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Historical Bankruptcy

1. Notions of Debt (Graeber, 5000 Years of Debt)
2. Joint Ventures, Shared Liability (Maritime Law influenced)
3. Social and Moral Stigmas
4. Solutions: Debt Bondage, Cessio Bonorum, Civil/Criminal Penalties (Lex XII Tabularum: “in parti secanto”; “trans Tiberim vendit”)





Mediaeval Bankruptcy

1. Reinvention of bankruptcy (a word on terminology)
2. Cessio Bonorum route (unresolved liability, discharge etc)
3. Lettres de répit route (grace period for settlement)
4. Criminal bankruptcy (banqueroute)
5. Insolvency vs debt-collection? The race to the table!





Modern Bankruptcy I

1. The rise of corporations
2. Limited liability and the fraudster's charter
3. Shaping insolvency on bankruptcy models
4. Liquidation focus: debt-settlement; schemes in winding up; cessation of entity vs discharge





Modern Bankruptcy II

1. Axioms: Not enough money; rescheduling or waiving debt/related liability (asset-security, guarantees etc)
2. Difference between financial and operational restructurings
3. The rise of rescue (1906-1978);
4. Upstream rescue (1990s onwards);
5. Hybrid rescue (2000s onwards);
6. Preventive restructuring (2014-)



The Function of Bankruptcy I

1. The emphasis on the collective!

2. Rationale:

- avoiding piecemeal dismemberment;
- avoiding information asymmetries and monitoring costs;
- avoiding social costs (employment loss; knock on insolvencies);
- minimises risk assessment and aversion behaviour (access to lending);
- provides opportunity for intervention and macro-economic planning (insolvency as determinant)





The Function of Bankruptcy II

1. The emphasis on procedural benefits!

2. Rationale:

- Orderly procedure under supervision (IP and/or Court);
- Prospects properly assessed (rational decision-making);
- Property and contractual rights properly adjudicated;
- Property recovered and distributed along predictable lines (priorities; (un)secured creditors and preferences);
- Opportunities for fraud/phoenixing reduced (commercial morality);
- Ut finis sit litigem (proper end/discharge/rehabilitation)



The Big Debates I

1. Debt vs Equity; Employees vs Creditors;
2. Bargaining Power/Information Asymmetries;
3. Short/Long-termism;
4. Ability to afford Losses;
5. Influence of Axioms of insolvency (not enough money; debt rescheduling/waiver);
6. Type of Rescue and at whose expense?



Modern Insolvency System Features: A Reminder

1. Corporate Restructuring: Schemes
2. Early Warning Systems and Preventive Restructurings: *(informal)* OOC, Workouts; *(semi-formal)* Ad hoc mandate; *(formal)* Draft Directive PRs;
3. Insolvency Restructurings
 - financial vs operational
 - entity rescue; business rescue; asset rescue
4. Liquidation

