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*Falliment*: The Social Life of a Legal Category.  
 Knowledge and Morals in Bankruptcy Proceedings  
 (Basel, 1840s)

MISCHA SUTER

I. *The Condition of Falliment*

‘Six years have already passed since I quit a most respectable trading house, and, shortly after, was thrown into deepest misery’, wrote Rudolf Hunziker, a 36-year-old day-labourer and father of three children, to the mayor and council of Basel in 1854. ‘Then came the loss of my civil rights and honour, following my *Falliment*.’ In his letter, Hunziker petitioned for rehabilitation from his *Falliment*, as the legal situation of insolvency was called.<sup>1</sup> Hunziker continued: ‘More than

This paper has a long history. For suggestions and criticism I would like to thank the participants in the conference ‘Networks of Paupers and Debtors’ held at the German Historical Institute London in February 2011, in workshops held at Tel Aviv University and the University of Michigan in February and March 2012, and Erika Vause and Jacqueline Larios. I cannot take all my commentators’ valuable suggestions into consideration in this paper. However, I do address some of the issues in broader scope and in more detail in my dissertation, of which this paper presents a few preliminary findings. The errors remain my own.

<sup>1</sup> A remark on terminology: ‘insolvency’ and ‘bankruptcy’ are used interchangeably throughout the text, although this does not reflect nineteenth-century Swiss usage of the terms. *Falliment* (or German *Konkurs*) was not a punishable crime and the cases considered in this chapter all fell under private law, but the fraudulent *Bankrott* was a criminal act, and distinguishing between the two was never easy. During the nineteenth century, the English term ‘bankruptcy’ came to be colloquially used interchangeably with the broader term ‘insolvency’ in the United States and Britain, and is used this way in most present-day English-language historiography. ‘Bankruptcy’ was in many European countries and the USA related to statutorily defined occupational groups, such as merchants, yet in Basel *Falliment* could occur to any-

four months without any bread [*brodlos*], without any hope or expectation for any apt employment, I decided, in order to provide my family with the most basic necessities—and in order not to let them get into other hands, to prevent this with work, whatever it may be, as long as it was an *honest* one.’ Having worked as a packer in a large store and having gained ‘the confidence and the esteem’ of his superiors, Hunziker claimed to have ‘satisfied and paid’ his creditors. ‘Now then, my most esteemed mayor and most honoured gentlemen’, he continued, ‘there remains just one stain adhering to me that affects me to the inmost and is a great obstacle for my future—namely, the loss of my civil rights.’<sup>2</sup>

This chapter is concerned with the experiences of bankruptcy law in Basel in the 1840s, a period marked by economic and political crises. Basel was a canton confined to a small, yet fast-growing town with roughly 23,000 inhabitants by 1840, and 38,000 in 1860.<sup>3</sup>

body, not only to merchants. For the early modern French terms, see Julie Hardwick, ‘Banqueroute: la faillite, le crime et la transition vers le capitalisme dans la France moderne’, *Histoire, Économie & Société*, 30 (2011), 79–93; for England, see Julian Hoppit, *Risk and Failure in English Business, 1700–1800* (Cambridge, 1987), chs. 2, 3 and V. Markham Lester, *Victorian Insolvency: Bankruptcy, Imprisonment for Debt, and Company Winding-Up in Nineteenth-Century England* (Oxford, 1995), 37–9; for the USA, see Bruce H. Mann, *Republic of Debtors: Insolvency in the Age of American Independence* (Cambridge, Mass., 2003), 45–6 and Scott Sandage, *Born Losers: A History of Failure in America* (Cambridge, Mass., 2005), 30–1; for Germany and Austria, see the thematic issue by Peter Eigner, Erich Landsteiner, and Peter Melichar, ‘Bankrott’, *Österreichische Zeitschrift für Geschichtswissenschaften*, 19 (2008), esp. ‘Einleitung’, 5–9; for a study which embraces the full range of debt enforcement in a wider context of credit relationships, see Ira Spieker and Elke Schlenndrich, ‘Im Soll: Kredite, Schuldklagen und Zwangsvollstreckungen. Ländliche Ökonomien im (vor)modernen Sachsen als Spiegel sozialer Praxen’, *Volkskunde in Sachsen*, 19 (2007), 9–40.

<sup>2</sup> Staatsarchiv Basel-Stadt (STABS) Justiz J6, Einzelne Rehabilitationen 1846–56, request for rehabilitation by Rudolf Hunziker, 10 Oct. 1854, emphasis in original.

<sup>3</sup> The estimated numbers are based on *Die Bevölkerungsaufnahme von Basel-Stadttheil am 25. Jenner 1837: Bericht an den E. E. Kleinen Rath* (Basel, 1838), table 1; *Bevölkerungs-Aufnahme von Basel-Stadttheil am 3. Februar 1847: Bericht an den E. E. Kleinen Rath* (Basel, 1848), table 1; *Bevölkerungs-Aufnahme von Basel-Stadttheil am 10. December 1860: Bericht an den E. E. Kleinen Rath* (Basel, 1861), table 1.

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Economically, it was marked by a dual regime of an export-led, rapidly industrializing silk-ribbon weaving sector (though cottage industry remained important), and an artisanal and trade sector still largely structured by the guilds.<sup>4</sup> The economic emergency of the mid and late 1840s was mirrored in a peak of insolvencies. While bankruptcy in the 1840s still was a rare, exceptional event which marked a pivotal low point of social agency for an insolvent, in relative terms the numbers increased significantly. The median number of bankruptcies in Basel was 24 per year between 1840 and 1860, and peaks appeared in 1847 (41 cases) or 1849 (45), and again in 1854 (52).<sup>5</sup> Or, to put it differently: whereas in 1843 only 0.21 per cent of all households in Basel went bankrupt, the number rose to 0.88 per cent of all households in 1849.<sup>6</sup> In the same period, in 1848, the Swiss federal state was founded. In the early days of the nation-state, questions of male suffrage and citizenship came to the fore.<sup>7</sup> The related issues of civil rights and social order were interwoven with the situation of *Falliment*, as I will detail towards the end of this chapter.

*Falliment* was a legal term, but its meanings exceeded its narrowly defined legal application. Contemporaries spoke of *Falliment*, or of being a *Fallit*, as an 'estate' (*Fallitstand*), thereby evoking a concept of social order (the 'estates'), or of a 'situation' (*Fallimentszustand*). They alluded to being put into a certain social condition. For men, this condition meant a publicly announced loss of civil rights: they could not vote or take office, they were excluded from military service, they could no longer carry a weapon, and they were not allowed to sign

<sup>4</sup> Philipp Sarasin, *Stadt der Bürger: Bürgerliche Macht und städtische Gesellschaft. Basel 1846–1914* (2nd rev. edn. Göttingen, 1997), ch. 2; id., 'Sittlichkeit, Nationalgefühl und frühe Ängste vor dem Proletariat: Untersuchungen zu Politik, Weltanschauung und Ideologie des Basler Bürgertums in der Verfassungskrise von 1846/47', *Basler Zeitschrift für Geschichte und Altertumskunde*, 84 (1984), 51–127.

<sup>5</sup> STABS DS BS8, Verwaltungs-Bericht[e] des Kleinen Raths an den Großen Rath des Kantons Basel-Stadttheil, 1840–60.

<sup>6</sup> The numbers are based on 'Bevölkerungsaufnahme' of 1837, 1847 and 1870, which counted the number of hearths in the town in order to determine the number of households.

<sup>7</sup> On citizenship and the Swiss nation-state see Regula Argast, *Staatsbürgerschaft und Nation: Ausschliessung und Integration in der Schweiz 1848–1933* (Göttingen, 2007).

contracts. For married women it entailed a shift from their husbands' legal control over their property to a form of tutelage which was managed by the town's guilds. Those who were not citizens of Basel—roughly two thirds of the inhabitants in the period under review—risked losing their residence permit.<sup>8</sup> The local civil courts were charged with investigating the reasons for insolvency and wrote a report for each *Falliment* to the minor city council. In many cases the council advised the police to question the insolvent, that is, whenever there was the slightest possibility that a criminal investigation might become necessary or when a residence permit was on the line.<sup>9</sup> A *Fallit* could request rehabilitation only after he had proved that he had paid all his creditors. However, many insolvents were never able to repay their debts. Some, like Rudolf Hunziker, expressed a deep desire to repay their debtors and to have their civil rights reinstated. Others, as will become apparent, did not bother much about being deprived of their civil rights at all. In what follows, the variety of experiences, and the inconsistent legal situations in which insolvents manoeuvred, will be examined.

In the letter quoted at the beginning, Rudolf Hunziker spoke of a 'stain adhering to me, which affects me to the inmost' (*ein Makel mir anklebend, der mir bis in das Innerste geht*). He referred, on the one hand, to how he was regarded by others (a 'stain adhering'), and on the other to his inner existence. This interplay of social standing and inner life serves as a starting point for analysing the experience of *Falliment*. A decade prior to Rudolf Hunziker's petition, an interested observer of economic issues reflected on the themes of debt, credit, and money by using a similar opposition of inside/outside, the private individual and the social individual.

Commenting on James Mill's *Elements of Political Economy* in 1844, Karl Marx wrote that, with credit, '[t]he substance, the body clothing the *spirit of money* is not money, but instead it is my personal existence, my flesh and blood, my social worth and status'.<sup>10</sup> According

<sup>8</sup> Regina Wecker, '1833 bis 1910: Die Entwicklung zur Grossstadt', in Georg Kreis (ed.), *Basel: Geschichte einer städtischen Gesellschaft* (Basel, 2000), 196–224, at 199.

<sup>9</sup> *Der Stadt Basel Statuta und Gerichts-Ordnung . . .* (Basel, 1849), § 274.

<sup>10</sup> Karl Marx, 'Excerpts from James Mill's *Elements of Political Economy* (1844)', in id., *Early Writings*, intro. Lucio Colletti, trans. Rodney Livingstone and Gregor Benton (New York, 1975), 259–78, 264, emphasis in original.

to Marx, credit supposedly escaped the abstraction money entailed since, without having recourse to a medium of exchange, it placed people in direct relation to one another.<sup>11</sup> In a credit relationship, money was bypassed; it was no longer numerical values that were exchanged but '[h]uman individuality, human *morality*'.<sup>12</sup> Yet 'this return of man to himself and thus to other men' which the credit relationship engendered was, according to the young Marx, only an 'illusion': a '*self-estrangement*, dehumanization, all the more *infamous* and *extreme* because its elements are no longer a commodity, metal or paper, but the *moral* existence, the social existence [*das gesellige Dasein*], the very heart of man [*das Innere der menschlichen Brust selbst*], and because under the guise of mutual *trust* between men it is really the greatest *distrust* and a total estrangement.' Marx argued in the context of his concept of estrangement, the Hegelian concept he had recently begun to explore. With credit (as opposed to money), estrangement came full circle since it transfigured people themselves in terms of money: 'We should reflect on the immorality implicit in the *evaluation* [*Schätzung*] of a man in terms of money, such as we find in the credit system.'<sup>13</sup> For the purposes of this chapter, however, the focus will be on Marx's remarks on 'social existence', 'moral existence', 'individuality', 'evaluation', and (dis)trust, and not on his concept of estrangement.

Marx's ideas can be taken as a contemporary reflection on indebtedness in the 1840s.<sup>14</sup> Recent writing on the social and cultural history of debt has claimed in a similar way that the cultural aspects of

<sup>11</sup> For a philosophical discussion of this 'very Nietzschean Marx', see Maurizio Lazzarato, *La fabrique de l'homme endetté: Essai sur la condition néolibérale* (Paris, 2011), 44–8.

<sup>12</sup> Marx, 'Excerpts', 264, emphasis in original.

<sup>13</sup> *Ibid.* emphasis in original. For the inserted German terms see Institut für Marxismus-Leninismus beim Zentralkomitee der Kommunistischen Partei der Sowjetunion (ed.), *Marx Engels Gesamtausgabe (MEGA)*, 4 Divisions, Division 4, vol. ii: *Exzerpte und Notizen 1843 bis Januar 1845* (Berlin, 1981), 450.

<sup>14</sup> Not least because Marx himself, and probably still more so Jenny von Westphalen, his wife, were constantly struggling with household debts. On Marx's own personal indebtedness and his silence on this everyday experience in *Capital*, see Peter Stallybrass, 'Marx' Coat', in Patricia Spyer (ed.), *Border Fetishisms: Material Objects in Unstable Spaces* (New York, 1998), 183–207.

social recognition and esteem lay at the heart of early modern and nineteenth-century credit relationships alike.<sup>15</sup> As Margot Finn has written in her study on credit and consumption: ‘Creditors sought constantly and unsuccessfully to read debtors’ personal worth and character from their clothing, their marital relations, their spending patterns and their perceived social status.’<sup>16</sup> Further, as Laurence Fontaine notes, insolvency is an ideal case for the study of the cultural mechanisms in the social construction of trust, since in times of crisis insolvency hit first and foremost those who were less embedded in mutual webs of obligation.<sup>17</sup>

Evaluation (that is, ‘reading’ somebody’s status), I argue, was not limited to the *ex ante* assessment of creditworthiness but became of pivotal importance in the case of insolvency as well. Court officials had to enquire into the worth of insolvents, and they faced complications in gathering this knowledge. Building upon Finn’s and Fontaine’s assertions, I want to emphasize the problematics of knowledge in dealing with insolvency. This prompts the broad question about the workings of cultural practices in the process of knowledge-production: how were techniques of examination and qualification culturally formatted? How did the assigning of an individual case in the context of classification work? If we extend Marx’s observation and take trust in this context as a certain way of coping with lack of knowledge, and distrust as essentially an urge for information, ‘evaluation’ – the quest for knowledge and the uncertainty it was based upon – appears as a procedure in which moral attitudes and cognitive operations were intertwined. For morals play a central role in the sources under review. This chapter proposes to take moral judgement as imbricated with cognitive practices: moral judgement framed the authorities’ assessment and provided a way of classifying people.

<sup>15</sup> Laurence Fontaine, *L’économie morale: Pauvreté, crédit et confiance dans l’Europe préindustrielle* (Paris, 2008); Margot Finn, *The Character of Credit: Personal Debt in English Culture, 1740–1914* (Cambridge, 2003); Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relation in Early Modern England* (Basingstoke, 1998); Jonathan Sperber, *Property and Civil Society in South-Western Germany 1820–1914* (Oxford, 2005), 104–27.

<sup>16</sup> Finn, *Character*, 21.

<sup>17</sup> Fontaine, *Économie*, 291.

In order to deal with these questions, this chapter draws on concepts from the history and sociology of knowledge. The term 'encoding', borrowed here from the history of statistical thinking, points to methods of assigning a singular case to a group while abstracting from some individual circumstances.<sup>18</sup> When authorities examined an individual bankruptcy case they 'encoded' it according to a certain script, thereby drawing on techniques of both cognitive and symbolic evaluation. This assessment was a social process not isolated from, and sometimes in conflict with, other registers of legitimacy in society. Sociologist Luc Boltanski's notion of 'operations of qualification' is useful here, which conceptualizes a process of assigning, documenting, and denominating worth in a given situation. According to Boltanski, actors in social space move through different societal domains of worth, while employing different modes of justification for their behaviour.<sup>19</sup> Some historians of knowledge pay particular attention to the material conditions of knowledge-production, the mediality involved in techniques of documentation.<sup>20</sup> Much of the knowledge-production in Basel's bankruptcy cases, however, was bound to varying rhetorics and modes of narration, rather than to modes of writing, although lists, tables, inventories, and questionnaires played an important role as well.<sup>21</sup>

In historiography the link between morals, knowledge, and credit has been explored in works on credit-rating agencies, which first became established in the United States in the 1840s and which engaged in the trade of assessing the creditworthiness of potential business partners. As Josh Lauer and Hartmut Berghoff observe,

<sup>18</sup> Alain Desrosières, *The Politics of Large Numbers: A History of Statistical Reasoning*, trans. Camille Nash (1st edn. 1993; Princeton, 1998;), ch. 8.

<sup>19</sup> Luc Boltanski, *On Critique: A Sociology of Emancipation*, trans. Gregory Elliott (1st edn. 2010; Cambridge, 2011). Boltanski has elaborated much of his programme in collaboration with the economist and statistician Laurent Thévenot. See Luc Boltanski and Laurent Thévenot, *On Justification: Economies of Worth*, trans. Catherine Porter (1st edn. 1991; Princeton, 2006).

<sup>20</sup> Cornelia Vismann, *Files: Law and Media Technology*, trans. Geoffrey Winthrop-Young (1st edn. 2000; Stanford, Calif., 2008).

<sup>21</sup> For a call to develop a poetics of bureaucratic rhetoric and practices, see Peter Becker and William Clark, 'Introduction', in eid. (eds.), *Little Tools of Knowledge: Historical Essays on Academic and Bureaucratic Practices* (Ann Arbor, 2001), 1–33.



these agencies, which collected and sold information to entrepreneurs, first employed a moral 'character rating'.<sup>22</sup> Lauer and Berghoff focus on the agencies' filing techniques and their economies of scale and do not further examine the nature of the morality at stake. Certainly, the anticipatory information in credit reporting was different from the kinds of knowledge-gathering in the case of bankruptcy. Yet in both cases information and knowledge were at stake and linked to moral questions.

The classifications and moral outlooks as well as the attitudes, perceptions, and explanations which these classifications encountered formed the social phenomenon of *Falliment*—they did so in a contradictory, contested way, as will be argued in what follows. This chapter utilizes 260 short reports on bankrupts issued by the civil courts between 1841 and 1851. In addition, the sources include 73 minutes of police interrogation with bankrupts between 1840 and 1850, as well as the 38 petitions bankrupts wrote between 1846 and 1856 to request rehabilitation. Over 90 per cent of the reported insolvents were male. The next section deals with the reasons authorities gave for the insolvencies, followed by an analysis of the bankrupts' versions of their story in section three. Section four is devoted to the issue of the female marriage portion, which proved to be the most difficult asset to delineate in a bankruptcy process. The fifth section examines the petitions for rehabilitation, like Rudolf Hunziker's mentioned at the beginning.

## II. *Accounting for Failure: The Grammar of Moral Judgement*

In their reports to the mayor and the city council, the civil court officials stated who the bankrupts were and what, in their view, had caused the insolvency. These authorities thus defined and scrutinized a very heterogeneous social group. To link financial failures to specific occupational groups is problematic, because many of the

<sup>22</sup> Josh Lauer, 'From Rumor to Written Record: Credit Reporting and the Invention of Financial Identity in Nineteenth-Century America', *Technology and Culture*, 49 (2008), 301–24; Hartmut Berghoff, 'Markterschliessung und Risikomanagement: Die Rolle der Kreditauskunfteien und Rating-Agenturen im Industrialisierungs- und Globalisierungsprozess des 19. Jahrhunderts', *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte*, 92 (2005), 141–62.

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interrogated insolvents told a story of shifting and varying occupations, whereas the officials' reports recorded only one profession for each insolvent. However, it appears that craftsmen and tradespeople such as bakers, butchers, grocery dealers, tailors, and shoemakers were strongly represented. But in this very diverse group one also finds silk weavers, day-labourers, office clerks, coachmen, washer-women, merchants, and one sketch-drawer in a ribbon factory. Many of the insolvents could be termed 'people in between'. Some were lower middle-class tradespeople or artisans who had yet to establish themselves and had to build up a reputation first, partly because they were new in town or because they could not rely on family ties. These people were caught in a middle position between customers who bought on credit and suppliers who at some point cut their credit short and insisted on cash payment.<sup>23</sup> In the event of financial distress they were not able to balance their simultaneous roles as debtors and creditors. The baker Jakob Henz who failed to pay a meal bill is a good example: 'In the year of 1838, when I was carrying on my profession as a baker', he wrote requesting rehabilitation, 'I could not – as I also had to sell on credit [*creditiere*] – satisfy a creditor as fast as he wished; I was therefore not only enforced, but – as the respective creditor was strict – enforced until the very end and got into the situation of *Falliment* [*Fallimentszustand*] and several of my creditors sustained losses.'<sup>24</sup>

Financial failure was not necessarily equivalent to being a pauper. Indeed, in about 50 of the 260 cases the officials reported that the insolvents were simply too poor to repay their debts, or lacked any assets. But many, especially those who were interrogated by the police, were implicated in substantial financial dealings that often involved real estate.<sup>25</sup> The court officials further noted that some

<sup>23</sup> Barbara Keller, *Von Speziererinnen, Wegglübun und Metzgern: Lebensmittelhandwerk und -handel in Basel 1850–1914* (Zurich, 2001), 229–30; Geoffrey Crossick and Heinz-Gerhard Haupt, *The Petite Bourgeoisie in Europe 1780–1914: Enterprise, Family and Independence* (London, 1995), 183–6.

<sup>24</sup> STABS Justiz J6, Einzelne Rehabilitationen 1846–56, request for rehabilitation by Jakob Henz, 9 Aug. 1847.

<sup>25</sup> In this context, the civil court officials at one point in the crisis of late 1847 suggested suggested to the city council to implement general restrictions on the purchase of real estate. STABS Justiz J8, Collocationen der Stadt 1840–51, report, 13 Jan. 1848.

bankrupts had opened an inn shortly before becoming insolvent. This indicates that they intended to enter a business of precarious self-employment which some managed to start with low initial funding, if credit from suppliers could be obtained.<sup>26</sup> Often, though, the opposite occurred, as was the case with the tailor Carl Wassermann, who had 'accelerated his *Falliment* by taking over the licence of an inn, which is often done by these people as a last resort'.<sup>27</sup> The last quotation also illustrates the officials' perception and bias, for the officials quickly associated innkeeping with a notion of carelessness; in fact, less than 10 per cent of the insolvents under consideration opened up a tavern or a boarding house.

The authorities' knowledge was always partial and uncertain. The information they acquired relied on hearsay and denunciations. One reason for this lack of solid information was that in a quarter of the cases the insolvents were absent, having already fled the proceedings, at least temporarily. The story of Johannes Bader, a butcher who 'allegedly along with a female left his wife and children and left town to settle in America' was not exceptional,<sup>28</sup> but for the fact that he

<sup>26</sup> Historian Christoph Guggenbühl describes the decision to open up a public house as a form of precarious self-employment often pursued in economic crises. He also points to the boom in tavern openings in the crisis of the 1880s. See Christoph Guggenbühl, 'Heaven or Hell? The Public House and its Social Perception in Nineteenth- and Early Twentieth-Century Switzerland', in Marc Jacobs (ed.), *Eating Out in Europe: Picnics, Gourmet Dining and Snacks since the Late Eighteenth Century* (Oxford, 2003), 89–104, at 100–1.

<sup>27</sup> STABS Justiz J8, Collocationen der Stadt 1840–51, report on Carl Wassermann, 27 Oct. 1845.

<sup>28</sup> The schoolteacher Niklaus Fessler moved with some of his family to America, 26 Jan. 1847, because of 'lack of earning and a guilty conscience'; the wagon-maker Joseph Sprich left for America, 26 Jan. 1847; Emanuel Staub became a mercenary for the Kingdom of Naples, 26 Jan. 1847; the tailor Johannes Krattiger settled for America, 19 Apr. 1847; the glassworker Hieronymus Friedrich Holzach left his wife and children and settled in America, 13 July 1847; the innkeeper Jakob Schneider 'secretly edged away with his second wife while leaving his children from his first marriage', and supposedly went to America, 10 July 1848; Rudolf Jeremias Christ had lost his wife and children and 'according to reports went to America', 13 Jan. 1848; the erstwhile civil court officer Heinrich Tschientschy 'left office, family and home country' and moved to America, 19 Jan. 1849; the saddler Eduard Rebsamen allegedly went to America, 2 July 1849; the joiner Urs

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returned shortly afterwards and tried 'to redeem his mistake by offering his creditors an additional 20 per cent which the family of his wife is willing to pay'.<sup>29</sup> The potential for hiding assets was another source of uncertainty. If the value of the mobile assets was conspicuously low, the officials suspected the insolvents of 'concealing' (*Hinterschlagung*) goods.<sup>30</sup> Also 'defrauding',<sup>31</sup> 'diversion' (*Verschleppung*),<sup>32</sup> or the 'alienation' of goods (*Entfremdung*),<sup>33</sup> could become subject to criminal investigation. But often the authorities did not pursue the matter further since they lacked the necessary information or the goods were of too little value. 'No need to be stupid, you have to divert the belongings' (*man müsse nicht so dumm seyn und die Sachen auf die Seite schaffen*), the wife of the insolvent Abraham Sixt allegedly said shortly before her family went bankrupt, and moved some household effects, silverware, and money from Basel to the suburb of Allschwil, as an anonymous informer told the police. When the police officer handed over the interrogation warrant to Abraham Sixt, he later reported that he had looked at the *Fallit's* kitchen, 'which was poor, and I saw that it was furnished only with old belongings, as is the case with people who no longer own much'. Having no search warrant, he merely 'glanced through the open door into the sitting room, and saw nothing remarkable there either, only a table in the middle of the room; yet I did not see the whole sitting

Victor Pfirter settled with his family in America, 2 July 1849; the scrivener Leonhard Matzinger-Weck moved to Amiens to start a trade in gaslamps, then, after becoming insolvent there, returned to Basel where in 1849 he sold rifles to the insurgents in Baden, then, facing bankruptcy again, supposedly fled with a 'not insignificant sum of money' to America, 7 Jan. 1850; the goldsmith Richard Trappet went to America with his wife, 1 July 1851. In one case the officers speculated about a suicide: 'Häring disappeared without a trace; one guesses he has thrown himself into the Rhine', 13 Jan. 1848.

<sup>29</sup> STABS Justiz J8, Collocationen der Stadt 1840–51, report on Johannes Bader, 5 May 1845.

<sup>30</sup> Ibid. report on Philipp Schwarz, 7 May 1844; conclusion of report, 27 Oct. 1845, reflecting on several cases of insolvency; report on Abraham Sixt, 16 Apr. 1846; report on Rudolf Sandreuter, 6 July 1846.

<sup>31</sup> STABS Justiz J8, Collocationen der Stadt 1840–51, report on Ludwig Calre, 5 Oct. 1848; report on J. J. Eckenstein, 19 Jan. 1849.

<sup>32</sup> Ibid. report on Christoph Grey, 6 Oct. 1849.

<sup>33</sup> Ibid. report on Alois Matua, 19 Jan. 1849.

room'.<sup>34</sup> Insolvents often made themselves out to be poorer than they were, but sometimes also richer, to keep up appearances. They did so in order to remain in credit, such as Samuel Barth, who was blamed for having managed 'to keep up the illusion of wealth by keeping an *équipage* [a carriage]'.<sup>35</sup> Also, the authorities only had quite limited control over the bankrupts' behaviour. 'It would be desirable to find ways to fine debtors like Häring', they wrote in 1845, 'who, although he is keenly aware of his own definite insolvency, is capable of borrowing time and again sums small and large, since such borrowing with its promise to repay appears as nothing else but fraud.'<sup>36</sup>

Despite the unreliability of sources and information, authorities made definite and decisive assessments of the reasons for financial failure. These judgements followed a logic: in a standardized form, they told a story of individual responsibility and culpability. They employed in a specific way the dialectics of inside and outside that were noted at the beginning of this chapter. According to the court officials, it was the inner, individual failure that led to a decline in social status. The case of Rudolf Hunziker, the petitioner for rehabilitation mentioned at the beginning, is a good example: 'This *Fallit* was a clerk in a trading house of our town, then he became a postman, and now he is a day-labourer.—This descending career path seems not to be caused by misfortune, but was self-inflicted [*der Selbstverschuldung zuzuschreiben*].'<sup>37</sup>

The court officials attributed two complementary characteristics to *Falliment*: lack of industriousness and lack of good housekeeping (*haushalten*). On a first level, these two interconnected components can be translated into the spheres of production and consumption, into the lack of consistent earnings and of economical spending, of workplace and the domestic. Yet these two spheres were closely intertwined. In the view of the officials, housekeeping had produc-

<sup>34</sup> STABS Justiz J7, Einzelne Concurssachen 1846–52, police report on Abraham Sixt, 23 Apr. 1846.

<sup>35</sup> STABS Justiz J8, Collocationen der Stadt 1840–51, report on Samuel Barth, 13 Jan. 1848.

<sup>36</sup> *Ibid.* report on Oscar Häring, 16 July 1845.

<sup>37</sup> *Ibid.* report on Rudolf Hunziker, 7 Jan. 1850. During his interrogation, Hunziker claimed that he worked as a stockroom labourer, not a clerk. STABS Justiz J7, Einzelne Concurssachen 1846–52, interrogation of Rudolf Hunziker, 11 Jan. 1850.

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tive aspects, and work demanded virtues that originated from the domestic sphere as well. The failures in the domestic sphere were rendered into the stereotypes of 'squandering', often linked with drinking, or of 'debauchery' (*Schwelgerei*) and 'luxuriousness' (*Wohlleben*).<sup>38</sup> Mostly, the two explanations were combined: 'This *Fallit* could have prevented his *Falliment*, had he been more thrifty and industrious', was the typical and standardized story of failure.<sup>39</sup> To be 'work-shy' meant inconsistency, a lack of focus on one single occupation, and an inappropriate use of time: 'This *Fallit* who stayed here as a silk weaver and started trading in commodities given to him on commission, seems to belong rather to the class of the *aventuriers*, as opposed to hard-working people who persevere in their profession.'<sup>40</sup> As with the case of a hat-maker: 'This *Fallit* concerns himself not only with his occupation but is often away on travels where he presumably spends more than he gains.'<sup>41</sup> Official accounts admonished a joiner: 'Idleness [*Arbeitsscheu*] and perhaps self-inflicted lack of customers are the reasons for the *Falliment*.'<sup>42</sup> Carelessness and incompetence were additional attributes of failure.

In the civil court officials' discourse, the notion of an 'immoral' reputation connected the regard a person was held in by others with individual behaviour. A statement about a wig-maker said: 'As can be concluded from the many letters of debt collection over many years, this *Fallit* has had a wrecked home [*zerrüttetes Hauswesen*] for a long time and he has not a good moral reputation.'<sup>43</sup> 'Immorality' was also linked to social interaction; it came to the fore in reprehensible dealings with others, for which the notion of deceit was central.<sup>44</sup> 'This extravagant and immoral man managed . . . in a deceitful

<sup>38</sup> E.g. STABS Justiz J8, Collocationen der Stadt 1840–51, Report on Johann Georg David, 16 July 1845; report on Heinrich Plattner, 26 Oct. 1846.

<sup>39</sup> *Ibid.* report on J. J. Sandreuter, 16 July 1845.

<sup>40</sup> *Ibid.* report on Jean Maas-Day, 20 Oct. 1841 (French in the original).

<sup>41</sup> *Ibid.* report on Adam Scherb, 22 Jan. 1844.

<sup>42</sup> *Ibid.* report on Martin Rapp, 27 Oct. 1845.

<sup>43</sup> *Ibid.* report on Rudolf Carly, 6 July 1846. Similar statements in the report on David Keller of 23 Apr. 1841; in the reports on Christoph Heckendorf and Maria Knechtle, both 17 Aug. 1842; in the report on Ludwig Calre, 5 Oct. 1848; and on Heinrich Scherrer, 19 Jan. 1849.

<sup>44</sup> On the idea of 'deceit' in this context, see Toby L. Ditz, 'Shipwrecked; or Masculinity Imperiled: Mercantile Representations of Failure and the Gender-

way [*hinterlistiger Weise*], to get hold of the annuity of 1,000 francs which his wife's relatives paid for her, for five years in advance. When Heckendorn received this sum of 5,000 francs, he ran away leaving his wife and children behind.<sup>45</sup>

In addition to the surprisingly few cases that treated the topics of sickness, disability or old age,<sup>46</sup> it was in the domain of family and household—and only here—where authorities found acceptable explanations for a *Falliment*. If the 'wrecked home' could be at the root of self-inflicted financial decline, then also, conversely, family responsibilities like caring for many children or relatives might account for misfortune through no fault of one's own. However, the one explanation the authorities in the 1840s never gave for a failure was economic crisis.<sup>47</sup> During the hunger crisis of 1847, when in Basel roughly 5000 persons obtained free meals from philanthropic institutions,<sup>48</sup> the officials concluded their report: 'Even if many of these insolvencies were exacerbated by the hardship of these times [*in der Bedrängniß der Zeit ihren mitwirkenden Grund haben*], it should nevertheless be appropriate, given the excess of careless insolvencies, to pursue matters against the fallible persons [*die Fehlbaren*] all the more strictly, as our laws command.'<sup>49</sup> What authorities noticed and what they felt they must intervene against were perceived individual failures only, and their translation into improper reputation. For this, the bridge between inner self and social standing was provided by the semantics of morality, that is, the projection of the individual on to the social.

ed Self in Eighteenth-Century Philadelphia', *Journal of American History*, 81 (1994), 51–80, at 59.

<sup>45</sup> STABS Justiz J8, Collocationen der Stadt 1840–51, report on Christoph Heckendorn, 17 Aug. 1842.

<sup>46</sup> I counted only 14 such cases out of 260.

<sup>47</sup> In some rare instances, the court officials took heightened competition in specific trades into consideration, e.g. between grocery dealers or coachmen. See STABS Justiz J8, Collocationen der Stadt 1840–1851, report on J. J. Reischacher-Hirt, 13 Jan. 1848; report on Johann Heinrich Wiesner, 2 July 1850.

<sup>48</sup> Sarasin, *Stadt der Bürger* (2nd edn.), 265.

<sup>49</sup> STABS Justiz J8, Collocationen der Stadt 1840–51, conclusion of report, 13 July 1847.

III. *Modest Stories, Losing Credit*

In contrast to the standardized narrative of individual mistakes recounted by the court officials, the bankrupts who were interrogated by the police gave a different account of their failure. And yet their story complemented rather than contradicted the authorities' account. The insolvents told a personal story, which stressed supra-individual circumstances and events. Certainly these were 'enforced narratives', structured by the police officer's questions and following what Carolyn Steedman has called the 'autobiographical injunction' that becomes 'a history of expectations, orders and instructions' in which the insolvent narrator tried to situate himself tactically.<sup>50</sup> One of the requirements of these highly pre-formatted narratives was to tell an individual history that stressed similarity with others: a story of having done nothing particularly wrong. The insolvents employed a conspicuous rhetoric of modesty. 'It just happened to me as it happens to many a man, my earnings fell back', Rudolf Hunziker, whom we encountered earlier, succinctly explained his dilemma to the police officer in 1850. He said he had taken over his father's house for the substantial sum of 9,500 francs, of which at the foreclosure sale only 7,250 francs were recovered. The single most repeated cause the insolvents cited for their losses was a poor forced auction sale. In a sense, the bankrupts recounting low auction sales were complaining that the market was a mechanism without memory – whereas they remembered their expenses and efforts from the past and projected them on to a value in the present and future.<sup>51</sup> In contrast to the civil servants' accounts, the bankrupts frequently referred to the 'current conditions of the times' of the late 1840s, especially to the plummet-

<sup>50</sup> Carolyn Steedman, 'Enforced Narratives: Stories of Another Self', in Tess Cosslett, Celia Lury, and Penny Summerfield (eds.), *Feminism and Autobiography: Texts, Theories, Methods* (London, 2000), 25–39, at 28.

<sup>51</sup> See e.g. STABS Justiz J7, Einzelne Concurssachen 1836–45, interrogation of Christoph Gysin, 8 May 1845; interrogation of Rudolf Kübler, 17 Feb. 1845; STABS Justiz J7, Einzelne Concurssachen 1846–52, interrogation of Fredrich Klingelfuß, 4 Feb. 1846; interrogation of Otto Landerer, 6 Feb. 1846; interrogation of Friedrich Otto, 6 Feb. 1846; Johann Georg Oppermann, 18 Oct. 1847; interrogation of Johann Jacob Reischacher-Hirt, 26 Jan. 1848; interrogation of Johann Jacob Schlueb, 11 Apr. 1848; interrogation of Johann Carl Peschel, 30 Apr. 1849.



ing real estate prices.<sup>52</sup> To refer to a general economic crisis was, of course, an argument for exculpation; however, it is important to note how this broad explanation of failure was transfigured into private misfortune in the insolvents' tales. The notion of economic crisis was merely a background to a personal consideration which developed the idea of lost credit. 'Falling back' or 'not getting ahead' was, according to the bankrupts' accounts, linked to the loss of credit.

Credit was not a single act of financial dealing, but an intangible situation or esteem, which one possessed, and which one could also lose. It involved personal interaction and was built on a web of social relations consisting of reputation and confidence from suppliers, fellow traders, and family members, all of whom had their own expectations and claims vis-à-vis a debtor. The interrogation minutes of Friedrich Hodel, a 30-year-old shoemaker and a divorced father of four, are significant in this respect. 'I established myself [as a shoemaker] in 1838', he told the police officer

with some ideas I brought from Paris, where I had been a lead worker in a distinguished shoemaking enterprise and trading house for a while. In the beginning, I had no funds of my own, and had to . . . equip my workshop, in which I handled goods of all kinds, solely on credit, and entered into heavy debts at the beginning; even though I enjoyed the unlimited trust of local tanners, the bills they issued piled up as well (*das Vertrauen hiesiger Gerber besaß ich zwar unbeschränkt, aber ihre Rechnungen stiegen dabei auch sehr hoch*) . . . [I]n later years, when I had eventually lost many customers and generally came under economic pressure, my natural dislike for the shoemaking profession arose again, and I confess freely that my fervour cooled down . . . When I started out in 1838, I was still young and inexperienced in many respects, I had credit, too, more than was actually healthy, and so I ventured, with the best intentions, and good trust, many things, I later repented.<sup>53</sup>

<sup>52</sup> See e.g. STABS Justiz J7, Einzelne Concurssachen, 1846–52, interrogation of Johann Carl Peschel, 30 Apr. 1849; interrogation of Niklaus Riedtmann, 5 July 1849.

<sup>53</sup> STABS Justiz J7, Einzelne Concurssachen, 1846–52, interrogation of Friedrich Hodel, 21 Apr. 1846.

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Hodel gave a contradictory account of his start in the profession, at the same time allegedly burdened with heavy debt and facilitated too smoothly with easy credit. The narrative then shifted to depictions of apathy and a change of mood, admitting a 'natural dislike' for his profession. Then again, Hodel underlined his good intentions, and pointed to the commonplace of inexperienced youth.<sup>54</sup> Friedrich Hodel referred to 'trust' to describe the suppliers' attitude towards him. While this particular term is not common in the source base under review,<sup>55</sup> the esteem received from others could help balance out financial dealings over a certain period of distress. He would have fallen into the condition of *Falliment* even earlier, an insolvent said, had it not been for the 'leniency' and 'consideration shown in respect to my otherwise upright and honest conduct' by a 'local, respectable trading house'.<sup>56</sup> Yet credit could quickly disappear; in some instances the insolvents pointed to the pace of debt recollection and deplored how they themselves had run out of time.<sup>57</sup> When a police officer reproached a bankrupt mason for having 'exploited the credit given until the last moment and piled debts on debts', the latter responded that he had never 'abused his credit carelessly', but 'then I suddenly became hustled from all sides, and couldn't hold myself up any longer'.<sup>58</sup> The 'piling up of debts' (*Schuldenmachen*) was, then, the counterpart to 'having credit'. While the authorities

<sup>54</sup> On the moods, aspirations, and mobilizations of nineteenth-century shoemakers, see the classic piece: Eric Hobsbawm and Joan W. Scott, 'Political Shoemakers', *Past and Present*, 89 (1980), 86–114.

<sup>55</sup> Only in one other instance did an insolvent say that he initially had 'confidence' (*Vertrauen*) and a good outlook in his trade, while in another case an insolvent reported that 'misguided trust' had led him into fatal enterprises. See STABS Justiz J7, Einzelne Konkursachen 1836–45, interrogation of Christoph Holzach, 22 July 1845; STABS Justiz J7, Einzelne Concurssachen 1846–52, interrogation of Jacob Meyer, 16 Oct. 1847.

<sup>56</sup> STABS Justiz J7, Einzelne Concurssachen 1846–52, interrogation of Valentin Rimmensperger, 16 Oct. 1847. Similarly, see interrogation of Heinrich Bruckner, 14 July 1848.

<sup>57</sup> STABS Justiz J7, Einzelne Konkursachen 1836–45, interrogation of Christoph Holzach, 22 July 1845; STABS Justiz J7, Einzelne Konkursachen 1846–52, interrogation of Johann Jacob Reischacher-Hirt, 26 Jan. 1848.

<sup>58</sup> STABS Justiz J7, Einzelne Concurssachen 1846–52, interrogation of Johannes Löliger, 28 Nov. 1848.

pointed out what they saw as a careless habit of paying old household debts with new ones—thereby alluding to the standard vice of excess consumption—the interrogated insolvents frequently emphasized a difficult professional start from which they never managed to recover. As debtors in the police interrogation translated their financial dealings into terms of personal relations, a prosecuted claim would be depicted as violation of the debtor’s integrity. A rapid settling of accounts, ‘quickly and heedlessly enforced’, as one insolvent said, was interpreted as a hostile act.<sup>59</sup> Vice versa, the fragile balance of countless credit arrangements was further endangered when others failed to make their payments or when a co-signed guarantee became due, leading to cascades of unmet debts.<sup>60</sup>

The virtues and appearances on display, essential to navigating everyday credit, depended ultimately on the household’s gendered order with its spheres, tasks, duties, and expectations. A failed domestic economy could provide a ready explanation for insolvency, since household financial dealings were relegated to women.<sup>61</sup> ‘Well, I don’t know that; there must have accrued quite a few debts for a long time’, Johannes Haering, a 65-year-old blacksmith told the police: ‘I have in my lifetime given my monthly earnings of c.36 francs to the household, and still give it, since the death of my wife, which occurred two years ago, to my daughter, and do not concern myself with it [*bekümmere mich weiter nicht*].’<sup>62</sup>

Yet to shift the responsibility on to the (deceased) wife or daughter was only one way of self-justification. Several bankrupts claimed

<sup>59</sup> STABS Justiz J7, Einzelne Konkursachen 1836–45, interrogation of Christoph Gysin Rosenburger, 8 May 1845. Another salient example is the interrogation of Ludwig Schwörer, 4 Nov. 1845.

<sup>60</sup> STABS Justiz J6, Einzelne Rehabilitationen 1846–56, request by Franz Schaub, 7 June 1851; request by Johann Ludwig Hagmann, 27 June 1851.

<sup>61</sup> Amanda Vickery, ‘His and Hers: Gender, Consumption and Household Accounting in Eighteenth-Century England’, *Past and Present*, Supplement, vol. 1 (2006), 12–38, at 13–14; Beverly Lemire, *The Business of Everyday Life: Gender, Practice and Social Politics in England, c. 1600–1900* (Manchester, 2005), 17; Bettina Heintz and Claudia Honegger, ‘Zum Strukturwandel weiblicher Widerstandsformen im 19. Jahrhundert’, in ead. (eds.), *Listen der Ohnmacht: Zur Sozialgeschichte weiblicher Widerstandsformen* (Frankfurt an Main, 1981), 7–68, at 16–17.

<sup>62</sup> STABS Justiz J7, Einzelne Konkursachen 1836–45, interrogation of Johannes Haering, 3 Nov. 1845.

that after their divorce they lost esteem in their community and forfeited their credit.<sup>63</sup> When they alluded to marital disputes or to the absence of a wife,<sup>64</sup> they addressed, for the purpose of explanation, a normative arrangement with habitual gendered practices and work tasks which could not be sustained without its female part.<sup>65</sup> Other insolvents represented themselves as caring heads of households (*Hausväter*) who led their household in a proper way. In any case, the bankrupts pointed to the importance of public display. This was also crucial for the inn as a space for plebeian public sociability.<sup>66</sup> The authorities intervened here by publicly forbidding insolvents from entering an inn. One insolvent asked to be spared this special penalty of honour. He did not object to losing his civil rights but begged not to be banned from the tavern 'because I fear the disgrace and detriment this would bring me'.<sup>67</sup> Confronted with the police offi-

<sup>63</sup> Ibid. interrogation of Abraham Oppliger, 5 Nov. 1845; STABS Justiz J7, Einzelne Concurssachen 1846–52, interrogation of Rudolf Karli, 10 July 1846.

<sup>64</sup> Ibid. interrogation of Johann Lucas Kappeler, 3 Feb. 1847.

<sup>65</sup> This does not imply that only one current household model existed; nor did the normative order of a household necessarily draw on arrangements which Otto Brunner has, with recourse to Wilhelm Heinrich Riehl, termed 'das ganze Haus'. Rather the household should be regarded, as David Sabeian has pointed out, as a site of tension: of implicit contracts, claims, and expectations between spouses and generations. See Otto Brunner, 'Das "ganze Haus" und die alteuropäische "Ökonomik"', in id., *Neue Wege der Verfassungs- und Sozialgeschichte* (1st edn. 1956; Göttingen, 1968), 103–27; David W. Sabeian, *Property, Production, and Family in Neckarhausen, 1700–1870* (Cambridge, 1990), ch. 3. For a critique on Brunner, see Valentin Groebner, 'Ausser Haus: Otto Brunner und die alteuropäische "Ökonomik"', *Geschichte in Wissenschaft und Unterricht*, 46 (1995), 69–80.

<sup>66</sup> On Swiss taverns see Beat Kümin, 'Das vormoderne Wirtshaus im Spannungsfeld zwischen Arbeit und Freizeit', in Hans-Jörg Gilomen (ed.), *Freizeit und Vergügen vom 14. bis zum 20. Jahrhundert* (Zurich, 2005), 87–98; Guggenbühl, 'Heaven or Hell'. With respect to a plebeian public, see Hans Medick, 'Plebejische Kultur, plebejische Öffentlichkeit, plebejische Ökonomie: Über Erfahrungen und Verhaltensweisen Besitzarmer und Besitzloser in der Übergangsphase zum Kapitalismus', in Robert Berdahl et al., *Klassen und Kultur: Sozialanthropologische Perspektiven in der Geschichtsschreibung* (Frankfurt am Main, 1982), 157–204.

<sup>67</sup> STABS Justiz J7, Einzelne Concurssachen 1846–52, interrogation of Christoph Grey, 28 May 1849. The ban on entering an inn was remembered as

cers' frequent reproaches about drinking and careless housekeeping, many bankrupts claimed to be resentfully slandered by others, and thus they interpreted their own situation as a series of interpersonal hostile relations. They called for witnesses and insisted that 'nobody has ever seen' them drunk or that they were never picked up by the police in the tavern after hours (*Übersitzer*),<sup>68</sup> always referring to the issue of being *seen*, of public appearance.<sup>69</sup>

The interplay between social existence and inner existence was of paramount importance in the interrogated insolvents' tales. The interrogation had to complement and confirm the authorities' encoding. The insolvents largely complied with this role the interrogators assigned them, all the while employing a specific semantics of modesty. In their narratives, they framed their economic dealings in personal terms, including emotions and moods. The loss of credit was intrinsically bound to the esteem they were held in by others. The insolvents emphasized the importance of appearance in differentiated publics that affected them in their inner, personal life.

#### IV. *Contested and Ambivalent Property*

A liberal conception of property as exclusive ownership, which emerged and became reinforced in the nineteenth century, constantly collided with everyday economic life and its relative, aspect-oriented usages of property in which user rights, deferred payment, instalments, barter, lending, leaseholding, appropriation and re-use of goods, claims and counter-claims marked the workings of

an especially degrading penalty in the memoir of the nineteenth-century pedlar Gregorius Aemisegger. See Fabian Brändle (ed.), *Das lange Leben eines Toggenburger Hausierers: Gregorius Aemisegger 1815–1913* (Wattwil, 2007), 62; Hermann Bendiner, *Das Wirtshausverbot: Eine schweizerische Strafe und Verwaltungsregel* (Zurich, 1917).

<sup>68</sup> STABS Justiz J7, Einzelne Concurssachen 1846–52, interrogation of Christoph Grey, 28 May 1849.

<sup>69</sup> STABS Justiz J7, Einzelne Konkursachen 1836–45, interrogation of Rudolf Kübler, 17 Feb. 1845; interrogation of Johannes Haering, 3 Nov. 1845; interrogation of Ludwig Schwörer, 4 Nov. 1845; STABS Justiz J7, Einzelne Concurssachen 1846–52, interrogation of Jacob Mangold, 24 Jan. 1849; interrogation of Niclaus Schimpf, 11 Oct. 1849.

what was a fairly informal economy.<sup>70</sup> These complicated property relations involved difficulties in assigning and even delineating assets in bankruptcy cases. When police officers routinely asked the insolvents how much money, in their own estimation, the creditors had forfeited in their case the bankrupts virtually never came up with a correct answer, or claimed to have no idea at all. This conspicuous ignorance might have been a tactical move. Also, insolvents were not present when an official inventory of the creditors' unmet claims was conducted.<sup>71</sup> Yet the answers given in the police interrogations might also point to the complicated property relations, which led to contradictory assessments. The president of the *Justizkollegium* reflected on the extraordinary amount of 'negative fantasy' of the *Falliten* who frequently contested the official inventory: 'Everybody finds here and there indications for excuses which make the whole procedure appear useless and superfluous.'<sup>72</sup>

The most difficult asset to assign by the authorities was the female marriage portion or dowry. Here marital affiliation, the household's gender order, and the wife's family lineage intersected. The dowry, then, was not a property with informal traits such as the ones discussed above, but one in which different domains of formality clashed. In judicial discussion, the marriage portion was technically ambivalent, being located at the intersection of insolvency law and marital property law. This border position points to a greater poten-

<sup>70</sup> On the encounter between the relative nature and the absolute conception of property relations, as seen through the lense of criminal law, see Rebekka Habermas, *Diebe vor Gericht: Die Entstehung der modernen Rechtsordnung im 19. Jahrhundert* (Frankfurt am Main, 2008), 82–3; ead., 'Eigentum vor Gericht: Die Entstehung des modernen Rechtsstaates aus dem Diebstahl?', *Werkstatt-Geschichte*, 42 (2006), 25–43; on the conceptual multiplicity of property in civil law disputes see Sperber, *Property*; on the futile efforts to conceptualize property in a coherent framework in nineteenth-century legal scholarship, see Mikhail Xifaras, *La propriété: Étude de philosophie du droit* (Paris, 2004); on the concept of informal economy, see Manuel Castells, Alejandro Portes, and Lauren A. Benton (eds.), *The Informal Economy: Studies in Advanced and Less Developed Countries* (Baltimore, 1989).

<sup>71</sup> This changed in 1855 and bankrupts by then had to attend the creditors' negotiations on the remaining assets. See *Verwaltungs-Bericht des Kleinen Raths an den Großen Rath des Kantons Basel-Stadt über das Jahr 1855*, 74.

<sup>72</sup> STABS Justiz J8, Collocationen 1852–59, President of the *Justizkollegium* to the mayor and minor city council, 16 May 1854.

tial conflict between a concept of contractual relations on the one hand, and a concept of the household on the other.

Before going bankrupt a husband could use his wife's dowry for his financial dealings.<sup>73</sup> He could back a debt specifically with the wife's dowry as collateral as long as the wife consented in writing.<sup>74</sup> In the case of insolvency, the gender tutelage for the insolvent's wife was handled, as it was for unmarried women, divorcees, or widows, by the guilds. Assuming gender tutelage, the guilds' influence increased compared to early modern times when women frequently testified before court.<sup>75</sup> In practice, the guilds pursued their own economic interests while pooling these overall enormous sums from women's dowries.<sup>76</sup> Yet in theory, the wife's guardian's task was to protect her interests. In the case of insolvency, the wife's portion had a privileged position in the remaining assets. A wife could take back her mobile assets if they were still in place, and moreover, she had a privileged claim on the lost assets.<sup>77</sup> In that sense, the supposedly pre-

<sup>73</sup> On the importance of dowries, especially for business enterprise in nineteenth-century Switzerland, see Elisabeth Joris, 'Kinship and Gender: Property, Enterprise, and Politics', in David W. Sabeau, Simon Teuscher, and Jon Mathieu (eds.), *Kinship in Europe: Approaches to Long-Term Development (1300–1900)* (New York, 2007), 231–57.

<sup>74</sup> Peter Münch, *Aus der Geschichte des Basler Privatrechts im 19. Jahrhundert: Traditionsbewusstsein und Fortschrittsdenken im Widerstreit* (Basel, 1991), 138.

<sup>75</sup> Regina Wecker 'Geschlechtsvormundschaft im Kanton Basel-Stadt: Zum Rechtsalltag von Frauen – nicht nur im 19. Jahrhundert', in Rudolf Jaun and Brigitte Studer (eds.), *Weiblich – männlich: Geschlechterverhältnisse in der Schweiz. Rechtsprechung, Diskurs, Praktiken* (Zurich, 1995), 87–97, at 90. An exception to gender tutelage was the 'freie Mittelverwaltung', comparable to the legal category of the 'merchant woman' or 'femme marchande', which existed in many European societies. In 1875 there were 317 women in Basel who obtained this status, *ibid.* 93. On the 'femme marchande' see Fontaine, *Économie*, 144–50. In her study on gender tutelage in the canton Basel-Landschaft, Annamaria Ryter asserts the class dimension of gender tutelage and 'freie Mittelverwaltung': wealthy women could manage their assets rather freely, whereas the makeshift economy of the underclasses was thoroughly scrutinized by the authorities. See Annamaria Ryter, *Als Weibsbild bevoogtet: Zum Alltag von Frauen im 19. Jahrhundert – Geschlechtsvormundschaft und Ehebeschränkungen im Kanton Basel-Landschaft* (Liestal, 1994), 170–5.

<sup>76</sup> Wecker, 'Geschlechtsvormundschaft', 90.

<sup>77</sup> On the different classes of creditors in insolvency proceedings, a mechanism first instituted in early modern town ordinances in order to invigorate

modern institute of the dowry can be seen as an individual female property. As recent studies on dowries have shown, this property was specifically conceptualized as a wife's credit vis-à-vis her husband and it was a potential source of legal and financial agency.<sup>78</sup> Evidence gathered from outside Basel further indicates that the inconsistent legal status of bankrupts' wives promoted their financial agency. For example, a statute in Zurich of 1810 stated that 'experience has shown that the wives of *Falliten* after the *Falliment* of their husbands mostly remain without supervision [*Aufsicht*] and often, while neglecting several respective statutes, do whatever they like with their saved female portion [*nach Belieben schalten und walten*] whereby for both public credit and the civic order very detrimental consequences arise [*wodurch für den öffentlichen Credit sowohl, als für die bürgerliche Ordnung sehr nachtheilige Folgen entstehen*].'<sup>79</sup>

However, it seems that in Basel the tutelage system, managed by the guilds, worked more rigorously than in Zurich. Contradictory practices and appropriation of inconsistent legal situations aside, the legal discussion on the subject was rooted in a patriarchal view which stressed order and hierarchy within the household. This view led to two different arguments. The first highlighted the female need

credit markets by providing legal security, see Sibylle Hofer, 'So haben Wir zur Beförderung des Credits vor nöthig befunden (...)': Kreditsteuerung durch Konkursrecht in der frühen Neuzeit', *Zeitschrift für Neuere Rechtsgeschichte*, 26 (2004), 177-88.

<sup>78</sup> Margaret Lanzinger, 'Variationen zum Thema: Mitgiftsysteme', in ead. et al., *Aushandeln von Ehe: Heiratsverträge im europäischen Vergleich* (Cologne, 2010), 460-92; Angiolina Arru, 'Die nicht bezahlte Mitgift: Ambivalenzen und Vorteile des Totalsystems im ausgehenden 19. und beginnenden 20. Jahrhundert', *L'Homme: Zeitschrift für feministische Geschichtswissenschaft*, 22 (2011), 55-69; ead., 'Schenken heisst nicht verlieren': Kredite, Schenkungen und die Vorteile der Gegenseitigkeit in Rom im 18. und 19. Jahrhundert', *L'Homme: Zeitschrift für feministische Geschichtswissenschaft*, 9 (1998), 232-51.

<sup>79</sup> Gesetz, betreffend die Bevogtigung der Eheweiber von Falliten, 13. Dezember 1810, in *Officielle Sammlung der von dem Großen Rathe des Cantons Zürich gegebenen Gesetze und gemachten Verordnungen, und der von dem Kleinen Rath emanirten allgemeinen Landes- und Polizey-Verordnungen* (Zurich, 1811), iv. 383. Also, Albert Vogt in his study of a village in canton Solothurn concludes that a husband's bankruptcy furthered a wife's agency and points to the active public roles of insolvents' wives before the court, especially in libel suits in which women defended the family's honour if their husband had lost



for protection by the law, the second, marital consent and female submission to the husband. These arguments were not mutually exclusive; for example, the legal scholar Andreas Heusler, who later wrote the first draft of the federal bankruptcy law, balanced both lines of argument.<sup>80</sup>

As a general tendency, a woman's claim to her portion in insolvency proceedings was progressively diminished during the nineteenth century. For the dowry, as a credit a wife granted to her husband, did not have the same status as other credits, as changing modalities for the rehabilitation of bankrupts demonstrate. As a precondition for the rehabilitation of a *Fallit*, all creditors had to be repaid by the bankrupt himself. This general rule was tightened as contractual relations became stronger in the context of expanding capitalist conditions. By 1849 an insolvent had to prove in detail that his creditors had not only declared themselves 'satisfied' in writing, but had in fact been paid.<sup>81</sup> Yet for the female marriage portion the exact opposite development can be observed. By 1827 a report by the civil court officials examining the rehabilitation of a *Fallit* had already come to a somewhat paradoxical conclusion. The *Fallit* in question failed to reimburse his wife's dowry, yet had repaid the other creditors. The officials, however, nonetheless granted rehabilitation, by concluding that 'the relationship of a wife to her husband's funds is of the kind that she is *not a creditor vis-à-vis him*, but only has a privilege *vis-à-vis other creditors*'.<sup>82</sup> This wife was in the paradoxical situation of not being a creditor and of simultaneously being privileged over other creditors. The unspoken assumption that a saved marriage portion de facto would support the whole bankrupt family was no longer taken into consideration.<sup>83</sup> The argument was that a wife

his civil rights. See Albert Vogel, *Ädermannsdorf: Bevölkerung, Wirtschaft, Gesellschaft und Kultur im 19. Jahrhundert* (Zurich, 2003), 201–2, 694.

<sup>80</sup> Andreas Heusler, *Motive zu dem Entwurf eines Civilgesetzbuches für den Canton Basel-Stadt* (Basel, 1866), pt. 1, 33, as quoted in Münch, *Basler Privatrecht*, 144.

<sup>81</sup> *Der Statt Basel Statuta und Gerichts-Ordnung*. . . (Basel, 1849), §276.

<sup>82</sup> STABS Justiz J6, Einzelne Rehabilitationen 1764–1845, report by the *Gerichtsamter* on the rehabilitation of Joseph Dollinger, 13 Sept. 1827, emphasis in original.

<sup>83</sup> For this tacit assumption, see Vogt, *Ädermannsdorf*, 200; also Sperber, *Property*, 248–9.

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should submit to her husband's lot and that she would also benefit from his rehabilitation. Thus this intra-household credit had a special status, positing the household normatively as a domain which stood, partially, in contrast to contractual financial dealings. In 1867 this policy with respect to rehabilitation was retained in a law.<sup>84</sup> The first draft of a federal bankruptcy law of 1874 went further.<sup>85</sup> According to this, the wife could only reclaim 50 per cent of her total wealth. Basel adopted this position in 1884 while simultaneously allowing the wife to request separation of property before her husband became insolvent, although with several impediments.<sup>86</sup> Finally, the legal doctrine that a wife held a privilege over only 50 per cent of her marriage portion was instituted in the federal bankruptcy law of 1889. Overall, the security of creditors was heightened at the expense of the wife's position.<sup>87</sup> This tendency to diminish the guarantee on the wife's assets can be integrated into the framework of a changing pattern of kinship alliances with respect to property in the context of expanding capitalist conditions and class formation. According to this interpretation, the influence of the wife's family with its long-term interests in lineage declined, and a husband's power to appropriate and to flexibly mobilize female capital augmented.<sup>88</sup>

On top of these ambiguities enshrined in a fractured, yet formalized legal framework came the practical ambiguities, since the female

<sup>84</sup> STABS BS DS 9. *Rathschlag und Gesetzesentwurf über die rechtlichen Folgen von Fallimenten, dem E. Großen Rath vorgelegt am 3. Dezember 1866* (= Rathschlag 357), 13.

<sup>85</sup> [Andreas Heusler], *Bundesgesetz [sic] über Schuldbetreibung und Konkurs: Erster Entwurf mit Motiven* (Berne, 1874), 123 ff; Münch, *Basler Privatrecht*, 144–5.

<sup>86</sup> Münch, *Basler Privatrecht*, 143.

<sup>87</sup> See Wecker, 'Geschlechtsvormundschaft', 96 for a parallel development in gender tutelage.

<sup>88</sup> This is in line with the wider implications of David Sabeau's thesis on the abandonment of legal guardianship over married women by the late 1820s. See David W. Sabeau, *Property*, 26, 47–8, 430; id., 'Allianzen und Listen: Die Geschlechtsvormundschaft im 18. und 19. Jahrhundert', in Ute Gerhard (ed.), *Frauen in der Geschichte des Rechts: Von der Frühen Neuzeit bis in die Gegenwart* (Munich, 1997), 460–79. Also Joris, 'Kinship and Gender' argues along this line. For a further elaboration of the thesis of a changing kinship pattern, see David W. Sabeau and Simon Teuscher, 'Kinship in Europe: A New Approach to Long-Term Development', in id., *Kinship in Europe*, 1–32.

marriage portion was an emblematic site of tensions over intra-household power. A final case will exemplify this. When the tailor Abraham Wertenberg was declared insolvent in 1834, his wife's portion of 6,429 francs was transferred to the guild *Saffran*, and his creditors lost 11,205 francs. When his mother died in 1845, he became able to repay most of his creditors with an inheritance of roughly 7,000 francs. In 1848 he convinced the remaining creditors, among them his wife's uncle, to grant him a remission, and he declared that he had repaid all his creditors. He then requested rehabilitation.<sup>89</sup> The investigating officials were convinced by this because they counted Wertenberg's wife's uncle as a relative. Granting intra-familial credits a special status, the authorities did not insist on full repayment. Yet the officials refused to hand his wife's portion over to Wertenberg since they assumed that his 'personality . . . hardly gives guarantee of responsible custody of even small funds'. Wertenberg saw this as a 'motion of no-confidence' and declared to the attending official 'that he, given such a restriction, would forever be a bonded man' and vehemently refused this precondition. The reporting head of the justice department suggested to the mayor that the request for rehabilitation be denied.<sup>90</sup> The authorities decreed that the marriage portion should remain in the guild's custody, except for a sum of 1,000 francs, which should be handed over to Wertenberg.<sup>91</sup> He finally gave in when he realised the weakness of his position. Yet even after that he continuously assailed both the guardian and the attending civil court official, insisting on what he perceived as his right as a head of household.<sup>92</sup> In order to get hold of his wife's substantial money, he utilized a hegemonic argumentation that stressed male authority in the household. Masculine sovereignty was, according to this line of argument, bound to marital dominance. Wertenberg claimed that having his civil rights reinstated was inseparable from full control over his wife's property. To conclude, the female marriage portion shows the difficulties the authorities encountered when examining, delineating, and assigning assets. Located at the intersec-

<sup>89</sup> STABS Justiz J6, Einzelne Rehabilitationen 1846–56, request by Abraham Wertenberg, 29 Dec. 1848.

<sup>90</sup> Ibid. *Justizkollegium*, 25 Jan. 1849.

<sup>91</sup> Ibid. *Justizkollegium*, 15 Feb. 1849.

<sup>92</sup> STABS Justiz J6, Einzelne Rehabilitationen 1846–56, *Gerichtsämter*, 10 May 1849.

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tion between family lineage and marital affiliation, it had an ambivalent status as an intra-household credit. Thus it was subject to constant contestation and legal redefinition.

### *V. Male Honour and the Variance of Social Experience*

In their requests for rehabilitation insolvents asked to have their sovereignty as citizens reinstated. This highly gendered notion embraced public and private dimensions. In 1848, the founding moment of the Swiss federal state, questions of civic inclusion and (male) suffrage became matters of intense public debate. The turbulent years 1847 to 1852, marked by a short civil war, by competing religious conceptions of social order, and by diverging visions of the nation, saw a massive wave of popular nationalist mobilization.<sup>93</sup> The counterpart to civic inclusion, the loss of civil rights, also became a highly charged touchstone for questions of social order. Yet despite the increasingly national horizon of these themes, the decision whether to grant or remove civil rights remained in the realm of the municipalities, mainly because civil rights were linked to the right to communal poor relief. Due to the municipalities' restrictions, about 17 per cent of Swiss adult men (and in Basel almost 50 per cent) were precluded from the right to vote in 1848.<sup>94</sup> When in 1848 a society of *Falliten and Accordants* (*Falliten- und Accordantenverein*) wrote a petition to the mayor, it voiced a theme of national inclusion to a government that mainly followed corporative, Old Regime modes of town-rule.<sup>95</sup> The society of *Falliten* unsuccessfully requested that

<sup>93</sup> Oliver Zimmer, *A Contested Nation: History, Memory and Nationalism in Switzerland, 1761–1891* (Cambridge, 2003), 130; Martin Schaffner, 'Direkte Demokratie: "Alles für das Volk—alles durch das Volk"', in Manfred Hettling et al., *Eine kleine Geschichte der Schweiz: Der Bundesstaat und seine Traditionen* (Frankfurt am Main, 1998), 189–226, at 210 ff.

<sup>94</sup> Albert Tanner, 'Ein Staat nur für die Hablichen? Demokratie und politische Elite im frühen Bundesstaat', in Brigitte Studer (ed.), *Etappen des Bundesstaates: Staats- und Nationsbildung in der Schweiz, 1848–1998* (Zurich, 1998), 63–88, at 70.

<sup>95</sup> For a microhistorical account of the modalities of Old Regime town-rule and citizenship, see Simona Cerutti, 'Justice et citoyenneté à Turin à l'époque moderne', in Juan Carlos Garavaglia and Jean-Frédéric Schaub (eds.), *Lois,*

insolvents be allowed to vote for the national constitution, writing that ‘the *Fallit*’s heart beats as warmly for the fatherland as the active citizen’s’.<sup>96</sup> The society of *Falliten* also petitioned that insolvents should be allowed to hold low-level administrative offices and be included in military ranks, which in the nationalist moment of 1848 touched on an especially sensitive point. The committee of the city council responsible for this issue rejected the request, stating that ‘with few exceptions, all public offices demand that the one who is consigned [to the office] enjoys public confidence’. Since *Falliten* were ‘stripped of this confidence’, they were judged not capable of officiating.<sup>97</sup> Also, the cantonal military commission answered that a military rank could only be held by ‘an upright man’, that is, a solvent, sovereign citizen.<sup>98</sup> Yet military service was one of the few instances in which the newly instituted federal state actually transformed cantonal conditions, and by 1850 the federal military commission planned to include *Falliten* in military service.<sup>99</sup>

Although written in this context, the individual requests for rehabilitation of bankrupts scarcely reflect the rhetoric of nationalist urgency; in fact, they highlight both more practical and more general symbolic dimensions of social status. What the petitions did address as a central concern was male honour. The insolvents presented themselves as caring heads of households, underscoring a set of duties the authorities had to acknowledge, even if this was not

*Justice, Coutume: Amérique et Europe latines (16e-19e siècle)* (Paris, 2005), 57–91; for a concise overview of Basel’s political system, see Martin Schaffner, ‘Geschichte des politischen Systems von 1833 bis 1905’, in Lukas Burckhardt (ed.), *Das politische System Baselstadt: Geschichte, Strukturen, Institutionen, Politikbereiche* (Basel, 1984), 37–53; on citizenship in Basel see Argast, *Staatsbürgerschaft und Nation*, 227–62; ead., ‘Das Basler Kantons- und Gemeindebürgerrecht’, in ead., Gérald Arlettaz, and Brigitte Studer (eds.), *Das Schweizer Bürgerrecht: Erwerb, Verlust, Entzug von 1848 bis zur Gegenwart* (Zurich, 2008), 187–228.

<sup>96</sup> STABS Justiz J4, Rechtliche Folgen des Falliments, bürgerliche Stellung und Ämterfähigkeit der Falliten 1782–1863, petition *Fallitenverein*, 8 Aug. 1848.

<sup>97</sup> *Ibid.* *Petitionskommission*, 19 Aug. 1848.

<sup>98</sup> *Ibid.* *Militärkollegium*, 26 Aug. 1848.

<sup>99</sup> Hans Tanner, *Die öffentlichrechtlichen Folgen (Ehrenfolgen) der fruchtlosen Pfändung und des Konkurses in der Schweiz*, Dissertation der rechts- und staatswissenschaftlichen Fakultät der Universität Zürich (Affoltern a.A., 1924), 13–14.

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matched by fulfilling other duties such as paying one's debts. The household thus provided a specific register of justification in their writing. As has been noted before, the household invoked a domain which was complementary to, though by no means disconnected from, contractual market relations. Rudolf Hunziker, the day-labourer whose account of the 'deepest misery' of his *Falliment* is mentioned at the beginning, asked for his rehabilitation in order to become 'reinstated' in his 'capacity to act as an honourable citizen'.<sup>100</sup> He explained how he had 'faithfully educated' his three children, and he reminded the mayor that at no point in time had he let his family become a burden on community welfare. The baker Johann Jakob Basler, on the other hand, recounted how his *Falliment* forced him to do precisely this: he had to commit his child to the orphanage 'and, which hurt me no less, let me appear in line with housefathers who, through carelessness and extravagance, throw themselves and their families into misery'.<sup>101</sup> Not to 'appear in line with' careless housefathers speaks of an attempt to break with the classifications of *Falliment*: in that sense, the requests for rehabilitation also document attempts to counter the social ascriptions inherent in the process of *Falliment*. By employing the normative figure of the caring housefather the petitioners entered the semantic field of morality which was marked by profoundly polysemic terms. Stressing the moral integrity and the duties of a father who 'faithfully educated' his children enabled an insolvent to use the concept of morality against the current of the authorities' argument. This is not to assert that the petitioners fully appropriated and redefined those terms, nor that they came up with morally grounded legitimations that directly opposed the authorities' view (after all, these were administrative requests by individualized subjects, not moments of collective action). The modes of justification the insolvents employed were, rather, complementary to the authorities' semantics of morality, making use of a gradual variance of meaning in order to interrupt the authorities' encoding.

The attempted break with the authorities' encoding by the *Falliten* also comes to the fore in the highly individualized narratives some insolvents told in their requests. In contrast to the rhetorics of mod-

<sup>100</sup> STABS Justiz J6, Einzelne Rehabilitationen 1846–56, request by Rudolf Hunziker, 5 Sept. 1854.

<sup>101</sup> Ibid. request by Johann Jakob Basler, 25 Dec. 1849.

esty the insolvents employed in the police interrogations, some fashioned their requests for rehabilitation as elaborated tales of misfortune, and they pointed to their striving for an honourable living. The silk weaver Johann Ludwig Hagmann, who was a non-citizen resident in Basel, recounted how he had to pay for a debt he had co-signed for someone else, how his family was affected by sickness, how he left the country in order to find work yet had to return with less than what he had started out with, and, finally, how a fire burned his house down and destroyed all his mobile assets including four weaving looms. On top of all these 'misfortunes through no fault of my own' came, following his *Falliment*, what he considered the most serious 'misfortune': 'the withdrawal of my residence permit.' The threat of expulsion points to a practical dimension of citizenship that for Hagmann and many others was of far greater importance than, though inherently intertwined with, its symbolic dimension.<sup>102</sup>

Insolvents did not passively await their rehabilitation. The authorities continuously deplored the fact that bankrupts besieged their creditors in order to obtain a statement that they had been paid.<sup>103</sup> The court officials investigated whether the supposedly satisfied creditors actually had been paid, but always lacked solid information. Whether a reduction of the debt granted by a relative or a friend would count as a statement of payment or not also involved tedious negotiation.<sup>104</sup> Payments by relatives were an especially salient issue since inheritance and advancements of inheritance were

<sup>102</sup> STABS Justiz J6, Einzelne Rehabilitationen 1846–56, request by Johann Ludwig Hagmann, 27 June 1851. Similar examples, among others, are the request by Friedrich Gerster, 20 Nov. 1854, and by Hermann Wetzel, 10 Oct. 1851. See also the request by the silk weaver Johann Jakob Grieder, 2 Dec. 1856 who, although having obtained rehabilitation, was scrutinized by the residence administration's office (*Niederlassungskommission*) since he possessed no assets whatsoever; authorities in this case hesitated to prolong the residence permit to someone who possibly might require poor relief in the future.

<sup>103</sup> STABS Justiz J6, Einzelne Rehabilitationen 1846–56, rehabilitation of Johannes Deck, report by the *Justizkollegium*, 6 Jan. 1849; rehabilitation of Jakob Konrad Ungerer, report by the *Justizkollegium*, 22 June 1852.

<sup>104</sup> *Ibid.* requests by Johann Friedrich Hurst, 14 Aug. and 13 Oct. 1846; reports by the *Justizkollegium*, 20 Aug. and 22 Oct. 1846. A similar case is the request by Hieronymus Erzberger, 15 Jan. 1846, and the respective report by the *Justizkollegium*, 29 Jan. 1846.

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the main and often the only way of acquiring the means to become rehabilitated. Authorities were acutely aware of this. When interrogating a bankrupt, the court official asked the standard question whether he could 'expect anything from anywhere' (*Ob er von irgendeiner Seite noch etwas zu erwarten habe*), meaning inheritance from both the wife's and the insolvent's family. The authorities were, of course, interested in creditors being paid. Yet they also had to make sure that the insolvents did not reimburse their creditors by taking up new debts from relatives. Confronted with intricate family relationships and their intermingled transfers, the court officials faced difficulties of assessment.

Finally, the requests for rehabilitation show that the insolvents' attitude to *Falliment* varied considerably. Certainly, this condition, highly symbolically charged, strongly affected many in their personal and social being. Also, as has been detailed, the practical consequences of the loss of civil rights were of pivotal importance, first and foremost the threat of eviction from the city. And yet it seems that in the everyday life of some *Falliten* their legal situation was of only small significance. The number of requests for rehabilitation remained low, which is probably due to the fact that many insolvents were never able to reimburse their creditors. Also, for obvious reasons the available sources say nothing about the motives of those who did *not* petition for rehabilitation. But certain requests suggest that some insolvents were not greatly impaired by the legal sanctions, and possibly some of them simply could not be bothered to become rehabilitated. To repeat an observation made earlier, in some cases other social sanctions, such as the ban on going to an inn, were seen as more invasive than the loss of civil rights.

At least some of the requests for rehabilitation give the impression that the bankrupts did not pay much attention to the procedures of *Falliment*. The day-labourer and non-citizen Jakob Lüdin claimed he simply had not realized that he was about to go bankrupt in the first place: he ignored the court summons 'and when I learned about the consequences of the procedure, it was too late'.<sup>105</sup> The tailor Friedrich Ungerer wrote in 1855 that he did not notice that a request for rehabilitation, which he had made two years before, had been

<sup>105</sup> STABS Justiz J6, Einzelne Rehabilitationen 1846–56, request by Jakob Lüdin, 14 Dec. 1849.



rejected at that time. It does not seem that his loss of civil rights restricted him much in his daily affairs. Ungerer had correctly repaid his creditors, but he said he had ‘forgotten to attach the receipts’. And since he was living in a village outside Basel, the administration’s negative decision did not reach him, or at least so he wrote. It was only when Ungerer had to start a business on his own because his increasing deafness meant that he was no longer able ‘to easily earn anything among other people’, that his thoughts returned to rehabilitation.<sup>106</sup>

These examples are given not to deny the force of the condition of *Falliment*, but rather to show the varying experiences and attitudes towards it. Instead of a pervasive, coherent set of norms one finds a variety of situatively differentiated effects, which were perceived and assessed by the *Falliten* in a multiplicity of ways. The social life of the legal category of *Falliment*, then, appears as more multi-layered than a notion of homogenous bourgeois morals assumes.

## VI. Conclusion

‘Social death’ or ‘civic death’ (*bürgerlicher Tod*) was a powerful trope for organizing experiences at the margins of nineteenth-century bourgeois society, among them the experience of *Falliment*.<sup>107</sup> Without neglecting the force of this trope, this chapter has, however, highlighted rather inconsistent situations and a variety of experiences, active insolvents and in many respects unknowing and unaware authorities (who nevertheless *did have* authority). The classifications on which the legal category of *Falliment* was based were no binary procedure, but involved a differentiated and contested process. This was especially the case with morality. Morality provid-

<sup>106</sup> Ibid. request by Friedrich Ungerer, 5 June 1855.

<sup>107</sup> Two temporally and thematically very different examples indicate the durability and adaptability of the trope of *bürgerlicher Tod*: Robert Beachy, ‘Bankruptcy and Social Death: The Influence of Credit-Based Commerce on Cultural and Political Values’, *Zeitsprünge: Forschungen zur Frühen Neuzeit* 4 (2000), 329–43; Brigitta Bernet, ‘“Der bürgerliche Tod”: Entmündigungsangst, Psychiatriekritik und die Krise des liberalen Subjektentwurfs um 1900’, in ead. et al., *Zwang zur Ordnung: Psychiatrie im Kanton Zürich, 1870–1970* (Zurich, 2007), 117–53.

ed a link: it connected notions of 'individuality' and 'social existence', which were both at stake in an insolvency procedure. Marx, in his reflections on credit and money, claimed that trust in bourgeois society was based on distrust, and that in a debt relationship, in terms of moral evaluation, the inner existence came under scrutiny. Clearly the authorities' moral judgements in Basel's bankruptcy proceedings had an economic underside, or to phrase it differently: normatively structured reputation had economic effects since only those bankrupts who regained a flawless reputation would also regain credit-worthiness. *Ex negativo*, the tales about losing credit, which the interrogated insolvents recounted, confirm how a moral logic and economic considerations were closely intertwined. Yet morals were also intrinsically bound to the calculative procedure of examining financial failure itself; morality framed the authorities' process of classifying—it was part of their practice of knowledge-production. Facing a constant lack of information and having to navigate through situations of uncertainty marked by the insolvents' intricate financial and social relationships, the civil court officials quickly encoded each individual insolvency case in their grammar of moral judgement. In that sense the powerful assigned attributes of careless housekeeping and lack of industriousness also speak of a profound insecurity on the authorities' part as regards their level of knowledge. As encoding abstracts from social contexts and elides information, the interrogation of the insolvents had to complement and confirm the authorities' first encoding. When questioned, the insolvents largely complied with their ascribed role, as their modest stories indicate. Only when requesting rehabilitation did the insolvents attempt to disrupt the authorities' encoding by telling individualized stories and by justifying themselves.

Morality as a grid of comprehension documents a continuous problematic of knowledge-gathering on the ground. The verbose, formulaic catalogue of vices and mistakes the court officials enumerated in their reports set out powerful social facts which were actually based on uncertain knowledge. It is debatable to what degree this grid of comprehension was replaced by more objectified forms of knowledge. In their works on credit reporting agencies, Berghoff and Lauer assert that moral 'character rating' was increasingly superseded by what they term more solid information and systematic practices of gathering, filing, storing, and mobilizing information. How-

ever, the insolvency proceedings in Basel assigned to morals more than a compensatory function in knowledge-gathering. Yet it is true that by the 1850s the authorities increasingly complained about the weak information in their reports.<sup>108</sup> The precarious knowledge the officials had, which was constantly undercut by debtors who eluded the procedures, made valuables disappear, or who disguised themselves, finally led the authorities to abandon their moral reports on the causes of bankruptcy. Eventually by the late 1860s these reports were increasingly rendered in tabular form, and in 1876, in accordance with new administrative arrangements and a new cantonal insolvency law instituted the year before, the court officials stopped their reports to the council altogether. '[T]he available means allow only for incomplete accounts on vague foundation', they concluded and, on the other hand, the cases for pursuit by criminal justice by then were directly delivered to the respective office.<sup>109</sup> But at the same time the grammar of moral judgement continued to frame the legal situation of *Falliment*. For when in 1867 a new law concerning the rehabilitation of insolvents was introduced, the precondition for rehabilitation hinged on the insolvents' ability to prove in detail that their bankruptcy had occurred through no fault of their own.<sup>110</sup> In order to do this, insolvents had to inscribe themselves into the very same catalogue of morality as the one which had guided the officials in the first place.

One pivotal point in the argumentation of all actors involved – interrogating police officers, reporting court officials, council members deciding on rehabilitation, and the insolvents themselves – was a notion of the household with its gendered order. This notion lay at the heart of the contradictory, insecure status of the female marriage portion as well. Also, the polysemic quality of moral terms came

<sup>108</sup> STABS Justiz J8, Collocationen 1852–59, *Justizkollegium* to mayor and minor city council, 9 Jan. 1855; *Justizkollegium* to minor city council, 25 Sept. 1855; STABS Justiz J1, Allgemeine Betreibungs- und Konkursachen, Police directorate to minor city council, 23 Aug. 1855; civil court president to minor city council, 10 Sept. 1855.

<sup>109</sup> STABS Justiz J8, Collocationen der Stadt 1869–80, report by the second president of the civil court to the mayor and city council, 7 July 1876.

<sup>110</sup> STABS DS BS 9, *Rathsschlag und Gesetzesentwurf über die rechtlichen Folgen von Fallimenten, dem E. Großen Rath vorgelegt am 3. Dezember 1866* (= *Raths Schlag* 357).

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especially to the fore in relation to the household. The household as a force field of both private and public expectations of proper behaviour proved to be fertile ground for imputation and explanation, yet also for the registers of justification the insolvents employed. Morality thus both provided 'semantic security' while at the same time being a site of incoherence.<sup>111</sup>

<sup>111</sup> Boltanski, *On Critique*, 78-81.