American Debtors' Prison: The Rise of the New York Citizen as a Commercial Participant during the Early American Republic, 1800-1836

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CHAPTER I
INTRODUCTION
AN AMERICAN DEBTOR

Mr. Brown was a young man, well received by his community for his fine features and polite manners. He was skilled at playing the flute and known for being a warm man whose company was a pleasure. Hardworking and faithful, Brown celebrated the companionship of his beautiful wife. But in 1811, Brown’s life violently changed when he was convicted for debt and sentenced to imprisonment at the New York City Gaol. Despite his pleas for release from the tortures of the prison, Brown was kept in his cell when one of his creditors refused consent to his discharge. The creditor went further, making a public declaration and a documented “solemn oath before God” that he would keep Brown in prison “till he rotted!!”¹ His creditor’s refusal to grant him any level of compassion took from Brown both his freedom and his personal resolve; the daily visits from his wife became the only thing which gave him happiness.

As remembered by Howard, an inmate of the Gaol, “Every day, whether clear or stormy, she visited the prison to cheer the drooping spirits of her husband.”² until one day when she did not appear. Howard noted in his essay that the absence of his wife immediately created a crushing level of anxiety on Brown, for his wife had visited him every day since his imprisonment. The hours went by slowly as Brown paced his small cell, until finally word came from a messenger that his wife had fallen seriously ill. “As soon as Brown heard this, he darted to the door with the rapidity of lightening.”³ Enraged

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¹ Essays of Howard: Or, Tales of the prison (New York: Joseph Desnoues, 1835), 16.
² Ibid., 17.
³ Ibid., 17.
at the refusal of the bailer to release him to care for his wife, Brown slammed through the prison door and violently attempted his escape. The jailor swung his heavy iron key, striking Brown across the temple. As the desperate husband crashed onto the floor, his blood raced between the cracks of the cobbled stones. Bloodied and unconscious, Brown was dragged to his cell where he awoke to find himself a widower. In time, Brown would find the courage to reflect on his experience in debtors’ prison in which he concluded that the death of his wife had been “more kind than his creditors.” The creditor had taken from Brown everything he had gained during life, and a few years later Brown joined his wife in death from within the walls of the Gaol.

The history of the American nation and its inhabitants during 1789-1840 has received a flood of academic and popular scholarship in the last three decades. Before recent scholarship, the early Republic was without an historical identity; instead, it was either an epilogue for Revolutionary historians or a prologue for historians who chronicled the American political evolution from aristocracy towards democracy. Beginning with historical works such as Jack Larkin’s *The Reshaping of Everyday Life*, cultural historians have revived an interest in the economic, political, and cultural shifts that took place in post-revolutionary American society. The cultural changes have revealed a society that was neither rooted in European aristocracy nor firmly cemented in a uniquely American perspective. Historians now understand the early Republic as a collection of societies driven by sets of egalitarian and individualistic interests.

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4 Ibid., 19.
Historical understanding of post-Revolutionary America has begun to emerge as the history of the ordinary American citizen and his impact on the development of republican culture.\(^6\) This new approach to understanding American republicanism represents a significant accomplishment by early American historians in their discussion of macro-level subjects; however, additional micro-studies of the time will help create a more intricate understanding of the historical period. The following micro-study reveals the commercial consequences resulting from the need for venture capital among an unrecognized class of middling mercantile and artisan borrowers in New York City.

The nineteenth-century practice of imprisoning men convicted of unlawful debt within privately owned debtors’ prisons has gone mostly unnoticed in scholarship. Recent works have considered the character of credit, the effects of unregulated paper tender, the development of the American penitentiary system, the use and repeal of forced labor camps, the history of national bankruptcy law, and more general surveys of post-Revolutionary punishment practices. But few have included debtors’ prisons within this historical framework.\(^7\) In his book, Republic of Debtors: Bankruptcy in the Age of


American Independence, Bruce Mann presents the most thorough examination of debtors’ prisons and their use as the legal consequence of unlawful borrowing.\textsuperscript{8}

Mann’s study of bankruptcy in post-Revolutionary America focuses on the legal history of New York City, choosing not to venture beyond the eighteenth century. Mann begins his account in 1730 and covers financial topics ranging from the architectural history and construction of New York’s New Gaol prison in 1758 to the collapse of the state paper pyramid of 1797, which displaced holders of bank notes and saw the imprisonment of every major New York speculator. Mann’s narrative of New York’s credit crisis comes to a close with the first National Bankrupt Act of 1800, which he argues created legal avenues for debtor representation.

Despite the scale of work, Mann’s narrative of American bankruptcy and the treatment of convicted debtors is incomplete. He concludes that excessive debt became defined as an economic crime rather than as a moral crime, with the passage of federal bankruptcy legislation at the beginning of the nineteenth century. This conclusion fails to explain why the practice of imprisoning men for debt continued until formally made illegal in 1831. In addition, although he implies that the National Bankrupt Act provided sufficient solvency for the crisis of credit, Mann does not divulge that the Act was repealed within one year of its creation and that meaningful bankruptcy legislation did not occur on a national level until the efforts of the 1898 Congress. Republic of Debtors

creates an impressive narrative that unfortunately concludes with a premature resolution to the narrative of New York’s debtors’ prisons.9

An additional account of the history of debtors’ prisons that includes the developments of the nineteenth century is Peter J. Coleman’s work, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900*. However, similar to Mann’s conclusions, Coleman provides an incomplete answer to the question as to why the use of debtors’ prisons for financial crimes was not prohibited until the 1830s. For Coleman, the discontinuation of debtors’ prisons was the result of creditors recognizing that their borrowers “were in jail because they were impoverished, not because they refused to pay.”10 In short, Coleman argues that the disappearance of debtors’ prisons throughout the United States during the nineteenth century was due to creditors’ acceptance of the inability of imprisonment to coerce payment. Although the efforts of reformers had an impact on the debate over imprisonment, Coleman suggests the institution was already on the decline due to economic and political readjustment.11

Coleman’s conclusion does not represent the historical solution to the problem of debtors’ prison. Rather, it illustrates a historian’s response to the conditions brought on by the practice of imprisonment. Public compassion for impoverished debtors rose when people grew aware of the high number of men imprisoned for debt. However, this financial empathy was not the source of the solution, as sympathy groups were established and grew during the height of the prison’s use. These reform groups do not

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9 Ibid.


11 Ibid., 268.
conclude the narrative of imprisonment because they were unsuccessful in persuading the state and national legislatures to end the practice. Nineteenth-century negligence toward the workings of the American economic system had the result of reinforcing the use of imprisonment for debt because of the absence of any meaningful state or federal regulation. More studies concerned with the historical narrative involving the effects of unregulated capitalism and the consequences of high-risk debt are needed to capture a more complete picture of state economics that are best characterized as unsettled and transformative.

The pages that follow revise the perspectives provided by Mann, Coleman, and those who argue that the American economy solved its tumultuous creditor/debtor relationships after 1800. These new perspectives confront the initial perspectives constructed by Gordon Wood and Daniel Walker Howe, as the exploration of debt in early market society fortifies the opinion of Wood that initial development was driven by individual political and economic participation. The more sweeping historical account of American revolutions in communication and transportation infrastructure is tested by the conclusions presented throughout this thesis. A set of experimental regional institutions and not national attempts at transformation are the driving force for commercial transition during the years of interest to this research. While adding to the emerging narrative of the early American republic, the proceeding account offers new conclusions that at times elude recent attempts of national characterization.

This new account of the historical narrative of nineteenth century debt in New York City makes two main arguments about the topic of early American finance: that the
The passage of the National Bankrupt Act was not the resolution to the problem of early American debt, and that those most at risk of imprisonment were members of an unrecognized merchant and artisan class. I begin with an examination of the causes for the repeal of the National Bankrupt Act and the response of New York citizenry in the years following its repeal. This analysis will illustrate that the creation of a piece of national legislation in 1800, did not resolve the question of debt as purported by Mann but instead was a turning point that witnessed increased changes regarding financial legal procedures and attempts at insolvency forgiveness in the decades that followed. The Act established legislation that foreshadowed major problems that would come to define the next century of economic debate. The National Bankrupt Act was not the act of solvency suggested by Mann, but is more accurately classified as an incomplete early effort to satisfy the need for pro-debtor legislation. The Bankrupt Act failed because it predated the required public understanding of such a policy. Continuing from the repeal of the Act, my research focuses on the second problem plaguing the financial history of the early American republic: the cause of the discontinuation of New York’s debtors’ prisons in 1831. Debtors’ prisons were not ruled unconstitutional by the New York Court because of the State’s compassion toward its insolvent population. Rather, this thesis illuminates that the nineteenth-century prison population was composed of members of the middle class. The explanation offered in this work contrasts with the conclusion presented by Coleman because it disagrees with the theory that sympathy for the poor served as the catalyst for releasing those imprisoned for debt. It is the goal of this research to argue that those imprisoned would not have qualified as being insolvent had the National Bankrupt
Act survive. Thus, instead of promoting an act of humanitarianism, debtors’ prisons were ruled unconstitutional by 1831 due to a growing appreciation for the pro-debtor legal perspective. Stated plainly, the prohibition of debtors’ prisons was the result of the change in the narrative of the debtor and the recognition that economic participation required borrowed capital. The history of New York’s debtors’ prison encapsulates the broad narrative of nineteenth century financial debate and the larger transition from industrial English economic structures towards modern American financial practices.

Chapter II begins with a historiography of secondary literature that analyzes eighteenth-century economic developments, establishing the context for American financial policy created in the aftermath of the Revolutionary War. The exploration of these secondary works creates a frame for the conclusions made when organizing and evaluating the primary research that is to follow. The Industrial Revolution, the adoption of English industrial methods by American merchants during the early years of the republic, allowed for the United States to quickly establish itself as a commercial power. That American tradesman relied on English commercial habits helps explain why creditors and financial courts in American urban centers continued to use debtor’s prisons after the creation of the Union. The reliance on English commercial habits included the use of traditional methods of economic punishment, one method being the imprisonment of debtors. The chapter continues by reviewing the National Bankrupt Act of 1800 and the history surrounding its quick repeal. Of interest are the qualities of the Act which distinguish it as an historical turning point in the broader history of American finance. The hasty repeal of the Act and the absence of any other national legislation concludes
the first chapter, which is followed by the development of third party organizations that sought to reduce the amount of risk both creditor and debtor undertook. Chapter two ends with a broad look at the adjacent historical developments of judicial precedent and the transformative cultural narrative of the debtor’s plight, as the role of borrowed capital become more fundamental within consumer culture. One of the reasons for the closure of debtors’ prisons was the gradual shift of the debtor narrative, as perception shifted from the debtor being understood as a villain toward the debtor being understood as a victim of economic volatility. This cultural change was possible because of the growing recognition of failing economic policy and not over concern for those imprisoned.

Chapter IV focuses on the demography of nineteenth-century debtors’ prisons. The scope of the third chapter is narrow, answering the question of debtor demographics by using a series of New York Recorder notes and a Monition and Writ Book kept by the United States District Court of New York during the years 1811-1818. The notes within these documents list a transcript of the discharge of convicted debtors and the property that was seized on behalf of the creditor in exchange for the debtor’s release. The estimated worth of the recorded convicts is at odds with the previous notion that the majority of debtors imprisoned were of the poorest class of citizenry. The information presented in the Recorder notes is then confirmed throughout the remainder of the chapter when examining the contents of the Monition and Writ Book. Kept by the New York District Court from 1806-1813, the Monition and Writ Book preserved the names and amounts owed by convicted debtors whose ships and possessions were seized at the New York City Harbor. The third chapter provides an explanation for the true reason for
the discontinuation of debtors’ prisons by demonstrating that a great majority of individuals imprisoned for debt during the nineteenth century were frequently members of New York’s commercial middle class. This challenges the idea that sympathy was the force that abolished the use of imprisonment for crimes of finance.

The fifth chapter analyzes the question of debtors’ prisons from the perspective of those imprisoned. Whereas the Recorder Notes and Writ Book discerned the commercial class of debtors through the value of their confiscated assets, the final chapter focuses on the information provided by personal accounts of those sentenced to imprisonment for debt. In order to bolster the ideas found in diaries the chapter begins by analyzing the monthly reports conducted by the New York Humane Society starting in May 1805 until April 1815. The monthly reports the Humane Society created provide lists of prisoners, the dates of their admittance to and release from the prison, the general expenses of maintaining the facility, and the names of the Humane Society members who conducted the reports. This comparison of the self-reported health of the individual prisoner with the overall condition of the facility increases the validity of the personal accounts. Additionally, monthly reports corroborate the duration of imprisonment of those residing within the walls of the Gaol. Third party accounts therefore verify personal accounts. Chapter IV provides an explanation for the discontinuation of debtors’ prisons that is unique to the current dialogue on the subject by demonstrating that the men frequently imprisoned for debt were member of New York’s commercial middle class. This suggests that the reason for their long sentences in debtors’ prisons was that they were ineligible to receive the sympathies of insolvent laws. The men found guilty of debt
owed more than what was protected by these laws and made them unable to be legally recognized as insolvents.

The benefit of looking at solely New York City throughout the duration of this project is twofold; first, because of the exponential growth of its port, New York was driven toward finding solutions to commercial risk earlier than inland markets that persisted on modeling state economies on the wealth generated by agricultural and domestic products. Second, the citizens of New York were active in their want for and use of legislative and third party solutions to the high level of risk experienced by those assuming credit. There is a financial modernity present in nineteenth-century New York that is absent from southern and western populations. Yet this is not to say that New York was isolated from the broad national dialogue. New York, just as any other state, was limited in its ability to solve for commercial grievances when federal judicial and legislative policy prohibited state insolvency forgiveness. New York City elegantly displays the frustration, optimism, fortune and failure that were the driving force behind free market risk and insolvency during the early American republic.

The tragic end of Mr. Brown’s life was the result of an economic system characterized by the harsh consequences of commercial risk. During the early American republic, debtors’ prisons were a mechanism for the economic organization of finance. The motivation behind Brown’s creditor, the hazardous conditions of his imprisonment, and his resulting death were consequences of such an economic system. The exploration of the history of American debtors’ prisons can unlock the connection between financial and cultural histories of the early American republic.
CHAPTER II

SIGNED IN RED: INDUSTRIAL ECONOMICS AND THE RISE OF AMERICAN RISK

To better understand the role of American debtors’ prisons within the advent of an unsettled capitalist marketplace; it is essential that an historical context be described in order to illustrate the lasting attributes of several eighteenth-century Anglo-economic developments. This sketch of transatlantic development in the decades preceding American independence is constructed through a historiography of secondary literature. Early republican financial development occurred amidst several new, transnational developments: The creation of a sophisticated transatlantic marketplace, the increasing amount of women participants in the market, the popularity of mortgages as a means to maintain property, the decline in the stability of regional markets and the gradual cultural change in perception of the acquisition of goods. These changes allowed for individual commercial development, but with such development the number of bankruptcies dramatically increased. The commercial world of the nineteenth-century was made possible by the economic innovations of England during the eighteenth-century. Consequently, this expansive American economy was maintained through a reliance on a system of financial punishment that borrowed heavily from British heritage, replacing colonial policies with imperial conservatism.

Prior to the American Revolution, the colonial period was characterized by financial policies that were kind toward the debtor. Opposed to the capital punishments of financial crimes in Britain, colonial practice focused on clearing the debtor of his
financial burdens and was willing to do so at the expense of his creditor. Industrial
development increased the opportunities for commercial participation and resulted in
increased levels of debt that challenged the leniency of colonial policy. The practiced
colonial financial system struggled to solve for the increasing levels of debt. In the wake
of transatlantic development, leaders of the early republic retired the practice of colonial
openness in favor of traditional British discipline.

Contrary to the philosophy of Adam Smith, no invisible or natural laws were
responsible for the transformative nature of the transatlantic economy in the decades
surrounding the Industrial Revolution. Instead, a growing merchant middle class was
eager to engage in the market while trying to solve for the hazards of risk. As the
following section will discuss, eighteenth-century development created the necessary
commercial infrastructure for the rise of industrial growth during the nineteenth-century.
American enterprise modeled European economic practices through access to established
trade infrastructure and then expanded it through the use of financial contracts to
supplement the high level of consumer spending.

An important consequence of eighteenth-century finance was the development of
transatlantic infrastructure. The English system of trade constantly improved throughout
the eighteenth-century. The commercial relationships built between the English and their
Scottish, Welsh, Irish, and colonial neighbors were crucial in the preservation of a
financial empire that protected English influence in Europe. Proof of the extensive nature
of this early transatlantic trading network can be found in David Hancock’s expansive
study on the Madeira wine trade in the years surrounding the American Revolution. Micro-studies of commercial business during the pre-industrial period defend the proposition that the economic infrastructure, business networks, and transatlantic systems of mercantile transportation developed during the eighteenth-century by Britain made possible the dramatic effects of nineteenth-century industrialization.

The revolution in trading practices under discussion saw dramatic changes in both business organization and scale of production. Madeira wine traders experienced both during the eighteenth century. Modifications in business organization were due to the distribution needs of Madeira traders, as their financial success was dependent on the effectiveness of their networks of distributors. As the wine trade expanded, traditional business relationships between family and close personal friends proved insufficient and Madeira product began being based on a system of impersonal distribution. The trust placed with anonymous exporters was a break from traditional economic practice. The switch from familial to anonymous market alliances was not a practice exclusive to the Madeira wine industry. As Hancock notes, “[Like the experiences of Madeira] the American importers and wholesalers increased their connective capacities by building

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12 David Hancock, _Oceans of Wine: And the Emergence of American Trade and Taste_ (New Haven: Yale University Press, 2007) affirms the argument that the Industrial Revolution was a major force for global change, in part, because of the transatlantic infrastructure which was established in the century leading up to the Industrial Revolution. “The book speaks to the adhesion of markets... and is also about the porousness of empire,” the benefits of this transatlantic trading system is shown in the success of the Madeira wine trade, which due to its remote location, was dependent upon the English system of trade. The actions of Madeira during the eighteenth century were similar to the ways in which Americans before and after the Revolution utilized its relationship with England and the transatlantic trade community. The case of Madeira wine distribution demonstrates that the Industrial Revolution was truly exceptional because of the availability of a proven economic infrastructure to use as a foundation for technological innovation.

13 Ibid., 108.

14 Ibid., 148.
networks of customers, suppliers, and competitors on the basis of ‘weak’ connections.  

By the nineteenth century, Madeira had established itself as a global producer of consumer wine due in large part to its adoption of modern market practices. The use of credit to finance expansion on the island, the use of English trading routes to transport their goods, and the implementation of new business practices such as establishing advanced networks of impersonal buyers and sellers allowed Madeira to dominate the wine market. American producers replicated the Madeira process of using English systems to expand commercial wealth.

As New World producers meshed themselves within the English system of trade, an equally important development occurred within the American colonies. Beginning in the eighteenth-century, an increasing proportion of America’s women participated in the emerging capitalist marketplace. In order for a colonial family to produce a higher standard of living, families often made the decision to transform their homes into domestic avenues of paid labor. These ‘housefuls’ were managed by women and consequently created a context for a complex level of market interaction both locally and intercontinentally. Although the narrative of American debtors is dominated by the stories of white males, the justifications and consequences of unlawful borrowing affected more than just men. Finance during the early American republic dictated the success or failure of the family, and is more than a history of individuals.

The ideal of what Adam Smith referred to as the independent, self-interested man who was motivated by his “uniform, constant, and uninterrupted effort to better his

\[ \text{Ibid., 200.} \]
\[ \text{Ibid., 397.} \]
condition” maintained a powerful grip on the cultural perception of the market. Even though Smith saw free men as the catalyst for capitalist growth, all laborers were affected by market development in that they were metaphorically and often literally chained to the identities of those above them making ambitious financial investments.\textsuperscript{18} And as English and American merchants were creating a dynamic international infrastructure, women developed domestic systems of market collaboration that paralleled the European counterpart. Just as the American market structure drew from European industrial practices, market practices in the young republic drew from their consumer roots. American women did this by defining the use of paper money through an agreed appreciation for what constituted valuable commercial purchases regarding items of style and prestige. The criteria for consumer spending spread cosmopolitan culture deep into the American interior and connected women from all regions using trusted economic communication.\textsuperscript{19} In her work, \textit{The Ties That Buy: Women and Commerce in Revolutionary America}, author Ellen Hartigan-O’Conner builds from the conclusions made by transatlantic economic historians. O’Conner argues that the consumer networks that revolutionized international trade were not limited to broad economic policy. Specifically, that “consumer networks consisted not only of senders and receivers but also of intermediaries,”\textsuperscript{20} those who passed along requests, obtained borrowed money, and saw to the collection and evaluation of purchased goods. O’Conner’s conclusion is novel for the inclusion of women intermediaries.

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\textsuperscript{18} Ibid., 3.
\textsuperscript{19} Ibid., 11.
\textsuperscript{20} Ibid., 132.
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The conclusions presented in *The Ties That Buy* agree with the premise that the British economic market of the nineteenth-century owed much of its success to the foundations of eighteenth-century financial practice. While the market encouraged the use of impersonal market networks, it also introduced new concepts of family obligation and a sense of commercial affection that challenged the ideas of free market individualism. The result of these conflicting attributes was the combination of ‘masculine’ and ‘feminine’ interests that set the tone for modern debate about economic policy.\(^{21}\) Women were central to both the increase of English and American economic development and later were central in the conversation of debt often inheriting the consequences of financial debt when faced with insolvency.

On the one hand, eighteenth-century financial developments increased the opportunities and mechanisms for business activity to men and women, while on the other hand, the developments in economic infrastructure created an increased desire among the middle classes to purchase newly accessible commercial goods. In order to satisfy their appetite for mercantile product, members of the middle class built a system of finance which allowed them to borrow the funds needed to better their lives. One tactic in which they did this was by assuming mortgages and heavy levels of personal debt. Additionally, as the amount of capital being borrowed rose, the relative regard toward the colonial gentry-class faded. Landed estates were challenged by the development of consumer finance which fostered a sense of party politics and active participation of the renting class. As the unregulated market began to swing between dramatic periods of wealth and recession, the landed gentlemen reacted by applying pressure to their renters.

\(^{21}\) Ibid., 192.
The resulting anxiety between those who taxed the land and those who worked to produce and improve it quickened the introduction of modern market constructs. Reeve Huston’s, *Land and Freedom: Rural Society, Popular Protest, and Party Politics in Antebellum New York* provides a strong example of renter contribution.\(^{22}\)

The New York renting system had been determined by national and regional cultural traditions.\(^{23}\) Industrialization and the introduction of speculative schemes fostered interest from all groups of society, in part because of the significant investments made by landed proprietors. Men of status “invested in banks, insurance companies, urban real estate, and western lands.”\(^{24}\) They did this while borrowing the capital to increase the potential of their leasehold estates. It is important to note that during the colonial and republican periods, the overwhelming proportion of a landlord’s revenue was drawn from the collection of rent.\(^{25}\) To the dismay of landed gentlemen, the introduction of more tenants ironically coincided with a decrease in overall profit produced from rent due to the financial insolvency of new tenants. The early American republic was growing in ways that did not benefit invested wealthy.

Huston notes, “They [the landlord class] had expected the extension of commerce, the expansion of agricultural production, and the growth of manufacturing to make American society more like their estates: benevolent hierarchies with themselves at the top.”\(^{26}\) This result would have ensured their continued wealth as well as their


\(^{23}\) Ibid., 8.

\(^{24}\) Ibid., 17.

\(^{25}\) Ibid., 17.

\(^{26}\) Ibid., 38.
confirmation as men of status in the American republic. But the introduction of an unregulated capitalist market did more than just create financial opportunities; the market encouraged an increased risk of financial hardship. Thus, while the regional wealthy land owner could experience new levels of prosperity, his tenants could experience additional challenges securing enough revenue for rent.\textsuperscript{27} These challenges experienced by the debtor class of citizen and the nonpayment of rent that jeopardized the creditors’ ability to accrue wealth fueled the cultural conversation surrounding debt. The unsettled existence of the market persuaded these landowners to aggressively collect from their tenants by either threat of eviction or lawsuit. However, by demonstrating that they were willing to rid the tenant of his economic security, wealthy investors lost their gentlemen status and the guarantee of renters as a source of income.\textsuperscript{28} Rather than suffer the wrath of their proprietors, members of the commercial middle class headed west to secure their own land. They did this by utilizing another new market mechanism, the mortgage loan. For those unable to move, conflict surrounding land increased the tensions surrounding debtor-creditor relations. In order to avoid this conflict, debtors began borrowing from institutions rather than from individual lenders.

The institution of credit allowed for a family of any financial standing to reshape their lives according to ambition rather than class standing. The opportunity afforded by credit was seemingly without consequence, as citizens of the commercial republic at first found themselves able to participate in a wide range of economic activity. Because the capital was borrowed from newly certified banks and third party organizations instead of

\textsuperscript{27} Ibid., 51.
\textsuperscript{28} Ibid., 80.
a proprietor, consumers did not feel the same ramifications of debt as they had while maintaining personal relationships with their lenders.\textsuperscript{29} The impersonal nature of capitalist finance encouraged consumers to borrow greater sums of money.

By the mid-eighteenth century the commercial practices of English and the Americans had clearly transformed from a market designed to accommodate the taste and luxury of the affluent to a marketplace with a system of finance aimed at helping all classes achieve a new standard of living. This gradual accommodation of consumer habits was a result of a more educated and resourceful middling class of mercantilists. The desire for the English middle class to consume product was correlated with their desire to “ape the manners and morals of the gentry.”\textsuperscript{30} A qualification of gentry status was being recognized as a member of polite society, proven through both education and the purchase of luxury material. At the close of the eighteenth-century more middle class citizens had acquired the ability to read than at any previous time in history. As is discussed in Paul Langford’s \textit{A Polite and Commercial People}, “Legal records-wills, probate inventories, marriage settlements-confirm that impression created by contemporary comment, that the middle ranges of society benefited as much as any by the creation of new wealth, and that their conditions of life changed substantially.”\textsuperscript{31} The nature of this change had more to do with what middle class society was allowed to consume than what they were allowed to invest or save due to the desire of the newly prosperous to acquire previously unattainable goods. The fight for prominence among the

\textsuperscript{31} Ibid., 70.
traditionally middle and lower economic classes of society was sponsored by the creation and popularity of third party organizations who helped finance their ambitions by helping them avoid the dangers of market risk. As early as the eighteenth-century, British merchants understood the purchase of consumer goods as a means of achieving a new standard of living. The actual practice of those who borrowed capital was to achieve an improved standard of living and not purposeful expenditures on luxury items. For this reason, the commercial practice of borrowing capital should not be seen as reckless spending by those who assumed debt. The economic system which brought in diverse goods at affordable prices left the middle class with the task of pursuing a new definition of commercial success, as the boundaries between the commercial lives of luxury and impoverished classes hazed. The developments of English industrialization are critical to providing the context for republican commercial experimentation. In the decades leading up to the American Revolution, colonists had been less acceptable to English commercial habits choosing to defend a more open system of capital. This flexibility is replaced with the introduction of federalism, resulting in a republican understanding of debt that looked more similar to English tradition.

The availability of a wider range of commercial goods to a larger segment of the middle and lower classes created a polarized economic climate. A consequence of the Industrial Revolution in England, and experienced later in the colonies, was a parallel rise in wealth and the number of commercial bankruptcies. An understanding of this seemingly contradictory trend is offered in the seminal financial text, *Risk and Failure in English business 1700-1800*, in which author Julian Hoppit proposes that the nineteenth
century world of finance beginning with the birth of the industrialization of production was marked by the actions of three economic actors: inventors, innovators, and a large group of economic imitators. Hoppit concludes that the series of growth and recession experienced throughout England in the wake of the Industrial Revolution was incongruent with the assumption of Adam Smith that economic demands would necessitate a sufficient level of supply.\(^{32}\)

The transatlantic trading networks created during the eighteenth-century and the onset of the Industrial Revolution at the start of the new millennium combined to form three distinctive merchant participants. All three of these groups, inventors, innovators, and imitators, experienced market opportunities from “different angles and at different times and [were], therefore, confronted with different problems, openings and pressures.”\(^{33}\) Generally, the inventors were responsible for the industrialization and provided themselves with famous new opportunities. Similarly, those practicing in the market as innovators created for themselves economic opportunity by using pre-existing organization methods while putting to use recently introduced invention. An example of the innovator class would be the wine distributors of Madeira. The imitators, who composed the largest segment of commercial actors, found success by replicating the commercial behaviors of the innovators in the hopes of achieving similar levels of prosperity.\(^{34}\) The imitator class was primarily responsible for the occurrence of heavy

\(^{33}\) Ibid., 12.
\(^{34}\) Ibid.
recessions as they were, more often than not, unable to adequately understand the systems they were imitating.

The distinguishing difference between inventors, innovators, and imitators was that those who were the first to contribute to the market were able to reap the benefits of markets not yet flooded with competition. Because the inventor created a new market and the innovators were few in number as they entered newly established trade, the amount of wealth each group received was often immense. “Imitators enjoyed no such protection from the chill winds of competition.”

The imitator class was the last to enter the new field, and the least likely to succeed due to their inability to adjust to new methods of trade should they be developed. Of significance to the entire commercial population was the fact that in order to participate in the market, imitators relied upon borrowed capital to establish themselves and were likely to default on their loans should the tastes of the consumer change before he recovered his startup costs. Those likely to serve as the creditor were upper class merchants who, serendipitously, comprised a large percentage of the innovators and inventors. This chain of events would at times prove disastrous as illustrated in the sharp rise in bankruptcy throughout English society.

Although a significant portion of English bankruptcies during the Industrial Revolution were caused by the vast number of commercial imitators, another portion was due to a steady rise in population in both rural and urban economic sectors. Hoppit concluded that, assuming the rate of population growth held a similar trajectory to the amount of annual business, “there was a real rise in the rate of bankruptcy of 77 per cent

in the eighteenth century." The projected rise in the amount of commercial bankruptcies was staggering. The increase of risk-taking behavior, from a growing middle class that was for the first time provided access to large amounts of capital and who experienced a relatively high level of commercial failings, proved costly. Significant to the early American republic was the lasting idea that an unsettled market fueled by the assumption of risk affirmed the instability of capitalist success. Despite the often chance for individual ruin, credit remained a popular financial tool in both England and the American republic at the turn of the century.

The use of credit in free market enterprise solved for the inconsistencies of an unregulated market. Important to the rise in bankruptcy rates and the inclusion of American middle classes during the nineteenth century, was that credit “enabled the threshold of entry into many branches of trade and industry to be lowered, easing business formation by allowing production and distribution to be extended upon expectations of possible markets, thereby being speculative and a partner of growth.” The inclusion of such a diverse body of economic participants allowed for the communication and infrastructure revolutions which have defined cultural development during the antebellum period. The Industrial Revolution and the accepted value of an unregulated market created a transatlantic economy molded by both the hope of a better life and the worry of financial ruin.39

36 Ibid., 47.
37 Ibid., 53.
38 Ibid., 163.
39 Ibid., 181.
The economic model used by American traders at the conclusion of the Revolution borrowed heavily from precedents established by the English system of trade. Utilizing the expansive economic infrastructure created throughout the eighteenth century, the American republic quickly established a commercial presence because they continued traveling the pre-established export routes British merchants had built. The acceptance of an unregulated system of capital anchored on the ability to borrow the financial means for market participation dramatically increased the proportion of the middle class that could achieve high levels of success. However, the institution of credit eroded traditional values that had been previously placed on landed proprietorship as well as the gender roles designated to women and men. Eighteenth-century commerce created a market characterized by the presence of economic imitators and the adjacent rise of wealth acquisition and bankruptcy. At the time of its independence, American consumers had made the first argument for equating the practice of personal risk with the nature of independence. To subsidize the risk of that independence, consumers were held to a system of financial punishments not experienced by colonists. The context of traditional British practices of industry and justice used by Americans lenders to regulate financial risk, as constructed from the selected secondary literature, best explains the introduction, history, and ultimate consequence of nineteenth-century financial policy.

The Bankrupt Act of 1800 was the first national attempt to reconcile many of the hazards experienced in the free market system. Although normally understood as the resolution to the problem of American debt, through the understanding of previous transatlantic development, the Act can be better understood as the attempt to begin a turn
in the cultural perception of debt and the commercial landscape. The Act’s quick repeal indicates that the conflict of debt was not quickly resolved, but rather was a controversy that defined the nineteenth century. What the Bankrupt Act sought to resolve predated the emergence of more modern notions of risk. Its intent was misunderstood and its described financial protections undervalued. Like the English response to Scottish trade, landed proprietors and established financial lenders were apt to quickly repeal the act after noticing economic trends that would offset their cultural influence. With the creation of the National Bankrupt Act of 1800, the United States assumed responsibility for their financial development and all of the unresolved hazards that came with it. As the market continued to reward chance at the expense of determination, popular sentiment would “turn to state and local means to realize developmental ends when markets failed”\(^{40}\) and the use of what once were English institutions of finance and economic punishment became distinctly American in their expected utility and daily function.

The creation of the National Bankrupt Act of 1800 contributed alongside the creation of National Bank of the United States and the assumption of state debt, as the first broad set of financial policies exercised by the Federal Government and, similar to other early attempts at establishing republican law, the Act borrowed heavily from English legal precedent. Repealed three years after its introduction, the National Bankrupt Act was unable to find acceptance among a commercial public that was grappling with the difficulties brought on by the adoption of a free market capitalist economy. Politically polarizing and socially dissatisfying, the Act did not provide a

solution to the problem of debt, so much as it traversed the American consumer toward a new cultural debate concerning the moral character of bankruptcy law and the limits of state sovereignty. The National Bankrupt Act is best understood as an attempted turning point in America’s financial history. Although the Act’s life was brief, the contents of the legislation were proactive in its efforts to protect convicted debtors and its discharge of physical punishment. When Congress repealed the National Bankrupt Act they created a void of federal financial leadership that would not be successfully reestablished until the year 1898. As the century progressed, American merchants, spurned by the confusing and often unsatisfactory result of the numerous state policies and third party organizations that surfaced with the repeal of the Act, would defend the intentions of the national legislation.

The first decade of free market capitalism had created in America a system characterized by high-risk. American consumers were at the mercy of economic cycles that saw unprecedented levels of wealth followed by discouraging economic recession. The result of an unregulated market comprised of first time merchants was an increasing population of debtors. To combat America’s problem of debt, members of the National Congress began debate over the creation of a National Bankrupt Act. Hastening the federal debate over finance was an economic depression that started in the year 1793. Representative James A. Bayard of Delaware summed up the position of those in favor for the Bill when he argued, “a law was necessary to protect creditors from dishonest and fraudulent debtors, as well as to enable creditors to protect honest debtors whose trade

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had been to unforeseen accidents who shall surrender all their property in order to obtain a discharge." The result was the National Bankrupt Act of 1800, an Act almost entirely borrowed from English legislation and that experienced a negative reaction from the public it sought to help. Although consumers from every region and political party voiced concern with the legislation, members of the Jeffersonian Republican party were the most vocal in their rejection of the Bill.

The dissatisfaction with the law came from a broad range of state and public concerns. Creditors were unhappy with the Bankrupt Act because of the difficulty some debtors had traveling to Federal Courts. A second grievance was that the Act fell short on its promise to provide a means of reimbursement due to a large number of discharged bankrupts having been imprisoned prior to their petition for relief. By not having to legally petition for discharge, the creditor was not made known of his arrest and left unable to receive reimbursement for the unsatisfied obligations. The debtor was arrested and discharged before his crime had been brought before a court or known by his creditor. In some ways the Bill had made the commercial climate worse than before the depression of 1793 because it had unintentionally allowed fraudulent merchants to use the Act as a means to obtain a discharge for contracts that had never intended to fulfill and then proceeded to engage in additional fraudulent behavior with a whole new host of business partners.

Another source of contention emerged out of the debate for what the role of a national bankruptcy policy should be. Central to nineteenth-century financial debate were the values placed on the idea of financial discharge and mechanisms for establishing a bankruptcy claim. A financial discharge meant that a debtor would be relieved from any withstanding contractual obligations that had and/or would add to the amount of money owed after the discharge had been granted.\textsuperscript{45} The debt would be removed and the individual freed to pursue new commercial activity. The National Bankrupt Act provided a discharge for those who qualified for assistance, but limited the number of qualifying debtors by only accepting claims of involuntary bankruptcy.\textsuperscript{46} Involuntary bankruptcy meant that the debtor could not choose whether to claim himself as a bankrupt, rather the decision was left up to his creditor. Should the creditor grow unhappy with the status of his repayment, a legal claim of involuntary bankruptcy would abruptly halt the actions of the debtor and see to a full reimbursement of the missing capital. The terms of involuntary bankruptcy were not sympathetic to the plight of the debtor, but recognition for the need for voluntary, pro-debtor legislation was still a distant goal for even the most aggressive proponents of debt relief. Providing a discharge through involuntary bankruptcy was seen as extremely controversial at the turn of the century, because, although it empowered creditor interests, it did so with the intention of discharging men from debt.\textsuperscript{47} Both creditor and debtor wanted additional protection through a national policy.

\textsuperscript{46} Ibid., 29.
\textsuperscript{47} Ibid., 31.
The repeal of the National Bankrupt Act in 1803 was due to the collective discontent of both creditors and debtors throughout the early American republic. The disagreement surrounding the legal extent of discharging debtors’ from contractual obligations and the success of a policy permitting involuntary bankruptcy ultimately doomed the first federal financial experiment. Jeffersonian Republicans, who feared that the law would empower northern creditors at the expense of southern farmers, voided the Act with a strong show of support.\textsuperscript{48} Congressional members elected during the Era of Good Feeling began discussing the merits of voluntary bankruptcies and a system of bankruptcy which would equip the debtor to protect his own interest, removing some of the power wielded by his creditor.\textsuperscript{49} However, despite their dismissal of the National Bankrupt Act, ideas contained within that first attempt would be revisited and while the public waited for a new proposal some would rise to the defense of the original Act.

The sixth National Congress proposed The National Bankrupt Act of 1800 during its first held session. As noted earlier, the Bill was a federal response to the commercial hardships induced by the economic depression of 1793 and the volatile nature of an unregulated capitalist marketplace. Using the economic infrastructure created by the English Monarch during the previous century, this first piece of American financial legislation inherited its sense of economic understanding from its English predecessors. Stated plainly, in the face of economic depression American legislators looked to traditional English solutions to correct uniquely American market problems. While the Act drew heavily from English influence, it also contained liberal sections that sought to

\textsuperscript{48} Ibid., 26.
\textsuperscript{49} Ibid., 3.
empower the debtor during and after the procedure of filing the discharge awarded to recognized bankrupts. Sympathy for the debtor would disappear during the early nineteenth-century, only to resurface as a consequence of rulings made by the Supreme Court a few decades later. A close examination of the contents of the Act, both aspects favoring the creditor and debtor, will showcase an Act that served as a turning point in the conversation of American debt because of the introduction of pro-debtor propositions.

The primary mechanism of the Bankrupt Act was the creation of financial commissions run by a set of federally appointed bankruptcy commissioners. Before the commissioner was authorized to represent the national government on issues concerning bankruptcies, he had to first take and then subscribe to his respective committee, an oath of affirmation. This oath could be issued by a limited number of federal positions which included judges serving on the Supreme Court as well as any judge, justice, or chancellor presiding on any State Court. The authority needed in order to conduct the oath is an interesting inclusion of the Act, for it expressed the fragility of what the Act sought to do and assured the public that the issuance of bankruptcy would be granted only by men of status. This would presumably avoid the occurrence of debtors’ abusing the right to a bankruptcy. The oath read as follows:

“I, Do swear, or affirm, that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the federal powers and trust reposed in me, as a commissioner in a commission of bankruptcy against, (name of defendant), and that without favor or affection, prejudice or malice.”

50 U.S. Laws, Statutes, ect., 1800:3, Early American Imprints Collection, Utah State University Merril-Cazier Library, Logan, Ut.
51 Ibid., 3.
After the oath had been taken and the commission established by the commissioner, those creditors wishing to file a motion of involuntary bankruptcy on behalf of their debtor were free to seek an audience before the commissioner. The Act created a system of bankruptcy that was accessible by all creditors seeking collection on unresolved contracts, provided that the outstanding contract held by the creditor exceeded two-hundred dollars in owed capital. Once the organization of bankruptcy hearings was established, the Act continued with a series of sections discussing the privileges granted to both creditor and debtor which were to be enforced by the appointed commissioner.

Section Twelve of the National Bankrupt Act authorized the bankruptcy commission to seize any lands, goods or estates that had been placed under the ownership of a third party by the debtor prior to his summons to appear before the bankruptcy commission. Once the possession had been discovered and appropriated to the committee, the creditor had the right to make use of the estate or property found thereon as if he was the original owner of the property. By awarding the creditor lands hidden by the debtor as if they were effectually part of the originally disclosed estate, the Act saw to decrease the opportunities of the suspected debtor from defrauding his creditor and obtaining a bankruptcy with additional assets. Access to otherwise hidden land was a lucrative attribute of the National Bankrupt Act, as creditors were assured that their initial investment would be reimbursed. Following the same line of intention, the Act placed a series of punishments for those debtors willing to commit perjury in order to protect hidden sources of revenue.

52 Ibid., 6.
53 Ibid., 9.
An act of perjury by a bankrupt stood the chance of eluding the aims of the National Bankrupt Act. If a debtor was convincing, he could submit to a bankruptcy that removed him of his contractual obligations and then return to his hidden wealth to start his fraudulent practices anew. In order to insure against the success of fraud, Section Fifteen of the Act provided that should an offending party be found guilty of perjury, he would face both financial and physical consequence. The bankrupt, upon being convicted of perjury, would be sentenced to pay a fine not exceeding four thousand dollars, and could in addition, be sentenced to a stay at the debtor’s prison, referred to as the New York Gaol until its closure in 1836, for up to two years. To hedge against the fraudulent debtor negatively influencing future legal proceedings, those found guilty of perjury were barred from serving as a witness in any court concerning any legal proceeding.54 However, this was not the only punishment enforced on those guilty of financial fraud. As Section Sixteen furthered, “if any person or persons shall fraudulently or collusively, claim any debts, or claim or obtain any real or personal estate of the bankrupt, every such person shall forfeit double the value thereof, and for the use of the creditors.”55 Friends of those guilty of bankruptcy were prohibited from satisfying defaulted contracts. All involved in an instance of threat were punished by financial consequences more hazardous than the outcome they had tried to unlawfully circumvent.

At the start of the nineteenth-century, traditional English perception of debt had found popular support in the new republic. The act of debt or bankruptcy had been seen as a reflection of immoral character and proof of a life lived of vice. This degraded

54 Ibid., 11.
55 Ibid., 11.
character of the debtor made the reduction of his rights not only legal but necessary in order for the truth to be discovered by more noble men. Section Twenty of the National Bankrupt Act accepted this sinister view of the debtor when providing the right of commissioners, or any other person or officer, the right to break into the “houses, chambers, shops, ware-houses, doors, trunks, or shelves of the bankrupt.” Those unauthorized by the commission who were able to discover any additional evidence of misconduct by the debtor were rewarded for their intrusion with a five per cent portion of the debtors valued estate. For debtors who were petitioned by their creditors for involuntary bankruptcy protections, the path to economic solvency was at times brutally intrusive.

Despite the list of power given to creditors throughout the provisions of the Act, debtors’ received the Bill with high spirits as the legislation also provided the means for their release from imprisonment. The National Bankrupt Act, in its quest to successfully repay all those creditors possessing existing contracts, reduced the total amount owed by the debtor to his creditors. As stated in Section Thirty-Five, if the net proceeds of the seized estate did not meet the full amount owed by the debtor to each of his creditors, the Commission divided the obtained estate into equal pieces among the list of creditors. The debtor, after willfully awarding all capital to his creditors, was gifted three hundred dollars or three per cent of his partitioned estate in order to start a new commercial life while his contracts were discharged and creditors disbanded. For the majority of debtors, the opportunity for a discharge came at a reasonable price as they had already

56 Ibid., 14.
57 Ibid., 17.
58 Ibid., 22.
been imprisoned for debt. Not having acquired any new capital while sitting in prison, involuntary bankruptcy was a means to escape the conditions of the Gaol at the expense of their creditors. The Act also provided an avenue of protection for those locked away in prison by creditors unwilling to petition for their release.

For those debtors imprisoned prior to the establishment of the Act, a creditor willing to pay the fees for his imprisonment could enforce a lifetime of imprisonment for their debtor. One of the positive consequences of the National Bankrupt Act was the discontinuation of the type of delayed debt collection that had resulted in long term prison sentences for American debtors. Specifically, Section Sixty-One of the Act provided that if a debtor should be imprisoned for any debt or unfulfilled contract, that after a period of three months the prisoner would receive relief from his imprisonment should his creditors abstain from filing a motion for involuntary bankruptcy. 59 It is important to note that this mercy was not provided to those debtors who had sustained debt prior to the time of the Act’s passage in which case not even death excused the debt accumulated by the prisoner. 60 The chance for a financial discharge and relief from debtors’ prison gave many debtors confidence in the purpose of the National Bankrupt Act, even if their creditors controlled the path to financial freedom.

Supported by Speaker of the House Theodore Sedgwick, approved by Vice-President and then-President of the Senate Thomas Jefferson and signed into law by President John Adams in April of 1800, the National Bankrupt Act was the first federal response to the concerns of a capitalist system of economics. In the years leading up to

59 Ibid., 32.
60 Ibid., 27.
the Jeffersonian Presidency, democratic-republicans had long supported a political view of debt that perceived it as an immoral practice, in regards to both individual and national policy. To actively maintain a national debt, was to Jefferson and his constituents, a rejection of revolutionary principles.\textsuperscript{61} The repeal of the National Bankrupt Act of 1800 at the arrival of a majority of Jefferson-Republicans was just a single episode of the political tensions which defined early American government. The broader implications of the Act did not earn the legislation the status of being a resolution to the early American republic’s problem with commercial debt. The quick repeal of the Act and the continuation of seismic shifts in the marketplace throughout the century continually called for more innovative legislative solutions. Jeffersonians argued that if there should be the need for bankruptcy legislation that the proposals should center on a system of debtor protection rather than methods of creditor enforcement. In addition to the divisions between political parties, democratic-republicans could not gain the support of the various regional representatives. The result was northern members being more supportive of debtor relief policy and the south defending moral positions on finance. A majority of Jeffersonians agreed that the National Bankrupt Act needed repeal, however, that majorly support vanished when discussing what legislation was needed to replace it. The moral issue surrounding the practice of debt shuffled political alliances, with southern representatives from both parties rejecting the idea of insolvency forgiveness. Rather than a bookend to the early history of American finance, the National Bankrupt Act serves as a bridge between a period of American financial history which attempted to reconstruct

English punitive systems and the introduction of truly genuine American financial practices that differed from its predecessors in its cultural perception of debt and in the need for commercial regulation. The Act was a blend of traditional English financial punishment and modern American financial discharge. The repeal of the National Bankrupt Act was an historical pivot in the republican discussion of finance; the first signs of which can be seen in the defense of the 1800 Act twelve years after its successful repeal.62

The nineteenth-century financial climate in America was characterized by the creation and the enforcement of numerous State bankruptcy and insolvency policies that were remarkably different in their prescriptive solutions to commercial hardship. The confusing and often haphazard approach of competing state policies convinced some consumers that the problem of market insolvency was an issue best resolved through federal policy. Published by Rapine & Elliot in 1815, a pamphlet titled “Consideration on the Establishment of a Uniform System of Bankrupt Laws” preserved the changing sentiments of American consumers in the wake of the National Bankrupt Act. As expressed in the pamphlet, the growing desire for national financial legislation had softened the author’s criticism of the Act and revealed merits of the Act that had gone unappreciated in the years of its existence.

Reflecting on the legacy of the National Bankrupt Act, the author reasons that the Act had failed because of its insistence on copying the English code of law. The mistake in mirroring the actions of Europe was that Congress had undervalued the differences

62 Consideration on the Establishment of a Uniform System of Bankrupt Laws, 1815: 4, Early American Imprints Collection, Utah State University Merill-Cazier Library, Logan, Ut.
between republican and English societies that had not been visible in the aftermath of the Revolution but had grown in prominence in the decades since.\textsuperscript{63} In addition to the problems brought on by adopting English precedent, the Act had since been viewed as having several imperfections which made its repeal inevitable. Speaking on behalf of the American consumer, the author furthers that despite its faults the Act had a level of effectiveness not experienced due to the repeal of the Act before the good could be seen by the public.\textsuperscript{64} The truisms of the National Bankrupt Act were enough to make both creditors and debtors reevaluate the repeal of the National Bankrupt Act toward the creation of improved federal action.

The gravest concern vocalized in the pamphlet are the inconveniences brought on by the multitude of state insolvency laws and the instances of debtors fleeing one state for the financial protection provided in another, a practice that left creditors ill equipped to recover their lent capital should their contract be challenged by desertion of their debtors. This defect of reciprocity negatively affected both creditor and debtor. Because of how the various laws were constructed, some states in the Union were known for their leniency and therefore essentially became asylums for runaway debtors. Other, more conservative states were known for their severity and therefore essentially became prison states for debtors.\textsuperscript{65} In this way, both creditor and debtor could suffer under the authority of state law. The solution provided by the National Bankrupt Act had successfully predicted the problems associated with state laws and had provided a system of

\textsuperscript{63} Consideration on the Establishment of a Uniform System of Bankrupt Laws, 1815: 4, Early American Imprints Collection, Utah State University Merrill-Cazier Library, Logan, Ut.
\textsuperscript{64} Ibid., 4.
\textsuperscript{65} Ibid., 9.
consistency between states when it established federal organizations within the states. The seen value in bankruptcy commissions and the surrounding judicial infrastructure had been a system capable of resolving bankruptcy hearings occurring within and between states. Adjusting for the disputes that manifested between these bodies seemed an appealing route when they became missed in the years following the repeal.66

More than sentiments in favor of the National Bankrupt Act of 1800, the commercial climate that persisted during the nineteenth-century saw fervor for national authority. A national policy began to be seen as the only effective mechanism for insuring mercy on the imprisoned while expressing veneration for risk taken by the creditor. The risk of tyranny attached by Jeffersonian-Republicans to the debate over federal financial powers that had been used as a reason to repeal the national act had given way to the experienced harms inevitable in competing state laws.67 As the economic environment darkened, efforts to persuade the national government to act increased. When shelter from the financial storm did not arrive on a national level, the commercial classes received the services offered by third party financial organizations with gratitude while the continued reluctance of the federal judiciary to allow for the creation of more aggressive state legislation was disdained by the public. The invention and popularity of the life insurance industry and the broad use of insurance as a means to combat economic risk is more clearly understood when placed within the historical context that has been presented.

66 Ibid., 10.
67 Ibid., 12.
The introduction of the National Bankrupt Act of 1800 did not resolve the debate over the moral implications of debt, just as the repeal of the Act did not dissolve popular support for the need for federal financial authority. Federal misunderstanding of the nature of the Act was revisited by those hungry for a system that provided for both creditor and debtor incentive by discarding the English underpinnings of the legislation. To change its legislative course, American representatives had to overturn decades of pro-creditor and pro-English policy that had altered colonial opinions of debt to assuming a strict conservative outlook. During this time of deconstruction, private third party organizations were created to fill the void left by the absence of federal authority. Insurance companies navigated the unsettled nature of capitalism and would continue well after the introduction of national law. At odds during the nineteenth-century were the continuous debates between State and National authorities concerning the nature of the debtor and the growth of commercial development. The century following the enactment and hasty repeal of the National Bankrupt Act witnessed a change in the cultural narrative of the debtor’s plight. The appreciation for debt as a means for commercial participation was expressed in a series of judicial rulings that identified the changes taking place and their utility within the existing republican system of government.
CHAPTER III

SOMETHING BORROWED/SOMETHING NEW: THE EMERGENCE OF
REPUBLICAN FINANCIAL CULTURE

With the quick repeal of the National Bankrupt Act of 1800, merely 36 months after it had been narrowly passed, the federal government had reenergized state discussion of financial policy and the role of economic punishment in democratic society. State and National conversations concerning the debtor and the economic system varied in their justifications for passive and then later proactive methods to tame a high-risk marketplace. Specifically, during the period of the early American republic the cultural narrative concerning the plight of the insolvent debtor began to shift. Two mechanisms of finance emerging during the nineteenth-century succeeded in transforming the character of debt: a set of legal precedents presented by the Supreme Court which prohibited the creation of state bankruptcy law, and third party organizations that sought to fill the void in the market left by the nullification of state law and the absence of federal regulation. Ultimately, sympathy for the debtor in American financial society would manifest within the middle class. Entrepreneurs understood, often from personal experience, that winning the attention of fortune was often the result of chance. In addition, middle-class families knew best that consumer habits required a necessary amount of borrowed capital.

The modest attention given by the American founders towards creating financial legislation during the founding of the American republic is reflected in the brief coverage of financial authority during the Constitutional Convention as well as the ratified Constitution. The creation and popularity of an unregulated, capitalist economic system
was not something that most in the founding generation predicted. However, the growing fervor of the American middle class for both the consumption and production of mercantile goods forced newly created governments, on both the state and federal level, to experiment with different types of financial punishment. It is not surprising that the first attempts at financial regulation mirrored the British model of economics, but the effectiveness of British law was not seen in America. During the early nineteenth-century, federal legislators were reluctant to address the issue while concomitantly federal courts prohibited states from taking action. Thus, federal leadership failed to author either retrospective or prospective laws when consumers began demanding more protection from bankruptcy. The examination of the debtors’ narrative begins with a discussion of American legalism at the start of the antebellum period.

The origins of American financial history derived largely from the traditional English system. However, the system constructed in the New World was hardly an echo of British custom. In fact, the systems which developed during the colonial period were marked by a multitude of regional differences, as each economic region drew different lines of authority between creditor and debtor. What was similar between these early attempts in creditor/debtor relations was that they shared three principle objectives: they sought to provide the debtor more time to account for missing funds, the laws they attempted were designed to decrease instances of fraud, and they provided systems which would distribute the property of a debtor amicably amongst his creditors. These initial guidelines prioritized both practical and humanitarian positions, as they “gave an

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insolvent a second chance by wiping out his debts, and protected property acquired in the future from seizure for the satisfaction of [more traditional economic obligations].”

Such compassionate sentiments however were not received positively by all colonists.

Some living in the colonies opposed all forms of debtor relief. Traditional Puritan understanding labeled the act of unlawful borrowing and fraud as moral sins against God, leaving its believers to conclude any act of legislative resolution as inappropriate. “They feared that abandoning the traditional [British] enforcement system would encourage recklessness and irresponsibility.” Despite this, many colonists played with the idea of limiting creditor rights for the benefit of insolvents. The ability for change in the colonial system and the challenges brought against the Crown highlight how serious the problem of debt was to colonial merchants in the decades leading up to Revolutionary conflict.

The commercial society that emerged after the ratification of the Federal Constitution abandoned the previous sympathy for the debtor’s plight. Removed were the core regional principles seeking the ideal equal distribution of available resources between debtor and creditor, as newly defined Americans returned to the legalism chartered by the monarch. The debtor was now subject to the payment of all of his outstanding contracts, without grounds for a possible discharge of his fraudulent behavior. The first U.S. bankruptcy law, enacted in 1800, was composed almost entirely of past English legislative precedents. As discussion of proper bankruptcy legislation

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69 Ibid., 12.
70 Ibid., 13.
71 Ibid., 15.
filtered to the level of state governments, regional differences illustrated during the colonial period began to resurface. However, the states were unified in their revitalized anger towards the debtor. This unwillingness for pro-debtor legislation resulted in various state bills that sought to establish pro-creditor systems comprised of mechanisms for involuntary bankruptcy. Debtors were fortunate in the early years of the republic to receive even that level of legal advocacy.

In addition to a less forgiving commercial class pushing for stern economic punishments, a debate took place over what governmental bodies had the authority to create bankruptcy legislation. As the century progressed, this concern would be at the forefront of several court rulings and popular outcries for regulation from either the state or national government. The Constitutional Convention had spent little time on the issue of finance, adopting a precedent espoused by Alexander Hamilton in Federalist Paper 42: “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.” Federal inaction would prove consequential when numerous states would enact their own bankrupt and insolvency laws, only to have the Supreme Court strike them down in defense of the Constitutional authority, interpreted by Justice Washington, as being reserved for use by the national government. The discussion of state law dramatically increased with the passage of the Embargo and Non-Intercourse Acts during the Presidencies of Thomas Jefferson and James Madison, as

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73 Ibid., 31.
both of these acts contributed to the economic distress of much of the New England coastline.\textsuperscript{75} The foreign policy decisions of the President combined with the restricting rules of the Supreme Court and a reluctant House of Representatives created a system ripe with unpopularity. The possibility of an act providing for both compulsory and voluntary bankruptcy stood little chance in a political climate marred by its inability to understand free market development. The question of legal authority would persist throughout the century.

Although the Court remained hesitant to allow for state laws to emerge and the national Congress was unable to pass any significant bankruptcy legislation, this did not mean that the national economy remained frozen in time. As noted earlier, during the early part of the nineteenth century, the creation of pro-debtor legislation was resented by a large segment of the public.\textsuperscript{76} The unsettled nature of the early American marketplace was filled with merchant anxiety, leaving creditors little choice but to cash on contracts quickly if the market abruptly dived. A lack of proactive legislation and the return to a cultural narrative that established the debtor as a morally impaired villain was not enough to persuade men to ignore opportunities of wealth. The market would continue to expand; the swings of the economy becoming more severe and men of the middle classes consistently assuming greater levels of risk for the chance of achieving capitalist prosperity.

Critical for understanding the financial developments of the early American republic were the third party responses to market problems forged by popular and federal

\textsuperscript{75} Ibid., 22.
actions. It is not a historical coincidence that the creation and popularity of financial and religious movements such as the Second Great Awakening and the life insurance industry coincided with a misunderstood system of trade. The creation of institutions dedicated to providing insurance for both products and producer was a solution for the risk experienced by market participants. Insurance companies, in their own attempts to hedge their bets on potential policy holders, reversed the trend of an impersonal market through their exploratory vetting process of applicants. First opposed by the religious institutions emerging from the Second Great Awakening but later praised by spiritual leaders, insurance policies provided an avenue of responsibility for borrowers characterized by their immoral actions; as state and federal judiciaries haggled over the Constitutional interpretation of finance, third party independents worked to change the cultural narrative of the debtor by providing him with economic tools necessary for acting financially responsible. Despite the practice of denouncing greed and excessive accumulation of wealth, all but a small section of the religious leaders accepted the practice of capitalism. Religious men accepted the purchase of life insurance as a positive good more than they dismissed it as moral harm. Although the creation of third party institutions did not solve for the needed financial regulation, it gave a sense of confidence in the market that encouraged prominent lenders to remain in support of middle class merchant and agricultural borrowers.

A significant contribution which arose with the acceptance of insurance policies was the intellectual justification of risk-taking activity as being an honored attribute of democratic men.79 Similarly, the assumption of risk was philosophically connected to the consequence of commercial gain. The relationship between the right to assume risk and the nature of free men challenged the structures of both gender and racial constructs as both performed different roles on a capitalist stage. As seen in the case of Thomas McCargo v. The New Orleans Insurance Company, the state laws of Louisiana were unable to adequately decide whether slaves were individuals or goods if and when they revolted.80 In the case of McCargo, the result was “an articulation of freedom in a commercial vernacular, which implied that to be un-free was for another man to own your risk, while to be free was to own that risk yourself.”81 Plainly speaking, the state court decided to agree with the argument made by the insurance company that once the transported slaves assumed their own risk they achieved a level of autonomy associated with being free of ownership. Insurance companies provided avenues for antislavery movements to achieve success by distinguishing slaves from other owned property.82 The animate quality of a slave made him unique from other mercantilist inventory. Cultural transformations were not unique to southern states; policyholders in New England were also responsible for a steady evolution of financial culture. In the case of Green v. Elmslie, The New York Supreme Court established the legal separation between

79 Ibid., 16.
80 Ibid., 23.
81 Ibid., 49.
82 Ibid., 28.
insurable “Acts of God” and non-insurable “acts of man.”

Claims against insurance companies helped to establish permissible financial boundaries that categorized instances of debt and fraud. Whereas this practice created a framework for financial dealings in the East, it provided support for western agriculturalists in a more fundamental way.

During the nineteenth-century, Western farmers turned to the mortgage market with an increasing amount of necessity. Geographical challenges, such as the natural composition of the soil and the distance between producer and consumer, limited farmers’ profit margins. Struggling farmers relied on borrowed capital cover financial costs of a bad harvest. Even though capitalism, in the form of insurance policies, could not remove risk entirely from the market, it provided a stable enough atmosphere to encourage economic development in the west.

In addition, during the period when the life insurance industry first developed, the United States had entered a period of expansion characterized by an increasing population living in an urban landscape. Urban living and capitalist enterprise were both dissolving colonial economic bonds which were largely composed of intimate dealings with relatives and neighbors. In order for men to engage in a marketplace characterized by anonymous contracts, a guarantee of payment was needed to replace the bond once sealed with emotional trust. This “countervailing force against dramatic societal changes” became the industry of life insurance.

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83 Ibid., 44.
84 Ibid., 157.
86 Ibid., 2.
The success of early life insurance institutions came from their ability to cater to the aspirations of the emerging middle class. Fostering market ambition, life insurance was initially advertised as a means for businessmen to make a secure financial investment that would provide for wife and children should the insured die due to an unforeseen event. With life insurance, the accounted risk was the unexpected loss of life, rather than the risk associated with the unpredictable spikes trending within the market. This type of risk-assessment was preferred by the growing lower middle-class, who wished to advance their aspirations for an improved lifestyle while maintaining small levels of low-risk economic behavior.\(^{87}\) As with the insurance of traded commodities, life insurance at first seemed at odds with the religious doctrine preached throughout antebellum society.

The class of citizen most likely to attend religious services in antebellum society was the same class of citizen that frequently paid a monthly rate into a life insurance policy. One of the ways in which life insurance found acceptance among the religiously devout was through its appeal as a policy that protected the family. This association was a combination of strategic marketing by the life insurance agents and the practicality of the market; “For families dependent on a regular salaried income for survival, life insurance at mid-century was evolving from a novel situation for mitigating one of the greatest risks they faced (death of the bread-winner) to a necessity of middle-class life.”\(^{88}\) In practice, however, the usefulness of life insurance policies among the middle class had more to do with the erasure of debt and the payment of contracts than it did providing cash reserve for surviving family.

\(^{87}\) Ibid., 18.
\(^{88}\) Ibid., 299.
This at first seems at odds with the religious doctrine taught by revivalist preachers who purposefully condemned the practice of debt and the accumulation of luxury goods by individuals residing in the lower and middle classes. Life insurance was successful in persuading the middle-class to engage in greater economic risk taking, an action good for the strength of the economy but more often hazardous to the individual risk-taker. The advertised purpose of life insurance was different than its actual purpose. Instead of being a safety net for a deceased husband’s wife and children upon his untimely demise, a life insurance policy was actually a mechanism for the repayment of defaulted loans assumed by middle and lower class individuals to reduce the risk taken by the creditor. Life insurance made sure that debt was not accumulated past the life of the borrower, solving for the immoral act of debt. An insurance policy on a merchant’s life allowed that merchant to assume greater risk than he would normally dare be responsible and it encouraged lenders to provide him more capital than would normally be considered good practice. In the event that the debtor died, the lender (all existing contracts) was promised payment for any outstanding debt prior to any portion of the policy being distributed to the debtor’s family. Thus, the debtor’s family benefited indirectly by not inheriting the deceased debt. The dramatic increase in the amount of credit being dispersed among consumers during the nineteenth-century is, in part, explained through the creation and near universal popularity of insurance policies promising at a least a partial return on all monies lent to the middle and lower classes. It was easy to lend money to a stranger with the knowledge that the borrowed money was.

89 Ibid., 183.
protected through additional third party organizations dedicated to collecting money from the debtor every month during the remainder of his life.

Both the creditor and debtor were achieving new levels of success under this system of commerce, in spite of regular market crashes and increasing levels of debtor litigation. It may be constructive to view the system that emerged during the early nineteenth century as a market system making the most out of a chaotic and misunderstood market that made some spontaneously wealthy and others impoverished beyond the means of achieving solvency. Prior to 1868 and the establishment of a single national currency, a multitude of both privately printed and counterfeit currencies presided throughout regional markets. For those not eligible to receive needed capital to participate in the market, the use of counterfeit currency was an acceptable risk.\textsuperscript{90} This new value on paper currency replaced the traditional value placed on land ownership. The use of family property as collateral became a bartering chip for a hungry producer to seize the capital he desired. In order to attempt expanding their business, farmers had to first leverage their current holdings and risk the vulnerability of the market. This occurred in such a high degree that by 1819, “the proliferation of new financial institutions [had drawn] family property into the mainstream of capitalist enterprise.”\textsuperscript{91} Property was leveraged and divided, as the customarily large families were dividing their estates for purposes of inheritance and consumption faster than new land was being acquired and


produced.⁹² A consequence of an unregulated economy and the proliferation of insurance companies was the destabilization of land.

The rejection of the National Bankrupt Act in 1803 fundamentally changed the format of debate concerning republican financial practices throughout every region of the newly created nation. The resulting judicial and legislative gridlock that came to define the century created the opportunity for more traditional opinions characterizing debt as a reflection of bad character to take root and influence state policy. The debtor was cast as a villain. The market was cast as an unpredictable organization governed by actions of high-risk and unsettled consequences. It seems natural within this historical context that outside organizations should gain reluctant acceptance as they at least made it possible for new participants to engage in capitalist enterprise, as they did not seek to answer moral questions concerning debt. However, the promises put forth by insurance companies came at a price. The inclusion of the lower middle classes in the production and purchase of once-considered luxury commercial goods deluded the traditional value of land and eroded traditional categorization of commercial class within republican society. The narrative of the debtor would begin changing with the 1814 Circuit Court case of *Golden v. Prince* as “cases came to turn less on the factual circumstances of each dispute and more on abstract and generalizable principles of law.”⁹³ The change in the debtors’ narrative is best described through the blending of two adjacent histories of judicial and popular action.

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⁹² Ibid., 99.
Decided during the spring of 1814, the case of *Golden V. Prince* established the legal rhetoric used by the Supreme Court throughout the first half of the nineteenth century. The creditor who had filed the motion was distressed by the passing of legislation by the state of New York which purposefully freed his debtor of his financial obligations. The Circuit Court of Pennsylvania, in an opinion written by Justice Washington, sided on behalf of the creditor. Although the verdict of the case was not novel, the justification for the decision held significance as the arguments made in 1814 would resurface in future cases. Washington based his decision to nullify the state bankruptcy law; the argument was presented that the law was unconstitutional due to it being a bankruptcy law, and that the intended outcomes of the law could not be enforced because it would knowingly impair the obligation of a contract.\(^9\) Both of these lines of argumentation are worth taking a closer look at.

At the time of this decision, the Court had placed an almost reverent value on the status of a signed contract. This was in part due to the unregulated nature of the market which needed mechanisms to secure the investments of creditors. In its dismissal of the binding obligation between money lent and money owed, New York was putting stress on a system grounded in the belief in an economy governed by natural law. In the majority opinion, Washington furthered this line of thought when he concluded that, “A law which authorizes the discharge of a contract, by a smaller sum, or at a different time, or in a different manner than the parties have stipulated, impairs its obligation, by substituting for the contract of the parties, one which they never entered into; and to the

performance of which, they of course had never consented.\textsuperscript{95} Said differently, in his defense of creditors, Washington had stipulated that any bill which changed the components of a contract, be it the time promised for repayment or the total amount of the debt, was unconstitutional because it discarded an agreed upon contract and replaced it with a different contract that neither party had a hand in creating. For Washington, the creation of state bankruptcy law confused the natural order of chartered and prescriptive rights and took from the national government powers that were reserved under the wording of the Constitution.\textsuperscript{96}

The preservation of Federal power lies at the heart of the second line of argumentation presented by the court. As understood by Washington, the state of New York had created a venomous bill the minute the legislation became incompatible with the promised power of the federal government to pass bills concerning the same subject and were meant to be uniform in enforcement.\textsuperscript{97} In addition, the ruling in \textit{Golden V. Prince} took the opportunity to withhold the rights of national supremacy on subjects pertaining to bankruptcy law even if the national government proved unable or unwilling to propose a bill. In his dismissal that the 9\textsuperscript{th} and 10\textsuperscript{th} Amendments applied to this situation, Washington rested on a conclusion that rejected the state bill even as it hesitated to present a national solution. “The answer is plain,--reject the bill and do nothing.”\textsuperscript{98} Washington defended his solution on the grounds that it removed the chances of inconsistent state rules from emerging which would suppress consumer borrowing and

\textsuperscript{95} Golden v. Prince.
\textsuperscript{96} Golden v. Prince.
\textsuperscript{97} Golden v. Prince.
\textsuperscript{98} Golden v. Prince.
strike at the invincible nature of contracts. In its decision to side with the needs of the creditor, the Circuit Court thought to have represented the public will on the subject, as it had successfully diverted the nation from creating unwise financial policy. In some ways this sentiment was proven true. As discussed previously, the inaction of state and federal governments to produce reliable financial policy had driven the American consumers to convert back to British sentiment on debt. This was an unsympathetic perspective which characterized the creditor as a hero and the debtor a villain. An example of such popular sentiment is found when looking at proposed insolvency laws by state governments in the years surrounding the *Golden v. Prince* Decision.

The legal rhetoric used by the Court in *Golden v. Prince* can be seen in various insolvency laws surfacing throughout the United States at the start of the nineteenth-century. Specifically, a Bill for the relief of insolvent debtors within the District of Columbia took the same stance toward debtor and creditor attributes, as it prescribed a set of punishments that likened the debtor to that of a serious criminal. The proposed act of insolvency relief, debated during the year 1802, was constructed around a core set of procedures that the debtor must accomplish in order to free himself of physical punishment. This bill did not discard the amount owed by the debtor, instead merely freeing him from his stay in debtors’ prison. In order to receive sympathy, the debtor had to first deliver all of his remaining property that he had title or claim at the moment his creditor requested payment. Next, the debtor would disclose any remainder owed to any and all contracts established during the time he was under contract by the petitioning debtor, as well as any money he was awaiting payment from his respective list of debtors.
The final step for an insolvent debtor was to swear that he at no time during his commercial life, had committed an act of fraud through either licensing his debt to others or by selling goods or services for personal prosperity while claiming insolvency. This act, through its extensive program of defining the debtor as a nuisance to the creditor, was in agreement with the stance taken by the circuit court.

Further support for the harmony between popular and federal perspective during the beginning of the republic is found in the special attention given to the sanctity of contracts by the District of Colombia. The drafted legislation included text that provided, “that no discharge whatever of any debtor under this act shall be construed or taken as a discharge of any other person from any debt, contract, or engagement of any kind or nature [what]soever.” The intent of the act was to reduce the level of physical suffering brought on to the convicted debtor rather than an absolute resolution of his contractual past. Just as it would be in 1814, the idea of contracts being universal in their authority was already finding appeal in the new American nation.

The Supreme Court did not wait long before re-visiting the debate over bankruptcy law. In their decision of the 1819 case, *Sturges v. Crowninshield* reiterated and expanded the argument for the defense of creditor authority. Similar to the details of *Golden v. Prince*, the case specifics of *Sturges v. Crowninshield* included a debtor who had pleaded a discharge of debts relating to two signed promissory notes. The notes had been voided by the creation of another state bankruptcy law that New York had passed

99 A Bill for the Relief of Insolvent Debtors within the District of Columbia, 1802:2, Early American Imprints Collection, Utah State University Merril-Cazier Library, Logan, Ut.
100 Ibid., 7.
for the intended benefit of state insolvents.\textsuperscript{101} During its journey up the judicial ladder, the state court had sided with the debtor, providing the reasoning that if the power to pass uniform laws was not utilized by the national government then the states could not be forbidden to pass a law resolving financial concerns.\textsuperscript{102} In their ruling, the Supreme Court resolved this apparent discrepancy and set to solidify the judicial preference for the creditor.

The claims made by the Supreme Court were a continuation of the same arguments made in the 1814 \textit{Golden v. Prince} decision. Again, the Court ruled the New York law unconstitutional on the grounds that it had disrupted the authority bestowed upon the national government by the Constitution. Article 1, section 10 of the Constitution specifically reserved the right to create and pass bankrupt law to the federal body. Also at issue was the fact that, like the failed legislation before it, the 1811 law under inspection effectually liberated the debtor from the money he had been held liable. Because the act destroyed a pre-existing contract, it was deemed unconstitutional.\textsuperscript{103} But the ruling was not a complete duplication of its predecessor and unique to Marshall’s decision was an argument that categorized state bankruptcy laws as something that opposed the governing cultural philosophy of the country.

The issue at the core of the opinion of \textit{Sturges v. Crowninshield} was the assigned difference between retrospective and prospective intent and the realist function of bankrupt and insolvent laws. Justice Marshall defended the implementation of a host of state insolvent laws that had emerged in almost every state during the early nineteenth

\textsuperscript{101} Sturges v. Crowninshield, 17 U.S. 122 (1819).
\textsuperscript{102} Sturges v. Crowninshield.
\textsuperscript{103} Sturges v. Crowninshield.
century, as they exempted minor offenses from deathly stays at the Gaol. These laws were valid because they were only rectifying the physical punishment of the debtor and did not remove him from what he owed; these laws were prospective in their function. The key difference between insolvent and bankrupt provisions was that “a bankrupt law established a system for a complete discharge of insolvent debtors. While an insolvent law is an act occasionally passed for the relief of the debtor’s agony.” The challenged law was found to be a bankrupt law because after the debtor had given all of his property and assets toward the repayment of the debt, the state then absolved him of his remaining balance. The nullification of the remaining obligation was a retrospective action that had been previously defined as contrary to the wishes of the Constitution.

In order to persuade commercial participants to view retrospective legislation as hazardous, Justice Marshall likened the consequences of retrospective law to the conditions of Ex post facto laws, something that had been explicitly outlawed with the creation of the Union. Once the relationship between retrospective bankrupt laws and Ex post facto law was established, Justice Marshall could conclude in good confidence that the New York bankrupt bill was unconstitutional due to it being found tyrannical. The ruling of Sturges v. Crowninshield strengthened the dominance of the creditor within the market system by reinforcing judicial commitment to the idea of an unbreakable contract and by repeatedly reminding the nation that the federal body alone reserved the right to propose financial solutions. It would take a change of heart by Justice Marshall nearly a decade later for the debtor to gain ground in the fight for legal sympathy.

104 Sturges v. Crowninshield.
105 Sturges v. Crowninshield.
In the meantime, the rights afforded to creditors were taken advantage in financial cases spanning across the country. In the particular instance of the lawsuit brought against New York residents Edward Gray, Robert Taylor, and Samuel F. Bradford by the very angry John Morgan epitomized the cultural fight taking place between creditors and debtors and afforded a rare glimpse at the perspective of a disillusioned creditor. In the opinion of John Morgan, the set of financial punishments assigned to debtors were too lenient, as “they allowed man to prey upon his fellow man with impunity.”\textsuperscript{106} Morgan knew this sentiment to be true because he had been preyed upon by three individuals who were not punished to the level Morgan had desired. Spurned by the ineffectiveness of state law, Morgan took to publishing his grievances in an attempt to warn the City of New York of the villainous character of C. and A. Conrad and Company. In the article published by Morgan, it is learned that Edward Grey, Robert Taylor, and Samuel F. Bradford had been businessmen who, in order to establish better lives for themselves, had willingly committed fraud for several years. Despite knowing that their company was bleeding money at an alarming rate, all three men advertised their business as solvent, collecting investment money that they then spent on luxury goods rather than on the company.\textsuperscript{107} This continued habit of promoting the insolvent company as profitable persisted, well after the company had filed for legal insolvency, costing its investors heavily when they should have been provided the information necessary to avoid the loss of capital.

\textsuperscript{106} Edward Gray, Robert Taylor, and Samuel F. Bradford being sued for insolvency and fraud by John Morgan, 1813: 9, Early American Imprints Collection, Utah State University Merril-Cazier Library, Logan, Utah.
\textsuperscript{107} Ibid., 29.
To prove that the actions of the company were fraudulent, Morgan compiled a list of facts that were known by the owners at the time of their declaration of solvency. That list was composed of the following arguments: That the company men knew that a high amount of their notes were circulating in the market, that they were paying at the rate of about 10,000 dollars in annual interest, that while they accrued debt they had not performed any business for several years, that their credit reputation was so low as to only garner monies from strangers unaware of their personal practices, that their checks were no longer accepted at chartered banks, that their stock had become worthless as the number of shares were increasing faster than their revenue projections, and finally that they were intentionally keeping the total amount of their loan contracts a secret.\footnote{Ibid., 30.} Morgan estimated that the total amount of money that the three men had fraudulently obtained was close to 40,000 dollars. In 1813, the year that saw Morgan suffer financial ruin due to the unethical actions of Edward Gray, Robert Taylor, and Samuel F. Bradford, there were not enough legal avenues for Morgan to retrieve his money. Although the amount of money at play in this example was unusual, the situation does demonstrate the typical arguments made against debtors during this time.

The legal and popular world of the debtor was significantly different by the year 1820, as subtle changes in the cultural image of the debtor became apparent and the favorability of English tradition started to wane. The transformation of the debtor narrative is evident on both the judicial and popular level. As the number of consumers borrowing capital increased, it became more difficult to label the debtor a villain. And as the number of commercial failures grew in number, causation for bankruptcy moved
away from the personal actions of the debtor and onto the spontaneous nature of wealth in an unregulated free market system.

A change in legal rhetoric can be seen taking place as early as in the opinion of the 1827 case Ogden v. Saunders. In the majority opinion, written by Justice Washington, the Supreme Court provided its first argument in defense of the debtor. The ruling surprised many, including the creditor’s legal team, who had argued their case solely on the precedents established by earlier rulings made by that same group of judges. The creditor argued that the debtor’s relief should be found unconstitutional due to the act protecting him being a state bankruptcy act, something that had been ruled null in 1819, and that the state legislation was retrospective in that it cancelled the obligations of a contract established prior to the creation of the law.\textsuperscript{109} The creditor’s lawyers must have been shocked to hear that Washington had ruled against them, and that he had made ground in reversing his foundation for debtor/creditor relationships.

Justice Washington had experienced a shift in his priorities, but did not reverse the entire doctrine set down by his previous decisions. In its ruling, the court had reversed the judgment of the lower court, “holding that the bankruptcy law, which operated prospectively, did not violate the United States Constitution.”\textsuperscript{110} This did not change the court’s stance on prohibiting retrospective legislation or the importance of contract, but it did provide an argument for state’s rights that had previously been discarded. And in doing so, Washington found a way to further distinguish what constituted retrospective legislation. The court achieved this by creating a new sub-category of contracts; citing the

\textsuperscript{109} Ogden v. Saunders, 25 U.S. 213 (1827).
\textsuperscript{110} Ogden v. Saunders.
legal difference between contracts and laws pertaining to the obligation of those contracts. The error, as recognized by Washington, was that past conclusions were in error because they had “not distinguished accurately between a law which impaired a contract, and one which impaired an obligation.” What Washington meant when he included the term “obligation” was a law that accompanied a contract that would bind the parties to perform their agreement. This new qualification for classifying a law as retrospective allowed for a greater number of state laws to go into effect.

By providing a specific legal framework for determining retrospective legislation, the Court majority had provided an avenue of legal sympathy for insolvents looking for a way out of abusive contracts. However, this stride would amount to nothing if the Supreme Court did not also provide for the creation of bankrupt laws by interested state bodies. Disagreeing with the arguments of Marshall in the Sturges case, Justice Washington overturned the preservation of federal authority regarding the creation of financial policy. For Washington, the task of the judiciary was to evaluate state policy to make sure that it did not negatively affect the “validity, construction, or enforcement of contracts” and to void cases of retrospective policy. If the state law was found valid, and there was found to be no competing piece of national legislature, Washington concluded that a state bankrupt law did not violate the Constitution of the United States. The 1827 decision reached in Ogden v. Saunders received a mixed reaction from the public, who were glad to have the ability to create state bankrupt law but still

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111 Ogden v. Saunders.
112 Ogden v. Saunders.
113 Ogden v. Saunders.
114 Ogden v. Saunders.
unsatisfied due to their declared, and subsequently ignored, desire for a national bankrupt act and their want for a law that would be retrospective and prospective in its function. By the year 1827, federal representatives were still in disagreement over whether bankruptcy policy should center on powers given to the creditor or the debtor.

The Supreme Court cases observed demonstrates the broad cultural change American consumers underwent concerning the idea of debt. Over the course of the judicial period previously observed, it is apparent that the Supreme Court was at first representative of public opinion when it ruled in favor of the creditor on the importance of contract and the need for national oversight. But as the legal rhetoric of the court became more entrenched in the debate over the allowed reach of bankrupt laws, its connection with the public began to weaken. The difference of opinion concerning the legality of retrospective bankruptcy law proved to be a catalyst for dispute between popular and judicial objectives. As had been the case throughout the history of the debtor narrative, New York established itself as a vocal proponent for change in the goals of state and national bankruptcy law.

By the year 1819, New York City consumers started requesting the creation of national bankruptcy legislation. As seen in the account of Mr. Morgan and his debtors, unregulated commerce had resulted in dramatic acquisitions of wealth and misunderstood recessions that left economic players without a means of solvency. Third party organizations such as insurance companies were providing a level of stability, but more was needed. In a series of published remarks on the desire for a bankrupt law, New York consumers presented a public argument for the creation of both retrospective and national
legislation. These remarks challenged the determinative logic of the Supreme Court. Namely, the public did not share the court’s enthusiasm for Constitutional reverence. The national governments continued inaction and the Court’s hesitance toward letting New York vote on a bill of their choosing led some New York consumers to reduce their respect for the Constitution. As one New Yorker is quoted as saying, “Was not the Constitution itself an instrument of experiment? And ought it not to meet with a liberal interpretation on a question so highly important to the interests of the people?”¹¹⁵ The change in the public perception of debt had to do with the experiences of consumers. For many, the chance of success seemed more whimsical than a product of hard work as the century progressed and many had the experience of knowing an honest man, who despite his best efforts, had succumbed to insolvency. Debtors were no longer viewed as immoral villains but instead were neighbors, family, friends, and in some cases, community leaders.

The most significant development during the nineteenth-century was the popular rejection of the British sentiment that had emerged in the years following the ratification of the Constitution. If capitalism was to be understood as a system of high-risk and chance; a system that favored the silly and ignorant as it also at times punished men of good capabilities and ethics, then labeling a debtor as a criminal may have resulted in the further punishment of an undeserving man.¹¹⁶ Along these same lines, many of the public reasoned that retrospective bankruptcy law was needed to correct contracts made by

¹¹⁵ Remarks on the bankrupt law to which are added the proposed amendments of Hopkinson and Webster of Civis, 1819: 22, Early American Imprints Collection, Utah State University Merril-Cazier Library, Logan, Ut.
¹¹⁶ Ibid., 42.
untrustworthy creditors. If the creditor could be immoral or disingenuous when creating a contract that willfully set up the insolvency of the borrower, a law would be needed that could free the debtor of his contract. For these reasons the public rose to the defense of a national bankrupt law in the United States adhered to public policy, it stood the best chance of advancing justice and sound morals, and it would allow hard working merchants a second chance to contribute to their communities.  

The financial, religious, and social justifications for national policy would not be taken seriously until 1898 when the Republican national congress passed the first long-term national bankruptcy act. The absence of federal action during the early American republic resulted in a market environment characterized by radical swings of prosperity and depression and a public that experimented with a multitude of legally permissible solutions. The use of financial history allows for the unique history of American financial culture to be observed as a pair of adjacent histories; one composed of judicial precedents, the other of popular experience. The transformative nature of the debtor in American culture was the product of both.

A remnant of the post-Colonial period was the creation and continued use of debtors’ prisons as a mechanism of punishment for financial crimes. Frustrated with the lack of enforcement options, creditors turned to the debtors’ Gaol as a means to extract any hidden property from the debtor by placing him in a state of physical discomfort until he could no longer survive the conditions. When the shift from British sentiment to American concepts of capitalism took place, the debtors’ prison survived the transformation remaining in use for several decades. A consequence of this change of

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117 Ibid., 49.
cultural expectation was that the prisons remaining in the country can be understood only as American institutions as they had departed from their roots. Understanding the place of American debtors’ prisons within a growing antebellum consumer market is the next crucial step in unlocking the history of early American finance. In the meantime, the world of debt and bankruptcy provides an historical context which explains the sudden prosperity and appeal of business and life insurance policies and the growing dissatisfaction towards the federal government.
CHAPTER IV

COURT OF TREASURE: THE PRICE OF FORGIVENESS IN INSOLVENT NEW YORK

New York commercial institutions greeted the turn of the century with an unrestricted free market system that was still characterized by high-risk activity. Frustrated with the lack of economic enforcement options, debtors had turned in vain to the authority of the national judiciary. In the absence of proactive jurisprudence and meaningful legislative regulation, creditors sought to resolve the crisis of market risk by imprisoning those found guilty of debt. They in turn suffered the severe consequences promised by a stay at the Gaol if they defaulted on their contractual obligations, thus learning first-hand the utility of the institution. The continued use of debtors’ prisons by New York creditors is crucial to a complete understanding of nineteenth-century economic development. The place of American debtors’ prisons within a growing antebellum consumer market reveals that the history of early American finance was often marked by the slow recognition of a vocational commercial class, whom creditors and debtors each misidentified.

In chapter II I sketched the legal history and the emergence of third party financial institutions. I now turn to the demography of the Gaol. The demographics of New York City’s prisons are vibrantly displayed in the New York City Recorder Notes spanning the administrations of Pierre C. Van Wyck and Richard Riker from the years 1811 to 1816. In addition to the data collected from the Recorder Notes, detailed accounts in a Monition and Writ Book kept by the United States District Court of New York
during the years 1811-1818 provides an interesting written archive of the goods and merchandise seized by the state for the purpose of resolving outstanding loans. The following chapter reviews these two source materials in detail. In doing so, the results challenge the traditional narrative of the estimated worth of debtors. The detailed accounts illustrate men who borrowed out of expected financial gain and not due to physical necessity.

The misinformed imprisonment of a commercial middle class slowed efforts to discontinue the use of debtors’ prisons. The information preserved in both the New York Recorders Notes and the Monition and Writ Book demonstrates that the practice of imprisonment neither helped repay creditors nor did it successfully deter New York commercial citizens from borrowing sums above their means. The accused, when listed, represented a broad range of merchant and artisan trades that borrowed sums of money greater than what the National Bankrupt Act of 1800 protected. Men listed as debtors in the Recorder Notes and the Monition and Write book were men of ability and that the mean averages owed placed them well above the poor class of citizenry. Of interest is the amount and value of materials seized by the state during the nineteenth-century, as the value of what was seized often benefited state authorities more than creditors. Stated plainly, the mean value received by government and financial officials are often more than the amount owed by debtors. The narrative of early American finance is a story of money lost and money hidden; the amounts of which are startling.

During the years 1811-1816, The New York City District Court was officiated by two men; Pierre C. Van Wyck and Richard Riker. Excluding the year 1814, which is
absent of any entries, the Court presided over by Van Wyck recorded 130 separate hearings concerning the unpaid contracts of 130 guilty debtors. Beginning in the year 1815, and spanning through the year 1818, the New York District Court presided over by Richard Riker saw to the hearings of an additional 76 men and women seeking safe haven under the State’s insolvency acts. In sum, the five years of Recorder Notes provide explanation of the steps New York City debtors took in their attempts to absolve themselves from financial obligation. The total of 206 hearings also establishes the demography of citizens most commonly brought before the Recorder.\footnote{Refer to Table 5: Number of Hearings Each Month and Year from 1811 to 1818 in Appendix A.} The debtors whose accounts have been recorded all sought protection under a series of New York Insolvency Acts which are familiar to the reader (as they are the same Insolvency Acts which were weighed by Chief Justice Marshall’s Supreme Court).

Two sets of Insolvency Acts were used by New York debtors in their appeals for insolvency during the early nineteenth century. Passed on April 4, 1811, the “Act for the benefit of insolvent debtors and their creditors” was an attempt by the New York City legislature to provide an avenue of clemency for the high number of citizens suffering the consequence of borrowed capital. A mere six days later additional relief was provided with the passage of the “Act extending the time for the remission and commutation of certain quit rents and for other purposes” on April, 9 1811. These two acts were invalidated in the District Supreme Court Ruling \textit{Golden v. Prince} in 1814. The number of insolvency hearings peaked in 1811, the year the insolvency laws passed and declined sharply after 1813, as the Acts were first brought under examination and then finally
rejected as unconstitutional. The Number of hearings would again increase under the Riker administration as a consequence of a new wave of state insolvency legislation introduced in the year 1813. Beginning with the evidence gathered in the Van Wyck records, a clear picture begins to emerge illustrating both the process of early American bankruptcy as well as the personal histories of those appealing before the court.

The Recorder Notes for both the Van Wyck and Riker administrations consist of a collection of legal documents organized chronologically. It is worth briefly describing the content of the forms used by each Recorder, for a great deal of the form was composed of prewritten text that was the same for every case. From 1811 until 1813 the hearing form was a two page document that first disclosed the qualities of the accused and then sought to justify his legal forgiveness. The Van Wyck Court document, used from 1811 to 1813, after notifying the recipient of the name of the current Recorder of the City of New York, left blank for Van Wyck to then list the name and current occupation of the debtor seeking financial discharge. The form then provided the date upon which the debtor in question had presented his petition to the Court. By seeking protection under the Insolvency Acts established in 1811, the debtor was seeking an agreement that his estate be assigned and proportioned amongst his creditors in exchange for a financial clean slate. Referred to as the petitioner by Van Wyck, the imprisoned had to first disclose a full account of the names and amounts owed to his creditors and then swear to the truth of his misfortune by subscribing to an oath of poverty. Once the plaintiff successfully made his personal financial history known and swore that he legally was without a

\[119\] Refer to Table 5: Number of Hearings Each Month and Year from 1811 to 1818 in Appendix A.
method of full payment, the New York Recorder was then ready to meet with the list of creditors to discuss an equitable solution.\textsuperscript{120}

The hearing form used by Van Wyck had saved spaces for him to enter all of the information concerning the petitioner. On the form, Van Wyck would certify that he had received the petition, established the validity of the debtor's financial history and remaining amounts of debt, determined that the creditors had been notified of the upcoming insolvency hearing, and successfully administered the debtor's oath to the imprisoned. The second half of the document was concerned with the creditor's response and the final judgment of the Recorder. Upon notification that their debtor was seeking absolution, any creditor awaiting repayment was entitled to meet with Van Wyck to discuss the future of the borrower. Van Wyck listed the time and day that this meeting took place, with the form notifying the reader that the goal of the hearing was to "shew (sic) cause why an assignment of the said petitioner's estate should not be made, and be discharged according to the directions of the acts aforesaid."\textsuperscript{121} It is important to note that the prewritten portion of the form assumes that no sufficient cause will be presented by the creditors. The recognition that the creditors were not expected to provide a compelling reason for continued imprisonment indicates that there was a high level of turnover within the prisons. The primary role of the New York City Recorder was to equitably distribute the debtor's estate amongst his creditors. Wyck would record the names of the creditors present at the hearing who were to collect the possessions and then exempt the debtor from having to part from certain of his possessions. Citing the

\textsuperscript{121} Refer to Figure A1 in the Appendix.
inventory and estate accounts, the form pre-established that a debtor’s wearing apparel, his bedding, and the tools of his trade that were necessary for he and/or his family were not confiscated. Of special interest is the documents persistence that the debtor be allowed to keep the arms and accoutrements which are noted as being required by law for those citizens participating as a member of the state militia. Voluntarily stripped from everything but his bedding, clothing, and gun, the debtor was now at the mercy of the Recorder and his notarized ruling found at the conclusion of the report.\textsuperscript{122}

The execution of the debtor’s estate was followed by The Recorder administering oaths to the creditors who were awarded ownership of the estate. Once the oaths and the property had been successfully recorded, Van Wyck would sign a statement that read: “Now therefore, know ye, that I, the said Recorder, according to the acts aforesaid, do order and adjudge that the said (Name of debtor) be discharged, and I do hereby discharge him from all debts due from him.”\textsuperscript{123} The hearing form concluded with room for Van Wyck to place his official seal and list the date upon which his ruling was made. It is apparent from the organization and construction of the form used by Van Wyck that the Court prepared to handle instances of financial appeal in a method that would ensure fast rulings. As Recorder, Van Wyck was not expected to exercise much judgment, instead being accountable for filling out a form of prescribed questions and answers that resemble a checklist more than a judicial hearing. Even so, Van Wyck often neglected to successfully fill out every part of the form. Van Wyck effectually disproved the expected utility of a standard application by regularly leaving out state-requested information. Van

\textsuperscript{122} Records, 1811-1813, 1816-1818.
\textsuperscript{123} New York City Debtors 1811-1813 1816-1818 page 3.
Wyck would serve as the New York City Recorder from 1811 until 1813. With few exceptions, the cases that came before the recorder followed the above narrative.

The data collected from the Van Wyck years help to establish a record of the various trades worked by those who sought legal protection from debt. The study is left with 130 hearings authorized by Van Wyck from 1811-1813. These records can be organized by both the year in which they occurred and by the type of occupation that the insolvent was listed as having upon the day of his petition for release. When organized by occupation, several conclusions can be made concerning the demography of New York insolvents during the years 1811-1813. The first observation that must be made is that Van Wyck left large omissions in the forms. Out of the 130 hearings he recorded, a shocking 46.9% of the forms (60) left unlisted the occupation of the petitioning insolvent. What the records do prove, in spite of this lapse in accountability, is that the remaining 53.1% of petitioners had a recorded artisan trade or merchant backgrounds. Twenty-six of the filed petitioners were recorded as having been merchants, constituting 20.3% of the total entries. A series of other more specific artisan specialties were listed with insolvent men ranging anywhere from educator to baker to carpenter. If it is assumed that many of the 46.9% of unlisted entries represented poor or unskilled citizens, it would still construct a culture of debt comprised of a majority of artisan/merchant laborers. The number of insolvents listed as having had a trade recognizes a class of debtor that did not consist primarily of the impoverished but rather those failing to find success within a growing commercial middle class. When state insolvency laws were enacted in the State of New York, primarily artisans and merchants sought legal protection for contractual

124 Refer to Table 6: Number of Hearings by Occupation and Year in Appendix A.
debt that they had accrued due to the necessity of capital for success in trade. The collection of New York City Recorder notes reveals a class of citizenry who were equipped (either materially or skill-wise) to have access to substantial credit. They are not the Dickension poor of lore. After judgment, they were left with the tools of their trade and an absolved financial past. Each made their way back into the free market system whose siren call of success beckoned them towards new and higher levels of risk.

The steady instances of insolvency filings was discontinued throughout the year 1813, as the federal government ruled the state insolvency acts contrary to the workings of the Constitution. Without grounds for legal resolution, New York debtors were without grounds to protest their imprisonment and subsequently, Van Wyck no longer had any hearings to conduct. There are no entries preserved from the year 1813, as debtors and creditors awaited new attempts by state and national bodies to resolve the problem of contract debt and bankruptcy. The wait was not long; New York quickly proposed and passed new insolvency acts in April 1813.

Despite the new legislation, insolvency hearings did not resume until the year 1815. Apparently it took considerable time for the city to first deconstruct the infrastructure created to compliment the 1811 legislation and then create and implement a different infrastructure that did not violate the federal court’s ruling. When the Recording office resumed, this time under the leadership of Richard Riker, the legal forms used by the court, the qualifications for discharge, and the consequences for those convicted of insolvency had changed considerably. Less is known about citizens who sought protection under the April 1813 Acts who were at the mercy of a system that recognized
the right of the creditor to petition for insolvency relief on behalf of the debtor, resulting in less privilege than was found in the Van Wyck years. And while New York debtors were still granted insolvency protection, the price they paid for forgiveness grew increasingly steep.

Beginning in 1815, Richard Riker held the position of New York City Recorder for issues of insolvency pertaining to the District Court of New York. With the transition from Wyck to Riker, the New York legal procedure experienced several significant changes in both the way it conducted insolvency hearings and the types of tasks it assigned to petitioning debtors. From 1815-1818 New York insolvents took use of the provisions made possible by the insolvency acts of 1813. However, similar to attempts at state solutions which came before it, the acts made available to New York citizenry would be available for only a brief time, creating a system of winners and losers, determined by those who were simply fastest to seek protection from debt.

The legal procedure for those seeking insolvency relief in the year 1815 looked very different than the process implemented during the Van Wyck period. Of primary difference was the transition from a process that was controlled by the actions of the accused debtor to a system that rested the avenues of freedom upon creditors. In order to qualify for a hearing before the Recorder, an imprisoned debtor was required to post the event of his hearing to the public for a period of up to ten weeks prior to the Court date. And whereas during the Van Wyck period the debtor’s estates were proportioned to satisfy a portion of each represented creditor in order to satisfy the conditions of the debtor’s release, the Riker court defended the position that in order to achieve release
from imprisonment, the insolvent party was responsible for accruing enough possessions to cover at least two-thirds of the sum owed to all recognized creditors. This change in legal policy promised the creditor a value on his decisions to lend capital while also promising certain members of the debtor class a longer stay in the debtors’ Gaol. A third significant procedural change was the permission of creditors to collect on an owed account without physically attending the insolvency hearing. Instead of listing their grievances or accounts owed in front of the Recorder, creditors could observe the post of a debtor’s hearing and then nominate, by majority vote, a representative who then spoke on behalf of all the creditors’ interests. This effectively made each court transaction one between a sole insolvent and a sole creditor, simplifying the legal transaction of private estates. The changes enacted by the Riker Court did more than just obstruct the aims of imprisoned debtors, but also limited the amount of information transcribed concerning the identity of those seeking sympathy. Stated plainly, the Riker transcripts do not list the previous occupation of the insolvent debtors. Without being able to collect a broad range of data to establish the trades of those filing for insolvency beginning in 1815, details of the identity of debtors must be discovered through only the personal histories of those petitioning the court.

The case of Daniel Johnson provides a typical routine for what became standard trial procedure. Prior to his audience with Riker, Johnson had been in prison for a prescribed term of no shorter than sixty days. Upon the sixtieth day of imprisonment, one of Johnson’s creditors, Archer Collard, petitioned for the relief of Johnson by arguing that keeping the insolvent in prison was not in the best interests of his finances because
the property still owned by Johnson was “under an apprehension that the estate of the
said insolvent would be wasted or embezzled.” Collard testified that the amount of
money left on the owed contract was a sum less than 25 dollars and further suggested that
it would be in the best interest of the state for the Recorder to distribute the value of
Johnson’s estate amongst his creditors in a manner consistent with the April 1813
insolvency act titled “Act for giving relief in cases of insolvency.”

Adhering to the request of Archer Collard, Riker granted Daniel Johnson
permission to post the date of his hearing, and after the ten week period had passed, set to
distribute Johnson’s property until a two-thirds sum was totaled on behalf of the
interested parties. The remaining estate was awarded to the sole creditor, Benjamin
Tucker, who is listed as having been a merchant. With all of the conditions met for his
release, Daniel Johnson was permitted a release from the Gaol having been successfully
picked over by his creditors. Just as was the case with the hearing form used by Wyck, a
majority of the text found on the Riker transcripts were prewritten. The discharge of
Johnson read, “Daniel Johnson is discharged from all debts due by him at the time of the
said assignment, or contracted by him before that time, though payable afterwards, and if
in prison, from his imprisonment.” Due to the efforts of his creditor, Daniel Johnson
was released from the Gaol on the 29th of February, 1816, and returned to economic
activity. The process of imprisonment, petition, distribution of assets, concluding with

125 Ibid.
126 Records, 1811-1813 1816-1818, 272.
127 Ibid.
128 Ibid.
the release of the debtor continued with an amount of generality as the years progressed, even in the single case involving a women debtor.

The appearance of Rebecca Rosseter is startling. She is the only woman to appear in the Recorder notes at any time from 1811-1818. At the heart of the hearing described by the Riker transcripts, the hearing of Rebecca Rosseter followed the standard set of procedures; it is that commonality of her hearing that is of vital significance. As a convicted debtor, Rebecca Rosseter was treated with complete equality when contrasted with her male counterparts. She was convicted of a crime in the same court, sentenced to a stay in the same Goal, kept in that prison for the legally required amount of time, and then saw to the dissolution of her remaining estate and assets as required by state law. Legally, Rebecca Rosseter’s actions were weighed no differently than if she would have been a man, illustrating the universality of debt in the early American republic.129

As was evident during the Van Wyck years of recording, the Riker court was not completely stagnant during its evaluation of convicted debtors. Small changes did take place in the rhetoric used by the Court in dealing with discharge hearings. The phrase “praying for relief” is used for the first time in the Riker notes in the 1817 case of Roderick Curtis, who is recorded as having prayed for his release from prison after being convicted as a debtor. The hearing notes still mention that the sum owed to the creditors petitioning on his behalf is equal or less than twenty-five dollars sum, however, the amount of documentation is less than was displayed in earlier reports. The differences continue in the phrasing of Curtis’s discharge, with Riker ruling, “I do hereby discharge the said insolvent from imprisonment and from all debts due by him at the time of the

129 Records, 1811-1813, 1816-1818, 294.
said assignment or contracted for before that time though payable afterwards agreeable to the directions of the said act…”

Unique to this statement, is the choice of Riker to make Curtis’s release from imprisonment among the first actions taken by the court. Less pertinent to the court and to the needs of Curtis is the absolution of his financial past; of primary concern is his release from the horrors experienced in the debtors’ Gaol.

The court procedure continued to experience notable change during the final year of Riker’s administration. In the notes pertaining to the hearing of George Riddle, Riker then referred to himself as “Richard Riker Esquire Recorder of the City of New York” indicating that the title of his position, and presumed prestige, had grown. Absent from the official record is any mention of a required amount of jail time and any documentation on when George Riddle had been initially prosecuted. Riddle was still seeking safe harbor under the insolvency acts established in 1813 but the completion of the required tasks does not seem to garner as much notice. Apart from the items removed from the account, the notes on the George Riddle case included new segments of text. Now included in the conversation of his creditors was the recognition of any foreign debts that had been contracted by Riddle prior to his incarceration, as well as the promised discontinuation of those contracts should Riddle receive legal insolvency.

The recognition of foreign debt is of interest because the incorporation of foreign balances attests to the far reaching effects of market participation as well as the rising sums these debts had on a New York citizen’s financial history. The totals owed on

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130 Records, 1811-1813 1816-1818, 302.
131 Records, 1811-1813 1816-1818, 346.
132 Records, 1811-1813 1816-1818, 347.
contracts overseas were no longer ignored when reviewing an application for financial discharge.

The standard procedure for hearings concerned with those imprisoned for crimes of debt was adhered without much deviation by the New York City Recorders, whether it was Van Wyck or Riker following those guidelines. From hundreds of cases listed in the collection of hearings, few stand out as having been truly unique in the way they were handled. Observed broadly, the data represented in the Recorder notes reveals a debtor society composed of a merchant plurality.

The data collected concerning the Van Wyck and Riker Recorder sessions reveal several broad conclusions concerning the behavior and nature of early attempts at New York insolvency procedure. The first is a correlation between the number of cases heard immediately after state insolvency efforts had been established and the years that the laws were under review by judicial bodies. Out of the 206 cases recorded through 1818, one hundred and eleven (54%) of those cases were resolved during the year 1812; with 52 of those cases being heard during the single month of April.\(^\text{133}\) In the years 1813-1814, as New York began deconstructing its initial financial legal system and creating new standards of practice the number of debt cases heard by the State was reduced to a single occurrence (0.5%) in 1813. Not until the year 1817, did the number of hearings make noticeable gains.\(^\text{134}\) Aside from the sum number of hearings presided during the terms of Van Wyck and Riker is the frequency of cases heard in a particular month of the year. Thirty-two percent of all hearings were recorded during the month of April, followed by

\(^{133}\) Refer to Table 5: Number of Hearings Each Month and Year from 1811 to 1818 in Appendix A.
\(^{134}\) Ibid.
the months of May (13.1%) and March (12.6%). With a majority of these spring cases being heard in 1812. This pattern reveals that, for those New York citizens seeking debt forgiveness, the action of filing a petition for insolvency immediately following a newly enacted state insolvency policy was common place. However, the duration of time spent imprisoned could have more to do with the season of their initial prosecution than the severity or quantity of contract obligations.

The New York Recorder notes centered on the personalities and structure of the hearings for insolvency release; The Recorder Notes did not document the amount of money owed by each petitioner, instead focusing on the debtor, the repossession of the estate and the benefitting creditor. For evidence concerning the amounts of money owed and the types of property seized, the information found in the New York City monition and writ book provides a series of crucial elements unavailable in the Recorder notes. Data taken from the monition and writ book complete the argument for an unrecognized and undervalued middle class population of debtors. The amount of money a debtor owed explains the extended time taken to discontinue the practice of imprisoning for crimes of debt during the early American republic.

I organized the data found in the monition and writ book into the following categories: Date of entry, amount owed by the defendant, and the result of the detainment of the defendant and or the amount paid toward the amount owed. The data shows the average debt owed by those recorded each year, and the data provides attention to the diversity of goods which the Court seized in order to satisfy the amount owed to the plaintiff. Both amount owed and the amounts seized fortify the argument that most

\[135\] Ibid.
debtors did not fall under the classifications of poverty during the nineteenth century. The men referenced in this chapter would not have qualified under the relief measures promised within the National Bankrupt Act of 1800, should that Act have survived past its brief lifetime. The data gathered from the monition and writ book supports the conclusion made in chapter one, that the 1800 National Bankrupt Act was a turning point in early American financial history rather than a resolution to the crisis of debt. The monetary means and sums preserved in the monition and writ book suggest the convergence of a middle class of merchants and artisans that had eluded legal recognition during the early nineteenth century.

The information included in the section discussing the types and amounts of goods seized by the state plaintiff required further organization. The creation of a meaningful system for analysis of the various goods, quantities, values, and vessels seized during the years 1806-1813 required the use of a series of general and specific classification categories for the listed commodities. I formed the following categories: Broad Terms, Perishable Goods, Raw Materials, and Mercantile Items. In addition to these four classifications of goods, I created the following specific classifications to better describe certain perishable goods, and mercantile items: Alcohol, Meats and Animal Products, Agricultural Goods and Natural Minerals, Animal furs, Clothing and Textiles, Cooking and Food Preparation and Vocation Tools.\textsuperscript{136} Using these classifications it is possible to record the diversity and chronological trends in amounts and types of goods seized.

\textsuperscript{136} A complete list of the General/Specific Classifications Categories can be found in Appendix B.
As discussed previously, the National Bankrupt Act of 1800 provided impoverished debtors owing an amount less than two hundred dollars clemency from their contractual obligations. Those safeguards would not have helped those who are recorded as having been prosecuted for debt during the years 1806-1813. Although the result of the cases varied, the mean values owed by those in the early nineteenth century illustrate that a significant amount of capital was borrowed by the average New York City debtor. As early as 1806, the mean sum owed by a New York debtor was $2,147.77. By the year 1810, the average sum had risen to $14,816.66. Taken together, the average debtor, during the eight years detailed in the monition and writ book, owed an average sum of $5,767.58.137 This average is consistent with the argument for an aspiring middle class demography proposed earlier in this chapter.

The average dollar amount of each case often prescribed the result of that case. While many of the cases were left unresolved, the countermanding of debt was common practice by those seeking a resolution to owed contracts. What made the act of countermanding distinct from a legal discharge was the action of the ruling. A countermanding resulted in the remaining balance owed by a debtor to be absolved, while a discharge nullified the contract. Over the eight year period, cases which were countermanded held the average value of $2,755.01.138 The action of countermanding effectually removed the required payment of the debt by the insolvent without the full reimbursement being made to the creditor. The total sum recorded as countermanded in the monition and writ book was $2,589,705.68; or roughly one-eighth of the sixteen

137 Refer to Table 4: Mean, Median, and Modal Numbers in Appendix A.
138 Refer to Table 2: Average Dollar Amount of Each Case by Result and Year in Appendix A.
million dollars under observation during 1806-1813. The average amount lost to legal discharge was even higher, averaging an amount of $11,798.31, accounting for a net loss of $471,932.40. In sum, less than $10,000 of the sixteen million dollars was fully reimbursed to the creditors seeking the fulfillment of their contracts.

When looking at the mean, median and modal values of seized materials during the years recorded in the monition and writ book, a few characteristics create a lasting impression. First, that the year 1810 experienced a significantly greater number of high-value cases of debt than both the years following and preceding it. The dramatic mean values of 1810 contrast against the total sum of hearings established using the recorder notes, which saw the largest number of cases throughout the 1812 Van Wyck term. Second, although the mean value of debt showcase a dramatic range of variation from year to year, the median and modal values exist during the eight years within a contained range. In every year except 1808 and 1809, both the median and modal values were below $2,000. What the figures illustrating the overall values of seized material show is that the values of seizure peaked during the years 1808-1810 and then dipped back to 1806 levels by the year 1813. Overall, the average mean value was $5,767.58 and the overall median value was $1,100.00. This suggests that a select number of large contracts are responsible for the rise in mean value. Although the mean values of seized goods began falling in 1811, the number of cases that would have benefitted from the measures in the National Bankrupt Act was also reducing in frequency.

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139 Refer to Table 3: Sum Dollar Amount of All Cases by Result and Year in Appendix A.
140 Ibid.
141 Refer to Figure A2: The Mean, Median, and Modal Values of Seized Material By Year of Hearing in Appendix A.
142 Ibid.
In order to illustrate the amount of cases that would have qualified for protection under early efforts of state insolvency legislation I organized the data into a figure showing the number of cases each year that owed a sum less than $500. Those owing less than the described amount would have found success at either being discharged from the remaining balance or would have been eligible for the protections provided by the debtors’ oath. Of the cases listed during the years 1806-1813 in the monition and writ book, 70.2% of the cases of debt exceeded a value of $500. During the year 1809, 94.1% of the cases documented would not have qualified for the protections promised by the debtors’ oath. In the year 1811, the year that saw the highest number of cases (795), 534 of those cases were valued at an amount higher than $500. In other words, during the year of containing the highest number of hearings, 67.2% of the debtors would not have been legally recognized as protected under insolvency protection laws proving that those who owed money in the early nineteenth century were members of a society who could find access to large amounts of borrowed capital.

There were numerous recorded outcomes. The monition and writ book preserved the results of 2,808 cases of debt, prosecuted against the debtor on behalf of the United States Government: 28% of the cases, or 795 individual occurrences, took place during the year 1811, with an additional 21% of the cases being heard during 1808 and 13% heard in 1807. Out of the total sum of cases, 1,715 (61.1%) were left blank, indicating that a formal result had not been found by the court. Nine-hundred-forty cases were countermanded. Sixteen cases settled. Forty cases received a formal discharge, and

143 Refer to Table 4: The Mean, Median, and Modal Numbers in the Appendix A.
144 Refer to Figure A3: The Amount of Cases Exceeding $500 Dollars from Year Totals in Appendix A.
145 Refer to Table 1: Number of Cases by Result by Year in Appendix A.
13 cases ended in a mistrial when the debtor could not be located and served with the notice of hearing.\textsuperscript{146} The cases left blank account for 75\% of the recorded value of revenue listed during the eight year period. $12,169,087.57 did not result in a legal exchange between plaintiff and his debtor. The remaining sum of monies sought was again reduced by $2,589,705.68 in countermanded rulings, $471,932.30 in formally discharged cases and a sum of $226,148.08 in cases that could not be heard due to the debtor escaping notification of the financial hearing. In total, 95\% of the value recorded for each hearing was left unpaid or unresolved by the debtor. The trend of rising sum dollar amounts of result per case per year,\textsuperscript{147} mixed with the demonstrated inability of the system to successfully collect owed sums is indicative of a system that was unsuccessful in satisfactorily providing for either the creditor or debtor.

The mean value owed for each type of ruling offer conclusions regarding the high number of unresolved cases and the total sum of money lost to legal countermands and discharge. For example, although the total value for cases discharged was $471,932.40, the mean value for cases ending in legal discharge was $11,798.31 and constituted only 3\% of the total monetary value. The countermanded value, noted as being almost one-eighth of the total revenue expressed in the monition and writ book, holds a mean value of only $2,755.01 which is representative of only 1\% of the total value. Stated plainly, when observing the mean and sum amounts of hearings and their monetary value it is established that the total sum lost was a result of the frequency and average amount associated with each case type. The data indicate a positive relationship in the rate of

\textsuperscript{146} Refer to Table 1: Number of Cases by Result by Year in Appendix A.
\textsuperscript{147} Refer to Figure A4: The Sum Dollar Amount of Result per Year in Appendix A.
change in the number of hearings and the gradual rise in the mean and sum amounts owed for various results of legal action. Thirty-three percent (33%) of all cases tried resulted in a ruling of countermanding, providing the best explanation as to what happened to those seeking financial insolvency by the court, should the court reach a ruling. The invalidation of the insolvency acts of New York and the refusal of the federal congress to pass meaningful bankruptcy legislation left the progression of debt insolvency at a standstill. Why the government was slow to respond to what seemed like a commercial crisis may find an explanation when looking at the types and quantities of goods seized by the government during the early American republic.

The data presented in the monition and writ book was not solely monetary. Of equal interest is the port authorities list of quantities recorded when they seized the ships of those being prosecuted for debt. I have divided this section of the monition and writ book into general and specific category classifications in order to make use of the quantities seized. For the sake of this study, I will use of the category “Broad Terms” when discussing generic, non-descriptive entries made by the recorder. The remaining items will be presented within three major classifications: Mercantile items, Perishable Goods, and Raw Materials. In sum, 1,384 volumes of goods were seized by the government of the United States during the years 1806-1813 as well as the vessels that had transported.

While the units of measure used may have been commonly understood, they are neither summative nor convertible across different unit types. Nowhere in the transcripts

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148 Refer to Figure A5: Occurrence of Case Type by in Appendix A.
149 Refer to Table 7: Number of Instances of Each Type of Item Seized in Appendix A.
does their appear to be any attempt to aid the reader in discerning the physical or spatial
difference between a Bale and a Box, or a Trunk and a Cask, a Hogshead and a Plugeon,
a Tierce and a Pipe, or a Chest and a Case. But the 457,635 ½ individual units seized
on these ships prove that there was a profit to be made in the seemingly unsuccessful
system of insolvency hearings. That profit came at the expense of both the debtor and the
creditor for the likely advancement of the government. The seizure of alcohol serves as a
good starting point in the information made available by the monition and writ data. Over
the eight year stretch of time, port authorities seized alcohol on 58 occasions; twelve
instances in 1808, six in 1809, two in 1810, twenty-eight in 1811, and ten in 1812.
These 58 instances took the physical form of: 39.5 barrels, 48 boxes, 258 casks, 672
hogsheads, 2 kegs, 7 matts, 229 pipes, and 914 puncheons of alcohol. This constitutes
an exceptional quantity of alcohol, of which the expected revenue the state now
controlled. Other notable acquisitions were in the possession of mercantile items such as
clothing and textiles as well as the amount of raw materials seized from accused debtors.
There were 84 instances of clothing/textiles seizures during the years 1806-1813, and 134
cases of the seizure of raw materials.

Aside from just the amounts and instances of goods seized for the benefit of the
prosecutor, the data show chronological changes in the economic trades impacted most
by debt seizure. The seizure of agricultural goods and natural minerals consisted of the
top category of goods seized during the year 1808, with 66 instances of occurrence. The

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150 Refer to Table 8: The Amount of Materials Seized by Type of Material Seized in Appendix A.
151 Refer to Table 7: Number of Instances of Each Type of Item Seized in Appendix A.
152 Ibid.
153 Ibid.
second most seized category was clothing and textiles, with the third highest frequency coming from the seizure of vocational tools. However, the following year saw a strong rise in the repossession of raw materials and a 50% reduction in the instances of agricultural goods being seized. The early years of seizure witnessed the taking of perishable goods at a higher rate than more general items of merchandize. Starting in the year 1810, those recording the possessions averted to broad categorizations. In the year 1812, for example, there was a documented 505 instances of merchandise being seized, compared to the next highest frequency of seizure, that of raw materials, at 26 instances. The clothing and textile industries were initially hurt hardest by debt seizure, experiencing 44 of their 84 instances of seizure in the year 1808. The monition and writ book presents an inverse relationship between the amounts seized from those things grown and those things produced. This trend in economic impact reveals that the raw material and agricultural industries were most at risk in the unregulated marketplace as well as the levels of monetary reward that the merchants were expecting to receive from their risk. This holds especially true in the raw materials market, which experienced heavy losses in four of the five years detailed, but none as severe as the year 1809.

The amounts and types of goods seized on the conditions of debt repayment cast the narrative of debt in a different light. The perspective introduced by the collection of seizures shows that while the creditors and debtors were lost under the early system of financial law, the prosecution of financial crimes profited those representing the state. This conclusion suggests that some seizures may have been premature, meaning that

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154 Refer to Figure A6: The Type and Amount of Items Seized in Appendix A.
155 Ibid.
merchandise was taken from debtors still attempting to repay their creditors. The profit and advantages of assuming ownership of everything from animal products to vocational tools to commercial luxuries could explain, in part, the absence of federal bankruptcy legislation. The value of the goods seized may have outweighed the costs of an ineffective legal process. Thus, while little was accomplished in terms of satisfying the sixteen million dollar deficit left by New York debtors, the state acquired large sums of goods and merchandise with evidence that those sums were not redistributed to the group of lenders responsible for the prosecution. The price for insolvency release came high to those wishing sanctuary from the horrors of the Gaol. The price of financial freedom was earned by the debtor surviving the venom of his creditors and the far reaching claws of the state. And yet all of these instances of discharge and sacrifice tell only part of the narrative of debt in the early American republic.
CHAPTER V

BOWLS OF CHARITY: STAYING ALIVE IN THE NEW YORK DEBTORS’ GAOL

For those in the nineteenth-century who sought safe harbor using the 1813 New York state insolvency law, the road to financial recovery was earned through a sixty day stay, or longer, at the Gaol. The history of debt in the Early American republic is not complete until we include the experiences of those imprisoned for their borrowing. Without any property to provide their creditors or any materials for the state to seize on behalf of their debt, prisoners of the Gaol represent a unique perspective on the burgeoning capitalist system. The study of the Humane Society accounts depicts the effects that the legislative and judicial policy debate had on those imprisoned for debt. The relationship between the legal history of finance and the parallel history of imprisonment explain the exclusion of debtors’ prisons from the movement toward enlightened ideals of imprisonment. The failure to achieve success in the free market placed these men in the harshest of physical conditions, often at the mercy of third party organizations and the employees of a privately owned prison system that sought profit from their punishment. However, an antiquated perspective about debt effectively spared financial prisoners from the harsh discipline of modernist criminal reformation. The history of the New York City debtors Gaol runs adjacent with the broad history of early American finance and demonstrates the physical consequences of financial risk.

The individual experience of those imprisoned for their financial failures deepens the discussion of early American financial culture. Whereas in the previous chapter state legal records revealed a commercial class of debtors characterized by the
value of confiscated assets, additional material is provided by reformers who visited the
prisons and documented the conditions of the condemned. Rather than rely on the often
biased accounts of the Gaol glorified in the personal diaries of the debtors, I rely more
heavily upon a collection of monthly reports conducted by the New York Humane
Society. Beginning in May, 1805, and continuing through April, 1815, the Humane
Society reports provide a list of prisoners, the duration of their imprisonment, the general
expenses of maintaining the facility, and the quantities of soup the Society provided for
the continued health of the imprisoned. The documented exchange between the Humane
Society and the prisoners reveals the costs the charitable organization shouldered in their
attempts to keep debtors from starvation. The debtors’ Gaol was privately owned and not
required to provide clothing, bedding, or food rations to its residents. Without the aid of
family members and charitable organizations, those confined in the prison would be
abandoned to starvation. The Humane Society reports suggest that the practice of
imprisoning men for debt was profitable for jail owners because of the compassion of
charitable organizations to provide for those in their care. The conditions of a for-profit
prison drew the attention of reformers, whose documentation of the debtors played a
crucial role in the closure of the Gaol. The utility of the Gaol ultimately came to an end
because of the conditions that had made it profitable.

The efforts of the Humane Society to close the debtors’ Gaol can be viewed as a
cultural response to the economic policies of the previous century. Prior to the signing of
the National Bankrupt Act of 1800, Alexander Hamilton and other Federalists had
established an economic policy that understood debt as a tool to sustain national growth.
Consequently, the successful charter for a National Bank, the ratification of the Jay Treaty, and the domestic taxes placed on whiskey distillers were policies that increased national revenue while purposefully reducing the amount of credit available to the citizenry. The conditional morality of debt took center stage in Federal defense of these policies and was later rebuked by a nineteenth-century appreciation for personal debt as an economic necessity rather than a sinful act.

Between the introduction of the National Bankrupt Act of 1800 and the creation of the Prison Discipline Society in 1830, the history of the debtors’ Gaol assumes an integral role in the history of American financial culture. In the year 1830, thousands had been imprisoned for debt; 3000 persons in Massachusetts, 3,000 in Maryland, 7,000 in Pennsylvania, and over 10,000 debtors in New York. During the early nineteenth century, an estimated 50,000 debtors were imprisoned in the northern and middle states, of which 15% were detained for fines of less than 10 dollars. For those in New York, the practice of imprisoning men for debt was lucrative until the passage of the 1831 statute abolished the use of debtors’ prisons. The use of the debtors’ prisons was at odds with progressive financial policy and attempts to restructure the prison system. And soon, the use of financial prisons was also challenged by the repeal or discontinuation of Federalist economic policies.

Ratified by President Washington during the winter of 1796, the Jay Treaty was the first of a series of national policies that has come to define Federalist. The Treaty should be characterized as more than promising peace between Britain and the newly

157 Ibid.
created United States during the Napoleonic Wars. The Jay Treaty should also be read as an economic document whose value is equal to past political interpretation. The political and cultural debate surrounding the Jay Treaty was a fight over competing visions of America’s commercial future. Found in the treaty are provisions for the removal of British posts in the western territories, the discontinuation of British blockades on American trading ports, and compensations for merchandise seized or destroyed during Revolutionary conflict. The role that contracts and debt play throughout the treaty represent the more general views Hamilton held towards credit. Hamilton’s plans for the future of republican commerce were clear in the months leading up to Jay’s travel to Britain.

Although Jay was appointed the position of representing American interests in England, he did not contribute significantly to the positions he would be defending. The primary author of the positions represented in the treaty was Alexander Hamilton. Of primary importance to Hamilton was that Jay successfully negotiated a treaty of commerce which would allow American access into the British West Indies and further into the continental territories held by British military posts. The treaty expressed the mutual advantages of American commercial opportunities but revealed Hamilton’s aggressive plans for American growth. Should the British accept the commercial treaty, they would have to first agree to America’s vision for its future economic success. Surprisingly, more has been said on the affect the treaty had on the political growth of the country than on the economic importance of the treaties ratification.

159 Ibid., 401.
The debate over the Treaty’s proposed allegiance with Britain at the expense of French, Dutch, and Russian relationships created the context for American political parties. Most scholarship on the treaty details the outpouring of popular sentiment from every region of the republic, with Republicans rising to the defense of French Revolutionaries and the Federalists siding with the reliable strength of the English. Viewed as a political document, historians focus on the political divisions created, in part, as a result of the treaty rather than on the treaty itself. The treaty debate overtakes the history of the actual treaty. A strong example of this is the work conducted by Todd Estes in his work, *The Jay Treaty Debate, Public Opinion, and the Evolution of Early American Political Culture*. The aim of this work is to uncover the history surrounding the Jay Treaty, but the focus of the narrative concentrates on the “nuts and bolts of the treaty debate.” \(^{160}\) The emergence of print media and the power of political rhetoric in influencing popular opinion make this work a better explanation of early republican political culture than a historical account of what the Jay Treaty accomplished. As noted by Estes, even the battle of rhetoric was handily in favor to the Federalist cause.

Of critical value in Estes work is the context established concerning public participation and the use of media to persuade societal transition. In the case of Republican efforts to persuade against the treaty, the media proved a costly disadvantage because of the absence of leading party figures within the debate. Hamilton was able to dominate the debate over the Jay Treaty because he went unanswered by dependable Republican critics such as Madison, Jefferson and Monroe. Without fielding any heavy-

hitters, Republicans witnessed the power of popular print culture from the sidelines.\textsuperscript{161}

Efforts to reform the system of imprisonment would adopt a similar strategy, and the Humane Society reports on the conditions of the debtors’ Gaol can be seen as a logical extension of the use of print media to foster support for cultural acceptance for new policy. The treaty was not passed easily. Both sides provided a bitter struggle at the legislative level of ratification. The Estes portrayal suggests that the passage of the Jay Treaty was due to the success of Federalist rhetoric in the press and the inability of Republicans to effectively maintain initial levels of popular concern with the treaty throughout the summer of debate. However, what persuaded the needed votes from the Maryland representatives may have had more to do with the content of the treaty, given that the commercial provisions promised to benefit the industrial commercial class residing in the northeast. To better understand the Jay Treaty as an economic document, Hamilton’s written defense of the treaty must be examined.

In a series of newspaper essays titled, “The Defense,” Alexander Hamilton promoted a defense of the treaty on the grounds that it would lead to several commercial successes. Stated differently, Hamilton advocated that the treaty should be ratified because it had earned preference when compared to past commercial treaties.\textsuperscript{162} Unlike the popular protests centered on the triangular foreign policies with Britain and Revolutionary France, Hamilton’s support of the treaty was anchored on the argument that the Jay Treaty best provided for the general welfare of American citizens. This

\textsuperscript{161} Ibid., 117.
\textsuperscript{162} Alexander Hamilton, “A defence of the treaty of amity, commerce, and navigation, entered into between the United States of America & Great Britain, as it has appeared in the papers under the signature of Camillus,” Reproduction from Library of Congress, 1795, 7.
argument was twofold. First, Hamilton argued that if the treaty should fail to be passed, the result would be an economic war which would destroy mercantile capital and place the national government with an insurmountable level of domestic debt.\textsuperscript{163} Secondly, his defense argued the positive consequences of the treaty should it be ratified.

The contentions at the heart of this second leg of Hamilton’s defense were the issues surrounding western British ports that had been cutting into the profits of American fur traders, the impressments of American seamen, the blockade of commercial ports, and contractual obligations that had been unmet by American citizens to their British and domestic creditors. In the defense of the Jay Treaty, Hamilton took use of traditional ideas of debt that perceived reverence for contractual obligations and the immorality of individual debt. The British had originally justified their attacks on American ships by stating that the United States had failed to meet the promises made in the peace treaty; one of these failed promises being the full repayment of British creditors for merchandise and land seized during the war. That the treaty reinstated that promise, was to Hamilton, of utmost importance because it corrected an injustice committed by the nation and satisfied British terms for resumed commercial trade.\textsuperscript{164} The recovery of debts by British creditors harmed American merchants, who were then forced to pay on contracts they had no means of fulfilling. Hamilton’s opinions concerning public and private debt would be reiterated in his proposal for a tax on whiskey distillers and would later be discussed by prison reformers who looked to find new ways of resolving those guilty of debt.

\textsuperscript{163} Ibid., 9.
\textsuperscript{164} Ibid., 85.
Hamilton saw it the duty of the government to protect legally acquired property and to “secure to the owner the full enjoyment of it.” However, by securing this property, the government was inclined to enforce the powers of contract and to secure the full repayment of lenders, should they be American or British. This sentiment would later be received with dread by those who held more in private property in private banks than in public debt. Hamilton made clear that the government would not protect or redeem goods or lands confiscated by the other, leaving the costs of seizure up to individual contracts. A successful legal breach of contract was only possible if both parties had implicitly or expressively done something to negate the contract or if the individual committed a crime or fault against the man who owed him repayment. The subsistence provided by credit to poorer American citizens went against traditional perspectives of immorality, and worse for Hamilton, gave American citizens a way to reject Hamilton’s plans for a strong nationalized economy.

Prior to the reformation movements in the practices of imprisonment and financial lending, Hamilton and Federalists efforts to nationalize American industry took use of innovative practices of capital and traditional uses of punishment for debtors. The War of Independence had brought with it new financial opportunities that restructured the borrowing and lending classes in the New World. During the war, Congress borrowed heavily from wealthy Americans in order to maintain the war effort. The steady rise of domestic debt quickly outpaced what was owed to foreign lenders and created in the early

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165 Ibid., 108.
166 Ibid., 111.
republic a new class of merchants who served as public creditors to the United States.\footnote{168 Ibid., 73.} A significant proportion of those investments were held by merchants in the form of war bonds, which could hypothetically be paid out at the conclusion of the war and if the government had the means to reimburse. Big finance meant big investments, with the average amount of bonds given to military generals exceeding $10,000 in promised worth.\footnote{169 Ibid., 91.} Noting that the average family income was around $200 dollars a year, the sums owed to military officers catapulted them into a class of wealth they had not experienced as colonists. But as author William Hogeland has observed, “The bonds weren’t what the soldiers needed. They had no way of waiting for interest or payment on federal debt instruments; they needed immediate cash. They sold their bonds to speculators at deep discounts on face value.”\footnote{170 Ibid., 93.} The money was transferred away from initial lenders before they could benefit from their investment, leaving them in need of additional capital.

The reliance on borrowed capital by those who had participated in the war and those who relied on landed investments in the west lived contrary to Hamiltonian Federalist objectives. Similar to the Jay Treaty, the whiskey tax was designed by Hamilton as a primarily economic policy. In relation to the topic of the morality of debt, the whiskey tax can be best understood as a way in which Hamilton sought to end the practice of personal borrowing in the west provinces which were most opposed to his plan for industrial growth.\footnote{171 Ibid., 162.} At the heart of the legislation, the whiskey tax was an attempt to correct for the seen hesitance of state’s to collect on owed contracts because of
the unknown reaction of debtors. Whiskey had grown in popularity and was a viable mechanism for collecting revenue from those typically averse to paying state and national taxes.

The popular consumption of whiskey had provided cash-starved areas of society with a means for local commercial development that was praised as a fortuitous way to raise impoverished individuals up from debt and economic dependency.\(^{172}\) The opportunities granted with whiskey ended with the introduction of the whiskey tax. The tax amplified the advantages of larger industrial distillers at the expense of small start-ups. Additionally, the tax effectively put the practice of part-time, seasonal distillers out of business, and thus diminished the power of whiskey in the independent western territories.\(^{173}\) The whiskey tax protected regional preference for industry and reflected the attitudes of its creator. Hamilton saw the path to republican industrial empire as requiring the creation of a large commercial agricultural industry. In its broader application, the introduction and application of the whiskey tax complemented the larger trend of Federalist economic policy and early understanding of debt. With the whiskey tax and Jay Treaty, debt was conceived as an invaluable tool for national growth and war-making while at the same time was not accepted as a moral choice when taken use by an individual. Even when it was at the expense of the American consumer, Hamilton and Federalist supporters believed the obligations of contract required fulfillment such as in the case of British creditors listed in the Jay Treaty. And where the fulfillment of British contracts by American consumers was promised through disastrous consequences should

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\(^{172}\) Ibid., 178.  
\(^{173}\) Ibid., 179.
the treaty fail, the whiskey tax sought its ends through direct Constitutional authority. The “democratic-finance effect” as circulated currency and the access to cash that distilling whiskey provided to a lower class was undone by confining whiskey production to wealthy business investors whose investment was critical to the retirement of national public debt. In the end, Hamilton’s efforts raised 6 percent tax-free interest in gold and silver which was then awarded to public bondholders. Many of the citizens who benefited from the gold and silver were the same men who previously purchased war bonds off of Revolutionary soldiers and had expanded development after the passage of the Jay Treaty.

Federalist efforts to nationalize the economy were successful, if only short-lived. The dialogue concerning the moral nature of debt carried past the life of the Federalist Party, being revisited by prison reformers and financial participants at the turn of the century. Reformers would follow the model used by Federalists during the Jay Treaty debate when pushing for the abolition of the debtors’ Gaol. And like the passage of the Jay Treaty and the implementation of the whiskey tax, legislative action taken to close the debtors’ Gaol would be driven by political and economic forces.

During the turn of the century, many officials made to provide an enlightened structure to the practice of imprisonment. This was done in part by reducing the number of crimes recognized as capital offenses. In previous centuries, financial crimes such as robbery, burglary, and arson were considered sinister and often resulted in the death of the criminal under grounds of moral sin. This began to change in the late eighteenth century. The humanitarian movement saw the emphasis change from the practice of

174 Ibid., 182.
execution to the practice of criminal rehabilitation. In order to persuade the concerned
general public that keeping criminals from the noose was in the best interest of society,
northeastern states proposed the construction of modern prison facilities which would
confine those guilty of dangerous crimes apart from the general public. As early as 1784,
national legislators approved the construction of state prisons marking the adoption of the
modern prison system by the young republic. Of specific interest here is the creation of
the modern prison in the state of New York.

The New York City prison reform movement excluded the debtors Gaol. While
New York City Legislators drafted the policies which would create the New York
Penitentiary at Auburn, they left the practices of the New York Gaol unreformed. The
construction of Auburn was influenced heavily by the Enlightenment, insisting that the
public execution of those guilty of any number of broad crimes was contrary to
republican principles. The virtuous alternative involved the physical separation, regulated
labor, and moral education of the convicted in an attempt to reform them to better fit
within modern society. The system established at Auburn included a penitentiary built
to encompass the physical representation of what twentieth century prison theorist Michel
Foucault would later refer to as the *panopticon*. The panoptic prison was “structured to
house the inmates in individual cells at night with group worship and labor during the
day. During congregate activities strict silence was the disciplinary code enforced

175 Elaine Jackson-Retondo, “Manufacturing Moral Reform: Images and Realities of a Nineteenth-Century
176 Ibid., 119.
177 Ibid., 127.
through corporal punishment."\textsuperscript{178} The interior layout of the prison, a row of towering solitary cells whose cell doors were kept from the sight of other prisoners, was innovative for its time, creating a system that ensured knowledge of the imprisoned was monopolized by prison officials. By conducting the prison in this manner, disciplinarians believed that those guilty of crimes against society could be successfully reformed and spared from the harsh capital penalties experienced under monarchial discipline. Early prison reform however, specifically excluded those guilty of debt. The modern prison at Auburn did not include the debtors’ Gaol. The treatment of those guilty of debt in the nineteenth century remained similar to those convicted of debt before the colonial period.

The New York Gaol was built during the years 1757-1758 in the architectural style of the colonial era. With barred windows and surrounding fence, the New Gaol contained three stories, with a cupola at the top of the structure.\textsuperscript{179} The cells located inside the prison were small, confined areas that provided the debtor with little more than standing room. As was discussed earlier, one of the characteristics that distinguished imprisoned debtors from other criminals was the insistence that debtors provide their own food and resources.\textsuperscript{180} For a debtor, food, clothing, blankets and other necessities came in the form of gifts received from the generosity of family and friends, or from a productive day of begging from those who walked passed or visited the Gaol. What could not be gathered from personal relationships came from the beneficence of the Humane Society.

At the time of the Gaol’s construction, while the system of debt laws was inconsistent

\textsuperscript{178} Ibid., 128.  
\textsuperscript{180} Ibid., 185.
among the states, every state imprisoned for debt. As in other states, those in the New York Gaol were there as a result of their inability to pay a creditor before a formal writ of attachment or having been found with a personal debt by a formal court authority. The transition from monarchial capital offenses toward policies seeking rehabilitation did not include those found guilty of crimes of personal debt. What would overturn this practice was the gradual appreciation for the idea that debtors were a casualty of hazardous social and economic conditions.

The Auburn and Eastern Penitentiary offer some striking differences with the Debtors’ Gaol constructed in 1758. Built in the year 1816, the new penitentiary at Auburn was an architectural achievement both in its size and in its organization. Hundreds of cells were constructed to follow the panoptic architectural style. Each cell was 7.5 feet long and 3.5 feet wide, existing under a 7 foot high ceiling. Each block of cells was purposefully constructed back to back from one another, ensuring that no prisoner could know of the presence of another inmate or the activities of those guarding him. Left in controlled isolation, the prisoner would reform his behavior out of fear of what he could not see. This architectural style had the additional benefit of making additions to the prison simple, as any number of blocks could be constructed within the same design. By 1825, the completion of a north wing of the prison brought the total number of cells at Auburn to 550. The costs of Auburn’s operation came at the expense of the state. Each individual’s year of imprisonment at Auburn cost the people of New York $584. Built in

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181 Ibid., 198.
183 Ibid., 853.
184 Ibid.
1829, the larger Eastern Penitentiary’s cost per inmate rose to $1,023 per individual prisoner.\textsuperscript{185} While the state paid large sums to keep those deemed undesirable away from the public, the New York debtors Gaol collected revenue for its private owners at the expense of those imprisoned for a lack of revenue. However, the differences in the amounts of revenue collected and spent by the public and private prisons systems is not the only contrast between the reformed institutions and the debtors Gaol. The treatment of prisoners was often drastically different.

Although left to acquire their own means of survival once sentenced to a cell at the Gaol, debtor prisoners often found themselves unsupervised. Sentenced to different floors of the jail based on the severity of their debt, it was common in the New York Gaol for members of the more respected floors, meaning those guilty of owing large amounts of debt, to attempt to reconstruct the life they had been barred from. The New York Gaol had an operating prisoners’ Supreme Court, which enforced the rule of law amongst the debtors living on all three floors, and represented the concerns of the debtors should there be a need for their collective voice.\textsuperscript{186} The legalism amongst the convicted debtors is representative of their educated backgrounds and involvement in affluent circles of society, but it is also indicative of a prison structure that did not seek to control prisoner behavior in the same way as the Auburn system. Men of the debtors’ Gaol were not confined to single room cells, were not forced to participate in labor or worship services, and were not expected to reform as individuals. Of utmost interest was their ability to pay jailers’ fees, not the moral state of their eternal souls. The study suggests that debt was

\textsuperscript{185} Ibid., 858.
handled differently because reformers no longer perceived financial crimes as severe enough to require individual reformation. Additionally, owners of debtors’ prisons were motivated by personal profit and not enlightenment principles making them disinterested in changing cultural perception of debt. This was not the case for the prisoners held at Auburn and the Eastern Penitentiary. “In New York, guards administered beatings with a paddle covered with ‘two thicknesses of sole leather’ forty or fifty at a time to inmates’ buttocks. Two of the most dangerous disciplinary measures were the ‘Shower’ and the ‘Gag.’”¹⁸⁷ The violence exhibited on state prisoners is alarming and highlights the differences in the goals of the state prison. Because the debtors’ gaol was created to collect revenue from prison fees, it reasonably did not wish to use any of the generated revenue on behalf of the debtors it housed; the state prison, on the other hand, would spend staggering sums to provide for the health of the prisoners so it could torture them into being virtuous citizens. To provide an account of this difference in objective, consider the use of the “Shower” and “Gag”, conducted on prisoners held at the Auburn facility.

“In the ‘shower’, inmates were locked into a chair and then doused repeatedly with iced water forced through an extremely small outlet. The treatment caused severe headaches, deafness, and, in at least one reported case, death. The ‘gag’ was a simple metal plate placed into the convict’s mouth and tightened around his neck by chains that attached to a pair of handcuffs.”¹⁸⁸ These forms of physical discipline were absent in the Gaol.

In 1824, Senator Barbour of Virginia projected that more than 13,000 were imprisoned for debt throughout the nation; a staggering number. Yet it is easy to wonder whether those left in the Gaol to find food and clothing were worse or better off than those imprisoned by the state in the hopes of being rehabilitated. In the attempt to generate wealth from the conviction of debtors, the owners of the Gaol had created a privatized prison, one that did not hold any sympathy for its occupants. The sympathy needed for survival came from the creation of the Humane Society, and the resulting costs of providing for the inmates were borne through charity.

The collection of Humane Society Records analyzed represents the conditions and costs of the New York Gaol for a total of 98 months, beginning with the month of May in the year 1805 and concluding with the report for April, 1814. The monthly reports are organized in a chronological listing of individual forms, each form pertaining to a specific month of the recorded year. The form is divided into 5 columns: Day received, Names of persons admitted, Day discharged, how many days the prisoner was fed, Soup Issued (recorded per Quarts). At the bottom or reverse side of the monthly form, the Humane Society Recorder wrote totals pertaining to the number of prisoners committed, discharged, and a count of those who remained in the prison at the end of the month. In addition to the total sums of prisoners moving through the system, totals also detailed the amount of soup rationed to prisoners during that month, how much of the soup had been sold for profit, and how much of the soup was exchanged for a ticket. A total amount of

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190 Refer to Figure C1: The Number of Debtors Committed, Discharged, and Retained as Recorded per Month. Found in Appendix C.
all soup produced and managed concludes each monthly report. Using the data from the Humane Society reports, specifically the total number of monthly prisoners and quarts of soup, a rate of debtor retention and an average amount of food donated by the Society can be determined. These numbers prove that the conditions within the Gaol were volatile; its conditions dramatically different in every month of imprisonment.

A broad analysis of the entire 98 month period of reports shows that the New York Gaol benefited from a consistent cycle of debt; new debtors entered the facility at a similar rate that others were discharged.\textsuperscript{191} An average of 55 debtors per month was committed to the Gaol during the years 1805-1814. Out of those 55, on average, 28 would be discharged from the prison leaving a total of 27 debtors to wait for the start of a new month and additional opportunities for receiving a discharge.\textsuperscript{192} The lowest discharge rate for any given month during the 98 month period was a rate of 18%. In October, 1811, a total of 106 debtors had been committed to the Gaol. This number represents the maximum number of prisoners convicted during the years of interest. That same month, the highest number of debtors (64) was discharged. October, 1811, experienced an effective discharge rate of 83%.

The retention rate was calculated using the available data. In order to establish a rate of retention, the data was organized by observing a month in relation to the preceding month. For example, when looking at the report for August, 1812, the total number of committed debtors was recorded at 100 individuals. In order to know the true number of

\textsuperscript{191} Refer to Figure C2: The Number of Debtors Committed Compared to Percentage Discharged as Recorded per Month. Found in Appendix C.
\textsuperscript{192} *This constitutes an average monthly discharge rate of 50%. The minimum number of prisoners committed during a single month was 16 (January 1807), with the minimum number discharged in a single month was only three (April 1807).
new inmates jailed during August, I subtracted the number of remaining debtors at the end of July from the total amount of the committed. Meaning that if August, 1812, has a record of 100 committed debtors but the previous month saw 52 debtors that remained in prison at the end of the month, the true number of new inmates entering the Gaol in the month of August was 48 debtors. Done in this way, a new series of numbers adds to the knowledge of the debtor population during the nineteenth century. The average number of inmates retained at the New York Gaol in any month was 27.\textsuperscript{193} Knowledge of retention rates change the interpreted significance of the figures for the numbers committed and discharged. Whereas the recorded average for committed debtors was remembered as 55, the average number of new inmates for any given month is calculated has having been 29.\textsuperscript{194} The highest number of new inmates in a single month was 64.

The data concerning new inmate is interesting because it reveals the occurrence of a rate of reduction not calculated in the Humane Society reports. In the case of a single particular month, the Gaol lost two more debtors than it gained in the time between Humane Society reports. As the number of committed debtors rose during the nineteenth century, the number of new inmates did not always match the recorded rate of growth. An explanation for the rise in total imprisoned debtors is that while the total number of new inmates fluctuated between 64 and 29 per month, the number of remaining inmates over multiple months increased, making the prisons full and the attempts of the Humane Society to feed the inmates more challenging.

\textsuperscript{193} Refer to Table 9: Averages. Found in Appendix C.
\textsuperscript{194} Refer to Table 9: Averages. Found in Appendix C.
The total number of committed debtors recorded during a given month could be largely influenced by the number of retained inmates. Take for example the four months in the reports that listed a total equal to or greater than 100 committed debtors: September 1809, May 1811, October 1811, August 1812. During the months of the highest number of committed debtors, 40%-50% of those tallied were individuals originally detained in previous months. These months suggest that the Gaol should be characterized by the number of retained debtors just as much as the number entering and leaving in the single month. A convicted debtor stood a 50% chance of being imprisoned for longer than one month, making the volatility of Humane Society efforts critical to his perseverance.

To discern the cost that the Humane Society assumed in their work to provide consistent meals for those imprisoned for debt, I analyzed the averages and amounts of soup prepared for and distributed to the debtors to show the result of the organization’s efforts. During the years 1805-1814, the Society provided the Gaol with an average of 1,217 Quarts of soup per month with a monthly high of 2451 and a low of 299 quarts. The quantity of soup translates into each prisoner receiving an average of 30 quarts of soup each month of his imprisonment. During the best month, with the most soup and the fewest prisoners, a debtor could be provided with 43 quarts of soup during a single month, but could suffer if the prison had a high number of new inmates and a minimum quantity of Humane Society support. If suffering from these conditions, a debtor might have expected an amount of 17.6 quarts of soup for his continued health (the minimum

195 Refer to Figure C3: The Number of Debtors Retained Contrasted with the Number of New Debtors as Recorded per Month. Found in Appendix C.
196 Refer to Table 9: Averages. Found in Appendix C.
197 Refer to Table 9: Averages. Found in Appendix C.
amount calculated). The Humane Society did not gift the total amount of soup it created to the benefit of debtors. Debtors would need to secure additional contributions if they were to survive a stay in the Gaol consisting of multiple months. The statistical trend lines for the Humane Society and the residents of the prison do not ebb and flow at the same rate. The event of a high number of committed debtors did not mean that the Society would be able to provide more soup. Stated plainly, the experience of a convicted debtor could be drastically different depending on the month and duration of his stay at the Gaol for no other reason than chance. On average, 79% of the soup the Society produced was sent to the prisoners at the Gaol, the remainder sold to support the Society or provided to those philanthropists who had a ticket to exchange.198 During some months the Humane Society did donate all its product to the prisoners, but this was the exception and not the rule when observing the history of the Gaol. For some, the risk of venture capital resulted in an imprisonment that introduced a new set of risks, pertaining to hunger.

Despite its limited resources, the Humane Society made attempts to meet the needs of the prisoners. The supply of soup provided to the prison during the 98 month period of observation fluctuated at a different rate than that of the percentage discharged, but the Society usually attempted to maintain at least previous month’s quantities in the event of a dramatic rise in the number committed to the Gaol.199

The data indicate dramatic fluctuations in the amount of soup available to inmates each month. For example, in May, 1805, 39 quarts of soup were available per inmate.

198 Refer to Table 9: Averages. Found in Appendix C.
199 Refer to Figure C4: The Average Number of Debtors Detained and the Total Quarts of Soup Provided as Recorded per Month. Found in Appendix C.
This dropped to 32, 30, to 22 quarts per inmate in June, July, and August, 1805, respectively, then back up to 38 quarts per inmate in September, 1805. This dramatic, and apparently somewhat random, up and down pattern is observed throughout the 96 months of data.\textsuperscript{200} Adding a linear trend line to the data, we see that the average amount of soup available to inmates decreased over time from about 33 quarts per inmate to approximately 28 quarts per inmate. The reliance upon third party charity groups left debtors in an uncertain predicament; depending on the month and year of incarceration, a convicted debtor could expect a multitude of experiences within the Gaol. Inconsistency in the marketplace was met with inconsistency in relief from punishment.

The experience of those imprisoned for debt should not be overly generalized. For those of means and access to familiar and business resources, the time spent in confinement was very similar to the life lived outside of the Gaol. But for those who entered without the means of support or estate to obtain a quick release, the punishment for their debt could create extreme deprivation. The creation of the Humane Society and the history of food donation to the Gaol highlight a growing cultural movement in the State of New York that saw the debtor as a victim rather than criminal. However, the fact that nineteenth-century debtors were still classified separately from other types of crime and that the debtors Gaol remained a private enterprise during a period of enlightened prison reform makes clear that by the end of 1815 the fight over the role of debt in a free market system remained undecided.

\textsuperscript{200} Refer to Figure C5: The Number of Quarts of Soup per Inmate as Recorded per Month. Found in Appendix C.
CHAPTER VI
CONCLUSION
AN AMERICAN DEBTOR

In the year 1803, New York City was ravaged by an epidemic of yellow fever. In an attempt to escape the illness, men and women from all economic classes sought harbor in the cities surrounding suburbs. The wealthy traveled out of state boundaries to other owned property, while the poor tried to maintain their good health by relocating to shelters constructed away from where the highest density of the sick had been reported. The efforts to evacuate New York City did not include any attempt to release from the Gaol those imprisoned for debt. The debtors were abandoned, forced to find survival by any means available to them within the walls of the Gaol. As remembered by Howard, who recorded the mistreatment and death of Mr. Brown, after the city had emptied,

“…not a cart was heard to rattle on the pavements. When the prisoner ascended to the top of this ‘castle of indolence’ instead of the beauty and gaiety that wont to enliven the prospect, he saw the houses and shops every where closed, and every object seemed to wear the appearance of death and desolation.”^201

For those locked away for debt, the outbreak of yellow fever had taken from them those who had donated to their survival, and worsened their ability to provide for their economic survivors.

One of the men locked away during the outbreak of yellow fever was Mr. Smith. Jailed for owing money to an unknown number of creditors, Smith had left behind a wife and two daughters when he was sent to the Gaol. Made available by those who recorded his imprisonment, it is known that Smith was a debtor who was inconvenienced by his

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^201 Essays of Howard: Or, Tales of the prison (New York: Joseph Desnoues, 1835), 33.
status in the financial community. Smith and his family were too wealthy to be considered for insolvency relief, yet were unable to generate the amount of revenue needed to repay his contractual obligations. Being a member of a class in between extreme circumstances, Smith and his family could not be granted relief from the state nor could they flee his creditors by leaving for rural property. Jailed for an initially small debt, Mr. Smith was unable to avoid a long stay in the Gaol.202 Prior to his leaving, he and his family kept a boarding house on Water street. However, the fortunes of the boarding house were damaged when the community became aware of the financial mistakes Mr. Smith made and soon after his imprisonment the community withdrew their investments and the tenants left. Without a business or neighbors to borrow from, the Smiths spent their day in and around the Gaol; Mrs. Smith and their daughters providing food for Mr. Smith each day they visited.203

Soon after his imprisonment, yellow fever was reported in New York City. Trapped in the city, Mrs. Smith quickly contracted the fever. Smith’s daughter brought the information of his wife’s failing health, including the information that no physician in the city would help treat her for fear of contracting the disease.204 While the horrors of Mr. Smith are the focus of the account analyzed, it is important to note the consequences these events had on his daughters. Now that their mother had come down with a violent strand of fever, the survival of the parents depended on the abilities of their children, one consumed with the care of Mrs. Smith and the other tasked with preparing food and finding clothing and blankets for Mr. Smith. The fate of the children was ultimately the

202 Ibid.
203 Ibid.
204 Ibid., 34.
same as their mothers, as both were seized by the terrible epidemic that had turned the
city into a ghost town. At no time was Mr. Smith able to find a way out of the Gaol. The
knowledge of the death of his wife and daughters was revealed to Mr. Smith while
reading the newspaper. Mr. Smith was to remain in prison, forging a check that had him
transferred to Bridewell prison where he received a trial and was convicted to an
additional seven years at the state prison.  

The story of Mr. Smith, like the personal narrative of Mr. Brown that introduced
the reader to the world of the nineteenth-century debtors’ Gaol, demonstrates that for
those guilty of financial misdeeds in the early American republic the consequence of
financial crimes were often a mix of traditional physical European punishments and
enlightened American ideas of prisoner reformation. The debtors’ Gaol of New York
City was a mechanism used by the state to regulate and safeguard against excessive risk.
The consequences of this system were broad, as the continued use of the institution
provided for the hazardous conditions illustrated in the Smith and Brown narratives as
well as (a) the creation of complex third party insurance industries, (b) a sophisticated
system of legislative and judicial frameworks aimed at processing and releasing failed
commercial participants and most importantly, (c) motivation for the cultural perception
of debt to evolve from viewing those guilty of borrowing as morally corrupt towards
understanding the role of credit in a capitalist market. Unlocking the financial and
cultural histories of the early American republic, the history of the New York City Gaol
makes known the complex relationship between creditor and debtor in a world where the

205 Ibid., 35.
promise of financial success persuaded men to engage in business ventures that held substantial risk for their personal wellbeing and that of their family.

The continuation of imprisoning men for debt is a testament to the need for accountability in a period of dramatic change. As the known colonial structure of commercial transaction established under British mercantilism was deconstructed in favor of an American economic system, the high level of uncertainty was reconciled with the preservation of traditional forms of punishment. The risk of an unregulated capitalist economic system was ever-present and so was the punishment for those who threatened to increase that volatility. Both creditors and third party profiteers understood the threat of the Gaol as a means to secure profit. Creditors used the fear associated with physical deprivation as a means to extract hidden property while innovators during this period saw a chance for financial success in creating modern mechanisms to replace the utility of the prison. The introduction and popularity of insurance companies during Antebellum America was a natural transition in a time when the necessity to borrow was without protection of product or person. Similarly, the reluctance of federal representatives to channel commercial anxiety into practical and lasting solutions resulted in a growing dissatisfaction towards republican government that appeared more interested in constitutional rhetoric than in the need for progressive regulation and bankruptcy provisions.

The absence of federal action made the temporary sets of state policies of lasting importance to the study of early American finance. The data obtained from the District Court of New York through the kept records of Pierre C. Van Wyck and Richard Riker
and the possessions documented in the Monition and Writ book kept by New York port authorities show that the beginning of the nineteenth-century was frustrating for both creditors and debtors, as neither was able to collect what was owed to them or avoid punishments, respectively. The price for insolvency relief came high to those wishing sanctuary from imprisonment; however, the price paid by those guilty of debt was not redeemed by those lending capital. It has been suggested by this work that the only benefactor in this system of debt collection was the state, who retained the value of possessed mercantile goods and titles. The profitability of dysfunctional state debt procedures could explain the persistence of colonial financial institutions. This new understanding of American debtors’ prisons within a growing Antebellum consumer market reveals that the slow recognition of a class of vocation based economic individuals harmed all economic participants and made the transition from colonial to modern economic institutions unnervingly slow as misidentified market participants were frustrated by creditors and debtors alike.

The conclusions made concerning the impacts of emerging third party insurance agencies, mercantile seizures and unresponsive legislative solutions should not be used to overly generalize the experience had by those imprisoned for debt. While the use of economic data and testaments of social anxiety can be used to contribute broad understanding to the history of the early American republic, the actual environment documented from within the Gaol is best described as sporadic. Due to the Gaol remaining a private institution until being ruled unconstitutional in 1836 by New York State law, the conditions and treatment of those residing within the Gaol could be
drastically different when contrasted. For those prisoners with a level of affluence, days spent in the Gaol were consistent with their life lived outside of the Gaol. However, for those who found themselves dependent on the labor of humanitarian organizations such as the Humane Society, the year and month of their imprisonment could mean the difference between comfortable conditions and a fight for survival. The creation of the Humane Society in itself is indicative of cultural change within the state of New York. The ability of a humanitarian group to effectively raise donations for the preservation of debtors is a behavior unknown during colonial and revolutionary period discipline. In order for New York society to want to aid those imprisoned for financial crimes required a new evaluation of the meaning of financial crime; one that did not view debt as reflective of moral sin. Those working for and donating to the Humane Society clearly understood the instance of debt as a situation that victimized individuals.

The beginning of the early American republic saw the organization of American institutions. Historical work on this subject has been devoted to accounts of political, cultural, and religious changes that have been documented across all regions and peoples of the United States. Missing from this collection of work is a critical evaluation of financial practices, whose historical value could be expansive. The way in which a people conduct themselves in commercial activities reveals evolution in all other areas of study. Typically, the works concerning the use of debtors’ prisons in the United States have concluded with the introduction of the National Bankrupt Act of 1800 but this is not the natural stopping point for the story of debt in America. The task of creating a workable system to deal with the financial crisis and the use of an unregulated capitalist system
characterized by high levels of risk would persist throughout the entire nineteenth century. This work has been an attempt to begin that research, by analyzing the judicial, legislative, mercantile, and commercial practices of New York during the years 1800-1836. Through the histories of debtors’ prisons, a larger history of American financial culture can be collected; the data reviewed in this research is a start to that historical excavation.

In the year 1811, Mr. Brown was convicted and imprisoned for debt. Like others before and after him, Brown would bare the punishments brought on to him by an inadequate system of punishment that sought to ease cultural anxiety concerning the transformation from colonial to modern economic institutions. The use of the debtors’ prison as a mechanism for economic sustainability was ill fitting and incorrectly identified the necessity of venture capitalism among commercial imitators as the actions of the immoral. Those in the early American republic would continue to rely on credit as a means for commercial growth, reflecting an economic culture that understood the essential role of credit in a free-market system. A recognition that arrived by economic activity prior to the development of the necessary political, religious, and judicial regulatory structures.
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