The Political Economy of American Bankruptcy:

The Evidence from Roll Call Voting, 1800-1978

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1. Introduction

The U.S. Bankruptcy Act of 1800 was essentially a copy of the English Statute of Anne. Today – two centuries later – bankruptcy law in United States differs dramatically from that in the United Kingdom, and in most other countries for that matter. In their attempt to measure the degree of creditor protection of different bankruptcy laws, LaPorta et al. (1998) find the United States and United Kingdom to be diametrically opposite on all measures but one, with UK law generally protecting creditors better. Given their common legal origin and similarities in the basic legal mechanism, these differences are puzzling.

The current bankruptcy law in the United States, the Bankruptcy Code of 1978, is the outcome of a turbulent legislative history. During the 19th century bankruptcy was one of the most controversial issues in the political debate in the United States. Even though the Constitution gives Congress the powers to legislate a national bankruptcy law, it took until 1898 for the country to get a lasting federal law. There were at least seven major reform attempts, four of which resulted in a bankruptcy law being adopted. The first three laws lasted only short periods; the 1841 Bankruptcy Act was even repealed by the enacting Congress, the 27th. In the 27th House, 68 out of 974 roll calls were about bankruptcy, suggesting that the issue was divisive and could not be settled by committee deliberations that would be ratified by voice votes or even by roll calls with large majorities. In contrast, a large majority adopted the Act of 1898, and bankruptcy legislation has since assumed a much lower profile in the public debate[1].

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[1] The current controversy primarily concerns personal bankruptcy, which is not our primary concern in this paper. Of course, in the first half of the 19th century bankruptcy legislation was primarily about personal bankruptcy.

This paper asks why bankruptcy law, which was so controversial during most of the 19th century, became much less so during the 20th century, and why the consensus converged on the current law. We believe that the two parts of this puzzle are related, i.e., the peculiar features of US bankruptcy law can at least in part be explained by political economy factors. The paper focuses on the 19th century, or more precisely on the period between the Act of 1800 and the Act of 1898, but we also provide some analysis of the legislative history in the 20th century, primarily the reforms in the 1930s and the late 1970s. We find that two conditions were necessary for bankruptcy legislation to be adopted during the 19th century: a "Panic", that is a deep downturn in the economy, and unified control of the executive and legislative branches of government by conservative parties.

To better understand these stylized facts we analyze the entire congressional history of bankruptcy legislation using the D-NOMINATE framework developed by Poole and Rosenthal (1991, 1997). This technique allows us to explore whether votes are influenced by ideology, by party politics, or by geography and socioeconomic factors. The analysis concentrates on four legislative episodes: the 1841 Act, the 1898 Act, two initiatives in 1933 and the Bankruptcy Code of 1978. For the 1898 vote we also present some simple regressions to investigate whether a legislator's proximity to a banking center affected the vote.

We find that, throughout the nineteenth century, the main votes on bankruptcy policy always had an important ideological component. That is, the long-run ideological positions of the legislators account for most of the variation in the voting patterns. As the ideological makeup of Congress shifted, so did public policy. Outcomes were, in addition,

unstable. Most strikingly, the 27th House both enacted and repealed the 1841 Act. This unstable outcome reflects not only the Act having been passed in a logroll but also preferences having changed after experience with the Act's implementation. In contrast, by the end of the century, there was a growing consensus that some national legislation was necessary. Nonetheless, voting on specific provisions of the bill of 1898 was highly ideological. Economic interests can also be detected. Logit analysis suggests that proximity to a banking sector was strongly positively correlated with the propensity to support the 1898 Act.

Specific economic interests undoubtedly continue to seek to influence bankruptcy law in the twentieth century. The large majorities for passage of the 1898 Act, however, signaled the beginning of a stable policy area where conflicts over changes in policy no longer reflect national ideological splits. We show that roll call voting on bankruptcy in 1933 and 1978 was less ideological; legislation had come to reflect the give and take of special interests. Indeed, the major changes in corporate reorganization law, contained in the Chandler Act of 1938 and the Bankruptcy Reform Act of 1978, never were subject to roll call votes through amendments that presented alternative procedures. Both the initial and final House and Senate bills passed by voice vote in both chambers. Further research will be needed to explain how an area of legislative action became detached from the generally partisan, ideological nature of roll call voting that has prevailed throughout American history (Poole and Rosenthal, 1997).

The legislative history of bankruptcy law in the United States provides a rich source of empirical observations for analyzing a number of important questions. Both the wide spectrum of federal bankruptcy procedures enacted across three centuries and the

long periods of no federal legislation beg the question whether there is something like an optimal bankruptcy law. If so, what are the characteristics of such a law? How does the level of economic and institutional development influence the desirability of various features of the law? Why is a federal law necessary and why is it mandatory, i.e., why could the contracting parties not choose from a set of available options or simply design the legal rules on their own?

The issue of bankruptcy legislation is also interesting because it raises larger issues about the role of the legislative process in adjusting contracts ex post, and how this mechanism compares to the courts. How well do these mechanisms incorporate relevant macroeconomic information? How vulnerable are they to pressure from interest groups? How do they influence ex ante contracting?

The paper starts by providing some concepts from the economic literature on bankruptcy and briefly reviewing some contributions on the political economy of law (Section 2). In Section 3 we offer some institutional background to the legislative episodes and identify some political puzzles arising out of the history of bankruptcy law. Section 4 briefly presents the D-NOMINATE model and Sections 5, 6, 7 and 8 apply the methodology to the votes on the legislative episodes of the laws enacted in 1841, 1867, 1898, the 1930s and 1978. In Section 9 we discuss the findings and provide some explanations to our initial puzzles.

2. The Political Economy of Bankruptcy Law

Different bankruptcy laws have been characterized in terms of their relative friendliness towards debtors (or creditors) (for characterizations of different initiatives in the legislative history of US bankruptcy law, see Warren (1935) and Domowitz and Tamer

(1997); and for comparisons of the United States and United Kingdom, see LaPorta et al (1998), Skeel (forthcoming), and Franks and Sussman (1998)). However, the literature on the economics of bankruptcy provides little guidance as to what is the optimal law. Most contributions have been concerned with the design of procedural and substantive rules given a certain capital structure or set of investors and contracts (for example, Bebchuk (1988) and, more recently, Aghion, Hart and Moore (1992)). But these rules should affect the contracting decision ex ante, and the parties should have preferences over different sets of rules.

The literature on capital structure, on the other hand, has attempted to explain observed financial instruments and ownership structures as optimal outcomes of *ex ante* contracting given the legal structure (for a survey, see Hart (1995)). This literature typically has little to say about specific legal rules, and bankruptcy is an off-equilibrium event ensuring that certain actions are undertaken or payments made (Berglöf, Roland, and von Thadden (1999a) provide an optimal contracting model with an embryonic bankruptcy law and where bankruptcy actually occurs in equilibrium). The *ex ante* reasoning should apply to the design of the legal framework. A bankruptcy law that is very harsh on management will discourage incentives to invest in human capital or distort investments in an excessively short-term or cautious direction. If it is too lenient, investors will demand high compensations for participation, increasing the cost of capital to the firm.

Another problem with the characterization of bankruptcy laws as creditor-friendly or debtor-friendly is that debtor-creditor orientation is only one dimension of the bankruptcy problem (Berglöf, Roland, and von Thadden, 1999b). A specific law may also be

excessively prone to liquidation, closing down firms that should be continued, or to continuation, keeping unprofitable firms alive. A bankruptcy law with a continuation bias is not necessarily debtor-oriented; it could also transfer assets to investors who continue the operation even though they should liquidate. Similarly, a law could be liquidation-prone and still favor management, for example, by allowing it to divert assets. Finally, a particular bankruptcy may be creditor-oriented with a continuation bias but discriminate against one class of investors.

In terms of this typology, U.S. Bankruptcy Act of 1978 is continuation-prone and debtor-friendly with a special antipathy against banks.[2] At the other end of the spectrum the current bankruptcy law of the United Kingdom, the Insolvency Code of 198X, is creditor-friendly, possibly liquidation prone and gives strong powers to the holder of the *floating charge*, typically a bank. The U.S. Bankruptcy Act of 1800 was more or less a copy of English law at the time, and was comparatively creditor-friendly. The challenge is to explain how the two countries came to take such different routes despite their common legal origin. This paper seeks the answer to the American side of this question in the legislative history of bankruptcy law.

To understand the legislative history we need to understand the potential conflicts inherent in bankruptcy. Obviously, *ex post,* the debtors and creditors have opposing interests, and debtors may support stay laws and other legislation, which benefits them. *Ex ante,* it may seem that debtors and creditors should agree on the "best" law. All the

[2] In particular, senior creditors, typically banks, may be determined to be an insider and as such subject to equitable subordination in case they attempt to affect management in a firm in distress (Clark, 198X). Through this procedure, the creditor is placed on par, or even after, junior creditors in the priority queue. Posner (1997, p. 111) claims, in contrast, that United States corporate reorganization law is biased toward large creditors.

potential biases increase the cost of capital to the firm, and it is in everybody's interest to minimize this cost. However, the calculus may differ for different types of investors (e.g., banks vs. bondholders) and across firms (depending, e.g., on size and nature of activity). When, for example, the standing of bank debt in bankruptcy is weakened, bank lending will become more expensive raising the cost of capital of small firms that rely more on this type of finance. The importance of these conflicts and, more generally, the relative desirability of different bankruptcy laws should also depend on the level of economic and general institutional development.

Liquidation may also give rise to costs that are not borne by the contracting parties. For example, it was once argued that the liquidation of railroads would lead to significant costs for the US economy (e.g., cutting off the West from important supply lines). The government may also worry about excessive liquidation in recessions, when negative shocks are correlated across firms depressing asset values. In fact, in these situations the creditors collectively– but not necessarily individually – may themselves have an interest in postponing liquidation or at least being more lenient on management or continuation-prone. The parties to a contract would like a bankruptcy procedure to incorporate such "macro" information. An alternative is to rely on the political mechanism to intervene through staylaws or bailouts (Bolton and Rosenthal, 1999). Domowitz and Tamer (1998), following Warren (1935), argue that pro-debtor bankruptcy legislation in the United States is countercyclical (see also Calomiris and White (1996), and Libecapp (1994) for evidence of this in other legislative areas).

Franks and Sussman (1998) argue that laws in United States and United Kingdom evolved out of different innovation regimes. In the evolution of legal practice in the UK,

private contracting preferences freely arrived at by lenders and borrowers were the main source of innovations, while judges and legislators were more important in the US. Judges and in particular legislators were in their view likely to have an *ex post* bias, favoring debtors and continuation. The freedom of contract naturally leads to a stronger ex ante focus, but it is crude and under-refined relying more on general principles than specific statutes. Skeel (forthcoming) gives a somewhat different interpretation to the US-UK differences. He emphasizes that government intervention in bankruptcy in the UK is largely through administrative procedures whereas in the US the judicial system predominates. Handling bankruptcies through courts, Skeel points out, has created a bankruptcy bar with an interest in expanding business that has favored debtor friendly law. The bar has been an active influence on Congress. We will return to the details of the arguments of both Skeel and Franks and Sussman in our final discussion, but clearly legislative intervention is going to play an important role in our story as well.

To tell our story, we need to begin by providing institutional background and outlining the important political issues that frame the legislative history.

3. Institutional Background and Political Puzzles

Article I, Section 8 of the Constitution gives Congress the power "To establish uniform Laws on the subject of Bankruptcies throughout the United States." This clause was adopted with practically no debate (Warren, 1935, p. 5). 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."[3]

Madison would discover how wrong he was within his own political lifetime. Bankruptcy law was a contentious issue 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. The 1800 act was repealed in 1803. The 1841 act was repealed in 1843 by the very Congress that enacted it. (The House actually voted repeal only 3 months after enactment.) The 1867 act was frequently amended and then vanished entirely in 1878. For most of the 19th century, including the period of Madison's presidency, there was no national bankruptcy law.

Indeed, in the last decade of the 1700s, partisan and regional preferences on the desirability of a national bankruptcy law shifted rapidly to a pattern that prevailed for the next century. On the one hand, despite Madison's endorsement of federal regulation of bankruptcy, his own Jeffersonian Republicans and their successors, the Democrats, led the opposition to bankruptcy legislation throughout the nineteenth century. Bankruptcy legislation was supported initially by Federalists and later by Whigs and Republicans. And, within both of the two major political parties, Madison's fellow southerners were more likely than northerners to oppose legislation and to favor repeal.[4] On the other,

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[3] 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 Conventions. See McCoy (1989).

[4] 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 the consequence of 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

although Connecticut was the only state to have opposed the bankruptcy clause in the Constitutional Convention (Warren, 1935, p. 5), members of Congress from this state were generally stalwart supporters of a national law.

We believe Madison's economic intuition was better than his political savvy. The economic case for an efficient bankruptcy law does not prevent the political process resulting in deviations from efficient arrangements, deviations that confer rents, particularly *ex post*, on majorities, on organized minority groups of debtors, creditors, and managers and on judges, bureaucrats, and lawyers entrusted with enforcement of a bankruptcy law. Moreover, politics makes it difficult, if not impossible, to commit to *ex ante* efficient policies because the political process can always be used to permit ex post intervention.

After 1898, common interests seem to have prevailed. Changes to the bankruptcy law do not seem to have energized political passions but were low-key issues that allowed congressional action to be dominated by turf battles among the rent-seekers.[5] For example, Posner (1997) devotes much of his analysis of the 1978 Act to a description of a battle over the patronage involved in hearing bankruptcy cases. The remainder of his account concerns provisions that would make the law more or less favorable to certain organized interest groups such as managers and large creditors. That rent-seeking superceded a debate over the very legitimacy of a federal bankruptcy law is not surprising given the economic intuition we provided above for a commonality of interests between

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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).

[5] See Arnold (1990) for a discussion of how interest groups dominate legislation on low visibility issues.

debtors and creditors. The twentieth century has not seen a major political conflict over the structure of bankruptcy law. In particular, there is no debate that the federal government should use its constitutional powers to have a national law.

3.1 Some Legal Background: State Laws and the Supreme Court

Legislative battles in Congress are necessarily conditioned by the status quo formed by state law and Supreme Court decisions. In turn, the absence of a national bankruptcy law represented a status quo that influenced state legislatures and federal courts. We now provide some background information about relevant actions in these institutions.

In the absence of federal law, many states enacted their own legislation. The Supreme Court could in turn use constitutional provisions other than the bankruptcy clause to address the tradeoff between credibility and flexibility expressed in state legislation. In *Sturges v. Crowinshield* (1819) and *Ogden v. Saunders* (1827), the 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.[6] Yet when these laws tilted too strongly against foreclosure, as did Illinois law, the Court, in *Baron v. Kinzie* (1843) intervened on the creditor side. Similarly while the Supreme Court was "a conservative stronghold against the growing power of state democracy and popular sovereignty" and "favored vested interests at the expense of the states" (Kelly and Harbison, 1970, 283), the Court was politically sensitive. In a largely agrarian society, it was more favorable to property [debtor] rights in land and mortgages than to rights in corporate property. On balance, the Supreme Court in the nineteenth century appeared as the guardian of ex ante commitment while the more politically responsive state legislatures were the advocates of ex post flexibility. Because courts cannot be indifferent to citizen demands in a democracy, the Supreme Court did not eliminate but only limited the role of state legislatures.

A similar political compromise continues in current bankruptcy law where state legislation continues to define exemptions and priorities, resulting in differences across states in the type and value of assets that can be sheltered in federal bankruptcy proceedings. On the other hand, since bankruptcy proceedings take place in federal courts, federal officials retain residual powers that influence property rights through discretionary interpretation and enforcement relying on case law.

[6] Between October 1818 and April 1822, Tennessee, Kentucky, Maryland, Illinois, Pennsylvania, Missouri, Louisiana, and Vermont passed stay laws imposing debt moratoria. Rhode Island made it more difficult to seize the assets of debtors by repealing "summary process". Minimum appraisal laws passed in Indiana, Pennsylvania, and Kentucky made it more difficult to sell debtor assets at auctions. See Rothbard (1962, 196-197).

3.2 Ex Post versus Ex Ante

The position of the Court has largely been one that the bankruptcy clause of the Constitution gives the federal government discretion to intervene in contracts ex post. Nevertheless, the Court has viewed the contract clause as preventing states from exercising the same power, even for contracts between two citizens from the same state. In the nineteenth century, the states retained de facto ex post power in that stay laws were generally held unconstitutional only after a considerable delay.

In the twentieth century, the states have largely surrendered ex post power. Stay laws were no longer enacted once the Court began the practice of overturning them very rapidly. However, many states passed farm mortgage moratoria during the Depression, and the statutes were upheld by the Supreme Court (Alston, 1983a, b, Rucker and Alston, 1987). The states have, in contrast, ex ante power in that state law determines exemptions and priorities. In the nineteenth Century, Congress also exercised ex post power by enacting and then repealing the Bankruptcy Acts. [Examples. Contracts concluded before 1841 were subject to bankruptcy under the 1841 Act. Contracts made between enactment and repeal were no longer subject to the Act after repeal.] In the twentieth century, ex post power largely resides in the courts. [Examples. Despite priorities, secured creditors generally do not receive full value in a bankruptcy and equity holders don't lose everything, even in firms with no going concern value (Weiss, 1990). The "best interests" provisions of Chapter XI and the "fair and equitable" provision of Chapter X leave substantial discretion to courts, "absolute priorities" notwithstanding (Posner, 1997, 88)]. Congress, of course, retains all residual ex post power and uses it from time to time in revisions to the law, in bailouts of private firms (Chrysler) or in assuming state ownership

(Conrail). Perhaps the most notable exercise of ex post power in the twentieth century occurred in 1933 when Congress abrogated the gold clauses in bonds, including nearly all corporate bonds listed on the New York Stock Exchange. Congress essentially reduced the real value of debts by 31% (Kroszner, 1999).

3.3 Jurisdiction

If the states were able to retain the ability to specify the ex ante substance of personal bankruptcies, why was the development of a federal law so contentious? Jurisdictional turf is an important consideration. The turf issue involves not only whether there should be a "uniform law" as called for in the Constitution but also who would administer and enforce the law. Conceivably, the federal government might have provided regulatory standards for bankruptcy but left adjudication to state courts (à la the European Union and Argentina).

Preferences about who gets jurisdiction depend upon expectations about ex post discretion that would be exercised by state courts versus that exercised by federal venues. Federal courts have always been limited to only the largest cities (although every state has at least one). Under the 1898 Act, bankruptcy judges were appointed to six-year terms by panels of district judges who in turn served with life tenure (Posner, 1997, 21). In contrast, state courts are at the county level, and while there is variability in the selection of judges, many states select judges by popular election to short terms. Thus, this distinction is important not only for interstate bankruptcies but for intrastate ones as well. Although politicians influence the appointment of federal judges, a creditor in Chicago might expect better treatment from a federal judge in Chicago than a state judge in some rural county or even from a state judge belonging to the local machine in Chicago.

Creditors were likely to be suspicious of the degree of balance in state courts, particularly in debtor regions in the south and west. Creditors could be expected to push for a national bankruptcy law to eliminate the "bias" of state courts.

Federal jurisdiction would also have been favored through time as better transportation and communication diminished the argument that state courts (which sat in each county) were better informed about local conditions than federal ones. Thus, the tradeoff between the bias and perhaps greater uncertainty (due to juries, greater variability in judges, political interference) of state relative to federal courts, on the one hand, and their better information, on the other, shifted in favor of federal courts.

3.4 The Bankruptcy Laws of the United States[7]

The 1800 Act, inspired by English law, applied only to merchant-traders and was ostensibly creditor friendly. Only creditors could initiate bankruptcy. Yet Warren (1935) reports that perhaps most bankruptcies were debtor-induced, in which a debtor colluded with a friendly creditor to obtain terms to the disadvantage of other creditors. The 1841 Law allowed for voluntary bankruptcy of individuals; creditor-induced bankruptcy could be once again applied only to merchant-traders. In practice the law favored debtors. During its brief existence, over 40,000 individuals (representing over 1 in every 100 adult white males) canceled over $441 million in debt. Creditors recovered only about ten cents on the dollar.[8] Thus, in effect, the 1841 Act wrote off the Panic of 1837 and was then canceled by repeal in 1843. The 1867 law allowed for both voluntary and involuntary

[7] This section draws heavily on Warren (1935).

bankruptcy for all classes of individuals. Warren (1935) suggests the law led to costly administration that was both inefficient and corrupt. Apparently the law was creditor friendly since the Democratic controlled House voted repeal *after* the Panic of 1873. The Republican Senate rejected full repeal but compromised on pro-debtor amendments, including provisions for composition (an agreement by a ¾ majority of the creditors) and extended repayment terms. Finally, in 1878 the bill was fully repealed.

The demand for national legislation continued, however. National commercial associations (trade creditors) had a bill drafted by Jay Torrey, a St. Louis lawyer. The Panic of 1893 created further demand for legislation. Significantly, however, no legislation occurred until after Republicans achieved unified control of both Houses of Congress and the Presidency in the 1896 elections. Like the 1841 Act, voluntary bankruptcy was allowed and wage earners and farmers were exempt from involuntary bankruptcy.

3.5 Political Regularities

All the nineteenth century Bankruptcy Acts were passed during periods when parties that represented commercial interests in the New England and Middle Atlantic states, that is the "right", had unified control of the federal government.

- The 1800 Act was passed under a Federalist Congress and Federalist president, John Adams.
- The 1841 Act under a Whig Congress and a Whig president, John Tyler

[8] Warren (1935) and Balleisen (1996). Balleisen provides a detailed account for the strategies pursued by bankrupts, bankruptcy lawyers, and "wreckers" to obtain most of the residual value of bankrupt individuals or firms.

- The 1867 Act under a strongly Republican Congress and Andrew Johnson, elected as Lincoln's vice-president on the Republican 1864 ticket.
- The 1898 Act under a Republican Congress and Republican president, William McKinley.

There was a demand for a law after every downturn in the business cycle. (The major panics are dated in Table 1.) But no bankruptcy legislation could be passed as long as the "left" was in control or control was divided. No legislation followed the Panics of 1819 and 1857.[9] (The Democrat-Republicans controlled the presidency and Congress from 1819 until 1825 and the Democrats controlled the presidency from 1857 to 1861.) The Acts that followed the panics of 1837 and 1893 were not passed immediately but only after political control had passed to the right.

The episodes of repeal or amendment echo the "left-right" conflict found in enactment. The 1800 Act was repealed by a unified left government following the Jeffersonian sweep in the 1800 elections. The 1841 Act was repealed when the more agrarian members of the Whig coalition from the West (now the Middle West) defected and voted with the Democrats. The 1867 Act disappeared as soon as the Democrats returned in force with the end of Reconstruction.

To summarize the facts about national laws, the "right" had a latent demand for a national law. Coalitions between ardent supporters and moderates were most easily formed after downturns. A winning coalition required "right" control of both the legislature and the presidency. These observations raise a number of questions: Why was

[9] Interestingly, after the Panic of 1819 Congress did vote relief for land debts held by the federal government. New England was the only region of the country where a majority of the representatives

the “left” against bankruptcy legislation, particularly when, in 1800, 1841, and 1898, farmers and wage earners were exempt from involuntary bankruptcy? Why did the “right” support legislation that favored debtors?

More generally, what is the role of various ideologies as against direct economic interests on bankruptcy? For example, did imprisonment for debt persist into the 19th century simply because people felt it was “immoral” not to pay even though imprisonment seemed to fail both as an ex ante punishment and as an ex post means of recovering the creditor’s loan? Did rural, agrarian classes oppose the law because they felt that foreclosure of a farm was “immoral” regardless of the effect that prevention of foreclosures would have on credit markets? Were bankruptcy laws opposed because individuals wanted to uphold “states rights” across the board? We will show that roll call voting on bankruptcy law fits nicely into the two-dimensional roll call voting model of Poole and Rosenthal (1991, 1997). Specifically, the long-run ideological positions of the legislators account for the voting patterns better than do just measures of region and party.

4. Policy Initiatives, Roll Calls, and Legislation

To preface our discussion of voting, we now indicate how roll call voting fits into the legislative process and provide an overview of legislative activity on bankruptcy in American history.

Domowitz and Tamer (1997) have carefully inventoried the historical record of legislative activity on bankruptcy. Their results are reproduced in Table 1. They consider bills, petitions, resolutions, and acts. Bills and petitions unaccompanied by roll

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opposed the land bill. In contrast, a bankruptcy bill, favored by merchant interests, failed. See Rothbard

call voting may not be indicative of substantial public concern over policy. They may be the initiatives of individual members barking in the dark. Or they may command some support but be "bottled up in committee". The observation of a bill (or in earlier times, a petition) without further information is not indicative of significant demands for legislation, either by interest groups or larger publics.

Bills accompanied by roll call voting are indicative of a more salient policy debate. Consequently, it is relevant to add counts of roll calls to the Domowitz-Tamer chronology. But not all roll call voting leads to legislation, either because the bill is defeated or vetoed or because one house fails to act.

On the other hand, there are many "acts" that have no (1872, 1903, 1906, 1910, 1917, 1922, 1938, 1960, 1974) roll call voting in one or both houses of Congress. That is because legislation can be passed by teller vote or voice vote. Such uncontested layups are passed off as "technical" changes. These changes, such as the Chandler Act in 1938 and the Bankruptcy Reform Act of 1978, may be of great importance to interest groups. They may, insofar as they pertain to personal bankruptcies or the employees and shareholders of large firms, also be very important to the public. Nonetheless, the acts largely avoid public scrutiny. Acts that engender important policy debates are, in contrast, the focus of roll call voting.

The history of congressional action can be broken into three periods with distinct characteristics. First, shown in part A of table 1, is the period from the Constitution through the Civil War. In these first Congresses of the United States, bills were introduced and substantial roll call voting took place only after each of the major

(1962).

economic Panics. Bills become Acts, however, only when there is unified conservative government. In the intervals between Panics, there is no legislative activity. Second, shown in part B, is the period of three decades leading up to the 1898 bill. During this period, there is activity, sometimes with substantial roll call voting, in most Congresses. The more continual activity suggests a demand for a national law but an inability to forge a national consensus. Third, as seen in part C, is the twentieth century. During this period, we see almost no roll call voting until the introduction of electronic voting in the House. Between 1898 and the Depression, the Act avoids repeal and is "perfected" by several pieces of non-controversial legislation. The Depression changes are pushed through by the huge Democratic majorities. Complete stability occurs between 1938 and 1960. Even the more recent changes occasion only limited voting

The overview provided in table 1 suggests that bankruptcy legislation was a major item on the national agenda only in the first half of the nineteenth century. Compared to more recent times, roll call voting on bankruptcy represented large chunks of the total floor activity of Congress. The 27th House devoted 68 of its 974 roll calls to passing and repealing the 1841 Act, the Senate 23 of 822. When the 55th Congress passed the 1898 Act, activity had already declined significantly, with bankruptcy votes represented by only 5 of 183 House and 4 of 183 Senate roll calls. The 1978 Act was largely a non-issue, generating only 6 of the 1540 roll calls in the 95th House, and just one of 1156 roll calls in the Senate. The decline in floor voting on bankruptcy is one mark of its passage from a partisan, ideological issue to one of behind-the-scene battles by interest groups for changes in an institution that has broad acceptance.

We now proceed to show how voting patterns correspond to the overall activity pattern of ideological conflict in the nineteenth century and interest group politics in the twentieth. To do so, we must digress to discuss our methodology.

Table 1. Legislation and Roll Call Voting on Bankruptcy

A. 1789-1866

	Total Roll Calls				
Congress	House	Senate	Legislative Activity	Economy	Politics
89-90					
91-92			Bill 11/91, Bill 11/92	**PANIC**	
93-94			Bill 12/93, Bill 12/94		
95-96			Bill 12/95, Bill 12/96		
97-98	1		Bill 12/97, Bill 12/98	**PANIC**	
99-00	4	8	**Act 4/00**		Federalists
01-02	4	3			
03-04	1	3	Act 12/03 (Repeal)		Jeffersonians
05-06					
07-08					
09-10			Petition 12/09		
11-12			Petition 1/12		
13-14			Petition 12/14, Bill 1/15		
15-16			Petitions 1-4/16		
17-18	1		Bill 12/17, 11/18		
19-20	7	18	Bill 1/20, Bill 1/21	**PANIC**	Jeffersonians
21-22	4		Bill 12/21		
23-24			Resolution 2/24		
25-26		10	Bill 12/25, Bill 12/26		
27-28					
29-30					
31-32					
33-34					
35-36					
37-38			Petition 9/37	**PANIC**	Democrats
39-40	3	26	Bill 1/40		Democrats
41-42	65	20	Petition 6/41**, Act 12/42,** *Repeal 1843*		Whigs
43-44					
45-46					
47-48					
49-50					
51-52					
53-54					
55-56					
57-58			Petition 12/57, Senate Report 5/58	**PANIC**	Democrats
59-60			Bill 3/60, Bill 5/60, Bill 3/61		Divided
61-62	5	4	Petitions 7/61, Bill 1/62, Bill 1/63		Republicans
63-64	7	1	Bill 12/64		Republicans
65-66	15	13	Bill 5/66		Republicans

Source: Roll Call counts. Authors from Voteview database. (voteview.gsia.cmu.edu)
Legislative Activity. Domowitz and Tamer (1997) with exception of 1843 repeal added by authors.

Table 1. (continued)

B. 1867-1898

Congress	Total Roll Calls House	Senate	Legislative Activity	Economy	Politics
67-68	2	3	Bill 5/67, Act 6/68		Republicans
69-70					
71-72	1		Act 6/72		
73-74	1	7	Bill, 12/73, Act 6/74	**PANIC**	
75-76	1				Divided
77-78	20	15	Act 5/78 (repeal)		
79-80					
81-82	19	7			
83-84	2	12	Bill 2/84		
85-86		2			
87-88					
89-90	12		Bill 4/90		
91-92			Bill 6/92		
93-94	6	4	Bill 10/93, 7/94, 1/95	**PANIC**	Democrats
95-96	2		Bill 5/96		
97-98	5	5	Act 7/98		Republicans

1877-78 19 of 20 House votes on bill with taxation provisions for bankrupt banks.
Only 1 directly on bankruptcy. All Senate votes on bankruptcy repeal.

1881-82 All House votes on national banking bill, only 1 directly on provisions for bankrupt banks.
All Senate votes on bankruptcy.

Source: Roll Call counts. Authors from Voteview database. (voteview.gsia.cmu.edu)
Legislative Activity. Domowitz and Tamer (1997).

Table 1. (continued)

C. 1897-1994

Congress	Total Roll Calls House	Senate	Legislative Activity	Economy	Politics
97-98	5	4	Act 7/98		Republicans
99-00					
01-02	1		Act 2/03		Republicans
03-04					
05-06			Act 6/06		Republicans
07-08	2				
09-10	1		Act 6/10		Republicans
11-12					
13-14					
15-16					
17-18			Act 6/17		Democrats
19-20					
21-22			Act 1/22		Republicans
23-24					
25-26	1		Act 5/26		Republicans
27-28					
29-30					
31-32		3	Act 2/32 (1933?)	**Depression**	Divided
33-34	5	2	Act 3/33. Act 5/33, Act 5/34, Act 6/34, Act 7/34		Democrats
35-36					
37-38			Act 6/38		Democrats
39-40	1				
41-42					
43-44					
45-46	1				
47-48					
49-50		1			
51-52					
53-54					
55-56					
57-58					
59-60			Act 7/60		Divided
61-62					
63-64					
65-66		2			
67-68		2			
69-70	1	1	Act 10/70		Divided
71-72					
73-74			Act 2/74		Divided
75-76	2	5	Act 10/76		Democrats
77-78	6	1	Act 11/78		Democrats
79-80	1				
81-82					
83-84	13	4	Act 7/84		Divided
Data unavailable.			Act 10/86		Divided
Data unavailable.			Act 10/94		Democrats

5. The Spatial Model of Roll Call Voting

In the ensuing discussion we analyze roll call vote on bankruptcy using the two-dimensional D-NOMINATE estimates of Poole and Rosenthal (1991, 1997).[10] The D-NOMINATE model assumes that each legislator has an ideal point in an (in this instance two-dimensional) Euclidean space. Legislator ideal points are indicated by the tokens in figures 1, 2A, and 3. Points in the same space also represent the two alternatives on each roll call. A legislator is more likely to vote for the alternative that is closer to his ideal point. If one alternative is very close to the ideal point and the other is very distant, the legislator votes for the closer alternative with a probability close to 1.0. If the two alternatives are equidistant from the ideal point, the legislator flips a fair coin in voting. The cutting line on each roll call, also shown in figure 1, 2A, and 3, gives the locus of points equidistant from the two alternatives.

A legislator's ideal point can vary linearly through time during his or her career, with time being measured by integers for each Congress. Consequently, the legislator ideal points are constrained to be identical for all roll calls in a given Congress. That is, the ideal point does not change with the issue content of roll calls. In this sense, the model can be termed "ideological".

The two-dimensional, linear D-NOMINATE model accounts for 85% of all the individual choices in both the House and Senate on all roll calls with over 2.5% voting on the minority side for the period 1789-1985. On roll calls with over 40% voting on the minority side, the model accounts for 84% of the choices in both houses (Poole and

[10] Other uses of D-NOMINATE estimates in the analysis of financial markets include Romer and Weingast (1991) and Romano (1997).

Rosenthal, 1997). For the period 1947-1995, the overall classification is 86% in both houses (McCarty, Poole, and Rosenthal, 1997).

An obvious benchmark with which to compare D-NOMINATE is the "majority" model that predicts, ex post, that all members vote with the majority side. Thus, its average classification percentage is simply the average size of the majority on roll calls. To compare D-NOMINATE to the benchmark on a given roll call, we use the Proportionate Reduction in Error measure:

$$\text{PRE} = \frac{\text{Minority - D-NOMINATE classification errors}}{\text{Minority}}$$

(A technically more appealing measure would be the geometric mean probability of the observed choices. Results are similar.) The average PRE for 1789-1985 is 0.55 in the House and 0.54 in the Senate (Poole and Rosenthal, 1997). The average PRE is substantially higher for close roll calls than for lopsided ones.

Table 2. 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 2. 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.

6. The 1841 Act in the 27th House of Representatives

To illustrate ideological or spatial voting in the ante-bellum period, we focus on a detailed consideration of votes in the 27th House, which passed and repealed the 1841 act. 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 shown by roll calls in the 26th Congress, were blocked by the Democratic majority. The bill appeared to include provisions for voluntary and involuntary bankruptcy for individuals but no provisions for corporations, which were, at the time, chiefly banks. The voluntary bankruptcy provision was a Whig innovation. Was the major purpose of the bill debt relief for Whig merchants and traders?

All the House votes on the bill, except for a few lopsided procedural votes, are shown in Table 2. The votes in Table 2 fall into four natural groups. First, a set of votes in June to August 1841, leading to passage. Second, votes in January 1842, leading to passage of repeal in the House. The Senate failed to pass repeal at this time. Third, in the spring and summer of 1842, sporadic attempts at repeal or the inclusion of corporations under the law. Fourth, a successful move to repeal in the lame duck session. Thesevotes 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.[11] 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.[12] The bill passed 110-105 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.

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[11] Warren (1935, 76) lists the margin as 110-97.

[12] 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.

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 times[13] and gained 3 votes among Whigs[14]. 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."[15] 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

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[13] Two went against and one switched to for.
[14] Four switched to for, one switched to against.
[15] The source of the citation is the ICPSR codebook entry for the roll call.

amendment, shown in figure 1, 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.)

Over the night from Aug. 17 to Aug. 18, the Whigs rallied. 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 was 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 were all rural or western areas.[16] 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.

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

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[16] 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.

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 HR 642 that led to repeal.

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 thefour "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 Whigsthan were Northern Democrats (0-38). We need to study the distinction between corporate and non-corporate bankruptcies more closely. 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 a bailout bill for southern and western banks, which failed after a speculative expansion from 1830 to 1836.

Immediately prior to repeal, the Whigs isolated the Southen 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 lawfor cases initiated before July was easily defeated.) This vote demonstrates that Southern Democrats were the heart of opposition to a bankruptcy law.

The bill was repealed by a 140-71 vote, on Jan. 17, 1843, less than one year since assuming 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. (All members who had voted against passage voted to 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.[17]

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 story of the 1841 Bankruptcy Bill illustrates the instability of bankruptcy policy in the 19th century. Skeel (forthcoming) suggests a role for voting cycles. 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. What appear to be more fundamental are basic ideological preferences. 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. Economics, elections, and ideology, themselves closely intertwined, combined to produce legislative volatility.

7. The 1898 Bankruptcy Act

Modern bankruptcy law originated in the 1898 Act. Congressional roll call votes both indicated a division over the standard ideological lines of the nineteenth century and a consensus that some form of a national law was necessary. The ideological battles were indicated in the votes on amendments in both chambers and on passage in the House. Consensus was indicated in the large, nearly bipartisan, majorities agreeing to passage in

[17] Three Whig representatives who voted for repeal in 1842 did vote against in 1843 (were these

the Senate and to the conference report in both houses. In both the Senate and the House, in strong contrast to the 1841 Act, both chambers took up and passed the bill in a single day. They also both took only one day to approve the conference report.

lameducks being loyal to the party?), but 13 switched from against to for, as did five Democrats.

Table 3. Roll Call Voting on the 1898 Bankruptcy Act

Roll Call	Vote with Paired & Announ.	Vote	No. Dem.	So. Dem.	Rep.	Pop-ulist	Sil-ver	PRE	Class. Errors
Senate #30, 4/22/97, Nelson amendment to exclude corporations	37-24	34-22	3-3	12-3	8-16	5-0	4-0	0.54	11
Senate #31, 4/22/97, passage.	51-8	49-8	6-2	8-6	20-0	5-0	4-0	0.13	7
House #61, 2/19/98, Mahany, table motion to reconsider amendment limiting bill to 2 years.	150-160	145-156	33-4	63-4	25-148	21-0	3-0	0.80	30
House #62, 2/19/98, Underwood amendment to eliminate involuntary bankruptcy and bankruptcy for corporations.	140-157	139-157	34-4	58-6	22-147	21-0	4-0	0.79	30
House #63, 2/19/98, Terry, recommit to eliminate involuntary bankruptcy and to limit act to 2 years.	137-158	131-157	33-4	58-6	18-146	19-1	3-0	0.78	29
House #64, 2/19/98, passage.	161-128	158-125	5-31	8-55	145-18	2-18	0-3	0.79	27
Senate #317, 6/24/98, agree to conference report	48-14	43-13	3-3	7-6	29-0	2-1	2-3	0.21	11
House #138, 6/28/98, agree to conference report.	136-53	134-53	8-14	13-27	104-8	7-4	2-0	0.34	35

The Senate considered and passed the bill early in its first session. The Republican Party majority depended on five "Silver Republicans" who would be subject to populist, anti-corporate appeals.[18] Indeed, as Table 3 shows, the Senate passed, on a roll call, an amendment excluding corporations from the act. The amendment was supported 9-0 by Populists, Silver Republicans, and Silvers, 12-3 by Southern Democrats. Northern

Democrats were divided 3-3. Only Republicans were opposed. Sixteen of the 22 votes against came from states east of the Mississippi and north of the Mason-Dixon Line, that is, the industrial part of the country. The most serious prediction error of the model was the vote in support of the amendment by Mark Hanna of Ohio, who symbolized corporate Republicanism. On the whole, the fit by the spatial model was good, with a negatively angled cutting line very similar to those found on railroad regulation (Poole and Rosenthal, 1994), another matter of anti-corporate or anti-commercial ideology.[19]

As table 3 shows, the House considered the bill only on February 19, 1898. There were motions to eliminate corporate bankruptcy, to eliminate involuntary bankruptcy, and to restrict the bill's duration to two years. The provision with regard to corporations had, as in the Senate, a populist ring. Similarly, the prohibition of involuntary *individual* bankruptcies seemed designed to appeal to debtors. Restricting the bill's duration to two years would allow it to sunset during the 56th Congress, to be elected in midterm elections where the Democrats would be expected to make gains.

The three amendment votes and the passage vote all had similar majorities and cutting lines. The pro-bankruptcy side obtained 156 to 158 votes on all 4 votes. The cutting lines were all negatively sloped, as with the corporate amendment in the Senate. All votes fit the spatial exceptionally well, with PREs ranging from 0.78 to 0.80. Few individual votes changed sides across the four votes. All of the nine individuals who switched sides between the restrictive Underwood amendment vote and the passage vote were all

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[18] We use the party classifications of Martis (1989). In Table 2 and the text, we treat the lone Independent Republican in the House as a Republican and, in both houses, combine Silver Republicans and Silvers as Silvers.

representatives who supported the amendment but also supported the bill. This behavior indicates consensus on the need for a bill. These nine representatives preferred the bill to the status quo of no bill even though they would have preferred an amended bill.

Since the four votes are so similar, we will focus on the Underwood amendment, shown in figure 2. This amendment sought to ban corporate bankruptcies and involuntary bankruptcies. Voting on the amendment broke quite cleanly on party lines, with Populists and Silvers unanimously siding with the Democrats. Regionally the amendment drew strong support from the South and agricultural and mining West. New England, the Middle Atlantic states, and the upper mid-West were strongly opposed. Texas aside, most of the southern opposition was concentrated in trading areas like New Orleans and Charleston, South Carolina. Missouri, where the only representatives in opposition were from St. Louis, and Nebraska, where opposition arose in and near Omaha, also nicely illustrate the urban-rural distinction. (See figure 2B.) Representatives from major urban areas were almost unanimously opposed. (See figure 2C.) As indicated previously, a similar pattern held on the passage vote.

Passage in the Senate had been less divisive than in the House. The Senate passed the bill by an overwhelming 49-8 majority. The spatial fit is only modest. The South does come through as the source of opposition to federal control since all 8 votes against came from states where slavery was legal in 1860.

After the House passed its version of the Senate bill, the bill went to conference. Bankruptcy for corporations, provided for only in the House bill, was a major item of

[19] We need to investigate the opposition to corporate bankruptcy. Hypothesis: railroads and others might use bankruptcy to default on loans granted by state and local governments. Alternative hypothesis: states were reluctant to surrender control of corporations that they chartered.

contention since only the House bill provided for corporate bankruptcies. The difference between the House and the Senate bills was largely because of their different methods of apportionment. In the House, the Underwood amendment to bar corporate bankruptcy lost by only 18 votes. A 23-vote cushion was provided by the 25-2 vote of the New York delegation. In contrast, the House and Senate delegations of the Dakotas and Montana opposed corporate bankruptcy. These states had 6 of the 90 seats in the Senate but only 3 of 371 in the House.

Corporate bankruptcy was introduced in the United States after the House prevailed in conference.[20] Senators expressed their anger by giving a smaller pro-bankruptcy margin to the conference report than to passage. All Senate Republicans voting on passage and the conference report voted positively both times. In contrast, seven of the other members voted negatively on the conference report even though they voted for passage while only three switched in the opposite direction. Nonetheless, there was broad support for a bill across the nation. Even the former Confederate states could only muster a 6-5 majority against the bill. The House also passed the conference report without controversy, with a far larger majority than had voted for passage. Moreover, turnout in the House dropped by about 100 members between the amendment and passage voting in February and the conference report voting in June. Approval was pro forma. Although House Democrats continued to oppose the law by a 2-1 margin, Populists and Silvers approved it 9 votes to 4. Bankruptcy law had ceased to be a major political issue.

Roll call voting on the 1898 Act thus showed an ideological split on amendments to the content of the Act but a large consensus that legislation of some form was needed.

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[20] The House did make significant concessions on the details. See Skeel (forthcoming).

Are there non-ideological factors that differentiate Yeas and Nays on the 1898 votes? At the end of the nineteenth-century, there were wide discrepancies in nominal interest rates across the nation. Nominal rates in the South and the West were more than double the rates in New England. One might expect that areas where debtors were faced with stiff payments might offer correspondingly stiff opposition to a Republican backed measure. Breckenridge (1898) provides data from *Bradstreet's* on the average discount rate (loan rate on first-class double-name commercial paper) from 1893 to 1897 for 43 cities.[21]

For the House, for each congressional district we used the rate for the city closest to the district. For the Senate, we averaged rates when there was more than one city in a state; where there was no discount rate city in a state, we used the rate for the closest city. These coding decisions are robust in the sense that the discount rates vary smoothly across the map of the United States. The resulting variables are only mildly correlated with the D-NOMINATE coordinates for the legislators. In logits for all the roll calls in Table 3, we used the interest rate variable in combination with the two D-NOMINATE coordinates. In no case was the interest rate variable remotely close to statistical significance at conventional levels.

If high interest rates did not spark opposition to a bankruptcy law, the presence of a banking sector did. Although Warren's (1935) view is that the bill was in the "national interest", urban areas with creditors in the form of banks appeared to be the major demanders. We created a dummy variable whose value was 1 if the district was wholly or partly contained in one of the 43 Dun and Bradstreet banking center cities and was 0 otherwise. Our coding generated 76 banking center congressional districts out of the 371

[21] In looking at the annual data for these years, we found a consistent crosssectional pattern across years.

congressional districts in 1898.[22] We ran logits based on this dummy variable, BANKCEN, and the two Nominate coordinates, DNOM1 and DNOM2, for the legislator. Since neither political party, interest rates, nor the interaction between interest rates and banking centers made significant improvements to the likelihood, we present, in Table 4, only the basic results for the five votes in the House.

Table 4. Banking Centers and the 1898 Act

	Roll Call				
Variable	**#61 Sunset after 2 years**	**#62, No involuntary bankruptcy, no corporate bankruptcy (Underwood)**	**#63 Sunset after 2 years, no involuntary bankruptcy**	**#64 Passage**	**#138 Conference report**
Constant	-1.381	0.832	0.436	-0.168	1.178
	(0.466)	(0.348)	(0.340)	(0.290)	(0.296)
BANKCEN	2.551	2.087	1.600	1.405	1.101
	(0.905)	(0.731)	(0.727)	(0.662)	(0.616)
DNOM1	6.466	5.368	5.380	4.768	2.658
	(0.891)	(0.701)	(0.629)	(0.533)	(0.436)
DNOM2	-4.906	-4.530	-4.991	-4.875	-3.415
	(1.359)	(1.25)	(1.372)	(1.283)	(1.300)
% Correctly Classified	90.6	90.5	91.5	90.7	81.5
Probability	0.928	0.890	0.832	0.803	0.750

Note: Standard errors in parentheses. The last row of the table shows the probability of a pro-bankruptcy vote in a banking center district that, were it not a banking center, would have had only a 50-50 chance of voting pro-bankruptcy.

To clarify the table, we coded a pro-bankruptcy vote as a "1" for all five votes. Thus, for all five roll calls BANKCEN is expected to have a positive coefficient. The results confirm this. Moreover, the coefficient on BANKCEN is statistically significant in all but the final, lopsided vote on the conference report. The impact of being a banking center is

[22] New York City had 9 districts, Chicago 8, Brooklyn 6, Philadelphia 5, St. Louis 3, and San Francisco,

substantial. A district that would otherwise have had only a 50% chance of favoring the bankruptcy act had an 80% chance if it were a banking center.

An alternative interest group explanation of support for the 1898 Act has been proposed by Hansen (1996). Hansen's perspective, influenced by the work of Douglass North, is that legislation is a public good that is provided only when a collective action problem is solved. Hansen saw voluntary associations of trade creditors as providing the solution. He indicates how trade creditors involved in interstate commerce developed chambers of commerce and boards of trade in urban centers. These local associations were then easily tied together in national umbrella organizations. In contrast, banks, given the limits on branch banking in the United States, may have seen less need for a federal law. It is possible that BANKCEN is just a reasonable proxy for trade creditor organization.[23]

We can provide an empirical test of the trade creditor vs. banking interest hypotheses by taking advantage of a unique set of data compiled by the Treasury in 1890. This is a "List of Boards of Trade and Other Commercial and Industrial Organizations of the United States."[24] The organizations in the list can be broken down into three main categories, namely, Boards of Trade, Chambers of Commerce, and other, more specialized organizations, such as the Grocers' Association of Lowell, Massachusetts. In addition, the list contains the number or, more likely, an estimate of the number of the members of

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New Orleans, Boston, Baltimore, and Buffalo, two each.

[23] Urban-rural differences are also captured in DNOM2, the second dimension coordinate. (See Poole and Rosenthal, 1993). Romano (1997) analyzes votes on regulation of futures markets, where the main opponents of futures markets were grain farmers. These votes fall largely on the second dimension.

[24] "Report of the Internal Commerce of the U.S.", 51st Cong., 1st sess., 1890, House. Doc. 6, serial set # 2738. We thank Bradley Hansen for pointing us to this publication.

each organization. As with the bank center data, we matched this data to congressional districts, assigning each city in the List to the one or more congressional districts that wholly or partially covered the city. We tried various approaches to using the data and found that the results were robust to these approaches. We report results for only the following four category breakdown ofcongressional districts: banking centers with trade associations (BANK AND TRADE); banking centers without trade associations (BANK NO TRADE); trade association districts that were not banking centers (TRADE NOT BANK); and other districts.

From the 1898 voting, we draw again on what was probably the most important vote, that on the Underwood amendment. Although there were few votes in 1898, the Act, as pointed out earlier, followed the usual nineteenth century pattern. A severe Panic in 1893, followed by the absence of legislation until Republicans get complete control of the executive and legislative branches, following the election of McKinley in 1896. The Democratic House did attempt to deal with the Panic, however, by passing the Bailey Bill, a bankruptcy bill that would have been limited to a two-year period. Not unexpectedly for the Democrats of the time, this bill would have been a pro-debtor write off of the Panic, in contrast to the permanency of the 1898 Act. We focus on passage vote on July17, 1994. Turnout was low, with only 210 members voting. All 10 Populists voting supported the bill, Democrats voted 110-44 for, but Republicans were against 37-17, with most Republicans not voting. In table 5, we compare voting on the Bailey Bill to voting on the Underwood amendment.

The coefficients in table 5 are estimates from a logit analysis. The dependent variable is coded 1 for a pro-Republican side vote in both cases. That is the dependent variable is

1 for a vote against the Bailey bill or a vote against the Underwood amendment and 0 for a vote for the bill or for the amendment. Districts whose representative did not vote are not included.

For each bill, there are three columns. One has just the ideological variables, the second adds the banking center variable, and the third has the breakdown with trade associations. The models are nested.

In the second column for the Bailey bill, we find that banking centers in fact, controlling for ideology, supported the Bailey bill, although the effectis not statistically significant, even at the 0.1 level. We expect banking interests were conflicted here, being drawn toward the bill for its ability to deal with the Panic but against for its pro-debtor orientation. In contrast, the bank center coefficient is large and statistically significant at the 0.004 level for the Underwood amendment. The contrast in the bank center coefficients for the two votes is consistent with a switch toward a more pro-creditor bill.

When we add in the trade association information, in the third column, we find that the added information is statistically significant for the Bailey bill. The standard Chi-square test comparing the second and third columns is statistically significant at the 0.025 level. The comparison of the first and third columns is statistically significant at better than 0.005. The coefficients of the three interest group variables in column 3 are all roughly the same value. Business interests did appear to weakly favor the Bailey bill.

In contrast, the third column for the Underwood amendment shows that only banking centers strongly supported the 1898 Act. The coefficient for districts with trade associations but no banking centers is small and opposite in sign to that for banking centers. The strongly positive coefficients for the two types of districts with banking

centers are both large and similar in magnitude. Indeed, the improvement in the log likelihood of the third column over that of the second is not statistically significant. Consequently, only banking centers supported a strong Act in 1898. Districts with trade associations only were not particularly opposed to the pro-debtor Underwood amendment. The Hansen thesis is not supported. Indeed trade associations may have included both trade creditors and trade debtors; there was ample opportunity for internal conflict in these local organizations. In contrast, insolvent banks would not have benefited from the Act. All banks had a common interest in, for the long run, of a bankruptcy law for their debtors.

Table 5. Voting on the Bailey Bill and the Underwood Amendment.

Variable	Roll Call					
	Against Bailey Bill		Against Underwood Amendment to 1898 Bill (#62)			
Constant	-.212 (0.170)	-0.053 (0.199)	0.208 (0.245)	-.278 (0.248)	0.832 (0.348)	-0.729 (0.384)
BANKCEN		-.669 (0.429)			2.087 (0.731)	
DNOM1	2.466 (0.437)	2.481 (0.439)		4.930 (0.549)	5.368 (0.701)	5.329 (0.645)
DNOM2	-2.599 (0.653)	-3.023 (0.725)		-5.496 (1.174)	-4.530 (1.25)	-4.471 (1.240)
BANK & TRADE			-0.853 (0.570)			2.264 (1.020)
BANK NO TRADE			-1.046 (0.584)			1.793 (.906)
TRADE NO BANK			-0.871 (0.461)			-0.275 (0.507)
% Correctly Classified	80.5	78.6	78.6	90.5	90.5	89.9
Probability	n.a.	0.339	0.299	n.a.	0.890	0.906

Note: Standard errors in parentheses. The last row of the table shows the probability of a Republican side vote in a banking center (or banking center without a trade association) district that, were it not a banking center, would have had only a 50-50 chance of voting on the Republican side.

Why did the 1898 legislation achieve stability? Skeel (forthcoming) argues that the Act created entrenched interests in both the bankruptcy bar and bankruptcy judges (referees before 1973) who sought to maintain and expand the scope of bankruptcy proceedings. He also emphasizes the influence of committee jurisdictions within Congress, with Judiciary not wanting to surrender turf. The role of the legal community is clearly important, particularly since, as Posner (1997) indicates, trade creditors are no longer major players in shaping legislation.

In addition, though, national elections continued to be influential. Repeal attempts were made early in the twentieth century, attempts that may well have succeeded if the Democrats had returned to power earlier than 1912. Similarly, passage in 1938 of the Chandler Act, which destroyed the power of the elite Wall Street bankruptcy bar and transferred it to the SEC (Skeel, forthcoming), almost certainly depended on the large Democratic majorities produced by the Depression. Stability, in our view, depends neither solely on national politics nor on interest groups but on their interaction.

8. The End of Ideology in Bankruptcy: Amendments in the 1930s

The passage of the 1898 Act marked the end of bankruptcy as a prominent issue in national politics. In his extensive analysis of the 1978 Reform Act, Posner (1997, 60) writes:

> Ideology … played only a minor role in the legislative history of the 1978 Bankruptcy Act. … everyone seems to have acknowledged both that credit plays an important role in the economy and should not be overly restricted, and that bankruptcy law serves as a safety net. Much of the debate was about the proper tradeoff: a technical decision made against an unquestioned ideology of welfare state capitalism.

In fact, the role of ideology in bankruptcy legislation ended well before 1978. The consensus expressed in the passage of the 1898 Act led to a great reduction in roll call voting on bankruptcy in the twentieth century in comparison to the nineteenth. Those votes that did occur were not heavily along ideological lines. We analyze activity in the first Roosevelt Congress, the 73rd in 1933-34.

Ideology, of course, did not disappear from congressional voting in the New Deal. Other legislation that affected debtor-creditor relations was fought out along the same liberal-conservative dimension that drew the lines of division on monetary policy, railroad

regulation, antitrust, and bankruptcy policy in the latter half of the nineteenth century. In particular, ideological votes occurred on the joint resolution to abrogate the gold clauses in private contracts. The votes are summarized in Table 5. Kroszner (1998) has recently written an important paper analyzing the economics of this event. He points out that most private debt in the United States in 1933 had clauses giving the creditor the option of demanding payment in gold. The Roosevelt administration, in an effort to raise prices, devalued the dollar form $20.67 per ounce to $35 per ounce on Jan 31, 1934. The devaluation would have triggered the gold clauses and produced a wave of corporate bankruptcies. Abrogation of the gold clause was an unanticipated and novel intervention of the government in private contracts. The joint resolution survived a Supreme Court challenge by only a 5-4 decision announced Feb. 18, 1935. Kroszner carried out an event study around the date of the Supreme Court. He concluded that abrogation had very positive macroeconomic benefits, increasing the price not just of equities but also of bonds.

If the effects of abrogation were anticipated, Congress should have supported abrogation in a non-partisan, nearly unanimous manner. But as Table 5 discloses, the votes were highly partisan, with strong Republican opposition in both houses. As happened in the nineteenth century, agrarian Republicans defected to the pro-debtor side. One explanation is that simple ideology prevailed--Republicans voted against despite the economic benefits, manifesting a seemingly irrational ideological opposition to government intervention.[25] Another explanation is that Republicans had incorrect economic expectations. Still another is that legislators knew the bill was sure to pass and

were signaling that they did not want government intervention to become commonplace.[26] Signaling was perhaps evident in the behavior of those members who voted in favor of an amendment that would not allow abrogation of existing contracts but who also voted in favor of the bill. Developing such a signaling explanation further will require accounting for the fact that in the Senate the signalers were 7 Democrats but in the House 19 Republicans as against only 5 Democrats "signaled". An even stronger signal would have been sent by the most conservative Republicans who voted both for the amendment and against the bill. Further research will be required to distinguish between alternative explanations of these votes that are puzzling in light of Kroszner's evidence that abrogation has benefits to both debtors and creditors.

In any event, it is important to contrast the ideological voting that took place on a macroeconomic policy that influenced debtor-creditor relations with the non-ideological voting that took place on amending the 1898 law's stipulations about how individual debtor-creditor relations would be handled.

[25] Farmer opposition to futures markets for agricultural products poses a similar puzzle. See Romano (1997).
[26] Voting as signaling has been formalized in the model of Piketty (1995).

Table 5. Abrogation of the Gold Clause and Bankruptcy in the 73rd Congress

Roll Call	Vote with Paired & Announced	Vote	No. Dem.	So. Dem.	Rep.	PRE	Classi-fication Errors
Gold Clause							
House #45, 5/29/33, Luce Recommit RE Retroactive Abrogation	289-104	263-78	143-11	101-3	14-64	.79	22
House #46, 5/29/33, Pass H.J. Res. On Gold Clause	321-83	283-57	146-8	104-1	28-48	.72	23
Senate #72, 6/3/33, Reed Amd. No Retroactive Abrogation of Gold Clauses	55-31	48-21	24-0	19-2	4-19	.77	7
Senate #72, 6/3/33, Walcott No Retroactive Abrogation of Gold Clause	46-36	38-26	20-4	15-4	2-18	.81	7
Senate #74, 6/3/33, Adopt H.J. Res. On Gold Clause	48-20	48-20	23-1	20-1	4-18	.85	3
Bankruptcy							
House #52, 6/9/33, Kurtz, Recommit Municipal Bankruptcy Bill	204-186	191-172	101-63	74-20	14-86	.52	89
House #57, 6/10/33, Martin, Adjourn, Judiciary Comm. Investigation of Receivers, Trustees & Referees	249-115	249-115	156-13	88-4	5-93	.77	27
Senate #178, 5/1/34, Pass Bankruptcy Bill	46-34	45-28	16-8	17-6	12-14	.24	26
Senate #179, 5/4/34, Frazier, Farm Bankruptcy	43-15	37-11	19-3	13-1	5-6	.40	9

The House took up bankruptcy less than two weeks after it passed the joint resolution on gold clauses. But it voted onlytwice. (Again see table 5.) A weakly ideological vote beat back an attempt to recommit the bill that introduced Chapter IX for municipal bankruptcies. (The bill then passed on a voice vote.) There was also a strict party line vote on what may have been a strictly procedural motion to adjourn while the House was debating authorizing the Judiciary Committee to investigate bankruptcy receivers, trustees,

and referees. Dissatisfaction with the judicial-administrative aspect of the law is a recurring theme, one that reappears in 1978. But such an investigation would not question the basic consensus about the need for a federal framework.

The House bill for municipal bankruptcy provided for much the same terms as had been recently allowed for corporate and railroad bankruptcy. The municipality, with the agreement of 30% of its creditors, could apply to the court for a stay that would permit working out reorganization--debt reduction, essentially--plan that would require the approval of 2/3 of the creditors and the judge.

Arguments for the bill in the *Congressional Record* emphasized that without the bill municipalities would be subject to holdup behavior by some creditors. These creditors could use a writ of mandamus to enforce unbearably high real estate taxes on communities in default. Another argument--one that might not have been found in the early nineteenth century--was that the contracts clause of the Constitution clearly forbid state intervention in the bond contracts whereas the bankruptcy clause permitted federal interventions.

Arguments against the bill emphasized that it would destroy credit markets in the future, that holders of bonds would receive less than face value, that insurance companies and banks, as large holders of bonds, would be ruined, that those who purchased bonds at low prices could collude with municipalities to obtain a fraudulent payout, and that the bill would encourage otherwise solvent communities to default on their obligations. With respect to this latter point, opponents of the bill argued that the defaulting communities were geographically concentrated in the South, particularly in Florida, and that a national bill was an inappropriate response to a regional problem.

The debate indicates that insurance companies, in contrast to the claims of opponents, supported the bill. The insurance companies might have preferred a bailout but accepted the bill--which with its two-year sunset provision was basically a debt write-off moratorium--to nothing. In effect, observers realized that enforcing the terms of the bonds through court-imposed real estate taxes of, say 50% of market value, just was not politically feasible.

Geographic interests may explain some of the non-ideological component of the vote. Not surprisingly, given the debate, all 5 members of the Florida delegation voted with the pro-bankruptcy side, as did most other Southern Democrats. But the Virginia delegation opposed unanimously and the Louisiana delegation was 5-1 against. These two states supplied 13 of the 20 southern votes against the bill. One suspects that the structure of municipal debt in these two states differed from that in other southern states. Insofar as the bill was believed to involve a transfer from northern bondholders to southern municipalities, it is not surprising that northern Democrats were badly split, favoring municipal bankruptcy by only a 101-63 margin (pairs included in the totals).

The Senate dealt with bankruptcy nearly a year later, when it passed a bill amending the 1898 Act. The vote was a close one but it was not along ideological lies. Both parties were divided. On the roll call following passage, the Senate beat back an amendment by Frazier of North Dakota concerning farm bankruptcies. It was a very weakly spatial vote, with a horizontal cutting line that separated agrarian Republicans from the rest of the Senate. Of the 11 votes favorable to the amendment, 6 came from Republicans and 1 from the Farmer-Labor senator from Minnesota. Unlike 1898, there were no divisive votes on important substantive amendments.

9. The Bankruptcy Reform Act of 1978

The absence of ideology is also partly suggested by the absence of roll call voting on *private* bankruptcies. From the introduction of the bill prepared by the Commission on the Bankruptcy Laws of the United States in 1973 until enactment of the bill in late 1978, there were only six roll call votes in the House of Representatives and one in the Senate. (In 1975-76, both chambers voted on *municipal* bankruptcy in response to the New York City financial crisis.) This despite the fact that the 95th House (1977-78) held 1540 roll call votes, the most in American history. The 95th Senate held 1041 roll call votes. All passage votes in both houses were voice votes. Four of the six roll calls in the House were procedural, with no more than 62 members in opposition. Unlike the 1840s, bankruptcy was kept off the floor of Congress in the 1970s.

On the other hand, it is wrong to think that, just because "technical" language was employed in hearings and debate, either economic interests or ideology would be absent from the bill. Indeed, precisely because bankruptcy had become a low-key issue, it allowed, as would argue Arnold (1990), economic interests to be very active in shaping the bill. Posner himself devotes his analysis to the bill's "political economy" -- how the compromises contained in the bill reflected the interests of various players such as banks, consumer finance companies, managers of large corporations, and the federal judiciary. And because the bill was a political compromise rather than a "technical" improvement, Posner concludes that it was a policy failure.

Furthermore, it is quite possible that ideology remained active in the shaping of economic interests. We can see this in the two areas that did occasion substantive roll call votes.

One area concerns the administrative structure of bankruptcy proceedings. Prior to the 1978 Act, panels of district court judges appointed bankruptcy judges. In the frequent cases where creditors could not agree on a trustee for a failed firm, the bankruptcy judges named the trustee. In the 1978 Act, the judges became presidential appointees with 14-year terms, and a pilot program was started where the Justice department supervised trustees. After the provisions with respect to judges were declared unconstitutional, a 1984 bill put the judges under the control of the district courts. The trustee pilot program was extended to all states but Alabama and North Carolina in 1986.

The second area concerns reaffirmation of prior debts after declaration of prior bankruptcies. In return for post-bankruptcy credit from a creditor, the debtor would agree to pay a pre-bankruptcy debt. The 1978 Act allowed for reaffirmation subject both to court approval and to recission by the debtor during a 30-day period. We begin with this latter case.

The one Senate vote took place on the Bartlett amendment to allow for reaffirmation. As shown in table 6, this was partly an ideological vote. The amendment was supported (Posner, 1997) by creditors and opposed by debtors' lawyers, the Democrat controlled FTC, and many academics. The "consumer" argument against was that debtors were subject to "bullying and deception" (Posner, 1997, 102)[27]. The linkage of consumer issues to ideology is indicated by the D-NOMINATE model making seven

fewer classification errors than the majority model. The majority model, in this case, is equivalent to predicting that Northern Democrats, Southern Democrats, and Republicans voted with a majority of their faction, since even Northern Democrats narrowly supported the amendment. Conservative support was uniform. All of the 20 members voting on the amendment who were to the right of Danforth (R-MO) supported the amendment. In contrast, liberal opposition was weak, with some very liberal Democrats, such as Riegle (MI), voting for the amendment. The weak support by liberals accounts for many of the 13 classification errors for D-NOMINATE.

The Senate bill included reaffirmation. The House bill did not. Reaffirmation prevailed in the final compromise.

The weak, even among liberals, opposition to reaffirmation in the Senate has two quite complementary interpretations. One is that some liberals bought the "technical" position of creditors that reaffirmation made it easier for debtors to obtain new credit. The other is that, since the issue was low-key, the liberals were simply bought by the creditor lobby.

[27] The consumer argument has been given force by a $425 million class action settlement by Sears in the summer of 1997. Sears had failed to follow the law in getting reaffirmations.

Table 6. Roll Call Voting On the 1978 Bankruptcy Act

Roll Call	Vote with Paired & Announced	Vote	No. Dem.	So. Dem.	Rep.	PRE	Classi-fication Errors
Senate #95, 9/7/78, Bartlett amendment to allow reaffirmation with 30-day recission period.	54-20	51-20	16-15	12-3	23-2	0.35	13
House, #655, 10/28/77, Danielson amendment to have federal courts appoint judges and supervise trustees	198-175	183-158	51-94	50-20	82-24	0.42	102
House #727, 2/1/78, Danielson amendment to have federal courts appoint judges and supervise trustees.	152-269	146-262	36-149	43-40	67-73	0.26	113

The two substantive roll calls in the House concerned the administrative structure of the program. Liberals favored a larger role for federal patronage by moving to make bankruptcy judges presidential appointees and trustees part of the federal bureaucracy. A preference for the status quo brought together federal judges, including Chief Justice Warren Burger, anxious to both retain power and to preserve the prestigious status of the judiciary, and those interests favorable to the cozy relationship that existed, at the local level, between bankruptcy judges and trustees.

The House bill contained the larger role for the executive and legislative branches sought by liberals. Two votes occurred on the Danielson (D-CA) amendment that would have moved the bill back toward the status quo. The votes were only moderately related to ideology. The error rate was higher and the PRE lower than on comparable close votes on bankruptcy in the nineteenth century. Although generally favored by conservatives, the amendment was sponsored by a moderately liberal California Democrat. Offered in the

committee of the whole, the amendment passed only to lose in a full floor vote. As seen in table 6, there was a general tide against the amendment. It was not simply defeated by an intraparty logroll in the majority party; even Republicans became less favorable. Posner (1997) does not discuss why a majority defeated the amendment. Many votes were changed. There were 67 representatives who voted for the amendment in the committee of the whole but against in the full House, while 9 switched in an opposite direction.

The amendment was killed by an alliance of Northern Democrats and Republicans. Southern Democrats still had a majority in favor. Perhaps the key element for southerners was maintaining local control over trustee appointments. North Carolina, which voted 10-1 for the amendment, and Alabama, which voted 8-1 for were the only states to be exempted from the U.S. trustee system when the trustee system became permanent in 1986. The South thus showed loyalty to its nineteenth century opposition to a greater federal role while northerners continued the expansive strategy begun with the New Deal. Those Republicans opposed to the Danielson amendment may have been dissatisfied with the existing judge-trustee setup.

It is important to step back from the details of roll call voting in 1978, to consider the broader characteristics of legislative activity in the twentieth century. Although federal bankruptcy law has been in force continuously since 1898, very important changes were made with the Chandler Act in 1938 and the Bankruptcy Code of 1978. In 1938, law firms that had previously represented a failed publicly traded firm were barred from representing the failed firm in bankruptcy court. Moreover, the SEC was given substantial control over bankruptcy proceedings. In 1978, the SEC was essentially taken out of the picture. Chapter XI represented a huge transfer of power from to managers. In addition,

and of great importance, present and future tort judgments could be put into bankruptcy. This latter provision led to the bankruptcies of Johns Manville, Texaco, and other solvent firms.[28] However, neither in 1938 nor in 1978 was there any voting on the features of corporate reorganization. Although the House and Senate bills in 1978 were radically different—the Senate kept the SEC in the picture--, they did not come to divisive roll calls, nor did the amended bills that eventually became law. (The House won.) Although many academics have criticized these changes, the changes were enacted without members of Congress having to give the changes public endorsement.

10. Discussion

The analysis of legislative activity in the nineteenth century shows that reforms were strongly driven by the strong negative fluctuations in the economy. In between "Panics" there were virtually no initiatives. This observation suggests that the primary motive for bankruptcy bills was to give debtors relief. Since acts were quickly repealed, they were *de facto* stay laws or moratria. In fact, the 1841 Act clearly applied to debts incurred before passage while repeal also removed the benefit of the Act to debts incurred between passage and repeal. On the other hand, at least on the surface, bankruptcy acts also represented *ex ante* legislation, perhaps so as satisfy creditors and provide some credibility to the government. By 1898, the notion of a "national and uniform" bankruptcy law that applied to contracts *ex ante* had become generally accepted. Legislative efforts

[28] The discussion above relies heavily on Skeel (forthcoming).

during the 20th century were mainly fine-tuning—albeit with major economic consequences for the players—compared to the dramatic swings during the previous century between state laws as status quo and a broad range of federal bankruptcy acts with short lives. It is not very difficult to identify a number of forces that should have contributed to the growing consensus on the need for a federal law. The more difficult question is why the United States ended up on such a different trajectory from where it started in the Bankruptcy Act of 1800 and from other countries, in particular United Kingdom, its legal origin. This section sets out to explain these two puzzles.

The general economic and institutional integration of the United States played an important role in creating consensus; bankruptcy law was only one of many areas in which federal powers increased over the course of the nineteenth and twentieth centuries (Riker, 1987). As the national economy developed, more complex financial arrangements emerged, and contracts took place between more geographically separated creditors and debtors. Eventually, the advantages of a federal law, so obvious to Madison, came to outweigh the advantages of a more decentralized mode of enforcement of debt contracts. The costs of the absence of federal legislation increased due to the Supreme Court rulings barring state regulation of inter-state contracts.

The changing structure of the US economy also changed dramatically during the period. At the beginning of the nineteenth century, the American economy was largely agricultural. By its end, those engaged in agriculture were a minority. Since rural and farming areas were always opposed to a federal bankruptcy law—even when engaged in substantial inter-regional and international trade, one potential explanation for the absence of bankruptcy law throughout the nineteenth century and its presence throughout the

twentieth is simply the decline of the farm population. The latter half of the 19th century also saw the emergence of the large corporation with its more complex production and financing patterns.

In contrast to the first two hypotheses, which reflect economic incentives, a third hypothesis involves the "moral" aspect of bankruptcy law. The nation went from the imprisonment of debtors to "fresh starts" in about the same span of time that it went from openly accepting slavery to rejecting it.[29] In the abolition of slavery, Fogel (1989) concludes that changes in attitudes fostered by abolitionists, not economic incentives, led to institutional change. Perhaps changes in attitudes toward the treatment of debtors were necessary before a consensus could be reached on a national law.

Another set of explanations focuses on the political struggle for federal legislation. The development of a national economy brought about by better transportation took place in the context of the battle over slavery before the Civil War. Any economic interest southerners may have had in giving the federal government bankruptcy powers may have been overcome by their interest in not "opening the door" to any exercise of federal power over state laws. Indeed, with the South out of national politics, a bankruptcy act was passed in 1867 and lasted until 1878, just after the end of Reconstruction.

The impoverished South of the last half of the nineteenth century pursued an agenda that favored local interests over national ones and favored expropriation of northern-held assets. Up until at least 1920, the South was anti-capital across the board. The South was thus the mainstay of support for railroad regulation (Poole and Rosenthal, 1993, 1994), for inflationary policies that would erode debt (Poole and Rosenthal, 1997,

[29] On the end of debtor prisons, see Coleman (1974).

100-106), and for taxes on capital rather than income (Brownlee, 1996, 49-53). The South's opposition to a bankruptcy law would then just be part of an "ideology" that opposed all policies favorable to large, national corporations and banks. A national law was possible only when the unified Republican government brought about by the 1896 elections was able to overcome Southern influence.

Why then did bankruptcy law in the United States converge on a debtor-friendly continuation-prone bankruptcy law that strongly discriminates against commercial banks? One possible explanation is that the Bankruptcy Act of 1800 was an aberration, a failed attempt to transplant a law into a political system with a strong tradition of debtor-friendliness. There were several examples of debtor-friendly state laws in colonial times and under the Articles of Confederation (Coleman, 1974). The strong presence of foreign, largely British, credit in early America could have contributed to shaping such a tradition. Many of the immigrants had also escaped debts in their home countries [Wright (1996) provides evidence than indentured labor, excepting slaves, had a stronger position visa-vis employers in the United States than in England at the time]. This explanation does not really provide answers to why bankruptcy law was so controversial during the 19th century and for why debtor-friendliness survived and became such a prominent feature in the consensus that emerged at the end of the century. Neither does it explain the continuation bias and the adverse treatment of banks in US debtor-creditor law.

The changing economic structure from a predominantly agrarian to an industrialized economy with very large corporations could have affected not only the support for national legislation but also the content of the law. In particular, a continuation bias may arise because corporations have large going-concern values and closing them

down would have major impact on local communities and sometimes on entire regions. The many railroad bankruptcies during the second half of the 19th century undoubtedly played a role in shaping the legislative initiatives. However, the large corporation also emerged in other countries and railroads were certainly an important part of the infrastructure in Europe at the time. Furthermore, this argument does not really explain why US bankruptcy law is so management-friendly and why it has such strong prejudice against banks.

The hypotheses advanced by Franks and Sussman (1998) and Skeel (forthcoming) that US and UK law evolved under different legal innovation regimes seems more appealing. Our analysis clearly shows the strong influence of the political mechanism on legal evolution in the United States. It is not implausible, as these authors also suggest, that politicians, lawyers, and bankruptcy judges have an *ex post* bias in favor of continuation. However, the authors do not distinguish between debtor-friendliness and continuation bias, and they do not explain the negative attitude towards banks. Furthermore, the split between US and UK law started very late in the 19th century, at least in the area of securities regulation (Gilmore, 1965, cited in Franks and Sussman), whereas debtor-friendliness was already a feature of the 1841 Act.

The analysis of the legislative history suggests that the federal structure may have been important in shaping the substance of the law. More importantly, the desire to establish a federal law may have been sufficiently strong among its supporters, primarily the conservatives, to try to win over those in support of a debtor-friendly law with a continuation bias, most prominent in the South and the West. According to this argument the necessary majority for a "national and uniform" bankruptcy law was achieved at the

expense of a compromise on substance. The prejudice against banks had its strongest roots in the same groups that supported debtor-friendly laws.

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Options View Help

NO OVERRIDE OF STATE DEBTOR LAWS

House #27 Roll Call #174 8/17/1841 (1/

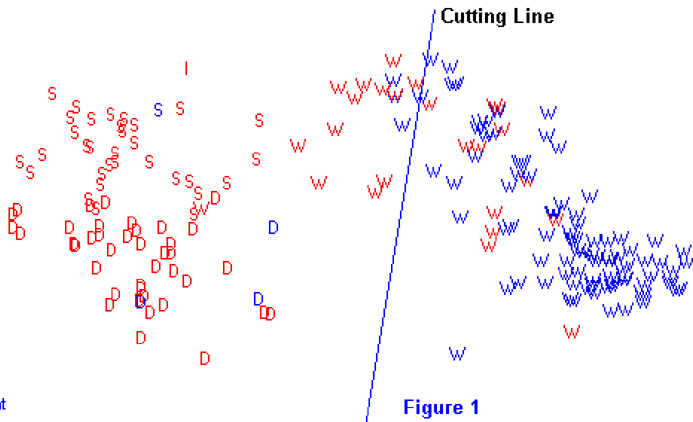
Issue Code: States Rights vs. Federal Government
Clausen Code: Civil Liberties
Peltzman Code: Domestic Social Policy

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



The Clifford Amendment

Figure 1

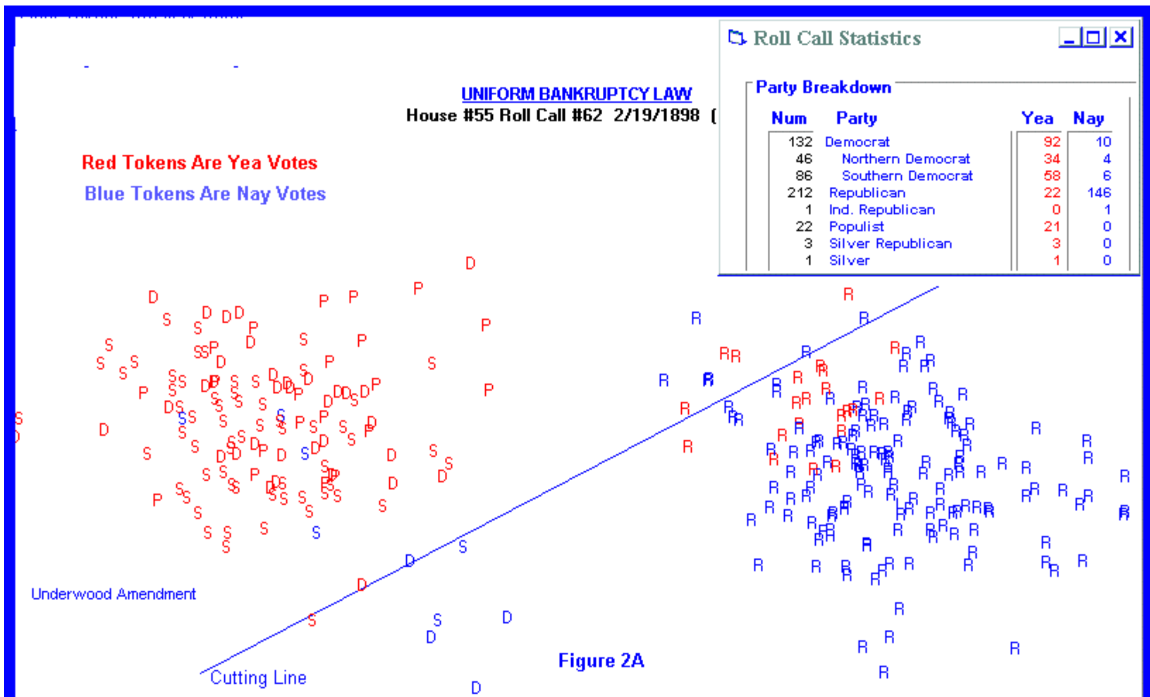


Figure 2A

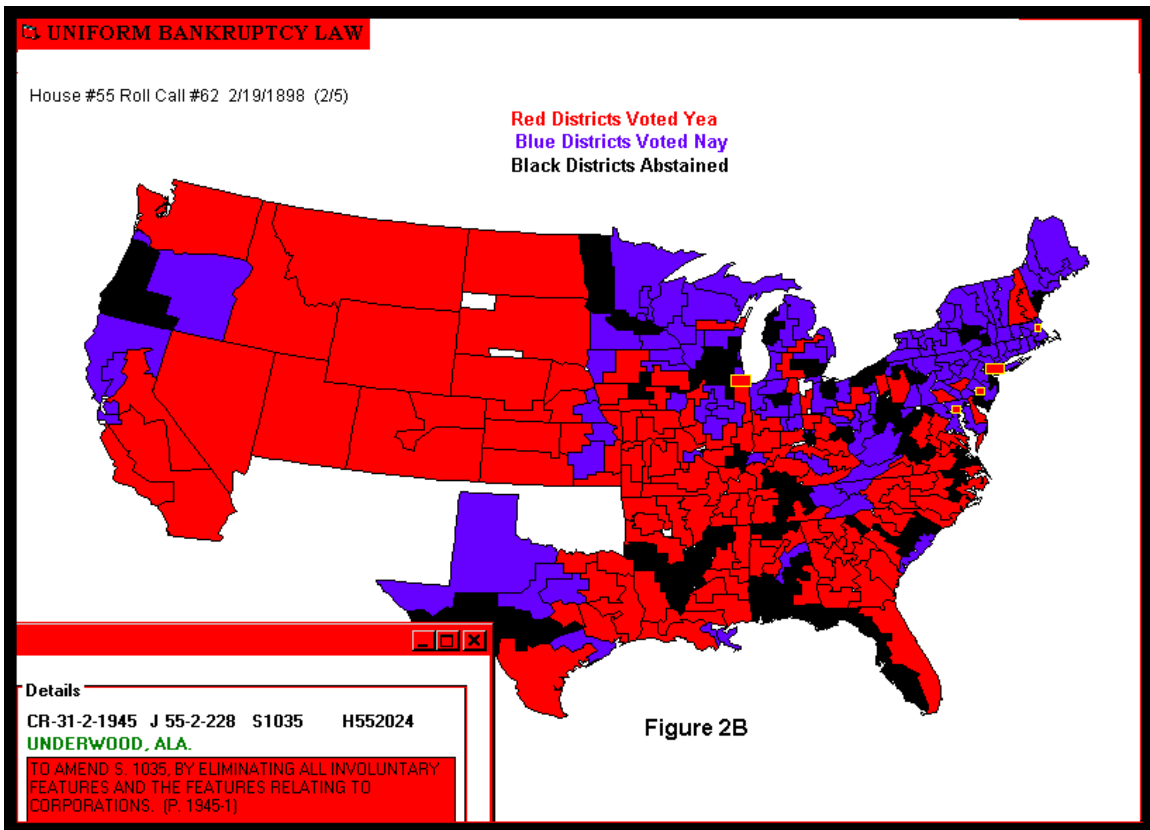


Figure 2B

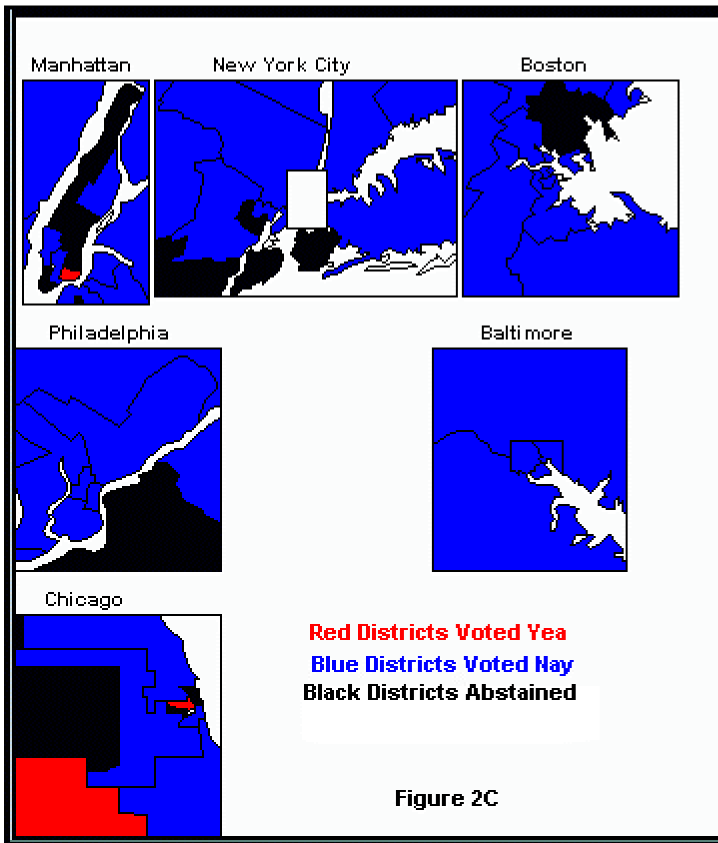


Figure 2C

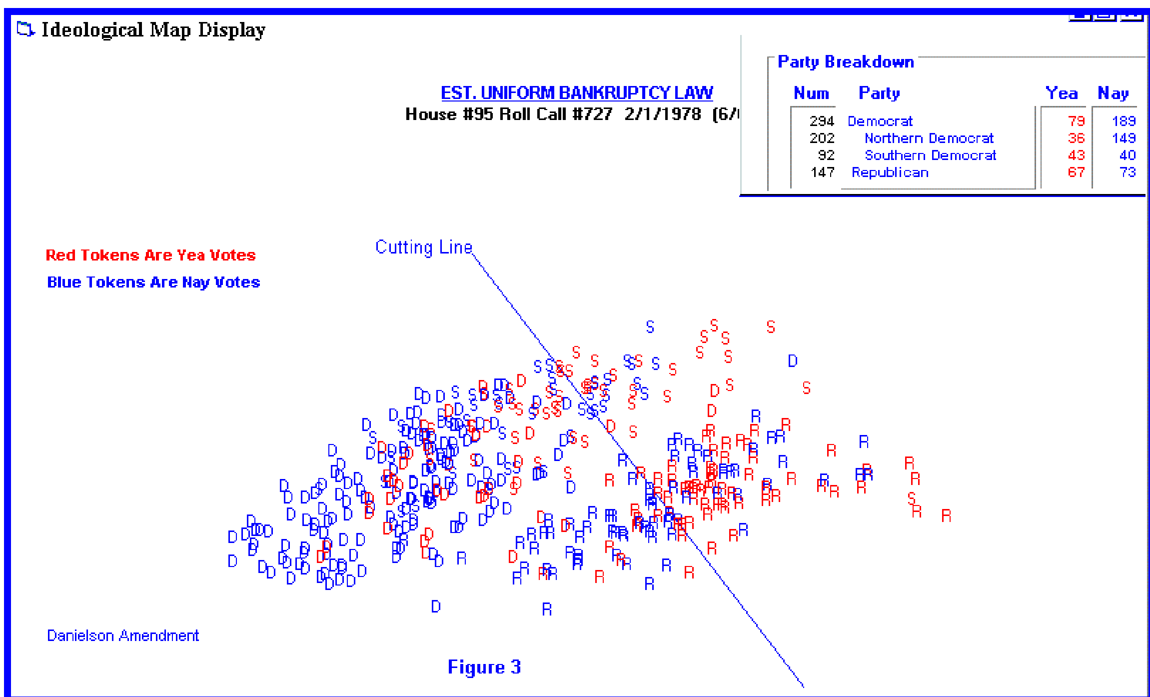


Figure 3