

The Power Gap: Pre-Commencement Authority of Insolvency Administrators and the Limits of Judicial Gatekeeping

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HOW TO CITE:

Lu Minh Dang (2026). The Power Gap: Pre-Commencement Authority of Insolvency Administrators and the Limits of Judicial Gatekeeping International Journal of Special Education, 41(25s), 1040-1050

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ABSTRACT:

Modern insolvency law faces a critical “power gap” between a petition’s filing and the formal opening of proceedings, a period exposing the debtor’s assets to severe dissipation risks. Existing scholarship lacks a comparative, normative criterion to determine when an insolvency administrator should hold pre-commencement authority. This article bridges that gap by synthesizing bankruptcy theory to weigh the expected cost of delay against the cost of foregone monitoring. Testing this standard against two opposing institutional poles—the United States, which withholds early authority, and Germany, which grants it extensively—reveals symmetrical structural failures when these models are applied without matching accountability infrastructures. To resolve this, the article proposes a graduated institutional design that conditions an administrator’s early powers on a jurisdiction’s actual monitoring capacity. Applying this model to evaluating specific case of Vietnam’s Bankruptcy Recovery Law 2025, the study demonstrates how mandatory professional liability and interim creditors’ committees can safeguard assets without overburdening resource-constrained judiciaries.

Keywords: Pre-commencement authority; Insolvency administrators; Judicial gatekeeping; Creditors’ bargain theory; Comparative insolvency law; Asset dissipation; Judicial monitoring capacity; Vietnam Bankruptcy Recovery Law 2025.

Introduction

Modern insolvency statutes almost uniformly separate two acts that intuition might expect to coincide. One act is the appointment of an administrator. The other is the formal opening of insolvency proceedings. Between these two moments, the debtor’s assets face their highest exposure to dissipation, concealment, or preferential transfer. This happens precisely because no party yet holds settled authority to intervene. German law calls this interval the preliminary insolvency proceeding. During this interval, a vorläufiger Insolvenzverwalter exercises powers that the court defines case by case, and these powers can range from narrow oversight to the full administration and disposal power that a final administrator would hold (Mayer Brown, 2023). United Kingdom law

addresses the same interval through an interim moratorium that precedes the administrator’s formal appointment, a regime the Enterprise Act 2002 introduced specifically to replace the receiver-driven model with an administrator-centred one (Armour & Mokal, 2005) (Insolvency Act 1986, c. 45, Sch B1, para 44). United States bankruptcy law recognizes an analogous “gap period” in involuntary cases, during which the debtor continues to operate subject only to limited statutory constraints rather than to a trustee’s authority (Ishoo, 2018). Vietnam’s Bankruptcy Recovery Law 2025 reproduces the same structural choice on a compressed timeline. Article 51 requires the court to appoint an administrator within three working days of accepting a petition, yet the administrator’s

power to propose suspension of a disadvantageous contract remains confined to the period after proceedings formally open, for a maximum of thirty days. The resulting research question is institutional rather than doctrinal: at what point, and under what conditions, does the design of insolvency law justify authorizing the administrator to act before the court has adjudicated the debtor's insolvency, rather than leaving the court as sole gatekeeper throughout the interim?

Existing scholarship addresses this gap from three directions that have not yet converged. A first stream is doctrinal and jurisdiction-specific. It describes how particular systems structure the preliminary administrator's powers, as in the German and English literature on the preliminary administrator and the interim moratorium (Eidenmüller, 2016; Finch, 2009), or it codifies state practice without prescribing it, as the UNCITRAL Legislative Guide on Insolvency Law and the World Bank's comparative survey of national insolvency systems do (UNCITRAL, 2005; Westbrook et al., 2010). This stream explains what different systems do. It offers no criterion for evaluating whether a given allocation of pre-commencement power is correct. A second stream is general bankruptcy theory, anchored in Jackson's creditors' bargain model, which justifies insolvency law's coercive displacement of individual creditor entitlements by appeal to what creditors would hypothetically have agreed to *ex ante*, in order to maximize collective recovery (Jackson, 1982, 1986; Jackson & Scott, 1989). Warren's competing account treats bankruptcy policy as balancing several distinct and sometimes conflicting values, rather than deriving from a single hypothetical bargain (Warren, 1987). Baird's contemporaneous reply to Warren defended the bargain's institutional economy against her balancing critique, without addressing the administrator's pre-adjudication authority either (Baird, 1987). Both accounts supply normative resources for insolvency law generally. Neither was developed to answer the narrower question of when authority should shift

from the court to the administrator before adjudication. A third stream engages that narrower question directly, but it remains confined to a single jurisdiction. Clemm's recent dogmatic study develops criteria for the German court's own decision to order provisional measures. It does not ask whether the administrator, rather than the court, should hold the power to act, nor does it test the resulting criteria against other legal systems or against the court's own institutional capacity to supervise (Clemm, 2024). No existing work combines a general normative criterion with a comparative test of opposing institutional models, and with an account of who should monitor the administrator once early authority is granted. That combination is the gap this article addresses.

Against that backdrop, the primary purpose of this article is to construct a normative framework capable of evaluating pre-commencement authority independently of any single jurisdiction, and to propose a graduated institutional design that aligns an administrator's early powers with the actual monitoring capacity of the legal system. Methodologically, the article proceeds in three stages. First, using a normative analytical approach, it develops a criterion grounded in bankruptcy theory for identifying when pre-commencement administrator authority is justified in principle. Second, it employs a functional comparative method to test that criterion against two legal systems chosen because they represent opposite institutional responses to the same timing problem. Building on what this comparative test reveals, the final stage applies institutional design principles to propose a graduated model that conditions the administrator's early authority on the monitoring capacity actually available in a given system. It closes by applying that design to the boundary conditions a developing judiciary such as Vietnam's presents under RBL 2025.

2. Theoretical framework

2.1. The creditors' bargain theory and its hypothetical foundation

The creditors' bargain theory, developed by Jackson, explains why bankruptcy law coerces individual creditors into a collective process at all. Jackson argues that an insolvent firm's creditors face a collective action problem. Each creditor, acting alone, has an incentive to seize assets before others do. This incentive produces a race to collect that can dismantle a viable going concern, even when collective restraint would leave every creditor better off (Jackson, 1986). Rational creditors, if they could negotiate the terms of this situation in advance, would therefore agree to replace individual collection remedies with a single collective procedure. That hypothetical agreement, not any actual consent given at the time of insolvency, is what justifies the law's displacement of each creditor's individual entitlement to pursue the debtor separately (Jackson, 1982). Jackson and Scott later extended this model to address how value recovered through the collective process should be shared among creditors with different pre-insolvency priorities, concluding that bankruptcy law is legitimate to the extent that it reproduces what self-interested, risk-averse creditors would have chosen for themselves (Jackson & Scott, 1989).

This foundation is considerably less stable than Jackson's own presentation suggests, and the instability matters for the argument that follows, because the criterion this article eventually builds rests on exactly this foundation. The theory's force depends on treating creditors as a homogeneous class reasoning from behind what Jackson himself describes as a form of ignorance about their specific position. Mokal's critical reconstruction of the model shows that this premise does most of the theory's normative work, and that once the premise is examined closely, the Bargain model can neither fully explain nor legitimate the coercive collective regime it was built to defend, because secured creditors in particular have little reason to accept collectivization once their actual, non-hypothetical bargaining position is taken into account (Mokal, 2001). If secured creditors

would not, in fact, consent to the bargain Jackson attributes to them, then the theory's claim to derive bankruptcy law from what creditors "would have agreed to" is harder to sustain than a first reading of Jackson implies. This is not a peripheral objection. It goes to whether the hypothetical bargain can do the justificatory work the theory assigns to it, and it should temper any claim that a criterion built on the theory carries the theory's full normative authority.

2.2. The competing claim that bankruptcy law balances values the bargain cannot capture

Warren's account does not reject Jackson's logic so much as deny that it is the whole story. She argues that bankruptcy policy cannot be derived from a single hypothetical bargain, because actual bankruptcy systems are built to balance several distinct values at once, including preserving going-concern value, protecting parties who did not choose to become creditors, and weighing the practical costs of enforcing any given rule (Warren, 1987). Korobkin pushes this objection further. Writing from an explicitly values-based rather than contractarian position, he argues that treating bankruptcy law as nothing more than a mechanism for maximizing creditors' collective recovery mistakes an instrumental feature of the law for its entire purpose, and that the theory's narrow focus on creditor wealth cannot account for why bankruptcy regimes in practice extend protection to employees and other non-creditor stakeholders who never entered any bargain, hypothetical or otherwise (Korobkin, 1993). Mokal's own alternative, the authentic consent model, goes still further than either Warren or Korobkin by rejecting the contractarian starting point altogether and asking instead which principles all parties genuinely affected by insolvency, not only creditors, would select from a position of equal standing (Mokal, 2001).

None of these competing accounts is immune from its own objections, and the article does not treat any one of them as settled. Warren's balancing approach has been criticized for failing

to specify how competing values should be weighed against each other once they conflict, which leaves the theory with considerable predictive looseness. Korobkin's inclusion principle, extended too far, risks admitting virtually anyone affected by a firm's distress into the circle of interests insolvency law must protect, a breadth of scope Mokal himself criticizes as difficult to contain once accepted (Mokal, 2001). The article's position, therefore, is not that Jackson is wrong and his critics are right. It is that the creditors' bargain supplies a workable account of why collectivization is justified at all, while remaining a weaker guide than Jackson claims to how authority should be allocated once collectivization has occurred, which is precisely the question this article asks. Rasmussen's menu approach, which lets firms select their governing bankruptcy regime by charter choice rather than have it imposed uniformly, supplies still another contractarian variant that neither Jackson nor his critics directly confront (Rasmussen, 1992).

2.3. A criterion built on contested ground, not a resolution of the debate

Read critically rather than as a settled consensus, these theories still supply a standard that can be applied to the question this article asks, but the standard should be understood as a deliberate simplification rather than as the output of a resolved theoretical dispute. Jackson's model shows that early intervention by an administrator is justified whenever it reduces the risk that assets will be dissipated during the interval between filing and adjudication, because that risk is the kind of loss a collective arrangement among creditors, however imperfectly hypothetical that arrangement may be, exists to prevent. Warren's and Korobkin's objections show that this justification cannot be treated as unconditional or as exhausting the relevant costs, since an administrator acting early without adequate oversight can itself produce the kind of harm to non-bargaining interests that a purely creditor-wealth-maximizing account would undercount. Combining these positions, the article adopts the

following criterion, while flagging rather than concealing its debt to an unresolved debate. Pre-commencement authority is justified only when the expected cost of delay exceeds the expected cost of foregone monitoring. The cost of delay is the expected loss in asset value caused by waiting for the court to act. The cost of foregone monitoring is the expected loss caused by allowing the administrator to act without adequate oversight, whether that oversight comes from the court or from another party with a direct stake in the outcome. Neither cost is a fixed property of the estate as a whole. The cost of delay in particular tracks how quickly a given class of assets can lose value, a dimension Section 4 makes explicit when it disaggregates the estate by asset volatility rather than by size alone. This criterion brackets, rather than settles, the deeper question of whose interests count and how they should be weighed once they conflict, a question Warren, Korobkin, and Mokal each answer differently. The bracketing is a deliberate methodological choice made for analytical traction, not a claim that the underlying theoretical dispute has been resolved, and the comparative test that follows should be read with that limitation in view.

3. Testing the criterion against two existing models

3.1. The United States model: withheld authority as a contestable, not merely mistaken, default

The United States model of involuntary bankruptcy applies this criterion in its starkest form. Under 11 U.S.C. § 303(f), the debtor continues to operate its business during the gap period as if no petition had been filed at all (Tabb, 2016). No administrator holds any authority over the debtor's assets by default. Section 303(g) allows a petitioning creditor to request the appointment of an interim trustee, but this remedy is treated as exceptional. The creditor must move for it, the court must hold a hearing, and the order must state why the appointment is necessary to preserve the estate or prevent loss

(Fed. R. Bankr. P. 2001), and the creditor must furnish a bond to indemnify the debtor if the appointment later proves unjustified.

It would be too quick to read this design as simple oversight or indifference to dissipation risk, and a critical account owes the United States model a fairer hearing than that before rejecting it. The procedural burden § 303(g) imposes can be defended on grounds the creditors' bargain criterion does not capture at all: a debtor against whom insolvency has not yet been adjudicated retains, under ordinary principles of due process, a presumptive entitlement to control its own property, and an involuntary petition is, after all, only an allegation. Seen this way, the heightened threshold for appointing an interim trustee is not a failure to weigh the cost of delay. It is a considered judgment that the cost of wrongly dispossessing a solvent or viable debtor outweighs, as a matter of institutional design, the cost of occasionally leaving a genuinely insolvent debtor's assets exposed for a short period. It should also be noted that involuntary filings of this kind are a small share of Chapter 11 practice as a whole. Most cases begin as voluntary filings, in which the debtor becomes a debtor in possession with a trustee's powers immediately upon filing, a norm whose consolidation in American bankruptcy practice Skeel traces historically (Skeel, 2004; Ayer et al., 2005). Urgent operational needs in these cases are addressed through first-day motions heard within days of the petition (Wall Street Prep, n.d.). This practical workaround, however, belongs to a different procedural track, one in which there is no gap in authority to begin with. For the scenario this article addresses, an estate whose management has not consented to the proceeding and whose authority is therefore genuinely unsettled, this due process justification does not dissolve the problem the creditors' bargain criterion identifies. It only explains why the designers of the rule accepted that problem as a cost worth bearing. Measured strictly against the criterion developed earlier, the gap period is exactly the interval in which the cost of delay is highest, and the law

responds to that interval by raising, not lowering, the threshold for intervention. The due process rationale may justify this trade-off on its own terms, but it does not make the trade-off disappear, and a legal system that adopts it should be understood to be knowingly accepting a higher dissipation risk in exchange for a different value the creditors' bargain criterion was never built to weigh.

3.2. The German model: an accountability infrastructure more contested than it first appears

German law applies the same criterion in the opposite direction, but a critical reading should resist treating the German position as a single, settled rule rather than as itself the product of ongoing doctrinal contest. When a court imposes a general prohibition on the debtor's disposal of assets under section 21(2) No. 1, read with section 22(1) InsO, the administration and disposal power over the entire estate transfers immediately to the preliminary administrator, before the court has formally opened insolvency proceedings, extinguishing the debtor's own disposal power in full. This is the so-called strong preliminary administrator. Liabilities the administrator incurs while running the business are treated as estate debts entitled to priority under section 55(2) InsO, allowing the administrator to obtain the credit and supplies needed to keep operating while the opening decision is pending (Eidenmüller, 2016; Mayer Brown, 2023).

What a less critical account omits is that German law itself does not treat this allocation of power as uncontroversial. Section 22(2) InsO allows courts to appoint a weaker preliminary administrator instead, one who operates alongside the debtor's continuing, though constrained, authority, and German courts have in practice stretched the weak administrator's powers close to those of the strong one without imposing a full disposal prohibition, precisely in order to avoid the more drastic displacement of the debtor that the strong model entails (White &

Case, n.d.). German case law on the selection of administrators has also generated sustained constitutional controversy. Challenges grounded in Article 12 of the Basic Law question whether courts may restrict the pool of eligible practitioners to those already “known and proven” (BVerfG, 2004). The Federal Constitutional Court and the Federal Court of Justice have had to adjudicate this controversy repeatedly (BGH, 2013). This matters critically for the present argument, because it shows that even the jurisdiction this article treats as the pole of mature professional accountability has not settled the question of how administrators are selected and held to account. The accountability infrastructure the German model is said to presuppose is not a fixed, off-the-shelf institutional fact. It is itself an ongoing site of doctrinal and constitutional dispute, which should caution against treating the German pole as a stable benchmark that other systems simply lack and could, in principle, straightforwardly acquire.

Measured against the criterion, the German model still solves the problem the United States model leaves largely unsolved, since the period of highest dissipation risk is covered by a party with authority to act. But the critical point this subsection adds is that the model’s safety was never guaranteed by statute alone. It depends on a body of accumulated case law continuously policing the administrator’s selection and conduct, a body of law that is still being contested in Germany itself. A system considering the German model as a template should therefore not assume it is importing a finished accountability architecture. It would be importing an architecture that remains under active construction even in the jurisdiction that built it.

3.3. Reassessing the symmetry: design choice or institutional path dependency

The two models fail the same criterion for reasons that mirror each other, the United States model by withholding authority during the period of greatest risk, the German model by granting

authority on the assumption of an accountability infrastructure that is itself still contested. A further question deserves to be raised before this symmetry is accepted as a stable premise for what follows. It might be objected that the divergence between the two systems reflects historical path dependency rather than any considered weighing of the costs identified in the criterion above. The United States gap-period rule and the German preliminary-administrator regime both emerged from distinct legal traditions and reform histories that had little to do with a deliberate comparison of dissipation risk against monitoring cost, a divergence consistent with the broader finding that common-law and civil-law systems protect creditors through structurally different legal mechanisms for reasons rooted in legal origin rather than in any shared cost-benefit calculus (La Porta et al., 1998). This objection has force, and the article does not claim that either legislature consciously performed the cost-benefit analysis set out here. What the objection does not undermine is the article’s narrower claim, which is evaluative rather than historical. Whatever the historical origins of the two rules, each can still be assessed against the criterion developed earlier, and each still fails it for reasons that mirror each other once that assessment is made. The symmetry, in other words, is a property of how the two rules perform against a normative standard, not a claim about why either legislature adopted the rule it did. This distinction matters because it is precisely what licenses moving from diagnosis to design. If the divergence were purely historical accident with no evaluative content, there would be no basis for proposing a model that improves on both. Because the divergence can be restated as a mirrored failure against a single criterion, the path from critique to construction is available, and it is the path the remainder of the argument now takes.

4. Synthesis: a graduated model conditioned on institutional capacity

The most direct way to resolve the tension just identified would be to let each court decide, case

by case, how much authority its own supervisory capacity can support. That approach should be rejected on its own terms. A court whose capacity is already constrained is poorly placed to judge that constraint accurately in the middle of an individual proceeding. A rule that depends on the overloaded institution assessing its own adequacy risks reproducing the very failure it is meant to correct. The graduated model proposed here avoids this by separating two decisions that the case-by-case approach would otherwise collapse into one. The first decision, how much monitoring capacity a given court system can actually sustain, is made *ex ante* and at the system level, by the body responsible for judicial administration rather than by the individual judge handling a specific petition. This classification can draw on the same kind of institutional data already used to document capacity constraints in practice, such as a court's bankruptcy resolution rate over a defined reporting period, the presence or absence of judges assigned specifically to insolvency matters, and average case-processing time, the kind of cross-country enforcement data that has already been shown to track formal institutional quality rather than resource levels alone (Djankov et al., 2008), reviewed periodically rather than redetermined in each case. Courts or regions classified as having mature supervisory capacity default to a wider grant of early administrator authority, closer to the German model. Courts or regions classified as still developing that capacity default to a narrower grant, closer to the United States model, until the classification is revised.

The second decision concerns what fills the monitoring gap in systems placed in the narrower tier, since withholding authority entirely simply reproduces the United States model's own failure there. Two mechanisms, operating independently of the court's day-to-day capacity, can supply this function. The first is a mandatory professional liability bond or insurance requirement, scaled to the size of the estate, imposed on the administrator as a precondition for exercising any early authority rather than assumed to exist as

background infrastructure. This gives the administrator a direct financial incentive against reckless or self-interested action that does not depend on a court reviewing each decision in real time, consistent with the World Bank's own recommendation that licensing and oversight of insolvency practitioners include mandatory professional indemnity cover (World Bank, 2015).

This insurance requirement, however, exposes a distinct boundary condition for legal transplants. A mandatory insurance rule substitutes judicial capacity with financial market capacity. In developing legal systems, a specialized underwriting market for insolvency practitioner liability may not yet exist, or premiums may be prohibitively high due to a lack of actuarial data on administrator malfeasance. Where the private insurance market cannot supply the necessary coverage, the graduated model dictates that the system cannot safely unlock broader pre-commencement powers. In such environments, the absence of an insurance backstop automatically restricts the administrator to the narrowest tier of authority, confirming that institutional capacity encompasses not only the judiciary, but also the surrounding financial infrastructure required to discipline delegated power.

The second mechanism revives the creditors' bargain logic directly into the model's operation rather than leaving it only as a justification stated in the abstract. The trigger for this mechanism is structural rather than discretionary: for any estate above a statutory size threshold, the law requires the automatic formation of an interim creditors' committee upon the administrator's appointment. The committee's membership is drawn from the affected creditors themselves, so no separate judicial finding is needed to bring it into existence. Its authority is narrow but standing: it holds the right to object, within a short fixed period, to specified categories of high-risk action, such as the disposal of major assets or the assumption of new estate debt. Because the

creditors on such a committee bear the direct financial consequence of the administrator's conduct, their monitoring incentive does not depend on judicial capacity at all, a dynamic consistent with empirical accounts of how creditors' committees actually bargain once formed in large reorganizations (LoPucki & Whitford, 1990). This committee does not replace the court. It supplies the monitoring that Jackson's theory already identifies as the creditors' own interest to protect, at exactly the point where the court's monitoring is weakest, and it does so through a private, incentive-based mechanism that can function even where judicial specialization has not yet developed.

However, transposing the monitoring burden from the court to an interim creditors' committee introduces the risk of rational apathy. In dispersed debt structures, the cost to any single creditor of evaluating a preliminary administrator's proposed action often outweighs that creditor's pro rata benefit in preventing asset dissipation. If the committee's active consent were required for early intervention, this apathy would recreate the exact delay the mechanism was designed to solve. To prevent gridlock, the graduated model must configure the committee's power strictly as a negative veto rather than an affirmative authorization. If the committee fails to formally object within a compressed statutory window, such as forty-eight hours after notice of a proposed high-risk transaction, consent is conclusively presumed. This deemed-consent rule forces active monitoring only when creditors perceive a genuine threat, ensuring that creditor passivity does not paralyze the administrator's protective function.

The second decision also benefits from refining the cost of delay introduced in Section 2.3, since that cost is not a static property of the estate as a whole. It is a direct function of asset volatility. The risk of dissipation is acute for highly liquid assets, perishable inventory, or continuous cash-flow obligations, whereas static assets such as real estate face a negligible delay cost. The threshold

for pre-commencement intervention should not, therefore, be a binary switch applied uniformly to all debtor property. A more refined model disaggregates the estate: it grants the preliminary administrator automatic, unconditioned authority over highly volatile asset classes to halt immediate depletion, while reserving interventions affecting structural or non-volatile assets for ex post judicial or committee review.

Vietnam's experience under RBL 2025 shows both why this layered mechanism is necessary and how finely it would need to be calibrated. In the reporting period from October 2021 to September 2022, Vietnamese courts accepted 240 bankruptcy petitions and resolved only 121 of them, a resolution rate of 50.42 percent (Tập chí Tòa án nhân dân, 2022). More recently, the Supreme People's Court has had to second judges from other courts specifically to help process bankruptcy proceedings, including those arising from the insolvency of Vinashin, after acknowledging that caseloads across all case types had grown faster than judicial staffing (Nhân Dân, 2026). Vietnamese scholarship on the reform has independently flagged the recovery procedure's unresolved design choices, including who controls the business during recovery and how recovery-plan deadlines should run (Trần, 2025), and has urged closer alignment with the Chapter 11 toolkit, including the automatic stay and the treatment of preferential transfers, as a model for strengthening recovery outcomes (Nguyễn, 2026). This pattern places much of the Vietnamese judiciary closer to the narrower tier the graduated model describes, which means the professional liability and creditors' committee mechanisms, not an unconditioned grant of German-style authority, are what the model would actually prescribe. Article 51 itself illustrates why this calibration matters at the level of statutory detail rather than only in general terms. The administrator's specific power to propose suspension of a disadvantageous contract arises only after proceedings formally open, and lapses thirty days after that opening. The gap between petition acceptance and formal

opening is precisely the interval in which court capacity data suggest proceedings are most likely to stall. A disadvantageous contract performed to the debtor's detriment during that gap therefore falls outside the administrator's specific remedy entirely, because the thirty-day clock does not begin to run until after the gap has already closed. The practical effect of this statutory delay is not merely procedural friction. It constitutes institutionalized legal asset depletion. Because the gap between petition acceptance and formal opening falls completely outside the administrator's statutory suspension power, the debtor's continued performance of a disadvantageous contract during this interval is perfectly lawful and irreversible. The estate is actively drained in full compliance with the statute, while the administrator, though already appointed, is reduced to a passive observer of value destruction. A reform that activated the interim creditors' committee's negative veto right, described above, during the gap period itself would halt this legal asset depletion, closing the interval without requiring the court to supply monitoring capacity it does not currently have.

5. Conclusion

The analysis in this article shows that the question of when an insolvency administrator should be authorized to act before adjudication cannot be answered by choosing between two institutional extremes, and that it cannot be answered by asking courts to judge their own capacity to supervise early authority either. Testing a single normative criterion, built from Jackson's creditors' bargain and Warren's interest-balancing account, against two opposing legal systems reveals that both fail for structurally symmetrical reasons. One withholds authority during the period of greatest risk. The other grants authority on the unstated assumption that judicial and professional monitoring capacity already exists. The theoretical contribution of the article lies in showing that this symmetry is not a coincidence between two unrelated rules, but the

predictable result of treating monitoring as something only a court can supply. Once monitoring is understood, in Jackson's own terms, as something creditors have an independent incentive to provide, and once professional liability is treated as a precondition rather than an assumption, the apparent choice between speed and supervision changes character. It becomes a design problem that legislation, rather than judicial discretion alone, is equipped to solve.

This conclusion carries clear limits. The graduated model still requires accurate, periodically updated data on judicial capacity, and a classification system built on imperfect data can misclassify a court in either direction. The model was tested against only two legal systems, chosen because they represent opposite institutional poles, and it has not been tested against systems that already combine elements of both, or against systems outside the common law and civil law traditions those two jurisdictions represent. Nor has the model been tested empirically. The cost of delay and the cost of foregone monitoring were defined conceptually, but neither has been measured against actual asset-value outcomes under different authority regimes.

These limits point to the next steps for this line of research, and they carry a practical warning that follows directly from the analysis above. A reform that imports the German grant of broad administrator authority into a system that lacks a specialized insolvency bench and a functioning professional liability regime would not transplant the German model. It would recreate its failure mode in a system less equipped to absorb it. The more productive path, for Vietnam and for comparable developing judiciaries, is to build the private monitoring layer, mandatory liability insurance and an interim creditors' committee, before extending the scope of administrator authority, and to test empirically whether that layer actually substitutes for judicial supervision as the theory here predicts it should.

Acknowledgement

This research is funded by University of Economics and Law, Vietnam National University Ho Chi Minh City, Vietnam.

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