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Companies' insolvency and 'the nature of the firm' in Italy, 1920s–70s[1]

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This article analyses the functioning of Italian insolvency laws and practices, in particular their role in the selection and relaunch of viable firms. The article investigates the period between the 1920s and the 1970s, and focuses on joint-stock companies. Using comparative data on the number of cases, we show that in Italy firms mainly used the procedure called *fallimento* (bankruptcy), consisting of the collection and subsequent liquidation of assets. Other procedures, such as deals with creditors or forms of receivership, able to give companies a further chance, were rarely used. On the basis of archival documents we maintain that this result was due to the strictness and complication of Italian procedures, as well as to their inability to select viable companies. The article also investigates the relation between the features of insolvency law and the nature of the Italian industrial system, specifically the peculiar small size and rapid turnover of joint-stock companies. We suggest that the pro-liquidation character of the insolvency law might have been one of the causes of the peculiarity of Italian industrial capitalism, even if the opposite direction of causality cannot be excluded.

Recent studies of economic and business history have analysed the link between the structure of the productive system, the instruments of corporate governance, and the features of commercial legislation and practice.[2] Within this emerging area of research, bankruptcy and insolvency[3] laws and procedures have received special attention, because of their key role in shaping the incentive structure for both creditors and debtors.[4]

Because of the unique nature of its industrial system, Italy provides a very interesting case study to examine this relationship. During the twentieth century, high rates of mortality and very rapid turnover in the population of companies characterized, in comparative terms, the profile of the Italian industrial system. Italian joint-stock companies not only experienced turbulence and instability, but

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[2] T. Guinnane, R. Harris, N. R. Lamoreaux, and J. Rosenthal, 'Putting the corporation in its place', NBER working paper 13109 (Cambridge, 2007); Lamoreaux and Rosenthal, 'Legal regime'; Morck, Wolfenzon, and Yeung, 'Corporate governance'.

[3] In Anglo-Saxon legal jargon, different names are used to indicate personal cases (bankruptcy) or companies (insolvency). This linguistic difference does not exist in Continental Europe, and in Italy the word *fallimento* (bankruptcy) applies to both cases. In this article we adopt the Continental European jargon and use the two words insolvency and bankruptcy as synonyms.

[4] Among many others, see Armour, Cheffins, and Skeel, 'Corporate ownership'; Franks and Torous, 'Empirical investigation'; Laporta, Lopez-de-Silanes, Shleifer, and Vishny, 'Law and finance'.

were also smaller that their European and US counterparts.[5] Even if some noticeable exceptions existed, on average Italian firms tended to be more fragile and to die younger than in other countries, with the consequence that acquired technical capabilities, accumulated knowledge, and entrepreneurial resources had to be frequently dismantled and 're-embodied' in new and often short-lived structures. The fact that in Italy firms struggled more than in other systems to develop these 'organizational capabilities'[6] has impacted on the country's industrial and economic performance. It is well documented that because of the limitations of many of its joint-stock companies, during the twentieth century Italy failed to establish its permanent presence in high-technology industries, lagged behind in introducing the most efficient managerial techniques, and was well behind other western countries in terms of innovative performance.[7]

The peculiarities of the Italian model have been the subject of numerous investigations focusing on a variety of elements, including the size of the domestic market, the role of the state, and the manufacturing companies' controversial relationship with the financial sector.[8] However, despite the focus on the elements that can be defined as the components of the 'institutional environment', not much attention has been paid to the functioning of laws and legal practices. Thus the study of the relation between the structure and evolution of Italian industry and issues such as fiscal regulation, labour market legislation, or the nature of commercial laws is still, by and large, *terra incognita*.[9]

The aim of this article is to start filling this gap by providing an empirical investigation of the functioning of the legal system, more specifically corporate insolvency legislations and procedures, and the way in which they dealt with the problem of businesses' selection and restart. We argue that Italian institutions were particularly badly equipped for this task, leading to excessive recourse to liquidation irrespective of firms' potential for recovery. Although the provision of this result is the main objective of the article, we also aim to establish some possible links between the nature of insolvency laws and practices and the features of the Italian industrial system. In particular we discuss whether bankruptcy laws must be seen as one of the possible co-causes of the peculiar instability and small dimension of Italian joint-stock companies, or whether the direction of causality must be inverted. Even if no definite evidence can be provided, on the basis of the material analysed here we tend to support the former hypothesis.

Using national statistics as well as qualitative evidence, this article approaches the topic under discussion by looking at the following aspects: firstly, the formal features of various official legal devices available in Italy, and their weaknesses in comparison to other legal systems, are described (section I). In section II we analyse national statistics on the number of insolvencies, showing that the theo-

[5] See, for example, Federico, 'Industrial structure'; Giannetti and Velucchi, 'Demography'; Vasta, 'Largest 200'.

[6] This is a concept elaborated by Chandler ('Organizational capabilities'), to define what Coase indicated as being 'the nature of the firm', meaning the ability to develop lasting mechanisms of coordination among economic agents, and of diffusion of explicit and tacit knowledge to reduce the complexity and costs of 'pure market' exchanges (Coase, 'Nature of the firm'). See also Williamson, *Economic institutions*.

[7] Federico and Toninelli, 'Business strategies'; Giannetti and Vasta, 'Conclusions'.

[8] For a general overview of the development of the Italian economy, see Zamagni, *Economic history*, and Cohen and Federico, *Development*. For an up-to-date survey of the more specific topic of industrial organization, see Giannetti and Vasta, 'Historiography'.

[9] Relevant exceptions are Ciocca, 'Law and the economy', and Teti, 'Imprese, imprenditori e diritto'.

retical inadequacy of the Italian laws and practices is reflected in their very low level of usage, especially in comparison to other countries. Section III focuses on the limits of official outside-bankruptcy deals available before 1942 (*concordato preventivo*), arguing that their malfunctioning explains both their general lack of popularity and their inability to play any role in relaunching companies. In section IV we analyse whether or not the limitation of this official device led to widespread use of informal solutions and, if so, whether these solutions allowed worthy companies to restart. Section V mirrors the analysis run in section III, by focusing on a new official procedure (*amministrazione controllata*), introduced in 1942 to integrate the legal devices previously available. Section VI provides some concluding remarks on the functioning of legal institutions and discusses possible links with the problem of 'the nature of the firm' in Italy.

I

In market economies, insolvency and bankruptcy laws are pivotal institutions as, *ex ante*, they provide incentives (or constraints) to risk-taking and contribute to disciplining debtors' behaviour while, *ex post*, they influence the rate and speed of debt repayment, make a distinction between companies to be liquidated and those deserving a further chance, and provide the means for such a restart.[10] Because of the number and diversity of roles that these institutions have to perform, as well as the conflicting nature of some of the issues involved, it is very hard, if not impossible, to define the 'ideal' bankruptcy law. In the traditional distinction between continuation- versus liquidation-biased systems, or pro-debtor versus pro-creditor systems, the explicit or implicit assumption is that laws that are able to support entrepreneurship and favour restarting companies end up sacrificing something in terms of protection of creditors' rights. Similarly, it is argued that when the tolerance element is pushed to the extreme (as might be the case under chapter 11 in the current US bankruptcy code), legislation might impose unfair competition by allowing failing companies to keep on operating. In this section, we examine the devices available in the Italian legal system and assess their theoretical efficiency, not in a general sense, but only in relation to the very specific issues of selecting among insolvent companies and allowing the worthy ones to restart. What we claim is that Italian law was peculiarly strict, not only when compared to the 'extremist' US legislation, but also when measured against the allegedly more moderate English system and the even more 'conservative' French and Belgian ones. However, even if our focus is limited and our aim is not to assess the general degree of efficiency of the Italian bankruptcy system, it is worth remarking that the disadvantages of the Italian legislation in those specific roles were not, at least according to the available evidence, compensated for by more efficient prosecution of fraud or better enforcement of creditors' rights. In other words, the Italian system was certainly not adequate to facilitate the restart of firms but, at the same time, probably not much better at achieving any other aim.[11]

In order to illustrate the features of Italian insolvency laws and practices, we provide a brief comparative chronological account of their evolution, with a specific focus on their role in promoting the restart of companies.

[10] Hart, *Firms*.
[11] Di Martino, 'Approaching disasters'; idem, 'Banking crises'.

In all legal systems, the most traditional device for dealing with the problem of insolvent debtors consists of the collection of the debtor's assets, their sale on the market, and the distribution of the proceedings among claimants in proportion to their credits. This is a procedure that in Italy takes the name of *fallimento* (bankruptcy). By definition this mechanism is a pure credit-collection device and does not provide any solution to the problems of the selection and restart of companies. A variation on the same theme implies an agreement with creditors about a share of debts to be paid (composition, or *concordato fallimentare* in Italian). In the case of personal bankruptcy, this procedure made easier for debtors to lose the legal condition of 'bankrupt' but was not conceived to avoid firms' liquidation. *Fallimento* and *concordato fallimentare* have been in use in Italy since the oldest commercial code dating back to 1865.

During the course of the nineteenth century, European lawmakers realized that mere asset-collecting devices were not adequate to deal with the mounting number of cases of insolvency, often generated by unpredictable economic fluctuations rather than, as previously advocated, simply by lack of competence and/or honesty. Since the 1870s procedures aiming at avoiding the forced liquidation of worthy companies, or at least of morally-sound debtors, started to emerge. In general, these devices consisted of giving debtors the opportunity to remain in charge of their companies and to try to find an agreement with creditors outside the bankruptcy procedure. In a matter of a few years this approach spread all over Europe; in 1877, a new, more problem-solving-oriented bankruptcy law was passed in Germany, and forms of extra-bankruptcy compositions emerged in Belgium and England in 1883 and in France in 1889.[12] It is key to note that these kinds of agreements only provided the opportunity for companies to survive but in no way ensured it. Firstly, in some legal systems, firms had to guarantee, ex ante, to be able to pay a minimum share of debts in order for the court to approve the deal; a high threshold not only reduced the number of potential applicants, but also increased the probability that a firm had to liquidate to fulfil the criterion. A way of counterbalancing this problem, if legally allowed, was to transfer all the company's assets as one single indivisible entity to creditors (relinquishment of assets, known as *cessione d'attivo* in Italian). Apart from the immediate advantage of preserving firms' integrity, this procedure also allowed debtors to afford higher payments, as the value of an ongoing concern was usually higher than the market price of its components when sold separately. It is with these considerations in mind that the anomalies of the Italian law emerge. In Italy the possibility of a pre-bankruptcy composition (*concordato preventivo*) appeared in 1903,[13] but was not associated with the possibility of relinquishment of assets; in fact, this option remained impossible in Italy for longer than in other systems.[14] On top of this problem, the guarantee threshold was, until 1930, the highest in Europe,[15] reflecting an explicit willingness to limit the use of these procedures. Contemporary

[12] Sgard, 'Do legal origins matter?'.

[13] Law 24 May 1903, no. 197.

[14] In France, for example, the concept of *abandon d'actif* was part of the legislation at least since 1889, while in England it became legal in 1911; Bonsignori, *Il Fallimento*, pp. 29–30.

[15] No such threshold existed in Belgium and France, while in England it was established at 25%, a level to which Italy converged only as a result of the law of 10 July 1930, no. 995; Di Martino, 'Approaching disasters'. Germany, where the limit was at 25%, was the closest to Italy.

commentators were adamant on this point. For example, Bonelli, an eminent lawyer, argued: 'This legal minimum requirement . . . gives to our *concordato preventivo* a special mark which distinguishes it from similar devices provided in other legal systems'.[16] In turn, the way in which this 'distinction' operated can be inferred from statements such as that made by Minister Gianturco, who very plainly affirmed, 'I am convinced that in Italy . . . *concordati* should not be made easier'.[17]

Perhaps not surprisingly, the explicit willingness to make access to *concordato preventivo* extremely selective stands at odds with the general leniency of the English system, where comparable forms of extra-bankruptcy agreements were made available earlier and much more freely.[18] It is more remarkable, however, to note that also the allegedly stricter French system appears to have been much more open than the Italian one. The French form of extra-bankruptcy solution, the so-called *liquidation judiciaire*, was certainly free from any explicit attempt to limit its usage (for example, the imposition of any ex ante guarantee of minimum payment); in fact, it proved to be a widely used alternative to insolvency.[19] Given the limited scope of this article, it is not possible to provide a detailed explanation of the reasons why over time the peculiar strictness of Italian legislation was not mitigated. In general, the historiography has pointed the finger towards what appears to be Italian lawmakers' lack of trust in the moral attitude of Italian entrepreneurs, leading to their preference for introducing ad hoc tolerant devices to cope with specific cases, rather than changing the general character of laws and procedures.[20]

During the 1930s, as a consequence of increasing macroeconomic instability, new devices emerged with the explicit aim of addressing the issue of the restart of companies. These included the Chandler Act in the US (1938), the *gestion contrôlée* in Belgium (1934), and the *amministrazione controllata* in Italy, originally introduced in 1936 to deal with insolvency of banks and from 1942 open to all joint-stock companies.[21] These devices were based on the already-established idea of debt moratorium,[22] alongside the replacement of management and/or the provision of a relaunch programme. It goes without saying that the latter condition was crucial in ensuring a company's survival, unless problems were either temporary or superficial enough to be solved automatically by the mere appointment of new management. In the case of the provision of a restarting plan, it was also of fundamental importance to have a procedure that was able to lock in possible reluctant creditors. Again, when compared to other systems, the structural problems of Italian procedures become apparent. *Amministrazione controllata* only

[16] Bonelli, *Commentario*, p. 213 (authors' translation).
[17] Quoted in Ibid., p. 213 (authors' translation).
[18] For a comparison, see Di Martino, 'Approaching disasters'.
[19] The next section provides some data on the use of this procedure as compared to the Italian *concordato preventivo*.
[20] Conti and Di Martino, 'Credito'.
[21] RDL (Regio Decreto Legge, Royal Law Decree) 16 March, no. 267. The same law also extended the use of the so-called *liquidazione coatta amministrativa*, originally conceived for banks, to all kinds of business. *Liquidazione coatta amministrativa*, however, was not an instrument to guarantee firms' survival and simply implied that official bodies, instead of creditors' agents, were in charge of the liquidation of assets.
[22] In the Italian system, for example, the first form of moratorium appeared in 1882, but was abolished in 1903 as a result of its disappointing performance. This tool, in fact, remained a purely theoretical option, as it allowed only debtors whose assets exceeded their liabilities to file for it.

meant a year-long moratorium along with the appointment of new management, whose members were chosen among public officers. Court approval did not depend (at least according to the formal character of the law) on an analysis of technical competence, on managerial ability, or more generally on the viability of the company.[23] Furthermore, this institution did not contemplate any specific directives on how to address the company's crisis, and simply relied on the generic (and optimistic) assumption that problems would be solved in one year by the new management. The features of the Italian procedure contrast not only with the US alternative—where firms' viability was the main criterion, the provision of a restarting plan was a key condition, and lock-in devices were available[24]—but also with the approach of the supposedly more 'conservative' Belgian *gestion contrôlée*, which at least implied the obligation to put forward a reorganization plan.[25] Once again, we face the problem of having to explain the peculiar character of the Italian procedures, not only *vis-à-vis* the 'adventurous' US solution, but also more 'traditional' Continental devices. Again, no conclusive answer seems to exist; those who have attempted to explain this peculiarity claim that Italian scholars were fully aware of the problems of the *amministrazione controllata*, but that the lawmakers' intellectual conservativeness and institutional inertia frustrated any attempt to improve it.[26]

To conclude this overview of the evolution of insolvency procedures, we should turn our attention to a further device: voluntary liquidation. This is largely a preventive strategy, as voluntary liquidation is in general allowed only to solvent firms that can prove they are potentially able to pay all debts.[27] It is necessary to keep in mind that voluntary liquidation helps to keep firms alive only when it is statutorily linked to a restarting plan; in other words, once the company is liquidated, an attempt must be made to use all its assets to constitute another firm. Having a statutory restructuring clause, however, is only a necessary condition for voluntary liquidation to be turned into a device supporting the continuation of the firm, rather than its liquidation; it is by no means a sufficient one. In fact, as in the case of a moratorium, there is a further problem regarding the ability of the institutional mechanisms surrounding liquidation to lock in potentially reluctant creditors. Under Italian law, voluntary liquidation was available to any company formally able to guarantee the payment of all debts, but it was not part of the official system, apart from cases where companies had lost more than one-third of their capital; in these circumstances the Italian commercial code obliged firms to choose between recapitalization or liquidation.[28] The extra-judicial nature of voluntary liquidation meant that this device was not precisely regulated. No restructuring plan was required in order to file for voluntary liquidation, and not only did

[23] Bonsignori, *Il Fallimento*.

[24] For example, the mechanism called 'upset price' invented by American courts to involve reluctant creditors in the relaunch of insolvent railway companies. For details, see Tufano, 'Business failure'.

[25] Bonsignori, *Il Fallimento*.

[26] Ibid.

[27] The 1890 English company wind-up law (53 & 54 Vict., c. 63), for example, allowed three kinds of liquidation: voluntary, compulsory, and supervised, and the first of these was de facto only permitted to solvent companies. Insolvent companies could file for voluntary liquidation but creditors had the power to appeal to the court to have a voluntary liquidation turned into a court-supervised procedure; Gore-Browne, *Handbook*.

[28] This norm was sanctioned by clause 146 of the 1882 commercial code and it was not substantially modified by the subsequent 1942 civil code.

creditors have no legal incentive or constraint to support the relaunch plan (if any were put forward), but in fact any single creditor had the right to declare the company bankrupt at any stage of the voluntary liquidation process if the firm failed to meet a debt of any size. On the contrary, the English insolvency law incorporated voluntary liquidation among official procedures and, consistently, explicitly addressed the problems above.[29] In this regard England was the exception to the rule, as the extra-judicial nature of voluntary liquidation was common, as was the lack of provision of pro-restarting clauses and lock-in mechanisms. However, once again, Italy appears to have been exceptional in the sense that such a lack of attention was particularly relevant in a country where official devices were relatively poorly organized (and therefore recourse to alternatives might have been more tempting), and where it was the law itself that in certain cases seemed to provide incentives to use voluntary liquidation.

II

In this section we analyse the relative degree of adoption of the various procedures—*fallimento* (including *concordato fallimentare*), *concordato preventivo*, and *amministrazione controllata*—that companies could use when facing insolvency problems.

Figure 1 shows that the total number of *fallimenti* (including *piccoli fallimenti*)[30] increased during the Great Depression, reaching its all-time maximum in 1932 (25,402 cases). The number of cases then began to decrease. It must be noted that during both World Wars the number of procedures was extremely low, particularly during the Second World War, when it reached its minimum level (91 in 1944). This result is probably due to a number of factors such as the stagnation of economic activity, inflationary prices, and the consequent reduction of debt burden. Moreover, the low number of cases might also reflect the general inefficiency and inactivity of the legal bodies in charge of the administration of bankruptcy and insolvency. Thus, the observed peak in the number of *fallimenti* in the postwar years is partially explained by the restarting of court proceedings.

It is worth noticing that in the period under investigation the number of cases shows no linear relationship with economic fluctuations. On the one hand, during the downturn of the 1930s the number of procedures increased, confirming the inverse relation between the number of *fallimenti* and the economic cycle. On the other hand, during the crises of the 1970s the number of procedures did not rise, as one would expect. To an extent, the differences between the two periods could be due to extensive state intervention in support of firms in trouble during the 1970s. In general two elements explain the mismatch between firms' insolvency and the economic cycle. The first one is the time lag between the beginning of a company crisis and the opening of formal procedures; the second one can be

[29] The so-called 'company restructuring', which implied the creation of a new business run by new management, or simpler court-sanctioned agreements with creditors which did not involve eliminating the old company, were automatically linked to voluntary liquidation. Also, recalcitrant creditors had only one week to refuse the deal, while in the case of agreement a majority of three-quarters of creditors was enough to approve the plan; Gore-Browne, *Handbook*.

[30] *Piccolo fallimento* was a special procedure, introduced in 1903 and abrogated in 1942, reserved to debtors whose amount of liabilities was below a certain threshold.

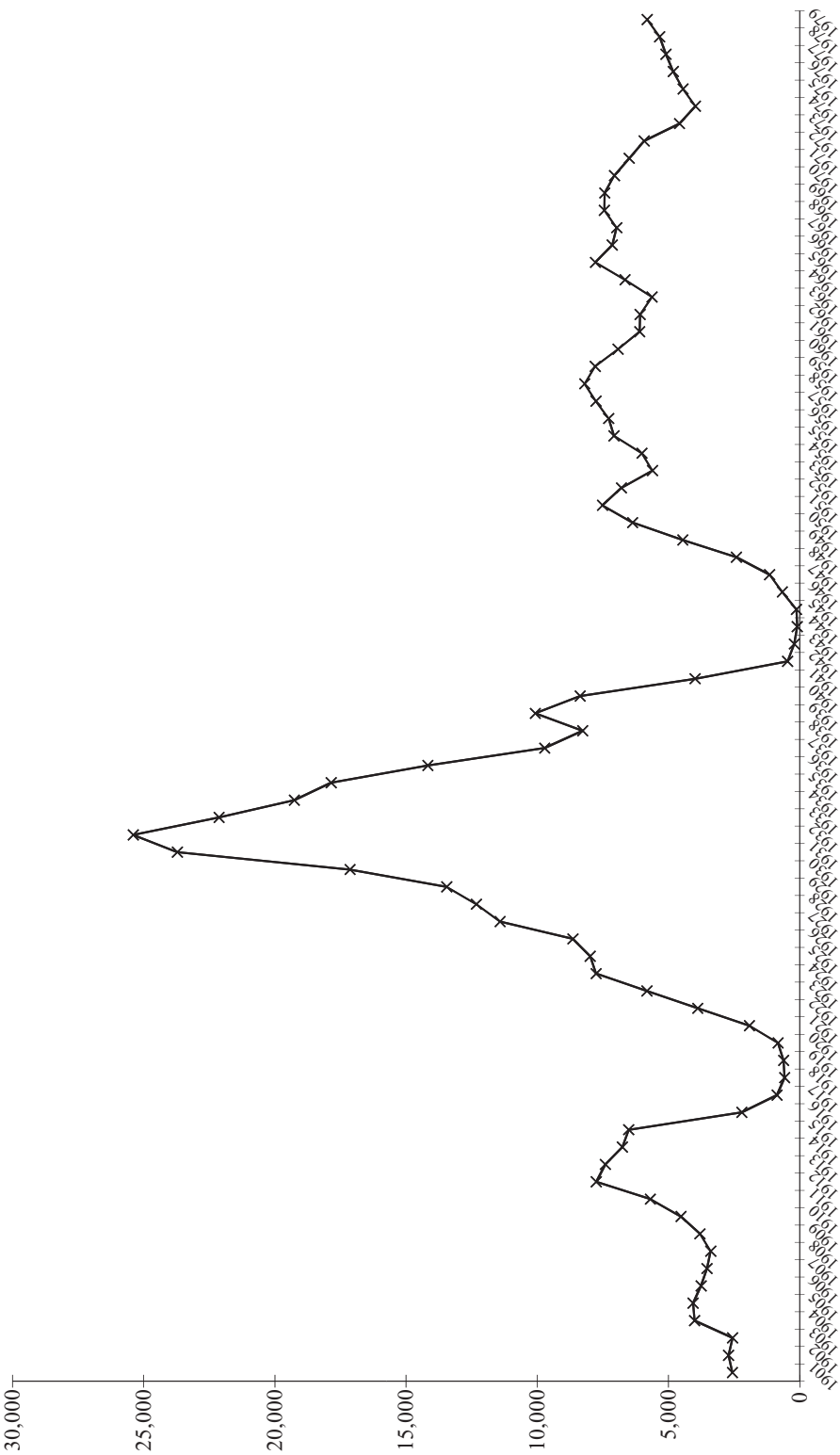

Figure 1. *Total number of fallimenti in Italy (1901–79)*
Sources: Authors' own elaborations on Istat, *Annuario* (1945–80).

Table 1. *Average number of* concordato preventivo, fallimento, *and* amministrazione controllata *in five-year intervals (1901–79)*

Period	*Concordato preventivo*	*Fallimento*	*Amministrazione controllata*
1901–4	94	2,957	
1905–9	69	3,709	
1910–14	73	6,425	
1915–19	22	2,152	
1920–4	81	4,040	
1925–9	196	10,764	
1930–4	328	21,530	
1935–9	63	12,018	
1940–4	10	2,622	
1945–9	16	1,758	21
1950–4	53	6,458	36
1955–9	58	7,621	38
1960–4	41	6,277	41
1965–9	137	7,355	61
1970–4	116	5,607	58
1975–9	204	5,101	126
Total average	99	6,696	56

Source: Authors' own elaborations on Istat, *Annuario* (various years).

linked to the character of the demography of firms, taking into account that in a period of crisis fewer new concerns will be set up. Since relatively younger (and smaller) companies were particularly prone to becoming insolvent,[31] this means that during crises the segment of the population of firms most exposed to this problem was smaller, even if the average probability of insolvency increased in general. As a consequence, the link between macroeconomic performance and insolvency was weakened.

As far as the relative use of different procedures is concerned, table 1 and figure 2 show that *fallimento* (bankruptcy) was the most widely used device during the whole period, representing more than 90 per cent of total cases, notwithstanding the introduction of alternatives in 1903 (*concordato preventivo*) and 1942 (*amministrazione controllata*).

During the first few years after its appearance on the scene, as shown in figure 2,[32] *concordato preventivo* accounted for about 4 per cent of total procedures, but thereafter its use decreased considerably. The introduction of *amministrazione controllata* in 1942 did not alter this picture either. During the 1940s and 1950s, *fallimenti* accounted for about 98 per cent of the total procedures, while *concordato preventivo* and *amministrazione controllata* made up, together, only the remaining 2 per cent. Their use began to grow only at the end of the 1970s, when the two procedures together made up about 10 per cent of the total. This seems to show that neither of the new procedures was able to achieve the aims for which they had

[31] A hypothesis confirmed by the analysis of insolvency in Milan (see section V).

[32] Because the recourse to *piccolo fallimento* was compulsory for debtors with liabilities below a given threshold, and these creditors could not file for any other procedure, we decided not to include *piccoli fallimenti* in the number of total cases. In this way the ratio measures more precisely the share of cases that benefited from procedures other than *fallimento*.

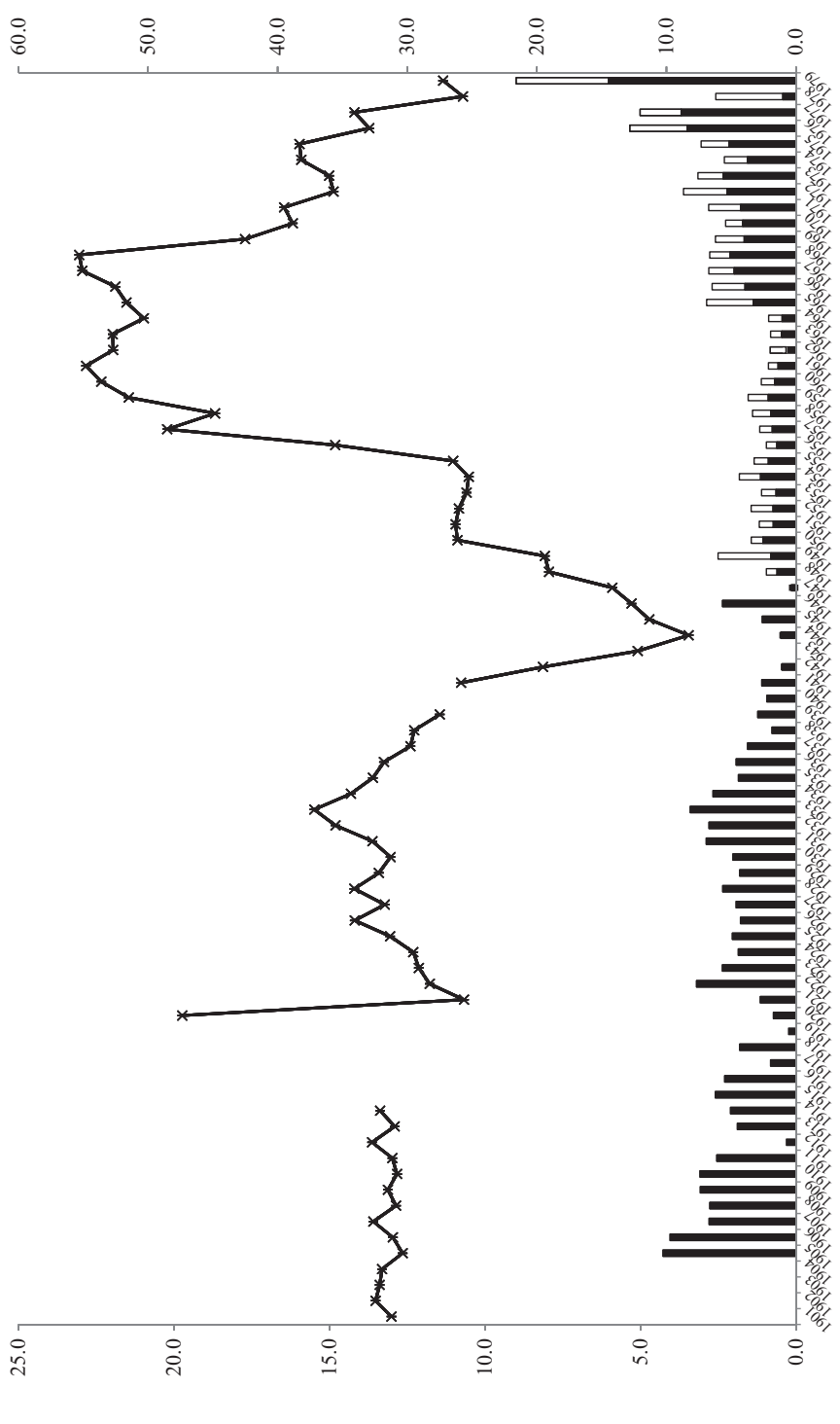

Figure 2. *Percentage of extra-bankruptcy agreements in Italy* (concordato preventivo *and* amministrazione controllata) *and France* (liquidation judiciaire *and* règlement judiciaire) *on total procedures (1901–79)*

Sources: Italy: authors' own elaborations on Istat, *Annuario* (various years); France: authors' own elaboration on Marco, *La montée des faillites*, pp. 165–8.

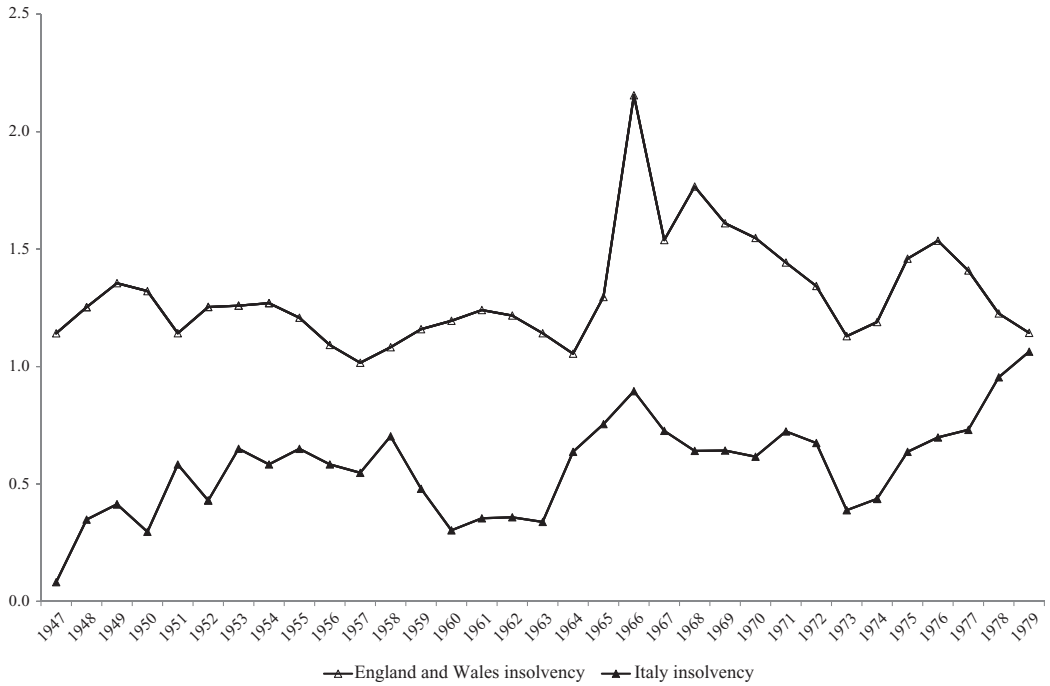

Figure 3. *Quota of joint-stock companies using various insolvency procedures on the total population of joint-stock companies in Italy and England and Wales (1947–79)*

Sources: Italy: authors' own elaboration on Istat, *Annuario* (various years); England and Wales: authors' own elaboration on Board of Trade, *Companies Annual Report* (various years).

been introduced. Analysis of the data also shows that *amministrazione controllata* was not able to substitute *concordato preventivo*.

The peculiarity of the Italian system is confirmed when we look at the use of extra-bankruptcy agreements (*liquidation judiciaire* and *règlement judiciaire*) in France, a country regulated by similar 'traditional' Continental principles. Figure 2 shows that during the period under study in France this kind of procedure amounted to about one-third (33.4 per cent) of the total, compared to a mere 2.5 per cent in Italy.[33] Thus, we have a further confirmation of the weakness of the Italian legal system where procedures that were supposed to support the 'unlucky but honest' debtors did not manage to become a valid alternative to insolvency.

Another important point that emerges from the analysis concerns joint-stock companies, whose behaviour can be analysed only from 1947, after which data disaggregated by type of debtor are available.[34] As we can see in figure 3, during the whole period, the percentage of Italian joint-stock companies that used any

[33] The French series shows an anomalous peak in 1919. This is probably due to the fact that after the First World War access to extra-bankruptcy procedures was made easier in order to close the large amount of unprocessed procedures cumulated during the conflict.

[34] We have tried to reconstruct the series for the period before the Second World War, but unfortunately data for both *fallimento* and *concordato preventivo* are not fully comparable to the statistics available for the post-Second World War phase. This is because sources sometimes report information on the number of procedures closed in a given year, and sometimes on procedures that were open, and any relation between the two relies on a debatable assumption about the average duration of various cases.

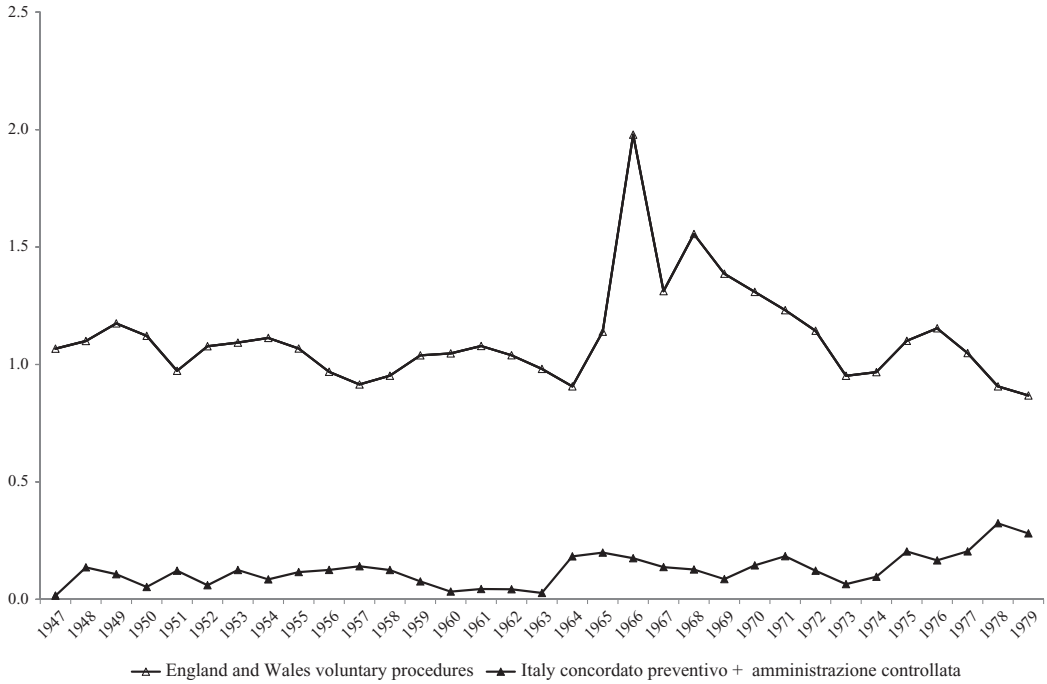

Figure 4. *Quota of joint-stock companies using 'non-bankruptcy' procedures on the total population of joint-stock companies in Italy and England and Wales (1947–79)*
Sources: Italy: authors' own elaboration on Istat, *Annuario* (various years); England and Wales: authors' own elaboration on Board of Trade, *Companies Annual Report* (various years).

official procedure was very low, remaining below 1 per cent of the total. In other words, officially only less than 1 in 100 companies in the country seemed to have faced insolvency problems. As far as the different procedures are concerned, Italian joint-stock companies mainly used *fallimento*, and the quota of businesses filing for *concordato preventivo* and *amministrazione controllata* accounted for 0.1 per cent of the total population of companies (figure 4). These data are even more revealing when analysed in comparative perspective. For instance, during the period under study, on average only 0.57 per cent of Italian joint-stock companies used any kind of official procedures, while for England and Wales the percentage of companies using any type of legal device was almost two-and-a-half times that figure, amounting to 1.31 per cent of the total population (figure 3). Furthermore, if we look only at the kind of procedures that were supposed to be used by the worthiest segment of insolvent companies, the differences between Italy and England and Wales are even more remarkable. For instance, on average only 0.13 per cent of Italian joint-stock companies used *concordato preventivo* and *amministrazione controllata*, while for England and Wales the comparable figure is 1.11 per cent, more than eight times that for Italy (figure 4).[35]

[35] For England and Wales we include in this category only the so-called 'voluntary liquidations'. As explained in section I, despite the name, these institutions held more resemblance to Italian extra-bankruptcy official procedures than to '*liquidazione volontaria*', which was a totally extra-judicial and unregulated procedure.

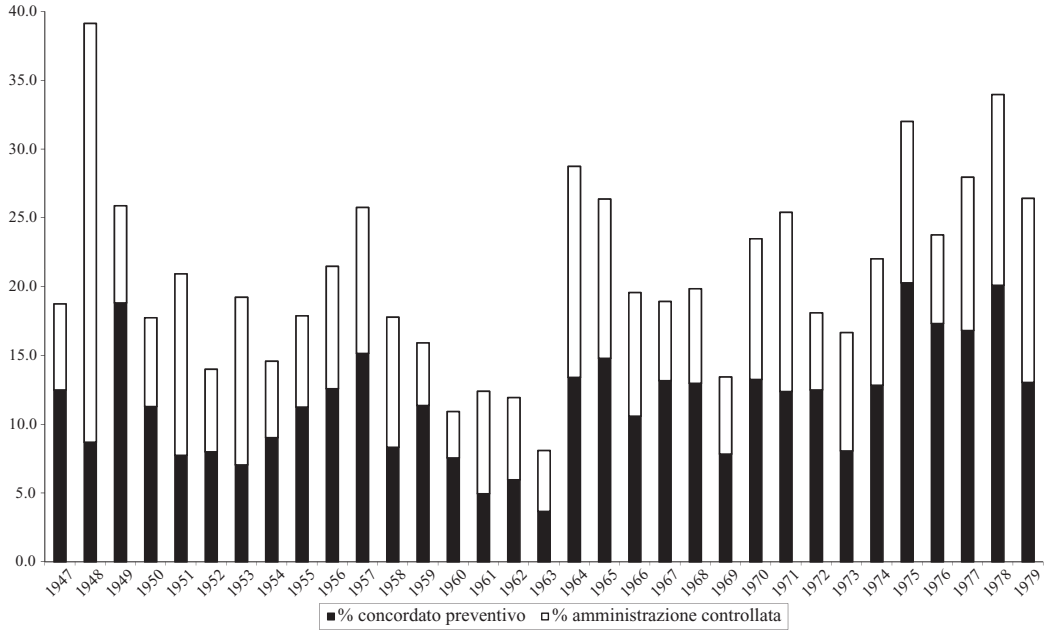

Figure 5. *Joint-stock companies: percentage of* concordato preventivo *and* amministrazione controllata *on total procedures (1947–79)*
Source: Authors' own elaboration on Istat, *Annuario* (various years).

The fact that extra-bankruptcy devices only dealt with a limited percentage of joint-stock companies should not lead us to undervalue their relative importance in comparison to other procedures. In fact, the comparison between figures 2 and 5 shows that joint-stock companies made recourse to *concordato preventivo* and *amministrazione controllata* differently compared to other kinds of businesses. Even if for joint-stock companies (figure 5) the ratio of *fallimenti* on total procedures still prevailed (79.1 per cent on average during the period), the percentages of *concordato preventivo* and *amministrazione controllata* were considerably higher (11.6 per cent for the former and 9.3 per cent for the latter on average during the period) than in the sample including all types of businesses (figure 2). In the 1970s in particular, for joint-stock companies the ratio of the sum of these two procedures seems to become stable at around 25 per cent of total procedures.

This suggests that the use of *amministrazione controllata* as a tool to avoid *fallimento* and to allow firms to continue in business varied widely among different types of businesses. Figure 6 shows the use of *amministrazione controllata* by percentage of the total number of procedures disaggregated by typology of debtor. As compared to the relatively high percentage for joint-stock companies noted above, we can see negligible use (on average 0.3 per cent) by both the *ditte individuali* (sole ownership), and the so-called *società di fatto* (irregular companies) which particularly tended to use *fallimento* (98.8 per cent on average). This is typical for small firms that were more exposed to failure either in a start-up phase or as a natural solution to the problem of inheritance in the event of the death of the owner of the business. The use of this procedure was also marginal (1.7 per cent in total on

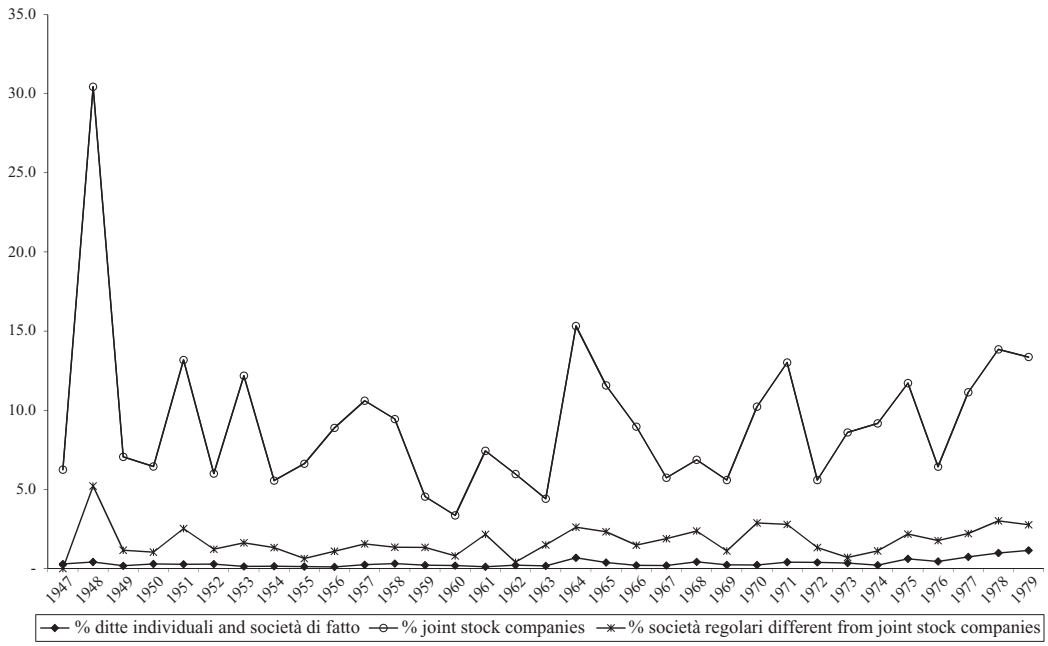

Figure 6. *Use of* amministrazione controllata *in percentage of the total number of procedures, disaggregated by different typology of debtor (1947–79)*
Source: authors' own elaboration on Istat, *Annuario* (various years).

average) for the so-called *società regolari* that filed for *fallimento* in 95.3 per cent of cases.[36]

In summary, the analysis suggests that *fallimento* and *concordato fallimentare* were and remained by far the most commonly used procedures. Their alternatives, in general, were used relatively little, although they proved to be much more popular among joint-stock companies (20 per cent on average) than among any other type of firm. On the other hand, however, only a very small number of joint-stock companies got involved in any kind of official procedure at all (the maximum, reached in 1979, was 1.1 per cent of the total population).

III

The quantitative analysis thus points out that Italian joint-stock companies made very little recourse to official procedures and, when this happened, they tended to use credit-collection devices such as *fallimento* rather than restarting mechanisms such as *concordato preventivo*. These results generate the impression that the formal limits of official procedures described in section II might have been well known to firms, with the consequence that only the relatively few 'desperate' companies used them, while the majority tried to find other solutions.

[36] *Società regolari* is a non-homogenous category, including general partnerships, limited partnerships, limited partnerships with share capital, cooperatives, and mutual insurance companies.

In order to test this hypothesis, we use qualitative information about various companies that faced insolvency problems in the period under analysis. In this section and in the next, we focus on the interwar period (when *concordato preventivo* was the only alternative to *fallimento*), while section V addresses the post-1942 period to see whether or not the introduction of *amministrazione controllata* changed the picture.

The qualitative analysis is mainly based on information on companies operating in Milan and its province. The decision to focus on Milan is due both to the existence of a miraculously surviving collection of documents available in the archive of the local Chamber of Commerce, and also to the key importance of the city of Milan in the Italian economy. With regard to the former reason, during the interwar period, a regulation that only applied at local level obliged the Milan Chamber of Commerce to keep information regarding all failed companies. To our knowledge this was unique to Milan and no other comparable documentation is available in other local archives, something that makes these files the richest collection of primary sources on the topic available in Italy. On the other hand, focusing on Milan and its province also offers a good quantitative coverage of the problem at national level, as according to our estimate over the entire period about one-third of the total number of Italian joint-stock companies operated in this area.[37]

The section of the archive of the Chamber of Commerce called '*Imprese fallite e relazione dei curatori fallimentari*' contains information about all businesses (joint-stock companies as well as partnerships and sole ownerships) which went bankrupt in Milan and its province between 1922 and 1935; out of this archival depository we selected only the information concerning joint-stock companies. This generated a sample (which we will refer to as ACCM/If) of 256 cases that represents the totality of joint-stock companies that became insolvent over the period. Unfortunately, files providing more information than just the name of the company and the year of its insolvency are available only for 153 companies; in most cases, however, the available information includes the reports written by the *curatore fallimentare* (the official receiver), which provide an extensive and detailed description of the history of the company, the causes of insolvency, the capital structure, and the outcome of the procedure. While ACCM/If provides the bulk of the information, it is complemented by two other sources. The first of these is the *Bollettino Ufficiale delle Società per Azioni* (hereafter BUSA), which is the official Italian bulletin of limited-liability companies. This source lists yearly (desegregated by provinces) the names of companies that ceased to exist, and, for some of the firms, also provides an extremely brief description of the circumstances in which

[37] To provide our estimate, we start from two sources: (i) Imita.db (http://imitadb.unisi.it), the dataset on the Italian joint-stock companies, which contains information about all companies with share capital above a certain threshold (see Giannetti and Vasta, eds., *Evolution of Italian enterprises*, for details), and (ii) data from Asipa, the Italian joint-stock companies association, which provided, for every year, only the official number of this kind of company without any sort of disaggregation. Through the former source we have both the numbers of Milanese and Italian joint-stock companies above a certain threshold, and through the latter we have the total number of Italian joint-stock companies. We have hypothesized that the ratio between Milanese and Italian joint-stock companies above the threshold was the same as that of the entire population. Thus we can provide, for the benchmark years available on Imita.db, an estimate of the weight of Milanese joint-stock companies on total joint-stock companies. The values for the period studied in this section are the following: for 1921, 1,944 companies (31.4% of the total); for 1927, 4,309 (32.6%); and for 1936, 7,192 (37.2%). It must be said that the weight is around one-third of the total during the whole period studied in this article. For further information on the sources used, see Vasta, 'Appendix'.

they disappeared. The other source comes from the section of the archive of the Milan Chamber of Commerce called '*Archivio Ditte*' (hereafter ACCM/Ad). It contains files on individual firms, recording all major changes such as liquidation, bankruptcy, merger with or acquisition by other companies, and so on. Unfortunately, information from ACCM/Ad is much less detailed and precise than that provided by ACCM/If, and often available only for a limited number of cases.

Starting with the outcome of procedures, analysis of the ACCM/If sample provides results in line with the national trend (table 2). Bankruptcy (ordinary *fallimento*) was by far the most widely used procedure, leaving *concordato preventivo* only a very marginal role. It must be noted that among bankruptcies there were a few examples of *bancarotta fraudolenta* (a dedicated procedure dealing with cases of fraud), a share of *concordati fallimentari*, and some cases that were closed via the so-called *insufficienza d'attivo*, a specific procedure conceived to deal with companies whose remaining assets were not even enough to cover the legal fees.

At first glance, the very marginal role played by *concordato preventivo* would confirm the hypothesis that 'good' firms used alternative procedures, and that the large majority of companies filing for official procedures were either in 'desperate' conditions (and therefore unable to guarantee the payment of the required minimum percentage of debts), or became insolvent for reasons that did not fit the legal principle of being 'honest but unlucky'.

A deeper analysis, however, reveals a different picture; it was not necessarily the case that 'worthy' firms feared official procedures and tried to avoid them, but that a number of formal and substantial requirements made extra-bankruptcy procedures extremely hard to utilize, even for them. Firstly, for most of the period under study, the ex ante legal minimum percentage of debts that companies had to guarantee to be able to pay was very high (40 per cent), a problem that generated a very strong selection among potential applicants. Looking, for example, at the 17 cases of *concordato fallimentare* for which evidence about debt repayment is available, we can see that, apart from five cases, all other companies paid a share of debts equal to or higher than 25 per cent, the threshold that was necessary in England to file for composition in bankruptcy, the equivalent of the Italian *concordato preventivo*. In other words, there was a pool of companies that in another legal system would have been able to benefit from more lenient procedures. The problem, however, was more complicated than that, as being able to pay ex post a given share of debts was different from being in the position of ex ante guaran-

Table 2. *Insolvency in Milan by outcome, 1922–35*

Bankruptcy							*Concordato preventivo*	*No info*	*Total*
Bancarotta fraudolenta	*Fallimento* and/or *bancarotta fraudolenta*	*Fallimento*	*Fallimento* and/or *concordato fallimentare*	*Concordato fallimentare*[a]	*Insufficienza d'attivo*	Total			
2	6	110	4	18	4	144	3	6	153

Note: a For 17 cases we have evidence that this solution was suggested by the receiver and accepted by creditors and the court; in one case only that it was suggested by the receiver, but we do not know whether this was accepted. The breakdown of debt repayment is as follows: five cases paid a percentage of debts below 20%; 10 companies between 25% and 35%; and two above 40%.

Source: Authors' own elaboration on ACCM/If.

teeing a given amount of payment. This could be a reason why even companies that at the end of various procedures paid a share of debts equal to or above 40 per cent, or even the full amount, did not file for (or did not obtain) *concordato preventivo*.[38] The provision of such a high level of ex-ante guarantees also created problems in the management of the procedure, and not only in being granted it. In the case of the company Progresso Agricolo Ferraniense, for example, the top managers provided extra guarantees in order to be granted *concordato preventivo* and to avoid spreading panic among customers. However, once the procedure began, a major disagreement emerged among the directors about who was supposed to be accountable for the actual provision of the financial resources. Eventually, unsatisfied creditors pushed the company into bankruptcy.[39]

The guarantee of a high minimum statutory payment was far from being the only or main difficulty in being granted *concordato preventivo*. According to the law, applicants had to pass a double independent screening by the court first, and then by creditors. These two stages were completely independent of each other, as proved by cases in which creditors turned down deals already approved by the court.[40] On top of the problem of passing two different and independent assessments, companies filing for *concordato preventivo* had to deal with procedures that were formally complicated and suffered from lack of correct information and coordination among decision-makers. At court level, the complexity of the formal requirements themselves could be enough to discourage potential applicants.[41] An even more significant problem than the complexity of the procedures was the substantial partiality and lack of information that characterized the decision-making process. Because of the way the procedure worked, the *commissario giudiziale* (the person in charge of writing the report that courts used to decide whether or not to grant *concordato preventivo*) could use a much more limited amount of information than that available to the official receiver.[42] In practice, it seems that in the Italian procedure much more attention was dedicated to the analysis of the case after the declaration of bankruptcy than before. This is something that did not happen in, for example, England (at least in the case of personal bankruptcy), where the same report was used both before bankruptcy (to allow or disallow a composition) and after it (for example, in deciding about the debt-discharge). The formal complication of the procedure, alongside the substantial lack of information during the decision-making process, led to the paradoxical result of *concordato preventivo* being on paper a strict procedure aimed at supporting honest debtors but, in practice, being far from able to prevent fraudulent behaviour. The case of the company Gardini & Co. illustrates the problem well. This firm was granted *concordato preventivo* in the first instance, but it was then turned into bankruptcy.

[38] In three cases of *concordato fallimentare* the companies involved paid more than 40% of debts, while three other firms (Società Anonima Consorzio Italiano metalli e affini, Este, and Explorator) simply passed through *fallimento* but managed to repay the whole amount (ACCM/If).

[39] ACCM/If, company: Progresso Agricolo Ferraniense.

[40] As in the case of the Società Anonima Consorzio Farmaceutico Italiano. ACCM/If, company: Società Anonima Consorzio Farmaceutico Italiano.

[41] In the case of the Società Anonima Circes, the annual report suggested that in the attempt to file for *concordato preventivo* the company had 'encountered many difficulties, essentially of a procedural nature' (authors' translation of 'incontrate molte difficoltà essenzialmente di ordine procedurale'); BUSA, 1924.

[42] The *commissario giudiziale* in charge of the case of the *Cartiera Albano Franchini* company explicitly acknowledged the problem in his official report. ACCM/If, company: Cartiera Albano Franchini.

The receiver clearly identified the reasons behind this failure in the behaviour of the main stockholder and general manager, who in the first instance 'cooked' the books in order to fulfil the legal requirement to be granted *concordato* and, after that, managed to convince other shareholders to put him in charge of the procedure. At that stage he managed *concordato* for his own purposes by extracting resources from the company, again using a variety of fraudulent devices.[43] This example reveals the weakness of the basis on which the original decision to grant *concordato preventivo* was taken, but also how minority shareholders struggled in getting information and in coordinating their efforts. In fact, such problems were widespread; in particular, in the attempt to maximize their personal interest, individual creditors often failed to realize that a composition was the best solution. This meant that the wide majority required for the approval of this procedure severely limited, in practice, the use of *concordato preventivo* even to worthy businesses. This problem is emphasized by the case of the company Fonderia di Desio, which was able to offer a friendly agreement on the basis of the payment of 50 per cent of debts, a deal turned down because short-sighted and uncoordinated self-interested creditors expected to get a higher percentage of credit repayment via the bankruptcy procedure.[44] As a result, the company was pushed into bankruptcy, but the receiver made it clear that it would be 'impossible' to expect a percentage of payment 'close to the one offered during *concordato*'.[45]

From the analysis conducted above, it appears that filing for and obtaining *concordato preventivo* was in general a very complicated and inefficient procedure. A further, and probably even more significant problem is that these difficulties were encountered by all types of companies—well-run and potentially innovative ones as well as fraudulent ones; innovative and entrepreneurial as well as conservative. In other words, it seems that the function of virtuous selection among companies, fundamental in any pro-restart insolvency norm or practice, was very badly performed by *concordato preventivo*. Neither the formal requirement of the law, which was based on the combination of the fuzzily defined principles of 'bad luck and honesty', nor the judges' behaviour ensured preferential treatment for potentially viable and/or innovative firms. Evidence of this problem can be inferred by looking at the level of viability and innovativeness of the companies in the ACCM/If sample. Table 3 provides a breakdown of the sample according to the causes of insolvency and on this basis distinguishes between viable and unviable businesses. The former category is composed of companies that operated in potentially successful markets in which they could competitively sell goods or services, but that were pushed into insolvency only because of the bankruptcy of their own debtors, lack of capital, mismanagement, exogenous short-term shocks, or a combination of these elements. The latter includes companies whose insolvency was caused by purely fraudulent/speculative behaviour from the very beginning, by fraud committed during normal activity, by structural inefficiency leading to the inability to compete in the market (including occasions when such inefficiency was caused by a sectoral crisis), by a

[43] ACCM/If, company: Gardini & Co.
[44] 'Everyone is looking after their own interest', as the receiver stated in his report.
[45] ACCM/If, company: Fonderia di Desio.

Table 3. *Insolvency in Milan by cause, 1922–35*

Viable	Bankruptcy of debtors	1
	Bankruptcy of debtors/lack of capital/mismanagement	2
	External shocks	1
	External shocks/lack of capital/mismanagement	1
	Lack of capital	9
	Lack of capital/mismanagement	6
	Mismanagement	7
	Total viable	27
Unviable	Fraud	4
	Fraud/mismanagement	1
	Fraud/lack of market	1
	Fraud/structural inefficiency	2
	Lack of market	9
	Lack of market/lack of capital	2
	Lack of market/lack of capital/mismanagement	4
	Lack of market/mismanagement	1
	Lack of market/structural inefficiency	3
	Purely speculative/fraudulent	25
	Sector crisis	4
	Sector crisis/lack of capital	1
	Sector crisis/lack of capital/mismanagement	2
	Sector crisis/structural inefficiency	2
	Structural inefficiency	36
	Total unviable	97
Unknown	Unknown causes	29
Total sample		153

Source: Authors' own elaboration on ACCM/If.

combination of these problems, or by a mixture of elements including some that, alone, would have made a company classified as viable.[46]

The rational for such categorization is that firms in the former category had the potential to be successful once recapitalized and/or the management was replaced. Even if this desegregation is somehow arbitrary, the evidence still suggests a remarkable difference between the number of potentially viable companies (27) and the cases of *concordati preventivi* (three).

A similar test has been run by considering the sector of activity and dividing the sample between the companies involved in innovative activities from others operating in traditional fields.[47] Table 4 shows that the number of innovative companies

[46] This is the reason why some causes listed in the table (lack of capital and mismanagement) appear in both groups. In the case of unviable companies, these causes are supposed to be 'dominated' by other reasons. The rationale for such a choice is to keep the number of potentially viable companies to a minimum and show that, nonetheless, a significant discrepancy still exists between this number and the number of *concordati preventivi* granted.

[47] In order to classify a sector as innovative or traditional, we have adapted to our case, by using qualitative criteria, the two main classifications of technological intensity (Pavitt, 'Sectoral patterns'; Hatzichronoglou, *Revision*). Notwithstanding the length of the time span studied, we decided to use the same classification for the entire period, since it is not characterized by radical technological discontinuities. In a few special cases, we also consider whether or not specific companies fitted the idea of Schumpeterian innovative entrepreneurship. Among innovative companies we therefore include the firms Bacapa and Federazione Casearia Italiana (companies operating in traditional sectors such as textiles or food and drink, but using machinery that incorporated owned patented innovations), and the firm Pentola 'Aster' (which produced a patented new product). Conversely, the company Società Anonima Brevetti e Novità (Saben) has been considered as a traditional company. This firm, although formally engaged with the commercialization of newly patented goods, was in fact a trader of low-value traditional goods.

Table 4. *Insolvency in Milan by level of innovativeness, 1922–35*

Innovative	Development of patents	1
	Electrical engineering	9
	Filmmaking	3
	Innovative chemistry	6
	Innovative mechanical engineering	5
	Mechanical/electrical engineering	2
	Pharmaceutical	2
	Special cases	*3*
	Total innovative	31
Traditional	Advertising	2
	Agriculture	3
	Building and estate agency	10
	Entertainment/tourism	10
	Food and drink	5
	Leather and shoemaking	2
	Metalworking	7
	Mining	1
	Non-metallic mineral products	2
	Paper	3
	Printing/publishing	9
	Special cases	1
	Textiles	17
	Trade (retail and wholesale)	33
	Traditional chemical	1
	Traditional mechanical engineering	4
	Transport	2
	Wood and furniture	3
	Total traditional	115
Unknown		7
Total sample		153

Source: Authors' own elaboration on ACCM/If.

in the sample is not negligible, but this finds no parallel in the number of *concordati preventivi* granted.

These results suggest that at the aggregate level variables such as innovativeness or future viability played a very minor role, and qualitative analysis supports this view. The company Giglio, for example, was a very innovative company, almost the stereotype of the 'Schumpeterian' model, as in the early 1920s it produced the first prototype of side lights for cars. Despite the unquestionable validity of the product, the market proved not to be ready yet, and the company was pushed into bankruptcy, without even the benefit of *concordato preventivo*.[48] Also interesting is the case of the Società Anonima Combustibili,[49] which was condemned to bankruptcy even though its insolvency was largely due to an external, unavoidable, short-term shock, namely, the crisis of the Banca Italiana di Sconto.[50] More generally, the analysis of the surviving records of court decisions on whether to grant *concordato*

[48] ACCM/If, company: Giglio.
[49] ACCM/If, company: Società Anonima Combustibili.
[50] The crash of the Banca Italiana di Sconto was one of the deepest and most serious banking crises in Italian history. See Sraffa, 'Bank crisis in Italy'; Falchero, *La Banca Italiana di Sconto.*

preventivo also supports the view that issues of innovativeness or viability were not taken into account. In the cases of the companies De Capitani & F.lli and the aforementioned Progresso Agricolo Ferraniense, the court was very strict in looking at the formal guarantees provided and the schedule of payment, but these were the only criteria considered. There was no mention of the possibility or convenience of relaunching the company or, in the former case, of the fact that its actual difficulties were largely linked to one single debtor towards whom the company was too exposed. In practice only the convenience of creditors was taken into account.[51]

IV

Section III shows that some potentially viable companies trusted official procedures and did not try to avoid them, although with very unsatisfying results. However, the total number of firms using official devices was so low that the general hypothesis that worthy companies tended to make recourse to extra-judicial alternatives deserves further analysis.[52] In particular, it is relevant to investigate the extent (if any) to which such unofficial solutions were used, and whether they represented a better alternative, in particular in terms of allowing companies to restart. The first step in this analysis is to provide a rough estimate of the ratio between the number of companies stopping their activity and the actual number of official insolvency procedures. In the case of Milan, it is possible to do this by comparing information from the BUSA sample (which provides a list, for each year, of joint-stock companies which interrupted their activity, disaggregated by province) to information from ACCM/If about the number of joint-stock companies that used official insolvency procedures each year. Focusing on the benchmark year 1924, the BUSA indicates that 116 joint-stock companies exited the market in Milan and its province, but according to the ACCM/If only 12 cases of insolvency had been declared. Even taking into account that among the 116 cases reported by the BUSA, two joint-stock companies disappeared and were recreated as partnerships, eight businesses reached the end of their expected life or were just branches of other companies, and six were banks or insurance companies that have not been included in the ACCM/If sample, the discrepancy is still noticeable.

It is evident therefore that joint-stock companies looked for alternatives to the official procedures provided by law using, in particular, voluntary liquidation. In theory the use of voluntary liquidation is a perfectly legitimate strategy for firms that, facing difficulties and having no prospect of relaunch, decide to put an anticipated end to their life before running into further trouble. In Italy, however, the peculiar harshness and inefficiency of official insolvency procedures could have generated the tendency to rush into liquidation even in cases in which companies were in the position of trying to defend their business or restructuring and starting again, with the result that potentially viable and successful companies met a

[51] The other available case (the Cartiera Albano Franchini) supports this evidence, even though in this instance the court expressed a favourable opinion. ACCM/If, companies: De Capitani & F.lli and Cartiera Albano Franchini.

[52] It must be taken into account that state-owned companies also benefited from bailout operations. For the banking sector this was the rule rather than the exception. See Di Martino, 'Banking crises'.

premature death. In this regard it is particularly revealing that companies often tried, sometimes successfully, to find an agreement with creditors only after their first attempt to liquidate failed.[53]

To some extent the rush into liquidation was also the result of the aforementioned requirement of the commercial code, which forced firms that had lost one-third of their capital either to recapitalize or to liquidate. Evidence of the frequency of this problem can be inferred from the BUSA sample for 1924, where cases of companies that decided to liquidate because of the inability to raise new capital on the market are easy to find.[54] Although this problem is clearly also linked to the workings of the Italian credit market and is therefore outside the scope of this paper, it also sheds light on the fact that there was no attempt to incorporate into the Italian procedure any mechanism to make the refinancing of a potentially viable company an alternative more appealing than its liquidation.[55] In particular, while in England and the US voluntary wind-up was often the first step towards restructuring via specific legal procedures which had also been conceived to counterbalance the action of a minority of reluctant creditors, in Italy restructuring was allowed, but it was not protected by any specific legal device.

The absence of such procedural mechanisms meant that in many cases voluntary liquidation was just a temporary condition before insolvency, leading to the disappearance of even potentially viable companies. Without any binding restarting plan, liquidation often became a long and complicated procedure, open to risks of all kind, in particular to severe devaluation of assets. A measure of the extent of the problem can be inferred from the ACCM/If sample, in which 37 companies went bankrupt during the liquidation process. Even if the majority of these companies had structural problems and therefore had little hope of avoiding bankruptcy in any case, some of them were not so troubled; in particular, examples can be found of firms pushed into bankruptcy despite having started the liquidation process with a level of assets exceeding the nominal value of liabilities,[56] businesses about whose bankruptcy the official receiver could go as far as saying explicitly: 'we cannot . . . claim that the company, at the time of the beginning of liquidation, was not in such conditions as to be able to . . . avoid . . . bankruptcy'.[57]

The fact that creditors did not have incentives or were not obliged to support the relaunch of firms just made these problems even more complicated. Firstly, as the example of the Società Elettrotecnica shows, the difficulty of locking in creditors simply forced companies to liquidate even when restarting could have been a theoretical option. This firm was put into liquidation in 1924 and terminated the procedure in 1930. From 1928, administrators foresaw the possibility of future new business and decided to suspend the liquidation temporarily, in order to keep activity to a minimum, and to wait for the right moment to present a restructuring

[53] For example, the company Magazzini 33 and the firm Società Industrie Meccaniche Servadei Benetti, which succeeded in their attempts to avoid liquidation. ACCM/If, company: Magazzini 33; ACCM/Ad, Società Industrie Meccaniche Servadei Benetti.

[54] Among companies for which detailed information is available, 16 complained about problems of this kind; BUSA, 1924.

[55] For a survey on the functioning of the Italian credit system, see Conti and La Francesca, eds., *Banche e reti*.

[56] As in the cases of the companies Bacapa and Società Anonima Cooperativa 'La Casa'. ACCM/If, companies: Bacapa, Società Anonima Cooperativa 'La Casa', and Industria Dattilografica.

[57] ACCM/If, company: Società Anonima Cooperativa 'La Casa' (authors' translation from Italian).

plan. The pursuit of this strategy, however, had to be interrupted because the company found it impossible to reach an agreement that would allow them to delay the payment of taxes that were already due. In practice it was the state, operating as an ordinary creditor, that created an insurmountable obstacle to attempting to relaunch the company.[58] Secondly, the absence of regulation constraining the action of creditors meant not only that the option of restarting could become impossible, but also increased the risk of voluntary liquidation being turned into bankruptcy, as Italian insolvency law established that during liquidation any unsatisfied creditor (even a single one) could force the company into bankruptcy if it failed to meet any liability. The extent of this problem is particularly apparent from cases of companies whose successful liquidation was turned into bankruptcy because of the action of one single creditor, sometimes owning credit worth a tiny fraction of the total capital of the firm.[59]

V

The analysis in sections III and IV indicates that neither official procedures nor informal alternatives were well equipped to address successfully the problems faced by insolvent companies hoping to avoid liquidation. On the one hand, official devices such as *concordato preventivo* were difficult for companies to use, were not linked to considerations about innovativeness or viability, and were scarcely connected with the issue of the relaunch of companies. On the other hand, voluntary liquidation was not an efficient alternative without any automatic link to a restarting plan or the possibility to limit the power of creditors.

In 1942, a specific formal device called *amministrazione controllata* was provided with the explicit aim of preventing the dissolution of potentially viable companies. As stressed in section I, this new procedure was based upon the principle of the replacement of management in the expectation that this would be enough to solve companies' crises. In the light of the argument put forward in this article, the questions to answer are, firstly, whether or not this new institution was a viable alternative to *concordato preventivo* and *fallimento* (that is, how simple it was to be granted it) and, secondly, if a company managed to obtain it, the extent to which *amministrazione controllata* represented a better solution to the problem of restarting. The analysis of these two issues is made difficult by the fact that very little, if any, direct evidence can be found about the reasons why and the conditions under which companies decided to file for *amministrazione controllata*, or the way in which applications were analysed by courts. In fact, information from the BUSA is extremely sketchy, while no case of an application for *amministrazione controllata* has been found in the ACCM/Ad sample. A way of bypassing this problem is to use a counterfactual argument by looking at the problems faced by companies before 1942, and asking 'what if' *amministrazione controllata* had existed at the time.

The issue of whether or not *amministrazione controllata* was more 'user-friendly' than the previous alternatives can be addressed by reconsidering the result of the

[58] BUSA, 1924.

[59] In the cases of the companies Industria Dattilografica and Federazione Casearia Italiana, bankruptcy was caused by the action of one single creditor. In the latter example, the creditor owned a credit worth 30,000 lira against the company net worth of about two million lira. ACCM/If, companies: Industria Dattilografica and Federazione Casearia Italiana.

Table 5. *Insolvency in Milan by size, 1922–35 (nominal capital in thousands of lira)*

Size	*≤50*	*51–999*	*≥1,000*	*Unknown*	*Total sample*
Number of companies	64	52	14	23	153

Source: Authors' own elaboration on ACCM/If.

quantitative analysis run in section II, which showed that although this institution proved to be much more popular among joint-stock companies than among any other type of business, in quantitative terms its usage never really took off. In order to explain this result, the first issue to consider is the dimensional structure of insolvent companies. As a matter of fact, *amministrazione controllata* was based on management replacement, but this policy makes sense only for companies with a clear distinction between ownership and control and with managers operating independently. This was certainly not the rule in the ACCM/If sample, in which a large number of companies appear to have been small and to lack genuine professional management. As table 5 suggests, the majority of companies fell below the threshold of 50,000 lira of capital, and among those many did not even reach 10,000 lira, an amount judged 'laughable' by a contemporary receiver.[60] Comparing these data to statistics at the national level, we can conclude that the distribution of the population of bankrupt companies was skewed towards the small scale. Assuming that the average size of companies in Milan did not differ from the national average, on the basis of data provided by Giannetti and Vasta we expect to find the share of Milanese firms whose capital during the period was on average above the threshold of one million lira to be roughly 33.7 per cent of the population.[61] However, in the sample of insolvent companies, this figure is only 10.8 per cent.[62] In this regard, it is also important to note that these firms were not only small, but also young: on average Milanese businesses started bankruptcy or voluntary liquidation procedures within the first three years of operation, about half the companies before two years, and only two after 10 years.[63] Applying the same assumption the other way round (in other words, that the size of the average insolvent Milanese firm was not dissimilar from the national one), we can conclude that the vast majority of bankrupt Italian firms were small, and therefore *amministrazione controllata* was simply out of reach for them.

The size of the majority of companies included in the sample of bankrupt companies clearly shows how unsuitable *amministrazione concordata* was as a general solution to the problem of firms' insolvency. However, one could argue that the aim of Italian lawmakers might not have been to deal with small firms already in an established state of insolvency, rather offering big and worthy companies facing illiquidity the possibility of addressing the problem within the official law and without making recourse to extra-judicial solutions. In other words, in order to evaluate the actual suitability of the *amministrazione concordata*, one has to look at the structure and nature of the wider sample of companies that disappeared from the market outside official procedures. However, our estimation

[60] ACCM/If, company: La Commissionaria.
[61] See Giannetti and Vasta, eds., *Evolution*, and particularly Vasta, 'Appendix'.
[62] Companies whose capital is unknown have not been included in the calculation.
[63] ACCM/If.

of the capital structure of companies that exited the market between 1924 and 1934, obtained by using data derived from the BUSA, reveals that the percentage of businesses whose nominal capital exceeded the one million lira threshold was only marginally higher (13.6 per cent) than in the sample of bankrupt companies.[64] This confirms that *amministrazione controllata* simply did not represent a suitable solution to most of the cases of either confirmed or simply potential insolvency.

Apart from the extent of its application, a further problem is whether or not *amministrazione controllata*, when used, gave better results than *concordato preventivo* or *liquidazione volontaria* in terms of allowing good companies to restart. In this case, too, direct qualitative evidence is difficult to obtain, but a counterfactual analysis can be run. This procedure relied mainly on the replacement of management, and certainly mismanagement was a very widespread cause of insolvency during the interwar years. The analysis of the ACCM/If sample shows that mismanagement was the sole or main cause in seven cases of insolvency, and played a part in other 18 cases (see table 3). Often companies that suffered from mismanagement were potentially successful businesses operating in buoyant markets.[65] If we exclude the circumstances where mismanagement occurred in conjunction with fraud or other causes of structural inefficiency, in the other cases *amministrazione controllata*, if it had existed at the time, would have been a good solution.

However, apart from or in addition to issues of mismanagement, the main problem that constrained the restart of worthy firms was undercapitalization and the necessity to lock in creditors to the process of relaunch; problems for which *amministrazione controllata* provided no solution. As shown in section IV, the BUSA sample contains various cases of companies having to liquidate because of their inability to raise new capital, and examples of potentially successful companies needing an injection of fresh financial resources have been found in the ACCM/If sample too.[66] In all these cases *amministrazione controllata* would have made no difference.

VI

The empirical analysis of the functioning of Italian insolvency laws clearly shows their inability to perform the role of selecting and relaunching viable firms. Over the entire period, the strictness and complications of the formal requirements, their lack of attention to issues such as innovativeness and viability, and their inability to address companies' problems severely limited the use of extra-bankruptcy 'friendly' procedures and, when used, their effectiveness to restart

[64] Elaboration on BUSA, 1924–34.

[65] As in the cases of the companies Industrie Riunite Arti Grafiche and Italo Francese Forniture Articoli Carrozzeria. ACCM/If, companies: Industrie Riunite Arti Grafiche and Italo Francese Forniture Articoli Carrozzeria.

[66] The Fabbrica Italiana Articoli Reclame had enough financial resources to invest massively and to turn its initially inefficient production structure into a modern and potentially successful plant. Ironically, it was at that stage that the company failed to attract new capital and went bankrupt. The Società anonima Italiana Motori Salmson, despite offering relatively popular goods, failed to attract further financial resources in a phase when more capital was required to survive a structural crisis. ACCM/If, companies: Fabbrica Italiana Articoli Reclame and Società anonima Italiana Motori Salmson.

worthy firms. This situation pushed many businesses, although not necessarily the best or biggest ones, towards the search for extra-judicial solutions, in particular premature recourse to voluntary liquidation. The end result, however, was no better as, in the absence of any binding restarting plan, companies in liquidation were exposed to the risk of asset devaluation and to the actions of any unsatisfied creditor.

These innovative findings can be considered in the context of the outstanding debate on the causes and consequences of the peculiar structure of the Italian industrial system. Italy was, and still is, known for having relatively small joint-stock companies and, at the same time, it appears to have had very strict and liquidation-oriented insolvency laws. How do these two features relate to each other? Certainly it is possible to argue that for small firms it is particularly hard to reallocate goodwill and other invisible assets; therefore the scope for a pro-restarting law is narrower. On the other hand, it is also possible to maintain that in Italy the balance of power in the relationship between debtors and creditors has been predominantly in favour of the latter, providing further grounds for insolvency laws to be directed more towards the liquidation of bad debtors than to the relaunch of firms. If this were true, then it would be the case that the structure of the productive system shaped the nature of bankruptcy law and not the other way round.

The direction of causality, however, can also be inverted. Insolvency is not necessarily the result of mismanagement and fraud; in fact, it is often the impact of natural macroeconomic instability, sudden changes in technological conditions, or exceptional shocks that turn perfectly sound firms into insolvent ones. In this scenario, it is up to laws and practices to identify those firms and provide the practical instruments for their relaunch. From this perspective, the inability to offer reliable and trustworthy relaunching devices meant that, de facto, Italian joint-stock companies were overexposed to the effects of instability. This may help to make sense of the Italian phenomenon of higher turnover in the population of companies and the consequent inability of firms to develop their full size and potential.[67]

On the basis of the available evidence, choosing between one of these two logical interpretations remains largely a matter for debate. In fact, the structural instability of the industrial sector has been shown only for relatively large companies.[68] On the other hand, we could not identify cases in which companies would certainly have grown had a different insolvency law been available. However, some indications lead us to believe, or at least suspect, that the direction of the causal link is more likely to go from the features of commercial law to the characteristics of the industrial structure than the other way round. Firstly, assuming that Italian legislation was liquidation-oriented because of the size of firms and the disproportionate power of creditors, this would imply that the latter would benefit from higher repayment as a result of more debtor-friendly legal systems. Although no systematic evidence is available, a study comparing Italy and England suggests that this

[67] In this regard we also find it intriguing that the areas in which the Italian companies suffered less from the problems described above (for example, in sectors such as insurance and banking, or when specific forms of corporate governance such as cooperatives were used) are also the ones which benefited, at least until 1942, from specific bankruptcy laws.

[68] Giannetti and Velucchi, 'Demography', Vasta, 'Largest 200', idem, 'Mutamenti istituzionali'.

was not the case; in fact, the more debtor-oriented English bankruptcy law also allowed a bigger share of debts to be repaid than was the case in Italy, at least in the case of personal bankruptcy.[69] Secondly, although the historiography is neither complete nor particularly illuminating in this regard, no traces of powerful lobbying action by creditors can be found in studies of the evolution of Italian law, which, at least on paper, showed some tendency to become progressively more debtor-friendly after the 1903 and 1942 reforms. Thirdly, beyond the generic problem of the balance of power between creditors and debtors, there is a deeper issue to be considered: the relationship between firms and the families who controlled them. As far as the period after the Second World War is concerned, some authors have emphasized the ability of families to 'asset-strip' companies by turning to their own advantage the fuzziness of commercial laws. In using this strategy, families were supported by a specific category of business consultants (*commercialisti*) who, in turn, found their legitimacy in the uncertainty of the institutional environment.[70] This perspective opens the door to an interpretation that sees formal rules as the engine for a transfer of resources from firms to specific groups of debtors, or, in other words, a casual link which goes from the inefficiency of laws and legal procedures to the weaknesses of the productive system.

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[69] Di Martino, 'Approaching disasters'.
[70] de Cecco, 'Piccole imprese'.

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