

Bankruptcy: Family and Finance in Early Modern Augsburg

Thomas Max Safley

University of Pennsylvania

The Berliner publisher and philosopher, Friedrich Nikolai, wrote in 1781 that "Augsburg does in a small way what Holland does in a large way."¹ The Dutch of the eighteenth century were renowned for dependable international banking, and Augsburg's financiers acted "as cashier for Austria, Swabia and for parts of Switzerland and Italy." Thus, they enjoyed the same reputation for reliability and creditworthiness albeit on a smaller scale. Yet, for Nikolai, ever critical of his country's backwardness and anxious for its progress, this was faint praise. Gone were the glory days, when Fugger and Welser dominated markets across the continent and underwrote enterprises around the world. Their city had suffered crisis and collapse, passing through siege and starvation, disease and destruction in the seventeenth century. Though a keen observer, Nikolai could not know that the modest scale of Augsburger banking was the result of choice rather than chance.

This paper examines several business failures from the middle of the sixteenth to the middle of the seventeenth century. It traces the gradual transformation of bankruptcy law and related business practice. These suggest that new patterns of capital accumulation and business organization were a self-conscious response to institutional change in the early modern economy.

On 9 November 1666, Maria Stemmer demanded her wifely

¹ F. Nikolai, *Beschreibung einer Reise durch Deutschland und die Schweiz im Jahre 1781*, Vol. VIII (Berlin, 1787), p. 12.

freedom (*weibliche Freiheit*).² Eight years earlier, her husband, Daniel Miller, had disappeared from Augsburg, leaving his affairs in disarray. Claiming that her dowry of fl. 1,000 had been invested in his business, she now wanted to assert her status as a privileged creditor and have her claims against her husband honoured before all his other debts. His brother, the Augsburg merchant Matheus Miller, neither surrendered the dowry nor rendered an account. Maria accused him of improperly using her capital to discharge Daniel's business obligations and petitioned the City Council to order compensation.

In his own defence, Matheus told a somewhat different story.³ Maria's dowry had been invested originally in his firm, of which brother Daniel had been a salaried employee at the time.⁴ Determined to form his own business, Daniel had re-invested his wife's property and had taken as partners his father Michael Miller and father-in-law Georg Stemmer the Elder. As Matheus put it, his brother "understood so little of business that they often had to help him with advances of their own means."⁵ By 1658, Daniel had owed Matheus more than fl. 1,000 and his father-in-law more than fl. 3,000. Aware of this precarious situation, Matheus and Daniel's partners had withdrawn their claims in order to satisfy the other creditors. To avoid arrest, Daniel had fled Augsburg, leaving his partners and wife to dispose of his debts in his absence. He left no trace and never returned.

Matheus offered detailed extracts from Daniel's books to substantiate his argument.⁶ Accounts receivable and commercial wares had been liquidated to discharge more than fl. 1,500 in accounts payable at Leipzig and Amsterdam. Capital in excess of fl. 3,000 remained, with which local debts and costs had been paid. Apparently,

² StadtAA, Reichsstadt Akten 675. Oberpflegant Protokollbeilage, *Stemmer v. Miller*, 1658-67.

³ *Ibid.*, 18 November 1666.

⁴ *Ibid.*: "Es were fördrist zue wüssen dz Er seinen Bruder Daniel gleich anfangs zue sich genommen und salariert..."

⁵ *Ibid.*: "...daß er eine eigene Handlung angefangen, die er eben sowol nit verstanden sondern sie folgents hin gaar vill und offtmals mit fürshießungen eigener Mittel jme helfen müessen."

⁶ *Ibid.*, Bilanz 1658.

none of these obligations had involved long-term, fixed-interest investment. After all claims had been settled, Daniel's firm had retained a balance of nearly fl. 1,500, more than enough to cover Maria's dowry. Matheus expressed astonishment that she had not collected her property at the time but, rather, had waited eight years to bring forward her complaint. He insisted that he had acted with the agreement of all parties and in the best interests of the firm and the family.

The magistrates agreed with Matheus.⁷ They found no evidence of impropriety on his part and ruled that Maria had delayed far too long to demand compensation. That notwithstanding, some gesture was needed to restore harmony between the Stemmer and Miller families. Matheus agreed voluntarily to pay fl. 300 with the understanding that it expressed neither guilt nor obligation on his part, that it would be used solely to support Daniel's five children, and that it would discharge forever all claims against the Miller family. With this agreement, the dispute was formally resolved.

This anecdote describes a bankruptcy mitigated, an instance of insolvency, in which a merchant, unable to meet his financial obligations, was saved from disgrace and destruction by the concerted efforts of his family, understood here as his brothers and in-laws. They were unable to prevent the flight of the bankrupt, the dissolution of the firm, or the discomfort of the bankrupt's wife and children. Yet, they preserved the credibility and credit-worthiness – in the parlance of that time, the “trust and faith” (*Trauen und Glauben*) – of the Miller name, no small feat in an age when reputation was the best guarantor of economic security, stability, and success.

Miller's case also provides an endpoint from which to view a process of change over time. The handling of bankruptcies – as matters of business, legal and domestic concern – evolved into a more normative and rational process during the early modern period. This normative, rational process would, however, alter the business practices that had forged the economic might of Augsburg and the Holy Roman Empire during the fifteenth and sixteenth centuries.

⁷ *Ibid.*, 14 November 1667.

Though not commonplace, bankruptcies were by no means unusual in early modern Augsburg, or Europe for that matter, the fact that they have attracted relatively little scholarly attention notwithstanding. As early as 1560, Paul Hektor Mair chronicled no fewer than 26 Augsburgers who “became bankrupt and, because of debts, sought sanctuary, fled the city, or suffered arrest until they settled and were released”.⁸ Had he extended his count to 1580, as did Jakob Strieder in 1938, the total would have risen to 70 “great and famous commercial houses.”⁹ More recent and reliable surveys have set at 63 the number of bankruptcies in Augsburg between 1529 and 1580.¹⁰

Financiers have been described as “the creatures of the great monarchies who needed them but always could, and did, break them when reason of state demanded it.”¹¹ While this generalization may describe the fall of many great merchant-banking concerns, it hardly captures the complexities of economic success or failure in the sixteenth century. Of 63 bankruptcies, 39 came in three distinct waves: 13 between 1559 and 1561, following the first suspension of payments by the Spanish and French crowns; 12 more between 1562 and 1565, constituting a kind of after-shock; and 14 between 1573 and 1576, coinciding with the second Spanish default. Yet, these correlate only imperfectly with royal bankruptcy. A prolonged slump in Spanish-American trade, the general crop failures of 1555 and 1556 and the renewal of the French war in 1557 forced the Spanish crown to transfer its debts into state bonds (*juros*) at 5 percent, effectively declaring a

⁸ *Die Chroniken der deutschen Städte vom 14. bis ins 16. Jahrhundert*, Vol. 33, 2nd ed. (Göttingen, 1965-67), pp. 78-81.

⁹ J. Strieder, “Der Zusammenbruch des süd- und mitteleuropäischen Frühkapitalismus,” in H.-F. Deininger (ed.), *Das Reich Augsburg: Ausgewählte Aufsätze Jakob Streiders zur Augsburger und süddeutschen Wirtschaftsgeschichte des 15. und 16. Jahrhunderts* (Munich, 1938), p. 46. Cf. W. Zorn, *Augsburg: Geschichte einer europäischen Stadt*, 3rd ed. (Augsburg, 1994), p. 236.

¹⁰ M. Häberlein, *Brüder, Freunde und Betrüger: Soziale Beziehungen, Normen und Konflikte in der Augsburger Kaufmannschaft um die Mitte des 16. Jahrhunderts* (Berlin, 1998), pp. 397-99.

¹¹ H. G. Koenigsberger and G. L. Mosse, *Europe in the Sixteenth Century* (New York, 1968), p. 53.

moratorium on payments. By 1560, the Dutch, French, and Portuguese followed suit. Failures peaked in Augsburg in 1560 and in 1563. Spain suspended payments again in 1575 and in 1596, neither of which had much effect on Augsburg bankers. The number of bankruptcies rose to 5 in 1574, before the second Spanish default, suggesting that state finances were but one of several causes. Indeed, by 1552, most Augsburger had already withdrawn from direct involvement with the Spanish crown and only a handful continued to offer credit to the French.¹² The majority of bankruptcies involved not the great financiers but modest merchants or improving masters, men who lived beyond their means.¹³

One of these was Paul Kramer, a merchant involved in currency exchanges between Antwerp, Augsburg, and Venice, usually as an associate of wealthier colleagues.¹⁴ When he was forced to suspend payments in 1563, a century before the fall of Daniel Miller, Kramer settled with a few, favoured creditors and fled Augsburg for the sanctuary of Friedberg, over the border in Bavaria. Under questioning, his servants exposed the tactics of dissolution.¹⁵ Hanns Bierbreu confessed that, acting on Kramer's orders, he made several deliveries to his master's creditors: 2 bales of black fustian (*Barchent*), worth fl. 132, to Hanns Widholtz; 17 pieces of white fustian of undisclosed value to Kramer's brother-in-law, Joshua Mair; and fl. 60 in cash to Jeremiah Seitz. Bierbreu then secured the balance of his master's capital and accounts. A sack containing fl. 400 in cash and a barrel containing business correspondence and books were surreptitiously delivered to

¹² M. Häberlein, *Brüder, Freunde und Betrüger*, pp. 38-39. See also R. Carande, *Carlos V. y sus banqueros*, 3 vols. (Madrid, 1942/47); R. Hildebrandt, "The Effects of Empire: Changes in the European Economy after Charles V," in I. Blanchard, A. Goodman, and J. Newman (eds.), *Industry and Finance in Early Modern History: Essays Presented to George Hammersley on the Occasion of his 74th Birthday* (Stuttgart, 1972), pp. 58-76; H. Kellenbenz, "Die frühen Bankgeschäfte der Fuggerschen Faktorei in Sevilla," *Revue internationale d'Histoire de la Banque* 8 (1974), pp. 200-15; idem, *Die Fugger in Spanien und Portugal bis 1560*, 2 vols. (Munich, 1990).

¹³ R. Hildebrandt, "The Effects of Empire," pp. 62-64

¹⁴ M. Häberlein, *Brüder, Freunde und Betrüger*, p. 32.

¹⁵ StadtAA, Reichsstadt, Stadtgericht, Schuld-, Klag- und Appelationssachen, Pt. II, Karton XVIII, Konkurs von Paul Kramer, 1563.

the same Joshua Mair, who forwarded them to safety in Friedberg. Kramer's wife, Sara, begged Bierbren to carry her clothing and jewellery to the house of her brother-in-law, Bartholomäus Keppeler, where it too would be transferred to Mair's keeping. She packed her belongings in a small keg, the sort usually used to ship dyestuffs. Noting the unusual weight of the barrel, the servant suspected it contained household silverware in addition to personal property. By such clandestine means, Kramer prevented seizure of his capital and forced his remaining creditors to negotiate.

Realizing that the bankrupt had stolen a march on them, they immediately appealed to the City Council. Despite sworn testimony to the contrary by Kramer's brother-in-law and wife, the creditors were convinced that certain people had acted on his behalf by secretly removing his capital and accounts to secure locations and preventing the payment of his debts. They petitioned for a judgment against Kramer that would permit them "to seize, auction, sell, and broker all Kramer's real and moveable property, without exception, until all our entrusted money and goods, including all costs and damages, have been recovered and we are satisfied."¹⁶ The City Council refused the petition, referring the creditors to the City Court, which had competence in all matters pertaining to debt. Fearful that any delay would enable Kramer to remove even more of his capital from their grasp, the creditors requested that the Council order the immediate arrest of all his property. A process before the Court, they argued, would require written proof of Kramer's debts, a condition rendered impossible by the hiding of his business accounts. It could only expose them to further delay and loss.

Meanwhile, both Kramer's wife and brother-in-law weighed in on his behalf. Sara accused the creditors of vindictiveness insofar as they refused all negotiation and jeopardized her livelihood. The creditors

¹⁶ *Ibid.*: "...alle gedachte Paulsen Kramers Haab unnd Guetter ligende unnd farende nichts davon außgenommen anzugreifen, zu ergannten, zu verkauffen und zu verhandeln, so lanng unnd vill biß wir unns unsere vertrautten waren und geltts und daruber ergangen Costen und shaden deren haabhafft sein und daran vergniegt machen."

responded that they could not negotiate with a person of such obvious bad faith that he would defraud his creditors and abscond with their property. Moreover they denied any intention to seize her property or to prevent her from going about her business, saying, “we never interrupted or threatened her subsistence, even when she sat in her open stall.”¹⁷ Indeed, they left her in peace, despite their suspicions that she and Joshua Mair had colluded in Kramer’s flight. For his part, Mair denied both that he had assisted Kramer to hide his property and that he had encouraged him to avoid settlement. The testimony of the servants notwithstanding, he accused the creditors of slander and demanded a retraction. Each party accusing the other of bad faith, they had reached an impasse.

Yet, Mair apparently worked behind the scenes to resolve the dispute. In a letter to Kramer, he reported that all his attempts to negotiate a settlement with the creditors had failed. He suggested, therefore, that they place the matter before his brother, Jeremiah Mair, a merchant in Amsterdam, to whom Kramer owed fl. 6,000. Not an account payable, a sum of this size probably represented an investment annuity. Were its repayment not demanded, it could provide the margin necessary to satisfy all other debts and obligations. The document closes with Mair urging Kramer to act. No evidence of a final settlement exists.

As in the case of Daniel Miller, this was but a minor instance of bankruptcy, involving a few thousand *Gulden*. An extended family strove to make good the debts and to fend off the consequences. Whether they succeeded is unclear. Yet, for all their similarities, a comparison of these two, relatively unimportant, business failures suggests on the one hand subtle changes in investment strategies and capital formation and on the other hand the growth of a stable, systematic approach to debt and bankruptcy between 1550 and 1650. Elements of that system shed light on some of the inner workings and institutional parameters of early modern capitalism.

Economic collapse – the suspension of payments and the cessation of operations – also struck the great commercial families and fortunes of southern Germany, including the Höchstetter, Mair, Zangmeister, Bimmel, Kraffter, Langenmantel, Rosenberger, Rem, Welser, and

Fugger. Not the statistical frequency of bankruptcy but rather the prominence and power of the bankrupts established the significance of these events. Scholarship has long recognized that these houses relied upon foreign investment, in the form of fixed-interest deposits, to provide an unusually high percentage of their operating capital.¹⁸ The Höchstetter and Fugger, early pioneers in this form of business organization, drew less than 50 percent of their capital from family and relatives.¹⁹ The larger proportion came from merchants and bankers, usually but not exclusively from Augsburg, who placed capital in the hands of related or associated firms for purposes of investment or exchange.²⁰ Patrician rentiers, wealthy widows, domestic trusts, and state and ecclesiastical institutions also contributed. Foreign investment was a benchmark of Upper German, especially Augsburger, finance, in an age when it dominated European industry, commerce, and banking. It explained its particular strength – its control of capital-intensive industries, such as silver and copper mining – as well as its underlying weakness – the tendency of one bankruptcy to trigger others.²¹ The bankruptcies that swept through Augsburg's merchant community in the 1560s and 70s seemed to typify – and to justify – Max Weber's characterization of the pre-modern, traditional capitalist as a swashbuckler, who "would sail through hell for profit, even if his sails were singed."²² One scholar

¹⁷ *Ibid.*: "...so wir doch jr an jrer Narung, wie sie dann noch zue offnen laden sitzt, nie eingegriffen oder aufgestossen...."

¹⁸ R. Ehrenberg, *Das Zeitalter der Fugger: Geldkapital und Creditverkehr im 16. Jahrhundert*, 2 vols. (Jena, 1896), *passim*.

¹⁹ U. Klinkert, "Die Augsburger Handelsgesellschaft der Höchstetter: Zusammenbruch 1529, Gläubiger und soziale Verflechtung" (State examination, University of Augsburg, 1983) as cited in M. Häberlein, *Brüder, Freunde und Betrüger*, p. 245.

²⁰ M. Häberlein, *Brüder, Freunde und Betrüger*, *passim*.

²¹ R. Hildebrandt, "Augsburger und Nürnberger Kupferhandel, 1570-1580: Produktion, Marktanteile und Finanzierung im Vergleich zweier Städte und ihrer wirtschaftlichen Führungsschicht," in H. Kellenbenz (ed.), *Schwerpunkte der Kupferproduktion und des Kupferhandels in Europa, 1500-1650* (Cologne, 1977), pp. 190-224. See also G. Seibold, *Die Mantich: Geschichte einer Augsburger Kaufmannsfamilie* (Sigmaringen, 1995).

²² M. Weber, *Die protestantische Ethik und der "Geist" des Kapitalismus* (Weinheim, 1996), p. 19: "...wie etwa jener holländische Kapitän, der 'Gewinnes halber durch die Hölle fahren wollte, und wenn er sich die Segel ansengte'...."

wrote of the "exceedingly high willingness to entertain risk among Augsburg merchants."²³ Constantly hungry for capital, these early businessmen readily compiled short-term debts, which might be redeemed at a day's notice, against their long-term investments, which was remunerative but insecure.²⁴ Hindered by inadequate accumulation, unreliable security, and unlimited liability they readily fell victim to cash-flow problems and liquidity crises.

Such difficulties doomed the enterprise of Marcus Ulstett and Brothers, which, like that of Paul Kramer, suspended payment in 1563.²⁵ It was the sordid but not unexpected culmination of a dramatic series of events. Founded by their father, Marcus Ulstett the Elder, their firm had traded textiles and other goods between the Levant, Venice, and points north, maintaining permanent factories and warehouses in Lyon, Salzburg, Nuremberg, Leipzig, Hof, Frankfurt, Breslau, London, Antwerp, Cologne, and Vienna.²⁶ The firm's end reflected the risks borne by merchants in the heyday of commercial capitalism. The brothers spoke of "irretrievably great damage."²⁷

"Fourteen months ago, 20,000 ducats were lost at sea. And, on the eighth of this month, we received newspaper reports that our servant, one George Coblentz, who took 50,000 ducats in uninsured precious stones, without our knowledge or consent, had been plundered and imprisoned by pirates, from which our unrecoverable

²³ R. Hildebrandt, "Augsburger und Nürnberger Kupferhandel, 1570-1580," p. 216.

²⁴ D. Landes, *The Unbound Prometheus: Technological Change and Industrial Development in Western Europe from 1750 to the Present* (Cambridge, Eng., 1969), esp. pp. 124-92.

²⁵ StadtAA, Reichsstadt, Stadtgericht, Schuld-, Klag- und Appelationssachen, Pt. II, Karton XXVIII, Konkurs von Marx, David und Paul Ulstatt, 1564.

²⁶ M. Häberlein, *Brüder, Freunde und Betrüger*, pp. 248-51.

²⁷ StadtAA, Reichsstadt, Stadtgericht, Schuld-, Klag- und Appelationssachen, Pt. II, Karton XXVIII, Konkurs von Marx, David und Paul Ulstatt, 1564, Supplikation, 18 April 1564: "Vor 1 Monaten biß jnn die 20,000 Ducaten werdt auf dem Meer zu grundt gangen. So haben wir auf 8. Dises gegenwartigen Monates laidige Zeitungen empfangen, das unnsere Diener einer Georg Coblentz genannt wellicher über die 50,000 Ducaten werdt Edelgestain ohn unnsere Befehl, Wissen und Willen onhgeseguriert mit sich gefuert, von dem Meerräubern seie geplündert, gefangen und weggefueert worden, auß wellichem nun unnsere unüberwindlicher Schad erfolgt ist. wie dann nicht allein wir sonnder auch andere von uns allhie, gewiße Zeitungen und Kundschaft empfangen haben."

destruction followed, as not only we but others here have learned as well.”

They had hoped that their “affairs, credit, and creditworthiness” (*Sachen, Trauuen und Glauben*) would see them through the first disaster. Apparently, however, they hedged that hope with certain precautions: though Marcus the Younger had risen to the office of Burgomaster of Augsburg, he surrendered this distinction, along with all rights of citizenship, and fled to Munich shortly after the first loss, in 1561.²⁸ The theft of the gems made further business impossible. With debts in excess of fl. 170,000 owed to 105 creditors, Marcus, David, and Paul went into hiding and sued for clemency.

In a petition to the City Council they proclaimed their innocence and appealed for assistance. To their creditors, including 70 Augsburgers and 35 foreigners, they proposed three possible settlements. First, they offered immediately to pay one-half of the principal owed to each of their creditors, including their wives, within a three-year period. Second, should 50 percent prove unsatisfactory, they promised to comply with a division of their goods (*cessionem bonorum*), saying they would rather stand “naked and stripped of all property” than keep a penny that did not belong to them. Third, should payment in full be required, they suggested a receivership (*Burgschaft*), whereby their firm would continue to operate but its profits would be forfeit until all its obligations were met. To demonstrate their good faith, the Ulstett brothers offered to open their accounts for inspection. They asked only a grace period of four months, free from all threat of arrest or seizure, to reach some form of agreement with their creditors.

For their part, the creditors were amenable to a cooperative resolution. A commission of five spokespersons, leading Augsburg merchants with only distant connections to the Ulstett, offered a response on behalf of all. They agreed to the requested grace period provided the bankrupts “immediately handed over an authenticated extract or balance of their debts and justified these against their

²⁸ M. Häberlein, *Brüder, Freunde und Betrüger*, p. 248.

business accounts to furnish the necessary statement of their goods.²⁹ Clearly, the list of debts that the Ulstett appended to their petition would not suffice without some statement of the capital at their disposal. Only with complete disclosure was a mutually agreeable solution possible.

Yet, not all creditors were prepared to be patient. Hieronymus Rehlinger the Elder took immediate measures to recover his investment, valued at fl. 2,000.³⁰ His representative appeared before the City Prefect (*Stadtvogt*) of Hof, a town in the Fichtel Mountains of Upper Franconia, and requested the arrest and seizure of all Ulstett goods and accounts warehoused there. When confronted, Rehlinger defied the appointed representatives and refused to release the arrested goods, saying that the Ulstett brothers had fled the city and, so, violated their civic duty (*bürgerliche Pflicht*). He only wished to recover his own (*mein aigen*).³¹ This took precedence over common efforts and joint resolutions, and it signaled the beginning of a scramble for advantage.

No less than nine creditors followed Rehlinger's example, seizing Ulstett property worth nearly fl. 15,000 in Antwerp, Leipzig, Nuremberg, Salzburg, and Vienna.³² Thus, Gregorius Henning and Melchior Neumayr secured debts of fl. 3,000 each. Jacob Mair of Kempten did likewise. Hieronymus Krafter arrested goods to secure payment of fl. 2,000. Wolfgang Paler, Jerg Mulich, Lucas Rem, Hans Paul and Hans Heinrich Horwart guaranteed similar sums in a similar manner. Nor did the Ulstett sit idly by as former associates, investors, and creditors stripped them bare. They asked brother Matheus Ulstett, who was not a partner in their firm, to act on their behalf. He began immediately to liquidate property in payment of debts. Letters of

²⁹ StadtAA, Reichsstadt, Stadtgericht, Schuld-, Klag- und Appelationssachen, Pt. II, Karton XXVIII, Konkurs von Marx, David und Paul Ulstatt, 1564, Antwort der Gläubiger, 20 April 1564: "ain glaubwürdigen Außzug oder Pilantz jrer Shulden und Gegenschulden unverzogenlich uberantworten denselben auch gegen den hauptbuechern justificieren und uns darbey der Wahren und anders halber notturfftigen Bericht thon."

³⁰ *Ibid.*, Arrest, 20 April 1564.

³¹ *Ibid.*, Antwort des Jheronmus Rehlinger, d. A., 25 May 1564.

³² *Ibid.*, Interrogatoria, 3 May 1564.

exchange, valued at 1,600 ducats and 1,750 ducats in Venice, satisfied the obligations owed to the heirs of Ulrich Weiß and to Lucas Rem respectively. Hans Österreicher and Ulrich Waiblinger accepted two letters of exchange, worth 700 ducats, in payment of their debts, originally listed as fl. 5,743. Perhaps they despaired of obtaining more. Likewise, Jerg Hopfer settled for partial payment of an obligation worth fl. 7,000. The heirs of Lienhart Weiss fared better; the sale of cloth from a Viennese warehouse discharged their debt of fl. 400 in full. Clearly, such piecemeal agreements threatened both the equitable payment of debts and orderly resolution of the bankruptcy.

On 7 May 1564, the City Council passed a Bankruptcy Ordinance (*Fallitenordnung*) that drew upon the experience gained in such cases as those of Kramer and Ulstett. It noted that bankruptcies deprive "honourable people" (*ehrlichen gueten Leut*) of their property. To prevent such damage and loss, the Council henceforth forbade the removal from Augsburg of property or accounts belonging to the bankrupt. More importantly, it proscribed the independent collection of debt, requiring all creditors to act in common. They had to register obligations at the City Chancery and pursue payment through the offices of the appointed and recognized commission of representatives. Voluntary mutuality yielded to legal formality among creditors.

Though many of those who had acted on their own subsequently surrendered seized property or collected debts, just as many did not. Hieronymus Rehlinger proved particularly stubborn. He proceeded, as the creditors noted on 30 May 1564, to sell the property he had seized and to pocket the proceeds in defiance of the Council's edict. Others did likewise. Without the recovery of lost capital, the Ulstett would be unable to honour their obligations.

In a further petition to the City Council, dated 22 July 1564, they referred again to the jewels, stolen by pirates somewhere on the sea route between Alexandria and Messina. Their factor in Alexandria had made a representation to the Imperial ambassador at the Sublime Porte in Constantinople, seeking official intervention and assistance. The factor hoped that the Sultan, thus encouraged, might convince his renegade subjects to surrender the jewels to him. Though willing to

raise the issue, the ambassador could not proceed without an order from the Imperial court. The Ulstett asked the City Council to petition the Emperor for such instructions. Sent via Ragusa to Constantinople, these might arrive in time to recover all or part of the lost cargo, repay most of the outstanding debts, and reestablish the Ulstett firm in business.

It must have been a small problem in the otherwise frequent and difficult relations between Habsburg and Ottoman empires. Perhaps too small. Apparently, no action was taken. Three years later, in 1567, the appointed representatives noted as common knowledge that individual creditors would go their own ways and do everything possible to secure payment in cases of bankruptcy.³⁵ Despite the fact that such independent actions were now illegal, certain persons still saw fit to proceed on their own, putting individual good before the common good. The majority of Ulstett debts remained unpaid; the Ulstett brothers were broken.

Bankruptcies were highly complex matters, involving negotiation and litigation that could extend over many decades and leave voluminous documentation. The Fugger bankruptcy of 1563 took nearly a century to settle; its records occupy some 10 metres of shelf space. Moreover, they were fluid affairs, given to extraordinary variation based on the personalities and circumstances involved. Such fragmentary, isolated cases as those of Miller, Kramer, and Ulstett, offer insights into the structure and function of early commercial enterprise and permit an examination of the family's economic role in early capitalism. Misfortune shifted the balance between interest and emotion, thus exposing some of the complex linkages between enterprises and underwriters.

It is difficult, in all three cases, to reconstruct exactly how the firms ran into financial difficulty. Miller and Kramer offered no indication; the Ulstett reported an otherwise unexplained loss of fl. 20,000. From the historian's perspective, each instance opens with the flight of the bankrupts – a common occurrence in all bankruptcies – and the appeal

³⁵ *Ibid.*, Supplikation der Gläubigern, 27 April 1567.

of the creditors. Miller, Kramer and the Ulstett all hid to avoid arrest: the first placing informal powers of attorney in the hands of his investors; the second securing such property as remained immediately at hand; the third placing their capital at the disposal of their creditors. Each became involved in a mediated attempt at settlement, a brother or brother-in-law acting on their behalf. The creditors responded with a demand for full liquidation of the debtor's assets to satisfy their claims against him. In Miller's case, those investors related to him by blood or marriage voluntarily withdrew their claims. His remaining creditors, apparently acting in common, settled readily. Kramer paid off several of his obligations, bringing two of his creditors, Joshua and Jeremiah Mair, into his camp and splitting the others as a group. His further efforts to hide his property and his accounts delayed, if not prevented, a final resolution of his debts. The Ulstett brothers promised ready access to their assets. Given the volume of liabilities, however, their creditors competed relentlessly with one another to seize the remaining capital.

The actions and tactics of debtors and creditors alike were predicated in large part upon the bankruptcy laws and legal practices of the time. One of the earliest of these appeared in the Augsburg Discipline Ordinance (*Zucht- und Polizeiordnung*) of 1537.³⁴ Title 20 mandated the arrest and imprisonment of individuals who contracted more than fl. 200 in debt and proved unable to pay, a method Augsburg's magistrates had applied regularly since 1529, the year of the infamous Höchstetter bankruptcy.³⁵ Should the principals flee to avoid arrest, their creditors were empowered to seize their goods or persons by whatever means necessary. Individuals with debts totalling less than fl. 200 were to be banished until settlement. The magistrates understood failure to settle with one's creditors as a derogation of status that struck at the heart of the city's commerce and prosperity, a violation of common trust and faith (*Gemeinen treuen und glauben*), and punished it accordingly. Defaulters were to be stripped of their right to membership (*Stubengerechtigkeit*) in the merchants' corporation

³⁴ StadtAA, EWA Lit. 155, Vol. 1, Augsburger Zucht- und Polizeiordnung, 1537.

³⁵ *Die Chroniken der deutschen Städten*, Vol. 23, p. 222.

(*Kaufleutestube*), required to remove their stands from the privileged positions of honest merchants in the arcade at the foot of the city's watch tower (*Perlachturm*), prohibited from bearing arms in public, and compelled to take their place with the women at the tail end of public processions. Even their children bore the mark of Cain; those born after the bankruptcy were forbidden to wear gold chains, the emblem of an established merchant. Later ordinances sharpened the punitive treatment of bankrupts; some business failures were not only dishonourable but also criminal. The Imperial Discipline Ordinance (*Reichspolizeiordnung*) of 1548 included a section entitled "On Ruined Merchants" (*Von verdorbenen Kaufleute*), according to which those who engaged in insecure or fraudulent credit transactions and suffered bankruptcy because of reckless or wastrel habits were to be treated as common thieves. And theft was a capital crime. In response to such cases as that of Kramer and Ulstett, as noted, the Augsburg Bankruptcy Ordinance of 1564 echoed the Imperial distinction between honest and dishonest bankruptcy.³⁶ It further promoted an orderly settlement of all claims by forbidding any burgher from abetting a bankrupt and mandating a full accounting of all properties. Another ordinance, in 1574, took the notion of an orderly settlement several steps further.³⁷ It empowered the magistracy to seize the bankrupt's property, to prevent the bankrupt's servants from leaving Augsburg, and to prohibit the bankrupt's wife from altering or hiding property, thus acknowledging the intimate connection between business and household. It also mandated the formation of a committee of representatives, to act on behalf of all creditors in common, subject to the approval of the City Council. The final Bankruptcy Ordinance, issued in 1580, strengthened the common elements of all earlier statutes: it emphasized the punishment of economic crime by restating the status sanctions of 1537; and it encouraged orderly settlements by insisting, once again, that all creditors submit their claims to the appointed representatives.³⁸

³⁶ M. Häberlein, *Brüder, Freunde, Betrüger*, p. 324.

³⁷ *Ibid.*, p. 331.

³⁸ *Ibid.*, p. 335.

The slow development of bankruptcy law in Augsburg suggests that the city-state gradually learned to handle business failure on a communal level. The person and conduct of the debtor remained a centre of attention: he had to surrender to his creditors and might be subjected to punishment.³⁹ Yet, his property was the true focus. These laws were pragmatic as well as systematic: they were applied according to the circumstances and necessities of each case; and they treated the debtor's assets as subject to the creditors' claims, as their property *de facto*.⁴⁰ The state's role remained essentially passive; it did not stipulate specific solutions. Rather, it provided a framework that minimized the disruption that might result from bankruptcy. By enforcing the distinction between honest and dishonest insolvency, it encouraged debtors to negotiate with their creditors. Daniel Miller did so quite readily. By encouraging creditors to act in common, it promoted settlements that were orderly and rational. Kramer's tactic of paying some to the detriment of others had forestalled any easy resolution of his affairs and had given him control of the proceedings. The Ulstett brothers were anxious to meet their obligations and preserve their *Trauen und Glauben*. As a result of the actions of certain creditors, however, most of their firm's debts were never paid. Whereas insolvency had unleashed every man for himself in a mad scramble to secure the property of the bankrupt – a situation that pitted creditors against one another and often resulted in some completely satisfied and others completely ruined – it slowly resolved itself into a systematic practice. The Miller settlement is exemplary: creditors received access to the bankrupt's accounts; they calculated the firm's assets as a totality; they divided those assets among themselves in proportion to their claims. Occasionally, they even took account of the basic needs of the bankrupt and his family, stopping short of condemning them to

³⁹ See also: Kohler, *Lehrbuch des Konkursrechts* (1891), p. 3; Baird and Jackson, *Cases Problems and Materials on Bankruptcy* (1990), p. 26; Hilaire, *Introduction historique au droit commercial* (1986), p. 305.

⁴⁰ A. Flessner, "Philosophies of Business Bankruptcy Law: An International Overview," in J. Ziegel (ed.), *Current Developments in International and Corporate Insolvency Law* (Oxford, 1994), pp 19-28.

complete indigence. As a result, bankruptcy became less a sudden rupture and more a gradual transition, in which capital was redistributed and enterprises were restructured.

Order had its price, however. Augsburg's bankruptcy laws required creditors to act in common, thus assuring that all would receive a portion of the assets due them but that none would receive all their due. As opportunity and transaction costs rose accordingly, the city's merchant-financiers reshaped their investment strategies to fit the new rules. It can be assumed that the retreat from state engagements, coupled with the continued expansion of Augsburg's economy, spurred a search for new opportunities in the second half of the sixteenth century. So, Augsburg bankers turned to family enterprises. They may have preferred to underwrite firms with whom they had multiple relations, social and political as well as economic. Whereas close relatives – a father-in-law, a wife, and a brother – underwrote Daniel Miller's firm and played an active role in the resolution of its bankruptcy, Paul Kramer and the Ulstett brothers confronted creditors, the majority of whom were relative strangers, interested only in the recovery of their capital. The structure of these firms suggests an expansion of family enterprise at the end of the sixteenth century. Reliance on truly foreign capital – funds drawn from beyond the close circle of immediately related or associated individuals and families – decreased; the extent of family participation – support garnered from parents, siblings, spouses, and in-laws – increased. Recent scholarship has confirmed the long-held assumption that early modern entrepreneurs depended on social connections to reinforce economic relations.⁴¹ In their search for capital, they turned first and foremost to members of their extended families, thus demonstrating what has been called “the multiplexity of social relations.”⁴² That a bankrupt's relatives

⁴¹ M. Häberlein, *Brüder. Freunde und Betrüger, passim*.

⁴² *Ibid.*, p. 169: “Von besonderem Interesse ist dabei die Präsenz von Verwandten der Weyer unter den Kreditoren, da sich daraus Aufschlüsse über die Kongruenz von familiären und ökonomischen Verbindungen und somit über die Multiplexität sozialer Beziehungen innerhalb der Augsburger Kaufmannschaft um die Mitte des 16. Jahrhunderts ergeben.” Häberlein sought to demonstrate the validity of Reinhard's theory of *sozialer Verflechtung* for economic life.

constituted a large number of his creditors is not surprising, given what is known about early modern business, but it poses an interesting question. How did this social context affect economic behaviour? Family financing implied family control, and the new bankruptcy laws provided the means. Thus, family members became more active in settlements. The risk of failure and default was no less great, but the opportunities for remuneration or compensation were undeniably more numerous. Here were the hard lessons of failure.

In the Miller, Kramer and Ulstett bankruptcies, parents and siblings, spouses and in-laws played prominent, often contradictory, roles as confederates, mediators, and creditors. Consider the wives. Maria Stemmer, the wife of Daniel Miller, initially invested her fortune in her husband's enterprise, subsequently withheld her claims against him, and belatedly sought compensation for her own losses. Sara Kramer assisted her husband's efforts to flee his creditors and protect their assets, probably preserving her dowry at the same time. David Ulstett's wife, Anastasia Langnauer, was also his single largest creditor, having invested fl. 20,000 in his firm.⁴³ During the liquidation of his assets, she cooperated with the representatives, relentlessly pursuing her husband to recover a portion of her capital. Siblings and in-laws served in a similar fashion. Matheus Miller disavowed his claims against his brother's business in order to facilitate a final settlement with the other creditors, a process in which he took a leading role. Joshua and Jeremiah Mair mediated a settlement on behalf of Paul Kramer but only after their own claims had been fixed in one way or another. The only Ulstett to come to the aid of the bankrupts was their brother Matheus, who had no commercial interest in their business. Over the course of the century that separated these bankruptcies, the role of the family members seems to have shifted from creditor and claimant – or creditor and confederate – to underwriter and mediator.

Imperial and local law made it dangerous for family members to assist bankrupts. The pain of legal sanction encouraged parties to

⁴³ StadtAA, Reichsstadt, Stadtgericht, Schuld-, Klag- und Appellationsakten, Pt II, Karton XXVIII, Konkurs von Marz, David und Paul Ulstatt, 1564.

reevaluate actions and reassess risks. Unlike Sara Kramer and Joshua Mair, Maria Stemmer and Matheus Miller could not legally aid their defaulting husband and brother. Rather, they insulated themselves from the consequences of his actions. Maria demanded the repayment of her dowry as one of her husband's debts. By insisting that her fortune not be included among his firm's assets, and subjected to liquidation therefore, she used standard legal practice to draw a fundamental distinction between business capital and family capital. It was a small step toward limiting investors' liability and protecting private capital, both of which became commonplaces of modern business. Matheus protected the family's *Trauen und Glauben*, its credibility and credit-worthiness. Yet, he did not understand economic capital as somehow dependent upon what has become known as social capital; reputation and connection were secondary elements in a complex economic calculation.⁴⁴ More important by far were the rendering of accounts and the paying of debts. These testified above all else to a merchant's economic standing. In an age before open account books or published annual reports, they offered the benchmark by which potential partners and investors assessed risk and granted access to capital markets. Family members asserted themselves on behalf of a bankrupt relative not in order to preserve his social capital but rather to protect his economic standing and, *mutatis mutandis*, their own. The actions of Stemmer and Miller would seem to suggest that, over time, family members recalculated their interests in family enterprises. As Matheus Miller explained, he settled his brother's affairs "to avert insult and ridicule, *even* [my emphasis] bankruptcy."⁴⁵ His brother's fate and fortune concerned him less than that of his family and his family's enterprise.

⁴⁴ Social capital is understood here as the totality of real and potential resources that derive from the possession of institutional connections, i.e., membership in a group or groups. Cf. P. Bourdieu, "Ökonomisches Kapital, kulturelles Kapital, soziales Kapital," in R. Kreckel (ed.) *Soziale Ungleichheit* (Göttingen, 1983), pp. 183-98; M. Häberlein, *Brüder, Freunde und Betrüger, passim*; J. C. Mitchell, "Networks, Norms, and Institutions," in J. Boissevain and J. C. Mitchell (eds.), *Network Analysis: Studies in Human Interaction* (The Hague, 1973), pp. 15-36.

⁴⁵ *Ibid.*: "...schimpf und spot ja falliment verhüeten wollen..."

Until very recently the bankruptcies of the 1560s and 70s were thought to have marked a turning point: the end of "The Age of the Fugger"; "The Catastrophe of the Early Capitalist Age"; or "The Collapse of Southern- and Middle-European Early Capitalism."⁴⁶ Yet, a close study of the economies of Europe and Augsburg in the second half of the sixteenth century reveals few unequivocal indicators of crisis.⁴⁷ The industrial base of the continent, textile production, seems to have enjoyed a general expansion. Certainly, Augsburg's fustian industry reached its highest level of production during the last decades of the century. Likewise, the signs of new wealth appear at many points. Augsburg enjoyed a steady increase both in the total amount of taxable property and in the number of families regarded as wealthy. Bankruptcies notwithstanding, these were not the worst of times.

Yet, Augsburger financiers may have felt they were not the best of times. As noted, most of them had withdrawn from state finance in Spain by 1552, well before its first default. The cessation of payments by the Spanish crown, followed by the Dutch, French, and Portuguese, swept away only those not so far-sighted. This may have dampened enthusiasm, but it did not empty the vaults. Nor were commercial developments uniformly encouraging. Against the rise of the textile industry, entrepreneurs weighed the fall of silver mining in Europe, the

⁴⁶ R. Ehrenberg, *Das Zeitalter der Fugger*, pp. 174-78; J. Kulischer, *Allgemeine Wirtschaftsgeschichte des Mittelalters un der Neuzeit* (Munich, 1958); J. Strieder, "Der Zusammenbruch des süd- und mitteleuropäischer Frühkapitalismus," in H.-F. Deininger (ed.), *Das Reich Augsburg: Ausgewählte Aufsätze Jakob Strieders zur Augsburger und süddeutscher Wirtschaftsgeschichte des 15. und 16. Jahrhunderts* (Munich, 1938), pp. 45-49.

⁴⁷ I. Bog, "Wachstumsprobleme der oberdeutschen Wirtschaft, 1540-1618," *Jahrbücher für Nationalökonomie und Statistik* 179 (1966), pp. 493-537; H. Kellenbenz, "Gewerbe und Handel, 1500-1648," in H. Aubin and W. Zorn (eds.), *Handbuch der deutschen Wirtschafts- und Sozialgeschichte*, Vol. I (Stuttgart, 1971), pp. 414-64; idem., "Augsburger Wirtschaft, 1530 bis 1620," in *Welt im Umbruch: Augsburg zwischen Renaissance und Barock*, Vol. I (Augsburg, 1980), pp. 51-71; F. Lütge, "Die wirtschaftliche Lage Deutschlands vor Ausbruch des Dreißigjährigen Krieges," in idem. (ed.), *Studien zur Sozial- und Wirtschaftsgeschichte* (Stuttgart, 1963), pp. 336-95; : B. Roock, *Eine Stadt in Krieg und Frieden: Studien zur Geschichte der Reichsstadt Augsburg zwischen Kalenderstreit und Parität*, 2 vols (Göttingen, 1989); E. Schremmer, "Die Wirtschaftsmetropole Augsburg," in M. Spindler (ed.), *Handbuch der bayrischen Geschichte*, Vol. III (Munich, 1971), pp. 1080-96.

great source of Augsburger capital, which suffered a steady decline in production and profitability in the face of silver imports from the New World. The withdrawal of the Portuguese spice monopoly from Antwerp in 1549 had placed Augsburg merchants at a competitive disadvantage in this lucrative market as well. Most bankrupts were middling men-on-the-make, like Miller and Kramer. That notwithstanding, the series of bankruptcies in Augsburg itself must have created the impression that hard times had arrived. Small wonder, then, that Hans Fugger, having witnessed two bankruptcies in his own family, bemoaned the decline of his hometown. Augsburg had become "a small village where once was a great city...all is in decline and all matters give evidence of worsening rather than bettering."⁴⁸ Such sentiments might explain, at least in part, the rapacity of Augsburger financiers in pursuit of their debtors, even those who were brothers or friends. Such sentiments might also explain, at least in part, the retreat into family finance. Under the circumstances, it offered the most reliable form of risk management.

The bankruptcies of the late 1500s encouraged a fundamental shift in economic behaviour. They constituted an "institutional change" in the Northian sense, that is, a change in the "rules of the game," in the larger social, political, and economic contexts that direct human interaction and exchange.⁴⁹ What emerged between 1550 and 1650 was a regularized process of managing the organization and reorganization of capital that placed no less emphasis on notions of personal responsibility, such as criminality or incompetence, but turned greater attention to a systematic accounting of creditworthiness, based on assets and liabilities. Through the lessons of experience, merchants altered their economic strategies, creditors adapted old forms of economic cooperation, and the state adopted new forms of regulation.

⁴⁸ Letter dated 23 July 1582 to Graf von Salm as cited in L. Lenk, *Augsburger Bürgertum im Spätbarock und Frühbarock (1580-1700)* (Augsburg, 1968), p. 15: "Es ist in summa alles in Abnehmung und erzeigen sich leider alle Sachen mehr zur Böserung als zur Besserung."

⁴⁹ D. North, *Institutions, Institutional Change and Economic Performance* (Cambridge, Eng., 1990), pp. 3-10.

Entrepreneurs sought investment from friends and relatives. They also learned to rely more heavily on domestic resources as a form of risk avoidance. Families assisted insolvent members in order to secure their own persistence and success in business. They also learned to work with creditors to preserve both property and propriety. Creditors sued to recover their capital and avoid illiquidity. They also learned to cooperate in order to avoid both the dilution and the concentration of capital. The state punished criminal misconduct. It also learned to maintain stability and order in volatile market economies. Bankruptcy became a sort of seminar in the workings of commercial capitalism.

Bankruptcy laws deterred foreign investment by raising transaction costs for creditors and debtors alike. The principle that creditors had proprietary rights over the capital of their debtors encouraged entrepreneurs to seek investment from their closest kin as a means to preserve capital within the family. The principle that creditors must act in common to recover their own encouraged them to place their capital in the hands of their closest kin as a hedge against loss. Augsburg merchant-bankers restructured their enterprises to fit these new parameters. The Miller, Kramer, and Ulstett cases suggest the immediate consequences: increased domestic investment; decreased business capitalization.

Traditionally, economic history employs grander narratives. Augsburg suffered its "crisis of the seventeenth century".⁵⁰ Warfare swept over the city between 1622 and 1635, destroying 80 percent of the population and, by some estimates, as much as 90 percent of its fixed and moveable capital.⁵¹ Yet, from the perspective of individual firms, such losses merely reproduced conditions that had been obtained in the late sixteenth century, conditions that had required new organizations of business, new approaches to debt, and new sources of investment. These lessons had been well learned. Thus, with the

⁵⁰ E. J. Hobsbawm, "The Crisis of the Seventeenth Century," in T. Aston (ed.), *Crisis in Europe, 1560-1660* (London, 1965), pp. 5-58.

⁵¹ P. Fassel, "Wirtschaft, Handel und Sozialstruktur. 1648-1806," in G. Gottlieb et al. (eds.), *Geschichte der Stadt Augsburg von der Römerzeit bis zur Gegenwart* (Stuttgart, 1984), pp. 468-80.

cessation of hostilities in 1648, Augsburg's merchant-financiers immediately reappeared in the continent's great centres of commerce and reestablished their home town as an important capital of finance.

Yet, economies do not respond simply to historical narratives or social forces. Nor do states simply impose laws and create order. Rather, individuals identify interests, assess risks, and make choices. These bankruptcies underscore the empirical nature of early modern capitalism.⁵² Debtors and creditors appropriated the legal process of settlement in personal ways and shaped their economic practices accordingly. In such complex, individual decisions were located the forces of change, the consequences of which Nikolai recognized without being able to identify. It is an irony that the macrohistory of survival and recovery must be understood in terms of a microhistory of individual designs and destinies.

⁵² Cf. T. Safley, *Charity and Economy in the Orphanages of Early Modern Augsburg* (Atlantic Highlands, NJ, 1997), p. 12 and *passim*.

