

## Law reform, registration and credit in seventeenth century England

Seiichiro Ito (Ohtsuki City College, Japan)

### Abstract

The law reform movement during the Interregnum in England produced numerous proposals for land registries. After the Restoration, however, the idea of land registration enlarged to having economic connotations and created the controversy over the role of registration as a settled and reliable basis of credit. While the discussions over law reform were entirely in the context of English law, the ensuing controversy on whether and how land registries should be erected was set in the more economic and international field where England had to compete with and, sometimes, to imitate her rivals in trade, particularly Holland. One side of the English pamphleteers in the controversy repeatedly insisted that land registration would clarify the ownership of land, offer safer security to make a firm foundation of credit, and, as a result, improve English trade. The other side argued that such excessive openness of information would be hazardous to credit. However, it was clear that for both of them the central issue was about the role of registration in creating more reliable credit.

### Introduction

In 1678 Mark Lewis said in his bank-proposal that 'Registers will make Security, Security will bring money'. Therefore, registers will bring money.<sup>1</sup> As I will show in this paper, this syllogism did not sound strange to the seventeenth-century pamphleteers on trade and credit, while for us registers and money may appear an unfamiliar matching. During the seventeenth century, particularly in its latter half, bank-projectors often argued that security (or fund), whether its content was cash or goods or land, was the essential part of banks. If so, it would have naturally been assumed among those projectors that registration of the content of security was both

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<sup>1</sup> Mark Lewis, *Proposals to the king and parliament, or, A large model of a bank : shewing how a fund of a bank may be made without much charge or any hazard, that may give out bills of credit to a cast extent, that all Europe will accept of rather than money* (London, 1678), p. 33[32].

necessary and useful for improving the quality of credit offered by those banks. When people were still haunted by ‘want of money’ and survived by vulnerable and unreliable credit,<sup>2</sup> registration of estates was expected to help make credit reliable and trustworthy. In fact, in the late-seventeenth century there was a controversy over establishment of a registry or registries and its fundamental issue was about the role of a registry or registries in relation to credit and trade. In this paper, firstly going back to the properly legal discussions in the Interregnum, I try to reveal that the issues and vocabulary of the controversy after the Restoration came from the forerunning debates in the law reform movement during the Interregnum. And then, focusing on the relationship between registration and credit, I follow the controversy over registration of estates in the latter half of the seventeenth century in England. In the illustration of the debates, I try to show that among the pamphleteers at that time credit which was requisite for improvement of trade was supposed to be unable to exist without some reliable foundation and that registration was one of the greatest potential candidates for that role.

## I

Facing increasing intricacy of the transfer of land and obscurity of the processes of seisin and enfeoffment in 1660s, Russell M. Garnier said, ‘[n]o wonder, then, that we find in the writings of this age frequent attempts to revert back to forms of public registry, which had so simplified alienations in primitive times’.<sup>3</sup> While, as we will see later, during the Interregnum such difficulty in dealing with land-ownership had been an issue in the debate on law reform, after the Restoration it produced an enlarged and endless controversy which always accompanied the questions about trade and credit.

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<sup>2</sup> See J.K. Horsefield, *British monetary experiments 1650-1710* (London, 1960); E. Kerridge, *Trade & banking in early modern England* (Manchester, 1988); R.D.Richard, *The early history of banking in England* (London, 1965[1929]); B.E.Supple, ‘Currency and commerce in the early seventeenth century’, *Economic History Review*, 10, (1957), pp. 239-255. Concerning the vulnerability of credit in the local community of England in the seventeenth century, see C. Muldrew, *The economy of obligation* (Basingstoke, 1998).

<sup>3</sup> Russell M. Garnier, *Hitory of the English landed interest: its customs laws and agriculture*, vol.II (New York, 1908), p. 96.

In fact, a series of reports from ‘the Committee for considering the Decay of Trade, Fall of Rents, &c.’ in the House of Lords during the winter of 1669-70 showed why in this year and afterwards a number of pamphlets concerning registration were written and why the debates among them were unfailingly filled with economic issues. On 24 November 1669, in the House of Lords the Earl of Essex, a member of the committee, reported that ‘the Lords Committees do think fit to offer to the Consideration of this House Three Things, as in their Opinions most conduceable to those Ends; as, that it is adviseable.’ ‘Three things’ were ‘Interest of Money’, ‘Registers for Estates’, and ‘Naturalization’. On the second topic, the earl gave a comment that ‘One Cause of the Decay of Rents and Value of Lands is the Uncertainty of Titles of Estates; and, as a principal Remedy for this, their Lordships offer it as their Opinion to this House, That there be a Bill of Registers for the future.’<sup>4</sup> The economic situation was bad to the extent that ‘the Committee for considering the Decay of Trade, Fall of Rents’ was named and the remedies against high interest, uncertainty of titles, and the want of people were the most needed. Registration of estates was mentioned here clearly as an effective solution to those economic difficulties. Thus, though some issues seeming to belong to the field of justice, such as reducing lawsuits and preventing frauds, had had been persistently discussed in numerous pamphlets on registration for decades, every point found in the controversy was, as we will see, involved with economic matters.

On the other hand, however, it should also be reminded that the issues and vocabulary of those discussions on registration and credit were without doubt inherited from the controversy on the law reform in the Interregnum or even earlier. As, quoting from and referring to quite a few pamphlets by the law reformers, the 62-page-long preface of Fabian Philipps’s *The reforming registry*, which was added to the edition published in 1671, surveyed, there had already been a continuous discussion of the pros and cons of registration of property:

*Mr. Charles George Cock ... would have an Office of Inrollment at least in the Head Town of every County to be of necessity, and a passing of the Wives consent by sealing the Deed of Sale, or releasing it before two Justices of the*

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<sup>4</sup> *Journal of the House of Lords*, vol. 12: 24 November 1669, p. 274.

*Peace, be as good as a Fine.*’; ‘Mr. Hugh Peters ... is so afraid there should not be Courts and Regi- / stries enough, and so willing to Cantonize the more Ancient Courts, and make a breed of new, as he doth earnestly propose the setting of *Registries in every Parish of the Nation* (which after the rate of one in every Parish, may amount unto) *to be kept every year, by two men chosen to that work, wherein all Alienations and Leases of Lands and Houses are to be Entred, and Copies thereof transmitted to the Country Towns*’<sup>5</sup>; Mr. William Sheppard ‘Hath proposed to the *Lord Protector ... That a Country Registry be erected / in every Coutny; and that every man that will, may enter his Deeds there*’<sup>6</sup>; ‘J.V. ... Adviseth, *That Publick Registers may be speedily established throughout his Dominions, which will prevent / Frauds and Contentions*’.<sup>7</sup>

All the names listed above were found in the controversy on the law reform during and before the Interregnum: Charles George Cock and Hugh Peters were the members of so-called Hale Commission, which was set up in January 1652 ‘to consider of the Inconveniences in the Law’<sup>8</sup>; William Sheppard was the author of *England’s Balme*, ‘the most comprehensive set of law reform proposals’ during the Civil War and Interregnum.<sup>9</sup> The law reform was urged as a remedy against the ‘slow, expensvive, and arbitrary’ judicial processes of the Court and the voices of the reformers was enhanced by the launch of the new government in 1649, though there had already been substantial discussions over the Common Law among Edward Coke, Francic

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<sup>5</sup> Fabian Philipps, *The reforming registry, or, A representation of the very many mischeifs [sic] and inconveniences which will unavoidably happen by the needless, chargeable, and destructive way of registries : proposed to be erected in every county of England and Wales for the recording of all deeds, evidences, morgages, and whatsoever may incumber the sale or settlement of lands not being copyhold : with the small or no efforts or atchievements of the notarial bonds of Holland, guarantigiated of Spain, and the bonds with clauses of registration in Scotland, in the securing of creditors and lessening of charges and contention : the greatest part thereof being written in the year 1658 / by Fabian Philipps* (London, 1671), c2.

<sup>6</sup> Philipps, *The reforming registry*, 1671, g2.

<sup>7</sup> Philipps, *The reforming registry*, 1671, h.

<sup>8</sup> *House of Commons Journal* Volume 7, 1802, p. 67.

<sup>9</sup> D. Veall, *The popular movement for law reform, 1640-1660* (Oxford, 1970), p.84. Also see Veall, pp. 78-96.

Bacon, and John Lilburne.<sup>10</sup>

Most of the law reforming pamphlets included a proposal for registration, whether just a short reference or a comprehensive discussion. They shared some issues. First of all, generally, every reformer saw the necessity for keeping record in each county and / or in Westminster, however it would be prosecuted. Secondly, prevention of fraudulent deeds and conveyances were the basic motivation for registration, though the contents to be registered were varied among the proposals.<sup>11</sup> In any case, the pamphleteers feared that registration would bring the discovery of concealed contracts and would cause the increase of lawsuits and their costs. Although the boom of the laws reforming pamphlets came in 1651, 1653, and 1659, the main frame of their arguments concerning registration remained the mixtures of those issues.

Hugh Peters found the remedy for the confusion of law in 'keeping Records in all Counties of all mens estates and alienations, &c. and those transmitted to a grand or leiger Record at *Westminst[er]*'.<sup>12</sup> In his other pamphlet published four years later, arguing that justice was 'more necessarie to the immediate subsistence of a Common-wealth' than religion and mercy, registers came first in twenty-one proposals of the 'short *Model* for the *Law*, upon which Justice hang's'. He proposed 'Registers to bee settled in everie Parish, kept every year by two men chosen to that work; and all Lands and houses entred into that book distinctly; and the Copie thereof transferred to the Countie-Town, in case of fire, &c. and in these books all alienations &c. entred'.<sup>13</sup>

In the beginning year of the new government, an anonymous author of a

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<sup>10</sup> Veall, *The popular movement*, 1970, p.56. Also see chap. III. Concerning the pamphlets proposing registration, see pp. 219-24.

<sup>11</sup> Veall says that during the Interregnum, '[p]roposals for registration varied from what is now known as a deeds registry to a land registry.' Veall, *The popular movement*, 1970, p. 219.

<sup>12</sup> Hugh Peters, *A Word for the Armie and two Words to the Kingdome, to cleare the one and cure the other. Forced in much plainness and brevity from their faithfull servant H. Peters*, [London, 1647.], p. 13.

<sup>13</sup> P[eters], H[ugh], *Good Work for a Good Magistrate, or, a short cut to great quiet, by honest ... hints given ... for the regulating of most cases in this Commonwealth, concerning religion, mercie, justice*, [London,] 1651, pp. 27-8.

pamphlet entitled *The Representative of divers well-affected persons in and about the City of London touching the present laws and government*, thought that it was necessary ‘to prevent the defrauding and defeating of Creditors, and other persons, by fraudulent and covenous private estates and conveyances’, and then proposed that ‘there [should] be Commissioners appointed in each Country for the acknowledging of all sales, Bargains, contracts, and conveyances, &c. and the same to be afterwards registred in a publick Book Alphabetically’.<sup>14</sup>

Another pamphleteer, following the ‘former Proposals’, also proposed erecting ‘a publique Register, in every County, to Register all Deeds, Contracts, Agreements, Bargaines’ and the ‘Commissioners appointed to receive their acknowledgment’. This was supposed to avoid ‘the defrauding of Creditors, and divers suits and inconveniences, that come by intayles’.<sup>15</sup>

William Leach’s proposition also intended to prevent ‘great numbers of secret, fraudulent Deeds and Conveyances, and other frauds and deceits’. He thought that such ‘frauds and deceits’ caused troubles and ‘great excessive charges and tedious Suits’. Registration at each region was the remedy for such problems: ‘a true Copy of all and every Deed, Indenture, bargaine or sale, Lease, Gift, Grant, or other Conveyance ... shall be made and delivered into the Keeper or Keepers of the Rolls ... by the Supreme Authority of this Nation, to be appointed, constituted or ordained in that behalf, of, and for every County, City, Burrough[sic], Town-Corporate, or Hundred, or division of such County’.<sup>16</sup>

Henry Robinson was a law-reformer, contending with ‘*superfluous Offices*’, ‘unnecessary *Fees*’, and ‘*the Multiplicity of Courts of Justice*’. To abbreviate

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<sup>14</sup> *The Representative of divers well-affected persons in and about the City of London touching the present laws and government; ... With XXXIX new proposals ... tendred to the consideration of the Commons assembled in parliament, etc.*, London, 1649, p. 19.

<sup>15</sup> *Several Proposals tendered to the consideration of the Honorable Committee for regulating of Courts of Justice, for a through reformation thereof, etc.*, [London, 1650], p. [1].

<sup>16</sup> William Leach, *Propositions 1, for recording and registring of deeds and conveyances; 2, judgments, statutes and other incumbrances upon lands and tenements; 3, for inabling creditors to have the benefit of copyhold and intangled lands and tenements for their satisfaction, etc.*, [London], 1651, pp. 2-3.

and prevent '*Lawsuits and Cavils*', he proposed establishing '*the Country Register*' of conveyances, bonds, and bills of debt. Robinson, as an active promoter of the social reform, suggested that registration would also '*exceedingly facilitate and enlarge Trade and Navigation.*'<sup>17</sup>

J.F. proposed registration in every shire of 'all Leases, Bargains, Conveyances, Statutes, Judgements, Recognizances, and the like, which any way concern the Lands in that Shire'<sup>18</sup> in 1653, the next year of setting the Hale committee. But, in the same year, some pamphlets suspicious about the result of registration appeared. The author of a pamphlet entitled *Reasons against the bill, intituled, An act for countie-registers, wills and administrations ...* warned that, if all deeds had to be registered, 'many thousands' would be 'made guiltie of undoing themselvs[sic]; being made to disco- / ver the flaws in the Titles to their estates'. Then the commonwealth would be swarmed with 'Informers, Prowlers, and searchers unto other men's Titles' and, at last, would cause 'multiplying Suits'.<sup>19</sup> Wills, inventories, rentals, and lands, J.W., a reformer calling himself 'a well wisher to the Public', thought, should be registered so that 'nor those to whom Gifts are bequeathed, may not be wronged, nor creditors defrauded.' However, he added a caution about the publicity of registered information: the contents of registration were 'to be kept secret from all persons but those that are really concerned in the purchase, mortgage, or ingagement.'<sup>20</sup>

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<sup>17</sup> Henry Robinson, *Certain considerations in order to a more speedy, cheap, and equall distribution of justice throughout the nation: most humbly presented to the High Court of Parliament of the most hopeful common-wealth of England*, London, 1651, pp. -6 - -2.

<sup>18</sup> J.F., *The laws discovery: or a brief detection of sundry notorious errors and abuses contained in our English laws, whereby thousands are annually stript of their estates, and some of their lives. By a well-wisher to his countrey*, London, 1653, p. 5.

<sup>19</sup> *Reasons against the bill, intituled, An act for countie-registers, wills and administrations, and for preventing inconvenience, delaie, charge, and irregularitie in chancerie and common law, (as well in common pleas as criminal and capital causes) and for settling countie-judicatures, guardians of orphans, courts of appeal, countie-treasurers, and work-houses : with tables of fees, and short forms of declarations*, London, 1653, pp. 7-8.

<sup>20</sup> J.W., *A mite to the treasury of consideration in the common-wealth, by severall queries ... in reference to its present state ... liberty, etc. By J. W., a well wisher to the Public*, London, 1653, p. 12.

Sheppard, a law-reformer who ‘designed a comprehensive plan that resolved all the complaints’<sup>21</sup> in his magnum opus, *Egnland’s balme*, proposed county-registries as the cure to answer the objection that ‘the Common Assurances of Lands, and profits of them, by Fines, Recoveries & Deeds, are very troublesome, chargeable and dangerous.’ His proposals were that ‘a brief Note’ of a fine should ‘be transcribed, and sent and / entred in the County-Registry’; that ‘a Country-Registry [should] be erected’ and Deeds [should] be brought there; that ‘all Recognizances and Statutes [should be] entred into, and indorsed in the Registry of the County’; that ‘a Bond or Bill above one hundred pounds ... [should] be entred in the County-Registry’. And such a registry should be erected in every country.<sup>22</sup>

A series of the proposals written in 1659, the year of the last boom of the Commonwealth’s law reform movement, still contained the same topics and arguments as before. Edward Billing argued that ‘Courts of Record’ should be settled in each county. The articles to be recorded were as many as possible: ‘Bonds, Bills, Obligations, Leases, Deeds, Bequeathments, Assignments, Deeds of Gift, Donations, Wills and Testaments, Contracts, Bargains, and Sales of Lands, Tenements, Seising and Seizures, Mortgages, Pledges, Pawns, or other dispositions & transactions’.<sup>23</sup> William Sprigg was also supportive for registration in each county, which was commended both by ‘the general suffrage of all men’ and by lawyers themselves<sup>24</sup> as ‘an admiral expedient for preventing frauds and securing of Inheritances’.<sup>25</sup>

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<sup>21</sup> Nancy L. Matthews, *William Sheppard, Cromwell’s law reformer* (Cambridge, 1984), p. 4.

<sup>22</sup> William Sheppard, *Englands Balme: or, proposals by way of grievance & remedy; humbly presented to his highness and the parliament: towards the regulation of the law and better administration of justice, etc*, London, 1657, p. 112; pp. 113-4; p. 121.

<sup>23</sup> Edward Billing, *A Mite of Affection, manifested in 31. Proposals, offered to all the sober and free-born people within this Common-wealth; tending and tendred unto them for a settlement in this the day and hour of the worlds distraction and confusion*, London, 1659, p. 3.

<sup>24</sup> According to Veall, the lawyers were most against law reform, because they ‘saw it as a threat to their privileged monopoly position’. Veall, *The popular movement*, p. 229.

<sup>25</sup> William Sprigg, *A modest plea for an equal common-wealth against monarchy: in which the genuine nature and true interest of a free-state is briefly stated: its consistency with a national clergy, mercenary lawyers, and*

Proposals for registration appeared usually just as a short reference of the larger illustration of law reform. But, in a proposal by a ‘Well-willer’, registration played a fundamental role in the whole project. Of the six-day work which was supposed to create the world out of the ‘Chaos’, the second day was assigned to prescribe ‘the Rules for Registers’. The proposal was institutional and detailed: a ‘National Register’ at Westminster, ‘a Provincial Register’ in each shire-town, a ‘Sub-provincial Register’ in each sub-province, and a ‘Parochial Register’ in each parish was to be appointed; and each of them should have clerks, assistants, and deputies; each register should keep its own seal.<sup>26</sup> What to be registered was wide ranging. The articles ‘Well-willer’ listed as necessary to be registered included not only ‘any Right, Title or Interest’, estates, debts, and ‘[a]ll manner of Bargains and Contracts’, but also ‘[a]ll Infants having any Estates’, ‘[a]ll marriages’, the ‘birth of every child’, ‘[a]ll christening[sic]’, ‘[a]ll deaths and burials’, ‘[a]ll Wills and Testaments’, ‘[a]ll and singular retainer or hiring all and every several and respective servants’.<sup>27</sup> The fees for the entries of those records were strictly prescribed. These second-day’s works made the rules for the works of the rest of the week, which included the judicial procedures, the parliamentary election, public revenue, work-houses for the poor, commerce, and education.

While thus the calls for registration were endlessly repeated, their desired outcome was above all the decrease of troubles and lawsuits. The author of *The Honest Design* insisted on complete registration of estates, such as houses and lands. It would ‘end all Suits’, he thought.<sup>28</sup> William Cole shared the same idea: If all laws, leases, mortgages were registered, ‘all old suits’ would be ended.<sup>29</sup> A pamphlet, entitled *A treatise shewing how*

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*hereditary nobility examined / humbly tendered to the parliament by a lover of his country*, London : Printed for Giles Calvert, 1659, p. 73.

<sup>26</sup> Well-willer to the publique weale, *Chaos, or, A discourse wherein is presented to the view of the magistrate ... a frame of government by way of a republicque : wherein is little or no danger of miscarriage ... : wherein is no difficulty in the practice ... but all things plain and easie to the meanest capacity / by A well-willer to the publique weale*, London, 1659, pp. 6-14.

<sup>27</sup> Well-willer, *Chaos*, 1659, p. 9; pp. 17-8.

<sup>28</sup> *The Honest Design: or, The true Commonwealthsman; offering a word in this juncture of time, in order to a settlement. Not unworthy the perusal of the General Council of the Officers of the Army*, London, 1659, p. 3.

<sup>29</sup> William Cole, *A Rod for the Lawyers: who are hereby declared to be the*

*usefull, safe, reasonable, and beneficial the inrolling & registering of all conveyances of lands may be to the inhabitants of this kingdom*, whose author is supposed to be Matthew Hale,<sup>30</sup> revealed the problems, some of which anticipated the controversy coming after the Restoration. At the beginning, the author confirmed two ‘Mischiefs at present’: firstly, ‘[t]he great Deceit committed by Persons by secret Judgements, Mortgages, Conveyances, and Settlements’; secondly, ‘[t]he Multitude of chargeable and difficult Suits in Law, occasioned by Preconveyances, secret Mortgages and other Incumbrances’. While the ‘propounded’ remedy to these ‘Mischiefs’ was ‘an Office of Inrollment, or Registry of Conveyances’, the author suggested, it held many latent problems: it must have been completely done, because, ‘if any of these be not Inrolled or Registred, or some way rendred open to the view of every Person, a Man may be cheated or deceived.’; it would produce ‘more Suits and Expences’; if the registry was in London, ‘all Men must come up thither to Inroll their Deeds’. In brief, registration would create excessive exposure of information and lead to multiplication of lawsuits.<sup>31</sup> We will see these problems in the controversy after the Restoration.

## II

All these law reformers who proposed registration had discussed generally within the legal or judiciary framework. For example, an active social reformer, Henry Robinson, was supportive, in a single pamphlet, both of the bill for ‘a Country Register’ and of erecting Lombards and banks to lend money upon pawns and land security, which he thought would increase trade and relieve the poor,<sup>32</sup> but they were not related to each other. However,

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*grand Robbers & Deceivers of the Nation ... To which is added, A word to the Parliament; and, a word to the Army*, London, 1659, p. 12.

<sup>30</sup> Veall is suspicious about the authorship of this pamphlet. See Veall, *The popular movement*, 1970, p. 223.

<sup>31</sup> Sir Matthew Hale, *A treatise shewing how usefull, safe, reasonable, and beneficial the inrolling & registering of all conveyances of lands may be to the inhabitants of this kingdom / by a person of great learning and judgment*, London, 1694, p. 1; p. 4; p. 7; p. 11; p. 13.

<sup>32</sup> Henry Robinson, *Certain proposals in order to the peoples freedome and accomodation in some particulars. With the advancement of trade and*

soon after the Restoration Francis Cradock tried to connect those two topics, registration and credit, which Robinson treated separately.

Francis Cradock placed his proposal for a land-bank on the extended line of previous discussions on erection of banks, showing the 'compass' of his 'own Library', which included Malynes's *Lex Mercatoria*, Lewis Roberts's *Mappe of Commerce*, Henry Robinson's *Trade Encrease in England's Safety* and Samuel Lamb's *Seasonable Observations*. Cradock found in all these proposals 'an Encouragement' to 'imitate' the cases of other countries, such as Holland, Genoa, and Florence. However, being different from the foreign examples which were 'Banks of Money', the bank he proposed was to be 'erected without Money'. In this point, Cradock's project was intended to be an improvement or an application of the previous models rather than just an imitation. In fact, he saw the origin of his plan also in William Potter's 'hints of a Land-bank', which was more than an attempt to imitate the foreign examples.<sup>33</sup>

Cradock developed his proposal step by step. First, he defined a bank as a corporation for 'keeping several mens Cash in one Treasury, and making payment thereof by assignation, transferring the ownership of Money from one mans account to anothers', which were the 'daily practice in the *Low Countreys*'. However, he posed a question: why cannot there be a bank where 'not only Money coyned, but Wedges and Vessels of Gold or Silver' were kept. This was again commonplace in Holland. Then came the next questions: why not 'either Barres of Silver, Jewels, Plate or other Goods not soon perishable?'; why not 'other Merchandize' such as linen, draperies, silks, iron, sugar, wine, tabaccos, and fruits? He argued that 'if by depositing of their Goods in Bank, they[merchants] may there have credit as other have for Dollars, Plate or Jewels, they may presently be dealing again, and a much vaster Trade be driven then now'.<sup>34</sup> This kind of bank that gives credit upon goods as security was a familiar idea also in England in this

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*navigation of this Common-Wealth in generall*, London, 1652, p. 18; p. 22.

<sup>33</sup> Francis Cradock, *Wealth discovered, or, An essay upon a late expedient for taking away all impositions and raising a revenue without taxes / published and presented to His Most Excellent Majesty King Charles the II by F.C., a lover of his countrey; whereunto is added His Majesties gracious order*, London, 1661, p. -2.

<sup>34</sup> Cradock, *Wealth discovered*, 1661, pp. 4-7.

period. However, Cradock went further.

It was the logical consequence for Cradock to think that ‘Lands may be as good, if not better security then Money or Jewels.’ A bank whose security was land could be a remedy for various ‘inconveniences’, such as lack of sufficient silver and gold, forcing to ‘part with their best Staple Commodities oft-times to great disadvantage’, the danger ‘to be kept in a private Cash, continual carrying’, ‘the time spent counting’, and ‘hazard of receiving clipt and bad Money’. Registration was supposed to play an essential role in his explanation of how a land bank would function. The necessary practices of its functioning were described in order, as follows: ‘the Kingdome be divided into a hundred Divisions, or some such like number, and in the midst of each Precinct a convenient place be erected for a standing and constant Bank or Registry’; ‘all Estates in Lands, Houses or Rents ... be registred at the Bank of each Precinct’; ‘a method be agreed upon and used alike in all the Banks, for the most exact way and manner of keeping a Register of all Estates, Titles, Conveyances, Incumbrances and Bequests’. Cradock affirmed that after the completion of all these procedures this bank, ‘wherein real security by Land may be a foundation of Credit’, would efficiently work.<sup>35</sup>

Though his proposal was claimed to be on the basis of the previous discussions among various bank-projectors, Cradock also had in his mind the parliamentary debate on registration of estates. In the parliament, Cradock acknowledged, ‘the alone subject of a Register has been formerly debated’. Having such a troublesome controversy behind, it could be conjectured that registration was an impediment to a land bank project. Therefore Cradock expected such an objection as that the parliament would not assent to registration and establishing a bank based on it because ‘*divers Gentlemen and others may be unwilling to have their Estates discovered*’. Cradock answered, thanks to registration ‘the abundance of Suits in Law and Controversies about Titles will in a short time be ended’. However, on the other hand, he himself was incapable of confidently giving an answer in the controversy on the judicial matters. It seemed enough to him just to say that ‘[t]he thing most requirable at the Register is, that every Estate has some Owner’. Nevertheless, he referred to one of the most contentious

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<sup>35</sup> Cradock, *Wealth discovered*, 1661, p. 7; p. 10; p. 14.

issues in the controversy, that is, the reduction of lawsuits. He expected another objection that '*the discovering of Conveyances, Titles and Incumbrances on Estates will rather augment[sic] then abbreviate Suits*'. He answered, 'no man will be obliged to discover his Conveyances or to shew them at the Banks'.<sup>36</sup> He added one more predictable objection about the possibility of registering all estates and encumbrances, though he did not give a satisfactory answer. In brief, however Cradock described them, all the topics he cared about were found in the legal debate during the Interregnum and he knew that. He consciously tried to show a proposal of a land bank in the integrated context of two controversies, one of which was of bank projects and the other, the law reform. In this meaning, Cradock's proposal was a novel way of discussing registration and credit, which seems to have anticipated the further controversy.

### III

The relatively animated debates over registration and credit revived after 1669 and, as I mentioned above, it must have been caused by the discussions in the parliament. However, those debates were undoubtedly motivated by and based on the original version of Philipps's *The reforming registry* published in 1662. Philipps made a clear assertion that '[t]he erecting of *Offices* for the *Registering of Deeds and Conveyances Indented* in every County,' would be 'needless', because there had already existed the 'the Statute of 27 *Hen. 8. cap. 16*', which had 'left to the peoples liberty'. This argument remained the key issue throughout the controversy. There were many reasons he was against establishing registries in every county: 'They will be illiterately, carelesly, and ill-favoredly *Registered*'; 'The *Records or Registries* which / are to be as mens publick *evidences* when the private are lost, will not in times of War or trouble ... be at all or so safely kept as the Records are at *London*'; 'Such an inforcement to *Register* all such *Deeds* in the proper Counties, will without any necessity of *War* or *Publick Safety*, take away the *Common Right and Liberty*'.<sup>37</sup>

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<sup>36</sup> Cradock, *Wealth discovered*, 1661, p. 32; p. 27; p. 29; p. 31; p. 32.

<sup>37</sup> Fabian Philipps, *The reforming registry, or, A representation of the very many mischiefs and inconveniences which will unavoidably happen by the needless, chargeable, and destructive way of registries : proposed to be*

Forgeries and counterfeits, which were always the bottlenecks for the smooth economic transactions in this century, were also the reasons against registration. ‘*Deeds* so to be Registred and Inrolled, which shall not be attended with so many cares and cautions’, Philipps argued, ‘may easily be forged, counterfeited, or antidated, and bring with them more *deceits* and *incumbrances*, then they do pretend to prevent; and fall into all the inconveniencies, questions and debates’. Then here registration would end up multiplying controversies and lawsuits, which was one of the main topics through the controversy: ‘such a *Rgistring* will certainly, besides many other evils attending it, revive and raise Controversies betwixt adversaries, or such as have been the former owners or inheritors of the *Lands*, make and multiply *Suits* ...; and so breed and multiply *Informers*, as few mens Estates or Titles shall be free from such kinde of *Vermin*’.<sup>38</sup>

However, the most serious and, above all, economically fundamental problem caused by registration was the potential crisis of credit: ‘*Bonds, Bills*, and other Writings, ... if they must be *Registred*, ... will so trouble every mans ordinary, and formerly easie enough, affairs and business in that kinde, as to make them to be no less then extraordinary *Incumbrances*, and too much *discover* every mans / Estate, and double every mans misery and wants, in taking away his credit, which might by degrees be a means to help him out of it.’<sup>39</sup> If registries are established, Philipps said in another place, tradesmen and merchants ‘who live upon credit, diligence and industry, ... will be so laid open to the view and jealousie of their Friends and Creditors, or such as they trade with, as they will every / one be so afraid of the poor *Debtors*’ or ‘[n]o man when he sees a small or no Estate in a yong hopeful *Tradesman*, will lend him any thing to set up withall’.<sup>40</sup> The relentless

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*erected in every county of England and Wales for the recording of all deeds, evidences, bonds, bills, and other incumbrances : written in the yea[r 1]656 when Oliver and the Level[l]ing party made it their design to ruine monarchy, the laws of the nation, and the impoverished Loyal Party / by Fabian Philipps* (London, 1662), p. 3; p. 4; p. 8; pp. 14-5; p. 19.

<sup>38</sup> Philipps, *The reforming registry*, 1662, p. 29; p. 47.

<sup>39</sup> Philipps, *The reforming registry*, 1662, pp. 58-9.

<sup>40</sup> Philipps, *The reforming registry*, 1662, pp. 60-1; *The reforming registry*, 1671, pp. 64-5. In 1668, a pamphleteer in the interest controversy argued that the reduction of interest rate by law makes it difficult for industrious and ingenious young men to borrow the money for new business. See H.R.,

exposure of debtors' information and its miserable consequences were also going to remain a contentious issue.

Philipps's fear of the Spanish universal monarchy and the bitter rivalry with Holland were equal to what the English pamphleteers had during the seventeenth century.<sup>41</sup> Given the reality of the *Jealousy of trade*<sup>42</sup>, it seems to have been natural that any adventurous and unfamiliar projects in this period, including registration, made people cautious of the foreign countries' economic reactions: 'It will too much advantage and encourage Forreign *Kingdoms, States, and Commonwealths*'. Such an inspection into our *Books and Registers*', Philipps asserted, will 'instruct Forreign *Merchants or Bankers*, how to raise their moneys exchange or commodities'.<sup>43</sup>

#### IV

In 1669, where 'the Committee for considering the Decay of Trade, Fall of Rents, &c.' was named in the House of Lords, an anonymous pamphlet, *A Seasonable proposal to the nation concerning a register of estates in this kingdom : tendred to the consideration of the publick-spirited in both houses*, was published. As the title shows, obviously this was written as a reaction to the parliamentary discussion.

*A Seasonable proposal* proposed 'The Grand thing worthy the design of every *Publick-Spirit*, that is, 'a *Register of Estates*', which 'should bring all Possessions of Houses and Lands to one Tenure, that is *holding* all of that *Register*'. The principal reason for this proposition was that a register

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*The brief observations of J. C. concerning trade and interest of money briefly examined / by H. R.* ([London?], 1668).

<sup>41</sup> See J. I. Isreal, *Dutch primacy in world trade, 1585-1740*, (Oxford, 1989); R. Brenner, *Merchants and revolution: commercial change, political conflict, and London's overseas traders, 1550-1653* (Princeton, 1993); S. C. A. Pincus, *Protestantism and patriotism: ideologies and the making of English foreign policy, 1650-1668* (Cambridge, 1996); D. Ormrod, *The rise of commercial empires: England and the Netherlands in the age of mercantilism, 1650-1770* (Cambridge, 2003).

<sup>42</sup> See I. Hont, *Jealousy of trade: international competition and the nation-state in historical perspective* (Cambridge, Massachusetts, and London, England, 2005).

<sup>43</sup> Philipps, *The reforming registry*, 1662, pp. 63-4.

would reduce the inconveniences often ending up in lawsuits. This is a good contrast with Philipps who asserted that it was a register that would *multiply* the number of lawsuits. ‘The doing of this, at one dash’, the author of *A Seasonable proposal* said, ‘would put an end to all Contentions and Suits about the Titles of mens Possessions to the Worlds End’. Looking from the opposite side with irony to those who were against registration, such as Philipps, *A Seasonable proposal* argued that, for lawyers who were gaining from suits, this anticipated reduction of lawsuits was *their* true reason against a register because ‘men are not like to go to Law as they now do.’<sup>44</sup>

It was evident that *A Seasonable proposal* was having Philipps as its imaginary opponent, when he showed another supposable reason against a register, which was of ‘*Broken-Merchant*’. ‘The *Broken-Tradesman*,’ the author suggested, ‘likewise will exclaim; *This will hinder Trade; many now live on their Credit, but when the Register / shall tell all, they shall not be trusted.*’<sup>45</sup> The author here was unmistakably talking about Phillipps’s worry about tradesmen and merchants ‘who live upon credit, diligence and industry’.<sup>46</sup> Then he replied to Philipps’s worry with the social and moral logic and vocabularies, such as trust, honesty, and reputation, which were commonplace in the seventeenth century English economy.<sup>47</sup> The ‘advantage’ of a register was

‘That by this way there shall a new Stock be brought up in the Nation to trade upon, when the Moneys at present are drained low, to wit, the Stock of *Honesty*; for when all mens conditions shall lye open, the trust that a man hath for the future shall be on this *Honesty*, and not on a deceitful Reputation of more than he is worth’.<sup>48</sup>

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<sup>44</sup> *A Seasonable proposal to the nation concerning a register of estates in this kingdom : tendred to the consideration of the publick-spirited in both houses* ([London], 1669), p. 3.

<sup>45</sup> *A Seasonable proposal to the nation*, 1669, pp. 4-5.

<sup>46</sup> Philipps, *The reforming registry*, 1662, p. 60; Philipps, *The reforming registry*, 1671, pp. 64-5.

<sup>47</sup> See Muldrew, *The economy of obligation*, 1998; S. Ito, ‘The making of institutional credit in seventeenth century England’, in ed. by C.Freedman & R.O’Donnell, *HETSA Conference 2005 Refereed Papers*, (Sydney, 2005).

<sup>48</sup> *A Seasonable proposal to the nation*, 1669, p. 5.

In this honesty which a registry would produce and present, one could find a solution to Philipps's other worry that none would lend to industrious and hopeful young men when he saw 'a small or no Estate' in them.<sup>49</sup> This honesty 'will not only make every one strive to preserve that', the author hopefully answered, 'but shall put it in the power of every man to have at first wherewithal to live upon'. Thus, a registry would be not an impediment but a 'Publick Encouragment to the industrious beginner, and hopeful man'.<sup>50</sup>

At the end of the pamphlet, the author insisted on the reformation: 'Believe it, those things which are a Leaven in the hearts of men to wish for a Change, ... / ... do require the Statesman's Prevention and kindly Reformation.'<sup>51</sup> But, this 'pretended registering reformation' in Philipps's words was going to be refuted by Philipps himself. Thus Fabian Philipps's rebutting pamphlet, *The pretended perspective-glass, or, Some reasons of many more which might be offered against the pretended registering reformation*, was published within the same year.

Philipps's argument was simple: 'Innovations are more than a little dangerous'. His cautious and suspicious stance on registration was strong, reminding us of the preface of the 1671 version of his *The reforming registry*, which we will see later. It might be the second Anglo-Dutch war and the 'decay of trade' as a consequence of it which made Philipps worry about the fragility of the English economy at that time: due to wars, plunderings, sequestrations, and taxes, 'the people of *England* ... are so universally indebted, as it may rationally be believed that the most part of them live more upon Credit, than any certain or real Estate or Subsistence of their own'. The English economy was so deeply involved in credit that 'a great part of the City of *London* now ... hath been brought to that perfection by Credit and Money borrowed' and then people there cannot survive without credit.<sup>52</sup>

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<sup>49</sup> Philipps, *The reforming registry*, 1662, p. 61. Honesty is going to be an important basis of the proposal of registries by Yarranton in 1677.

<sup>50</sup> *A Seasonable proposal to the nation*, 1669, p. 5.

<sup>51</sup> *A Seasonable proposal to the nation*, 1669, pp. 7-8.

<sup>52</sup> Fabian Philipps, *The pretended perspective-glass, or, Some reasons of many more which might be offered against the pretended registering reformation* (London, 1669), pp. 1-2.

In this situation the outcome which the newly contrived ‘innovation’, that is, registration might have brought to credit was considered disastrous for every social group in the country:

‘our Nobility and Gentry ... will now by such a Registration be turned out of that Credit which was left to support their seeble and languishing Estates’; ‘our Merchants ... are for the most part three parts in four in Credit, and an opinion of a greater Estate than they can justly call their own’; ‘the Retailers, and now more than formerly lofty Shop-keepers, who have owed their low beginnings to a small Stock, and a great deal of Credit ... will when they shall be exposed to the jealous eyes of the nice, over-timerous and Usurers or Money-lenders, be turned out of all their expectations, and made to submit to the devouring and unmercifull Fangs of a Statute of Bankrupt, or give over their Trade and be better acquainted with humility’; ‘The Country Farmers when Corn or Cattel shall in their rates or prices fall short of their hopes to pay their Land-lords Rents, shall not now be able to borrow money to pay them, if their small Stock or Estates shall not be sufficient to endure the severity of a Telltale Registration.’<sup>53</sup>

This class-by-class analysis led to a conclusion that ‘All Trust and Credit, and the Faith, Charity and Love of Mankind one to another ... will be so enervated and weakened’ as to make people ‘like crafty *Banyans*, and hard hearted *Jews* each to other.’ The worry of the ‘*Broken-Tradesman*’ in *A Seasonable proposal* was here enhanced. Then Philipps argued that the disaster extended to the foreign trade: ‘All Foreign Merchants will be by such a Registration affrighted and deterred from trafficking with our Merchants without ready money’. Such a ‘Contrivance’ was just to make ‘Foreign Princes ...discover the weaknesse of the Nation’.<sup>54</sup>

Philipps maintained also a properly legal issue since his pamphlet in 1662: ‘such a device as the Registration will ... undermine and over throw a great part of our Laws, and the excellent form and beauty of the fabrick and structure thereof, in which the Liberties and safety of the peoples Estates do reside, and lead into Captivity their Laws and Liberties’. But, nevertheless

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<sup>53</sup> Philipps, *The pretended perspective-glass*, 1669, pp. 2-3.

<sup>54</sup> Philipps, *The pretended perspective-glass*, 1669, pp. 3-4.

his primary message was the fear of the excessive exposure of information and its economically disastrous results. He repeated the warning that too much and too accurate knowledge of property which registration would generate was harmful rather than beneficial to trade. He insisted that the rules should not be easily changed in such a society as overwhelmed by uncertainty. In fact, being in a miserable society full of fraudulent transactions, Philipps's words sounded realistic and appropriate. In the world he lived in, titles were 'so fraudulent, and Lands so doubly and trebly Mortgaged', as people were supposed to be afraid to purchase or lend any money upon them' and therefore trade would be 'greatly hindered' by registration because 'all the Securities which men can take for their debts are so deficient, that thereby many suites and contentions have arisen which otherwise would not have been, may vanish and no more disturbe their Fancies.' Facing such a fragile situation of the economy, any reformation or innovation should not have been ventured. Besides, to him trade itself looked to be going well without such an unnecessary contrivance: 'the grand increase of Trade appearing by the Custome house books, and the overstocking of Trade ... may declare that there is no defect in our Laws which may deserve such a scandal or needless reformation, which will bring upon the people greater mischiefs or inconveniencies then it pretends to prevent or avoid'.<sup>55</sup>

It may seem unexpected for us that as a conclusion Philipps recommended a bank of charity as much more helpful than a registry: 'there more need to erect *Mont Pietes* in every County, now successfully practised in many parts beyond the Seas, to relieve the people in their debts and oppression, increased by an unchristian-like Usury and Brocage, then to encourage such a design of Registring'.<sup>56</sup> *Mont Pietes*, that is, a bank of charity was an institution of credit which had been proposed throughout the seventeenth century. In fact, given that it was supposed to be one of the most wanted institutional credit in those days, one can say that for Philipps *Mont Pietes* and registration were substitutable forms of credit for each other, though the former looked better than the latter at that moment.

Before the ending paragraph he repeated his argument once more: 'the

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<sup>55</sup> Philipps, *The pretended perspective-glass*, 1669, p. 5; p. 8; p. 9.

<sup>56</sup> Philipps, *The pretended perspective-glass*, 1669, p. 13.

Registring Reformers can never arrive to any other end of their Proposals, than that of getting Offices and Employments to ruine or perplex the people.<sup>57</sup> However, the relentless debates between reformers and Philipps continued.

The next shot came from Nicholas Phillipott's *Reasons & proposalls for a registry or remembrancer of all deeds and incumbrances of real estates* (1671). The long subtitle says that this proposal was 'to be had in every county, most necessary and advantageous as well for sellers and borrowers as purchasers and lenders : to the advance of credit and the general good, without prejudice to any honest minded person.' As it appeared in this subtitle, credit came to the front as a main issue in this pamphlet, though the author's target was clearly Philipps and the topics and vocabulary were substantially taken from his.

Despite 'a most excellent Law' in 27 Elizabeth (1585), which 'was made against fraudulent Conveyances' and 'enacted to remedy it', Phillipott argued, the continual increase of 'fraud and deceit' was apparent. However, the action which Phillipott thought should be taken was entirely reverse to Philipps's. It was 'a publick Registry' in each county that Phillipott proposed as the solution of this difficulty: 'if a publick Registry or remembrance of all Conveyances and Incumbrances on real estates were settled in each County all mischiefs and inconveniences .../ ... would be prevented to Purchacers and Creditors'.<sup>58</sup>

Most mischief, which led to 'the vast number of Suits, & Actions in the Courts at Westminster', Phillipott asserted, came from 'precedent and concealed Incumbrances'.<sup>59</sup> In the social and personal nexus of credit, which Craig Muldrew called the 'economy of obligation'<sup>60</sup>, this uneasy and fragile situation of economic transactions would unavoidably produce

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<sup>57</sup> Philipps, *The pretended perspective-glass*, 1669, p. 13.

<sup>58</sup> Nicholas Phillipott, *Reasons & proposalls for a registry or remembrancer of all deeds and incumbrances of real estates : to be had in every county, most necessary and advantageous as well for sellers and borrowers as purchasers and lenders : to the advance of credit and the general good, without prejudice to any honest minded person / most humbly offered to consideration by Nicholas Phillipott* (Oxford, 1671), pp.1-2.

<sup>59</sup> Phillipott, *Reasons & proposalls for a registry*, 1671, pp. 2.

<sup>60</sup> See Muldrew, *The economy of obligation*.

cumulative difficulties. This economy filled with scepticism called for not just security, which in those days was more or less required when borrowing money,<sup>61</sup> but also even ‘too unreasonable securities’: ‘The terror of this mischief, affrights persons who have money to lend unto those who want it, and occasions the demanding of too unreasonable securities, which enforces men to engage their friends, as well as their lands, to satisfy scrupulous lenders’. And then, due to ‘weakened Credit’, ‘a lender in these daies’, would set the lower interest ‘to a City Goldsmith, or Scrivener, upon a note of his hand, than ‘a Country Gentleman on his Morgage[sic], Judgement, or Statute’.<sup>62</sup>

The remedy to this was a registry, which would make it easy to give credit without relying on such an ‘unreasonable’ security: ‘As the discovery of precedent Incumbrances would be to the great benefit, safety, and satisfaction of purchacers and lenders. So would it prove no lesse advantageous to borrowers and sellers, by giving them Credit to raise mony on sale, or engagement of their lands, as occasion requires, without drawing in ( and thereby often ruining ) their friends to be engaged with them, or giving generall securities by Judgements, Statutes’. The effect of erecting registries was not only on credit or the other direct economic factors but also on the ethics of ‘young Gallants’: ‘when once the Incumbrance they create is discovered by the entry of it in their owne Country ... then the Parent ( if liveing ) is fairely forewarned to check the sons prodigality, if other wise, the unthrift will be enforced to discharge his old engagement before his new will be taken’.<sup>63</sup>

Obscurity of the titles of lands was considered to be one of the principal reasons for the increase of the number of suits for both the author of *A Seasonable proposal to the nation* and Philipps, particularly for the former. Phillipott was also one who worried about this problem: ‘When an Estate is once involved in unfathomed Incumbrances, then it creates suits upon suits,

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<sup>61</sup> See Ito, ‘The making of institutional credit’; S. Ito, ‘Quest for a ‘good’ fund – a prelude to the land-bank controversy’, in *Paper and Proceedings of the 19<sup>th</sup> HETSA Conference*, (Ballarat, 2006) and in <http://www.ballarat.edu.au/ard/business/hetsa06/ito.pdf>.

<sup>62</sup> Phillipott, *Reasons & proposalls for a registry*, 1671, pp. 2-3.

<sup>63</sup> Phillipott, *Reasons & proposalls for a registry*, 1671, pp. 3-4.

the expence whereof soone devours all without either satisfying the Creditors or leaving any thing to remaine for the debtor.’ But, it is interesting to see here that the central issues were moving from problems about relatively technical inconveniencies, with which Philipps had been obsessed, to more socio-moral factors as a basis for credit, such as honesty, which Phillipott wished to find in ‘young Gallants’, and security, which honesty would create. The ‘state and Condition of seller alters’, indeed Phillipott said, as the socio-moral conditions change: ‘If a person reputed to be indebted or engaged, offers land to sell, noe will adventure to deal for feare of precedent Incumbrances unles it be upon very great advantages of an vnder value ( in regard of the danger )’, that is, without taking high interest or usury. However, needless to say that the most essential factor to make it easy to borrow money was security. Phillipott clearly concluded that money-lending was a matter of social reliability which may be improved by ‘good security’: ‘The difficulty to borrow money proceeds not from it’s scarcity, but the diffidence of good security, for it’s generally known that those who need it not, and have estates, may borrow what they please on easie tearms, when as persons in debt cannot procure it without much trouble and Charge.’<sup>64</sup> Consequently, the lender’s confidence created by ‘good security’ ended up lowering interest.

However, in the extended version of his former pamphlet, *The reforming registry*, Fabian Philipps brought the issue back to a legal matter again. The main body of the original version, which was published in 1662, that is, from p. 3 to halfway down p. 93 of 100 pages was transferred to the edition in 1671 with the same pagination, but with some editorial corrections and chapter’s titles removed. The 62-page long preface ‘to the reader’ and about 250-page long contents are added to the new edition. Quoting from or referring to Thomas Aquinas, Cajus Cassius, Solomon, Solon, Augustus Caesar, Cato, Thucidides, and Bodin, Philipps, in this long additional preface, insisted that laws should not be changed when ‘the Vices of Men, corruption of Manners, change of Customs, and a necessity of publick and just Affairs, may be a warrant or ground to adventure upon the alteration of Laws, some of them being by time, or some other way, rendred or made to be ineffectual’. Phillipps persistently emphasised the ineffectiveness of an unnecessary legal

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<sup>64</sup> Phillipott, *Reasons & proposalls for a registry*, 1671, pp. 4-5.

alteration: 'to change or alter Laws, because they cannot prevent or extend unto, or remedy all the evils which too many men do invent and others complain of, / will be to vex and course the people out of their old and well approved Laws and Customs'.<sup>65</sup>

Thus, though Philipps dwelled on legal matters, nevertheless, it is also noticeable that he referred to the international political and economical situation, evidently reflecting the experience of the second Anglo-Dutch war. Beside, for Philipps and most other English pamphleteers in the latter half of the seventeenth century the United Provinces, particularly Holland, appeared as undeniably the best trade-nation model to follow or even imitate. Therefore, in this new edition Philipps could not avoid mentioning the fact that 'in *Holland*, and the rest of those *United Netherlandish Provinces*, where (as in many other *Transmarine* parts) they do besides some of the *Canon Law*, retain and make use of much of the *Civil* or *Cesarean*, and imploy *Publick Notaries* (who were / anciently constituted and sworn to make the peoples Contracts and *Instrumenta Authenticata* in their due Forms, keep *Protocols* or *Records* thereof'. Of course he confidently added a defensive note to this, for him unfavourable fact: 'they are not forced to go unto the *Publick Notaries* to make their Bonds or Writings Notarial, but do in ordinary and common Causes'.<sup>66</sup>

Taking the examples of Holland and Spain Philipps revealed further difficulties accompanied by employing '*Publick Notaries*'. The costs and troubles caused by using a 'Publick Notary' in Holland were exactly the reasons why Philipps was strongly against erecting registries over the country. The case of Spain, however, more clearly showed how such kind of system would cause a disastrous result to a country, which was known by its '*severity* and *power* of the *Spanish Creditors* upon the *Debtors*.' The poor, who had the least reputation in their communities, were the victims: the poor people 'have so little *Faith* or *Credit* one with another, as not to be able to borrow any money without such a *dire* and *prejudicial Security*'.<sup>67</sup>

However, a more outstanding characteristic of Philipps's pamphlet was the thorough analysis of the registration in Scotland. While in *The*

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<sup>65</sup> Philipps, *The reforming registry*, 1671, A2.

<sup>66</sup> Philipps, *The reforming registry*, 1671, pp. 94-5.

<sup>67</sup> Philipps, *The reforming registry*, 1671, pp. 113-4.

*pretended perspective-glass*, in fact, Philipps gave some historical and sociological explanation of the Scottish system,<sup>68</sup> he demonstrates here the more extended research on the Scottish registration with a wide-ranging perspective. Quoting largely from Sir Thomas Craig's *Jus feudale, tribus libris comprehensum*,<sup>69</sup> in particular, Philipps shows the historical background of 'Scottish Registring' and also how they eventually became unreliable and ineffective. In Scotland, due to 'a jealousy upon all private *Deeds* or *Writings*', since roman-empire period '*Publick Notaries*' had been 'instituted', because 'many men made it their studies or business to counterfeit hands and writings'. In fact, 'there was an *Edict* made by the Emperor, that no private *Deed* or *Writing* should be credited if the party subscribing, denied it, unless it were testified by three witnesses'. In this way, 'use of *Notaries*, came the course of Scottish *Registring*, which ... ought to be done in Court, or where the *Register* or his Deputy are.' However, just as Notaries were instituted 'to stop the abuse of private writings', so

'by the fraud and wickedness of *Notaries*, the private writings came again to be of use and credit, which made them afterwards in *Scotland* to be so unwilling to trust the *Notaries*, as they ordained by publick *Edict*, That no Faith in *Gravibus* or matters of great concernment, should be put upon the Faith of a single *Notary*'. Thus people ended up giving 'no credit to Notarial Writings ..., though the *Notary* affirm it.'<sup>70</sup>

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<sup>68</sup> For example, he gave a socio-cultural explanation comparing Scotland and England: 'the nature of the *Scots*, much differing from that of the *English*, and the general poverty of that Nation, causing the stricter ties in their Bonds and Obligation, and the grand severities used in them, may be more agreeable to the Law and Constitution of that people than the more rich and tender hearted *English*.' (Philipps, *The pretended perspective-glass*, 1669, p. 11.)

<sup>69</sup> Sir Thomas Craig, *Jus feudale, tribus libris comprehensum : quibus non solum consuetudines feudales, & praediorum jura, quae in Scotia, Anglia, & plerisque Galliae locis obtinent, continentur; sed universum jus Scoticum, et omnes ferè materiae jusir clarè & dilucidè exponuntur, et ad fontes juris feudalis & civilis singula reducuntur / authore Thoma Cragio* (London, 1655).

<sup>70</sup> Philipps, *The reforming registry*, 1671, pp. 118-9.

In 1677 Andrew Yarranton published a voluminous proposal entitled *England's improvement by sea and land*. The subtitle of this book shows simply the author's basic arguments and how much he struggled in it with the issues which had been discussed in the previous controversy around registration, such as the rivalry with Holland, preventing suits and the benefit from registration: '*To out-do the Dutch without fighting, to pay debts without moneys, to set at work all the poor of England with the growth of our own lands. To prevent unnecessary suits in law; with the benefit of a voluntary register.*' While the great danger of '*breaking the Balance of Europe*', for example, the 'growing Power of the French' appeared a serious threat to England, Holland was in an ambivalent position for England, that is, a menace, on the one hand, and a model to follow and imitate, on the other. Then, being based on what was '*alrea- / dy experienced in Neighbour Nations*', Yarranton tried to show that '*we could not beat the Dutch with fighting*' but '*we might beat them without fighting*', that is, '*by no other ways than the Free Lands of England being put under a Voluntary Register by Act of Parliament*'.<sup>71</sup>

Honesty, in which both Philipps and Phillipott<sup>72</sup> saw some importance as the motif for smoother economic transactions, was playing a key role in Yarranton's registration project. For Yarranton, 'common *Honesty*' was prerequisite for trade.

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<sup>71</sup> Andrew Yarranton, *England's improvement by sea and land. : To out-do the Dutch without fighting, to pay debts without moneys, to set at work all the poor of England with the growth of our own lands. To prevent unnecessary suits in law; with the benefit of a voluntary register. Directions where vast quantities of timber are to be had for the building of ships; with the advantage of making the great rivers of England navigable. Rules to prevent fires in London, and other great cities; with directions how the several Companies of handicraftsmen in London may always have cheap bread and drink. / By Andrew Yarranton, Gent* (London, 1677), pp. b-b2; pp. c.

<sup>72</sup> Indeed, 'Nicholas Phillipot of Hereford' was referred: 'in the next County an Attorney (*Nicholas Phillipot of Hereford*) about four years since put out in print two sheets, to shew Reasons wherefore a Rigister of Lands is needful'. (Yarranton, *England's improvement*, 1677, p. 10.) I am not certain if this 'two sheets' means his pamphlet in 1669 or else.

In 'All Kingdoms and Common-wealths in the World that depend upon Trades, common *Honesty* is as necessary and needful in them, as Discipline is in an Army, and where is want of common *Honesty* in a Kingdom or Commonwealth, from thence Trade shall depart. For as the *Honesty* of all Governments is, so shall be their *Riches*; And as their *Honour*, *Honesty*, and *Riches* are, so will be their *Strength*; And as their *Honour*, *Honesty*, *Riches*, and *Strength* are, so will be their Trade.'

Thus, honour, honesty, riches, strength, and trade were causally related and they were 'five Sisters that go hand in hand, and must not be parted'. This was a basic principle throughout his book. He enumerated five advantages of Holland, which were the settlement of 'a Publick Register', 'Communicable and Easie' trade by 'making Cut Rivers Navigable', 'a Publick Bank', 'A Court of Merchants', 'A Lumber-house'.<sup>73</sup> These strengths of the Dutch policy were the result of those 'five Sisters'.

In Holland, Yarranton observed, 'A Register will quicken Trade, and the Land Registred will be equal as Cash in a mans hands, and the Credit thereof will go and do in Trade what Ready Moneys now doth.' In brief, it was registration that would make a safe fund on which credit eventually relied. It was a mistake to think that 'a great Cash in Bank' was the spring of the Dutch prosperity.

'For it is a Bank of Credit, and Paper is in that Bank equal with Moneys, the Anchorage, Fund and Foundation being laid Safe: And that is the Lands being under a Register, from whence issue these delightful Golden Streams of Banks, Lumber-house, Honour, *Honesty*, *Riches*, *Strength* and Trade.'

What he meant by the words, 'the Anchorage, Fund and Foundation being laid Safe', was to be produced by registration. If a bank holding such 'a good, secure, and unperishable foundation' was settled in England, Yarranton assured, money would be 'tumbled' at low interest rate there, too. Taking the city of Salisbury as an example, Yarranton insisted that the English cities were in need of 'the Authority of the Law to Register all their Houses

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<sup>73</sup> Yarranton, *England's improvement*, 1677, pp. 6-7.

and Lands' and that the 'Anchorage and Foundation' backed with this 'Authority of the Law' would make their trade 'comfortable'.<sup>74</sup>

Whether registration should be voluntary or not and whether it should be erected only in London or in each region were also the key issues in the controversy. Though concerning the former he tended to reserve his judgement, his position regarding the latter was quite positive. He argued that, if London and other cities and regions in England, such as Middlesex, Essex, Kent, Surrey, and Yorkshire, Lincolnshire, etc., were under voluntary registers, 'then there would be as great a Bank at *London* as at *Amsterdam*, and would be able to do much more in Trade, Credit, and all great things, than they can'. While Philipps suggested the malfunction of the registration of Scotland, Yarranton evaluated it, emphasising the superiority of the dual register system in Scotland to the single and central one: 'At *Edinburgh* there is a Grand Register, and in each County a particular one, and no man can be there deceived in a Purchase unless it be his own fault.'<sup>75</sup>

The 'hard Questions' to his proposition of registration were practical and technical just as seen in the contemporary bank-proposals<sup>76</sup>: '*First*, Who shall keep this Register? *Secondly*, Who shall choose the Register? *Thirdly*, How shall he be chosen? *Fourthly*, Who shall pay him for his pains? And *Fifthly*, What Security shall he give to perform his Trust?'<sup>77</sup> The answers to these questions were of course practical and technical, too. Foremost, this was the place where 'Honesty and Honour' were able to function most effectively and properly. Yarranton's explanation went into the procedural details:

'[a]s to the *First*, let the Register be kept by two Gentlemen whom you have experience of for Honour and Honestie. *Secondly*, let the Register be chosen by the / Major voices of all the Free-holders in and within ten Miles of the City of *Salisbury*, who have forty shillings a year and upwards. *Thirdly*, Let him be chosen by the way of the Baletting Box. ... by this way no man knows how to find fault with his pretended Friend, or knows who is his Enemy.

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<sup>74</sup> Yarranton, *England's improvement*, 1677, p. 12; p. 13; p. 23; p. 29.

<sup>75</sup> Yarranton, *England's improvement*, 1677, p. 16; p. 28.

<sup>76</sup> For example, Mark Lewis. See Ito, 'The making of institutional credit'.

<sup>77</sup> Yarranton, *England's improvement*, 1677, p. 33.

And certainly this way would drive out base interests and prefer men of Honesty and Honour. To the *Fourth*, [who shall pay him for his pains.] I say be ought to have it out of the Lands Registred; but have a care of allowing too much. And as to the *Fifth*, [what security,] get as honest and as rich a man as you can, then the slenderer Security will serve.<sup>78</sup>

Yarranton here cared much about how ‘Honesty and Honour’ would be maintained, because they were the most essential factors for the success of the project.

These kinds of specific concerns about practical and technical aspects of a register ran parallel with the enthusiasm for the institutional details in Mark Lewis’s bank proposals in the same period, in which he explained the full details of the proposed office and the people who work there, such as the masters and assistants.<sup>79</sup> Though they were part of the same discussion at the same time, Lewis and Yarranton had their own remedies for the economic crisis, that is, a bank-project and registration. Nevertheless, both had a common interest in the procedural and institutional perspectives as all their contemporaries had. They were all contrived in order to improve ‘Honesty and Honour’ in Yarranton’s words.

However, it was in his design of granaries of corn that Yarranton’s ‘Maxim’ that ‘Honour and Honesty bring Riches’ was idiosyncratically exemplified. The granaries had the same function as banks and both were supposed to create bank-credit. By ‘sending his Corn into the Publick Bank-Granary, and there lodging it’, Yarranton argued, a tenant was ‘able to give his Landlord Bank-Credit in Corn for his Rent’. A register could not fail to play the role as the foundation of his ‘Maxim’: ‘when this Corn is in the Publique-bank-Granary in the Countrey, immediately it is to be Registred at the *Guild-Hall* in *London*’. Thus ‘good credit’ was created and it would ‘inliven Trade, and fetch out all Moneys now unemploy’d’.<sup>80</sup>

When the corn was brought into ‘the Publick Granary’, and there registred in the ‘Register Book’, the owner of the corn was ‘at liberty to take it out at his own will and pleasure; or to sell, transfer, or assign any part of

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<sup>78</sup> Yarranton, *England's improvement*, 1677, pp. 33-4.

<sup>79</sup> See Ito, ‘The making of institutional credit’.

<sup>80</sup> Yarranton, *England's improvement*, 1677, p. 122-3; p. 126.; p. 127.

the said Corn to any Person or Persons, for the payment of his Debts, or in Mortgage to pay his Landlord his Rent' and the Granary-keepers were also able 'to give good security, that all things should be faithfully done and discharged.' To this purpose, the owner of corn takes 'a Note / under the Hand and Seal from the Granary-Register, of the quantity of Corn brought into the Granary, with the time it was delivered, with the Matter and kind of the Corn'. This 'Ticket' from the Granary-Register was transferred from the tenant to the landlord, and 'entred in the Register.' This was the resolution to 'want of present Moneys' and 'want of Credit'. Money, which used to be compared to blood in body natural, was replaced here by corn: 'it will be, if done, as the Blood in the Body, it will so circulate in a few years, that Corn will be to *England* better than ready Moneys.' Corn registred in the 'Publick Granary' worked as money and it was supposed to resolve all problems which arose from want of money, exactly as credit did otherwise. Yarranton clearly argued that 'Lands Registred' and 'Bank-Corn' would function as the basis for credit. However, as most bank projectors in the seventeenth century insisted that the credit they proposed was equal or even superior to money, this credit was also considered to be so: 'the Land Registred, will do what Money now doth; and this is credit equal to Moneys; and then we shall do what the *DUTCH* now do, never want Moneys to do any great thing.' Or, in his other words, 'Corn in Bank is Money in Purse, nay better.'<sup>81</sup>

Such useful credit, Yarranton repeated, was not effective without registers. A Bank-Granary did not make sense unless it accompanied Registers: 'be it further enacted, that no Sale, Mortgage, or any other Act shall be good for any Corn brought into Bank-Granary, unless entred with the said Register.' Register was placed at the beginning point of all systems of credit. It was the 'undeniable' foundation. For instance, one of 'some Reasons, which have occasioned the Abatement of Trade in the City of *London*', was 'the Neglect of putting Houses to be new built under a Register'. Yarranton illustrated how the cooperation among a register, various types of institutions of credit, and trade would produce the harmonious end eradicating the persistent difficulties deeply embedded in the early modern English economy, that is, the vicious pawn-broking business: 'by virtue of

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<sup>81</sup> Yarranton, *England's improvement*, 1677, pp. 131-2; p. 138; p. 142; p. 166.

such undeniable Security as Registered Houses, Banks ( yea many just Banks ) and Lumber Houses would have sprang up, which had so enliven'd Trade, and preserved the Poor out of the hands of the Usurers, and pawn-Brokers'. Pawnbrokers, who had traditionally been condemned for abusing the poor, were here still a target. Yarranton claimed, indeed, that his project would 'unavoidably ruine Pawn-Brokers' and it was 'high time' to do it, otherwise they would ruin all the poor. Poor relief itself was, however, clearly not Yarranton's major concern. His concern was rather on 'poor Tradesmen'. 'My whole Design at this time, and in this Sheet', he distinctly said, 'is to relieve the honest poor laborious Handicraft Tradesman in the City of *London*'. When he referred to the poor, it was in the talk of employment and trade. If his plan was realised, he argued, 'bread and drink' would be 'always certain and cheap', 'Machanick Trades' would be well settled, and 'then in *London* could be no Poor, nor want of Trade' because 'then men would strive who should employ most hands, he that employed most would get most.'<sup>82</sup>

Technical explanations here again were essential to make his design look persuasive to the readers. It included what 'the length, breadth, and height the Granaries ought to be of', and the practices and details of those who work there: 'Six labouring Men, with One Clerk will be sufficient to manage this Granary, to turn and wind the Corn, and keep the Books of accounts; Fifteen pounds a piece allowed to the Six men, and Thirty pound a year to the Clerk, or Register, will be wages sufficient' and so on. Those devices would bring both economic and practical conveniences, such as 'to cheat the Rats and Mice, to feed the Poor, to preserve the Tenant, to pay the landlord, to bring to us several Manufactures, to prevent Law-Suits, to fetch out all Moneys now unemployed into Trade'.<sup>83</sup> Preventing lawsuits, which had remained one of the main issues in the controversy, was as important a benefit as cheating rats and mice.

In any case, it was an age of uncertainty. It was 'the time' for an improvement, because 'all trades were in a consumption, all securities of Lands uncertain, and personal-security very difficult, and Suits of Law daily multiplied with great charges, and miserable spectacles, Prisons full, and

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<sup>82</sup> Yarranton, *England's improvement*, 1677, pp. 176-8; p. 172; p. 179; p. 186.

<sup>83</sup> Yarranton, *England's improvement*, 1677, p. 135; p. 137; p. 138.

many near perishing.’<sup>84</sup> And controversy continued.

## VI

Taking over the vocabulary and the framework of arguments from the controversy on registration since Philipps, ‘A Well-Wisher To The Publick Interest Of The Nation’ wrote a pamphlet, entitled *Reasons for a registry*, dated 4<sup>th</sup> February 1677/8, and discussed the same topics as almost a decade before, but with some new twists. What this ‘Well-Wisher’ tried to demonstrate symbolically showed how the issues concerning registration, which were originally legal matters, and the land-bank projects, which were potentially economic subjects, are connected and the former issues evolved into the latter. He intended here to show

*‘That Trade cannot be completely advanced but by establishing so secure a Fund, that Money may be safely lent on all necessary occasions. /*

*That no other Security but the Lands of this Nation can establish such a Fund.*

*That the Lands of this Nation cannot become such a Security but by a Registry.*

*That a Registry may be made practicable in this Nation, without any real inconveniencies attending it.’<sup>85</sup>*

In short, trade needed the money-lending business, such a business a secure fund, such a fund land-security, and then such land-security a registry. Consequently a registry turned out to be helpful to trade. This logic, here quite simply shown, was prevailing amongst the pamphleteers discussing credit and registration in those days, such as Yarranton, as we have seen, and Hugh Chamberlen, as we will see.

Though the title of the pamphlet was *Reasons for a registry*, the author

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<sup>84</sup> Yarranton, *England's improvement*, 1677, p. 167.

<sup>85</sup> A Well-Wisher To The Publick Interest Of The Nation, *Reasons for a registry: shewing briefly the great benefits and advantages that may accrew to this nation thereby; and likewise reconciling those mistaken inconveniencies which many have conceived thereof / by a well-wisher to the publick interest of the nation* (London, 1678), pp. -3- -2.

started his demonstration with describing the causal relationship between trade, money, and credit. This comprehensive analysis of economy, though, more or less, it reminds us of Yarranton's, was *the* new twist which could not have been consciously presented in the debates around registration from 1669 to 1671. Indeed the argument itself that trade creates wealth but it cannot be managed without credit was ubiquitous among bank-proposals of those days, but the initial motif of the discussions of the previous pamphleteers had generally been more deeply involved in legal issues or international affairs.<sup>86</sup> The author's analysis was as follows:

'Traffick and Commerce is not only a *medium* of acquiring a Property in any thing, but one of the most eminent and advantagious means whatsoever, of advanceing and establishing the Wealth and Plenty of Nation'; 'Mony is the general and common Standard, and value of all Commodities, in Traffick or Commerce; and if such Money or a Credit equivalent to it be wanting, at such times as any Commodity is exposed to sale, the great advantages of Trade are wholly lost'; 'Hence it is that a Common bank hath been so much esteemed in all Nations'.<sup>87</sup>

It should be here noticed that at the end of the demonstration of trade-money-bank causality the author insisted on 'some constant security', which was often sought for by Lombard-bank and land-bank projectors.<sup>88</sup> If money is requisite for trade, the author said, 'it is of equal necessity, that there should be some constant security established, whereby Men should be

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<sup>86</sup> Even this author, in the preface, shows his worry that '*the multiplicity of frauds which have been practised about Purchases and Mortgages for many years last past, have made Men weary of dealing in that nature, and our present Laws being deficient of a remedy; the mischief is grown to that height as to become a Disease almost past the hopes or possibility of a redress, we may the more excusably imitate those Doctors, / who in desperate diseases adventure to apply new and unusual remedies. I have therefore presumed to offer some Reasons for a Registry*'. (*Reasons for a registry*, 1678, pp. -4- -3.)

<sup>87</sup> *Reasons for a registry*, 1678, p. 2; p. 4.

<sup>88</sup> Exactly at the same period, Mark Lewis proposes a Lombard bank. See Ito, 'The making of institutional credit'

encouraged to lend that Money to others'.<sup>89</sup>

Even 'bringing down the interest of Money', which was one of three agenda proposed by 'the Committee for considering the Decay of Trade, Fall of Rents, &c.' at the house of lords but eventually 'Resolved in the Negative',<sup>90</sup> the author asserted, 'will not effect this design, for where there is not a certain security, either in lending Money or purchasing Lands; neither the readiness in the borrower, nor the seeming advantage of a Purchase, will persuade Men too easily to part with that Money, which possibly has cost them a great deal of labour and pains in the gathering together.' The significance of security for running trade was repeated: 'Trade and Commerce, cannot be carried on to the greatest advantage, without establishing such security'; 'That which remains therefore is to discover such a convenient *medium* for a Fund, or security as may properly reconcile the difficulties already premised.'<sup>91</sup> The persistent insistence on a certain and good fund were widely seen in the bank-proposals of those days, even though what content it has seriously mattered.<sup>92</sup> But, what was in common with so-called land-bank projects was that land was recommended as the most suitable and best security or fund: 'it may reasonably be presumed that no Fund or Bank whatsoever can so naturally and conveniently secure the Money, that may occasionally be lent for advancement of Trade, and other necessary purposes, as the Lands and real inheritances in this Nation'.<sup>93</sup>

Then, the next agenda was how to secure such a 'certain' fund. The author analysed that the difficulty consisted 'in finding out such practicable and easie Methods of transferring, or mortgaging all Lands and freehold Inheritances, whereby Men may be encouraged from the Security and conveniency thereof, to lend their Money upon all reasonable occasions, which otherwise would be hoarded up in Chests'. To answer this he offered 'a short Model' of registration. It was 'to make it a Law' that anyone who had

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<sup>89</sup> *Reasons for a registry*, 1678, p. 5.

<sup>90</sup> *Journal of the House of Lords*, vol. 12: 3 December 1669, p. 280.

<sup>91</sup> *Reasons for a registry*, 1678, p. 6.

<sup>92</sup> See Ito, Ito, 'Quest for a 'good' fund'.

<sup>93</sup> *Reasons for a registry*, 1678, p. 7. Notice that security, fund, and bank are used as almost the replaceable, or even synonymical terms in this pamphlet.

‘any Title or Incumbrance’ should register by a certain day’.<sup>94</sup>

It is clear to see that this ‘model’ of registration was based on the preceding discussions of more than two decades. But, it is also interesting that the author anticipated the same ‘prejudices’ as the pamphleteers who were against registration. The two ‘great prejudices’ he picked up were typical ones: first, that it would be ‘a vast charge for Men to be obliged to Register the several Deeds’; secondly, that ‘the private concerns of one Mans Estate, may be publickly exposed to the / knowledge of any other that will but peruse the Registry.’ Besides, some other difficulties, which also had been already discussed, are added, such as the troubles caused by ‘the Registring of what is past’; the case of an infant who is ‘ignorant of his own right’, ‘all persons beyond the Seas’, and ‘all other persons who having lost their Evidences’.<sup>95</sup>

The author referred also to the ‘other difficulties’ concerning merchant and country gentlemen. His answer to them was that ‘they are of more private concern’. As for the merchant, he assumed an objection that, when, thanks to a registry, one could lend money ‘upon real Security’, no one would lend ‘upon personal; and consequently the Merchant, who hath so many reasonable opportunities of taking up Mony upon Credit, would lose the convenience of serving his necessary occasions’. To this, he simply replied, ‘this is not the Interest of the Nation’. Also concerning country gentlemen, the author admitted that this registry would be ‘a great prejudice’ to them, ‘by discovering what Mortgages or other incumbrances are chargeable upon their Estates’. For the people living in Muldrew’s world, reputation was a double-edged sword, which could improve social credibility, on the one hand, but might accompany a risk of disastrous ending. ‘[T]he reputation of a Country Gentlemans being in Debt’, he cautioned, ‘is at this day so fatal upon him from the uncertain conjecture to be made, how far that Debt may extend’. Nevertheless, however he admitted a number of these potential disadvantage of a registry, he ‘cannot believe they can too highly esteem the advantages of a Registry’.<sup>96</sup>

The fear of being unknown and misunderstood, which was generally

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<sup>94</sup> *Reasons for a registry*, 1678, p. 9.

<sup>95</sup> *Reasons for a registry*, 1678, pp. 9-11.

<sup>96</sup> *Reasons for a registry*, 1678, pp. 17-9.

seen in the discussion of bank-projects in this period, was here also noticeable: 'I fear the misapprehensions which they [=Country Gentlemen] have had over the conveniencies or inconveniencies of a Registry, hath been the great obstruction hitherto of putting the same in practice.'<sup>97</sup> While more than a decade later Briscoe, quoting Descartes's words, would be troubled with persistency of custom as 'a second Nature',<sup>98</sup> this author worried about the 'a forward retention of Custom', quoting from Francis Bacons's essay 'On Innovations':

'It is true that what is settled by Custom, though it be not good, yet at least it is fit; and whose things which have long gone together, are as it were Confederate among themselves; whereas new things piece not so well; and though they help by their utility, yet they trouble by their inconformity'.<sup>99</sup>

The author's argument 'that new Laws should be enacted so often as Men shall introduce new and unwarrantable practices', he thought, was exemplified in 'the late Act against Frauds and Perjuries'.<sup>100</sup> Paraphrasing the quotation from Sir Edward Coke's *The first part of the institutes of the lawes of England*, the author, in fact, argued that essence of the law was invariable.<sup>101</sup> However, because of 'the iniquity and cunning of our latter

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<sup>97</sup> *Reasons for a registry*, 1678, p. 19.

<sup>98</sup> See John Briscoe, *An explanatory dialogue of a late treatise, intituled, A discourse on the late funds of the million-act, lottery-act, and Bank of England* (1694, London), p.21.

<sup>99</sup> *Reasons for a registry*, 1678, p. 20. These sentences are quoted from Francis Bacon's *Essays*. See Francis Bacon, *Essays* (New York, 1995), p.65.

<sup>100</sup> *Reasons for a registry*, 1678, p. 21. This 'late Act' is 'Charles II, 1677: An Act for prevention of Frauds and Perjuryes.' See *Statutes of the Realm: volume 5: 1628-80* (1819), pp. 839-842.

<sup>101</sup> Sir Edward Coke, *The first part of the institutes of the lawes of England: or a commentary upon Littleton ... 4th ed. corrected : The second part of the institutes of the lawes of England, containing the exposition of many ancient and other statutes ... The third part of the institutes of the laws of England, concerning high treason, and other pleas of the crown, and criminal causes ... The fourth part of the institutes of the laws of England, concerning the jurisdiction of courts* (London, 1639-48), 4 v. in 3. Sir Edward Coke appears

times, having made so many deviations and digressions from the candor and integrity of the former', he had been 'forced to propose new and more effectual remedies against the insufferable mischiefs of Mens fraudulent practices and contrivanced'.<sup>102</sup>

Soon after, the anonymous author of *Reasons against a registry for lands* rebut this proposal for a registry word by word, insisting on unnecessariness of a registry for almost the same reasons as the preceding pamphlets against it had: 'it doth not appear that the Disease is so great and desperate, that such a strange, unusual and dangerous Remedy should be applied'; 'I cannot conceive that to be a sufficient Reason, to make nine hundred ninety and nine other Estates subject to such great inconveniencies as a Registry will inavoidably produce, for the security of one only Estate.' *Reasons against a registry* was imbued with the suspicion of the 'security' of the proposed registry. The problem the author found in security seemed quite technical but concerning the most essential role of a registry: 'it is easie to frame two Deeds that may purport the same thing in the extract, yet in the main to have several ends and operations; if so, then I may pretend to Register one, and when occasion serves make use of the other; so that there can be no security in a Registry. But, the author said to this that only 'Registering the whole Deed' might prevent the 'crafty Men' from imitating 'such Superscriptions'. Nevertheless, this author argued that a registry would eventually produce extravagancy and multiply the uncertainty of trade: 'a Registry will capacitate ill Husbands in the Country to borrow Money to waste extravagantly, and encourage all monied men to lend their Moneys at Interest on Mortgages, rather than hazard it on the uncertain effects of Trade'.<sup>103</sup>

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to be an authority in the field of jurisprudence at the time. Philipps and the author of *A Seasonable proposal* both refer to Coke. See Philipps, *The pretended perspective-glass*, 1669, p. 6. and *A Seasonable proposal to the nation*, 1669, p. 6.

<sup>102</sup> *Reasons for a registry*, 1678, p. 21.

<sup>103</sup> *Reasons against a registry for lands, &c : shewing briefly the great disadvantages, charges, and inconveniences that may accrue to the whole nation in general, thereby much over-ballancing the particular advantages that are imagined to arise therefrom; in answer to a late book entituled Reasons for a registry; with some reasons for a registry of personal contracts,*

In contrast with the argument of benefit and necessity of an ‘Innovation’ in *Reasons for a registry*, *Reasons against a registry* emphasised that it would make the English laws concerning property ‘shake, and disturb the peace and quiet of of[sic] many thousands of sober and well-minded peo- / ple throughout the Kindom[sic]’. It was not ‘a new Medicine for a new Disease’ but ‘a Venomous Medicine’ which would surely lead to ‘an universal indisposition of the whole Body’.<sup>104</sup>

The author’s argument against a registry that there should be ‘no security in a Registry, *unless* [my Italics] the whole Deed or Incumbrance be Registered’, in the ending paragraphs, turned out to be the cue for his own proposal ‘to establish in every Market Town in *England*, a Registry for all personal Contracts’.<sup>105</sup> The advantages which were enumerated in this author’s own proposal could be summarised in two view points: ‘conveniencies’ and reliability.

As to ‘conveniencies’, first, the author was confident of its effect for reducing the number of ‘Suits and Controversies’: ‘the late Act against Frauds and Perjuries, will conduce much to the prevention of Suits and Controversies: But this Registry much more’. Though this gave the author an effective point in the controversy, he added the other minor ‘conveniencies’: ‘The expences will be but small’; ‘The Journeys of the parties will be but short, *viz.* to the next Market Town’; ‘Here is no danger of such Obligation or Agree- / ment to be lost’; ‘Executors may here discover what Bonds their Testators have entred into’.<sup>106</sup> Enhancing the reliability of economic transactions, which was the second merit of this ‘Method’, was a strongly demanded improvement at that time, where reliability and safety were supposed to be most needed in any kind of business. Besides, what kind of person should handle the business was one of the most contentious problems in every bank-project of the seventeenth century,<sup>107</sup> and so was in this controversy: ‘The Register himself and his Deputy, may be elected by the Inhabitants of the Town, where such Registry is to be kept, and ought to be persons inhabiting there, and of known integrity: the reason why there ought

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*humbly offered to consideration* (London, 1678), pp. 2-3; pp. 12-5.

<sup>104</sup> *Reasons against a registry*, 1678, pp. 16-7.

<sup>105</sup> *Reasons against a registry*, 1678, p. 12; p. 17.

<sup>106</sup> *Reasons against a registry*, 1678, pp. 17-9.

<sup>107</sup> See Ito, ‘The making of institutional credit’.

to be a Deputy, is, because one or the other may be sick, or on extraordinary occasions absent.<sup>108</sup> Existence of a deputy and 'known integrity' constituted the necessary part of the safety net of this uncertain-looking system. Thus, the author's answer to the controversy, at the end, turned out to be 'for' registration itself. His answer was No to 'a Voluntary Registry' indeed, but Yes to a perfect registration and Yes to a registry in each county or town.

## VII

It is well-known among economic historians since J.K.Horsefield's *British Monetary Experiments* that there was an economically and politically contentious controversy in the ending decade of the seventeenth century between the proponents of the Bank of England and land-bank projectors.<sup>109</sup> However, the pre-history of land-bank projects and the sources of their ideas do not seem to have been properly explored yet. My intention in this paper was to demonstrate that the very idea of land-banks in that controversy originated in the lengthy discussion of credit and registration of land, whose issues and vocabulary came from the law reforming debates in the Interregnum. Land-bank projectors chose land as the security or fund of banks, not just because it was the most trustful pledge. They had always realised the necessity of some system which would make land the most reliable security. That necessary system was registration of land. Establishment of registries had been an important issue through the century. In this age registries were often proposed usually as one of the measures to improve the safety of economic transactions. Naturally a registry of land was supposed to function as an institution to fortify credit, which hitherto used to be considered quite fragile.

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<sup>108</sup> *Reasons against a registry*, 1678, pp. 18-9.

<sup>109</sup> According to Antoin E. Murphy, the land-bank proposal of John Law was an extension of the discussion between Hugh Chamberlen, John Briscoe, and John Asgill. See Antoin E. Murphy, *John Law: Economic Theorist and Policy-Maker* (Oxford, 1997), chapter 6.