

Power Rejected:
Congress and Bankruptcy in the Early Republic

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Introduction

A Congressional power, such as the bankruptcy clause, is often neglected, unexercised, or explicitly rejected. The United States had no national bankruptcy law until 1800. The 1800 law, enacted by the soon to be defeated Federalists, was quickly repealed by the Jeffersonian Republicans in 1803. The nation then stood without a bankruptcy law until 1841 when a law was enacted following the Panic of 1837 and the Whig sweep of the 1840 elections. But in 1843 this law also was repealed. The next act, that of 1867, was fully repealed in 1878. Only since 1898 has the United States had a permanent, enduring national bankruptcy law.

This essay seeks some explanation of why the members of Congress chose to leave the nation without a federal bankruptcy law for much of American history. There are three important observations. First, bankruptcy laws were enacted following severe macroeconomic downturns. Second, the laws were produced by unified government of the political “right”. Third, although enacted by political conservatives, the laws were debtor friendly either by design or by practice. A quite relevant ancillary observation is that Congress responded to the Panic of 1819 by providing relief for land debts to the federal government but not by enacting a Bankruptcy Act. Many state governments stepped to the plate and enacted “stay” laws that provided for debt moratoria.

To understand these observations, we draw on formal theoretical developments in political science, most notably the “Pivotal Politics” approach of Krehbiel (1998). See also Brady and Volden (1998). We also draw on the rapidly developing theoretical and empirical literature on the political economy of financial markets. We argue that the

observations can be reconciled by acknowledging that the “conservative” political right in fact represents capitalists who are debtors as well as creditors. When the economy is in a funk, the debtors are likely to get more political weight. The political right was, moreover, generally eager both to extend the scope of the federal government and to obtain the relative impartiality of federal as against state courts. In order to obtain the benefits of a national law, creditors were willing to make a political compromise on how bankruptcy law applied to debtors.

Federal bankruptcy law has its origin in Article I, Section 8 of the Constitution. Congress has the power “To establish uniform Laws on the subject of Bankruptcies throughout the United States.” The clause was adopted with practically no debate (Warren, 1935, p. 5). It appears to have been added, with unclear motivation, by Charles Pinckney of South Carolina (Mann, 2002, p. 183). In *Federalist* 42, Madison wrote simply, “The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States that the expediency of it seems not likely to be drawn into question.”¹

Madison would discover how wrong he was within his own political lifetime. Bankruptcy law was contentious in the United States from the adoption of the Constitution until 1898, the year of passage of the act that forms the basis of the current bankruptcy system. Madison himself served in the first two Houses. Martis (1989) classified members of these Houses into two parties or factions, one in favor of the administration of George Washington and one against. Madison, as we detail later, was one of the more “left-wing” anti-administration types. The anti-administration forces

evolved into the Jeffersonian Republicans and then the Jackson Democrats that represented the left end of the political spectrum in the ante-bellum period. Madison would have found it difficult to play a role in national politics from his base in Virginia without being a loyal Jeffersonian opposed to bankruptcy. The positions of the Virginians in turn may have reflected the deterioration of the local economy brought about by the revolutions in America and France.² The United States had no bankruptcy law during Madison's presidency.

Following ratification of the Constitution, actual bankruptcy legislation was *tabula rasa*. Moving from this empty status quo might prove extremely difficult, if only because of the institutional structure which governs the legislative process. Most important to our story, there is a bicameral legislature whose chambers differ sharply in how they are apportioned and elected. In particular, the nineteenth century Senate was heavily tilted in favor of thinly populated frontier states, each of which received two votes in the Senate upon admission but, typically, only one vote in the larger, population based, House of Representatives. The House and Senate would indeed frequently find themselves in conflict over aspects of domestic economic policy, including bankruptcy.

Bicameralism, the presidential veto, and internal institutional rules that each house chooses to adopt, require that legislation pass not just the assent of a simple majority but also the acquiescence of pivots controlling a series of hurdles barring the route to legislation [Krehbiel (1998), Brady and Volden (1998)]. To enact or change legislation often requires a dramatic change of preferences in Congress, brought about either by a defining external event or by elections that change the composition of Congress. Sometimes the triggers are largely political as when the Kennedy assassination

and the misguided Goldwater campaign combined to produce the 1964 elections and the legislation of the “Great Society”. A breakdown of the economic system, as in the Great Depression, can also create a perfect legislative storm, but normally the status quo will hold.

Until recently, there was scant research on the development of federal bankruptcy law, with little written since Charles Warren’s 1935 history.³ Scholarship has truly flourished in recent years with Skeel’s (2001) excellent general history, emphasizing the twentieth century, Balleisen’s (2000) book on experience with the 1841 Act, and Mann’s (2002) history of colonial, state and federal bankruptcy legislation in the late eighteenth and early nineteenth century. Hansen (1996) has emphasized the formation of national associations of trade creditors in leading to the 1898 bankruptcy Act. In contrast, we (Berglöf and Rosenthal, 2003) have emphasized the influence of ideology and banking interests. Posner (1997) has provided a detailed account of the role of interest groups in the enactment of the 1978 Bankruptcy Act. Hansen and Hansen (2003) have detailed the long-run historical linkage between the development of consumer credit and personal bankruptcy. Nunez and Rosenthal (2004) have studied the failed attempt to enact bankruptcy legislation in 2001 and 2002, with emphasis on ideology, campaign contributions by credit card issuers, and the strategic implications of amendments relating to abortion protest and state exemptions.

Left unpainted on this rich canvas, however, is the story of congressional politics in the ante bellum period and, in particular, analysis of the roll call votes that enacted and repealed bankruptcy legislation. This essay traces the political economy that led to the absence of a federal bankruptcy law for most of the 110 year period from 1789 to 1898.

We will focus on the federal response to debt crises in the 1797, 1819, and 1837 Panics. The 1867 law remains largely uncharted territory.

The Political Economy of Bankruptcy

The economics part of the political economy starts with the observation that the early bankruptcy acts were responses to economic “panics”. The 1800 Act followed the Panic of 1797 while the 1841 Act followed the Panic of 1837. In practice, these acts were less permanent procedures for handling the economic distress of individuals (recall that we are very much in a largely pre-corporate world) than a temporary expedient for writing off a wave of defaults.

The 1800 Act, passed at the end of the 6th Congress, in fact had a five-year sunset provision.⁴ After an unsuccessful effort at early repeal was made as soon as power shifted from the Federalists to the Jefferson Republicans in the 7th Congress, repeal was voted just six weeks into the first session of the 8th Congress. But the 1800 Act had served, *inter alia*, to spring Robert Morris, signer of the Declaration of Independence, member of the Constitutional Convention, and George Washington’s first choice as Treasury Secretary, from the Philadelphia gaol.

Efforts to repeal the 1841 Act were made on the heels of enactment, even before the act became effective. While the first attempts aborted, the Act was repealed in 1843, by, most unusually in the history of Congress, the enacting Congress, the 27th. In the year the Act was in effect, the total number of bankruptcy filings reported by Warren (1935) represented one percent of the adult male white population of the United States. In an era where the nation was still demographically dominated by agrarian sole

proprietors and laborers unlikely to file, the 1841 Act represents a massive write-down of commercial debt.

After the intervening Panic, that of 1819, Congress voted a write-down of federal loans for land purchases.⁵ This write-down amounted, in economic terms, to a *bailout* of private debt. The costs of a bailout fall on taxpayers. In contrast, a temporary bankruptcy law represents a partial *moratorium* on debt where the costs fall on private creditors. One might expect, therefore, the support for each measure to come from very different political coalitions (Bolton and Rosenthal, 2001). These coalitions can vary in their political effectiveness, resulting in Congress being selective in the type of debt relief it allows in a macroeconomic crisis. Indeed, there was no bankruptcy law passed following the Panic of 1819. This observation leads to the politics piece of our political economy story.

Up through 1898, bankruptcy bills became law only when the right (Federalists, Whigs, or Republicans⁶) had unified control of the federal government. Otherwise, gridlock prevailed even when the necessary condition—panic—was provided by the economy.⁷ The Panic of 1819 occurred in the middle of 40 years of domination by Jeffersonian Republicans and Jacksonian Democrats. Only when this domination ended, some years after the Panic of 1837, was it possible to pass another bankruptcy act, under a unified Whig government.

The bankruptcy laws passed by the “right wing” governments were generally debtor friendly in practice. Although the 1800 Act was in large part copied from the British Statute of St. Anne and provided for only involuntary bankruptcy, Mann (2002) details how Americans innovated to use the statute to accomplish voluntary bankruptcy.

For example, a father could be the creditor of a son. The son could have many other creditors. The father could initiate bankruptcy proceedings, to the potential displeasure of other creditors. Similarly, “vulture capitalism” Balleisen (1996, 2001) surrounded bankruptcy proceedings under the 1841 Act. Part of the impetus for repeal came from the fact that debtors’ assets were largely dissipated by various means, including collusion with friendly creditors to bid on the assets, fraudulent conveyance, and fees paid to court officials, printers, etc. It was common for bankrupts, experienced with the process, to become bankruptcy lawyers who represented other bankrupts.

Bankruptcy acts also became debtor friendly not just because debtors became clever in using legislation on the books but also because the legislation was a compromise tilted toward debtors. Compromise was needed in 1800 because many, Virginians in particular, were concerned that land was an asset that could be seized (Mann, 2002, p. 217). The concern over land initiated the homestead exemption debate that continues to this day (Posner, Hynes, and Malani, 2001; Nunez and Rosenthal, 2004). Debtors whose residences were remote from federal district courts were reluctant to accept federal jurisdiction. Even worse for debtors in 1800, creditors may have preferred for bankruptcy cases to be decided by commissioners appointed by the President, outside the judicial process. Executive administration of bankruptcy was introduced by Napoleon in France and copied in the nineteenth century by the British, who processed debt default through the Board of Trade (Lester, 1995). That bankruptcy was not processed by the executive branch was due to John Marshall’s insisting that a jury trial be available before bankruptcy was imposed (Mann, 2002, p.218). Jury trials appear as a debtor friendly compromise.

Debtor “friendliness” was also manifest in the 1898 Act. This legislation was a compromise in which the creditor lobby ceded to the states the rights to define exemptions and priorities and to try cases of fraudulent conveyance. Grounds for involuntary bankruptcy set forth in the House bill were substantially weakened in conference, responding to the wishes of a more agrarian centered Senate (Skeel, 2001).

Why did the “right” push for legislation that was in law and in practice debtor friendly? We believe there are two reasons. One turned around the Federalist, later Whig and post bellum Republican, push for a strong federal government. The second had to do with which debtors actually benefited from a bankruptcy law.

As to the first point, early America featured a debate between “agrarianism” and “capitalism” as outlined by Parrington (1927). The capitalists wanted a national government able to provide national defense, impose an external tariff, construct national roads and other infrastructure, and control monetary policy through a national bank. They wanted an expanded role for a federal judiciary. Mann (2002) indicates that Speaker of the House Theodore Sedgwick, who cast a tie-breaking vote to pass the 1800 Act in the House, was more concerned with the bill as a wedge for expanding the judiciary than for its effectiveness in dealing with defaulted debt.

Agrarians, in contrast, sought to maintain the prerogatives of state courts and legislatures, presumed more favorable to local debtors. There would be little need of a federal procedure to handle debtors in default if state legislatures could, as they did after the Panic of 1819 (Rothbard, 1962; Bolton and Rosenthal, 2002), vote “stay laws” that allowed all farm debtors to avoid repayment. Moreover, the agrarian insistence on states rights would come, by the 1840s, to be reinforced by the debate on slavery.

The battle of states' rights versus federal jurisdiction could be influenced by how the courts changed the status quo on bankruptcy. In *Sturges v. Crowninshield* (1819) and *Ogden v. Saunders* (1827), the Supreme Court ruled that state laws were legal in the absence of a federal statute. The applicability of the laws was, however, sharply limited. The interstate commerce clause was used to judge the laws inapplicable to contracts between citizens of different states. The contract clause was used to deem the laws inapplicable to contracts concluded before the legislation went into force. The Court's use of the contract clause was not rigid insofar as the Court tried to strike a balance that extended flexibility to debtors. It did allow the states to modify legal remedies or methods of enforcing contracts. Consequently, the states freely enacted "stay laws" which provided for debt moratoria or prolonged installment payments. Yet when these laws tilted too strongly against foreclosure, the Court, in *Baron v. Kinzie* (1843) intervened on the creditor side.⁸ Over time, the Court appears to have constrained the ability of individual states to deal with private debt default, particularly as interstate commerce developed. This change in the status quo may have favored a compromise on federal legislation.

Our second argument recognizes that the "capitalists" comprised both debtors and creditors. In economic downturns, the debtors would become more numerous and have more influence. The 1800 bill, moreover, was designed only for the relatively wealthy. Only someone with over \$1000 in debt could be held bankrupt and only a creditor owed more than \$1000 could initiate bankruptcy (Mann, 2002, pp. 222-223). Some Federalists, such as Theodore Sedgwick, Jr., claimed the "rabble" of the masses were unworthy of benefiting from a bankruptcy law (Mann, 2002, p. 258). Indeed, Shays rebellion,

undertaken by “little insurgents, men in debt, who want no law, and who want a share of the property of the others”⁹ spurred the Constitutional Convention. Recent theoretical work by Ayotte (2002) and by Biais and Récaissens (2000) and Biais and Mariotti (2003) suggests that lenient bankruptcy procedures would tend to favor “high type” entrepreneurs to the detriment of “low type” who become credit rationed. A similar result with regard to debt collection in the courts was obtained by Jappelli, Pagano, and Bianco (2002). This recent work is echoed by empirical work for the United States by Gropp, Scholz, and White (1997) which shows that liberal state exemption laws for bankruptcy raise loan rates for the poor and lower them for the rich. A similar result, with regard to court efficiency, is obtained for Italian provinces by Fabbri and Padula (2003). So capitalist debtors may be quite favorable to government policies that keep creditors at bay. One need only recall the Eastern Airlines bankruptcy proceedings (Weiss and Wruck, 1998), the “zombie” savings and loans from the 1980s (Romer and Weingast, 1991, White, 1991), LTCM from the 1990s (Dowd, 1999), and the support of President George W. Bush for the right of Texas debtors to continue to benefit from unlimited homestead exemptions (Morgan, 1999).

An analysis of roll call voting contains the evidence we present to support our arguments as to when and why the “right” pushed through national bankruptcy laws. We will break the analysis into three major sections. In “the brief triumph of Federalism” we treat the passage of the 1800 Bankruptcy Act. Then, in “democracy without bankruptcy” we discuss the congressional failure to enact a bankruptcy law between the 1803 repeal and the election of 1840. Finally, in “writing off the Panic of 1837”, we cover the

passage and repeal of the 1841 Act. We first pause to discuss methodological issues in our roll call analysis.

Methodology

Measuring Legislator Ideology

Our analysis relies on the widely used Poole and Rosenthal (1997, 2001) two-dimensional DW-NOMINATE measures of ideology. Each legislator is assigned an ideal point in a two-dimensional Euclidean space. These points are illustrated by the letter tokens in figures 1 and 2. Each point is based on a legislator's entire voting record for all the years the legislator served in Congress. Legislators serving in three or more Congresses are allowed to have linear trend in their ideal points.

The first dimension of DW-NOMINATE captures economic left-right. From the very beginning of the Republic, this dimension was correlated with the regional division of the country. In the 2nd House, for example, the 19 leftmost representatives of the 63 scaled were from Maryland southwards while the 15 rightmost were from the North. Madison was the 13th furthest to the left. Sedgwick of Massachusetts, who as speaker in 1800 managed passage of the first bankruptcy Act, was 6th furthest to the right. By 1800, there is a well formed two-party system with the Federalists on the right and the (Jeffersonian) Republicans on the left (figure 1). By 1840, on the first dimension, Whigs have taken over on the right and Democrats on the left (figure 2); the second dimension is the South-North division over slavery. DW-NOMINATE allows for shades of gray such that moderates are more likely to deviate from the majority of the party than are extremists.

DW-NOMINATE positions a roll call by estimating both the length and direction of the line connecting the locations of the “Yea” and “Nay” outcomes and the midpoint of this line. The perpendicular bisector of this line, which runs through the midpoint, is the cutting line for the roll call. (Again see figures 1 and 2 for examples.) Of course, adequate sample sizes are required for precise estimates. Since the Senate had only 32 seats in Congresses 5-8, Senate roll call estimates for this period will be quite imprecise.¹⁰ The situation is better for the House, which had 116 seats in Congresses 5-7 and 142 in the 8th Congress, following reapportionment on the basis of the 1800 census. In the later years we cover, the sizes of both the House and Senate increase, alleviating the sample size problem.

Sample Size Problems in Early Congresses

Legislator estimates, like those for roll calls, also depend on adequate sample sizes. Bankruptcy bill roll calls took place in Houses 5-8 and Senates 6-8. The total number of roll calls in the 5th, 6th, 7th, and 8th Houses were, respectively, 155, 96, 142, and 132. In the 6th, 7th, and 8th Senates, there were 120, 88, and 150 roll calls, respectively. These numbers are an order of magnitude lower than the number of roll calls available in recent years, but the numbers are still large enough to allow for reasonable estimation.

There is, however, a related problem in saying that ideology influences roll call voting. The number of bankruptcy roll calls in Houses 5-8 are 1, 4, 4, and 1, respectively (see Table 1). For Senates 6-8, the numbers are 8, 1, and 2. For a senator serving only in the 6th Senate, the senator’s 8 votes on bankruptcy out of 120 possible are likely to have a substantial influence on his “ideology”. Thus, our independent variable is not truly

independent. But for senators serving before the 6th or after the 6th Senate, their DW-NOMINATE estimates will reflect their entire voting record and be only slightly influenced by, at most, the total of 9 Senate bankruptcy roll calls between 1800 and 1803. A similar problem arises for the House. The worst case scenario there is a representative serving only in the 6th House which had four bankruptcy roll calls in a total of 88. Where the number of on topic roll calls is sparse, as in the one bankruptcy roll call out of 155 in the 5th House, results are likely to be robust.

The problem of the “contamination” of the DW-NOMINATE estimates by bankruptcy votes being in the estimation continues through time, especially in the 27th Congress where there were many bankruptcy votes. Poole and Rosenthal (1993) addressed the contamination issue explicitly in their study of the Interstate Commerce Act by reestimating NOMINATE without railroad roll calls. They found that their results were very robust to the exclusion of the on topic roll calls.

Problems of Interpretation

Our analysis emphasizes not just ideological splits on bankruptcy legislation but also the effects of changes of partisan control of Congress and the Presidency. From one theoretical viewpoint (Krehbiel, 199?) shifts in partisan control won't matter much. What elections do, from this perspective, is to simply shift the distribution of ideal points within Congress. Was, for example, there anything important in the Republican triumph in the 1994 elections other than a conservative shift in the preference distribution? Other scholars, most notably, Cox and McCubbins (1993, 2003), have argued that party organization is fundamental to the understanding of Congress. Undoubtedly, there is some truth in both positions. Poole and Rosenthal (1997) show that the mean winning

outcome location in a Congress responds to the size of the majority party delegation (the distribution of preferences) and to a dummy variable for partisan control. So adding more conservatives moves policy in a conservative direction, especially when control shifts. The control effect testifies to the ability of the majority party to control the congressional agenda. We believe that control and ideological preferences are both important and will invoke both in the ensuing discussion.

In addition to shifts in preferences and control, legislation can reflect changes in the mapping of an issue onto ideological dimensions. For example, Romer and Rosenthal (1985) examined two sequences of Senate amendment voting on the minimum number of employees exposing an employer to OSHA inspections. Both sequences evidence strong liberal-conservative mappings but a majority supported a smaller limit in the second round of voting. Similarly, the 27th Congress both enacted and repealed the 1841 Bankruptcy Act. This change, like that on OSHA, took place with no measured change in the distribution of ideological preferences. But experience with corruption under the Act could have weakened moderate support and moved the cutting line rightwards. In short, roll call voting will reflect a mix of agenda control by the majority party, basic ideological preferences, and the mapping of policy choices onto the preferences.

1800: The Brief Triumph of Federalism

We now apply the political economy framework to legislation in the 1800s. Our ability to understand congressional action in this period is very much obligated to the superb treatment in Mann (2002).

Our central conclusion is that support for a national law came from political conservatives, Federalists, and coastal districts. Although these variables are collinear, all had significant influences on roll call voting. In particular, those Federalists that favored bankruptcy as part and parcel of a strong national government dragged an unenthusiastic party to support the legislation. There were important divisions among the Federalists, with only the more “right” members strongly supporting the bill. After controlling for party and ideology, North-South regional differences have no effect. The relevance of the coastal variable anticipates the effect of national expansion. The coup de grace to a national bankruptcy law was brought about by the 1800 census which shifted the balance in the House strongly in favor of Jeffersonian Republicans on the frontier.

The 1800 census was indeed the sole source of institutionally mandated change that would affect roll call voting from the 5th (1797-99) through 8th (1803-05) Congresses. No new states were seated during Congresses 5-8 so the increase in representation of the frontier was largely a matter of differential population growth. The changes brought about by the 1800 census were first manifest in the elections of 1802 to the great benefit of the Republicans. The number of seats in the House rose from 106 to 137. Although the Federalists maintained their number of seats from the 7th to the 8th House, the Republicans increased theirs contingent dramatically and had a nearly 3:1 House majority. The Republicans further solidified their control of Congress by also

gaining a 3:1 majority in the Senate, which was only narrowly controlled in the 7th Congress. The Krehbiel (1998) pivotal politics approach suggests that repealing the 1800 bill, *ceteris paribus*, would have been much easier in the 8th than in the 7th Congress.

Our results for House voting on the 1800 bill are found in Table 1. The spatial model embodied in DW-NOMINATE shows that voting was ideological (and on the first dimension). DW-NOMINATE outperforms a straight-party line voting model. On all the roll calls in Table 1, with the exception of roll call 7-86, there are fewer classification errors in DW-NOMINATE than in a party voting model. The differences are small but consistent. The largest differences occur on the vote to postpone consideration of repeal in the 7th House, where DW-NOMINATE makes 17 errors as against 23 party defections, and on the vote to pass in the 5th House, where DW-NOMINATE makes 13 errors as against 18 party defections. The smaller number of errors for DW-NOMINATE means that the roll call cutting line is passing interior to one of the parties and not through the spatial channel separating the parties. Voting on bankruptcy is highly ideological, with high levels of Proportionate Reduction in Error (PRE) with the exception of the last roll call on repeal where the majority in favor of repeal was very lopsided.

The results are illustrated by the vote on passage in the 5th House shown as figure 1. (The Senate did not act in the 5th Congress.) The cutting line runs interior to the Federalists. It succeeds in separating moderate Federalists, who defected, from the bulk of the party. While the cutting line makes “incorrect” predictions about the 5 defecting Republicans it makes “incorrect” predictions about only 7 of the 13 defecting Federalists. There is also one Federalist who did not defect but is on the anti-passage side of the line.

The Senate is a somewhat different story. Throughout the 6th and 7th Senate, the spatial model does not improve on a model of party-line voting, perhaps as a matter of the small sample size. The defections appear unrelated to spatial position or region. For example, the two defections on passage in 1800 (roll call 6-50) were Hillhouse (CT) and Goodhue (MA), both from the New England heartland of Federalism and both on the far right side of Federalist ideal points.

In the 8th Senate, although the fit to the spatial model is modest, there is an improvement over the party-line model but the votes are curiously along the second dimension. The second dimension is a weak dimension during this period.¹¹ Interpretation is not direct. The other roll calls with nearly horizontal cutting lines are a grab bag. There are not regional groupings. For example, the polar Federalists on this dimension are the two Massachusetts senators, John Quincy Adams and Pickering. Repeal was more narrowly voted in the Senate. As in the House, however, repeal was supported by Federalists as well as Republicans.

What led to the non-partisan character of repeal? Presumably the larger Republican majorities themselves did not induce Federalists to support repeal. One suggestion, to anticipate our story for the 1841 bill, is that bad experience with the 1800 Act played a role in abolishing the Act prior to its legislated expiration. The “voluntary” involuntary bankruptcies may have been unanticipated; their occurrence may have strengthened creditor opposition. Another factor is that by 1803 the defaults from the bad times of the 1790s may have been worked out. In good times, creditors may have been able to argue for tougher terms. Repealing the bankruptcy law meant eliminating the discharge of debt and the resultant fresh start that was available only in Federal law.

Let us make two further observations about the process surrounding the 1800 Act. First, the bill did not generate enthusiasm, even among Federalists. On the critical passage vote in the 6th House, the Federalists were able to obtain the votes of only two Republicans to pass the bill but they lost seven of their own members. The Speaker's vote was needed for passage. In the Senate, the 10 Republican senators never flinched in their opposition to the bill in voting on passage and amendments, with the exception of two defections on roll call 6-37. In contrast, Hillhouse and Goodhue not only voted against passage but also voted with the Republicans on all the amendments.

The behavior of the two New England Republicans suggests a minor correction to Mann's work. Mann (2002, p. 218) places emphasis on southern opposition including southern attempts to amend the bill. But on the Senate amendment that the act not extend to "framers, graziers, dozers, or manufacturers" (6-31), the two defecting Federalists, Hillhouse and Goodhue were northern while the one northern Republican, Langdon of New Hampshire, voted with his party and the one southern Federalist, Read of South Carolina, also voted with his party as did Federalists from the border states of Kentucky and Maryland. Thus, opposition to the bill appears to be more partisan than regional. The parties were simply sharply split along North-South lines.

Similarly, the House did not divide solely on regional lines. It is true that the two Republicans who voted for the bill were non-southern, representing Maryland and New York. It is also true that five of the seven¹² defecting Federalists were southern, two being the Georgia representatives, Jones and Taliaferro. They had ideal points in the middle of the Republican cluster, which indicates that they generally voted with the

Republicans, and not just on bankruptcy. But 10 southern Federalists voted for the law as did 5 from the border states of Maryland and Kentucky.

Party, region, and ideology are all quite collinear. This can be seen in the regression results in columns (1)-(5) of Table 3. We have run a linear probability (regression) model with the 6th House passage vote (for=1, against=0) as the dependent variable. In comparison to the passage vote in the 5th House, this vote presents a tougher test of the influence of ideology as against party membership since the cutting line now runs in the channel separating the Federalists and the Republicans.¹³ Nonetheless, ideology remains important for discriminating the likelihood of a defection from the party position. Indeed, after we control for the interactions of party with both ideology and the geographic position of the congressional district, party membership has only a weak effect on the vote.

In a first set of regressions, the independent variables were PARTY (Federalist=1, Republican=0), REGION (North=1, Maryland or Kentucky=0.5, South=0), and the two DW-NOMINATE ideal point coordinates. In the complete multiple regression, all variables are statistically significant, except for the second DW-NOMINATE coordinate. Region, however, has almost no punch by itself, as seen in column (5). Eliminating this variable decreases the fit only slightly. Columns (2)-(4) show that both party and ideology are significant with ideology providing slightly better discrimination.

Because party defections were primarily Federalist, we have run, in column (6), a regression where party was interacted with the other regressors. This amounts to estimating slope terms only for Federalists. This provides a slightly better fit and suggests that the second dimension had some importance within the Federalist Party.

In addition to party and ideology, the accessibility of the district courts to the legislator's constituents might have influenced support for a federal bill. Those districts far from the courts can be hypothesized to vote against. We coded variables to capture distance to the courts.¹⁴ The variables were not even close to statistical significance when added to the regression in column (1) of table 3. Consequently, we omit presentation of those results.

Accessibility to the courts would depend, however, not just on geographical proximity but on easy transportation. In the pre-canal, pre-railroad era of the early 1800s, coastal and estuarine areas were favored by water transport. They were also areas containing the early centers of commerce, manufacturing, fishing, whaling, slave trading, and export-import trade. These areas also had most of the district courts. Consequently, we coded another variable that was "1" if the congressional district touched the Atlantic coast or was in the Hudson, Delaware, or Chesapeake estuaries.¹⁵ This "coastal" variable enters the regression significantly in columns (7) and (8), although its marginal contribution to fit is modest. Comparison of columns (6) and (8) indicates that, in the interactive model, controlling for coastal location diminishes the effect of party.¹⁶

Democracy without Bankruptcy: 1803-41

After the 1800 Act was repealed in 1803, bankruptcy was not brought to a vote again in the House until 1818, during the Era of Good Feelings. But consideration of a bill in that year was postponed indefinitely despite strong support from the rump of the Federalist Party. (See table 5.)

The Republicans did, however, soon have to deal with a major economic crisis, the Panic of 1819 (Rothbard, 1962). Our main finding here is that this macroeconomic

crisis did not result in a bankruptcy bill because of the opposition of Jeffersonian Republicans in the older states of the Union. Republicans from the frontier states supported a bankruptcy bill in the Senate, where they were critical to passage, but cast but one vote on the key roll call in the House.

In the wake of the Panic, the Senate took up bankruptcy in 1820 but failed to pass a bill. Finally, in the lame duck session of 1821, the Senate passed a bankruptcy bill. (See table 4) The major items of contention, as indicated by amendment voting, were whether voluntary bankruptcy would be allowed, whether bankruptcy would extend to individuals other than merchants, and whether a discharge would apply to debts owed to private individuals who were not the trade creditors of the debtor. Within this debate, Federalists appeared to support merchants only but with a full discharge for this class—once again, debtor friendliness to a segment of capitalists. Those Republicans who favored a bill wanted to democratize, that is broaden the base of eligible individuals. When the bill passed 23-19, the Federalist votes were necessary. A majority of Republicans opposed. Nonetheless, the voting, in terms of PREs was only modestly ideological. Ideological differences were hard to pin down in the essentially one-party state of the Era of Good Feelings. Poole and Rosenthal (1997, pp. 38-40) show that the period 1815-1825 was one of two periods of American history where the spatial model gives a poor fit to roll call voting behavior. Consequently, it is not surprising to find that bankruptcy votes in the Senate were not highly ideological at this time.

The House, however, failed to follow the Senate's lead when it received the bill near the end of the lameduck session of the 16th Congress. Because non-voting was rampant at this time, the outcome could be influenced by abstentions. When the dust

settled, the bill was tabled. (See table 5.) There was a clear regional split, however, with the South blocking consideration of the bill against the wishes of major urban centers.

See figure 3.

We again use regression analysis to contrast ideology and region, which remain very collinear. The results for the motion to table are in table 6. The variable definitions remain as in table 3.¹⁷ It can be seen in the first column of table 6 that party and the two DW-NOMINATE coordinates are all significantly related to voting, with p-values no higher than 0.037. Region is marginally significant with a p-value of 0.073. Since the variables are collinear, region by itself is highly significant, with a t-statistic exceeding 7. The fit is not, however, as good as the overall model, nor as with just the other variables, as seen in columns (3) and (4). The R^2 values are much lower than in 1800, echoing the above discussion of the limited applicability of the spatial model to roll call voting during the Era of Good Feelings. Nonetheless, the negative signs on all estimates show that it was southerners, Democrats, and the ideological left that favored tabling the bill. The second dimension is a North-South dimension, with the negative pole southern at this time. The southern pole supported tabling, but the second dimension was much less important than the first, even when region is not included as a variable.

Bankruptcy was brought up again in the 17th Congress, but the House, by a substantial majority, refused to order a 3rd reading in a vote on March 12, 1822. (See table 5.)

During the same period, the federal government did deal with default on land debts to the federal government. Bolton and Rosenthal (2002) provide a brief analysis of the related roll call votes. Frontier states were favorable to forgiving land debts and older

areas were against. Because the frontier was tied to the Republicans, legislation passed that gave the land debtors a partial write down or delayed repayment terms. Bolton and Rosenthal (2002) also looked at which state legislatures voted “stay laws” or debt moratoria in this period. They were also concentrated on the frontier and, to some degree, the North. The seaboard southern states (Virginia, North and South Carolina, and Georgia), although Republican, had a conservative approach to debt that is echoed in opposition to bankruptcy legislation.

The fact that relief was given to land debt but not to bankrupt commercial debtors provides a clue as to why bankruptcy legislation cleared the Senate but failed to pass the House hurdle following the Panic of 1819. The demanders of bankruptcy legislation were concentrated in Federalists who remained in political eclipse. The demanders of land debt relief were concentrated on the frontier, largely in Republican hands. Moreover, southern Republicans, opposed to federal judicial intervention in private debt contracts, could support a bailout that would maintain the inviolability of personal homesteads.

When frontier states were admitted, they had two seats in the Senate but just one in the House. The five most recently seated frontier states, voting in the 16th Congress, were Louisiana (1812), Indiana (1816), Mississippi (1817), Illinois (1818), and Alabama (1819).¹⁸ (Maine, admitted in 1820, was of much older settlement; Missouri was admitted only in August, 1821.) These states had a total of 10 of the 46 Senate votes but only 5 votes in the House. The 10 Republican frontier senators voted 7-3 on the passage of the bankruptcy bill in the Senate in 1821. Other Republican senators were heavily opposed, by a 16-9 margin. The frontier states and the 7 Federalists supplied 14 of the 23 votes in support of the bill.

In the House, in contrast, on the motion that tabled the bankruptcy bill, only one representative from the frontier states even voted (albeit to table). The remaining Republicans voted 62-43 to table, giving a margin larger than the total of 17 Federalists voting.

Two factors suggest why frontier Republicans broke with the party. First, the economic crisis was probably more severe on the frontier, leading to more political pressure for intervention. Second, these states had broader suffrage for white males than at least some of the older states. Freehling (1990) details, for example, how both Virginia and South Carolina had malapportioned state legislatures tilted toward the old planter groups. Thus, the frontier would be more willing to drop conservative inhibitions about debt discharge and more inclined to support fresh start policies. In any event, the failure to pass a bankruptcy bill after the Panic of 1819 appears to reflect both the political weakness of the Federalists and the institutional differences inherent in the apportionment of the two Houses of Congress.

As the Panic of 1819 receded, a bankruptcy bill was considered only one further time, by the 19th Senate. After postponing consideration in 1826, this Senate used the lameduck session to return to the bill in 1827. John Quincy Adams was president, and the Republican-Federalist division was replaced, in the categorization of Martis (1989), by Adams and Jackson Democrats. There were ten roll calls, including six dealing with amendments. The proposed changes to the bill, as in earlier times, related to voluntary vs. involuntary bankruptcy, the inclusion of debtors other than merchants and traders, and the provision for discharge. Most votes were non-ideological, but a vote on the voluntary bankruptcy provision separated Adams Democrats (14-5 against amending the bill) from

Jacksonians (14-12 in favor) and had a reasonably high PRE of 0.58. The bill died when the Senate failed to order a 3rd reading by a 21-27 vote on Feb. 6. The failure to act and the general paucity of activity between the 17th and 26th Congresses testifies that bankruptcy legislation in antebellum America was largely a response to economic crises.

Writing Off the Panic of 1837

The quiescence of the years centered on Jackson's presidency was broken by the Panic of 1837. By the time of the Panic, the Era of Good Feelings had given way to the sharp divisions between Democrats and Whigs. These divisions, as they pertained to bankruptcy, were largely a matter of the first, left-right DW-NOMINATE dimension. A bankruptcy bill was passed only after a shift in party control with the Whig victory in 1840. The increased number of conservatives led to passage whereas bankruptcy bills were voted on, but not passed, before the shift in control. Controlling for ideology eliminates the effects of other variables, including party. Representatives from frontier states were, however, more supportive of bankruptcy insofar as they were relatively reluctant to vote repeal in 1843.

The Response of the Democratic Congress

As happened in the 1820s, the 26th Senate (1839-41) took up and passed a bankruptcy bill that failed to be supported by the House. Bankruptcy indeed formed an important part of the agenda of this Senate, generating 26 of 334 roll calls. Some roll calls, on procedural matters or non-central amendments, like the treatment of gambling debts, were not ideological. The more substantive votes were highly ideological, showing a sharp Whig-Democrat division with the Whigs generally supporting a broader,

more debtor friendly law. On these roll calls, PRES were quite high. The roll calls included an amendment on the inclusion of banks (Voteview # 116, PRE =0.69), eliminating the eligibility of merchants (121, 0.71), rights of married women, minor, and mortgagors (149, 0.63), involuntary bankruptcy for jailed individuals (150, 0.83), involuntary bankruptcy for fraud cases (151, 0.83), whether bankruptcy must be accepted by a majority (by value) of creditors (152, 0.75), no discharge in case of preferential treatment of creditors (153, 0.86), control of creditors by assignors (155, 0.75), and need to give notice to creditors (163, 0.68).

The bill was ordered to a 3rd reading on June 24 by a one vote margin and passed by two votes on the next roll call, taken the next day, June 25 (165, 0.74). As was the case in the 1820s, votes of frontier senators were crucial. By 1840, the five previous frontier states were augmented by Missouri (1821), Arkansas (1836), and Michigan (1837). The 8 frontier states voted passage by a 9-5 margin. The 9 positive votes included the votes of all 4 frontier Whigs but also 5 Democrats. Elsewhere in the nation only 3 Democrats supported the bill as against 14 opposed.

The Senate bill, then, was passed by a coalition of all 13 Whigs and defecting Democrats, largely from the frontier. The four votes from the “Cotton Kingdom” states of Louisiana and Mississippi, the richest part of ante-bellum America (Fogel and Engerman, 1974, p. 248) were part of this coalition. In general, high per capita income portions of the country supported the bill.

The day after Senate passage, a motion to suspend the rules was made in the House. This failed on a tie vote. The frontier had less weight in the House and was slightly less favorable. The 8 frontier states voted 10-7 to suspend. The closeness of the

vote reflects the larger weight of the North, relative to the South, after the reapportionment based on the census of 1830. Two weeks later, however, the bill was tabled, by a much wider margin. Of those members voting on both occasions, there was a net change of 4 votes away from support of a bankruptcy bill. So the closeness of the vote to suspend is largely a matter of a very substantial number, 64, of non-voters. When turnout was higher, on the table vote (only 49 non-voters), the lack of support in the House was clearer. An attempt to revive the bill in the lameduck session of 1841 also failed badly. Voting in the House did remain ideological with high PREs (see Table 5).

The Whigs thus failed to get the House to go along with the Senate. The Senate did continue, in two votes in the lameduck session of 1841, to show strong support for bankruptcy legislation, but the matter was allowed to die. After all, the chances that a Senate bill would succeed in the House were slight. Bankruptcy would have to await the triumph of Tappan and Tyler too.

The Whig Bankruptcy Act of 1841: Enactment and Repeal

The change that followed the elections of 1840 was purely a matter of a strong voter shift to the Whigs in the 27th Congress (1841-43). No new states had been seated, and Congress was not reapportioned. The shift, nonetheless, was immense, leaving the Whigs with a nearly 3:2 majority in the House. In the Senate, however, the shift was less pronounced, given that the Senate was indirectly elected and had staggered terms. A bankruptcy bill secured final passage in August, 1841. Although heavily Whig, the House, however, voted repeal just 5 months later. Repeal was nonetheless blocked in the Senate when proponents could not secure a 2/3 majority to bring the repeal bill to the floor. Thus, rapid repeal was blocked by majority party agenda control. Repeal finally

cleared Congress in early 1843. We now present a detailed account of votes in the 27th Congress, to see how bankruptcy law not only passed but also unraveled.

Perhaps because of the transfer of control from Democrats to Whigs in the elections of 1840, the 27th Congress convened unusually early in March 1841, the earliest possible date under the Constitution. (In the nineteenth century, it was common for a Congress to convene only in December of the year following its election. For example, the 26th House, elected in November 1838, took its first roll call vote only in January 1840). The Panic of 1837 had resulted in demand for bankruptcy legislation, but bankruptcy proponents, as we have shown, were previously blocked by the Democratic majority. The bill included provisions for voluntary and involuntary bankruptcy for individuals but no provisions for corporations, which were, at the time, chiefly banks. The major purpose of the bill was likely to have been debt relief for Whig merchants and traders.

The bill that was passed was a Senate bill that was definitely a Whig party bill with strong party whips on both sides. The votes on the bill up to passage, shown in Table 7, were almost strict party line votes, with no sharp regional differences. Whig unity was important, given their narrow majority in the Senate.

The bill went to the House after the House had taken a few votes on bankruptcy in June. (See Table 8.) In the House, the Whigs could tolerate defections from southern representatives who, moreover, were subject to popular rather than indirect election. When the House passed the bill in August, the Whigs had 23 defections, most notably 19 from the South. In contrast, only 3 Democrats, two from Manhattan and one from “King Cotton” Louisiana, both “money” areas, defected to support the bill.

The 27th House was in fact preoccupied with bankruptcy, devoting 65 of 994 roll calls to the issue. All the House votes on the bill, except for a few lopsided procedural votes, are shown in Table 8. The votes in Table 8 fall into four natural groups:

1. Votes in June to August 1841, leading to passage.
2. Votes in January 1842, leading to passage of repeal in the House. The Senate failed to pass repeal at this time.
3. In the spring and summer of 1842, sporadic attempts at repeal or the inclusion of corporations under the law.
4. A successful move to repeal in the lame duck session. These votes took place between New Year's Eve and January 17, 1843.

The entire period is characterized by a virtual absence of substantive amendments. Most of the votes are on procedural attempts to kill a bill or to delay action, a reflection of a bitter, close division, where turnout on a given day could influence the outcome. With the exception of attempts to maintain state debt relief laws in force and to delay the effective date of repeal, members either manifested support or opposition to the bill. There was an absence of floor action aimed at reform or perfection. Positions were polarized.

The bill initially met strong opposition. In fact, the bill was tabled on August 17 by a vote of 110-99.¹⁹ The Democrats were unified against with only five defectors. These were all "Wall Street" Democrats (Roosevelt, Sanford, Ward, and Wood of New York and Plumer of Pennsylvania). Northern Whigs were just as unified in favor, with only six defectors. The swing votes were Southern Whigs who voted 25-10 to table. The bill fit the spatial model quite well, with only 28 classification errors in 209 votes and a

PRE of 0.72. Predicting straight party-line voting would have resulted in 36 classification errors.

Warren (1935) claims that passage was secured by a logroll engineered by Henry Clay that included distribution of government lands, a high tariff, and a national fiscal bank, with the Bankrupt Bill as a byproduct. If this is the case, a deal had to be made with Southern Whigs. The Democrats were clearly not part of any logroll. When the Bankrupt Bill was reconsidered and then passed on August 18, there were even fewer Democratic votes for passage than there had been against tabling.²⁰ The bill passed 111-105 largely because it received majority (22-19) support from southern Whigs. The spatial model makes only 18 classification errors with a PRE of 0.85. The straight party-line voting prediction would have resulted in 26 classification errors.

The vote to pass may have been more strategic than the vote to table. On the vote to table, members may have been expressing constituency interests on the legislation. On the logrolled passage vote, votes may have expressed strategic vote trades. Because party affiliation is an important determinant of location in the ideological space, a strategic, intra-party logroll classifies quite well.

Developing a logroll in this period involved influencing abstentions as well as simply switching votes. Opponents could be persuaded to abstain. The turnout of supporters could be increased. Between the motion to table and passage, the pro-bankrupt law side lost 1 vote among Democrats voting both times²¹ and gained 3 votes among Whigs²². The net gain was 2 votes. They needed a switch of six to swing the 110-99 defeat on tabling to a victory. The missing votes came from earlier non-voters.

In fact, the Whigs were able to increase their turnout by six voters while the Democrats could increase turnout by only one.

Of the many votes prior to passage of the Act, there was only one substantive amendment. This amendment, by Clifford (D-ME), a Northern Democrat in the left wing of his party, manifests an important issue that divided proponents from opponents of the bill. On August 17, Clifford moved to amend “adding that nothing in this act shall be construed to alter or repeal any state law for the relief of insolvent debtors, or any such law exempting certain goods and chattels from attachment, execution and distress.”²³ With the amendment, debtors would have been allowed to use relatively friendly state laws as protection from creditors. Clifford’s amendment passed 99-94. The vote on the amendment, shown in figure 2, was perhaps the purest vote in terms of preferences. Democrats supported the amendment 73-4, Northern Whigs opposed 8-69. The amendment passed because of the division of Southern Whigs (17-21). There were only 19 classification errors and the PRE was 0.80. (Party-line voting implies 29 classification errors.)

Regression analysis of the Clifford amendment vote shows that left-right ideology was indeed the predominant variable. Of the four models presented in table 9, column (4), with just the DW-NOMINATE first dimension has, albeit by a gnat’s eyelash, the highest adjusted R^2 . With the reappearance of a two-party system, fits return to the levels seen in voting on the 1800 bill. The more fine-grained DW-NOMINATE measure, however, captures all the information provided by party and provides additional discrimination. The REGION variable has no bite as does an additional variable coded for FRONTIER. This variable was set to 1.0 for the 8 frontier states identified above.

After their defeat on the Clifford amendment, the Whigs rallied before Congress resumed the next day, August. 18. A motion was first made, and passed, to reconsider the tabling. Underwood (D-KY), who had moved to table on the 17th so moved again. The motion failed. A motion was then made to reconsider the Clifford amendment. Clifford moved his amendment again. This time the amendment lost 91-119 on a nearly straight party-line vote. Democrats supported 79-1, Northern Whigs opposed 1-88 and Southern Whigs opposed 10-30. The spatial model has only 8 errors and a PRE of 0.912. Of those voting both times on the amendment, 1 Democrat and 11 Whigs, including 8 from slave states, swung in favor of restricting state law. The House then passed the unamended bill.

Why did the law become unpopular so quickly after passage? On the one hand, the bill could be viewed as a success since over 40,000 individuals took advantage of voluntary bankruptcy and many more used the threat of voluntary bankruptcy to secure favorable terms from their creditors (Warren, 1935, 81). On the other, Warren argues that the bill alienated creditors because in practice it became a mechanism to write off the debt of the Panic of 1837 and alienated debtors because it took precedence over even more debtor-favorable state laws that were enacted following the Panic. Warren's creditor story is at odds with the roll call record since conservative Whigs remain the legislators most likely to vote against repeal. In addition, during the debate on repeal, motions are made concerning repeal petitions from citizens in Louisville, Kentucky, Madison and Bullitt counties Kentucky, Otsego county New York, and Montgomery and Kickman counties Tennessee. These counties did not represent the frontier but were all

rural or western areas.²⁴ A great source of opposition might just have been the transaction cost of pursuing relief in distant federal district courts.

The bill took effect on Feb. 1, 1842. Even before this date, there were roll call votes in the Senate on motions to delay its implementation. A motion to move a repeal bill to third reading failed by one vote. Thomas Hart Benton (D-MO) was only able to produce a tie vote in July, 1842 when he tried to obtain the 2/3 majority necessary to bring repeal to the floor. (See table 6.)

In contrast, the House did vote repeal, at the end of a debate lasting from Jan. 8 to Jan. 17, 1842. There were a total of 27 roll call votes, the large number reflecting efforts by the Whigs to both delay repeal and to include specie-issuing banks under the law. When repeal passed on Jan. 17, the vote was 126-94, with Democrats favoring repeal 85-7, Northern Whigs opposing 9-76 and Southern Whigs being the swing vote in support, 30-12. The vote fit the spatial model well, with a PRE of 0.70 and 28 errors. The movement to repeal at this point reflects more the collapse of the logroll than a dramatic shift in preferences. Of those voting on both Underwood's original motion to table, which was thought to have killed the bill, and on repeal, only 9 Whigs and 4 Democrats changed camps. Both parties had only a single individual who switched to the pro-bankruptcy law side. The others switched against, including 3 New York and Pennsylvania Democrats and 8 southern and western Whigs. The net gain of 9 votes by the anti-bankruptcy side between the Underwood motion and repeal suggests only a mild shift in basic preferences. Since there had been no experience with the law in January, the first repeal effort was largely the unraveling of the logroll. As the Senate failed to act, however, the bill took effect.

In the period between the failed attempt at repeal in early 1842 and the successful repeal a year later, there were 18 roll calls on bankruptcy. One was an isolated vote on a petition in March 1842. Four more occurred between July 21 and 23, 1842 and represent a Whig attempt to include corporations, mainly banks, under the bankruptcy law. The last 13 votes were in Dec. 1842 and Jan. 1843 on the repeal bill, HR 642.

The votes on including corporations show cutting lines that are, in contrast to all the other roll calls in this Congress, negatively angled. For example, the last of the four “corporation” votes, on a procedural motion by Briggs (MA), was carried by the Whigs, 82-81. But the distinctions between Northern Whigs (55-14) and Southern Whigs (21-8) were muted, and Southern Democrats were less likely (5-21) to oppose the Whigs than were Northern Democrats (0-38). According to Warren, the Van Buren (Democratic) administration reacted to the Panic of 1837 by proposing a bankruptcy law for banks only. This was opposed by Whigs who must have seen Van Buren’s proposal as forbearance for southern and western banks, which failed after a speculative expansion from 1830 to 1836.

Immediately prior to repeal, the Whigs isolated the Southern Democrats by passing the Cushing amendment to maintain the law in effect for bankruptcies currently in progress in the courts. There were 34 spatial errors and a fairly low PRE of 0.452. Northern Whigs voted 80-1 to maintain current cases. Southern Whigs were nearly as solid, supporting the amendment 31-8. A substantial minority of Northern Democrats (25-30) also supported the amendment. Only Southern Democrats (11-23) were firmly against. (Another Whig amendment, which would have maintained the law for cases

initiated before July was easily defeated.) This vote demonstrates that Southern Democrats were the heart of opposition to a bankruptcy law.

The House voted repeal by a 140-71 vote, on Jan. 17, 1843, less than one year since the bill took force. The Democrats voted for repeal unanimously. The Whig party had become sharply divided. Southern Whigs voted for repeal by more than a 3-1 margin; even 20 Northern Whigs supported repeal. The swing against the bill was unambiguous. (Repeal was supported by all members who had been against passage and also voted on repeal.) The effect of experience with the bill is demonstrated by observing a gain of 15 more votes favorable to repeal in 1843 compared to the earlier repeal vote just prior to the bill's taking effect in 1842.²⁵

The spatial model is quite successful in finding those Whigs who voted for repeal. There are only 29 classification errors. (PRE drops to 0.594 because the roll call is more lopsided than the earlier votes.) In contrast, the party-line model has 52 classification errors, reflecting the split within the Whig party,

The 27th House votes on bankruptcy reveal that party and region were both significantly related to support for a national bankruptcy law. Northern Whigs represent the core support for legislation, Southern Democrats the core of the opposition. This is basically the same alignment that takes place on major economic issues for the remainder of the 19th century, with the Republicans replacing the Whigs after the Civil War. [See Poole and Rosenthal (1993, 1994) for a similar story on votes on railroad regulation between 1874 and 1887.]

The North-South split on repeal is, however, largely captured by the DW-NOMINATE coordinates, as shown in Table 10. Like passage, the left-right split is again

the variable that does the heavy lifting. The left votes for repeal. The second dimension, unlike the passage vote, is also significant. Positive values on this dimension, now identified with pro-slavery positions, are significantly related to repeal. The FRONTIER variable is now significant. The frontier, ridden with land debt, is against repeal, after controlling for ideology. The overall fit (both in adjusted R^2 and in the standard error of the estimate) on the repeal vote is lower than on the passage vote. We suspect that the reduction of fit reflects both a breakdown within the Whig party and differential experience with the Act across constituencies, and differential demands for debt relief across constituencies.

The House bill went to the Senate, which started debate on Feb. 20 before voting repeal on Feb. 25. Although the Whigs were able to maintain enough internal discipline to block consideration of the House bill by one vote on Feb. 21, support for the bill quickly evaporated in a series of later votes. The Whigs had to acknowledge the bill's bad reputation by proposing an amendment "to modify the bankruptcy act to meet all the evils complained of, suitable to the wants and advantages of a great commercial nation." The amendment was solidly trounced. Repeal occurred by a large majority, 32-13, on Feb. 25. Although the defenders of the bill were all Whigs, the party had become badly divided, splitting 13-13 with even the Northern Whigs voting against repeal only by an 11-7 margin.

Conclusion

The story of the 1841 Bankruptcy Act illustrates the instability of bankruptcy policy in the 19th century. Similarly, the 1800 Act was cashiered before its scheduled sunset. On other occasions, bills were passed in the Senate only to fail in the House.

Skeel (2001) suggests a role for voting cycles as a source of the lack of a bankruptcy law. Cycles that are germane to bankruptcy do not seem to be fundamental to the absence of law. If anything, because of the evolution of technology and corporate structure, the dimensionality of bankruptcy legislation might be far higher today than in the nineteenth century. However, Congress has rather easily found ways to bargain and negotiate across the multiple aspects of the law.

Basic ideological preferences appear to be more fundamental to the absence of bankruptcy law in the eighteenth and nineteenth centuries. The “left” was always the motor for undoing the legislative accomplishments of the “right”. The “indirect” preferences that result from the mapping of bankruptcy legislation onto ideology are conditioned by the state of the economy and public reaction to the effectiveness of the law. The distribution of preferences in Congress is determined by the volatile outcomes of national elections. It was, in the nineteenth century, also determined by the admission of new states, resulting in overrepresentation of the debt-ridden frontier in the Senate. Interests of the frontier were an important addition to ideology in structuring roll call voting. They were pivotal in the passage of two bills in the Senate that did not pass a House that reflected the more populous states. Thus, economics, elections, and ideology, themselves closely intertwined, produced legislative volatility.

Table 1. House Voting on Bankruptcy 1789-1803

House - Voteview Roll Call #	Date	Yes-No			D-W NOMINATE		Content
		Total	Federalist	Republican	Classification Errors	PRE	
5-121	1/15/1799	44-47	39-13	5-34	13	0.71	Pass Uniform Bankruptcy Bill
6-14	1/31/1800	41-56	3-52	38-4	6	0.85	Postpone Comm. Of the Whole Report
6-19	2/21/1800	49-48	47-7	2-41	7	0.85	Pass Uniform Bankruptcy Bill, Speaker Voting
6-89	2/27/1801	49-42	47-1	2-41	2	0.95	Order 3 rd reading, Amend & continue in force
6-91	2/28/1801	50-42	6-42	44-0	4	0.91	Recommit 4 th section to committee
7-29	3/2/1802	33-56	31-0	2-56	1	0.97	Amend S.2, transfer proceedings to district judge from circuit
7-80	4/22/1802	35-36	25-0	10-36	7	0.80	Amend S.9, eliminate presidential appointment of commissioners.
7-86	4/26/1802	45-27	0-18	45-9	9	0.67	Recede from amendment to S.9 to transfer nomination of commissioners from district judge to president.
7-125	2/18/1803	50-39	29-2	21-37	17	0.56	Postpone consideration of repeal
8-11	11/23/1803	99-13	21-3	78-10	12	0.08	Agree to bring in report of committee of whole to order a bill for repeal

Table 2. Senate Voting on Bankruptcy 1789-1803²⁶

Senate - Voteview Roll Call #	Date	Yes-No	Yes-No Federalist	Yes-No Republican	Classification Errors	PRE	Content
6-30	3/14/1800	13-15	3-15	10-0	3	0.77	Amend to apply only to merchants and not to private persons
6-31	3/17/1800	12-14	2-14	10-0	2	0.83	Amend to exclude farmers, graziers, drovers, tavernkeepers, or manufacturers
6-32	3/17/1800	12-13	2-13	10-0	2	0.83	Amend to deem bankrupt individuals with \$1000 attached debt who cannot give security.
6-33	3/17/1800	10-14	2-14	8-0	2	0.80	Amend to deprived creditors with less than \$50 owed of right to vote for assignee
6-37	3/20/1800	10-18	2-16	8-2	4	0.60	Eliminating proviso validating bona fide purchases from bankrupts or near bankrupts.
6-38	3/2/01800	12-15	2-15	10-0	2	0.83	Amend provisions on vesting of goods sold by assignee for benefit of creditors.
6-47	3/27/1803	17-12	17-2	0-10	2	0.83	Order 3 rd reading.
6-50	3/28/1802	16-12	16-2	0-10	2	0.83	Pass Uniform Bankruptcy Bill.
7-32	4/8/1802	11-15	9-0	2-15	2	0.82	Amend to eliminate presidential appointment of bankruptcy commissioners.
8-19	12/13/1803	14-17	3-5	11-12	9	0.36	Postpone consideration of bill to repeal act.
8-20	12/13/1803	17-13	5-3	12-10	8	0.39	Pass bill to repeal act.

Table 3. House Voting on Passage of the 1800 Bankruptcy Bill

(1=For, 0=Against Passage. t-statistics in parentheses.)

<i>Variable</i>	Model							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Intercept	0.051 (0.778)	0.133 (2.827)	0.231 (6.766)	0.047 (1.171)	0.304 (3.841)	0.047 (1.177)	0.072 (1.335)	0.047 (1.207)
REGION	0.126 (1.825)				0.331 (3.169)			
PARTY	0.439 (3.339)	0.367 (2.891)		0.821 (13.734)		0.291 (2.322)	0.391 (3.129)	0.209 (1.65)
DW-NOMINATE 1	0.464 (3.039)	0.575 (4.057)	0.943 (14.503)				0.520 (3.681)	
DW-NOMINATE 2	-0.074 (-1.231)	-0.027 (-0.495)	0.000 (0.005)				-0.051 (-0.934)	
DW-NOMINATE-1xPARTY						0.846 (4.796)		0.809 (4.683)
DW-NOMINATE-2XPARTY						-0.172 (-2.240)		-0.213 (-2.768)
COASTAL							0.134 (2.182)	0.196 (2.415)
Adjusted R Square	0.718	0.711	0.688	0.667	0.087	0.734	0.723	0.747
Observations	96	96	96	96	96	96	96	96

Note: Sample is all House members voting except for Sedgwick-MA, who as Speaker, voted too few times to have a DW-NOMINATE score. Roll call is Voteview # 19 in the 6th House, Feb. 21, 1800.

Table 4. Senate Voting on Bankruptcy in the 16th Congress

Senate -- Voteview Roll Call #	Date	Yes-No	Yes-No Federalist	Yes-No Republican	Classification Errors	PRE	Content
16-22	3/16/1820	14-25	0-8	14-17	13	0.14	Postpone consideration of bankruptcy bill
16-23	3/16/1820	15-13	2-6	23-7	9	0.31	Discharge for voluntary bankruptcy, commissioner to liquidate assets
16-24	3/16/1820	18-24	6-2	12-22	10	0.44	Eliminate aid to farmers and remove from discharge debts not included in commission of bankruptcy
16-25	3/17/1820	25-16	2-6	23-10	10	0.38	Only voluntary bankruptcy for all other persons
16-30	3/30/1820	19-22	0-8	19-14	15	0.21	Postpone consideration
16-31	3/30/1820	5-28	3-5	6-23	10	-0.11	Strike out exclusion of mechanical laborers
16-32	3/30/1820	15-239	6-2	9-21	9	0	Order 3 rd Reading of H.R. 9
16-33	3/30/1820	17-19	8-0	9-19	9	0.48	Reconsider H.R. 9
16-84	2/9/1821	9-32	0-8	9-24	4	0.56	Postpone indefinitely consideration of S. 20
16-87	2/13/1821	13-24	0-7	13-17	12	0.08	Recommit S. 20 with instructions to allow voluntary bankruptcy for classes other than merchants
16-88	2/13/1821	13-24	0-7	13-17	9	0.31	Amend to allow for voluntary bankruptcy by farmers and all classes as well as merchants.
16-89	2/15/1821	17-22	0-8	17-22	12	0.29	No discharge for debts as to other than merchants, bankers, brokers, underwriters, or marine insurers.
16-90	2/15/1821	14-27	0-8	14-19	14	0.00	Commissioners can uses warrants to break into houses, shops, etc. to take possession of assets
16-91	2/15/1821	14-26	0-8	14-18	9	0.36	Amend act to apply only to debts incurred after passage.
16-92	2/15/1821	19-18	8-0	11-18	12	0.33	Order 3 rd Reading of S. 20.
16-97	2/19/1821	23-19	7-0	16-19	12	0.37	Pass S. 20

Table 5. House Voting on Bankruptcy 15th-26th Houses

House - Voteview Roll Call #	Date	Yes-No	Yes-No Right	Yes-No Left	Classification Errors	PRE	Content
15-21	2/25/1818	82-70	3-30	79-40	40	0.43	Postpone bill indefinitely.
16-137	2/28/1821	78-59	17-4	61-55	30	0.49	Consider bankruptcy bill S. 20
16-138	2/28/1821	59-77	6-17	53-60	30	0.49	Adjourn during consideration of S. 20
16-139	2/28/1821	62-73	5-18	57-55	34	0.45	Adjourn during consideration of S. 20
16-140	2/28/1821	58-73	4-18	54-55	29	0.50	Postpone S. 20 indefinitely
16-141	3/1/1821	62-65	5-17	57-48	31	0.50	Table S. 20
16-142	3/1/1821	65-58	3-14	62-44	32	0.45	Table S. 20
16-147	3/2/1821	58-70	15-5	43-65	39	0.33	Consider S. 20
17-22	3/12/1822	74-90	11-15	63-75	64	0.14	Amend bill to allow others than merchants to avail themselves of the benefit of the law.
17-24	3/12/1822	86-77	15-13	71-64	53	0.31	Allow all to have voluntary bankruptcy with assent of majority of creditors by value.
17-25	3/12/1822	72-99	16-12	56-87	65	0.10	Order 3 rd reading
26-493	6/26/1840	88-88	61-9	22-79	25	0.72	Suspend rules and consider bankruptcy bill
26-541`	7/7/1840	101-89	11-66	88-19	29	0.67	Table bankruptcy bill
26-669	1/15/1841	57-97	45-23	8-72	19	0.67	Make bankruptcy bill 1 st order of business on Jan. 28

Note: In Congresses 15-17, Left is Republican, Right is Federalist; in Congress 26, Left is Democrat, Right is Whig. Anti-Masonics and Conservatives included in totals and DW-NOMINATE analysis but not included in left of Right.

Table 6. House Voting on Tabling 1821 Bankruptcy Bill (Roll Call 142)

(1=For tabling, 0=Against. t-statistics in parentheses.)

<i>Variable</i>	Model			
	(1)	(2)	(3)	(4)
Intercept	0.767 (7.762)	0.919 (14.361)	0.602 (15.438)	0.575 (15.613)
REGION	-0.273 (-1.811)	-0.611 (-7.524)		
PARTY	-0.253 (-2.307)		-0.210 (-1.943)	
DW-NOMINATE 1	-0.415 (-2.193)		-0.706 (-6.976)	-0.760 (-7.718)
DW-NOMINATE 2	-0.150 (-2.109)		-0.198 (-2.956)	-0.193 (-2.856)
Adjusted R Square	0.384	0.313	0.372	0.358
Observations	123	123	123	123

Table 7. Senate Voting on Bankruptcy in 1841-42

Voteview Roll Call #	Date	Yes- No	Yes-No Northern Whig	Yes-No Southern Whig	Yes-No Northern Democrat	Yes-No Southern Democrat	Classification Errors	PRE	Content
108	7/23/1841	26-22	15-2	9-0	1-12	1-8	4	0.82	Proceed to consider S. 3, Bankruptcy law.
109	7/23/1841	24-22	13-4	8-1	2-10	1-7	9	0.64	Exclude corporations if not state owned.
110	7/23/1841	16-34	2-17	0-10	12-0	2-7	4	0.75	Include banking corporations unless stated owned.
111	7/23/1841	17-29	2-16	0-10	10-1	5-2	5	0.71	Eliminate provision that act does not annul state laws on married women, minors, mortgages.
112	7/23/1841	27-22	17-2	6-3	2-11	2-6	9	0.59	Order 3 rd Reading S. 3.
113	7/24/1841	26-23	17-2	5-2	2-11	2-7	9	0.71	Pass S. 3
202	8/18/1841	23-26	1-18	4-6	11-0	7-2	7	0.70	Postpone further consideration of S. 3 until 2/1.329
329	12/28/1841	15-25	9-2	5-4	1-12	0-7	7	0.53	Refer S. 98, bill postponing operation to Judiciary.
339	1/28/1842	22-23	2-16	4-5	12-1	4-1	9	0.61	Order 3 rd Reading of H.R. 72, repeal bill.
352	2/15/1842	18-23	0-15	1-8	12-0	5-0	1	0.94	Order 3 rd Reading of S. 98, postponing operation until July 1, 1842.
540	7/18/1842	21-21	1-15	2-6	11-0	7-0	3	0.86	Benton motion to bring in H.R. 72 (2/3 vote required).

Table 8. House Roll Call Voting on the 1841 Bankruptcy Act

Roll Call	Vote.	No. Whig	So. Whig	No. Dem.	So. Dem.	PRE	Class. Errors
Passage of the 1841 Act							
#43, 6/12/41, Sergent, suspend rules	122-89	82-1	38-3	1-54	1-30	0.93	6
#44, 6/12/41, Briggs refer to Judiciary	93-89	65-7	13-25	13-34	2-22	0.60	36
#124, 7/21/41, Brown, table motion to consider bill	119-82	76-4	22-16	13-38	8-23	0.52	39
#141, 7/31/41, Briggs, print 5000 copies of committee report	93-115	66-14	22-23	4-45	1-32	0.62	35
#142, 7/31/41, Atherton, Table S. 3.	91-123	4-81	21-25	36-12	29-5	0.58	38
#167, 8/12/41, Barnard, limit debate.	78-89	53-9	21-11	2-38	2-32	0.71	23
#169, 8/13/41, Profitt, table motion to reconsider vote ending debate	89-96	4-71	8-24	45-1	32-0	0.88	11
#170, 8/13/41, Smith, reconsider ending debate	102-90	75-2	26-11	1-44	0-32	0.89	10
#174, 8/17/41, Clifford, state debt relief laws to remain in force	99-94	8-69	17-21	40-3	33-1	0.80	19
#175, 8/17/41, Underwood, table S. 3	110-99	6-76	25-18	43-5	35-0	0.72	28
#177, 8/18/41, Botts, excuse Barton	115-73	81-2	27-3	2-44	5-24	0.85	11
#178, 8/18/41, Botts, procedural	111-76	75-6	25-6	6-39	5-25	0.71	22
#179, 8/18/41, Johnson, table motion to reconsider tabling of S. 3	92-112	1-86	10-24	47-2	34-0	0.90	9
#180, 8/18/41, Gamble, reconsider tabling of S. 3	108-98	85-3	22-12	1-47	0-38	0.91	9
#181, 8/18/41, Underwood, table S. 3	99-111	3-85	13-25	47-1	35-0	0.89	11
#182, 8/18/41, Sollers, reconsider Clifford amd. on state debt relief	116-93	89-1	27-11	0-43	0-33	0.93	7
#182, 8/18/41, Clifford, state debt relief laws to remain in force	91-119	1-88	10-30	45-1	34-0	0.91	8
#184, 8/18/41, Wise, order call of House	89-116	1-85	7-31	48-0	32-0	0.94	5
#185, 8/18/41, Pass S. 3	111-105	86-4	22-19	2-47	1-34	0.85	16
#186, 8/18/41, Fillmore, reconsider vote to pass	98-115	2-88	16-26	45-1	34-0	0.87	13
First Repeal							
#294, 1/8/42, Warren, table motion to report bill to repeal	89-114	76-9	13-25	4-50	2-28	0.69	28
#295, 1/8/42, Lane, order question on motion to refer bill to repeal	109-97	8-73	23-15	46-7	30-2	0.65	35
#297, 1/8/42, Cravens, report bill to repeal	115-94	9-74	24-13	51-4	29-3	0.66	32
#298, 1/8/42, Irwin, adjourn	38-158	30-44	4-32	0-52	4-28	0.03	37

#299, 1/8/42, Marshall, Judiciary should report Jan. 11	113-88	7-70	23-11	51-4	30-3	0.67	29
#321, 1/14/42, Johnson, table memorial to repeal	86-95	14-59	23-12	27-16	21-7	0.45	47
#322, 1/14/42, Johnson, table memorial to repeal	100-101	4-73	25-13	43-9	27-5	0.65	35
#323, 1/14/42, Gentry, adjourn until next day	101-88	20-56	14-22	44-5	22-5	0.56	39
#324, 1/15/42, Briggs, order question on including corporations issuing currency in bankruptcy law	111-89	77-4	28-7	2-48	3-30	0.84	14
#325, 1/15/42, Briggs, include corporations issuing currency in bankruptcy law	100-109	61-24	7-30	22-29	9-25	0.37	63
#326, 1/15/42, Winthrop, table instructions to report today	104-113	84-6	13-24	4-49	3-32	0.71	30
#327, 1/15/42, Granger, table instructions to report	102-115	83-6	12-25	4-48	3-34	0.71	30
#328, 1/15/42, Chittenden, adjourn	60-144	48-30	8-30	1-60	3-32	0.38	37
#329, 1/15/42, Boyd, order question on repeal	114-87	9-70	23-11	47-4	33-2	0.75	22
#331, 1/15/42, Boyd, report repeal by 2 p.m. today	117-99	6-79	25-13	50-4	34-3	0.70	30
#332, 1/15/42, Arnold, adjourn	87-118	71-9	12-25	2-51	2-31	0.72	24
#333, 1/15/42, Borden, adjourn	87-107	65-7	19-17	2-50	1-21	0.78	19
#334, 1/15/42, Williams, table appeal of chair's decision to have report	103-98	2-76	17-16	49-4	33-2	0.81	19
#335, 1/15/42, Andrew, adjourn	106-102	78-4	19-16	4-49	5-31	0.78	23
#337, 1/17/42, Linn, table appeal on chair's decision to have report	103-117	81-7	18-22	3-51	1-35	0.80	21
#338, 1/17/42, Wise, sustain decision of chair	99-118	76-9	19-21	2-51	2-35	0.74	26
#339, 1/17/42, Marshall, move previous question on rejection of bill	121-99	8-76	27-15	49-5	35-3	0.65	35
#340, 1/17/42, Marshall, order second reading	97-125	78-9	12-29	4-50	3-35	0.71	28
#341, 1/17/42, Weller, order previous question	111-108	4-83	23-17	48-5	34-3	0.75	27
#342, 1/17/42, Barnard, order third reading	123-96	9-78	29-12	50-4	35-2	0.71	28
#343, 1/17/42, Barnard, pass H.R. 72, repeal of 1841 Act	126-94	9-75	30-12	50-4	35-3	0.70	28

Sporadic Action							
#428, 3/14/42, Chittenden, table petitions to repeal	80-96	62-2	12-19	4-44	2-30	0.74	21
#653, 7/21/42, Barnard, table resolution on moneyed corporations	73-103	43-24	26-8	0-47	4-23	0.58	31
#654, 7/21/42, Arnold, table resolution on moneyed corporations	77-103	46-22	25-12	0-47	0-21	0.51	38
#663, 7/23/42, Barnard, do not include corporations	54-113	27-38	18-11	1-44	7-19	0.13	47
#664, 7/23/42, Briggs, include corporations	82-81	55-14	21-8	0-38	5-21	0.68	26
Second, Successful Repeal							
#813, 12/31/42, Everett, suspend rules to consider repeal	135-60	27-50	24-9	52-0	30-1	0.48	31
#835, 1/6/43, Everett, suspend rules to consider repeal	113-90	17-67	24-10	39-10	31-3	0.54	41
#843, 1/13/43, Everett, suspend rules to consider repeal	120-73	19-51	30-10	44-8	25-4	0.45	40
#845, 1/13/43, Briggs, table reporting of repeal	81-108	66-9	13-19	1-48	1-30	0.69	25
#846, 1/13/43, Clifford, order previous question	116-88	7-72	20-13	53-1	34-2	0.75	22
#847, 1/13/43, Clifford, instruct Judiciary to report	127-78	12-65	26-11	52-1	35-1	0.67	26
#848, 1/16/43, Thompson, table appeal of chair's decision on committee reporting	104-91	73-4	27-8	2-47	2-31	0.87	12
#849, 1/16/43, Thompson, table resolution on Judiciary committee	87-104	67-5	17-16	1-47	2-34	0.84	14
#850, 1/16/43, Lowell, Judiciary committee to report forthwith	112-81	7-65	18-16	48-0	37-0	0.82	15
#852, 1/16/43, Weller, table resolution that repeal would not affect pending bankruptcy cases	61-115	1-68	7-26	28-16	24-5	0.54	28
#853, 1/16/43, Cushing, amend such that repeal would not affect pending bankruptcy cases	148-62	80-1	31-8	25-30	11-23	0.45	34
#854, 1/17/43, Barnard, limit repeal to cases after July 4, 1843	74-136	63-16	9-30	0-56	1-32	.70	22
#855, 1/17/43, Everett, pass H.R. 614, repeal of 1841 Act	140-71	20-61	32-10	56-0	30-0	0.59	29

Notes to Table 8. There was one Independent and one Independent Democrat in the House. The votes of these two members are not included in the party breakdowns. The ICPSR roll call file does not record paired and announced votes for the 27th House.

Table 9. House Voting on the Clifford Amendment, 1841

(1=For the Amendment, 0=Against. t-statistics in parentheses.)

<i>Variable</i>	Model			
	(1)	(2)	(3)	(4)
Intercept	0.450 (4.566)	0.438 (5.255)	0.524 (24.391)	0.525 (24.545)
REGION	-0.019 (-0.213)			
FRONTIER	-0.009 (-0.116)			
PARTY	0.151 (1.063)	0.149 (1.062)		
DW-NOMINATE 1	-1.130 (-6.782)	-1.133 (-6.853)	-0.966 (-18.624)	-0.971 (-18.894)
DW-NOMINATE 2	-0.018 (-0.238)	-0.006 (-0.135)	0.026 (0.715)	
Adjusted R Square	0.647	0.650	0.650	0.651
Observations	192	192	192	192

One independent, Hunter, Virginia, omitted.

Table 10. House Voting on Repeal, 1843.
 (1=For Repeal, 0=Against. t-statistics in parentheses.)

<i>Variable</i>	Model			
	(1)	(2)	(3)	(4)
Intercept	0.627 (5.800)	0.625 (9.090)	0.690 (28.364)	0.671 (28.525)
REGION	0.099 (1.005)	0.099 (1.007)		
FRONTIER	-0.229 (-2.711)	-0.229 (-2.718)	-0.218 (-2.608)	
PARTY	-0.004 (-.025)			
DW-NOMINATE 1	-0.846 (-4.750)	-0.851 (-13.276)	-0.823 (-14.203)	-0.814 (-13.881)
DW-NOMINATE 2	0.164 (2.054)	0.164 (2.275)	0.103 (2.608)	0.089 (2.223)
Adjusted R Square	0.499	0.501	0.501	0.487
Observations	209	209	209	209

Two independent, Casey, Illinois and Hunter, Virginia, omitted.

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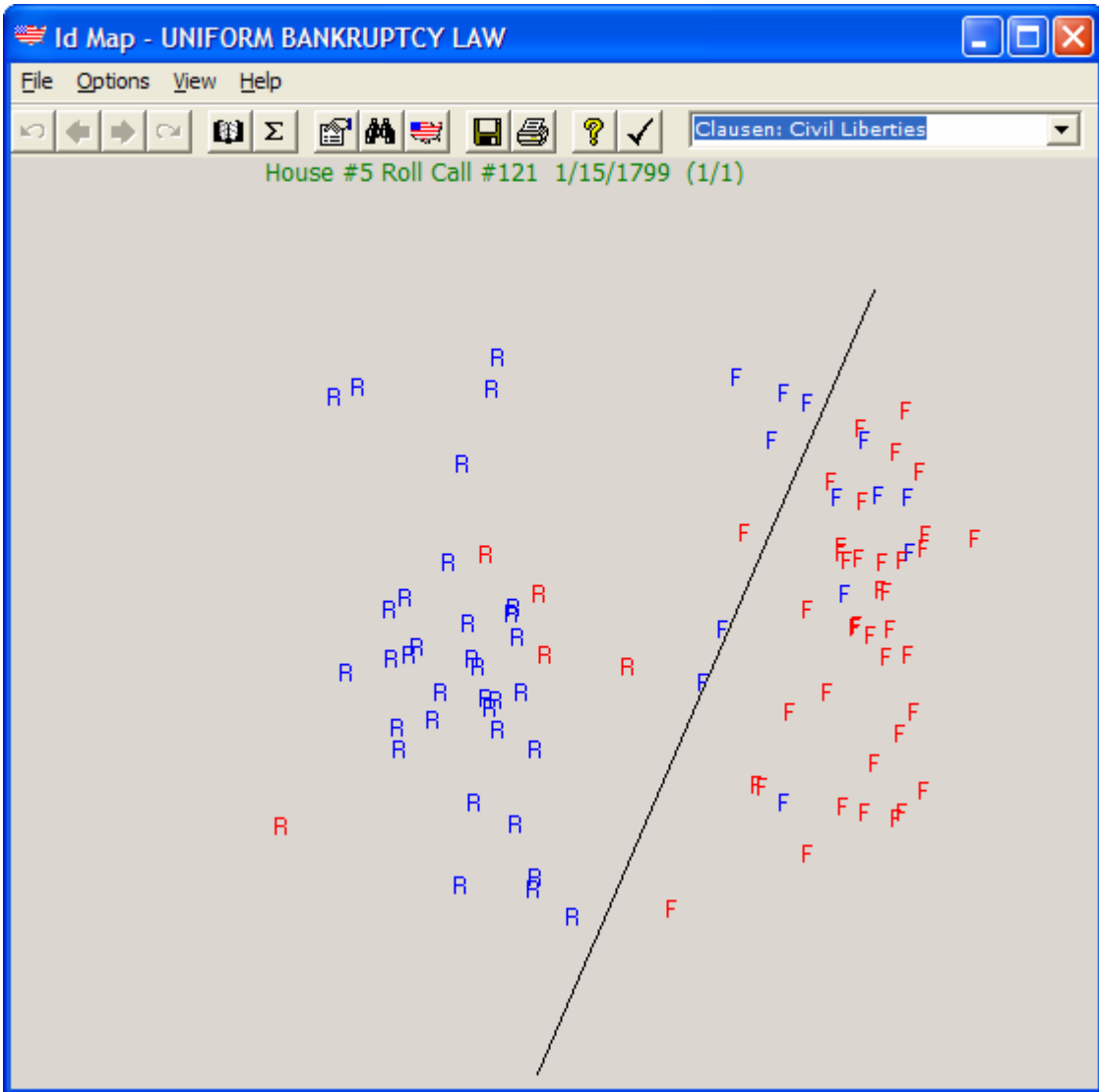
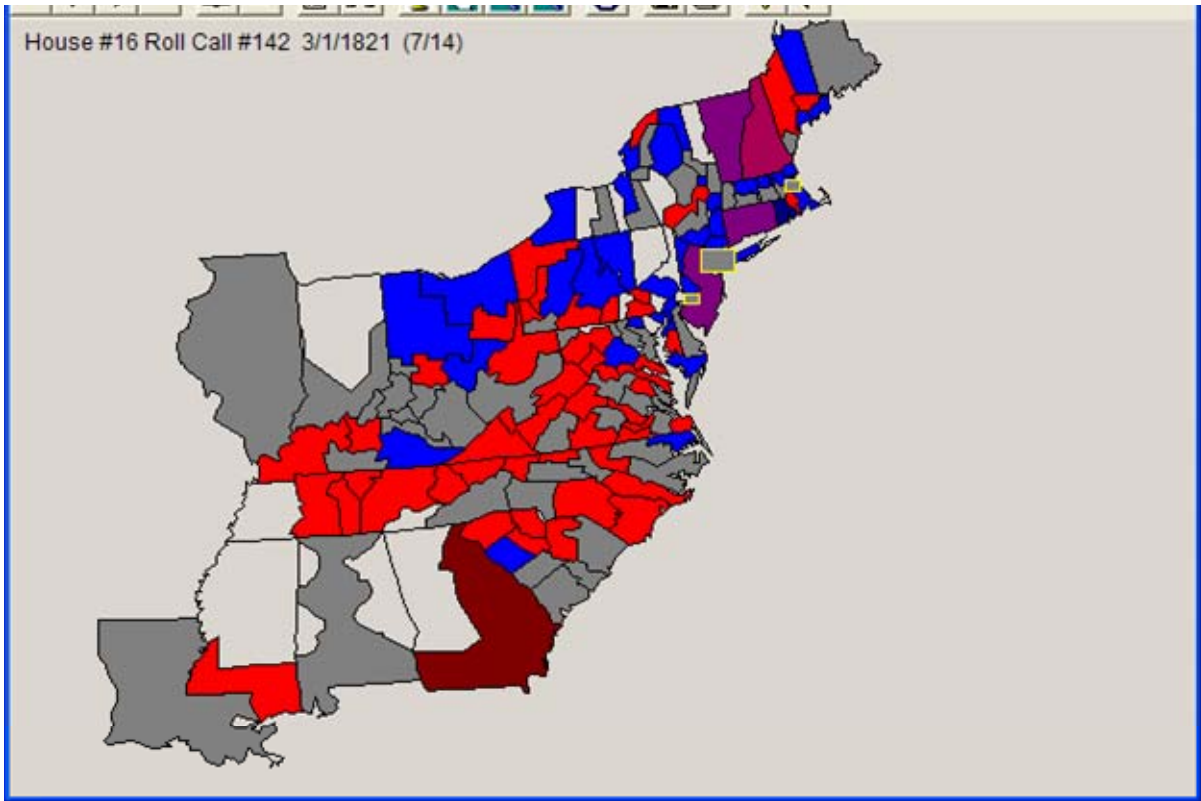
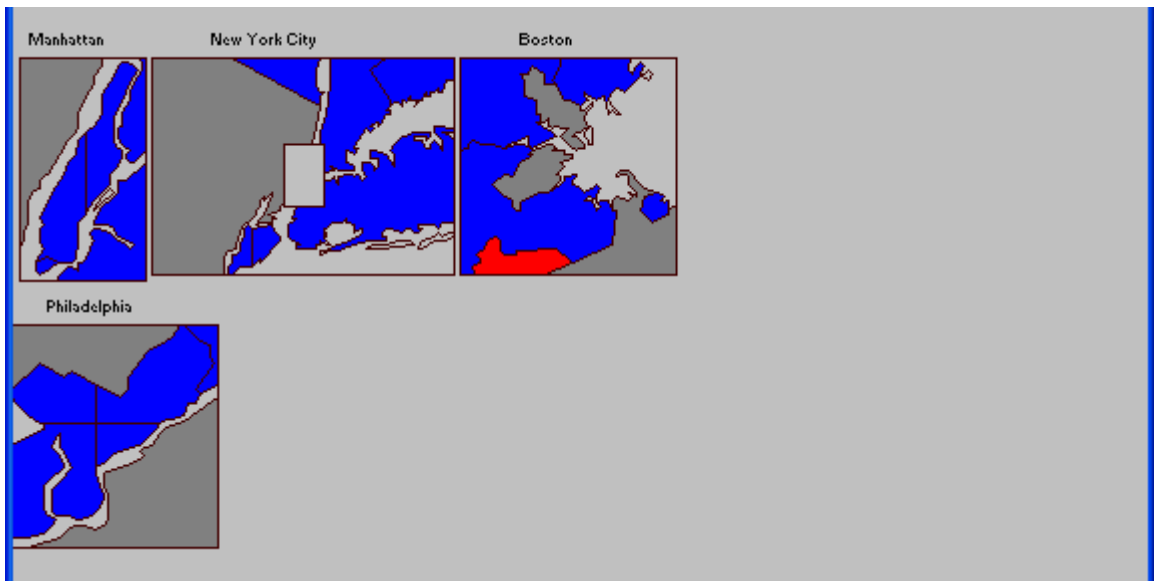


Figure 1. Voting to Pass the Bankruptcy Bill, 1/15/1799. Token assignments, F=Federalist, R=Republican, Red=For passage, Blue=Against Passage. Black line is estimated cutting line. Moderate Federalists are shown to be more likely to defect and vote against passage. The images in the figures are captured from VOTEVIEW, downloadable at voteview.uh.edu.



(a) Rural areas.



(b) Major cities

Figure 2. Vote to table the bankruptcy bill on March 1, 1821 (16-142) Color key—red=for, blue=against, grey=abstain; other shades are split multi-member districts.

Ideological Map Display

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NO OVERRIDE OF STATE DEBTOR LAWS
House #27 Roll Call #174 8/17/1841 (17/1841)

Issue Code: States Rights vs. Federal Government
Clausen Code: Civil Liberties
Peltzman Code: Domestic Social Policy

Red Tokens Are Yea Votes
Blue Tokens Are Nay Votes

Party Breakdown

Num	Party	Yea	Nay
151	Whig	25	90
100	Northern Whig	8	69
51	Southern Whig	17	21
106	Democrat	73	4
62	Northern Democrat	40	3
44	Southern Democrat	33	1
1	Independent	1	0
1	Ind. Democrat	0	0

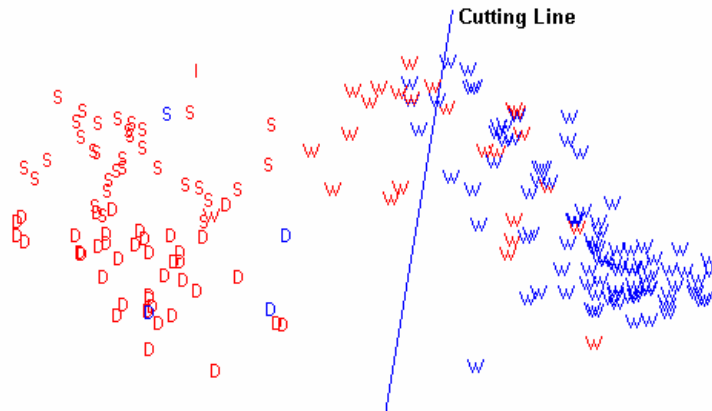


Figure 3. Voting on the Clifford Amendment in 1841

Notes

¹ Madison's views may have been influenced by his experience in the Virginia House of Delegates which voted a "stay law" imposing a debt moratorium in the years preceding the Constitutional Convention. See McCoy (1989).

² The personal finances of Jefferson and other Virginians provide a hint as to how opposition to a national law arose. Before the American and French Revolutions, the economy of Virginia expanded, in large part, by tobacco exports to France. (The French kings thought it in their interest to forbid the production of tobacco in France since imports were more easily taxed!) Jefferson and other Virginians contracted debts to English lenders. When the two Revolutions led to a collapse in tobacco prices, the debts could not be repaid. In negotiating the Treaty of Paris to end the American Revolution, John Adams agreed that pre-revolutionary private debts would be honored. However, during the Articles of Confederation, Virginia courts refused to enforce collection of foreign debts. After the Constitution was adopted, the creditors pursued Jefferson and others in federal courts. Of the four early Virginia presidents, Washington, Jefferson, Madison, and Monroe, only Washington was solvent. The others all had a personal interest in limiting federal intervention. For an extended discussion, see Sloan (1995)

³ For example, in a skimpy discussion of bankruptcy, Friedman (1985) relies almost entirely on Warren.

⁴ Mann (2002), p. 248.

⁵ Prompt repayment at 62.5 cents on the dollar was accepted or, alternatively, the full amount due could be repaid with a delay.

⁶ The Republicans from the 1850s onwards should not be confused with the Jeffersonian Republicans who dominated American politics from 1800 until 1824. The Jeffersonian Republicans were strongly opposed to a federal bankruptcy law.

⁷ Warren (1935) and Domowitz and Tamer (1997) previously suggested that economic downturns were necessary for pro-debtor legislation. Alston (1983a, 1983b) and Rucker and Alston (1987) document how state legislatures provided farm mortgage moratoria during the Depression. Kroszner (1999) analyzes federal legislation passed in 1934 that retroactively voided the gold clauses in debt contracts. Bolton and Rosenthal (2002) provide a formal model that argues that legislative intervention in debt contracts can be ex ante efficient. Important related work, with direct application to bankruptcy, have been developed by Biais and Récassens (2000) and Biais and Mariotti (2003).

⁸ Our account of court action draws on Kelly and Harbison (1970).

⁹ The quote is from an opponent of the Constitution, Richard Henry Lee, cited by Parrington (1928, p. 295).

¹⁰ The problem is exacerbated by low turnout. The number of voters for the roll calls shown in Table 2 was as low as 24 and never higher than 31.

¹¹ Poole and Rosenthal (1997) indicate, for both the 8th House and 8th Senate, that a second dimension does not make an important improvement in the fit of the D-NOMINATE model (p. 32) and that there are no issue clusters for which the second dimension is important (pp. 49-50).

¹² Mann (2002, p. 218) lists 11 Federalists as defecting. The difference may be in his coding of partisanship and our use of the Martis (1989) classifications

¹³ The cutting lines for all roll calls in American history, including those discussed in this paper, can be viewed by downloading the Voteview software from voteview.uh.edu.

¹⁴ Matthew Harrington of Catholic University has compiled data on the location of district courts. For 1800, his results indicate that the courts were located in Exeter and Portsmouth, NH; Boston, Salem, Portland (now ME), Pownalsborough (now ME), MA; Rutland and Windsor, VT; Newport and Providence, RI; Hartford and New Haven, CT; New York, NY; New Brunswick and Burlington, NJ; Philadelphia and York, PA; Newcastle and Dover, DE; Baltimore and Easton, MD; Richmond and Williamsburg, VA; Newbern, NC; Charleston, SC; Savannah and August, GA; Harrodsburgh, KY; Nashville and Knoxville, TN. We used the maps in Martis (1989) to code districts as being “close” or “far” from a court in the district’s state. The court in York was abolished in 1800. We tested variables that did and did not assume the existence of a court in York. The coding of the variables was complicated by the fact that NH, RI, CT, NJ, and GA did not have single member districts but general ticket elections. Because RI, CT, and NJ were small states with two courts each, we coded all representatives from these states as “close.” We coded NH and GA as 0.5. The Excel files with these and other variables are posted at www.princeton.edu/~voteview.

¹⁵ The coastal districts were MA, 5-14; NY, 1-4; PA, 1-3; DE, 1; MD, 1-3, 5-8; VA, 10-13, 16-19; NC, 6, 8-10; SC, 1-3. The general ticket districts were coded as follows: NH, 0.5, RI, 1, CT, 0.75, NJ, 0.75; GA, 0.5. All other districts were coded 0.

¹⁶ Although the magnitude of the party effect drops substantially, the effect is not statistically significant at conventional levels.

¹⁷ We did not run interactions with party given the small number of Federalists. We did not include a “frontier” variable (see the discussion in the text, below) because only one frontier representative voted on the motion.

¹⁸ The state admitted prior to Louisiana was Ohio in 1803.

¹⁹ Warren (1935, 76) lists the margin as 110-97.

²⁰ Roosevelt and Wood continued to support the bill, Plumer and Ward switched to opposition, and Sanford did not vote. J. B. Dawson of Louisiana switched to supporting the bill.

²¹ Two went against and one switched to for.

²² Four switched to for, one switched to against.

²³ The source of the citation is the ICPSR codebook entry for the roll call.

²⁴ Balleisen’s (1996) evidence about “vulture” exploitation of the 1841 Act is largely drawn from court records from the southern district of New York and thus does not bear directly on the sources of southern and western demands for repeal.

²⁵ Three Whig representatives who voted for repeal in 1842 did vote against in 1843 (were these lameducks being loyal to the party?), but 13 switched from against to for, as did five Democrats.

²⁶ The description of roll call 6-31 is based on Mann (2002), p. 218 rather than the ICPSR codebook entry which appears in Voteview.