

**LAW, CLASS, AND ENTREPRENEURSHIP. BANKRUPTCY AND DEBT
DISCHARGE IN ENGLAND AND WALES, C.1890-1939.**

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C.1890-1939.

This paper analyses the functioning of debt discharge procedures in England and Wales between c. 1890-1939. This study shows that in general judges used criteria provided by the law and their autonomy in the direction of supporting productive use of economic resources. The system however was not perfect and traditional explanations of British economic decline, such as class and geographic divide, plaid a part.

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The role of entrepreneurship in the narrative of Britain's alleged economic decline during the Victorian, Edwardian, and interwar periods is at the centre of a long-lasting debate. In general terms, the argument suggested by the "pessimists" is one of geographic and class separation between the industrial and commercial middle-class in the North, and the aristocratic, finance-oriented South, London in particular. This divide – so the argument runs – manifested itself in various ways: the passiveness and lack of interest of the credit market for domestic industrial projects, the non-technical nature of the educational system, and the anti-business character of the cultural and moral values of the time.¹

Despite the large number of studies supporting or criticising this view,² the role of the legal system, in particular the impact of commercial law, has attracted relatively

¹ The historiography on this topic is vast and hard to summarise in one footnote. Just to quote a few pillars of the debate, Cain and Hopkins (*British imperialism*) provided the concept of "gentlemen capitalism", and Elbaum and Lazonick (*The Decline*) a classic collection on the role of institutional forces in British decline. On more specific issues, Kennedy (*Industrial Structure*) emphasised the limits of the financial sector, Allen (*The British disease*) analysed the distortions in the educational system, while Wiener (*English culture*) provided a general study of the role of cultural values. For a comprehensive and up-to-date survey, see Nicholas ("Enterprise and management.").

² A general criticism of the very idea of British entrepreneurial failure can be found in McCloskey and Sandberg ("From damnation to redemption"), while, among many others, Baker and Collins (*Commercial Banks*) reclaimed the relative efficiency of British commercial banks, and Rubinstein

little attention. For example, in a recent survey on the problem of entrepreneurial failure in Britain, the issue of the impact of company law was only mentioned regarding its alleged role in constraining information disclosure.³

In the last two decades a growing body of literature in economics has stressed that legal institutions are fundamental for economic growth⁴ emphasizing, among other elements, the link between personal bankruptcy law and entrepreneurship. In particular debt discharge, by easing the conditions for restarting a business after bankruptcy, is seen as providing an *ex-ante* incentive to become an entrepreneur.

Both law historians and contemporary observers have argued that in terms of debt discharge English bankruptcy legislation between the late Nineteenth century and the interwar period was probably the most advanced in the Western world. On the one hand, the discharge option existed (contrary to Continental European countries), on the other hand it was much better regulated and effective than in the US. As compared to America, English legal procedures, thanks to their structure and the deep involvement of members of the Board of Trade,⁵ were less prone to corruption, and based on a reliable and complete set of information about the debtors' conduct of affairs. Furthermore, contrary to the sketchy US law, English bankruptcy legislation

(*Capitalism, culture, and decline*) provided a substantial re-assessment of the alleged limitations and distortions of the British educational system. Again, a much more comprehensive and detailed analysis of the debate can be found in Nicholas ("Enterprise and management.").

³ Nicholas ("Enterprise and management.").

⁴ Beck *et al.* "Legal Theories", Laporta *et al.* "Law and Finance", and Levine "Law, finance and economic growth".

⁵ This was the result of the return to "Officialism" in 1883. See Lester *Victorian Insolvency*.

established clear and well-conceived criteria which judges could rely on, and a wide set of possible sentences.⁶

Recent contributions by economic and social historians however, cast doubt on this rosy picture. The English law left judges substantial autonomy and under such conditions even the least corrupt and best-informed procedure does not guarantee any pro-entrepreneurship result if judges' behavior is not in line with this objective. According to Margot Finn, Paul Johnson, Patrick Polden, and others, issues of class, gender, geographic provenience, and morality influenced judges' decisions in a way that might have generated an anti-entrepreneur bias.⁷

The aim of this paper is to study the functioning of debt discharge procedures in England and Wales in 1890s-1930s, and to analyze whether or not, and to what extent, this device was used in a way that supported entrepreneurship. Also, this paper studies the impact on these legal procedures of class, geographic divide, and cultural elements which have been at the centre of the debate on British entrepreneurial failure.

The study is based on information from the *London Gazette*, which is used to test various hypotheses about the ways the courts operated. Section I introduces the conceptual framework. Section II reviews the historical debate on the functioning of debt discharge procedures in England and Wales. Section III describes data and methodology, section IV analyses results, and section V concludes.

DEBT DISCHARGE AND ENTREPRENEURSHIP: THEORETICAL ISSUES

⁶ See Radin "Discharge in Bankruptcy", Del Marmol *La faillite* and, for a survey, Di Martino "Approaching disasters".

⁷ Finn, *The character of credit*, Johnson, "Class law", Polden, *A History of the County Court*, and Rubin, "Law, poverty, and imprisonment for debt".

In theory, there are three ways in which debt discharge can encourage entrepreneurship. Firstly, the discharged debtor loses the legal status of “bankrupt” and is allowed to benefit from much easier conditions for re-starting a business.⁸ Secondly, as a consequence of discharge, share of the unpaid liabilities is “cancelled”, meaning that earnings from any future activity could not be claimed for the settlement of past debts. Finally, discharged debtors are allowed to keep a certain share of assets (the so-called “exemption level”) in order to facilitate the restart of their business.

Empirical studies suggest that the circumstances under which debt discharge is granted have two effects. On the one hand, lenders react to “soft” conditions by increasing interest rates and/or constraining credit supply. On the other hand, however, the easier the discharge the stronger is the *ex-ante* incentive to become an entrepreneur, and this effect dominates. This is shown both in a study of European and North American countries, and in one on different states in the US.⁹

This analysis, however, fails to address a fundamental problem; if debt discharge is too-easily granted it might encourage speculation, fraud, and misbehaviour. This means that easy discharge increases the number of entrepreneurs but can affect their quality and performance. A model of entrepreneurs’ behaviour developed by William Baumol provides a more nuanced analysis of the relation between debt discharge and

⁸ In England the condition of “bankrupt” led to the loss of a number of civil rights: being elected in parliament, being a member of a local authority, becoming a solicitor or a corporate manager or director. In terms of personal business, an undischarged debtor could not obtain credit or start a trade without disclosing to any business partners the fact that she had run into bankruptcy.

⁹ Armour and Cumming “Bankruptcy law and entrepreneurship”, and Wei and White “Personal Bankruptcy”.

entrepreneurship.¹⁰ This model is based on two fundamental points. The first one is that the availability of entrepreneurship is constant over time and space, but its destination (i.e. the kind of field in which entrepreneurs decide to operate) is not. Developing the classical Schumpeter argument, Baumol suggests that entrepreneurs can be “productive”, i.e. committing to activities able to contribute to growth, or destructive (or “unproductive”), in other words operating in fields (from rent-seeking to illegal businesses) having a negative (or at least neutral) impact on macroeconomic performance. The second point is that entrepreneurship is channelled towards one of the two alternatives by what Baumol calls the “rules of the game - the reward structure of the economy”,¹¹ in other words the whole set of laws, rules, conventions, and habits characterising any existing society.

Baumol’s study provides an extremely fruitful framework for the analysis of debt discharge and its impact on entrepreneurship. The starting point is that in capitalistic economic systems insolvency and failure are linked to the inherently risky nature of business activity and they are to a large extent unavoidable. However, operating in the three ways described in the introduction, discharge option “rewards” (to use Baumol’s jargon) entrepreneurs by limiting the negative *ex-post* impact of bankruptcy.

Positive as it is for entrepreneurship in general, discharge can encourage destructive entrepreneurship - in the form of promoting ultra-risky business, financial speculation, or illegal/fraudulent activities – at the expense of productive entrepreneurship. This happens if the claimant’s conduct of affairs and level of competence is not closely scrutinised. In such a situation, in fact, unconditional and

¹⁰ Baumol, “Entrepreneurship”.

¹¹ Ibid., p. 894.

free discharge would offer an incentive to run ultra remunerative business (often associated with speculation and other illegal activities) without taking into account the extra risk of failure. In this case, to use Oliver Hart's language, debt discharge would simply reduce the ex-ante constraining role associated with debt contracts¹² or, as Max Radin pointed out about the US:

“Men do not engage in transactions with the deliberate intention of slipping out from them through the intervention of the bankruptcy courts. But the knowledge that these courts are there and that discharge is easily procurable and the observation of its extreme frequency about them, can scarcely do other than stimulate speculative nature...in other words, the rewards of business inefficiency are too high.”¹³

Thus debt discharge promotes entrepreneurship in general, but it supports what Baumol defines “productive” entrepreneurship only if associated with counterbalances and efficient screening devices, in order that lenient solutions are only allowed to debtors who deserve it. Ideally, then, procedures should be well informed, and criteria of selection should include the evaluation of technical competence, the relevance of the sector in which debtors operate, personal honesty, and so on. On the other hand, in order for this institution to be entrepreneur-supportive, “moral” considerations about the claimant must be included only as long as personal behaviour directly impacts on professional life. Elements such as sexual orientation, observation of religious codes, or even past criminal records if not connected to current business activity, do not imply that agents with these characteristics are worse entrepreneurs than others.

¹² Hart, *Firms, Contracts*.

¹³ Radin, “Discharge in Bankruptcy”, p. 42

In evaluating the support of debt discharge to “productive” entrepreneurship there is another fundamental dimension that must be considered, the one of consistency. Even if, on paper, debt discharge procedures are based on reliable information and “sound” criteria, a problem remains if, in practice, sentences are inconsistent. If this is the case, economic agents get the message that their behaviour and performance are only one element in the judgment so that ultra-risky, speculative, illegal activities could be encouraged. Inconsistency can be the result of arbitrary moral considerations as well as the effect of bias generated by class or, personal connections inside institutions, and the lack of professionalism in the courts.

HISTORIOGRAPHY, ISSUES AND DEBATES

Historical accounts and contemporary analyses suggest that, in the period under study,¹⁴ the English bankruptcy law achieved very efficient debt discharge norms and procedures. According to both continental European and American scholars, the English system had reached a balance between French law-based countries such as France herself, Belgium or Italy (where discharge simply did not exist) and the US which lacked efficient mechanisms of selection among claimants and flexibility in the sentences, conditions that exposed debt discharge proceedings to exploitation by debtors.¹⁵ The successful structure of the English system relied on two main factors; “officialism” of bankruptcy procedures in general, and the sophistication of the debt

¹⁴ During the period under examination, three subsequent laws regulated debt discharge: Bankruptcy Act 1890 (53, 54 Victoria, c. 71), Bankruptcy Act 1914 (4, 5 George V, c. 47), and Bankruptcy Amendment Act 1926 (16, 17 George V, c. 7). Unless differently specified, the analysis on this section refers to principles and norms common to the three acts.

¹⁵ Boshkoff, “Limited, conditional, and suspended discharge” .

discharge mechanism more specifically. Since the 1883 reform, “officialism” meant that members of the Board of Trade (*official receivers*) were in charge of bankruptcy procedures or at least deeply involved in them. In particular, *receivers* ran official inquiries that provided accurate information about the debtor’s conduct of affair, commitment, and technical skills. The results of these enquiries were fundamental for the debtor’s destiny in terms of, for example, being allowed a friendly compromise with creditors, instead of facing the more unpleasant consequences of bankruptcy procedure. Therefore debtors had incentives to cooperate and, because the information they provided was double-checked in a meeting with creditors and the official receivers (*public examination*), little incentive to cheat. This collection of valuable and reliable information, including records of the public examination, represented the basis also for judges’ decisions about debt discharge.¹⁶ According to contemporary scholars, this element gave a fantastic advantage to the English procedure.¹⁷

The sophisticated structure of law provided the other element of comparative strength. As a result of the 1898 bankruptcy law, the US courts could only decide between granting unconditional discharge or simply denying it, but the English counterparts could also suspend discharge for a variable length of time or grant it conditional on the future or immediate payment of a portion of past debt. Courts had total discretion about final decisions, but the law established an explicit set of criteria (called “facts” in the law jargon) on which to base the decision (criteria are listed in

¹⁶ Clause 26 of the 1914 law stated: “the [discharge] application shall not be heard until the public examination of the bankrupt is concluded ... On the hearing of the application the court shall take into consideration a report of the official receiver as to the bankrupt’s conduct of affairs.” Subsequent laws did not alter these principles.

¹⁷ See in particular Del Marmol *La faillite*.

the appendix). The existence and the characteristics of these criteria further strengthened the English system. In general, bankrupt debtors were insulated from possible biases deriving from their past criminal record, by stating that criminal offences mattered only as long as they directly concerned the bankruptcy itself. More importantly, some of the “facts” related to debtors’ technical ability and commitment, rather than to moral principles. For example, the inability to guarantee the payment of 50 per cent of debts, a very widespread problem among bankrupts, can be seen as the symptom of lack of skills and not necessarily the result of fraudulent behavior. Furthermore, this specific fact was not taken into account if it was possible for the debtor to prove that the problem was due to circumstances outside her control. If so the “honest, but purely unfortunate, debtor will be ... granted a discharge in accordance with the provision governing “normal” cases”, i.e. he could obtain an unconditional and immediate discharge.”¹⁸ Other relatively “technical” facts related to problems such as having being bankrupted before or the inaccuracy of bookkeeping. Other facts concerned the honesty of the person filing for discharge, but they referred more to “business” dimensions of morality: undue preference given to some creditor; not being able to account for any loss of assets; trading after knowing to be insolvent; contracting debts without any expectation to be able to repay it; increasing creditors’ expenses via “frivolous or vexatious defense”; incurring liabilities in order to artificially increase assets up to 50 per cent of debts; committing frauds.

Contemporary scholars believed that the ability of the English system to take into account “technical” elements alongside the assessment of debtors’ “moral” behavior was the most relevant difference from the American system, and the source of higher

¹⁸ Fletcher, *Law of bankruptcy*, p. 294.

comparative efficiency.¹⁹ During the 1930s, Radin emphasized this point in his criticism of the American procedure. “Of one thing” – Radin wrote – “we may be sure. We shall not make discharge less frequent by increasing the criminal or punitive provisions against fraudulent practices”²⁰ According to Radin the solution was, in fact, to look at the English procedure where “in addition to the offences which are really obnoxious or criminal penalties, discharge is refused - or at any rate may be refused - ...for inefficiency, recklessness, and even sheer incompetence.”²¹

However the English law was not totally free from pandering to the public morality of the time.²² The clearest example of this tendency is the nature of fact *f* (see appendix), which contemplates the case in which “the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance of living, or by gambling, or by culpable neglect of his business affairs.” Although this criterion clearly addresses technical issues, the specific emphasis on elements such as gambling can be seen as a reference to general moral principles.

¹⁹ The American law was based on seven criteria, most of which simply indicated the presence of a fraud or, at least, the attempt of committing one. Interestingly enough, however, American law also considered having been discharged in the previous six years a reason for denying discharge, in order to stress the idea that discharge was an exceptional condition, not the expected and natural consequence of bankruptcy procedure. (see Maclachlan, *Handbook of the Law* , p. 92)

²⁰ Radin “Discharge in Bankruptcy”, p. 43.

²¹ *Ibid.*, p. 44.

²² According to Fletcher, *Law of bankruptcy*, [facts] “are formulated so as to denote those species of conduct which exemplify the distinction between the “honest” bankrupt and the “culpable” one, employing the latter term in the broadest sense, with reference to the public and commercial morality and good sense in the conduct of one’s financial affairs” (p. 292)

To conclude, according to scholars of the time, the efficient collection of information, the uncorrupted nature of procedure, and the sophisticated structure of criteria provided by bankruptcy law, were the main advantages of the English system.

This reassuring picture, however, does not take into account one important aspect of the story. English bankruptcy law defined different possible outcomes of discharge proceedings (immediate, suspended, conditional, denied) and a precise set of criteria but, apart from one exceptional case,²³ it established no relation whatsoever between the two. Furthermore the statutory facts “strongly influence courts”²⁴, but they were by no means the only element that judges were supposed to take into account. General considerations about the nature of claimants, the contingences in which bankruptcy occurred, and so on, were all allowed to play a part. In other words, as law historians pointed out, discharge decisions involved “the exercise of an extraordinary amount of discretion”,²⁵ therefore the judges’ ability and willingness to support entrepreneurship was pivotal.

Understanding the forces that shaped and channeled the use of such an enormous discretionary power thus became the key issue in the assessment of the functioning of debt discharge mechanisms. According to Fletcher, external considerations were supposed to go in the “correct” direction, as among other criteria “it may be logically inferred from the overall purposes attaching to the bankruptcy law that the court

²³ Immediate discharge should have been automatically allowed unless one single criterion was not respected.

²⁴ Boshkoff, “Limited, conditional, and suspended discharge”, p. 84.

²⁵ Ibid., p. 89.

should [have been] mindful of such questions as the debtor's suitability to recommence trading."²⁶

Other historians, however, have cast doubt on the ability of the English system to consistently foster "productive" entrepreneurial activity. The general argument is that despite the increasingly efficiency-oriented character of the formal aspects of law and procedure, at least until WWI, issues of gender, class and morality still permeated the reality of debt-credit relations to an extent that could not have left the working of courts unaffected. According to Margot Finn, this led to a "conflict between common law and equitable conceptions of justice [which] was of pivotal importance in English small claims litigation."²⁷ Furthermore, contrary to established views that stress the growing dominance of common law, the author also showed the existence of "a pattern of legal evolution in which the equitable considerations that informed petty debt litigation gradually transformed legal practice in the superior courts of common law."²⁸

This latitude in the implementation of common-law took different forms. In terms of class bias, in a seminal contribution Johnson demonstrated that Victorian civil law encapsulated middle-class values and that, despite the formally neutral and market-oriented approach of legal reforms, de facto it reflected prejudice about the "latent fecklessness and immorality of manual workers".²⁹ This feature was evident in the implementation of bankruptcy law, in particular in the fact that while bankruptcy law

²⁶ Fletcher, *Law of bankruptcy*, pp. 289-90, quoted by Boshkoff, "Limited, conditional, and suspended discharge", p. 90.

²⁷ Finn, *The character of credit*, p. 14

²⁸ Ibid., p. 15

²⁹ Johnson, "Class law", p. 147.

was made available to non-traders in order to let wealthy debtors benefit from a tolerant legislation (instead of being subject to the much stricter insolvency law), decisions about small debts – therefore about the poorest class of debtors – remained unjustifiably strict, if not openly vindictive.³⁰ Along similar lines, Gerry Rubin showed that the practical implementation of the imprisonment for debt law meant that working class debtors were de facto jailed even after the formal abolition of the law itself.³¹ Finn has qualified these points by arguing that, in fact, judges used equitable considerations also in the direction of mitigating the harshness of law towards poor debtors. Still the idea of a strong influence of class in the implementation of bankruptcy law remains an element to be examined. If the courts looked at debtors' class, that might introduce an element of structural inconsistency in the decision-making process. Also, in the upper class (which includes judges) we are expecting to find a relatively lower number of agents involved in commercial and industrial activities. Under these circumstances a class prejudice meant that a softer hand might have been used to deal with ordinary speculators and gambler as compared to the tougher approach applied to risk-taking “productive” economic agents.³²

Class-bias can be seen as a specific example of the more general persistency of cultural elements impacting on courts' decisions. In this regard, Finn also showed that women tended to be seen as different kind of debtors, leading to the hypothesis that a further element of arbitrary inconsistency could have permeated the decisions about debt discharge.

³⁰ Johnson, “Creditors, Debtors, and the Law”.

³¹ Rubin, “Law, poverty, and imprisonment for debt”.

³² Including cases of judges themselves, “a circumstance that could moderate their zeal for the letter of the law of contract” (Finn, *The character of credit*, 101)

If class and gender bias can be seen as part of a cultural attitude, another even more general aspect deserves attention. The issue of bankruptcy has always been a moral as well as a technical problem. Accounts of the historical evolution of bankruptcy and insolvency laws have suggested that only in Nineteenth century England the efficiency issue started to prevail over the moral condemnation of insolvency as a sign of dishonesty and incompetence.³³ This led to a divergence between the spirit of the law and the public “moralistic” view of debts and insolvency. Although, according to Finn, public support for tough sentences for insolvent debtors was far from monolithic, it seems that lawmakers’ relatively lenient intention might have differ from the public attitude. In terms of the evaluation of debt discharge procedures, the issue is to understand how much of the general disapproval of insolvent debtors spilled over into the actual approach in legal cases. As the analysis of criteria already showed, the transition towards “pure” technical elements of judgment was not complete, and “facts” still contained elements pandering to both the general and “business” sense of morality. Furthermore there is no certainty about the degree of support that judges might have given to such a transition and hence about how far moral disapproval of debts and bankruptcy still survived in the practical implementation of the law.

The idea that class, gender, and morality issues affected judges’ views and the courts’ functioning, leads to a further problem. In London debt discharge was the responsibility of the High Court, while in the provinces it was administered by judges operating in county courts, a system of local tribunals that was set up after the 1846

³³ On this transformation, see Duffy *Bankruptcy and Insolvency* and Lester *Victorian Insolvency*.

reforms of small debt cases.³⁴ Historians have suggested that the functioning of county courts was very different from the way the High Court operated. In general, the established view suggests that during the period under analysis county courts never reached the level of professionalism and efficiency that characterized the High Court and their working was never completely satisfactory.³⁵ Similarly, Finn emphasizes that county courts were at the forefront of the use of discretionary criteria; in other words inconsistency is expected to be more relevant outside the London area. However one aspect of the (alleged) arbitrariness of the working of county courts might have meant a stronger support to entrepreneurs. As Polden pointed out, the lower prestige and status associated with the appointments to county courts vis-à-vis London affected the social background of judges, with the result that, among other professions, commercial and manufacturing sectors progressively took the place left free by aristocrats and army officers.³⁶ This meant that in county courts entrepreneurs were judged by their peers to an extent that was unknown in London. It is therefore arguable that the “latitude” characterizing county courts might also have been used to provide an extra support to entrepreneurial risk-taking agents.

To sum up, contemporary observers stressed the comparative advantages of English laws and procedure in terms of efficiency and fairness. At the same time,

³⁴ See Polden, *A History of the County Court*.

³⁵ See Smith, “The Resurgent” and Polden, *A History of the County Court*.

³⁶ “The county court bench never carried anything like the same prestige as the superior courts – it was not so much a lower division as a lesser league.” (Polden, *A History of the County Court*, p. 243) and “One of the expected changes in the parentage of judges over time has been the decline of the landed interest, the clergy and the armed forces... Their successors came sometimes from commercial and (less commonly) manufacturing background.” (Ibid., p. 265)

historians emphasize the existence of problems and possible biases in the way judges operated, therefore casting doubts on their actual consistency and ability to support entrepreneurship. In the following sections we test these different hypotheses using quantitative analysis.

DATA AND METHODOLOGY

In this study we use information on discharge hearings provided by the London Gazette (LG), for the following benchmark years: 1893/94; 1912/13; 1924/25; 1934/35.³⁷ Twice a week, the LG reported the outcome of debt discharge hearings. On average every year about 700-1300 cases were discussed, which in our sample makes a total of 7480 observations. A typical report includes: name of the applicant, address, gender, job or occupation, date of the decision, court in charge, sentence given, and “facts” the sentence was based on. A summary of the data set is provided in Table 1.

The methodology consists of a set of regressions in which the degree of toughness of sentences represents the dependent variable, measured according to the nature of available data. In models 1 and 2 we provide a very rough measure simply differentiating among three possible outcomes: immediate discharge, suspended or conditional, denied. Suspended and conditional discharges are used as an homogenous outcome as there is no reasonable way of creating a progressive rank of toughness by

³⁷ Debt discharge procedures closed in these years are supposed to relate to cases of bankruptcy started about two years before (it took about one year for the bankruptcy procedure to be closed, plus a similar length of time was necessary for courts to decide upon request for discharge). Taking that into account, the rationale for focusing on those benchmark years is to avoid phases of remarkable economic turbulence, in other words to analyse “normal” years. The years 1934-35 have been included on purpose in order to compare judges’ behaviour in good time to their attitude during critical periods.

mixing timing of suspension and payment of money (there is no possibility, for example, of establishing whether being suspended for three years was necessarily better or worse than having an immediate discharge but conditional to paying, say, £200). This is a crude measure, also because different reasons dictated granting a suspended or a conditional discharge,³⁸ but on the other hand this is the only feasible way of using the whole set of data. A more precise analysis is conducted by limiting the data set to the cases of suspended discharge (models 3.1 and 3.2), as in this case various outcomes can be consistently ordered in terms of months of suspension.

Models 1, 2, and 3.1 are used to evaluate the role played by the statutory facts, the possible impact of moral and social elements, and judges' consistency in general. It would be useful to know whether or not an established "model" of behavior existed, in terms of the relative weight given to general "external" considerations vis-à-vis the statutory "facts". Ideally we would also like to know whether or not there was any codified ranking of the various criteria, or an established relation between the facts (their number and/or their kind) and sentences. Knowing such a model, it would be possible to quantify the adherence to it. Unfortunately qualitative information about the proceedings is scarce. The analysis of six hearings that took place in the 1970s, provided by Douglas Boshkoff, reveals that a variety of elements, including compassion for debtors' health conditions, played a part alongside the analysis of the statutory facts. However, given the low number of cases, it is impossible to infer any precise rule about the relative importance of different components.³⁹ What seems to

³⁸ Conditional discharge was seen primarily as a payment-collection device, while suspended discharge was more of an instrument to discipline debtors. (Boshkoff, "Limited, conditional, and suspended discharge", pp. 73-4.)

³⁹ Ibid., pp. 95-103.

be the case, however, from Boshkoff's study is that the nature of external elements included in the decision, and the frequency with which they were used, were very arbitrary. In terms of the relative importance of criteria and their link to sentences, the only clear-cut case concerns immediate and unconditional discharge; this was supposed to be allowed unless the claimant had not respected one or more facts. In no other cases can anything be inferred from the law. Also there is very little in the legal literature. As far as the "facts" are concerned, at first glance, some seem to be more important than others. Having being bankrupt before, or giving undue preference to some creditor (thus not respecting one of the very rationales for the existence of bankruptcy law) appear more relevant than, say, not keeping the books correctly, especially if this was due to negligence rather than to fraud. However, there is very little evidence that judges took these considerations into account. If anything, Boshkoff suggests the opposite: "the failure to keep proper books and continuing to trade after knowledge of insolvency [were] regarded as especially serious facts."⁴⁰ It is also possible that judges took in consideration specific combinations of facts rather than just their number. A few traces of this principle can be found in Fletcher, who suggests "a logical interrelation" between keeping the books, being able to account for any loss of assets, trading after being insolvent, incurring debts without being sure to be able to pay, and guarantee 50 per cent of debts paid. On the other hand, facts *b* and *c* (see appendix) could have been considered as two faces of the same coin, therefore

⁴⁰ Ibid., p. 85.

probably accounting as one single offence.⁴¹ This, however, is not enough to argue that judges operated on the basis of a clear-cut scheme.

Although it is plausible to argue that judges probably had some more sophisticated scheme in mind, we use a simple model measuring severity of sentences against the number of legal “facts” claimants did not respect, to see whether or not disrespect of a growing number of criteria consistently matched stronger sentences.

To test the hypothesis of a different degree of efficiency of various courts, a *court* proxy has been constructed by separating sentences handed down by the London High Court from decisions taken in all other courts.⁴² This variable is rather crude, as it considers as homogeneous, courts which were probably characterized by very different degrees of efficiency. Courts such as the Birmingham or the Manchester one, for instance, were much more established and professional than the smaller towns’ tribunals. However, as it is hard to find a clear discriminatory device among various county courts, a more complex proxy would be even more arbitrary than the simple division London – outside London.

Other dummy variables control for the social status of claimants (*status*),⁴³ their gender (*gender*, in which female equals 1 and male 0), *misconduct* during the

⁴¹ “The combination of the obligation to keep proper books and the prohibition against trading with knowledge of insolvency will generally ensure that a person who has traded when actually insolvent will be penalised on at least one of these two grounds.” Fletcher, *Law of bankruptcy*, p. 293.

⁴² This variable assumes value = 1 in case of High Court, and 0 in all other cases.

⁴³ The “status” proxy (“high” status =1) includes the following categories (when known): Doctors, surgeons, medical practitioner, bachelor of medicine, doctor in medicine, dentist, and chemist. Gentleman and peers. Army officers. Barrister and solicitor. financier, stock broker (stock-exchange broker or agent), member of the London stock market, financial agent. The numeric breakdown is as follows: High = 314; Normal = 6669; Unknown = 497.

bankruptcy procedures (for example not cooperating with the official receiver, giving false information, etc),⁴⁴ and the year in which decisions have been taken. In the data sample the years 1934 and 1935 contain the analysis of cases where insolvency was also the result of the exceptionally poor economic conditions of the early 1930s. We are interested to see whether or not judges took this element into account and, as a consequence, had a relatively softer touch. To test this hypothesis, a *crisis* dummy has been constructed, where 1934 and 1935 take value 1, and all the other years value 0.

Finally, in order to test for the persistency of the moral bias, model 3.2 uses as independent variables a series of proxies indicating the lack of respect for each single statutory fact. This allows considering the relative impact of various criteria reflecting, to different degrees, “moral” principles and/or “technical” considerations. In particular we are interested at looking at the relative importance of fact *f* (speculation, gambling, culpable neglect), the one that can most closely reflect the persistency of a “moral” bias.⁴⁵ Although this measure of the moral bias is far from perfect, it is the only possible way of quantifying the impact of an element that, otherwise, would remained unobservable.

RESULTS

The first model (1) is a binary *logit* regression. The dependent variable (*dgrsevr1*) is a proxy in which immediate and unconditional discharge (which takes value 1 when granted) represents one condition, and all other sentences the other one. In order to

⁴⁴ Claimants’ misconduct was part of the recorded information. The proxy “misconduct” associates the value 1 to these cases.

⁴⁵ Some indication about the relative high significance of fact “f” can be found in the literature, for example in Fletcher, *Law of bankruptcy*, p. 293.

test for the adherence to the formal requirements of the law, one independent variable (*Critdummy*) incorporates the hypothesis that the number of non-respected facts is different from 0; that is at least one statutory criterion unmet. It is important to remark that this is the only link between “behaviour” and sentence that the law clearly stated and decisions were supposed not to be influenced by other considerations. To control for the impact of observable external elements, proxies for gender, status, court, and crisis are added to the model.

This model shows a strong negative correlation between the dependent variable *dgrsevr1* and the proxy *Critdummy*, while all other variables (apart from “crisis”) are not significant. These results suggest that decisions about immediate discharge were determined by the claimants’ conduct, and not influenced by elements of distortion such as their gender or status. In terms of possible impact of different courts, no significant effect can be noticed. Misconduct during bankruptcy procedures seems to be irrelevant to the decision, although this result might simply reflect the very low number of cases of improper conduct in the sample. Interestingly, during the 1930s courts were less prone to grant immediate discharge (*crisis* has a negative sign and is significant).

In conclusion, with the exception of the *crisis* variable, the significance and sign of the proxy measuring the adherence to law criteria, and the lack of significance of all other variables, indicate that the “market” received the “correct” message. Whether or not this signal was also consistently given, is a different question. Consistency can be measured by looking at the pseudo *R*² of the regression, which indicates how much of the decisions is explained by variables included in the model and how much is left to be explained by external elements that, as the Boshkoff analysis shows, are supposed

to have been subject to a high degree of arbitrariness.⁴⁶ In this case, however, no meaningful conclusion can be reached, as it radically changes according to the measure of pseudo *R*² one decides to adopt.⁴⁷

Having assessed the way in which the best bankrupt debtors were treated, the following step is to look at the opposite side of the sample's spectrum, to see what influenced the courts' decision to grant a suspended/conditional discharge instead of simply denying it. This way we assess the way in which the very worse segment of the sample (debtors who were denied discharge) was selected from the rest. To analyse this issue we use model 2, a binary *logit* regression whose dependent variable (*Dgrsev2*) differentiates between conditional or suspended discharge (= 0) versus denied (= 1) discharge, includes all control variables of model 1, and as the main explanatory variable uses the number of non-respected facts (*criteria*).

As compared to 1, model 2 reveals a more complex decision-making process. Elements such as misconduct, status and court all play a part, and so does the "crisis" dummy which goes in the opposite direction to model 1. The statistical significance of *misconduct* and its positive sign are somehow self-explanatory (*ceteris paribus*, misbehaviour during procedures led to a higher chance of discharge being denied), while *court* and *status* are not. For some reason London judges tended to be more reluctant to deny discharge than their colleagues outside in the provinces, a result that is not particularly revealing *per se*, but that is interesting when compared to the

⁴⁶ Note that in this model the pseudo *R*² does not improve once non-significant variables are dropped.

⁴⁷ The principles behind *Logit* regressions do not allow to directly calculating the *R*² as it is the case for OLS. However, using different methodologies can provide various pseudo measures. In this case different methods (Cox & Snell and Nagelkerke) lead to opposite results (0.24 versus 0.8).

findings of models 2 (see further down in the paper). The positive sign of the *status* proxy is the most surprising result as it means that belonging to a high status made claimants more likely to be denied a discharge.

In terms of the quality of the signal given to the “market”, this model supports the findings of model 1; a better behaviour matched a more lenient sentence, the claimant’s gender did not impact on the decision, operating in period of crisis (therefore in a inner riskier environment) had a positive impact, and belonging to the “productive” section of the society gave a further advantage. As in model 1, a further issue is to consider how consistently this message was and how important elements external to the model were. In this case whatever measure of pseudo R^2 we consider, it appears to be extremely low, at first glance suggesting that adherence to the law, and factors such as gender, status, and crisis impacted little, leaving to external forces a big play. In fact, it is very likely that the model suffers from problems of specification, in particular because suspended and conditional discharges were inspired by very different principles. Regarding the issue of the general level of consistency, it is worth mentioning again the fact that various courts seem to have operated differently. To analyse this point further, model 2 is run differentiating between High Court (2a) and county court (2b). The results are interesting, as we can notice that it is only in the High Court that *crisis* is significant,⁴⁸ but also that in this tribunal the *status* is not significant anymore. This means that only the High Court surely rewarded economic agents for operating in riskier periods, but also that the anti high-status bias was fully located in county courts.

⁴⁸ The “crisis” proxy, however, becomes significant once the 5 per cent interval of confidence is increased by a mere 0.3 per cent.

However revealing, models 1 and 2 only deal with a relatively low number of cases. Model 3.1 provides a more precise test by looking at the relation between the number of months of suspension in case of delayed discharge (*Dgrsev3*) and the number of criteria that were not respected. The model also controls for misconduct during bankruptcy procedure, gender and status of claimants, court in charge, and year of decision. This model, an OLS regression, is first estimated for the whole sample, and then run differentiating between High Court (3.1a) and county courts (3.1b). The sign and high significance of the coefficients of both “criteria” and of the proxy for misconduct meant that the “better” the bankrupt’s behaviour, the “softer” the treatment. More specifically, each non-respected criterion increased the suspension by about 3 months, and “improper” behavior during procedure added another 9 months to the sentence. Sign and significance (or lack of) of “crisis”, “status”, and “gender” are in line with the findings of model 2. Combined together these results show that, again, the market was given the “correct” signal. Establishing how consistent decisions were implies, again, the analysis of the adjusted R^2 . Even if less severe than in model 2, problems of misspecification might exist. In particular the proxy for the adherence to the law only measures the number of non respected statutory facts, not taking into account their relative weight, possible composition effects, and so on. With these caveats in mind, the fact that a rough superimposed model explains about 40 per cent of the variability of decisions can be seen as the sign of a relatively high level of consistency.

Shortcomings, however, surface too. In particular the High Court’s sentences proved to be stricter despite, as appeared from model 2, county courts being less generous than London when it came to denying discharge. This seems to suggest a general level of systemic inconsistency generated by different behaviors in London

and outside, although this represents a marginal problem unless we suppose that the average entrepreneur freely and frequently changed location moving in and out the area subject to the London court supervision.

The problem of different behaviour of various courts, however, becomes more relevant if county courts proved to be less consistent than London, because of lack of communication in the system (i.e. different courts operating with different criteria), higher reliance of more arguable principles such as gender and status, or stronger impact of external unobservable elements. In order to have a more precise view of the differences between London and the rest of the country, models 3.1a and 3.1b run the same regression in the two contexts. The first difference we can spotted is the measure of the adjusted R^2 , which is higher in London and suggests that either the overall impact of external elements increased outside the capital, or that our abstract model of consistency is less a good proxy of the behaviour of an heterogeneous set of courts, than of one single institution (London).⁴⁹ The latter interpretation would confirm the presence of “systemic” problem, in terms of coordination of various institutions, a less severe problem because it would surface only for those economic agents who tended to often change the location of their business. The former interpretation would reveal a more serious situation as it would mean that county courts have taken more arguable

⁴⁹ Our model is based on a linear relation between the number of criteria and sentences, and does not take into account threshold effects in this relation, possible composition effects (i.e. more than one fact considered as a single one), the different relative relevance of various criteria and so on. If we assume that in fact these factors might have been important in the courts’ decisions, it is also possible to suggest that each single court had an idiosyncratic approach to these factors. It follows that in the case of London we use an abstract proxy to assess the consistency in the implementation of one real but

criteria into account. Looking at various explanatory variables is a way of assessing whether or not this was the case. In this regard, no difference can be spotted in terms of the impact of *crisis* (negative and significant in both cases) or *gender* (not significant), while the *status* proxy appears to be significant only in county courts. However, rather than signalling any extravagance in the functioning of county courts, this result means that the alleged pro-entrepreneur approach of the system was, in fact, totally located outside London.

The last set of models we analyse is 3.2 which examines the length of suspension (in months) in relation to the kind of criteria that claimants did not respect (rather than their number), using the same elements as in model 3.1 as control variables. This model reveals judges' *ex-post* preferences indicating what criteria they look at and the relative weight given to each one. However it can hardly be used to control for consistency, as we do not know what kind of model (if any) judges might have had in mind (i.e. whether or not there was an ex-ante established ranking among various criteria) and therefore there is no way to assess the degree of consistency in the application of this hypothetical model.

Model 3.2, however, is useful in other ways; firstly in indirectly assessing the goodness of 3.1. What appears is that not all criteria are significant (*h* is never significant, while *j* is automatically dropped) and that different criteria had a very different impact on the final decision. This confirms that model 3.1, based on the number of non-respected criteria, is in fact a very rough approximation of judges' actual behaviour, therefore a very high R² cannot be reasonably expected.

unobservable model, while in the case of county courts we are using a proxy to assess the consistency of a number of different unobservable models.

The relative degree of impact of various criteria can be used to analyse the hypothesis of the persistency of a moral bias among judges. As we noticed, among various facts, f seems to be the one that more than any other criterion reflected the tribute paid by the popular sense of morality rather than to the business ethic. Criterion f is significant and ranks fourth in terms of impact, showing that its contribution was not negligible. The rank of f changes from 3.2a to 3.2b, being higher in county courts (third), than in the High Court (fifth). This confirms the problem of systemic inconsistency noticed before, but also adds the evidence that the moral bias, if any, was stronger in county courts.

CONCLUSIONS

This paper shows that, at a general level, respecting law's formal principles paid-off; in all models proxies measuring the adherence to law are strongly significant and their sign always indicates that "behaving" led to softer sentences. Interestingly, the system also shows elasticity in considering the general macroeconomic conditions under which insolvency emerges: in all models but 1 (and potentially in 3.1b) it appears that, *ceteris paribus*, judges in the 1930s had a softer touch than in any other period. Another observable element (gender) reinforces the idea of consistency and lack of bias: in a deeply male-based society being a bankrupt woman did not lead to any different treatment. The analysis of class and status, further possible elements leading to anti-entrepreneurship bias, provides the most surprising results. Contrary to the expected pro-class bias, models show that lower status agents got a preferential treatment.

The degree of consistency in which this positive signal was provided is harder to establish, as R^2 of various models are not easy to interpret. As far as model one is concerned, the assessment varies enormously depending on which measure of pseudo R^2 is used, while models 2 and 3.1 are open to the problem of the dependent variables (although responding to a theoretical idea of consistency) being rough superimposed proxies of judges' actual (unobservable) models of behaviour. This said, at least in the case of model 3.1 we are inclined to argue that the R^2 is high enough as to suggest a high degree of consistency.

These positive elements, however, are not enough to say that English entrepreneurs relied on a perfect debt discharge system. First of all, all models show that R^2 and pseudo R^2 are consistently higher in the High Court than in county courts. Notwithstanding the limits of the data, this implies that at a national level coherent and shared norms of behaviour failed to be established. The extent of this problem, however, depends on assumption about agents' mobility. As long as economic activity was relatively geographically-stable the impact of systemic inconsistency was limited; little would have interested a Norwich builder granted a two-year suspended discharge to know that a colleague in Yeovil was discharged after one year despite having disrespected the same criteria. Different is the case of, say, a commercial traveller operating in various areas.

The problem of different behaviour of county court vis-à-vis the London one has a more important dimension to be investigated. As suggested by the historiography, county courts were supposed to be less professional and adhering less closely to the principles of common law, leaving wider scope for moral, gender or class considerations. Considering the potential detrimental effect of such elements for entrepreneurship, the risk is that the county court system could have counterbalanced

the positive role played by London. In terms of moral bias, results indicate that the least-technical criterion of decision (*f*) made an impact on decisions, but certainly this was more remarkable outside London than in the capital. In both cases, having given undue precedence to a creditor could have been less important than having a bet on the horses or having led an extravagant life. While in London failing “to account satisfactorily for loss of assets or deficiency of assets to meet his liabilities” was more relevant than lifestyle, this was not necessarily the case outside the capital. In other words, as far as we can trust the significance and meaning of the nature of criterion *f*, we can conclude that procedures were to an extent influenced by moral principles, but it was more so in county courts. On the other hand, the *status* proxy is significant (and with the “right” sign) only in county courts showing that they paid no lip service to social status, indirectly benefiting agents involved in productive use of financial resources. Our interpretation is that, following Polden, a different social composition of county courts allowed entrepreneurs to be judged by their peers to a larger extent than in London

As a general conclusion, while bankruptcy law was progressively oriented towards the promotion of economic efficiency and support of business, its implementation did not necessarily go in the same direction or at the same pace. When judged this way, the whole institution appears to be, at least to an extent, a missed opportunity: “productive” English entrepreneurs could benefit, in theory, of very supportive debt discharge legislation (better than the French or the American one) but the full advantages of the law were not exploited because of problems in the enforcement and implementation.

Finally, in this study the possible impact of debt discharge on entrepreneurship is assessed in theoretical terms only, with no analysis of its actual impact on

entrepreneurs' decisions. *Ceteris paribus*, any rational agent prefers to restart her activity instead of being cut off business, being given a further chance soon instead of later, or under no conditions instead of having to pay a price for it. Because there is no reason why economic agents in Nineteenth-Twentieth century England should be an exception to the rule, this means that the degree of efficiency in the working of debt discharge procedures impacted on the way English entrepreneurs behaved. However, in order to evaluate how much attention to debt discharge English entrepreneurs actually paid, economic rationality must be framed in the historical context. In this regard more research is certainly necessary. However, already-available studies such as the one on Birmingham jewellery, show that associations spent a lot of energy in making sure that bankrupt traders did not restart their activity without having being discharged, confirming that this was a serious issue in the business environment.⁵⁰

Appendix

List of “facts” to deny immediate and unconditional discharge as described in the Bankruptcy Act 1890 (53, 54 Victoria, c. 71)

a) The bankrupt's assets are not to a value equal to ten shillings in the pound of the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible.

⁵⁰ Carnevali, ““Crooks, thieves, and receivers””

- b) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried by him and as sufficiently disclosed his business transactions and financial position within the three years immediately preceding his bankruptcy.
- c) That the bankrupt has continued to trade after knowing himself to be insolvent.
- d) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it.
- e) That the bankrupt has failed to account satisfactorily for loss of assets or deficiency of assets to meet his liabilities.
- f) That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs.
- g) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him.
- h) That the bankrupt has, within three months preceding the date of the receiving order, incurred unjustifiable expense by bringing a frivolous or vexatious action.
- i) That the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors.
- j) That the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with the view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities.
- k) That the bankrupt has, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his creditors.

- 1) That the bankrupt has been guilty of any fraud or fraudulent breach of trust.

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Table 1: summary of the data sample

1	2	3	4	5
	Gender	Years	Court	Outcome
	Male = 7110	1893-1894 = 1694	London = 2823	Immediate = 274
	Female = 367	1912-1913 = 1567	Outside = 4657	Suspended = 5521
	Unknown = 3	1924-1925 = 1676		Conditional = 1460
		1934/35 = 2543		Denied = 225
Tot.	7480	7480	7480	7480

Source: London Gazette, various issues

Table 2. Estimation of model 1

Model 1 = *Dgrsevl* (probability of granted immediate discharge (= 1) vs. any other outcome), explained by: *Criteriadummy* (at least one fact unmet = 1), *misconduct*, *gender*, *court*, *status*, and *crisis*.

1	2
<i>Crisis</i>	-1.742** (0.411)
<i>Misconduct</i>	-19.386 (1858.898)
<i>Gender</i>	-0.393 (0.601)
<i>Status</i>	-0.263 (0.740)
<i>CritDummy</i>	-9.036** (0.516)
<i>Court</i>	0.751 (0.459)
<i>Constant</i>	1.957** (0.205)
<i>Cox & Snell Pseudo R2</i>	0.239
<i>Nagelkerke Pseudo R2</i>	0.879
<i>Chi-square</i>	1910.730
<i>Sig.</i>	0.000

Standard error between parentheses; * = significant at 5%; ** = significant at 1%

Table 3. Estimation of model 2

Model 2 = *Dgrsev2* (Probability of allowed suspended/conditional discharge = 0 vs. denied discharge = 1) explained by: *criteria* (number of statutory facts unmet), *misconduct*, *gender*, *court*, *status*, and *crisis*.

1	2	3	4
	Whole sample	High court (2a)	County courts (2b)
<i>Court</i>	-1.715** (0.224)		
<i>Crisis</i>	-0.517** (0.159)	-1.396* (0.549)	-.327 (0.168)
<i>Criteria</i>	0.294** (0.053)	0.562** (0.153)	0.297** (0.057)
<i>Misconduct</i>	1.812** (0.260)	1.599** (0.394)	2.089** (0.352)
<i>Gender</i>	0.152 (0.334)	0.230 (1.041)	0.156 (0.354)
<i>Status</i>	0.571** (0.216)	0.350 (0.754)	0.787* (0.329)
<i>Constant</i>	-3.842** (0.194)	-6.226** (0.581)	-3.912** (0.211)
<i>Cox & Snell Pseudo R2</i>	0.022	0.017	0.014
<i>Nagelkerke Pseudo R2</i>	0.091	0.139	0.046
<i>Chi-square</i>	148.524	41.334	62.189
<i>Sig.</i>	0.000	0.000	0.000

Standard error between parentheses; * = significant at 5%; ** = significant at 1%

Table 4: estimation of model 3.1

Dgrsev3 (Degree of suspension in months), explained by: *criteria*, *misconduct*, *court*, *gender*, *crisis*, and *status*.

1	2	3	4
	Whole sample (3.1)	High Court (3.1a)	County courts (3.1b)
Constant	17.527** (0.348)	16.734** (0.545)	19.018** (.415)
Gender	-0.456 (0.546)	-1.548 (0.889)	0.427 (0.684)
Crisis	-11.098** (0.240)	-11.516** (0.393)	-10.966** (0.300)
Criteria	2.884** (0.101)	3.862** (0.173)	2.316** (0.123)
Misconduct	9.077** (0.526)	9.339** (0.574)	3.959** (1.494)
Status	1.940** (0.628)	1.313 (0.783)	4.009** (1.069)
Court	1.552** (0.252)		
<i>R</i> ²	0.425	0.483	0.383
<i>Adj. R</i> ²	0.424	0.482	0.382
<i>F test</i>	638.629	371.371	397.231
<i>Prob.</i>	0.000	0.000	0.000

Standard error between parentheses; * = significant at 5%; ** = significant at 1

Table 5: Estimation of Model 3.2.

Dgrsev3 (Degree of suspension in months), explained by: all criteria, *misconduct*, *court*, *gender*, *crisis*, and *status*.

	1	2	3	4
	Whole sample (3.2)		High Court (3.2a)	County courts (3.2b)
(Constant)	16.014** (0.427)	14.422** (.903)	17.078** (.489)	
Gender	-0.219 (0.525)	-.979 (.847)	.482 (.660)	
Crisis	-11.481** (0.239)	-12.119** (.381)	-11.349** (.309)	
Misconduct	8.752** (0.508)	8.830** (.551)	4.749** (1.446)	
Status	0.202 (0.613)	-.172 (.757)	1.685 (1.049)	
Court	0.141 (0.258)			
Criterion A	6.901** (0.376)	7.879** (0.866)	6.472** (0.416)	
B	1.474** (0.254)	1.671** (0.404)	1.306** (0.323)	
C	0.910** (0.248)	1.901** (0.401)	0.365 (0.317)	
D	2.142** (0.283)	4.059** (0.602)	1.928** (0.329)	
E	5.765** (0.567)	9.419** (1.031)	4.419** (0.675)	
F	5.159** (0.299)	5.141 (0.405)	5.024** (0.442)	
G	5.151** (1.044)	6.138** (1.593)	4.347** (1.368)	
H	4.128 (3.630)	<i>Dropped</i>	4.144 (3.566)	
I	3.864** (0.465)	4.536** (0.736)	3.249** (0.594)	
J		<i>Dropped</i>		
K	3.586** (0.359)	4.411** (4.536)	2.587** (0.502)	
L	11.667** (1.129)	17.475** (1.655)	6.347** (1.528)	
R2	0.472	0.537	0.429	
Adj. R2	0.470	0.534	0.426	
F test	289.162	163.732	159.612	
Prob.	0.000	0.000	0.000	

Standard error between parentheses; * = significant at 5%; ** = significant at 1%

