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**In light of failure: Bankruptcy, insolvency and financial failure
in New York City, 1790–1860**

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City University of New York, 1992

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IN LIGHT OF FAILURE:
BANKRUPTCY, INSOLVENCY AND FINANCIAL FAILURE IN
NEW YORK CITY, 1790-1860

by

JAMES CIMENT

A dissertation submitted to the Graduate Faculty
in History in partial fulfillment of the
requirements for the degree of Doctor of Philosophy,
The City University of New York.

1992

This manuscript has been read and accepted for the Graduate Faculty in History in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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To My Parents
And in Loving Memory of
Catherine Low

Acknowledgements

Dissertations are inherently lonely tasks. Only the support and concern of family, friends, and colleagues makes the isolation of research and writing bearable. In that same spirit, I would like to thank all my friends--those experiencing the rigors of dissertation writing themselves and the rest who lent much-needed empathic support.

Needless to say, I could not have accomplished this task without my family's support. My parents and siblings stood by me throughout. In particular, there is my loyal and lawlerly brother Scott whose delightfully cynical witticisms provided a refreshing perspective on the limitations of dispute settlement through legal means.

I would also like to thank the research and archival staffs of the New York Public Library, the New-York Historical Society, the Federal Archives (Bayonne, New Jersey), the New York City Municipal Archives, and the Queensboro Public Library (special thanks here to William Asadorian) who, in a time of budget cuts, maintained an admirable level of cordial professionalism and friendly advice.

I would also like to extend my appreciation to my colleagues in the historical profession. The entire Department of History, City College of New York, and particularly chairpersons Jim Watts and Rada Milentijevic remained supportive throughout the long years it took to complete this task I thought would never end.

In addition, Professors Richard Bushman of Columbia University, Sean Wilentz of Princeton University, and David Jaffee

of City College read different parts of this dissertation and offered many helpful suggestions. The editorial and conceptual suggestions of Professor Irwin Yellowitz of City College have influenced and enhanced this study as well.

Finally, I would like to extend my most special appreciation to my advisor Professor Carol Berkin of Baruch College. As teacher, editor, confidante and friend, she guided this student and this study to a weary but satisfying completion. Thank you.

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Introduction

Between the ratification of the Constitution in 1788 and the outbreak of the Civil War in 1861, New York City became the unrivaled trade and financial center of the United States, as well as a major hub in the North Atlantic trading network. Imports doubled by the decade during the last 40 years of the period, until the city so dominated the United States that all its major rival cities combined could not match it. Financing expanded as well. A single bank in 1790 had become a dozen by 1825.¹

The economic growth was not merely quantitative either. In fact, during these seven decades the city's economy was simultaneously transformed in two important ways. First, there was a transformation in production. The small 18th century artisan workshops of masters, skilled journeymen, and apprentices disappeared--sometimes rapidly, sometimes slowly, and sometimes incompletely, depending on the craft. In their place arose a system of outwork, sweatshops, and factories, each with their cohort of unskilled laborers under the command of non-laboring, market- and finance-oriented employers.²

Secondly, there was a transformation in marketing and distribution, particularly at the wholesale level. Merchants began product specialization, eschewing general or mixed lines of goods which sold slowly and with large profit margins for specialized lines which sold more quickly but with less profit per item. In

both cases, manufacturing and merchant trading, the crucial transformation occurred during the two decades following the general European and North American peace of 1815. Economic historians of the antebellum period have spoken of the nation's 'take-off' into self-sustained qualitative economic growth, usually referring to the 1840's and 1850's. But as the nation's economic pacesetter, New York City began its 'take-off' two decades earlier.³

Naturally, there was no single cause for this astonishing and transformative growth of the city's economy. Transportation innovations and projects, for one, played their part. The completion of the Erie Canal and the inauguration of regular packet service to Great Britain, the continent, and the American South helped guarantee that the city would become the hub of a trading system that came to connect the vast and rapidly filling hinterland of North America with the manufacturing and consumption centers of England, Europe, and the northeastern United States.⁴

Demographic developments within the city and nation were important as well. The increasing influx of destitute immigrants from Europe created a pool of unskilled, easily exploitable laborers for sweating and factory work. At the same time, the growth of urban centers around the United States and the general increase in rural population meant larger, more concentrated, and more accessible markets for the goods manufactured in the city and, more importantly, for the goods distributed by the city's mercantile community.⁵

Business and legal historians have highlighted the significance of innovations and developments in these fields to help explain the rise of New York as the nation's premier trading, financial, and 'metropolitan manufacturing' center. In particular, the development of the limited partnership--first perfected in New York--allowed for that separation of capital and management so crucial to the modern business enterprise. At the state level, New York pioneered in the development of limited liability and contributory negligence laws--so crucial to market-oriented economic growth--and, of special interest to this study, laws easing the impact of insolvency and eliminating debtor imprisonment altogether.⁶

Technical, demographic, legal, and managerial innovations were all critical components in the economic development of New York City and the nation in the years between 1790 and 1860. Nevertheless, it was the growth in and the transformation of the capital markets both in the city as well as overseas that allowed the city's economic pioneers, investors, and developers to translate these innovations into dramatic quantitative and profound qualitative economic growth. And, arguably, the dramatic expansion of credit and indebtedness was the single most important factor in this transformation of the city's capital markets.

But again, as with the growth in the city's production and distribution, it would be misleading to presume quantitative change alone where credit and debt were concerned. Instead it would be more useful to speak of a new economic role for credit and debt.

Before the critical year of 1815, credits were usually offered and debts were usually accrued as means to profitable ends. After that year, the extensions of credit became a profitable--sometimes the profitable--end of many financial transactions. Through the accrual of debt, rather than through personal, familial, or firm financing, business operations were funded and outside investments and speculations were financed.⁷

As with all economic developments, the change and expansion in the use of credit and debt implies that the interests of dominant economic agents--usually lumped together by class, trade, and/or community--are being advanced. And unlike any other period in New York City's history, the economic growth and development of the seven decades between the Constitution and the Civil War were dominated by a single class of men: the mercantile class. This was their golden age. They controlled the city's government, claiming 18 of the 25 mayors among their rank between 1825 and 1850.⁸ They also founded and headed the city's philanthropic and cultural institutions. But most importantly, they set the pace of the city's spectacular economic expansion.⁹

Credit was one of the keys to this economic hegemony. More specifically, mercantile hegemony was directly linked to that sector of the economy's predominant control over the source, channelling, and access to the credit markets in the city and abroad. The reasons for this were quite simple. On the one hand, most of city's capital was in the hands of merchants, either in the form of capital they controlled through the directorships they held

on the boards of virtually all of the city's banks. Furthermore, the potentially vast sources of English and European credit were nearly always offered directly to merchants rather than to manufacturers or any other sector of the economy.¹⁰

At the same time, merchants tended to reward themselves with generous offerings of credit. This does not seem obvious at first since most of the credit controlled directly by merchants was offered to their customers. That is to say, since most of the domestic producers and consumers of New York's import and export trade were agriculturalists--either free farmers in the North or slave masters in the South--most of them were perpetually in debt, borrowing as commercial farmers always do from harvest to harvest. In a sense then, merchants were required to be conduits of credit if they hoped to stay in business.¹¹

But they made the most out of it. As conduits of credit, merchants made themselves a lot of money, particularly after 1815 as they began to focus their innate mercantile instinct of 'buy-cheap-and-sell-dear' as much on credit devices as on the products the credit was financing. Merchants dispensed most of the city's capital and they initially received most of the credits that flowed through the city's capital markets. In short, they harnessed the energy of credit and debt that fueled the expansive economic growth of New York's antebellum years.¹²

At the same time, other groups within the city were left wanting. As Sean Wilentz points out, the city's craftsmen and artisans, even its most ambitious and entrepreneurially-oriented

masters, rarely obtained the kinds of credit they needed to finance expansion and modernization efforts. In fact, most--although not all--of the city's artisans were perennially strapped for capital and trapped in a credit squeeze in which they were forced to offer materials and services on credit to their customers of all classes yet were unable to obtain adequate sources of credit even for the most basic costs of operation. The result of this unbalanced access to credit was predictable. It amounted to the sustained economic hegemony of the merchants.¹³

In point of fact, credit and class intersect in interesting ways. First, access to credit is one of the better means of measuring class position. Those who have access to it are usually those who have the proper social, financial, and political connections. They are also those who understand financing, bookkeeping, and have the business acumen that mark the entrepreneurially-oriented. At the same time, access to credit was virtually the only means to obtain and hold onto the fortunes necessary to ensure a place in the antebellum city's dominant mercantile class or small manufacturing elite. In his study of New York's (and three other city's) antebellum class structure, Edward Pessen demonstrates how the elite lived, married, socialized, and did business within a closely defined circle. And in the same way they offered each other credit.¹⁴

To scholars, the whole process appears tautological; access to credit being the means to ensure continued access--where did the cycle begin? The answer is elusive. Often it was simply making or

having the right personal, educational, or occupational connections, and it always resulted from a piece of great good fortune. As mysterious and frustratingly hermetic as the process now seems to scholars, it presented little but frustration to those artisans and others who found themselves outside the magic circle.

In short then, access to credit was both a mark of class distinction as well as a means to assure one's entry into or continued membership in that class of New Yorkers who regularly had access to substantial sums of mercantile or bank capital. At the same time, the power and size of the mercantile class grew in stride with the economic importance of credit and debt-financing. Thus, the expansion of credit and debt were inextricably linked in antebellum New York to class formation and stabilization. Nevertheless, it represented a precarious connection.

Credit is a two-edged sword. As it amplifies the possibility for gain, it increases the potential for disastrous financial loss. While the absence of credit means economic stagnation, its superabundance ensures extreme economic volatility. Antebellum New York understood economic boom and depression. At least three general, long-term panics--in 1819-1822, 1837-1843, and 1857-1858--and numerous minor ones gripped the city during the era. These almost always followed years of extraordinary economic expansion and speculation.

Individually, New Yorkers knew success and failure as well. Great and small fortunes were won and lost in trading ventures by merchants every year. And the swings in the economic cycle often

wiped out the fortunes of hundreds and thousands of the city's most economically aggressive and active population. And so, as the 19th century progressed, credit and debt became more essential for individual economic success just as they became increasingly responsible for individual economic catastrophe. This dichotomy was at the heart of the mercantile class' changing attitudes about credit and debt. That is, both the growing importance and the perpetual danger of credit shaped the evolving attitudes toward credit, debt, and the financial failures and successes credit and debt made possible.¹⁵

These changes in attitudes manifested themselves in various ways. In the 18th century and persisting into the early years of the 19th, substantial long-term debt was looked upon with profound suspicion. Most merchants operated their businesses with a minimum of debt, considering it a necessary but potentially volatile lubricant to the wheels of trade. A vast accumulation of debt for the purposes of speculative investment was generally regarded as antithetical to the proper and even moral standards of business conduct. Financial failure and the consequent inability of the borrower to meet his or her obligations was considered to be a breach of moral duty. If this failure to pay back debts resulted in the failure of others, the crime was compounded in the eyes of other merchants.¹⁶

In effect, conducting one's business with a minimum of debt was one element in what historians of the colonial and early national period of American history call the 'moral economy'.

Operating and expanding one's business upon capital raised internally rather than borrowed was of a piece with charging a just price for commodities and accepting that a neighbor's right to the quiet enjoyment of his or her property had legal priority over the right to develop one's own property. In short, accumulations of vast debt, especially for the purposes of speculation, were morally suspect. And a failure to pay back that debt was likened to criminal activity.¹⁷

Insolvent debtors went to jail. In the 18th century and into the first decade of the 19th century, lots of people went to jail, including some of the biggest and wealthiest speculators in the city. After 1810, smaller numbers of the rich and powerful went to jail in the literal sense, although they were still sent there in a legal and technical sense. That is to say, they were allowed to live on the 'limits', a prescribed area around the prison which grew over the years to include all of Manhattan below 14th Street.¹⁸

For working New Yorkers, of course, failure to pay back one's debt continued to imply the possibility of time in jail, until the jail itself was legislatively abolished in 1831. And debt for the city's artisans and laborers had always been something different than what it was for the city's mercantile elite. The city's economically marginal population was forced to live on the credits they were able to obtain from local retailers. Debt had always been and would continue to be an essential part of the economy of the city's working classes and a crucial mechanism for survival.

Thus, the possibility of being jailed for failing to pay back one's debt remained a reality for working New Yorkers decades after that threat had been removed from the experience of the city's mercantile elite.

On the other hand, few merchants needed to borrow for consumption. Nevertheless, as even the most cursory glance at New York City in the first half of the 19th century--and especially in the antebellum years--reveals, expensive tastes and a propensity for conspicuous consumption were hallmarks of much of New York's mercantile elite, an attitude that, on a more limited but hardly more humble scale, also marked such lower class ways of life as the dress of Bowery B'hoys and girls.¹⁹

This display, however, depended on a healthy economy. When the economy turned sour, and people could not meet their debts, a wave of retroactive criticism engulfed the city. Frivolous display and debt-financed luxuries were an obvious target as they required less social introspection than the more significant problem of debt-financed speculation. And since much of the city's opinion-influencing mercantile class were of Quaker stock or else recent arrivals from Puritan New England, chastising oneself or others for extravagant living seemed to be fulfill a need triggered by some kind of lingering Christian guilt about pampering the flesh. Thus, those members of the city's elite who borrowed to pay for extravagant living were roundly condemned-- especially when it led to financial failure; more especially when it led to unmet financial obligations; and most especially when those failures

piled up into financial panics. This pattern did not change over the years before the Civil War.²⁰

But attitudes about debt accumulated in the pursuit of wealth, and the subsequent failure to meet financial obligations in the event of insolvency, were changing. The rules and customs of the moral economy gave way to the imperatives of the market in the first decades of the 19th century as attitudes about just price, the 'peaceful enjoyment of one's property', and the moral obligation to pay back one's debts changed. In their place arose an ideology based on the precepts of the capitalist economy Americans would mistakenly call 'laissez-faire'. Just price gave way to the rigors of supply and demand. Peaceful enjoyment of property was sacrificed to active development of private and public lands and resources. And the failure to pay back one's debt went increasingly unpunished in the personal domain. All these developments, of course, were the results of an active governmental policy termed 'laissez-faire' capitalism.²¹

But these above-mentioned changes were not all of a piece. There was a crucial difference between the changing attitudes about and the actual decline of just price, peaceful enjoyment of property, and the lessening of the moral disdain for and overt punishment of insolvency. In the case of the first two developments, the parties involved were economically and politically unequal. This essential inequality becomes apparent, as Morton Horwitz demonstrates, in the area of liability law. A farmer's land is bisected by a new railroad track and his cow is

killed by a locomotive. At first, as the intrusive and modernizing agent, the railroad was held liable for such damages. But over the years, and not very many years at that, the liability shifted to the politically less powerful farmer, who although unchangingly following his agricultural vocation, was nevertheless responsible for keeping his livestock off the railroad tracks.²²

The balance of power had grown increasingly imbalanced. Railroad corporations--as joint-stock companies--tapped into growing reserves of institutional and personal capital waiting to be invested. This access to credit markets allowed the railroads to grow rich and economically powerful. This wealth influenced political and legal decision-making in direct and indirect ways. It could, as the post-bellum years evidenced, be used directly to buy legislative favors.²³

But before the Civil War, the influence was less direct. The railroads simultaneously contributed to and benefitted from an increased willingness by the courts to create a legal environment in which the agents of economic activism were not bound by the damages and costs of that activity. Nothing breeds success like success. As the railroads and other developers became more indispensable for sustaining an ever-increasing pace of economic growth--a pace which was soon politically and economically self-perpetuating--so their economic needs came to influence commercial law and social attitudes.²⁴

The costs of insolvency, however, could not be settled in this way since the two agents in the legal and economic conflict

--that is, the debtor and the creditor--were relatively equal as far as economic and political power was concerned. In fact, in the case of New York City, most mercantile creditors were debtors and most mercantile debtors were creditors. As conduits of credit, merchants played both sides of the credit equation against the middle. On the other hand, when there was an inequality of social position, it was usually the creditor, in the form of an artisan or laborer doing work for a richer citizen, who was at a distinct political and economic disadvantage.

The results of all this were a continuing ideological struggle--with different terms, meanings, and implications among various classes of New Yorkers--over the right use of credit and the obligations of the insolvent, as well as a fitful and uneven push for bankruptcy and insolvency law reform. Through the end of the antebellum period, there was an on-going debate about what was reasonable and what was excessive debt, as well as what were the proper uses of debt-financing. Arguments continued to emerge in the financial, main-stream, and working class press about the insolvent's moral and legal obligations to repay every penny of his or her creditor's money.

As far as legal reforms were concerned the record was plain. Time and time again, legislators both in Albany and Washington wrestled with legislation designed to ease the burden of the insolvent and allow him or her a way out of impossible debt. But on only three occasion was major legislation passed--in 1800, 1811, and 1841--and these were only in effect an average of about a year

and a half each before they were repealed. In New York, mercantile opinion generally stood behind liberalization for a time--especially in times of economic crisis. But when the results of the liberalization--in the form of numerous insolvents who, according to prevailing opinion, were released too easily--became apparent, mercantile opinion turned against the laws.

Imprisonment was a different question. The lightening of the moral burden of insolvency was enough to abolish this archaic and widely vilified institution, although it took over a generation of active reform efforts. It is important to note that it was the efforts of the working class that finally got imprisonment for debt abolished.

In short, the subjects of credit, debt, and financial failure reveal the story of the growth and transformation of the New York City economy in the first seventy-odd years of the republic. Credit and debt-financing emerged as the most vital component of economic growth and as such they were virtually controlled and utilized by the most powerful class in the city, the mercantile class. Access to credit became the single most assured path to wealth, while the power to allocate credit became the singular mark of membership in the ranks of the city's financial elite.

Nevertheless, few members of this elite and virtually no artisans were ever entirely out of debt themselves. They were conduits for credit and as such they were extraordinarily vulnerable to the swings in the economic cycle that the ever larger quantities of credit made inevitable, although the impact of this

ranged from genuine physical suffering for the working class to embarrassment and circumscribed economic operations for the mercantile elite.

Thus, the attitudes about the necessity of and excessive reliance on credit by the city's active economic agents, as well as the attitudes about the obligations of the debtor to his creditor, were never clearly resolved, although they were clearly shifting toward liberalization and expediency during these 70 years. At the same time, legislation barely evolved at all. Instead, the political record reveals legislators, from the city and elsewhere, moving in fits and starts, sometimes toward and sometimes away from embracing the liberal release mechanisms of modern American bankruptcy law.

The existing literature on bankruptcy and insolvency is focused primarily on the history of that legislation. The two major studies in the field--Peter Coleman's Debtors and Creditors in America: Insolvency, Imprisonment for Debt, Bankruptcy, 1607-1900, and George Philip Bauer's unpublished dissertation on the movement to end imprisonment for debt--are attempts to document, on a nation-wide scale, legislative innovation and change.²⁵ Both point up a shift from a punitive approach--with the frequent incarceration of the insolvent debtor--toward a more functionalist approach--with its emphasis on asset recovery and the smooth economic rehabilitation of the honest debtor.

In examining these legislative efforts to keep pace with the evolution of the American economy and to tack with the shifting

political winds, these two studies--the most comprehensive in a rather slim and dated field--are valuable. However, both have their limitations. One of these is that these studies--as well as the earlier work of Charles Warren and F. Regis Noel--are surveys of the subject, encompassing a broad sweep of colonies, states, and even nations over centuries of time.²⁶

The periodical literature stands out a little better on this score with articles on imprisonment for debt and insolvency relief in Massachusetts, Rhode Island, and New Jersey as well as a few less commercially dynamic states. But again, the primary focus is on legislative reform or, occasionally, the reform societies.²⁷ Generally, serious lacunae in the literature on financial failure, insolvency, and bankruptcy remain.

This study will attempt to fill in these gap by providing a detailed examination of these phenomenon in America's premier commercial community. New York City was, of course, sui generis. No city could match its volume of port trade, manufacturing diversity, or financial prowess. On the other hand, the city was a center of innovation, particularly in its financial markets. New York's bankers and merchants developed the mechanisms of 19th century finance that the rest of America's metropolitan financiers would come to adopt. In that sense, a study of New York's commercial affairs provides a useful blueprint for the nation generally.

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PART ONE:
FINANCIAL FAILURE

Chapter One: The Conservative Era of Credit and Debt, 1790-1815

The Credit Markets

'Old Citizen' did not like what he saw happening in the financial marketplace of New York City in 1803. Writing in the pages of the American Citizen, he said there was too much fast and easy credit moving about for his taste, and he blamed this development on the rise of banks and their easy credit policies. "In these modern and improved times," he noted sarcastically, "through the happy instrumentality of banks, (the more the better) young men start in business without a clear cent in the world..."¹

The consequences of this, he warned, were dire. Easy credit, he argued in stern and unforgiving prose, led to loose financial ethics and, inevitably, a terrible reckoning that would come, in his conception of things, from some part of the heavens co-inhabited by Adam Smith's 'invisible hand' and the vengeful God of the 'Old Light' Puritans. Fully in character, 'Old Citizen' based his assessment of the current debased state of financial affairs on a crotchety comparison to the glory days of his younger manhood as a colonial merchant.

As if to lecture and chastise his younger colleagues ("I appeal [for corroboration] to the few remaining merchants of that day"), he catalogued the proper and conservative ways of doing business thoroughly.

In times of old...men never sprang up as
dealers without a reasonable sum in themselves,
or furnished, or promised by their friends,

and added to this their own competence in business and correct habits derived from regular apprenticeship and the good word of their master...Everyone in trade founded what credit he wanted upon his solid character.²

Examining 'Old Citizen's' list of conservative business practices carefully is worthwhile since it implied everything that, in his opinion, was done right in the old days and done wrong in the new. First, 'Old Citizen' discussed the inappropriateness of using market-obtained credit, as opposed to personally-obtained credit, to get a start in business. In his mind, there was a direct correlation between credit, risk, and reputation. Since the commencement of a business is the riskiest moment of enterprise, credit should only be offered on the worthiest of reputations. But it is precisely at that early moment in a young businessman's career that his reputation is most nebulous. Hence, only the closest circle of friends or family should act as creditors.³

Established in business and with a track record behind him, 'Old Citizen' goes on to say, the merchant might be able to obtain financing from creditors outside that earlier narrow circle of close acquaintances. But still, the correlation between risk and reputation held true. The circle of individuals that might offer credit to the merchant should expand precisely to the extent of his reputation for probity, intelligence, and thrift.

In short, 'Old Citizen' was lamenting the inevitable. As New York City's mercantile population grew, it became impossible to maintain a credit system based on the principles he advocated. Old

Citizen was also voicing concerns about developments that, in retrospect, had yet to fully manifest themselves. While some of the changes he complained about had, indeed, begun to occur in the first years of New York banking--roughly between 1790 and 1810--the real transformation of the credit markets occurred after 1815, when British capital flooded New York and the mercantile class had truly grown beyond the confines of a narrow, well-acquainted, and inter-related community. Then, and only then, in Old Citizen's conception of things, did that singularly essential correlation between risk and reputation become virtually impossible to maintain.

For 'Old Citizen', the financial marketplace was supposed to operate on the basis of trust. Of course, whenever a creditor offers funds he is doing so on the basis of trust, whether he is personally acquainted with the borrower or not. What marks the ideals of the older financiers and merchants of New York was the emphasis on personal trust to assure re-payment, rather than the borrower's list of assets or a confidence in the bullish direction of the markets.⁴

At first glance, this appeal to personal trust sounds like a cover for a class-based credit system. But it was more than class bias. That is to say, the trust was something more than the creditor's sense that the borrower was a like-minded merchant who, but for his temporary financial circumstances, could be the creditor himself. For 'Old Citizen', the relationship between creditor and debtor was supposed to be based on something more

profoundly personal. Finance in early republican New York involved transactions that were based on direct face-to-face encounters between people who shared a long-term business relationship or else friendship or kinship ties. And, in fact, younger merchants often complained that the older banks and merchants renewed loans to favorite borrowers so consistently it was as if the money actually belonged to those debtors.⁵

This was especially the case for foreign trade. More credit in the first decades of the republic was offered for the purposes of facilitating foreign trade than for any other purpose, since the interminable delays between the payment for goods and their eventual sale was too great a strain on the finances of the New York merchant middle-men. Yet these trans-Atlantic distances did not prevent the relationships from being substantive and long-term. Many importers sent representatives to England, often times junior members of the merchant's family, to work with the English manufacturers and exporting houses. One anonymous writer in 1800 described how this kind of relationship perpetuated itself.⁶

It was [the merchant's] maxim to breed an abundance of young people in his counting house, after three or four years accomplishment under his judicious eye to transplant them to counting houses [in other cities], among his correspondents: and if their conduct was approved, he some how made it for the interest of those houses to take such young people into the partnership.⁷

In this way, a closely-knit credit network based on personal relations was extended across the Atlantic.

Two things made this close-knit, well-acquainted community of creditors and debtors possible. First, and most simply, the number of merchants and mercantile houses was small. In 1815, on the eve of the city's great mercantile expansion, there were less than 350 merchants in the city with \$5,000 or more in personal wealth. Most had establishments lining a few streets--like Pearl, South, and Front Streets--at the southern tip of Manhattan.⁸

Because this world was so small, it still lacked formal institutions that brought creditor and borrower, investor and entrepreneur together. This fact has led some historians to describe the financial marketplace in late 18th and early 19th century New York as chaotic. And this is true of general calls for financing. When individuals or firms tried to raise capital by appealing to a large number of investors, they lacked a real stock market in which to conduct this capitalization. Instead, funds of this sort were raised by lottery or newspaper advertisement, a more haphazard system but one that served the limited needs of the mercantile world of 1800.⁹

Furthermore, this description of a chaotic marketplace would also seem to be true of merchants' attempts to finance their trade through appeals to bigger creditors. But this appears so only at first glance and betrays a modern day bias toward institutionalization of finance and formal credit procedures. The seeming chaos is really a problem of the historian's inability to see an archaic set of credit procedures in the widening circle of acquaintance, reputation, and trust described by 'Old Citizen'.

The demand side of the equation must also be considered when explaining the personal world of early 19th century finance. The demand for credit in those years was not great. Again, most debt in the period before 1815 was utilized to cover the long time lag in trade--especially foreign trade--resulting from delays in transportation. Few merchants, says Robert Albion, borrowed for much else, even for major capital expenditures as ships or buildings.¹⁰

Nor were the credit demands on the merchants from their country customers extensive either. With transportation costs before 1815 enormous, the trade in bulk commodities was limited to those areas accessible to down-river transport. The vast network of country retailers, purchasing the farmers' crops in exchange for goods supplied by New York merchants, had not yet become an extensive demand market for metropolitan-supplied credit.¹¹

Finally, most merchants of the era were general merchants, purchasing and selling limited supplies of a wide-range of goods. The lack of product specialization reduced the need for extensive or long-term credit in two ways. The smaller purchases were usually spread out over time, placing less of a burden on mercantile finances. Second, this lack of specialization limited commodity speculation. As commentators in the 1830's and 1840's often noted, the speculative impulse was usually behind most large-scale, long-term borrowing, since the orders were large and were often held for a longer time to play off anticipated rises in the price of that commodity.¹²

All of this is not to say that credit was entirely unnecessary or incidental to the mercantile trade in the years before 1815. Something had to tide merchants over during the weeks and months the goods they had purchased and sold were in transit. Still, in contrast to later decades, most merchants tended to consider their credit arrangements as a means to the more important end of commodity exchange, rather than as money-making ends in and of themselves.

Attitudes toward Credit, Debt, and Financial Failure

In the early years of the republic, New York City's merchants acted as both a class and a community. That is to say, they constituted a class in that they shared a variety of political, social, and economic traits with one another. Most had undergone the same clerking apprenticeship; their family backgrounds were similar; their incomes derived from the same source of business activity; and their politics were based on a similar understanding of the relationship between government and economic activity. Furthermore, they had similar habits, dress, talk, and social behavior. And while their income levels differed, the gaps were rarely so huge as to stretch the meaningfulness of wealth as a gauge of class identity.¹³

But the merchants and traders of New York constituted a community as well. For one thing, the smallish number of merchants and the confined quarters of business activity in lower Manhattan meant that virtually every member of that community knew one

another. And if every member of the community didn't literally know one another, their economic interactions, as 'Old Citizen' explained, were structured around the simple principle: personal acquaintanceship as the basis for economic relationships.¹⁴

The physical setting of their world was narrow and circumscribed as well. Their business encounters were usually face-to-face and normally occurred in one or two places familiar to all members of the community. Pessen's study of New York City's mercantile elite, although covering a later period in the antebellum era, indicates that they stuck to a strict and rather confined pattern of residential living. For the early republican period, the confines of these residential arrangements were even narrower.¹⁵

How does this community/class dichotomy apply to credit and debt? First, since community relationships are personal, they revolve around individual character. That is to say, as far as the lender was concerned, the borrower's personal character mattered as much as his financial portfolio. Knowing the personal foibles, follies, and strengths of the borrower was of paramount importance in the extension of credit. Studying the business correspondence of early 19th century businessmen such as William Bayard, it is not surprising to find so much about the borrower's credit-worthiness coming down to questions about his lifestyle. Does he wear fancy clothes? Does he spend "inordinate amounts of money on his lovely young wife"?¹⁶

A trading system dominated by class relationships is different

and more complex. For one thing, the class relationships that provide a kind of template for the pattern of capital distribution are anonymous as well as personal. They are based on the various economic players' experience of having certain social, political, and economic habits and attitudes in common. In short, individual characteristics become fused with group ones.

Again, using credit as the key to this difference of class and community, the merchants who controlled the city's capital markets tended to loan money to other merchants and, perhaps, a few manufacturers and entrepreneurially-oriented artisans. The creditor might not know the lender personally. The two might have just met one another, perhaps through a third party. And a personal acquaintanceship may and probably will be established between the two (as, say, merchants get to know their local banker today). Still the initial connection between the two that leads to the transfer of capital is more likely to be based on a shared sensibility or a shared mentality, the ineffable spirit of class interest. These class-based credit relationships can be verified, for the antebellum period, by noticing the grievances and conflicts they created among other classes of New Yorkers.

Artisans, for one, constantly complained that any merchant could get capital, no matter how poorly he managed his business. But artisans, no matter how competent their own shops were run, were left out. This assessment was not entirely accurate. As Howard Rock demonstrates, some early 19th century New York artisans who demonstrated the entrepreneurial skills and values of the

merchants were rewarded with credit. Still, if the conclusion artisans reached was not the entire truth, it represented a good part of it. Only those artisans who talked the talk and kept the books of a businessman were considered for credit.¹⁷

Both as a class and a community, then, the merchants of New York managed the capital markets of the city to serve their own needs. They channelled virtually all credit to themselves and, in doing this, maintained their own financial hegemony, class cohesion, and community exclusivity. Nevertheless, there was a catch to this class- and community-serving flow of credit. And the catch was insolvency. Every creditor who loans money recognizes the possibility that that the debtor may not be able to pay it back.

Yet merchants had a hard time coming to terms with this fact throughout the 70-year period covered in this study, although difficulties tended to vary over the years. They varied as the composition and size of the merchant class in the city changed, especially as the population of merchants grew beyond the confines of community. In the early years of the century, with debtors and creditors relating to one another both as members of the same class and as members of the same community, the attitude was steeped in a value system based on personal interaction among market participants.

This imbued attitudes about insolvency with a moral dimension that had lingered on from an earlier epoch in colonial history when non-market values interacted with the economic workings of the

city. If a debtor was unable to pay back the money he had borrowed from another, it was often argued that there must be something wrong with the debtor's character. And the process of insolvency was seen in similar terms. That is to say, the failure to pay back a debt was also considered to be an immoral act as well as a financially irresponsible one.

In general, financial failure was a ubiquitous experience among all classes of New Yorkers in the early republican period, although the pace of failures never quite reached the intensity it would during the periodic panics after 1815. Between 1790 and 1815, approximately 3,000 New Yorkers received a legal release from their debts under state insolvency law. Of these, approximately 1,000 were merchants and about 750 of these were heads of families. (In addition, another 131 merchants filed for bankruptcy under the temporary federal act of 1801-1803.) There were also about 650 small retailers who declared insolvency as well. Together, merchants and small retailers constituted over 50 percent of the bankrupts, while they made up just 30 percent of the city's total tax-paying population in 1810.¹⁸

The sums involved were rather large among merchants. A sample of 24 merchant failures between 1790 and 1813 reveals a median debt load of almost \$21,000. Unfortunately, the records do not list who the debts were owed to, nor how much was owed to each creditor. Merchants owed far more money than either small retailers or artisans and had a much higher asset to debt ratio listed in their insolvency papers. Over half the merchants had 50 percent or more

of their debts covered by such assets as ships, goods, and, most importantly, outstanding debts owed to them.¹⁹

The bankruptcy papers, filed under the temporary act of 1800, are a rich source of material on financial failure among merchants. The bankruptcy courts of the federal government, however, were reserved only for the largest of fortunes. Here assets were listed with great specificity, although the debts were not. Mostly, the lists reveal the dangerous cost of doing business in a war-torn world. Prominent among the debts of most merchants were cargoes and bottoms lost to the British or the French.²⁰

The bankruptcy papers of John Marsden Pintard were typical. His account of losses listed two sloops, two brigs, a schooner, and three ships. With their cargo of wine and liquor, the losses amounted to \$115,000. In every case but one--the sinking of a brig in a storm--the cause of the loss was war-related. Unlike subsequent periods, the pre-1815 era was marked by great political uncertainties in the international arena. Whereas economic panics caused major epidemics of failures from 1815 on, war, embargo, and blockade were the cause of much mercantile failure in the 25 years of nearly unbroken warfare in Europe following the French Revolution.²¹

In short, merchants failed owing large but not inordinate amounts of money. That is to say, the total debt loads were heavy but they were usually balanced by substantial assets, even though many of these 'assets' were in the form of debts owed to the failed merchant. This points to a steady flow of credit through the

merchants' business, but not the accrual of heavy debt for the purposes of speculative investment. And much of the losses, particularly among traders, was due to war circumstances beyond their control. In other words, most merchants failed in ways that indicate they were not overly extended with their credit and debt.²²

Artisans, on the other hand, owed far less. A sample of 50 artisan insolvents between 1790 and 1813 shows a median debt load of about \$1700. This does not seem to be particularly excessive. In his statistical analysis of New York City artisans in the year 1816, Wilentz notes that at least one-third of those in the barrel, shoe, cabinet, and metal trades had tax-assessed estates of at least \$2,000.²³

On the other hand, almost all of the artisan insolvents in this study's sample had less than 50 percent of their debts covered by assets. And the vast majority of these assets were in the form of outstanding debts. In sum, artisans had far less access to credit. But they were far more likely than merchants to have their money tied up in outstanding debts owed to them. Nevertheless, both failed merchants and failed artisans, in the years before 1815, did not seem to hold excessive amounts of debt. Merchants had good debt to asset ratios and artisans simply didn't have much debt. This is especially true in comparison to the Jacksonian period and the high-flying economy of the 1850's.²⁴

Of course, contemporaries could not make this comparison with the future. To many financial observers, the adoption of liberal-

lending policies by newer banks and the increasing dependence on credit sources beyond the circles of immediate acquaintance bode ill for both the economy and the financial ethics of those operating within it. Even before the post-war expansion of credit and the proliferation of new credit devices, a conservative critique of the new business methods had arisen. Many of these conservative critics, like 'Old Citizen', were older merchants whose careers dated from colonial days.²⁵

These individuals represented one side of a growing dispute over access to credit within the mercantile community. The older merchants distributed capital in the old-fashioned way. They opened and closed the spigots to their personal acquaintances depending on the supply of credit, rather than using market-oriented determinants such as interest rates. As banking historian Herman Krooss writes, "funds were rationed more by discretion than by interest rates."²⁶

When capital was tight, merchants with money to lend or the older mercantile bank directors gave less to their friends. When there was more, they lent more. Consciousness of themselves as a community co-existed with a consciousness of shared class interests. Thus, it was not easy, as younger merchants and artisans complained, to break into this tight-knit community that had control over the capital markets. Yet things were beginning to change in the early 1800's.

The newer and not-so-well-established merchants whose careers dated from the Hamiltonian boom of the 1790's were frustrated and

began to open banks of their own in cities up and down the Atlantic seaboard. The new availability of credit made possible by these banks was both a cause and effect of the new attitudes about credit. The new generation of merchants were both aware of a greater potential for speculative investment and disdainful of attitudes that saw excessive issues of credit as dangerous to the older moral framework of commercial activity. Nurtured on governmental largesse of the Hamiltonian variety and new English sources of credit on the supply end and the "dazzling prospect of sudden riches" in real estate and commodity speculation on the investment end, the post-1815 generation of merchants developed, in historian Amy Bridges words, "a distaste for those modes of business by which wealth is gradually acquired."²⁷

The pivot upon which these new attitudes and activities revolved were the newly established banks of the post-War of 1812 era. And it was these new banks, and the market-oriented methods they employed, that riled older merchants like 'Old Citizen.' The older banks tended to extend their capital to the same inside merchants with such regularity it was almost as if they had extended them permanent loans. This provided for stability but allowed for slow growth and stagnant profits. By extending their loans to a larger circle of merchants, the newer banks and new mercantile houses with capital to lend became more profitable. But they also became more vulnerable to economic fluctuations.²⁸

Now tied to market forces, rather than tethered to a permanent source of credit, the newer banks, and especially the merchants

they lent to, were more likely to fail when the money supply tightened. Not surprisingly, these failures were interpreted by both the newer and older mercantile camps to vindicate their own views about how the distribution of credit was supposed to operate. For older merchants, like 'Old Citizen', a financial failure was a clear sign that credit had been offered to the wrong kind of individual. And this had been made possible by the fact that the lender had not known the borrower sufficiently well. All of this was a clear sign to him that the new market-oriented credit system was dangerous.

What was the wrong kind of individual? The spend-thrift was one possible suspect. According to a 1799 article in the Commercial Advertiser, the "numerous insolvencies" were caused by a "manner of living...and costly things beyond the means of small traders." This "luxuriousness

is a forced, unnatural state of things that cannot possibly be maintained, and will bring more calamity on this country than the yellow fever...In all parts of the country, men out-live...their capital. Let banks and endorsers look well to the fact.²⁹

Ten years later, another severe critic of the insolvent and his propensity to profligacy spoke his mind in a pamphlet criticizing the movement against imprisonment for debt. To 'Diogenes Jr.' (searching desperately, he claimed, for an honest man), this propensity toward luxury had more personal ramifications. Less interested in the effects on the economic marketplace, 'Diogenes' saw insolvency due to profligacy in moral and personal terms. "I

would ask if nine-tenths of the objects of your [Howard, the leading anti-imprisonment reformer's] tender concern," Diogenes wrote

have not brought themselves to that grave of liberty...by their own misconduct and folly. Must the knavish abandoned rake riot in debauchery--be let loose as a prowling beast to prey upon the unwary--to riot in luxury, and fatten in idleness from the earnings of the industrious? (emphasis in original)³⁰

Here was insolvency as a morality play. 'Diogenes', like 'Old Citizen', was a self-proclaimed conservative ("Liberty does not consist in doing what we please...but in adhering to that which the law enjoins.") trying to preserve the economic standards and moral measures of an era that was passing in the commercial world of New York City. While 'Old Citizen' emphasized the restraining influence of an older community of merchants, 'Diogenes' was trying to resurrect an increasingly out-dated moral absolutism in regard to financial responsibility. Society, he maintained, must continue to punish those who refused to act, in the matter of their personal habits, with moral responsibility.³¹

Of course, there wasn't much argument on the subject of the spendthrift. Even those who advocated the most liberal credit policies and excused most of the excesses connected with that liberalization were not likely to excuse those who used the credit to pamper themselves with luxury. (Only in the credit card economy of the 20th century has credit-based consumption been tied to civic responsibility.) Instead, the most contentious question concerned

credit liberalization and speculation.

Credit for the purposes of speculative investment worried everybody. There were several reasons for this. First, speculation caused far more irresponsible lending and borrowing than consumption did. In addition, it was also harder to differentiate between responsible and speculative investment. While nobody condoned speculation, evaluating what exactly constituted a speculative investment was not easy. Thus, critics of credit liberalization spent a lot of time differentiating between those economic activities they deemed "irresponsible and destructive" and those considered necessary for "reasoned" economic growth.³²

Compounding the complexity of the issue was the problem of definition. Was 'responsible' investment value-neutral? Should it just be a matter of what turns out to be profitable? Or did "responsible" contain an ethical element? Was there a set of moral absolutes, defined as normative by an older generation of merchants, against which all economic behavior and especially that which involved other people's money, could be measured? Contemporaries grappled with all of these considerations.

Still adhering to the moral economic order of the colonial era, the conservative observers of credit and debt readily interpreted the economic behavior that led to financial failure in terms of a failed moral standard. Describing the local financial panic of 1792, 'Publicola' contributed these thoughts to the pages of the Daily Advertiser.

The current distress is a severe judgement on this city. It should produce a speedy reformation from our past errors and teach us to place no dependence on uncertain riches. Who can tell what fraud, dishonesty and imposition have...entered into the business of speculation?...It is the iniquitous process of this species of trade." (emphasis added)³³

The author of this passage combined revolutionary era ideals of independence and moral virtue in an attack on the debt-financed speculation that had resulted in the new republic's first panic. This panic, set off by the collapse of speculator William Duer's real estate empire, sent a host of very wealthy investors to debtors' prison when they could not meet their financial obligations. While the prison is more properly the subject of part two below, a comment or two on the institution is appropriate here.³⁴

First, until roughly 1810, all classes of debtors found themselves behind bars when they were unable to meet their financial obligations. It was not just the defenseless artisan, laborer, or small retailer, who could not afford the best lawyers, who ended up going to jail. There was a sense that the jail was for anyone and everyone who violated the standards of responsible fiscal behavior and failed to pay back the money they had 'hired' or borrowed.

Second, while the defense of imprisonment for debt would later take on a utilitarian tint--how else can the creditor get at the hidden assets of an insolvent debtor?--it was the moral dimension that defenders of the institution employed before 1810. In those

early years, they considered imprisonment for debt a justified punishment for failing to meet financial obligations. "The man who steals a \$12 watch," 'Elihu' explained in the pages of the Columbian in 1810,

is jailed for three years. But the vicious debtor borrows \$12,000, with no intention of re-paying... is taken to court...and is set free to go on his way to do it again. The \$12 thief is making nails in state prison--the \$12,000 villain is riding in his carriage because it is cruel to confine a man for debt.³⁵

In sum, conservative critics of the changing capital markets of New York City continued to conceptualize debt as a moral obligation. In face-to-face encounters, between intimately acquainted individuals, merchants consummated solemn financial obligations. To be unable to pay back that debt was inexcusable, a moral and criminal outrage worse than theft since it involved something more important than the mere taking of another's property. It involved the violation of a personal obligation as well.

Obviously, this interpretation left little room for the possibility of economic misfortune. As far as conservatives were concerned, the debtor's violation was clear: he couldn't pay back his debts because he had either borrowed too much, or else wasted and speculated the money away without considering the real meaning of his obligation to his creditor. Even war and politics were not enough to excuse the breach of this solemn obligation. As one writer noted accusatorily of the trade-withering Jeffersonian

embargo (in noteworthy contradiction to the prevalent attitude of blaming the embargo for all the merchants' trouble), the only merchants who failed were those who had borrowed too much in the first place.³⁶

This was the old standard of a community undergoing the stress of growth and change. Personal acquaintanceship as a functional model for the capital markets no longer made sense to many observers of and participants in New York's financial world. It put unnecessary and constraining limits on economic activity and, with standards of proper economic behavior now being measured more in market than moral terms, seemed hopelessly old-fashioned. As innovators, the liberals in the debate over credit felt compelled to educate their fellow merchants in the new norms of financial behavior.

To lend money, noted an anonymous contributor in the Columbian in 1810, was to take risks and accept the possibility of losing that money. Certainly, he said, every debtor was under an obligation to do everything in his power to pay back his creditors. But the moral absolutism that said the obligation was sacrosanct, he argued, must give way to considerations of economic fluctuations and, more importantly, the consideration that every investment and every loan contained within it the possibility of loss. In short, he explained, lending as an investment involved inherent risk.³⁷

Beyond this basic consideration of capitalist reality, however, the liberals on the subject of credit split into two camps. The first were economic liberals in the classic sense of

the term. That is to say, they believed that all restrictions on economic behavior and action, whether moral and legal, had to be swept away as barriers to economic growth. Archaic attitudes about insolvency were part of that economically debilitating legacy. In the absence of fraud--that is, where the borrower falsely obtained the loan or hid assets--there should be no question of moral or legal guilt. For the creditor, by lending the money, had assumed a financial risk as well. Economic-minded liberals of this type attacked old notions about insolvency by outlining the nature of market relations.

Most importantly, these defenders of the insolvent emphasized the fickle nature of financial transactions and the marketplace generally. "Let us be fair with those who have failed," wrote 'A Friend to Justice' trying to explain away the failures in the wake of the panic of 1792. Most financial failures, he said, were caused by a "chain of unforeseen accidents." Like other defenders of the failures of the 1790's--failures caused by the speculative binges in the wake of Hamiltonian bond and monetary policies--'A Friend to Justice' was one of those economic liberals.³⁸

The public, he said, conceived of the most nefarious financial doings behind every failure. When creditors of William Duer, the speculator whose failure set off the panic of 1792, stoned the debtors' jail where he had fled for his safety, they had already decided he was guilty of some outrage against the commonweal. According to 'Friend', the public believed all speculators were "fired up with the idea of heaping up a mountain of gold at the

enormous interest of 5 percent a month." The quaint interest rate aside, 'Friend's' comments can be taken to mean he believed popular opinion was misguided.³⁹

The public had openly given its money, even, he said, "rushed and forced it upon speculators" like Duer. All are implicated in the financial catastrophe that had resulted from this. To call Duer a uniquely evil individual for losing so much money was unfair, he said. Stoning the jail and calling for his neck were barbaric acts, worthy of some kind of dark age before the light of modern market relations had burned away these vestigial ideas of guilt about losing other people's money in a non-fraudulent way. In 'Friend's' opinion, it was not that the creditors who lent him the money were the guilty party. Rather, it was that questions of guilt or innocence in this type of financial catastrophe were entirely irrelevant.⁴⁰

These economic liberals or modernists had a political agenda. They were pushing for the passage of legislation that would allow a reasonably smooth, equitable, and rapid release of the financial failure from his debts. In this effort, they were joined by reformers with a humanitarian perspective. These reformers wanted to counter the harsh attitudes about insolvents in order to rid the statute books of draconian laws that called for the perpetual imprisonment of non-paying debtors. They wanted to shift the frame of reference about credit, debt, and insolvency away from the dominant harsh and absolutist one. Rather than doing this in the interest of unfettered markets, these reformers sought justice for

and humane treatment of the insolvent.

Their voices were first heard about 1800. In the year that the federal government passed its first--albeit shortlived--bankruptcy law, two insolvent debtors began publishing newspapers about the problem of insolvency. Both Prisoner of Hope and Forlorn Hope--put out, respectively, by insolvent merchants William Sing and William Keteltas--were written, or so the editors said, from cells in the debtors' prison itself. Although they lasted only a season or two, both papers were filled with pleas for the passage of more humane laws on insolvency, bankruptcy, and imprisonment. While the editorial content of Forlorn Hope encompassed a broader reform agenda, the two papers shared the same line on debt and insolvency.⁴¹

Most financial failures, Keteltas wrote, were caused by unforeseen and unpreventable misfortune. "It is a terrible thing," he said, "to liken misfortune to crime." But where the economic liberals argued for an amoral economic standard in which all who lent and borrowed were equally guiltless in the face of market fluctuations, Keteltas' intent was to establish a common thread of humanity within the financial community. As to those who have lost their money in a bad loan, Keteltas warned, do not judge or act harshly against the insolvent. "Those who are wise and modest," he cautioned, "do not seek to do injury even if in they are in the right; they know that life's fortunes change."⁴²

While Keteltas' paper did not outlast the year, the sentiments lived on. A decade later, they were taken up by Joseph Fay

(writing under the pseudonym 'Howard', after the English prison reformer of the same name), probably the most important figure in the insolvency reform and anti-imprisonment movements. A prestigious New York lawyer, who also claimed he composed his essays during a stay in the debtors' prison, Fay defended imprisoned debtors. They have, he wrote, "become embarrassed [insolvent] by misfortune which no human wisdom can guard against." 43

Fay worried about the unforgiving attitudes of the public as well. As long as credit was legal, he said, adopting some of the rhetoric of economic liberals, then people should not automatically presume irresponsibility on the part of the debtor for accruing too much debt or a lack of ethics for his failure to pay those debts back. Nobody ever bothers to investigate, Fay noted acidly, why the debtor had failed to meet his financial obligations, they just fling accusations about. The all important distinction between fraudulent activity and economic, he said, was being 'blurred.'⁴⁴

In a series of articles running in the Public Advertiser in 1810, 'Ambrose' took the point even farther. The first and 'heartfelt' impulse of troubled debtors is not to cheat their creditors, he said, but to do everything they could to meet their financial obligations. "Why do they [debtors] tear up the very pavement in our streets in search of money when they have notes to pay?" he asked

Is it to cheat? No, verily, it is reputation
and a 'good name' that influences them. It is
more precious than gold.⁴⁵

'Ambrose's' comments revealed a convergence of liberal positions--both of the economic and humanitarian stripe--on the issue of financial failure causation and the debtor's moral responsibility to meet all financial obligations to his creditor. Not only was there no moral question involved in non-fraudulent insolvency, Ambrose argued, but the very instincts of enlightened self-interest--so critical to the theoretical underpinnings of the capitalist marketplace--were re-enforced by the liberal capitalist attitude toward the insolvent.⁴⁶

While 'Ambrose' was directing most of his criticism at harsh insolvency and imprisonment laws--laws which were about to be radically but briefly overturned in Albany (see chapter seven)--there was an underlying message about the role of insolvency in the marketplace that anticipated the liberal position, of both the capitalist and humanitarian stripes, on insolvency after 1815.⁴⁷

Although the great panics of the 19th century--panics which caused the failure of great trading houses and 'wild speculators' alike--were still in the future, Ambrose anticipated the liberal capitalist response to them. When they functioned freely and fairly, markets, he argued, acted randomly against all participants. There was very little most debtors could do to save their fortunes in the face of overwhelming market forces.⁴⁸

Nevertheless, left to their own self-interest, debtors would do everything within their power to meet their financial obligations. Without the rules and duties imposed by a community of merchants and in the absence of feelings of personal obligation

to one's creditor, the Smithian force of individual self-interest would instill an impulse in the debtor to meet his financial obligations. The nature of that impulse was left unclear by 'Ambrose'. And, indeed, this lack of clarity on the subject of debtor responsibility would haunt the New York financial world for much of the antebellum era, years that can be labelled the chaotic era of American finance.⁴⁹

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Chapter Two: The Chaotic Era of Credit and Debt, 1815-1845

The Credit Markets

When the long cycle of European and North American wars inaugurated by the French Revolution came to an end in 1815, New York City was on the verge of an enormous economic expansion. Freed from embargo and blockade and sensitive to a pent-up demand for capital and goods, its merchant population was eager to re-establish critical links with English manufacturers and exporting houses as wartime conditions had squeezed revenue and profits. "The non-intercourse with England act prevents the use of these [credits] from England," Evening Post had editorialized in 1811, "hence causing failures here."¹

But the New York merchants got more than they had bargained for. While short-term credits to cover the cost of goods in their Atlantic crossing were once again offered by English exporters to their New York importing counterparts, many exporters in England decided to bypass the New York merchants altogether and sell directly to the merchants' former customers. The reasons were trade frustration and anxiety. Two years of the Jeffersonian embargo and three years of warfare between England and the United States had created explosive trade conditions on both sides of the Atlantic Ocean.²

Denied access to their biggest foreign market for almost a decade, British manufacturers and exporting houses were anxious to get rid of excess inventories. They also wanted to re-establish

dominance in these crucial American markets. With New York as the entrepot of first choice, English manufacturers and exporters began to flood the city with cheap textiles, factory-made iron products, and select, under-priced luxury goods.³

The auction was the preferred method of sale for many of these English exporters and manufacturers. Auction houses had existed in New York since the 17th century. By 1800, the city had regulated the trade, allowing for 24 houses (expanding that number to 36 in 1813) and levying a three percent tax on all auction sales. Nevertheless, auction sales remained more or less an adjunct to the overall mercantile economy before 1815, utilized mostly as a way for exporters and importers to get rid of dated or damaged goods.⁴

But with the peace of 1815, auction sales took on a new life. They allowed the British to get rid of their war- and embargo-created inventories in a hurry. The potential bargains to be had drew rural retailers and the new class of city wholesalers--or jobbers as they were called--in droves. Since many of the retailers and many of the jobbers--who put together attractive packages of goods which they then marketed to country retailers--sold their goods to perpetually indebted farmers and planters, they were always on the look-out for liberal credit offerings.⁵

Through the auction houses and the agents the British manufacturing and exporting house increasingly dispatched to New York City, this credit was made plentiful. Despite the fact that much of this credit was long-term--as much as 12 and 18 months to suit transportation distance and crop schedules--the credit itself

became a very important source of profit, since interest rates rose to match the need for money. In fact, it is not too far-fetched to say that in the case of many auction sales and jobber lots, the credit package was the source of profit. That is to say, with the profit margin on goods sold at auction so unpredictable due to bidding, and with jobber packages priced so competitively and close to cost, the credit offered to finance the sales provided the jobber or auction house its margin of profit.⁶

Unfortunately for regular merchants, the auction house was not a one-time inventory-reducing phenomenon. In line with their importance in the late 1810's, the city changed its regulations on auction sales which furthered their increasingly dominant trade position. By the 1820's, auction houses like Haggerty and Austin and John Hone and Company were powerful players in an economy in which almost half of the city's imports were sold at auction. Moreover, the auctions further expanded the availability of credit and further de-personalized the exchange of credit for the purposes of conducting business trade. In short, they served to weaken the chains by which personal acquaintanceship and obligation linked creditors and debtors to one another. Country retailers and city jobbers now flocked to whatever auction house was offering the latest sale, rather than to their regular supplier.⁷

And it was now the arbitrary flux of bidding which determined who controlled the goods and the credit that was offered with them. Auctions increased market risks and heightened the sense of a free and market-determined flow of credit among the mercantile class.

This is not to say that the predictable credit arrangements between older merchant houses and city banks or English exporters disappeared. It is just that this kind of credit arrangement was no longer the exclusive or even dominant form by which merchants came to finance their expanding trade.

Still, the economy-wide swings in prosperity brought on by the new credit arrangements affected everyone. Even large houses and wealthy individuals were vulnerable to the mass failures of their debtors during times of economic panic. And as the American economy became increasingly volatile, English and continental creditors became ever more skittish.⁸

Thus, the explosive growth of auction sales could not help but have a profound impact throughout the New York economy. For the older mercantile houses, it acted as a catalyst for a dramatic change in the way they went about doing their business. Auctions hit the merchants in places where it hurt. First, they took away customers by the droves. This was particularly worrisome in the immediate post-war years since merchants, anticipating tremendous pent-up demands from the war years, had over-extended themselves and built up huge inventories. Now they couldn't get rid of them or, at least, get rid of them at a profit.⁹

The problem was that merchants who had purchased the goods outright or, on fixed terms of credit, had to sell the goods at fixed prices. But the auction houses, with their fluctuating prices and with their willingness to make smaller profits or even no profit on the merchandise itself, under-priced them. Importing

merchants as well as the city's artisans, especially those in trades competitive with British manufacturing, felt the pinch.¹⁰

Not surprisingly, then, the general boom economy of the late 1810's was marked by soaring insolvency rates. From approximately 150 cases per year in New York City in 1814 and 1815, the numbers doubled in 1816 and doubled again in 1817. And artisans were increasingly prominent among them.¹¹

Despite these temporary setbacks, importing merchants responded in a variety of creative ways to the threat of auction sales and the opportunities presented by the new forms of credit the auction houses offered. First, many importing merchants continued the trend toward specialization that had marked the business since the turn of the 19th century. Beginning with the enormous drygoods business, merchants began to imitate the high volume, low-margin sales practices of the auction houses. Soon specialized merchants in raw and finished metals, foodstuffs and spirits, and many other lines of goods appeared. Many of these were older general merchants adapting themselves to the new methods, but most were part of a newer post-war generation of traders.¹²

These specialized lines of business contributed to the growing importance of credit devices. First, to profit in a specialized business, large bulk orders were required. To purchase in such volume, merchants had to utilize larger credit advances, for longer periods of time if the market for the particular goods was soft. Specialized merchants were usually deeper in debt than their older

general merchant counterpart, according to the asset sheets of insolvency cases. And, as those same insolvency records make clear, the debt was often for longer terms.¹³

This tendency to augment credit needs was built into the structure of specialized line trading. But there was also a tendency toward commodity speculation that grew out of the specialized trades. That is to say, merchants specializing in one line of trade were more likely to try to profitably anticipate market trends in prices than were generalized merchants. And, of course, commodity speculation is inherently credit intensive and risky.¹⁴

In his 1843 collection of mercantile stories called Bankrupt Stories (based, he claimed, on 'fact'), Charles Briggs describes the efforts of two New York coffee merchants desperate to stay solvent. Caught with warehouses full of coffee in a buyer's market, the two attempted to make use of their access to liberal private and institutional creditors. They tried to corner the market in coffee "and restore their firm." But commodity speculation being its inherently risky self--and with Briggs' aim being the advocacy of non-speculative business practices--the effort inevitably fails and the two men go broke after a tight-fisted Scottish creditor refuses to forward them the credit advance they needed.¹⁵

Product specialization was not the only response of merchants to the auction threat. Many began to conduct their trading business on entirely new principles. In general, these new

practices involved less in the way of outright purchases of merchandise and more in the way of financial services and new forms of marketing. In the years up to 1815, most merchants were generalized ones who owned their own ships and bought and sold goods outright, using a minimum of short-term credit to cover the trans-oceanic delays in transportation. Speculation and debt-financing produced binges and busts in the 1790's, but these were aberrations in a mercantile community that mostly experienced ups and downs in prosperity that were related to geo-political conditions rather than to any swings of the business cycle. With limited credit, booms and busts were necessarily milder.¹⁶

After 1815, merchants began to specialize in their role as middlemen and entrepreneurs. A variety of new kinds of mercantile houses emerged including jobbers, commission merchants, and brokers. Briefly, jobbers were those who purchased goods from a variety of importing houses and auctions--especially auctions since they offered the chance of substantial bargains--and then put them together in attractive and diverse packages for country retailers. While the jobber actively drummed up business by looking for visiting retailers in the city's hotels and saloons, the real enticement they offered was liberal long-term credit, although at a healthy interest rate since it was that rate that provided most of the profits.¹⁷

One step removed from the jobber, in terms of his ownership of the goods that passed through his hands, was the commission merchant. Rather than purchasing the goods outright, the

commission merchant took goods on consignment for others, charging a varying rate for the money he forwarded to the consigner. He garnered additional--although less significant-- fees charging for such services as storage and accounting.¹⁸

Last, in terms of their relationship to the merchandise that passed through their hands, was the broker. Beginning with ships but spreading to many different lines of business, brokerage houses arose to facilitate trade. Brokers never purchased anything they bought or sold. Rather, their business involved bringing buyer and seller together, charging a premium for this service and, most importantly, facilitating the transaction by offering credit to both sides.¹⁹

In the case of all these new kinds of merchants, credit was the key to their operations. Merchants offered it in greater quantities to their buyers, and on much longer terms. More significantly, the credit itself became the profitable end, rather than the means, of the merchant's business activities. As 'M.M.', a businessman and a commentator on the mercantile community of New York City in the late '1810's, noted

[People] became disgusted with sober dog-trot paths of industry. They were almost ashamed to be at work. Economy was characterized as meanness, and labor was denominated plodding.²⁰

Buying and selling goods were the 'dog-trot' paths, 'M.M.' implied. Endorsing notes, borrowing in order to lend, and speculation on debt-financed means was the way "to gallop to riches." Credit was the path to easy and quick fortune. It allowed those in the

trading profession to remain profitable in their day-to-day business activities and it promoted speculative financing.²¹

Banks, which had traditionally been controlled by the dominant mercantile groups in New York City before the War of 1812, were shifting with the times as well. By the late 1810's and the 1820's, they were extending credit on longer terms to a much larger class of merchants. Competition was part of the reason for this. Those banks that practiced more liberal credit policies made more money which caused the older and more conservative banks to emulate them.²²

More important, however, was the fact that newer and more creative managers of credit and capital were on the boards of many banks, just as they were filling the ranks of the mercantile population. Gone were the days when banks only extended loans to a closed circle of well-connected merchants usually sitting on the boards of directors or related, by close personal acquaintanceship, to those who were. Within a few years of 1815, the trend toward freer money markets was heading in an obvious direction--the speculative debt-financed excesses of the 1830's.

Two outside developments--one from England in 1826 and one from Washington in 1832--contributed immensely to this trend by releasing even more capital into the New York markets and further advancing the attitude, so critical to this chaotic era of credit and debt, that manipulation of credit and speculative financing were the paths to fortune.

The first development involved changes in London's financial

markets. English manufacturers and exporting houses were allowed to extend their American customers bills of credit. These bills allowed Yankee merchants to utilize the assets inherent in the goods they bought from England. In other words, merchants didn't just get extended time to pay for the goods in the traditional manner of credit to cover transport. They were now able to borrow against the value of the goods, before they even arrived in America, to raise funds for other purposes. Those other purposes might be further commodity purchases or speculations in real estate or whatever.

The second development was the more famous Andrew Jackson veto of the Second Bank of the United States' charter renewal. The veto lifted the lid on monetary expansion as federal monies were shifted to private banks. More importantly, the restrictions of a conservative specie to banknote ratio, indirectly imposed by the national bank's ability and occasional willingness to force an irresponsibly over-extended bank to pay the money it borrowed in specie, were removed.

The effect of all this is easy to imagine. In a very short period of time, there was, very simply, a lot more capital available for investment in the New York money markets. This plentiful money, of course, meant inflation and inflation meant that loans were easier to pay back. This freed businessmen to take out new and bigger loans. Investments would yield ever greater returns as prices continued to rise. A contagious idea began to permeate the New York mercantile community: it was impossible to

fail. And, indeed, insolvency rates in the early 1830's plummeted to record lows, sometimes to a tenth of what they had been a decade before. A mere thirty or so merchants went bankrupt in 1834.²³

The rapid augmentation of capital in the early 1830's also speeded up the process by which merchant-controlled capital moved through and about the New York economy. In fact, the interpenetration of merchant capital, in which merchants both lent money and endorsed notes for each, was nothing short of astonishing in this period. They borrowed against real assets and imaginary ones, the latter often in the form of goods to be sold at an anticipated inflationary price.²⁴

Not only did this money breed a predictable rise in more ambitious, questionable and even shady investments, it also meant that at any given time there was more capital on the streets than there had even been before. As 20th century economists have noted, it is not merely the supply of money that matters but the rapidity with which it changes hands. The rapidity of exchange, facilitated by the easy willingness to lend and borrow money, meant that more people could spend and invest the same amount of actual capital. In short, it allowed for the same dollar to be in the pockets of two or more people simultaneously.²⁵

Finally, easy and plentiful money bred corruption. Banks were notoriously given to making loans and issuing notes against inadequate holdings, although this was more acute in western and southern states than it was in the northeast. But merchants were little better about this--and often they were worse. Debts, even

the most unreliable of debts, were treated as if they were solid assets allowing the merchant to borrow even more against them, and then lend money they had just borrowed. Even commission merchants borrowed against goods that only temporarily passed through their hands as if they had owned them themselves.²⁶

Even with all this money available, there was still a demand for more and merchants met this demand by issuing their own notes, backed with assets of dubious liquidity. If a merchant could not lay his hands on claims to goods, he could often find another merchant who would endorse his notes as a favor or for a fee, implicating an ever wider circle of businessmen in the bargain.²⁷

By the panic of 1837, the mercantile community of New York City had been utterly transformed. The number of merchants had grown immensely as New York out-distanced all its commercial rivals for control over the nation's retailing and wholesaling trades. More importantly, they had transformed the way they did business. By using credit devices that were increasingly intricate and diverse, they expanded the possibilities of trade. Money could be made on goods that the merchant bought and sold or that simply passed through his hands. In either case, credit allowed the merchant to increase his volume of trade and add to it the even more lucrative business of financing the trade itself. The flood of credit allowed for speculation, not just in commodities but in corporate stocks and, above all else, in real estate.

And as the New York merchants obtained new sources and developed new forms of credit, they were transforming themselves.

Early 19th century borrowing and lending had been based on the idea of personal reference. After 1815, the size of the mercantile community obviated this kind of credit based on personal reference.

Nevertheless, credit exchanges multiplied and grew increasingly complicated. Where this once would have chilled creditor-debtor relations and raised cries of financial irresponsibility and corruption, it now became unexceptional to most of the mercantile community, with neither merchants of the old or new school raising their voices in protest or warning about the new credit practices. The reason for this was that the mercantile community of New York had developed a new frame of reference for an economy increasingly based on credit and debt.

That frame of reference was confidence--not the old style trust in the character of the borrower but confidence in the possibility of gain and in the promotional salesmanship of the borrower. And it seemed to take in everybody. This confidence in the possibility of gain worked both on a macro- and a micro-economic scale. At the macro-scale it meant confidence in the idea of market capitalism and the limitless possibilities of economic growth in the United States. At the micro-level, it meant that the borrower's investment scheme was imbued, in the lender's mind, with its own bit of that larger market confidence. "Someone wants to know what a credit system is?" the editors at the Evening Post wrote. Their answer, although rendered sarcastically, captured well the spirit of the times.

It means...confidence and excludes the

idea of system, which implies restriction and prohibition. (emphasis added)²⁸

It was a confidence in ever rising prices and the likelihood of obtaining credit that both resulted from and, in turn, fed the flow of credit. Confidence, 'insane confidence' as one writer called it, acted like a rich atmosphere enveloping the entire mercantile community during times of economic expansion, especially in the early 1830's. Longer-term credits and endorsements of the notes of other merchants were the financial symptoms.²⁹

The basic rules of capitalism, as they were once understood in the New York financial community, seemed to be in abeyance. There was money without specie. There was credit offered on terms beyond any reasonable need of trade. There seemed to be profit without loss and investment without risk. Without the fear of failure as a check on either the lending or borrowing of money or the financing of all kinds of investment schemes, most members of the mercantile community came to have confidence in one another to an extraordinary degree.

Among this class of people, it could be said, there was a broad socialization of credit: from each according to his lending ability, to each according to his borrowing need. The extraordinary confidence creditors had in their borrowers and investors had in their speculations meant that most merchants with capital and assets, especially newly-made paper ones, were willing to share them, for a profit, with almost every other merchant. It represented, in exaggerated form, the confidence necessary to all

credit and hence to most trade. Henry Ward Beecher, preacher to the mercantile class, called it the "principle of mutual confidence upon which all commerce rested." Less positively, the editors of the New York Evening Post described the speculative binge of the 1830's as a period of "mutual self-delusion as to the results of enterprises and the values of property."³⁰

In fact, it was neither capital nor confidence alone but the interpenetration and interdependence of the two that sustained the credit economy of the Jacksonian age. It was the influx of new sources of capital into New York and the immense possibilities presented by the expansion of the city's access to new markets in the hinterland--as well as the politically motivated removal of governmental restrictions on finance--that created the new economy of confidence-induced debt-financing. In short, the two decades between 1815 and 1835 were decades of the transcendent entrepreneur and transcendent entrepreneurial values.

As far as credit and debt were concerned, they were mere tools for the purposes of attaining quick fortune. The editors of the Columbian understood these values early when they wrote, in the midst of the panic of 1819, of the entrepreneurial mentality. The previous binge began, the paper said, when merchants

first began to get money upon accomodation
[i.e. on un- or under-secured loans from banks or
other merchants] instead of raising it from their
own businesses. Procuring money so easily from
the banks, they cease to encounter the trouble
and vexation from raising it from small sums due
to themselves: they are tempted to take all they
can get, even to the pledge of their last acre of
ground...³¹

The transformation of a class and a community was already beginning to take place among the New York merchants. Both creditors and debtors, who were often the same person in the frantic and convoluted New York financial marketplace of the 1820's and 1830's, were exchanging pieces of paper obliging them to pay or collect monies based on little more than a sense that their counterpart in the financial transaction shared their optimism and confidence in the possibilities of debt-financed investment. The personal acquaintances that formed the basis of credit amongst the mercantile community at the turn of the 19th century had been replaced by the shared attitudes of an entrepreneurial class of merchants by the 1830's. To use a gilded age term, it was a great barbeque, but clearly not everyone was invited.

Outside of the mercantile class, for instance, the credit situation had not changed quite so dramatically. Especially among artisans, the new entrepreneurial economy provided the makings of a credit nightmare. The late 1810's and 1820's witnessed a wave of financial failures among artisans of all trades who were increasingly caught between a lack of finance credit and an outlay of work and materials provided on credit for their customers.³²

As Sean Wilentz has noted in his work on the artisans of antebellum New York, "the money market, although still largely the preserve of mercantile speculators, had begun slowly to open to entrepreneurs in those crafts most stimulated by the acceleration of commerce." In other words, those few craftsmen who caught on to the new entrepreneurial methods of utilizing credit to expand

business were able to develop the manufacturing establishments and sweatshops that eventually would drive many competing artisans into bankruptcy and wage-earning status.³³

And, in those trades or segments of trade still dominated by handicraft, producer to consumer interaction, and small capital requirements, the effects of the entrepreneur economy could be almost as harsh. The working-class press was filled with stories of artisans stifled by contractors or upperclass patrons. And even the mercantile Commercial Advertiser noted that the need of artisans to offer goods and services on credit to their customers made it more difficult to stay in business. The paper's editors calculated that the artisan's capital requirement was three times what it would have needed to be in the absence of credit sales.³⁴

As far as obtaining credit was concerned, the picture was bleak. The insolvency records of the 1820's reveal a relentless squeeze of the artisan class, as the quantity of outstanding debts owed to the artisan increased while the amount they had borrowed, and couldn't pay back, had dropped. In other words, even though they owed less money, artisans were finding it increasingly difficult to meet their financial obligations in a punctual manner.³⁵

There were two general reasons why artisans rarely obtained the kind of long-term investment credits they needed to expand operations or even remain in business. First, New York City's merchants were less likely to invest in manufacturing or artisanal concerns than, say, their Boston counterparts. Given the immense

profitability of the mercantile trade, as well as its intense demands for capital, there was little credit available for anything else. What excess capital there was usually went into the highly lucrative and volatile urban real estate market.³⁶

But lack of credit alone does not produce insolvency. In fact, it can often effectively ward against it, for the obvious fact that only those in debt can become insolvent. The problem for New York City's artisans was that they were forced to provide their services and goods on credit to the merchants and wholesalers who purchased and distributed their production. Thus, they were caught in a squeeze between their reluctant creditors and recalcitrant debtors. For artisans of the era, credit was crucial. In fact, it was often a necessity for remaining solvent rather than an option for the ambitious to pursue. The urgency of the workers' demand in the late 1820's and 1830's for an end-to-imprisonment and a mechanics' lien law--giving legal priority to their demands on the estates of insolvents--was an indication of their desperate credit circumstances.³⁷

Unfortunately, however, artisans were unable to secure much in the way of credit because the merchants who controlled the city's financial institutions were reluctant to loan money to artisans. For the most part, city merchants were lured by speculations in real estate and commodity exchange. What money was made available to artisans went to a fortunate and entrepreneurially-minded minority who established social connections with the city's elite or, in some other way, gained access to the money they needed to

transform their workshops into factories and thus position themselves at the receiving end of the credit conduit.³⁸

But economic criteria were not the only reasons artisans were starved for credit. Class had much to do with it. The credit economy based on confidence was essentially an entrepreneurial one. And as such, its class dynamics revolved around the issue of younger businessmen trying to gain access to the capital controlled by established merchants in order to secure themselves a berth in the mercantile class. More than just demonstrating economic savvy, they had to share a lot of the attributes and education of the class of people whom they hoped to latch on to in order to make their own fortunes.

Credit and class, then, worked upon each other in a kind of dialectical process of wealth and reputation building, a process effectively closed off to most artisans. And access to credit and class standing acted as mutually supportive means. Artisans who had not imbibed the entrepreneurial culture and had not found a way to ingratiate themselves with the merchants and bankers who controlled the city's capital markets were left out of the credit picture. As a class, then, they suffered for this lack of credit. In many ways, it is this inability to obtain the necessary capital to expand their businesses, as well as some of the new technologies of scale and the importation of cheaply manufactured goods from England--itself a product of the era's lopsided expansion of credit--that doomed the artisan workshop.

The credit squeeze's effect on the artisans can be measured,

paradoxically, by the amount of commentary addressed to the question of artisan failures during panics. That is to say, the fact that there were artisans who were unable to meet their financial obligations to their creditors means there were artisans who were able to get some kind of credit in the first place, although compared to the mercantile class the numbers of artisans able to do so were tiny, and the quantity of credit they received was niggardly.

Thus, during the periodic economic crises of the 1810's, 1820's, and 1830's, the press was filled with accounts of artisans, unable to pay back their creditors, being forced to settle their accounts in insolvency courts. This would disappear, as will be discussed chapter three, by the panic of 1857-1858, by which time the press had an entirely different focus on the effects of the economic downswing on the city's working class population. Instead of the earlier concerns with artisan insolvency, there was a great deal of handwringing over the suffering of the unemployed worker and urgent appeals to manufacturers and even the city government for jobs and poor relief.

Attitudes about Credit, Debt, and Financial Failure

There was a naive quality to the discussions of credit and debt in Jacksonian age New York. As long as the economy was operating smoothly or even when it was experiencing periods of giddy expansion, no one seemed to be overly concerned about the mercantile community's growing reliance on shaky credit. But when panics hit, the community's keepers of business conscience would

rouse themselves and denounce the evil ways of the credit economy. Janus-faced, both merchants and the mercantile press eagerly and optimistically looked to a glorious future of ever expanding capital markets during periods of economic growth and nostalgically hearkened to a past golden age of financial sobriety whenever the credit economy had entered one of its periodic downturns.³⁹

After describing the boom period of the late 1810's as a time of brimming confidence and thoughtless optimism, for instance, M.M. turned his attention to the gloomy present of financial panic in 1819. "I got caught up in it," 'M.M.' had to confess

...here I had a good business and if I wasn't greedy, I would have been happy. But I ventured out onto the sea of speculation...and then the storm hit. And unprecedented pressure and alarm came over the deluded country. Banks called in their debts and even the biggest fortunes collapsed.⁴⁰

In more measured tones, the Commercial Advertiser assessed the importance of this credit confidence from another perspective. "In times of general distress," it editorialized,

it is not the absolute scarcity of the money which creates the principal embarrassments [inability to meet financial obligations]; it is the destruction of confidence that annihilates the largest proportion of business capital.⁴¹

In short, the financial problems arose when the rules of the marketplace began to penetrate the 'gorgeous dream' of unlimited growth based on credit. Although panics were often triggered by a specific event, the subsequent collapse of the economy was due to

this sudden evaporation of confidence. For instance, the two most serious panics of the era--those of 1819 and 1837--were triggered by a shift in the federal government's easy money policies. But the depressions which followed resulted from a deeper problem in the mercantile society and economy, a fact that was apparent to contemporaries. They consistently pointed to the dangerous herd instinct among the players in the credit markets and the creditors over-zealousness and lack of patience to get their loans re-paid promptly.⁴²

Panics, then, set off class crises as well as economic ones, since confidence had become the substance of the mercantile class' identity. They played themselves out as exaggerated confidence was replaced by exaggerated suspicion. The socialization of credit, which resulted from the willing though temporary suspension of marketplace disbelief ("a summer of prsperity [in] which...it was forgot that winter should ever come"), was replaced by the individual instinct for financial survival. In the words of Reverend Beecher, ever the supporter of the business community, the panic of 1837 exposed an ugliness in the New York mercantile class he had never before imagined. It was a shocking episode, he said, in which "fidelity seemed to have forsaken men.

Many that had earned a reputation for sterling honesty were cast so suddenly headlong into wickedness, that man shrank from man. Suspicion overgrew confidence, and the heart bristled with the nettles and thorns of fear and jealousy.⁴³

In effect, nothing was more feared among the mercantile class

as a whole and among merchants individually than a loss of confidence. A lack of confidence in the market could turn bad financial news into catastrophe. And a lack of confidence among a debtor's creditors could make all the difference in the world between a temporary shortage of funds and a full stoppage of payment and failure. That was why nothing was more feared by conservative merchant and wild speculator alike than the rumor of financial difficulties.

When, for instance, James Bennett's Herald began listing financially troubled firms and individuals during the panic of 1837--in the interests of warning hapless mechanics and other small creditors--he was roundly criticized by the city's merchants. When he accidentally listed two thoroughly solvent firms and was sued, the plaintiffs received the lion's share of moral support from the mercantile press.⁴⁴

What made the rumors so devastating were their self-fulfilling qualities. Once the word was out that a debtor was having difficulty meeting his financial obligations, the flow of credit through his business would suddenly freeze. Creditors immediately cut it off and followed that by attempts to suck the current back up the tap, a task as impossible with credit as it is with water. The word that a merchant could not meet his obligations, then, had two mutually re-enforcing effects. First, it set off a scramble amongst the creditors to make their demands as quickly and forcefully as possible. Second, it froze the credit flow to the debtor precisely at the moment he most needed it to meet his

obligations.

As far as credit was concerned, confidence was equally important to the individual and the economy as a whole. Thus, at both the community and personal level, economics and class identity intersected over credit. The economy depended on it, and in this dependency was rendered terribly vulnerable to it. And the individual businessman looked to make his fortune and assure his trajectory into the mercantile class by the utilization of credit.

But to obtain that credit was a tricky business. The merchant had to assume the part and accept the values of those he hoped to borrow from. He had to manufacture confidence and he had to sustain a reputation, two very fragile things in the rambunctious economy of Jacksonian New York. And when that lack of confidence extended to the economy as a whole, the economy stagnated and failed to live up to its expectations of assured and relentless growth. The popping of the credit bubble plunged both the merchant and the mercantile economy into confidence-less limbo. Such was the case with the era's worst financial panic--that of 1837.

At first, merchants tended to lay the blame on the Jackson/Van Buren administration and the economic policies of the ruling Democrats. The petitions they sent to Washington bitterly denounced the government's demand to have all public lands purchased in specie, which depressed values in the all important market in western lands. And they cited the specie circular--which depleted the specie holdings of eastern banks in favor of their western and southern counterparts and created instability in the

financial markets of New York City--as the singular cause of the depression. When the government refused to heed the merchants' commission to Washington's demands to relax the rule that all customs payments be made in specie--a direct blow to cash-strapped New York merchants--the merchants were convinced that they were being martyred by an administration trying to appeal to country voters. Mercantile meetings that immediately followed the panic of 1837 were raucous.⁴⁵

Still, when the depression deepened and extended itself into 1838, 1839, and the early 1840's, the mercantile community began to admit to itself that there was something structurally wrong with the way they had gone about their business. And the credit markets, many realized, were the most likely culprit behind the merchants and the economy's existing woes.

Thus while it was natural enough for merchants and the mercantile press to praise the new abundance of credit for general economic expansion and individual financial success, the darker side of that story periodically had to be taken into account. For general panics and individual failures were, to risk a cliché, the tail side of the coin to the head of growth and success.

In the early years of the century, attitudes about failing to meet one's financial obligations dated from the colonial era and rested on the idea that there were moral obligations involved in every debt exchange. But in the transformative economy of the decades between 1815 to 1845, this sense of a moral obligation co-existed, often in one person's mind, with a recognition that the

market necessitated an easier and more liberal attitude about the failure to meet financial obligations. The Jacksonian age in New York City, then, was chaotic both in economic and ideological terms. People embraced the gains of the market economy, but when faced with the pressure of its costs and losses often succumbed to a longing for a lost stability. They frequently acted in modern market-oriented ways but conceptualized their actions in the vocabulary of a moral economy that was rapidly disappearing. And nowhere was this more apparent than under the revealing pressure of economic panic and financial failure.

Panics and failure were the antithesis of the American myth of endless growth and upward mobility and, as such, they effectively tested these bedrock attitudes under the most trying circumstances. Many New Yorkers, like many Americans of the age, worshipped the idea of economic growth and personal success. But panics and failure required them to look at the possibility that growth and success were not guaranteed. An introspective phase inevitably struck after each panic.⁴⁶

"Americans," John Pintard, a former insolvent who had been jailed for debts accrued during the Duer speculations of the 1790's, wrote in 1819, "are an active restless people impatient of slow profits." While he agreed that this energy was the source of the nation's extraordinary economic growth to date, he clung to his old standards.

Their habits...must undergo, not a reformation,
but a complete revolution. A new race must
arise on the broken fortunes of the present,

who different[ly] educated may be content to
plod and earn an honest living by slow degrees...
bring up their children in habits of strict
morality and industry...⁴⁷

Pintard believed that the cause of America's doom was the speculative impulse, and it was the unfettered capital markets that let this impulse come to life.

But Pintard was a representative of an older generation of merchants who operated their businesses side by side with a younger cohort of credit-oriented traders. Among this younger generation, attitudes about the pursuit of wealth were more ambivalent. On the one hand, they marvelled at their own capacity to pursue profit around the globe and deep into the interior of the North American continent as did 'Civis', a self-proclaimed young merchant on the make when he wrote of

the merchant...whose commercial operations
are confined not to part of the globe. The
merchant, whom no difficulty can discourage,
nor toil fatigue, nor danger appal, and no
enterprise retard, whilst engaged in the
prospect and pursuit of fortune.

At the same time, however, Civis was concerned about the implications of this limitless mercantile ambition. This "too enthusiastic pursuit of wealth" was leading to the kind of "wild speculation [that] has prejudiced property and morals, confidence and credit (emphasis added)".⁴⁸

The important thing to notice about 'Civis'' remarks was both his ambivalence and the language he employed to express it. Earlier generations condemned speculation and debt-financed

investment as a threat to the mercantile community's tight network of acquaintance and its moral standards of economic behavior. In later years, particularly in the proto-gilded age decade of the 1850's, concerns about speculative excess were confined to the strictly functionalist terms of its effect on economic growth and the smooth operation of the credit markets.

But 'Civis'' remarks bridged the two worlds. It was not so much that he was ambivalent about speculation. Every subsequent generation down to the modern day questions the utility and efficacy of speculative finance. More important was 'Civis'' conceptualization of the problem as a moral issue. Like Pintard, he even goes on to wonder what the effects will be on the morals of the young clerks who are learning the business at the side of these speculating merchants. Will they too be corrupted, he asked, and lose their sense of how commerce is above all else an honorable profession doing social good and fulfilling God' plans for humankind.⁴⁹

Like many others who condemned the unbridled ambition of merchants, 'Civis' blamed the expansion of credit. Again, in some ways, he hearkened back to an earlier time when credit was safely based on personal acquaintanceship of creditor and lender. Unlike 'Old Citizen', 'Civis' did not completely condemn the idea of credit based on confidence rather than personal acquaintanceship. What upset him was the abuse of confidence. When merchants endorsed each other's paper or notes, he said, it gave a false impression to those who took the notes of the merchant.

Endorsements, which he heartily condemned, allowed merchants to obtain credit based on the assets and reputation of another. The practice, he said,

was lacking in a moral, just, or practical basis...the system corrupts since the merchants... make themselves look better than they really are and by such means obtain credit elsewhere.⁵⁰

There was a practical concern here. For a system of credit to be based on confidence rather than acquaintanceship, there can be no smoke and mirrors. Interestingly, 'Civis' acknowledged the fact that oftentimes the reason one merchant endorsed the notes of another was in consideration of friendship or family. Thus, 'Civis' was rejecting a strategic part of the old system of credit as incompatible with the new anonymous credit markets based, as they were, on the idea of general merchant class confidence rather than personal acquaintanceship.

Frequently, the question of what constituted a moral and practical credit system came down to mere quantification, once again showing the confusion of the mercantile class of the age over the rightness and efficacy of utilizing credit for the purposes of general growth and individual economic success. That is to say, many business observers tried to calculate what might seem like the economic equivalent of counting angels on the head of pin, by trying to determine exactly how much credit in the economy generally and among merchants individually constituted an excessive amount. Especially during panics, many argued that it was not credit, but excesses of credit, that set off the panic, caused

merchants to fail, and debased the values and ethics of the mercantile class as a whole.

Yet at the same time, even in the midst of the depression years of the latter part of the decade and into the early 1840's, virtually every newspaper in New York was in agreement that debt-financing had its uses. The conservative and Whiggish Journal of Commerce argued that as long as there was available capital, there would be a need for credit, a need for someone to make use of that excess capital. The liberal Democratic Post concurred. It was the abuse of credit to finance and expand business, not credit itself, that was 'particularly baneful.'⁵¹

Clearly, the political lines concerning credit and debt were fluid during this era. Liberal anti-debtor prison reformer Joseph Fay and the Journal of Commerce both agreed that it was not within anyone's purview to decide the difference between rash speculation and sober investment. Thus, both conservatives and self-declared liberals, for Fay was highly suspicious of the commercial community, agreed that it was best to allow the markets to determine what was a reasonable level of credit without any governmental interference such as usury laws or judicial and legislative bias in favor of either debtor or creditor. Defining the latter was, of course, not an easy task, implying different things to the debtor and creditor camps. Yet, both Fay and the Journal of Commerce concluded, rather paradoxically, that the market would work this way only if the markets' agents operated under solid moral standards of business conduct.⁵²

The key test of these attitudes came when the debtor could not meet his debts, and this became the subject of much attention when panics made financial failure common among the mercantile community. Here, the debate followed old patterns from the early republican era. Was it simply economic misfortune and unforeseen calamity that caused most debtors to go under financially? Or was it their own personal indulgences and financial greed that was at the root of the extraordinary number of failures that came in the wake of every financial panic?

Not surprisingly, given their intractability, the questions were still unresolved. Nevertheless, the lines of debate were beginning to shift as supporters of the mercantile community began to accept the fact that a credit-based economy and an unrestrained market would inevitably produce failures. And, more importantly, that the failures should not be read as personal weakness or corruption of the insolvent's character. In turn, a new strain of criticism was beginning to emerge in the liberal press of the 1830's and 1840's. It was not yet a fully coherent but it did begin to see financial failures in class-conscious terms as the doings of money-men. "The car of credit, like the juggernaut is rolling on," a correspondent under the name of 'Erasmus' wrote in the pages of the Evening Post in August of 1837,

and if while thousands are crushed beneath it,
others are pressing forward under the influence
of high [wealthy] examples, to offer themselves
up as victims to the fancied divinity, the
delusion is a matter to be settled between
themselves and those who seduce and mislead
them.⁵³

These contradictions of seeing the participants of the new credit system as both makers and victims of their own failures would be resolved by the 1850's. By that decade, artisan failures were disappearing as an issue as the artisans themselves were slowly being absorbed and transformed into a new working class. As for the merchant, the idea that there was any blame at all for failure would shift to other terms. And the idea that there was morality or ethics involved in financial failure would be almost entirely dropped. The merchant may have acted irresponsibly but not immorally, defenders of the insolvent would argue. And those who attacked the insolvent were less concerned with their corruption than by the effects their insolvency had on workers and increasingly, with the rise of corporate business in the 1850's, on the stockholders as well.

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Chapter Three: The Formal Era Credit and Debt, 1845-1860

The Credit Markets

Economic recovery came slowly and fitfully to New York City in the 1840's. Emerging from the long financial slough set off by the twin panics of 1837 and 1839, the city continued to experience sluggish growth in its capital markets throughout the latter half of the 1840's. In fact, it was not until the great gold strike in California, which flooded the city with specie in the early 1850's, that one could speak convincingly of a full economic recovery. Nevertheless, the setbacks were temporary ones, set against a background of economic expansion.¹

The story of New York's rise to commercial dominance is a well-told one. By the 1850's, the city had turned its primacy among equals with other seaboard cities into a total domination of the nation's trade and finance, a commercial control which worked synergetically.²

New York's merchants, with their access to great pools of financial credit, could, in turn, offer credits on more liberal and expansive terms to their customers. This, in turn, drew the commodity trading, the profits of which continued to fuel the city's burgeoning capital markets. Between 1854 and 1857, foreign and domestic investors increased their deposits in New York banks by over 70 percent. As a popular saying of the day went, not a tree was cut down in the republic that didn't serve to benefit the commerce and power of New York City.³

Essentially, this was the story of New York's growth since about 1815. What made it different in the 1850's were two new developments. First, a significant portion of the city's craft production was being transformed as sweatshops and small manufacturies replaced artisan workshops. By the 1850's, this transformation had turned the metropolis into a manufacturing powerhouse. New York City had become, says Wilentz, "[the] most productive manufacturing city in the United States...and probably the fastest-growing large industrial area in the world."⁴

This growth was contingent on a widening access--although no fundamental shift in the channels--to the city's capital markets. As far as credit was concerned, the old rules still applied. The vast expansion of the capital markets meant that the financial leftovers offered to craftsmen were a little more substantial, but they remained crumbs off the merchants' table. Banks continued to be extremely hesitant to venture capital to the city's craftsmen and only the most entrepreneurially-oriented of these masters continued to get the kind of long-term credits they needed to expand their craft operations.⁵

This meant that the distribution of wealth among the city's craftsmen was becoming even more skewed than it had been in the 1820's. According to Wilentz, the top tenth of all manufacturing concerns controlled nearly a third of all invested capital, while the bottom half received three percent. Moreover, many of those in the top tenth were merchant-partners in industrial concerns. With their old connections and class allegiance, they continued to

obtain the lion's share of the credit made available to the city's manufacturing concerns. Thus, most craftsmen were, as always, squeezed at both ends. They could not find the capital to expand their operations. But unless they could invest in capital equipment and find the money for larger payrolls, they could not compete against the large new industrial concerns and sweating shops. This was particularly the case in clothing, shoes, furniture, and printing and less so, in site-specific trades like ship-building and construction and the de-centralized direct-to-consumer businesses such as food preparation.⁶

This selective transformation of production was also premised on an increasing number of un-skilled or semi-skilled wage-earning factory or sweated workers, many of whom were part of the huge wave of Irish, English, and German migration that hit the city in the 1840's and 1850's. By 1850, for instance, 92 percent of the city's clothing workers were involved in the outwork system and almost two-thirds of the printers worked in large factories. On the other hand, in the carpentry trade about two-thirds worked for small concerns and in the baking business this figure was near 90 percent. And in virtually every trade, except the lucrative shipbuilding ones, immigrants outnumbered the native born, often by substantial margins.⁷

For most of these workers, credit was nothing more than the extensions on payment they were able to extract from the retailers who supplied their subsistence needs and the money they could raise pawning their meager possessions. This credit was important to

them, as wages and standards of living were declining for most wage workers. While prices had climbed over 25 percent in the first half of the 19th century, the wages for an unskilled worker stagnated and, by 1850, covered just three-fifths of the budget estimated for survival by the New York Times. As Sean Wilentz writes,

The entire logic of the bastard artisan system was based on the premise that employers could expand production by reducing their wage bills. While a small elite of workers was well paid, most men and virtually all women worked at piece rates that brought mediocre--for some, abysmal--incomes.⁸

Thus, for many workers, petty consumer credit was often the only lifeline they had. For the small retailers, however, it could prove disastrous. Large numbers of them went under during the panic of 1857 when many of their impoverished debtors lost their jobs and could not pay their debts.⁹

Economic change in the city, with its factories in some trades and its intensification of competition in virtually every other trade, meant fewer independent artisans. By the 1850's the number of artisans among insolvent debtors settling their financial affairs in court declined to about 15 percent, from about 30 percent 25 years earlier. Again, the fact that there were so few artisans among the official insolvency statistics meant that fewer artisans were being offered substantial credit. Small consumer debts--although they might be significant to the petty retailers who offered them--were rarely worth the effort and

especially the expense of court adjudication. This lack of wealth is revealed in property holdings among the working poor. In lower Manhattan's working class 14th ward, for example, only 125 families of the 3,700 listed in the tax records owned any real estate whatsoever.¹⁰

Along with these changes in the city's economic manufacturing base, there were also important developments in the organization of the city's capital markets in the 1840's and 1850's. The most important of these was the rise of the corporation. While the 1820's and 1830's saw more mercantile houses as partnerships--in order to pool capital and expertise--the 1850's witnessed a vast expansion of the corporate business form. In fact, by the middle years of the decade, the city was home to a stock exchange in which over a million shares of corporate stock, mainly in transportation but also to a lesser extent in manufacturing, were traded every month. "By the outbreak of the Civil War," Alfred Chandler writes, "the New York financial district, by responding to the needs of railroad financing, had become one of the biggest and most sophisticated capital markets in the world."¹¹

The effect on the city's politics was manifested in the rise of Fernando Wood and the Tammany machine. With Wood's election to the mayor's office, the political system that would dominate New York into the 1930's and the LaGuardia reform administration was inaugurated. Rather than an elite who controlled the city's government as combination merchant/amateur politicians, there arose professional politicians who traded in votes, patronage, and city

jobs, and built a base of support among the immigrant and native-born workers of the city. At the same time, the city's business elite concentrated its political efforts in Albany--and, to a lesser extent, Washington--getting legislation enacted that was favorable to corporations and business generally.¹²

At the same time, in the private sector, corporate institutions were absorbing ever increasing amounts of capital. Much of it was utilized in the capital-intensive projects undertaken by the great transportation businesses, including canals and especially railroads. But, when the market experienced its heady booms of the early and mid-1850's, much of the capital was borrowed, as it had been in previous periods of explosive growth in the capital markets, for the purposes of investing in speculative stock purchases. These were short-term investments designed to turn a profit long before the completion of any proposed capital project.¹³

In other words, many outside investors and even many of the managers of the corporations themselves had no real interest in undertaking the projects for which the capital was ostensibly being raised. The free-wheeling stock-market, which allowed many of these investors to sell out long before any capital was actually invested in construction, was not entirely new, but its growth and size caught the public's attention for the first time in the 1850's.

If money was abundant in antebellum New York's final decade, as it certainly was for investors in the stock market and among the

city's merchants growing wealthy on the now vastly expanded hinterland market of New York City, it was also increasingly maldistributed. Clearly, the two major changes in the city's economy--transformation of the productive sector and the rise of corporate institutions--contributed enormously to this process. Industrial change, as Sean Wilentz has noted, pushed the amount of money earned by average New Yorker down by as much as 20 percent in the 1840's and the 1850's.¹⁴

On the other hand, there was a clear trend toward corporate financing, a trend that involved merchant-controlled banks offering generous long-term credits to the new joint-stock companies that were increasingly managed by former merchants and bank directors. A mercantile elite that had already come to dominate the allocation of credit was formalizing the procedures for that allocation--including the new mercantile credit agencies--and creating the institutions--both corporations and a more formal stock exchange--capable of amassing more capital from both small investors, the stock-speculating public, and large investors like banks.¹⁵

The system had become more systematized during the first half of the 19th century. A stock exchange rather than lotteries or posted advertisements served to raise most of the capital among large numbers of small-time investors by the 1850's. As for the control and channelling of that credit, the changes since the early years of the 19th century were clear. Credit exchange based on personal acquaintanceship had given way to the free and chaotic exchange of notes in the 1820's and 1830's. These, in turn, were

succeeded by the credit agencies, founded in the 1840's, but coming into widespread use with the financial recovery of the 1850's. These agencies created a system whereby informal hearsay and rumor concerning the credit practices and personal behavior of borrowers was replaced by a system of formal observation, notation, and subscription. Creditors could, for a price, inspect a potential borrower's past history of failure and debt as well as his own personal spending habits.¹⁶

Regularized as it was, the system was far from foolproof and did not completely eliminate the agencies of human malice and error. While these reports were supposed to adhere to regular guidelines set by the agency, they were often filtered through the personal prejudices of the observers. Such prejudices could be significant given the fact that the observers were sometimes rival businessmen of the same locale.¹⁷

Despite these idiosyncrasies of the system, especially in the hinterlands where credit information about potential borrowers was scarce, the system represented a step in the direction of informational power for the city's creditor elite.

There was now access to information based on one's ability to pay. In a sense, money and inside information always went together, but now it was part of a formalized system, and hence more effective. This did not necessarily imply more caution on the part of the city's capitalists and capital institutions, since the same overly-confident attitudes about growth prevailed during flush times and when credit was extended indiscriminately for the purposes of

speculation.

The formalization of credit information simply meant that the rigidities of the credit markets--in not offering loans to artisans and others outside the magic circle of class and entrepreneurial sophistication--increased. But there was always plenty of money--in boom years like the mid-1850's--for even the most speculative railroading or real estate scheme. Thus, as far as control over the city's capital markets were concerned, the mercantile class was furthering its power base, even as many merchants abandoned their old occupations, while the city's artisans grew ever more powerless financially.

Attitudes about Credit, Debt, and Financial Failure

More than the increasing stratification of wealth, the growing discrepancies in the power of individuals to control their own economic fortunes colored the public mind in the 1850's. With the rise of corporate institutions, and the stock shares they sold to the investing public at large, public opinion grew more concerned over the question of economic power. Never before, it seemed to many contemporaries, did so few individuals have the power to control so much capital. And never before were these large sums of capital so important to the success and failure of business establishments that controlled the economic destinies of so many small investors and, ultimately, so many wage-earners.

As usual, a half-decade of speculative growth, mostly in railroad and some manufacturing stock, went by with hardly a worried comment from the business or mainstream press. Only when

panic struck the city's financial markets, as it did in the autumn of 1857, did the concerns about capital control and the economic vulnerability of working New Yorkers become subjects worthy of much press attention.¹⁸

Unlike the two other major panics of the 19th century--those of 1819 and 1837--the economic crisis of 1857 was not induced by the monetary policies of the federal government. Instead, a combination of circumstances set it off including, among other things, an exceptionally good farm harvest. Ironically, abundant farm harvests often strained the nation's monetary resources as farmers sought to convert their crops into specie all at once. Normally, the needs of a good harvest season would stretch but not snap the system. But in 1857, two separate but catastrophic financial disasters added to the strain.¹⁹

The first was the unexpected failure, in August and September, of the Ohio Life and Trust Company, a major financial institution traded extensively on the New York Stock Exchange. The failure of what was considered to be a solid and solvent insurance firm set off a wave of panic in the markets, causing investors to pull their funds and banks to raise their interest rates. Then, in October, the sense of panic and the drain on available capital was compounded when news came of the sinking, off the North Carolina coast, of the ship Central America with the year's major shipment of California gold.²⁰

This absence of governmental meddling, the source of so much debate during previous panics, and the fact that in many people's

eyes a single massive corporation had set off the panic forced the public to focus almost exclusively on the new and powerful players in the financial markets. The popular press, including James Bennett's sensationalistic New York Herald, immediately looked for blame among the new elite of corporate directors for the financial catastrophes of the year. After the board of directors of the failing Southern Michigan Railroad appealed in a public advertisement for patience and more funds from the company's shareholders, the Herald lashed out.

All comes with bad grace from those who figured so prominently in the last financial operations of the company, and to whose want of judgement, experience, or something else, can be attributed most, if not all, the difficulties and embarrassments, which threatened to extinguish every dollar of the stockholders' interest.²¹

Belatedly, the more business-oriented press was forced to come to the same conclusion when the evidence of incompetence and corruption continued to mount. After dallying for months about the severity of the crisis and then haughtily discounting each and every explanation for the crash in prices, the Times agreed that many corporate managers were to blame for the specific failures and the panic generally. At the end of September, two months after the crisis had begun, a correspondent to the Times conceded, with no names named and a subjunctive verb, that the "present financial revulsion may be traceable to the culpable negligence, dishonesty, and fraud of the railway managment of the country (emphasis added)."²²

By December, however, even the editorial staff of the Times was willing to admit that the corporate boards of directors should be held accountable for the crisis. In an article titled "Causes of the Late Panic", the paper's editorial staff agreed, although oddly unwilling to admit the convergence of their paper's position with much of the rest of the popular press, that

an important unmentioned part of the crisis' cause is in the lack of integrity among the men in charge of corporate affairs. This lack of integrity caused a loss of confidence in the public's mind and this loss of confidence --so crucial to commercial affairs--led to the panic.²³

As the panic deepened, skepticism about corporate management continued to spread until even The Bankers' Magazine, a forum as conservative as its name suggests, agreed that "rotten managment had set off the panic."²⁴

Nevertheless, the consensus only went so far. In their pages, both the Herald and the free-soil Independent maintained the skepticism they directed at individual boards of directors toward the corporate institution itself. What bothered many correspondents of the popular press was the 'unnatural' forms of liability represented by the corporate form of finance. The criticism came in two forms, both sharpened by the whetting stone of financial failure and economic panic.

On the one hand, corporate boards of directors were held to be either lazy or entirely irresponsible as far as the larger interests of the company were concerned since they were not liable

for its losses. Or, if they owned large stakes in the company, it was believed they would look after their own interests exclusively so that when financial disaster struck they were the only ones who came out unscathed. Financial failure on a larger scale than anything imagined before was built into the corporate system of finance, the Herald concluded, since these businesses controlled so much capital and since there was no way that those who controlled the corporations could be held legally liable.²⁵

Paradoxically, as the popular press sharpened their criticism of the impersonalized corporate form, their attacks on the directors became more personal, hearkening back to the arguments of financial conservatives at the beginning of the century. Even the language employed in the popular press came to sound like the conservative voices of the turn of the 19th century. "The problem and the cause of the panic is deep within these men," the Herald editorialized during the depth of the panic, "it is called selfishness.

Not one of them thought how can I help
my neighbor...Some ask how can this be
in a country where religion is so
important...Self is the idol; and this
idol so successfully counteracts the
good, that under its pestilent influence
every good gift is perverted, so that
abundance is no safeguard against want,
and even freedom degenerates into misrule.²⁶

Nevertheless, this was no conservative critique of a patrician merchant longing nostalgically for a lost era of community values concerning credit and debt. Instead, the harsh critique of the

failed corporation and stock broker was part of a new proto-populist critique of the money markets. By the 1850's, New York City politics had become increasingly polarized. The new machine's calls for relief proposals in the panic of 1857 were regarded as 'demagogic' and 'communistic' by Whigs and business leaders. At the same time, exposures of corporate irresponsibility in the brief panic of 1854 and the more sustained one in 1857 led to disillusionment with the city's business leadership. For instance, many of the building associations incorporated under new state laws in the 1850's--associations designed to encourage homeownership among the city's mechanics--were run by financial charlatans who the city's mechanics identified as members of the commercial elite. When many of these associations went bankrupt--due to incompetence and panic-induced shortages of credit--it re-enforced the idea that the city's commercial elite was no longer concerning itself with anything beyond its own financial gain.²⁷

Even middle class readers of such newspapers as the Herald were sympathetic to harsh denunciations of the self-serving ways of the city's business community. When the panic hit, the outrage in the popular press increased. "The insolvency of all the bulls and bears," an article in the Herald, entitled "Financial Embarrassments in Wall Street", read, "[and] their amalgamation in one common undistinguishable run, would be, we verily believe, a national benefit."²⁸

Among the working poor and the petty entrepreneurs of the city, the new critique was anchored upon the hard rock of

unemployment, physical suffering, and the losses of small time investors hoodwinked by the "speculators of Wall Street"--speculators who had misled them about the stability of corporate institutions and the reliability of the corporate form to insure against investment losses.²⁹

On the other hand, the business press counselled caution on the subject of blame for financial failures. True, the major business-oriented periodicals agreed, that some corporate directors had acted irresponsibly and the system that allowed for this kind of financial behavior needed to be corrected. The business press also conceded that the speculators who broke the backs of solvent corporations by selling their stocks short needed to be reined in.

Still, the general consensus among merchants and conservatives over the uses of and need for an extensive credit system was a long way from where it had been at the beginning of the century. "Credit is good and credit is necessary," Hunt's Merchants' Magazine, the most popular business journal of the day, editorialized. While that apostle of 19th century capitalism, Henry Beecher, sermonized, "credit is hope and hope is good." Of course, it was admitted that there were abuses of the system. The Times emphasized the need to clean out the corporate and banking houses of "irresponsible" and "imbecilic" managers of other peoples' money. But the vast credit network, the paper insisted, was indispensable for a modern industrial nation like the United States.³⁰

This argument represented a spirited defense of the new

financial order against proto-populist critics who pointed out that corporations amassed a great deal of capital from a goodly number of creditors who often were less powerful and wealthy than the institution in which they were investing. When these corporations had borrowed too much and failed, the limited liability aspect of their charters outraged those who felt it led to irresponsibility and corruption on the part of the directors. Small time investors lost their hard-earned money and working class New Yorkers lost their jobs. But, the managers who were really responsible, public opinion believed, escaped unscathed. Here were the makings--barely articulated and still unclear to many of the participants--of the populistic politics of the late 19th century.

With artisans increasingly being turned into factory laborers with no need or use for business credits, a class critique of the Wall Street began to emerge. That is to say when artisans no longer participated in the struggle for credit, the polarization of the argument about the credit economy along class lines could emerge. The critique of the proto-populist voices sounded a lot like earlier colonial conservative critiques--in its attack on those who continued to live extravagantly despite having failed financially--but, in fact, it was anticipating the radical, reform, and labor politics of the late 19th century.

This criticism of Wall Street in the 1850's went beyond a simple and limited attack on the corporate form of doing business. It came to include virtually the entire mercantile class, a class increasingly associated with Wall Street and the capital markets

which dominated the nation's finance and controlled the destinies of so many average Americans. "The people of the United States must never forget," the editors of the Herald cautioned in an article ironically entitled "Beneficial Results of the Financial Crisis,"

that between them and the speculators of Wall Street, there is nothing at all in common. The speculators will cheat and swindle them year out and year in as long as they live, if they can...

And, for good measure, the Herald took a sideswipe at the business press as well. And these speculators, the editors went on, "will print newspapers to aid themselves in their swindling operations."³¹

The conservative defenders of the new financial order responded in two ways, both trying to deflect the increasingly strident proto-populistic attacks coming from the regular press. First, they tried to counsel 'caution' by explaining what they considered to be the 'truths' of business and finance. "Successes of commerce come from risk-taking," Hunt's pointed out. Furthermore, the magazine cautioned, "don't moralize about failures. They are part of the mercantile business."³²

According to Hunt's, merchants were held to too strict an accountability by the public. Anything, the editors said,

change in the policies of government, fire and disaster, fraud can ruin the work of a lifetime and unfairly earn the merchant ignominy...It is true that nine-tenths of merchants fail--but this would be true of

all society if held up the same standards.³³

These 'standards', according to the editors, included punctual payments, and the lack of a grace period when extensions on credit were up. Something, the editors said with all genuineness, that no other class of borrowers had to contend with.

Out of this appeal to the sympathies of the public grew another argument in defense of the merchant and the new financial order. Specifically designed to counter the new critique of the popular press and its attacks on the money markets, the other line of conservative defense appealed to nationalism, an obvious line of argument for the financial class to take in the fragmented politics of the 1850's. During the heart of the financial crisis of 1857, Beecher used this line of reasoning in his Thanksgiving day sermon. "Our country is built on money," he said.

We need the venturesome speculators and
gamblers to go forth first and try things,
then conservative men build upon that.
The adventuresome hit the rock so that those
who follow will know where it is and avoid it.³⁴

By 1860, an even more explicit appeal to bind the classes had emerged. It dismissed the idea that the financiers and the moneyed classes generally, having seized control of the nation's economic resources, were naturally in opposition to those who increasingly earned wages and worked for the concerns controlled by these men. The appeal was a romantic one and invoked a tone of social Darwinism decades before its late 19th century heyday. An article in Hunt's captured the tone of it. "The true cause of mercantile

failures lies much deeper in our system than paper money," the magazine explained, using the old symbol for reckless and irresponsible finance.

It is to be found in the character of our race. The Anglo-Saxons are the pioneers of modern civilization and improvement. They are adventurous, enterprising, and far-seeing. There is no spot on the face of the earth...they will not visit, provided it promises to put money in their purse...wherever such rapid improvement exists, and such extraordinary enterprise prevails, there will be much of rash adventure, failure, and vicissitude. Such results are natural and [don't] depend upon paper money.³⁵

As Kenneth Stamp and other historians contended, the proto-populistic politics of the 1850's provided a preview of the postbellum era. At the heart of this change from earlier eras were the dynamics of the credit markets and increasing sense among many working New Yorkers that the economic interests of those of the credit haves and have-nots were diametrically opposed to one another.³⁶

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Conclusion

Financial failure was the ultimate litmus test for attitudes about the credit economy rapidly emerging in the 70 years between the ratification of the Constitution and the beginning of the Civil War. Two camps sparred continually over the significance of failure. One side insisted financial failure was the result of an individual's sneakiness, greediness, or stupidity in the way he accrued and handled his debts. The other side argued that the insolvent debtor was nothing worse than a victim of economic misfortune or natural disaster beyond his control.

A pamphlet published in 1810 by reformer Joseph Fay, and calling for the outlawing of debtors' prison, captured this dichotomy. "They [businesspersons] become embarrassed [fail financially] by misfortune which no human wisdom can guard against," Fay argued. To which 'Diogenes Jr.', the invited opponent, replied, "I would ask if nine-tenths of the objects of your concern have not brought themselves to [debtors' prison] by their own misconduct and folly?" From the beginning of this period to the end, these opinions and this debate remained remarkably consistent.¹

The persistence of this dichotomy was partly attributable to the effects of the business cycle. Certainly, there were many differences between the local panic of 1792, induced as it was by the failure of a single developer, William Duer, and that of 1857 involving a string of spectacular collapses resonating outward from Wall Street to every corner of the nation. Yet, the scenarios of

every panic had much in common: a cycle of feverish speculation based on inflated expectations of growth and demand, debt-financing, falsely-inflated values, and paper profits. All followed by the fall: the precipitating event (government tight money policy, short crops, or the failure of a major financial player), deflation of expectations, suspicion, demands for payment and sudden calls on loans, depreciated values, unsustainable losses, and financial failures.

While many failures occurred in years of stable economic growth, they were rarely remarked upon. The unfortunate circumstances of the insolvent continually received attention but here the focus was on what happened after the failure had occurred, that is the purgatory of debtors' prison (see part two) or the endurance test of insolvency court (see part three). Explanations of the financial failure itself were generated almost exclusively during the panic periods in which there were floods of them. Even the newspaper notices of financial failures, now set in lengthening columns, would jump to the front page during panics, a typographic metaphor for the increased awareness of financial failure on the part of the public at large.

This panic-driven attention to the financially failed firm meant that the phenomenon would be depicted in the worst conceivable light. Periods after panics, after all, were financial mornings-after in which the excesses of the night before seemed particularly destructive, inexcusable, and even shameful. Culprits were sought and the insolvent debtor was about as handy a one as

could be found. That was why the charges against the financial failure determined the terms of the debate. Defenders of the insolvent debtor were then forced to respond.

Panic periods, when large numbers of individuals and firms were failing, also represented periods of crisis in the financial community and elsewhere. The crises emerged on both a practical and a conceptual level. In the first case, there were the sudden credit calls, tight money, deflation, failure, unemployment, and gloom. The economy was locked tight and, depending on the assets of the individual involved, real suffering could and did occur. Some were forced to sell their possessions; others went hungry.

On the conceptual level, the crisis tested presumptions about both the behavior of the economy and the behavior of the actors within that economy. As long as the economy was growing, the criticisms of the credit market that fueled that growth remain muted. More important for the subject of financial failure, continued growth allowed increasingly speculative, debt-financed investment to fund itself. A host of financial sins were hidden beneath easy credit, bloated asset sheets, and profit.

The subsequent collapse of the market popped the credit bubble, rapidly deflated prices, and exposed the methods that had produced and sustained, for a time, the explosive level of profits. Disillusionment with virtually every aspect of finance then set in. Opinions sharpened and rhetoric became more shrill. The debtor was villified, the creditor lambasted, the financial community as a whole pilloried. Or else, a kind of fatalism emerged in which

misfortune, it was argued, overcame all the efforts of individual economic players to avoid it.

Nevertheless, liberals and conservatives on the issue of financial failure--that is those who wanted a minimum rather than a maximum of penitence from and punishment for the insolvent--switched positions on the ultimate responsibility for financial failure. Liberal voices, which at the beginning of the century were willing to absolve the insolvent of his responsibility for this economic dilemma, were replaced by proto-populist voices blaming the greedy speculator for his own collapse, the general crisis in the economy, and the suffering this caused untold numbers of small investors who lost their money and wage workers who lost their livelihoods. Conservatives who cited human behavior as the source of financial failure became defenders of mercantile good sense and insisted failure was the price to pay for economic expansion.

The causes of the switch can be found in the long term structural changes in the city and nation's economy. Population growth, the expansion of the mercantile class, the rise of corporate institutions, and the rapid spread of factory employment all played a part. Even more, there was a growing maldistribution of wealth in the city that was hard to ignore. By the 1860's, the top one percent of New York's population earned over 60 percent of the city's income.²

It is difficult to say whether this increased the average working New Yorker's vulnerability to business cycle fluctuations.

The prominence of artisans in the insolvency statistics through 1830 revealed a startling number of failures among independent craftsmen. By the 1850's, the proportion of artisans among the insolvents had shrunk significantly.

On the other hand, while the image of the artisan as a financial failure began to fade, it was increasingly replaced by the specter of the unemployed wage-earning masses. Adding to this trend was the end-of-imprisonment law passed in 1831. The demise of debtors' jail removed from the public's imagination and experience the pathetic image of the suffering artisan behind bars, caught between his heartless creditors and a host of irresponsible gentlemen clients or equally suffering artisan customers.

In short, financial failure was increasingly associated with the merchant, the manufacturer, and the capitalist. At the same time, there was a widespread perception in the city's press--excluding the more conservative organs like the Journal of Commerce--that the costs of financial failure seemed to be falling most heavily on those who had little responsibility for these debacles. By the 1850's, voices sympathetic to working New Yorkers showed little sympathy for irresponsible financing and speculation since this resulted in unemployment, financial losses for small investors, and suffering for the city's poor generally.

In addition, the increasing matter-of-factness and ease with which insolvencies were legally dispatched (see part three) and the insolvent returned to productive life (see epilogue) disturbed many who took the side of working people. Again, the actions of the few

resulted in suffering for the innocent many. It is not surprising, given such circumstances, that opinions turned against the financial failure and increasingly saw him as the maker of his own misfortune and, more importantly, the misfortune of so many others.

On the other side of the debate were those who advocated leniency and consideration for the financial failure. As far as the mercantile community was concerned, the most important economic development was the vastly expanded marketplace with its many new and very large firms. This development, says Peter Coleman, meant a growing anonymity and formalism to trade which, in turn, implied a more "legalized perception of relationships" in business. Coleman also argues that the increasing formalization of credit, as reflected in the rise of credit agencies and the convergence of state insolvency law nationwide, engendered a more pragmatic, less moralistic attitude toward financial failure.³

The ratio of articles in the business press defending the merchant debtor in this way to those condemning him for profligacy and greed was certainly shifting in the direction implied by Coleman. Especially following the depression of the 1830's, when so much of the animus of the conservative mercantile community--many of whom were Whigs--was shifted from its own members' failures to the 'iniquitous actions' of a detested and Democratic national administration, the blame for failure slipped off the shoulders of the insolvent and onto those of distant institutions like the federal government or the Bank of England.

There was also a growing realization that the increasing scale

of economic operations, the growing complexity and inter-penetration of capital nationally and internationally, and the greater need for capital meant that each creditor-debtor relationship was not an island unto itself, especially since so many creditors in one relationship might be debtors in another. Pragmatism dictated that financial failure be considered neutrally in the aggregate--if not in individual cases--with an absence of blame and shorn of accusatory rhetoric.

Nevertheless, this emphasis on pragmatism elides the narrow self-interest, smug self-satisfaction, and inter-class contempt of the mercantile community. The new amoral standards were reserved for themselves alone. The increasingly neutral attitudes toward financial failure were materializing at a time when, according to Michael Katz, concern for and obligations to the poor by society's more fortunate members was being replaced by a harsh critique that held the poor primarily responsible for their social and economic circumstances.⁴

The paradox is clear. An increasingly anonymous urban environment and the institutionalization of poor relief resulted in cool contempt and a moralizing attitude toward the most unfortunate victims of the marketplace. In contrast, the anonymity of the credit markets and the increasingly impersonal relations between debtor and creditor reduced blame for the merchant-victim of the market. Both were losers but, in the case of the paupers, their agency and responsibility were highlighted in a defense of the free market. In the case of financial failures, their agency was seen

as diminished.

This paradox can be explained in two ways. First, given the interpenetration of credit and debt, creditors and merchants generally could more easily imagine themselves as financial failures and thus could identify with them. Especially during panics, the sense of a collective fate encompassed the mercantile community.

Furthermore, it was too uncomfortable to consider financial failures morally responsible for their economic misfortunes in the same way paupers were. Technically, the two were reduced to the same economic level at the moment the insolvent divided up his assets for the benefit of his creditors and the pauper entered the poorhouse. The feeling of naked exposure, helplessness, and shame that accompanied the pathetic sales of personal possessions was too much like the pawnshop experiences of the poor. At least, a distinction could be maintained psychologically by distinguishing between pauper who were responsible for their own humiliation and the businessmen who were brought down by the vagaries of an unpredictable and volatile marketplace.

The irony of all this was that the merchant did have more control over his financial circumstances than the simple pauper. In fact, the economic activities of the merchant, the manufacturer, and the corporate manager contradicted the idea that these same men, as financial failures, were entirely at the mercy of uncontrollable financial forces. This contradiction helps to explain the history of the insolvency and bankruptcy legislation of

the period.

In his work on the changing legal environment of antebellum America, Morton Horwitz points out that liability and negligence law were undergoing a conceptual transformation during these years. Both legal concepts, he writes, were being modified so that the costs of economic growth would be socialized even as the profits accrued to a class of economically aggressive merchants, manufacturers, investors, and corporate managers. The new approach to liability was that the economically passive citizen must keep out of the way of the economically active one. In effect, the agent of economic growth was not responsible for the losses his activities might cause others. But what about the financial failure?⁵

The situation here was somewhat different. On the one hand, efforts to absolve the economically active individual for the failure inherent, at least potentially, in every investment resulted in liberalized insolvency laws. The debtor was no longer held responsible for the failure in the old sense that he went to jail because he had taken another's money and couldn't pay it back. Although this reform was sold politically as a relief to the impoverished artisan, it was legally part of the trend toward the encouragement of economic activity with less liability.

On the other hand, the losses of a bad investment and financial failure were not directly foisted on to politically and economically weaker citizens or even society at large as they often were under the new liability laws. Instead, they were incurred by a powerful creditor class. The question, then, was the degree to

which these creditors should swallow the losses. This, in turn, revolved around the question of the degree to which creditors shared in the responsibility for the failure. They had made an investment and since they knew there was always a possibility of failure, they must accept the fact that they might lose their money.

Nevertheless, as various economic projects grew in size and absorbed capital and credit from more distant sources, the degree to which a creditor could be aware of what he was getting his money into diminished. This was especially the case with the rise of corporate institutions. Nevertheless, the law said he should share in those losses over which he had little control and about which he often had little information. Here, it would seem, the laws of insolvency and bankruptcy were changing in line with the changes in liability, that is toward some kind of socialization of losses. Yet to see it that way would be misleading for both legal and political reasons.

First, the creditor and the debtor were contractually bound, and contractual obligations were being interpreted more strictly by the courts during this period. Second, creditors were also active economic agents who were politically influential. They were not like the politically weak farmer who had to swallow the cost of livestock lost (or the cost of fences to prevent that loss) to the locomotives of economically powerful and politically influential railroads.

Thus, while liability law evolved consistently toward

absolving the active economic agent for almost all losses he incurred in his economic activities, insolvency and bankruptcy law evolved in fits and starts because of the inherent contradiction of trying to absolve the debtor of personal responsibility for his failure while not offending powerful creditor interests or disturbing contractual obligations.

The opposing forces of debtor and creditor interests resulted in a complicated compromise in which a debtor's body would be freed from prison and his debts forever erased. But this could occur only if most of the creditors would go along with this arrangement that made it legally impossible to collect in full the money they considered rightfully theirs. But until that compromise could be reached debtors languished in prison. And even after the abolition of that cruel institution, creditors turned their debtors into, as one playwright of the day put it, "victims of chancery [insolvency court]."6

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PART TWO:
DEBTORS' PRISON

Introduction

Rarely did form follow function as closely as it did with the debtors' prison of old New York City. From its construction in 1735 until its demise in 1831, the three-story prison housed, in haphazard and chaotic fashion, a population of dead-beats, insolvents, and criminals. It was a place where imprisoned debtors and others were left almost entirely to their own devices as far provisioning, housing, and internal security were concerned.¹

Haphazard form followed function because there was such confusion over the purpose of debtors' prison. During the lifetime of the institution--and especially in its last three or four decades--New York's politically dominant trading community could not agree on the role of debtors' prison in the expanding market economy, the evolving legal system, and the volatile political order. On a deeper level, the confusion about the role of the institution was the result of uncertainty over the meaning of insolvency itself. This fundamental ambivalence, uncertainty, and confusion about the meaning of and responsibility for financial failure--as well as what should be done about it--produced an institution where the orderliness of prison life--a hallmark of the newly-invented penitentiaries and asylums of the early 19th century--was almost entirely absent.

At one level, the confusion concerned the technical aspects of the debtors' prison. In short, what was the purpose of the place? This question, straight-forward in itself, raised a host of conflicting answers. Either the prison was meant to punish the

debtor or the prison was meant merely to hold the debtor. Either the prison was there as a warning to potentially irresponsible speculators who might become insolvent or the prison was there to ensure that the speculator-turned-insolvent could not continue--until his or her financial affairs were finally settled in insolvency court--to act irresponsibly with his or her remaining assets. One set of answers led to a conceptualization of the prison as a place of penitence or punishment. The other led to the idea of the prison as a holding pen for those who had to be temporarily separated--for the purposes of legal settlement--from their property.

There was, however, a more profound social ambivalence about the function of debtors' prison, a confusion about the institution that went beyond its day-to-day purpose. That ambivalence concerned the very raison d'etre of the prison--the debtor for whom the place was built and maintained. Who were these people? Were they criminals who 'thieved' other people's money or victims of economic circumstances beyond their control? And what about insolvency itself? Was it the final, inevitable result of irresponsible and perhaps even immoral financial behavior? Or was it simply an unfortunate outcome of the necessary risk-taking activities of the economically venturesome? Or, perhaps more accurate than an either/or formulation of these questions, where on the spectrum of individual responsibility and free will did contemporaries believe the actions and intent of insolvents lay?

As long as a consensus over the answers to these questions

eluded those contemporaries who had the political power to legislate debtor law, the debtors' prison would continue to operate, unchanged and unchanging, under its own inertia. While the anti-imprisonment movement had an effect on the number and types of debtors who were incarcerated, and tended to shorten the terms they served, the conditions within the prison itself went virtually unchanged.

In the end, ironically, it was easier to qualify the rules for incarceration rather than the conditions of that incarceration. For to do the latter would require settling on a reason for debtors' prison. And that, in turn, would have forced society to reach a consensus about what insolvency meant in the first place.

Eventually, the institution was closed down. The qualifications about who could not be incarcerated came to include everybody and the prison was effectively eliminated. And even this development was more the result of a slowly evolving social and political consensus about the effectiveness of debtors' prison in preventing speculative financing and insuring equitable settlements than a consensus about the moral and ethical dimensions of insolvency.

But this history is more properly the subject of chapter eight, where the imprisonment laws themselves are discussed. For the purposes of this chapter, it needs to be noted that the slowly evolving consensus about the efficacy and even the purpose of debtors' prison had little effect on the chaotic conditions within the prison. Here there was an inertia borne of that confusion of

purpose and place for the prison and for the debtors within it.

Endnotes

1. Stokes, I.B.N., The Iconography of Manhattan Island, 1498-1909, (six volumes), New York: Robert H. Dodd, 1915-1928, v. II, plate 97.

Chapter Four: Housing and Provisions

The contrast could hardly have been more striking. By the 1830's, America's prison system was undergoing dramatic reform. There were on-going experiments in northeastern states, including New York State's efforts at Ossining and Auburn, to systematize criminal punishment and rehabilitation. In fact, the very idea of the penitentiary, with its emphasis on a disciplined program for the behavioral modification of the criminal, was being invented. From Europe came the experts and the curious to study and assess the progress Americans were making in the field. "By the 1830's," writes David Rothman, "the American penitentiary had become world famous."¹

Nobody, however, was coming to visit or to praise New York's debtor's prison in these years. Most local commentators admitted that New York and America at large, rather than a model and pacesetter, lagged in the area of debtor prison reform. "Debtor imprisonment law is the product of the dark ages of feudalism," a New York City 'citizens memorial' to the legislature read in 1831. "Why Americans have allowed it to exist here is a wonder." It wasn't to be a wonder for much longer.²

Outmoded and virtually emptied of inmates, the debtor's jail, or New Gaol, was finally closed in 1830, its 22-inch thick walls providing the fire-proof shell for a new court archives. The 40 or so prisoners who were still incarcerated were trundled across the grounds of the new City Hall and deposited in just-emptied Newgate

Prison. Objections to the idea of putting the debtors in a prison deemed unfit even for criminals were brushed aside by the city council. After all, a council report noted, public sentiment was such that debtors' prison itself would soon be outlawed. And it was, the following year. Debtors' prison, then, was neither to be improved nor reorganized. There was no talk of the role of debtors' prison in the rehabilitation of bankrupts and insolvents. In the age of reform, the debtors' prison was an institution to be eliminated.³

Everything about the place seemed archaic, gerry-rigged, haphazard, and unplanned, even to contemporaries and especially as the 19th century progressed. The contrast between the new penitentiaries and the debtors' jail began with the very ground they stood on. Ossining and Auburn's upstate, small-town locations--rural, quiet, and isolated from the metropolis--were consciously chosen for these attributes. While the site of the debtors' jail was a rural one when the jail was built in 1735, it was never truly isolated from the city. And by the first decades of the 19th century, it was actually on New York's northern outskirts, with boardinghouses, taverns, stables, and, from 1811 on, the City Hall as neighbors.⁴

Neither was the building's architecture in the service of social experimentation. Unlike the carefully planned criminal penitentiaries, with their deliberate floorplans of isolated living space and congregate workspace, the debtors' jail, by contrast, followed a very conventional scheme. It was a three story building

with a basement. The 14 cells were rather large, about 400 to 500 square feet each, so that each housed numerous inmates at one time. The basement, which was also used at times to house debtors, was not divided into rooms.⁵

All was not random, however, in the layout of the debtors' prison. There was, in fact, a method to the messiness of the jail's interior, and the method was money. Unlike the penitentiaries, with their experimental rows of identically bare cells designed to impose a harsh egalitarianism on all inmates, the rooms in the debtors' jail varied in quality. And how did an imprisoned debtor get him or herself placed in the better cells? They bought their way into them.⁶

This payment system resulted in a not very surprising pattern. The upper floor, or Upper Hall, was the "abode of the more respectable prisoners." Presumably most desirable for reasons of light and air, it was occupied by skilled artisans and merchants. The Middle Hall was similarly occupied, while the cells in the Lower Hall fell to laborers and the unskilled. Into the basement were thrown the wretches of the imprisonment system: itinerants, prostitutes, and sailors, "cramped into a damp underground cell without fire or fireplace." All debtors, then, were not equal nor were they treated equally.⁷

Presumably, the only people who could afford better cells--the cost for a place in a cell in Upper Hall was about \$30 in 1800--were people who had been financially well-off or who were still well-connected on the outside.⁸ In fact, the money to pay for a

better situation in debtors' jail came from a number of sources. Debtors held on the mesne process, for instance, were still legally in control of their own assets and, short of fraudulently concealing or transferring them, could do with them as they wished. Debtors with substantial financial portfolios still under their control were often held under the capias ad satisfaciendum (hold until satisfaction), or ca.sa., and this legally enjoined them from touching any of their assets. In those cases, family, friends, or partners often came up with the funds to support the debtor in prison.⁹

By the middle to late 1810's, in fact, most well-connected debtors were able to secure, with the proper bond, a place on the 'limits'. Living on the limits, or 'liberties', was a custom going back to early modern England which allowed the debtor to live outside--although in close proximity to--the jail. And as New York expanded, so did the legal 'limits'. By the end of the imprisonment era in 1831, the 'limits' had come to include all of Manhattan below 14th Street.¹⁰

Technically, the purpose of this arrangement was to allow formerly wealthy debtors to take care of their business affairs in order to maximize the return to creditors or to stave off financial failure altogether. A practical enough idea in theory, it represented, in practice, a legally-sanctioned way out of debtors' prison for the rich and the well-connected. As such, it was not unlike the exemptions from the draft offered to the rich during the Civil War--that is, a practice of obvious class favoritism gussied

up as a financial expedient. And like the draft exemptions, it was widely resented. In an 1818 report, Governor Clinton, a member of the debtor-aiding Humane Society's Board of Directors, scathingly attacked the imprisonment system's inequities, pointing out in a report that it was the poor alone "who truly suffered in jail."¹¹

Indeed, for the vast majority of imprisoned debtors without assets or connections, a stay in jail meant a sojourn in the dark and damp lower floor or basement. In panic years, these conditions were exacerbated by over-crowding. During the panic of 1797, for example, there were over 200 people confined to the prison and even the residents of the Upper Hall had to make room for better-heeled debtors crowding into their cells. During the depression following the panic of 1819, approximately 500 debtors passed through the cells each month. To visitors, however, the most shocking revelation was not the crowding but rather the commingling of "men, women, and children both married and minor, in prison without any provisions and trembling together in the same room."¹²

Adding further insult to their injury, there was the matter of provisioning imprisoned debtors. More by omission than commission, the debtor laws of New York State were a throwback to ancient custom when it came to supplying debtors with the necessities of life. Unlike the law in other jurisdictions, New York's statutes offered no state aid to the imprisoned insolvent: no food, no fuel, no clothing, no bedding, no medicine, or medical care. In fact, even so far as providing prison-wide health, hygiene, internal security, and allocating cells, the imprisoned debtors were pretty

much on their own.¹³

To make matters worse for the debtor, New York's laws did not oblige any creditor, even the creditor whose suit had put the debtor in jail in the first place, to support that debtor during his or her incarceration. "All persons who can't pay their debts," read the law as summarized by one jailed writer, "may be imprisoned without bail, living at their own costs, until those debts are paid to the satisfaction of the creditor." For a time in the 1790's, some temporary exceptions to this rule were made, especially for petty non-freeholding debtors. But by and large, once the gates of the prison had closed behind them, incarcerated debtors were on their own.¹⁴

Adding a particularly harsh twist to their circumstances, rules were such that debtors risked legal trouble for selling off assets to pay for their own upkeep. The value of those assets did not matter. When James Howard, a 21 year-old imprisoned in the city jail in 1820, exchanged his watch for some clothes, some food, and a knife, he was prosecuted by his creditors. "I was advised by the Sheriff to give him [the purchaser] my watch for my support," Howard pleaded with the judge.

I was most naked for clothes and I thought
I had a right to put it off for clothes or
anything else that I was in need of while
in prison, and that I could not get out of
jail until I had been in the state two years,
and I had not property to support myself till
then...¹⁵

That mass starvation, frostbite, or epidemic did not sweep the

prison confines was a tribute to the voluntary aid societies that stepped into the legal breach. Of these, the most important was the Humane Society.

Founded in 1787, and maintained by the city's elite merchants and politicians, the "Society for the Relief of Distressed Debtors" (it changed its name to the Humane Society in 1803, as it added poor relief to its humanitarian efforts), pursued two goals.¹⁶ First, it attempted to liberate those 'worthy', small-time family-heading debtors, usually a handful each month, whose financial obligations the society could afford to pay off.¹⁷ Its second and more important goal was to provide 'comfort' for the rest of the debtors who did not have outside benefactors. "Despite the political differences about imprisonment for debt," an 1814 pamphlet on the society insisted, "no one is more deserving of beneficence than the destitute debtors in prison."¹⁸

Generally, the history of the Humane Society was the history of a desperately needy population of prisoners overwhelming the limited provisions and funds the society could wring from the public. When hard times hit, when the number of imprisoned debtors mounted, and when donations were most urgently needed, there were fewer people with the resources or the inclination to come to the Society and the debtors' aid.¹⁹

With their limited resources, the various societies struggled over the years to provide a level of provisioning and comfort not much above that necessary for survival, and sometimes not even that.²⁰ Reformer Joseph Fay, a city lawyer and, according to his

own story, a long-time inmate of the debtors' prison, claimed that over 50 debtors had died in the city's jail between 1800 and 1810, despite the societies' efforts. In the end, the societies were forever struggling to keep up with their charges. At the close of many years, the Humane Society reported shortfalls of funds: \$250 in 1802 and \$645 in 1812 (although the latter year also represents aid to the non-imprisoned poor as well).²¹

The increase in these deficits was almost certainly related to the increasing number of prisoners the Society had to support. In 1791, it was feeding 71 debtors. By 1800, that number had grown to 140. After that the numbers soared. A decade later, in 1811, the society reported provisioning over 500 debtors over the course of the year. In the latter year, various accounts in the press claimed that the Society was providing relief for between one-third and four-fifths of the city's indebted inmates.²²

Despite this funding problem, the Humane Society maintained its efforts on behalf of debtors continuously through the end of the imprisonment era. Its work was greatly appreciated by the inmates. "To the Society," went a toast at a jailhouse banquet, "whose good efforts provides [sic] for those others have forgotten." Other prisoners offered more than praise. To one prisoner, the Society's weekly visits to the jail represented the difference between life and death.²³

Although the societies supported some formerly well-to-do and well-connected debtors, particularly out-of-towners, few of these formerly wealthy and still well-connected people would have gone

hungry or cold without the societies' aid. Most had plenty of food to eat--some of which they cooked in their rooms and most of which they received in baskets from family and friends--and fuel to keep warm by. Their cells were often well-furnished. The absence of pressing deprivation can be noted in the occasional banquet residents of the Upper Hall threw for themselves on important national and religious holidays. In the 1790's, there was even enough money available to hire outside help to keep the lamps of the hall lit and the public spaces swept clean daily. The money to pay for all this usually came from their outside sources since the prisoner's use of his or her own assets brought the risk of prosecution for fraud by creditors.²⁴

In fact, the societies' efforts were aimed at the poorer debtors, for whom a stay in jail was a truly miserable experience. No visitor to the prison could fail to notice the pathetic conditions of the inmates. Cold, sickness, and hunger were the lot of most of the debtors, noted one jailhouse observer in 1810. "I was met by a terrible smell," remarked another, "like of a prison ship." As 'Sojourner', a correspondant for the reform-minded Columbian noted on a visit in 1811, conditions in the basement were almost sub-human. There, he reported seeing sailors, drunkards, and prostitutes going days without food, "clustered around a cold stove...[with] rats gnawing at their flesh."²⁵ One particular case, that of an 18 year-old girl who had mis-carried because of "severe treatment in prison", raised public awareness of and outrage over the problem. Within the year, the legislature had

prohibited the imprisonment of women who owed less than \$50.²⁶

For poor male debtors, however, the conditions of imprisonment remained miserable for another two decades. The reasons for this lack of reform in the conditions and provisioning of imprisoned debtors were the many-layered contradictions, inconsistencies, and confusion over purpose that marked the policies concerning debtors' prison.

While the prison's political, economic, and social raison d'etre is the topic of this part's conclusion, it is important to note here that the confusion over the purpose of imprisonment for debt and the poor conditions in the place, in which imprisoned debtors were allowed to starve and freeze, went hand in hand. Since the debtors' prison was a kind of institutional orphan (was it there to punish, coerce, or simply hold the insolvent?), it was easier for the lawmakers of New York to set stricter terms for the imprisonment of debtors--eliminating the poorest of debtors--and more expedient for the courts to grant stays on the 'limits' to well-connected debtors than it was to tamper with the conditions inside the prison.

In the late 18th and early 19th centuries, both prison defenders--often better-capitalized, older merchants--and critics--frequently the insolvent merchants themselves--grappled with the idea of debtors' prison as a form of punishment. Was the debtor simply a victim of misfortune or a perpetrator of a particularly insidious form of property crime?

Later, as the 19th century progressed, the emphasis turned to

more market-oriented considerations. For defenders of the institution, debtors' prison was meant to coerce payment out of recalcitrant and/or deceitful insolvents. Increasingly, the justification for debtors' prison rested on the idea that there was no other alternative to this painfully extractive process. At the same time, however, critics pointed out the flaws of this argument. Prison, they said, tended to be filled with the honestly insolvent--those who did not try to evade their creditors--rather than the fraudulent debtor. The coercion argument was invalid because those who could be coerced usually placed themselves beyond reach. And those who were in jail had less blood than a stone and were thus being coerced unnecessarily.

All through the imprisonment era, however, this contradiction of purpose affected the conditions within the prison. If imprisonment was to be socially useful and/or economically necessary, then it was imperative that the debtor not be pampered. To allow the debtor to live in prison comfort or, worse, to allow the debtor to live on the 'liberties' would defeat the punitive and coercive purposes of the institution. However, while the defenders' position remained consistent, the critics' position was shifting and, with this shift came a continuing confounding of the intent of the institution's defenders. This struggle made it difficult to reform conditions within the prison.

The process worked liked this. In the twenty year period falling around the turn of the 19th century, critics of the existing imprisonment system maintained a drumbeat for debtor

support. Sometimes they argued that the state should take care of insolvent debtors, and they got their way for a brief period--and for a narrow stratum of particularly destitute prisoners--in the 1790's. Usually, however, critics insisted that it be the suing creditor who supported the debtor. This, they argued, would not only prevent undue suffering but it might also dissuade vindictive creditors from suing and jailing innocent insolvents. However, following the temporary liberalization of the insolvency laws in 1811, which resulted in the sudden mass release of imprisoned debtors and the equally sudden re-institution of harsh debtor law, the critics changed their position and began agitating for the outright elimination of debtors' prison.

The battle over the moral and ethical dimensions of imprisonment for debt tended to undermine the purpose and direction of the institution. In that vacuum, reform was difficult and the imprisoned debtors were left to fend for themselves. This resulted in a situation in which those who were better-connected were able to sustain themselves in relative comfort or, later, find a way to live on the 'limits'. But these were the debtors who had borrowed and lost really large sums of money. They tended to be those who had been involved in the speculations that were so widely condemned. In short, they tended to be those insolvents for whom, both critics and defenders maintained, debtors' prison was originally intended.

This situation persisted and even intensified in later years, as the debate shifted to the need for prison as a form of coercion.

As the rigors of imprisonment softened for the better-connected debtors, the usefulness of the institution to extract assets from those who had them declined. Left to suffer in the worse conditions were those debtors who had the least ability to pay. The full weight of imprisonment--especially in the era when the institution was seen as a way to coerce hidden assets through the personal suffering of the insolvent--had shifted to those who were the least likely to have much in the way of assets in the first place.

The irony is further sustained when the relationship of assets to upkeep is examined. By not supporting the debtor themselves--and by insisting that the state not support them--the creditors ensured that debtors would use up whatever assets they continued to control to feed and clothe themselves. And if the debtor was hiding assets with another person, then it was easy enough to have that person support the indebted prisoner during his or her incarceration. While poor debtors, who had no assets and had to get by on the bare minimum provided by the Humane and other prison aid societies, suffered for no purpose.

In sum, the contradictions of the imprisonment system and the controversy about how it was supposed to work and what it was supposed to do reduced its role to a kind of lowest common denominator. As a place that was meant to punish and coerce, it let off those for whom that punishment and coercion was essentially intended and achieved its aims against those whom it could have the least practical effect. These contradictions ensured that debtors'

prison served as little more than a holding pen for insolvents, a place where those who had no money and no way of getting any money were held until, preposterously, they could come up with money to pay back their creditors. With this purposeless in mind, it is easier to understand why the outrageous conditions, in which imprisoned debtors were left to starve and freeze, persisted. The debtors' prison was a kind of institutional orphan and the imprisoned debtor a resident of this no-man's land. Given this situation, it was easier for the lawmakers of New York to set stricter terms for imprisonment of debtors--eliminating the poorest of debtors--and more expedient for the courts to grant the 'limits' to well-connected debtors than it was to tamper with the conditions inside the prison.

Tampering with the latter would have meant defining what exactly insolvents were--criminals, moral recreants, victims, etc...; why exactly society was choosing to incarcerate them--for punishment, coercion, or no reason other than expediency; and the role the state should play in the relationship between imprisoning creditor and imprisoned debtor. Not surprisingly, these formidable questions led to a political impasse. Thus, in the final analysis, it was easier for society and the state to leave the question of provisioning imprisoned debtors and the conditions within the prison itself to family and friends, to charities like the Humane Society, and, to the prisoners themselves.

Endnotes

1. Rothman, David, The Discovery of the Asylum: Social Order and Disorder in the New Republic, Boston: Little, Brown, 1971, p. 81.
2. New York Sentinel and Workingman's Advocate, January 22, 1831.
3. Stokes, I.B.N., The Iconography of Manhattan Island, 1498-1909 (six volumes), New York: Robert H. Dodd, 1915-1928, volume V, p. 1643, 1669, 1693, 1694.
4. Rothman, Discovery of the Asylum, p. 79-108; Stokes, Iconography, volume II, plate 97; volume IV, p. 689; volume V, p. 1637.
5. Columbian, January 28, 1811; Fay, Joseph, Essays of Howard or, Tales of the Prison, New York: C.S. Van Winkle, 1811, p. 95-99; William Duer Papers, Boxes 1-3, New-York Historical Society, Manuscripts Room; Stokes, Iconography, volume IV, p. 701, 707.
6. Rothman, Discovery of the Asylum, p. 79-108; Duer Papers, Box 2, January 3, 1798.
7. Columbian, December 8, 1810; February, 25, 1811.
8. The records contain no reference to whom the money was paid and for how long it secured a place; Duer Papers, Box 2, January 3, 1798
9. For a more detailed discussion of these legal devices, see pages 226-228.
10. Bauer, George Philip, "The Movement against Imprisonment for Debt in the United States", (unpublished dissertation), Harvard University: 1935, p. 44-76; Clinton, DeWitt, Governor's Speech to the Houses of Legislature (unpublished), January 27, 1818, New York Society Library, Rare Book Room, p. 8; Stokes, Iconography, volume V, p. 1709.
11. Clinton, Governor's Speech, p. 8.
12. Columbian, December 8, 1810; January 28, 1811.
13. Coleman, Peter, Debtors and Creditors in America, 1607-1900, Champlain, IL: University of Illinois Press, 1974, p. 116; Forlorn Hope, June 21, 1800.
14. Coleman, Debtors and Creditors, p. 116; Forlorn Hope, March 24, 1800.

15. The final decision in this case escaped the historical record; Commercial Advertiser, November 9, 1820.

16. The founders of the society were the following: Moses Rogers, John Hobart, John Rodgers, Abraham Beach, William Linn, Matthew Clarkson, James Watson, Richard Platt, Melancthon Smith, James Cogswell. In 1814, the Society's board of directors included such prominent figures as John Aspinwall, James Bleecker, DeWitt Clinton, Frederick Depeyster, George Griswold, and Benjamin Strong; Humane Society, A Sketch of the Origins and Progress of the Humane Society of the City of New York Together with the Act of Incorporation and the Bylaws, etc..., New York: New York Humane Society, 1814.

17. While the record remains silent on the subject, we can be relatively certain, under the by-laws of the Society, that these debtors were obligated to re-pay the Society as soon as they were able; Humane Society, Sketch of Origins, p. 3-4.

18. Ibid.

19. Ibid.; Evening Post, July 21, 1802.

20. There is evidence that Federalists and Democrats began their own prisoners' aid societies, but the names and stories of these other organizations are not well documented; Columbian, July 23, 1810.

21. Fay, Essays, p. 20; Humane Society, Sketches, p. 5-7.

22. Humane Society, Sketches, p. 5-7.

23. Prisoner of Hope, May 3, 1800; Columbian, July 31, 1810.

24. Duer Papers, Box 3, no date; Forlorn Hope, March 24, 1800.

25. Prostitutes were often jailed by their pimps or madames. Young girls often turned to the trade because of financial need. A timely loan could be held in reserve by the crediting pimp for the time when age, disease, or pregnancy made the prostitute less desirable. Sailors were also frequent victims. Captains and shipowners would often jail unwanted crewmembers and then set sail without them; Columbian, January 28, 1811; February 14, 1811.

26. Ibid.

Chapter Five: Community and Time

By virtually all accounts, debtors' prison was a busy place during much of its institutional life-time. Year after year, until incarceration for debt was effectively eliminated by legislation in New York State in 1831, creditors used the institution extensively. As early as the late 1780's, for instance, over 600 debtors were being arrested annually in New York City. By 1810 and 1816, that number had grown to 1,000 and 2,000 respectively. One anonymous pamphleteer estimated that in 1810 fully 10 percent of the arrestable population--by which the writer meant free-holding males--had been arrested for debt.¹

Of course, the number of arrests for debt did not necessarily translate directly into the number of insolvents who were in prison at any one time. Many debtors were able to pay or persuade their creditors to release them quickly and, thus, were only briefly jailed. Still, according to a report by Governor De Witt Clinton's administration, over 1,000 insolvents passed through the gates of the prison in any given month of 1817.² Many were forced to spend weeks and even months behind bars. Furthermore, these arrest records represented a significant increase--even accounting for New York City's explosive population growth--from 20 years earlier when, in the panic of 1797, less than 200 people passed through the debtors' jail in the worst month of that year.³

The trend was neither consistent nor always upward however. On the one hand, times of economic distress--such as the Jeffersonian

embargo of 1807 and the financial panic of 1819--raised the numbers of incarcerated debtors while laws exempting non-freeholding debtors with estates less than \$25 and \$50--passed in 1818 and 1824 respectively--had an entirely different effect. Passed as both a humanitarian gesture and as a way to avoid the politically embarrassing situation of imprisoning out and out paupers for debt, these laws effectively cut the rate of incarceration for debt in half.⁴

These petty debtor laws point out another aspect of the imprisonment picture in the early years: at least half of all imprisoned debtors were very poor and most of these were incarcerated for very small debts. Of the almost 1,200 debtors jailed in 1787 and 1788, for example, over 700 owed less than 20 shillings, or about five dollars. Twenty years later, in 1810, almost 600 of the 1,000 arrests involved sums of less than \$25, and most of those 600 involved less than \$10.⁵

The preponderance of petty debtors among incarcerated insolvents reached a crisis point in the economically turbulent years after the end of the War of 1812. In an 1817 speech advocating debtor law reform, Governor Clinton noted how the system "entangles and holds only the poor and forlorn, while those favored with friends or opulence escape its severity."⁶ In general, as more and more well-connected debtors were able to buy their way onto the 'limits', the proportion of poorer debtors rose.⁷

With the very poorest debtors exempted by law and the richest debtors able to buy their way out, the debtors' jail population had

become much more homogenous by the 1820's. Most incarcerated debtors were free-holders with petty to moderate property holdings who could not find a way to raise the bond--the amount of which was calculated against the debt owed to the suing creditor--which would allow them to live on the 'limits.'

But this homogeneity had not always been the case. Before 1812--when the repeal of the liberal insolvency law led the courts to issue bonds for the 'limits' more freely--the debtors' prison was usually filled with a broad cross-section of New York City's population. Without the possibility of life on the 'limits', once very rich and now very deeply indebted individuals joined the very poor in jail. While these more substantial debtors were able to procure better accommodations and provisions than their petty debtor brethren, certain aspects of jail life affected all indebted prisoners uniformly.⁸

One of these less pleasant aspects of debtor prison life was the institution's lack of governance. Conditions in the prison bordered on the chaotic. Partly this was the nature of 18th century American prison life and partly this was due to the fact that nobody took responsibility for affairs inside the place. For example, the law was such that the jailers were only responsible for preventing escapes.⁹ The jailer and the turnkey, then, did little more than regulate access to the prison confines while debtors of all classes were thrown into jail and left to sort things out for themselves as best they could.

In 1794, the inmates of Upper and Middle Hall of debtors'

prison attempted to do just that, deciding they need a cleaner and better-ordered jailhouse. And so, in proper republican fashion, they wrote a constitution and formed a government which they divided into three branches: a council to consider and pass rules for the halls; a court to hear and decide upon grievances between inmates; and a set of wardens or sheriffs to implement the decisions of the council and court. Taking their cue from the recent deliberations in Philadelphia, they placed certain checks and balances into this constitution. The court would monitor both the wardens and the council, while the council had the power to call the court into session. These constitutional safeguards were designed "to prevent [the government] from becoming the engine of private oppression."¹⁰

Just as this constitution was a rather ambitious document, so the stated aims of the government were far-reaching and inclusive. They amounted to nothing less than an effort "to establish cleanliness and order, goodwill and harmony," and to punish anyone who violated those rules of the council and decisions of the court "pertaining to those objects." All rules and decisions were to be in writing and well-posted so that all the prisoners would be aware of them.¹¹

For at least four years, and perhaps more, this government of imprisoned debtors continued to function. It established a working relationship with the jailer and turnkeys of the prison; it issued fines and meted out punishments for infractions of the rules; it tried to defuse disputes among the debtors; it advocated reforms

within the prison; and, in the process of doing all of these things, left a remarkable written record of the New York City debtor prison community in the first decade of the national era.

The jail cried out for some kind of ruling body. Before the prisoners formed their government, there were few official rules operating on the inside of debtors' jail and very few officials to enforce them. By modern standards, as well as by the standards of the 19th century penitentiary, jails of the 18th century were rather informal in structure, discipline, and activities. They were often nothing more than strongly secured houses, with the inmates mingling amongst themselves casually and passing the day in unscheduled activities, a mixture of boredom and work. This was as true of the debtors' jails as it was of most criminal jails.¹²

And from the records of the New Gaol of New York City's government, it appeared to be the case there as well. As the preamble of the constitution stated, the main purpose of the courts and council was to keep the prison clean and orderly and, in fact, the records show that these tasks occupied much of the officers' time. The jailer rarely got involved in inmate disputes and the turnkeys were mostly pre-occupied with jail security and the monitoring of visitors. Given the complaints about various hazards and messes around the prison, the official managers of the jail did not appear to be too concerned about the quality of living conditions in the prison either.¹³

Like criminals, imprisoned debtors were left to their own devices. This was as true for their relations among themselves as

it was for their housing and provisioning. Generally, the inmates of Upper and Middle Hall got along with one another. While the fact that virtually all of them signed the constitution, pledging their allegiance and obedience to the council and court, was not a sign in and of itself of harmonious relations, the 4-year duration of the government is evidence that the prisoners recognized the importance of the goals of that body. Furthermore, in the over four years of records, only one or two serious challenges ever arose against the government.¹⁴

At the same time, however, the debtors' prison was also an occasionally raucous and disputatious place. While the inmates got along with each other for the most part, disputes did arise. Inmates complained about the usual things including each other's noise, drinking, personal habits, and personal cleanliness. And the courts acted to settle the disputes and punish wrong-doers. For the lesser infractions, curiously enough, this punishment consisted of small fines imposed on the rule-breaking insolvents. For example, a Mrs. Hutchinson, who was jailed with her husband, was fined after a cellmate complained that she was "not cleaning herself and becoming lousey."¹⁵

On another occasion, a prisoner was required to pay a shilling after he "purposefully upset the wash tubs" his fellow inmate was using. When an inmate could not pay the fine for one of these petty disputes or infractions, they could be and often were confined to their cells for a given period of time. Whether anybody noticed the dark irony of imprisoned insolvents being

confined to their cells for being unable to pay a fine, their comments never made it into the historical record.¹⁶

Some of the disputes, however, ran much deeper and were often very personal in nature. Many of these more rancorous conflicts had started on the outside and continued to fester in the close confines of the debtors' jail. It is clear that some, perhaps many, of the inmates had been involved in each others' financial affairs on the outside. New York was not a very large city in the 1790's and its merchants and craftsmen moved in close circles. Financial inter-penetration among each of these groups was tight and was almost always based on personal, face-to-face dealings. In short, many of the debtors incarcerated together knew each other before they entered prison, and some of them had had intimate financial relations with one another.

Yet the fact that these persons were now in prison was a sign that something had gone terribly wrong both in the transactions and in the efforts to settle the financial obligations created by those transactions. Adding to the potent mix was another general fact: debtors' prison was filled with frustrated and angry people. After all, no jury or judge had weighed the evidence and decided their guilt. On top of that, most debtors considered the question of guilt and innocence irrelevant. While many of them regretted and even chastised themselves for some of the financial activities they had undertaken which landed them in jail, they refused to accept the idea that the failure to pay back a debt was, in itself, a sign of any wrong-doing or moral turpitude on their part. And,

lastly, the 'sentence' they were being forced to serve was of an indefinite length, lasting until each creditor was satisfied that there had been no wrong-doing on the debtor's part.

In this climate, personal and financial disputes from the outside became even more highly charged once they moved inside the prison. The case of Margaret Frean and Charles Ellison, although a bit more scandalous than most, typified the kinds of grudges that could traverse the walls of the prison. Mrs. Frean, had been, of all things, the madame of a Charleston, South Carolina bordello (what exactly she was doing in New York's debtors' jail is not clear) and Ellison was one of her creditors. The year before, 1794, Frean had settled with her creditors. But on the day she was to be released from her debts in Chancery Court, Ellison decided to object.¹⁷

Ellison's objection was based on a conversation he and certain associates of his had overheard outside the Court. The conversation concerned hidden assets Frean had turned over to a confidential or preferred creditor named Mr. Haskins.¹⁸ Ellison claimed that Frean had secreted \$10,000 with Haskins. To add insult to injury, Frean also boasted in the overheard conversation that she could pay 100 cents on the dollar if she was so disposed. In prison, things got ugly. Both accused the other of assault and slander. After Ellison had pushed Frean on to the floor, Frean shouted at him that she knew his wife to be a whore. To which he replied, "he knew so much of her [Frean's] character that he would not admit her to board with him nor be in company with his wife."¹⁹

For a long time, there was little the prison court could do. Frean and Ellison kept at it for months, securing various allies amongst the other prisoners and making their respective cases at different sessions of the court. At one point, the dispute threatened to boil over into the real courts of law outside the prison. At the same time, the dispute seems to have been slowly resolved or, at least, it disappeared from the in-prison court records, although the actual reason for this remains unclear.

In general, it is difficult to determine how successful the court was in settling disputes of this kind. There clearly was an insistence to the actions and words of the council, the court, and the constitution that hinted of periodic struggles to maintain authority. When the constitution was proposed, for instance, heavy pressure was placed upon the inmates of all the halls to sign it. The residents of Lower Hall were the only ones to resist. They claimed they were capable of taking care of their own affairs and quite capable of joining the court and council in the event of a jail-wide issue.²⁰

Furthermore, the court and council meted out its severest sanctions--confinement to cells or exile to the prison stairs or roof--to the inmates who challenged its authority. When one unnamed inmate tried to back out of his commitment to the constitution by erasing his signature, he was sentenced to remain in his room for a month. When Isaac Shearman, a newcomer to the prison in the panic year of 1797, complained about housing allocation and asked questions about "how certain inmates got there

[those cells] in the first place", he was sharply rebuked. When he tried to organize a protest against the council, he was exiled to the stairwell "with the noxious odors of the [washing] tubs and exposed to the night air."²¹

Above all else, those who ran the court and council resented anyone who went to other authorities with their grievances and disputes. When an inmate named Timothy Wales complained to the jailer that prisoners confined to their cells were drinking there against the rules (of the court or of the prison, it's not clear), the council was upset, but at Wales rather than the drinkers. They refused to investigate the incidents, persuaded the jailer not to interfere, and even fined Wales for disturbing the peace.²²

The council reacted even more harshly to prisoners who sued each other in outside courts. One case concerned Thomas King and the brothers John and James Davan, all residents of Upper and Middle Hall. In 1796, King went to the prison court with a charge of assault and battery against the Davan brothers. The assault was the latest episode in a dispute begun in business dealings turned sour. Failing to get satisfaction from the prison court, King took out a writ in an outside court. The council was outraged by this and threatened to expel King from the hall and ostracize him socially if he did not desist within 24 hours. Their ultimatum worked. King dropped his suit within three days and then "plead[ed] to be let back in."²³

The government's strength and effectiveness, however short-lived, was rather remarkable. The prisoners recognized its

authority and, with few exceptions, honored it. The fact that social ostracism was an effective disciplinary instrument at the court's command demonstrates the general, although not universal, support the government received among the inmates.

The government commanded the respect of the jailers as well. When, in the summer of 1797, the council presented six demands for better conditions and more freedoms for the prisoners, all but one were met in full and it was simply modified for security reasons.²⁴

Part of the effectiveness of the government was certainly a result of the self-interest of the debtors. The prison needed order and the authorities did not provide it. Time and again, the various fines and punishments that were meted out were followed by moralistic codas to the effect that without a rule of law "the peace, harmony, and good order which ought to subsist in every civilized society...would be threatened." In addition, the court's sway with the jailers (important because they determined visiting privileges), its links with the Humane Society (critical because the distribution of provisions was partly in the government's hands), and the fact that it was democratic added to the government's prestige, power, and effectiveness.²⁵

That the community of debtors in Upper and Middle Hall in the 1790's was relatively homogeneous certainly contributed to the government's authority. While the prison as a whole was filled with debtors of all classes (as well as criminals), virtually all of the inmates who signed on to the original constitution and who can be identified by occupation were either craftsmen, clerks, or

merchants, and all but one could sign their name. Since the residents of Upper and Middle Hall were able to borrow enough to procure a place in the preferred floors, they could not have come from backgrounds of total destitution.

The internal government set up by these substantial debtors in the 1790's was probably not unique in the history of the institution, although its the only one whose records appear to be extant. There is evidence of a contemporaneous council on the lower floor, and the conditions within the jail would seem to demand some method for establishing internal order. However, what does seem clear about the debtors' government of the 1790's --and was probably true of other such bodies--was its management by the long-term inmates.²⁶

While hundreds and even thousands of debtors briefly passed through the prison over the years, there always seems to have been a smaller population of longer-term inmates. On the debtors' council roster of imprisoned debtors for 1794 to 1798, about one-third of the 150 names show up at least two years running, and for a smaller group the names continued through all four years. It was long-term insolvents who took the lead in forming and running the internal government of the prison.²⁷

Sadly, the historical record is not very clear about this critical element--the length of time served--in the experiences of imprisoned debtors.²⁸ Unlike the imprisoned criminal, debtors never served fixed sentences in prison. They were shut away for as long as it took to settle the complicated disputes and calm the

suspensions that arose out of their insolvency. The law, while not entirely silent on the subject of time debtors would spend in jail, was muted. Generally, limits on debtor 'sentences' were slow in coming and only applied to the most destitute cases.

Typical of these laws and probably the most important of them was an 1818 statute concerning non-freeholding debtors. Before that year, such a debtor with less than \$25 in personal assets would be released within 30 days. After 1817, these debtors were released immediately, upon the sworn oath of the debtor, and this \$25 limit was doubled in 1825. Generally, however, the record on prison stays can only be pieced together--and this but partially--through the widely varied estimates, hypotheses, and anecdotal evidence provided by critics and defenders of the institution, all measured against the logic of debtor and creditor self-interest.²⁹

It is a tricky process. For example, prison reformers were fond of calculating the potentially lengthy stays possible for petty debt. Writing in 1810, a reformer under the name of 'Impartial' pointed out that a debtor owing just one cent to 12 different creditors could be kept in jail for a year for a debt of 12 cents. Owing somewhat larger debts to those same 12 creditors, 'Impartial' wrote, the hapless debtor might spend 12 years behind bars. Usually, these accounts of the possibility of nearly limitless stays in prison for petty debts remained just that--hypothetical possibilities. But they usually had the effect of stirring up significant debate.³⁰

To defenders of debtors' prison, these abstract calculations

of an insolvent's jail stay were irrelevant. Responding to 'Impartial's' assertions, 'Calm Observor' refused to accept the hypothetical case as a reasonable basis for advocating the reform of imprisonment law. First of all, 'Calm Observor' pointed out, creditors rarely worked in such conspiratorial concert. Most of the time they were struggling against one another to secure their own claims. They were hardly going to wait until the time limit on previous creditors' claims were up to press their own. And, 'Calm Observor' wondered, how many creditors would really press so assiduously for so little return in the first place? ³¹

While logic was on 'Calm Observor's' side, the ease and cheapness with which creditors could have their debtors jailed, as well as the statistics outlined above, indicate that many poorer debtors did indeed land in jail for petty obligations. And, once there, as imprisoned reformer Joseph Fay said, debtors had a hard time reaching their creditors with their pleas for mercy or their plans to re-pay. "I have sometimes attempted to appeal to his conscience," Fay wrote in 1810, "but it is so completely secured behind the statutes of New York that I shall never touch it."³²

Again, it should be reiterated that in the years after the reversal of the liberalized insolvency law of 1811 only the most forlorn of formerly wealthy debtors--usually out-of-town--spent much time in jail before getting released to the 'limits.' So, while both formerly poor and rich debtors might be under creditor suits, it was, from the 1810's onward, the middling poor debtors (the poorest non-freeholders were exempted) who passed this

potentially lengthy period inside the walls of the prison.

As for the years before the courts began making it easier for those debtors who could post bond to live on the 'limits', it was more likely for them to pass lengthy periods behind bars. The reason for this lay not only in the immense size of their debt but also in the complexity of the financing behind it. First, substantial debtors usually owed sums far in excess of their assets, a fact which often left creditors angry and confused. "\$100,000 in debts and not a six pence paid," a correspondent to the Columbian heatedly declared in 1811. "These instances have always been unaccountable to me, and they certainly wear a very unfavorable appearance." And, second, having borrowed so much from so many different creditors, substantial debtors had spun a web of financial obligations into which they and their creditors became entangled.³³

'Calm Observer's' comments that creditors did not work in concert to keep petty debtors imprisoned was true of major debtors as well. The difference was that, with the stakes so high, no one dared drop their suit, and try to reach a settlement. For to do this was to risk being closed out of a final settlement or to flirt with illegality in the form of a preferred settlement. In the end, many of these substantial debtors--owing so much money to so many different creditors-- spent many years in jail.

William Duer, for example, perhaps the greatest of early American real estate speculators, spent the last eight years of his life in jail. His associate in finance, John Pintard, spent nine

years in prison, until the federal bankruptcy law of 1800 gave him a legal release from his debts. These were long stays and many of these long-term imprisoned debtors were aware of the rather steep odds against their early release. Owing so much money to so many angry creditors, they could hardly hope to get out of prison any time soon.³⁴

In the end, the most salient factor concerning terms of debtor imprisonment was the disposition of the parties involved in the settlement. Recalcitrance on anyone's part meant lengthy terms, although blame for this was determined by the political position of the observer. The debtor's sentence, according to most debtors and prison law reformers, was just that length of time it took for the creditors' passions and suspicions to subside and for the creditors to realize how unrealistic their expectations of uncovering and recovering hidden or shifted assets really were. While their sentence, according to creditors and defenders of debtors' prison, was just that length of time it took to break the debtors' resistance and force him or her to confess up to secreted assets.

Whether they were hiding assets or not, virtually all debtors wanted out of jail as soon as possible. And, in fact, much of a prisoner's time or, at least, much of some prisoners' time was spent trying to win release from jail. Thus, the prison population--stratified by class and size of debt--could also be divided into two other groups: those who believed they had a chance of getting out and those who believed their only hope for freedom lay in a change in the insolvency or bankruptcy laws.³⁵ T h e

division was obvious to one jailhouse visitor in 1811. According to 'Sojourner', there was the "optimism of the young debtors...[who] talked with their creditors about getting out soon." And then there were the "old cases who amuse themselves by observing the new cases." 'Sojourner' ironically likened the public hall of the prison--where debtors met with their lawyers and creditors--to the mercantile exchanges further downtown.³⁶

And, finally, there were the attempts at escape. While there are no statistics on escape available, it seems to have been a chronic problem. Jailers and turnkeys, responsible for the debts of insolvents they allowed to escape, were extremely cautious about the gates to the prison. When the prison government of the 1790's made their requests, the only one which was turned down was the request that visitors not be so intensively searched upon entering the prison.³⁷

Still, for many inmates of the debtors' prison, especially those who were innocent of hiding or shifting assets, the only hope of a legal release was a creditor's change of heart. Two problems stood in the way. First, having gone to the expense and bother of taking out a writ against the debtor, few creditors were willing to drop their case while the decision to take out the original writ usually signalled the creditor's initial mistrust. Secondly, there were usually several creditors pressing suits against a debtor at the same time, compounding both suspicions and demands.

For many debtors, there was only one other hope for release from imprisonment. This hope was dependent on a combination of

forces, including a dramatic shift for the worse in the financial fortunes of the dominant political and economic groups of the city and state and the pressure of reformer-led changes in public opinion. Together, these accumulations led to the gradual limitations on and elimination of incarceration for debt.

Endnotes

1. The gender distinction is odd, given the fact that women could be and were arrested for debt; Fay, Joseph, Essays of Howard or, Tales of the Prison, New York: C.S. Van Winkle, 1811, p. 20, 32; Fay, Joseph, A Disquisition on Imprisonment for Debt as the Practice Exists in the State of New-York, New York: C. Wiley and Company, 1818, p. 5; Anonymous, Debtor and Creditor, Philadelphia: Anonymous, 1810, p. 3; Humane Society, A Sketch of the Origins and Progress of the Humane Society of the City of New York Together with the Act of Incorporation and the Bylaws, etc..., New York: New York Humane Society, 1814, p. 5.

2. Given the complicated credit arrangements of the age, many debtors had multiple creditors. Since each of these creditors could take out a separate complaint, many of those arrested for debt represented what, for lack of a better term, might be called recidivists.

3. Clinton, DeWitt, Governor's Speech to the Houses of Legislature (unpublished), January 27, 1818, New York Society Library, Rare Book Room, p. 8; William Duer Papers, Box 1, New-York Historical Society, Manuscripts Room, no pagination.

4. Laws of the State of New York, 1817, chapter 40-260; 1824, chapter 47-238.

5. Sketch, p. 5; Fay, Essays, p. 16-19.

6. While it could be argued that at least poor insolvent debtors were fed in prison by the Humane Society, incarceration still meant that they were separated from their families and that they could not search for the work it would take to pay off their debts.

7. Clinton, Governor's Speech, p. 8.

8. For a discussion on how the 1812 repeal affected 'limit' release, see chapter eight.

9. Early negligence law was based on the requirements that the sheriff not lose debtors he was arresting for creditors. And escapes from debtors' prison were prevalent enough for the jailer to take precautions. All visitors were searched for ropes and other paraphernalia of escape. This was a source of complaint for many inmates who did not like to see family members suffer this indignity; Horwitz, Morton, The Transformation of American Law, 1780-1860, Cambridge MA: Harvard University Press, 1976, p. 86.
10. Duer Papers, Box 2, no date.
11. Ibid.
12. Rothman, David, The Discovery of the Asylum: Social Order and Disorder in the New Republic, Boston: Little, Brown, 1971, p. 57-78; Klein, Philip, "Prison Methods in New York State", 33, Colonial Laws of New York, Albany: State of New York, 1894-1896, p. 669-675.
13. Duer Papers, Box 3, no date.
14. The greatest challenge came from some of the newer prisoners, victims of the panic of 1797, who complained about the rules for allocating housing. Duer Papers, Box 4, April 22 and 24, 1797.
15. Duer Papers, Box 3, no date.
16. Ibid., Box 2, September 11, 1797.
17. Ibid., Box 1, July 23, and August 15, 1795.
18. For a discussion of preferred credits, see page 248-257.
19. Duer Papers, Box, July 23, and August 15, 1795; The historical record reveals nothing about how Ellison ended up in debtors' jail.
20. Ibid., July 26, 1797, September 15, 1797.
21. Ibid., Box 2, September 11, 1797.
22. Ibid., Box 1, March 18, 1796.
23. Ibid., September 9 and 12, 1797.
24. Ibid., March 7, 1796.
25. Ibid., Box 3, no date.
26. Ibid., Box 1, September 15 and 16, 1796.
27. Ibid., Box 3, no date.

28. Statistics for Boston and Philadelphia, although sketchy, indicate that most jailed debtors averaged anywhere from a few weeks to a few months behind bars; look up on note cards of newspapers

29. Statutes of the State of New York, 1817, chapter 40-260; 1825, chapter 47-238.

30. Public Advertiser, October 10, 1810.

31. Columbian, October 8, 1811.

32. Fay, Essays, p. 7.

33. Columbian, December 12, 1811.

34. Davis, Joseph, "William Duer, Entrepreneur", Essays in the Earliest History of American Corporations (two volumes), New York: Russell and Russell, 1965, v. 2, p. 316-338; Pintard, John, Diary (unpublished), New-York Historical Society, Manuscripts Room, 1793-1800.

35. There were always a few stories circulating about slothful debtors who, it was said, appreciated having a roof over their heads and a quart of Humane Society soup in their bellies; Columbian, March 5, 1811.

36. Columbian, February 14, 1811.

37. Duer Papers, Box 1, March 7, 1796.

Conclusion

Debtors' prison was withering away long before it was legislatively done away with and this process, so evident in the chaotic conditions within the institution, fed upon itself. The more the prison fell into neglect, the more obvious the social and economic uselessness of the institution became to observers in the financial community and in the public at large.

Until about 1810, the debtors' prison remained a vibrant and important institution in the life of New York City. It contained a broad spectrum of debtors; the consensus was that it was important to an effective running of the city's economy; and that it was generally held to be a rational, civilized, and not overly inhumane response to the dangers of unchecked debt and insolvency. Moreover, most contemporaries were conceptually and experientially inured to the idea that the imprisonment of a person's body was a reasonable response to suspicions that the debtor had illegally shifted or was illegally hiding property from his or her creditor, or was planning on absconding with their remaining assets.

There were several reasons for this set of attitudes, most of which, described in chapter one, grew out of the role of debt in 18th and early 19th century New York City. The institution's defenders, often older merchants reared in an era of limited credit offering and use, focused on the most egregious cases of irresponsible debt. As far as they were concerned, most insolvents incarcerated in the debtors' jail--a population conservatives

assumed was younger and speculation-prone--deserved to be there, although they were never completely clear why.

Theirs was the argument of the complacent. They brushed aside reformers' arguments that placing the power of incarceration in the hands of private citizens--in this case, creditors--was a violation of basic republican ideals as well as constitutional protections of due process. They ignored the fact that many jailed insolvents were there for petty debts. For them, the simple fact that a person had borrowed someone else's money and did not pay it back earned them a place in prison.

Moreover, the debtors themselves often accepted the general judgement that they--as well as many of their compatriots in the financial marketplace who had escaped insolvency and imprisonment--had acted, at the very least, with disregard for the financial rights of others, accumulating excessive debt for speculative purposes that threatened their creditors as well as themselves. This is not to say that all of them felt they should be jailed. In fact, they did everything in their power to avoid incarceration.

John Pintard, for example, hid in the upper floors of his Manhattan townhouse, giving explicit orders to his servants to tell creditors and writ-serving constables that he was not at home. When the ploy failed, he fled to 'safe' friends' homes in New Jersey. Still, once incarcerated, Pintard began to speak of the opportunities he had in prison to ruminate over his past preoccupation with speculative finance. Insolvency law reformer and imprisoned debtor William Keteltas went even further. While

filling his debtors' newspaper with articles, poems, and testimonials about the innocence of most incarcerated debtors, editor Keteltas still felt that imprisoned debtors had a duty to consider both their financial transactions and the attitudes toward debt accumulation that had led to imprisonment.¹

In short, the idea of imprisonment for debt was widely accepted among merchants, newspaper editors, insolvency law reformers, and even among some of the prisoners themselves, even if specific cases were often cited in which injustice had been done to the debtor. This acceptance made itself felt in the record of imprisonment. In proportion to the city's population as a whole and, more importantly, in proportion to the number of adjudicated insolvencies (and, most likely, non-adjudicated insolvencies as well), more debtors went to prison before 1820 than after. More significantly, prisoners of all classes landed in jail and were forced to remain behind bars until their debts were cleared up.²

It is important to note that the debtors' prison also contained various kinds of criminals. In the 18th and the early 19th century, incarceration for criminal activity had not been formalized to the degree it would be during the great wave of institution-building that hit the northeast in the 1820's and 1830's. It can be argued that prisons were little more than holding pens for criminals and insolvent debtors until their terms--fixed in the former case and indefinite in the latter--were up. Nevertheless, there is something significant in the fact that debtors and criminals were thrown behind the same set of walls and

left to their own collective devices. Whatever qualms the debtors had about mixing with criminals, those who formed the debtors' in-prison government of the 1790's were willing, by unanimous agreement in 1797, "to admit persons charged with criminal offenses." This admixing of criminals and debtors sheds a certain light on the social significance of debt and the role of debtors' prison in early republican New York.³

On the one hand, conservative defenders of imprisonment for debt conceptualized the debtor as criminal. Writing in the Columbian in 1810, for instance, 'Elihu' drew a profile of the typical 'profligate debtor.'

A profligate borrows money and gets his friend to act as security...The debtor then spends all the money...His friend is humanely stripped of all his property and his family is turned out of their 'patrimonial mansion'...The profligate is free to go out and do the same again. It is better to jail him, then let 50 suffer.⁴

Given this attitude, it is not surprising to see debtors imprisoned with criminals. Of course, these comments represented the most conservative, anti-debtor voices in society. Most observers did not actually equate debt and criminal behavior so explicitly. Nevertheless, to many contemporaries, there was something vaguely sinister about the failure to meet financial obligations. When reformers spoke of 'separating the honest debtor from the dishonest' debtor, they often placed the profligate, the luxuriant, the speculator, and the financially negligent in the same category with the outright fraud. A cloud hung over the

character of insolvent debtor and property criminal alike, and the two groups were thrown into a common institution.

Still, it was not so much that conservatives and other defenders of the institution believed that jail should be a specific punishment for the debtor, it was just that they did not see imprisoning the debtor as a particularly cruel response to what the insolvent had done. If these debtors were forced to sit in debtors' prison for a while, then it was nothing more than they deserved. In fact, it might even be just what they deserved.

But these attitudes were not to last and, in the last few years of the 19th century's first decade, they were already changing. By 1810, a host of reformers--mostly editors, professionals, and merchants--had taken up the cause of insolvency law reform. For the first time in the city's history, there was a concerted effort to change the terms of insolvency.

Americans boast they have done away with torture, but the debtors' prison is torture... Americans should forget about the cruelties done to prisoners of the Algerines and look to debtors' prison, where far more are tortured instead...and turn indignity on that subject.⁵

The reformers real aim, in fact, was to create a new sensibility around insolvents and insolvency among all classes that would involve the realities of trade during wartime. The main effort was to deflate the moral component of insolvency and release debtors--not so much from their responsibility for the failure--but from the sense that there should be verdict rendered

over them at all.

The reformers' point that respectable traders and artisans did not belong in jail had an impact on the courts and on the mercantile community at large. Both George Bauer and Peter Coleman note how the reform efforts isolated, in both social and financial circles, those creditors who too easily resorted to the imprisonment option.⁶

But in the end, the increased use of credit for commercial trade and investment (and speculation) in the post-1812 War period had the most profound impact on creditor behavior. Excessive debt grew more routine while insolvency became a more likely fate for traders, entrepreneurial artisans and manufacturers, and the city's lesser economic agents who did their business with these heavy borrowers.

The mainstream and financial presses' image of the imprisoned debtor was bifurcating into two clearly defined and divergent profiles. On the one hand, there was the insolvent of the conservative's imagination--a fraud and a cheat--and, on the other other, the reformer's debtor--an honest victim of market and other forces beyond his or her control. Clearly, one deserved no better than imprisonment for debt until every creditor was somehow satisfied and the other did not.

Even as this polarization was occurring, the terms of the debate were continuing to shift as well. By the late 1810's, the emphasis of the conservatives' argument rested on coercion rather than punishment. That is, the justification for placing debtors in

prison had been lifted almost entirely off of its moorings in the moral economy and set atop the piers of economic pragmatism.

Responding to the post-1815 realities of debt-financed trade, prison defenders retreated to narrower grounds. While occasionally maintaining the 'guilt' and 'responsibility' of insolvents, they now argued that debtors' prison was justified even if it was to be little more than a place to coerce recalcitrant insolvents to confess up to hidden or shifted assets. In an 1819 report by the Chancellor and judges of the Supreme Court to the Legislature of New York, the miserable conditions of the debtors' jail was rationalized less on the grounds that insolvent debtors deserved no better and more on the fact that the place could achieve its goals only if it was kept as unpleasant as possible.⁷

This shift in the conservatives' position represented both the changing circumstances of debt and a response to reformers' arguments to outlaw the institution altogether. The hand-writing was on the prison walls. Critics of the institution had become more strident after 1815. If the debtor was a fraud, reformers continually argued, then he or she had violated criminal statute and deserved a trial, a verdict, and, if guilty, a sentence in a regular prison. Debtors' prison, of course, involved none of that.⁸

The effect of the reformers' arguments was cumulative. As they pointed out the absurdity and cost of jailing honest insolvents, the reformers' arguments began to have their effect. In the courts, judges were now even more likely to grant debtors --

that is, more debtors who could afford it--the right to post bond and live on the 'limits'. And in the court of public opinion, similar changes were occurring.

George Bauer's point that creditors were under social and financial pressure not to take out suits against their debtors is well taken. However it should not be taken too far, for this trend did not apply to the imprisonment of petty debtors. More substantial debtors were often the business associates of their creditors. Of a similar class and social standing, they were more likely to be able to persuade or use others to persuade their creditors not to press suits against them. At the very least, they could appeal to the prejudices of class and trade. But petty debtors were of a different class altogether and were usually required to deal with their creditor in the position of a pauper or even a mendicant.

These facts of the debtors' life had a direct effect on the demographics of the prison. Fewer heavy debtors were being placed behind bars. While, in the short term, this demographic development indicated a change for the better only among the better-connected debtors, it eventually served to undermine much of the remainining justification for debtors' prison and helped to place it on the road--the gradual road--to extinction.

The reason was simple. The coercion argument of the conservatives began to look more absurd and irrelevant with the jail filled almost solely with poorer debtors. What, in fact, was there to coerce from them? And, what justification could there

possibly be for prolonging these debtors' misery? The reformers argument that the civil liberty violations represented by debtors' prison was an unacceptable cost for credit discipline began to seem more compelling as the economic justification for imprisoning delinquent debtors began to disappear.

After 1825, debtors' prison had effectively lost whatever raison d'etre it had once had. Where a confusion of purposes had characterized the public's opinion--especially the politically important mercantile community's opinion--about debtors' prison earlier in the 19th century, by the 1820's this confusion had been transformed into a growing consensus that there was little or any purpose for the place: punishment for whom? many asked, coercion of what?

Conditions within the prison reflected this situation. They remained unhealthy and unpleasant as the prison fell into neglect and uselessness. Punishment and/or coercion had become irrelevant as far as determining the conditions within the prison were concerned. The thought and energy focused on the proper rehabilitative environment for the criminal, a hallmark of the age of reform, was pointless here. Guilty of mere misfortune or, at the very worst, stubbornness (in not revealing assets), they were not mis-guided characters in need of rehabilitation. If anything, the argument went, a stay in debtors' jail was likely to embitter them to society and turn them into criminals.⁹

Without a role or design, the prison simply was. During the prosperous years of the middle and late 1820's, the prison

continued to exist on the political inertia that typically stands in the way of profound reform. But when the economy turned sour again during the brief but sharp recession of 1829, the issue became compelling once more. Not surprisingly, given the demographics of the prison, the issue was taken up this time by working class reformers.¹⁰ With the politically powerful mercantile class lacking a coherent and cohesive argument for sustaining the institution and with upstate legislators, as usual, sensitive to their rural constituency's hostility to the institution, imprisonment for non-fraudulent debt was ended by legislative act in 1831. On the evening of February 29, 1832, the handful of individuals still incarcerated for debt in New York City spent their last night in jail.¹¹

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PART THREE:
DEBTOR LAW AND THE COURTS

Introduction

In the over seventy years between the ratification of the Constitution and the commencement of the Civil War, there was only one qualitative and permanent innovation in the legal procedures for debt settlement affecting New York State. That innovation was the prohibition on imprisonment for non-fraudulent debt. Yet, as important as that law was, its passage under-scored the general lack of innovation in the field of debtor law. The debtor's person was no longer part of the settlement procedure but the debtor's property--whether it rightfully belonged to him or her or to creditors--still had to be negotiated in time-honored fashion. This lack of reform and innovation occurred in spite of the enormous economic changes of the era.

Equally striking was the contrast between developments in insolvency law reform and changes in other areas of the law. For example, in contrast to the evolutionary changes in other business-oriented law such as liability and negligence law, the relatively unchanging status of insolvency and bankruptcy law seems an anomaly. While the changes in liability law were transferring the burden of damage from the active to the passive economic agent and while the meaning of negligence was being transformed from the failure to perform a duty to the careless performance of that duty, insolvency law continued to presume that the creditors alone had the right to release debtors from their financial obligations and the debtors alone had the right to release their assets.¹

Like all commercial law, insolvency and bankruptcy statutes had two basic intentions. Explicitly, debtor law was to provide remedies (meant, here, in the colloquial rather than legal usage of the word) for both parties. The debtor was provided a way out from under a burdensome set of financial obligations that he or she was unable to meet and the creditor was given a means to get at whatever assets the debtor still possessed. Since the creditor held the obligations and the debtor the assets, debtor law was to facilitate a reconciliation between the two parties.

But debtor law was written with an implicit intent as well: to regulate economic behavior. In particular, bankruptcy and insolvency statutes were often written and passed (and repealed) in response to public outrage after periods when speculation and easy and excessive credit had sent the economy into a panic as in 1800, 1811, and 1841. Debtor law, then, was implicitly designed to curb or curtail commercial behavior that was considered unethical in and of itself or was believed to be detrimental to the economy generally.

In examining why debtor law underwent so little change in the seven decades under study, both intents need to be considered. As for debtor law as remedy, two general sets of arguments persisted. One concerned the debate over debtor and creditor behavior. Were most debtors generally honorable men and women who would pay back their debts if they possibly could? Or were most debtors rogues who were likely to defraud their creditors if given half a chance?

As for creditors, similar questions were begged. Did creditors act out of vengeance when they refused to release a debtor from his or her obligations? Or did they act out of a genuine suspicion that their debtors were hiding assets from them? These basic questions prompted one of the central debates about debtor law. Did laws that were lenient to debtors encourage fraud on the debtor's part and/or did laws conducive to creditor interests impel vindictive behavior on the creditor's part?

As for the regulatory aspects of debtor legislation, the debate was fraught with even greater complexity. There are two over-lapping areas of concern. First, there was the abandonment of the idea of the 'moral economy'. Adherents to the 'moral economy' believed that a higher moral code should determine economic behavior and laws were passed to coerce people to follow these codes in their economic activities. In a sense, it can be argued that this represented a systemic approach to the economy in that it sought to regulate individual economic activities in the context of a larger social good. (Although, it should also be noted that this effort was almost always conceptualized in local terms. The idea that state and national regulation could assure fairness was well in the future--a product, really, of our own century.)

As this code was abandoned in the name of economic growth and in the interests of economic elites, the idea of the economy as a regulated system died with it. (Of course, the gradually increasing economic interdependence among regions throughout the nation and world might have doomed the locally-based idea of a

'moral economy' anyway.) When this system was abandoned, the economy began to be conceptualized in individualistic terms. That is, economic performance--increasingly the criterion for commercial law--was conceptualized as the sum of the actions of all the players within the economy. If every person could be impelled to act in an economically-responsible manner, then the economy would flourish.

Still, this transformation should not be interpreted to mean that one higher good (economic growth) had simply replaced another (economic morality). A limited transformation of this kind would not have implied a breakdown in the idea of the economy as a system. Instead, when the goal of economic growth and expansion triumphed over the idea of economic morality, the means of economic behavior were placed ahead of the ends and a new conceptualization of the government's role in economic affairs--in this case, commercial law--was born. To put it more precisely, the new conceptualization--based on the Smithian idea that individual self-interest led to economic growth--increasingly became the measure against which commercial law was written. However, this new conceptualization was not economically neutral. The new growth-oriented commercial law benefitted those who could take advantage of new economic opportunities.²

In addition, there was the matter of legislative intent. Commercial law based on moral principles was guided by two such intentions. First, it was essentially static, attempting to preserve an existing economic order. And secondly, common law, the

juridicial basis for the 'moral economy', set the parameters for statutory commercial law and for its interpretation by the courts. "During this [colonial and early republican] period," says Morton Horwitz,

the common law conceived of as a body of essentially fixed doctrine. Consequently, American judges...rarely analyzed law rules functionally or purposively, and they almost never self-consciously employed the common law as a creative instrument for directing men's energies toward social change.³

But in the decades following the Revolution and particularly in the years after 1815, these basic intents were disrupted by two simultaneous developments in law and in politics that were in turn affected by economic change. First, the political changes wrought by the Revolution 'dethroned' the idea that legislation and judicial rulings were to be guided by natural law and replaced it with the idea that laws were to be written and interpreted positively, with a conscious bow to the "will of the people." This brings up two critical questions: what is the 'will of the people'?; and who are these people?⁴

One interpretation of this 'will' raises the second legislative intent behind new commercial law. With an underdeveloped economy, a class of entrepreneurially-active citizens, and a continent to be exploited, it was clear to many that the old English-based natural law and the parameters it set for commercial law were not appropriate to the new nation. New criteria had to be developed. Increasingly, the measure against

which commercial law was conceived and interpreted was economic growth.⁵

While this new criterion reflected the interests of the economically aggressive and powerful, these interests are not always easy to ascertain. When it came to liability, negligence, and other areas of commercial law where both the balance of political power was unequal and where the affect of the law on economic growth was more easily understood, legislation and judicial interpretation developed apace. But the issue of insolvency possessed no such easy guidelines nor such clear-cut political power ratios.

Adding to the problem were the economic experiences of those who advocated and wrote the laws. Debtor law was particularly difficult to write since it attempted to control and regulate the credit that made economic expansion possible. And anyone who had lived through the boom and bust cycles of the early 19th century understood and reacted to both the headiness of the expansive periods and the sobering realization of the dangers of unchecked credit that became apparent when the economy crashed. There was not a legislator or editor in these years who had not attempted to define the difference between positive economic investment and dangerous and destructive speculation.

Thus, debtor law was written with an eye to economic expansion, but without a clear sense of which policies and which class of people--creditors or debtors--would best promote it. The questions concerning the efficacy of the various insolvency and

bankruptcy laws of the first half of the 19th century must have seemed especially perplexing to contemporaries, since, despite the advances in the 'dismal science', there was still a lack of ready answers. First, did lenient debtor laws encourage the debtor to accrue burdensome financial obligations in the pursuit of speculative investment and profit? If the debtors knew they could get out from under those obligations easily, then they wouldn't hesitate to take whatever credit they could get.

On the other hand, laws that gave inordinate power to creditors might have the same result. If creditors knew they could either throw debtors in prison or never have to lift the lien against debtors' property until the loan was paid back then creditors would be more likely to lend their capital, even to those who wanted to use it for speculative purposes. If creditors had to worry that debtors' losses would become their own, they might be a bit more circumspect in their selection of debtors.

Still, the historical record speaks to a clear understanding by contemporaries of the parameters of the debate. There was a growing consensus that risk had to be accounted for in the writing of insolvency law. That is, the rigid application of a moral idea about failing to meet financial obligations gave way to a new economic postulate: economic investment was to be encouraged; investment involves risk; risk involves the possibilities of unforeseen circumstances; unforeseen circumstances mean loss; and losses based on these unforeseen circumstances warranted a more liberal consideration of the person who suffered the losses and

could not meet his financial obligations. Thus, the new economic thinking required a heightened consideration of risk and an understanding that insolvency law should take the economic benefits of risk into account.

However, the new economic thinking spoke to contractual issues as well. In several antebellum cases such as Dartmouth v. Woodward (1819), the Supreme Court re-enforced constitutional safeguards on contracts and declared that no individual or institution had the power to violate contractual obligations. When New York State passed (and quickly overturned) just such a law in 1811--which allowed insolvents unilaterally to release themselves from unmet financial (and contractual) obligations, it was over-ruled in Sturges v. Crowninshield (1819).⁶

Clearly, insolvency law presented a dilemma to law-makers. On the one hand, if they attempted to advocate liberal insolvency release, they violated constitutionally-mandated rules of contract. As the historiography since Charles Beard has highlighted, the sanctity of contracts was a critical component in the commercial agenda of the Constitution's writers and early defenders. Yet, the new awareness of the necessity of risk--and, hence, irretrievable loss--for economic growth seemed to contradict this agenda. Both the defense of contract and recognition of risk were meant to enhance commercial activity and yet the two were, at least in part, at direct odds with one another.⁷

The debate over insolvency law went right to the heart of this contradiction and involved several fundamental questions about it.

First, was the creditor's act of loaning money akin to an investment with all the natural risks for loss that capital investment always implied? Or was the debtor's act of borrowing money akin to the signing of a contract with all the solemn obligations this implied? And finally, of course, which was in the best interests of each party to the transaction and which best encouraged economic growth generally? No other set of laws, with the exception of usury laws, involved such a direct and immediate interference in the workings of financial supply and demand.

The process operated the other way as well. While debtor law was written to have an effect on the credit markets, the play of those markets had an effect on the way debtor law was viewed, debated, and legislated. Most obviously and most immediately, the market's effect on debtor law arose out of the business cycle. Virtually every major period of debate and the passage of virtually every important piece of insolvency or bankruptcy legislation followed in the wake of a major economic crisis affecting the city or nation.

During economically healthy periods, debtor law remained on the legislative backburner, barely mentioned and often forgotten. There was little talk of debtor perfidy and even less of creditor coercion. When the economy ran smoothly, those who were able to secure significant measures of credit were usually able to repay or refinance it. In general terms, there was no sense of crisis about the workings of the market economy and thus no atavistic or progressive (depending on the perspective) calls for governmental

interference. In short, risk and contract were not acutely at odds with one another.

But, when panics hit the city, the concerns about the economy changed dramatically. Creditor interests complained of dramatic upsurges in the nefarious activities of debtors, just as debtors warned of a new and unprecedented 'despotism' engulfing the city's creditor class. A strident and passionate debate arose out of the wreckage of a failing economy and an unworkable legal system. Financial obligations on paper were going unmet, yet the reasons for this were plain enough for almost everyone to see. People were dependent on credit and exposed to cyclical fluctuations in its availability. Again, risk and contract seemed to be at odds with one another. On the one hand, a heightened sense of contractual obligation implied a more rigid position on the repayment of loans. While a greater awareness of the risk inherent in finance often meant a more sympathetic understanding of the unforeseen difficulties in meeting those financial obligations.

There was also the question of power. On one level, the dilemma over the power of debtors versus the power of creditors was clear. Should debtors have more power in the decision over their release from burdensome obligations? Or should creditors continue to control the terms over how their debts should be repaid? Money, of course, was the ends over which the two sides struggled. But what about the means? After all, both parties usually recognized that if the debtor had exhausted his or her finances, there was no sense in keeping him or her in a state of perpetual obligation to

repay. This dilemma involved a determination of the power each side had in ascertaining the financial circumstances of the debtor (a major conflict in many bankruptcy and insolvency cases involved the right to look at the debtor's account books) and the power to release the debtor from his obligations. Real money was at stake and, as contemporaries were very much aware, this question of power intersected with ideas about capitalist economics, democratic government, and the rule of law itself.

Party politics were only a part--perhaps, the most superficial part--of the equation. Depending on the period in question, Federalists and Whigs generally resisted liberalization of the insolvency laws, while Democrats generally supported them. Nevertheless, the relationship between party affiliation and advocacy of insolvency law liberalization was not always so neat. There were several reasons for this confusion of political positions. First, there was the over-lapping role of political identity and economic interest. Historical studies of the era reveal a confusing pattern of political affiliation among the several classes of New York City. Not all artisans and laborers were affiliated with the Democratic Party, while numerous merchants went against the Whiggish grain of their class.⁸

More to the point, most participants in the credit economy--be they substantial or petty debtors--were often in the position of creditor in one financial transaction and debtor in another. Artisans offered goods and services on credit to their clients and took credits from small retailers, suppliers and, if they could,

from capitalists and banks. Similarly, merchants offered credits to country retailers and took loans from local and European manufacturers and merchant houses. They also lent and borrowed extensively amongst themselves.

Thirdly, the lawmaking bodies that considered and passed insolvency and bankruptcy law were usually careful to balance creditor and debtor interests in the legislation they wrote. Oftentimes, supporters of insolvency law liberalization found the clauses re-enforcing certain creditor rights that were written into every such law objectionable while opponents didn't like the ease with which debtors could get released under the laws.

Moreover, special stipulations about chartered corporations--especially in the case of the exemptions for these institutions under the 1841 Bankruptcy Act--aroused a welter of conflicting and contradictory arguments among the advocates of the various bills. Should the law be passed despite the exclusion of these objectionable exemptions? Was half a loaf better than none? were questions with which advocates of insolvency reform wrestled.

Finally, there were serious debates about what really served the interests of debtors and creditors. Not infrequently, those individuals whose economic role was predominantly that of creditor viewed liberalization of the insolvency laws as being in their interest. Either they recognized the inherent relationship between financial risk and economic growth or they saw, in their own experiences with insolvents, that liberalization would streamline the process by allowing debtors a way to come forward more quickly

with their financial difficulties. It was almost universally agreed that quicker insolvency settlements were in the best interests of the creditor. That notion, of course, depended on the trust the creditor had in the particularly piece of insolvency legislation as regards to forcing insolvents to make a full and honest disclosure of their assets and debts. In short, attempts to chart support for liberalization of insolvency law along party lines or in terms of economic interest groups are inherently tricky.

For the most part, however, creditors wielded political power throughout the period under study here, particularly the more substantial creditors who maintained control over the fate of the debtor's estate and, before the end of imprisonment for debt, over his person as well. (Insolvency law mandated the agreement of two-thirds or three-quarters of the creditors by number and amount before the debtor could be released from his or her financial obligations.) As long as the economy was operating smoothly--for insolvencies arose even in economically healthy periods--creditors effectively maintained that the fulfillment of written financial obligations was a legal necessity as well as a critical cog in the machinery of economic prosperity. But when the economy turned sour, political power often shifted to debtors. When the critical mass of public opinion--usually emerging in a spate of newspaper editorials, mass meetings, and lengthy petitions with the signatures of powerful but financially troubled heads of mercantile firms conspicuously displayed--reached the breaking point, the

state and federal legislatures acted.

They acted because there was a temporary convergence of opinion in the public at large. The fact that insolvency liberalization was almost always considered and/or passed during economic panics was significant. It was during those periods that all classes of New Yorkers recognized the need for reform. The numerous un-adjudicated insolvencies and the many artisans, merchants, and others idled by debt were considered a serious social and economic problem. Why should debtors try to earn money, contemporaries asked, if it would just be taken away by creditors to meet insurmountable debt?

At the same time, self-interest led most to the same conclusion. During economic panics, of course, individuals who played both the role of debtor and creditor continued to have conflicting economic interests. As they were both urged by their creditor and were urging their debtors to meet financial obligations immediately, they experienced, to borrow 20th century terminology, a liquidity crisis. While their role as creditor might seem to make them more rigid on the question of the sanctity of repaying financial obligations, the financial crisis they found themselves in required a more balanced approach to the question of insolvency law liberalization.

Credit was about liquidity and a liquidity crisis strikes at the heart of any participant in the credit economy. The fact that many individuals--even the most economically substantial ones--were illiquid created both a sense of personal and social crisis.

People felt an urgency to change the law and there was a heightened sense of sympathy--except among those, like A.T. Stewart, who had always maintained a cash-only basis for their businesses--for the dilemma of the illiquid insolvent. In addition, there was a general recognition that serious economic times called for serious economic measures.⁹

The historical record of insolvency law effectively revealed the fault lines of finance in early republican and antebellum New York. Thus, it has to be interpreted through the lens of economic experience and with a watchful eye to the vagaries of the business cycle. When the economy experienced an upturn--which, ironically, was due in part to the passage of liberalized insolvency legislation--the consensus about that law dissolved and it was debtor politics, confusing as they were, as usual.

Thus, insolvency and bankruptcy law came in spurts or, rather, spasms, since many of them were quickly repealed or watered down. This did not, of course, provide a reliable foundation for long term reform, and so there really was none. The history of antebellum credit and debt was marked by a fundamental paradox. On the one hand, there was a growing complexity and scope to the credit markets and the uses to which credit was put. In fact, credit became the critical means and ends of many financial enterprises by the 1830's and 1840's. In addition, the size of the financial community expanded enormously as well, making it impossible for the kind of personal, face-to-face encounters of credit typical of the 18th century.

Yet, on the other hand, the laws concerning the inevitable failures that resulted from that credit underwent a spasmodic lurching from reform to reaction to stasis and back again, depending on the immediate state of economy. Again, this history was in striking contrast to the kind of evolutionary response to longer-term structural changes in the city and nation's economy that marked the history of other aspects of commercial law.

Before examining the reasons for this paradox, however, it is important to lay out the terminology of debtor law and a brief legislative timeline. Most important is the difference between bankruptcy and insolvency law. According to Article 1, section 8 of the United States Constitution, only the federal government has the power to write bankruptcy law. Specifically, in the antebellum American context, bankruptcy law raised the issues of retro-active legislation and debtor autonomy. Under bankruptcy law, a debtor could unilaterally absolve him or herself of all financial obligations upon making an oath that he or she had made a full declaration of assets and had agreed to award them, on a pro rata basis to every creditor. Under the Constitution, only Congress could pass an act which allowed for a retro-active and unilateral negation of contractual obligations. This was called 'voluntary bankruptcy'.¹⁰

'Involuntary bankruptcy', on the other hand, was initiated by the creditor or creditors. Modelled on English law, involuntary bankruptcy was restricted to merchant debtors only and permitted creditors, whose debtors had failed to meet their obligations

punctually, to force those debtors into federal bankruptcy court. As it was argued that the mercantile profession was in a peculiarly vulnerable position to fluctuations in the market, creditors to merchants needed a means quickly to intervene to save their interests. Also, since much of a merchant's assets were highly liquid by nature--such as goods on hand or in transport or the ships themselves--it was not considered overly harsh to force merchants to liquidate those assets very quickly.¹¹

Conversely, since artisans' shops and tools and farmer/planters' land were both a more critical component to their respective wealth and less liquid, it was deemed unfair to apply the involuntary provisions to these classes of men. The bankruptcy acts of 1800, 1822 (not passed but voted on by the Senate), and 1841 all contained both voluntary and involuntary provisions--although the 1800 law applied, in all its provisions, to merchants only.¹²

The record of insolvency law in New York State was spottier than the federal one. For one thing, it remained highly debatable whether any state government could pass any law that allowed a debtor to be released from previous financial obligations, since this would violate constitutional prohibitions on retroactive state legislation that violated contract. Nevertheless, in 1811, New York State passed just such a law. Upon swearing that they had listed all their assets and all their creditors, any debtor could be released from previous obligations. In 1819, in the landmark Sturges v. Crowninshield decision, the Supreme Court ruled that the

1811 law violated both prohibitions. The 1811 law, however, had long since been repealed.¹³

Prior to that 1811 law, and dating from the pre-Constitution era, New York State, as noted above, required a minimum of three-quarters of the creditors by amount and number to release a debtor from financial obligations. That three-quarter figure was resurrected shortly after the 1811 law was repealed in early 1812. In 1817, the number of creditors required to release a debtor from his or her financial obligations was lowered to two-thirds.¹⁴

As noted in part two, a series of laws modifying imprisonment was passed in the 1810's and 1820's--mostly exempting women and very poor men--culminating in the end of imprisonment law of 1831. Various laws concerning the insolvency of corporations and partnerships were passed from the 1820's on. The general drift of state, as opposed to federal, legislation was to bring the rules concerning the insolvency of these economic entities more in line with those concerning individual financial failures.¹⁵

In short, new insolvency laws could not apply to previous financial obligations and they always required a certain percentage of creditors to release the debtor. In addition, they did not give the creditor the power inherent in involuntary bankruptcy law to force a debtor into insolvency. On these basic provisions, New York State and the federal government failed to pass permanent legislation. The federal bankruptcy act of 1800--in operation in 1801--was repealed in 1803. The 1841 federal law--in effect in 1842--was over-turned just a year later. And the 1811 insolvency

law--New York State's most significant piece of debtor legislation aside from the end of imprisonment law--was repealed in less than ten months, long before the Supreme Court had even heard a case that resulted from it. What, then, accounts--in this critical area of commercial law and in such an important commercial state as New York--for this spotty record of innovation and reform?

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Chapter Six:
The Federal Bankruptcy Act of 1800

Debtor laws in the last half of the 18th century were not unlike Mark Twain's celebrated prejudices, they were fair because they treated everybody with equal contempt. They were equally unforgiving to lady and gentlemen debtors and the poor, merchants as well as artisans, professionals as well as laborers. They were the laws of the creditor pure and simple and behind them lay the ultimate legal bludgeon, debtor's jail. As one historian has noted of debtor law in the colony of New York, "when the need arose, the law stood ready to serve creditor needs..."¹

Throughout the pre-Revolutionary period, most of the city's credit was supplied by England and thus there was little chance that the imperial government would leave that area of law to colonial legislatures, although there was some room to maneuver. In 1755, for instance, the colony of New York did pass a form of bankruptcy legislation, but it was modelled very carefully after English law. This law, amended at several points in the 1750's and 1760's, did not exempt the wife's dowry nor any estate in the hands of the insolvent destined for his children.²

Generally, colonial debtor law in New York was passed for one year increments only. In 1771, and possibly in response to the Hudson Valley rent riots and the harsh imperial repression of the rioters, the provincial legislature allowed the severe 1755 law to expire. Returning to the more lenient debtor laws of the early 18th century, the new legislation attempted to release small and

medium debtors from jail and from their obligations by allowing anyone with less than 200 pounds of debt to make an oath and give over all his assets to his creditors on a pro rata basis. Since much of the credit was coming from England, this represented a direct challenge to imperial commercial law.³

In no mood to countenance further colonial insubordination, the crown overturned the law within a year. But the New York legislature, increasingly responsive to local debtors over English creditors, freed over 250 financial failures by individual acts of insolvency before the war-time military occupation prevented the exercise of that power. In 1776, the revolutionary Committee of Safety permitted an entirely voluntary system of bankruptcy.⁴

During the occupation of the city between 1776 and 1781, there was little business to be done and virtually no credit offered. Only after the war and the end of the British occupation did the problem of insolvency arise again. The depressed economic conditions of the 1780's, however, did not spur lenient debtor legislation. Not until 1788 did the legislature even get around to passing voluntary insolvency legislation. And it was not pro-debtor legislation either. It required three-quarters of the creditors to release the debtor. And it had the same strict colonial pro-creditor stipulations about the debtor's wife's dowry and the debtor's trusteeship of his children's inheritance.⁵

Nor did much real reform in insolvency law occur in the first decade of the new republic. In 1789 and 1790, laws were passed to help release petty debtors from imprisonment after stays of 30 days

to a year. Yet, a creditor could keep any debtor imprisoned indefinitely by simply paying the jail and court fees. This form of 'hired vengeance', as one reformer called it, was not outlawed until 1799, and then only for non-freeholding debtors owing less than 10 pounds.⁶ At the same time, Congress continually debated but failed to even vote on bankruptcy legislation until 1799.

In general, 18th century debtor law remained harsh and unforgiving, imposing jail sentences and allowing little escape from financial obligations. Under colonial rule, this can be explained by the constraints of imperial credit and imperial law. But, when the Revolution thrust power into local hands, the laws' severity was hardly mitigated. Only reluctantly, did the legislature act to relieve the poorest of debtors. What accounts for this lack of change?

One explanation might be found in the disparity between written and enforced law, a factor of particular importance in insolvency law since it was private citizens rather than the state who usually initiated legal action. According to historian George Phillip Bauer, some of the severity of these laws was tempered by the self-interest of the creditor and, perhaps, by his humanity. Some creditors understood that there was a better chance of repayment if the debtor were not thrown in jail and not hit by liens and suits against every penny he earned while in a state of insolvency. "If a man has nothing to pay," a contributor to the Daily Advertiser asked rhetorically, "what can a suit against him get you?"⁷

Moreover, the law was costly and court procedures were time-consuming. As creditors would complain for decades, much of a debtor's remaining estate would often get used up in the time it took to make the settlement final. Lastly, a creditor who had too precipitously used the law to penalize a debtor would lose such a customer for his capital and, if he resorted to the law too often, would gain a costly reputation for nastiness that might drive away potential business. In general--and this would be the case throughout the years under review in this study--most creditors preferred to settle with their debtors informally and out of court.⁸

For debtors, the harsh law was entirely unfavorable no matter how they were able to settle their financial obligations. If their creditors wanted to settle extra-judicially, the settlement was never final because other creditors could always continue to make claims. Moreover, by settling out-of-court, the debtor could be found guilty of making preferred payments to one creditor over another, an action illegal under the law of 1788 and all subsequent insolvency laws. In court, the debtor did not fare much better. For one thing, a single creditor could keep the debtor in jail during the entire course of the proceedings and one-quarter plus one of the creditors by number or amount owed could keep the debtor in a perpetually unsettled financial state.⁹

In short, insolvency law in the new state of New York retained some of the severest elements of colonial legislation and demonstrated the inertia and resistance to change that would mark

the field down through the beginning of the Civil War. It offered little escape from prison except among the pettiest of property-less debtors and gave virtually every advantage to the creditor. This was particularly notable--although it was in keeping with the central paradox of debtor law in the 19th century--because the 1790's was a period marked by financial excess, real estate speculation and the inevitable commercial busts and waves of financial failures that resulted from that kind of economic activity.

Throughout the decade, Hamilton's pro-bondholder policies for the federal treasury provided windfall capital for New York City's financiers. Much of this capital was loaned out for the purposes of speculations in western lands and city real estate. Twice during the decade--in 1792 and 1797--the market in real estate collapsed, numerous fortunes were lost, and financial failure spread through much of the mercantile community. Many of these financial failures, like many of the bondholders, were among the richest men in the city.¹⁰

Nevertheless, the state legislature failed to provide any kind of legal relief. Defenders of the status quo--many of them merchants not involved in the wave of bond-holder speculations--maintained that most failures were, in fact, handled amicably and without resort to the law. This was an argument that excluded the litigious and complicated settlements of the speculators. Since most financial transactions involved people of long acquaintance and since the laws were indeed so harsh, it was argued that most

creditors would avoid using the law and only the most fraudulent or intractable failures would need to be settled in court. According to the American Citizen, insolvency courts were "the last resort of indigence on one side and fatigued resentment on the other--from which nothing is obtained or expected, but the release of the debtor from imprisonment and the creditor from hope."¹¹

On the other hand, a deep-lying suspicion--evinced in the numerous stories in the city's commercial press about particularly egregious examples of debtor fraud--that failure was usually the doing of immoral men or the results of unethical commercial practices helped to preserve the severity of insolvency law. As one creditor noted of his debtor's failure to meet his financial obligations, "this is a breach of a most sacred trust...[and] I pray a jury will see this."¹²

As for the number of cases, approximately 500 insolvents were incarcerated yearly in the city, with over 200 in just one month during the panic of 1797. When creditors took advantage of the law, their defenders justified it on the grounds that it wasn't in the interests of creditor to use the law frequently, except in those cases where the debtor was acting fraudulently. In other words, the law remained harsh because excessive indebtedness remained suspect, while that severity was tempered by the belief in the personal nature of debtor-creditor relations --creditors were unlikely to jail close acquaintances--or the commercial good-sense of creditor.¹³

But critics--many of them sympathetic to bondholders and

speculators--argued otherwise. They drew a picture of a system that unfairly sent innocent debtors to prison and encouraged certain vindictive creditors in their attempts to extort favorable settlements for themselves upon the suffering of the debtor. Perhaps worse, they argued, creditors used the law at the expense of other creditors, attempting to extort a bilateral settlement with the threat of incarceration. Rather than seeing a system based on the sparing use of harsh law, debtors and their supporters argued that the laws were kept 'cruel' so that aggressive creditors could always maintain the upperhand. Quoting from a French writer, editor William Keteltas of the debtor's journal Forlorn Hope wrote that harsh debtor law was "dictated by the avarice of the rich..."¹⁴

Samuel Mitchell, an anti-Federalist Congressman from New York City, took the connection between the commercial greed and harsh insolvency law a step further.

[I have] always considered it a as a paradox that in countries comparatively free, the love of property should predominate over that of freedom...[This] is easily to be traced to a spirit of commerce...which made [commercial interests] ready, with one accord, to commute money for liberty.¹⁵

In fact, however, public sentiment concerning debtor law was more complex than either side depicted it. For one thing, both the city's merchants and the city's artisans remained divided over the issue of severe insolvency law. Many of the city's older merchants, for example, solemnly accepted the idea that any and all

imprisoned debtors deserved to be there. According to 'Old Citizen', there was something positively immoral about borrowing and investing beyond one's means. If a merchant had in fact borrowed beyond his close circle of acquaintanceship and failed, then he should accept the consequences, and know that he might be incarcerated and hounded in court by creditors from whom he could expect little sympathy or mercy.¹⁶

Still, by the end of the speculative 1790's, there was enough pressure coming from these failed speculators and the creditors--both substantial and petty--who were ruined by their own debtors' failures to place insolvency and bankruptcy law reform on the political agenda. In fact, after the economic catastrophes of both 1792 and 1797, New York Congressmen and others had introduced various bankruptcy acts into the House and Senate. Over the course of the 1790's not a Congress adjourned without discussing bankruptcy legislation.

The political battle over bankruptcy was not a straightforward one. In 1796, a House committee appointed to look into the possibilities of bankruptcy legislation reported that the issue was "so complicated that it should be considered as a bill by the whole house in extensive open debate." Both Federalists and anti-Federalists supported and opposed the legislation. Rather than partisan politics being the determinant of support, advocacy of a bankruptcy act tended to follow the patterns of the Constitution's ratification, with the commercially-oriented districts like New York City generally supporting this kind of legislation as the

decade wore on and the more rural and commercially-backward districts opposing it.¹⁷

The reasons were simple enough. Increasingly, the economic chaos and the financial failures caused by the European wars and the continuing drag of the numerous financial failures that resulted from the speculative binges of the 1790's--"the distress caused by the vicissitudes of trade", a bi-partisan House committee called it--changed the political balance in New York City, and in enough other commercial centers of the United States, to put the nation's first bankruptcy act high on the legislative agenda by 1800.¹⁸ At the same time, the debate shifted away from the twin concerns of debtor-creditor acquaintanceship and the ethics of insolvency that dominated discussion of debtor law in the 1790's. By 1800 and after, proponents of the law had gained the upperhand by arguing that leniency was a better motivation to quick and equitable settlement. "What does the bankrupt act do?" the editors of the American Citizen wanted to answer for their readers.

It forces the fraudulent and prodigal debtor to admit the wrong and allows the honest to rescue their reputation...[and] it divides property fairly amongst the creditors.¹⁹

Then, despite the paper's anti-English democratic leanings, it pronounced its final argument in support of the act. "It works so well," the editors wrote, "that the greatest commercial nation [i.e. Great Britain] keeps it on the books."²⁰

The law that finally passed the Congress did so by the narrowest of margins and only after the Speaker cast his vote to

break a 47-47 tie. As for New York State's delegation, it split evenly with four members voting for the bill and four against, "the metropolis advancing and the back country vigorously resisting its passage." In the roughly two years the law was in effect 133 'traders' (the only profession eligible)--merchants, insurers, factors, brokers, and bankers--obtained a release from all their debts, domestic and foreign, and some of these debt accruals were in the hundreds of thousands of dollars. As would be the case with the 1841 act, the law was administered by bankruptcy commissioners. These commissioners were first appointed by district judges and later by President Jefferson, a development which produced political infighting.²¹

By the standards of later insolvency and bankruptcy acts, the numbers of debtors taking advantage of the 1800 law was modest, a result no doubt of the occupational limitations. Nevertheless, the reaction to these numbers produced a tremendous political revulsion. To many, the law was nothing more than an invitation to fraud and the huge debts wiped away by it seemed proof enough of that fact. It promoted "fraud, speculation, and extravagance," a House committee on repeal noted in 1803, its conservative tone coming through clearly in its observation that "the obligation to pay debts is eternal."²²

So strong was the backlash that the law was repealed before it had run even half of its legislated five-year duration. Again, the politics behind the passage and repeal of the law defy easy categorizing. Both the Democratic American Citizen and Hamilton's

Federalist Evening Post agreed that partisan politics had little to do with either the passage or the repeal of the act. Both the Democratic and the Federalist press also shared sentiments about the bill's effectiveness. In fact, a search of the press for 1803--the year the act was repealed--reveals not a single comment in support of that repeal.²³

Overall, New Yorkers of all political leanings assessed the bill positively. Some, like the Post, showed lukewarm support--"not a great deal of good came of the bankruptcy law, but little harm was done." While the American Citizen was more enthusiastic. "The bankrupt law," the editors wrote

solved this problem [of varying state insolvency laws], assuring creditor's property and leniency to the debtor. And now it is to be abolished!²⁴

Political pressure for repeal came from outside New York City. According to the Post, the repeal was "another step in the system of disorganization of...politics," that the paper blamed on fiscally irresponsible agrarian politicians and their supporters. According to the editors, these people were simply discontented with any law designed to assure creditors a fair share of their debtor's assets. The repeal, the paper said, was supported in states like Virginia (chosen as a barbed swipe at the loathed Jefferson) "where state law exempts lands from execution for debt, so that a man may maintain the style of a nabob, and set his creditors at defiance."²⁵ In fact, however, the problem was closer to home as well. New York's Senators split on the vote with John

Smith, a Democrat from the city, voting for repeal and John Armstrong, of Dutchess County, voting against.²⁶

In effect, the bankruptcy act was the new nation's first attempt to utilize debtor law, not as a bludgeoning instrument whose efficacy resulted from the mere threat of its use, but as an instrument of coercion, designed to coax debtors and creditors into court by regularizing the informal procedures common in extra-legal settlements. This new approach to debtor law was generally supported in New York City, although specific provisions, such as the exclusion of small creditors (owing less than \$50), must have made the bankruptcy act obnoxious to artisan creditors.²⁷

Nevertheless, old attitudes died hard. What most upset both Federalist and Democratic supporters of the act was the ease with which debtors were able to settle their cases. Here, ironically, was the law's main end being fulfilled--to expedite legal settlement of burdensome and ultimately unpayable debt--and it was the aspect of the bill most widely criticized. "Because the bill saves property as well as person," noted a House of Representatives committee on repeal in 1803, "it invites more fraud."²⁸

Despite their recognition of the need for a faster method of legally resolving insolvencies, many Americans and some New Yorkers continued to prefer the 18th century's debtor law--with its near Old Testament harshness and righteousness--over the proposed laws of the 19th century which departed from the moral high ground for the work-a-day world of legal settlements based on the expeditious liquidation of debt. In promoting 'fraud', the House Committee

on repeal concluded, the 1800 law destroyed "the confidence men have in one another for there to be trade."²⁹

It would be a generation before Congress seriously attempted to fulfill its constitutional mandate "to establish...uniform laws on the subject of bankruptcies throughout the United States", and a generation beyond that till it had succeeded.

Endnotes

1. Coleman, Peter, Debtors and Creditors in America, 1607-1900, Champlaign, IL: University of Illinois Press, 1974, p. 112.

2. Klein, Philip, The Colonial Laws of New York, (five volumes), Albany: State of New York, 1894-6, 3: 1101-4, 4: 182, 346-7, 931; Coleman, Debtors and Creditors, p. 108-9.

3. Klein, Colonial Laws, 5: 195; Coleman, Debtors and Creditors, p. 112-3.

4. Mayor's Court, New York State Insolvency Assignments, Queensboro Public Library, Jamaica, NY; Coleman, Debtors and Creditors, p. 115.

5. Laws of the State of New York, 1788, chapter 92.

6. Ibid., 1789, chapter 24; 1790, chapter 40; 1799, chapter 25.

7. Bauer, George Philip, "The Movement against Imprisonment for Debt in the United States", (unpublished dissertation), Harvard University: 1935, p. 163-5; Daily Advertiser, April 23, 1792.

8. It is impossible to determine with absolute certainty the number of financial failures that never went to court. There is, however, one set of statistics that helps to reveal the ratio of adjudicated to non-adjudicated insolvencies by indirect means. The 1811 insolvency law, which guaranteed a unilateral release to all debtors, encouraged court settlements. It was entirely in a debtor's interests to take advantage of this law. In the nine months the law was in effect, 625 debtors took advantage of it. Contrasting that to the numbers of insolvencies during the late 1810's and 1820's--approximately 200 a year--reveals that the rate of adjudicated to non-adjudicated failures in years when there were no reforms was much lower. The difference is even more marked when the greater size of the New York economy and its greater dependence

of credit in these latter years are considered.

9. Laws of the State of New York, 1788, chapter 92.

10. Miller, Nathan, The Enterprise of a Free People: Aspects of Economic Development in New York State during the Canal Era, 1792-1838, Ithaca, NY: Cornell University Press, 1962, p. 27-28; Mayor's Court, New York State Insolvency Assignments; United States Federal Court for the Southern District of New York, "Bankruptcy Case, Act of 1800", Microfilm Rolls 2-10, Federal Records Center, Bayonne, NJ.

11. American Citizen, December 14, 1803.

12. Daily Advertiser, July 4, 1792.

13. Commercial Advertiser, August 30, 1799.

14. Forlorn Hope, March 24, 1800.

15. United States Congress, Debates and Proceedings, 7th Congress, 2nd Session, January 3, 1803.

16. American Citizen, February 23, 1803.

17. Congress, Debates and Proceedings, 2nd Congress, 1st Session, May 5, 1792; 4th Congress, 1st Session, January 3, 1796; 5th Congress, 2nd Session, December 8, 1797; 6th Congress, 1st Session, February 21, 1800; Bauer, "Movement against Imprisonment", p. 126-135.

18. Congress, Debates and Proceedings, 5th Congress, 2nd Session, January 3, 1798.

19. American Citizen, December 14, 1803.

20. Ibid.

21. Bauer, "Movement against Imprisonment", p. 142; Federal Court, "Bankruptcy Cases, Act of 1800", Microfilm Rolls 2-10.

22. Congress, Debates and Proceedings, 8th Congress, 1st Session, November 23, 1803.

23. American Citizen, December 5, 1803; Evening Post, December 3, 1803.

24. Ibid.; Ibid.

25. Evening Post, December 3, 1803.

26. The numbers behind the vote in the House went unrecorded in the official record of the Congress; Congress, Debates and Proceedings, 8th Congress, 1st Session, December 13, 1803.

27. Federal Court, "Bankruptcy Cases, Act of 1800 Act", Microfilm Roll 1.

28. Congress, Debates and Proceedings, 8th Congress, 1st Session, November 23, 1803.

29. Ibid.

Chapter Seven:
The New York State Insolvency Act of 1811

If the 1790's was a decade marked by a mercantile class divided over economic agendas, the first decade of the 19th century saw that class struggling against a common economic disaster. The envelopment of American trade by the European wars and the subsequent French and English depredations on American shipping and, more significantly, Jefferson's Embargo of 1807 and the Non-Intercourse Act of 1809, withered the city's economy, devastated its trade, and drastically undermined the credit markets that were beginning to make New York the nation's financial center.¹

The effects of the military and political siege of the city were clear. With the export and import trade off between fifty and eighty percent, the city's economy went into a severe depression. And without access to English and continental capital, the credit markets withered and financial obligations went unmet. While smuggling made fortunes for a few intrepid entrepreneurs, most of this illegal trade was conducted outside the major ports and New York was effectively shut down as a trading city. By 1808, the effects of this government-enforced, war-imposed depression were widespread. While artisans may have been spared direct competition from British goods, the general stagnation of the mercantile class, the source of so much custom work for the city craftsmen, meant depression among this class of New Yorkers as well.²

Not surprisingly, the depression urged along the cause of insolvency law reform. In the ten years following the adoption of

the bankruptcy act of 1800, the terms of the debate had shifted noticeably in a liberal direction. There were several reasons for this. First, those conservative merchants who most avowedly suspected the worse of insolvent debtors were also the merchants most likely to hold strong antipathies to the administration in Washington. With most merchants blaming the vilified Jefferson and Madison administrations for the economic woes of New York City, the stigmas and suspicions around financial failure were lifted slightly from the debtor's shoulders. In effect, the politically-imposed stagnation engendered a willingness to discuss debtor law reform among the more conservative elements of the city's mercantile community, even among those who had most heatedly opposed any relief measures designed to aid the 'paper aristocrats' of the 1790's.³

Second, virtually every commentator on the subject of insolvency law was in agreement that reform of some kind was necessary. Conservative elements that opposed the 1800 law--on the grounds that any law that encouraged the accumulation of debt was bad--were beginning to come around. Many of them had experienced serious economic setbacks due to the conflict in Europe. In general, the war losses of these merchants reverberated through the mercantile community, creating a sense of uncertainty about their own commercial vulnerability. While insurance companies, of course, offered security, they themselves were endangered by the hostilities. Insurance companies in these years had a higher failure rate than banks; six in Philadelphia and New York alone

were rendered insolvent by the Napoleonic wars.⁴

Given these realities, then, it is not surprising to find that most merchants were coming to agree, although with great reluctance, that the giving and taking of credit had undergone some kind of little understood but fundamental and irreversible change by 1810 and that some new and more usable legal mechanism was necessary to regularize the failures that these new and expanded credit markets were inevitably producing.

For conservatives, the idea of the insolvency code as a bludgeon, always at the creditor's ready, to terrify speculators on to the straight and narrow and afford the creditor his righteous command over the debtor's person and estate was weakening. The old law, most agreed, was not preventing the accumulation of excessive debt and it certainly was not providing an effective means to settle unpaid debt. But in place of the old laws and the ready certainties came confusion, a willingness to be swayed slightly by the arguments of reformers, and an awareness that the city's financial markets were in serious trouble.⁵

The crisis was not easy to ignore. For one thing, the sheer number of insolvents of all classes being incarcerated for debt--one pamphleteer estimated that about ten percent of the free-hold population of the city had been arrested for debt in 1810--implied troubling failures in insolvency law procedures. If the old law was supposed to put the fear of the creditors' god into debtors, it clearly was not working. Older notions about the morality of debt were coming apart, as more and more 'respectable' persons of

different economic backgrounds found themselves unable to pay their debts.⁶

The economy was stagnant, hundreds were going to jail, and the response to the crisis seemed inappropriate. Although it was not always clear whom to blame--the insolvency courts or the creditors themselves--it seemed clear to a majority of New Yorkers that this combination of economic stagnation and legal gridlock--a combination which resulted in such high rates of incarceration for debt--was in need of serious reform.

As a result of this economic crisis, many previously-held conservative truths about economic behavior and legal control--specifically, the righteous use of severely punitive insolvency law for the purposes of controlling economic speculation--were being called into question. Cumulatively, these changing attitudes produced a growing willingness to reconsider the very fundamentals of the insolvency system.⁷

It was a matter of trust. What, conservative merchants asked, guaranteed the debtor's truthful and honorable conduct in the settlement of his unpaid debts? Despite the widely-held opinion that blame for the current economic woes could be laid at the Democratic administrations' feet, failure to meet financial obligations still meant a spot on one's good name. How could this person who had failed the most elementary test of honor--despite whatever mitigating factors they could bring up as an excuse--be trusted now? "I agree that the laws need to be ameliorated for honest debtors," wrote 'Franklin', a contributor to the Columbian,

in 1811,

but those are few and the rogues and villains who prey upon the unwary are many. All the oaths in the world are nothing next to a career of dishonest behavior; I won't trust an oath by such a man though he stand upon an heap of Bibles, and be covered with a cloak, composed of oaths and affidavits.⁸

Other ideological remnants from the 18th century outlook on credit persisted as well. If it was appropriate that people borrowed only from within a tight circle of acquaintance, then unpaid obligations should be handled out-of-court and informally. A case of insolvency that had to be settled in court carried with it the stigma of uncontrolled credit. In other words, if the case had to be settled in court, chances were the original loan had been made in violation of the basic standards of proper credit financing.

Still, as mentioned above, the severe economic crisis of the decade had a way of deflating these old suspicions and opening up the debate to a new set of arguments by a different kind of merchant. These merchants, more willing to question the efficacy of the old methods of credit restraint, were beginning to make their voices heard in the last few years of the 19th century's first decade. It is difficult to assess this group's financial means, ages, or relationships to the credit system, although their outspoken sympathies for the debtor's plight would seem to indicate that most of them were on that side of the credit-debtor fence. Nevertheless, most of these merchants believed the current

insolvency system served neither partner in the credit relationship.

Their goal was to create a set of laws that would solve the problem of excessive debt, burgeoning insolvencies and the legal log-jams resulting from debtor-creditor mistrust through the enlightened self-interest of both parties rather than through the debtor's fear of punishment and the creditor's legal right to vengeance. The new law, they believed, should encourage debtors to come forward as quickly as possible when they suspected their finances were in serious disorder. At the same time, it should be tough enough to reassure creditors that they would get their fair share of the debtor's assets and that there would be no need to sue the debtor precipitously.

The problem with the old system, critics pointed out, was that it simply failed to accomplish any of these goals. According to David Longworth, a financial writer and author of The Debtor and Creditor's Vade Mecum, the problem with the law was that

by allowing a single [substantial] creditor to postpone settlement indefinitely, the debtor won't come forward...Thus, the debtor tries to get out by borrowing more, pruning and reducing his estate until he is utterly exhausted and penniless...

The law's severity worked against the interests of the creditor as well, critics pointed out. "Every trader can tell from personal experience," a correspondent to the Columbian wrote in 1810, "you get a better settlement from the debtor earlier, rather than later, and the worst settlement after a long confinement."⁹

Even worse, the harsh law encouraged rather than discouraged fraud. To get out of jail and to avoid a future in which all potential earnings would be under threat of creditors' suits, one writer noted in the Public Advertiser in 1811, a debtor would swear an oath to anything. In the sum of cases, then, the threat of imprisonment did nothing to guarantee honest behavior on the part of the debtor. Fear, in short, promoted fraud.¹⁰

Even as a preventive measure, the reformers' argument went, severe debtor law provided little advantage. On this score, the newer voices on insolvency law reform better understood and more willingly accepted the incipient changes in the credit system of the early 19th century. Here, concerning the regulatory aspects of insolvency law, the pro-debtor sympathies of the new voices became most apparent.

According to one anonymous pamphleteer writing in 1810, the problem with the existing insolvency law were its twin and equally fallible assumptions that the debtor was responsible for the rise in speculative finance and, therefore, his behavior was the proper subject for the regulatory aspects of insolvency legislation. In fact, the writer went on to say, more lenient insolvency laws--laws which would reduce or even eliminate the threat of imprisonment and the threat of lawsuits over the debtors' future earnings--would have a salutary effect on the behavior of that party which was responsible--the creditor. "Severe punishments on misfortune are good, some say, as a check on that facility with which credit is generally obtained," the author of the pamphlet Debtor and Creditor

wrote,

...[but] the opposite is true...the more powerful the laws are the more the creditor is encouraged. The taking of credit cannot be checked, but the giving of it may...If men were taught to expect their re-imbursement from the property of those they trust, and not from their sufferings...There would be more investigations and more caution...The sufferings of the debtor are limitless, but his property is not. (emphasis in original.)¹¹

The argument was about pragmatism or, better, a new pragmatism. Conservative defenders of harsh insolvency law had always argued that human behavior being what it was, only the severest penalties kept debtors on their best behavior. Critics pointed out the failures of the old method as well as its inherent inconsistencies. First, since many of the financial failures had little to do with a debtor's malfeasance--and more to do with international affairs and federal trade policy--then it was absurd to use the law as punishment. And if society was to avoid having large numbers of debtors locked in jail or forever weighed down by insolvency, then it must find a way to expedite the settlement of burdensome debt.

Lastly, and most importantly, insolvency law reform was meant to bring the settlement process more into line with the freer credit markets of the new century. If the assumption was that borrowers and lenders of capital were most productive when freest from restraint and acting in their own financial self-interest, then it would be best to have an insolvency process that worked correspondingly.

While, this assumption seemed to contradict the idea of restricting speculation by reducing or eliminating the threat of insolvency, it did not seem so at closer inspection to the anonymous author of the pamphlet Debtor and Creditor. For economic liberals among the anti-imprisonment reformers, incarceration for debt was associated with an out-moded order in which imprisonment--a legal manifestation of older moral restraint--played a too important part. Unwanted speculation, they argued, could not and would not be controlled by legal bludgeon, but by making the lender consider his own interests. This would harmonize with the Smithian idea that economic self-interest was the best and most effective means for assuring socially-beneficial economic activity.¹²

These liberals advocated a new idea. Instead of an 'old light' law of external threat, why not have a 'new light' law that encouraged financial self-interest and got debtors to come forth of their own free will when their financial affairs were in trouble. In a word, Adam Smith's principles would be applied to failure. The arguments, combined with conservative confusion and chronic economic depression, were sufficiently convincing to produce legislative action.¹³

In April, 1811, the insolvency reform law or, officially, "An Act for the Benefit of Insolvent Debtors and Their Creditors" was passed overwhelmingly by the New York State legislature, with support strongest in the city and in the downstate and Hudson River counties. Not surprisingly, but beyond all expectation, the law drew hundreds of insolvents into the courts. In response to the

'shock' of a Boston newspaper about the 1,200 insolvents who had taken advantage of the law in the first three months, the editors of the Columbian wrote, "they don't realize things have built up for 10 or more years." As George Bauer wrote, "the easy terms of the new insolvent law undoubtedly led many persons not in prison to have themselves arrested in order to go through the mill."¹⁴ In fact, the numbers were unprecedented.¹⁵

What made the insolvency law of 1811 so popular were its remarkably lenient procedures. Under the law, debtors could unilaterally release themselves from financial obligations by simply listing all of their creditors and all of their assets, and then signing an oath swearing to the veracity of these claims. The settlement would then entail the division of virtually all of the debtor's assets among his or her creditors on a pro rata basis and the financial failure's release from future obligations to pay back previous debts.

Creditors, of course, could challenge every aspect of the release in court. But the 1811 law, for the first time in the state's history, placed the burden of proving fraud on the creditor. No longer did the debtor have to prove his or her innocence--in contradiction to the basic premise of common law-- to be released from prison. Furthermore, in the absence of any evidence of fraudulent behavior, there was nothing the creditor could do to stop the insolvent's release from all future obligations to pay back his or her debts.

From the moment the law entered the books, it raised a chorus

of strident criticism. Despite the efforts of the law's supporters to prepare public opinion, the rush of applicants did, indeed, shock many. Critics could not see in this rush the helpful purging of an insolvency backlog but, rather, a wholesale release of 'criminals'. "Too many rogues are released under the law," 'L.M.' argued in the Columbian.

Even men whose infamous conduct and swindling has forced them to live in the backways and shadows are coming out of the woodwork to take advantage of the law.

It was not just the number of applicants, but the kinds of cases which raised 'L.M.'s' suspicions. "...\$100,000 in debts and not a six pence paid," he wrote, "these instances have always been unaccountable to me, and they certainly wear a very unfavorable appearance."¹⁶

The honesty of the debtor was the issue's lodestone. Critics like 'L.M.' argued that pure cases of insolvency, unsullied by legal or ethical fraud, were efficiently and justly handled under the old laws where the creditor had the sole power to release the debtor. "Innocent debtors would be released under any law," he maintained. 'L.M.'s' presumption that thousands of debtors, including hundreds of merchants, were all shady criminal-like characters was a rather harsh indictment of the state of affairs of New York City commerce. With this attitude, only the severest penalties would suffice to keep all the city's borrowers from attempting to cheat their creditors.¹⁷

In a report to the state legislature on the law, New York

Attorney General Abraham Van Vechten concurred that the law was too lenient. "It made no distinction," he said, "between the unfortunate debtor and those who had rendered themselves insolvent by extravagance, dissipation, gambling, or any other vice." This was a bleak picture of human behavior and of the behavior of New York's merchant princes-turned-paupers.¹⁸

Defenders of the law did not attempt to dispute this claim directly. Rather than knocking heads over the philosophical question of man's innate depravity, they came up with a pragmatic defense. If the problem was ensuring the debtor's honesty, then the new law was the lesser of two evils. Under the old law, debtors were driven by fear to make any promise, sign any paper, and disregard any obligation in order to avoid imprisonment or a future of hopeless debt. Under the new law, they said, everything encouraged the debtor's best behavior. A complete and honest disclosure of assets and creditors would assure release. Still, it came to down to a matter of faith in the debtor--would he lie when given the chance?--and a matter of power in the credit relationship. Who, ultimately, would make the decision to adjudicate the insolvency and, more importantly, who would decide what the terms of that adjudication would be?

More than just a question of human behavior and the politics of debt, the ramifications of the new law for the economy were immense. At stake, contemporaries began to realize, were both the future of the growing credit markets and the increasingly functional conception of the commercial contract. As for the

latter, the arguments were clear-cut. Opponents of the law defended the sanctity of contract and said that the law 'brazenly violated' current contracts and would encourage the breach of future ones. "Contracts, especially in commercial economies," read a petition to the legislature of 'merchants, traders, mechanics, and other inhabitants of New York', "must be honored to the utmost."¹⁹ Van Vechten noted that the insolvent's discharge depended solely "on the oath of a gambler, a drunkard, or a spend-thrift [and] not on the fair, upright, and honorable conduct of the debtor."²⁰

Proponents took a position of calculated pragmatism. When a debtor absolutely could not pay his or her financial obligations, then the contract was violated anyway. Furthermore, a contributor to the Public Advertiser wrote, the new law got rid of the necessity for slyer and more conspiratorial violations of contract. Under the old law, debtors would do anything to get out of their contracts, including finding people who would swear they were creditors in order to make up the three-quarter majority necessary under the law.²¹

As for the credit markets, the debate was more complex since it involved the more implicit regulatory function of insolvency law. Specifically, the question was whether lenient debtor laws would encourage a future expansion of speculative credit. Not surprisingly, both sides of the debate tried to point out how their position coincided with more responsible lending. Oddly, the two sides found themselves heading toward common ground even as the

debate became more strident.

Defenders of the law argued that if creditors lacked the power to coerce a settlement they would be less willing to offer money. In effect, this would discourage overly liberal credit offerings, the source of so much conservative merchant angst. Opponents concluded that the easy release mechanisms would shut off the flow of credit altogether, starving entrepreneurs and artisans of the capital they needed to operate and expand their businesses. They even argued that the law would hurt the poor, since grocers and others would be less willing to sell the necessities of life on credit.²²

With opponents of liberal insolvency law arguing that it would cut-off liberal credit and proponents demonstrating how it would stop excessive speculation, the debate, at first glance, appeared to take on a disingenuous tone, with both sides advocating expanded credit while lamenting that very same development in the past.

But, in fact, the terms of debate were less considered than that. Confusion, rather than calculated disingenuousness, marked the debate. The 1811 law had been created--ill-considered and hastily-enacted--at a time of severe economic crisis. What pushed it through the legislature were humanitarian considerations rather than a coherent consensus about its beneficial effect on credit and contract.²³

In the end, the law was quickly repealed. A widespread--although, again, ill-considered--reaction to the mass release of insolvent debtors turned the legislature around. Just nine months

and 625 cases after it was overwhelmingly passed, the 1811 insolvency act was overwhelmingly repealed. The great haste of the repeal is indicated by the fact that the legislature did not even bother to pass a replacement insolvency act. For almost a year, New York State went back to the old and cumbersome method of passing private legislation for each insolvency.

As with the 1800 bankruptcy act, the insolvency law was repealed with little comment from the press. Presumably, the law was repealed hastily because it had both accomplished its task and/or because it had accomplished it too well. In 1819, when the city was again gripped by economic crisis and there was talk of liberalizing insolvency legislation, there were references to the uproar about mass releases as a reason for the hasty repeal of the 1811 bill.²⁴

In 1813, a new insolvency law, once again requiring three-thirds the number of debtors, was quietly passed. Other than several acts in the late 1810's and 1820's excluding the poor from imprisonment and lowering the number of creditors required for release to two-thirds, it would be the last major piece of state legislation on insolvency until the end-of-imprisonment act in 1831.²⁵

Endnotes

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4. Krooss, Herman, "Financial Institutions" in Gilchist, David, The Growth of Seaport Cities, 1790-1825, Charlottesville, VA: University Press of Virginia, 1967, p. 110.

5. Columbian, p. January 15, 1812.

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8. Columbian, January 28, 1811.

9. Longworth, Vade Mecum, p. 16-17; Columbian, August 13, 1810.

10. Public Advertiser, September 26, 1810.

11. Anonymous, Debtor and Creditor, Philadelphia: 1810, p. 4.

12. Longworth, Vade Mecum, p. 21.

13. Anonymous, Debtor and Creditor, p. 6-26.

14. The 1,200 figure appears to be an exaggeration as the New York State insolvency records reveal a total of 625 debtors taking advantage of the law in the ten months it was in effect; Mayor's Court, New York State Insolvency Assignments, 1755-1888, Queensboro Public Library, Long Island Room, Jamaica, NY; Laws of the State of New York, chapter 123, 148; Columbian, August 24, 1811; Bauer, George Philip, "The Movement against Imprisonment for Debt in the United States" (unpublished dissertation), Harvard University: 1935, p. 145.

15. By contrast, the bankruptcy act of 1800, although it only applied to members of the trading class, released but 133 financial failures. See pages .

16. Columbian, December 12, 1811.

17. Ibid.

18. Ibid., February 15, 1812.

19. Evening Post, December 6, 1811.
20. Columbian, February 15, 1812.
21. Ambrose (pamphlet), New York: 1811, no pagination, (originally published in the pages of the Public Advertiser on September 26, 28, and October 2, 4, and then updated for 1811 publication).
22. Columbian, October 8, 1811 (reprinted from Public Advertiser).
23. Fay, Joseph, Essays of Howard, p. 2-3.
24. Columbian, February 15, 1819.
25. Mayor's Court, New York State Insolvency Assignments.

Chapter Eight:
The New York State
End-of-Imprisonment Act of 1831

To the modern mind, incarceration for debt seems as ill-considered as it does wicked. Most today would probably agree with the Native American trapper, imprisoned in an upstate New York debtors' jail in the early 19th century, who patiently told his creditor that "prison was a mighty bad place to catch beaver."¹

The modern sense of injustice about debtors' prison is further aggravated when the workings of the institution are examined. Reduced to the simplest moves, incarceration for debt operated like this: when a debtor could not meet his or her financial obligations, a creditor could have an officer of a state court issue an arrest warrant against the debtor. The creditor did not need to provide proof to the court of any debtor wrong-doing, except the delinquent bill.

And once the debtor was jailed, the creditor had almost complete control over when and whether that debtor would be freed. The large number of debtor arrests in the late 18th and early 19th centuries (see part two) hinted at the ease with which creditors could threaten the person of a debtor. In short, the law, as it stood on the books, was almost always on the side of the plaintiff. The law encouraged its own abuse.

Specifically, there were two legal devices by which creditors could have their debtors legally imprisoned before 1831. Both devices originated centuries earlier in English precedent and

statutory law, and both were modified by the various states, including New York, in the decades immediately following the Revolutionary War.²

First, a creditor in New York State could sue for an overdue debt in the Court of Chancery. The creditor was required to submit evidence that the debt was real, that it was overdue, and that he or she had made a good-faith but fruitless effort to collect upon it. If the creditor was able to satisfy the chancellors on these points, a final judgement was issued and the debtor's property, first personal and then real property, was sold to meet that debt. Dowry property was not exempt from the judgement, nor was inheritance property held in trust by the debtor. If the sale of all this property failed to generate sufficient proceeds to cover the debt, a writ of execution was issued and the debtor was arrested and jailed.³

This execution order was known as a capias ad satisfaciendum (hold until satisfaction) or a ca. sa. for short. For the creditor, the ca. sa. presented certain benefits. Most importantly, with the ca. sa., the creditor gained control over both the debtor's person and the debtor's property. Debtors could neither flee the jurisdiction nor could they dispose of their assets until the suing creditor's demands had been fully met.⁴

But the ca. sa. had its drawbacks for the creditor as well. It was a complicated, multi-stage procedure that involved significant expense, time, and bother. Creditors with few financial resources of their own--perhaps, pressed for payment by

creditors of their own--or creditors who suspected their debtors might have immediate plans to abscond or, more likely, to make preferential payments to other creditors would not be likely to use the ca. sa. to recover their debts. The process simply took too much time.

Instead, that creditor would turn to the second legal device for imprisoning the debtor, a device generally known as the mesne (means) process. As historian Peter Coleman describes it, the mesne "was simple, cheap, and swift." Originally a legal device to protect the debtor against fraud, the mesne allowed creditors immediate satisfaction, if satisfaction meant putting a debtor behind bars. Under the mesne, the creditor did not have to wait for the chancellors to be in session to hear his suit. They simply swore to an official of the court that there was an overdue debt and that they suspected the debtor might be trying to conceal himself or his property, or that he might try to flee the jurisdiction.⁵

The court then issued a capias ad respondendum (hold until response) allowing the sheriff or constables to arrest and jail the debtor until he or she had paid the obligation. For the creditor, the benefits of the mesne--its facility and its cost--were obvious, but it also had its drawbacks. As creditors routinely complained, since the mesne did not include an attachment on property, a debtor willing to sit in jail could hold onto his or her property and refuse to satisfy the creditor's demands indefinitely. Essentially, Coleman argues, use of the mesne was predicated on the

assumption that incarceration was so unpleasant a prospect that the debtor would choose to cooperate with the creditor rather than serve time in jail.⁶

On the other hand, given the volume of complaints about the mesne by anti-imprisonment reformers, it appears to have been the more popular method for jailing debtors, especially petty debtors. It was used most frequently against petty debtors for several reasons. First, since these debtors usually relied on their own labor to support themselves and their families, jail time was perceived to be, and no doubt was, more financially devastating for them.

Second, since the outstanding debts were usually smaller, the lower costs of the mesne made it a more appropriate legal instrument. Finally, and most obviously, control over assets was more crucial with larger debtors. The ca. sa., removed those assets from the debtor's hand and put them in those of a court-appointed assignee, whereas the mesne left them with the debtor. Hence the appeal of ca. sa. for creditors with large outstanding debts due them.⁷

Still, the Indian trapper's comment leaves a key question begging: why would creditors confine their debtors to a place where there was little chance for the debtor to do anything to pay that debt back? If creditors and prison defenders are to be believed, there were several reasons, all considered and logical, for creditors to seek to have their debtors arrested. It was all a matter of suspicion. Only by having the debtor's person confined

could those suspicions be satisfied.

Suspicion number one concerned absconding. The United States in the early 19th century was an easy place to get lost in if one had a half mind to do it. Especially for men without family or real property, it was very easy to pick up and escape from outstanding financial obligations. Laws that exempted certain heads of families from lengthy stays in the debtors' jail, like that of 1817, were written as much with this fact in mind as with any humanitarian concern in the heart.⁸

Yet the record shows that absconding from debts was more a product of creditor anxiety than historical experience. In fact, few debtors absconded in the early 19th century, especially in proportion to the number who settled their cases with their creditors in court. Between 1814 and 1819, for instance, nearly 6,000 cases of insolvency were settled in New York State courts. Of these, only 160 involved debtors who had absconded on their creditors.⁹

More realistic was the potential for waste. Creditors were very concerned that debtors in the throes of insolvency and facing the possibility of having all their property taken away from them might purposefully, or vengefully, dissipate their estates. The debtor might become fatalistic and spend his last resources on fancy living. Or, in a desperate attempt to remain solvent, the debtor might attempt ill-considered and high risk speculative investments. Worse, the debtor might commit fraud, the great pre-occupation of all creditors and prison defenders. The scenario

went like this: in order to avoid going to prison, debtors would take out 'confidential' loans from preferred creditors. If and when the debtor actually became insolvent, these loans would be paid back first and in full, denying funds for the settlement of other debts.

But the greatest fear of creditors concerned assets. More than any other single factor, creditors jailed debtors because they believed they were hiding assets. In some cases, this was meant literally, especially in cases where the debtors' assets were primarily in the form of personal rather than real property. Usually, however, hidden assets meant transferred assets--property shifted from the debtor to a family member, trusted friend, or paid accomplice shortly before the debtor declared insolvency. This property, creditors feared, would then be returned to the debtor after the insolvency settlement had been finalized in court and the creditor had officially accepted whatever percentage on the dollar the debtor claimed he or she could offer.

Arrests for debt--based as they were on suspicions of absconding, waste and/or fraud--were meant to keep debtors under close observation and in a place where it would be difficult for them to conduct nefarious or ill-considered business ventures. By one reckoning, the whole process was rather barbaric. The creditor used the debtor's person as a hostage to repayment and the debtor then had to pay the ransom of hidden or transferred assets in order to regain his or her freedom.

Nevertheless, the defense of debtors' prison added up to more

than just a sum of reasonable arguments about the potential fraud of debtors. Beneath these suspicions of an immediate and practical nature lay hints of deeper ideological convictions about human behavior, commercial practice, and the legitimacy of moneyed power. Lingering suspicions about the accumulation of excessive debt were always part of the equation.

Older, conservative defenders of debtors' prison, for instance, continued to argue that imprisonment was an appropriate punishment for the accumulation of excessive debt. This help explains why some of the wealthiest people in New York State--on paper, that is--were routinely jailed before 1810 and especially in the 18th century. As an affront to the ethics and practices of the more conservative members of the mercantile community, the business methods of such paper millionaires as William Duer were anathema. Some older merchants, like 'Old Citizen', prided themselves on their frugality and adhered to a value system that did not see the ends of commercial success in terms of personal consumption. The flamboyant and costly displays of men like Duer only added to their disdain. Thus, jail time seemed appropriate, even if it wasn't entirely efficacious in getting a decent settlement for the creditors.¹⁰

In the early 19th century, defenders of the prison system continued to see the debtor as a wrong-doer, but of a somewhat different type. Reflecting the increasing opportunities for credit as the close-knit financial world of the 18th century gave way to the more open marketplace of the 19th, the insolvent began to be

seen as an active and malevolent agent. Thus, a stock character invented in the early 1800's and persisting through the 1840's was the borrower as the charlatan or confidence man. One contributor to the Columbian in 1811 wrote that it was, "better to jail the insolvent debtor than let 50 suffer from his profligacy."¹¹

Beyond this focus on culpability, the persistence of the defense of imprisonment for debt can also be understood by examining what might be called the idea of the possible. Creditor interests, as George Bauer has argued, simply could not imagine an alternative to debtors' prison. Only the threat to imprison the debtor's person seemed an adequate check on the natural propensity of "rogues and villains"--of which the 'debtor class', they believed, was full-- to cheat their creditors.¹²

Increasingly in the early 19th century, it became less important for defenders of debtor prison to determine what motivated recreant debtor behavior--whether it be reckless abandon or malicious intent--and more important to figure out ways to respond to it. The law of 1811 showed them that jail was the only real method of assuring that creditors were not 'robbed by the [insolvent's] oath', as the saying of the day went. Following the massive releases of the 1811 law, the dominant image in the press was that of debtors, 'smiling wickedly', as they emerged with their release from insolvency court and either headed to the warehouses and financial institutions where they had secreted their assets or went about recklessly borrowing huge sums of money all over again.¹³

Following the repeal of that law, the debate over imprisonment for debt fell silent for a few years. The massive release of jailed debtors eased the immediate suffering of the imprisoned, thus diminishing the humanistic concerns of the reformers. At the same time, the War of 1812 and the British blockade of American ports completely disrupted trade and froze credit. With little to borrow and little to borrow for, the issue of meeting financial obligations punctually and the question of imprisonment for debt became a less relevant concern.

Only with the reopening of trade in 1815 and the great expansion/contraction cycle for credit in the late 1810's and early 1820's did concerns about imprisonment arise again. The new commercial climate, however, left defenders of imprisonment arguing an increasingly anachronistic position. Suspicious of the rapid change in the supply and demand of credit--and the disastrous economic swings that seemed to come in the wake of those changes--defenders clung to the idea that prison might still put a lid on these developments.

In a report to the legislature in 1819, at a time when it was contemplating modification of the insolvency laws, the chancellors and judges of the Supreme Court of New York summed up the regulatory-type arguments in favor of imprisonment for debt.

Another useful object of imprisonment is the check which it is calculated by its influence to give to the artful or thoughtless creation of debt...And without such means as personal imprisonment, it would appear to us, that persons who had no fixed residence, or who had no visible or tangible property, or whose

property was exempt from execution, or whose property consisted of money, or bonds, notes and public or corporate stock, or whose property lay out of the state, would be entirely lawless, without any power in the creditor to obtain justice.¹⁴

In this veritable catalog of conservative complaint about the new economy of exchange, the judges maintained that much of this new credit and debt could be eliminated by the application of imprisonment. Prison could provide a necessary brake on a dangerous economic future. Not surprisingly, the element of this new economy that the justices feared most was what they perceived as an increasing disregard for contractual obligations among those who were borrowing and lending money. "The security of debts and confidence in contracts has been so much weakened," the report went on to say

...and we are entirely of the opinion, that if it be once well known and generally understood, that those who contract debts must expect to pay them, or that they must be able to satisfy the creditor of their integrity and misfortune, or that they will have to submit to temporary restraints, now imposed by law, and that no other relief was to be afforded, it would have a most salutary effect upon the morals and habits of the community.¹⁵

The justices were not alone in their beliefs, although they were becoming increasingly isolated in their position. For years, reformers had been pointing out the horrors of imprisonment. The stories of innocent debtors--jailed for 16 years for debts of a few pounds--had always been a staple of the reformist literature and press. As described in part two, the treatment prisoners received

was barbaric as debtors were forced to rely on family, friends, and charity to ward off hunger and cold.¹⁶

Reformers had also been pointing out the essentially anti-republican nature of imprisonment for debt. Joseph Fay, New York City's most persistent and vocal critic of imprisonment, made this the centerpiece of his emotional pleas to end the institution. What upset Fay and other reformers most was the 'lawlessness' of imprisonment for debt; the fact that private citizens (creditors) had the power to put, keep, and release their fellow citizens (debtors) in jail; the fact there was no trial; and the fact that the sufferers had to prove their innocence to get out.

"Imprisonment for debt," Fay insisted,

is contrary to the spirit of the Constitution,
incompatible with the ideals of the Revolution
(especially liberty), against the Jewish law
and the word of Christ...if being poor and owing
a debt is a crime, write a statute fix a
penalty, and call a jury trial.¹⁷

Nevertheless, these arguments remained on the periphery of the debate. While Fay's emotional pleas for reform may have contributed to the passage of the 1811 law, which released hundreds from jail, the revulsion among the mercantile class to the effects of this law highlighted the purely commercial concerns of most of these merchants. That is to say, while some expressed satisfaction at the end of so much human suffering or lauded the new-found harmony of the insolvency law with republican ideas of justice, most simply complained about the criminal-like loss of property and the dangerous impact the law had on orderly economic development.

Instead, the revulsion against the 1811 law and the debate about imprisonment following the collapse of the credit markets after the panic of 1819 indicated that commercial considerations were uppermost in the debate about imprisonment for debt. As more merchants became credit-oriented in their trade, the conservative argument that imprisonment was necessary to limit excessive issues of credit was becoming less popular among those who participated and prospered in those credit markets. While everyone agreed that the speculative borrowing during the late 1810's had to be checked, most probably felt their own borrowing was not excessive. And so prison, with all its personal horrors and depredations, was increasingly seen a less than effective way to achieve this.

Reformers understood the changing economic circumstances and played off of them effectively. In a later work on the subject of ending imprisonment for debt, Fay pointed out that prison often created precisely those effects that conservative defenders of the institution said were supposed to be controlled by the debtor's awareness that prison might be awaiting him or her.¹⁸

In his Disquisition on Imprisonment for Debt, Fay brought up the old argument--twisted anew for the occasion--that debtors did everything they could to avoid the possibility of going to jail. At the very least, he said, they accrued burdensome new debts to repay overdue ones, thereby spreading the effects of their likely failure to more individuals. And at worst, he warned, desperate debtors with families to support were willing to make special and unethical financial arrangements at the last minute. These

arrangement which guaranteed secret preferential payments or dispersal of assets to preferred, or confidential, creditors worsened the settlement for regular creditors.¹⁹

More than that, Fay and other reformers pointed out, debtors' prison distorted economic behavior because it distorted the process of financial failure, a crucial element in the effective working of a capitalist marketplace. One of the most crucial decisions a businessperson has to make is the decision to fail. Too long a delay and good money chases bad; a hasty forced settlement and a potentially-profitable enterprise is prematurely sunk. In both cases, creditors and debtors lose.

Given the importance of this decision, reformers pointed out, it should be made without the onus of imprisonment hanging over the debtor. In other words, individual self-interest (i.e. the desire to avoid imprisonment at all costs) dictated putting off the declaration of insolvency as long as possible, despite the fact that this was often not in the best interests of the debtor, the creditors, or the economy generally, since one badly timed failure often precipitated others.

Still, debtors' jail persisted, not just in New York State but throughout the United States. Only Kentucky, in 1821, had outlawed the institution. Part of the explanation, no doubt, was inertia, an inability to radically rethink the laws surrounding the repayment of financial obligations. Expressions in the press of moral outrage at excessive debt and, more importantly, the fear that only the threat of a loss of liberty could truly guarantee re-

payment in all cases stymied change.

At the same time, virtually every reformer and defender of the institution agreed that most insolvencies were settled amicably between debtors and creditors. Defenders of the institution pointed out how the few who suffered by it obviously deserved what they got. Reformers argued that even a few debtors were too many and besides, if the debtor was guilty of fraud, then the matter should be handled in criminal or civil court with all due process of law as guaranteed by the state and federal constitutions.

And so, even as the debate heated up, the debtors' jail was falling increasingly into disuse. As George Bauer argues, the reformers had created a climate in which a creditor was increasingly despised and ostracized for too readily using the prison. True enough but a little misleading as the reformers' arguments had had, in fact, a slightly different effect. That is, they induced the courts into granting the 'liberties of the jail' (prescribed blocks around the prison in lower Manhattan that, by 1831, had come to include the entire island below 14th Street) to more debtors. This undermined the usefulness of the prison.²⁰

If the intent of imprisonment was to terrify the debtor into revealing hidden assets or even, in its harshness, prevent the accumulation of excessive debt in the first place, then the 'liberties' defeated that purpose. This demise of its raison d'être was another reason the institution was falling into dis-use. Again, the inertia of maintaining the laws on the book was partially explained by this fact. That is, if few people from

politically influential classes were suffering from an unjust or ineffective law, then why bother changing it. Especially if the politics of eliminating it would stir up unwanted acrimony.

All would have been well and good--a little-used law and an unconcerned public and legislature--if it was only merchants who were affected. But, in fact, the debtor's prison was increasingly a place reserved for the poor. For example, the 'liberties' were obtained by those who could get a bond posted for them and those tended to be merchants and other substantial citizen-debtors. "The consequence," as Governor DeWitt Clinton noted in an 1818 speech, "is that it entangles the poor and forlorn, while those favored with friends or opulence escape from its severity."²¹

Clinton's concerns were only partially met by laws which exempted non-freeholding debtors owing less than \$25 (passed in 1817) and \$50 (passed in 1825). These laws, combined with the 'liberties' for more substantial debtors, left small freeholders with debts of any size as the sole inhabitants of the prison. Although, it should be noted, that in absolute terms, the population of imprisoned artisans was declining as creditors, under pressure from workingmen's organizations and politicking, were increasingly disinclined to utilize the prison. At the same time, the artisan population was facing a severe credit crunch (see chapter two). In brief, artisans were caught in a squeeze between the work and goods they were forced to offer on credit--or lose the patronage of the poor and the merchants alike--and their inability to pry open the fount of credit available from banks, merchants,

and other capitalists.²²

The squeeze created a sense of crisis in the artisan community, especially at the end of the 1820's when a short but sharp recession hit the city. As documented in numerous other studies of the New York City working classes in the age of Jackson, the late 1820's witnessed an astonishing profusion of political activism and a demonstration of workers' electoral strength. High on the list of working class demands were two demands that concerned credit. One, the mechanics' lien law, concerned the mechanic's role as creditor. The lien law was supposed to give the mechanic bill's for goods and labor the same priority as a judgement creditor's bills--that is, the highest priority--against the remaining assets of the debtor. The other demand, an end to imprisonment for debt, concerned the artisan's role as debtor.²³

While both demands concerned credit, the two represented different economic agenda. The mechanic's lien law was a straightforward attempt at class-based legislation, a bill premised on the twin working class ideas: that labor expended should be valued higher than capital lended; and that living closer to the edge of penury, mechanics deserved a better break in the insolvency settlements of their debtor-customers. The mechanic's lien law also meant an additional governmentally-imposed restriction on the free flow of credit to those who could obtain it. A lien law, critics argued, would cut off the flow of credit. Capitalists feared they would not be able to get their money back--being behind a long line of mechanic-creditors--in cases where their lenders

became insolvent. In short, the lien law moved against the legal tide, in which moral, community, and class considerations for economic legislation were ebbing.²⁴

Not so the demand for an end to imprisonment. The humanitarian concerns working people had about imprisonment for debt jibed with the general reformist impulses of the age and, while it would disproportionately benefit working class debtors--since they were the ones still facing imprisonment--it did not represent the same kind of zero sum game, as perceived by merchants, that class-based legislation like the mechanics' lien law did. That was the general thrust of a report by the Select Committee of the New York Legislature formed in 1831 to look into the workings of the imprisonment law--a law, the report said, that had no "efficacy in compelling payment." Debtors of modest means, the report concluded, suffered in jail with no discernible benefit to their creditors.²⁵

And as the legislature was extending a sympathetic ear to worker demands, there was an element within the working class movement, as represented by the Workingman's Advocate after 1830, that was voicing favorable opinions of the new economic ideas of the mercantile class. In fact, the arguments against imprisonment presented in the Workingman's Advocate in 1830 and 1831 were surprisingly laissez-faire in tone and substance. For one thing, the paper argued that creditors take natural risks when they lend money. If they knew that they couldn't rely on the government to enforce the repayment of these debts, they would naturally lend

more carefully. Ending imprisonment would lead to market-induced controls on the exchange of credit rather than arbitrary governmental ones. Furthermore, they said in more traditional terms, failing to meet financial obligations was no reason for imprisonment since debt implied risk. "The creditor trusts the debtor," the Advocate wrote,

as the trader trusts in the sea. The creditor agrees to trust in the debtor's ability to pay. If he loses his ability, he has not violated his obligation, just as a man who promises to go to London and dies before would not be considered to have reneged on his obligation.²⁶

In short, the Advocate was articulating the position that the risks of the marketplace were a more appropriate method of control over credit than the enforcement of specific contractual obligations through the threat of imprisonment. At first glance, it appeared to be a rather contradictory position to take since most artisans were required to sell their goods and services on credit or lose most of their custom. But a longer look at the subject reveals more consistency. Most artisans knew that enforcing repayment through threats of imprisonment would be useless against their bourgeois customers since these people no longer went to jail.

In fact, those few people who were still being imprisoned for debt were usually artisans and the free-holding poor--as opposed to the property-less poor exempted by law--who could not pay the fees to keep out of jail. Thus, the mechanic's lien law and an end to imprisonment were part of a seamless whole. Artisans were looking

for an alternative means to ensure the repayment of debts due them and, at the same time, rid themselves of the loss of liberty that was implied in every loan they themselves took out. Increasingly, the tone of articles in the Advocate about ending imprisonment for debt, was one of exasperated frustration, as if the obviousness of the idea should be enough to turn around the opinions of those few who still resorted to using prison to get their debts to working class people repaid.²⁷

In conclusion, both the end of imprisonment law and the mechanic's lien law passed the legislature, a better testament to the impact of the short-lived Workingman's Party than its more modest successes in getting candidates elected. With demands for economic and social legislation coming fast and furious from newly powerful--although quickly ebbing--working class institutions and a working class electorate, ending imprisonment for debt, at least, must have seemed like a relatively painless legislative reform to the merchants who dominated New York City's delegation to the state legislature. Although this should not be taken to mean that the reform was meaningless to working class New Yorkers. In fact, the fear of imprisonment for debt had always haunted the working class imagination and remained a fearful consideration in their daily experiences.

In the end, the end of imprisonment law was passed April 26, 1831 and went into effect March 1, 1832. Because of the general health of the economy and because creditors knew it was coming, only a small number of imprisoned debtors--less than 40 in all,

were released. A careful study of the press for two years following the former date reveals not a single article mentioning the new law or the institution of debtor's prison. Perhaps, the silence following its demise was the best demonstration of how imprisonment for debt had out-lived its day in New York City.²⁸

Endnotes

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3. Longworth, David, The Debtor and Creditor's Vade Mecum. A Commentary on the Insolvent Laws of New York with a Digest Thereof, New York: David Longworth and Company, 1810, p. 22-24; Coleman, Peter, Debtors and Creditors in America, 1607-1900, Champlaign, IL: University of Illinois Press, 1974, p. 3-5.
4. Ibid., p. 23-25; Ibid.
5. Ibid., p. 22-24; Ibid.
6. Coleman, Debtors and Creditors in America, p. 3-5.
7. The information on legal procedure was culled from: Bauer, George Phillip, "The Movement against Imprisonment for Debt in the United States" (unpublished dissertation), Harvard University: 1935; Botein, Stephen, Early American Law and Society, New York: A.A. Knopf, 1983; Coleman, Debtors and Creditors in America; Dargo, George, Law in the New Republic: Private Law and the Public Estate, New York: A.A. Knopf, 1983; Horowitz, Morton, Transformation of American Law, 1780-1860, Cambridge, MA: Harvard University Press, 1976; Hurst, James Willard, Law and the Conditions of Freedom in the Nineteenth-Century United States, Madison, WI: University of Wisconsin Press, 1956; Longworth, Vade Mecum; Warren, Charles, Bankruptcy in United States History, Cambridge, MA: Harvard University Press, 1935; Zainaldin, Jamil, Law in Antebellum Society: Legal Change and Economic Expansion, New York: A.A. Knopf 1983.
8. Laws of the State of New York, 1817, chapter 260.

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12. Bauer, "Imprisonment for Debt", p. 126-135; Woodard, Calvin, "Reality and Social Reform: The Transition from Laissez-faire to the Welfare State", in Holt, Wythe (ed), Essays in 19th Century American Legal History, Westport, CT: Greenwood Press, 1976, p. 286-88.
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17. Ibid., p. 18-19.
18. Fay, Disquisition, p. 16.
19. Fay, Disquisition, p. 36-37, 42.
20. Bauer, "Movement against Imprisonment", p. 126-135.
21. Clinton, DeWitt, Speech to the Houses of Legislature (unpublished), January, 27, 1818, New York Society Library, Rare Book Room, p. 8.
22. Laws of the State of New York, 1817, chapter 131; Laws of the State of New York, 1825, chapter 238. Permitting debtors who could post a bond was not part of statutory law, but a common law tradition granted from the bench.
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27. Ibid., January 22, 1831.
28. Laws of the State of New York, 1831, chapter 300.

Chapter Nine:
The Federal Bankruptcy Act of 1841

As the New York credit markets expanded rapidly in the two decades following the peace of 1815 and as the city's merchants both developed and took advantage of transportation innovations to encompass a national market for their goods, new stresses and strains developed in the settlement of the insolvencies that resulted from this growth. Credit became more integral to the trading network, and the potential for speculative gain enticed numerous merchants into undertaking riskier investments. At the same time, the newly expanded trading network required longer term credits--the kind of credits were also useful for speculative purposes--to function smoothly.¹

At the same time, the capital markets became more institutionalized. Relatively easier chartering rules and the mercantile community's need to make punctual payments on their financial obligations--especially given the inelasticity of the money supply in the years before the gold discoveries in California--created a burst of new and expanded banking facilities in the years between 1815 and 1835. While bankers were no more likelier than private creditors to lend to speculators, their greater capital resources had a more profound effect on the overall level of speculative investment.²

Longer credits, riskier speculations, greater sums of money -- all of these developments spelled a more volatile economy. At the same time, this expanding economy became more information oriented.

That is, as the connections between creditor and debtor became more impersonal, it became increasingly crucial for those lending money to develop methods for ensuring an accurate assessment of the financial status of those to whom they were lending the money. This need would eventually result in the rise of credit agencies. But its immediate product was a system of increasingly elaborate insider trading deals meant to ensure the safest possible return on investment, even if that meant the arrangement of secret, quasi-legal deals to assure priority repayment in case of insolvency.

This system of insider information and repayment schedules came under the general rubric of preferential credits. No issue confounded the debate over insolvency settlement more than that of preferential credits and preferential creditors. And no issue is more crucial for understanding the crisis in the credit markets that led to the bankruptcy act of 1841, the second and last attempt before the Civil War to develop a national system for settling the affairs of the financially failed.

Preferential credits were held in near universal suspicion and those who offered and took them came under near universal condemnation. Yet, judging from the amount of attention afforded this subject, preferences were in widespread use in the New York financial markets throughout the period following the general expansion of the credit markets in 1815. While arrangements varied with each exchange, preferential credits came in two general types.

The first type involved credit obtained long before the debtor was in financial difficulties. These are what might be called considered credit preferences. "The debtor obtains accomodations from his friends, or from the banks by means of their endorsement," a critic wrote in the New York Evening Post in 1840, summing up and attacking this type of credit arrangement.

He makes a show of property which he does not possess, and acquires a credit among mercantile men to which he is not entitled. When at last he finds he has not managed his affairs properly ...he makes a selection among his creditors, pays his particular friends who have lent him money or endorsed his notes, and leaves his general creditors to bear the whole loss of his misfortune, his mismanagement, or his fraud.³

As for the second type of preferences--what might be called reactive credit preferences--the scenario usually went like this: a debtor facing imminent insolvency would arrange to get money to cover his or her debts. The arrangements were made secretly--hence, the alternative name 'confidential' credits--and higher than legal interest rates were often charged to compensate the creditor for his risk. Nevertheless, what irritated the mercantile community most about preferential credits was not the high interest rates but the preferential re-payments the 'confidential' creditor received.⁴

In short, a preferential creditor was paid back in full by the debtor before any of the other 'general' creditors had received a penny. If the preferential credits had rescued the debtor from

insolvency, the creditors were none the wiser. But when debtors became insolvent, creditors often became suspicious. For example, if a debtor tried to settle with one of his creditors and discrepancies in the account books were evident, other creditors would usually suspect that preferences had been made. Even without looking at the books, creditors might often hear word through other sources that the debtor had arranged preferential credits.⁵

As for the legality of these preferential credits, there were serious questions. Obviously, once a debtor had entered the insolvency process, all payments of debts had to be done on a pro rata basis. But if the creditor was repaid the money before the debtor entered insolvency, then it became an issue to be adjudicated by the courts. Timing had much to do with whether the courts declared the arrangement a legal or an illegal preference. When the repayment was made close to the debtor's initial declaration of insolvency, suspicions that a preferential arrangement had been made were more likely to be aroused.

In both cases--considered and reactive--preferential credits involved a widening circle of well-positioned lenders and creditors. Although far less closed to outsiders than the early 19th century system of credit by acquaintance, the process of preferential credit still involved privilege and connection. For those offering the money, it was a way to minimize loss while maximizing the gain of speculative investment. In financially stable times, considered preferential credits (and reactive, too, for that matter, since insolvency occurred even in the best of

economic times) represented a form of 19th century insider trading, a game for the financially powerful. For the well-connected debtor who could obtain preferential credits--especially considered ones--they represented a ticket to financial wealth, since these debtors' resources were often inadequate for the purposes of obtaining non-preferential credit.

As far as the significance of credit on the individual's economic activity was concerned, preferences acted like the overdrive on an engine. Considered ones rapidly pumped more fuel to the speculator, while reactive ones went into operation when the speculator's regular supply of credit was threatened. But as far as the effect of these credits on the behavior of and attitudes about the general economy was concerned, the process by which preferential credits of both types were offered and received followed a more complex pattern.

For decades, the issue of preferential credits divided the mercantile community. While most citizens agreed that the egregious offering and acceptance of preferences--particularly in the case of reactive ones--was economically irresponsible, preferential credits represented, for those merchants who insisted that all credit arrangements be honest and open, the kind of danger that insider trading deals always do. They threatened the all-important flow of credit. First, regular creditors became more wary with their money, fearful that in case of their debtors' insolvency they would lose their claim to a part of the settlement. More than that, a general sense of distrust set in, as everyone

worried about the arrangements that had been secretly made.

None of this, as the Journal of Commerce pronounced, was good for credit markets and commerce generally. For many established merchants, the abundant use of preferential credits made it seem as if there was an alternative economy in operation. In this secretive economy, capital was both acquired by speculative means and then lent in a new round of speculation, but with the opportunities to debtors amplified and the risks to lenders minimized. The creditor would either offer preferential credits on risky schemes that were not, in many merchants' view, a reasonable or responsible investment. They were only made to seem so by the preferential arrangement. If this alternative economy could have somehow been sealed off, there would have been little threat to the economy generally and established merchants could watch the shady transactions with a certain detachment.⁶

Unfortunately, as many merchants complained, these two economies could not be separated. It was a problem involving several related elements. First, the spectacular profits offered to those who made preferential credits to speculators tended to draw capital that might otherwise be used for more traditional trading activity. But since the specie money supply in the United States was rather inelastic, new capital had to be created to do this. Banks and merchants issued notes and offered credits to expand available capital. Thus, rather than pulling money away from more sober investments, preferential credits wove an ever more precarious financial web in which everyone was made more vulnerable

to economic fluctuations. Thus, it is not surprising to see little discussion or critique of preferential credits--at least, on the part of merchants--during times when credit was plentiful and outrage when it dried up.

But the mercantile critique of preferential credit was more than a matter of simple economics; it also contained a social dimension. For many established merchants, preferential credits represented a 'nefarious' affront to their own values and their sense that commercial success should be based on hard work, the careful husbanding of financial resources, and, most importantly, the years of experience and effort required to establish a good reputation. As the editors of the Journal of Commerce complained, preferential credits offered a dangerously quick path to financial success and standing.⁷

There was, however, a certain disingenuousness in all this. Time and again, critics of preferential arrangements complained that 'friends' made arrangements with one another, paying off each other in secretive ways, as the quote from the Post noted, leaving other credits outside the settlement arrangement. But, in fact, much of this preferential activity was a response to a situation in which many debtors with inadequate economic connections were unable to secure credit arrangements in traditional fashion. The irony of the situation should not be overlooked. In the decades following the peace of 1815 and the general expansion of the credit economy, attitudes about credit had come full circle. Now, it was insider arrangements between closely acquainted lenders and borrowers that

seemed to threaten the economy and the rules of financial responsibility.⁸

In financially stable periods, what was threatened was an idea. While there was little immediate threat to the economy generally, preferential credits did seem to threaten the idea that free and open markets best benefited the economy. For it could be argued, as recent extreme supply-siders have done, that insider arrangements and insider information should become just another commodity to be bought and sold on the open market. Why didn't established merchants simply accept the new reality of preferential arrangements and adjust to them?

There were several reasons. For one thing, preferential credits skirted the law and the creditor risked losing his or her claim on the state of the insolvent if an illegal preference could be proved by the other creditors. Furthermore, healthy economic times made preferential arrangements seem unnecessary. Finally, there was a certain stigma attached to the giving and taking of preferential credits, that transcended simple economic self-interest.

For some established merchants, at least, there lingered a sense of commerce as an honorable vocation and a force not just for prosperity but for the advancement of a rational or--in the case of Christian merchants--a millenarian social order. While not exactly conceptualized in such expansive terms, most merchants considered commerce a socially useful activity, beneficial to the city and nation alike.

Not only did preferential credits threaten the good of commerce by encouraging speculation, it brought up a new generation of merchants with an impatient mind to the fast dollar and an idea that financial success could be attained overnight. To a few merchants like Arthur Tappan, it meant a dangerous tendency in which younger merchants would consider success an end in itself, divorced from any notion of commercial activity as a socially responsible endeavor.⁹

In financially precarious times, however, preferential credits represented something more immediately threatening, of course. They spelled financial disaster for those creditors who had not or would not offer them. Worse still, they threatened to freeze commerce and undermine the economy as a whole. The implications, the editors of the Journal of Commerce wrote, were dire. In advocating new bankruptcy legislation to deal, in part, with preferential credit, they said

Its tendency would be...to prevent persons from getting a false credit with borrowed capital--by means of which, thousands of honest men are defrauded of their property, because the property goes to pay a few favored creditors.¹⁰

For the city's petty entrepreneurs, artisans, and workers, the question of fairness was more compelling than the mercantile concern with assuring free, non-secretive and stable credit markets. For them, preferential credits represented another more advanced method for assuring the credit hegemony of speculators. Closed out of normal credit channels, the city's artisans and petty

entrepreneurs were unlikely to have the financial connections to secure preferences.¹¹

But there was something more insidious to these individuals about preferential credits. Artisans and petty entrepreneurs had their own role as creditors which the use of preferential credits threatened. From that perspective, preferences implied an 'immoral' method by which wealthy 'ne'er-do-wells' got out of paying their bills to the city's artisans and petty entrepreneurs. While not exactly an organ of artisan concern, the Post captured what must have been the frustration and anger the city's working people felt about preferential credits.

[The debtor's] friends get back their money;
the banks are paid their notes at all events;
his grocer, his butcher, and all who have
sold him goods of any description, pay the
expense of his unlucky commercial experiment.
While we have laws for the collection of
debts they should not allow this injustice!¹²

The debates about financial irresponsibility among various elements within the mercantile community, then, were not especially relevant to the city's artisans and petty entrepreneurs. To these groups, the issue of preferential credits was more clearly seen as an issue of class power, privilege, and influence. Their critique was worded in republican terms and aimed at corporate privilege. "There never has existed a condition of society," wrote the Post,

the relationship of which as appertaining to
debtor and creditor, approached so near that
of vassal and lord, as the present, [or which so
calls for] Jefferson's cry: 'External hostility
against every form of tyranny over the mind of

man...Were it possible to meet the question of corporate privilege alone, we need entertain no fear of the result; but so long as the balance of political power is held by men who sue for an act of franchise [a corporate charter]...these men will act like hungry gudgeons...¹³

The corporations under attack were, of course, banks. No institution stirred up more rancor among all classes of New Yorkers than banks. For artisans and petty entrepreneurs, banks had come to represent, by the mid-1830's, the credit privileges of the merchants and elites of the city, although the history of the relationship between working men and banks from the 1810 onward was more convoluted.

In that year, the Mechanics' Bank was founded to provide credit for the city's enterprising craftsmen. But it quickly went insolvent, and was reorganized along more traditional lines, with merchants dominating its board and its capital offered to manufacturers and more financially-sophisticated and entrepreneurially-oriented artisans. Nevertheless, as Sean Wilentz writes, "it provided the first important entry for craft entrepreneurs into the money market..."¹⁴

With the organization of the Workingmen's Party in the late 1820's, the political push to assure a more equitable distribution of the city's capital among the city's artisans and petty entrepreneurs was undertaken. Responding to this pressure, some of the city's banks allied to Jackson and the Democrats offered credit lines to the city's more entrepreneurial artisans. But this was during a period when the capital markets were flush and growing.

When the same Jackson administration enacted national legislation--such as the specie distribution bill--which drained capital from New York and other eastern money markets, credit dried up and the city was sent head-long into a financial panic in which credit became unavailable and the press for repayment by creditors became unbearable for many artisans and merchants.¹⁵

In the splintered and fractious years of the 1830's depression, the city's hard-pressed artisans had become altogether disenchanted with banks. Many artisans had lost their savings in the wave of bank collapses in 1837 and 1839. But another very real point of contention between banks and artisans came about as a form of competition between creditors. When artisans saw preferential creditors muscling their way to the front of the line when their debtors became insolvent, those creditors were usually banks. In fact, banks had made it their practice to get endorsements (co-signatures on debts), preferences, and judgements (a kind of court-mandated preference) when they offered credit, thus assuring themselves preferential treatment in the insolvency settlement.¹⁶

Nevertheless, artisans were not alone in this critique of the city's banking institutions, although the issues were articulated far less clearly among other groups. Part of the problem was the convoluted and deceptive politics of the Jacksonian age. The Democratic Party had established its political hegemony--at least, on the national scene--by attacking economic privilege and money power. But, at the same time, its financial deregulation--most significantly, with the veto of the national bank's charter in

1832--opened the doors to speculative banking and the finances of excess which had contributed, in turn, to economic catastrophe.

When the panic hit, blame-laying got complicated. With most of the city's bankers allied to the Whig opposition, Democratic organs like the Post found themselves attacking the speculative practices of the banks while defending the administration in Washington. At the same time, Whiggish organs like the Journal of Commerce maintained that the banks had acted responsibly and even heroically in the face of Jacksonian and Van Burenite attacks, such as the specie circular of 1836.¹⁷

The New York banks' suspension of specie payment in May of the following year brought the political struggle to a head. While both sides agreed that the suspension was probably necessary to save the city's financial markets, the battle over what to do next intensified. For Democrats, the banks had forfeited their credibility and the citizens' trust. When Albany allowed banks to keep their charters despite the suspension--an arguably illegal abrogation of those very charters--the political influence and privilege of the banks became apparent to Democrats.¹⁸

The Whiggish mercantile community was caught off-balance. Some merchants were openly hostile to banks all along, seeing them as unfair competitors for insolvency assets and as a major cause of the financial excesses that had led to the panic in the first place. Merchants involved in banking, of course, saw things differently; they tried to make distinctions between their own responsible banking practices and the excesses of the 'wildcat

banks' in the rest of the country.¹⁹

However, like the depression that would hit the country 100 years later, that of the 1830's weakened the political position of the city's financial elites and created a widespread consensus that bankers were privileged, selfish, and irresponsible, and that their institutions required politically-mandated regulation. In the 1930's, the mandate emerged out of Congressional hearings into the financial excesses of bankers and called for legislation designed to separate the speculative aspects of commercial banking from the more traditional banking role of deposit security and careful lending. In the 1830's, the mandate was for new banking rules about specie holdings--rules that would, essentially, serve to accomplish the same ends.

However, unlike in the 20th century depression, banking critics of the 1830's and 1840's wanted to utilize bankruptcy legislation to achieve their goal. Their argument for bankruptcy legislation was stipulated on the premise that corporate institutions--and especially banks--would be included under the new laws. As long as banks were immune from the insolvency process, they argued, they would be encouraged to speculate. "The bad ones ought to be thrown out," said Representative James Roosevelt, a city Democrat, "by the the operation of a bankrupt law." And the bankruptcy process, he added, would assure depositors and holders of bank notes a fair distribution of a failed banks assets on a pro rata basis.²⁰

But the most important issue concerned banks and preferential

credits. Bankers were widely viewed as operating from a position of privilege and nothing made that more evident--as far as the all-important depression-era issue of insolvency was concerned--than their ability to exact preferences in the settlement of insolvent estates. According to New York Senator Silas Wright, an upstate Democrat, this exclusion of banks "would cause ruin to New York City." The inclusion of banks under bankruptcy legislation was supposed to put an end to that privilege. The 1841 act was quite severe on the question of preferences and the inclusion of banks was seen as a blow to the most egregious practitioners of the 'nefarious' art of preferential credit.²¹

Other issues, of course, played an important role in the push for bankruptcy legislation.²² The suffering of insolvent debtors, the back-logged and inefficient state insolvency courts, and the deadening economic effect of idled and discouraged merchants and manufacturers were all considered. The 1841 act would streamline the system by allowing merchant debtors to be forced into bankruptcy court, thereby freeing up creditor assets. It would also allow all debtors to unilaterally release themselves from their financial obligations upon a full declaration of their debts and creditors.²³

Finally, it covered all national and international debts (national bankruptcy laws, not state insolvency laws, were the ones honored in Europe), an important consideration given the increasing geographic scope of investment in the age of the transportation revolution. Still, as pressing as all of these depression-era

issues may have been--and as important as all of the various aspects of the bankruptcy law were--they were not the cause of the political maneuvering around the proposed law. In fact, there was a general consensus by 1841 that bankruptcy legislation was urgently needed and that it would effectively deal with these problems.²⁴

Nevertheless, the banking question dominated the debate. The issue of whether banks should be included under bankruptcy legislation was debated endlessly but to little effect. In the end, banks were not included in the 1841 Bankruptcy Act. The bankers' main argument--that corporate institutions 'died' upon failure and should therefore be exempt from legislation which attempted to reestablish solvency and economically reactivate financially-failed individuals--seems a weak one. It had a certain logic to it, but it was not politically convincing. In fact, it was rather abstract; it seemed a little deceitful; and it smacked of legal rationalization.²⁵

Instead, the explanation for the banking community's success lay in the realm of realpolitik. While banking interests often lamented the fact that the Van Buren and Tyler administrations were deaf to their pleas--and, to some extent, they were--the bankers did wield a great deal of influence in Congress, especially after the 1840 elections when the Whigs took control of the national legislature. Despite the banking exclusion, the law passed during an unusual summer session called to consider it and was reluctantly signed by President Tyler. "After a great battle--an Austerlitz or

a Waterloo," the Washington correspondent for the Journal of Commerce reported, "the victors return thanks to God by a 'te deum'."26

The war over the bankruptcy act, however, was not over. Just two days later, the same correspondent filed a different report. "Application will be made," he wrote, "to the next session for repeal of the law just passed on the subject of bankruptcies." (emphasis in original). The reason was the exclusion of banks. Some in Congress and the press argued that repealing the act in its entirety was a little extreme, throwing the baby out with the bathwater. But the consensus behind the repeal efforts was built on both the idea that the legislation was fatally flawed by the exemption and the conclusion that the most effective political means to correct the error was to get rid of the law altogether and start anew.²⁷

Still, the political forces behind the original legislation held firm, as the problem of financial failure and economically idled citizens remained. The repeal efforts failed and on February 1, 1842 the new law went into effect. Unlike the 1811 insolvency law, the response was less than overwhelming. As a correspondent to the Post noted, "fears of a rush on the [bankruptcy] court on the first day proved unfounded. Only 56 came in New York City." There were several reasons for this, one of which the writer cited in the same story. "One lawyer who had 20 clients," he noted, "found that 16 had already settled with their creditors before the law took effect."²⁸

In fact, the severity of the depression, the fear among many creditors that they too might have to face repayment demands, and the long delay in getting a bankruptcy law forced many creditors and debtors into making either extra-judicial settlements or resorting to the inadequate legal mechanism provided for under the existing state insolvency laws. Equally important was the simple course of depression. By 1842, the credit markets had stabilized, many of the bad debts had been written off, and the economy was beginning to experience the fitful growth that would mark the rest of the decade.

But the exclusion of the banks was the main reason for the sudden repeal (the act of 1841 was supposed to run for five years and then be reviewed for possible renewal). The stridency of the debate would be renewed when economic panic struck the city in 1857 and, again, it would be focused on the bank issue. But the relatively short duration of that economic downturn (it was over in less than a year) never allowed for a sustained consideration of a bankruptcy law.²⁹

What is to be made of this heated debate and these pendulum swings in legislative intent? The answer is to be found in the politics of debt. While Bray Hammond argues, in his account of American banking history, that the politics of debt and credit are entirely different in the postbellum period--marked, as they were, by clear class boundaries between impoverished debtors and plutocratic creditors--certain patterns of the late 19th century debate over economic privilege were evident in the 1830's and

1840's.³⁰

For one thing, there is the incipient and widespread suspicion and distrust of the power and influence of moneyed corporations. Evident also is the political confusion of party and class interest. Elites among both the Democrats and the Whigs struggled to forward their own economic interests while gilding that struggle with rhetoric about protecting the little man or maintaining economic probity respectively.

Also, the debate over banks and the bankruptcy law of 1841 revealed precisely why legislation in this arena lagged so far behind economic change and growth. As Hammond notes, debtors and creditors could not be as easily divided along class lines in the years before the Civil War. There were powerful interests on both sides of the credit equation in those years and the connection between hard-pressed agrarian debtors and bloated eastern creditors had not reached the proportions captured cartoon-like in the drawings of Thomas Nast. Frequently, even the roles themselves were blurred, as creditors and debtors exchanged positions in their various transactions.³¹

In the end, bankruptcy and insolvency legislation, which inherently required legislators to perform a balancing act between debtors and creditors, became the pawn of economic interest groups who were often confused about just where their interests lay. The act of 1841 would be the last pre-Civil War effort undertaken by the federal government (or the State of New York, for that matter) to rationalize the system by which the financially-failed could be

legally released from their obligations.

Endnotes

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21. Journal of Commerce, February 10, 1841.
22. In fact, the emphasis on national bankruptcy--as opposed to state insolvency--legislation was due to an awareness of how nationally and internationally (only national bankruptcy laws were honored by Europeans) connected economic investment had become; Journal of Commerce, July 26, 1841.
23. Since it was an act of the Congress, it did not violate the contract clause of the Constitution which stipulated against retroactive legislation. The clause which said that no state could pass laws impairing contract had been used, in the 1819 Sturges v. Crowninshield decision, to preempt any future state efforts along the lines of New York's 1811 insolvency act--an act which granted a similar unilateral right to insolvent debtors; Journal of Commerce, August 2, 1841.
24. Ibid.
25. United States House of Representatives, Papers 27A-D11.2 (unpublished), July, 21, 1841, National Archives, Washington DC.
26. Journal of Commerce, August 21, 1841.
27. Journal of Commerce, December 28, 1842; December 31, 1842.
28. Evening Post, February 3, 1842.
29. Journal of Commerce, January 19, 1842.
30. Hammond, Banks and Politics, p. 15.
31. Hammond, Banks and Politics, p. 15, 31-32.

Conclusion

The trajectory of insolvency and bankruptcy law in New York City in the years between 1790 and 1860 was clearly an erratic one. On several occasions, dramatic changes in the law were considered and enacted, only to be repealed with what even contemporaries considered to be unseemly haste. "[A] repeal of [the 1841 bankruptcy act] before it went into operation," one merchant said, "...would exhibit a deplorable act of inconsistency and instability in the National Legislature." What, he wanted to know, would this record communicate to "our European partners?"¹

The explanation for this erratic trajectory resulted from the volatility of the fuel--few issues were more explosive than the access to credit and the abundance of debt--and the contradictory political forces acting upon the state and national legislatures. As for New York, its citizens--merchants, manufacturers, retailers, artisans, and others--could not reach a consensus, other than to end imprisonment for debt, about the direction of reform. The contest not only pitted group and against group, but also revealed deep rifts within each. Furthermore, the consensus remained as elusive in the decades preceding the Civil War as it did in the years immediately following the ratification of the Constitution.

This trajectory was in stark contrast to that of virtually every other area of commercial law. While legislation and judicial rulings on tort, negligence and contract were moving consistently in the direction of promoting rapid economic development,

insolvency law was caught in a logjam of conflicting attitudes and ideas about credit, debt, and the role of government as an arbiter in the disputes between creditors and debtors.

Virtually all trends in commercial law depended on several concurrent developments. First, there had to be a general consensus among those who set the political agenda--in New York City that meant a dominant mercantile class as well as an artisan population whose political power and influence fluctuated over the years--that the legal order should protect, promote, and enhance what James Willard Hurst has described as the 'release of creative [economic] energy.' And further, there had to be an understanding among the politically influential that the legislatures and courts should develop legal instruments to allow the community to aid this 'release process.'²

Secondly, with the balance of political and economic power in the first decades of the 19th century shifting to the entrepreneurially-active real estate speculators, specialized merchants, brokers, private bankers, and manufacturers, the costs of economic development were legally shunted on to the backs of working people, small retailers, small property-holders, and independent artisans.³

But insolvency and bankruptcy law did not follow this trend. Reform in this area of law generally would have meant easier releases from financial obligations for debtors and better assurances of an honest assessment and pro rata disbursement of debtors' assets for creditors. As these two aims often seemed to

and indeed did conflict with one another, there was little consensus about how debtor law reform could and should 'release creative energy.'

The problems, however, are in determining the role of creditor and debtor--especially the major debtor--in economic development and measuring the influence each had over the political process. If the active economic agent was the key individual in the equation, then the question remains whether that individual was the debtor or the creditor. Again, as Bray Hammond notes, late 19th and 20th century correlations between the debtor class and political powerlessness do not effectively apply to the antebellum era.⁴

Several factors need to be considered here. First, major debtors often borrowed to effect what contemporaries considered to be both useful economic growth and dangerous speculation. But the line between these two endeavors was often blurred. If contemporaries were going to use insolvency law--as they clearly intended--to promote the former and thwart the latter, then they were forced to grapple with the subtleties of debt-financed investment. Finally, there is the difficulty of defining who was a debtor and who was a creditor. With merchants borrowing and lending amongst themselves with sometimes breath-taking rapidity and scope, it is difficult to determine where any one individual's interest lay as far as remaking insolvency law was concerned.

On a different scale and often for very different reasons, it is just as difficult to determine the interests of creditor and

debtor amongst the financially humbler class of New Yorkers. While the situation was different among various occupations--depending upon their vulnerability to the economic changes of the era--there was a credit problem among a significant proportion of the city's artisanal groups. If their products were to effectively compete with the products of the city's new sweatshops, factories, and flood of cheap manufactured imports, then they would need credit to modernize and expand their operations.

But artisans had a difficult time getting this kind of credit. In addition, there was their equally frustrating role as creditors. In an economy increasingly dominated by debt-saturated merchants, artisans were often forced to offer their services and goods on credit. Adding to this set of conflicting roles, many artisans were themselves forced by penury to run up bills with the small retailers who supplied their consumer needs and the suppliers they needed for their artisanal production. In short, artisans were caught in a double bind of credit, putting their interests in insolvency law reform at cross-purposes with each other.

It could be said that for many of the era's economically-active citizens--and especially speculative merchants and entrepreneurially-oriented artisans--credit resembled a kind of addiction. Addiction, of course, is not used here to imply the psychological dependency and pathological dysfunction inherent in the word. Instead it can be used to provide a metaphor for the dynamics of antebellum credit on a systemic scale. As credit became increasingly critical to the operation and profit columns of

both merchant ledgers and artisanal figuring, both groups found themselves increasingly dependent upon assuring a steady supply of it. But, periodically, the credit-based economy of 19th century America reached a saturation point, and then collapsed. The supply of credit dried up and those who depended upon it faced or experienced financial failure.

These developments had a critical effect on the attitudes about credit. With more New Yorkers dependent upon credit and caught in conflicting roles of creditor and debtor, more were vulnerable to the increasingly volatile economy engendered by the heightened dependency upon credit. As insolvencies increased, the moral and ethical stigma about it diminished, even as those contemporaries who were caught up in the credit cycle had a difficult time determining where exactly their interests as both credit and debtor lay.

As for merchants, the refrain was increasingly that commercial success and even solvency itself were precarious things. "Remember," the editors of the Journal of Commerce lectured their mercantile readers,

that fortune is well represented by a wheel,
every point of the circumference of which is
moving, rising, or falling, and that point
now at the top, and which they, perhaps
occupy, may soon be at the bottom. (original
emphasis)⁵

For the city's humbler artisans, the situation was somewhat different. Since their access to credit was so much more tenuous and since the specter of imprisonment continued to hang over their

heads, they were less likely to consider the moral dimension of insolvency, at least as far as their own situation was concerned. But they did join the chorus of disapproval against assumptions of excessive debt for speculative purposes. Artisans maintained a steady drumbeat against imprisonment for debt even as they tried to fortify their position as creditors with the mechanics' lien law.

But with imprisonment legislatively abolished (although the memory of it continued to haunt them), the city's artisans were left to grapple with the laws concerning the insolvent's release from his or her financial obligations. On this issue, their main concerns were how to enforce their bills against recalcitrant, well-to-do patrons and how to ensure that the insolvency court process be accessible to them, both in terms of lowered costs and less lengthy procedural complications. While their concerns contained an older set of assumptions about moral economic behavior, they also addressed the raw power relations inherent in the new credit economy. Wealthy debtors hired lawyers and used other means to avoid paying their debts while larger creditors--especially institutional ones--continued to use legal and extra-legal methods to gain priority in insolvency settlements.

What set in among working New Yorkers was an increasing distrust of the entire insolvency process, as well as a jaded attitude about debt. If, as petty creditors, they could not exact justice from the system, then why should they, as petty debtors, suffer from harsh insolvency law. As far as they were concerned, the insolvency process favored the rich and powerful, and punished

the poor and powerless. While they continued to see massive accumulations of debt in terms reminiscent of the way conservative merchants of the early 19th century did, they could not as potential debtors themselves advocate harsh insolvency law.

The city's artisans wanted justice--especially as their economic condition became increasingly perilous in the face of competition--and they recognized that the only justice they were like to get lay in treating all insolvencies--whether they were based on the speculative excessives of the rich or the needs of the poor--equally under the law. They might maintain the rhetoric of immoral and irresponsible debt, but they were forced to advocate laws that treated the insolvencies resulting from that kind of debt leniently.

Thus, as the ethical and moral imperatives for considering insolvency slowly unravelled, the merchants and artisans of New York grew increasingly uncertain about how to formulate a legal response to the problem. The practical question of how to provide for a prompt release of hopelessly insolvent debtors-- while assuring the maximum and most equitable disbursement of the debtor's assets--eluded citizen and legislator alike. Ultimately, the effort to balance the shifting but equivalent powers of debtors and creditors--often times, of course, these were the very same people--proved too difficult a task.

In the end, economically-triggered shocks--in the form of panics and mass insolvencies--dictated the pacing of insolvency law reform and reaction. When financial down-turns shredded the city's

fragile credit markets, immobilized commerce, bankrupted businesses and individuals, and took work from able-bodied men and women, the merchants began to reconsider the merits of rapid and speculative economic growth. While artisans--who had always maintained a harsher view of these endeavors--were forced to go along. When the merchant-dominated economy was prostrate--wherever the cause and responsibility for that condition lay--it meant financial devastation for the rest of the city.

As far as credit was concerned, this reconsideration of the insolvency law process by both merchants and artisans became less connected to any moral or ethical framework about the appropriate uses, quantity, and responsibilities of debt. Instead, the superabundance of unpaid financial obligations was now considered in terms of impractical, misled, or irresponsible business activity. And as practical solutions to the problems of debt continued to elude contemporaries--including the politically-influential merchants--legal reforms tended to bounce from extreme forgiveness for debtors to precipitous reaction and return to harsh pro-creditor laws. This was in contra-distinction to the more consistent approach toward bankruptcy legislation in the commercial nations of western Europe, as frustrated contemporaries consistently noted.

Thus, insolvency law reform became a matter of politics and power. And the political balance of power between creditor and debtor shifted with the business cycle. During panics and depressions, the political edge was with the vast number of debtors

who formed an alliance with those creditors who recognized there was little to be gained in perpetuating the economic immobility and personal suffering of the debtor. In times of economic recovery, the edge shifted to creditors. And so went the history of antebellum insolvency law reform.

While artisans and merchants approached the necessity of insolvency law reform from different angles, their rhetoric was consistent. During times of economic crisis, both groups claimed they longed for a lost age of stable commerce, when responsible lending and borrowing prevailed, insolvency was rare, speculative financing was unknown and everyone in the city agreed that those who violated these principles should be appropriately disciplined. In fact, however this consistency in rhetoric was misleading. Merchants were far more ambivalent about the responsibility for excessive debt than artisans. While much of that had to do with their relative accessibility to credit, it also had much to do with their relatively greater capacity to recover from insolvency.

Endnotes

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3. Horwitz, Transformation, p. 70-1, 81-2, 85-95, 101, 185.
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5. Journal of Commerce, July 26, 1841.

Epilogue: The Rehabilitation of the
Legally-Released Debtor

The story was meant to provoke a knowing smile. Running in the Evening Post, as concern swelled about the release of financial failures under the federal bankruptcy act of 1841, the story concerned a Scotsman's 'smartest son' who went off to London to make his fortune in the mercantile business. Several years later, an old family acquaintance visited the father and asked him how his son has been doing in the world of commerce.

'He's in an unco' profitable business;'
[the father said,] 'he is a bankrupt,'
'A bankrupt!', the acquaintance replied,
'Ye would say a banker.'
'No I would say a bankrupt. Willie has
ta'en the benefit of the bankrupt law twice,
and if he suld do sae [the same] the third
time, he will be the richest man in the
kingdom.'¹

Not everyone found such jokes amusing. Forty years earlier, the Forlorn Hope, a newspaper dedicated to the radical reform of insolvency and debtor imprisonment law, related a very different and story of a debtor in upstate Columbia County who, dependent on "poor and parsimonious neighbors" to support him during his nine years in debtors' jail, emerged from jail "so dis-oriented and alone, [that] he wished to be put back in jail or die." Asked the editor plaintively, "should this be allowed to happen?"²

Among the stock characters inhabiting the imagination of the commercial community of New York City in the first half of the 19th century was the legally released insolvent or bankrupt. A protean

character who reflected society's uncertain attitude about financial failure itself, the debtor who had gone through the courts and been released from his or her financial obligations or who had been freed from imprisonment, was depicted in a variety of ways. He or she was alternately portrayed as a smug and swaggering ne'er-do-well who lived off the ill-gotten gains bilked from their creditors; or as the impoverished, dispirited and perhaps even criminalized victim of vengeful creditors and the debilitating and demoralizing insolvency process; or, finally, as the energetic, honorable, and even responsible individual who, in spite of a legal release from all past financial obligations to creditors, works and perhaps even 'starves' to pay back all of the creditors in full.³

The fact that the released debtor should have been seen in such strikingly different ways was not surprising. In fact, these characterizations neatly paralleled the way financial failure itself was depicted. And as with the subject of financial failure, there was a certain consistency in attitudes about the released insolvent over the 70 years of this study, as both sympathy for and mistrust of the released debtor marked different but contemporaneous accounts in the mercantile, mainstream, and working class press. At the same time, there were certain subtle changes in attitudes as well over these same decades. As the financial failure was increasingly seen, in the course of the early and middle 19th century, as a victim of forces beyond his or her control, so the general attitude toward released debtors allowed, increasingly, for their easier reintegration into the commercial

world.

Their position was a response to the conservative position that viewed the released insolvent as if he or she was somehow permanently branded with the original sin of their financial failure. One of the more frequent points raised by reformers concerned imprisonment and its effect on the released debtor. If former insolvents were having a difficult time returning to commercial prosperity, it was either because he or she had been branded as untrustworthy or, more melodramatically, because prison itself had broken them. "Now he is useless," the editors of the Columbian noted of a released debtor in 1810. "He is half-mad, yet he is still an honorable man."⁴

Depicting debtors' prison in this light served two reformist purposes. First, it helped support the reformers' overall cause of ending imprisonment. Second, and more importantly for the subject at hand, it served to rehabilitate the image of the released debtor. Nothing was more crucial to a merchant's ability to obtain needed credit and to return to commercial prosperity than his good name and reputation. Trying to rehabilitate that image, then, was at the top of the reformers' agenda. And rehabilitation of their image was critical to released debtors since the engine of the credit-financed economy was lubricated by reputation.

As far as these reformers were concerned, there was a terrible irony in this loss of reputation. Debtors who had been released from jail and released from their financial obligations under the insolvency laws should have been considered guilty of nothing more

than misfortune. If their immediate creditors were willing to release them, then why, reformers asked, were there continuing aspersions against the reputation of former insolvents?

As far as reformer Joseph Fay was concerned, it was a recipe for everlasting poverty and financial ostracism for these former insolvents. Releasing the debtor's body is not enough, he wrote in his 1816 reformist tract "Disquisition on Imprisonment for Debt". Not as long as his or her character remained 'impugned'.⁵

Even into the 1810's and '20's, when a stay in debtors' jail had become an increasingly unlikely event for insolvent merchants, there remained the problem of the debtor who was forced to spend long months and years in legal and financial limbo, awaiting a final litigated release by his creditors.

In short, the critical issue of reformers concerned the commercial reputation of the former insolvent. Their main aim was to force a change in attitude about released insolvents among the commercial community at large. A release from insolvency should not be interpreted, they said, to mean that the original financial failure had been a result of incompetence or malfeasance.

This reconceptualization of the former insolvent was of particular importance in the closely confined world of early 19th century finance. In that intimate world, the critical importance of reputation, combined with the aspersions against the former insolvent, spelled difficulties for former insolvents eager to reestablish themselves commercially. As one reformer put it, why bother to punish the debtor with jail? The inevitable return to,

and stagnation in, poverty and loss of good name was punishment enough.⁶

At the same time, the reformers insisted that debtors' jail and punitive insolvency laws were self-defeating. Over and over, they emphasized how 'honest and honorable men' were penalized while the 'rogues' continued to plunder their creditors. While they were usually unable or unwilling to offer specific remedies to the problem, they maintained that a punitive attitude toward insolvents would not solve anything.

In their reformist articles and pamphlets, they called for a change. The debtor's internal motivations to treat his or her creditors honestly needed to be considered when new insolvency laws were written. That is to say, they proposed a new interpretation of the insolvent, an interpretation that assumed the debtor understood that his interests lay in fair and honest dealings with his or her former creditors. Only by understanding the importance of their commercial reputation--and how it was far more important than any immediate gains to be made by short-changing creditors--would debtors be motivated to do the right thing.

If the general attitude was that all former insolvents were dishonest rogues, then this motivation to rescue one's reputation would be swamped by charges of debtor wrong-doing. As far as the reformers were concerned, the situation had--to risk an anachronism--a kind of catch-22 built into it. Unable to obtain the special relationships many of the older and well-established merchants had with credit sources, the younger or less well-

connected entrepreneurs were more credit-vulnerable. Insolvency was higher among this group, and this higher rate confirmed the more conservative merchant's ideas about the connection between insolvency, irresponsibility, and bad character. In frustration, many reformers tried to point out how this punitive attitude toward the former insolvent had unfortunate social and economic costs. "Good and great men are being wasted," editorialized another debtors' newspaper, Prisoner of Hope, "their services and their gifts are lost to us all."⁷

Finally, the earlier 19th century reformers associated their efforts with the political temper of the times. By attempting to rehabilitate the image of the former insolvent, they hoped to eliminate an important obstacle to the freer flow of credit. At the same time, however, they were convinced that the ante-diluvian attitudes about released debtors ran counter to the ideals upon which the new nation was founded. As one writer noted, the laws are based on the idea that most insolvents don't want to pay back their debts, when in fact they will do everything in their power to do so. That to another reformer was a presumption of guilt without trial. And that presumption went against the spirit and letter of the Constitution, just as the idea that a man's economic failure was a sign of permanent character flaw went against the republican and evangelistic assumption--dating back to the first great awakening--that men were essentially good and always capable of redemption.⁸

But attitudes toward the released debtor and the current of

reformist thought began to change in the post-1815 era. First, the decline and eventual abandonment of debtors' prison removed the most pathetic examples of the broken and dispirited former insolvent. The fact that insolvent merchants and artisans no longer risked arrest warrants when they walked the street or the ignominy, as bankrupt merchant John Pintard described it, of being "accosted by a catch-pole looking fellow...with an execution against [my] property and person..." no doubt diminished the urgency of the issue. That is, the demise of imprisonment meant there was less public manifestation of the insolvent state of the debtor. Although, this public display of insolvency was less important as the growing size of the New York financial community allowed for more anonymity.⁹

More important, perhaps, than the demise of debtors' jail were the developments in the credit markets. By the 1820's and 1830's, new banks and a wide array of individuals whose primary business was the offering of credit in various forms made it possible for former insolvents to secure money more readily. The spread of confidential loans to troubled debtors indicated how competitive and active the credit markets had become. Confidential credits were an indication to many that the old principles of credit had been turned upside down. A man who sought a confidential loan was, ipso facto, a borrower of bad character. Yet, given the spread of confidential credits, it was precisely this kind of debtor who was securing loans, even when in deep financial trouble.

And in fact, few former merchants in the chaotic era of credit

and debt suffered any financial outcasting, the sentimental fictions of the era like Victim of Chancery and Bankrupt Stories notwithstanding. If one was in a position to get credit immediately before the failure, he or she was usually in a position to get it after final release from financial obligations. In a remarkable switch in the political position of insolvency liberals and conservatives, it was the problem of a too easy post-insolvency financial rehabilitation that became the major pre-occupation of a new generation of critics both outside and within the commercial community. And, it should be noted, this changing attitude was of a piece with the spasmodic history insolvency and bankruptcy law reform and repeal.

"It does not hurt a sanguine man, full of spring and hope, to be destroyed," sarcastically noted the editors of The Independent, a free-soil, Congregationalist newspaper, whose criticism of the looser credit markets emerged out of a conservative dislike for land speculation.¹⁰

Some men are like some of the earlier
form of worms; cutting them in pieces
only multiplies them...Many men in New
York get so used to failures that they
expect them as much as ten-pins expect
to be tripped up--it is part of the game;
or, if they do not expect it, their neighbors
do. (emphasis in original)

This, the editors went on to say, was the "atmosphere that produces bubbles and speculations."¹¹

The editors of The Independent were not alone when the economy turned sour. Most organs of the financial press took up the issue

of the debtor who became insolvent on a suspiciously frequent basis. An indication of this concern came in the pedagogical, moralistic terms adopted, in times of economic panic, by papers like Hunt's, the Journal of Commerce, and later the Times.

When the financial failures resulting from the panic and depression of the late 1830's and early 1840's, as well as those from the panic of 1857, proliferated, the financial press began to lecture its mercantile readers. With a regularity bordering on the cliché, these periodicals repeated item after item about released debtors who, in spite of the fact that they had been released by the insolvency courts from all financial obligations, still chose, when the opportunity presented itself, to pay back every creditor in full.¹²

The Times provided a typical example in 1857. After commission merchant Cyrus Field was released under the insolvency act, he eventually paid all of his many creditors in full, and with interest. "Such noble acts, " a contributor wrote, "are not of every-day occurrence, and when they do occur, they ought to be placed to the credit account of poor humanity."¹³ In a more instructional mode--sounding, in fact, not unlike a grown-up version of McGuffey's Reader--Hunt's Merchants' Magazine made a similar point.

We hear of bankrupts later engaging in trade, doing well and paying off old debts despite a lack of a legal obligation. People seem amazed by this as if it were beyond normal frail humanity. We see nothing in such an act beyond the performance of a duty which is demanded by the plain receipts of pure

morality.¹⁴

This emphasis on full repayment after insolvency release revealed how the earlier reformist ideal of the rehabilitated debtor had now, for many observers within the financial community, manifested itself as part of the frightening specter of chaotic and unreliable credit markets. This effort to promote a new set of moral beliefs about the responsibility of the insolvent indicates their desperation and it represented a gauge of the decline in financial integrity.

With the personal acquaintanceship of the past gone and the more formal credit agencies not fully developed, the emphasis on personal integrity took on, not surprisingly, an almost frantic urgency in the financial panic. Amidst the catastrophes of the depression of the 1830's and early 1840's, Hunt's captured the fear of this possibility with a sarcastic bite.

Yet amidst all this uncertainty...there is one speculation in which it requires nothing...but the use of one's own judgement...The speculation is to fail, and there is but one art and mystery in it--to fail at the right time...[and] for a good slapping sum at once; enough to strike your creditors with reverence for your greatness, and respect for your misfortunes.¹⁵

There were two results of this wave of financial anxiety. Most immediately came the bankruptcy act of 1841. The act was supposed to make confidential credits or preferred loans a thing of the past. The act was also supposed to provide the incentives for an open, honest, and full disclosure by the debtor of his or her

assets and creditors. In short, the act was meant to balance the interests of the debtor and creditor and relieve society of the thousands of hopelessly bankrupt individuals.

Whether the act did or did not accomplish these tasks is of secondary importance here. The perception among most observers of the financial press, as well as many merchants, was that the act worsened the problem of relaxed standards of insolvency release. It was clear that not too many debtors were ever making the effort to pay back their financial obligations after they were released. In fact, it seemed as if the bankruptcy act was arbitrarily releasing the fraudulent with the honest. To put it in the blunt language of contemporary critics, under the bankruptcy act of 1841, the ranks of former insolvents became a 'host of rogues.'¹⁶

The second outcome of this general perception that debtors were being too easily released for the good of the market was a prolonged discussion, lasting through the end of the antebellum period, about the meaning of honor and reputation in the commercial world. For contemporaries, honor and reputation were two different things, although they involved an intertwined set of values. Honor was about ethical standards, the internal framework of principle under which all merchants, traders, and brokers were supposed to operate. "Borrowing," the editor of Hunt's pointed out succinctly, "involves a moral as well as a financial obligation".¹⁷

Reputation, on the other hand, represented a more modern concern. Reputation was about maintaining one's good name for the purposes of obtaining credit in one's post-insolvency career. While

reputation has been, of course, an important element in financial circles since time immemorial, it is important to take note of how much mid-19th century business commentators emphasized it. Even in the more intimate financial community of colonial New York, where reputation could be accurately assessed by the knowledge the mercantile community had of the debtor, there was a consistent discussion of the topic.

But as the community's capacity to verify a businessperson's reputation was out-stripped by demographic growth and economic expansion, it became increasingly crucial to the proper functioning of the credit markets that individual traders develop their own sense of the importance of reputation. Like so much else in the new economy and society of the mid-19th century, self-interest and community good, as far as credit and debt were concerned, had to be reconciled.

In his study of the employing class in antebellum Rochester, New York, Paul Johnson listed a set of values--prompted by and, in turn, prompting evangelistic ideals--that this class hoped to inculcate in their employees. Many of these values concerned the proper habits of work, worship, and recreation, habits which these employers believed were the basis for worldly prosperity, labor and social peace.

An equivalent and contemporaneous process was going on in New York City's financial community. While the evangelistic ideals were muted, there was a similar effort to inculcate certain values within the character of the trader. That is to say, there was an

effort to replace the broader community-enforced values of credit reputation and honor with internally generated ones. While Rochester's employers' efforts were a response to the social chaos of an upstate frontier community, the effort in New York City was in response to the economic chaos on the financial frontier of credit and speculation.¹⁸

As for the rehabilitation of artisan debtors, the concerns were becoming increasingly muted. For this class of New Yorkers in the 1820's, '30's, and '40's, insolvency often represented the final blow to economic independence. The credit squeeze faced by artisans and the increasing competition with factories, sweatshops, and outwork meant that employee status faced most artisans once they were released from their financial obligations. Without the need to borrow for commercial reasons any further, the concern over the credit reputation of the artisan became irrelevant.

Furthermore, as unemployment rather than insolvency became the preeminent issue within the working community of New York City during panics, the press did not consider commercial reputation or honor when discussing artisan insolvency. Instead, the focus shifted to preventing the pauperization or, worse, the possible criminalization of New York City's unemployed artisans. In sum, the rise of credit and the changing economy of New York had, in 70 or so years, created a city of such greatly increased economic stratification that even insolvency, theoretically one of the great economic levellers, meant dramatically different things to different classes. While the mercantile debtor was being released

ever more easily, with little loss of reputation and little or no threat to future prosperity, the artisan debtor was facing a dramatic and permanent loss in status, independence, and, possibly, income as well.

In this setting, the debate about the meaning of insolvency began to take on a bit of a surrealistic quality. Liberal commentators cited the insolvency process as the reason for the continuing difficulties of the former insolvent while conservatives blamed the troubles on the debtor's own corruption and malfeasance. Neither side, however, saw what was actually happening. Neither side saw how economic stratification was creating two kinds of economic aftermaths to insolvency: one in which former merchants obtained a second, third, and fourth chance to return to their old economic status and another in which the artisan and independent craftsman was drowned by their very first insolvency.

Endnotes

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Conclusion

As a developing economy, the United States in the first half of the 19th century found itself perennially short of capital. To build its transportation system, manufacturing infrastructure, and, most importantly, to facilitate its expanding national and international commercial trading network, the country required tremendous infusions of money.

As with successfully developing economies ever since, antebellum America discovered that credit provided the only path to the achievement of sustainable economic growth. Typically, America found the capital it needed in the more advanced and capital-rich economies of its day, particularly Great Britain and, to a lesser extent, continental Europe.

But the United States did more than borrow from abroad. Again, as in the case of all successful developing countries, antebellum America developed its own internal capital markets that provided credit to its entrepreneurs of trade and manufacturing. Between 1790 and 1860, America established a substantive, if volatile, banking network. At the same time, the nation's financiers invented and utilized the kinds of new long-term credit devices needed for rapid economic development. Credit, then, was the key to America's economic take-off in the first half of the 19th century.

As the nation's commercial hub, New York City was critical to these developments. Its merchants and financiers were the conduits

for international credit, the source of new capital offerings, and the innovators of new mechanisms for providing and expanding these new supplies of capital. While New York City's financial markets and financiers were, in many aspects of the new credit economy, cases unto themselves, they were also the pathbreakers and trendsetters for the nation.

Still, even as New York's merchants and financiers were eagerly participating in the development of the new credit-based economy, they clung to old habits and attitudes about credit. Many had a difficult time shedding what were to become dated beliefs about responsible credit and debt, about borrowing funds only for the short-term necessities of trade, and eschewing speculative financing.

The source of this ambivalence was specter of financial failure. Expanded borrowing, particularly the kinds of long-term borrowing necessary for rapid economic development, meant increasing failures and growing quantities of unpaid debt. For many, the line between healthy economic development based on credit-financing and dangerous speculative ventures requiring infusions of long-term credit, remained blurred.

For many merchants and financiers in the early 19th century, there was supposed to be a moral order to the credit marketplace. Financing much of their established trade with internally-raised capital or capital obtained through their long-term relationships with English and continental suppliers and financiers, these merchants looked with unconcealed disdain on those merchants who

they felt had borrowed beyond their means, especially when that borrowing led to financial failure and accumulations of unpaid debt.

Financial failure, the most egregious manifestation of credit-financed speculation, was, in the minds of these conservative merchants, to be punished. Financial failure was a manifestation of moral failure. The inability or, as many of these merchants believed, the unwillingness of debtors to repay their financial obligations remained a threat not only to the smooth functioning of the credit marketplace but to the sense of moral responsibility that supported it. Credit and the ability and willingness to repay it represented not just a financial obligation but a moral duty.

Hence, strict insolvency and bankruptcy laws were necessary and right. They made certain that both the function and principles of the credit marketplace would be protected. There should be no opportunity for debtors to escape their financial and moral obligations. In the early 19th century, this also implied the ultimate sanction against the irresponsible debtor--incarceration. In the minds of conservative merchants, persons who failed financially were not unlike criminals and should be punished as such. In addition, imprisonment for debt provided a sense of a community-enforced moral order to the financial marketplace at a time when the players in that marketplace were a few and well-acquainted community that offered credit to each other based on personal relationships.

Yet even as this moral order to credit held sway, several

forces were emerging to undermine it. First among these, there were the reformers. Primarily younger merchants, many of them having experiencing insolvency and debtors' prison themselves, these reformers attempted to undermine the moral basis for harsh insolvency law and imprisonment for debt. Allying themselves with artisan spokespersons, who recognized that artisans often represented a majority of incarcerated debtors, these reformers argued that harsh debtor law violated basic republican principles as they gave too much power to the creditors who, in turn, used these powers in a despotic fashion to deny debtors their liberty and a release from their debilitating debts. While the moral arguments were highlighted in the reformer attacks, self-interest was also involved. Many of these younger merchants were closed out of the narrow circle of established credit where creditors were more forgiving of delinquent payments from borrowers to whom they were well-acquainted.

The immediate outcome of these reformer/artisan arguments was an ironic one. By undermining the moral foundation for harsh debtor law, they created a climate in the commercial community in which outraged and vindictive creditors were less able and less likely to imprison their delinquent creditors. In addition, they were also able to lowering the number of creditors legislatively required to release insolvent debtors from their financial obligations.

The impact of this liberalization, however, was felt most immediately among the merchant class rather than among independent

artisans and the laboring poor. This outcome was largely the product of class since merchants were often better able to establish the kinds of financial relationships with their creditors that allowed for this leniency. Merchants shared the kinds of values, attitudes, education, and social connections that helped to ameliorate the harsh requirements of the credit marketplace.

There was, however, a further twist to the story of liberalization. As the victims of incarceration for debt increasingly consisted of independent artisans and the working poor, the moral foundation for imprisonment was further undermined. With the debtors' jail increasingly filled with persons who were obviously--to all but the most reactionary of the prison's defenders--victims of forces beyond their control, it became increasingly difficult to justify imprisonment on moral grounds.

When artisans became more politically organized in the 1820's, one of their targets for reform was an elimination of imprisonment for debt. The only defense of imprisonment became a practical one--that it forced recalcitrant debtors to admit to hidden or diverted assets. But with the cells filled with the poor, that argument became less effective and imprisonment for debt was eliminated in New York State in 1831.

Insolvency and bankruptcy law liberalization--that is liberalization of laws that allowed for the easier release of the insolvent from his or her financial obligations--was a more complicated story. Here, there was less a straight trajectory toward more modern and humane legislation--as was the case with

imprisonment laws--and more of an erratic back and forth between liberalization of the law and reaction to that liberalization.

While there are several reasons for this difference between the course these two areas of law followed, two stand out. First, there was the expanding and changing market for credit. Following the peace of 1815, and in the face of increasing competition from auction houses and British commercial agents in the United States, New York's merchants began to offer more credit to their customers. At the same time, a newer generation of merchants, less bound by older strictures on responsible credit, began to borrow more heavily for the purposes of expansion and speculation.

Transportation innovations and, to a lesser extent, new investment possibilities in manufacturing made credit more crucial to the financial portfolios of New York's investors. New and expanded markets allowed merchants to specialize--both in turns of product lines and in their relationship to the goods that passed through their hands (brokers and commission merchants did not actually purchase the goods they sold). This new kind of commercial business also increased the need for credit by increasing the possibilities of commodity speculation.

Fortunes were increasingly made through the manipulation of credit rather than through profits accrued by buying and selling the goods themselves. With 'the line between 'legitimate' commercial activity and speculation blurred and with more and more merchants dependent on credit financing for their profits, attitudes about 'responsible' borrowing and lending changed. By the 1830's,

much of New York's mercantile community--including some of its oldest and most reputable houses--were thoroughly involved in massive credit deals. Inevitably, these resulted in massive failures, as was the case during the panic and depression of the late 1830's.

With large numbers of important merchants caught in the bind of tight credit and failing, attitudes about the moral duty to meet all financial obligations began to change. Increasingly, the merchant community began to take a more lenient approach to the insolvent debtor, while much of that community vigorously supported the passage of liberalized bankruptcy legislation. In 1841, they got their way.

Two forces, however, were acting against this legislative liberalization. First, the artisan community and those elements of the press and government that claimed to speak on their behalf became outraged by what they considered to be 'irresponsible speculation' by the city's mercantile and, especially, its banking community. The depression, and all of the subsequent suffering of the city's working and artisan classes, was laid at the doorstep of the city's speculating classes. In short, artisans and those who spoke out against class privilege were hostile to the liberalization of laws that would let speculating merchants--especially those who had engaged in confidential borrowing, the insider trading of the day--get away with their financial 'crimes'.

Nevertheless, this criticism remain muted for two reasons.

First, many artisans had also failed. And, second, many of their spokespersons understood that the city's economic well-being depended upon the merchant community's financial health--a condition that would be directly threatened by having large numbers of businesspersons caught in the legal and financial limbo of unsettled insolvency.

Still, the artisan community did not have the political power to thwart or overturn legislation important to the mercantile community. To explain the virulent reaction to the law of 1841 and all previous liberalized legislation--with the exception of the end-to-imprisonment law--other forces must be considered. The significant of these forces grew out of the changing credit markets themselves.

Unlike other aspects of commercial law--such as tort--debtor law pitted two important commercial constituencies, as well as two important ideas about what constituted a solid foundation for commercial activity, against each other. Unlike tort law, where the plaintiff was often an economically passive victim of an active commercial agent, creditors were a financially powerful and economically aggressive constituency.

And on the question of liberalized debtor law, they were of mixed mind. On the one hand, they were often outraged at the idea that their debtors might be able to free themselves of their financial obligations without the approval of creditors. On the other hand, they understood--especially in times of financial panic--the personal futility of trying to collect unpaid debts and

the collective economic danger of keeping large numbers of substantial debtors in economic limbo. These mixed sentiments were exacerbated by the fact that in the panics following credit free-for-alls economically expansive periods many persons found themselves in the position of creditors in one financial transaction and debtors in another.

In addition, there was the issue of contractual obligation. While many merchants recognized that rigid insolvency law hampered financial recovery, they also adhered to the sanctity of contract as one of the most important elements in a secure and thriving business economy. But to allow debtors an easy release from financial obligations was to directly threaten the idea of contractual obligation.

Thus, conflicting constituencies of creditors and debtors--neither separate or unequal--and conflicting ideas about the practical necessity of liberalized debtor law and the sanctity of contracts conspired to create an erratic history of insolvency legislation. And, in fact, every effort at state insolvency and federal bankruptcy legislation in the antebellum era generated tremendous controversy and spasms of reform and reaction.

Ultimately, antebellum New York's mercantile community adjusted to changing credit marketplace without significant legislative reform. Imprisonment was outlawed as the community slowly came around to the idea that it was anachronistic, vindictive, and impractical. Coercion of the insolvents--by keeping them in financial limbo--was supplemented by new means to

gather credit information. The credit agencies which sprung up in the 1840's and 1850's helped formalize the credit process, by providing creditors with information on distant and dispersed for a fee.

As for the attitudes about unpaid debt which underpinned these developments, they consisted of both change and stasis, reflecting the uneven record of legislative reform. On the one hand, merchants appealed to one another on a moral level as they sought a practical means to avoid excess insolvencies. Marking the commercial press of the 1840's and especially 1850's was a new concern with commercial reputation. Emphasizing the need for debtors to make good on their financial obligations--whether they were legally released or not--the commercial press utilized the verbiage of commercial morality to educate merchants to the idea that it was in their practical interest to maintain their reputation and honor.

At the same time, the increasing stratification of wealth in antebellum New York--itself a product of the increasingly class-based access to credit--meant a lightening of the moral of financial insolvency. As independent artisans slowly became absorbed into the wage-earning world of factories and sweatshops, the frequency and economic significance of artisan commercial debt waned--even as these same wage earners became increasingly dependent on consumer debt for survival.

Increasingly, with artisans dependent on manufacturers for their employment, attitudes about insolvency and poverty began to

part ways. Where once the two were linked as both insolvent merchants and artisans landed in debtors' prison, by the 1850's the former was seen as the unfortunate outcome of market forces on the merchant while the latter was viewed as a product of the immoral behavior of the working poor. Thus, it was possible to see a liberalization of the attitudes about debt--particularly in times of panic--while, at the same time, attitudes about poverty became increasingly harsh.

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