

Mark Steele

Bankruptcy procedures in sixteenth century Seville, with special reference to the Espinosa and Morga bank failures in the 1570s

«Becoming bankrupt was a form of original mercantile sin» (Oldham 1992, 403)

1. A world without bankruptcy

The eminent legal scholar Douglas G. Baird has invited us to imagine «a world without bankruptcy» as a thought experiment (Baird 1996, 29-38). Specifically, Baird sought to postulate a world without bankruptcy law, codes or procedures, where individual claimants would use debt collection law to pursue their (presumably) atomistic claims. Baird does not ask us to imagine a world without lawyers (he is one), although the idea has appealed to others, including of course one of Shakespeare's characters.¹ In a powerful rejoinder to Baird, Elizabeth Warren² wrote:

[T]he attractions of abstract economic analysis such as Baird's are many... the fact that the economic analysis is utterly self-referential also spares the proponent from nasty hours searching out empirical evidence or trying to learn about what happens in real borrowing and lending decisions. (Warren 1996, 93)

An economic historian might add that Baird could very well have looked more broadly for real-world examples in his theoretical discussion. There are near-contemporary examples of countries without settled bankruptcy codes or clear legal procedures. Although China has had a bankruptcy law (of sorts) since 1906-7, it remained largely ineffective and not until the 1986 Enterprise Bankruptcy Law and the more comprehensive legislation of 2007 (extended in 2016-2017) was an effective insolvency code promulgated (Chen 1999-2000). There is still no personal bankruptcy law, as I understand matters, in China outside Hong Kong and Shenzhen (Baker McKenzie 2006).

¹ «The first thing we do, let's kill all the lawyers» Shakespeare Henry VI part 2 Act IV scene 2.

² United States Senator (D-MA), formerly a law professor, and heavily invested in drafting recent U.S. bankruptcy regulations.

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Still less have contemporary writers on the theoretical and practical limitations of modern insolvency procedures thought to look to the past for examples, although one feels that historic business failures have been fairly well-studied and there are lessons to be learned from back in time.

2. Is bankruptcy law progressive?

Some years back I reacted (Steele 1991) against the Whig interpretation of the progressive organic development of a «rational law of bankruptcy» as advanced by Sir William Holdsworth in his magisterial *History of English law* (Holdsworth 1945). Now it has been suggested with some truth that the old maxim *aequitas sequitur legem* (equity follows the law) is only acceptable when accompanied by some such expression as «except when it does not» (Steele 1933, 16). In his course of Oxford law lectures of 1767-1773 (drafted with the able assistance of the essayist and lexicographer Dr Samuel Johnson) Sir Robert Chambers stated that «the end of all law is *suum uniusque tribuere*, to give to every man what he may justly claim» (Curley 1986, II, 230). Here again we might add the qualification «except when it does not». A root around the law's lumber room would certainly turn up many examples of irrational and inequitable bankruptcy regimes in past centuries. Again, in 1991 I drew attention to the perception that insolvency procedures could still, after centuries of development, be held to be inefficient. A generation on, and particularly of course in wake of the 2008 'credit crunch' and the sensationally mis-managed collapse of Lehman Brothers and its aftermath, not much has changed.³ To cite one example, a perusal of the 1996 United Kingdom *Insolvency Regulations* or later recensions up to the re-statement of 2016 indicates the multiple complexities which bedevil a «rational law of bankruptcy». As I write, I have before me my copy of the 2014 *Insolvency Practitioners Manual* in two large volumes totalling 2.652 pages, which I freely admit to not having read from cover to cover (Sealy and Milman 2014). A practitioner in the field once remarked casually to me that drawing up a set of insolvency rules is like shooting at a moving target. But then we have it on the authority of the late Justice Antonin Scalia, no less,⁴ that «a bankruptcy law has little to do with natural justice» (Scalia 1992). Here we may call as authority Dr Johnson's well-known 1775 maxim on political regulations where «good cannot be complete, it can only be predominant» (Johnson 1775, 82) – and in bankruptcy procedures, that may be as close to true justice as one can get.

Now Lord Briggs,⁵ in his Denning Law Lecture of 2012, *How English law has coped with the Lehman Brothers collapse* (Briggs 2012) takes a more sanguine view of the ceaseless march of 'law's empire' in financial matters, very favourably contrasting the British approach of time-consuming legal argument with continental processes which were more document-based and also more expeditious. Only in an English court of

³ There is now a comprehensive legal manual on the Lehman Brothers debacle and its complex cross-border insolvency issues in Faber and Vermont 2017.

⁴ United States Supreme Court, Associate Justice 1986-2016. Scalia is regarded as a textualist or at times a strict constructionist, or usually just 'conservative'.

⁵ Michael Briggs, now of the United Kingdom Supreme Court. He was the principal judge sitting on the Lehman Brothers litigation in the U.K., 2009-2013.

law, so Briggs opines, would the multiple issues of a cross-border insolvency be properly thrashed out. One expects no less from a senior English judge: Lord Briggs' lecture is an authoritative statement of the superiority of British court procedure in dealing with a complex cross-border insolvency. But the Faber/Vermont study fully demonstrates the diversity of approaches in different jurisdictions and the extent of what is known as 'forum shopping'. There is a cautionary note here when looking at historic examples of bankruptcy litigation which drag on for years: winding up Lehman Brothers was not a speedy process, and litigation in different jurisdictions took diverse forms.

3. The perils of bankruptcy statistics

The economic historian is of course very tempted by bankruptcies as a statistical datum for the analysis of economic fluctuations. A comprehensive set of bankruptcy statistics for the Amsterdam market (Oldeveldt 1962) has provided an attractive conjunctural index for the years 1636-1838, perhaps the longest annual run of such figures that exists. The index presents difficulties in interpretation. Critics pointed out that the bankruptcy level seems more elevated in the 'good' decades of the seventeenth century than in the period of «contraction and recession» from 1700 to 1720 (Van Houtte/Van Buyten 1977, 102-3). It is striking that the rate stayed low during the 'tulip mania' of 1636-7, and even in the late 1680s, regarded as difficult years for the Amsterdam stock market. The bankruptcy rate was also low in the early 1720s and 1760s, both periods commonly associated with financial distress. There are some interesting arguments to be rehearsed here, including that bankruptcies might increase during periods of boom, when inefficient operators are squeezed out of the market.

The evidence from bankruptcy statistics could be used to deny the severity of, or even the existence of, a financial crisis: and a crisis without bankruptcies would seem a little austere. More often, information about business failures will be too incomplete to let us make a firm judgement. This is clearly the case with data for the Lyon market presented by Roger Gascon in his classic study (Gascon 1971, II, 600). His figures indicate an increase in the bankruptcy rate in the 1570s, but since the highest number in any one year is 11 (the lowest is 2) it is hard to see the figures as an «indice de la conjoncture» as Gascon claims.

Like Gascon, Valentín Vázquez de Prada printed a survey of «des faillites, indices de la conjoncture» in his edition of mercantile correspondence from Antwerp preserved in the Ruiz archives (*Lettres marchandes d'Anvers* 1960, I, 167-178). Vincenzo Manzini, in a classic study of Venetian bankruptcy law, pointed to frequent bankruptcies in the fifteenth and sixteenth centuries as indicative of the effects of commercial expansion coupled with poor business organisation and shady financial dealings (Manzini 1925-6) and Gene Brucker used records of Florentine bankruptcy commissions as a guide to the city's commercial milieu in the fourteenth century:

If the incidence of bankruptcy is used as an index of business conditions, the most prosperous years were 1349-1357 and 1361-1365, while the years 1358-1360 and 1366-78 were periods of depression (Brucker 1962, 15)

Staying for a moment with Florence, a trio of eminent historians has urged caution with bankruptcy figures. «Delays and devious proceedings helped to make bankruptcies mere episodes in the history of many a great company in Florence» (Becker 1967, 17), and this is echoed by Philip Jones who said of the same period that «Bankruptcy brought few families to total ruin» (Jones 1956, 202), and there are similar strictures in the work of Brucker already cited (Brucker 1962, 17-18).

4. Seville in the late sixteenth century

Having advised caution, we should still not be in much doubt of the severity of the situation in Seville in 1566-7 as indicated by a spectacular jump in the bankruptcy rate as recorded by figures presented by Eufemio Lorenzo Sanz. His bankruptcy statistics are derived from letters in the Simón Ruiz archive, and incomplete for some years. They are nevertheless indicative of the importance that merchants writing to Medina del Campo assigned to business failures. From 1562-1601 the annual failure rate is fairly low, in the one to three range. But the pronounced hike up to 9 in 1566 and 56 in 1567 is striking; the situation in 1576 is not so spectacular, but with 8 bankruptcies is clearly out of the ordinary. As we shall see, two of these bankruptcies were significant indeed. The 56 business *quiebras* for 1567 represent a peak in the conjuncture, but these were likely just the tip of the iceberg (Lorenzo Sanz, 1979, 199). The true number was much higher than the records show. One of Simón Ruiz's correspondents, Gregorio de Villamazar, wrote that «today [15 November 1567] you could say that there is no-one in Seville who is not compromised» (Lorenzo Sanz 1979, 204). The position in Seville in 1566-7 is well explained by the state seizures of bullion from the Indies fleets: a powerful example of the susceptibility of the Sevillian market to the actions of the central government in its frequent attempts to resolve its persistent fiscal difficulties at the expense of business and trade.

Two major characteristics of Sevillian banks in the era of Philip II were their «debilidad y frecuente quiebra» (Lorenzo Sanz 1979, 182). The fragility of Sevillian merchants is explained by Lorenzo Sanz as their tendency to live on credit but one wonders, given the very seasonal nature of the Indies trade, whether there was any other way to proceed in business.

5. Fiscal pressure and crisis

If the commercial crisis of 1566-7 is explained by the activities of the central government in the Indies trade, then the banking crisis of the following decade was also due to a governmental intervention in financial markets, the famous *decreto* of 1575 suspending payments on the Castilian floating debt. The Habsburg financial crises, or 'state bankruptcies' as they are often misleadingly termed, are of course a regular contributor to financial pressure and business failures on the Sevillian market - as elsewhere in Spain and the Spanish empire - in the sixteenth century. Since my theme is bankruptcy, it seems necessary to add here a comment about the debt manipulations of the Spanish central government. It was a Scottish enlightenment political economist (but not Adam Smith for once) who suggested that:

The idea of a nation's becoming bankrupt to itself, I have always looked upon as a contradiction; but that it may become bankrupt to the rest of the world, is quite consistent with reason and common sense (Steuart 1767, 653).

This seems a suitable place to consider terminological discussions at the meeting in Prato arising from the overlapping terms 'bankruptcy' and 'insolvency', which are often used interchangeably and perhaps somewhat loosely. Here I rely on a definition advanced in an American Bankers Association report:

Insolvency means the inability of a firm to meet its obligations as they become due. A business in such a situation may seek the protection of the bankruptcy laws, which may provide the opportunity to work out a reorganisation that may protect creditors, or otherwise provide for an equitable distribution of the firm's wealth among its creditors (Bentson 1986, 91)

Strictly speaking a 'bankrupt' is not one whose debts outweigh his assets, but rather one who comes within the remit of the bankruptcy laws: 'bankruptcy' being a legal, rather than an economic, category. Perhaps the Castilian *Hacienda Real* (public finances, treasury or 'Exchequer') qualifies as 'insolvent' under this definition: but the government of Philip II, or his Council of Finance, certainly did not seek the protection of any sort of bankruptcy law, and there was no way for the king's creditors to bring him before a court or commission. 'State bankruptcy' is therefore a meaningless term in the context of the Castilian public finances of the Habsburg era; a rather more meaningful expression would be «sustainable debt management crises», and I here freely adapt a term from a recent authority on the subject (Drelichman and Voth 2014, 105-131).⁶ The American Bankers' Association report notes that many U.S. financial institutions «are insolvent today [1986]» (Bentson 92); this is even more true nearly four decades on. Insolvent firms and financial institutions yet continue to trade; in the same way, the technically insolvent Spanish treasury continued to function surprisingly well, at the expense of its creditors, five centuries ago.

6. Disaster in Seville, 1576-77

Although bankruptcies were no stranger to the Sevillian money market, even «endémicas» as characterised by Lorenzo Sanz (1979), the particular circumstances of the failure of the Pedro de Morga and Espinosa brothers' banks in 1576 make this an event of great moment. The fortunes of the great trading market on the Guadalquivir had for long been tied to the new continent across the Atlantic but even though, in the words of one writer «the return of the treasure fleets from America was the focal point of the commercial year» (Morales Padron 1973, 313), the city also had significant links with the older world of Mediterranean commerce and finance.

⁶ The bibliography on the Habsburg suspensions of payments is now substantial and continues to grow. Drelichman and Voth's important monograph of 2014, whilst it does not supersede all earlier work, puts all discussion on a much sounder quantitative and conceptual basis, and is now clearly the first work to consult in any serious study of the issues.

A third factor is the relationship with the fiscal activities of the Spanish crown. Researches in Sevillian notarial records demonstrated long ago the high level of Genoese participation in the trading companies and merchant banks which made economic exploitation of the New World possible (Almàgia 1935). Despite the high level of activity generated by the Indies trade, some features of the Sevillian money market made her financial position precarious, such as dependence on the annual arrival of a fleet which might not fulfil expectations, might not even arrive - or worse, whose cargoes could be seized by a government desperate for bullion. Perhaps more correctly, we should say a monarch who at times seemed to believe that unlimited quantities of specie could be extracted from his American empire. To add to these fragilities, the occupation of deposit banker was concentrated in the hands of a small number of licensed houses – often as few as two in operation at any one period.⁷ There were plentiful reasons why the Sevillian market should have been susceptible to frequent commercial fluctuations. These are evidenced by the waves of bankruptcies which affected the city from time to time – the worst occurring in 1566-8 and 1576-7.

Well before the collapse of the Lizarrazas bank in 1553, the government, and indeed the local authorities in Seville, had been keeping a watchful eye on the city's financial health. It was the responsibility of the ruler to regulate economic affairs - and in his self-interest to do so with a nod to his own requirements: the king had a vital interest in much that went on by the Guadalquivir. Whether the smooth running of the market, from the mercantile community point of view, was the chief priority of Charles V and Philip II remains a valid question. There was in the *Casa de Contratación* a permanent central government presence and this could be supplemented by other officials or *jueces de comisión* investigating bankruptcies, appropriating intestate estates, or supervising seizure of bullion from the fleet and re-imbusement of creditors in *juros*. To safeguard against bankruptcies the authorities kept a firm hand on the operation of finance. Special *cédulas* were required to license the formation of banks of deposit and these required each banker to have a number of *fiadores* (guarantors or sureties) to stand surety in the event of inability to meet obligations. As a bank gained esteem proportionate to the number of its sureties, so also to be a *fiador* to a Sevillian bank was a position of esteem, giving the impression of wealth without actually having to put money down – except when problems arose (Pike 1972, 93-6).⁸ It seems agreed that these suretyship arrangements underwrote the structure of Sevillian deposit banking, made it possible in fact, but there was the clear threat that it would aggravate a crisis if the *fiadors* were themselves unable to meet their pledges. This is exactly what happened when Pedro de Morga's bank failed in March 1576.

It may be something of a commonplace to say that Seville's money market was already troubled before the issue of Philip II's partial suspension of payments on the

⁷ Here it is important to distinguish between the licensed deposit-taking banks and the merchant-bankers who also held money, bonds (*juros*) and other assets. Merchant-bankers were much more numerous (Tinoco Rubiales 1991, 1097-1100)

⁸ A modern parallel would be the system of underwriters at Lloyds of London, with its serious consequences for those who took underwriting positions in the 1980s.

Castilian floating debt in September 1575. At the end of March Perez and Morovelly⁹ had written to Simón Ruiz at Medina del Campo of a paralysing *stretteza*:

...for every ducat [by exchange] there are 100 takers – it is not possible to obtain a *real* from these banks since they are so extended – no one is doing business for the Navidad fair, nor for the Pâques fair at Lyon – money is not available at any price.¹⁰

Now, this time of year was traditionally a ‘slack season’ in Seville when the last year’s bullion had been disbursed and merchants waited (anxiously, as one may imagine) for the next injection of working financial capital at the end of the summer period. The two Atlantic fleets arrived at Sanlúcar on 11th August bringing 30 per cent more bullion than the previous year.¹¹ This was cause for celebration, but then most of the bullion was in the Casa de Contratación when news of the decree suspending payments reached Seville. On 15th October Perez and Morovelly could report that «the innovations of the Court have put the business of this market in suspense».¹² The Espinosas had been forced to withdraw acceptance of some bills of exchange and protest the payment of certain others, including one drawn on them by the Royal Treasurer Juan Fernández de Espinosa (their brother). In behaving thus, Simón Ruiz’s correspondents considered that the Espinosa had gone outwith the boundaries of acceptable business practice

...this has caused great confusion in business matters and it seems to be because they have shown the worst frailty which is to go back on the proper procedures [*«an usado de la última flaqueza que es negar sus propias formas»*]¹³

The news of the decreto may have been shocking but as at other markets, like Antwerp, there was suspension of outright panic. There was no instant communication of business news between financial centres so that the effects of a crisis took time to develop, but the frequency of business correspondence in the Ruiz archive suggests that merchants were as well-informed as they could be: market information was, by the standards of the time, efficient. The situation at Antwerp – to which everyone looked for a lead – did not yet seem wholly disastrous. Perhaps the more important mitigating feature was that the king did not seize bullion from the Indies fleet in 1575. In 1557 Philip II had done so, and again during the payment suspension of 1596. That no such confiscation took place in 1575 is a powerful indication that the king (or his financial officials) hoped for some role for Spanish – or rather, Castilian – financiers in his plans to circumvent his Genoese bankers.

⁹ The principal correspondents of Simón Ruiz at Seville in this period.

¹⁰ *Archivo Ruiz, Museo de las Ferias*, Medina del Campo (henceforth AR) c. 26-289, Perez y Morovelly to Simón Ruiz, Seville, 31 March 1576.

¹¹ Report of safe arrival of the fleet, AR c. 26-199 Morovelly to Ruiz, Seville, 13 August 1575; Chauu (1955, 214-5 and Lorenzo Sanz 1980, II, 252-3).

¹² AR c. 26-204, Perez y Morovelly to Ruiz, Seville 15 October 1575.

¹³ AR c. 26-204, Perez y Morovelly to Ruiz, Seville 15 October 1575.

Business still lay under a sword of Damocles: instead of the expected *larghezza* following the arrival of the fleets, *strettezza* reigned. It was impossible to find anyone to give exchange on Antwerp, itself mired in a liquidity crisis attendant on resolution of financial transfers to the market which had been held up by the 1575 decree: «muy estrecha para Flandes». By the commencement of 1576, everyone was worried that the banking house of the Espinosa brothers had been compromised.¹⁴ On 12 March the Espinosa declared themselves unable to meet their obligations, and three days later Pedro de Morga followed suit. Reporting these insolvencies, Morovelly spelled out the issues starkly:

...it will especially affect the *cargadores de Nueva España*, since at present it is time for the armada and everyone has their money in these banks – because in this city very few like to keep their money at home – and with this very few can make up their cargoes because everyone sells only for cash.¹⁵

The failure of the Morga bank has been identified by the Chaunus as a reason for the reduction in size of the 1576 armada decreed by the Prior and Consuls of Seville in response to a request from the city's merchants (Chaunu 1955, 226-7).

Of the two banks closing their doors in March 1576 the firm of 'Gregorio de Espinosa y Herederos de Alonso y Pedro de Espinosa' was the larger and better connected. They held about 2m. ducats of assets (on paper at least), most of which as they claimed was in the form of loans to the government organised through the royal treasurer Juan Fernández de Espinosa, brother to the bankers Alonso and Pedro. These last traded on their good name when disaster struck and also attempted to foreclose on their brother, making a *relación* to the authorities that the cause of their problems was that Juan Fernández had refused to pay them what he owed (which Juan Fernández denied).¹⁶ In the same month, April 1576, some attempt was made to resume dealing: «the Espinosa have opened their bank and are paying what they owe and it is understood that at the arrival of the fleet they will pay their due» wrote Luis Perez.¹⁷ Morovelly was more sceptical:

These Espinosas are taking advantage of the great favour they have here....to re-open their bank, although it will add to the confusion of everyone – they are going to pay off debts of little importance and those which amount to anything will be put off – pretending that they have new sureties as a result of the favour of certain gentlemen to whom they owe sums of about 600.000 ducats, and this shows they are going to pay some people at the expense of others.¹⁸

Perez reported that «as regards Pedro de Morga, each day things seem worse and it

¹⁴ AR c. 31-173, Joan Borses to Ruiz, Seville 3 January 1576.

¹⁵ AR c. 31-240, Morovelly to Ruiz, Seville 15 March 1576.

¹⁶ AR c. 31-180 Luis Perez to Ruiz, Seville 18 April 1576.

¹⁷ AR c. 31-180 Perez to Ruiz, Seville 18 April 1576.

¹⁸ AR c.31-245 Morovelly to Ruiz, 16 April 1576.

is known for certain that he cannot change [that is, remit] half of what he owes».¹⁹

Although Morga had been in clear difficulties before 1576 he had been confident enough at the start of the year to issue a bill for 9.000 escudos drawn on Martín de Isunza at Antwerp.²⁰ But matters hardly improved and in mid-March he declared himself unable to meet his obligations – that is, ‘insolvent’ – and was accordingly taken to the public prison. Morovelly put Morga’s debts at 480.000 ducats, a substantial portion owing to «personas naturales desta ciudad». Against these debts Morga could only offer his own «muy poca hacienda» and *fianzas* (sureties) of 200.000 ducats from various merchants, not all of whom would pay up quickly.²¹ Morga was a wealthy man and 480.000 ducats was a large enough volume of deposits for any sixteenth century banker, but it is clear that the business he conducted was considerably more down-to-earth than the Espinosa brothers. Morga did not involve himself much in international dealings, but he had a significant local role in deposit-taking and mercantile finance. He conducted business for the Casa de Contratación and held deposits from local tax-farmers. The failure of the Morga bank thus had full potential to affect many more people than the insolvency of the Espinosa. This may explain the much greater attention Pedro de Morga receives in official documents, due to his involvement with government contracts.²²

On 26 March 1576 the Prior and Consuls of Seville wrote to the *Consejo de Hacienda* (Council of Finance) that many tax-farmers would be unable to pay the government’s share of revenues that had been collected as the funds were on deposit with Pedro de Morga or his close associate Mateo del Fano.²³ This, coupled with the well-justified concern at the progress of business after the failure, was sufficient to cause the despatch of Alvar García de Toledo, *alcalde de la casa y corte*, to Seville to act as *jefe de comisión* in the affairs of Pedro de Morga: the main part of his brief was to assess the sums owing the crown.²⁴ By July Alvar García was proceeding against people who had done business with or formed companies with Pedro de Morga: «[T]here is some hope of agreement here that the creditors will get half of their money in two or three years and his fiadores will pay half of what they stood for».²⁵

Francisco Morovelly believed that for Alvar García «proceeding with rigour will cause much damage» and on the evidence of the documents we have this was all too correct.²⁶ There was 68.400 ducats owed the Casa de Contratación; 646 ducats which

¹⁹ AR c.31-180 Perez to Ruiz, Seville 18 April 1576.

²⁰ Recorded in *Lettres marchandes d’Anvers*, I, 330-1.

²¹ AR c. 31-242, Morovelly to Ruiz, Seville 18 April 1576.

²² For example *Archivo General de Simancas – Consejo y Juntas de Hacienda* (henceforth AGS-CJH), with *legajo* no. Thus: 147 (13) doc. No. 4: letter from Pedro de Morga of 10 September about providing «bastimentos... para provisión de la armada que se hizo para Flandes en Laredo».

²³ AGS-CJH l. 151 (12) «El Prior y Consules de Sevilla al Consejo de Hacienda» 26 March 1576.

²⁴ New of the *alcalde* in AR c. 246 and c. 31-248, Seville 17 May and 3 June 1576. The terms of his commission in AGS-CJH l. 164 (12), Francisco de Duarte to Council of Finance 20 November 1577, with a full history of the Pedro de Morga enquiry and eventual resolution in the matter of monies owed to the crown.

²⁵ AR c. 31-249 Morovelly to Ruiz, Seville 2 July 1576.

²⁶ AR c. 31-242 Morovelly to Ruiz, Seville 17 May 1576.

Morga owed the crown on behalf of Alvaro de Mendano for *licencias de esclavos*; and 4.351 for a bill of exchange issued by Morga on behalf of the king. This was the oldest debt of all: Morga had drawn the bill on Juan de Palma Carrillo at Antwerp, payable to the king's order. But due to Palma Carrillo's own bankruptcy, Alvar García held that de Morga should be regarded as the *de facto* debtor, which was probably correct in law.²⁷

Morga's debts to the king on this reckoning were 73.397 ducats. The bank's account books were already in the safe-keeping of the Casa de Contratación which had made the initial investigations at the end of March 1576 and reported in April of that year. The king's juez de comisión proceeded, aided by the Conde de Borrajas, to seize the *hazienda líquida*, or liquid assets, of Pedro de Morga. This was a complex process indeed: it meant sequestration of the «*escudos y reales*, gold jewellery, silver, pearls and other possessions from de Morga's home». Then there were certain sums of gold and silver held by Morga's business associate Pedro de la Torre Espinosa, together with coin minted at the Sevillian *casa de moneda* on Morga's behalf and, when it should arrive, Morga's share of treasure remitted from the Indies fleet of 1576. The aggregate of monies and goods seized totalled 49.448 ducats. The contents of Morga's house – 3.538 ducats in *escudos y reales*, 54 in *vellón*, 8.083 in pearls and 1.425 of «other jewellery» make up about one-quarter of this amount. No figures for debts to private merchants are given in the accounts but as noted Morovelly had estimated these at 480.000 ducats.²⁸ The Dean and Chapter of Seville claimed the bank held 12.266 ducats of theirs; and Agustín Hivera, receiver of the Sevillian *alcabala* (sales-tax) claimed to have had 1.800 ducats in Morga's keeping.²⁹ Alvar García de Toledo reported a shortfall in the king's claims on de Morga and whilst he was seizing the available assets he also leant on the bank's sureties. Some, like Andrés de Larrea, a citizen of Burgos who had stood surety for 16.000 ducats that he could not produce, and one Hernando de Medina (for an unrecorded sum) ended up in the public gaol.³⁰

Enquiries into the accounts of Pedro de Morga's bank dragged on now that the dead hand of the central government lay upon it. The basic principle remained that the crown claimed priority in settlement of debts and also possessed the greatest ability to enforce settlement. It was not until 25 August 1577 that the Council of Finance made an order to liquidate the royal debt. This time the matter was in the hands of Francisco de Duarte, royal factor in Seville who had previously placed provisioning contracts with Morga's bank. Duarte found that at the time his bank failed Morga owed the *Casa de Contratación* 68.400 ducats but the crown owed exactly the same amount in *libranzas* on the *alcabala* of Seville. The *libranzas* had been granted to de Morga as part of a provisioning contract for *galeras y fronteras*. Duarte

²⁷ AGS-CJH l. 164 (12) 20 November 1577, itemised account of debts of Pedro de Morga – the longest of several similar documents which commence with AGS-CJH l. 154 (15) 3 April 1576 (account rendered by officials of the Casa de Contratación).

²⁸ AR c.31-242, Morovelly to Ruiz, Seville 2 April 1576.

²⁹ This account is based on AGS-CJH l. 164(12) «Relación de las partidas de oro y plata--que secestramos por hazienda de Pedro de Morga». For debts to the Dean and Chapter of Seville: AGS-CJH l. 164 (12), relation of Francisco de Duarte. For the sum owed the receiver of the *alcabala*, AGS-CJH l. 154(15), April 1576, Agustín de Hivera to Council of Finance.

³⁰ Letters from both, asking to be freed, in AGS-CJH l. 154 (15).

recommended the crown cancel the first part of the debt, leaving 4.997 to be disbursed from the sequestered funds. The king agreed this on 9 November 1577, also ordering the remaining money «to be distributed amongst the creditors».³¹ This characteristically took some time. The tortured history of Morga's bankruptcy settlement shows that a situation already difficult might be extremely aggravated by the involvement of royal officials who in the end were chasing a net debt of less than 5.000 ducats, most of which had been incurred through the failure of a third party. It is not possible to say whether the non-payment of the *libranças* on the *alcabala* was the critical factor in the failure of the Morga bank: precise reasons cannot be assigned from the documents. But the non-performance of a royal obligation, apparently hypothecated on a stable revenue source (the sales-tax) cannot have been helpful, just as the subsequent enquiries ensured that guarantors and creditors would be drawn into the tangled web of the Sevillian financial crisis of 1576-7.

An informative document in this case is the letter, or supplication perhaps, to the Council of Finance from Andrés de Larrea of 30 October 1576. As noted earlier, de Larrea had been imprisoned by Alvar García de Toledo for non-performance of sureties to the de Morga bank in the sum of 16.000 ducats. De Larrea pleads that he is himself owed money by two Genoese financiers, Niccolo and Honorato Grimaldi, who were major *asiento* contractors with Philip II:

...because the Prince of Salerno (Niccolo de Grimaldi) and his brother owe me 25.000 ducats which I advanced them at the last fair and they have lent that to Your Majesty I find it impossible to give the said *fianças*...it is not just that I am imprisoned and my debtors are free, and although I have tried to enforce payment from them the high officials of the court do not wish to give me any order of execution against them.³²

The Sevillian malaise had clear international dimensions. From Lisbon in December 1576 Fernando de Morales wrote with perhaps some hyperbole that there did not seem to be a *real* in the whole city: «no-one gives or takes exchange here because no-one takes or gives on Flanders and for Seville very little [exchange] is conducted».³³ The concerns of this Lisbon merchant emphasise the international character of the financial crisis of 1576, not solely a Sevillian affair although the episodes we have described were one of its most spectacular manifestations. The safe arrival of the Indies fleets in 1576, and despite the welcome news that there were no confiscations of bullion, failed to bring out the usual *larghezza*. «The failure of these banks and the fact that no others have started up has severely affected commerce» writes Morovelly in September 1576, sentiments he repeated the following month.³⁴ Shortly afterwards, Francisco de Palma Carrillo and García Xerez, merchant financiers of Seville, were insolvent. In the case of Palma Carrillo it was the failure of his son Juan in

³¹ AGS-CJH 164 (12) Francisco de Duarte to Council of Finance, referring to a royal warrant of 20 November 1577.

³² AGS-CJH l. 154(15) Andrés de Larrea to Council of Finance, 30 October 1576.

³³ Lettres de Lisbonne 96, Fernando de Morales to Simón Ruiz, Lisbon 24 December 1576.

³⁴ AR c. 31-356 Morovelly to Ruiz, Seville 17 September 1576 and c.31-259, Morovelly to Ruiz, Seville 16 October 1576.

Flanders which caused creditors in Seville to force him to liquidate. García Xerez had a number of reasons for going under, amongst these the sureties he owed for Pedro de Morga, and by 2 November 1576 he had taken sanctuary in a church.³⁵ Two other Sevillian merchants, Luis Pinto de Florencia and Benito Vaaz also failed about the same time.³⁶ This renewed crisis in Seville was also noted in Lisbon. Manuel Gomes wrote that he fortunately was not compromised: indeed, had García Xerez taken Gomes' advice «it would have affected him less and the damage could have been controlled». Fernando de Morales, however, was worried about a cargo of salt which was in the care of Xerez in Seville and wondered if it should be written off as lost.³⁷ We have been using the voluminous Ruiz correspondence to illustrate the workings of finance in the 1570s: this last should remind us that the main topic of the letters to and from Medina del Campo concerned trade in goods, not high finance.

7. Aftermath

Documents from the Sevillian municipal archives show the importance of the *fiador* system in the case of Pedro de Morga's bank: in its articles of 1570 124 merchants or merchant-bankers pledged guarantees totalling 295.000 ducats (Tinoco Rubiales 1991, 1097-1100). Most of these were sureties in small sums of one or two thousand ducats. They included one of Simón Ruiz's principal correspondents, Luis Perez, in the amount of 3.000 ducats: although this was a tidy sum, Perez shows no sign in his correspondence of being harassed by Morga's failure in 1576. Andrés de Larrea is written down for 1.000 ducats rather than the 16.000 given in his 1576 *pleito* to the Council of Finance, so either he was exaggerating his financial straits or his sureties had increased since 1570. Pedro de Morga's guarantors are mostly identified as *mercader* or *mercader banquero*, with a much smaller number of *jurados* and *escribanos públicos*. The large number of guarantors is an indication of the lengths to which the municipal authorities were prepared to go to ensure the stability of the Sevillian deposit banks. But, faced with the suspension of debt repayments of 1575, the *fiadores* themselves (or some of them at least) quickly also became part of the problem. Sureties of 295.000 ducats might seem enough to underwrite the bank's losses and prevent failure: but when the guarantors were themselves compromised by the 1575 *decreto* and the subsequent manipulation of the sales-tax and the bond (*juro*) market, it is easy to see how Pedro de Morga failed. We have rather less information about the other deposit bank, the Espinosa brothers; but from the details of the Morga bank we can infer a similar malaise.

A more detailed quantitative and analytical study of the banking crisis of 1575-7 in a wider Castilian context (Álvarez Nogal 2017) fleshes out greater detail about Pedro de Morga's entanglements with the central government finances and confirms

³⁵ AR 31-260 Morovelly to Ruiz, Seville 2 November 1576.

³⁶ *Lettres marchandes d' Anvers*, II no. 342 Luis Alvares Caldeira to Simón Ruiz, Antwerp 7 December 1576 reporting «avizan aver faltado García de Xerez, Benito Vaaz, Luis Pinto de Florencia y Francisco de Palma Carrillo».

³⁷ *Lettres de Lisbonne*, II, 232, Luis Gomes to Ruiz, Lisbon 6 November 1576 ; and *Lettres de Lisbonne*, III, 91, Fernando de Morales to Ruiz, Lisbon 7 November 1576.

that Morga's heavy involvement with government loans, contracts, payment transfers and *libranzas* on revenues amply explains his failure in 1576 (and indeed the whole of the Sevillian financial crisis of the 1570s), with its wider repercussions for other Castilian public and merchant banks.³⁸ Local opinion was very much energised by the attempts of the monarch to establish in 1581 a deposit-banking monopoly for Juan Ortega de la Torre in Seville. Juan Ortega was himself compromised by the events of 1576-7, but was clearly able to re-establish himself successfully. Representations by local stakeholders secured the licensing of a second deposit-taking bank, Cristóbal Centurión, to commence trading in 1583. This was hardly the end of the story of developing a stable banking sector in Seville after the 1570s, as described in standard treatments of the subject (Lorenzo Sanz, 1975, 105-207). Perhaps this was a hopeless task, where «good cannot be complete, it can only be predominant».

Inevitably any study of business failure in the past is likely to be coloured by the experience of the unpredicted financial crisis or 'credit crunch' of the first decade of this century. Between 2007 and 2009, the Spanish business bankruptcy rate³⁹ increased by 550 per cent, prompting concerns about the ability of the *Juzgados de lo mercantil* to handle the volume of cases before them (Celentani et al. 2010). But for this period, the business bankruptcy rate was never above 5 per 10,000 firms: the comparable French rate for the same period was never below 35 per 10,000, and mostly in the range 40-50. In 2010 Spain had the world's lowest business bankruptcy rate. Corporate financial distress is dealt with very differently in different jurisdictions and no doubt the diversity of bankruptcy and insolvency regimes would provide a solid foundation for an enquiry in comparative economic history. Bankruptcy law in the United Kingdom has developed in such a manner as to put resolution mainly in the hands of commissioners; in the United States by contrast, mainly in the hands of lawyers. The U.K. has a fairly creditor-friendly insolvency law, whilst France has pretty much the opposite and the Italian codes have at times a bewildering array of categories although the most commonly used is *fallimento*. It has been suggested that the Spanish bankruptcy codes in the forms in force since 2004 facilitate workouts that give debtors scope to attempt the continuity of a firm, although this is not necessarily an efficient outcome (Celentani et al. 2010). This raises the issue of whether low usage rates of formal bankruptcy are an indication of low risk-taking in business as a whole and therefore tend to promote low returns. We find ourselves returning to a wider question in the management of risk: economic growth increases the opportunities for business, it also increases the risks of failure. How failure is resolved seriously conditions future economic progress.

³⁸ Álvarez Nogal's thorough analysis of the important documents in AGS-CJH 164, which I had discussed only superficially in my earlier paper (Steele 1991) is enhanced by his use of other series from Simancas which I did not look at during my researches for a general survey of the Spanish public finances back in the 1980s (Steele 1987). I draw attention also to the «riquísima bibliografía» which accompanies Professor Álvarez Nogal's important publication.

³⁹ Number of formal business bankruptcies divided by number of firms.

BIBLIOGRAPHY

Documentary sources:

AR – *Archivo Ruiz, Museo de las Férias*, Medina del Campo [previously held at the *Archivo Histórico Provincial y Universitario*, Valladolid]

AGS – *Archivo General*, Simancas, AGS-CJH Consejo y Juntas de Hacienda.

Lettres marchandes d'Anvers ed. V. Vázquez de Prada 4 vols 1960. Paris: Armand Colin.
Marchandises et finances. Lettres de Lisbonne II-III ed. J-G. da Silva. 1959-1961. Paris: Armand Colin.

Literature:

Almàgia, Roberto. 1935 “Comercianti, banchieri ed armatori genovesi a Siviglia nei primi decenni del secolo XVI.” *Rendiconti R. Accademia dei Lincei, cl. scienze morali...fil.*, 6 ser. 11: 443-58.

Álvarez Nogal, Carlos. 2017 “Los bancos públicos de Castilla y el decreto de 1575” *Cuadernos de historia moderna* 42, 2: 527-51.

<http://dx.doi.org/10.5209/CHMO.58073>

Baird, Douglas. 1996 “A world without bankruptcy.” In *Corporate bankruptcy. Economic and legal perspectives*, ed. Jagdeep S. Bhandari, and Lawrence A. Weiss, 29-38. Cambridge: Cambridge University Press.

Baker McKenzie LLP n.d. (2007?) *Law of the People's Republic of China on enterprise bankruptcy* <<https://restructuring.bakermckenzie.com>> accessed 26 March 2025.

Becker, Marvin B. 1967 *Florence in transition*, I, Madison: Wisconsin University Press.
<https://doi.org/10.1353/book.67860>

Bentson, George J. et al. 1986 *Perspectives on safe and sound banking*. Cambridge, Mass.: MIT Press.

Bhandari, Jagdeep S., and Lawrence A. Weiss, ed. 1996 *Corporate bankruptcy. Economic and legal perspectives*. Cambridge: Cambridge University Press.
<https://doi.org/10.1017/cbo9780511609435>

Briggs, Michael [Lord Briggs]. 2012 *How has English law coped with the Lehman collapse?* Denning Lecture for the Bar Association for Commerce) repr. In Faber and Vermont 2017.

Brucker, Gene A. 1962 *Florentine politics and society 1343-1378*. Princeton: Princeton University Press. <https://doi.org/10.1515/9781400847860>

Celentani, Marco, Miguel García-Posada, Fernando Gómez. 2010 The Spanish business bankruptcy puzzle and the crisis.” *Fundación de Estudios en Economía Aplicada, Documento de Trabajo* 2010-11 (marzo).
 <<https://documentos.fedea.net>> accessed 10 June 2025.

Chambers Sir Robert 1986 *A course of lectures on the English law 1767-1773*, ed. T.M. Curley, 2 vols. Oxford: Clarendon Press.
<https://doi.org/10.1093/actrade/9780198701156.book.1>

- Chaunu, Huguette and Pierre Chaunu 1955 *Séville et l'atlantique*, Tome III *Le trafic de 1561 à 1595*. Paris: Armand Colin.
- Chen, Feng 1999-2000 "Chinese bankruptcy law: milestones and challenges." *St. Mary's Law Journal* 31: 49-62.
- Drelichmann, Mauricio, and Voth, Hans-Joachim 2014 *Lending to the borrower from hell: debt, taxes and default in the age of Philip II*. Princeton: Princeton University Press. <https://doi.org/10.23943/princeton/9780691151496.001.0001>
- Faber, Dennis, and Niels Vermont, ed. 2017 *Bank failure: Lessons from Lehman Brothers*. Oxford: Oxford University Press. <https://doi.org/10.1093/law/9780198755371.001.0001>
- Gascon, Roger 1960 *Grand commerce et vie urbaine au XVI^e siècle. Lyon et ses marchands*. 2 vols. Paris: SEVPEN.
- Holdsworth, William 1945 *A history of English law*, Volume 5, 3rd. edit. London: Routledge and Kegan Paul.
- Johnson, Samuel 1775 *A journey to the western isles of Scotland*, ed. Robert W. Chapman 1930. Oxford: Oxford University Press.
- Jones, Philip J. 1956 "Florentine families and Florentine diaries of the fourteenth century" *Papers of the British School at Rome* 24: 183-205. <https://doi.org/10.1017/s0068246200006930>
- Lorenzo Sanz, Eufemio 1979-80 *Comercio de España con América en la época de Felipe II*, 2 vols, Valladolid: Universidad de Valladolid.
- Manzini, Vincenzo 1925-26 "La bancarotta e la procedura fallimentare nel diritto veneziano, con cenni sui grandi fallimenti del secolo XV." *Atti del R. Istituto veneto di scienze, lettere ed arti* 85, 1091-1135.
- Morales Padrón, Francisco 1973 "The commercial world of Seville in early modern times" *Journal of European economic history* 2, 294-319.
- Oldeveltdt, Willem F.H. 1962 "Twee euwen faillissementen en het verloop van de conjunctuur, 1636 tot 1838" *Tijdschrift voor Geschiedenis* 75: 421-35.
- Oldham, James. ed. 1992 *The Mansfield manuscripts and the growth of English law in the eighteenth century*. Chapel Hill: University of North Carolina Press.
- Pike, Ruth 1966 *Enterprise and adventure: the Genoese in Seville and the opening of the New World*. Ithaca: Cornell University Press.
- Scalia, Antonin 1992 [United States Supreme Court] *Dewsnupp vs. Timm* 502 U.S. 410, 435, Scalia, J. dissenting.
- Sealy, Len, and David Milman. 2014 *Annotated guide to the insolvency legislation* 17th edit., 2 vols. London: Sweet and Maxwell.
- Steele, Ernest A. 1933 *Juris Proverbia*. Halifax: Halifax Law Classes.
- Steele, Mark 1987 "La real hacienda" in V. Vázquez de Prada, ed., *Historia general de España y América. Tomo VI La época de poder*. Madrid: Rialp.
- Steele, Mark. 1991. "Bankruptcy and insolvency. Bank failure and its control in preindustrial Europe." in *Banchi pubblici, banchi privati e monti di pietà nell'Europa preindustriale. Atti del convegno*. I, 183-204. Genova: Società Ligure di Storia Patria.
- Steuart, James 1767 *An inquiry into the principles of political economy*, 2 vols, ed. Andrew Skinner 1966. Edinburgh: Oliver and Boyd. <https://doi.org/10.4324/9781003551157-9>

- Tinoco Rubiales, Santiago. 1991 "Banca privada y poder municipal en la ciudad de Sevilla, siglo XVI." In *Banchi pubblici, banchi privati e monti di pietà nell' Europe preindustriale. Atti del convegno, 1051-1133*. Genoa: Società Ligure di Storia Patria.
- Van Houtte, Jan A., and Léon Van Buyten. 1977 "The Low Countries." In *An Introduction to the Sources of European Economic History, 1500-1800*, ed. Charles Wilson, and Geoffrey Parker, 100-14. London-Ithaca: Weidenfeld and Nicholson. Cornell University Press.
- Warren, Elizabeth 1996 "Bankruptcy policy." In *Corporate bankruptcy. Economic and legal perspectives*, ed. Jagdeep S. Bhandari, and Lawrence A. Weiss, 73-94. Cambridge: Cambridge University Press.