law Board, England £37,643 (sixty-eight employees), Inspectors of factories £2,010 (thirty-four employees) and the Secretary of State, Home Department £22,155 (forty employees).[153] Indeed, the cost of the operation of the bankruptcy court, if fees to official assignees and messengers are included, was larger than any other category of Class II of the estimates (salaries and expenses of public departments) except for 'printing and stationery' and 'postage of public departments'.

Summary

An examination of bankruptcy law reform in the thirty-year period between 1831 and 1856 leads to several conclusions. To begin with, Lord Brougham's act of 1831 expanded the role of government. If Dicey's definition of the fundamental principle of 'collectivism' is applied, that is, 'faith in the benefit to be derived by the mass of people from the action or intervention of the State even in matters which might be, and often are, left to the uncontrolled management of the persons concerned', then bankruptcy reform in the second quarter of the nineteenth-century supports the proposition that the spirit of collectivism existed in England long before Dicey thinks it did.[154] In terms of number of employees and cost, the bureaucracy which administered the bankruptcy courts, was one of the largest in

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[153] Parl. Papers 1859, xvi (58 sess. 2), pp. 427-72: 'Estimates, etc. Civil Services ...', 4 July 1859.

[154] Dicey, op.cit., p. 259.

government at that time, since bankruptcy commissioners and official assignees were just as much employees of the government as factory inspectors or treasury officials. But influence is more than simple numbers. The indirect effect of the government on business activity through the bankruptcy court and its official assignees was of an entirely different nature from the more direct role of coordinated governmental policies expressed in railway regulation or factory inspection. Even so, the official assignees appointed by the Lord Chancellor were carrying out not judicial but administrative duties and were managing assets worth millions of pounds. Where once this responsibility had been held by private assignees appointed by the creditors, it was now being held by government officials.

Next, modification of the bankruptcy system during this period lay primarily in the hands of lawyers. The principal reform measure, Lord Brougham's act of 1831, consisted of provisions put forward by lawyers such as Sir James Bland Burges, Basil Montagu and Sir W. D. Evans, who were intimately involved in the operation of the bankruptcy system as either practicing barristers or commissioners. Bentham, himself a lawyer, certainly had some impact on bankruptcy reform. The replacement of fees with salaries for judges and the 1849 consolidation of bankruptcy law can be traced directly to Bentham's philosophy. The more major reforms conceived by Burgess, Montagu, Evans and others are practical suggestions to improve the operation of the system and did not result from any 'Benthamite philosophy'. Overall, the spirit during this period to reform large areas of the law, a

spirit that captivated men like Lord Brougham, largely resulted from Bentham's efforts.

Since the historical debate, particularly that surrounding the MacDonagh thesis, has largely focused on the extent of the influence of Bentham on nineteenth-century reforms, there is a tendency to ignore the presence of other factors. More recent historians have realized that other elements, such as humanitarianism, evangelicalism, and classical economic theory have played a part in the formulation of reforms, social thought and economic policies.[155] These other factors can be seen in a small way in bankruptcy reform. A humanitarian strain was present in bankruptcy law almost from its inception. There was a consistent attempt to separate those debtors who became insolvent through fraud from those innocent debtors who faced bankruptcy through no fault of their own. The power to grant a discharge was taken from the creditors and given to the courts. As for evangelicalism, the most blatant example of its influence is the continued refusal to allow gambling debts to be discharged in bankruptcy. There was also warehouseman Howell's scheme to distinquish between moral and immoral businessmen by classifying their discharge certificates. In a broader sense, there was a religious-like overtone which pervaded the parliamentary debates on bankruptcy bills. Members expressed a zealous desire to 'punish' those who had dishonestly failed to pay their debts.

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[155] For example, Hilton, op.cit.

Economic influence on bankruptcy reform is best seen in the growing influence of the business community. Although those who drafted the Bankruptcy Act of 1831 and subsequent legislation were almost certainly familiar with classical economic theory, there is no evidence of such theory's specific influence on bankruptcy legislation. What can be seen is the constant effort of business leaders to create an efficient system generating as great a return as possible from bankrupt estates. As early as 1827, the committee of the common council of the city of London took testimony on bankruptcy reform and sent out circulars seeking more information on the subject. Parliament's willingness in 1831 to alter Chancery Court jurisdiction radically by removing bankruptcy is testimony to the influence of business on reform efforts. The continued desire of business for an efficiently functioning system of bankruptcy administration surfaces in the efforts of the London committee, which tried intermittently for twenty years to reform the bankruptcy system. Reformers faced disappointments. The efforts of some business groups to merge bankruptcy and insolvency law or to allow for deceased insolvent debtors' estates to be handled in bankruptcy court were not successful until some years later. Attempts in 1847 to block the return of bankruptcy jurisdiction to Chancery Court failed. Yet, on the whole, the influence of business on bankruptcy legislation rose throughout the period and would reach a peak with the dismantling of the official system in the 1860s.

Chapter Six

Retreat from 'Officialism', 1857-1869

During the 1860s, the thrust of bankruptcy law reform shifted significantly from expanding judicial involvement in the administration of bankrupt estates to increasing creditor control. By the end of the decade, Parliament had completely dismantled the official system constructed by Lord Brougham and others in the 1830s and 1840s, and had replaced it with a scheme of creditor-managed administration. The philosophy behind both major reforms of the period, the Bankruptcy Act of 1861 and the Bankruptcy Act of 1869, emphasized creditor control with the judiciary playing little role in the collection and distribution of bankrupts' assets. In large measure, this change resulted from pressure on Parliament exerted by a vocal section of the business community acting through local chambers of commerce and through new organizations such as the National Association for the Promotion of Social Science and the Associated Chambers of Commerce of the United Kingdom. The efforts of these groups met with considerable success. With the Bankruptcy Act of 1869, organized business achieved, on the whole, all the major reforms it had been urging. As generally recognized at the time, the 1869 act 'was framed upon the request and very nearly upon the lines laid down by the Chambers of Commerce ...', and reformers

believed that a system designed by those who had most at stake could not help but succeed.[1]

By describing in detail the circumstances surrounding the passage of the 1861 and 1869 bankruptcy acts, including the efforts of business groups to secure that passage, this chapter attempts to answer two questions. First, why did the influence of business on bankruptcy reform increase? The role of business in reforming the bankruptcy system during the second quarter of the nineteenth-century was marginal when compared to that of the legal profession. Lord Brougham, as Lord Chancellor, and the reforms that lawyers had conceived had the greatest influence on the development of the bankruptcy system. Roles were reversed in the 1860s. In that decade, the business community was primarily responsible for the predominant concept of creditor control. Law officers of the government for the most part assisted in implementing the scheme business demanded. Understanding why this reversal of roles occurred will shed light on the place of organized business in mid-Victorian society and in particular business's role in the formation of commercial legislation.

The second question: why did organized business and other groups become convinced that a creditor-managed system of bankruptcy administration was necessary? The system of using official assignees to manage bankrupt estates had operated effectively for the most part for more than twenty-five years. By the late 1850s, however, it had fallen out

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[1] Sheffield Chamber of Commerce & Industry Papers (hereinafter 'Sheffield CC Papers'), LD 1986/1, council report at annual meeting, p. 361: chamber meeting, 29 Jan. 1875.

of favour with a large segment of the business community. This seems to run counter to the general nineteenth-century trend of increased government involvement in society. Was this rejection of the official system the result of some philosophic aversion to government interference in business affairs or were there more practical reasons?

Efforts of the National Association for the Promotion of Social Science, 1857-1859

By the end of the 1850s, dissatisfaction with the administration of bankrupt estates had become pronounced. The Times declared in January 1858 that there was 'no question at the present moment so important to the commercial world as that of amendment of the bankruptcy law'. The chief result of bankruptcy administration was merely 'to secure immunity to dishonest speculators'.[2] Bankruptcy reform had become one of the principal topics of discussion at local chamber of commerce meetings. The Leeds Chamber of Commerce held a special meeting to discuss bankruptcy reform in September 1857, which included representatives from Huddersfield, Batley, and West Riding, as well as the mayor of Bradford. This meeting unanimously passed a resolution condemning the official assignee system and supporting the merger of bankruptcy and insolvency law.[3]

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[2] 'Money Market and City Intelligence', The Times 4 Jan. 1858, 7.

[3] Leeds Chamber of Commerce & Industry Papers (hereinafter 'Leeds CC Papers'), minute book, vol. II, p. 304: special meeting to discuss bankruptcy reform, 30 Sept. 1857.

In addition to random complaints from separate groups, coordinated efforts of the business community to return to a creditor-managed bankruptcy system can also be traced to this period of the late 1850s. In January 1857, thirty-five delegates, including secretaries of chambers of commerce and trade protection societies, and six members of Parliament held a 'Mercantile Law Conference' in London to discuss changes in mercantile law, including bankruptcy law reform. A similar meeting had been held in November 1852. When a questionnaire was circulated among interested parties before the 1857 conference seeking to learn whether or not another conference might be valuable, the replies were strongly in the affirmative. When asked what subjects should be discussed, all respondents listed bankruptcy law reform.[4]

Chaired by Lord Brougham and consisting of thirty-five participants including six members of Parliament, the Mercantile Law Conference of 1857 adopted no specific recommendations but did resolve to send a delegation to the Prime Minister, Lord Palmerston, to discuss the subject.[5] Most important the conference agreed to appoint a committee to draft proposed legislation and monitor bills that might affect the business community.[6] This suggestion met with

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[4] The Solicitors' Journal & Reporter 31 Jan. 1857, 106.

[5] Ibid.

[6] No evidence has been found as to whether or not the meeting with Lord Palmerston called for at this conference ever occurred. Reference to the actions taken by the Mercantile Law Conference is also found in the minutes of the proceedings of the Leeds and Bristol chambers of commerce. Leeds CC Papers, minute book vol. II, p. 287, chamber meeting, 10 June 1857; Bristol Record Office, Bristol Chamber of Commerce & Industry Papers (hereinafter 'Bristol CC Papers'), 38605/A/5: Bristol Chamber of Commerce, Report of the Proceedings of the Bristol Chamber of Commerce (Bristol, 1857).

enthusiastic response, and the Birmingham Chamber of Commerce appropriated £25 to the cost of the committee's preparation of litigation.[7]

The committee appointed by the Mercantile Law Conference, however, was a disappointment; six months after its formation, the committee had not even held a second meeting. The council of the Birmingham Chamber of Commerce decided to take independent action and employed a London barrister to draft a bankruptcy bill that was circulated to a number of chambers of commerce.[8]

At this point the National Association for the Promotion of Social Science entered the scene. This group, referred to for the sake of economy as the Social Science Association, was founded in 1857 at the suggestion of Lord Brougham. The association has been described as a 'solidly middle class' organization that acted as a conduit between government and public opinion.[9] Lord Brougham described the association's purpose as to 'aid legislation, by preparing measures, by explaining them, by recommending them to the community, or, as it may be, by stimulating the legislature to adopt them'.[10] The Social Science Association was a large

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[7] G. Henry Wright, Chronicles of the Birmingham Chamber of Commerce AD 1813-1913 and the Birmingham Commercial Society AD 1783-1912 (Birmingham, 1913), p. 141. Many of the early records of the Birmingham Chamber of Commerce were destroyed during the Second World War; however, Wright wrote his history of the chamber from many of the records later destroyed.

[8] Wright, op.cit., p. 142.

[9] Lawrence Goldman, 'The Social Science Association, 1857-1866: a context for mid-Victorian Liberalism', E. H. R. 101 (Jan. 1986), 95-134, 105.

[10] N. A. P. S. S., Transactions (1857), op.cit., p. 23, cited in Goldman, op.cit., p. 97.

organization with many influential members in business, medicine, the law and government. One historian has gone so far as to claim that the association 'melded the political, administrative and intellectual elites of mid-Victorian Britain ...'.[11] The organization's successes included the Habitual Criminals Act (1869), the Married Women's Property Acts (1870 and 1882), the Prevention of Crimes Act (1871) and the Public Health Act (1875).[12]

For the first annual meeting, held in Birmingham in October 1857, the secretary of the newly formed association asked the Birmingham chamber to prepare a paper on the chamber's proposed bankruptcy bill.[13] The paper was delivered before the jurisprudence committee of the association, a committee composed of both lawyers and businessmen.[14] In the discussion that followed a distinct chasm opened between those who favoured more or less complete creditor control of the bankruptcy system and those who supported a system of officialism. As might be expected, Lord Brougham supported the latter position. During the debate, Brougham commented that, while the law might need amendment the permanent judicial tribunals and official assignees were of merit and should not be changed. At the close of the debate, Lord John Russell, who chaired the committee, observed that apparently the mercantile community had not made up its mind on certain

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[11] N. A. P. S. S., Transactions (1857), op.cit., p. 98.

[12] Goldman, op.cit., p. 98.

[13] Wright, op.cit., p. 142.

[14] N. A. P. S. S., Transactions (1858) (London, 1859), pp. 97, 103.

points. The committee nevertheless decided to appoint a drafting subcommittee to oversee the preparation of the new bankruptcy legislation.[15]

The drafting committee held its first meeting the following month.[16] Representatives of business groups dominated the membership. The Birmingham Chamber of Commerce had urged local chambers to send delegates, and fifteen chambers of commerce and trade associations were represented.[17] At the initial meeting, the committee passed resolutions outlining suggested reforms that were to be incorporated into the draft of the proposed bill. Even at this early date, many committee members were for abolishing the official assignee position altogether, although this position was not formally adopted.[18] The only record left of the resolutions adopted by the drafting committee is a description given in a speech in 1860 by G. W. Hastings, chairman of the committee. Since these resolutions formed organized business's agenda for bankruptcy reform in the 1860s, they deserve to be innumerated: 1) consolidate the law, 2) abolish the bankruptcy/ insolvency distinction, 3) extend bankruptcy law to the administration of the estates of deceased insolvents, 4) facilitate voluntary settlements, 5) diminish officialism, 6) localize administration of the law, 7) reduce expense by transferring

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[15] N. A. P. S. S., Transactions (1858), op.cit., p. 136.

[16] Ibid.

[17] Bristol CC Papers, 38605/A/2, p. 6: 'Report of the Proceedings of the Bristol Chamber of Commerce, ... January 27, 1858'; Leeds CC Papers, minute book vol. II, p. 287: chamber meeting, 10 June 1857.

[18] The Solicitors' Journal and Reporter 17 July 1858, 789.

judicial salaries to the consolidated fund, and 8) provide more stringent punishment of insolvent debtors.[19]

The drafting committee completed its work in May 1858 and circulated copies of the proposed bill to local business groups that discussed the measure and suggested changes. Lord Russell introduced the final draft of the Social Science Association bill in Parliament in June 1858.[20]

When compared to the legislation that eventually passed, the original bill is a valuable yardstick by which to measure the success or failure of the commercial interests in achieving the reforms they sought. The bill closely followed the eight goals outlined by the Social Science Association drafting committee. The bill abolished the 'trader'/ 'non-trader' distinction, thus providing that virtually all persons would be subject to bankruptcy jurisdiction. It combined the insolvency and bankruptcy courts, the insolvency court being abolished altogether and its jurisdiction being assumed by the bankruptcy court. Before 1860, bankruptcy had only applied to 'traders'; other insolvencies were handled under a separate and distinct branch of the law. Through numerous amendments of the laws over a period of more than 200 years, the legal definition of 'traders', who were subject to bankruptcy laws, included over thirty specifically described occupations; anyone 'using the Trade or Merchandize

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[19] N. A. P. S. S., Transactions (1860) (London 1861), p. 169.

[20] N. A. P. S. S., Transactions (1858), op.cit., p. 136; Leeds CC Papers, minute book, vol. II, pp. 344-50: chamber meeting, 26 May 1858; Parl. Papers 1857-58, i (154), pp. 79-260: 'A Bill to amend and consolidate the Laws relating to Bankrupts and Insolvents', 22 June 1958.

[sic] by way of bargaining, Exchange, bartering, Commission, Consignment, or otherwise, in gross or by retail ...'; and others who 'seek their Living by buying and selling, or by letting for Hire'. Farmers, common labourers, workmen for hire, subscribers to corporations, and several other categories were specifically excluded from bankruptcy laws.[21] Under Lord Russell's bill, all insolvencies, no matter what the occupation of the debtor, would be handled under bankruptcy law.

The idea of expanding the scope of bankruptcy laws did not originate with the Social Science Association drafting committee. As early as 1783, Sir James Bland Burges had advocated such a reform.[22] The 1818 parliamentary select committee had also recommended expanding the bankruptcy laws to include more than those who buy and sell.[23] Over the years, various journals and treatises endorsed the concept, and Jeremy Bentham questioned the practice of separating the bankruptcy and insolvency jurisdictions in his Equity Dispatch Court Proposal in 1830.[24]

Next, Lord Russell's bill maintained the district bankruptcy court system but enlarged concurrent jurisdiction to include the county courts.[25] Compensation for retired

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[21] 12 & 13 Vict., c. 106, s. 65 (1849).

[22] Burges, op.cit., p. 348.

[23] Parl. Papers 1818, vi (276), op.cit., p. 4.

[24] 'Consolidation of the Bankrupt Laws', Jurist, i (1827) 62; Evans, op.cit., p. 8; Jeremy Bentham, Equity Dispatch Proposal (London, 1830), p. 48.

[25] To the surprise of many in the business community and without consultation with the

(Footnote Continued)

bankruptcy officials was to be paid out of the government's consolidated fund, rather than from the bankruptcy court account maintained with assets of bankrupt estates. The central aim of the legislation, however, was to reduce officialism and institute more creditor control over bankruptcy administration. The 1858 annual report for the Manchester Chamber of Commerce stated the objects of the proposed legislation were 'to secure to the creditors the means of controlling and dividing without delay their own property in the hands of bankrupts, and to make the creditors, who are the injured persons paramount ...'.[26] Upon the appointment of the creditors' assignee, the powers and duties of the official assignee ended. The measure abolished classification of certificates of conformity (discharge) and somewhat surprisingly did not require creditor approval for the court's decision to discharge a debtor. The bill allowed for deeds of arrangement, provided they received the approval of a majority of the creditors in number and four-fifths in value. Finally, so that creditors might avoid the infamous delays involved with the Chancery Court, the bill provided that creditors of deceased insolvent debtors could petition to have the estate handled in bankruptcy court.

The Social Science Association was not alone in its effort in 1858 to reform the bankruptcy system. The

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(Footnote Continued)
National Association for the Promotion of Social Science, Lord Brougham introduced a bill on his own in February 1858 that would abolish the district bankruptcy courts altogether. According to a circular sent to local chambers of commerce, Lord Brougham 'contrary to all expectation, had done so on his own responsibility'. Leeds CC Papers, minute book, vol. II, p. 335: meeting 25 Feb. 1858.

[26] Manchester CC Papers, M8/2/5, p. 609: annual report, 1 Feb. 1858.

government had also been exploring the possibilities of reform. In early 1858, Attorney General Sir Fitzroy Kelly had Edward William Cox of London draw up a plan for bankruptcy reform.[27] Cox sent an outline of his plan to local chambers requesting a resolution approving its general principles and stating that such a resolution would 'materially promote' the adoption of the reform proposals by the government.[28] By June 1858, the press speculated that the government was about to present a bankruptcy bill that would incorporate many of the provisions of Lord Russell's measure. Since the government's bill might not incorporate all such provisions, Lord Russell continued to press for adoption of his bill.[29] The speculations, however, proved true, and the Lord Chancellor, Lord Chelmsford, introduced the government's bankruptcy bill in July 1858 containing almost all the provisions of the Social Science Association's measure.[30] Insolvent debtor courts were to be merged with bankruptcy courts by leaving vacancies unfilled. Classification of discharge certificates was to cease, and the approval for discharge was to be made solely by the courts. The government's bill also provided for deeds of arrangement with approval of six-sevenths of creditors in

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[27] The Times, referred to the government's bill being prepared at the Board of Trade, but no other evidence has been found to support this contention. 'Money Market and City Intelligence', The Times 17 Mar. 1858, 10.

[28] Leeds CC Papers, minute book vol. II, p. 337: chamber meeting, 15 March 1858.

[29] The Solicitors' Journal & Reporter 5 June 1858, 642.

[30] Hansard, 3rd series, 1858, cli. 2293; Sessional Papers 1857-58, iii (291), p. 15: 'A Bill intituled [sic] an Act to Amend the Law of Debtor and Creditor and Insolvency and Bankruptcy, and to enable and facilitate the Liquidation of a Debtor's Estate, and the Administration of Estates of Insolvent Traders Deceased', 30 July 1858.

number and value, as well as permitting deceased insolvent debtors estates to be removed from chancery to bankruptcy court. This bill, unlike that of the Social Science Association, did not allow for retirement fees of bankruptcy officials to be paid out of the consolidated fund but maintained the system of charging such fees to the current bankrupt estates' account. While not going as far as the law amendment committee's bill, the government's bill did reduce the powers of the official assignees and required them to seek the 'assistance and counsel' of the creditors' assignee in all matters.[31]

As the 1859 session of Parliament approached, the supporters of the Social Science Association's bill obviously did not favor the government's approach and were anxious to see the association's measure resubmitted. Delegations from local chambers met in Liverpool and London and reaffirmed their preference for the association's measure over the government's bill.[32] The Times quoted the Leeds Mercury as stating that Lord Russell's bill had been submitted to, and approved by, nearly every trade protection society and chamber of commerce and 'seems to meet most completely the wishes and needs of the mercantile community'.[33] A delegate to a meeting of merchants and traders in London in March 1859 proclaimed it useless to object to the Lord Chancellor's bill, since it 'was so objectionable that there could be no

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[31] Sessional Papers 1857-58, iii (291), p. 15 (of the bill).

[32] Bristol CC Papers, 38605/M/2, p. 3: annual Meeting, 26 Jan. 1859.

[33] 'Lord John Russell's Bankruptcy Bill', The Times 18 Feb. 1859, 8.

doubt as to which [bill] would be preferred by the Commercial community'.[34] According to the observations of the Bristol chamber's delegation at the meeting, this statement met with general approval.[35] The Times reported that this same group heard a report by a subcommittee that studied both bills and had decided that Lord Chelmsford's measure 'exhibits many deficiencies and should be firmly opposed'.[36]

Once again Lord Russell introduced the Social Science Association's bill in February 1859, and although it was assigned to a select committee, Parliament took no further action on the measure for the remainder of the session.[37] Undaunted, supporters of the bill immediately resolved at the close of the 1859 session to reintroduce the measure again the following year.[38] In the interim, local chambers of commerce actively lobbied for the Social Science Association's bill, writing to chambers that had not endorsed the measure seeking their support.[39] In addition, supporters of the bill obtained an interview with Lord Palmerston, who had formed a government in June 1859. The delegation that met with the Prime Minister and Attorney General Richard Bethell in November 1859 consisted of fifteen members of Parliament

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[34] Bristol CC Papers, 38605/ M/2, pp. 27-30: Report to the Bristol Chamber of Commerce on the Mercantile Law Amendment Committee held 10 Mar. 1859.

[35] Ibid.

[36] 'Money Market and City Intelligence', The Times 16 Mar. 1859, 7.

[37] Hansard, 3rd series, 1859, cliii. 413; ibid., cliii. 1142.

[38] Bristol CC Papers, 38605/M/2, p. 53: G. W. Hastings to the Bristol Chamber of Commerce discussed in a general meeting of the chamber 19 Sept. 1859.

[39] Leeds CC Papers, vol. II, p. 396: meeting 2 Nov. 1859.

and representatives of more than ten chambers of commerce. Spokesmen for the delegation urged Palmerston to have the government adopt the principles of Lord Russell's bill in a measure of its own. According to a newspaper report of the meeting, Palmerston assured the committee that the government would seriously consider the matter and announced that he was placing the attorney general in charge of preparing the government's bill. When Bethell outlined his views on bankruptcy reform, which included, among other things, the abolishment of the trader/non-trader distinction, they were met with the general approval of the delegation.[40]

Bankruptcy reform and the formation of the Associated Chambers of Commerce of the United Kingdom

A direct outgrowth of the agitation for bankruptcy reform by the Social Science Association was the formation of the Associated Chambers of Commerce of the United Kingdom in early 1860. The first local British chamber of commerce was formed in Jersey in 1768, and merchants formed chambers later in Manchester (1794), Birmingham (1783), Glasgow (1783), and Edinburgh (1785).[41] The growth in local chambers continued during the first half of the nineteenth-century; however, there never appeared a national organization to coordinate the efforts of the local chambers, especially in the area of putting forward and monitoring proposed legislation. Mercantile interests recognized this weakness very early. An

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[40] 'The Bankruptcy and Insolvency Laws', The Times 23 Nov. 1859, 7.

[41] Ilersic and Liddle, op.cit., pp. 2-3.

article in Jurist in 1827 recognized that 'the commercial class in this commercial country has no recognized organ ... of communication with the legislature'. The author of the article believed this was one of the problems in reforming bankruptcy law and in general for the 'supineness of trading interests'. Various trade interest groups petitioned Parliament when necessary, the article continued, 'but there is no recognized officer who has the right to say in petition or remonstrance, "I represent the trading interests of Great Britain"'.[42] During the 1850s, Professor Leoni Levi urged the formation of a federation of chambers with a London office and secretary, and there are other indications of growing interest in a national federation during the period.[43] Although the local chambers of commerce evidently discussed the idea of a national organization before 1859, nothing ever came of the idea.[44]

At the third annual meeting of the Social Science Association in October 1859, representatives of several chambers met and recognized the need for representatives of local chambers to meet annually. Following up on this idea, a month later chamber representatives to the Social Science Association committee drafting proposed bankruptcy legislation resolved to call an organizational meeting of a national

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[42] 'Consolidation of Bankrupt Laws', Jurist, i (1827, 55.

[43] Bristol CC Papers, 38605/M/2, pp. 58-59: chamber meeting, 18 Nov. 1859; Beresford, op.cit., p. 39.

[44] At a meeting of the Leeds Chamber of Commerce in November 1856, a member presented a plan for an annual meeting of chambers of commerce to discuss commercial matters that came before Parliament, and a report of the idea was submitted to Leeds' representative in Parliament. Leeds CC Papers, minute book vol II, p. 245: meeting 1 Nov. 1856.

association. Three months later in February 1860, representatives of sixteen local chambers of commerce met in London and formed the Associated Chambers of Commerce of the United Kingdom, which delegates believed would become 'a most useful medium of communication between the commercial, manufacturing and trading classes and the Government'.[45]

From its inception, the association's primary purpose was to influence legislation. Furthermore, it is fair to say that bankruptcy reform, while not only one of the principal reasons for the new association, was also a reform at the top of the group's agenda during its first years of existence. Other than details of organization, the only topic discussed at the first meeting of the association was bankruptcy, and bankruptcy was the subject of the association's first resolution.[46] A review of the association's minute books confirms the assertion in the history of the organization that 'no aspect of the law received closer attention from the Association [than bankruptcy] during the first thirty and more conferences'.[47]

Bankruptcy Act of 1861

The Economist stated bluntly in 1860 that because current bankruptcy law could not be any worse than it was, no harm could be done by the government, no matter what measures

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[45] ACC Papers, 14,474: meeting 2 Feb. 1860, first annual meeting 6-7 Feb. 1861 (reporting on formation of the association).

[46] Ibid.: meeting 2 Feb. 1860.

[47] Ilersic and Liddle, op.cit., p. 67.

they proposed.[48] The Attorney General in the Palmerston cabinet, Richard Bethell, later Lord Westbury, readily admitted the state of bankruptcy law was even worse than before the era of nineteenth-century reforms.[49] The principal complaint about bankruptcy administration was its cost, which the government estimated, and independent sources confirmed, to average thirty-three percent of the assets of a bankrupt's estate.[50] Many reformers charged that the cost was attributable directly to a system top heavy with official receivers, commissioners, messengers, and other unnecessary functionaries. As in the past, critics raised the cry that it was 'high time to amend the amendments and reform the reforms'.[51]

The challenge of reform fell to attorney general Bethell, a distinguished solicitor in Chancery and first elected to Parliament in 1851. He served as solicitor general, eventually becoming attorney general in 1856. Law reform was not new to Bethell. He had been instrumental in the passage of the Probate and Administration Bill, the Divorce and Matrimonial Bill, and the Fraudulent Trustees Bill. He also strongly favored codification of the law and continuously fought to abolish the separation of law and equity.[52]

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[48] 'The New Bankruptcy Bill', The Economist 31 Mar. 1860, 337.

[49] Hansard, 3rd series, 1860, clvii. 650.

[50] Hansard, 3rd series, 1860, clvii. 650-51; The Solicitors' Journal and Reporter 17 Mar. 1860, 357; See also, Chapter Three, pp. 81-2.

[51] 'The New Bankruptcy Bill', The Economist, loc.cit.

[52] George Paul MacDonell, 'Richard Bethell', Dictionary of National Biography (London, 1967-68), 2. 426-31; Thomas Arthur Nash, The Life of Richard Lord Westbury, 2 vols. (London, 1888).

According to the chairman of the Social Science Association committee that had prepared a bankruptcy bill, Bethell originally planned to use the committee's measure. The attorney general later decided that he did not like certain provisions and decided to draft his own bill, which would be an entirely new and complete bankruptcy code.[53] Bethell's task of creating a workable system of bankruptcy administration was a difficult one. 'I am overwhelmed...', the attorney general wrote Gladstone in December 1860, 'by the labour attending the reconstruction of the entire Code of Bkrpt & Insolvent Law ...'.[54] The result of Bethell's labours was a massive bill containing over five hundred sections.[55]

The Solicitors' Journal & Reporter reported in February 1860 that Bethell had disclosed the provisions of his bill to a delegation from the chambers of commerce and that the interview was so favourable as to make it probable that the chambers of commerce would not reintroduce their bill.[56] This turned out to be the case. Unlike the sessions in 1858 and 1859, Lord Russell did not introduce the Social Science

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[53] N. A. P. S. S., Transactions (1868) (London, 1869), pp. 294-95.

[54] Gladstone Papers, Add. MSS. 44337, f. 178: Bethell to Gladstone, 2 Dec. 1859. To assist him in his efforts, the attorney general used William Hazlitt and Henry Philip Roche. Later the attorney general stated that he was 'much indebted' to Hazlitt, a commissioner in bankruptcy, for his 'constant attention to the improvement of the Bankruptcy Bill'. William Hazlitt and Henry Philip Roche, The Bankruptcy Act, 1861 (London, 1861), p. iii; British Library, London, Hazlitt Papers, 38,898, f. 106: Bethell to Hazlitt, 27 Dec. 1860.

[55] Parl. Papers 1860, i (75), pp. 275-448: 'A Bill to Amend and consolidate the Laws relating to Bankruptcy and Insolvency in England', 15 Mar. 1860.

[56] The Solicitors' Journal & Reporter 11 Feb. 1860, 251.

Association bill in 1860 but co-sponsored the attorney general's bill.

The Social Science Association's bill and the government's proposed legislation turned out to be remarkably alike. Bethell's bill contained several of the major reforms called for in the committee's bill, including the abolishment of the merger of bankruptcy and insolvency law. Bethell's new bankruptcy code also relegated the official receiver to collecting small debts and auditing accounts though it did not, contrary to the Social Science Association's measure, end the duties of the official assignee upon the appointment of the creditor's assignee. The creditors' assignee, elected by the creditors themselves, was to be promoted to the position of principal person in charge of the management of the bankrupt estate.

Bethell's bill also contained the Social Science Association's proposals that classification of certificates be abolished and that if desired by creditors deceased insolvent's estates be handled in bankruptcy court. In the area of court reform, the attorney general's bill, like Lord Brougham's earlier bill, abolished the district bankruptcy courts as vacancies occurred and gave bankruptcy jurisdiction in the provinces to the county courts. While the district courts had been kept in the Social Science Association's bill, the business community did not unanimously support the district courts' bankruptcy jurisdiction.[57] The government's

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[57] A public meeting on 23 January 1853 called by the principal tradesmen in Exeter passed a resolution condemning district bankruptcy courts. 'The concentration of the court

(Footnote Continued)

bill also created a single chief judge of bankruptcy to sit in London and help coordinate the entire bankruptcy system. Other revisions included abolishing the prerequisite that an estate yield at least £150 before a bankruptcy petition could be filed and requiring that registrars be sent out to different localities to hold meetings for the better convenience of creditors.

Strong support for the bill came from many quarters. The business community presented a petition signed by one thousand London merchants, traders, and bankers describing 'important advantages' from the proposed changes in the law and urging the House of Commons not to delay consideration of the measure.[58] Some, however, saw too much influence of the business interests in the bill and believed that the needs of smaller bankruptcy estates had been sacrificed to the demands of larger ones.[59] Throughout the session the business community vigorously debated the bill. Local chambers held meetings to discuss bankruptcy and exchanged communications with each other on the subject.[60] In addition, the law amendment committee of the Social Science Association sent out a

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(Footnote Continued)
in one town only of a large district, and the unnecessary complication of practice ...', the resolution charged, 'render the court practically unavailable in most ordinary estates ...'. The Solicitors' Journal & Reporter 30 Jan. 1858, 255.

58 Hansard, 3rd series, 1860, clviii. 1565.

59 Nash, op.cit., 1. 301.

60 Leeds CC Papers, minute book vol II, pp. 414, 420: chamber meeting, 28 Mar. 1860; Bristol CC Papers, 38605/M/2, p. 127: chamber meeting, 6 June 1860 (discussion of communication from the Wolverhampton Chamber of Commerce on the bill).

circular letter to local chambers with suggested minor amendments to the bill.[61]

Most of the Parliamentary debate on Bethell's proposal focused on the merger of bankruptcy and insolvency law and the extension of bankruptcy jurisdiction to the county courts. Objections varied as to why the bankruptcy and insolvency law merger was unworkable. Many saw bankruptcy law as a privileged protection that the trading community alone deserved. As one member of Parliament explained, the trader, without any fault of his own, might be ruined through some circumstances totally out of his own control. The non-trader, on the other hand, 'almost necessarily incurred his debts in consequence of his own thoughtlessness and extravagance ...'.[62] Some London solicitors and merchants questioned the practicality of the bankruptcy courts handling large numbers of insolvency cases.[63] The Lancashire and Preston Trade Protection Society, expressing what may have been the view of the small creditor, thought that abolishing the insolvency courts would destroy a cheap means of collecting debts.[64] Many members of Parliament feared that if bankruptcy jurisdiction could be universally applied, the land owning class might be unfairly subjected to bankruptcy by unscrupulous money lenders. The Tory Sir Fitzroy Kelly, a former solicitor

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[61] Bristol CC Papers, 38605/M/2, p. 125: general meeting, 21 May 1860.

[62] Hansard, 3rd series, 1860, clvii. 682.

[63] The Solicitors' Journal & Reporter, 17 July 1858, 770.

[64] Ibid.

general, expressed the unique fears of the non-trader, upper classes that under the new law someone might be able to

> ...bankrupt [a] private gentleman accustomed to the country life, and wholly unacquainted with commercial habits, and who, while traveling abroad -- not for a week or a month, but for years together -- might perhaps have left ample sums in the hands of their agents to meet their obligations, and yet not know what was going on at home in regard to their affairs.[65]

Even Lord Palmerston expressed concern to Bethell about a debtor's property being sold during an innocent absence abroad.[66]

Regarding the transfer of district bankruptcy court jurisdiction to the county courts, bankruptcy districts extending sixty to seventy miles inconvenienced creditors by forcing them to travel long distances to appear in court. The extension stems from the Benthamite concept of making courts more available on a local basis rather than concentrating them in London.[67] Even though the 1854 bankruptcy commission opposed the idea because of the differing nature of the county courts, the government still included the plan of extended jurisdiction in its bill. Many business groups supported the transfer of jurisdiction, although the support was by no means unanimous. The Leeds Chamber of Commerce argued that the county courts were already fully employed and were not competent to exercise bankruptcy jurisdiction.[68] The

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[65] Hansard, 3rd series, 1860, clvii. 674.

[66] Palmerston Papers, Add. MSS. 48,581, p. 180: letter from Lord Palmerston to Sir Richard Bethell, 17 July 1860.

[67] Halévy, The Growth of Philosophic Radicalism, op.cit., p. 395.

[68] Hansard, 3rd series, 1860, clviii. 1582.

legal profession also split on the issue. The Liverpool Law Society submitted a petition to Parliament opposing the idea of county courts being given concurrent jurisdiction on the rationale that bankruptcy should be handled by only one court. The Birmingham Law Society also opposed the plan.[69] There may have been an element of self-interest in whether or not a group of lawyers supported or opposed the reform. As the County Courts Chronicle observed, those practicing in the district bankruptcy courts opposed the giving away any of that court's jurisdiction since such practitioners were 'naturally not displeased that so much good business should be placed within their reach'.[70]

Even though not able to introduce the bankruptcy measure until somewhat late in the session, Bethell at first expressed optimism about the bill's chances of passage. He wrote to Lord Palmerston that the bill had been 'well received' by the mercantile community, but that he was aware of a strong group forming against the bill composed of many lawyers 'who profit by existing abuses...' and by Lord Brougham, 'the author of all legislation in bankruptcy with unfortunate results, and whose measures are subverted by the present bill'.[71] Palmerston agreed with this assessment and wrote Bethell in April 1860 that while some bills had no chance of passage, the bankruptcy bill was one of the law

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[69] Birmingham Law Society Papers, Book B, p. 135: annual report of the council, 20 Oct. 1860.

[70] 'Bankruptcy in the County Courts', The County Courts Chronicle 1 Feb. 1861, 33.

[71] Letter quoted in Nash, op.cit., p. 302.

reform measures which the government could expect to become law.[72] Local chambers strongly lobbied their local members of parliament to support the attorney general.[73] The bill was so extensive, however, that it began to bog down in debate, and some members of Parliament predicted as early as May that the bill would fail.[74] In addition to the more substantive issues, controversy over other matters such as the compensation to bankruptcy officials whose duties were being abolished also slowed the bill's progress.[75] In 1860 technical measures such as the bankruptcy bill were still considered by the entire House of Commons, and by late in the session only some 100 of the over 600 sections of Bethell's bill had been debated. The government had no option but to withdraw its bill.

Local chambers immediately set to work to see that a bankruptcy reform measure would be passed in the next session. At the urging of the Leeds Chamber of Commerce, the Liverpool Chamber of Commerce forwarded a memorial to the government requesting that the bankruptcy bill be reintroduced at an early period in the next session.[76] In September 1860, the Leeds Chamber of Commerce suggested that they take

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[72] Palmerston Papers, Add. MSS. 48,581, p. 132: Palmerston to Bethell, 12 Apr. 1860.

[73] Leicester and County Chamber of Commerce, Leicester and County Chamber of Commerce, 1860-1960 (Leicester, 1860), p. 23.

[74] Bodleian Library, University of Oxford, Ms. Eng. lett. d. 469 f. 16: George Moffat to James Wilson, 10 May 1860.

[75] Hansard, 3rd series, 1860, clviii, 1567-70.

[76] Liverpool Chamber of Commerce & Industry Papers (hereinafter 'Liverpool CC Papers'), 380 Com 1/1. p. 26: council meeting, 1 Oct. 1860.

advantage of Lord Palmerston's coming visit to impress upon him the importance of bankruptcy law reform and the chamber's disappointment that Bethell's bill had to be withdrawn. To emphasize their point, the Leeds chamber decided that a delegation consisting of several Yorkshire chambers would add weight to its arguments, so invitations were sent to nearby chambers to send representatives to the meeting with the Prime Minister.[77] Later, the Birmingham chamber invited local chambers to a meeting in November to discuss what course should be taken with regard to bankruptcy reform 'in order to avoid a repetition of the Disappointment of last session.[78]

Although Bethell, for years a strong supporter of codification of the law, believed that a complete consolidation of bankruptcy law was best, the experience of 1860 taught him that the temper of Parliament might only permit an amending statute. According to the attorney general, Parliament had become 'jealous and suspicious' of all bankruptcy reforms because of the past failures and opposed the expenditure of public money toward reform of the system.[79] Accordingly, the bankruptcy measure introduced in 1861 was much shorter than its 1860 predecessor. The new measure sought only to amend the law to the minimum extent necessary to achieve the essence of the reforms Bethell sought in his 1860 bill, namely the amalgamation of bankruptcy and insolvency

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[77] Leeds CC Papers, minute book, vol II, p. 443: chamber meeting, 26 Sept. 1860.

[78] Ibid., p. 444: chamber meeting, 31 Oct. 1860.

[79] Hansard, 3rd series, 1861, clxi, 288.

law and the extension of bankruptcy jurisdiction to the county courts.

Bethell, however, did include in his 1861 bill some modifications addressing the complaints of opponents of the earlier bill. On the issue of pensions for commissioners whose offices were abolished, the new measure provided that such commissioners were to be employed elsewhere and then pensioned off at two-thirds salary rather than being pensioned off immediately at full salary.[80] More substantive revisions required that violations of bankruptcy laws which were misdemeanors not be referred to criminal courts and deeds of composition be registered in the court of bankruptcy and open to the inspection of creditors. The latter requirement, according to one member of Parliament, especially met with the approval of the mercantile community.[81] Even with minor details of the government's bill, local chambers consistently had a voice regarding modifications of the bill. The Manchester Chamber of Commerce, for instance, met in March with local chambers and determined that the stamp charge of seven shillings per £100 of assets contained in the bill was too high. Accordingly, delegates to the meeting telegraphed the member of Parliament for Leeds, who, in turn, met with the attorney general and the secretary of treasury and agreed to a five shillings per £100 charge.[82] In

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[80] Parl. Papers 1861, i (9), pp. 87-180: 'Bill to Amend the Law relating to bankruptcy and insolvency in England', 11 Feb. 1861.

[81] Hansard, third series, 1861, clxii. 26061.

[82] Leeds CC Papers, minute book, vol. II, p. 463: chamber meeting, 27 Mar. 1861.

addition, local chambers kept up pressure for reform by constantly petitioning for passage of the government's bill. On 26 April, individual petitions from eighteen local chambers were introduced in the House of Lords urging passage of the government's measure.[83]

At first, Bethell believed there would be little opposition from the Tories and informed Lord Palmerston that Lord Derby would not attempt to do material damage to the bill -- at least he was so assured by a 'leading member of their party'.[84] Indeed, during the course of the debate in the House of Commons, several members emphasized that the bankruptcy bill was not a party issue but a measure of the 'utmost importance to the commercial classes'.[85] Bethell's optimistic forecast proved wrong. When the bill reached the House of Lords, several opponents of the measure requested that it be referred to a select committee. The Lord Chancellor, on behalf of the government, objected to the referral, and a petition signed by a large number of merchants and banking firms in London supported the Lord Chancellor's position. Yet despite the warning in The Times that 'the inference will be unavoidable that the wishes and views of the commercial world are to be sacrificed for the sake of party hostility', the Lords referred the bill to a select

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[83] Jornals of the House of Lords, xciii, 26 Apr. 1861, p. 239.

[84] Bethell to Lord Palmerston (undated), quoted in Nash, op.cit., 2. 4-5.

[85] Hansard, 3rd series, 1861, clxi, 310.

committee.[86] Once again, however, caution must be exercised in concluding that there was a unity of opinion in the business community. For example, referral had the support of the Manchester chamber, although no record remains as to why the chamber took this position.[87]

Although there was still concern in 1861, especially in the House of Lords, about the merger of bankruptcy and insolvency law and the extension of the county court's jurisdiction, it was the issue of the increased powers to creditors in the management of the bankrupt estate and the establishment of a chief bankruptcy judge that came under the severest scrutiny in Parliament. On the issue of the partial dismantlement of officialism, Bethell attempted in 1861 to steer a course of compromise between supporters of the continuation of administration by the courts through a system of court appointed official receivers and those who wanted to replace the system with administration by the creditors alone. The attorney general's position was to give the creditors' assignee 'the right of receiving, applying, and administering the estate...' while at the same time retaining for the official assignee the power to be 'an efficient auditor, active inspector, and vigilant superintendent over the creditors' assignees...'.[88] On the one hand, the bill

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[86] The Times 2 May 1861, 7.

[87] Leeds CC Papers, minute book, vol II, p. 467: chamber meeting 24 Apr. 1861. The minutes of the Leeds meeting record the chamber's displeasure at having the name of the Leeds chamber published in a list, which included the Manchester chamber, of those supporting referral to the select committee. Apparently, other chambers supported the referral but their names were not listed in the minutes of the Leeds meeting.

[88] Hansard, 3rd series, 1861, clxi. 293.

relegated the official receiver to collecting debts under £10 due the bankrupt, but on the other hand the bill required the creditor's assignee to make periodical accounts to the official receiver who was to assist in auditing such accounts. Stated another way, as the debate in Parliament revealed, Bethell's bill would separate judicial from administrative functions, allowing the creditors to settle their own affairs, but recognizing, through strict accounting and auditing features, the apathy of creditors in such matters.[89]

As might be expected, the government's move to return power to creditors had strong support from a large segment of the business community. Numerous chambers of commerce presented the attorney general with petitions supporting the scheme called for in the bill.[90] The Economist pointed out that a court could never be a good collector of money, since it is not the nature of such a body and there was a 'want of motive power'. According to this influential journal, under the government's bill, collection would be handled by persons selected by the creditors who would make it their profession to liquidate estates. Such professionals would 'generally start in life with no capital, but with considerable natural intelligence and sound mercantile education'. 'They have

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[89] Hansard, 3rd series, 1861, clxi. 286.

[90] The chambers of commerce of Belfast, Birmingham, Bradford, Coventry, Glouster, Hull, Leeds, London, Sheffield, Southampton, Wolverhampton, York, and Sunderland were mentioned as supporting the provision in the course of debate in Parliament on the bill. Hansard, 3rd series, 1861, clxiv. 1303, 1305, 1307. See also, Wolverhampton Chamber of Commerce & Industry Papers (herein after 'Wolverhampton CC Papers'), minute book vol 1: chamber meeting 18 Apr. 1861.

their way to make in the world, and the industrious efficiency which necessity best produces'.[91]

Some members of Parliament were not so enamoured of this picture of free enterprise at work. One member pointed out that even though the official system had been costly, nevertheless it had brought in a large percentage of the bankrupts' assets.[92] Lord Chelmsford believed that the commercial community was not so nearly united in support of the bill. In Chelmsford's mind, creditors of small estates opposed the bill because 'the machinery it provided was infinitely too cumbrous to be applicable to small estates'. As to the many petitions from the business community supporting the bill, one opponent noted that they all had similar or identical language and dismissed them, saying 'those who were acquainted with the way such things were managed did not attach as much weight to their decision as if the petitions had been the result of spontaneous action'.[93] According to opponents of the bill, in smaller bankruptcies with few assets, a creditors' assignee would never even be appointed because larger creditors would have no interest in controlling, through the creditors' assignee, the appointment of a solicitor or paid agent of the estate.[94] The chief representative of the creditors of the larger estates behind the bill, according to Chelmsford, was the Mercantile Law Amendment

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[91] 'The Essential Element in Bankruptcy Reform', The Economist 16 Feb. 1861, p. 170.

[92] Hansard, 3rd series, 1861, clxi. 312-13.

[93] Hansard, 3rd series, 1861, clxiv. 1119.

[94] Hansard, 3rd series, 1861, clxii. 627.

Society, which 'boasted that they had induced ... [the] Attorney General to make alterations in his bill to suit their views... ' and 'in falling in with those views the Attorney General had run contrary to the wishes of a very large class of persons'.[95] In addition, opponents of the bill argued that the work of the creditors' assignee and the official receiver would be duplicative and would cause unnecessary and redundant expense.

After the Lords' committee made its report, the upper house amended the bill to eliminate, among other things, the shift of power to the creditors' assignee and actually increased the number of official receivers. In addition, the Lords removed the provision for a chief judge in bankruptcy. Lord Lyndhurst confided to a friend that 'we have doctored and curtailed [the bankruptcy bill] so that the Atty Genl will hardly know his own offspring when it returns from its visit to the Lords'.[96]

The standing committee of the Associated Chambers of Commerce was irate over the Lords' action and issued a statement that they strongly disapproved. They believed that the removal of the powers of the creditors' assignee and other changes '... would deprive the bill of its principal value in

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[95] Hansard, 3rd series, 1861, clxii. 626. The 'Mercantile Law Amendment Society', to which Lord Chelmsford referred should not be confused with the law amendment committee of the National Association for the Promotion of Social Science. The 'Mercantile Law Amendment Society' was more than likely a London-based group chaired by Samuel Morely, who testified on behalf of such a committee during the hearings of the 1864 Select Committee. Parl. Papers 1864, v (512), p. 182: 'Report from the Select Committee on the Bankruptcy Act ...', 22 July 1864.

[96] Lord Lyndhurst to Henry Bellenden Kerr (undated) quoted in Carr, op.cit., p. 16.

the estimation of the mercantile community'.[97] Local chambers also passed similar resolutions.[98]

On the issue of increased powers of the creditors' assignee, there was little or no disagreement among the business community. The provisions must remain in the bill despite the Lords' efforts to remove them. The House of Commons stood firm, and the provisions granting such powers became part of the law adopted in 1861.[99]

Support for the chief judge in bankruptcy was not as widespread. The main argument in favour of the proposal was that the chief judge, who would hear all appeals, would end the problem of conflicting opinions rendered by separate commissioners.[100] Opponents objected, arguing that the new chief judge would only add an unnecessary appeal level and that appeals were being handled satisfactorily under the present system by the Court of Appeal in Bankruptcy.[101] To London merchants and bankers who presented a petition in support of the new chief judge's position, however, appeals to the Court of Appeal in Bankruptcy were too expensive, and an interim appeal to the proposed chief judge would be less

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[97] The Times 22 June 1861, 5.

[98] Leeds CC Papers, minute book vol. II, p. 474: chamber meeting, 5 June 1861; Liverpool CC Papers, 380 Com 1/1, p. 71: special meeting of the council, 24 June 1861.

[99] 24 & 25 Vict., c. 134, ss. 119 (creditors' assignee to audit the accounts of the official assignee) and 127 (creditors' assignee to 'manage ... realize and recover' the bankrupt's estate) (1861).

[100] Hansard, 3rd series, 1861, clxiv. 1102.

[101] Ibid., p. 1106.

costly.[102] Assertions of London merchants and the Mercantile Law Amendment Committee notwithstanding, not all the commercial community agreed on the wisdom of creating a chief judge. Some of the provincial chambers of commerce, including those of Manchester and Leeds, specifically opposed the plan, the Leeds chamber calling it an 'expensive and unnecessary appointment'.[103] Many other chambers, while objecting to some of the Lord's amendments, did not complain about the removal of the chief judge provision.[104] Perhaps because of the influence of the provincial chambers, even the standing committee of the Associated Chambers of Commerce, while objecting to many of the alterations made by the House of Lords, made no objection to the Lords' removal of the chief judge provision.[105]

When the Lords returned the bill to the Commons without the chief judgeship, the attorney general moved and carried a motion to disagree with the Lords, declaring that the bill would be 'unworkable' without the chief judge provision.[106] At this critical juncture, Lord Campbell, the Lord Chancellor, suddenly died and Palmerston elevated Bethell, as Lord Westbury, to the Lord Chancellorship on 27 June 1861. Lord Westbury, in one of his first speeches as Lord Chancellor,

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[102] Hansard, 3rd series, 1861, clxiv. 1102.

[103] Leeds CC Papers, minute book, vol II, p. 458: special meeting, 19 Feb. 1861; Hansard, 3rd series, 1861, clxiv. 1104.

[104] Hansard, 3rd series, 1861, clxiv. 1104-05 (Belfast, Birmingham, Bristol, Glasgow, Leeds, Hull, Sheffield, Wolverhampton, and Coventry).

[105] Hansard, 3rd series, 1861, clxiv. 1118.

[106] Ibid., p. 1103.

vigorously attacked the opposition to the bankruptcy bill and in particular Lord Cranworth. According to Lord Lyndhurst's description of the scene, Lord Westbury 'shocked' the House with his 'vulgarity and insolence', and 'the storm of indignant reproof that overwhelmed him is without parallel, ...'. 'It was said he was so overcome as to have shed tears'.[107] This time it was the Lords who stood firm, and attorney general Atherton later admitted that the Commons must agree to do without the chief judge or the bill would be lost.[108]

As a result of the Lords' amendments, the Bankruptcy Act of 1861 was not the same measure as originally presented by the attorney general on behalf of the government. Some of the measure's main provisions, such as the increased powers for the creditors assignees and the merger of bankruptcy and insolvency law, largely survived, but the act did not include a chief judge of bankruptcy. Bethell was disappointed and referred to the new statute as a watch from which the mainspring had been taken. He felt that for every hydra head of abuse that he attempted to destroy, seven new ones had arisen.[109] William Hazlitt, writing in his treatise on the Bankruptcy Act of 1861, published soon after the passage of the bill, correctly described the dynamics that finally caused the passage of the bill. According to Hazlitt, the conflict between the House of Commons and the House of Lords over the bill resolved itself in compromise. The Commons

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[107] Lord Lyndhurst to Henry Bellenden Kerr (undated) quoted in Carr, op.cit., p. 17.

[108] Hansard, 3rd series, 1861, clxiv. 1814.

[109] Nash, op.cit., 2. 10-11.

surrendered the Chief Judge 'in order that the power of the creditors to regulate and control the administration of the debtor's property -- an object so popular with the commercial classes -- should be secured'.[110] Nevertheless, with the passage of the bill, there was a feeling that the business community now had been given the scheme they had long desired. They must now take responsibility for its success or failure. The Economist bluntly stated at the time that the creditors 'have now the opportunity given to them by the law to undertake the entire management of these affairs, and if they practice neglect to do so, they must in mere consistency at any rate cease to complain'.[111]

A great deal of tension existed between the business community and legal profession throughout the debate on the bill. Not only in the 1860-61 period, but also later, each of these constituencies felt that the other was not capable of solving the problems the bankruptcy system posed. One member of Parliament declared that the failure to pass the 1860 bill could be attributed to the 'bickerings of the lawyers', and while it was very well for the lawyers to discuss the matter, it was the commercial men who were the ones most interested.[112] According to this member's view, the lawyers were the cats and the traders the mice in the political game.[113] On

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[110] Hazlitt, op.cit., p. iv.

[111] 'The Ample Powers Given to the Creditors By the New Bankruptcy Act', The Economist 19 Oct. 1861, 1153.

[112] Hansard, 3rd series, 1861, clxi, 313.

[113] Ibid., Another member responded that he hoped the speaker realized that he had placed commercial men in the category of vermin. Ibid.

the lawyers' side, one barrister published a pamphlet in 1861 urging the attorney general to listen to 'statesmen and lawyers' first and be careful to 'apply a legal mind' to any proposal offered by tradesmen.[114] Each community was looking out for its own interest. In one of the more blatant examples of self-interest, the solicitors rallied with unwonted zeal to protect their continued ability to appear in bankruptcy court when that source of income was threatened by the attorney general's 1861 bill. As part of the overall scheme of bankruptcy reform, the attorney general had called for the repeal of the solicitors' advocacy clause in the Bankruptcy Consolidation Act of 1849 which gave the solicitors the right to appear and plead in courts of bankruptcy. The attorney general pointed out that he had no intention of depriving solicitors of any powers they presently possessed, such powers being reintroduced in the new bill. Nonetheless, The Solicitor's Journal & Reporter pointed out that under the new bill solicitors would no longer be able to appear in proceedings like those on opposition to discharge. The journal told its subscribers that it was not too late to take action on the matter, and 'the entire body of the profession should bring its strength immediately to bear'.[115] The solicitors successfully thwarted the attempt to tamper with their prerogatives, and the final version of the Bankruptcy Act of 1861 contained a specific provision that solicitors could

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[114] Theophilus Bennet H. Abrahall, Reform of the Laws Relating to Bankruptcy and Insolvency, a Second Letter to Sir Richard Bethell (London, 1861), pp. 47-48.

[115] The Solicitors' Journal & Reporter 23 Mar. 1861, 371.

appear or plead in any bankruptcy proceeding without having to hire counsel.[116]

But broader issues divided the legal profession from the business community. Many lawyers were disappointed with the government's 1861 bill and looked forward to possible revisions by the Lords. The County Courts Chronicle, a legal trade journal, went so far as to say that the bill was 'the most slovenly bit of legislation that has been attempted, even in our own time of slovenly law-making'.[117] One change the upper house made in the bill demonstrated the divergence between lawyers and businessmen. The Lords eliminated creditors' power to remove estates of insolvent decedents from chancery court to bankruptcy court. The support for the change from the business community seems to have been almost unanimous.[118] Indeed, this revision was one of the central goals listed in the Social Science Association's resolutions passed in 1857. Much of the legal profession opposed the change, and a prominent legal journal charged that the government introduced the provision 'at the dictation of the mercantile classes, who can hardly be supposed to know what the real effect would have been'.[119] The business community was not inclined to be charitable about the motives of the lawyers on this issue. John Bright observed that much of the

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[116] 24 & 25 Vict., c. 134, s. 212 (1861).

[117] The County Courts Chronicle 1 June 1861, 153.

[118] See, for example, resolution of the Manchester chamber reported in The Times 11 Jan. 1861, 12.

[119] The Solicitors' Journal & Reporter 30 Mar. 1861, 391.

opposition came from those who had an interest in the Court of Chancery.[120] In the end, the lawyers prevailed, and at the insistence of the House of Lords, Parliament removed the provision to transfer insolvent estates from chancery to bankruptcy.

Parliamentary Select Committee, 1864-1865

It soon became apparent that the 1861 effort to reform permanently the bankruptcy system had failed. The general committee on mercantile legislation reported at the fifth annual meeting of the Social Science Association in 1861 that although the new act encompassed most of the features recommended by the Social Science Association drafting committee in 1857, the 'defects and incompleteness' of the new act made amendment necessary.[121] As early as January 1863, the council of the Birmingham Chamber of Commerce resolved to discuss the defects of the 1861 act at the annual meeting of the Associated Chambers of Commerce.[122] The Law Times reported that the number of bankruptcies and insolvencies had doubled under the 1861 act, yet the amount of assets collected had drastically declined.[123] The bankruptcy returns confirmed this assertion. In 1860, 1,430 bankruptcy petitions were filed, and assignees collected a total of £1.25 million in assets. For the year

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120 Hansard, 3rd series, 1861, clxi. 2170.

121 N. A. P. S. S., Transactions (1861) (London, 1862), p. 277.

122 Birmingham CC Papers, Council Minute Book, 13 Jan. 1863.

123 The Law Times 3 Sept. 1864, 479.

ending 11 October 1862 (the first year under the Bankruptcy Act of 1861), however, there were 9,663 adjudications in bankruptcy, and just under £650,000 in gross assets were realized.[124] Even with the dramatic increase in the number of adjudications caused by including former insolvency cases under bankruptcy jurisdiction, the total assets collected were barely half what they had been under the pre-1861 system. In a paper presented to the Social Science Association in 1865, one member of Parliament active in bankruptcy reform estimated that while the annual income of the country was £400 million, the annual loss from insolvency amounted to £50 million.[125]

By 1864, the attorney general, Sir Roundell Palmer, admitted that the 1861 bill's effect 'had not been so satisfactory as desirable... ' with regard to some areas, and the government did not object to the appointment of a select committee in that year to study the situation.[126] The Associated Chamber of Commerce also voiced its support for a Parliamentary inquiry.[127]

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[124] Parl. Papers 1864, xlviii (31), p. 303: 'General Returns by the Chief Registrar of the Court of Bankruptcy', 11 Feb. 1864. The figures did not improve for the year ending 11 Oct. 1863, in which there were a total of 8,470 bankruptcy adjudications and just over £698,000 in assets of the bankrupts' estates recovered. Ibid., p. 314.

[125] Meeting held 5 Oct. 1865 reported in The Law Times 14 Oct. 1865, 607.

[126] Hansard, 3rd series, 1864, clxxiv. 686, 688.

[127] A report delivered at the annual meeting of the Sheffield Chamber of Commerce in 1864 stated that representatives of the Sheffield chamber assisted in presenting a resolution passed by the Associated Chambers of Commerce supporting Parliamentary inquiry into the administration of bankruptcy laws. Although existing Associated Chambers' records do not record the authorization of such a petition, it seems likely that such petition did exist. Sheffield CC Papers, LD 1986/2: annual meeting, 1864.

The select committee appointed had eleven members, but the driving force behind its work was George Moffat, who had been active in studying bankruptcy reform. Moffat was a wholesale tea dealer and partner in the firm of Moffat and Co. of London and Liverpool and had sat as a Liberal in Parliament since 1845.[128] The committee worked extensively and held nineteen meetings in the early summer of 1864, where they heard the testimony of thirty-five witnesses including commissioners of bankruptcy, the chief registrar of bankruptcy, official assignees, solicitors, merchants, and bankers.[129]

The bankruptcy system came under heavy attack by witnesses before the committee. Sampson Lloyd, a Birmingham banker and Chairman of the Associated Chambers of Commerce, testified that he did not know of any other subject on which the business community was so unanimous in condemning. Lloyd carefully pointed out that the problem was not the fault of the business community because bankruptcy was essentially a legal problem rather than a commercial difficulty. 'It is more difficult', said Lloyd, 'for a commercial man to state the wisest remedies for a legal difficulty than to state where the shoe pinches'.[130]

The major complaint of all the witnesses and summarized in a memorial to the select committee by the Associated

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[128] Dod's Parliamentary Companion (London, 1865), p. 251.

[129] The committee issued its final report in March 1865. Parl. Papers 1864, v (512), op.cit., pp. 1-546.

[130] Parl. Papers 1864, v (512), op.cit., pp. 166-67.

Chambers of Commerce was the increased expenses of administration. The association claimed that according to available statistics and since the 1861 Act had been in effect, costs of bankruptcy estates had risen from approximately a third to over half of the total estate.[131] The cost of bankruptcy had driven many creditors to avoid the system if at all possible. 'My experience is, that no one will have anything to do with it who can help it', declared a Derbyshire banker.[132] As chairman Moffat reported to the Commons, many debtors used the threat of bankruptcy to negotiate the smallest amount of payment possible to their creditors.[133] Several actions were suggested to improve the situation. The Metropolitan and Provincial Law Association and the Associated Chambers of Commerce among many others again urged the appointment of a chief judge, a course included in the 1861 bill but eliminated by the House of Lords.

Most witnesses believed the key to the problem was to give creditors total supervision over the administration of bankrupt estates. As the memorial of the Associated Chambers of Commerce stated, it was a 'fundamental principle of bankruptcy legislation that questions affecting the person or the character of the bankrupt, or abstract questions of law, belong exclusively to the court, but the duty of realizing and distributing the estate belongs exclusively to the

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[131] Parl. Papers 1864, v (512), op.cit., p. 8.

[132] Ibid., p. 180.

[133] Hansard, 3rd series, 1865, clxxix. 421-22.

creditors ...'.[134] The President of the association testified that an 'instinctive jealousy of official administration in the English commercial mind will not allow men to work cordially with official assignees'.[135] Samuel Morely of the Mercantile Law Amendment Society believed the bankrupts' assets should be placed in the hands of the bankrupt's creditors with a 'minimum' amount of supervision.[136]

On the subject of creditor control, the committee heard the testimony of several persons familiar with the 'Scottish system', which allowed the creditors alone to appoint a trustee to manage the entire affairs of the bankrupt's estate. Under this system, some of the creditors served as inspectors and monitored the trustee's activities. A Scottish accountant testified that the expense of managing bankrupt estates in Scotland was averaging approximately 12.5 percent of wholesale assets recovered compared to an estimated average of thirty percent usually cited for England.[137] These figures were appealing to English businessmen, and Sampson Lloyd told the committee 'the Scotch system is very satisfactory, and, with little exception, I can conceive nothing better than that system'.[138]

The idea of employing the Scottish system was not new. The Social Science Association heard a paper in 1857 on the

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[134] Parl. Papers 1864, v (512), op.cit., p. 292.

[135] Ibid., p. 178.

[136] Ibid., p. 183.

[137] Parl. Papers 1864, v (512), p. 149.

[138] Ibid., p. 177.

advantages of the Scottish bankruptcy system in which it was alleged that in Scotland the expense of a bankruptcy estate was less than one-third what it was in England.[139] In 1858, The Solicitors' Journal & Reporter ran an article in 1858 by a correspondent in Edinburgh pointing out the advantages of the system.[140] When Lord Chelmsford introduced the government's bankruptcy bill in 1858, Lord Campbell urged the government to look at Scottish bankruptcy law.[141]

There were those, however, who warned justifiably that the comparison between the English and Scottish systems was misleading. Speaking to the Nottingham Chamber of Commerce somewhat in jest, one member of Parliament noted that there was a basic difference between the Scottishman and the Englishman -- the latter letting 'bygones be bygones -- and not looking after the last penny of his debt ...'.[142] A much more serious difference made comparison of the two systems impossible: the difference in the size of England and the size of Scotland. In April 1859, George Hawes, in a speech to a Law Amendment Society meeting, pointed out that expenses in Scotland were so low because the figure only represented 104 estates of which 101 had been wound up by consent of the parties.[143] In contrast, England had thousands of

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139 N. A. P. S. S., Transactions (1857), op.cit., p. 107.

140 The Solicitors Journal and Reporter 27 May 1858, 444-45.

141 Hansard, 3rd series, 1858, cli. 2301.

142 Nottingham Chamber of Commerce Papers (hereinafter 'Nottingham CC Papers'), annual meeting, 9 Jan. 1865.

143 The Solicitors' Journal & Reporter 9 Apr. 1859, 435; see also, M. S. Moss and J. R.

(Footnote Continued)

bankruptcies each year. This point was made during the debate over the 1861 act.[144]

Despite the warnings that a comparison between England and Scotland was inappropriate, the memorial of the Associated Chambers of Commerce to the select committee claimed that English bankruptcy costs were fifty-five percent of net assets, while in Scotland they were only thirteen and a half percent. What the memorial failed to recognize, as they later learned was that the figure for Scotland was not based upon net assets but on gross assets, seventy-nine percent of which were secured and not liable for distribution. Also, the memorial based its English cost figure on only sixty-five small bankruptcies where costs were unusually high.[145] Despite such warnings, the 'Scotch system' seemed to be the panacea for the problems with English bankruptcy and gained widespread popularity among local chambers of commerce.[146]

Moffat and members of his committee strongly supported the idea of increased creditor responsibility in the management of bankrupt estates, usually referred to as support for the 'Scotch system'. This was certainly the recommendation in

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(Footnote Continued)
Hume, 'Business Failure in Scotland 1839-1913: A Research Note', Business History, 25 (1983), 3-10 and R. G. Rodger, 'Business Failure in Scotland, 1839-1913', Business History, 27 (1985), 75-99.

144 Abrahall, op.cit., p. 46.

145 Parl. Papers 1877, lxix (152), pp. 52-3: 'Copy of a Report to the Lord Chancellor of a Committee appointed to consider the Working of "The Bankruptcy Act of 1869" ', 12 Apr. 1877 (report dated 28 July 1875).

146 Leeds CC Papers, minute book vol. II, pp. 588-99: council meeting, 20 Jan. 1865 (resolution passed recommending that Scottish bankruptcy law be adopted in England); Bristol CC Papers, 38605/M/3, p. 135: general meeting, 20 Feb. 1865 (authorizing delegates to the Associated Chambers of Commerce meeting to express approval of the Scottish system).

the final report.[147] According to the select committee, official assignees were negligent and indifferent to the collection and distribution of the bankrupt's assets.[148] A reading of the minutes of the testimony before the committee, however, reveals strong voices of dissent, usually from bankruptcy officials. Edward Holroyd, a commissioner in bankruptcy, frankly told the committee that the office of the official assignee should be given back the powers it had before 1861, because it was an 'exceptional case' that a creditors' assignee 'devotes his time, labour and attention to winding up an estate'.[149] The Chief Registrar in the Court of Bankruptcy, a solicitor involved in bankruptcy practice, and others concurred.[150] These warnings, however, were ignored in the final report of the committee.

The 1864-65 select committee was one of the many select committees in the Victorian period 'packed' to support a specific position.[151] The committee that strongly supported the introduction of the Scottish system ignored all testimony opposing the system. The primary conclusion, the theme both of the draft and of the final report, was that 'experience of the last 40 years points rather to the renunciation of the attempt to collect and distribute the estate of an insolvent

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147 Parl. Papers 1865, xii (144), pp. 591-93: 'Report from the Committee on the Bankruptcy Act', 21 Mar. 1865.

148 Parl. Papers 1864, v (512), op.cit., p. 9.

149 Ibid., p. 79.

150 Ibid., pp. 20, 22.

151 For other examples, see Henriques, op.cit., p. 171.

among his creditors by any other agency than the creditors themselves'.[152] The remedies suggested by the committee included the adoption of the 'Scottish system', in effect, the abolition of all official receivers, commissioners, and other officials involved in estate administration. Creditors should be allowed to elect a trustee and establish his remuneration as well as appoint creditor-inspectors to monitor the trustees' activities. In addition, the select committee recommended that there should be no discharge of the debtor without payment of six shillings and eight pence in the pound or until six years had passed since the filing of the petition. Finally creditors must prove their debts properly before being allowed to vote on deeds of arrangement.[153]

The Lord Chancellor, Lord Westbury, had his own plans for reform of the bankruptcy system. Westbury had never been pleased with the operation of the 1861 act. He confided in his son-in-law, Mansfield Parkyns, the Comptroller in Bankruptcy and later a strong supporter of the official system, that he was going to seek the repeal of the removal of powers from the official assignee. According to Westbury, this demotion of the official assignee had been a great mistake forced upon him by 'protection societies including the Social Science and Law Amendment people'.[154] In a meeting with

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[152] Parl. Papers 1864, v (512), op.cit., p. 11.

[153] Parl. Papers 1865, xii (144), op.cit., pp. 591-93.

[154] Bodleian Library, University of Oxford, MS Don C. 150 fol. 79-80: letter from Lord Westbury to Mansfield Parkyns (undated).

representatives of the Associated Chambers of Commerce at the time, Westbury stated that he did not look with any favour on the Scottish system but suggested a reconstructed bankruptcy system on a much simpler basis.[155] In a circular to local chambers of commerce in the spring of 1865, the Lord Chancellor outlined his suggestions for improvement of the bankruptcy laws and requesting comments.[156]

Lord Westbury never had the chance to complete his plans. He resigned his position as Lord Chancellor in July 1865 after a scandal in which he was censured by a Parliamentary select committee.[157] Lord Cranworth, who replaced Lord Westbury on the Woolsack, complained that Westbury had left him as a legacy the task of 'entirely sweeping way his first pet measure the new Bkptcy [sic] and Insolvency Law and putting it all on entirely fresh footing'.[158]

Clamour for reform continued to grow. Local chambers of commerce called attention to the 'urgent need for thorough reform of Bankruptcy Law'.[159] The council of the Birmingham

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[155] Birmingham CC Papers, report to the council from delegates attending the Associated Chamber of Commerce meeting, 28 Feb. 1865.

[156] Bristol CC Papers, 38605/M/3, 137: meeting 20 Mar. 1865; Sheffield CC Papers, LD 1986/1: council meeting, 10 Mar. 1865.

[157] Oddly enough, the scandal that caused Lord Westbury's resignation involved the bankruptcy system. Unknown to the Lord Chancellor, a barrister named Walsh had been given a position in the bankruptcy court system. Walsh had loaned large sums of money to Westbury's son, Richard Westbury, who was himself an undischarged bankrupt and had been forced to resign as London bankruptcy registrar. Rumor had it that Walsh was holding the position for the eventual appointment of Westbury's son. A Parliamentary select committee appointed to study the events censored Lord Westbury, and as a result, Lord Westbury resigned. Holdsworth, A History of English Law, op.cit., 16. 80.

[158] Lord Cranworth to Henry Bellenden Kerr (undated) quoted in Carr, op.cit., p. 19.

[159] Leeds CC Papers, minute book, vol. II, p. 641: council meeting, 9 Jan. 1867.

chamber thought the bankruptcy system in 'crisis' and called for a thorough change in the system rather than accepting a 'patch-work' enactment.[160]

Finally the Liberal government in 1866 introduced a bankruptcy bill largely based upon the recommendations of the 1864 select committee.[161] In introducing the bill, Attorney General Sir Roundell Palmer indicated how much the government had come to support the concept of a completely creditor-run system of bankruptcy administration. The court, according to the attorney general, was to have 'as little as possible to do' in the matter, and official receivers were to be abolished, since they had failed to manage the bankrupt estates in a 'mercantile way'.[162] The schedule of the House of Commons and the change of government in June 1866 forced the bill to be withdrawn. The new Tory government, introduced a similar measure in 1867, but once again, it had to be withdrawn at the close of the session.

These attempts by Liberal and Tory governments in the 1860s received careful attention from both the business community and the legal profession. Both local chambers and the Associated Chambers of Commerce carefully reviewed each

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[160] Birmingham CC Papers, half-year report of the council to the chamber, 19 Jan. 1865.

[161] Parl. Papers 1866, i (106), pp. 119-236: 'A Bill to amend and consolidate the Law relating to Bankruptcy in England, and to abolish Imprisonment for Debt in Final Process', 16 Apr. 1866.

[162] Hansard, 3rd series, 1866, clxxxiii. 690. The only real disagreement the government had with the select committee's report was on the issue of what to do with the officials whose duties were being abolished. The committee suggested that they simply be removed, while the government's bill had the commissioners in bankruptcy slowly phased out.

provision of the bills.[163] In April 1867, the standing bankruptcy committee of the Associated Chambers of Commerce met with the attorney general, Sir J. Rolt, to discuss changes in the government's bill proposed by the association. The committee reported to the association that the general point of difference, the attorney general thought, consisted in the committee's willingness to attribute more vigilance to creditors than Rolt felt they deserved.[164] Solicitors were also busy guarding their interests during the period. The council of the Law Society 'protested most strongly' to the attorney general in 1867 the provision of the bill that required vacancies in the office of the registrar of bankruptcy to be filled only with other registrars, barristers, or other special pleaders of five years standing. The Law Society took the expected position that a solicitor's practical experience makes him 'eminently qualified for the position' and he should therefore not be excluded from service.[165]

One reform in the bankruptcy system did become law in 1868. George Moffat introduced and secured the passage of a measure to address what appeared to contemporaries to be one of the greatest abuses in the system. When a debtor proposed a deed of arrangement, sham creditors with adequate security would vote to approve a deed of arrangement over the

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[163] ACC Papers, 14,474: special meeting 10 May 1866 and standing committee 19 Feb. 1867; Leeds CC Papers, minute book, vol. II, p. 647: chamber meeting, 20 Mar. 1867.

[164] ACC Records, 14,474, report of meeting with the attorney general on 26 Apr. 1867.

[165] The Law Society of the United Kingdom, Annual Report of the Council of the Law Society of the United Kingdom 28 June 1867 (London, 1867), pp. 21-22.

objections of unsecured legitimate creditors. Moffat's bill required that the debtor, or someone on his behalf, file with the Chief Registrar a detailed list of his debts, the names of all creditors, and a statement of affairs. Both documents had to be verified by sworn affidavit under penalty of perjury. In addition, only secured creditors were to be allowed to vote to the extent of the unsecured portion of their claim.[166]

In itself, the bill is not significant, but debate over the measure exemplifies the diversity of opinion among the business community regarding bankruptcy reform. In a letter to The Times, the secretary of the Mercantile Law Amendment Society attacked the measure claiming that in executing a composition deed, creditors would be required to go through the inconvenience of proving their debt in the same manner as in bankruptcy. The authors of the bill had 'been careful...to inflict on the creditors as much vexations and unnecessary trouble and expense as possible'.[167] In contrast, the Leeds and Sheffield chambers of commerce sent petitions supporting the bill, and the secretary of the Association of Chambers of Commerce wrote to members of Parliament in support of the measure.[168] The secretary of the Nottingham chamber of commerce was so confident of his organization's support for

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[166] Parl. Papers 1867-68, i (145), pp. 117-22. The bill was enacted as 31 & 32 Vict., c. 104.

[167] The Times 13 July 1868, 6.

[168] Leeds CC Papers, minute book, vol II (unnumbered pages): chamber meeting, 24 June 1868; Sheffield CC Papers, LD 1986/1, p. 120: council meeting, 18 June 1868; Hansard, 3rd series, 1868, cxciii. 1159, 1161.

the measure, that he sent a petition in favour of the bill and obtained his council's approval only after the fact.[169] Moffat's bill became law, and as an indication of the urgency of its reforms, The Law Times reported in the last three days before the bill went into effect, 509 deeds were registered 'thus escaping the test of honesty which the Act imposes upon all compounding debtors'.[170]

Bankruptcy Act of 1869

As time for the 1869 session of Parliament drew near, it was evident that the new Liberal government would continue to work for major reform of the bankruptcy law -- the 'Rogues' Charter' as it had come to be called.[171] The third attorney general to be involved in bankruptcy reform in the decade, Sir Robert Collier, asserted that the time for 'patching up' the law of bankruptcy had passed and that the government intended to reform the entire system.[172] The government's bill accepted the proposal of the 1864 select committee to install the 'Scottish system' and end the use of commissioners and official receivers. Debtors would no longer be able to petition for their own bankruptcy, and if a

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[169] Nottingham CC Papers, minute book: council meeting, 6 May 1868.

[170] The Law Times 17 Oct. 1868, 433. The next year, The Times reported that in the first three months operation of the bill, the number of private arrangement deeds decreased from 2,010 to 804, even though total bankruptcies increased during the same period from 2,245 to 2,361. According to The Times, 'in the opinion of the officials best qualified to judge, there has not been a single fraudulent deed passed since it [the act] came into force'. The Times 16 Feb. 1869, 6.

[171] The Law Times 14 Oct. 1865, 597.

[172] Hansard, 3rd series, 1869, cxciv. 776.

petition was filed against them, debtors could only be released when a majority of creditors in number and three-quarters in amount agreed upon the payment of ten shillings in the pound. The last vestiges of imprisonment for debt were also to be removed.

On the whole, the government's bill was well received. The Saturday Review called the measure 'by far the most promising Bill which has yet been brought forward'.[173] The president of the Liverpool Chamber of Commerce was able to report to his membership that the bill embraced all the more important reforms that the chamber had long advocated.[174] Petitions supporting the measure flooded the House of Lords. Between April and July, the Lords received over twenty individual petitions in support of the bill from local chambers of commerce and groups of merchants.[175] This favorable reception to the bill was more than likely due in part to the government's attempts to pay particular attention to the wishes of the commercial interests.[176] Many persons associated with the chambers of commerce met with the attorney general not only before but after the introduction of the bill and one member of Parliament expressed the view that these representatives found the attorney general ready to

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[173] 'The Bankruptcy Bill', The Saturday Review 27 Mar. 1869, 407.

[174] The Times 4 Mar. 1869, 9.

[175] The Journals of the House of Lords, ci. 52, 434, 494-543.

[176] On some issues the business community was still split. For example, the minimum amount of indebtedness before a bankruptcy petition could be filed and the minimum amount, if any, that a debtor must pay before being discharged. Hansard, 3rd series, 1869, cxcvi. 1213, 1406.

listen to any suggestions they had to make.[177] The attorney general, himself, boasted that the government had been 'most anxious' in writing the bill to consult with the commercial community.[178] Although this statement was made largely to engender support for the bill; nevertheless, the government on more than one occasion did amend the measure at the request of chambers of commerce. At the insistence of many chambers of commerce, for example, the government amended the bill so that the liquidation of ordinary partnerships with more than seven members would come under bankruptcy law and not company winding-up law.[179]

The influence of the business community did not go unnoticed by the legal profession. The 1869 annual report of the council of the Law Society remarked that the bankruptcy bill 'was open to the most grave objections, owing no doubt in great measure to the fact that it had evidently been drawn by gentlemen unacquainted with the practical working of Bankruptcy Law'.[180] Commenting on the attorney general's reception of a delegation from the Associated Chambers of Commerce, The Law Times sourly noted that 'the patient is not the best person to prescribe the remedy... ' and charged that the most glaring defects in the present bankruptcy law resulted in 'the adoption of the views of the mercantile

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[177] Hansard, 3rd series, 1869, cxcv. 162.

[178] Hansard, 3rd series, 1869, cxciv. 788.

[179] Hansard, 3rd series, 1869, cxcvi, 1212-13; 32 & 33 Vict., c. 71, s. 5.

[180] The Law Society of the United Kingdom, Annual Report of the Council of the Law Society of the United Kingdom, 16 July 1869 (London, 1869), p. 16.

world'. In conclusion, the legal journal claimed that 'legal matters are better dealt with when left to lawyers'.[181] Another legal periodical was concerned that the bill placed too much emphasis on the collection of debts and not enough on the causes of the bankruptcy. The state had a duty to interfere and demand an explanation of a debtor as to why he could not pay his debts -- it was a question of 'right and wrong' and not just of dividends.[182]

For the most part, there was little debate over the government's 1869 bankruptcy bill; the adoption of the 'Scottish system' was a forgone conclusion. The Economist remarked that with so large a body of opinion in favor of the adoption, the verdict of the system's jury was almost 'inevitable'.[183] Even The Solicitors' Journal & Reporter endorsed the adoption of the Scottish system because it enabled creditors to dispose of what was substantially their own property in their own way, it worked well in Scotland, and it was what the creditors wanted.[184] Still there was dissent. The Metropolitan and Provincial Law Association, which represented many solicitors outside London, argued that the system of creditor inspectors would not properly monitor the activities of the trustees, and that such trustees should be

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[181] The Law Times 25 Apr. 1869, 482.

[182] 'Principles of Bankruptcy Legislation', The Law Magazine, xxvi (Sept. 1868 - Feb. 1869), 102-03.

[183] The Economist 13 Mar. 1869, 293.

[184] The Solicitors' Journal & Reporter 28 Mar. 1868, 439-40.

under the supervision of the court.[185] The Economist disapproved of the 'wholesale adoption' of the Scottish system, stating that such a scheme failed to take into account that creditors might not exercise control, especially with smaller estates.[186] Similarly The Banker's Magazine asserted that while the proposal to do away with all official intervention had 'a certain attractiveness' about it, the doing away with all judicial supervision was questionable.[187] With an ever vigilant eye for the interests of the legal community, The County Courts Chronicle, saw 'secret sources' of the new plan, that is, the accountants and traders who fear the 'researches of an official eye'. The accountants' plot was to claim the business of winding up estates, and 'we all know that their charges are double those of the solicitor, and five times the expense of an official assignee'.[188]

Parliament was not in a mood in 1869, as it had been in 1861, to tamper with what the business community or at least the most organized and vocal part of it desired. The 'Scottish system' and most other important provisions of the government's bill remained intact and the bankruptcy bill became law in August 1869.[189]

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[185] The Solicitors' Journal & Reporter 8 May 1869, 539.

[186] 'The Attorney General's Bankruptcy Bill', The Economist 13 Mar. 1869, 292-93.

[187] 'The Attorney General's Bankruptcy Bill', The Bankers' Magazine and Journal of the Money Market Apr. 1869, 426.

[188] The County Courts Chronicle 1 Apr. 1861, 98.

[189] 32 & 33 Vict., c. 71 (1869).

Summary

It is now possible to attempt to answer the two questions posed at the beginning of this chapter. Why did the influence of business on bankruptcy reform increase during the 1860s, and why did bankruptcy reformers become convinced that a creditor-managed system of bankruptcy administration was necessary?

The history of bankruptcy reform during this period demonstrates the danger of talking about 'business' or the 'business community' as if it were a single group with a uniform position on the myriad issues concerning the bankruptcy system. The business community was not a monolithic structure. Many petitions presented by business groups offered suggestions to improve a particular bankruptcy bill. The minute books of chambers of commerce during the 1860s reveal detailed analyses of almost every section of the bankruptcy bills presented in that decade. When compared with each other, the petitions and minutes of the chambers of commerce offer hundreds of examples of just how widely opinion diverged among various business groups. To a great extent, these differences merely reflected personal attitudes about trivial issues like the amount a debtor should pay before being discharged.

In addition to these minor differences of opinion, two significant fissures split the business community's view of bankruptcy reform. The most important rift existed between creditors of small bankruptcy estates and creditors in the larger bankruptcies. If Lord Chelmsford and other opponents of the government's bankruptcy bill in 1861 are to be

believed, creditors of large bankrupt estates led the clamour to replace an official receiver with one appointed by the creditors. Creditors of smaller bankrupt estates depended on the automatically appointed official assignee to gather the assets of the estate no matter how meager. These creditors feared that if Parliament abolished this office, then in smaller bankruptcies it would be impossible to get creditors to risk further exposure by appointing their own assignee. Chelmsford and others perhaps exaggerated the degree of opposition from creditors of smaller estates, but the return of smaller estates to official supervision under the Bankruptcy Act of 1883 lends weight to Lord Chelmsford's assertion that creditors of smaller bankrupt estates were not enthusiastic about the abolition of official assignees.

In another example, the merger of bankruptcy and insolvency law had almost universal support among business groups petitioning Parliament. In opposition, the Lancashire and Preston Trade Protection Society argued that the insolvency court only provided a cheap means for the collection of debts. This reasoning hints that some business groups had an eye out for the problems of collecting smaller debts and that smaller creditors may not have strongly supported the elimination of the insolvent debtor's court.

To some extent the split between small creditors and large ones was evident in petitions taken on George Moffat's 1869 bill requiring creditors in deeds of arrangement to make the same proofs of claim as they did in formal bankruptcy. The Mercantile Law Amendment Society, generally expressing the views of many of the larger London creditors, opposed the bill. Many provincial chambers of commerce supported it. One

explanation may be that creditors dealing with larger estates, which were likely to be handled through deeds of arrangement, wanted greater flexibility in handling such estates. If such creditors had to go to the trouble of formally proving their claims, as in bankruptcy, much of the advantage of using deeds of arrangement to settle an estate would be lost.

The second significant schism among the business community was between London creditors and creditors in the country. This split is perhaps best seen in the reaction to the proposal for a chief judge in bankruptcy to sit in London and hear interim appeals. London merchants desperately needed some relatively inexpensive interim appeal mechanism that could substitute for an immediate and expensive appeal to the Lord Chancellor. In other words, a creditor could take a relatively inexpensive interim appeal and, if such appeal was lost, then make a decision to expend the considerable sums necessary for an appeal to the Lord Chancellor. For businesses in London, an interim appeal to a court in the same city would be of great advantage. Provincial chambers of commerce disagreed. A chief judge only added another layer to the appeal process. Even though an appeal to the Lord Chancellor was expensive, there was little chance that a business miles from London would use an interim court in that city. Since the salary of the proposed chief judge would be paid from fees collected from all bankruptcies, provincial creditors saw themselves as having to subsidize a convenience to primarily benefit merchants and traders of the metropolis.

Keeping in mind that the business community did not speak with one voice on bankruptcy reform, it is still

possible to identify a group within that community whose views fashioned the reforms during the 1860s. Business leaders who represented larger firms, the type of firms most likely to be creditors in the larger bankruptcies, coalesced around local chambers of commerce or were active in the Social Science Association. As the history of the passage of the bankruptcy act of 1861 and even more so the passage of the 1869 bankruptcy act demonstrates, the ideas of this chamber of commerce-centered group most influenced legislation, and their position on the 'Scottish system' of creditor-managed bankruptcy administration prevailed.

Why did this particular group became so dominant in the efforts to reform the bankruptcy system? Batzel has argued that nineteenth-century bankruptcy reform demonstrates Parliament's failure to reflect a level of consensus on the 'values and biases' of the business community in reforming bankruptcy law.[190] To the contrary, assuming there can ever be 'values' defined for such a technical question as bankruptcy, Parliament mirrored the opinions of business. Businessmen's success in achieving the results they desired was summarized in 1869 by G. W. Hastings, chairman of the Social Science Association committee. 'The passing of the Bankruptcy Act must be a subject of sincere congratulation', asserted Hastings, 'not merely as a settlement of a question which has become the bete noire of law reformers, but because the principle of the measure is identical with that prepared by

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[190] Batzel, op.cit., p. 172.

this association some twelve years hence'.[191] The ultimate success was not without difficulties. Before 1869, businessmen were greatly disappointed at Parliament's actions, or lack of action, in the field of bankruptcy reform. The House of Lords' referral of the bankruptcy bill in 1861 to a select committee that deleted the major provisions supported by business was obviously a disappointment to the commercial community at the time. Parliament, on more than one occasion, thwarted the creditors' attempts to have insolvent decedents' estates moved from chancery to bankruptcy jurisdiction. Despite these setbacks and disappointments, the introduction under the Bankruptcy Act of 1869 of the modified 'Scottish system' and the establishment of the chief judgeship demonstrate a Parliament not at odds but in lock-step with the opinion of the predominant group of business leaders on the issue of bankruptcy reform. Even before 1869, the government went out of its way to meet the desires of the business community. In 1861, at the insistence of creditors, the government changed its position expressed in the 1860 bill and sought to require deeds of composition to be registered in bankruptcy court. The Commons in 1861 stood firm against the House of Lords in support of increased powers for the creditors' assignees. Even though in 1861 Richard Bethell was only willing to go half-way in supporting the business community's desire to abolish the official system (the House of Lords even struck out some of Bethell's half-way measures), by 1869 the government's bill that became law with

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[191] N. A. P. S. S. Transactions (1869) (London, 1870), p. 35.

little opposition reflected the views of the chamber of commerce-centered business group.

A large reason for this record of success must be found in the organization of national groups such as the Social Science Association and the Associated Chambers of Commerce that could claim to speak for business on a national basis. Although there is some indication of national coordination in the 1843 petition campaign, where a large number of cities simultaneously petitioned Parliament for bankruptcy reform, the efforts of the Social Science Association mark the first significant nationally organized effort. No longer was the position of business expressed in isolated petitions from individual chambers of commerce. With organizations such as the Social Science Association and the Associated Chambers of Commerce, a powerful voice claimed to represent a national consensus. In addition, these organizations provided a continuity for reform. Efforts could be maintained from session to session of Parliament. In this way, goals which were not achieved in 1861 were kept alive and continually pressed upon Parliament until they finally became law in 1869.

Not only did the Social Science Association and the Associated Chambers of Commerce provide a forum for the expression of a national business 'consensus' and a continuity of effort, these organizations also provided the practical tools to achieve the desired legislation. The Social Science Association maintained a central organization in London to coordinate lobbying of Parliament, and the Associated

Chambers of Commerce had their own Parliamentary agent.[192] This central apparatus brought pressure to bear as far as individual bills and probably served an even more important function of keeping alive goals which were not met in a particular session of Parliament. With a central organization, interest could be kept alive and reforms could be brought forward again in subsequent sessions.

Another reason the chamber-centered business group was able to dominate in the field of bankruptcy reform was the retreat from the field by the legal profession. The trend began early on as shown by Lord Palmerston's comment to the delegation of business leaders in 1859 that lawyers should be relegated to assisting in the preparation of legislation to carry out the purposes business had in mind.[193] This was to be more or less the position of the legal profession throughout the 1860s. Bethell, as attorney general, attempted to orchestrate the progress of bankruptcy reform in 1860 and 1861, but his efforts largely failed. Even Bethell desired to accommodate the wishes of business. The tendency of the government to implement the ideas of business on bankruptcy reform can be seen even earlier in 1858 when Attorney General Sir Fitzroy Kelly's representative sought out the views of business leaders before drafting the government's bill. By 1869, the attorney general merely drafted the legislation business desired.

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[192] Goldman, op.cit., p. 97.

[193] 'The Bankruptcy and Insolvency Laws', The Times 23 Nov. 1859, 7.

The retreat of the legal profession may be attributable to the fact that the profession's own interests were rarely challenged. With the exception of Bethell's 1860 attempt to restrict some of the solicitor's privileges of appearing in bankruptcy court, there was little effort to impinge upon the lawyers role in the bankruptcy system. As long as the livelihood of barristers and solicitors was not threatened, the legal profession cared little how bankrupt estates were administered.

The next question is why those most concerned with bankruptcy reform during the 1860s shifted from supporting an 'official system' to believing in the absolute necessity of a creditor-managed system. In a broad sense, part of the answer lies in the widespread feeling at the time among businessmen that only their methods worked and that state appointed managers lacked any incentive to be efficient.[194] The complete answer does not seem to lie in any philosophical conviction. While one of the main bankruptcy reforms of the period, the merger of bankruptcy and insolvency law, was specifically endorsed thirty years before by Bentham, the idea was not original with Bentham. Perhaps it can be argued that the creditor-managed system of bankruptcy administration reflects Benthamite utilitarianism, although there is no indication that contemporaries believed this to be the case. To make this argument requires a definition of utilitarianism so broad as to encompass almost any change in the law. Nor can it be said that the creditor-managed system reflected

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[194] MacDonagh, Early Victorian Government, 1830-1870, op.cit., p. 17.

some general trend of _laissez faire_ antagonism to government involvement. While the 1860s is not the most prominent decade in the nineteenth century for reform, it is still true that bills were passed during the 1860s that expanded the role of government.[195] More important, there is an almost total absence from the debates on bankruptcy reform during the 1860s of any arguments against government involvement based upon _laissez faire_ objections. The Parliamentary debates, the petitions to Parliament, the minutes of chamber of commerce meetings and gatherings of the Social Science Association are devoid of argument based upon _laissez faire_ doctrine.

Rather, the shift of opinion to favouring a creditor-managed system was based on one factor: the belief that a creditor-managed system would be cheaper. Creditors in a position to influence policy came to believe the existing system of bankruptcy administration simply cost too much, and others deferred to their opinion because they felt such creditors could devise a more efficient system. Official assignees were not objectionable because they were government officials _per se_, but because it was believed that such officials could not administer a bankrupt estate as cheaply as an assignee selected by the creditor's themselves.

Parliament, after trying the official system, was by 1869 in no mood to argue. Organized business had convinced most members of Parliament and the legal profession that creditors knew best how to handle bankruptcy. Besides, they

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[195] For example, The Sanitary Act of 1866, 29 & 30 Vict., c. 90 (1866) (compelling local nuisance authorities to provide sanitary inspectors and provide a system for removal of nuisances) and The Elementary Education Act of 1870 (33 & 34 Vict., c. 75 (1870).

felt that all other possible systems, other than the total abolition of bankruptcy altogether, had been tried and had failed. The feeling was that the creditors at last had been given all the powers they had desired. It was now for the business community to make the system work. As one member of Parliament commented, the new act said to the trading class,

> You must meet and conduct your own business for yourselves; we have tried to help you by messengers, by brokers, by official assignees, by all conceivable agencies, which have involved an enormous outlay of money; henceforth if your business is to be conducted expensively it will be your own fault.[196]

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196 Hansard, 3rd series, 1869, cxcv. 162.

Chapter Seven

Return to 'Officialism', 1870-1883

In spite of the optimism expressed by its proponents, the creditor-managed system of bankruptcy administration established by the Bankruptcy Act of 1869 lasted only fourteen years. 'Merchants and lawyers are agreed', The Economist reported in 1882, 'that the Act of 1869 ... has completely broken down and that it has fostered and stimulated the very evils it intended to prevent'.[1] In 1883, Parliament once again altered the policy of bankruptcy administration and reimposed a modified version of 'officialism'. This change, however, unlike the alterations before it, was to have a lasting effect. The administrative reforms set in place with the Bankruptcy Act of 1883 formed the basis of the modern English bankruptcy system. Over a century after this unique legislation, England still operated under virtually the same system of bankruptcy administration set in place in 1883.

Why did Parliament change course and reimpose a form of 'officialism'? More important, to what extent can an answer shed light on patterns of government growth in nineteenth-century England? Why did the creditor-managed system fail, since the Bankruptcy Act of 1883 stemmed from attempts to address its failure? How did the dynamics behind the formulation and the passage of the 1883 act affect the bill

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[1] The Economist 23 Dec. 1882, 1583.

ultimately passed? In particular, the influence of Joseph Chamberlain, the staff of the Board of Trade, and various business groups will be looked at in detail. Finally, each of the factors that led Parliament to reimpose an official system is catalogued and examined to determine what it may reveal about the causes of government growth in general during the nineteenth-century.

Failure of the Bankruptcy Act Of 1869

The collapse of the creditor-managed system of bankruptcy administration made the reimposition of 'officialism' at least possible, if not inevitable. Reformers willingly turned again to the government because of the complete failure of the Bankruptcy Act of 1869 to solve the fundamental problems in the administration of bankrupt estates.

Initially, the business community expressed great optimism about the predicted benefits of the Bankruptcy Act of 1869. The council of the Birmingham Chamber of Commerce reported to its membership that the new act would 'be a large improvement on any previous Bankruptcy legislation...' and would result in fewer bankruptcies, lower costs, and larger dividends.[2] Such optimism was short lived. The first evidence of displeasure manifested itself in calls for numerous technical corrections in the 1869 legislation. Only months after the act's passage, the 1870 annual meeting of the Associated Chambers called to the attention of the government

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[2] Birmingham CC Papers: council report, 29 July 1869.

the 'unsatisfactory' provision that allowed fully-secured creditors to vote on approval of deeds of composition.[3] In October 1870, the Bristol Chamber of Commerce had already catalogued five necessary amendments to the law, including better procedures for notifying creditors of bankruptcies and for scheduling assets.[4]

By the early 1870s, disenchantment with the new bankruptcy system had become widespread. The executive council of the Associated Chambers in late 1870 felt the situation with bankruptcy administration warranted the appointment of a full-time committee to inquire into the workings of the 1869 act.[5] In 1872, six cities -- Leeds, Norwich, Bristol, Southampton, Birmingham and Ipswich -- presented petitions to the House of Lords praying for amendment of the Bankruptcy Act of 1869.[6] The Birmingham chamber, which had earlier been so optimistic about the prospects for the 1869 act, claimed in 1872 that the act was 'to a great extent inoperative'.[7] The Bankers' Magazine in 1873 declared that it was 'abundantly evident that not only are the worst description of insolvencies on the increase, but ... the protection afforded creditors is diminishing year by year'.[8] Some believed that

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[3] ACC Papers, 14,476(2), minute book: annual Meeting, 22-24 Feb. 1870.

[4] Bristol CC Papers, 38605/M/4, minute book, p. 30: meeting, 12 Oct. 1870.

[5] ACC Papers 14,746(2), minute book: special meeting of the executive council, 24 Nov. 1870.

[6] Journals of the House of Lords, civ (16 July 1872), 574.

[7] Birmingham CC Papers, minute book: council report, 1 Aug. 1872.

[8] 'The Bankruptcy Act of 1869', The Bankers' Magazine and Journal of the Money Market Aug. 1873, 651.

so far from reducing costs, the average expense of bankruptcies under the 1869 act was double what it had been under the 1861 act, and there were claims in Parliament that continuance of the system 'would bring serious harm to the commercial prosperity of ... [the] country'.[9] Professor Leoni Levi summarized the situation in the 1880 edition of his History of British Commerce stating that complaints about the bankruptcy system were 'rife', and that 'reform will speedily become necessary'.[10]

The reforms Parliament ultimately enacted in 1883 addressed three problems with the creditor-managed system: first, creditors' refusal, especially in small bankruptcies, to protect their interests by administering the estates; second, debtors' and creditors' improper, though legal, use of liquidations and proxies; and third, inadequate provision for the investigation of the circumstances surrounding a debtor's bankruptcy.

A. The 'creditor problem'

The creditors' failure to pursue their interests after the occurrence of a bankruptcy had long been a problem endemic to the bankruptcy system. An 1861 pamphlet by the registrar of the Court of Bankruptcy in London claimed that creditors avoided serving as assignee 'on account of the time it must keep them out of their business and by the labyrinth

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[9] Law Society Papers: 'Proceedings of the Law Society', p. 52: meeting, 10-11 Oct. 1877; Hansard, 3rd series, 1878, ccxlviii. 592.

[10] Leonne Levi, The History of British Commerce and the Economic Progress of the British Nation 1763-1878, 2nd edn. (London, 1880), p. 360.

of trouble in which they may probably be involved.[11] Lord Westbury described the situation as follows:

> As soon as a trader has made a bad debt, and the debtor becomes a bankrupt, in 19 cases out of 20 he reasons thus, "The first loss is the best. If I look after this bankrupt's estate, I shall have much trouble, and may incur great expense. I cannot leave my business to attend meetings, and it will not do to employ an attorney. If I did perhaps I should not get more than an extra shilling ... in the pound dividend. Therefore, let it take care of itself". And thus every estate is abandoned to attorneys, brokers, auctioneers, and every description of unnecessary official persons, and it is eaten up by their costs and charges.[12]

Many believed the 1869 act would cure the 'creditor problem' by allowing the creditors full reign in the management of the bankrupt estate. Full responsibility would mean full participation. The Associated Chambers understood early that this plan was not working. In 1871, the association inquired of local chambers as to how well they believed the new system was operating. The responses disturbed the association, because they revealed 'much greater laxity in the action of creditors prevails, than might have been expected'.[13] The situation did not improve. Seven years later, the president of the Law Society, John Hollams, stated that the chief problem with the bankruptcy system was the 'supineness of creditors' and that most of the complaints about the system would 'disappear' if creditors would pay closer

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[11] Bennet Hoskyns Abrahall, Reform of the Laws Relating to Bankruptcy and Insolvency: A Second Letter to Sir Richard Bethell (London, 1861), p. 33.

[12] Nottingham CC Papers: Lord Westbury to R. H. Paget, M. P. (undated) quoted at annual meeting, 8 Jan. 1865.

[13] ACC Papers, 14,476(2), minute book: annual meeting, 2 Mar. 1871.

attention to their affairs.[14] Attorney General Sir J. Holker reiterated this point a year later in introducing a bankruptcy bill. According to the attorney general's description, the creditor facing the bankruptcy of one of his debtors 'gives vent to his feelings in a few passionate exclamations, and some strong language; having done this, he takes his ledger, writes off the amount owing as a bad debt, and pays no further attention to the matter'.[15] As one contemporary summarized the position of creditors, 'he prefers new pastures to fields nubbled to the roots'.[16]

Criticism of the creditors' performance was by no means limited to those outside the business community. Samuel Morley, a prominent London wholesale hosier, business leader, and member of Parliament who strongly supported business attempts to reform the bankruptcy system, told the London Chamber of Commerce in 1883 that he felt the creditors had 'absolutely neglected their duty'.[17] In a private letter, Morley described the creditors' performance as a 'record of infamy' and stated:

> I have nearly lost all faith in the creditor class. Their practice, for some years, has been, on the occurrence of failure, at once to divest themselves of all further power to interfere by executing proxies almost to the first comer, by which they transfer, either to a solicitor or an

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[14] Law Society Papers, 'Proceedings of the Law Society': meeting, 23 and 24 Oct. 1878.

[15] Hansard, 3rd series, 1879, ccxlviii, 556-57.

[16] Lord Sherbrooke, 'What Shall We Do With Our Bankrupts?', The Nineteenth Century August 1881, 315.

[17] London Chamber of Commerce (Incorporated), First Annual Report of the Council to the Members of the Chamber (London, 1883), p. 80; Dod's Parliamentary Companion (London, 1883).

> accountant, a power which has been most grossly abused to the enormous cost of the creditors.[18]

Upon closer examination, however, the 'creditor problem' largely existed with smaller bankruptcies where there were few assets. The Economist recognized this correlation in the mid-1870s and pointed out that the 1869 system of creditor management worked well with larger bankrupt estates. With the small estates, 'the creditors do not attend because the estates are small, confused, and it is not worth their while'.[19] What occurred in smaller estates was in reality what would today be called a 'free rider' effect. Although there may have been assets to be divided in a small estate, one creditor could see no value in expending large amounts of his own time and energy to recover what might prove a meager return, only to see it divided among his fellow creditors. Some creditors would get a 'free ride' through the efforts of the more energetic ones. As Chamberlain reported in introducing his bankruptcy bill in 1883, 'Traders ... were no more likely to attend to administering bankrupts' estates than they were to carry their own parcels ...' because 'it was not worth their while to undertake these duties on their own account'. The result, as Joseph Chamberlain explained, was that 'a fortiori, it was not worth their while to undertake them on the part of the public'.[20] Thus creditors often did

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[18] Morley to unnamed person (undated), quoted in Edwin Hodder, Life of Samuel Morley, 5th edn. (London, 1889), pp. 313-14.

[19] 'The Bankruptcy Bill', The Times 3 July 1876, 7 (quoting The Economist).

[20] Hansard, 3rd series (1883), cclxxvii. 820.

nothing, and the assets of many small bankruptcies, rather substantial in the aggregate, were lost.

With some exceptions, the response of most business groups to the problem was a ringing defense of the principle of creditor-management and a halfhearted admission that some specific changes were necessary.[21] Sir John Lubbock, President of the Institute of Bankers, went so far as to say that even with the Bankruptcy Act of 1869, creditor control had still not yet been tried.[22] The Associated Chambers reaffirmed in 1881 its belief that 'the principle that the Creditors of a Bankruptcy should have the power of directing the Administration of his Estate by one or more trustees selected by themselves is a sound one, and ought to be adhered to in any new legislation on the subject of bankruptcy'.[23] The secretary of the Creditors' Association of Wholesale Dealers 'utterly and emphatically' condemned the return to any system of 'officialism'.[24] Likewise the council of the Institute of Bankers resolved that no settlement of the

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[21] Exceptions to the pattern included the unsuccessful attempts by the Southampton and Hull chambers of commerce in 1878 and the Cardiff and Warrington chambers in 1879 to get the Associated Chambers to pass resolutions calling for a total repeal of the 1869 act. It is not known, however, what type of system the chambers desired to substitute. ACC Papers, 14,47693), minute book: annual meeting, 28 Feb. 1878; ibid., special meeting 26 Aug. 1879.

[22] The Times 22 Mar. 1883, 4.

[23] ACC Papers, 14,476(3), minute book: annual meeting, 2 Feb. 1881; the association passed similar resolutions on numerous occasions. For instance, in 1878 a special meeting of the association resolved that 'the main principles underlying the Bankruptcy Act, 1869, are sound, and worthy of being maintained'. ACC Papers, op.cit., special meeting, 28 Aug. 1878.

[24] Journal of the Institute of Bankers June 1881, 410 (reporting a speech by the secretary of the Creditors' Association of Wholesale Dealers to the Institute of Bankers).

bankruptcy question would prove satisfactory unless it gave the creditor 'complete control' over the bankrupt estate.[25]

The business press was unanimous in its support of the creditor-managed system. The Bankers' Magazine stated that the creditors' right to administer and manage bankrupt estates was a 'correct principle' and The Economist objected to any plan to turn over the functions of the trustee and the creditors' committee of inspection to a 'state official'.[26] In the same vein, the The Accountant stated that the administration of bankrupts' assets was the 'especial concern' of the creditors and opposed any return to officialism.[27]

Nor was opposition to 'officialism' limited to the business community. Many in the legal profession feared a return to the old official system. The Birmingham Law Society objected to the Lord Chancellor's 1879 bankruptcy bill because it 'provided for much unnecessary official interference'.[28] When the government proposed a return to some form of officialism in 1883, several provincial law societies made public their disapproval of the principle of official administration.[29] Such apprehension in the legal community may in part have risen from a fear that officials might take over

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[25] Institute of Bankers Papers, minute book, p. 152: council meeting, 14 Nov. 1881.

[26] 'Bankruptcy Law Amendment', The Bankers Magazine and Journal of the Money Market Dec. 1880, 975; The Economist 23 Dec. 1882, 1583.

[27] The Accountant 18 Feb. 1882, 4; ibid. 25 Feb. 1882, 4.

[28] Birmingham Law Society Papers, minute book A, p. 2: report of committee to annual meeting, 4 Feb. 1880.

[29] Law Society, Bankruptcy Bill: Suggestions and Observations of Provincial Law Societies (London, 1883), pp. 2-3 (Bradford Law Society and Hull Law Society).

many of the jobs presumably done by privately hired solicitors. As early as 1859 when the idea of an official salaried solicitor attached to the court was discussed, The Solicitors' Journal vigorously attacked the idea in an editorial.[30]

One of the first indications that there were, however, some who did not fully bow to the orthodoxy of a creditor-managed bankruptcy system was the report of a committee appointed by the Lord Chancellor in 1874 to study the workings of the bankruptcy system. The five-man committee consisted of a county court judge, the registrar of the London Court of Bankruptcy, the Comptroller of Bankruptcy, a Treasury officer, and a London solicitor.[31] Noticeably absent from the committee was any representative from the business community. The committee invited comments from people involved in the bankruptcy system and received opinions from a variety of groups (including the Associated Chambers), solicitors, and other individuals.[32] The committee found that the 1869 act had not 'satisfied the expectations of the public ...'. Although not specifically recommending the reintroduction of a complete official system, the committee did call for increased official involvement through court examination of the bankrupt regarding his affairs and the auditing of trustee's accounts.[33]

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[30] The Solicitors' Journal & Reporter 26 Mar. 1859, 381-82.

[31] Hansard, 3rd series, 1876, ccxxix, 1498.

[32] Parl. Papers 1877, lxix (152), op.cit., p. 41.

[33] Ibid., pp. 41, 45-46.

The real broadside against the creditor-managed system came in a stinging supplement to the report of the Lord Chancellor's committee by Mansfield Parkyns, a member of the committee and Comptroller in Bankruptcy. This document as implied in its title 'Supplemental Report of the Expenses of Bankruptcy Administration', sets out the facts and figures of the growing expenses of bankruptcy.[34] Parkyns took this opportunity to do much more than merely recite statistics. The supplemental report expresses Parkyns' belief in the necessity of government involvement in the administration of bankrupts' estates and the ultimate failure any system left to the control of the creditors themselves.

To Parkyns, the problems of the 1869 act resulted undoubtedly from the system itself, a system dependent upon creditors managing the bankrupt's estate. Echoing complaints of business leaders themselves, Parkyns argued that each creditor only considered his own pecuniary interest and found it better to write off his losses considering any dividends that he might receive as profit.[35] Parkyns scoffed at the chambers of commerce who continually called for control by the creditors and railed against 'officialism'. The act of 1869, according to the supplemental report, carried out the principle of creditor control, but the chambers of commerce

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[34] A unique character, Parkyns in his early days was an explorer, traveller, diplomat, and author, spending several years living in remote parts of Abyssinia and serving as attache to the British embassy at Constantinople. A son-in-law of Lord Westbury, he was appointed official assignee in Exeter in 1858 and later become Controller in Bankruptcy. Thomas Seccombe, 'Mansfield Parkyns', Dictionary of National Biography (London, 1967-68), xv. 319.

[35] Parl. Papers 1877, lxix (152), op.cit., p. 55: 'Supplemental Report'.

'now deem it necessary that some better provision be made ...'.[36] The solution to the problem, according to Parkyns, was to revert to the principles of the act of 1849 and former acts, that is, at a minimum to have the receipt and payment of monies left to an official staff.[37]

The reaction of many to the report and its supplement was far from favorable. The Associated Chambers severely criticized the supplemental report and stated 'it would be fatal error to revert to a system similar to that of official assignees, which has been tried and has so signally been found wanting'.[38] When the government introduced a bill in 1877, adopting some of the recommendations offered by the Lord Chancellor's committee, The Times pointed out that all members of the committee were in some way connected to the court's administration of the bankruptcy law and were 'somewhat biased by their official standpoint'. Considering the membership of the committee, The Times argued, it was not surprising that it recommended improving the status of county court judges, giving additional power and control to London registrars, and enlarging the comptroller's staff to audit all trustees' accounts, and not interfering with the legal profession.[39] Even three years after the supplemental report, during the debate on the government's 1879 bankruptcy bill, some still saw Parkyns as the villain behind the crime of

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[36] Parl. Papers 1877, lxix (152), op.cit., p. 50: 'Supplemental Report'.

[37] Ibid., p. 56.

[38] The Times 24 May 1877, 7.

[39] Ibid.

'returning to officialism'. The Bristol Chamber of Commerce forwarded a petition to the House of Commons stating that '... no person or body of persons (except the Comptroller in Bankruptcy) has demanded the return to the old official system' and that the members of the chamber 'highly approve the general principles of the Act of 1869'.[40]

Despite the criticism leveled at the committee, its report formed the basis of discussion of bankruptcy reform in the 1870s and highlighted many of the problems with the existing system. In particular, the supplemental report's vigorous attack on the completely creditor-run administration set the stage for the crucial debate over the extent to which the government should involve itself with bankrupt estates.

B. Abuse of liquidations and proxies

The 1869 act unfortunately opened the door for creditors to take advantage of liquidations that no longer required court approval and for debtors to abuse the practice of proxies. A Parliamentary select committee studying the bankruptcy system in 1880 concluded that 'the principal defect in the working of the act of 1869 is found in the facilities for fraud which result from the practice of Liquidation and Composition by Resolution'.[41] Judging by the amount of commentary on this issue, it was the most prominent abuse of the system at the time. The Solicitors' Journal speculated that if liquidations had not been exempted from

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[40] Bristol CC Papers, 38605/M/5, minute book, p. 240: chamber meeting, 19 Feb. 1879.

[41] Parl. Papers 1880, viii (324), op.cit., p. 212.

the provisions of the act of 1869 requiring the audit of trustees' accounts and judicial approval for the discharge of the debtor, and if the courts had not exempted liquidations from the requirement that the trustee pay all sums received into a bank, 'there probably would have been little reason to complain of the Act [of 1869]'.[42] The Associated Chamber recognized the problem as early as 1871, when the responses to its circular revealed an increased tendency of debtors to use provisions of the 1869 act for liquidation and assignment 'owing to the facilities afforded these latter methods to the Insolvent, to conceal his past transactions...'.[43]

In the words of the president of the Law Society, liquidation had become a 'process of whitewashing'.[44] As a Sheffield banker reported, upon the filing of a petition an interim receiver friendly to the debtor was appointed thus allowing as much as three weeks time for 'all sorts of subterranean operations before the first meeting of creditors'.[45] The unscrupulous debtor would then call a meeting of his creditors at an inconvenient time and place. Inactive creditors unknowingly gave their proxies to a creditor friendly to the debtor. The Secretary of the Mercantile Law Amendment Society reported that the debtor also used bribery

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[42] The Solicitors Journal & Reporter 24 Mar. 1877, 394.

[43] ACC Papers 14,476(2), minute book: annual meeting, 2 Mar. 1871.

[44] Law Society, Proceedings and Resolutions of the Annual Meeting of the Law Society of the United Kingdom (London, 1877), p. 14.

[45] Association of English Country Bankers Papers (hereinafter 'Country Bankers Association Papers'), 4523 : J. H. Barber, Sheffield Banking Co, Ltd. to W. B. Denison, M. P., 18 June 1877.

and the votes of fully secured and even fictitious creditors to gain sufficient votes to approve his plan of liquidation or composition.[46] A trustee, usually the debtor's accountant and elected at the meeting of friendly creditors, would then proceed to waste the assets of the estate, especially through exorbitant fees for himself and the debtor's solicitor. Acting fully within the provisions of the 1869 act, he would then close the estate and discharge the bankrupt without any accounting or audit.[47]

Solicitors who specialized in bankruptcy practice immediately recognized the advantages to their debtor clients of an arranged liquidation. One such solicitor in a pamphlet entitled How to Arrange Embarrassed Affairs: A Plain Guide for Debtors and Creditors in Bankruptcy and Trust Deeds commented: 'Experience... proves that creditors as a body are always ready to fall into any reasonable proposition of their debtors for adjustment of his affairs'.[48] An added advantage was the privacy afforded. 'This course (comparatively without publicity, although published in the official Gazette, does not appear in the newspapers like the list of bankrupts) is now, in fact, a kind of private bankruptcy ... '.[49] Another work of the period recommended liquidations and compositions because there was no public examination and a work-out plan

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[46] Hansard, 3rd series, 1876, ccxxix. 1503.

[47] Hansard, 3rd series, 1879, ccxlviii. 561.

[48] George Manley Wetherfield, How To Arrange Embarrassed Affairs: A Plain Guide for Debtors and Creditors in Bankruptcy and Trust Deeds (London, 1865), p. 7.

[49] Ibid., p. 11.

could be adopted without stating any fixed dividend the estate must pay.[50] Even respected legal treatises impressed upon their readers that liquidation by arrangement was bankruptcy 'without a bankruptcy petition being presented, or an order of adjudication made ... ' and that the rules applying to the close of the bankruptcy -- rules applying to the discharge of the bankrupt, the release of the trustee, and the audit of accounts -- did not apply.[51]

This opportunity for abuse meant a large increase in liquidations. Answers to the Associated Chambers' 1871 circular indicated such a tendency and in 1872 the council of the Birmingham chamber reported 'the great majority of insolvent estates [were] still drifting into private compositions or liquidations by arrangement'.[52] The popularity of liquidations by arrangement and compositions can be readily seen in the records of their use. In 1872 just under 7,000 liquidation by arrangement petitions were filed. The number of these petitions increased and by 1879 there were 14,574.[53] While some of this increase can be attributed to economic problems, none of those debating the issue acknowledged economic factors and only saw the dramatic increase in filings in

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[50] Joseph Seymour Salaman, A Practical Treatise on Liquidation By Arrangement and Composition with Creditors Under the Bankruptcy Act, 1869 (London, 1882), p. 7.

[51] George Young Robson, A Treatise on the Law of Bankruptcy, 4th edn. (London, 1881), p. 15; Richard Ringwood, The Principles of Bankruptcy, 3rd edn. (London, 1879), p. 9.

[52] ACC Papers, 14,476(2), minute book: annual meeting, 2 Mar. 1871: Birmingham CC Papers, minute book: council report, 2 Feb. 1872.

[53] Parl. Papers 1873, liv (257), p. 9: 'General Report by the Comptroller in Bankruptcy', 18 June 1873; Parl. Papers 1880, lix (309), p. 14: 'General Report by the Comptroller in Bankruptcy', 27 July 1880; Parl. Papers 1883, lv (286), op.cit., p. 14.

terms of evidence of improper evasion of the bankruptcy system.[54]

The general consensus was that to remedy the abuse of liquidations there must be some judicial supervision. The 1880 Parliamentary select committee recommended that all bankruptcy proceedings begin with an application to the court, that the court then immediately appoint a receiver until the first meeting of creditors, that formal bankruptcy be avoided only by consent of a prescribed number of creditors, and that any such agreement be by deed not just by resolution.[55]

Several individuals including John Smith, a member of the Institute of Bankers who later became the first Inspector of Bankruptcy under the 1883 act, criticized the select committee's recommendations as to liquidations by arrangement and compositions. In a letter to The Times, Smith attacked the committee for criticizing the present system of liquidations and compositions; yet he recommended a similar system with liquidation by deed, a system that had proved a failure in the 1861 act. Smith suggested that liquidations outside of bankruptcy be abolished, or if they must exist, debtors

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[54] The shift to liquidations not requiring court approval led at the time to misinterpretations of bankruptcy statistics. For example, an article in The Times reprinted in the transactions of the Statistical Society in 1881 claimed that insolvency had declined between 1862 and 1879. This assertion was based upon the number of bankruptcies but did not take into account that the apparent reduction in bankruptcy was more than offset by an increase in liquidations by arrangement. Journal of the Statistical Society, xliv (1881), 590-96.

[55] Parl. Papers 1880, viii (324), op.cit., p. 213.

should be at least examined under oath with the same restrictions for discharge that existed under formal bankruptcy.[56]

Along with the unsupervised liquidations, another major abuse of the system sprang up in the use of creditors' proxies. Indeed, the report of the Lord Chancellor's committee in 1875 concluded that the abuse of proxies was the central problem with the entire system. Further it stated that nearly all the evils that led to so much dissatisfaction with the 1869 act could be traced either directly or indirectly to the proxy system.[57] So serious was proxy abuse, that it was one of only two abuses complained of in one of the major petitions of the period, the 1879 petition to Lord Beaconsfield signed by forty-six major London merchants and bankers.[58]

Either the bankrupt or someone acting on his behalf would obtain a sufficient number of proxies from indifferent creditors so as to gain control of the administration of the estate. 'So frequently as almost to form the rule', persons employed a technique referred to as 'touting', whereby they would canvass for proxies from unknowing creditors and gain control of the administration of the bankruptcy.[59] Often the people seeking proxies would present themselves to creditors

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[56] The Times 14 Oct. 1880, 7.

[57] Parl. Papers 1877, lxix (152), op.cit., p. 42.

[58] House of Lords Record Office, Document No. 54: 'Memorial of Bankers and Merchants of the City of London to Rt. Honourable Earl of Beaconsfield, K. G.', 17 Feb. 1879. Apparently the proxy abuse continued to be a problem, for in July 1882 a memorial from the London Chamber of Commerce to the Lord Chancellor called for the abolition of general proxies. London Chamber of Commerce, First Annual Report, op.cit., p. 54.

[59] Parl. Papers 1877, lxix (152), op.cit., p. 41.

as a 'secretary' or a 'manager' of a 'trade association' formed purportedly to assist creditors in administering bankrupt estates.[60] As the 1875 Lord Chancellor's committee reported, a 'stranger' often gained power (through proxies) 'to vote himself trustee, to fix his own remuneration, to nominate the committee of inspection, to order the payment of costs, and finally to vote, in liquidation cases, the debtor's discharge'.[61] A member of the Institute of Bankers told how a bankruptcy registrar refused to pay a trustee a £200 fee 'approved' by creditors. When the trustee took the registrar to court to force the payment, the court found the trustee used proxies to vote himself the fee. Rather than notify creditors of his requested fee as the court required, the trustee reduced his request to £50.[62]

C. Inadequate investigation of bankrupts' affairs

In large measure because of the abuse of liquidations and proxies, people commonly believed that large numbers of dishonest bankrupts were using the system to have their debts discharged without proper investigation of the circumstances surrounding the bankruptcy. It was true that if a debtor could arrange with his creditors, either with or without the use of proxies, to liquidate his estate, then he could legally obtain a full discharge of his debts with no judicial inquiry into his financial affairs. In addition, in thousands

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[60] The Accountant 10 Feb. 1883, p. 3.

[61] Parl. Papers 1877, lxix (152), op.cit., p. 42.

[62] Journal of the Institute of Bankers, Apr. 1880, 395-96.

of bankruptcies where the creditors did not bother to appoint an assignee because the estate was so small, bankrupts went through the system without proper investigation.

Among other complaints of the London merchants' memorial to Lord Beaconsfield in 1879 was that the investigation into the causes of a debtor's failure was insufficient. 'Experience has amply proved... ', the memorial stated, 'that reliance on Creditors to perform these onerous and costly functions is entirely futile... ', and such function should be handled by the court.[63] Bankers also loudly supported the idea that bankrupts be required to be examined. One of the major projects of the Institute of Bankers in 1881 was to prepare a memorial, endorsed by every London banker, calling for an examination under oath of all debtors seeking the protection of the statute and discharge of the bankrupt by the court alone.[64]

Linked to the issue of adequate investigation of the bankrupt's affairs was the debate over whether a bankrupt should be required to pay a certain sum in the pound before being allowed to be discharged, and if so, how much. The issue itself is not important. The debate, however, provides yet another example of what little consensus existed within the business community on many specific issues of bankruptcy reform. Most groups, including many local chambers, the

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[63] HLRO, Document No. 54, op.cit.

[64] Journal of the Institute of Bankers Jan. 1881, 39-40. The cover letter to Prime Minister Gladstone stated that the memorial was 'signed without exception by all the London bankers'. Institute of Bankers Papers, minute book: council meeting, 13 Dec. 1880. The Institute reaffirmed to the government their interest in these two points in December 1882. Journal of the Institute of Bankers Jan. 1883, 104-06.

Institute of Accountants, and the National Union of Commerce, favoured requiring payment of some amount in the pound before discharge. Even those chambers that had originally taken a no minimum payment stance, such as the Birmingham Chamber, changed their position and supported the requirement.[65] Nevertheless, support for a minimum payment was not unanimous. At the 1881 annual meeting of the Associated Chamber, members struck from a resolution the requirement of a minimum payment.[66]

The Institute of Bankers also objected to this requirement. When the Law Society asked the Institute of Bankers for their opinion on the society's suggestions for bankruptcy reform, the institute adopted almost all the Law Society's suggestions but specifically deleted the suggestion that there should be a minimum payment in the pound before discharge.[67]

Many groups differed as to the exact amount of any minimum payment. Suggestions ranged from The Law Society's five shillings to a suggestion of ten shillings offered by The Economist, the Sheffield Chamber of Commerce, and the Association of English Country Bankers.[68] The National Union of Commerce even demanded a twenty shillings in the pound minimum payment, arguing that the only way to check abuse was

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[65] Birmingham CC Papers, minute book: report of council to members, 25 Feb. 1878.

[66] ACC Papers, 14,476(3), minute book: annual meeting, 2 Feb. 1881.

[67] Institute of Bankers Papers, minute book, p. 65: council meeting, 13 Dec. 1880.

[68] The Times 27 Nov. 1880, 7; The Economist 23 Dec. 1882, 1583; The Times 27 Feb. 1880, 8; Country Bankers' Association Papers 4517: 'Report for the Year Ending May, 1879'.

knowledge that the inability to pay might bar discharge.[69] The Accountant bitterly attacked this suggestion as being 'crudely impractical and harsh' and predicted that it would undoubtedly be ignored.[70]

Before leaving a discussion of the problems of the 1869 bankruptcy system, it should be pointed out that during this period some had become so discouraged with the efforts to reform the bankruptcy system that they had come to believe that the system should be abolished altogether. As early as 1865, The County Court Chronical and Bankruptcy Gazette suggested the abolition of the system.[71] A member of Parliament, Serjeant Simon, took up this theme when speaking against bankruptcy reform in 1878. Declaring that the government's bill would be better entitled a 'Bill to compel Mercantile Men to look after their Interests', Simon observed that bankruptcy laws had 'proved beneficial to no one except the debtor, the assignees, or the trustees, the officials of the Court, and the lawyers'.[72] Bankruptcy laws merely encouraged 'reckless trading and speculation, a readiness amounting to eagerness to give, as well as to take credit.'[73] In November 1879, the Bristol Chamber of Commerce learned of the general abolition of bankruptcy law in the United States, the

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[69] The Times 20 Jan. 1881, 4.

[70] The Accountant 22 Jan. 1881, 5.

[71] 'A suggestion for bankruptcy reformers', The County Court Chronicle and Bankruptcy Gazette 1 Mar. 1865, 55.

[72] Hansard, 3rd series, 1879, ccxlviii. 571, 574.

[73] Ibid., p. 571.

information having been forwarded by the New York Chamber of Commerce. The Bristol chamber was so intrigued by the proposition that they ordered the information printed and circulated to other chambers.[74] Viscount Sherbroke in an article published in 1881 entitled 'What Shall We Do With Our Bankrupts?' suggested that the common law, now that imprisonment for debt had been abolished, was sufficient to handle the situation with a shorter statute of limitations on the collection of debts.[75] While a minority viewpoint, there was nevertheless a growing feeling in the 1880s that the successive failures of bankruptcy reform left little choice but to abandon the system altogether and leave creditors to their common law rights.

The Bankruptcy Act of 1883

A. Efforts at bankruptcy reform in the 1870s

Armed with the Lord Chancellor's committee report, the Tory government in 1876 introduced a bankruptcy reform bill in the House of Lords based upon the committee's recommendations. Although the Lord Chancellor carefully pointed out that as far as possible the government wanted to preserve the principle of the Act of 1869, believing it to be 'good and wholesome'; nevertheless, the government's bill did try to impose some aspects of official supervision. The bill required creditors to appoint a permanent committee of

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[74] Bristol CC Papers, 38605/M/5, minute book, pp. 284-85: general meeting, 26 Nov. 1879.

[75] Sherbroke, loc.cit.

inspection that would, in turn, appoint a trustee to manage the estate. Further, all accounts of trustees in bankruptcy and liquidation had to be audited, and all liquidation arrangements had to receive court approval.[76] Parliament took no action on the measure. The government reintroduced the bill in 1877, when it passed the House of Lords but only reached a first reading in the commons.[77]

The efforts of the government and others during the second half of the 1870s were closely monitored by the business community. As usual, the Associated Chambers sent a circular letter in 1878 to their local chamber members requesting that they carefully review the most recent version of the government's bill, and the association's bankruptcy committee frequently met to discuss the progress of various bills.[78] The Association of English Country Bankers in 1878 and the Institute of Chartered Accountants in 1879 established similar bankruptcy committees with the specific purpose of monitoring the government's bankruptcy bill.[79]

As for the chambers of commerce, they were not content to merely monitor the efforts of the government toward bankruptcy reform. Local chambers actively opposed the Tory government's measure as an attempt to restore 'something like the old and universally condemned system of officialism

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[76] Sessional Papers 1876, iii (106), p. 111, ss. 8-15, 55-58: 'A Bill intituled [sic] an Act to Consolidate and amend the Law of Bankruptcy and for other purposes'. 1 June 1876.

[77] Hansard, 3rd series, 1877, ccxxxiv. 1039; ibid., ccxxv. 811.

[78] Sheffield CC Papers, LD 1986/2, minute book, p. 90: chamber meeting, 19 Sept. 1878.

[79] ICA Papers, minutes of general meetings, book A, p. 112: meeting, 23 Apr. 1879, Country Bankers' Association Papers 4517: 'Report for the Year Ending May, 1878'.

...'.[80] The Bristol Chamber of Commerce petitioned Parliament in 1877, sending a copy to all local chambers, asserting that the government's bankruptcy bill was 'highly objectionable' by subverting the principle of creditor control found in the 1869 act. The Bristol chamber received the news that similar petitions had been submitted by the chambers of commerce of Aberdeen, Birmingham, Dewsbury, Halifax, Huddersfield, Hull, Leeds and Sunderland.[81] J. H. Barber, a Sheffield banker and member of the Association of English Country Bankers' bankruptcy committee, expressed a view that was probably that of many in the business community. To Barber, there was nothing intrinsically wrong with the Scottish system and the plans of the government during the mid 1870s to remedy the problems would only aggravate the situation. The reason the Scottish system was not working in England and was working in Scotland, according to Barber, was that Scotland had the benefit of time to remedy minor defects in the system. If fully introduced in England, the Scottish system of creditor-managed bankrupt estates would work.[82]

As early as April 1877, the executive council of the Associated Chambers authorized a London barrister to draft a bankruptcy bill containing the amendments suggested by the association over the last few years. The executive council referred this bill to the local chambers for comments in

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[80] Bristol CC Papers, 38605/M/5, minute book, p. 191: annual report, 11 Apr. 1878.

[81] Ibid., pp. 156-57: special meeting of the council, 29 June 1877.

[82] Country Bankers' Association Papers, 4523: J. H. Barber to W. B. Denison, M. P. (President of the Association of English Country Bankers), 7 June 1877.

June, a final draft being introduced in Parliament at the close of the 1877 session.[83] The chambers' bill, reintroduced in the 1878 session, was much shorter than the government's version and increased creditors' control over bankruptcies by requiring, among other things, the approval of creditors of at least three-fourths in value for discharge.[84]

Every annual meeting and almost every executive council meeting of the Associated Chambers during the 1870s and early 1880s discussed these bankruptcy resolutions and there was far from uniform feeling among the members. For example, in a meeting of the executive council of the Associated Chambers in 1870, three local chambers submitted resolutions calling for specific changes in the system. The council rejected two of the suggestions -- that the creditors' meetings should be held in the town nearest the majority of creditors and that the creditors be allowed to file a petition where they resided as opposed to where the bankrupt resided. The only proposal sanctioned by the association at this meeting was to require debtors to furnish a complete list of creditors and assets and to send the list to all creditors at least seven days before the first meeting.[85]

Local chambers took these debates at the association level seriously and carefully considered each resolution. The national association printed each proposed resolution and

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[83] ACC Papers, 14,476(3), minute book: executive council meeting, 8 June 1877.

[84] Parl. Papers 1878, i (89), pp. 59-68: 'A Bill to Amend the Bankruptcy Act, 1869', 25 Jan. 1878.

[85] ACC Papers, 14,476(2), minute book: special meeting of the executive council, 24 Nov. 1870.

distributed it to local chambers for discussion. Chambers rarely gave blanket approval. A meeting of the Leeds Chamber of Commerce in 1873 instructed its delegates to the forthcoming annual meeting of the association to vote for certain bankruptcy resolutions, carefully disapproving of what must be considered a minor proposal to allow a bankruptcy petition to be filed by a creditor who only had debts totalling £20 or two creditors with combined debts of £50.[86] Local chambers thus exercised independence on the issue of bankruptcy reform, even though actively participating in the Associated Chambers. The Bristol chamber, for instance, resolved in June 1873 to send its own memorial to the Lord Chancellor with reforms that had not been included in the recent Associated Chambers' memorial.[87]

Local chambers sometimes had such strong feelings on a particular issue that they would lobby other local chambers on the subject. Circulars were sent by one chamber to another with the proposed changes in the system.[88] Even after the national organization approved resolutions, they were challenged by local chambers. The Northampton Chamber of Commerce, incensed by a resolution passed by the association endorsing no certificates of discharge without the approval of all creditors, wrote other local chambers seeking to have the position changed. Northampton urged that certificates be

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[86] Leeds CC Papers, minute book, vol. III, p. 26: chamber meeting, 31 Jan. 1873.

[87] Bristol CC Papers, 38605/M/4, minute book, p. 164: general meeting, 20 June 1873.

[88] Ibid., p. 163: chamber meeting, 18 June 1873 (Exeter Chamber of Commerce's suggested amendments to the Bankruptcy Act of 1869 received).

issued only if a majority in number and nine-tenths in value approved.[89] In at least one instance, Northampton's lobbying effort proved partially successful, for the Leeds chamber changed its position to support a system whereby a certificate of discharge would be issued upon the approval of three-quarters in number and nine-tenths in value.[90]

Nor were the efforts of the national association to marshal the support of local chambers in lobbying Parliament always successful, and such failures highlight the lack of consensus among the business community on the subject of bankruptcy reform. An incident regarding the Sheffield Chamber of Commerce provides an example. On July 31, 1879, John Hole, London agent for the Associated Chambers of Commerce, sent out a telegram to local chambers which pleaded with the chambers to 'write your parliamentary members immediately to block the new government bankruptcy bill lest good bill next sessions be prevented'.[91] An association circular dated the next day and signed by Sampson S. Lloyd, a member of the executive council as well as of Parliament, followed up Hole's telegram. He admitted that the government's bill had been prepared in a hurried manner and added that he intended to move for postponement, trusting 'you will ask your representatives in Parliament to support me in the

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[89] Sheffield CC Papers, LD 1986/1, minute book, p. 350: chamber meeting, 24 Nov. 1874 (circular from the Northampton Chamber of Commerce referenced); Leeds CC Papers, minute book, vol. III, p. 69: chamber meeting, 2 Dec. 1874 (same circular from the Northampton Chamber of Commerce referenced).

[90] Leeds CC Papers, minute book, vol III, pp. 81-82: 1874 annual report.

[91] Sheffield CC Papers, LD 1989/3/32: John Hole to Sheffield Chamber of Commerce, 31 July 1879.

course'.[92] The Hole telegram to the Sheffield chamber had been forwarded to the business address of its president, John Nixon. Nixon was absent on its arrival, and his assistant merely forwarded a copy to A. J. Mundella, Sheffield's parliamentary representative. When Nixon returned, however, he immediately wrote Mundella,

> I do not feel at liberty to ask you on behalf of the Chamber of Commerce to stop the Government Bill. The Bankruptcy question has received very little discussion in our Chamber the members being pretty well tired of the whole subject, but I do not think they have any special affection for any Bankruptcy scheme suggested by the Association when compared with that of the present government.
>
> My own idea and I believe Mr. Smith's is that a much more radical change is required than is pressed for by the Association or by the Government, and that steps taken in 1869 require retracing altogether.[93]

If this letter is any indication, the local chambers of commerce in these early years of their national association maintained their independence and would take positions counter to those of the national group. More important, the Nixon letter shows that not all businessmen agreed on the best method to improve the bankruptcy system and there was some sentiment among local chambers to overhaul radically the 1869 act.

B. Preparation of the Bankruptcy Bill of 1883

When Gladstone once again formed a government in 1880, he selected Joseph Chamberlain as President of the Board of

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[92] Sheffield CC Papers, LD 1989/3/34: Associated Chambers of Commerce Circular No. 73, 1 Aug. 1879.

[93] Ibid., LD 1989/1/13: John Nixon to A. J. Mundella, 1 Aug. 1879.

Trade. In reflecting on Chamberlain's career, Winston Churchill commented that, although others were leaders, '"Joe" was the one who made the weather'.[94] 'Making weather' was difficult in the office of President of the Board of Trade, where as one historian has commented, Chamberlain was faced with 'persistent trivialities rather than big opportunities'.[95] Although the Board of Trade was a low status department in the 1880s, this fact was met with increasing criticism by business-minded reformers who compared it to the more active 'Ministries of Commerce' on the continent. Chamberlain was among such critics and, from the outset of his appointment, as The Bankers' Magazine observed, the new President of the Board of Trade was 'obviously desirous of signalizing his tenure of office by an accession of energy ...'.[96]

Bankruptcy reform provided one of the first outlets for Chamberlain's energies, for in one of the first cabinet meetings of the new government, Chamberlain was given the responsibility of addressing this problem.[97] It was the first time the cabinet had given someone other than a law officer the responsibility of bankruptcy reform. Why did Gladstone or his cabinet make this decision? The only previous record of involving the Board of Trade in the drafting of bankruptcy

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[94] Winston S. Churchill, Great Contemporaries (London, 1937), p. 72.

[95] M. Balfour, Britain and Joseph Chamberlain (London, 1985), p. 139.

[96] 'The New Bankruptcy Bill', The Bankers' Magazine and Journal of the Money Market June 1881, 445.

[97] Gladstone Papers, Add. MSS. 44,642, f. 11: Gladstone's notes of cabinet meeting 14 May 1880.

legislation was an offhand reference in The Solicitors' Journal in 1858 to the Board of Trade having prepared a bill to facilitate voluntary arrangements.[98] In addition to perhaps wanting to increase the status of the Board of Trade, more than likely, the cabinet assigned Chamberlain the responsibility because he was anxious for something affirmative to do and because of his own extensive business experience. The cabinet perhaps believed that a bankruptcy bill coming from a businessman like Chamberlain, rather than from a law officer, might prove more palatable to the business community. As one member of Parliament observed, many felt that the great fault with previous bankruptcy reforms was their introduction by lawyers who 'were not qualified to judge or know the wants and necessities of the commercial community'.[99] Chamberlain, on the other hand was 'a man of large experience of the present law and the way it affected business', and as a result 'he was sure to win the confidence of commercial men'.[100]

Chamberlain set his staff to work on the bankruptcy reform project. As for the actual drafting of a bankruptcy bill, although Chamberlain exercised 'minute and careful supervision ... over every detail ...' of the bill, members of the staff of the Board of Trade, in particular C. P. Ilbert and T. H. Farrer, actually drafted the government's

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[98] The Solicitors' Journal & Reporter 20 Feb. 1858, 322.

[99] Hansard, 3rd series, 1883, cclxxvii. 846.

[100] Ibid., p. 850.

bill.[101] Ilbert apparently did much of the early work on the measure but left the Board of Trade in 1880, when the task passed to Farrer, at the time permanent secretary of the board. After the bill became law in 1883, Chamberlain admitted to Gladstone that passage of the act would have been 'impossible' without Farrer's help.[102] Since Farrer, who has been described as the 'prototype of the future higher civil servant', played such a central role in the formulation of the bankruptcy system that emerged after 1883, his views of bankruptcy administration are telling.[103]

Farrer who was himself a prominent writer on economic questions recognized, as others did, that creditors generally found it not worth their while to look after bad debts, and for the most part unscrupulous agents whose only object was to profit themselves rather than creditors were managing bankrupt estates.[104] In retrospect, Farrer's analysis was correct. As seen in Chapter Four, statistics show that after the passage of the Bankruptcy Act of 1883 small bankruptcy cases predominated. In each year between 1883 and 1913, around seventy-five percent of the bankrupt estates had

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[101] Address by M. D. Chambers, staff member of the Board of Trade, to the Institute of Bankers reported in Journal of Institute of Bankers Dec. 1883, 553-54.

[102] Gladstone Papers, Add. MSS. 44,125, f. 195: Chamberlain to Gladstone, 15 Aug. 1883. Apparently Farrer also had a high opinion of Chamberlain. In a letter to Gladstone, Earl Granville reported that 'Farrer says that Chamberlain is the best and quickest chief he has had since Milner Gibson [T. M. Gibson, President of the Board of Trade 1859-66]'. Gladstone Papers, Add. MSS. 44,462, f. 27: Earl Granville to Gladstone (undated).

[103] Parris, Constitutional Bureaucracy, op.cit., p. 159. Educated at Eton and Oxford, Farrer was a barrister who entered the Board of Trade in his late 20s and became Secretary of the Marine Department in 1850. In 1865 he became permanent secretary to the board and served in that position until 1886.

[104] T. H. Farrer, The State In Its Relation to Trade (London, 1883), p. 34.

assets of less than £200 (Table 4.1). Also, experience would show after the enactment of the 1883 act that creditors allowed almost all these small cases to be handled by official assignees.

The injury caused by such an inefficient system, in Farrer's mind, was not limited to the harm done to creditors, but rather the harm extended to the country's entire financial system. In his pamphlet, What Do We Pay With?, Farrer stated,

> The point of view which a law of bankruptcy or debtor and creditor is generally looked at is that of the injury done to the creditor. But this is only part of the mischief done by insolvency. The creditor is often a person little to be pitied, who has, by his own carelessness or dishonesty, contributed to the failure by which he suffers. But insolvency is a public evil. The creation of false credit, the making of promises to pay where there are no means of performing them, does just the same public mischief as the issue of bad money.[105]

Since he felt that the status quo was harming the entire financial system, Farrer saw a definite role for the state in supervising bankruptcy administration. Farrer was not known for his support of radical legislation, but the permanent secretary had realized, as Victorians politicians did with the railroads, that many aspects of society had a public as well as a private character.[106] What was needed, according to a Board of Trade memorandum written by Farrer in 1880, was

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[105] Sir T. H. Farrer, What Do We Pay With? Or, Gold Credit and Prices (London 1889), p. 56.

[106] W. H. G. Armitage in his biography of A. J. Mundella, for example, notes that Farrer consistently supported unequal railroad rates. W. H. G. Armitage, A. J. Mundella: The Liberal Background to the Labour Movement (London, 1951), p. 251. Lubenow, op.cit., p. 135.

'to supplement the action of creditors in collecting the estate by such assistance as it is possible to give without interfering with their free action ...'. To Farrer, the state's role in bankruptcy resembled a coroner's inquest or investigations into shipwrecks and railway and mining accidents. It was, in other words, to 'expose, and, if necessary, punish insolvencies which sin against the public interest'.[107] To carry out these functions, Farrer recognized that some form of 'officialism' must return to the bankruptcy system. He refused to accept the fundamental basis of the 1869 act, that management of the estate be reserved for creditors alone, while the conduct of the bankrupt is the business of the court. Speaking of the report of the 1865 parliamentary select committee, Farrer questioned the a priori view of the committee that 'qua the estate insolvency is simply a creditors question, and, qua the conduct of the bankrupt, simply an ordinary question of criminal law'. He concluded that on the whole the evidence did not support the report.[108] In Farrer's mind, the officialism established in 1831 worked well at first but broke down because of a lack of administrative supervision that the law courts were not fitted to provide.[109]

Although Farrer influenced the preparation of the Board of Trade's bankruptcy bill, he was not one of those Victorian

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[107] P. R. O., BT 13/12 E 4908/1881, T. H. Farrer, 'Memorandum on the Changes in the Law of Debtor and Creditor, 1820-1870', 31 Dec. 1881, p. 15.

[108] Ibid., pp. 11-12.

[109] Farrer, The State In Its Relation to Trade, op.cit., p. 34.

civil servants responsible by himself for a piece of legislation.[110] There were also those outside of the Board of Trade who participated in the drafting process, including members of parliament, local judges, the presidents of the Incorporated Law Society and the Institute of Bankers, as well as John Smith, the Institute of Bankers' expert on the subject of bankruptcy.[111] The Board of Trade also sent out a general circular to concerned organizations requesting suggestions for bankruptcy reform.[112]

In the process of drafting the bill, Chamberlain asked Mansfield Parkyns to provide him 'notes' on various points. Parkyns responded with a twenty-four page memorandum. In his cover letter, Parkyns again expressed his belief that the official assignee system with modifications, as outlined in his supplemental report of 1875, was the best alternative, and that if his suggestions had been adopted in the first place the commercial community would have been pleased with the result. Of special interest, Parkyns alluded in his letter to earlier remarks by Chamberlain that Parkyns took to mean that Chamberlain was contemplating a return to a system of official assignees. But Parkyns states a day or two later that Robert Giffen, the head of the statistical department of

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110 See, for example, the efforts of the first inspector under the alkali acts, Robert Angus Smith, to achieve passage of the Alkali etc. Works Regulation Act of 1881. MacLeod, 'The Alkali Acts Administration, 1863-1884', op.cit.

111 Hansard, 3rd series, 1881, cclx. 1057.

112 Bristol CC Papers, 38605/M/6, p. 24: parliamentary committee meeting 16 July 1880 (reference to the Board of Trade circular being considered). It was reported in the 28 July 1880 general meeting that the parliamentary committee had communicated its suggestions to the Board of Trade. Ibid., p. 27.

the Board of Trade, 'corrected my guess'.[113] Since the bill finally presented by Chamberlain in 1881 contained a modified official assignee system, the reference in Parkyns' letter hints that, at least during the drafting stage of the bill, Chamberlain and his staff at the Board of Trade did not agree on the issue of increased officialism.

Chamberlain also sought the advice of James Motteram, judge of the County Court of Birmingham, a court that had jurisdiction over bankruptcy matters. Sent a copy of the initial draft bill, Judge Motteram was 'startled and surprised' by the measure. Pointing out that for years the areas outside of London had been working for decentralization of the bankruptcy system, Motteram could not believe the provinces 'will ever be brought to submit to the system of centralization and state interference that pervades the bill'. The judge recommended not taking all control away from the creditors but a '...fusion of officialism with proper licence to creditors, in which neither could predominate but each assist ... the other'.[114] It is difficult to place the judge's comments in proper context, since a copy of the draft bill upon which he based his comments has not survived in the Chamberlain papers. However, the following April, only days before the final bill was introduced, Motteram wrote to Farrer that the revised bill was 'very much improved' and that he was very pleased the board had 'been able to give

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[113] Chamberlain Papers, JC/6: Parkyns to Chamberlain, 23 Dec. 1880. Only the cover letter forwarding the memorandum and not the memorandum itself remains in the Chamberlain papers.

[114] Chamberlain Papers, JC/1: J. H. Motteram to Chamberlain, 13 Feb. 1881.

effect to so many of my suggestions'.[115] Motteram's letter seems to establish that at least one of the earlier drafts of the bill went much further in setting up a centralized official assignee system than the final draft introduced in 1881.

Chamberlain also faced a challenge from within the government during the drafting of the bankruptcy bill. One of the earlier drafts contained a provision for an additional judge, and here Chamberlain came up against Gladstone's reputation for parsimony. Lord Selborne, the attorney general, told Chamberlain that he should mention to Gladstone that the draft bill called for the new judge and warned the President of the Board of Trade that 'Mr. Gladstone is generally disposed to require very clear proof of necessity when an increase in the number of judges is in question'. The attorney general went on to add that if asked his opinion he would have to say that such a judge was not necessary, even though the mercantile community would like to have such a judge, because an additional judge had been appointed by the Chancery Division in 1877.[116] The final version of the bill did not provide for the new judgeship.

C. Provisions of the Board of Trade's bankruptcy bill

When Chamberlain first introduced the Board of Trade's bankruptcy bill in Parliament in April 1881, he set forth three principles that he believed essential to good

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[115] Chamberlain Papers, JC/2: J. H. Motteram to T. H. Farrer, 1 Apr. 1881.

[116] Chamberlain Papers, JC/3: Lord Selbourne to Chamberlain, 2 Apr. 1881.

bankruptcy law. The first principle had become almost a required litany before discussion of any bankruptcy reform: 'the assets of the debtor in each insolvency belonged to the creditors, and they should therefore have the promptest and fullest control over those assets, subject to the least possible interference'. In light of the other provisions of bill, the sincerity of this statement can be questioned, but considering the strong views held by many in the business community, the political reasons are clear for making reassurances about creditor control. The second principle, that the 'trustee should be subject to official supervision and control as regards his pecuniary administration, ... and his accounts should in every case be audited by authority ...', was necessary, according to Chamberlain, since creditors did not always have time to become directly involved in the management of the estate.[117] In other words, after paying passing homage to creditor control, Chamberlain turned the system on its head by calling such total control impractical and governmental supervision necessary. Such a tactic was common. As MacDonagh has pointed out, since centralization was alien to the current climate of opinion, Victorian reformers often rationalized additional bureaucracy as a one-time aberration or a subtle application of individualism. Finally, the president of the Board of Trade called for 'some independent examination into the conduct of the debtor and the circumstances attending to his insolvency, and some proper provision for the punishment of fraud and negligence,

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117 Hansard, 3rd series, 1881, cclx. 1067.

and rash and unjustifiable speculation and extravagance'.[118] To Chamberlain, this third principle '...was absolutely of the essence of any satisfactory reform in the Law of Bankruptcy...' and would determine whether a bankruptcy bill must stand or fall.[119]

The Board of Trade's bill[120] was not exactly a novel piece of legislation but did contain many of the same provisions, or at least variations of provisions, introduced by the Tory government's reform bills between 1876 and 1880. All proceedings under bankruptcy law were to be initiated by a bankruptcy petition presented by a creditor or a debtor. To remedy the abuse of liquidations, the bill adopted the recommendation of the Lord Chancellor's committee report and provided that no liquidation plan or composition would be valid unless approved by the court. No longer were insolvent debtors to be able to exploit the bankruptcy laws by staying the actions of creditors and then proceed to carry out a liquidation or composition virtually outside of bankruptcy.

After the filing of the bankruptcy petition, a 'receiving order' entered by the court would authorize an 'official receiver' of the debtor's property. This order, unlike an adjudication order, neither made the debtor a bankrupt nor divested him of his property.[121] The introduction of the

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[118] MacDonagh, Early Victorian Government, 1830-1870, op.cit., pp. 8-9.

[119] Hansard, 3rd series, (1883), cclxxvii. 817.

[120] Parl. Papers 1881, i (137), pp. 247-82: 'A Bill to Amend the Law of Bankruptcy', 8 Apr. 1881.

[121] Under the 1881 bill, there was only one stage of a bankruptcy proceeding and a

(Footnote Continued)

official receiver in the form of an employee of the Board of Trade was the striking innovation of Chamberlain's bill. Modeled after the French juge commissaire, a lay member of the Tribunal of Commerce, the official receiver was to be appointed, not by the judiciary, as was the case under Lord Brougham's form of officialism, but by the Board of Trade.[122] In this provision can be seen the hand of Farrer, who strongly believed that the earlier official system had failed from a lack of supervision by the judiciary.[123] The new official receiver was to act as an interim receiver of the bankrupt's estate pending the appointment of a trustee. The official receiver was to protect the interests of the creditors at this early stage of the proceedings by obtaining and giving information about the debtor's financial affairs. In Chamberlain's words, the official receiver 'would in some way be a public investigator, and to a slight extent also a public prosecutor...'.[124] In this respect the official receiver resembled other Victorian inspectorates.

Within fourteen days of the receiving order, the official receiver was to summon a first meeting of creditors; proofs of claim and any proxies had to be filed within twenty-four hours of the first meeting. To eliminate earlier

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(Footnote Continued)
debtor was either declared or not declared a bankrupt. The 1883 version of the government's bill introduced a preliminary stage of a receiving order that might or might not lead later to a formal declaration of bankruptcy.

[122] Speech by M. D. Chambers, an official of the Board of Trade involved in drafting the Bankruptcy Act of 1883, to the Institute of Bankers. Journal of the Institute of Bankers Dec. 1883, 562.

[123] Farrer, The State In Its Relation to Trade, op.cit., p. 34.

[124] Hansard, 3rd series, (1883), cclxxvii. 822.

abuses, proxies had to be on an official form in the handwriting of the person giving the proxy. In addition, the proxy could not be general unless given to a person in the regular employment of the proxy signer or to the official receiver.

At the first meeting, creditors were to have two options. The first was to approve a proposal for a preliminary resolution for a composition or scheme of arrangement. This course required the approval of a majority in number and three-fourths in value and a subsequent confirming resolution by the majority. To insure that proper examination of the bankrupt occurred in all cases, the vote for a composition or arrangement could only take place after the debtor was publicly examined. If creditors passed a confirming resolution, the court still had to approve the proposal after hearing a report from the official receiver. Approval could be withheld by the court if the proposal appeared unreasonable, were calculated to benefit the general body of creditors, or revealed some misconduct by the debtor. The second option was to resolve in favor of adjudication of bankruptcy. In this case or if the creditors failed to approve a scheme of arrangement, then the court would adjudge the debtor bankrupt. Consequently, title to his property would be vested in a trustee and become divisible among the creditors.

Once the court judged the debtor a bankrupt, the creditors, with certain restrictions, would select a trustee. The Board of Trade could nullify his appointment on the ground that the election had not been made in good faith by a majority in value of the creditors, that the trustee was unfit to act, or that he was not likely to act in the

interest of the creditors. Under the original version of the bill, the creditors were free to appoint the official receiver as the trustee. If the creditors could not agree on a trustee, the Board of Trade was empowered to appoint one. Trustees were to be closely watched. All accounts were to be audited by the Board of Trade not less than twice each year. At least once each year trustees were to forward to the board a statement reviewing the proceedings in their case. No trustee was to be released until after the board had approved the trustee's accounts. In addition to the power to appoint the trustee, the creditors were permitted, if they wished, to appoint a committee of inspection consisting of not more than five creditors.

The investigation of the circumstances attending the debtor's insolvency, which Chamberlain outlined as his third principle of good bankruptcy law, was to be carried out primarily under a provision requiring a public examination of the debtor. The requirement of public inquiry had broad support among the business community including endorsement by the Institute of Accountants, the Associated Chambers of Commerce, and the Incorporated Law Society.[125] In their 1879 petition, London merchants and bankers asked Prime Minister Disraeli that any investigation of the debtor's affairs be treated as a public matter to be dealt with by a public court and judge.[126] Every debtor who filed a petition or had one filed against him was to be publicly examined in court as to

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[125] Hansard, 3rd series, 1883, cclxxvii. 819.

[126] HLRO, Document No. 54, op.cit.

his conduct, dealings, and property. Creditors and the official receiver were permitted to inquire of the debtor. Not until after a public examination was the court to set a hearing on the debtor's discharge. At the discharge hearing, the court was to consider a report to be filed by the official receiver as to the bankrupt's conduct and affairs. The court could grant the bankrupt's petition unconditionally; upon proof of misconduct, they could either refuse or qualify the discharge by conditions.

To finance the new official system, the Board of Trade bill provided that with certain exceptions trustees had to pay over all monies in excess of £50 into the Bank of England. The surplus over and above funds needed for the estate were to be invested, with the income from such investments going to meet the government's expenses in running the system. This provision resembled the method of financing the bankruptcy system introduced in 1835 by Robert Rolfe.[127] However, M. D. Chalmers, an official at the Board of Trade in 1883, stated the provision was modeled after the French system which provided that monies collected be paid into the Caisse des Dépôts et Consignations, a governmental institution created for the custody of money required to be deposited in the course of legal proceedings.[128]

Finally, in what was a major revision of the bankruptcy system, the bill took a new tack in the handling of small bankruptcies, the central problem in lack of creditor

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[127] 5 &6 Wm. Iv, c. 29 (1835); See Chapter Five, pp. 201-02.

[128] Journal of Institute of Bankers Dec. 1883, 564.

participation. Under Chamberlain's plan, where assets of the debtor were expected to be under £300, a summary procedure was to apply. The official receiver would act as the trustee unless the creditors especially demanded a trustee of their own.[129] Where debts did not exceed £50, the court could make an order for the administration of the estate and future earnings allowing for the debts to be paid in installments.

An entirely new concept of bankruptcy 'officialism' emerged distinguished from Lord Brougham's system by requiring bankrupt estates to be supervised by an executive department, the Board of Trade, rather than by the courts. This 'supervision', distinguished carefully by Chamberlain and the Board of Trade from 'administration', was to be accomplished by employees of the board called 'official receivers', who would take initial control of the estate, followed by the board's examining the debtor and auditing the trustees' accounts. Creditors would 'administer the estate by having control over the election of the trustee'.

As his philosophical basis behind the new system, Chamberlain followed Farrer's lead. The supervision and investigation of failed businesses was just as necessary a government function as investigating mine disasters, shipwrecks, or boiler explosions. The potential for harm involved the community as a whole. The government had a duty through proper investigation and supervision to minimize injury to

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[129] A plan similar to this had been proposed by W. Howgrave in a speech before the 1868 meeting of the Social Science Association. Howgrave suggested that cases with assets under £300 be heard before a commissioner and that the assets be realized by an official assignee. N. A. P. S. S. Transactions 1868, op.cit., p. 283.

the public. In other words, 'Parliament had to endeavor ...to protect the salvage, and also to diminish the number of wrecks.'[130]

The fine line between 'supervision' and 'administration' had been drawn often in Victorian England. Under the new poor laws, poor law boards were to supervise, while local authorities were to administer. Likewise, under the Sanitary Act of 1848, a distinction existed between central supervision and local administration. Even with railroad legislation, there was never any intention of interfering with the actual management of the railroads.[131]

Immediate and intense interest blossomed in the Board of Trade's new proposal. Local chambers asked their representatives to forward to them copies of the newly introduced measure, and The Accountant prominently displayed an advertisement offering copies of the bill for its subscribers.[132] The business community's first reaction to the new bill was mixed. The Bristol Chamber of Commerce condemned the measure in a petition to the House of Commons for reintroducing 'officialism' and asserted that the bill did not meet 'the requirements of the commercial classes, as evidenced by the numerous petitions ...'.[133] In Manchester, the Chamber of Commerce urged passage of the bill without delay, while the

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[130] Hansard, 3rd series, 1883, cclxxvii. 817.

[131] Lubenow, op.cit., pp. 34, 81, 125.

[132] Sheffield CC Papers, 1989/1/294, letter book: Charles Hill, Secretary of the Sheffield Chamber of Commerce, to C. B. S. Wortley, M. P., 28 Apr. 1881.

[133] Bristol CC Papers, LD 1989/4/201, letter book: Thomas Browning, Secretary of the Manchester Chamber of Commerce, 1 June 1881; The Accountant 25 June 1881, pp. 3-4.

Council of the Manchester Society of Chartered Accountants criticized the bill and warned 'that still greater evils than those proposed to be remedied would result from the system of official administration... '.[134] The Accountant charged that the only reason it could see for the support of Chamberlain's bill by those who only a year ago agreed to the principle of creditor control was 'simply because it is new, and because it has been presented in an artistic and striking manner by a Minister who is credited with a reputation for being businesslike and practical'.[135] There seems to have been some support for the bill among bankers. Of special interest is the endorsement of 'officialism' expressed by The Bankers' Magazine.

> With such statistics before us, we are almost ashamed that the cry of undesirability of reverting to officialism should have been raised in the House on the introduction of the new Bill. "Officialism", so called, affords some safeguard against dishonesty and extravagance, and it is this much need safeguard which Mr. Chamberlain seeks to supply.[136]

Despite the intense interest in the bill, there was not enough time in the 1881 session of Parliament to consider the measure and by late June Chamberlain was already expressing doubts that the bill could be passed in that session.[137]

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[134] Sheffield CC Papers, LD 1989/4/201, letter book: Thomas Browning, Secretary of the Manchester Chamber of Commerce, 1 June 1881; The Accountant 25 June 1881, 3-4

[135] The Accountant 16 Apr. 1881, p. 4.

[136] 'The New Bankruptcy Bill', The Bankers' Magazine and Journal of the Money Market June 1881, p. 447.

[137] Sheffield CC Papers, LD 1989/4/209: H. Barber, Sheffield Banking Company Ltd., to secretary of the Sheffield Chamber of Commerce, 21 June 1881 (describing a meeting of bankers with Joseph Chamberlain).

C. Debate and passage of the Board of Trade's bill

Chamberlain reintroduced the Board of Trade's bill with minor modifications in the 1883 session.[138] At first, many thought the bankruptcy bill would generate little debate. The press remarked on the timidity of the government in bringing forward new proposals and observed that the bankruptcy bill concerned topics that had been 'judiciously selected, and in almost all cases have undergone so much preliminary public discussion, that the task of Parliament in dealing with them will consist mainly in the adjustment of details.'[139] The Fortnightly Review believed that those interested in the subject of bankruptcy recognized the soundness of the government's proposed reforms and predicted that 'it was impossible the measure should be made a cheval de bataille'.[140] Only a month later, the same commentators revised their predictions. The opposition now would 'omit no opportunity of hindering the legislation of the Government; and if they cannot defeat

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138 In addition to the introduction of the preliminary receiving order, some of the other modifications made in the 1881 bill included a change in the valuation of securities in the case of bills of exchange and the remuneration of solicitors and agents. Hansard, 3rd series, 1883, cclxxvii. 827-28, 830, 832-33. Although the Queen's speech in 1882 promised that bankruptcy legislation would be brought forward by the government that year, it never was. Hansard, 3rd series, 1882, cclxvi. 6. The reason Chamberlain chose not to introduce a bankruptcy bill in 1882 was more than likely that the government wanted to wait until the procedures for the new 'Grand Committee' had been worked out. This broad-based committee was to consider technical bills and handle the amending process, thus avoiding a lengthy amending process before the full house. In 1881 Chamberlain indicated that the failure to have this committee's procedure worked out might be good reason to withdraw the bill and The Accountant stated the 'Grand Committee' problem caused the government to introduce no bankruptcy bill in 1882. The government's 1883 bankruptcy bill was one of the first bills to be handled under the new 'Grand Committee' structure. Gladstone Papers, 44,124, f. 49: Chamberlain to Gladstone, 1 July 1881; The Accountant 22 Feb. 1882, p. 4.

139 The Economist 17 Feb. 1883, 186.

140 T. H. S. Escott, 'Home and foreign affairs', The Fortnightly Review 1 Mar. 1883, p. 455.

a bill on its main issue they will attempt to kill it by a side wind.'[141] Chamberlain faced five months of lengthy debate before the Board of Trade's bankruptcy bill would become law.

In addition to outright opposition, Chamberlain also had to contend with a bankruptcy bill prepared by the Institute of Bankers. The Institute had taken a more or less independent stance on bankruptcy reform throughout the 1880s. About the time Chamberlain took up the cause of bankruptcy reform, it rejected offers from the Institute of Accountants and the Committee of Wholesale Dealers to form a joint committee to take action on bankruptcy reform proposals.[142] The Institute's bill focused on increasing the rights of creditors by allowing them to call a meeting of creditors, have an accounting, demand information from the trustee, and call for a distribution of assets.[143] According to the institute, the introduction of its bill was not to be regarded as an alternative to the government's bill but as an independent measure should the government fail to pass its own bill.[144] In short, the banker's bill kept pressure on the government to press the enactment of Chamberlain's bill, and at one point the sponsor of the Institute of Banker's bill, Sir John Lubbock, embarrassed the government by having the House of Commons,

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[141] The Fortnightly Review 1 Apr. 1883, p. 607.

[142] Institute of Bankers Papers, minute book: council meeting, 13 Dec. 1880.

[143] Parl. Papers 1883, i (82), p. 327: 'A Bill to Amend the Law Relating to Bankruptcy', 16 Feb. 1883.

[144] Journal of the Institute of Bankers Mar. 1883, 161.

over Chamberlain's objection, go into a committee of the whole to discuss the measure.[145]

In March 1883, Parliament referred both the Board of Trade's bill and the Institute of Banker's bill to the new 'grand committee', the Standing Committee on Trade Shipping and Manufacturers, which had been appointed several days earlier and consisted of sixty-four members of Parliament.[146] This was the first time that such a grand committee had been used. Its purpose was to allow debate on a measure among a large number of members without the number being so large, as with a committee of the whole, to make meaningful amendments impossible. Over 500 amendments to the Board of Trade's bill were set down for consideration by the grand committee in the first of nineteen meetings held in April 1883.[147] Opponents of the measure, many from the accounting profession, realized that Chamberlain would not change his mind on the leading features of the bill, having the undivided support of the government. It was best to direct attention to various minor points of detail that would be discussed in the grand committee.[148] Unlike their stance in 1881, local chambers of

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[145] The Times 21 Mar. 1883, p. 8. Samuel Morley co-sponsored the Institute of Bankers' bill. Hansard, 3rd series, (1883), cclxxvii. 922.

[146] Hansard, 3rd series, 1883, cclxxvii. 987.

[147] The Solicitors' Journal & Reporter 14 Apr. 1883, p. 393.

[148] The Accountant 24 Mar. 1883, pp. 3-4. The growth of accountancy as a profession was stimulated by the need to have professional persons of integrity serve as trustees under the 1869 bankruptcy act. Part of the reason many accountants opposed Chamberlain's efforts might be attributed to the fact that the Institute of Chartered Accountants continually attempted to have the bill require that professional trustees be restricted to chartered accountants, a suggestion the government never accepted. A. A. Garrett, History of the Society of Incorporated Accountants 1885-1957 (Oxford, 1961), p. 8; ICA Papers, minutes of council, book A, p. 20: council meeting, 7 July 1880.

commerce do not appear to have been active in the debate on the bankruptcy bill, and many of the local chambers' Parliamentary committees merely relied on the association's watchdog committee to monitor the progress of the bill.[149]

Business groups were able to convince Chamberlain and the Board of Trade to accept amendments to the bill. The Association for the Protection of Wholesale Traders succeeded in inserting a provision for the appointment of a special receiver when special knowledge was required.[150] Throughout the debate, Chamberlain broadened support for the Board of Trade's bill by inviting various groups interested in the bill, such as the Law Society, to discuss its principal features with him.[151] In addition, the Board of Trade had already written to groups like the Associated Chambers of Commerce seeking their opinion on sections of the government's bill.[152] These meetings were not merely a formality. When a delegation from the Institute of Chartered Accountants met with Chamberlain in April, for instance, he accepted their suggestion that creditors be allowed to appoint a trustee at the first meeting of creditors in which a composition or scheme of arrangement was entertained. Chamberlain requested that the Institute draft an amendment to such

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[149] Sheffield CC Papers, LD 1986/2, minute book, p. 289: meeting 5 Apr. 1883; Leeds CC Papers, minute book, vol III, p. 443: parliamentary and legal committee meeting, 2 Apr. 1883.

[150] Hansard, 3rd series, 1881, cclx. 1068.

[151] Law Society Papers, 'Annual Report of the Council of the Law Society of the United Kingdom', 13 July 1883, p. 22.

[152] ACC Papers, 14,476(3), minute book: executive council meeting, 6 May 1881.

effect, and their amendment became part of the final measure.[153]

The debate on the Board of Trade's bill, apart from technical issues, centered on 'officialism'. As in the debate over Lord Brougham's bill in 1831, there were cries that 'officialism' meant unnecessary interference by the government. Even those of his own party criticized Chamberlain's bill for controverting the principles of liberal government, arguing that individuality and independence should be encouraged 'even to the extent of eccentricity'.[154]

The opposition to the government's bill was unconvinced that supervision by the Board of Trade would be any better than that previously experienced with the judiciary. 'By what process of reasoning', inquired The Accountant, 'are we expected to arrive at the conclusion that a mere division of a varied department like the Board of Trade is likely to do better, without experience, than a simple Bankruptcy Court with years of experience'?[155] The Manchester Chamber of Commerce, which had endorsed the government's 1881 bill, now objected to any 'administrative duties' being given to the official receiver.[156] Chamberlain's system allegedly was worse. According to opponents, confusion would arise since

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153 ICA Papers, Reports of Committees, Book A, p. 36: report of the bankruptcy committee, 2 May 1883.

154 Hansard, 3rd series, 1883, cclxxvii. 856.

155 The Accountant 25 Dec. 1880, pp. 4-5.

156 Manchester CC Papers, M8/2/9, minute book, p. 422: bankruptcy committee meeting, 5 Apr. 1883; ibid., p. 425: board meeting, 11 Apr. 1883; ibid., p. 209: ordinary meeting, 25 May 1881.

the official receiver was to act not only as an officer of the court but also under the direction of the Board of Trade. Trustees were under the authority of the board but were to apply to the court for instructions. The bill served, according to the opposition, to confound a political office with the duties of a court of law.[157] Some opponents went so far as to charge that the Board of Trade was being made the 'great detective' in all the commercial proceedings in the country.[158] Chamberlain attempted to deflect such criticism by emphasizing differentiation between 'supervision' and 'administration'. As previously mentioned, this differentiation was not new to Victorians, but contemporaries apparently considered it important in the context of bankruptcy reform. In a letter to Chamberlain, the Secretary of the Institute of Bankers criticized the 1881 version of the Board of Trade's bill for its tendency to establish a system of 'administration' as opposed to one of 'supervision', to which the bankers had no objection.[159] The Economist had also taken up the theme that administration of the estate should be left in the hands of creditors but such administration should be effectively supervised by a public authority.[160] Chamberlain responded to the bill's critics by stating the bill did not involve the government in the administration of the estate

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[157] Hansard, 3rd series, 1883, cclxxvii. 839.

[158] Ibid., p. 842.

[159] Institute of Bankers Papers, minute book, p. 124: council meeting, 20 June 1881 (approving letter from G. Dayrell Reed to Chamberlain).

[160] The Economist 3 Mar. 1883, p. 251.

but only in 'supervision which was necessary for the protection of a minority of creditors, and in order to secure honest dealing on the part of all the persons employed in the administration of the estate.'[161]

In protecting 'a minority of creditors', Chamberlain and the Board of Trade were not willing to follow groups like the Associated Chambers and the Institute of Bankers, which for the most part represented the interests of the larger creditors in bankruptcies. The difficulty, as Chamberlain stated after receiving a delegation from the council of trade sections of the London Chamber of Commerce in April 1883, was that a bankruptcy bill had to apply to a vast array of cases from a general private bank to a 'little peddling tradesman in a country village'.[162] To Chamberlain the delegation from the London chamber and many others '... were chiefly interested in the wholesale commerce of the country'. According to the delegation's report, Chamberlain frankly told them that 'if the Bill were drawn exclusively for them it would deal the greatest possible injustice to the smaller trades, whose bankruptcies formed a large portion of the whole ...'.[163] In other words, Chamberlain and the Board of Trade believed that there must be some supervision of all estates, but the supervision would be especially useful in protecting the creditors in smaller bankruptcies.

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[161] Hansard, 3rd series, 1883, cclxxvii. 827.

[162] The Times 21 Apr. 1883, p. 9.

[163] London Chamber of Commerce (Incorporated), Second Annual Report of the Council to Members of the Chamber (London, 1884), p. 67.

Opponents of the government's measure also claimed that the bill gave too much patronage to the Board of Trade through the appointment of large numbers of official receivers, another of the principal arguments used by opponents of Lord Brougham's bill in 1831. It was the first step in the 'Americanization' of the British civil service because of excessive patronage.[164] One opponent asked Chamberlain point-blank during the debate for a personal guarantee that 'there was no disposition to treat these appointments [of official receivers] in a political or Party sense, and that the aim would be to secure the very best men, totally irrespective of Party'.[165] Chamberlain replied that it would be suicidal to allow party feeling to influence him so as to not allow the best men possible to be selected for the posts.

In the grand committee, the government kept most of its bankruptcy bill intact. There were, however, some limited victories for those wishing to limit the power of the Board of Trade. For example, the official receiver, who in the original version of the bill could be named the permanent trustee, was barred in most cases from such selection. Opponents felt that there would be too much pressure on creditors to select the official receiver in place as the trustee.[166] Also, the committee defeated a government amendment to allow the Board of Trade, with the concurrence of the Treasury (as

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[164] Hansard, 3rd series, 1883, cclxxvii. 839.

[165] Hansard, 3rd series, 1883, cclxxxiii. 522.

[166] Parl. Papers 1883, xi (224), p. 265: 'Report of the Standing Committee on Trade, Shipping and Manufactures -- Bankruptcy Bill', 25 June 1883.

opposed to the Treasury alone), to set the salary of receivers and other board employees involved with bankruptcy.[167]

The requirement that all monies received by a trustee over £50 be paid into a special account in the Bank of England triggered vigorous special interest opposition. Country banks held 'sizable' sums in bankruptcy trustee accounts, and this proposal had been opposed by most business groups.[168] The Associated Chambers, the Birmingham and Wolverhampton chambers, and the Institute of Bankers all had objected to the idea in the original 1881 bankruptcy bill.[169] In June, when the grand committee was about to complete its work, The Times reported that the entire bill was in 'eminent danger' over this one issue. A very strong section favoured Sir John Lubbock's amendment to retain the present law, trusting penalties imposed on trustees to prevent them from failing to pay all sums in hand.[170] Leading the opposition to the government's proposal was the Association of English Country Bankers who stood to lose the most if the measure passed.[171] In a letter to The Times, the president of the

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[167] Parl. Papers 1883, xi (224), op.cit., pp. 298-99.

[168] L. S. Pressnell, Country Banking in the Industrial Revolution (Oxford, 1956), p. 749.

[169] ACC Papers, 14,476(3), minute book: executive council meeting, 8 July 1881; Birmingham CC Papers, 'Suggestions of the Council on the Bankruptcy Bill, 1881'; Wolverhampton CC Papers, minute book: chamber meeting, 25 Apr. 1881; Institute of Bankers Papers, minute book, p. 115: council meeting, 11 Apr. 1881.

[170] The Times 2 June 1883, p. 11.

[171] The Association of English Country Bankers was active in lobbying against the proposal that all funds be deposited in the Bank of England. Circular letters were regularly sent to members before key committee votes. Country Bankers' Association Papers 4523, letters to members from joint secretaries, Theodore Waterhouse and William H. Winterbotham, 31 Mar. 1883 and 30 May 1883.

organization alleged that the Board of Trade had overestimated the amount of interest earned on the sums deposited and that sending funds to and from London during the administration of the estate would add expense.[172] The letter also argued that Chamberlain incorrectly stated to the Grand Committee that the country banks did not pay interest on current bankruptcy estate accounts. A Parliamentary return confirmed that country banks did in fact pay interest on some of these accounts.[173] Some people argued that the accounts needed the kind of audit that would occur if they were in the hands of the Bank of England. The President of the Country Bankers Association called such an audit unnecessary, since private businesses did not require one from their own banks.[174] Others objected on the grounds that the Board of Trade would be tempted to hold such sums as long as possible. It was more honest merely to raise fees than to hide the cost of the system under the government's plan.[175] The Bankers' Magazine stated that while bankers generally would not object to the payment of unclaimed dividends into the Bank of England, they would object 'and with reason' to the payment

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172 The Times 4 June 1883, p. 12.

173 Ibid.; Parl. Papers 1883, lv (335), p. 30: 'Return from the Comptroller in Bankruptcy ...', 21 Aug. 1883. The return showed that local banks had paid approximately £36,000 in interest on bankruptcy estate accounts from the commencement of the 1869 act. This interest, however, was earned on approximately £4.5 million.

174 The Times 4 June 1883, p. 12.

175 Hansard, 3rd series, 1883, cclxvii. 847, 880.

of sums in the course of collection although no specific reason was give for this stance.[176]

Although groups like the bankers had a special interest in seeing the provisions defeated, indications are that many supported the idea. The Economist had endorsed the idea in 1882, but in the end an amendment to remove the requirement of payments to the Bank of England was handily defeated in the grand committee.[177]

Chamberlain was pleased with the work of the Grand Committee and years later reflected that the exercise had proved a considerable success. The bill was carefully discussed and, in his opinion, without much party feeling.[178] He held the grand committee in line, and the bill was reported out of the committee with few substantive changes.[179] With only minor further modifications, the bill passed and received royal assent in August 1883.[180]

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[176] 'The New Bankruptcy Bill', The Bankers' Magazine and Journal of the Money Market Apr. 1883, p. 389.

[177] The Economist 23 Dec. 1882, p. 1584; Parl. Papers 1883, xi (224), op.cit., p. 285.

[178] Joseph Chamberlain, A Political Memoir 1880-92, ed. C. H. D. Howard (London, 1953), pp. 85-86.

[179] There was one final problem before the passage of the bill, whether or not the measure should extend to Ireland. At one point, just before the final vote on the measure, Chamberlain wrote to Gladstone that 'We are in great difficulty about the exclusion of Bankruptcy Bill to Ireland'. As Chamberlain explained in his letter, if the bill was extended to Ireland, it would anger the Dublin lawyers. If not extended, 'we are promised a furious opposition from the Ulster members both Liberal and Conservative as well as from many of the Parnellites'. Gladstone's private secretary confirms in his diary that this problem was of concern. The bill was not extended to Ireland. Gladstone Papers, 44,125, f. 193: Chamberlain to Gladstone, 2 Aug. 1883. Dudley W. R. Bahlman, ed., The Diary of Sir Edward Walter Hamilton 1880-1885, 2 vols. (Oxford, 1971).

[180] 46 & 47 Vict., c. 52 (1883).

Summary

The central question remains to be answered: why did Parliament, against the advice of much of the business community, make an about face and reintroduce a form of officialism into bankruptcy administration? Since the mid-1850s, the trend had been to eliminate as much as possible judicial or other governmental involvement in the administration of bankrupt estates. Although the 1869 Act's creditor-managed system had failed, business organizations in 1883 still believed that the administration of bankrupt estates should be left to the creditors. It is all the more surprising, therefore, that the government was able to reimpose through the Bankruptcy Act of 1883 not only governmental supervision over much of the system, but also official administration over most bankrupt estates. What were the factors that made this possible, and what do these factors reveal about the nature of government growth in nineteenth-century England?

Despite the strong rhetoric of many against the return to 'officialism', in reality business organizations and the business press had little objection to, and in fact supported, many of the reforms the Board of Trade put forward. One of the points continually made during the debate by both opponents and proponents of the Board of Trade's bill was that the government had a legitimate role, if not a duty to 'supervise' the bankruptcy system. Few wanted official 'administration' of bankrupt estates. 'The true principle which should ... be applied to this matter ...', exhorted The Economist, 'is to leave the actual work of

administration, as far as possible, in the hands of the creditors, but subject it to an effective supervision and control by a public authority'.[181] Groups as divergent as local chambers of commerce and writers for the Fortnightly Review unanimously supported this division of responsibility.[182] Even Chamberlain himself claimed that provisions of the Board of Trade's bill scrupulously honoured the distinction.

'Supervision' principally meant that the government should play a greater role in the investigation of the circumstances surrounding bankruptcies, especially the larger ones. In addition, there was little objection to appointing an official receiver at the outset of the bankruptcy to protect assets. Likewise, there was strong support for official auditing of trustees' accounts and judicial approval of liquidation plans. All of these reforms fell into the acceptable category of official 'supervision'.

It would be a mistake, however, to conclude as Treiman has done, based upon the 'supervision' / 'administration' distinction, that the officialism of the 1883 scheme was 'profoundly different' from that of Lord Brougham's act.[183] In one important respect, this was not the case. Under the act, bankruptcies with assets under £300 (which were to be by far the largest number of bankruptcies) were not just supervised but administered entirely by official receivers. In

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[181] The Economist 3 Mar. 1883, 251.

[182] The Times 6 Mar. 1883, 10; Fortnightly Review 1879, pp. 469-70.

[183] Treiman, op.cit., p. 261.

larger bankruptcies, if the creditors failed to appoint a trustee, or if the Board of Trade believed the creditor-appointed trustee was not acting in the best interest of all creditors, then the estate would be administered by an official receiver.

Although the distinction between 'supervision' and 'administration' in the Board of Trade's bill was not always maintained and provisions of the bill were strongly opposed, broad support for most of the bill's provisions improved the measure's chances of passage.

Another reason for Parliament's willingness and ability to reimpose a form of officialism was the decline of the influence of business organizations opposing 'officialism'. The power of business, especially the chamber of commerce-centered business groups, to affect the policy of bankruptcy administration reached its zenith with the passage of the 1869 act. In 1883 the scene was quite different. For the most part, business organizations were powerless to affect any real change in the Board of Trade's plan to reimpose some official system.

Part of the reason for the change of fortune for organized business groups was their inability to recognize the needs of the creditor in the small bankruptcy cases. With the 1869 Act, Parliament had embraced the 'large creditor' view that insisted upon the establishment of a 'Scottish' creditor-managed system and the abolition of 'officialism' altogether. While this system was in place between 1869 and 1883, small creditors suffered because there was no official receiver to collect the assets of the more insignificant bankruptcy estates. There had been warnings that small

creditors could not be ignored. In the 1860s, some bankruptcy officials, Lord Chelmsford, The Economist, and others expressed concern as to whether the needs of small creditors were being addressed. Largely as a result of the failure to meet the needs of all creditors, the 1869 Act was a failure, and by 1883 the government was not as prone to accept without question the views of the organized business community as they had been in 1869. As has been shown, Chamberlain made it clear to the chambers of commerce and other groups that a bankruptcy act must not only apply to the large creditor but also to the 'little peddling tradesman'.

Business organizations and their leaders did not help themselves by refusing to acknowledge that the failure of the 1869 act sprang largely from the creditor-managed system itself. Even during the 1883 debate on the bankruptcy bill, Sir John Lubbock, President of the Institute of Bankers, still claimed that Parliament had never tried a system that enabled creditors to manage their own affairs. To Lubbock, even under the 1869 act, creditors 'actually had no powers'.[184] The 1881 annual report of the Association of English Country Bankers claimed that, although in theory the management of bankrupts' estates had been placed in the hands of the creditors, in practice the creditors had 'very little' power.[185] Chambers of commerce, and accountant and banker groups did admit the existence of problems with the workings of the creditor-managed system. They recognized that

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[184] Hansard, 3rd series, 1883, cclxxvii. 878.

[185] Country Bankers' Association Papers, 4517: 'Report for the Year Ending May, 1881'.

creditors were apathetic, particularly with smaller bankruptcies. Indeed, chambers of commerce urged their members to participate actively in the administration of bankruptcies. They saw the abuses of the liquidation mechanism and the use of proxies, and they accepted that more investigation of bankrupts was needed. Yet, despite these admissions, these business groups refused to understand that it was the creditor-managed system, itself, which underlay most of the difficulties.

To a lesser extent, another reason organized business and particularly the Associated Chambers failed to have any real influence on the Bankruptcy Act of 1883 was that their tactics only antagonized Chamberlain and the Board of Trade. Opposed to Chamberlain's efforts from the beginning, in 1882 the Associated Chambers defeated a resolution by a 'large majority' that gave merely conditional support to the President of the Board of Trade in his attempt to remedy the effects of the 1869 act.[186] The rupture between Chamberlain and the chambers of commerce became even greater in 1882, when Chamberlain decided not to reintroduce the Board of Trade's bankruptcy bill. The Associated Chambers took this opportunity to introduce again their own bill, which they believed 'far preferable' to the government's measure.[187] The chamber's bill was not nearly so sweeping as the government's and according to the bill's sponsor the 'trading community generally was anxious to avoid undue officialism,

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[186] ACC Papers, 14,476(3), minute book: meeting, 28 Feb. 1882.

[187] Ibid., minute book: special meeting, 5 Oct. 1881.

and the Bill proposed to give the creditors such power that they might have both the responsibility and the direction in matters which affected very largely their own interests.'[188] The executive council of the Associated Chambers requested the sponsors of their bill to press forward 'in default of the Government Measure not being introduced in this Session'.[189] Chamberlain opposed the Associated Chambers' bill, calling it 'an extremely inadequate measure for dealing with a great subject'.[190] Proponents were furious at Chamberlain's stance, claiming that any change in the present system would be an improvement and castigating Chamberlain for failing to 'pay respect' to the unanimous opinions of the Associated Chambers and to the other commercial bodies of the country. In fact, Chamberlain lost a division over a second reading even though the Associated Chambers' bill never passed the house.[191] Angered, Chamberlain later publicly attacked the move and pointed out out that while his earlier bill gave effect to all fourteen resolutions adopted by the Associated Chambers in 1881, the Association's 1882 bill ignored nine such provisions.[192]

Perhaps the Associated Chamber's decision to press their own bill in 1882 had been influenced by their success in

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[188] Hansard, 3rd series, 1882, cclxviii. 1367.

[189] ACC Papers, 14,476(3), minute book: executive council meeting, 9 June 1882.

[190] Hansard, 3rd series, 1882, cclxviii. 1368.

[191] Ibid., p. 1371.

[192] Speech described in a letter to The Times by John Smith of the Institute of Bankers and a delegate to the Associated Chambers of Commerce. The Times 13 Feb. 1883, 4.

1869. But the tactic failed and only alienated Chamberlain. Apparently the association realized the mistake and the vanity of such efforts. In October 1882, a resolution by the Leeds Chamber of Commerce that the association's bill be introduced in the next session of Parliament had to be withdrawn, and the association stated that it was not inclined to press its bill to the exclusion of other measures of bankruptcy reform.[193]

The decline of the influence of the organized business community on the issue of bankruptcy legislation must also be seen against the backdrop of change in society as a whole that was taking place between the 1860s and the 1880s. From an economic standpoint, Parliament passed the Bankruptcy Act of 1869 at the height of what one historian has described as the 'Great Victorian Boom' that occurred between 1850 and 1873.[194] By contrast, the 1883 act was placed on the statute books at the close of a period of decline in output and a time of disappointment in the performance of the economy. Perhaps the institution of the organized business community's creditor-managed system in 1869 reflected a confidence in business resulting from the prosperity of the times. By the 1880s, Parliament may have lost some of that confidence.

With politics too, the 1880s differed markedly from the 1860s. The trend toward popular participation and democratization of politics had twenty more years to run its course.

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[193] Leeds CC Papers, minute book, vol 3, pp. 413, 417: meeting 2 Aug. 1882 (passing a resolution to be presented at the annual ACC meeting); ACC Papers, 14,476(3), minute book: special meeting 3 Oct. 1882.

[194] R. A. Church, The Great Victoian Boom (London, 1975).

By the 1880s, England had entered a 'period of anticipation' of twentieth century government.[195] There was already evidence of collapse of the mid-Victorian political consensus and the rise of class politics. With the government's concern over protecting the public interest and facilitating the needs of small creditors, can be seen in a small way the shifting tide of British politics and the wider pressures affecting the demotion of business influence on the issue of bankruptcy reform.

The final factor that caused Parliament not only to reverse course in 1883, but also to take the particular course it did was the exceptional efforts of Joseph Chamberlain and his talented staff at the Board of Trade. Cornish asserts that some form of official supervision was the only feasible direction for bankruptcy reform in the 1880s. Since the purely creditor-managed system had failed, there must be some truth to this claim.[196] A small but growing group urged the abolishment of the entire bankruptcy system, leaving creditors to their common law remedies. More important, it is doubtful that the Bankruptcy Act of 1883 would have taken the particular form it did and been passed by Parliament without the exertions of Chamberlain and his staff. These factors are especially important for the light they shed on perceptions about the nature of government growth in nineteenth-century England.

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[195] Derek Beales, From Castlereagh to Gladstone 1815-1885 (New York, 1969), p. 269.

[196] Cornish, op.cit., p. 235.

One of the important contributions of MacDonagh to the historical debate on government growth was the notion that there could exist an 'internal dynamism' in departments to stimulate growth. MacDonagh did not deny the influence of outside forces but merely pointed that reform was often 'self generated' from within a department.[197] Historians have studied numerous departments to ascertain the extent to which this theory of 'internal dynamism' is true. What has emerged in many cases, such as in health care and education, is a pattern where the 'specialist classes', composed principally of scientists, doctors, and engineers working within the departments for a time gained wide influence on legislation. This influence continued until the onset of departmental 'legalism', which threatened the experts' autonomy and initiative.[198]

The growth of government in bankruptcy administration initiated by the Bankruptcy Act of 1883 did not follow this pattern. No 'omnicompetent' specialist class in bankruptcy administration worked to 'self-generate' reform of the system. Experts like Mansfield Parkyns, the Comptroller in Bankruptcy and also a Birmingham bankruptcy judge, commented on early drafts of the Board of Trade's bill; however, the influence of 'experts' on the Bankruptcy Act of 1883 was indirect and cannot be ranked with, for instance, John Simon's influence on the Sanitary Acts of 1863 and 1867.

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197 MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal', op.cit.

198 MacLeod, Government and Expertise, op.cit., p. 15.

Although not in the pattern described by MacDonagh and others, an element of 'internal dynamism' was at work in extending the role of government through the Bankruptcy Act of 1883. Those responsible for this dynamism were not scientific experts but rather senior civil servants like Sir Courtenay Ilbert and Sir. T. H. Farrer, whose particular 'expertise' was the drafting of statutes. This type of expert worked not only in the Board of Trade but in many departments, and as Drewry has pointed out, these draftsmen served as the 'link-men' between the ministerial department where policy was initiated and Parliament.[199] In the case of the Bankruptcy Act of 1883, Ilbert and Farrer served as more than just 'link-men'and, as far as can be learned, formulated much of the policy expressed in the statute.

The record of how each of the numerous provisions came to be a part of the 1883 act is far from clear. Farrer had definite ideas about bankruptcy reform. Most important, he saw the harm the current system was doing to the business community as a whole as well as to individual creditors. As a result, Farrer believed the government had an affirmative duty to see that harm was lessened or perhaps prevented. Apparently Chamberlain shared this belief, for he was willing to adopt the concept as the basis of the Board of Trade's bill.

The notion of a government's affirmative obligation was part of a much broader movement beginning to take place at

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[199] Gavin Drewry, 'Lawyers and statutory reform in Victorian government', in Roy MacLeod, ed., Government and Expertise, op.cit., pp. 27-40.

the time often referred to in Dicey's umbrella term as the 'period of collectivism'.[200] Farrer himself acknowledged this when he likened official intervention in bankruptcy administration to official investigations of mine disasters, shipwrecks, or boiler explosions. In this regard, the Bankruptcy Act of 1883 was very much the product of the times and of what was becoming the predominant view of the proper role of government.

Finally, if one man deserves more credit than any other for the passage of the Bankruptcy Act of 1883, it is Joseph Chamberlain. T. H. Farrer was at first surprised to find how ignorant Chamberlain was of economic questions. The permanent secretary, however, soon realized that Chamberlain had an amazing ability to assimilate and reproduce arguments that he did not understand.[201] This was of critical importance, since no matter how capable the legislative draftsman, he was useless without a competent minister. Even Sir Courtenay Ilbert, perhaps the most famous legislative draftsman of the period, admitted that the work of the legislative draftsman would be in vain without a strong minister to guide the legislation through the House of Commons.[202] Chamberlain with the strong support of the cabinet was able to see the bankruptcy bill through the Grand Committee with its untried procedures and have the legislation passed with only minor

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[200] Dicey, op.cit., pp. 259-302.

[201] Sir Algernon West, Contemporary Portraits: Men of My Day in Public Life (London, 1920), p. 83.

[202] Sir Courtenay Ilbert, Methods of Legislation: A Lecture Delivered Before the University of London on October 25, 1911 (London, 1912), p. 25.

modifications. The Bankruptcy Act of 1883 was one of Chamberlain's first attempts as a member of a government to pass legislation, and the record of the entire debate bears witness to the energies he devoted to the project.

To summarize, Parliament's decision in 1883 to abandon the creditor-managed system of bankruptcy administration it had imposed only fourteen years before is not as dramatic as it would first seem. Many of the reforms that extended the role of government in the supervision of the bankruptcy system had widespread support and were for the most part uncontroversial. That so much of the bill was accepted as necessary made the passage of the entire measure much easier. Also, the influence of the business organizations that opposed 'officialism' was not as great as it had been in 1869, largely because they had lost credibility with the failure of the 1869 act's creditor-managed system they has so vigorously supported. This creditor-managed system had failed to meet the needs of creditors of small bankruptcies. Finally, a large measure of the credit for the Bankruptcy Act of 1883 must be given to Joseph Chamberlain and the staff of the Board of Trade. Ilbert and Farrer accepted the growing view of the expanded role that government was to play in society and drafted a statute embodying that new role.

Chapter Eight

Aftermath and Summary of Conclusions

Legacy of the Bankruptcy Act of 1883

By way of epilogue to the history of nineteenth-century bankruptcy reform, some brief observations on the legacy of the Bankruptcy Act of 1883 are in order, in addition to a summary of the major conclusions of this thesis. Of particular interest: the growth and impact of government stimulated by the new official system; and the influence of the statute on bankruptcy legislation in other countries.

Seen from a purely statistical standpoint, in terms of numbers of employees and size of budget, the growth of government resulting from the Bankruptcy Act of 1883 is impressive. After the act passed, the Board of Trade established a separate Bankruptcy Department charged with the new responsibilities of supervising and administering bankrupt estates. For the year ending 31 March 1885, the second full year the Bankruptcy Department was in operation, the civil service estimates showed a budget of over £78,000, thirty-two percent more than the budget of the Treasury and all its subordinate departments and only some £15,000 less than the budget for the entire Home Office.[1] Also, the budget figure for the bankruptcy department given in the civil service estimates does not fully reflect the total cost of the

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[1] Parl. Papers 1884, lii (57), pp. 4, 128: 'Estimates for Civil Services', 25 Feb. 1884.

bankruptcy system because it does not include any part of the salaries of judges and support staff who handled bankruptcy cases. Admittedly, since fees charged in cases funded the Bankruptcy Department's budget, it did not represent an additional outlay of general tax revenues.[2] Nevertheless, in terms of gross outlays, the Bankruptcy Department was one of the larger departments in the British government during the last quarter of the nineteenth-century.

In terms of staff, in 1885 there were already ninety-seven employees of the Bankruptcy Department, including eighteen in the Inspector General's Office and twenty-three salaried official receivers.[3] Although a little more than half merely closed out old cases under the 1869 act, the number of employees of the Bankruptcy Department was significant. In the same year, the Treasury had only 108 employees, and the Home Office, only seventy-nine. Even the factory and workshop inspectorate, often portrayed as the quintessence of nineteenth-century government growth, employed only fifty-six.[4]

The relative size of the Bankruptcy Department compared to other departments of government, however, declined between

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[2] The Board of Trade annually published an 'Account showing the receipts and expenditure on account of Bankruptcy Proceedings'. This account included receipts from all sources connected with the bankruptcy system as well as all expenditures, including those for the Bankruptcy Department. The account, however, did not include the salaries for either the Supreme Court or the County Courts. According to this account, except for the years 1891 and 1907, no deficiency existed in fees to support the system until 1909. Between 1909 and 1914 there was an annual deficiency of approximately £4 to £5 thousand per year. Parl. Papers 1914, lxvii (413), op.cit., p. 8.

[3] Parl. Papers 1884, lii (57), op.cit., pp. 129-30.

[4] Ibid., pp. 103-04, 108-09, 110.

1885 an 1914, not only because the number of bankruptcies declined (described in Chapter Three), but also because other departments grew. The civil service estimates show that the Bankruptcy Department's budget peaked in 1890 at just over £117,000 and declined to £109,000 in 1913.[5] Although the number of employees increased from ninety-seven in 1885 to 114 in 1913, thirty of the employees in this increase were in lower grades such as assistant clerks, boy clerks, charwomen, and messengers.[6] By contrast, the staff of the Home Office tripled between 1885 and 1914, and the number of Treasury employees increased by seventy-five percent.[7]

While the data show an impressive growth in the sheer size of government caused by the Bankruptcy Act of 1883, obviously they offer little information about the extent to which this expansion of government actually affected bankruptcy administration in England. To what extent did larger government translate into greater government involvement in bankruptcy system?

The answer to this question can be divided into two parts, representing the two major goals that the act's proponents saw for the government in its new role. The first task for the government, acting through the Board of Trade and the courts, was the proper examination of the bankrupt's financial affairs and the circumstances surrounding his

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[5] Parl. Papers 1889, lii (49), pp. 132-36: 'Estimates for Civil Services', 4 Mar. 1889; Parl. Papers 1913, xliv (2), pp. 181-84: 'Estimates for Civil Services', 10 Mar. 1913.

[6] Parl. Papers 1913, xliv (2), op.cit., p. 182.

[7] Parl. Papers 1884, lii (57), op.cit., pp. 103-05, 108-09; Parl. Papers 1913, xliv (2), op.cit., pp. 132-33, 141-42.

insolvency. T. H. Farrer called the examination into the conduct of the debtor and exposure of fraud and misconduct 'one of the most important features' of the Bankruptcy Act of 1883.[8] The hope was that such an official investigation might deter those inclined to commit fraud through unscrupulous business practices. It is difficult to judge accurately whether or not the investigations and examinations actually reduced questionable activity or caused a decline in the rate of bankruptcy. The Board of Trade certainly believed that the act had such an effect, and it seems likely that it would have been a deterrent to the more flagrant abuses, but there is no convincing evidence of the degree to which the act was effective in this respect.

The best evidence, although indirect, that the system worked well and had a positive impact is the act's longevity. With minor amendments, principally in 1890 and 1913, the bankruptcy acts were consolidated in 1914.[9] For the most part, the 1914 statute repeated the provisions of the original 1883 act and remained the bankruptcy law for England and Wales until the Insolvency Acts of 1985 and 1986.[10] Even though the Insolvency Acts of 1985 and 1986 changed the form

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[8] BT 20/7 T. H. Farrer to the Secretary, Treasury, 3 Aug. 1883.

[9] 53 & 54 Vict., c. 71 (1890); 4 & 5 Geo. V, c. 59 (1914).

[10] Insolvency Act of 1985 (1985 c. 65); Insolvency Act of 1986 (1986, c. 45). These acts were based with modifications on recommendations made in the Report of the Review Committee of Insolvency Law and Practice (Cmd. 8558, June 1982) and proposals contained in the White Paper 'A Revised Framework for Insolvency Law' (Cmd. 9175, Feb. 1984).

of many of the provisions of the old system, in most respects they retained the intent of the 1883 statute.[11]

Little criticism of the bankruptcy system appeared after 1883, suggesting that the new 'officialism' must have been working satisfactorily. Within only two years after the implementation of the new scheme, a Board of Trade internal report on the office of the Inspector-General in Bankruptcy authored by T. H. Farrer stated that the management of the system was 'on the whole ably and carefully done'.[12] There were some complaints. One witness before the royal commission on depression of trade and industry in 1885 stated that the bankruptcy act was largely ignored (creditors preferring private arrangements), and even as late as 1908, a witness before a committee studying the operation of the bankruptcy system testified there was 'great prejudice against the Bankruptcy system in the minds of creditors ... up and down the country'.[13] Such attacks on the new bankruptcy system were rare.

For the most part, however, there was consistent praise for the system established in 1883. A year after the new act's passage, The Pall Mall Gazette called the bankruptcy act Chamberlain's greatest success and noted costs of

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[11] The official assignee, for instance, still serves as the trustee of the bankrupt estate, unless the creditors appoint their own trustee, and the official receiver still has the duty to investigate the financial affairs of the debtor. Also, the requirement of the public examination of the debtor remains.

[12] BT 15/24 f. 1695/85, T. H. Farrer, 'Office of the Inspector General in Bankruptcy', 13 Feb. 1885.

[13] Parl. Papers 1886, xxi [cmd. 4715], p. 438: 'Second Report of the Royal Commission Appointed to Inquire into the Depression of Trade and Industry', 31 Mar. 1886; Parl. Papers 1908, xxxiv [cmd. 4068], op.cit., p. 172.

bankruptcies had declined considerably.[14] The Associated Chambers in 1884 received only a modest response to its circular asking members to comment on the workings of the new act, and as a result, the Associated Chambers assumed the statutory scheme must be working well.[15] When the 1885 royal commission on the depression of trade and industry asked business organizations whether amendments to the bankruptcy law should be adopted to improve existing conditions of trade, there was only one affirmative response.[16] Further testimony to the success of the new bankruptcy act is that references to bankruptcy, which dominated chamber of commerce proceedings before 1883, almost totally disappeared from the minute books after the introduction of the new bankruptcy act.

Although there is no record of the Board of Trade making a detailed comparison of the performance of the English bankruptcy system with that of the United States, there does exist in the files of the Bankruptcy Department a report of the United States Attorney General on bankruptcy proceedings for the years 1907-1908.[17] This document reveals American bankruptcy losses (liabilities in excess of assets) equaled approximately £25 million in each of the two years. This sum was approximately the same or only slightly less than the

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[14] The Pall Mall Gazette 21 Oct. 1884.

[15] Ilersic, op.cit., p. 71.

[16] Parl. Papers 1886, xxi [cmd. 4621], op.cit., p. 103.

[17] BT/17/B 2539, 'Report of the Attorney General -- Bankruptcy Proceedings'.

figure for England.[18] Even more revealing, the Attorney General's report indicates that dividends to creditors in the United States were only approximately fifty percent or less of the total assets realized, a performance well behind that of the English bankruptcy system.

In 1908, the Board of Trade appointed a committee to review the effect of the provisions of the bankruptcy and deeds of arrangement laws. Chaired by Montague Muir Mackenzie, this committee carried out an exhaustive investigation, taking evidence from sixty-four witnesses, including representatives of numerous commercial associations, bankruptcy officials, and judges. The committee concluded that 'the evidence and documents placed before us do not disclose any dissatisfaction on the part of the commercial community with the main features of the existing law and procedure...'.[19] As a result of this finding, the Mackenzie committee recommended only technical changes in bankruptcy and deed of arrangement laws.

The Board of Trade again in 1924 appointed a committee to look at the workings of the bankruptcy act and suggest amendments. The committee directed its attentions mainly to the penal sections of the act; however, it still found that 'in the main, the Bankruptcy Act, 1914, and the procedure

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[18] There are, of course, difficulties in comparing the two systems because bankruptcy jurisdiction differed. The figure for England includes bankruptcy, deeds of arrangement and company winding-up. Since United States bankruptcy law included company bankruptcies, the figures can be roughly compared.

[19] Parl. Papers 1908, xxxiv [cmd. 4069], op.cit., p. 7.

thereunder have proved satisfactory'.[20] In 1957 yet another Board of Trade committee concluded that apart from the provisions relating to discharge, the basic structure of the bankruptcy law was satisfactory.[21]

The lack of substantive complaint about the new official system and the system's survival in practically the same form for over one hundred years seems sufficient reason to conclude that such a system must have largely fulfilled its goal of properly examining the bankrupt's affairs and the circumstances surrounding his insolvency.

While the 1883 act's successful institution of official investigations into a bankrupt's affairs can only be shown through indirect evidence, the second key feature of the official system -- the efficient management of small bankruptcy estates -- can be accurately measured through the statistics kept by the Board of Trade. Section 121 of the 1883 act provided that cases with assets not likely to exceed £300 were to be administered in a summary manner with the official receiver serving as the permanent trustee, unless the creditors chose to nominate a non-official trustee.[22] Most bankruptcies fell into this category. Between 1884 and 1913, summary cases represented between approximately eighty-one and eighty-six percent of the total number of

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[20] Parl. Papers 1924-25, ix [cmd. 2326], p. 252: 'Bankruptcy Committee, 1924-25', 22 Jan. 1925.

[21] Parl. Papers 1956-57, viii [cmd. 221], p. 844: 'Report of the Committee on Bankruptcy Law and Deeds of Arrangement Law Amendment', July 1957. The only substantive objection to the discharge procedures was that nothing required all bankrupts to petition for a discharge.

[22] 46 & 47 Vict., c. 52, s. 121 (1883).

bankruptcies in each year. Also, the proportion of summary cases tended to increase during the period.[23]

There was little change in the proportion of types of cases administered by official and non-official trustees between the passage of the 1883 act and the First World War. The official receivers were administering between ninety and ninety-five percent of the bankruptcy cases with assets under £300, while non-official trustees tended to be given responsibility for the larger bankruptcies. While official receivers administered five to six times as many cases as non-official trustees, non-official trustees were in charge of cases approximately three times the value in gross receipts (Table 8.1).

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[23] Parl. Papers 1914, lxvii (197), op.cit., p. 50.

Table 8.1 Cases wound-up by official receivers and non-official trustees in 1885, 1895, 1905, and 1913 with gross receipts either less than £300 or in excess of £1000

	1885		1895		1905		1913	
	Number	Gross Receipts (£ thousands)	Number	Gross Receipts (£ thousands)	Number	Gross Receipts (£ thousands)	Number	Gross Receipts (£thousands)
Official Receivers (total number of cases)	1593	£163	3803	£303	4011	£342	2966	£290
cases under £300	1519	113	3634	204	3862	214	2830	165
cases over £1000	3	17	15	21	22	16	17	59
Non-official trustees (total number of cases)	294	£276	767	£1,109	799	£891	452	£ 972
cases under £300	81	19	265	48	352	58	202	31
cases over £1000	63	159	161	831	154	626	87	798

Sources: Parl. Papers 1886, lx [cmd. 4815), op.cit. pp. 36-39; Parl. Papers 1896, lxxvi (267), pp. 46-49: 13th Annual Bankruptcy Report, 30 June 1896; Parl. Papers 1906, cix (261), pp. 498-501: 23rd Annual Bankruptcy Report, 16 July 1906; Parl. Papers 1914, lxvii (413), op.cit., pp. 44-47.

The management of smaller cases by official receivers was exactly what the drafters of the 1883 Bankruptcy Act predicted. They realized that the official machinery was not especially needed for the larger cases where creditors often chose an eminent accountant to serve as special manager and provided a first rate solicitor to assist him.[24]

In economic terms, with the smaller bankruptcy cases, the creditors and government were responding to the need to provide for what economists describe as a 'public good'. As early as the eighteenth-century, David Hume recognized that

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[24] BT 13/4 E. 7498/1886, T. H. Farrer, Allen Stoneham, and G, H, Murray, 'Report on the Establishment of Chief Official Receiver in Bankruptcy', 26 June 1886.

some jobs, although not profitable when performed by one individual, could yet be profitable for society as a whole if performed by collective action.[25] An example of a 'public good' is a nation's defense. It would be obviously unprofitable, if not impossible, for any one citizen to provide such a defense, but there is great benefit for the country as a whole if the task is collectively carried out. Although Victorians were not familiar with the term 'public good', they were certainly aware of the advantages in some situations of collective action -- the construction of drainage, water supply, and sewage disposal facilities being a prominent example. In the context of post-1883 bankruptcy, the 'public good' to be achieved was the collection of receipts from small bankruptcy estates. For one creditor to pursue profitably the collection of marginal assets in a small bankruptcies was impossible. The 'free rider' effect, a common phenomenon where a 'public good' exists, would lead each creditor to wait until someone else had carried out the collection and then step in to claim a 'free' share of the receipts. The Bankruptcy Act of 1883 created a mechanism by which collective action could be taken through official assignees to see that the assets of small bankruptcies were collected to the benefit of all creditors.

The actual extent to which this arrangement of collective action profited creditors can be seen in the statistical evidence collected by the Board of Trade. The actual sums

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[25] Agnar Sandmo, 'Public goods', in John Eatwell et al., eds., The New Palgrave Dictionary of Economics (London, 1987), 3. 1061-65.

recovered in the administration of small bankruptcies were not large (Table 8.2).

Table 8.2 Analysis of bankruptcy cases wound-up in 1885, 1895, 1905, and 1913 in which gross receipts were less than £300 and in which official receivers served as trustees

	1885	1895	1905	1913
Gross receipts	£113,207	£204,614	£214,122	£165,853
Costs as a % of gross receipts	37%	43%	42%	42%
Amount available for dividends	£ 41,785	£ 88,612	£ 91,393	£ 69,783

Sources: Parl. Papers 1886, lx [cmd. 4815], op.cit., pp. 36-39; Parl. Papers 1896, lxxvi (267), op.cit., pp. 46-49; Parl. Papers 1906, cix (261), op.cit., pp. 498-501; Parl. Papers 1914, lxvii (413), op. cit., pp. 44-47.

Nevertheless, the amounts recovered represent net gains to the creditors; the costs deducted included all expenses incurred in the operation of the bankruptcy system charged to creditors. Furthermore, these sums, ranging between £50,000 and £100,000 annually would more than likely have been lost had there been no official apparatus to collect them.

Another reason the official system may have had continued support was the efficiency with which official receivers administered the larger cases put in their charge. Although the lion's share of the cases handled by official receivers had few assets, these officials did administer a number of the larger bankruptcies. If all bankruptcies are considered, the total costs as a percentage of gross receipts for estates managed by official receivers between 1884 and 1913 averaged approximately thirty-three percent while the same figure for

private trustees' estates was only twenty-five percent.[26] This statistic is misleading because it incorporates all classes of cases. Non-official trustees handled a better class of cases where there were more assets to be collected, thus producing a lower figure for costs as a percentage of gross receipts. If bankruptcies are divided into classes according to the total gross receipts, the official trustees had a better performance in both classes of cases (Table 8.3).

Table 8.3 Costs, as a percentage of gross receipts, in bankruptcy cases wound-up by official receivers and non-official trustees in 1885, 1895, 1905, and 1913 with gross receipts either under £300 or over £1000

	1885		1895		1905		1913	
Cases	Official Receivers	Private Trustees	Official Receivers	Private Trustees	Official Receivers	Private Trustees	Official Receivers	Private Trustees
under £300	37%	41%	43%	56%	42%	59%	42%	68%
over £1000	12%	17%	17%	25%	16%	19%	13%	25%

Sources: Parl. Papers 1886, lx [cmd. 4815], op.cit., pp. 36-39; Parl. Papers 1896, lxxvi (267), op.cit., pp. 46-49; Parl. Papers 1906, cix (261), op.cit., pp. 498-501; Parl. Papers 1914, lxvii (413), op. cit., pp. 44-47.

In both small and large cases, the official assignees handled their cases more inexpensively than private trustees. This is also borne out when more than two classes of cases are examined. In 1913, for instance, a typical year, in every category of cases except one (those with assets of between £9,000 and £10,000), the official assignee out-performed his

[26] Parl. Papers 1914, lxvii (413), op.cit., p. 55.

non-official counterpart.[27] Only in the aggregate, where the private trustees have the benefit of a more disproportionate share of the larger asset cases does it appear that private trustees were operating more efficiently.

Another legacy of the Bankruptcy Act of 1883 was its impact on bankruptcy legislation in other countries. A number of dominions and colonies adopted the English bankruptcy act of 1888, as modified by the consolidation act of 1914, almost verbatim -- Australia (1924)[28], Barabados (1925); Cyprus (1930), Fiji (1944), Hongkong (1891), Jamaica, Kenya (1930), Nyasaland (1928), Malawi (1928), Mauritius (1888 statute amended), Singapore (1888), Sarawak (1931), Tanganyika (1930), Trinidad and Tobago (1917), and Uganda (1930)[29]. This development is not surprising since a uniform system of bankruptcy obviously helped trading partners. There were, however, colonies and dominions that never adopted the 1883 English bankruptcy statutory scheme, the most prominent being South Africa and New Zealand.[30]

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[27] Parl. Papers 1914, lxvii (413), op.cit., pp. 44, 46.

[28] Within a few years of the Bankruptcy Act of 1883, the states of Southern Australia and New South Wales adopted similar statutes. 49 & 50 Vict., c. 385 (South Australia) (1886); 51 Vict., c. 19 (New South Wales) (1887). The Australian Parliament adopted a federal statute in 1924 modeled after the English act of 1914, and the revision of this 1924 act in 1966 was based on the premise that existing law had worked well. Act No. 37 of 1924. 'The Bankruptcy Act of 1966', The Australian Law Journal, 40 (31 Oct. 1966), 202.

[29] Act 3 of 1925 (Barabados); Act 8 of 1930 (Cyprus); Ordinance No. 22 of 1944 (Fiji); Ordinance No. 7 of 1891 (Hongkong); the Jamaican statute of 1880 was amended to reflect the English bankruptcy act of 1914; Ordinance No. 32 of 1930 (Kenya); Ordinance No. 6 of 1928 (Nyasaland); Act 6 of 1928 (Malawi); Title xvi, chap. 166 (1888 statute as amended) (Mauritius); Ordinance No. 2 of 1888 (Singapore); Ordinance No. 2 of 1931 (Sarawak); Ordinance No. 9 of 1930 (Tanganyika); Ordinance No. 24 of 1917 (Trinadad and Tobago); Ordinance No. 15 of 1930 (Uganda).

[30] For the development of bankruptcy law in South Africa see Harold Edward Hockly, The

(Footnote Continued)

In India, the 1883 and 1914 English bankruptcy acts were adopted with some modifications in the presidency towns in 1909 and in the provinces in 1920.[31] The major Indian modification was to strengthen the official element. Under the Indian statutes, there was no provision for a creditors' trustee; all estates were to be administered by the official assignee; and a creditors' committee could only be appointed with the permission of the court.

While basing its 1919 bankruptcy act on the 1914 English statute, Canada made major and interesting modifications.[32] The British North America Act of 1867 gave the Parliament of Canada power over 'bankruptcy and insolvency'. The Canadian Parliament passed acts in 1869 and again in 1875, but there was so much discontent that all federal acts were repealed in 1880, leaving the provinces to enact their own bankruptcy systems. At the time of the passage of the Canadian bankruptcy act in 1919, nine separate insolvency acts operated in the various provinces.[33] For this reason, it was impossible to

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(Footnote Continued)
Law of Insolvency in South Africa, 4th edn. (Capetown and Johannesburg, 1948), pp. 5-13. New Zealand adopted its first bankruptcy statute in 1867, and despite revisions including a major revision in 1892 (Act No. 24 of 1892), the English system was not adopted. Other colonies that merely modified their existing bankruptcy laws rather than adopt the English statutory scheme included Bahama Islands, Bermuda, and Ceylon.

[31] Act No. 3 of 1909, 'Presidency-Towns Insolvency Act, 1909'; Act No. 5 of 1920, 'The provincial Insolvency Act, 1920'. Sir Courtenay Ilbert, who had gone to India from the Board of Trade in 1880, was one of the strong supporters for India adopting the British system. D. V. Chitaley and S. Appu Rao, The A. I. R. Manual, 2nd edn. (Bombay, 1962), 12. 1155.

[32] 9 & 10 Geo. V, c. 36 (Canada); Official Report of the Debates of the House of Commons of the Dominion of Canada, cxxxv (1919), 1983.

[33] British North America Act (31 & 32 Vict., c. 3, s. 91 (21); 32 & 33 Vict., c. 16 (Canada) (1869); 38 Vict., c. 16 (Canada) (1875); 43 Vict., c. 1 (Canada) (1880); S. W. Jacobs, 'A Canadian Bankruptcy Act -- Is It A Necessity?', The Canadian Law Times, 37 (Aug. 1917), 604.

adopt the 1914 English bankruptcy act in its entirety, because the Canadian Parliament would have had to reconcile the variations in the laws of the provinces, including a civil law scheme adopted in Quebec.[34]

The major difference between the Canadian and English acts was the Canadian attempt to avoid as far as possible application to the court.[35] Under the Canadian statute, the debtor in a voluntary case makes an assignment for the benefit of his creditors to an approved trustee instead of presenting a petition in court. The trustee is appointed by the government and not by the judiciary. Neither did Canada embrace much of the official system that marked the English bankruptcy act. Official receivers were not given the investigative duties and responsibilities that existed with the English statute. Finally, Canada, following the example of the United States, excluded wage earners and farmers from involuntary bankruptcy.

The development of the modern American bankruptcy system, which also took place at the end of the nineteenth-century, should be briefly mentioned because it was probably influenced to some extent by the English bankruptcy act. The American constitution empowers Congress to 'establish .. uniform Laws on the subject of Bankruptcies throughout the United States'.[36] Despite this power, not until 1800 did

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[34] Official Report of the Debates of the House of Commons of the Dominion of Canada, 1919, cxxxiv. 932.

[35] Ibid., 1919, cxxxv. 1985-88.

[36] United States Constitution, Art. I, Sec. 8.

Congress pass a federal bankruptcy statute, only to repeal it three years later. The next attempt at a federal bankruptcy statute was an 1841 act that remained in force only one year. The depression of the mid-1860s caused Congress to try once again to establish a national bankruptcy law with the adoption of the Bankruptcy Act of 1867. Amended several times, this act was finally repealed in 1878. Agitation for new national bankruptcy legislation began in earnest in 1890 with the proposal of what came to be known as the 'Torrey' bill. Written by a St. Louis attorney, Jay Torrey, on behalf of a national group of merchants, 'The National Convention of the Representatives of the Commercial Bodies of the United States'[37], this bill with major modifications finally became law in 1898 and remained the core of the bankruptcy system in the United States until the passage of a new bankruptcy code in 1978.[38]

Although England had recently passed a bankruptcy act, the record of the debates on various bankruptcy bills introduced in Congress in the 1890s reveals hardly any mention of the new English system. The only hint as to why this was the case comes in a brief statement by a congressman during the debate over the 1898 bill. According to Congressman Doliver,

> It is not necessary to critically examine the operation of the present English bankruptcy law,

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[37] United States Congress, Congressional Record, 51st Cong., 21 Part B (22 July 1890), 7569. The 'National Convention' was composed of twenty-eight organizations including boards of trade, chambers of commerce, merchant associations, and wholesale grocers and manufacturers associations principally from the north-east and mid-west part of the country.

[38] 'Bankruptcy Act of 1898', United States Statutes at Large, Vol. 30, Part I, c. 541; 'Bankruptcy Code of 1978', P. L. 95-598, United States Statutes at Large, Vol. 92, Part 2, 92 Stat. 2549.

> since whatever success it enjoys more than was secured by former enactments comes from the employment of such machinery of the Government as is wholly impractical in the United States.[39]

Apparently, Congress accepted as a forgone conclusion that the English form of 'officialism' was not applicable to the situation in the United States.

Indeed, the final version of the Bankruptcy Act of 1898 did show major differences from the system adopted by Parliament in 1883. The United States' statute applied to all business corporations, including national banks, but exempted farmers and wage earners from involuntary petitions. Under the United States' act, a grace period allowed debtors to reorganize their affairs or reach compositions with creditors. The most important distinction, however, between the two bankruptcy systems was the absence of 'officialism' in the American system. Although Congressman Doliver did not say so, the organization of official receivers under the direction and supervision of the Board of Trade must have been what he was referring to when he spoke of '... such machinery of Government as is wholly impractical in the United States'. There was never any suggestion in the Congressional debates that the United States should adopt England's form of 'officialism' in the supervision and administration of bankrupt estates and no equivalent of an 'official receiver', salaried by an executive department of government, appears in the United States 1898 act.

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[39] United States Congress, Congressional Record, 55th Cong., 31 Part 2 (17 Feb. 1898) 1856.

Despite the United States' rejection of the British form of official administration, there were many similarities between the British bankruptcy act of 1883 and the American act of 1898. Under both, bankruptcy proceedings were initiated by proof of one or more 'acts of bankruptcy', and once a petition had been filed, all actions against the debtor outside of bankruptcy were stayed. Both acts provided for compositions, although the American Statute was slightly less stringent in the requirements for creditor approval. In addition, both acts provided for discharge only upon court approval and allowed for examination of the debtor about his financial affairs.

A legislative history of the United States bankruptcy act of 1898 is well beyond the scope of this thesis; however, while no direct evidence can be offered that many of the provisions of the American act were directly adopted from the English statute, so many similarities seem to make it unlikely that the American statute was drafted without any reference to the English bankruptcy act of 1883.

Summary of conclusions

Statistics support the Victorians' notion that financial failure was a significant problem for English society. In the first half of the nineteenth-century, losses from formal bankruptcies alone are estimated to have been between £4 and £5 million per year, not including the losses resulting from seven to eleven thousand compositions that debtors entered into each year. In addition, losses covered under the

insolvency laws for 'non-traders' and for small indebtedness are unknown. Losses in the 1860s from bankruptcy and composition-type arrangements ranged from £11 to £13 million annually (Tables 3.3 and 3.7). For the 1870s and 1880s, these losses averaged approximately £17 million annually or an average of around three quarters of a percent of the gross domestic product (Table 3.4 and 3.8). These figures do not include the unknown amount of losses from company winding-up. Between 1892 and 1913, estimated losses from all three components of insolvency -- bankruptcy, deeds of arrangement, and company winding-up -- averaged approximately £28 million annually or between one and two percent of gross domestic product each year. Although there was a shift in the amount of insolvency represented by bankruptcy to that represented by company winding-up, the level of all three insolvency components declined from the passage of the Bankruptcy Act of 1883 until the First World War.

The extent to which bankruptcy legislation affected insolvency levels will never be fully known. What is certain is that legislation had an effect on the method creditors chose to manage bankruptcy estates, that is, either through bankruptcy, compositions or deeds of arrangement. Depending on the provisions of the particular statute in force, creditors and debtors would employ the method of liquidation that proved the post advantageous. When the law changed, so too would the popularity of a particular method. As to the effect of legislation on the insolvency level itself, there is no evidence to confirm or deny the claim of bankruptcy officials that the 1883 act had the effect of reducing financial failure. It seems likely, however, that the provisions of the

act requiring investigations of the circumstances of bankruptcies, examinations of bankrupts, and penalties for misconduct could not help but have had a favourable effect.

As to some of the characteristics of insolvency, there is evidence, principally the low rates of bankruptcy in some occupations, that creditors and debtors handled some insolvency outside of the formal legal system. While the bankruptcy level declined in the three decades before the First World War, the rate of bankruptcy in certain occupations clearly did not reflect this decline. With regard to the impact of trade cycles, evidence shows that random factors such as illness or injury of proprietors, dishonesty of employees, or lack of credit may have played just as great a role as trade cycles in affecting bankruptcy levels. There was a tendency for bankruptcies to increase in number during trade slumps and decline as the trade cycle improved, but the more dramatic pattern in bankruptcies is the almost continuous fluctuation in the numbers of bankrupts irregardless of the trade cycle. To a large extent, the cause of this pattern was that most bankruptcies represented failures of small firms that were subject to random factors unrelated to the performance of the economy as a whole.

The problem of insolvency during the last century was addressed by a movement to reform the English system of bankruptcy administration. This movement was only part of a much broader effort to reform many areas of English law. Numerous factors stimulated the movement, including humanitarian and evangelical forces. Yet a combination of two elements was the principal stimulus. First, in a broad sense, change in the system of bankruptcy administration resulted from a

Benthamite spirit of inquiry seeking to improve many aspects of the English legal system. Second, the various nineteenth-century bankruptcy acts reflect an attempt to respond pragmatically to the problem of effectively and efficiently managing bankrupt estates.

There is no doubt that Jeremy Bentham influenced alterations in the bankruptcy system. Certain technical changes in the law, such as the evidentiary reforms of the 1809 act or the abolishing fee-supported commissioners in the 1831 act, can be traced directly to Bentham's suggestions for reforms in the legal system. Of even greater importance than Bentham's direct influence, however, was the indirect influence of his spirit of inquiry that questioned the utility of many aspects of English law. Men such as Samuel Romilly and Henry Brougham, key figures in early reforms of the bankruptcy system, were caught up by the ideas of Bentham that led to changes not only in the bankruptcy system, but also in a number of areas of English civil and criminal law.

Yet Sir Henry Maine's claim that every law reform in the nineteenth-century can be traced to Jeremy Bentham overstates the case when it comes to reform of the bankruptcy system. The substantial changes in bankruptcy administration during the second quarter of the nineteenth-century, most notably the official supervision and administration of bankrupt estates, had no Benthamite lineage, but rather grew from the practical suggestions of lawyers like Burgess, Evans and Montagu familiar with the bankruptcy system.

Behind these practical suggestions was the overriding drive to administer bankrupt estates in the most efficient and inexpensive manner possible and to maximize dividends

paid to creditors. This simple economic consideration not only was behind the establishment of officialism in 1831, but also caused business interests to pressure Parliament in the 1860s to abandon 'officialism' for the chimerical economic benefits of the 'Scottish system'. The poor collection of assets in smaller bankruptcies was the Achilles heel of the creditor-managed system, and the reintroduction of an official system in 1883 rose from, in part, the economic benefits of allowing assets of small estates to be collected by a government official on behalf of all creditors.

Although elements of both Benthamism and pragmatism influenced the reform of the bankruptcy system, the efforts of specific groups and individuals cannot be ignored. The influence of the business community on bankruptcy reform dates back at least to the early eighteenth-century, when Parliament received petitions from various merchant and trader groups. It was a memorial in 1817 from merchants, bankers, and traders in London that resulted in a select committee to study bankruptcy laws. The work of this committee and banker and member of Parliament John Smith led to the bankruptcy reforms in the 1820s. There was also the 1843 petition campaign, in which business groups in twenty-nine cities urged Parliament to make certain changes in the system. At the same time, the London committee operated for over twenty years seeking improvements in bankruptcy administration.

Parliament did not turn a deaf ear to the early cries for reform from business groups. As early as 1706, Parliament responded by restoring the creditors' power to approve or disapprove discharges, which had only been removed the year

before. The fact that Parliament in 1831 was willing to alter the Chancery Court's jurisdiction over bankruptcy matters, a power it had held for over 250 years, demonstrates how far Parliament was willing to go to meet the complaints of the merchants and traders about the system of bankruptcy administration. There is even the example of how one warehouseman's suggestion to classify discharges became a central feature of bankruptcy law in the 1840s.

The influence of business reached its zenith with the rejection of officialism in the 1860s and the imposition of a creditor-managed system. This influence was largely the result of the increased organization of large segments of the business community through groups such as the Associated Chambers of Commerce, the Institute of Bankers, the Institute of Accountants, and certain committees of the National Association for the Promotion of Social Science. This study has shown, however, the danger of assuming that the 'business community' always expressed a uniform opinion. During the 1860s small creditors disagreed with large creditors over the important issue of retaining official assignees, and London merchants differed with those outside the metropolis on issues such as the necessity of appointing a chief judge in bankruptcy. The influence of the organized business community waned in the 1870s and 1880s, however, principally because of its inability to recognize the needs of smaller creditors who suffered from not having an official assignee to collect assets in the more marginal bankruptcies. As has been shown, after the passage of the 1883 act, around seventy-five percent of the bankruptcies had assets of less than £200 and

almost all these small cases were handled by official assignees.(Tables 4.1 and 8.1).

Another trend this study has highlighted is the decline of the influence of the legal profession in bankruptcy reform during the course of the century. Lawyers on the whole were responsible for the provisions of the bankruptcy act of 1831. Subsequent bankruptcy acts, at least until 1869, were also largely the handiwork of lawyers, as in the case of Lord Lyndhurst's efforts in 1842, Brougham's again in 1849, and Sir Richard Bethell's work on the Bankruptcy Act of 1861. After the mid-1860s the legal profession, acting through such groups as the Law Society, showed little interest in the reform of the bankruptcy system, provided reforms did not encroach upon the livelihood barristers and solicitors earned from the system.

The void in leading bankruptcy reform left in the 1880s as a result of the decline of business influence and the widespread indifference of the legal profession was filled by Joseph Chamberlain and the senior staff of the Board of Trade, principally the board's permanent secretary, T. H. Farrer. These men grasped the conceptual key to successful bankruptcy legislation. From an economic standpoint, they understood that government must play a role in the administration of bankrupt estates, especially smaller ones, if such estates were to be managed in the most inexpensive manner and yield the largest possible dividends to creditors. Chamberlain and Farrer also realized that bankruptcy was not merely a problem for creditors but affected society as a whole. Financial failures like any other public calamity

should be investigated so that measures could be taken to lessen the chances for occurrence in the future.

The history of bankruptcy reform bears many resemblances to the history of other Victorian reform movements. To begin with, as with other nineteenth-century reforms, Parliamentary select committees and royal commissions played a critical role in identifying the problems with the system. The inauguration of nineteenth-century bankruptcy reform came with the appointment of the 1817-1818 select committee, and Lord Lyndhurst's 1842 act was the offspring of the 1840 royal commission studying the operation of bankruptcy laws. The adoption of the creditor-managed system in 1869 largely resulted from findings of the 1864-65 Parliamentary select committee.

The reformed bankruptcy system had its version of a centrally operated inspectorate, the hallmark of other Victorian administrative systems. The official assignee under the 1831 act and the official receiver under the 1883 act were directed to monitor the progress of individual bankruptcies and to report to the court any evidence of wrongdoing, either before or after the filing of the bankruptcy petition. After 1883, the Bankruptcy Department of the Board of Trade filled the role of a central controlling body, a role also found in the organization of poor relief, the implementation of sanitary regulations, and other areas of increased state intervention.

Another common feature of nineteenth-century reform movements was the pressure for reform applied by organized voluntary groups. Just as the Health of Towns Association lobbied for sanitary reform, so the London committee, local

chambers of commerce, the Associated Chambers of Commerce, the Law Society, and other groups petitioned Parliament to reform the system of bankruptcy administration.

Finally, the arguments used in the debate over bankruptcy reform in many respects resembled those in debates over other reforms in the Victorian period. The criticism that bankruptcy officialism would mean increased patronage and government corruption that Brougham faced in 1831 and Chamberlain in 1883 would have been familiar to the proponents of poor laws, public health acts, and railroad regulation. Similarly, Chamberlain's distinction between 'supervision' and 'administration' was a tactic used by many Victorian reformers to overcome objections to increased state intervention.

While all Victorian reforms may not fit exactly into any strict pattern, nevertheless this study adds to the evidence that they have enough similarities to constitute a distinct and identifiable process, one which laid the foundation for the modern British state. In this process bankruptcy reform played a definite and influential role.

Appendix A Bankruptcy dividend account, 1835-1860

Year	Amount paid out	Year	Amount paid out
1835	£ 690,940	1848	no statistics
1836	527,937	1849	£ 694,149
1837	618,284	1850	705,257
1838	406,011	1851	618,253
1839	295,172	1852	615,586
1840	284,674	1853	540,400
1841	602,228	1854	524,372
1842	702,816	1855	no statistics
1843	1,118,599	1856	811,964
1844	1,213,004	1857	1,035,661
1845	922,681	1858	1,000,851
1846	863,025	1859	no statistics
1847	no statistics	1860	583,635

Sources: Parl. Papers 1836, xliii (22), p. 57; Parl. Papers 1837, xliv (52), p. 73; Parl. Papers 1837-38, xliv (139), p. 303; Parl. Papers 1839, xliii (48), p. 155; Parl Papers 1840, xli (78), p. 55; Parl. Papers 1841, xx (106), p. 465; Parl. Papers 1842, xxxiii (60), p. 443; Parl. Papers 1844, xxxviii (273), p. 479; Parl. Papers 1845, xxxvi (63), p. 250; Parl. Papers 1846, xxxiii (65), p. 158; Parl. Papers 1847, xlvi (406), p. 348; Parl. Papers 1851, xlvii (91), p. 243; Parl. Papers 1852, xlii (149), p. 521; Sess. Papers 1852-53, xxv (75), p. 21; Sess. Papers 1850, xx (50), p. 209; Sess. Papers. 1857-58, xviii (11), p. 21 and (37), p. 27.

See, Chapter Three, p. 80.

Appendix B Persons adjudicated bankrupt, total assets and liabilities, 1870-1883

Year	Number	Assets(1)	Liabilities(2)
1870	1,351	£1,965,589	£7,932,520
1871	1,238	554,770	3,974,767
1872	933	622,146	2,649,646
1873	915	675,023	4,045,127
1874	930	485,445	3,788,639
1875	965	960,755	6,981,240
1876	976	518,353	3,833,523
1877	967	486,630	2,923,907
1878	1,084	1,930,731	9,287,156
1879	1,156	570,713	4,298,721
1880	995	336,936	2,733,158
1881	1,005	319,713	2,728,464
1882	995	400,506	3,367,138
1883	1,046	462,123	4,321,212

(1) as estimated by trustees

(2) as stated by bankrupts, or where no statement of affairs filed, as estimated by trustees

Sources: Parl Papers, Annual bankruptcy reports by the comptroller in bankruptcy 1871-1884, Table 6.

See, Chapter Three, p. 84.

Appendix C Bankruptcy 'receiving orders entered'*, total assets and liabilities, 1884-1913

Year	Number	Assets	Liabilities
1884	3,260	£3,117,040	£10,049,398
1885	4,354	3,101,323	9,064,456
1886	4,857	2,877,644	7,995,037
1887	4,866	2,682,522	8,995,752
1888	4,859	2,256,379	7,148,950
1889	4,542	1,998,957	6,380,362
1890	4,044	2,238,584	6,184,146
1891	4,242	3,164,966	8,600,726
1892	4,657	3,089,791	8,892,162
1893	4,901	2,834,533	7,547,794
1894	4,794	2,373,884	7,018,168
1895	4,415	2,046,627	6,547,700
1896	4,170	2,339,936	5,919,197
1897	4,098	2,802,602	5,771,557
1898	4,310	2,622,492	6,827,728
1899	4,111	1,937,170	5,925,222
1900	4,410	2,603,238	6,479,315
1901	4,244	3,242,445	6,794,320
1902	4,202	2,770,881	5,569,669
1903	4,286	2,535,432	5,320,967
1904	4,546	2,803,594	6,961,836
1905	4,764	2,343,627	5,915,867
1906	4,436	1,886,621	5,762,199
1907	4,111	1,917,338	5,673,623
1908	4,306	2,103,492	5,509,949
1909	4,070	2,154,034	5,804,142

Appendix C continued

Year	Number	Assets	Liabilities
1910	3,880	£2,867,068	£8,211,678
1911	3,742	2,180,869	6,841,470
1912	3,581	1,827,110	4,913,950
1913	3,358	1,790,463	5,091,265

* 'Receiving orders entered' means the total number of debtors adjudicated bankrupts, the number of schemes of arrangement and compositions under section 18 of the Bankruptcy Act of 1883 and Section 3 of the Bankruptcy Act of 1890, and the number of orders for the administration of deceased debtors' estates under section 125 of the Act of 1883.

Sources: Parl. Papers. -- Annual bankruptcy reports 1883-1913.

See, Chapter Three, p. 84.

Appendix D Deeds of assignment, inspectorships, and compositions, 1862-1868: gross value of estate and effects and gross amount of unsecured debts

Year	Deeds of Assignment		Inspectorships		Compositions	
	Number	Gross value of estate & effects	Number	Gross value of estate & effects	Number	Gross value of estate & effects
1862	1,967	not available	44	not available	640	not available
1863	2,308	" "	19	" "	689	" "
1864	2,208	£2,138,600	48	£ 1,162	1,348	£1,198,300
1865	2,733	3,649,500	127	5,548	2,344	3,166,700
1866	2,611	3,619,800	133	2,992,500	2,714	2,862,800
1867	2,803	3,504,700	138	1,805,300	3,971	3,427,100
1867 gross amount of unsecured debts		10,642,646		10,753,550		8,246,432
1868	2,708	2,499,500	91	969,700	5,246	3,592,900
1868 gross amount of unsecured debts		6,458,729		5,500,923		9,276,545

Sources: Parl. Papers 1864, xlviii (31), p. 303; Parl. Papers, 1865, xlv (28), p. 1; Parl. Papers, 1866, lviii (35), p. 2; Parl. Papers, 1867, lvii (61), p. 33; Parl. Papers, 1867-68, lvii (129), p. 1; Parl. Papers 1868-69, li (26), p. 89.

gross amt. of composition paid

See, Chapter Three, p. 96.

Appendix E Liquidations by arrangement, 'gross amount of debts' and 'gross value of estate', 1870-1883

Year	Number	Gross amount of debts (= liabilities)	Gross value of estate (= assets)
1870	6,854	£ 6,230,287	£2,235,191
1871	10,669	6,549,892	2,454,310
1872	11,666	8,427,774	2,656,253
1873	13,329	11,019,375	4,034,553
1874	14,139	11,131,915	3,461,893
1875	14,135	12,483,999	4,598,473
1876	16,822	11,183,949	3,899,059
1877	17,618	11,594,555	4,016,123
1878	21,361	14,774,342	5,433,372
1879	24,529	17,989,482	7,307,999
1880	19,316	9,318,633	3,337,941
1881	18,121	10,649,483	3,580,738
1882	17,529	10,936,761	3,910,408
1883	16,379	13,038,915	4,534,035

Sources: Parl. Papers, Annual bankruptcy reports by the comptroller in bankruptcy 1871-1884, Table 9.

See, Chapter Three, p. 97.

Appendix F Deeds of arrangement, liabilities and assets as estimated by debtors, 1888-1913

Year	Number	Liabilities	Assets
1888	3,495	£4,803,481	£2,416,755
1889	3,337	4,773,947	2,352,941
1890	3,495	4,360,271	2,416,755
1891	3,008	5,092,448	3,106,755
1892	3,333	5,957,022	2,937,315
1893	3,938	7,573,866	3,440,552
1894	3,894	6,419,099	3,161,675
1895	3,462	4,879,021	2,542,002
1896	3,271	4,479,883	2,338,707
1897	3,208	3,980,615	1,910,492
1898	3,246	3,846,759	1,978,927
1899	2,974	3,371,666	1,774,321
1900	3,354	4,263,610	2,486,913
1901	3,369	4,000,441	2,255,012
1902	3,305	4,483,128	2,756,744
1903	3,622	4,354,315	2,505,669
1904	4,085	5,124,521	2,966,743
1905	3,839	3,758,603	2,046,955
1906	3,641	4,364,082	2,618,660
1907	3,488	5,214,504	3,100,784
1908	3,822	5,858,447	3,545,373
1909	3,491	3,910,834	2,032,588

Appendix F continued

Year	Number	Liabilities	Assets
1910	3,364	£3,450,922	£1,937,474
1911	2,950	4,006,126	2,083,588
1912	2,770	3,139,990	1,654,553
1913	2,411	2,765,929	1,512,919

Sources: For 1888-1890, Parl. Papers 1893-94, lxxxi (409), p. 9: 10th Annual Bankruptcy Report, 5 Sept. 1893;
For 1891-1900, Parl. Papers 1901, lxix (323), p. 169: 18th Annual Bankruptcy Report, 9 Aug. 1901;
For 1901-1913, Parl. Papers 1914, lxvii (413), p. 65: 31st Annual Bankruptcy Report, 4 Aug. 1914.

See, Chapter Three, p. 100.

Appendix G Total number of compulsory, supervised, and volutary liquidations, 1891-1913

Year	New Co.s registered	Compulsory liquidations	Supervised liquidations	Voluntary liquidations	TOTAL	Percentage of compulsory to total liquidations
1891	2,447	119	32	722	873	14 %
1892	2,371	117	53	921	1,091	11
1893	2,332	139	43	860	1,042	13
1894	2,670	114	51	833	998	11
1895	3,538	90	52	918	1,060	8
1896	4,735	86	24	1,152	1,262	7
1897	5,229	108	53	1,426	1,587	7
1898	4,653	125	66	1,554	1,745	7
1899	4,533	108	37	1,648	1,793	6
1900	4,510	117	38	1,649	1,804	6
1901	3,132	110	20	1,488	1,618	7
1902	3,596	112	16	1,501	1,629	7
1903	3,692	83	19	1,530	1,632	5
1904	3,478	98	18	1,484	1,600	6
1905	3,967	89	17	1,587	1,693	5
1906	4,395	116	12	1,602	1,730	7
1907	4,810	108	13	1,676	1,797	6
1908	4,639	126	14	1,980	2,120	5
1909	5,833	146	17	1,781	1,944	7
1910	6,707	135	14	1,811	1,960	6
1911	5,959	160	18	1,883	2,061	7
1912	6,796	151	18	1,898	2,067	7
1913	6,871	137	10	1,799	1,946	7

Sources: Parl. Papers 1904, lxxxvii (311), p. 508: Companies (Winding Up) Annual Report, 4 August 1904; Parl. Papers 1914, lxxix (348), p. 149: Companies Annual Report, 13 July 1914.

See, Chapter Three, p. 105.

Appendix H Amount of capital involved in company liquidations, 1892-1913

	Compulsory		Supervised		Voluntary		
Year	Public	Vendor	Public	Vendor	Public	Vendor	TOTAL
1892	£3,069,328	£1,320,768	£1,485,239	£2,984,956	£22,663,653	£10,956,136	£42,480,080
1893	5,740,189	3,175,685	1,315,893	652,548	15,927,793	14,635,653	41,447,761
1894	2,811,573	1,559,127	1,232,052	226,413	20,761,676	16,015,926	42,606,767
1895	552,489	1,942,601	950,218	372,939	17,465,908	12,485,166	33,769,321
1896	291,589	1,295,364	204,240	388,680	23,806,032	20,508,541	46,494,446
1897	658,488	2,940,306	839,639	1,112,953	25,249,657	22,746,635	53,547,678
1898	679,400	2,269,539	1,354,331	1,210,950	28,637,600	32,551,038	66,702,858
1899	548,495	2,393,088	881,558	670,418	31,974,693	40,459,304	76,927,826
1900	1,152,241	1,756,230	683,355	657,635	29,059,567	38,192,314	71,501,342
1901	2,735,707	5,375,733	270,276	534,074	25,066,470	29,401,150	63,383,410
1902	619,381	1,936,186	492,134	404,951	28,811,840	32,005,962	64,270,454
1903	1,022,658	1,206,362	269,612	183,781	25,876,135	38,085,155	66,643,703
1904	503,418	2,662,572	321,993	631,459	21,423,924	29,300,110	54,843,476
1905	991,965	2,014,648	625,359	281,940	23,445,636	22,735,721	50,095,269
1906	519,898	1,463,264	221,439	178,810	22,524,254	27,403,780	52,311,805
1907	979,002	968,667	178,950	381,673	21,178,248	24,137,346	47,823,886
1908	787,302	1,371,057	263,415	530,987	25,528,120	33,138,476	61,619,357
1909	1,754,981	2,313,871	570,562	69,041	27,716,902	33,930,347	66,355,704
1910	946,547	1,375,922	47,784	54,848	23,066,243	21,248,021	46,739,365
1911	3,363,446	2,711,820	1,282,321	911,500	17,741,462	18,039,215	44,049,764
1912	1,412,181	1,958,119	132,401	277,954	26,952,247	24,095,431	54,828,333
1913	973,883	3,991,302	129,110	87,800	21,901,982	17,296,608	44,380,685
TOTAL	£23,304,644	£43,506,138	£10,950,749	£9,168,806	£488,188,866	£533,776,246	£1,108,895,449

Sources: Parl. Papers 1904, lxxxvii (311), p. 508: Companies (Winding Up) Annual Report, 4 Aug. 1904;
Parl. Papers 1914, lxxxix (348), p. 149: Companies Annual Report, 13 July 1914.

See, Chapter Three, p. 114.

Appendix I Numbers of bankruptcies in selected occupations, 1885-1913

Year	Architects-Surveyors	Bakers	Boot & shoe mfgr.-dealers	Builders	Butchers	Drapers-haberdashers
1885	16	25	151	239	48	123
1886	20	104	187	255	81	117
1887	16	128	152	289	101	119
1888	16	116	150	251	134	112
1889	17	127	147	239	154	117
1890	18	117	144	226	130	78
1891	16	94	137	207	116	101
1892	19	119	157	237	118	93
1893	21	123	141	235	131	105
1894	15	135	110	284	119	105
1895	13	99	125	229	144	88
1896	13	122	109	222	106	92
1897	12	123	129	214	165	95
1898	11	136	140	242	144	93
1899	23	116	107	231	152	85
1900	12	98	109	374	166	97
1901	10	95	115	282	134	96
1902	23	117	108	266	131	97
1903	13	128	106	315	99	114
1904	26	142	112	313	135	110
1905	21	144	98	299	140	102
1906	18	129	85	309	134	95
1907	19	119	93	303	132	91
1908	26	170	96	291	150	76
1909	18	163	84	205	114	82
1910	12	149	84	201	121	102
1911	20	105	64	237	98	56
1912	24	132	69	202	109	77
1913	13	95	61	165	106	73

Appendix I continued

Year	Farmers	Furniture dealers-makers	Fish-mongers	Grocers	Jewellers	Publicans
1885	206	35	29	317	88	285
1886	332	30	50	365	69	331
1887	295	30	39	337	90	342
1888	282	30	44	350	54	321
1889	247	25	52	335	39	273
1890	172	22	40	258	40	240
1891	183	34	36	290	42	260
1892	236	27	35	332	49	325
1893	283	36	42	331	69	328
1894	281	35	52	280	34	351
1895	313	28	47	289	72	311
1896	260	43	50	290	48	296
1897	248	29	53	299	33	240
1898	188	40	48	317	41	249
1899	144	27	46	280	45	301
1900	173	41	61	292	43	281
1901	168	50	55	302	39	276
1902	178	32	58	298	52	262
1903	155	59	71	293	41	236
1904	184	54	60	280	57	253
1905	213	47	87	318	48	293
1906	187	31	77	312	44	256
1907	172	40	58	258	46	231
1908	189	46	62	249	57	253
1909	178	33	59	295	29	199
1910	148	36	83	249	40	168
1911	198	35	67	199	34	197
1912	206	30	64	199	41	156
1913	193	28	53	184	33	118

Appendix I continued

Year	Tailors	Tobacconists	Wine & spirit merchants
1885	125	34	36
1886	132	23	21
1887	91	42	19
1888	81	42	23
1889	96	38	18
1890	80	28	19
1891	83	29	33
1892	96	37	21
1893	116	53	19
1894	104	37	21
1895	99	37	28
1896	85	44	24
1897	72	45	13
1898	95	36	20
1899	96	34	13
1900	72	44	17
1901	89	47	18
1902	74	44	13
1903	92	48	14
1904	104	43	13
1905	105	53	10
1906	95	47	13
1907	98	29	20
1908	80	50	16
1909	116	42	11
1910	70	54	15
1911	81	41	14
1912	67	52	9
1913	69	45	7

Sources: Parl. Papers -- Annual Bankruptcy Reports, 1885-1913

Appendix J Numbers of bankruptcies in selected cities, 1885-1913

Year	Birmingham	Bristol	Ipswich	Leeds	London	Manchester
1885	113	61	16	106	768	82
1886	138	73	28	105	812	79
1887	130	77	25	92	856	86
1888	100	86	36	95	845	71
1889	88	71	47	123	818	108
1890	97	68	35	122	785	62
1891	122	71	24	102	828	73
1892	128	80	29	122	909	85
1893	125	80	32	115	907	66
1894	142	92	24	132	876	76
1895	130	70	21	136	712	75
1896	118	57	24	114	663	72
1897	94	78	24	95	677	82
1898	110	79	19	137	727	69
1899	115	69	21	133	725	86
1900	144	70	19	136	709	75
1901	115	75	22	117	700	90
1902	117	50	24	130	598	92
1903	125	52	28	131	678	71
1904	129	64	32	131	682	101
1905	140	67	41	172	772	86
1906	103	64	27	122	672	82
1907	105	84	31	101	680	66
1908	111	78	24	116	725	80
1909	104	64	24	116	654	83
1910	92	59	28	90	679	26
1911	65	54	27	96	702	25
1912	62	49	21	75	675	67
1913	59	51	29	64	658	25

Appendix J continued

Year	Liverpool	Newcastle-on-Tyne	Nottingham	Norwich	Swansea
1885	148	104	88	29	29
1886	139	112	122	37	46
1887	131	99	110	43	42
1888	92	90	130	56	26
1889	89	62	107	59	35
1890	100	57	74	47	30
1891	95	72	62	40	34
1892	121	60	59	32	45
1893	90	65	75	44	68
1894	91	60	69	44	58
1895	81	62	75	54	66
1896	79	62	52	42	45
1897	70	54	78	34	31
1898	78	62	65	35	48
1899	66	56	52	42	29
1900	67	53	66	51	44
1901	75	59	56	46	31
1902	78	62	60	58	31
1903	69	89	58	64	28
1904	89	62	76	50	46
1905	68	71	68	43	42
1906	79	65	65	47	47
1907	60	59	43	46	34
1908	71	51	49	54	36
1909	64	63	44	38	30
1910	74	54	60	39	30
1911	61	51	67	35	29
1912	50	44	59	53	25
1913	47	31	69	47	20

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