The Insolvent Italian Banks of Medieval London

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Part Two

I. The Papal Dilemma

The celebrated Italian historian, Benedetto Croce, discussing in 1941, the philosophy of history and the task of the historian, famously asserted that 'All history is contemporary history'. He argued that present concerns greatly influence historians in deciding which documents and events from the past they consider to be significant. Every type of history is, according to this theory, written, consciously or otherwise, from the perspective of the present. A controversy within the Vatican during the thirteenth century about the scope of a general charge may provide a useful illustration of how the approach to a problem in a previous age may throw some light on a similar question in the world of today.

The concept of a general or comprehensive form of security extending to the whole of a debtor's assets, present or future, capable of being enforced on demand, is not an entirely new phenomenon. By the end of the thirteenth century, long before Victorian chancery lawyers had invented the modern floating charge, instruments possessing its essential characteristics were in use in England and other parts of Western Europe. An eminent French historian a century ago gave a detailed account of the nature of these documents, speculating about their usefulness. He raised the question whether a debtor, as against the holder of such a charge, could ever deal with any of the assets so as to confer a good title upon a third party, suggesting that this might happen only if the transaction was for value.

The Vatican officials and their legal advisers were particularly occupied with the problem of devising a comprehensive form of security for use in two somewhat separate and distinct circumstances. On the one hand the concern was to give the Papacy the maximum degree of security where substantial fluctuating balances were kept by Italian merchant banks on behalf of local Collectors of papal revenues. Cases like that of the absconding bankers of

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Bologna in 1218 (see page 153 *supra*) must have highlighted the need for a reappraisal of the papal requirements regarding the taking of security to prevent similar disasters in the future.

On the other hand there were frequent occasions when senior Church officials under the jurisdiction of the papacy were themselves obliged to seek substantial loans to meet personal expenses, for example, whilst visiting Rome, or to defray the heavy cost of building works or other activities in their dioceses. The Italian banks were the obvious source of such funds but it was now their turn to demand security. The situation placed the Vatican in a dilemma.

The fundamental issue depended on whether or not such officials might be permitted to charge the assets under their control in favour of a moneylender. At stake was the extent to which, if at all, the spiritual authority and dignity of the Pope would have to give way to more worldly needs.

II. General and Specific Bonds

Jurists in medieval Europe were quite familiar with the concept of the floating charge and the problems associated with non-possessory securities. Under traditional feudal law and its complex system of land tenure immovable property was virtually inalienable and unavailable for the payment of debts. The gradual disappearance of these restrictions created a market in land and provided the opportunity for an owner to raise substantial amounts of capital on the security of real property. It then became necessary to reconcile the conflicting interests of borrower and lender in relation to the possession of the land and the enjoyment of its income and profits so long as the debt was not in default.

Derived from Roman law models, a general bond affected all the property of a borrower, extending to immovables, chattels, book-debts and inheritances, present or future. As a form of security such a bond had its weaknesses. It conferred no rights against a third party, so that conveyances or other dispositions, at least those supported by valuable consideration, could not be avoided by a lender. Furthermore it did not impose anything amounting to a charge or lien on the property with the result that it normally gave no priority against judgment creditors. Its usefulness in the circumstances is somewhat questionable, but it has been suggested that it fulfilled two purposes. It served to circumvent the old principle that immovables could not be seized or distrained upon. It also had the advantage of making the heir of land responsible for the liabilities of a decreased debtor at a time when debts were only payable out of movables.

By contrast a special bond was confined to land, but what it lost in extent it gained in strength. With the need for some degree of formality and occasionally even publicity, it created a charge over such property and can therefore be treated as an early form of mortgage. It prevailed against third parties and took precedence over a general bond.

Despite any such disadvantages the Vatican did not hesitate to make extensive use of general bonds. The papal lawyers almost certainly prepared their own precedents of these documents for circulation amongst notaries. Local variations were probably envisaged. However in the case where Church officials were the intended borrowers express instructions forbidding any modifications were issued.

III. The Ammanati Precedent

The complete text of a general bond executed by the Ammanati bank in 1280 has survived in the English archives. In 1274 the papal Council at a meeting held in Lyons imposed a tax of a tenth to finance a forthcoming crusade, its collection in England being entrusted to more than a dozen banks approved by the Vatican. The Ammanati bank of Pistoia was fortunate enough to be on the list. At the time Pistoia was still a proud and independent self-governing state that had not yet been absorbed by Florence, its more powerful neighbour. In contrast with the Bonsignori and several of the other banks the Ammanati's share of the business was quite small. Its responsibility was for gathering the tax arising in about 20 different areas across the country including, in particular, the amount owing by the Abbot and Convent of St Albans.

A detailed statement of account was in due course prepared providing details of all the deposits as they stood in 1283 so collected by each bank. The amount still outstanding in the hands of the Ammanati from the St Albans source was 100 marks.

In June 1280 James Agolantes, described as 'a citizen and merchant of the society of Ammanati of Pistoia', executed a general bond on behalf of the bank and himself in favour of the papal Collector in England. The bond contained a specific statement that it was in respect of the St Albans money. No other amounts are mentioned. Perhaps this bond was one of a series that covered the other collections. If so, the fees earned by the notary must indeed have been substantial.

The formalities of executing the bond took place in the New Temple, the customary place in London for storing large quantities of coins and treasure. The presence of the papal nuncio strongly suggests the great importance attached to the occasion and the probability that it may have been used to obtain similar bonds from other banks involved in the collection of the tithe.

The bond commenced with an acknowledgement that the bank held the 100 marks in 'good, new and legal sterlings'. The inclusion of this statement was no mere formality. It was rather in the nature of a warranty of quality in an age when coin-clipping was common practice. As recently as the previous year, in 1279, the government had taken measures to combat the problem by enabling an offender's assets to be confiscated. The deed's warranty was supplemented by further provisions whereby the bank expressly undertook

never to deny that it had received the money in full or to raise any 'defence and aid of law or fact' by which it might delay the Collector 'in any way by any method or device'.

The primary obligation of the bank was to restore the actual money deposited when requested. A more practical alternative was, however, contemplated which enabled the Collector or an authorised representative to demand an equivalent amount with damages and expenses in London or at an overseas branch. The branch assumed responsibility for 'every change and possibility of ruin, robbery, theft, greater force, fire or shipwreck, and any other thing which could happen in any way'. As security for performance of the contract the Collector obtained a charge over the 'goods' of the bank as well as those of Agolantes personally. Finally, in case enforcement became necessary, the bank agreed in advance to submit to the 'coercive power' of the Collector and the jurisdiction of the courts, secular and ecclesiastical. It was also provided that enforcement measures might be taken on an extra-judicial basis without any formal process or the necessity of obtaining a judgment.

It is somewhat disconcerting to find that a document displaying such a high degree of sophistication and expertise was in use 800 years ago. This astonishing achievement must surely have been attributable to the professionalism of the anonymous draftsman and his determination to protect the interests of the local Collector and the papacy to the fullest imaginable extent.

IV. The 25 per cent Fund

In October 1288 the Vatican turned its attention to the converse and more controversial situation where a church dignitary might wish to contract a loan in connection with his ecclesiastical activities. As a result detailed instructions were issued for obtaining an apostolic licence in such circumstances and about the nature and extent of the security that could be granted for the protection of an approved moneylender. No variations to the accompanying model form of bond were contemplated.

The category of officials entitled to take advantage of the arrangements was extensively defined to include patriarchs, archbishops and bishops but also inferior prelates such as an abbot. The documentation fixed an upper limit to the amount to be so borrowed and then specified the security available for repayment. To this end the prelate expressly 'obliged' himself, his successors, his church and his and their 'movable and immovable goods present and future' to the creditor for the satisfaction of the debt 'with just and moderate expenses and the restoration of damages and interest, usury ceasing entirely'. But there was a remarkable proviso.

The loan was subject to termination on one month's notice, a series of undertakings similar to those in the Ammanati bond being given by the prelate waiving reliance on a variety of technical defences. In the event of default he might in the last resort face the humiliation of excommunication or be ordered

to travel to Rome and remain in detention there until the debt was finally satisfied. So far the scales were tilted heavily in the creditor's favour.

The security, however, possessed one unique and exceptional feature that went some way to redress the balance. It took the form of a limitation upon the entitlement of the creditor to enjoy the full benefit of the proceeds of any realisations. It was provided that three parts of 'any fruits, rents, revenues, temporal rights and offerings whatever' should be applied towards payment of the debt. The fourth part was to be reserved for 'the charges and expenses' of the prelate 'lest he be forced to beg to the shame of the pontifical dignity'.

Little is known about the origins of the 25 per cent fund or how it ever worked, if at all, in practice. Probably the idea of some reservation for the prelate's benefit from the proceeds of what amounted to a floating charge emerged during discussions between the Vatican and representatives of the Italian financial community. It is tempting to speculate that the Pope's officials perceived in the sweeping nature of such a charge some unconscionable element and that the fund represented more or less a practical compromise solution to a moral dilemma.

V. **Reorganisation**

However important it may have been to obtain adequate security for a loan, the paramount commercial concern was always with the contractual liability invariably undertaken by the debtor for repayment. The maintenance of confidence in the banking system as a whole precluded any modification of an individual's personal responsibility in this respect. Demands for the extension of the terms of repayment were nothing unusual, but any deviation from the principle of such strict liability would have been revolutionary. Accordingly the attempt by a group of partners in the Bonsignori bank to obtain some variation of their joint liability for the partnership's debts when in 1298 it fell into severe financial difficulties was from the start doomed to failure.

The petition to the judicial authorities of the Commune of Siena began with a reminder, couched in the most obsequious language, of the bank's previously high reputation in the world at large. It goes on to refer to the confidence placed in the bank by the papacy, foreign governments as well as merchants and in particular to the extensive services it had for so long performed on the Commune's behalf. There then follows an allegation that the current state of dissension and lack of harmony within the partnership was attributable to the machinations of outsiders.

The petitioners claimed that the bank was still in a position 'to meet its obligations at the proper times and places and within the different time limits, as is its custom, to all its creditors and to those who are to receive anything from it'. The trouble, it was alleged, lay with several local citizens who, acting maliciously, had instigated a run on the bank. The creditors were not only making their demands simultaneously but were proceeding against certain

partners individually rather than against the partnership as a whole, even though it had not refused as yet to meet any of its obligations. It was alleged that since the panic had started more than 200,000 gold florins had been paid to creditors.

The position was bound to deteriorate, according to the petitioners, unless the bank was given an opportunity to recover what was due to it 'in different parts of the world from kings, counts, barons, and other *societates* and individuals'. Since the bank had never concealed from its creditors that the money received from them would, as was customary, be lent to others, it would be proper, the petition claimed, to order them to moderate their claims until the debts due to the bank could be collected. The petitioners went so far as to urge the authorities to send two ambassadors to the Pope who would speak on the bank's behalf and ask him to use his influence with the creditors, especially those in Rome. It was hoped that as a result they would give the bank time to settle its affairs in an orderly manner and, in particular, to accept a novel plan for dealing with the vexed problem relating to the individual liability of the partners.

The substantive proposal by the petitioners was that in the circumstances each partner should become liable for only a percentage of the partnership's obligations equal to his percentage of its capital. The indebtedness of an individual as a result of the bank's failure could still have been higher to an unlimited extent than the sum he had invested, but he would not have had to carry the burdens of his partners in addition to his own. This principle was later adopted, for a brief period, in the statutes of Siena, but it was eventually abandoned. The provision was partly responsible for the rapid decline of Siena as a leading centre of business. The public wanted to nail solidly each and all of the partners to each and all of the partnership's debts.

VI. **Enforcement**

The collapse of the Ammanati bank in 1302 led to the abrupt closure of its Rome branch and, as was to be expected, the flight of the local partners. As soon as the Vatican authorities heard the news they lost no time in taking the customary steps to safeguard the papal interests.

The story had been told how the partners were ordered to refrain from disposing of their property and the debtors of the bank were at the same time enjoined from making payment without the Vatican's permission. These measures were inadequate since all the partners were beyond the reach of the direct coercive power of the Holy See.

The principal debtors of the bank resided in Spain, England, Portugal, Germany and France. Local creditors in these countries tried to appropriate the assets within their own particular jurisdiction. Many of the debtors were unwilling to pay at all. The blunt fact had to be faced that unless the partners agreed to assist the foreign debts were to all intents and purposes irrecoverable.

To overcome the problem certain partners were offered a safe-conduct to come back to Rome in return for a promise of co-operation. The Vatican having received the necessary information and papers to enable the collection of debts to proceed, letters rogatory were sent to the clergy abroad with detailed instructions for pursuing the recalcitrant debtors.

VII. **Safe-Conducts**

The general practice at the time across most of Western Europe in relation to a merchant who failed to pay his creditors was to have him imprisoned whilst his property was sold to extinguish the debts. If the proceeds were insufficient for full payment and the creditors were not prepared to accept less, the debtor completed his sentence and also suffered other penalties including loss of civil rights and expulsion from his gild. As late as 1360 a moneychanger was beheaded in Barcelona for failing to pay his creditors. Such extreme cases were, however, virtually unknown elsewhere.

The habitual response of a debtor facing financial ruin was to abscond from his usual place of business, taking with him or concealing as much of his stock as possible with intent to defraud creditors. The grant of a safe-conduct with the creditors' approval was the normal method for procuring a debtor's return to enable him to reach a settlement with them. It remained in force for a specified period during which the creditors undertook not to raise 'impediments' against him and his family. The system had originally been devised to assist 'good merchants or citizens who may have been struck by adverse fortune'. In Venice the procedure gradually fell into disrepute. An unscrupulous merchant might, in advance of departure, obtain from an appropriate official a safe-conduct already prepared and stamped with the seal of St. Mark. The space for his name would, however, remain blank to be added at the opportune moment. The object, of course, was to extract better terms from the creditors.

VIII. **Cross-Border Assistance**

Although the inducement of a safe-conduct worked tolerably well in the Ammanati case, debtors could not always be relied upon to be so amenable. With a multitude of different independent states and separate jurisdictions criss-crossing Europe a merchant determined to avoid his creditors was not short of havens in which to shelter. In such cases far more robust measures were required to procure his return. They were needed in England when the Pulci and Rembertini bank collapsed and the London partners suddenly disappeared.

The preliminary investigation into the bank's affairs disclosed a dismal picture. It was discovered that massive breaches of the government's strict controls on the export of gold and silver had occurred. The list of creditors included not only the King, but magnates, merchants and a group of depositors expecting funds to be transferred on their behalf to Rome or other branches of the bank.

The matter was considered in January 1306 at a meeting of the King's Council held in Abingdon. In an atmosphere of anger, astonishment at the scale of the losses and indignation that the trust placed in the bank had been so disastrously betrayed, it was decided to order the sheriffs respectively of Lincoln, York and Northumberland to apprehend four named partners and arrest their goods. Similar instructions were sent to the Chancellor of Scotland. In the light of further information received shortly afterwards he was also ordered to arrest debts due to the bank from two abbots within his immediate jurisdiction. The amount owed by the abbot of the prosperous abbey of Melrose was 180 marks.

The Council continued to keep a close eye on the situation. When the king was given to understand that Grisius Lambard, another of the partners, was in the county of York, urgent instructions were sent to have him arrested and kept safely until further order. Whilst in custody he was to be interrogated about his presumed knowledge regarding the bank's 'goods, wares, chattels and debts' in England as well as Scotland.

The bank's affairs came before the Council yet again during its meeting at Winchester in February 1306. On this occasion it was decided to send a special envoy to the authorities in Florence with a request that the fugitive partners be brought back to London 'under faithful custody' with their goods to satisfy the bank's liabilities 'lest the king betake himself to some harsher remedy'. The authorities were to be invited to indicate what assistance they might be prepared to offer but meanwhile they would be told that the merchants of the other societies of their city in England would not be permitted to leave the realm or remove any assets.

The threat of using other Florentine merchants as hostages for the payment of the bank's debts was clearly a potent weapon in the Council's hands. If, as seems probable, it was carried out the result in terms of mitigating the effects of the disaster would presumably have been worth while and sufficient to offset any retaliatory counter-measures against English merchants in Florence.

IX. **Creditor Equality**

Contemporary practitioners, as the Pulci case indicates, had at their disposal ample machinery for gathering information about the property and affairs of a defaulting debtor, for the seizure of tangible assets and the attachment of any debts. In the long history of English insolvency law the significance of the case is, however, overshadowed by the failure of the Scali bank 20 years later. That case is not only an example of how the procedures for recovering assets operated, but it also provides considerably more detailed information regarding the subsequent process for distributing the funds so obtained by way of a dividend amongst the creditors.

The concept of creditor equality in an insolvency context was at the time generally applied. Known in Roman law as *par conditio creditorum*, it was almost everywhere distorted in practice and subject to numerous exceptions. The

Russian code of Yaroslav had decreed in the 11th century that foreign creditors must be paid first but this was, to say the least, anomalous. The general tendency was, on the contrary, to give preference to domestic creditors over foreigners, though at the time of the Scali case the practice was about to be abandoned in the Florentine Republic. A statute of 1326 provided, on the basis of reciprocity, for foreign creditors to be treated equally with local citizen creditors.

The tendency to discriminate against foreign creditors was closely associated with another long-standing feature of cross-border insolvency practice that concerned separate administrations. The origins of this controversial concept are to be found in Roman law. The rule was that where a slave operated distinct businesses for his master, the creditors of each business were to be considered separately in the distribution of the assets; for 'credit was given more to the business than to the business owner'. It was interpreted later as applying to merchants with different establishments at different places within the same province. As economic circumstances gradually changed and international trade extended, the underlying validity of the rule came to be challenged but it continued tenaciously to survive as an important aspect of cross-border procedures.

Some attempts were made to address these problems by means of bi-lateral treaties, particularly between the Italian city-states. Such treaties provided for the extradition of fugitive debtors, whilst others probably banned the practice of discriminating in the distribution of the assets between citizens of the two states. In 1306 such a treaty outlawing the latter practice was made between Venice and Verona. As early as 1204 Verona had arranged with Trent for the transfer of assets to the jurisdiction where the insolvency had occurred but this was an exceptional arrangement.

By the time of the Scali case quite a few Italian states had begun to codify their respective insolvency laws. The English had not yet embarked upon such an exercise and would not do so for another two centuries. The practice in cases with a cross-border element was to adhere to the principle of a separate local administration. The attitude with regard to foreign creditors was not entirely hostile since they may have been allowed to rank for dividend along with local creditors if their claims arose out of a liability incurred in England.

The concept of creditor equality was further undermined by the continued ability of the Crown, notwithstanding insolvency proceedings, to avail itself of the special procedures developed by the Court of Exchequer for collecting revenue debts. Although the excessive nature of these remedies had in 1311 been the subject of complaint to Parliament, nothing was ever done to curb them until the nineteenth century. Then, in return for agreeing to be bound by insolvency legislation, the Crown was given a substantial degree of preferential status.

X. A Major International Liquidation

The handling of so many high-profile insolvency cases in England would have been quite impossible in the absence of a group of royal officials with a wide

range of legal and practical experience. Many of them would have been trained in the civil law at Oxford or Cambridge, using Justinian's Digest of Roman law as a basic text. A few may have taken more advanced courses at an Italian university such as Bologna, especially renowned at the time as a centre for legal studies. The *lingua franca* was Latin.

The insolvent administration of the English branch of the bank falls conveniently into two phases. The first was supervised by the Council and dealt primarily with the recovery of assets. The second phase, conducted by the chancery, was largely concerned with the verification of claims and the payment of a dividend. Too much emphasis, however, should not be placed on any substantial difference at the time between the royal council and chancery. In routine administrative proceedings the Chancellor and his senior assistants often formed the effective core of the Council.

The bank had existed in Florence for nearly a century before the formal announcement of its closure was made in August 1326. The overall liabilities amounted to a staggering 400,000 florins. Within about a fortnight news of the disaster had reached London whereupon the Council, at a meeting on 13 September, set in motion the by now customary protective measures adopted in such cases.

On this occasion detailed instructions were given to the Mayor and sheriffs of London for the arrest of the partners, the seizure of the assets and the collection of outstanding debts. Arrangements were made with the local branches of the Bardi and Peruzzi banks respectively to receive and retain the proceeds until further order. The creditors were to be given notice to present their claims for adjudication by judges of the King's Bench. At the conclusion of this process, further orders would be given regarding the final release of the funds.

Proceedings were also commenced at about the same time against several of the bank's factors for a declaration that they were in fact partners. The litigation was abandoned in return, no doubt, for an undertaking by them to use their best endeavours to assist the officials responsible for the administration of the matter.

The second phase began in February 1327 when all creditors were invited to present their claims at the chancery on 15 June 1327. Besides four local English creditors, the remainder comprised two German claimants, four Cardinals, each with separate legal representation, and a group of Italian merchants mostly from Florence, Lucca and Genoa.

A wide variety of documentary material and accounting records in support of claims was submitted and subjected to meticulous examination by the chancery clerks. The most common type of evidence consisted of holograph letters written in London in the hand of the bank's senior factor and carrying the Scali seal. Alternatives included letters obligatory written in London similarly sealed.

The bank's account books together with those of a creditor were another important source of evidence. It was customary at the time for Italian

merchants to rely on such books as a sufficient record of transactions between themselves. The senior partner of the bank in London was, for example, in August 1324 in dispute with another Florentine merchant. The banker alleged that the normal practice amongst the alien merchants of the realm, in relation to loans and other financial transactions between themselves, was not to require any formal bond. In such circumstances a simple memorandum setting out brief particulars of the nature of the matter, the amount involved and the terms of repayment would normally be quite sufficient.

The process of verifying claims involved an examination of the authenticity of the transaction, the extent to which the creditor might have already received some payment on account or was otherwise overstating the position. Since obligations were frequently incurred in one currency with repayment to be made in a different kind of coinage, the difficult problem of expressing such a claim in terms of sterling also arose.

The whole tedious process of admitting claims had been completed by February 1328. By then the funds available for distribution amounted, probably after allowing for the costs, charges and expenses of the administration, to £459. The total amount of the liabilities finally ranking for proof was approximately £2,420.

The two German creditors received a privileged payment of 50 per cent of their claims, substantially more than any other creditor was to obtain. Their debts had been incurred in England but perhaps they were threatening separate legal action that might have delayed the final distribution or needed an extra inducement to persuade them not to encourage other creditors to lodge claims in London. Apart from a small English creditor who received 20 per cent of his claim, all the others obtained a dividend of 19 per cent.

By any standards this was a satisfactory outcome and is a testimony to the practical ability, technical knowledge and sheer professionalism of all concerned with the administration. It is not known how the court officials were remunerated though it is likely that they were entitled to a share of the total funds recovered.

The main sources for reconstructing the English insolvency proceedings against the bank are two formal documents drawn up by chancery officials at the close of the case. There must have once existed other informal records containing the complex calculations for payment of the dividends to each creditor. The lengthier of the two surviving documents summarises the entire proceedings from August 1326 until February 1328. The other is a partial list of claims submitted to the chancery. It omits three of the English creditors as well as information regarding the special payments to the Germans, but these can be inferred from other sources. It does, however, contain notes of the scaling down of some of the claims and this suggests that it was prepared after the completion of detailed accounting. This documentation was intended at the time to be preserved among the chancery files. It can now be found among the Chancery Miscellania at the Public Record Office.

XI. **Postscript**

This is not, however, the end of the affair. Enraged creditors of the bank in Genoa seized the goods of the other local Florentine merchants and three of the largest were compelled to pay 11,700 florins in settlement. The creditors of the branch in Venice, where it proved difficult to collect debts had accrued locally, received less than half of their debts. The liquidation of the bank in Florence dragged on for many years. In 1329 the syndics were attempting to dispose of valuable assets belonging to one of the partners and as late as 1343 were trying to recover two outstanding debts. The Florentine creditors ultimately received 44 per cent of what was owed to them.

In 1326 the Pillestri bank of Florence also collapsed. It had assets of only 10,000 florins and liabilities with Florentines alone of 30,000 florins. The creditors of its Venetian branch received no more than 50 per cent of their claims.

Part Three

(A Note on Sources and the Background to this Paper)

I. The Quest

I first became aware of the Ammanati case about 15 years ago when I acquired *Conflict of Laws: International and Interstate* (Martinus Nijhoff, The Hague, 1972) which contained a reprint of a selection of essays by Dr Kurt Nadelmann. One of these deals with 'Bankruptcy Treaties' and had originally been published whilst the author had been attached to the University of Pennsylvania: (1944) 93 U. Pa. L. Rev. 58. In the introduction, after briefly describing the facts of the insolvency, Nadelmann remarked that if a similar commercial failure occurred in modern times with creditors and assets situated in various countries, the creditors were not likely to be as fortunate as the members of the clergy in 1302.

The case has since been frequently cited in lectures on cross-border issues, usually with a view to capturing the audience's imagination. Professor Ian Fletcher refers to it as an early instance of an international insolvency in his treatise on the subject (Oxford, Clarendon Press, 1999) and, along with the Tolomei case, it is also referred to by Paul J Omar in 'The UNCITRAL Model Law on Cross-Border Insolvency': [1999] I.C.C.L.R. 242.

Until 1997 I was under the impression that the case was the only known example of how cross-border insolvency matters were handled at the beginning of the fourteenth century. I certainly had no idea that it was one of a series of major insolvency cases that had happened in England and elsewhere in Western Europe at the time. Whilst working on Tudor insolvency law at the Institute of Historical Research in Bloomsbury my understanding of the situation underwent a dramatic change.

I decided to look into the early commercial and financial background. My starting-point was volume 3 of the *Cambridge Economic History of Medieval Europe* published in 1963. This contains a long list of the period's Italian banks including, in particular, the name of the Ammanati Bank.

I then moved to the shelves with material on English medieval economic history and by a stroke of luck came across the library's most recent acquisition on the subject. *Progress and Problems in Medieval England* (Cambridge University Press, 1996) is a volume of essays in honour of Edward Miller, a distinguished economic historian, edited by Richard Britnell and John Hatcher. The contribution by the late Edmund Fryde is entitled 'The bankruptcy of the Scali of Florence in England, 1326–1328'. In the space of 13 pages Fryde provides a detailed account of the English insolvency proceedings relating to the bank. The article is supported by extensive references to the primary sources, mostly in the Public Record Office, and refers to several of the other

major banking collapses of the period, in particular, that of the Frescobaldi. In his younger days Fryde had also written about the Chiriton, Swanland case in 'The English Farmers of the Customs, 1343–1351': (1959) 9 Transactions of the Royal Historical Society (Fifth Series) 15.

At the same time I was fortunate to find W E Lunt's *Financial Relations of the Papacy to 1327* (Medieval Academy of America, Cambridge, Mass, 1939). In this work and his earlier *Papal Revenues in the Middle Ages* (Columbia University Press, 1934) Lunt provides several examples of the mortgage instruments in use by the papacy. These documents became available with the opening in 1881 of the Vatican Archives to research students. The IHR library does not possess a copy of the latter volume. However I have recently managed to find one at Haverford College in Pennsylvania where Lunt held the chair of English constitutional history.

II. The Coke Connection

The task of assembling the documentary material on which the present article is based was thereafter relatively simple though quite time-consuming. As my researches progressed it occurred to me that there must be a link between the insolvent Italian banks of the fourteenth century and a pejorative reference, unsupported by any particulars, to the 'Lombards' in Sir Edward Coke's *Institutes of the Laws of England.*

This classic compilation was published in parts from about 1628 onwards. The fourth part contains a section on the jurisdiction of the Bankruptcy Court with a brief historical survey. Coke believed that there had once been a golden age when bankrupts were virtually unknown in England save amongst the Lombards, the name by which the Italian merchants were customarily known in his time. He refers to a Statute of 1350 where Lombards are specifically mentioned. The somewhat belated subject of the Act was to impose collective responsibility upon them for the debts of any of their absconding colleagues.

III. Sources

It was not until the nineteenth century that any serious investigation into the lending activities of the medieval Italian banks was undertaken. Having conducted an extensive and detailed examination of a considerable amount of archival material stored in the Public Record Office, Edward Bond presented the fruits of his researches in a paper read at the British Museum in April 1839. This memorable lecture was subsequently published in the journal of the Society of Antiquaries: 28 *Archaeologia* 208 (1840).

Bond was the model of a Victorian scientific historian anxious to subject each document to almost microscopic scrutiny. His study rejoiced in the title *Extracts from the Liberate Rolls, relative to Loans supplied by Italian Merchants to the Kings of England, in the 13th and 14th Centuries; with an introductory Memoir.* These Rolls

consisted of orders upon the Exchequer for repayment of sums advanced by the Italians on loan to the King. They did not, as Bond candidly admitted, provide a complete picture of the subject. If this was ever to be achieved it would be necessary to search the Patent Rolls, where the King's letters of obligation were entered for the sums borrowed, and also the accounts of the Keeper of the Wardrobe, by whom the loans were sometimes negotiated and discharged.

The gradual publication by the PRO during the second half of the nineteenth century of the printed calendars of the patent and close rolls relating to the medieval period made it possible to amplify Bond's pioneering work. Almost simultaneously two scholars embarked on the task. The first was probably Walter Rhodes in 'The Italian Bankers in England and their Loans to Edward I and Edward II': *Owen's College Historical Essays*, (first published by Longmans Green in 1903 and reissued by Manchester University Press in 1907). The second was Robert Whitwell in 'Italian Bankers and the English Crown': (1903) 17 *Transactions of the Royal Historical Society (New Series)* 75.

The more recent *Alien Merchants in England in the High Middle Ages* by T H Lloyd (Harvester Press, 1982) contains a considerable amount of detail relating to the collapse of Italian banks with a London branch during the period. The footnotes conveniently provide the references to the relevant documentation in the Calendars published by the PRO as well as unpublished material in its archives.

A *Calendar of the Early Mayor's Court Rolls* (Cambridge University Press, 1925) is the source of the documents concerning respectively the disturbances of 1302 and the proceedings to freeze the funds stolen from the senior Church dignitary as well as the case of the absconding bankers of Bologna in 1218. The measures for the recovery of their assets are described by Lunt in *Financial Relations of the Papacy* (at page 600).

Details about the life of Bishop Grosseteste can be found in the *Dictionary of National Biography*. His critical remarks on the Italians are taken from Whitwell's article (at page 213). The similar comments of Chief Justice Mettingham were referred to in a lecture 'Observing and Recording the Medieval Bar and Bench at Work' about the origins of law reporting in England, given by Paul Brand to the Selden Society in July 1998. A warning to foreigners in England to lock their doors at night given by an Italian visitor, Giovanni Frescobaldi, is mentioned by Robert S Lopez, of Yale, in 'Italian Leadership in the Medieval Business World': (1948) 8 *Journal of Economic History* 63.

A description of the tough measures taken in 1279 against coin-clippers has been given by Don C Skemer, of Princeton, in 'King Edward I's Articles of Inquest on the Jews and Coin-Clipping, in 1279': (1999) 72 *Historical Research* 1.

IV. Crown Privilege

A catalogue of grievances submitted to Parliament in 1311 contained a complaint about the privileged position of the Crown in revenue matters. The

full list is printed in *Sources of English Constitutional History* edited and translated by Carl Stephenson and Frederick Marcham (Harper & Row, New York).

Shortly after the Napoleonic wars Edward Christian, professor of English law at Cambridge and the author of a treatise on bankruptcy expressed his anger at the continued abuse. Parliament, responding in due course to public pressure, reluctantly began to curb the situation but only to a limited extent. Some years later Jabez Henry, an English barrister and ardent law reformer probably connected to Jeremy Bentham's circle, took up the subject.

V. Economic Background

The Medieval commercial life of Western Europe is vividly described in Fernand Braudel's *Civilization & Capitalism 15th–18th Century.* Despite its title this famous trilogy covers the thirteenth century. The third volume entitled *The Perspective of the World* deals with the Champagne fairs then still at the height of their prosperity. Originally published in France in 1979, the work was issued in an English translation as a Fontana Paperback in 1985.

Although it appeared in 1963, volume 3 of *The Cambridge Economic History of Europe: Organization and Policies in the Middle Ages* remains the most significant English work on the subject. The material on the Italians was contributed by Raymond de Roover who is best known for *The Rise and Decline of the Medici Bank, 1397–1494* (paperback edition: New York: W. W. Norton, 1966, 2nd ed., 1968).

Born in Belgium and trained as an accountant de Roover chose to specialise as an economic historian. *Business, Banking, and Economic Thought in Late Medieval and Early Modern Europe* (University of Chicago Press, 1974), edited by Julius Kirshner, contains reprints from a representative selection of his studies. One particular essay traces the history and development of accounting practice by reference to the account books of medieval merchants.

VI. The European Dimension

Jean Brissaud's *A History of French Private Law* (John Murray, 1912) is the third volume in the Continental Legal History Series published under the auspices of the Association of American Law Schools. Although the translation is uneven with a tendency to be over-literal, it does contain a detailed survey of the early origins respectively of the general charge and the insolvency laws of several medieval European jurisdictions. The discussion of the philosophy and principles by which these laws were shaped remains unsurpassed. The eighth volume in the same series is Carlo Calisse's *A History of Italian Law* (John Murray, 1928) but its coverage of insolvency matters is relatively superficial.

The first substantial treatise on the insolvency laws of the various Italian Republics was written in Latin by Benevenuto Straccha, a lawyer from Ancona, and appeared in 1553. A massive volume containing a reprint of this

book and his other works relating to commercial and maritime law was published in Germany in 1622. A rare copy of this volume in the Library of the House of Commons was donated in 1956 to the Institute of Advanced Legal Studies.

At least two academics have drawn on Straccha for their information about Italian insolvency practice. Louis Levinthal did so in 'The Early History of Bankruptcy Law': (1918) 66 *U. Pa. L. Rev.* 223. Israel Treiman did likewise on several occasions, notably, in 'Acts of Bankruptcy: A Medieval Concept in Modern Bankruptcy Law': (1938) 52 *Harvard Law Review* 187.

Neither of these writers had the advantage of *Medieval Trade in the Mediterranean World* by Robert S Lopez and Irving W Raymond (Oxford University Press, 1955). This important book contains a vast amount of material and documents illustrative of the commercial practices of the period. A chapter is devoted to 'Business Failures and their Settlement' and includes the English texts translated from the Latin respectively of a Venetian safe-conduct in 1301 and the petition for the reorganisation of the Bonsignori bank in 1298.

The branches of the Scali and Pillestri banks respectively are briefly referred to in *The Venetian Money Market; Banks, Panics and the Public Dept, 1200–1500* by Reinhold C Mueller (Baltimore and London: John Hopkins Press, 1997). This important work is noted in (1999) 6 *Financial History Review*, at page 259. The causes of nearly 20 bank failures are discussed at length, the last examples occurring during the great panic of 1499.

VII. The Historical Method

Croce's dictum that all history is contemporary history is taken from Professor Richard Evan's *In Defence of History* (Granta, 1997) and forms part of a discussion about the purpose and limitations of the historical process. Three issues are raised which are of especial significance for a lawyer with no qualifications as historian unwise enough to venture into the territory of another discipline.

In the first place it is important to recognise that undue reliance on the Calendars of State Papers published by the PRO and other similar collections can have its dangers. Mostly translated from the original Latin or Norman-French rolls or manuscripts nearly a century ago, they contain mistakes and misunderstandings, especially in relation to technical legal terms, and are capable of giving a distorted picture of events and the meaning of medieval documents.

Secondly, it must be recognised that it is extremely risky to draw an analogy between the past approach to a problem and what appears to be its present-day counterpart. The temptation, for example, to compare the papal 25 per cent fund with the Cork proposal for a 10 per cent fund (*Report of the Review Committee on Insolvency Law and Practice*, 1982, Cmnd. 8558) must therefore be resisted.

Finally, it is worth remembering that an assessment of a historian's work can be aided by an awareness of his background, personality and, in particular, his prejudices. It is appropriate therefore to make a few brief remarks about the author of 'Bankruptcy Treaties' which provided the seed from which the present study developed.

VIII. Nadelmann

The name of Kurt Nadelmann is scarcely known within English insolvency circles. He was a comparative lawyer of great distinction but is also entitled to the title of founding father of modern cross-border insolvency studies. The year 2000 marks the centenary of his birth and is an appropriate occasion for an appraisal and celebration of his achievements.

Nadelmann was born in Germany, trained as a lawyer and became a career magistrate in Berlin. His fascination with insolvency law started when he was assigned to deal with some of the many bankruptcy cases that occurred in the early 1930s during the depression years. Shortly afterwards he moved to Paris and obtained a French legal qualification. He was soon participating in international conferences on cross-border insolvency matters. The last such event before the outbreak of war was held at The Hague in 1937 where the discussion was mainly about the considerable legislative changes that had been introduced into the insolvency laws of many European countries in consequence of the recent harsh economic conditions.

In 1941 Nadelmann settled in Philadelphia and during the next decade produced a monumental series of articles dealing with all aspects of cross-border insolvency law on a comparative basis. The range of knowledge and the depth of scholarship are truly breathtaking and will never be surpassed. It was his intention to publish a comparative study of the conflicts aspects of bankruptcy law but this never materialised. The articles are a more than adequate substitute.

The material appeared in various American and Canadian journals. Besides bankruptcy treaties, it covered the recognition of Americans' arrangements abroad, foreign and domestic creditors in concurrent bankruptcy proceedings, creditor equality in inter-state bankruptcies, compositions and corporate reorganisations in the conflict of laws, and insolvent decedents' estates.

Although Nadelmann subsequently concentrated on other aspects of comparative law, he never entirely lost his passion for insolvency matters. In 1958 he identified Jabez Henry, with experience as a colonial judge and a profound knowledge of Roman–Dutch law besides his interest in law reform, as the author of a pamphlet in 1823 which, for the first time, advocated the idea of a European bankruptcy convention. He continued to contribute frequently to the debate on the merits and defects of the draft Brussels convention on the subject until his death in January 1984. His last article was published posthumously under the title 'The Bankruptcy Reform Act and Conflict of Laws: Trial-and-Error': (1988) 29 *Harvard International Law Journal* 27.

Nadelmann produced well over 100 articles. A more or less complete list of those before 1972 dealing with bankruptcy and arrangements, written mostly in English though occasionally in French, German or Spanish, is contained in *Conflict of Laws: International and Interstate.* In addition to these 33 or so articles, a few more appeared subsequently and can be identified from the 1988 article.

In the context of contemporary cross-border insolvency law it is worth mentioning in particular 'International Bankruptcy Law: Its Present Status: (1944) 5 *U. Toronto L. J.* 324. It contains a masterly survey of the history of the subject and draws attention to the recommendation of the pre-war Hague conference for the establishment of a clearing-house for the exchange of detailed information regarding case law and other relevant developments within Europe in the field of cross-border insolvency matters.

IX. New Perspectives

The history of English insolvency law is a neglected subject. The traditional theory that by and large it was created in the reign of Henry V11 is in need, having regard to the Scali case, of considerable qualification. This branch of the law seems to have been in a reasonably healthy condition 200 years or more before, though disfigured by the almost certain use of torture and by the taking of hostages. The evidence strongly suggests that the practitioners of the day could handle complex insolvency cases with great aplomb and confidence and had a firm grasp of the policy issues involved. Although on the geographical periphery of Europe, they appear not to have been entirely averse to foreign influences, particularly from Italy.

The trend towards finding solutions to complicated cross-border matters by the use of bi-lateral treaties was as yet still much in its infancy. The concept would in any event not become acceptable in England for many centuries. On the other hand, as Nadelmann has shown, this type of approach rapidly matured within the Continental environment and gradually blossomed into the movement towards a multi-lateral approach not only in Europe but also amongst the South American trading nations.

Nadelmann has bequeathed to the present generation of insolvency practitioners and policymakers a splendid legacy of rich and colourful material. From this it will in time be possible to view the current progress towards greater European co-operation in the sphere of insolvency law as no more than a significant milestone on the long march of history. Given the clarity of such a perspective, the next stage of the journey must inevitably lead to the construction of a global framework for insolvency assistance.

