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## Federally Funded Slaving

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# Federally Funded Slaving

Rafael I. Pardo\*

*This Article presents a new frame of reference for thinking about the federal government's complicity in supporting the domestic slave trade in the antebellum United States. While scholars have accounted for several methods of such support, they have failed to consider how federal bankruptcy legislation during the 1840s functionally created a system of direct financial grants to slave traders in the form of debt discharges. Relying on a variety of primary sources, including manuscript court records that have not been systematically analyzed by any published scholarship, this Article shows how the Bankruptcy Act of 1841 enabled severely indebted slave traders to reconstruct their financial lives and thus return to the business of enslaving black men, women, and children. Knowing this legal history gives us a richer understanding of the federalization of American slavery and its role in the development of the nation's economy.*

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## I. INTRODUCTION

Our country continues to struggle mightily with slavery’s legacy, as so tragically exemplified by the horror that unfolded in 2017 during the violent and deadly protest in Charlottesville, Virginia.<sup>1</sup> As we reckon with one of the most pernicious and ugly chapters in our nation’s history, it is imperative not to ignore that history—or, for that matter, not to suppress it, as some other nations have recently attempted to do with their dark historical chapters.<sup>2</sup>

According to one conservative estimate, antebellum America witnessed the sale of at least two million black men, women, and children between 1820 and 1860.<sup>3</sup> Yet despite the magnitude of this severe assault on humanity, willful ignorance and social amnesia have been among the enemies that have undermined remembrance of this past. In *Slave Trading in the Old South*, the pioneering and foundational work on the domestic slave trade published in 1931,<sup>4</sup>

1. See, e.g., Jonathan M. Katz & Farah Stockman, *James Fields Guilty of First-Degree Murder in Death of Heather Heyer*, N.Y. TIMES (Dec. 7, 2018), <https://www.nytimes.com/2018/12/07/us/james-fields-trial-charlottesville-verdict.html>; Daniel Victor, *First Attacker Convicted in Beating at Charlottesville Rally*, N.Y. TIMES (May 2, 2018), <https://www.nytimes.com/2018/05/02/us/charlottesville-white-supremacist-attack.html>.

2. See Marc Santora, *Poland’s Holocaust Law Weakened After ‘Storm and Consolation,’* N.Y. TIMES (June 27, 2018), <https://www.nytimes.com/2018/06/27/world/europe/poland-holocaust-law.html> (“Just a few months after making it illegal to accuse the Polish nation of complicity in the Holocaust, Poland backpedaled on Wednesday, moving to defang the controversial law by eliminating criminal penalties for violators.”).

3. STEVEN DEYLE, *CARRY ME BACK: THE DOMESTIC SLAVE TRADE IN AMERICAN LIFE* 296 (2005). This Article adopts the context-sensitive approach of using (1) the term “slave” (or its plural form) to “emphasiz[e] the perspectives or transactions of slaveowners” and others associated with the domestic slave trade and (2) the modifier “enslaved” to draw “attention to the perspectives or agency of those held in bondage.” MARK AUSLANDER, *THE ACCIDENTAL SLAVEOWNER: REVISITING A MYTH OF RACE & FINDING AN AMERICAN FAMILY*, at xv (2011).

4. See Michael Tadman, *Introduction* to FREDERIC BANCROFT, *SLAVE TRADING IN THE OLD SOUTH*, at xi, xxxviii (Univ. of S.C. Press 1996) (1931) (stating that *Slave Trading in the Old South* “produced a detailed analysis of major urban slave markets which is still without parallel in the historical literature”).

Frederic Bancroft pointed to this phenomenon in his chapter analyzing the slave market in Charleston, South Carolina: “After emancipation it was, perhaps, equally natural to blink the old facts and opinions and to create a roseate tradition of slavery . . . and to ignore . . . the inhumanity of the slave-trade.”<sup>5</sup>

In his *News and Courier* review of *Slave Trading in the Old South*, authored the same year as the book’s publication, William Watts Ball, the newspaper’s editor and “[a] conservative from a wealthy Upcountry family,”<sup>6</sup> excoriated Bancroft’s work, stating that “[n]othing is to be accomplished . . . by writing a history of a long dead trade that was a bad business but no worse than the naughtiness of the world.”<sup>7</sup> For good measure, Ball defiantly added that the South’s “forebears did rather better, distinctly better, with negro slavery than did perhaps any other set of people who, not being angels, could not escape it.”<sup>8</sup> In other words, according to Ball, descendants of those who had been involved with slavery had nothing of which to be ashamed or for which to apologize.

It took nearly nine decades after Ball’s bigoted review for the City of Charleston to officially accept responsibility for its role in the domestic slave trade. On June 18, 2018, the Charleston City Council approved a resolution stating that “basic decency requires an acknowledgment and apology for the City of Charleston’s role in regulating, supporting and fostering the institution of slavery in the city and the past wrongs inflicted on African Americans here in Charleston.”<sup>9</sup> Although a necessary “step toward racial healing,”<sup>10</sup> the resolution by itself does not do enough to recover the past. On this front, historical scholarship represents an indispensable foundation

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5. BANCROFT, *supra* note 4, at 195; *see also id.* at 173 (“In all the South there was not another city where the traffic in negroes could have been so easily and advantageously studied. But that was a fact which the courteous and amiable Charlestonians very naturally did not mention, a study they did not encourage.”); *cf.* ETHAN J. KYTLE & BLAIN ROBERTS, DENMARK VESEY’S GARDEN: SLAVERY AND MEMORY IN THE CRADLE OF THE CONFEDERACY 229 (2018) (“No one in early-twentieth-century America did more to ferret out information about the slave trade, or to expose white Charlestonians’ proclivity for forgetting about it, than Frederic Bancroft.” (emphasis added)).

6. KYTLE & ROBERTS, *supra* note 5, at 234.

7. Tadman, *supra* note 4, at xxii (quoting William Watts Ball, *Bancroft Writes of Slave Trading in the Old South*, NEWS & COURIER (Charleston, S.C.), Mar. 17, 1931).

8. *Id.* at xxiii (quoting Ball, *supra* note 7).

9. CHARLESTON CITY COUNCIL, RESOLUTION 2 (2018), <https://www.charleston-sc.gov/AgendaCenter/ViewFile/Agenda/06192018-3825>.

10. Melissa Gomez, *Charleston Apologizes for City’s Role in Slave Trade*, N.Y. TIMES (June 19, 2018), <https://www.nytimes.com/2018/06/19/us/charleston-slavery-apology.html>.

for establishing the context that makes it morally imperative for society to “tackle systemic issues, like affordable housing, economic development and criminal justice matters facing . . . African-Americans.”<sup>11</sup>

Certain historiography has identified the U.S. domestic slave trade as a market activity that played a crucial role in the commercialization of the national economy during the first half of the nineteenth century.<sup>12</sup> That economic sector flourished, in part, through support provided by the federal government.<sup>13</sup> Noticeably absent from this historical account, however, has been a discussion of how federal bankruptcy law played a role in financially rehabilitating bankrupt slave traders—that is, those individuals who availed themselves of federal bankruptcy relief and who engaged in the horrific business of selling enslaved men, women, and children of African descent. This Article represents the first step in filling that void.

Until recently, no scholarship had explored the intersection of the bankruptcy system and the domestic slave trade.<sup>14</sup> In *Bankrupted Slaves*, I documented and analyzed the creation of the bankruptcy slave trade,<sup>15</sup> pursuant to which “the federal government in the 1840s became the owner and seller of . . . slaves belonging to financially distressed slaveowners who sought forgiveness of debt through the federal bankruptcy process.”<sup>16</sup> In that sphere, federal judges in the South actively engaged as administrators of bankruptcy slave sales, in essence by having their courts function as the equivalent of slave auctioneering firms. The Bankruptcy Act of 1841 (1841 Act or Act)<sup>17</sup> gave those judges a great deal of discretion to perform their duties, which they used to advance the brutal system of slavery. More than just deciding cases, those judges served as functionaries of a federal bureaucratic state that had become deeply intertwined in the domestic slave trade.<sup>18</sup>

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11. *Id.*

12. For some recent examples of this historiography, see EDWARD E. BAPTIST, *THE HALF HAS NEVER BEEN TOLD: SLAVERY AND THE MAKING OF AMERICAN CAPITALISM* (2014); CAITLIN ROSENTHAL, *ACCOUNTING FOR SLAVERY: MASTERS AND MANAGEMENT* (2018); CALVIN SCHERMERHORN, *THE BUSINESS OF SLAVERY AND THE RISE OF AMERICAN CAPITALISM, 1815-1860* (2015).

13. *See infra* notes 136-144 and accompanying text.

14. *See* Rafael I. Pardo, *Bankrupted Slaves*, 71 VAND. L. REV. 1071, 1094-98 (2018).

15. *See id.* at 1093-165.

16. *Id.* at 1071-72.

17. Act of Aug. 19, 1841, ch. 9, 5 Stat. 440 (repealed 1843).

18. *See* Pardo, *supra* note 14, at 1141-61.

This Article continues the historical inquiry into the intersection of the federal bankruptcy system and the domestic slave trade, shifting the focus to examine how Congress created the conditions for a form of federally funded slave trading. Before setting forth the broad contours of this argument, a brief discussion of definitional concepts is warranted. First, in using the term “slave trader,” this Article adopts the comprehensive meaning given to the term by Steven Deyle:

While long-distance speculators, both large and small, were certainly the most well known type of southern slave trader, there were just as many other men, if not more, who also made at least part of their living from the interregional trade. These individuals worked as commission brokers, dealers, auctioneers, financiers, and various types of agents and auxiliary personnel. . . . Although they did often engage in other business activities besides selling slaves, many of them still made a significant portion of their income from this trade, and their services proved essential for making it run as smoothly as it did. *Therefore, to fully appreciate the range of people involved in this business, it is important to recognize that all of these men were slave traders as well.*<sup>19</sup>

Second, when referring to “slaving,” this Article uses the term as defined by Calvin Schermerhorn—namely, “the process of generating bondspersons.”<sup>20</sup> This definition acknowledges that, because “*slave* was a legal designation rather than an existential one” and because that designation resulted in human beings treated as commodities, “slaves were made, not born.”<sup>21</sup>

The crux of the argument in this Article rests on several straightforward and uncontroversial premises that, once merged, should reorient how we think about the federal government’s complicity in the domestic slave trade. The basic version of the argument is as follows.<sup>22</sup>

In the first half of the nineteenth century, the United States dramatically shifted from an agrarian economy to a commercial

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19. DEYLE, *supra* note 3, at 113 (emphasis added); *cf.* BANCROFT, *supra* note 4, at 126-27 (“We know that numerous agents, general agents, commission merchants, auctioneers and others making a considerable part of their living out of slave-trading were respectively designated by one of those general terms and not as traders or dealers in slaves . . .”).

20. SCHERMERHORN, *supra* note 12, at 9.

21. *Id.*; *cf.* DEYLE, *supra* note 3, at 158 (“As the commercial values of the professional slave traders spread throughout southern society, countless owners began to view their human property in more market-oriented terms. Most significantly, slave property was increasingly seen as an investment, a valuable type of property that could be purchased and sold like any other.”).

22. The full version of the argument is set forth in *infra* Part III.

economy. A capitalist ethos drove this transformation and reached all business sectors, including the domestic slave trade, which represented a major part of the national economy. Private debt financed much of the country's entrepreneurial activity, meaning that financial failure would be part and parcel of the growing pains associated with economic expansion. Cataclysmic shocks to the economy, such as the Panic of 1837, made financial failure especially pronounced. During that crisis, some, if not most, of the populace expected the federal government to intervene and provide responsive measures to alleviate the nation's dire economic condition.

The two major political parties, the Democrats and the Whigs, offered competing visions of the role of federal government vis-à-vis the economy, with the Democrats generally espousing nonintervention and the Whigs demanding that the government take action to stabilize and continue growing the economy. The majority of voters during the 1840 elections opted for the latter vision, ushering the Whigs into power and giving them an opportunity to put their plan into effect. Their legislative package included, among other measures, proposed federal legislation that would ultimately become the 1841 Act. Significantly, the law extended to nearly all debtors and allowed them to seek relief voluntarily. This revolutionary bankruptcy system strikingly differed from its short-lived predecessor, the Bankruptcy Act of 1800 (1800 Act),<sup>23</sup> which applied only to a limited class of debtors and only permitted involuntary relief (i.e., creditor-initiated).<sup>24</sup> As such, the Whigs had robustly wielded the Constitution's federal bankruptcy power to introduce widespread debt forgiveness, at least for those who pursued relief under the 1841 Act.

While Congress wrote a law of general applicability, available to almost all debtors, the Act's proponents, some of whom held strong antislavery views, appear not to have been aware of how the federal government would end up providing financial support to the domestic slave trade—specifically, by enabling indebted slave traders to shed debts from which they otherwise could not have escaped under state law. Such relief gave bankrupt slave traders the opportunity to continue seeking pecuniary gain from the sale of black men, women, and children. To make matters worse, the bankruptcy discharge that allowed bankrupt slave traders to walk away from their financial pasts constituted the functional equivalent of a monetary grant from the

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23. Act of Apr. 4, 1800, ch. 19, 2 Stat. 19 (repealed 1803).

24. See *id.* §§ 1-2, 2 Stat. at 19-22.

federal government. Accordingly, for bankrupt slave traders, the 1841 Act represented a mechanism for federally funded slaving.

This Article proceeds in three parts. Part II tells the story of Joseph Beard, a financially distressed slave trader from New Orleans, to illustrate the significance of federal bankruptcy relief in the domestic slave trade. Part III describes how capitalism, politics, and the 1841 Act intersected to federalize that trade. Part IV presents this Article's case study of bankrupt slave traders, focusing almost exclusively on those who sought relief in the United States District Court for the Eastern District of Louisiana, which was home to New Orleans, the third most populous U.S. city in 1840 and America's largest slave market.<sup>25</sup> This Article concludes that federally funded slaving under the 1841 Act exacerbated the government's complicity in the domestic slave trade and thus constitutes a crucial component to understanding the history of slavery's role in the development of U.S. capitalism.

## II. "THE GREAT SLAVE-AUCTIONEER OF NEW ORLEANS"

To set the stage for this Article, I begin with an episode in New Orleans involving a bankrupt slave trader, Joseph A. Beard, who had to overcome disaster and debt on his path to a new financial life. By presenting this narrative, my goal is to "put a face on the history of slavery's commercial development."<sup>26</sup> Subpart A recounts the events surrounding a fire that nearly destroyed the original St. Charles Theatre, which at the time was one of the world's grandest theatres and was located in the same city block as Beard's business, thus illustrating how "the slave trade [in New Orleans] boldly asserted itself as part of the competitive commercial landscape."<sup>27</sup> Subpart B relates how the fire inflicted collateral damage on Beard's business in the midst of his attempts to extricate himself from financial distress. Subpart C discusses the unique nature of federal bankruptcy relief, which enabled Beard to obtain a fresh start and recommit his efforts to the business of slaving.

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25. See Pardo, *supra* note 14, at 1106 (citing *Population of the 100 Largest Urban Places: 1840*, U.S. BUREAU CENSUS (June 15, 1998), <https://www.census.gov/population/www/documentation/twps0027/tab07.txt>).

26. SCHERMERHORN, *supra* note 12, at 5.

27. MAURIE D. MCINNIS, *SLAVES WAITING FOR SALE: ABOLITIONIST ART AND THE AMERICAN SLAVE TRADE* 157 (2011).



A. *The St. Charles Theatre Fire*

The new St. Charles Theatre, “[l]ike the phoenix, literally arose from the ashes of its predecessor.”<sup>28</sup> *Norman’s New Orleans and Environs* used this dramatic metaphor of rebirth as its introduction to the 1845 guidebook’s entry titled *The New St. Charles Theatre*.<sup>29</sup> The edifice, which was located on St. Charles Street in New Orleans’s Faubourg St. Mary neighborhood,<sup>30</sup> had been rebuilt after a fire on the evening of March 13, 1842, almost entirely consumed the original theatre.<sup>31</sup> As with many other things in life, the new St. Charles Theatre was a product of its past, tangibly so in its case: “The main entrance and front wall [we]re remains of the former establishment; which, from the substantial workmanship, resisted the conflagration so effectually as to be made available the second time.”<sup>32</sup>

The original St. Charles Theatre had a glorious, albeit fairly brief, history. Built in 1835 for the substantial sum of \$250,000 (approximately \$6.5 million today),<sup>33</sup> the theatre occupied a sizeable portion of the city block bounded by St. Charles Street to the west, Camp Street to the east, Gravier Street to the north, and Poydras Street

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28. BENJAMIN MOORE NORMAN, *NORMAN’S NEW ORLEANS AND ENVIRONS* 178 (Matthew J. Schott ed., La. State Univ. Press 1976) (1845).

29. *Id.*

30. *See id.*; Samuel Wilson Jr., *Early History of Faubourg St. Mary*, in 2 *NEW ORLEANS ARCHITECTURE: THE AMERICAN SECTOR (FAUBOURG ST. MARY)* 3, 44-45 (Mary Louise Christovich et al. eds., 1972). Today, the “old Faubourg St. Mary [is] known as the Central Business District.” Leonard V. Huber, *Foreword* to 2 *NEW ORLEANS ARCHITECTURE: THE AMERICAN SECTOR (FAUBOURG ST. MARY)*, *supra*, at vii, vii.

31. Samuel Wilson has written that the St. Charles Theatre “was destroyed by fire on March 12, 1842.” Wilson, *supra* note 30, at 45. Contemporaneous newspaper accounts, however, report that the fire occurred on Sunday, March 13, 1842. *See Burning of the St. Charles*, *DAILY PICAYUNE* (New Orleans), Mar. 15, 1842, at 2; *Fire*, *NEW-ORLEANS COM. BULL.*, Mar. 14, 1842, at 2.

32. NORMAN, *supra* note 28, at 179.

33. *Id.* at 178 (stating that the original St. Charles Theatre “was erected . . . at the cost of \$250,000, *exclusive of the ground*” (emphasis added)). *But see* JOHN S. KENDALL, *THE GOLDEN AGE OF THE NEW ORLEANS THEATER* 114 (1952) (stating that the original St. Charles Theatre “represented an investment of approximately \$325,000”); Wilson, *supra* note 30, at 45 (stating that the cost of the original St. Charles Theatre was \$350,000); Lucile Gafford, *A History of the St. Charles Theatre in New Orleans, 1835-43*, at 17 n.1 (Aug. 1930) (unpublished Ph.D. dissertation, University of Chicago) (on file with author) (stating that the *London Theatrical Observer* reported in an 1836 article that the original St. Charles Theatre cost \$300,000 to build). References to dollar amounts today are to their value in 2018. The nominal dollar amounts have been converted using the Consumer Price Index estimates compiled by the Federal Reserve Bank of Minneapolis. *Consumer Price Index (Estimate) 1800-*, FED. RES. BANK MINNEAPOLIS, <https://www.minneapolisfed.org/community/teaching-aids/cpi-calculator-information/consumer-price-index-1800> (last visited Feb. 22, 2019).

to the south.<sup>34</sup> Standing at a height of seventy-six feet,<sup>35</sup> “a half story higher than the two-story buildings in the block,”<sup>36</sup> with a seating capacity of 4000 individuals,<sup>37</sup> the theatre was, at the time, the fourth largest in the world.<sup>38</sup> As patrons approached the building’s entrance, depicted below in Figure 1, they would have marveled at the “[t]en Corinthian columns [that] supported a portico running between the second and third floors.”<sup>39</sup> Once in the auditorium, they would have been seated under a “ceiling rounded into a great dome from whose center hung a chandelier . . . made in England at a cost of \$9000” (more than \$200,000 today),<sup>40</sup> which measured two tons in weight, twelve feet in height, and fourteen feet in diameter.<sup>41</sup> Emitting “[t]he light of one hundred seventy five burners . . . diffused through 23,300 beads of prismatic glass,” the chandelier filled the auditorium with “a radiance unexcelled in any theatre of the world.”<sup>42</sup>

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34. See NORMAN, *supra* note 28, at 178; NEW-ORLEANS DIRECTORY FOR 1842, at 381 (New Orleans, Pitts & Clarke 1842). A map of New Orleans produced for *Norman’s New Orleans and Environs* confirms that Camp Street constituted one of the city block’s streets. That map appears as an inset in the back of the 1976 facsimile reproduction of the guidebook, see NORMAN, *supra* note 28, and can also be viewed online, see *Norman’s Plan of New Orleans & Environs, 1845*, LIBR. CONGRESS, <https://www.loc.gov/resource/g4014n.ct000243/> (last visited Feb. 22, 2019). A close-up image of the map, which has been altered, appears below in Figure 2. See *infra* note 64. For a discussion of errors in the above-referenced New Orleans directory, see Rafael I. Pardo, *Documenting Bankrupted Slaves*, 71 VAND. L. REV. EN BANC 73, 113 n.206 (2018).

35. NORMAN, *supra* note 28, at 178.

36. Gafford, *supra* note 33, at 18.

37. NORMAN, *supra* note 28, at 178.

38. *Id.*

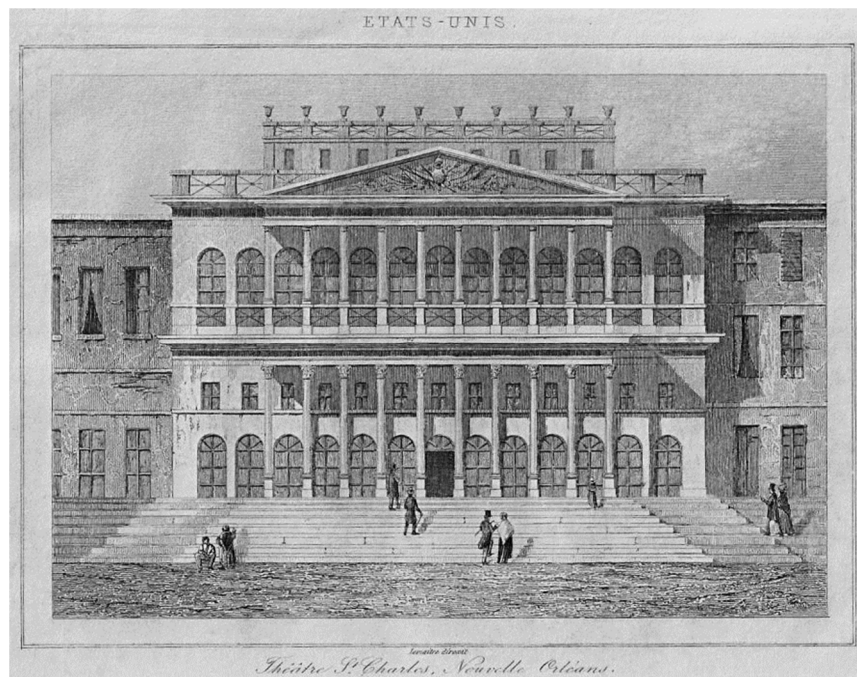
39. Gafford, *supra* note 33, at 18.

40. *Id.* at 19-20. *But see* KENDALL, *supra* note 33, at 116 (stating the chandelier of the original St. Charles Theatre cost \$10,750).

41. Gafford, *supra* note 33, at 20.

42. *Id.* *But see* KENDALL, *supra* note 33, at 116 (stating that the chandelier of the original St. Charles Theatre consisted of “250 gas jets”). For a cross-section plan of the original St. Charles Theatre, see LEONARD V. HUBER, *NEW ORLEANS: A PICTORIAL HISTORY* 145 (1971).

Figure 1: The Original St. Charles Theatre



The opulence of the original St. Charles Theatre simultaneously befitted and symbolized New Orleans's ambitions for national and international commercial greatness.<sup>43</sup> And yet the theatre's tragic

43. Cf. BAPTIST, *supra* note 12, at 83 (noting that, by 1820, "New Orleans had become the pivot of economic expansion . . . between Europe and America"); WALTER JOHNSON, *RIVER OF DARK DREAMS: SLAVERY AND EMPIRE IN THE COTTON KINGDOM 2* (2013) (describing 1850s New Orleans as "the commercial emporium of the Midwest, the principal channel through which Southern cotton flowed to the global economy and foreign capital came into the United States, [and] the largest slave market in North America"); SCOTT P. MARLER, *THE MERCHANTS' CAPITAL: NEW ORLEANS AND THE POLITICAL ECONOMY OF THE NINETEENTH-CENTURY SOUTH 4* (2013) ("Louisiana was located on the nonindustrial periphery of the Atlantic world, yet the commodities produced on its slave plantations, along with the New Orleans-based commercial agents who shepherded them to national and global markets, played a crucial role in the new forms of capitalist development taking root elsewhere."); MCINNIS, *supra* note 27, at 155 (observing that, in the 1850s, with "[i]ts population and economy growing rapidly, New Orleans represented the South's future" and further observing that "[t]he city's importance (then as now) was its position at the mouth of the Mississippi River, making it the connection point between the vast interior of the United States and the Caribbean basin"); Robert E. Roeder, *Merchants of Ante-Bellum New Orleans*, 10 *EXPLORATIONS ENTREPRENEURIAL HIST.* 113, 121 (1958) ("From 1800 to 1815 New Orleans was a small seaport . . . . From 1815 to 1860 it became the center for an area devoted to highly commercialized staple production."); Joshua D. Rothman, *The Contours of Cotton Capitalism: Speculation, Slavery, and Economic Panic in Mississippi, 1832-1841*, in *SLAVERY'S*

misfortune reflected the setbacks that often accompany ambitious endeavors. The evening of Sunday, March 13, 1842, began with much promise. It marked “the eleventh opera night at the St. Charles,”<sup>44</sup> part of a performance series that had commenced at the end of February 1842 “with the engagement of Signor Marti’s Italian company from the Tacón Theatre” in Havana, Cuba.<sup>45</sup> Patrons that night expected to see the opera titled *Clara di Rosemberg*, which was scheduled to start at 7:30 p.m.<sup>46</sup> They could have arrived as early as 6:00 p.m., at which time the St. Charles Theatre would open its doors.<sup>47</sup> But the performance did not take place.

The cabinet-making and undertaking business of M.C. Quirk & Sons,<sup>48</sup> located behind the theatre at 93 Camp Street,<sup>49</sup> caught fire at approximately 6:30 p.m.<sup>50</sup> From there, the fire quickly spread to the theatre, engulfing it in flames and dealing a major emotional blow to the Crescent City.<sup>51</sup> As described by the editors of the *New-Orleans Commercial Bulletin*, “almost like electricity the splendid temple, the pride of New Orleans and the South West, and we might say of the Union, was seen and acknowledged to be a complete victim to the devouring element.”<sup>52</sup> Vastly worse, the inferno caused the death of a fireman, which cast a pall over the city.<sup>53</sup>

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CAPITALISM: A NEW HISTORY OF AMERICAN ECONOMIC DEVELOPMENT 122, 127 (Sven Beckert & Seth Rockman eds., 2016) (“In 1834, thanks almost entirely to southwestern cotton production, New Orleans bypassed New York as the country’s most important export city and would hold that position for almost a decade.”).

44. *St. Charles.*, DAILY PICAYUNE (New Orleans), Mar. 13, 1842, at 2.

45. Gafford, *supra* note 33, at 99; *see also St. Charles.*, *supra* note 44, at 2 (“Two admirable dancers . . . are to appear, and will no doubt secure a share of the enthusiasm manifested in favor of the Italian company.”).

46. *St. Charles.*, NEW-ORLEANS COM. BULL., Mar. 12, 1842, at 2; *St. Charles Theatre.*, DAILY PICAYUNE (New Orleans), Mar. 13, 1842, at 3. In his history of New Orleans theater, Kendall incorrectly indicates that the opera’s curtain time was around 8:00 p.m. *See* KENDALL, *supra* note 33, at 184-85.

47. *St. Charles.*, *supra* note 46, at 2.

48. *See* NEW-ORLEANS COM. BULL., June 6, 1842, at 4.

49. *See* NEW-ORLEANS DIRECTORY FOR 1842, *supra* note 34, at 337 (providing a listing for “Quirk, M. C. & Sons, 93 Camp street”).

50. *See supra* note 31. Whether the fire first started at M.C. Quirk & Sons is unclear. *See Burning of the St. Charles.*, *supra* note 31, at 2.

51. New Orleans’s epithet, the “Crescent City,” is “derived from its location on a sharp bend near the base of the Mississippi River.” MARLER, *supra* note 43, at 1.

52. *Fire*, *supra* note 31, at 2.

53. *See Burning of the St. Charles.*, *supra* note 31, at 2. Kendall incorrectly asserts “that there was no loss of life in the disaster.” KENDALL, *supra* note 33, at 185. The deceased fireman was buried in the Cypress Grove cemetery, where M.C. Quirk & Sons conducted some interments. *See Burning of the St. Charles.*, *supra* note 31, at 2; *Cypress Grove Cemetery.*, DAILY PICAYUNE (New Orleans), Sept. 15, 1842, at 2.

Immediately after the disaster, the future prospects of the St. Charles Theatre seemed bleak. The editors of the *Daily Picayune* observed, “[A]ll that is now left of that proud building are the towering walls, majestic still, in desolation and in ruin.”<sup>54</sup> They further noted that the property had been grossly underinsured, to the tune of a \$335,000 shortfall.<sup>55</sup> Still, they optimistically acknowledged the possibility of the theatre’s rebirth: “[T]hat heap of ruins in St. Charles street, seems already in motion with a Phœnix.”<sup>56</sup> That hope became reality when the new St. Charles Theatre opened its doors in 1843,<sup>57</sup> though a more modest version of its former self.<sup>58</sup>

### B. *Joseph Beard’s Commercial Calamities*

The damage caused by the St. Charles Theatre fire did not confine itself to the theatre. The fire, in fact, destroyed or damaged various buildings.<sup>59</sup> Among the damaged structures was the Camp Street Auction Mart, on which the *Daily Picayune*’s editors commented in their reporting on the fire:

With the Theatre, went that handsome and extensive structure, the Camp Street Arcade. The Auction Mart, (formerly the “old Camp,”) was not burned, but sadly mutilated by the falling walls of the Arcade. For the preservation of this building our firemen deserve more than all ordinary terms of commendation. At one time, while the terrible destruction was progressing, we would not have ensured the further existence of poor “old Camp,” for the most extortionate rate of premium ever exacted or given. Yet the building stands, and may be repaired easily, for, perhaps greater use and emolument to its owner, than is chronicled in its flourishing career of former times.<sup>60</sup>

The *Commercial Bulletin*’s editors likewise expressed concerns over the Auction Mart’s future, writing that “[h]opes were entertained that the old Camp Theatre, now occupied by Maj Beard as an auction mart, would be saved.”<sup>61</sup>

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54. *Burning of the St. Charles.*, *supra* note 31, at 2.

55. *Id.* (“[I]f we are correctly informed, not more than \$65,000 was insured, upon property worth nearly \$400,000.”).

56. *Id.*

57. HUBER, *supra* note 42, at 145.

58. See Wilson, *supra* note 30, at 45. The St. Charles Theatre continued to operate until destroyed by yet another fire in 1899. HUBER, *supra* note 42, at 145. It was once again rebuilt in 1902 and was finally demolished in 1967. Wilson, *supra* note 30, at 45.

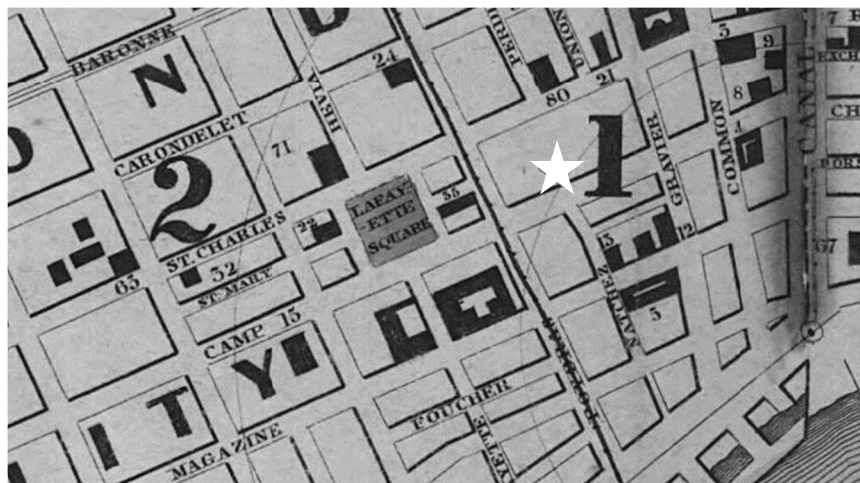
59. See *Fire*, *supra* note 31, at 2.

60. *Burning of the St. Charles.*, *supra* note 31, at 2.

61. See *Fire*, *supra* note 31, at 2.

As alluded to by the *Commercial Bulletin*, Joseph A. Beard, an auctioneer, ran the Camp Street Auction Mart, which was located on the Camp Street side of the same city block occupied by the St. Charles Theatre,<sup>62</sup> just opposite of Natchez Street.<sup>63</sup> The star appearing in Figure 2 below indicates the location of Beard’s establishment.<sup>64</sup>

Figure 2: Location of the Camp Street Auction Mart



The St. Charles Theatre fire upended Beard’s plans for an auction on Tuesday, March 15, 1842, as evidenced by three advertisements appearing in the *Commercial Bulletin* during that week. On Monday, Beard’s advertisement—which he had presumably placed with the newspaper prior to that date (i.e., no later than Sunday, March 13, the day of the fire)—announced that he planned to sell on Tuesday at the Auction Mart “[a]n extensive assortment of Household Furniture.”<sup>65</sup> But the Auction Mart was too damaged for the auction to proceed, which prompted Beard to place a notice in Tuesday’s *Commercial Bulletin* “inform[ing] his numerous friends and the public generally, that in consequence[] of the late disastrous fire, he ha[d] removed his

62. See *supra* note 34 and accompanying text.

63. See NEW-ORLEANS DIRECTORY FOR 1842, *supra* note 34, at 25.

64. Figure 2 is a close-up image of the New Orleans map produced for the 1845 guidebook, *Norman’s New Orleans and Environs*. See *supra* note 34. The map has been altered by adding the electronically drawn star marking the location of the Auction Mart. The original map is oriented with its upper right-hand corner pointing north and so too is the close-up image. See *Norman’s Plan of New Orleans & Environs, 1845*, *supra* note 34.

65. *Camp Street Auction Mart*, NEW-ORLEANS COM. BULL., Mar. 14, 1842, at 2.

office to the stores opposite the late Camp street Auction Mart, and hope[d] to receive a continuation of public support.”<sup>66</sup> Finally, his Wednesday advertisement reveals that he rescheduled the auction for Friday at “the stores, corner Camp and Natchez streets,” where he would auction a “quantity of goods *saved from the fire*,” all of which had been “[s]lightly damaged.”<sup>67</sup>

A particularly attentive reader of the *Bulletin* on Friday that week may very well have felt that the old adage of “when it rains it pours” was particularly apt when it came to Beard. Turning to the *Bulletin*’s “Auction Sales” section, the reader would have quickly come across the fifth one from the top, which was Beard’s advertisement announcing his auction on that day of the goods damaged by the St. Charles Theatre fire.<sup>68</sup> Had the reader merely looked to the column immediately to the left of the “Auction Sales” section, he or she would have seen an entire column consisting of twenty-four separate notices announcing the commencement of bankruptcy cases in the Eastern District of Louisiana under the 1841 Act,<sup>69</sup> which had been in effect for slightly more than a month.<sup>70</sup> Scanning the column for the names of the individuals who had petitioned for financial relief, the reader would have come across a notice, reproduced below in Figure 3, containing Beard’s name.<sup>71</sup> The second page of Friday’s *Bulletin* thus told a story of a figure who epitomized commercial calamity, having suffered financial ruin that culminated in a petition for bankruptcy relief on March 8, 1842,<sup>72</sup> only to be followed five days later by a business disruption precipitated by casualty.<sup>73</sup>

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66. *Auction Notice of Removal*, NEW-ORLEANS COM. BULL., Mar. 15, 1842, at 2.

67. *Sale of Goods Damaged at the Late Fire.*, NEW-ORLEANS COM. BULL., Mar. 16, 1842, at 2 (emphasis added).

68. *Sale of Goods Damaged at the Late Fire.*, NEW-ORLEANS COM. BULL., Mar. 18, 1842, at 2. Additionally, the third advertisement from the bottom of the page in the “Auction Sales” section was the same advertisement placed by Beard in Tuesday’s *Bulletin* announcing the relocation of his office as a result of the St. Charles Theatre fire. *Auction Notice of Removal*, NEW-ORLEANS COM. BULL., Mar. 18, 1842, at 2; see *supra* note 66 and accompanying text.

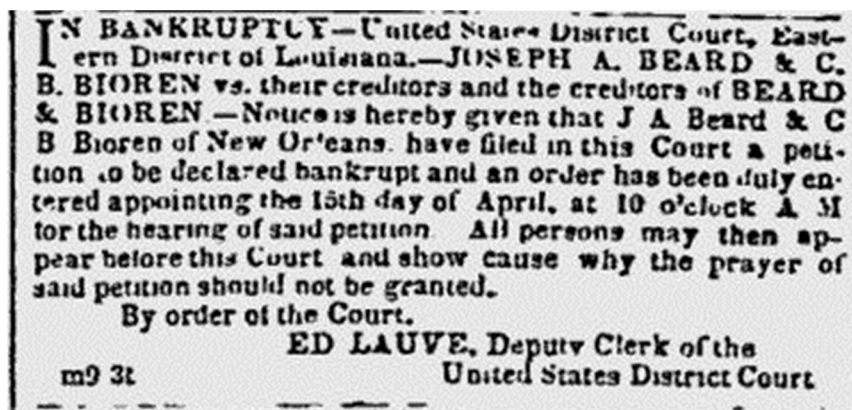
69. See NEW-ORLEANS COM. BULL., Mar. 18, 1842, at 2.

70. See Act of Aug. 19, 1841, ch. 9, § 17, 5 Stat. 440, 449 (providing that the 1841 Act “shall take effect from and after the first day of February next”) (repealed 1843).

71. See NEW-ORLEANS COM. BULL., Mar. 18, 1842, at 2.

72. *Joseph A Beard & Charles B. Bioren v. Their Individual Creditors & the Creditors of the Firm of Beard & Bioren*, *In re Beard & Bioren*, No. 96 (E.D. La. Mar. 8, 1842) [hereinafter *Beard & Bioren Petition*]. For a discussion of the manuscript court records consulted for this Article, see *infra* Part IV.A. For a discussion of the citation method used to refer to these sources, see Pardo, *supra* note 34, at 90.

73. See *supra* notes 44-53, 60-61 and accompanying text.

Figure 3: *In re Beard & Bioren* Bankruptcy Petition Notice

Despite these setbacks, Beard would experience financial rebirth. Recall how the *Daily Picayune*'s editors hoped that Beard's Camp Street Auction Mart would "be repaired easily, for, perhaps greater use and emolument to its owner, than is chronicled in its flourishing career of former times."<sup>74</sup> Approximately three months after the St. Charles Theatre fire, Beard's announcement on June 16, 1842, in the *Daily Picayune* confirmed that one of those hopes had become reality—specifically, his return to the Auction Mart, which he loudly proclaimed while thanking his customers for supporting his business.<sup>75</sup> Although the notice did not indicate whether it had been difficult for Beard to repair the Auction Mart, Beard had clearly returned. The question remained, however, whether his business there would bring him greater prosperity, as the *Daily Picayune*'s editors hoped.

Nearly three months after returning to the Auction Mart, Beard would end up moving his auction office to 45 Magazine Street.<sup>76</sup> Accordingly, any commercial success he experienced would not take place at the Auction Mart. But he did experience such success, to a degree beyond what the *Daily Picayune*'s editors could have probably predicted when they initially reported on the St. Charles Theatre fire. About eight years after moving out of the Auction Mart, Beard reported

74. *Supra* text accompanying note 60.

75. See *Camp Street Auction Mart*, DAILY PICAYUNE (New Orleans), June 16, 1842, at 3 ("The subscriber begs respectfully to return his grateful acknowledgements to his friends and the public generally, for their very liberal patronage hitherto bestowed on him, and avails himself of this opportunity to inform the public that the CAMP STREET AUCTION MART is again opened.")

76. *Auction Notice!*, DAILY PICAYUNE (New Orleans), Sept. 14, 1842, at 2.



the highest gross amount of auction sales among New Orleans auctioneers during the second quarter of 1850, more than \$397,000 in total sales (approximately \$12 million today),<sup>77</sup> which was nearly twice as much as the next-highest reported amount.<sup>78</sup> His commission on such sales would have ranged from \$3970 to \$9925 (approximately \$120,000 to \$300,000 today), depending on the type of property sold.<sup>79</sup>

How did Joseph Beard reach such great commercial heights after finding himself in financial ruin? While surely many factors contributed to his success, two can be said to have played an integral role. First, Beard received a federal bankruptcy discharge on July 11, 1842,<sup>80</sup> which cut off the right of his creditors to recover from him as a personal liability the prebankruptcy debts that he owed them.<sup>81</sup> Those debts totaled \$64,513.67 (approximately more than \$1.67 million today).<sup>82</sup> With this fresh start, Beard stood poised to embark on new financial ventures unhampered by his financial past. But the value of that clean slate would be squandered unless Beard could capitalize on a lucrative enterprise, which brings us to the second factor that contributed to his postbankruptcy commercial success.

To understand how Beard generated eye-popping dollar amounts from his auction sales, one can look back to his announcement on June 16, 1842, in the *Daily Picayune*, which informed the public that he had

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77. *Auctioneers' Returns to the State.*, DAILY PICAYUNE (New Orleans), July 14, 1850, at 2.

78. *See id.* Likewise, during the first and second quarters of 1851, Beard posted the highest gross amount of auction sales among New Orleans auctioneers. *See Auctioneers' Returns to the State.*, DAILY PICAYUNE (New Orleans), Apr. 19, 1851, at 1 (reporting over \$320,000, or approximately \$9.6 million today, in total sales for "Jos. A. Beard" during the first quarter of 1851); *Auction Sales.*, DAILY PICAYUNE (New Orleans), July 15, 1851, at 2 (reporting over \$370,000, or approximately \$11.1 million today, in total sales for "Beard & May" during the second quarter of 1851). By the end of the decade, even though Beard no longer ranked as the top auctioneer in New Orleans, he still continued to enjoy financial success. *See* BANCROFT, *supra* note 4, at 338 n.47 (stating that total auction sales by Beard, Pitts & Gardner Smith during the last quarter of 1859, in the amount of \$112,000, or approximately \$3.1 million today, ranked tenth among New Orleans auctioneers).

79. *See* Act of Jan. 15, 1805, ch. 4, § 9, 1804 Orleans Terr. 10, 18 (New Orleans, James M. Bradford 1805) ("[T]he auctioneers' commissions shall be after the following rates:—On the sale of real estates, ships or vessels, and slaves, one per centum, and on all other effects two and one half per centum, on the value or price at which the same shall be sold . . .") (repealed 1870).

80. 1 U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 DOCKETS, 1842-1843, at 96 (located in Record Group 21, The National Archives at Fort Worth, Texas) [hereinafter EDLA DOCKETS].

81. *See* Act of Aug. 19, 1841, ch. 9, § 4, 5 Stat. 440, 444 (repealed 1843).

82. *See infra* Appendix, Table 1.

reopened the Auction Mart.<sup>83</sup> In that advertisement, he emphasized to merchants his willingness to “receive *all descriptions of property* for sale,” including “Furniture,” “Dry Goods, Hats, Groceries and Shoes,” and “Carriages and all descriptions of bulky property.”<sup>84</sup> While the sales of such items would certainly contribute to his revenues, they merely represented a side show. We can infer what Beard cared most to sell by looking to the second-to-last paragraph of his advertisement, in which he announced with great solemnity that “[t]he sales of Negroes, Bank and other Stocks, and Real Estate, *will receive his personal attention as usual*, at the various Exchanges.”<sup>85</sup> Whereas the prior property categories (i.e., furniture, dry goods, and the like) had been accompanied merely with an indication of the days on which they would be sold,<sup>86</sup> Beard wanted to make sure that the general public knew that his professional acumen would be especially focused on sales of land, securities, and slaves.<sup>87</sup>

Moreover, if we look to the series of Beard’s auction advertisements appearing in the *Picayune*’s “Sales at Auction” section on the same date as his advertisement announcing the reopening of the Auction Mart, the juxtaposition of those advertisements further suggests that, more than anything, Beard wanted to stake his claim as a successful entrepreneur by selling black men, women, and children. The first and second advertisements announced without fanfare the sales of goods: “Groceries, Furniture, &c.” at the first auction and “Portable Medicated Bathing Tents” at the second auction.<sup>88</sup> The fourth advertisement announced a real estate auction and sought to entice prospective purchasers by describing the property as “valuable.”<sup>89</sup>

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83. See *supra* note 75 and accompanying text.

84. *Camp Street Auction Mart.*, *supra* note 75, at 3 (emphasis added).

85. *Id.* (emphasis added).

86. See *id.*

87. *Id.* Beard’s willingness to sell a wide array of property illustrates the manner in which many slave traders diversified their business activities. See DEYLE, *supra* note 3, at 139; SCHERMERHORN, *supra* note 12, at 23.

88. *Groceries, Furniture, &c.*, DAILY PICAYUNE (New Orleans), June 16, 1842, at 3; *Portable Medicated Bathing Tents.*, DAILY PICAYUNE (New Orleans), June 16, 1842, at 3.

89. *Unreserved Sale of Valuable Livadais Property.*, DAILY PICAYUNE (New Orleans), June 16, 1842, at 3.

Figure 4: Auction Sales by Jos. A. Beard &amp; Co.

**SALES AT AUCTION.**

*Groceries, Furniture, &c.*  
BY JOS. A. BEARD & CO.

WILL be sold at auction THIS DAY, the 16th instant, at half past 10 o'clock, at the Camp street Auction Mart—

25 qr casks Port Wine  
20 do do Madeira  
200 lbs Prime Pork  
10 casks Bacon  
50 boxes manufactured Tobacco  
50 boxes Spermacandlos  
200 boxes Claret Wine  
100 baskets Champagne  
300 coils Blue Rope  
50 pieces Bagging

Together with a general assortment of second hand furniture. Terms cash. jol6

*Portable Medicated Bathing Tents.*  
BY JOS. A. BEARD & CO.

WILL be sold at auction on FRIDAY, 17th inst. half past 10 o'clock, at the Warehouse of Mr Carnes, Bienville street.

115 Portable Medicated Bathing Tents, patented by J.W. Warren, M. D.  
They can be seen at Mr. Carnes' Ware-rooms. jol5

*Negroes! Negroes!*  
BY JOS. A. BEARD & CO.

WILL be sold at auction, THURSDAY, 16th instant, at 12 o'clock, at the St. Louis Exchange: the following slaves:

Pompey, 24 years, carpenter, worked at the trade 7 years.  
Mark, 24, field hand.  
Jacob, 20, do.  
Sam, 20, do.  
John, 14, do.  
George, 16, house servant and field hand.  
Caroline, 15, good house girl, washer, ironer, &c.

The above negroes are of fine character and fully guaranteed, excepting John, who has one short leg. Terms, cash—payable in specie. Acts of sale before W. Barrett, Notary Public. jol5

*Unreserved Sale of Valuable Louisiana Property.*  
BY JOS. A. BEARD & CO.

WILL be sold at auction, to close a concern, on SATURDAY, June 13, at 12 o'clock, at Bank's Arcade—the following valuable Lots, situate in Faubourg Louisiana, near the river, viz:

Five Lots of Ground, in square 22, bounded by Fulton, Chippewa, Seventh and Eighth streets, and designated as No. 1, 2, 3, 4, and 5, each lot measuring 30 feet 10 inches 5 lines front on Seventh, by a depth of 120 feet on Fulton street.

Terms, Cash—one-half in notes of the First and Second Municipality, the balance in notes of the City Bank. Acts of sale before D. L. McCoy, notary public, at the expense of the purchasers. The sales to be completed within 10 days from date of adjudication, or the same will be resold on account of purchasers, without further notice. jol5

In stark contrast to these advertisements, Beard sought to make the third advertisement leap off the page, as illustrated above in Figure 4, through the use of exclamation marks in the auction sale's heading: "Negroes! Negroes!"<sup>90</sup> Ranging in age from fourteen to twenty-four years old, Beard sought to sell for cash seven enslaved individuals—Pompey, Mark, Jacob, Sam, George, Caroline, and John, the youngest—all of whom he described as being "of fine character."<sup>91</sup>

This example provides us a glimpse of how Beard, through active, shrewd, and eager participation in the domestic slave trade, would harness the capitalist impulses of America's expanding market economy to make himself a rich man.<sup>92</sup> To be sure, he had fully committed to this path well before seeking bankruptcy relief in 1842, perhaps revealing that he foresaw "[t]he spectacular rise in prices [that] made human property one of the most costly, and therefore most valuable, forms of investment in the country."<sup>93</sup> For example, a broadside from 1840, illustrated below in Figure 5, announced his auction sale of seventeen field hands "for no fault."<sup>94</sup> Or for yet another example among countless others, on the Friday preceding the St. Charles Theatre fire, a *Bulletin* advertisement informed the public that Beard would auction off on that day "Valuable Negroes!" at the Camp Street Auction Mart, a total of nine individuals, including Susan and her eight-year-old daughter, as well as Louisa and her four children, who ranged in age from three to seven years old.<sup>95</sup>

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90. *Negroes! Negroes!*, DAILY PICAYUNE (New Orleans), June 16, 1842, at 3. Beard's advertisement typified the "creative advertising" used by interregional traders when advertising slave sales. See DEYLE, *supra* note 3, at 134 (providing examples).

91. *Negroes! Negroes!*, *supra* note 90, at 3. On the use of references such as "of fine character" in slave sale advertisements, see DEYLE, *supra* note 3, at 165.

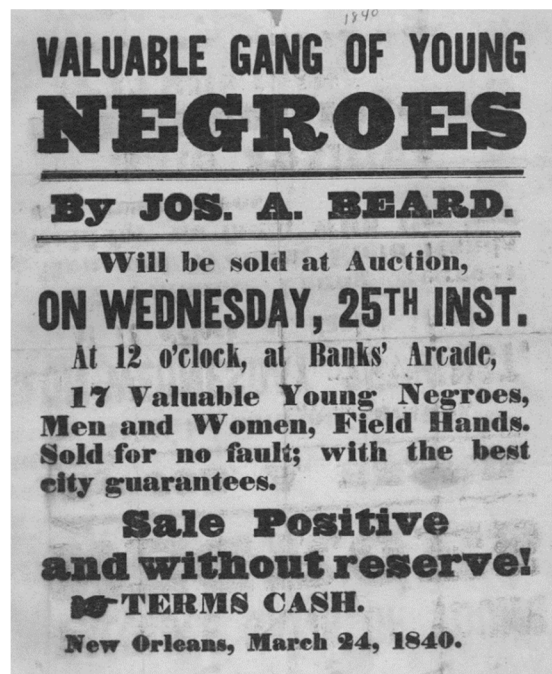
92. Cf. DEYLE, *supra* note 3, at 120 ("As with northern capitalists, southern slave traders were willing to take risks for the enormous profits that could be obtained in this trade. And some men truly did obtain great wealth, often in a short period of time. . . . Auctioneers who specialized in the selling of slaves could also make that kind of money.").

93. *Id.* at 59.

94. On the use of references such as "sold for no fault" in slave sale advertisements, see *id.* at 165.

95. See *Camp Street Auction Mart*, NEW-ORLEANS COM. BULL., Mar. 11, 1842, at 2.

Figure 5: Beard Auction Broadside



Notably, Beard's commitment to slave trading did not waver in the face of his bankruptcy and the damage to his Auction Mart. If anything, he doubled down on that commitment.<sup>96</sup> For example, shortly after the St. Charles Theatre fire, on the same Wednesday that he informed the public of the need to reschedule the auction of the fire-damaged goods,<sup>97</sup> he also announced in a separate *Bulletin* advertisement that he planned to conduct an auction of "10 likely slaves" at Banks Arcade,<sup>98</sup> located just a couple of blocks away from

96. See *Auction Notice!*, *supra* note 76, at 2 (advertising that Joseph A. Beard, "[h]aving discontinued his sales of merchandize in store, tenders his services for the sale [of] Real Estate, Negroes, Syndics' and Bankrupt Estates; Port Wardens', Cargo, and all other outdoor sales"); cf. EDWARD J. BALLEISEN, *NAVIGATING FAILURE: BANKRUPTCY AND COMMERCIAL SOCIETY IN ANTEBELLUM AMERICA* 191 (2001) ("Grandiose visions by no means perished with every antebellum failure. For a number of bankrupts, the experience of insolvency constituted merely a temporary setback, not a warning to adopt more modest goals.").

97. See *supra* note 67 and accompanying text.

98. See *Negroes.*, *NEW-ORLEANS COM. BULL.*, Mar. 16, 1842, at 2. The advertisement refers to the auction's location as "Bank's Arcade." *Id.* For an explanation of why that designation is incorrect, see Pardo, *supra* note 14, at 1147 n.412. For the meaning of "likely" in this context, see, for example, SCHERMERHORN, *supra* note 12, at 38.

his damaged Auction Mart.<sup>99</sup> Roughly three months later, Beard was in the full swing of things, announcing a “Great sale of Virginia, North Carolina and Maryland NEGROES,” seventy-three in total, at the St. Louis Exchange,<sup>100</sup> a reference to the St. Louis Hotel, which was a location that played a central role in the New Orleans slave market.<sup>101</sup> As described by one historian, Beard “willingly went wherever profit invited.”<sup>102</sup> And profit he would, while in the process inflicting untold harm of tragic proportions on people of African descent.<sup>103</sup> Referred to as “Major Beard, the great slave-auctioneer of New Orleans,”<sup>104</sup> he very likely sold more slaves during the 1840s and 1850s than anyone else in the city,<sup>105</sup> a particularly ignominious achievement given that the city had hundreds of traders.<sup>106</sup>

### C. *The Unique Nature of Bankruptcy’s Fresh Start*

It is not difficult to imagine that, like Beard, other New Orleanian traders experienced financial distress that ultimately prompted them to seek federal bankruptcy relief. One can further imagine that this story likely repeated itself throughout various Southern cities that had robust slave markets, such as Baltimore, Maryland; Washington, D.C.; Richmond, Virginia; St. Louis, Missouri; Lexington, Kentucky; Memphis, Tennessee; Charleston, South Carolina; Savannah, Georgia; Montgomery, Alabama; and Natchez, Mississippi.<sup>107</sup> And yet, no scholarship to date has explored the story of bankrupt slave traders and the significance of that historical chapter in understanding the domestic slave trade.

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99. The map of New Orleans produced for *Norman’s New Orleans and Environs* marks the location of Banks Arcade with the number 5. See *Norman’s Plan of New Orleans & Environs, 1845*, *supra* note 34. That marked location appears above in Figure 2 as the building located on Magazine Street between Natchez and Gravier Streets.

100. See *Seventy Three Negroes*, NEW-ORLEANS COM. BULL., June 7, 1842, at 2.

101. See, e.g., MCINNIS, *supra* note 27, at 164.

102. BANCROFT, *supra* note 4, at 324.

103. Cf. SCHERMERHORN, *supra* note 12, at 1 (“But the business of slavery was never merely business, and the creative destruction that built a commercial republic and helped usher into being a continental empire was one that racked the bodies, splintered the families, and tried the souls of African-descended Americans.”).

104. BANCROFT, *supra* note 4, at 324 (quoting JAMES STIRLING, LETTERS FROM THE SLAVE STATES 239 (London, John W. Parker & Son 1857)).

105. *Id.*

106. See, e.g., *id.* at 314; DEYLE, *supra* note 3, at 153.

107. See, e.g., BANCROFT, *supra* note 4, at 37-44, 120-23 (Baltimore); *id.* at 45-66 (Washington, D.C.); *id.* at 94-119 (Richmond); *id.* at 140-44 (St. Louis); *id.* at 130-33 (Lexington); *id.* at 250-68 (Memphis); *id.* at 165-96 (Charleston); *id.* at 222-36 (Savannah); *id.* at 294-98 (Montgomery); *id.* at 300-09 (Natchez).

Historians' failure to examine the intersection of federal bankruptcy law and the domestic slave trade might be attributed to the fact that such legislation existed briefly during the antebellum period,<sup>108</sup> with the first law enacted in 1800 and repealed in 1803 (i.e., the 1800 Act)<sup>109</sup> and the second law enacted in 1841 and repealed in 1843 (i.e., the 1841 Act).<sup>110</sup> At most, historians have made fleeting mentions to the possibility of bankruptcy filings by slave traders.<sup>111</sup> Relatedly, some historians have identified certain slave traders who financially failed as having been bankrupts, even though those individuals did not seek federal bankruptcy relief, but rather debt forgiveness under state law.<sup>112</sup> It may be that those historians have used the term "bankruptcy" loosely.<sup>113</sup> However, not drawing the distinction between federal bankruptcy relief and state debt-forgiveness laws has the unfortunate consequence of obfuscating how the former played a distinctively unique role in bolstering the nation's domestic slave trade.<sup>114</sup>

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108. See Pardo, *supra* note 14, at 1081.

109. Act of Apr. 4, 1800, ch. 19, 2 Stat. 19 (repealed 1803).

110. Act of Aug. 19, 1841, ch. 9, 5 Stat. 440 (repealed 1843).

111. See, e.g., DEYLE, *supra* note 3, at 121; WALTER JOHNSON, *SOUL BY SOUL: LIFE INSIDE THE ANTEBELLUM SLAVE MARKET* 52-53 (1999).

112. For example, Calvin Schermerhorn states that Theophilus Freeman—the New Orleans slave trader who sold Solomon Northup, who had been kidnapped into slavery and who would recount his ordeal in the autobiography *Twelve Years a Slave*—"failed in 1842" and "suffered bankruptcy." SCHERMERHORN, *supra* note 12, at 201. Freeman, however, did not file for federal bankruptcy relief. Rather, in 1844, he availed himself of Louisiana's debt-forgiveness law—referred to as a "cession of property." See LA. CIV. CODE arts. 2166-2180 (1825) (repealed 1984); *Bank of Ky. v. Conner*, 4 La. Ann. 365, 366 (La. 1849).

Similarly, Richard Tansey has identified Bernard Kendig, a New Orleans stable owner who subsequently turned to slave trading, as having gone bankrupt in 1843 with Oliver Dubois, his partner in the stable business. See Richard Tansey, *Bernard Kendig and the New Orleans Slave Trade*, 23 LA. HIST. 159, 162 & n.9 (1982). One of the court documents cited by Tansey clearly indicates that Kendig availed himself of Louisiana's debt-forgiveness law in 1840. See *id.* at 162 n.9. Moreover, while Dubois sought bankruptcy relief under the 1841 Act, he did not seek that relief jointly with Kendig. See *Petition of Oliver Dubois Individually & As a Member of the Firm of Dubois & Kendig, In re Dubois*, No. 689 (E.D. La. Feb. 3, 1843). The Act permitted "partners in trade" to commence a joint bankruptcy case. Act of Aug. 19, 1841, § 14, 5 Stat. at 448. Finally, Walter Johnson mentions Bernard Kendig as an example of a slave trader "who had been legally bankrupted." JOHNSON, *supra* note 111, at 53.

113. Cf. BALLEISEN, *supra* note 96, at 234 n.3 ("Unless the specific context requires reference to technical distinctions in nineteenth-century American law, I . . . use 'bankrupt' and 'insolvent' interchangeably, just as nineteenth-century Americans did in their everyday speech.").

114. I refer to state laws that provided for the discharge of debt as "debt-forgiveness laws," rather than bankruptcy laws or insolvency laws, to avoid the debate during this time period over whether bankruptcy and insolvency were substantively distinct concepts. See KENNETH N. KLEE & WHITMAN L. HOLT, *BANKRUPTCY AND THE SUPREME COURT: 1801-2014*, at 95 n.680, 127 n.926 (2015).

The need to substantively distinguish federal bankruptcy relief from state debt-forgiveness laws rests on how the United States Supreme Court had construed the federal bankruptcy power to limit the scope of debt relief that states could extend to their citizens.<sup>115</sup> First and foremost, in 1819, the Court ruled in *Sturges v. Crowninshield* that, in the absence of federal bankruptcy legislation, states could enact debt-relief laws provided that they did not run afoul of the Constitution's bar precluding states from impairing contract obligations.<sup>116</sup> Such a law would impair a contractual obligation if the law purported to apply retroactively to obligations predating the law's enactment.<sup>117</sup> In 1827, the Court further ruled in *Ogden v. Saunders* that a state's power to enact laws discharging contractual debts did not extend to debts owed by its citizens to citizens from another state.<sup>118</sup> As such, state debt-forgiveness laws had limited temporal and territorial scope, providing debtors relief from intrastate, but not interstate, contractual debts that arose *after* the laws' enactment.<sup>119</sup> This was the doctrinal backdrop to the 1841 Act at the time it went into effect.<sup>120</sup>

Taking stock of this legal landscape is one of the keys to understanding the significance of the Act, which facially provided a

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115. The U.S. Constitution grants Congress the power "[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." U.S. CONST. art. I, § 8, cl. 4.

116. See 17 U.S. (4 Wheat.) 122, 208 (1819). Article I, Section 10 of the Constitution provides, in relevant part, that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. CONST. art. I, § 10.

117. The Court provided this interpretation of its *Sturges* holding eight years later in *Ogden v. Saunders*. See 25 U.S. (12 Wheat.) 213, 273 (1827) (Johnson, J.); see also *Boyle v. Zacharie*, 31 U.S. (6 Pet.) 348, 348 (1832) ("Whatever principles are established in [Justice Johnson's opinion in *Ogden*] are to be considered . . . the settled law of the court."). Accordingly, pursuant to the *Sturges* holding, state debt-relief laws could only apply prospectively—that is, to contractual obligations postdating the passage of such laws. See *Ogden*, 25 U.S. (12 Wheat.) at 284-85 (Johnson, J.).

118. See 25 U.S. (12 Wheat.) at 271-72 (Johnson, J.).

119. See *Brown v. Smart*, 145 U.S. 454, 457 (1892) (citing, among other decisions, *Sturges*, 17 U.S. (4 Wheat.) 122, and *Ogden*, 25 U.S. (12 Wheat.) 213).

120. See *Springer v. Foster*, 22 F. Cas. 1008, 1009 (Story, Circuit Justice, C.C.D. Mass. 1842) (No. 13,266). The 1841 Act took effect on February 1, 1842. Act of Aug. 19, 1841, ch. 9, § 17, 5 Stat. 440, 449 (providing that the 1841 Act "shall take effect *from and after* the first day of February next" (emphasis added)) (repealed 1843); see also *Hutchins v. Taylor*, 12 F. Cas. 1079, 1081 (Story, Circuit Justice, C.C.D.R.I. 1842) (No. 6953) (stating that the 1841 Act's effective date was February 1, 1842); cf. *Arnold v. United States*, 13 U.S. (9 Cranch) 104, 119-20 (1815) (Story, J.) (construing the statutory phrase "*from and after the passing of this act*" and stating that "it is a general rule that where the computation is to be made *from an act done*, the day on which the act is done is to be included" (quoting Act of July 1, 1812, ch. 112, § 1, 2 Stat. 768, 769)). But see *In re Chadwick*, 5 F. Cas. 398, 399 (W.D. Pa. 1842) (No. 2569) ("The rights which [the 1841 Act] creates, its disabilities, and obligations began on the 2d day of February[] 1841 . . .").



bankrupt “a full discharge from *all his debts*.”<sup>121</sup> In other words, through the federal bankruptcy power, Congress had accomplished what the states could not do on their own—that is, provide nearly complete financial relief through the discharge of intra- and interstate prebankruptcy debts.<sup>122</sup> Moreover, because the Constitution has never prohibited the *federal* government from impairing contract obligations,<sup>123</sup> Congress fashioned relief that temporally applied to all prebankruptcy debts,<sup>124</sup> even those that had arisen *prior to* the 1841 Act’s passage. At the time of enactment, of the thirteen states that permitted slavery (the slave states),<sup>125</sup> only four of them had some form of debt-forgiveness laws providing for the discharge of debt,<sup>126</sup> constitutionally limited, of course, to intrastate debts.<sup>127</sup> The other nine Southern states had no such relief whatsoever.<sup>128</sup> Accordingly, through its bankruptcy legislation, the federal government offered a massive economic benefit to grossly indebted slave traders, like Joseph Beard, enabling them to continue their businesses unhampered by their financial past. This Article now turns to an exploration of how capitalism, the domestic slave trade, and the 1841 Act coalesced to create federally funded slaving.

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121. Act of Aug. 19, 1841, § 4, 5 Stat. at 443 (emphasis added).

122. Cf. *Ogden*, 25 U.S. (12 Wheat.) at 274 (“Without that provision [i.e., the Constitution’s bankruptcy clause], no power would have existed that could extend a discharge beyond the limits of the State in which it was given, but with that provision it might be made co-extensive with the United States.”). This Article says “nearly complete relief” because, in a couple of limited circumstances, courts interpreted the 1841 Act to except certain debts from discharge. See *infra* notes 274-275 and accompanying text.

123. See U.S. CONST. art. I, § 9.

124. See Pardo, *supra* note 14, at 1088.

125. Those states were Alabama, Arkansas, Delaware, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Virginia. See 1 SLAVERY IN THE UNITED STATES: A SOCIAL, POLITICAL, AND HISTORICAL ENCYCLOPEDIA, at xxx (Junius P. Rodriguez ed., 2007) (setting forth a map identifying states that permitted and prohibited slavery). The District of Columbia also permitted slavery during this time. See *id.* at 41.

126. See *infra* notes 298-299 and accompanying text.

127. See, e.g., *Cook v. Moffat*, 46 U.S. (5 How.) 295, 307-09 (1847) (holding that Maryland’s debt-forgiveness law could not operate to discharge a debt owed under a contract made in New York between a Maryland citizen and a New York citizen); *Larrabee v. Talbot*, 5 Gill 426, 437 (Md. 1847) (same), *overruled in part by Pinckney v. Lanahan*, 62 Md. 447 (1884).

128. See *infra* note 297 and accompanying text.

### III. THE INTERSECTION OF CAPITALISM, THE DOMESTIC SLAVE TRADE, AND THE POLITICS OF BANKRUPTCY

In this Part, subpart A begins by exploring the interconnected strands of capitalism, the domestic slave trade, and financial failure during the antebellum period. Subpart B then recounts the partisan politics surrounding the passage of the 1841 Act: first, by examining the competing economic agendas of the Whig and Democratic Parties and, second, by tracing how the parties' respective ideological positions became infused in the three issues at the core of the debate over the 1841 Act—namely the role of a federal bankruptcy system within the national economy, federalism concerns, and the nature of relief that bankruptcy law should provide. Finally, subpart C analyzes how relief under the 1841 Act opened the door to federally funded slaving.

#### A. *Capitalism, the Domestic Slave Trade, and Financial Failure*

During the antebellum period, the U.S. economy became increasingly commercialized and integrated. In the congressional debates leading up to the enactment of the 1841 Act, Senator Nathan F. Dixon, a Whig from Rhode Island,<sup>129</sup> commented on this transformation, stating as follows: “But the relations of business in this country . . . are greatly changed and enlarged. The modern facilities of intercourse have brought all the States together into a common market. The North and South are in the constant interchange of their products and merchandise.”<sup>130</sup> In his remarks, Senator Dixon hinted at the advances “in transportation, communications, and industrialization . . . that modernized business practices, heightened consumerism, and made commercial activity a greater part of people’s daily lives.”<sup>131</sup>

Importantly, the domestic slave trade featured prominently in this “market revolution,” with a great deal of that commerce affecting the South, such as by “encourag[ing] market activity in all [of its] subregions . . . and mak[ing] speculation in commodities a greater part of people’s everyday lives.”<sup>132</sup> The trade’s commercial effects also

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129. See MICHAEL F. HOLT, *THE RISE AND FALL OF THE AMERICAN WHIG PARTY: JACKSONIAN POLITICS AND THE ONSET OF THE CIVIL WAR* 638 (1999).

130. CONG. GLOBE, 26th Cong., 1st Sess. app. at 833 (1840).

131. DEYLE, *supra* note 3, at 6; see also BALLEISEN, *supra* note 96, at 5 (“[I]t is clear that during the first several decades of the nineteenth century, the United States underwent a dramatic expansion in market-based production, distribution, and consumption.”).

132. Steven Deyle, *Rethinking the Slave Trade: Slave Traders and the Market Revolution in the South*, in *THE OLD SOUTH’S MODERN WORLDS: SLAVERY, REGION, AND NATION IN THE AGE OF PROGRESS* 104, 105 (L. Diane Barnes et al. eds., 2011).

extended beyond the region, reaching both northern and European financial markets.<sup>133</sup> Given the trade's national and international reach, it has been suggested that "ventures that financed, traded, and transported enslaved people chart the progress of nineteenth-century American capitalism more strikingly than any other enterprise."<sup>134</sup> In other words, our understanding of the evolution of business enterprise in the antebellum United States must account for the profound role that slaving had on the national economy.<sup>135</sup>

To fully grasp slavery's capitalism, we must recognize that "[t]he business of slavery benefited largely from a federal framework and policies designed to give enslavers advantages."<sup>136</sup> Simply put, the domestic slave trade would not have been as lucrative without the support of the U.S. government. Consider four examples. First, federal tariffs on imported sugar made Louisiana-produced sugar more competitive in the market place, thus encouraging sugar planting, a business that overwhelmingly depended on enslaved labor.<sup>137</sup> The atrocious working conditions that turned sugar plantations into killing fields required plantation owners to maintain their workforce "by resupply rather than reproduction,"<sup>138</sup> thereby bolstering demand in the New Orleans slave market,<sup>139</sup> the nation's largest.<sup>140</sup> Second, the government's financial support for a variety of infrastructure projects indirectly contributed to the profitability of slave trading by reducing the transportation costs associated with the movement of enslaved individuals, whether by land or water.<sup>141</sup> Third, the slave trade

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133. See, e.g., SCHERMERHORN, *supra* note 12, at 22, 32, 63.

134. *Id.* at 1.

135. *Id.* at 3-4.

136. *Id.* at 240.

137. *Id.* at 72-73, 91, 100.

138. *Id.* at 101; see also MICHAEL TADMAN, *SPECULATORS AND SLAVES: MASTERS, TRADERS, AND SLAVES IN THE OLD SOUTH* 69 (1989) ("The work regime of the sugar crop seems to have produced . . . high mortality among adult workers."). For a discussion of the "cold-blooded" attitude of sugar plantation owners toward their enslaved workers, see RICHARD FOLLETT, *THE SUGAR MASTERS: PLANTERS AND SLAVES IN LOUISIANA'S CANE WORLD, 1820-1860*, at 8 (2005). For a description of the brutal work forced upon the enslaved who toiled on sugar plantations, see TADMAN, *supra*, at 65.

139. See TADMAN, *supra* note 138, at 64-65.

140. See *supra* note 25 and accompanying text.

141. See SCHERMERHORN, *supra* note 12, at 6, 20, 217; *cf. id.* at 40 (noting that, for Austin Woolfolk, a Baltimore slave trader, "[h]is enterprise was self-financed, and survival depended on lowering overhead and *transportation costs*" (emphasis added)). For an example of federal legislation creating post roads through the antebellum South, see Act of Apr. 14, 1842, ch. 23, 5 Stat. 473.

flourished partly as a result of federal banking policies.<sup>142</sup> Fourth, federal expansion that added slave territory to the nation, such as the annexation of Texas, generated a greater demand for slaves, which inured to the benefit of slave traders, among others.<sup>143</sup> These are just some of the numerous governmental measures demonstrating that “[p]roslavery was the default setting in the federal policy-making machinery.”<sup>144</sup>

Notwithstanding the extent of the federal government’s indirect financial support for the domestic slave trade, the possibility of business failure loomed large for this sector of the economy, as for others, given the ubiquity and nature of commercial debt obligations during this time period. As described by Edward Balleisen, “The expansion of America’s market economy depended crucially on . . . ‘the credit system’—an intricate tangle of obligations that extended throughout the country, financing production, distribution, and consumption of the nation’s goods and services.”<sup>145</sup> Because the scarcity of specie made financial instruments evidencing payment obligations (e.g., individuals’ promissory notes, banknotes, bills of exchange) the dominant form of payment,<sup>146</sup> “almost all business owners found themselves entangled in complex webs of credit, at once debtors to suppliers and creditors to customers.”<sup>147</sup> Like so many other antebellum entrepreneurs, those in the slaving business inevitably found themselves entrenched in the nation’s credit networks.<sup>148</sup> Accordingly, so far as marketplace success went, the commercial landscape placed a particular premium on businessmen’s skill at making reliable assessments of their counterparties’ repayment ability,<sup>149</sup> slave traders included.<sup>150</sup> Further complicating matters, the

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142. SCHERMERHORN, *supra* note 12, at 242.

143. See DEYLE, *supra* note 3, at 69.

144. SCHERMERHORN, *supra* note 12, at 5.

145. BALLEISEN, *supra* note 96, at 27; *cf.* SCHERMERHORN, *supra* note 12, at 1 (“[Capitalism] was a highly structured system of trade characterized by debt obligations that bound borrowers’ ambitions, expectations, and imaginations to future repayment. Debt instruments represented those obligations, which were durable, mobile, and ultimately transferable, the basis of paper money.”).

146. See BALLEISEN, *supra* note 96, at 27; SCHERMERHORN, *supra* note 12, at 25.

147. BALLEISEN, *supra* note 96, at 2.

148. See DEYLE, *supra* note 3, at 129; Rothman, *supra* note 43, at 130-31.

149. See SCHERMERHORN, *supra* note 12, at 25; *cf.* BRUCE H. MANN, REPUBLIC OF DEBTORS: BANKRUPTCY IN THE AGE OF AMERICAN INDEPENDENCE 7 (2002) (“[T]he decision to extend or withhold credit rested on personal ties or experience, or, absent those, on second- or third-hand information reported by someone whom the creditor knew . . .”).

150. See SCHERMERHORN, *supra* note 12, at 24-25, 45.

practices of discounting and endorsing financial instruments “multiplied the interlinked strands within the credit system,”<sup>151</sup> with the result that “[e]conomic hardships anywhere along the chain of credit could quickly migrate up and down the chain.”<sup>152</sup> This domino effect of financial failure “democratized the specter of insolvency, bringing its anxieties and perplexities to a greatly expanded population of market-oriented proprietors,”<sup>153</sup> among them slave traders, whose “business was filled with risks, any one of which could wipe out a season’s profits, lead to bankruptcy, or worse.”<sup>154</sup>

Thus, when investigating the meaning of American capitalism through the lens of the domestic slave trade, folding financial failure into the mix provides a critical ingredient for producing a more layered and complex understanding of the trade’s role in antebellum society.<sup>155</sup> Given that “[t]he brutal fact of ever-present business failure demanded the creation of institutions to cope with it,”<sup>156</sup> the question arises whether the federal government took any steps to alleviate the commercial pains that arose from the excesses of capitalism in the expanding economy. It did, albeit for a narrow window of time, through the 1841 Act. This Part now turns to a discussion of the politics surrounding that legislation, exploring how they constituted part of the

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151. BALLEISEN, *supra* note 96, at 31; *cf.* DEYLE, *supra* note 3, at 129 (“At a time when the country’s main form of currency consisted of discounted bank notes, [slave traders] had to keep track of the comparative value of the various drafts, in order to deal in those with the greatest acceptability.”). For further discussion of antebellum credit transactions involving discounting and endorsing, see, for example, BALLEISEN, *supra* note 96, at 30-31; MANN, *supra* note 149, at 13-16.

152. BALLEISEN, *supra* note 96, at 32; *cf.* MANN, *supra* note 149, at 13 (“Assignability kept debtors’ promises circulating in the marketplace, making it difficult for debtors to know when they would return for repayment or from what quarter they would come. All that was certain was that reports of a debtor’s distress would bring all of his promises back at once.”).

153. BALLEISEN, *supra* note 96, at 5.

154. DEYLE, *supra* note 3, at 121.

155. *Cf.* BALLEISEN, *supra* note 96, at 19 (noting that “one of [American capitalism’s] most enduring features [was] the widespread inability of individuals and firms to pay their debts” and suggesting that analyzing American capitalism from “[s]uch a perspective enriches our understanding of how Americans adjusted economically, socially, and culturally to the advent of a thoroughly integrated market society”); PETER J. COLEMAN, DEBTORS AND CREDITORS IN AMERICA: INSOLVENCY, IMPRISONMENT FOR DEBT, AND BANKRUPTCY, 1607-1900, at 248 (Beard Books 1999) (1974) (“[A]s American life in general and debtor-creditor relations in particular became inexorably commercialized, depersonalized, and channeled through the corporate, legalistic, and institutionalized structure of commercial finance, the need for bankruptcy systems became imperative. Thus the history of bankruptcy provides a perspective on a much larger and much more profound matter—the evolution of the role of credit in America.”).

156. BALLEISEN, *supra* note 96, at 21.

maelstrom of competing visions for the national economy. This analysis will serve as an essential foundation for reconsidering the nature and significance of the federal government's involvement in the domestic slave trade.

### *B. The Politics of the 1841 Act*

The politics that were born in the crucible of the Panic of 1837 largely shaped the legislative debates culminating in the passage of the 1841 Act. First and foremost, the economic climate resulting from that crisis did more than anything else to drive political dynamics in the years that followed.<sup>157</sup> Relatedly, as dire financial conditions persisted and commercial failure became widespread, affected constituencies urged Congress to promulgate bankruptcy legislation that would address the problem.<sup>158</sup> This subpart begins by describing how the Panic of 1837 influenced the Whigs' and Democrats' party platforms on the economy, with each party adopting a diametrically opposed stance on the role of the federal government in economic recovery. The subpart then explores how the parties' differing views on this broad issue played out in the specific debate over bankruptcy legislation and concludes with a postmortem account of the 1841 Act's political demise.

#### 1. The Economic Agendas of the Whig and Democratic Parties

The financial shockwave released by the Panic of 1837 forced the Whigs and Democrats to articulate to the American electorate what the appropriate level of federal intervention should be during an economic crisis and what measures should be implemented commensurate with that vision.<sup>159</sup> The ideological gulf between the parties on these questions could not have been any greater.<sup>160</sup>

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157. See HOLT, *supra* note 129, at 61.

158. See, e.g., BALLEISEN, *supra* note 96, at 5; CHARLES WARREN, BANKRUPTCY IN UNITED STATES HISTORY 52 (1935). While it has been claimed that the economic conditions following the Panic of 1837 "made bankruptcy the number one concern of the Congress," PETER CHARLES HOFFER ET AL., THE FEDERAL COURTS: AN ESSENTIAL HISTORY 113 (2016), that claim is overstated. To be sure, bankruptcy legislation ranked high on the Whigs' political agenda following the 1840 election, but it was not the most important item on that agenda. See *infra* notes 210-215.

159. See HOLT, *supra* note 129, at 64.

160. In describing the economic agendas of the Whig and Democratic Parties, this Article does not mean to suggest that every congressional member adhered to his party's platform. Politics fracture not only across party lines, but also within them. See, e.g., 1 JOHN ASHWORTH, SLAVERY, CAPITALISM, AND POLITICS IN THE ANTEBELLUM REPUBLIC 364 (1995)

President Martin Van Buren, leader of the Democratic Party, championed a federal anti-growth policy that would curtail the economy and that would not extend relief to those in financial distress.<sup>161</sup> The Democrats' position did not even call for state or local governments to adopt revitalization measures.<sup>162</sup>

The Whigs, on the other hand, demanded a muscular response by the federal government to jump-start the economy.<sup>163</sup> Moreover, the Whig Party took it as an article of faith that such a response encompassed federal relief that would help those knocked down by the Panic get back on their feet.<sup>164</sup> These ideological beliefs animated the legislative path to economic recovery charted by the Whigs.<sup>165</sup> The party's leaders pursued a legislative program that would reinforce and grow the nation's commercial and manufacturing sectors, which they anticipated would have positive spillover effects throughout the rest of the economy.<sup>166</sup> That program included a variety of measures tailored to these ends, including implementation of a federal bankruptcy system, which the Whig leaders viewed as "a necessary aid to a fully developed and prosperous America."<sup>167</sup>

Just as fundamental differences existed in the respective economic philosophies of the Democrats and Whigs, so too did such differences exist in their respective views of how the federal government should wield its bankruptcy power under the U.S. Constitution. As discussed below, these differences rose to the fore in the debates that led to both the enactment and repeal of the 1841 Act.

## 2. The Politics of the 1841 Act's Enactment and Repeal

Despite the fact that the nation's first experiment with a federal bankruptcy system had been quite limited (i.e., repeal of the 1800 Act

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("Neither the Democratic nor the Whig party was monolithic . . ."). And as we shall see, this occurred with respect to the 1841 Act. See discussion *infra* Part III.B.2.

161. See HOLT, *supra* note 129, at 66.

162. See *id.* at 67.

163. See *id.* at 67, 69.

164. See *id.* at 67.

165. See *id.* at 69.

166. See David Beesley, *The Politics of Bankruptcy in the United States, 1837-1845*, at 154 (Aug. 1968) (unpublished Ph.D. dissertation, University of Utah) (on file with author); cf. 1 ASHWORTH, *supra* note 160, at 319 ("The Whigs gave an almost wholehearted welcome to commercial development; they applauded the actions of merchants; they hastened to the defense of banks and bankers.").

167. Beesley, *supra* note 166, at 154.

roughly three years after its enactment),<sup>168</sup> debates over the matter continued in the ensuing decades.<sup>169</sup> Those debates began to crescendo in 1837, ultimately reaching a fevered pitch in the early 1840s.<sup>170</sup> David Beesley has succinctly captured the crux of the debates' contours and what precisely was at stake: "The struggle over the enactment of bankruptcy legislation was not a simple sectional or party issue, although it at times became both. It was essentially a struggle over the use of the power of the federal government to aid one element of the economy over another."<sup>171</sup> Accordingly, "two different approaches to the use of the national bankruptcy power" emerged from these debates.<sup>172</sup>

The question of how Congress should operationalize the Constitution's bankruptcy clause did not lend itself to a readily apparent answer.<sup>173</sup> Instead, members of Congress faced an inordinately complex set of considerations in figuring out what vision of the federal bankruptcy power they should support.<sup>174</sup> Beesley's summary of the congressional debates in the 1830s and 1840s points to a process in which the ideology of bankruptcy oriented itself along several dimensions: (1) the role of a federal bankruptcy system within the national economy, (2) federalism concerns, and (3) the nature of relief that bankruptcy law should provide.<sup>175</sup> As a result of so many competing considerations, ideological preferences fractionated both across and within party lines.<sup>176</sup> Notwithstanding the lack of a unified party front on these issues, partisan politics did significantly influence

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168. See *supra* note 109 and accompanying text.

169. See generally WARREN, *supra* note 158, at 23-45 (analyzing congressional debates during the 1810s and 1820s over federal bankruptcy legislation); Beesley, *supra* note 166, at 13-43 (same).

170. See generally WARREN, *supra* note 158, at 52-85 (analyzing congressional debates during the 1830s and 1840s over federal bankruptcy legislation); Beesley, *supra* note 166, at 44-146 (same).

171. Beesley, *supra* note 166, at 14 (footnote omitted).

172. *Id.* at 156.

173. See COLEMAN, *supra* note 155, at 274; DAVID A. SKEEL JR., DEBT'S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA 31 (2001).

174. See SKEEL, *supra* note 173, at 28.

175. See Beesley, *supra* note 166, at 156.

176. Cf. SKEEL, *supra* note 173, at 30 ("[T]he multiplicity of views contributed to Congress's inability to reach a stable outcome on federal bankruptcy legislation throughout the nineteenth century."); Beesley, *supra* note 166, at vi (noting that "the contrasting attempts to enact bankruptcy legislation [constitute] evidence of a continuing struggle between many elements of the population"). For the argument that the 1841 Act can be viewed as the product of lawmakers' unstable voting preferences on the variety of options presented to them, see SKEEL, *supra* note 173, at 28-32.



the direction of the debates that resulted in the 1841 Act.<sup>177</sup> Accordingly, this Article frames much of the discussion that follows in that light.

First, what were the competing visions for a federal bankruptcy system within the national economy? Recall that, in the wake of the Panic of 1837, the Democrats adopted an anti-growth economic platform and the Whigs adopted a pro-growth one.<sup>178</sup> The partisan politics of federal bankruptcy legislation represented a specific extension of this broader debate, with the Democrats viewing the federal bankruptcy power as a tool to curb economic growth and the Whigs taking the opposite view.<sup>179</sup> At a special session of Congress in September 1837, President Van Buren advocated for bankruptcy legislation that would be limited to involuntary relief against banks—that is, the purpose of the legislation would be to create a bankruptcy resolution mechanism for failing banks that could be initiated only at the behest of the banks' creditors.<sup>180</sup> While this suggestion never materialized into a bill,<sup>181</sup> the debates surrounding the proposal signified radical Democrats' commitment to “using national power *negatively* in order to dismantle special privilege.”<sup>182</sup> In stark contrast, the Whigs envisioned “creating a bankruptcy system which would

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177. See F. REGIS NOEL, A HISTORY OF THE BANKRUPTCY LAW 143 (William S. Hein & Co., Inc. 2003) (1919); WARREN, *supra* note 158, at 72; Charles Jordan Tabb, *The Historical Evolution of the Bankruptcy Discharge*, 65 AM. BANKR. L.J. 325, 350 (1991); cf. SKEEL, *supra* note 173, at 23-24 (“A common theme running through the bankruptcy debates was party politics. Throughout the nineteenth century, Democrats and their predecessors often resisted federal bankruptcy legislation, whereas Republicans and their predecessors were its most fervent advocates.”); Erik Berglöf & Howard Rosenthal, *The Political Economy of American Bankruptcy: The Evidence from Roll Call Voting, 1800-1978*, at 3 (revised Oct. 12, 2000) (unpublished manuscript) (on file with author) (“We find that, throughout the nineteenth century, the main votes on bankruptcy policy always had an important ideological component. That is, the long-run ideological positions of the legislators account for most of the variation in the voting patterns.”).

178. See discussion *supra* Part III.B.1.

179. Cf. SKEEL, *supra* note 173, at 26 (“In addition to geography, lawmakers' views on bankruptcy also tended to divide along party lines. The Federalists (later Whigs, and then Republicans) promoted bankruptcy as essential to the nation's commercial development. Jeffersonian Republicans (later Democratic Republicans, and then Democrats), on the other hand, sought a more agrarian destiny and insisted that bankruptcy legislation would encourage destructive speculation by traders.”).

180. See WARREN, *supra* note 158, at 56-57; Beesley, *supra* note 166, at 44, 46-47, 147.

181. See WARREN, *supra* note 158, at 57, 59-60; Beesley, *supra* note 166, at 78.

182. Beesley, *supra* note 166, at 148 (emphasis added); cf. BALLEISEN, *supra* note 96, at 20 (“Insolvency, moreover, often sparked anger and resentment about the injustices spawned by an integrated market economy, emotions that powerfully shaped the rhetoric and agenda of the antebellum Democratic Party.”).

fulfill long held hopes that the national bankruptcy power would be used to help bring some regularity and a measure of relief to the instable American economy.”<sup>183</sup> These contradictory stances informed how lawmakers approached concerns over federalism and the nature of relief, which were triggered by the substance of the Whig-sponsored legislation that ultimately became the 1841 Act.<sup>184</sup>

Second, what federalism concerns were triggered by the Whig’s proposal to implement a federal bankruptcy system to spur the growth of the national economy? The debate here centered on answering who, as between the federal government and the states, was best suited to regulate matters regarding debt relief. Recall that the Supreme Court had ruled in *Sturges* that the states had the authority to enact debt-relief measures in the absence of federal bankruptcy legislation, so long as such legislation did not permit the retrospective discharge of debts.<sup>185</sup> Significantly, the Court reaffirmed this principle in *Ogden*.<sup>186</sup> Between the time that Congress repealed the 1800 Act and passed the 1841 Act, a variety of legislative approaches to debt relief proliferated across the states, running the gamut from minimal relief to robust relief.<sup>187</sup> This nonuniformity reflected the fact that “[e]ach . . . state faced distinctive problems in the relationships between its lenders and borrowers,” with

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183. Beesley, *supra* note 166, at 12.

184. To be clear, on the bankruptcy question, there were Democrats who embraced the Whig position and Whigs who embraced the Democratic position. For example, U.S. Senator Garrett Wall, a New Jersey Democrat, in proposing a bankruptcy bill that was similar in key respects to various Whig bankruptcy bills, *see* WARREN, *supra* note 158, at 60, stated that his “object in submitting the substitute [was] not to prevent the passage of a uniform law upon the subject of bankruptcy, but to promote it, by giving it a constitutional character and making it uniform,” CONG. GLOBE, 26th Cong., 1st Sess. app. at 461 (1840). In defending his proposal, Senator Wall unmistakably signaled his support for the Whig policy of using the federal bankruptcy power to expand economic growth, noting that it would “promote[] the productive energies of the country by emancipating the honest debtor from the hopelessness of that most depressing, demoralizing, and paralyzing bondage resulting from the failure attending the disastrous exercise of those energies.” *Id.* at 462. On the other hand, U.S. Representative Henry Wise, a Virginia Whig and one of the party’s few remaining states’ rights adherents, *see* HOLT, *supra* note 129, at 128, when commenting on the Senate bill that would ultimately be enacted as the 1841 Act, *see* CONG. GLOBE, 27th Cong., 1st Sess. 333 (1841), stated that “[a] bankruptcy bill was not suited to the business and habits of an agricultural people,” *id.* at 334, thus echoing the anti-growth vision of the Democratic Party, *see supra* note 179; *cf.* HOLT, *supra* note 129, at 68 (“Democrats opposed . . . Whig attempts to relieve ruined businessmen through a national bankruptcy law.”).

185. *See supra* notes 116-117 and accompanying text.

186. *See* 25 U.S. (12 Wheat.) 213, 271-72 (1827) (Johnson, J.).

187. *See generally* COLEMAN, *supra* note 155, at 37-246 (discussing debtor-creditor laws in New England and the Middle Atlantic and South Atlantic regions during, among other time periods, the antebellum era).

the result that “each [state] developed unique legal principles and procedures for dealing with them.”<sup>188</sup> The federal bankruptcy debate therefore required lawmakers to make normative judgments about whether a national uniform bankruptcy system was to supplant the then-extant “pluralistic institutional framework,” which had “helped shape regional economic and social affairs” and had additionally “contributed to or impeded the emerging business and economic system.”<sup>189</sup>

On this issue, the nation’s sectional divide between the North and the South loomed large: “As the [two geographical regions] drew further and further apart on the slavery question in the antebellum period, the desire to preserve the distinctive concepts of southern debtor-creditor institutions intensified. Southerners resisted proposals to subordinate valued local differences to a uniform national system.”<sup>190</sup> In other words, much of the South resisted federal bankruptcy legislation on the grounds that the region’s prevailing approach to debt relief was the product of fine-tuned legislative approaches that sensitively addressed the contextual needs of its populace. National legislation that would make Southern states conform to a federal vision of debt relief was tantamount to jettisoning a scalpel for a hatchet, one which would end up butchering the South’s narrowly tailored schemes for alleviating financial distress.<sup>191</sup> Furthermore, the fact that the Supreme Court had reaffirmed the constitutional legitimacy of state debt-relief measures in *Ogden* gave states’ rights proponents added ammunition to argue that the federal government need not involve itself in the bankruptcy sphere.<sup>192</sup> Along these lines, Senator John C. Calhoun, the zealous states’ rights Democrat from South Carolina, exhorted that “State Legislatures are just as competent to discharge the debt, under their insolvent laws, or, in the absence of our legislation, under their bankrupt laws, as Congress

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188. *Id.* at 36.

189. *Id.*; *cf.* SKEEL, *supra* note 173, at 23 (“Bankruptcy pitted farm interests and states’ rights advocates against those who favored a more national economy, and it was repeatedly proposed as a remedy for economic depression.”).

190. COLEMAN, *supra* note 155, at 245; *cf.* Berglöf & Rosenthal, *supra* note 177, at 37 (“The 27th House votes on bankruptcy reveal that party and region were both significantly related to support for a national bankruptcy law. Northern Whigs represent the core support for legislation, Southern Democrats the core of the opposition.”).

191. *See* COLEMAN, *supra* note 155, at 244; *cf.* SKEEL, *supra* note 173, at 26 (“Not just concern for the repayment of debts, but a belief that local debtors were better served by state regulation of insolvency fueled the ongoing opposition to federal bankruptcy legislation.”).

192. *See* WARREN, *supra* note 158, at 51.

itself.”<sup>193</sup> Thus, for Calhoun, the proposed federal bankruptcy legislation, if enacted, would constitute congressional overreach—specifically, by “enlarging the power of th[e] Government, and contracting those of the States, in relation to the delicate . . . and all-pervading relation of debtor and creditor.”<sup>194</sup>

Of course, such arguments rang hollow to members of Congress who represented northern commercial interests and viewed federal bankruptcy law as the tool for implementing the uniform debt relief that would serve as a cornerstone for a strong national economy.<sup>195</sup> The conditions of the time irrefutably mandated adopting the broad-based approach disparaged by states’ rights adherents. The tenor of this argument reverberated in the remarks by Representative William P. Fessenden, a Maine Whig,<sup>196</sup> when he offered a full-throated defense of the robust exercise of the federal bankruptcy power embodied in the bill that would become the 1841 Act: “I wish to see that Constitution what its framers designed it to be—powerful for good—effective, energetic, broad, and deep. Those who would narrow it down to the smallest possible dimensions, would, if successful, destroy all its vitality.”<sup>197</sup> According to him, only by expansively wielding the federal bankruptcy power could the nation be rid of “the evils arising from the perplexed and uncertain legislation of the States upon this subject.”<sup>198</sup>

Finally, how did the debate over the nature of federal bankruptcy relief unfold? This, perhaps, constituted one of the most contentious issues at the heart of the debates culminating in the 1841 Act. Up to that point in time, the nation’s only experience with federal bankruptcy law, the 1800 Act, had solely involved involuntary relief—that is, creditors under that legal regime determined if and when bankruptcy proceedings would be instituted against a debtor.<sup>199</sup> All of that changed with the various bills leading up to the 1841 Act, starting with a bill

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193. CONG. GLOBE, 26th Cong., 1st Sess. app. at 693 (1840).

194. *Id.*

195. See HOFFER ET AL., *supra* note 158, at 113; SKEEL, *supra* note 173, at 26; Beesley, *supra* note 166, at 153-54.

196. See HOLT, *supra* note 129, at 341.

197. CONG. GLOBE, 27th Cong., 1st Sess. app. at 470-71 (1841).

198. *Id.* app. at 471.

199. See Act of Apr. 4, 1800, ch. 19, §§ 1-2, 2 Stat. 19, 21-22 (repealed 1803). Some states, however, had experimented with the concept of voluntary debt relief (i.e., debtor-initiated). See, e.g., COLEMAN, *supra* note 155, at 50 (noting that, under Massachusetts’s debt-forgiveness law of 1838, “[b]oth debtors and creditors received a right of action”); Pardo, *supra* note 14, at 1101 (noting that, under Louisiana’s debt-forgiveness law of 1825, relief “could be voluntary or involuntary”).

introduced by Senator Daniel Webster from Massachusetts, one of the Whig Party leaders,<sup>200</sup> which provided for voluntary relief (i.e., debtor-initiated) for all debtors and for involuntary relief only against traders.<sup>201</sup> Representative Joseph Trumbull, a Connecticut Whig, when commenting on a subsequent Senate bill, which would become the 1841 Act and which incorporated voluntary relief, drew attention to the then-radical nature of the concept.<sup>202</sup>

What would Chief Justice Ellsworth have said to a man who talked to him of ‘voluntary bankruptcy?’ Who ever heard of such language before? . . . Under this law, the discharging of the debtor was the principal thing aimed at, and the surrender of his property was merely an incident. In former bankrupt laws, the object was the surrender of the property, and the discharge of the debtor was the incident.<sup>203</sup>

Support for this type of relief came mostly from the Whig Party,<sup>204</sup> yet another reminder of the meaningful, though not exclusive,<sup>205</sup> role of partisan politics in the bankruptcy debates.

Having considered the three primary dimensions across which the bankruptcy debates played out—that is, the role of a federal bankruptcy system within the national economy, federalism concerns, and the nature of bankruptcy relief—our focus shifts to the instrumentalist considerations that led to passage of the 1841 Act, followed by a discussion of political impetus for the Act’s repeal in 1843. The economic fallout from the Panic of 1837 left many financially ruined individuals clamoring for federal legislation that would provide them with debt relief.<sup>206</sup> The Whig Party seized this opportunity to offer itself to the American electorate as the purveyor of economic salvation, making a federal bankruptcy system one of the party’s key campaign

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200. See HOLT, *supra* note 129, at 21; Beesley, *supra* note 166, at 153.

201. See WARREN, *supra* note 158, at 60; Beesley, *supra* note 166, at 101. In the 1820s, Congress had contemplated proposed bankruptcy legislation implementing creditor-initiated relief conditioned on a debtor’s assent. See WARREN, *supra* note 158, at 39-43.

202. See *Cont’l Ill. Nat’l Bank & Tr. Co. v. Chi., Rock Island & Pac. Ry. Co.*, 294 U.S. 648, 670 (1935) (“But the act of 1841 took what then must have been regarded as a radical step forward by conferring upon the debtor the right by voluntary petition to surrender his property, with some exceptions, and relieve himself of all future liability in respect of past debts.”).

203. CONG. GLOBE, 27th Cong., 1st Sess. at 324.

204. See WARREN, *supra* note 158, at 63.

205. See 2 CONG. REC. 1181 (1874) (statement of Sen. Thurman) (discussing history of 1841 Act and noting that “on the great question whether there could be such a thing as voluntary bankruptcy there was the greatest division of opinion among the lawyers of the country, *without regard to party*” (emphasis added)).

206. See *supra* note 158 and accompanying text.

promises during the elections of 1840.<sup>207</sup> The Whigs emerged from those elections with unified government at the federal level.<sup>208</sup> In the end, voters had chosen “the Whig call for positive governmental intervention to restore prosperity” and, in doing so, had rebuked “[t]he Democratic message that people should not look to their government for aid.”<sup>209</sup>

With the balance of power tilted in their favor and looking to make good on their campaign promises, the Whigs turned their attention to passing legislation to alleviate the nation’s financial woes.<sup>210</sup> Their economic agenda at the federal level consisted of three major initiatives: a national bank, protective tariffs, and a program for distributing federal land revenues.<sup>211</sup> At a special session of Congress called at the end of May 1841, bankruptcy legislation entered the picture once it became clear that such legislation would be the critical component of a logrolling strategy to corral sufficient Whig votes for passage of each of the three major initiatives.<sup>212</sup> The strategy proved successful insofar as the 1841 Act became law on August 19, 1841,<sup>213</sup> promptly followed by passage of the program for distributing land revenues.<sup>214</sup> Accordingly, the nation’s second experiment with a federal bankruptcy system resulted from a political horse trade.<sup>215</sup>

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207. See SKEEL, *supra* note 173, at 31; WARREN, *supra* note 158, at 69.

208. See HOLT, *supra* note 129, at 113. Several months before the presidential election of 1840, Senate Whigs introduced a bankruptcy bill centered on voluntary bankruptcy relief even though the bill appeared destined to fail in the face of stiff Democratic opposition. See Beesley, *supra* note 166, at 103. The bill entailed a strategic political calculus by the Whig Party to greatly expand its electoral base by sending a strong signal of support to hundreds of thousands of financially distressed voters. See *id.* at 103-04; see also WARREN, *supra* note 158, at 69 (stating that Democrats “claimed that the political influence of the 400,000 bankrupts in the country may have turned the scale in five States having 89 electoral votes”). Despite passing the Senate by two votes, the Whig bill died in the House, in which the Democrats then had the majority. See Beesley, *supra* note 166, at 104.

209. HOLT, *supra* note 129, at 112.

210. *Cf. id.* at 121 (“Just as the Whig party had attracted enough new voters to win the elections of 1840 by advocating policies different from those of the Democrats, they would have to implement different policies in order to retain that voting support.”).

211. See *id.* at 129; WARREN, *supra* note 158, at 77.

212. See HOLT, *supra* note 129, at 129; SKEEL, *supra* note 173, at 31; WARREN, *supra* note 158, at 76-79; Beesley, *supra* note 166, at 145; Berglöf & Rosenthal, *supra* note 177, at 32; *cf.* CONG. GLOBE, 27th Cong., 1st Sess. 349 (1841) (statement of Sen. Allen) (“It was by *log-rolling* that these bills [i.e., the bankruptcy bill and the land revenue bill] were to be passed . . .”).

213. Act of Aug. 19, 1841, ch. 9, 5 Stat. 440 (repealed 1843).

214. Act of Sept. 4, 1841, ch. 16, 5 Stat. 453 (repealed 1891).

215. For a sample of the Democrats’ outrage over the vote trading that occurred with respect to the bankruptcy bill and the distribution bill, see WARREN, *supra* note 158, at 77-79.

Because the 1841 Act did not become operative until February 1842,<sup>216</sup> Democrats immediately had an opening to continue attacking the legislation, pushing for its repeal before debtors had an opportunity to avail themselves of the relief offered by the law. Although those initial efforts narrowly failed,<sup>217</sup> the drumbeat of opposition continued to grow once the Act went into effect. In an entirely premature assessment of the law after it had been in operation less than two months, the *United States Magazine and Democratic Review*, the “semiofficial journal” of the Democrats,<sup>218</sup> described the 1841 Act as “an unjust and demoralizing law . . . created, by party clamor, for the benefit of . . . that class of desperate and dangerous speculators, whose hazardous operations jeopard[ize] the welfare of the whole community, and the disastrous results of which, defying all settlement, have recourse to indiscriminating extinguishment.”<sup>219</sup> Along similar lines, Democrat James K. Polk, during his hiatus from politics prior to being elected President in 1844, wrote to Senator Calhoun at the end of February 1842,<sup>220</sup> decrying the 1841 Act as “not having a single advocate, except those who expect to take advantage of it to be freed from their debts, and a few reckless political leaders.”<sup>221</sup>

In these critiques, we see the dominant counternarrative marshaled to undermine popular support for the 1841 Act—namely, the story of undeserving debtors getting a free pass from their irresponsible financial behavior, all thanks to the Whig’s radical experiment with voluntary bankruptcy relief.<sup>222</sup> As this message took hold and the Act’s popularity eroded, Whigs began to defect to the Democratic opposition for sheer political survival.<sup>223</sup> When the House voted to repeal the Act on January 17, 1843, the bill passed 140 votes in favor and 71 votes

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For a discussion of the details and politics of the distribution bill, see HOLT, *supra* note 129, at 135-36.

216. See Act of Aug. 19, 1841, § 17, 5 Stat. at 449.

217. See Berglöf & Rosenthal, *supra* note 177, at 35-36.

218. JEAN H. BAKER, AFFAIRS OF PARTY: THE POLITICAL CULTURE OF NORTHERN DEMOCRATS IN THE MID-NINETEENTH CENTURY 143 (Fordham Univ. Press 1998) (1983).

219. *Monthly Financial and Commercial Article*, 10 U.S. MAG. & DEMOCRATIC REV. 304, 309 (1842).

220. See 2 ANNUAL REPORT OF THE AMERICAN HISTORICAL ASSOCIATION FOR THE YEAR 1899, at 844 & n.1 (J. Franklin Jameson ed., 1900).

221. *Id.* at 845.

222. See BALLEISEN, *supra* note 96, at 191.

223. See HOLT, *supra* note 129, at 135.

opposed,<sup>224</sup> with Whigs constituting 40 of the “yes” votes.<sup>225</sup> The *New-York Daily Tribune*’s scathing commentary on the vote mocked those congressmen who so readily had swayed like reeds in the wind, capitulating to the hostile pressure against the ease with which debtors could obtain relief under the Act:

I wonder if Members who voted for this law at the Extra Session did not then know that it would of course wipe out a great many debts—that it would release thousands from their legal obligations, and that some small creditors and other folks *would* complain! Did they expect such a measure to operate without producing the very effects intended by the law itself . . . ?<sup>226</sup>

But the reality was that the train had left the station, and there appeared little that could be done to turn the political tide. Even lawmakers who sought to rescue the 1841 Act from repeal could not ignore the unpopularity of its voluntary relief provisions: When the Senate took up for consideration on February 24, 1843, the House bill to repeal the Act, Senator John M. Berrien, a Georgia Whig,<sup>227</sup> proposed various amendments to improve the law, including one that would limit the Act to involuntary relief.<sup>228</sup> Such efforts were too little, too late. The following day, the Senate voted to pass the House repeal bill, 32 votes in favor and 13 votes opposed.<sup>229</sup> President Tyler signed the repeal bill into law on March 3, 1843,<sup>230</sup> thus bringing an end to the possibility of federal bankruptcy relief for any debtors who had not yet entered the system.<sup>231</sup>

While the 1841 Act’s demise illustrates how “[a]lmost every one of [the Whigs’] bright expectations went aglimmering” after the 1840 elections,<sup>232</sup> the fact remains that more than 44,790 individuals filed for

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224. See CONG. GLOBE, 27th Cong., 3d Sess. 169 (1843).

225. *The Bankrupt Law, &c.*, N.Y. DAILY TRIB., Jan. 20, 1843, at 2. For further discussion of the Whig defections on the House repeal bill, see Berglöf & Rosenthal, *supra* note 177, at 37.

226. *The Bankrupt Law, &c.*, *supra* note 225, at 2.

227. See HOLT, *supra* note 129, at 222.

228. See CONG. GLOBE, 27th Cong., 3d Sess. at 341.

229. See *id.* at 349.

230. Act of Mar. 3, 1843, ch. 82, 5 Stat. 614.

231. Notwithstanding repeal of the 1841 Act, Congress provided that any unresolved bankruptcy cases at the time of repeal would remain unaffected and could “be continued to . . . final consummation.” *Id.* at 614.

232. HOLT, *supra* note 129, at 123; see also Beesley, *supra* note 166, at 134 (“The assault of the Democrats on the bankruptcy law was part of a larger attack, running from the county to the national level, upon all of the measures passed through the Special Session of



bankruptcy relief during the brief, thirteen-month window of the Act's effective period.<sup>233</sup> Furthermore, federal district courts granted discharges to the overwhelming majority of these individuals.<sup>234</sup> As we have seen, these beneficiaries included slave traders, such as Joseph Beard from New Orleans.<sup>235</sup> All of this brings us back to examining how the federal government provided *direct* financial support to the domestic slave trade through the 1841 Act.

*C. Reconstructing the Domestic Slave Trade Through the 1841 Act*

It goes without saying that the future of slavery in the nation dominated politics during the antebellum period. The Missouri Compromise in 1820. The annexation of Texas in 1845. The Fugitive Slave Act of 1850. The Kansas-Nebraska Act of 1854. These were the most prominent among many firestorms of controversy that consumed lawmakers as the country marched closer and closer to disunion. And yet, it does not appear that members of Congress ever stopped to consider the ramifications of the 1841 Act for the institution of slavery.

To demonstrate this point, recall that during the debates leading up to the 1841 Act, Representative Fessenden forcefully argued for a muscular exercise of the federal bankruptcy power.<sup>236</sup> He also happened to be “a powerful antislavery radical who . . . vigorously opposed the expansion of slavery, and welcomed confrontation with the Slave Power.”<sup>237</sup> During his time in the House of Representatives, to which he was elected in 1840, he “learned lusty contempt for Southern slave owners and their northern defenders, so much so that on several occasions he announced his willingness to resort to civil war.”<sup>238</sup> Fessenden’s antislavery views, “especially radical for the 1840s, reflected [his] position throughout the prewar years.”<sup>239</sup>

Here, then, we have one of the most radical antislavery legislators in Congress, who also happened to vigorously advocate for passage of

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1841. The unpopularity of many of the measures of that session offered a way for the Democrats to recoup the losses of 1840.”).

233. See Pardo, *supra* note 34, at 81-83, 86 tbl.3. Legal entities, such as corporations, could not seek relief under the 1841 Act. See Act of Aug. 19, 1841, ch. 9, § 1, 5 Stat. 440, 441 (specifying persons eligible for bankruptcy relief).

234. See H.R. DOC. NO. 29-99, at 8 (1847); H.R. DOC. NO. 29-223, at 30-31 (1846).

235. See discussion *supra* Part II.B.

236. See *supra* notes 196-198 and accompanying text.

237. Michael Todd Landis, “A Champion Had Come”: William Pitt Fessenden and the Republican Party, 1854-60, 9 AM. NINETEENTH CENTURY HIST. 269, 270 (2008).

238. *Id.* at 271.

239. *Id.*

the 1841 Act. One of Fessenden's more remarkable set of comments involved his discussion of the federal government's power to impair contractual obligations through the exercise of the bankruptcy clause. He prefaced those comments with the caveat that "a power like this should be *most cautiously exercised*," further adding that, "[a]s a general rule, the obligation of contracts should be held inviolable."<sup>240</sup> Nonetheless, the moment that had brought the nation to the point of needing a federal bankruptcy system was an exceptional moment that warranted deviating from the general rule:

But those rights and those interests must yield to high considerations of public policy. They must necessarily be made subservient to the good of the State. . . . Legislation of this kind must be founded upon higher views, and more commanding principles—principles which look to the general weal—to national objects. When these are brought into action, they necessarily ride over all these considerations which affect individuals merely, and become imperative upon every statesman whose eye is single to the welfare of his whole country.<sup>241</sup>

Representative Fessenden, in his arguments for robustly wielding the federal bankruptcy power, avowedly had "the welfare of his whole country" in mind.<sup>242</sup> We further know that he held fervent antislavery views during this time. Yet, when working on a clean slate to design a new bankruptcy system, he and his colleagues ended up creating one that they should have known would inevitably draw the federal government into the domestic slave trade in myriad ways.<sup>243</sup> Fessenden and similarly situated lawmakers may have been oblivious to this connection.<sup>244</sup> Or they may have been aware of it, but their desire to shore up the national economy made them look the other way.<sup>245</sup> Whatever the reality, the fact remains that they found a way to strengthen the institution of slavery through yet another federalization

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240. CONG. GLOBE, 27th Cong., 1st Sess. app. at 470 (1841) (emphasis added).

241. *Id.*

242. *Id.*

243. *See, e.g.,* Pardo, *supra* note 14, at 1159 ("The federal judiciary thus financed a significant portion of the Eastern District bankruptcy slave trade, helping prop up the market for slaves.").

244. For example, Representative John Quincy Adams of Massachusetts (i.e., the former U.S. President) and Representative William Slade of Vermont, chief among the antislavery adherents within the Whig Party, *see* 1 ASHWORTH, *supra* note 160, at 359-60, both voted in favor of the 1841 Act, *see* CONG. GLOBE, 27th Cong., 1st Sess. at 350.

245. *Cf.* 1 ASHWORTH, *supra* note 160, at 361 ("Until at least the mid-1840s the slavery issue was subordinate to the [Whigs'] need to defend the nation's commercial system, challenged by the Democratic party in the name of an agrarian creed . . .").

measure.<sup>246</sup> The remainder of this subpart explains how the 1841 Act effectively provided direct financial support to bankrupt slave traders.

First, consider the plight of an antebellum debtor who lacked sufficient assets that could be liquidated to repay his creditors in full. If that debtor stopped paying either some or all of his creditors and if he had some assets on hand, his creditors would look to those assets as a potential source of repayment.<sup>247</sup> Outside of bankruptcy, a creditor owed money by the debtor could seek individual recourse through the courts, suing him for the money owed and obtaining a judgment entitling the creditor to collect the debt from the debtor's property using the state's coercive power.<sup>248</sup> Depending on the facts and circumstances, that litigation could have taken place in state court or federal court. As such, the debtor's creditors could have sought to enforce money judgments against him both through the state system and the federal system.<sup>249</sup>

Under either system, one way to enforce the money judgment would have been through the writ of *feri facias*, a court order that instructed a government official—for example, a sheriff in the case of a state judgment and a U.S. Marshal in the case of a federal judgment<sup>250</sup>—“to cause the judgment to be satisfied out of the judgment debtor's goods and chattels . . . by seizure and sale” of the property.<sup>251</sup> Some jurisdictions also permitted the writ to reach a debtor's real estate.<sup>252</sup>

Our antebellum debtor could therefore have expected his creditors to continue these types of collection efforts until they had collectively

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246. For examples of other such measures, see *supra* notes 136-144 and accompanying text.

247. The discussion that follows in *infra* notes 248-251 and accompanying text is excerpted, with some revisions, from Pardo, *supra* note 14, at 1099-100.

248. See, e.g., Douglas G. Baird, *Blue Collar Constitutional Law*, 86 AM. BANKR. L.J. 3, 4 (2012).

249. Much of the work of antebellum state courts involved the enforcement of money judgments. See Thomas D. Russell, *South Carolina's Largest Slave Auctioneering Firm*, 68 CHI.-KENT L. REV. 1241, 1245 (1993); Thomas D. Russell, *The Antebellum Courthouse as Creditors' Domain: Trial-Court Activity in South Carolina and the Concomitance of Lending and Litigation*, 40 AM. J. LEGAL HIST. 331, 347 (1996). Likewise, the enforcement of money judgments lay at the heart of the federal judicial power. See Baird, *supra* note 248, at 7-8.

250. See, e.g., *Hagan v. Lucas*, 35 U.S. (10 Pet.) 400, 400 (1836).

251. Stefan A. Riesenfeld, *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 IOWA L. REV. 155, 157 (1957).

252. See *id.* at 164-72.

exhausted the debtor's assets.<sup>253</sup> If, however, the debtor ever acquired new property, his creditors could resume their collection efforts, provided that their money judgments had neither become dormant (although such judgments could be revived) nor unenforceable as a result of a statute of limitations.<sup>254</sup> If the creditors avoided or overcame such impediments, our debtor faced the specter of "[t]he unlimited enforceability of money judgments,"<sup>255</sup> unless he could somehow obtain relief from his debts.

A contemporary account of these creditor-collection dynamics places in stark relief the dilemma faced by debtors in financial distress. Joseph Smith, founder of the Church of Jesus Christ of Latter-day Saints and one of the most notable debtors to seek relief under the 1841 Act,<sup>256</sup> described being driven to file for bankruptcy to escape the hell of perpetual debt collection, which entailed "stripping, wasting, and destitution, by vexatious writs, and law suits, and imprisonments."<sup>257</sup> Without question, he recognized that bankruptcy relief could give him a fresh start by providing a break from his financial past.<sup>258</sup> To provide the reader with a better sense of how debtors could attain this goal, this subpart turns to a discussion of how the law operationalized voluntary relief under the 1841 Act.<sup>259</sup>

## 1. Voluntary Relief Under the 1841 Act

Pursuant to the 1841 Act, Congress classified "[a]ll persons whatsoever, residing in any State, District or Territory of the United States, owing debts" as potentially eligible for relief.<sup>260</sup> Debtors could

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253. Keep in mind that, once the debt owed to a particular creditor had been satisfied, that creditor's collection efforts would cease, while others would continue with their efforts seeking to be repaid in full.

254. See Riesenfeld, *supra* note 251, at 172-77.

255. *Id.* at 173.

256. 4 JOSEPH SMITH, HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS 595 (1908). Another notable bankrupt under the 1841 Act was Edgar Allan Poe. *In re Poe*, No. 1304 (E.D. Pa. filed Dec. 19, 1842). The U.S. National Archives and Records Administration has digitized his bankruptcy petition and schedules of assets and liabilities. See *Petition*, NAT'L ARCHIVES CATALOG, <https://catalog.archives.gov/id/12089326> (last visited Feb. 25, 2019).

257. 4 SMITH, *supra* note 256, at 595.

258. See *id.* at 594 (stating that, by seeking relief under the 1841 Act, "the individual was at liberty to start anew in the world, and was not subject to liquidate any claims which were held against him previous to his insolvency").

259. The discussion in Part III.C.1 is excerpted, with some revisions, from Pardo, *supra* note 14, at 1084-88.

260. Act of Aug. 19, 1841, ch. 9, § 1, 5 Stat. 440, 441 (repealed 1843).

voluntarily access the bankruptcy forum by filing a petition with the district court located in the federal judicial district where they resided or had their principal place of business at the time of filing the petition.<sup>261</sup> In the bankruptcy petition, debtors would request that the district court issue a decree declaring them to fall within the class of individual eligible to pursue the relief available under the 1841 Act.<sup>262</sup>

A debtor's eligibility for a bankruptcy decree hinged on the satisfaction of certain conditions—specifically, (1) a declaration by the debtor stating his or her inability “to meet [his or her] debts and engagements”<sup>263</sup> and (2) financial disclosures regarding the debtor's liabilities and assets.<sup>264</sup> The disclosure requirements served the purpose, among others, of providing the court and its officers adequate information to perform the marshalling and distribution functions entailed in allocating whatever the debtor had given up in exchange for bankruptcy relief.<sup>265</sup> Provided that the debtor complied with these conditions, the district court would declare him or her to be a bankrupt.<sup>266</sup>

After obtaining a bankruptcy decree, the bankrupt could petition the district court for a discharge.<sup>267</sup> To qualify for a discharge, the bankrupt had to satisfy several conditions. First, the bankrupt had to surrender all of his or her property existing as of the date of the bankruptcy decree, with the exception of a limited amount of property necessary for the support of the bankrupt and, if applicable, his wife and children.<sup>268</sup> Second, the bankrupt had to have complied with all orders issued by the court and all of the 1841 Act's requirements.<sup>269</sup> Finally, the bankrupt had to fall outside a particular class of individual—specifically, a class defined mostly by reference to a limited set of circumstances relating to a bankrupt's fraud or misconduct in connection with the bankruptcy case.<sup>270</sup> If the bankrupt

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261. *Id.* § 7, 5 Stat. at 446.

262. *See id.* § 1, 5 Stat. at 441.

263. *Id.*

264. *Id.* These financial disclosures were to be “verified by oath” or alternatively “by solemn affirmation” if the debtor were “conscientiously scrupulous of taking an oath.” *Id.*

265. *See, e.g., In re Frisbee*, 9 F. Cas. 959, 960 (S.D.N.Y. 1842) (No. 5130); *In re Plimpton*, 19 F. Cas. 874, 874 (S.D.N.Y. 1842) (No. 11,227); *In re Malcom*, 16 F. Cas. 540, 540 (S.D.N.Y. 1842) (No. 8986).

266. *See, e.g., Plimpton*, 19 F. Cas. at 874.

267. *See* Act of Aug. 19, 1841, § 4, 5 Stat. at 443.

268. *See id.* §§ 3-4, 5 Stat. at 442-43.

269. *See id.* § 4, 5 Stat. at 443.

270. *See id.* § 4, 5 Stat. at 443-44. To prevent abuse of the bankruptcy system by repeat filers, the 1841 Act also precluded a court from granting a discharge if the bankrupt had

satisfied these discharge-eligibility rules,<sup>271</sup> the Act required the court to grant the bankrupt a discharge certificate.<sup>272</sup>

The most expansive form of discharge would have provided a bankrupt under the 1841 Act with a release from all of his or her prebankruptcy debts, notwithstanding the identity of the creditors or the circumstances under which the debts had been incurred. On the surface, this is what the 1841 Act's discharge provision purported to do—that is, to provide the bankrupt “a full discharge from all his debts, to be decreed and allowed by the court which has declared him a bankrupt, and a certificate thereof granted to him by such court accordingly.”<sup>273</sup> The Supreme Court, however, interpreted the Act to except from discharge any debt resulting from defalcation by the debtor while acting as a public officer or in a fiduciary capacity.<sup>274</sup> Additionally, courts appear to have been split on the issue of whether a discharge under the Act applied to debts owed to government creditors.<sup>275</sup> Aside from these limited exceptions, a bankrupt's discharge under the 1841 Act encompassed all prebankruptcy debts, thus representing a very robust form of relief.

The discharge thus marked the beginning of the bankrupt's new financial life, unfettered by his or her prebankruptcy debts. By cutting off a creditor's ability to recover such debts as a personal liability of the

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previously received a discharge in a prior case, unless the proceeds from the liquidation of the bankrupt's estate were sufficient to pay all creditors seventy-five percent of their claims. *Id.* § 12, 5 Stat. at 447.

271. For a discussion of the modern-day distinction between “bankruptcy eligibility rules” and “discharge eligibility rules,” see Rafael I. Pardo & Michelle R. Lacey, *Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt*, 74 U. CIN. L. REV. 405, 416-17 (2005).

272. Act of Aug. 19, 1841, § 4, 5 Stat. at 443. It should be noted that the 1841 Act enabled creditors to prevent the court from granting the bankrupt a discharge if “a majority, in number and value, of the creditors” who had proved their debts filed at the discharge hearing “their written dissent to the allowance of a discharge.” *Id.* § 4, 5 Stat. at 444. If that occurred, the bankrupt could demand a trial by jury, or alternatively appeal to the circuit court. *Id.*; see Pardo, *supra* note 14, at 1086 n.75. If the jury found that the bankrupt had “made a full disclosure and surrender of all his estate, as by this act required, and has in all things conformed to the directions thereof, the court shall make a decree of discharge, and grant a certificate.” Act of Aug. 19, 1841, § 4, 5 Stat. at 444. In addition to the aggregate creditor-dissent mechanism, creditors could, of course, object to the bankrupt's discharge on independent grounds, such as the bankrupt's failure to surrender all of his or her property. See Pardo, *supra* note 14, at 1086 n.75.

273. Act of Aug. 19, 1841, § 4, 5 Stat. at 443.

274. See Pardo, *supra* note 14, at 1087.

275. See *id.* at 1087 n.78.

bankrupt,<sup>276</sup> the 1841 Act severely limited a creditor's postbankruptcy recourse to collect any unpaid, prebankruptcy amounts owed by the bankrupt.<sup>277</sup>

## 2. Discharge as a Government Grant

To understand why it is that the discharge granted to bankrupts under the 1841 Act was functionally equivalent to a financial award by the federal government—a government grant—to the bankrupt, we must consider an immutable characteristic of the bankruptcy discharge that has been true at least since voluntary relief first became available, if not earlier: When a court enters a bankruptcy discharge order, that order “constitutes the court’s exercise of its in rem jurisdiction to issue a judgment declaring the debtor’s status as a discharged debtor.”<sup>278</sup> The Supreme Court, in *Shawhan v. Wherritt*, one of its decisions involving the 1841 Act, described proceedings under the Act as “in the nature of a proceeding *in rem*, before a court of record having jurisdiction.”<sup>279</sup> At the turn of the century, in *Hanover National Bank v. Moyses*, a decision involving the Bankruptcy Act of 1898 (the 1898 Act),<sup>280</sup> the Court reaffirmed this principle, relying on its prior decision in *Shawhan*.<sup>281</sup> Two decades later, in *Myers v. International Trust Co.*, also a decision involving the 1898 Act, the Court further specified that “[a]n adjudication of bankruptcy, or of discharge therefrom, is a judgment in

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276. See Act of Aug. 19, 1841, § 4, 5 Stat. at 444 (“[S]uch discharge and certificate . . . shall be and may be pleaded as a full and complete bar to all suits brought in any court of judicature whatever . . .”). Because the bankruptcy discharge had to be pleaded as an affirmative defense to a judicial collection effort by a creditor, the possibility existed that the defense would be waived if not properly raised, thus negating the benefit of discharge with respect to that creditor. See, e.g., *Fellows v. Hall*, 8 F. Cas. 1132, 1133 (McClellan, Circuit Justice, C.C.D. Mich. 1843) (No. 4722).

277. Some possibilities for postbankruptcy collection on a discharged debt included informal voluntary payments by the former bankrupt to the creditor, or alternatively a formal agreement (i.e., a contract) between the parties that the former bankrupt would repay the debt. See BALLEISEN, *supra* note 96, at 124-28.

278. Rafael I. Pardo, *The Undue Hardship Thicket: On Access to Justice, Procedural Noncompliance, and Pollutive Litigation in Bankruptcy*, 66 FLA. L. REV. 2101, 2168 (2014); cf. Ralph Brubaker, *One Hundred Years of Federal Bankruptcy Law and Still Clinging to an In Rem Model of Bankruptcy Jurisdiction*, 15 BANKR. DEV. J. 261, 263 (1999) (“American bankruptcy jurisdiction, of course, developed from an English system, which itself had quite a history. The English model of a jurisdiction in bankruptcy was, very explicitly, an *in rem*, property-based jurisdiction—centered around the construct of a bankrupt’s ‘estate.’”).

279. 48 U.S. (7 How.) 627, 643 (1849).

280. Act of July 1, 1898, ch. 541, 30 Stat. 544 (repealed 1978).

281. 186 U.S. 181, 192 (1902) (“Proceedings in bankruptcy are, generally speaking, in the nature of proceedings *in rem* . . .” (citing 48 U.S. (7 How.) at 643)).

*rem.*”<sup>282</sup> In the twenty-first century, the Supreme Court has continued to hold fast to this principle, stating that “[t]he discharge of a debt by a bankruptcy court is . . . an *in rem* proceeding” and citing to its prior decision in *Hanover*, among others, to support the proposition.<sup>283</sup> It is thus beyond peradventure that “[a]n order of discharge, like an adjudication of bankruptcy, is an *in rem* determination of status.”<sup>284</sup>

Importantly, an *in rem* proceeding is one “[i]nvolving or determining the status of a thing, and therefore the rights of persons generally with respect to that thing.”<sup>285</sup> We must therefore ask what interest in property is at stake when a court makes a discharge determination. The answer, simply, is “the bundle of legal liabilities of the debtor.”<sup>286</sup> More specifically, when a discharge order purports to release a debtor from personal liability for his debts, the order does not eliminate them, but rather precludes creditors from pursuing personal remedies against the debtor to recover those debts.<sup>287</sup> Or, in the language of the 1841 Act, the “discharge and certificate . . . shall be and may be pleaded as a full and complete bar to all suits brought in any court of judicature whatever.”<sup>288</sup> Accordingly, when a federal district court issued a discharge order under the 1841 Act, that order changed the rights that the debtor and his creditors had regarding the debtor’s bundle of legal liabilities.<sup>289</sup>

With these principles in mind, it should become apparent why the discharge given to bankrupts under the 1841 Act was functionally equivalent to a government grant. Imagine a debtor who owed his creditors \$10,000, but who had no assets or income—in other words, a debtor with a negative net worth of \$10,000. Seeking to give the debtor relief from his debts, and others like him, the government might pursue one of two options, among many others, if working on a blank canvas. On the one hand, the government could create a program that would

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282. 263 U.S. 64, 73 (1923) (emphasis added).

283. *Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004) (citing *Hanover*, 186 U.S. at 192).

284. James Wm. Moore, *Res Judicata and Collateral Estoppel in Bankruptcy*, 68 *YALE L.J.* 1, 23 (1958).

285. *In Rem*, BLACK’S LAW DICTIONARY (10th ed. 2014).

286. Christopher Klein et al., *Principles of Preclusion and Estoppel in Bankruptcy Cases*, 79 *AM. BANKR. L.J.* 839, 889 (2005).

287. See Moore, *supra* note 284, at 24 & n.122 (citing *Zavelo v. Reeves*, 227 U.S. 625 (1913); *Helms v. Holmes*, 129 F.2d 263 (4th Cir. 1942)). But see *Zarega’s Case*, 30 F. Cas. 916, 916 (S.D.N.Y. 1842) (No. 18,204) (stating that the 1841 Act’s discharge provision “extinguishes the debt”).

288. Act of Aug. 19, 1841, ch. 9, § 4, 5 Stat. 440, 444 (repealed 1843).

289. See *id.*



tap the public fisc and provide the debtor with \$10,000 that he could then use to pay his creditors in full, thus increasing the debtor's net worth to \$0. In this instance, the \$10,000 provided to the debtor by the government would clearly constitute a grant, albeit one limited to a restricted use—namely, use of the funds to pay off creditors.

On the other hand, rather than tapping the public fisc to give the debtor a stack of money with which to pay off his creditors, the government could instead create a system that would provide the debtor with relief in the form of a court order precluding the debtor's creditors from recovering their debts personally from him—in other words, a liability shield. Although the debts would continue to exist, the debtor would theoretically no longer be accountable for them.<sup>290</sup> Of course, the shield option would not increase the debtor's net worth to \$0 given that the debtor would have to expend pre-discharge costs (e.g., court fees and attorneys' fees) to obtain the order<sup>291</sup> and possibly post-discharge costs to enforce it. But even when taking into account such costs, the discharge order would generally have the effect of *increasing* the debtor's net worth,<sup>292</sup> thus representing to the debtor a property right with *positive* value.<sup>293</sup> Given that such an order would have been issued pursuant to “a general system of statutory

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290. See *supra* note 276 (noting that the bankruptcy discharge under the 1841 Act was a waivable affirmative defense to judicial collection efforts by creditors seeking to recover discharged debts).

291. For a discussion of the direct costs of obtaining bankruptcy relief under the 1841 Act, see Pardo, *supra* note 14, at 1089 n.87.

292. Cf. Martin J. McMahon Jr. & Daniel L. Simmons, *A Field Guide to Cancellation of Debt Income*, 63 TAX LAW. 415, 420 (2010) (discussing the Supreme Court's decision in *United States v. Kirby Lumber Co.*, 284 U.S. 1 (1931), which addressed the treatment of cancelled debt as federal taxable income and stating that the decision “often has been interpreted to be grounded on the rationale that when a debt is discharged for less than full repayment, the portion of the debt cancelled without payment is income because the borrower's net worth has been increased”).

293. As analogous support for this proposition, consider modern federal tax law, which generally treats discharge of indebtedness as gross income. See 26 U.S.C. § 61(a)(12) (2012). Such treatment rests on the basic principle that, “when a borrower receives money in a loan transaction and is later discharged from the liability without repaying the debt, the borrower has realized an accession to wealth.” McMahon & Simmons, *supra* note 292, at 417. While gross income does not include indebtedness discharged in a bankruptcy case, see 26 U.S.C. § 108(a)(1)(A), Congress created the exception in recognition that bankruptcy's fresh-start policy would be undermined if the law imposed tax liability as a direct consequence of receiving a bankruptcy discharge, see S. REP. NO. 96-1035, at 10 (1980), *reprinted in* 1980 U.S.C.A.N. 7017, 7025. Such a rationale simultaneously acknowledges that debt forgiveness through a bankruptcy discharge permits a debtor to realize an accession to wealth, but that countervailing policy considerations warrant ignoring the economic benefit for tax purposes.

regulation,”<sup>294</sup> we can functionally conceptualize discharges under the 1841 Act as governmental financial awards to bankrupts that increased their net worths.<sup>295</sup>

The full significance of these federal government grants can be gleaned from looking to the debt-relief options that would have been available to debtors in the absence of the 1841 Act. Given this Article’s focus on bankrupt slave traders, the discussion will be limited to debt-forgiveness laws in the thirteen slave states during the early 1840s,<sup>296</sup> as illustrated below in Figure 6.

Recall our debtor who owed his creditors \$10,000, but who had no assets or income. Further imagine that he owed \$6000 to in-state creditors and \$4000 to out-of-state creditors. Had our debtor been a citizen in Alabama, Delaware, Georgia, Kentucky, Mississippi, Missouri, North Carolina, Tennessee, or Virginia, he could not have had any of his debts forgiven under state law because none of those states provided for the discharge of debt under their respective debtor-creditor laws.<sup>297</sup>

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294. *New Lamp Chimney Co. v. Ansonia Brass & Copper Co.*, 91 U.S. 656, 662 (1875). While the Supreme Court used this phrase in describing the Bankruptcy Act of 1867, Act of Mar. 2, 1867, ch. 176, 14 Stat. 517 (repealed 1878), there is no reason why the description should not equally apply in this context.

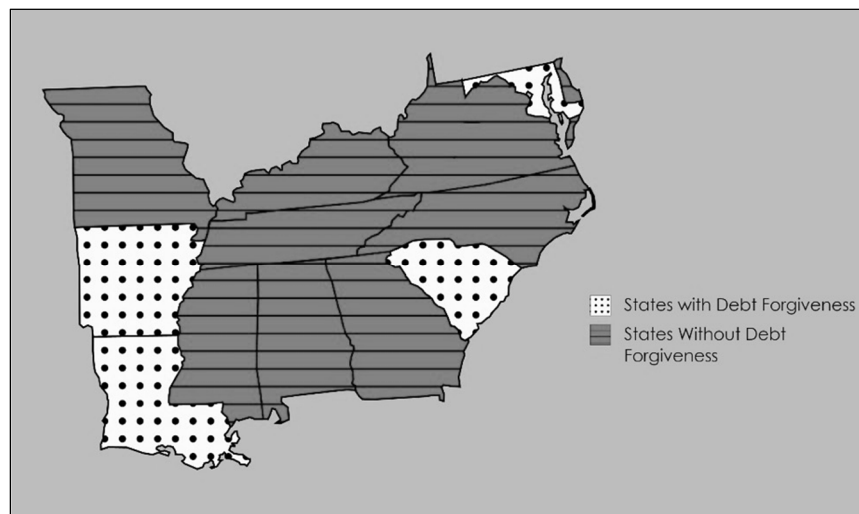
295. *Cf.* Alec P. Ostrow, *Constitutionality of Core Jurisdiction*, 68 AM. BANKR. L.J. 91, 105 (1994) (“[T]he discharge in bankruptcy is part of a federal regulatory scheme that has no antecedent in the common law, and was enacted by Congress pursuant to one of its enumerated powers. It is in the nature of a government benefit, and is not required to be conferred by the judiciary.”).

296. *See supra* note 125 (listing the thirteen slave states during the early 1840s).

297. *See* COLEMAN, *supra* note 155, at 191, 207, 222, 228 (stating that Delaware, Georgia, North Carolina, and Virginia did not provide for the discharge of debt); A COMPILATION OF THE STATUTES OF TENNESSEE 390 (R.L. Caruthers & A.O.P. Nicholson eds., Nashville, James Smith 1836); A DIGEST OF THE LAWS OF THE STATE OF ALABAMA 276 (C.C. Clay ed., Tuscaloosa, Marmaduke J. Slade 1843); A DIGEST OF THE STATUTE LAWS OF KENTUCKY 276 (Preston S. Loughborough ed., Frankfort, Albert G. Hodges 1842); THE REVISED STATUTES OF THE STATE OF MISSOURI 333 (Saint Louis, Chambers & Knapp 3d ed. 1841); THE STATUTES OF THE STATE OF MISSISSIPPI 637-38 (V.E. Howard & A. Hutchinson eds., New Orleans, E. Johns & Co. 1840).

Further keep in mind that, if these states had suddenly decided to enact debt-forgiveness laws, the relief would have only applied prospectively—that is, to contractual obligations postdating the passage of such laws. *See supra* note 117. Accordingly, in that counterfactual universe, such laws would not have provided any relief to our debtor, whose debts would have *predated* enactment of those laws.

Figure 6: Debt-Forgiveness Laws in the Slave States



On the other hand, had our debtor been a citizen in either Arkansas, Louisiana, Maryland, or South Carolina, such relief would have been available.<sup>298</sup> It would not, however, have been guaranteed in Louisiana and South Carolina, both of whose laws required creditor consent.<sup>299</sup> Moreover, even assuming our debtor could have obtained such relief in any of the four slave states with debt forgiveness, the relief would have been limited to forgiveness of the \$6000 owed to the debtor's in-state creditors, given the Supreme Court's holding in *Ogden*.<sup>300</sup> In other words, he would have remained liable for the \$4000 owed to his out-of-state creditors.

In stark contrast, our debtor would have fared much better under the 1841 Act. Had he been a citizen in any of the nine slave states without debt-forgiveness laws, a federal bankruptcy discharge would have represented \$10,000 more of debt forgiveness. Had he been a

298. See LA. CIV. CODE art. 2173 (1825) (repealed 1984); COLEMAN, *supra* note 155, at 174, 184 (stating that Maryland and South Carolina provided for the discharge of debt); REVISED STATUTES OF THE STATE OF ARKANSAS 468 (William McK. Ball & Sam C. Roane eds., Boston, Weeks, Jordan & Co. 1838).

299. See LA. CIV. CODE art. 2173 ("A cession of property discharges all the debts which the debtor placed on his bilan . . . provided a majority of his creditors in number, and who are also creditors for more than the half of the whole sum due by him, agree to such discharge."); COLEMAN, *supra* note 155, at 184 (stating that South Carolina debt-forgiveness law "authorized a full discharge only if the insolvent could obtain the unanimous consent of his creditors").

300. See *supra* note 118 and accompanying text.

citizen in any of the four slave states with debt-forgiveness laws, a federal bankruptcy discharge would have represented \$4000 more of debt forgiveness (i.e., the \$4000 owed to interstate creditors).<sup>301</sup> Thus, regardless of where debtors in the South resided, the federal government ended up giving them a significant financial benefit. As we will see in Part IV below, these government grants enabled severely indebted slave traders to reconstruct their financial lives and thus return to the business of enslaving black men, women, and children.

#### IV. BANKRUPT SLAVE TRADERS: FINANCIAL FAILURE AND THE FEDERALIZATION OF AMERICAN SLAVERY

This Article now marshals evidence from the historical record that provides a glimpse into the scope of federally funded slaving. My aim here is to leave the reader with a firm sense that the government's financial support for the domestic slave trade through the 1841 Act was nontrivial. I do not seek to make any descriptive claims beyond this. For example, I do not argue that the relief obtained by bankrupt slave traders allowed them to become profitable. Nor do I argue that severely indebted slave traders could not have resumed their businesses but for the relief that they obtained under the 1841 Act. Relatedly, I do not claim that there would have been less slaving in the antebellum market had the federal government not bailed out bankrupt slave traders.<sup>302</sup>

This Article's descriptive claim is much simpler, but nonetheless quite significant: Certain figures who played an active role in the domestic slave trade received sizable financial assistance from the federal government, which only made it easier for them to continue slaving. The remainder of this Part proceeds as follows. Subpart A discusses my case study to explore federally funded slaving in action and describes the sources consulted. Subpart B provides background information on the case study's bankrupt slave traders. Subpart C quantifies the financial benefit provided to these traders under the 1841 Act.

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301. Moreover, the discharge would have been more easily obtained under the 1841 Act than under the debt-forgiveness laws of Louisiana and South Carolina, which required creditor consent.

302. Along these lines, Calvin Schermerhorn, in his discussion of Theophilus Freeman's financial failure, *see supra* note 112, notes that it "caused no more than a ripple in the slave market" due to the fact that "[o]ther traders simply took over his business," SCHERMERHORN, *supra* note 12, at 201.

A. *Case Study Design and Sources*

This Article's case study focuses almost exclusively on bankrupt slave traders who filed for relief in the Eastern District of Louisiana, within which New Orleans was, and presently is, located.<sup>303</sup> This Article has done so for a couple of reasons. First, at the time of the 1841 Act, New Orleans was antebellum America's third-largest city and home to its largest slave market.<sup>304</sup> Accordingly, the Eastern District should be a prime location for uncovering financial failure by slave traders in the wake of the Panic of 1837.<sup>305</sup> Second, the extensive historiography on the New Orleans slave trade helps facilitate positive identification of bankrupt slave traders when consulting the Eastern District's voluminous and highly detailed records from the 1841 Act.

I identified the individuals for this case study using two approaches. Under the first identification approach, I obtained from the scholarly literature on the domestic slave trade the names of slave traders throughout the South. I then consulted the indices that list the names and case numbers of individuals whose bankruptcy cases under the 1841 Act were commenced in a given federal judicial district. The federal district courts from those districts created these manuscript records,<sup>306</sup> which are currently located in the various regional facilities of the U.S. National Archives and Records Administration (National Archives).<sup>307</sup> If an index contained a name identical or similar to the

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303. See Act of Mar. 3, 1823, ch. 44, 3 Stat. 774 (creating the Eastern and Western Districts of Louisiana) (current version at 28 U.S.C. § 98 (2012)). Congress consolidated the Eastern and Western Districts of Louisiana into the District of Louisiana in 1845, see Act of Feb. 13, 1845, ch. 5, 5 Stat. 722, well after the 1841 Act's repeal in 1843, see *supra* note 230 and accompanying text.

304. See *supra* note 25 and accompanying text.

305. Cf. DEYLE, *supra* note 3, at 64 (“[T]he Panic of 1837 had a devastating impact on the South, slashing the value of slave property in half.”); SCHERMERHORN, *supra* note 12, at 242 (“Louisiana briefly became the most credit-laden, most monetized state in the nation thanks to banking expansion, trade liberalization, and the credit elasticity provided by the bodies of enslaved people disembarked in New Orleans by the hundreds, along with the lands they cultivated.”).

306. See, e.g., BANKR. D.N.C. R. 18 (1842) (“The clerks shall also prepare and keep in their respective offices, with alphabetical indexes thereto, suitable registers, into which shall be transcribed the dockets of each case in bankruptcy, and such registers shall be preserved as a record of all proceedings in bankruptcy.” (emphasis added)) (repealed).

307. For example, the 1841 Act records located at the National Archives regional facility in Fort Worth, Texas, include the minute books corresponding to the bankruptcy cases filed in the Eastern District. U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 MINUTES, 2/1843-1/1861 (located in Record Group 21, The National Archives at Fort Worth, Texas). One of the minute book volumes consists of the Eastern District's name index. See *Bankruptcy Act of 1841 Minutes*, NAT'L ARCHIVES CATALOG, <https://catalog.archives.gov>.

name of a slave trader discussed in the scholarly literature, I then consulted the case file associated with the corresponding index number. The 1841 Act case files, all of which are located at the National Archives regional facility in Kansas City, Missouri,<sup>308</sup> contain a wide range of documents filed by various parties to a given bankruptcy case.<sup>309</sup>

Under the second identification approach, I sought to identify slave traders from New Orleans by combing through thousands of advertisements for slave sales that appeared in various New Orleans newspapers, including the *Daily Picayune* and the *New-Orleans Commercial Bulletin*. After identifying a slave trader, I would cross-reference the trader's name with the names listed in the Eastern District's index of petitioners under the 1841 Act.<sup>310</sup> If the same or similar name appeared in the index, I then examined the corresponding Eastern District case file to ascertain whether that case involved a bankrupt slave trader.

Pursuant to these identification procedures, I examined a total of forty-seven case files, all but six of them from the Eastern District.<sup>311</sup> For purposes of exposition, this Article's case study on federally funded slaving ultimately focuses on twelve bankrupt slave traders who conducted some, if not all, of their business in New Orleans.<sup>312</sup> The

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gov/id/4510563 (last visited Feb. 27, 2019) ("The volume for February-December 1843 contains an index to petitioners.").

308. See, e.g., U.S. DIST. COURT FOR THE DIST. OF MD., BANKRUPTCY ACT OF 1841 CASE FILES, 1842-1843 (located in Record Group 21, The National Archives at Kansas City, Missouri); U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 CASE FILES, 1842-1843 (located in Record Group 21, The National Archives at Kansas City, Missouri).

309. For example, the 1841 Act case files from the Eastern District include the following documents:

petitions, inventories of the petitioner's property, orders, petitions for the discharge of the bankrupt, reports of the assignee who administered the estate, proofs of debts, depositions, petitions by creditors for the appointment of an assignee, rules, notices, schedules listing the assets and liabilities of the petitioner, motions, oppositions, and attachments.

*Bankruptcy Act of 1841 Case Files, 1842-1843*, NAT'L ARCHIVES CATALOG, <https://catalog.archives.gov/id/4513381> (last visited Feb. 27, 2019).

310. See *supra* note 307.

311. There were 763 cases filed under the 1841 Act in the Eastern District. See *Bankruptcy Act of 1841 Case Files, 1842-1843*, *supra* note 309 (noting that Eastern District case files are "[a]rranged numerically by case number, 1-763").

312. These numbers should not be interpreted to mean that the universe of bankrupt slave traders under the 1841 Act was quite limited. First, nearly all of the forty-seven case files that I examined involved a bankrupt slave trader. I have chosen to base my portrait on the twelve traders partly because of their significance within the trade. Second, because the scholarly literature predominantly focuses on notable traders, rather than the "auxiliary

1841 Act's venue provision generally required a debtor to file a bankruptcy petition in the federal judicial district where the debtor resided or had his principal place of business at the time of filing.<sup>313</sup> All but one of the case study's traders resided *and* had their principal place of business in New Orleans and thus filed for relief in the Eastern District, within which the city was located. The exception is John N. Denning, whose residence and principal place of business were located in Baltimore, Maryland, and who thus filed for relief in the District of Maryland. Denning, however, did conduct some slave trading in New Orleans.<sup>314</sup> He has been included in the study to highlight that the two cities were connected in the interregional slave trade that took place between the Upper and Lower South.<sup>315</sup>

In selecting these traders to create a portrait of federally funded slaving, I do not claim, in any way whatsoever, that the portrait is representative of all federally funded slaving in the Eastern District, let alone the other federal judicial districts in the South. That said, the reader should keep in mind that this portrait will convey an image that necessarily *understates* the magnitude of federally funded slaving throughout the South. All of the bankrupt slave traders profiled here sought relief in either Louisiana or Maryland, two of the four Southern jurisdictions with debt-forgiveness laws.<sup>316</sup> Because traders in these jurisdictions could have obtained relief from their *intrastate* debts, contingent on creditor consent in Louisiana,<sup>317</sup> this Article portrays

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personnel" involved in the trade, *see supra* text accompanying note 19, my first identification procedure likely produced names that merely constitute the tip of the iceberg. In order to obtain the names that constitute the bulk of the iceberg, one would likely have to implement my second identification procedure—that is, scouring the newspapers published in the South's major slave markets (e.g., Richmond, Virginia) for slave-sale advertisements. This is, of course, an extremely time-intensive procedure. For purposes of this Article, I was able to implement the procedure only with respect to the New Orleans market.

313. Act of Aug. 19, 1841, ch. 9, § 7, 5 Stat. 440, 446 (repealed 1843).

314. *See infra* notes 367-368 and accompanying text.

315. *See, e.g.*, BANCROFT, *supra* note 4, at 121-22 (providing examples of the slave trade between Baltimore and New Orleans); SCHERMERHORN, *supra* note 12, at 33-68 (same). *See generally* RALPH CLAYTON, CASH FOR BLOOD: THE BALTIMORE TO NEW ORLEANS DOMESTIC SLAVE TRADE (2007) (discussing the domestic slave trade between Baltimore and New Orleans).

316. *See supra* note 298 and accompanying text.

317. *See supra* notes 299-300 and accompanying text. It appears that many debtors in the Eastern District availed themselves of Louisiana's debt-forgiveness law prior to seeking bankruptcy relief. *See* H.R. DOC. NO. 29-99, at 7 n.† (1847). The case of Samuel Nelson Hite, who is one of the bankrupt slave traders included in this Article's case study, *see* discussion *infra* Part IV.B.3, provides one example of how that law may have been insufficient to provide debtors the requisite relief for rebounding from financial distress. In his schedule of liabilities, Hite recounted that he "was in the month of May 1840 compelled to avail himself of the laws

only bankrupt slave traders whose liabilities included *interstate* debts in order to isolate the added financial benefit that they gained from a federal discharge under the 1841 Act. This approach necessarily excludes bankrupt slave traders who had only *intrastate* liabilities. Of course, if such traders had instead sought relief under state law but had failed to receive the requisite creditor consent, a discharge obtained under the 1841 Act would have indeed represented a financial benefit otherwise beyond their reach.<sup>318</sup> But rather than worry about such counterfactuals, this Article targets those traders who undeniably received an added financial benefit from the federal government.

### B. Twelve Bankrupt Slave Traders

This subpart provides thumbnail sketches for four of the bankrupt slave traders who are the subject of this case study. Before presenting those sketches, this subpart will offer some observations about the other eight bankrupt traders.<sup>319</sup>

First and foremost, recall Joseph Beard, “the great slave-auctioneer of New Orleans.”<sup>320</sup> As previously mentioned, on March 8, 1842, Beard filed a joint bankruptcy petition with his partner at the time, Charles Bioren.<sup>321</sup> Beard, “[l]ike other traders, . . . often changed [business] partners,”<sup>322</sup> which meant that Bioren would quickly be out of the picture. By the end of the month, Beard and Richard Richardson had “entered into a co-partnership for the purpose of transacting a General Auction and Commission business under the firm of J A

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of the State of Louisiana relative to the voluntary surrender of property and ceded to his creditors all his property rights & credits whatsoever as appears by his schedule in the Parish Court of New Orleans.” Schedule Setting Forth a List of Petitioner’s Creditors, Their Residence, and the Amount Due to Each of Them at 2, *In re Hite*, No. 544 (E.D. La. Dec. 24, 1842) [hereinafter Hite Schedule]. He further stated that he had “no property whatsoever having used the proceeds of his industry since his failure in his support and in settling some of his old debts.” *Id.* at 3 (emphasis added).

318. Likewise, for bankrupt slave traders in states without debt-forgiveness laws, a discharge obtained under the 1841 Act would have been a financial benefit otherwise beyond their reach.

319. All twelve traders received a discharge under the 1841 Act. See 1 EDLA DOCKETS, *supra* note 80, at 31 (*In re Pegram*); *id.* at 87 (*In re Pierson*); *id.* at 96 (*In re Beard & Bioren*); *id.* at 266 (*In re Wood*); *id.* at 286 (*In re Eaton*); *id.* at 300 (*In re Peixotto*); *id.* at 320 (*In re Berger*); 2 EDLA DOCKETS, *supra* note 80, at 182 (*In re Hite*); *id.* at 183 (*In re Botts*); *id.* at 299 (*In re Vignié & Soulet*); *id.* at 317 (*In re Spear*); Final Decree, *In re Denning*, No. 193 (D. Md. Dec. 17, 1842).

320. *Supra* text accompanying note 104.

321. See *supra* note 72.

322. BANCROFT, *supra* note 4, at 324.



BEARD & RICHARDSON.”<sup>323</sup> In January 1844, the partnership advertised the sale of “45 LIKELY SLAVES.”<sup>324</sup> On the first of May that year, the partnership dissolved.<sup>325</sup> As of June 1846, Beard had formed the partnership of Beard, Calhoun & Co.,<sup>326</sup> which auctioned off “[t]hirty-seven FIELD SLAVES” on February 5, 1847.<sup>327</sup> While Beard would continue changing business partners throughout the 1850s, his business consistently committed to auctioning enslaved individuals.<sup>328</sup>

Second, consider Hezekiah R. Wood, whose bankruptcy petition, filed in the Eastern District in June 1842, declared that he had been a “partner of the firm of H.R. & E J Wood formerly trading in St Joseph & Apalachicola Fla.”<sup>329</sup> By the end of the year, Wood had partnered with G.R. Beard to assist Joseph Beard with his auction sales.<sup>330</sup> That partnership dissolved by April 1843.<sup>331</sup> But Wood then rebounded in July 1843, transacting business under the name H.R. Wood & Co., such as an auction at the beginning of the month, conducted by auctioneer J. Wilcox, where “Negro Man SAM, 35 years old,” and “Negro Man TOBY, 45 years old,” were to be sold.<sup>332</sup> Less than a week later, Wood had “made permanent arrangements with Mr. R. L. PATTERSON, Auctioneer, for the general sale of Merchandize, Slaves, Real Estate, &c, &c.”<sup>333</sup>

Third, consider George Ann Botts, who sought bankruptcy relief in the Eastern District on Christmas Eve of 1842.<sup>334</sup> According to

323. NEW-ORLEANS COM. BULL., May 15, 1843, at 2 (indicating that Beard and Richardson formed their partnership on March 30, 1842).

324. *45 Likely Slaves.*, LE COURRIER DE LA LOUISIANE (New Orleans), Jan. 2, 1844, at 4.

325. See DAILY PICAYUNE (New Orleans), May 24, 1844, at 1.

326. *Copartnership Notice.*, DAILY DELTA (New Orleans), June 17, 1846, at 4.

327. *Cotton Field Hands.*, DAILY PICAYUNE (New Orleans), Feb. 4, 1847, at 3. For a first-hand account of this auction, see EBENEZER DAVIES, AMERICAN SCENES, AND CHRISTIAN SLAVERY: A RECENT TOUR OF FOUR THOUSAND MILES IN THE UNITED STATES 48-56 (London, John Snow 1849). In discussing this auction sale, Bancroft mistakenly reports that the auction took place in 1848. See BANCROFT, *supra* note 4, at 324 n.27a.

328. See BANCROFT, *supra* note 4, at 324-25. It has been stated that, “[d]uring the 1855-1856 fiscal year, J. A. Beard sold 569 slaves.” Tansey, *supra* note 112, at 169 n.30.

329. Petition of H.R. Wood Individually & as a Member of the Firm of H R E J Wood of St Joseph Apalachicola at 1, *In re Wood*, No. 266 (E.D. La. June 11, 1842).

330. See *Auction Notice.*, DAILY PICAYUNE (New Orleans), Dec. 8, 1842, at 1.

331. See *Notice.*, DAILY PICAYUNE (New Orleans), Apr. 1, 1843, at 2.

332. *Slaves! Slaves! Slaves!*, DAILY PICAYUNE (New Orleans), July 8, 1843, at 3.

333. *By H. R. Wood & Co.*, DAILY PICAYUNE (New Orleans), July 12, 1843, at 3.

334. Petition of George Ann Botts to Be Declared Bankrupt & to Be Discharged from All His Debts, *In re Botts*, No. 545 (E.D. La. Dec. 24, 1842).

historian Walter Johnson, “Botts . . . did business as a broker in the name of a free woman of color, Ann Maria Barclay,”<sup>335</sup> who also happened to be his lover and former slave.<sup>336</sup> Evidence exists that Botts continued the business of slaving into the late 1840s.<sup>337</sup>

Fourth, consider Norbert Vignié, who petitioned to be declared a bankrupt in the Eastern District on January 28, 1843, along with his former business partner, Jean Soulet.<sup>338</sup> Bancroft has described Vignié to have been, “[a]t one time, . . . perhaps the most prosperous auctioneer in New Orleans.”<sup>339</sup> Vignié reported total auction sales of more than \$142,000 (approximately \$4.2 million today) during the second quarter of 1850,<sup>340</sup> more than \$200,000 (approximately \$6 million today) during the first quarter of 1851,<sup>341</sup> and nearly \$264,000 (approximately \$7.9 million today) during the second quarter of 1851.<sup>342</sup> Bancroft notes that Vignié “alone did nearly three-fifths as much business as the whole firm of Beard & May,” much of it constituting slave sales.<sup>343</sup>

Fifth, consider Thomas J. Spear, who filed for bankruptcy relief in the Eastern District on January 31, 1843.<sup>344</sup> The year before, on February 16, 1842, he and Benjamin Kendig had “associated themselves together, to transact the Auction Business, under the firm of

335. JOHNSON, *supra* note 111, at 53.

336. *Id.* at 114 (“Joseph A. Beard, a man who earned his money by auctioning slaves, spoke of the child of George Botts, a slave dealer, and Ann Maria Barclay, Botts’s former slave . . .”); *cf.* KENNETH R. ASLAKSON, MAKING RACE IN THE COURTROOM: THE LEGAL CONSTRUCTION OF THREE RACES IN EARLY NEW ORLEANS 116 (2014) (“[M]ost of New Orleans’s intimate relations across the color line were economic as well as intimate partnerships.”).

337. *See* §30 Reward., DAILY PICAYUNE (New Orleans), Aug. 21, 1847, at 3 (stating that Brazile, an eighteen-year-old enslaved boy, had been “purchased of George A. Botts, of [New Orleans], on 26th June last”).

338. Petition of Norbert Vignié & Jean Soulet Individually & as Members of the Late Commercial Firm of Soulet, Vignié & Co., *In re* Vignié & Soulet, No. 661 (E.D. La. Jan. 28, 1843) [hereinafter Vignié & Soulet Petition]. The 1841 Act permitted “partners in trade” to commence a joint bankruptcy case. Act of Aug. 19, 1841, ch. 9, § 14, 5 Stat. 440, 448 (repealed 1843).

339. BANCROFT, *supra* note 4, at 337-38.

340. *See Auctioneers’ Returns to the State.*, *supra* note 77, at 2.

341. *See Auctioneers’ Returns to the State.*, *supra* note 78, at 1.

342. *See Auction Sales.*, *supra* note 78, at 2.

343. BANCROFT, *supra* note 4, at 338. Beard & May was yet another one of Beard’s business partnerships involved in the domestic slave trade. *See, e.g., Cooper and Bricklayer for Sale.*, DAILY PICAYUNE (New Orleans), Apr. 24, 1851, at 3 (advertising a sale by “J A Beard & May” of two enslaved men, one a twenty-six-year old bricklayer and the other a twenty-three-year-old cooper).

344. Petition of Thomas J. Spear to Be Declared Bankrupt, *In re* Spear, No. 679 (E.D. La. Jan. 31, 1843).

BENJAMIN KENDIG & CO.”<sup>345</sup> Although the two parted ways in July of the same year,<sup>346</sup> it is clear that slaving was a core part of their business while it lasted.<sup>347</sup> And just as Spear’s prebankruptcy business involved the slave trade, so too did his postbankruptcy business.<sup>348</sup>

Sixth, consider William Berger, who after filing his bankruptcy petition in the Eastern District on July 21, 1842,<sup>349</sup> went to work as an auctioneer for Benjamin Kendig & Co. selling slaves.<sup>350</sup> Berger also served as a slave auctioneer for Anthony Fernandez’s auction business.<sup>351</sup>

Seventh, consider Nathaniel J. Pegram, who commenced his bankruptcy case in the Eastern District on February 8, 1842.<sup>352</sup> An advertisement from March 1842 indicated that Pegram had entered into a partnership with H.H. Bryan under the name Pegram & Bryan to conduct business as “Tobacco and Cotton Factors, Receiving and Forwarding Merchants.”<sup>353</sup> Evidence exists that, during the late 1840s, their business involved slaving.<sup>354</sup>

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345. *Notice.*, DAILY PICAYUNE (New Orleans), Mar. 13, 1842, at 3.

346. *See Dissolution*, NEW-ORLEANS COM. BULL., July 15, 1842, at 2.

347. *See, e.g., Great Bargains in Slaves*, NEW-ORLEANS COM. BULL., Mar. 15, 1842, at 2 (“For sale . . . 60 likely negroes, . . . all of which will be sold low by BENJN KENDIG & Co. Auctioneers.”); *Liberal Advances.*, DAILY PICAYUNE (New Orleans), Apr. 15, 1842, at 3 (“BENJN KENDIG & CO. are prepared to make Liberal Advances on SLAVES, and all other property placed in their hands for sale.”); *To Owners of Slaves, Real Estate, &c.*, NEW-ORLEANS COM. BULL., Mar. 30, 1842, at 2 (“BENJAMIN KENDIG & Co. . . . request all owners of Slaves . . . who have them for sale to call upon them as they have at all times opportunities to sell at private sale as well as at auction.”).

348. *See, e.g., Syndic’s Sale.*, NEW-ORLEANS COM. BULL., Feb. 5, 1848, at 2 (advertising auction by Spear at which “[a] slave, named Willis, (absent)” would be sold).

349. Petition of William Berger to Be Declared Bankrupt, *In re Berger*, No. 320 (E.D. La. July 21, 1842).

350. *See, e.g., Slaves—Slaves.*, DAILY PICAYUNE (New Orleans), June 3, 1847, at 3; *Slaves! Slaves!*, DAILY PICAYUNE (New Orleans), May 11, 1843, at 3; *Valuable Family of Negroes at Auction, for Account and Risk of a Former Purchaser.*, DAILY PICAYUNE (New Orleans), June 3, 1847, at 3.

351. *See, e.g., Creole Slaves of Value.*, LE COURRIER DE LA LOUISIANE (New Orleans), Jan. 15, 1844, at 3; *Slaves! Slaves!!*, LE COURRIER DE LA LOUISIANE (New Orleans), Feb. 1, 1844, at 3.

352. *N.J. Pegram v. His Creditors*, *In re Pegram*, No. 31 (E.D. La. Feb. 8, 1842).

353. *Pegram & Bryan.*, NEW-ORLEANS COM. BULL., Mar. 14, 1842, at 2.

354. *See, e.g., Negroes for Sale on Time*, NEW-ORLEANS COM. BULL., Apr. 4, 1849, at 1 (“Nine valuable and well-trained Negroes, consisting of men, women and boys, for sale on a credit of 4 to 6 months, by PEGRAM & BRYAN.”); *cf. BANCROFT, supra* note 4, at 126-27 (“We know that numerous agents, general agents, commission merchants, auctioneers and others making a considerable part of their living out of slave-trading were respectively designated by one of those general terms and not as traders or dealers in slaves . . .”).

Eighth, consider Joseph Ogden Pierson, who filed his bankruptcy petition on March 3, 1842, in the Eastern District.<sup>355</sup> He ran an advertisement for his business, six days after filing for bankruptcy, indicating that he was a “Commission and Forwarding Merchant” located at “No 69 Magazine street.”<sup>356</sup> The following year, Pierson ran various advertisements for slave sales.<sup>357</sup> In the late 1840s, Pierson partnered with J.A. Bonneval, who incidentally had auctioned slaves for Beard & Richardson,<sup>358</sup> to run an auctioneering business under the name Pierson & Bonneval, pursuant to which they would “attend to the purchase and sale of Real Estate, Negroes and Merchandise.”<sup>359</sup> Up until they dissolved their partnership on August 30, 1848,<sup>360</sup> Pierson and Bonneval quite actively auctioned off slaves.<sup>361</sup>

While the observations for the foregoing bankrupt slave traders have been relatively brief, it has been my hope to convey to the reader enough information to demonstrate that they did have significant business dealings in the domestic slave trade. The thumbnail sketches for the remaining four traders should further reinforce the idea that the federal government granted funding to individuals who undoubtedly were involved in substantial slaving activity.

#### 1. John N. Denning

In Baltimore, Maryland, John N. Denning was among “[t]he best known resident traders in the [1850s].”<sup>362</sup> In the prior decade, his “trade operated from his establishment at 104 N. Exeter Street (near the

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355. J.O. Pierson v. His Creditors, *In re Pierson*, No. 87 (E.D. La. Mar. 3, 1842).

356. *Joseph O Pierson*, NEW-ORLEANS COM. BULL., Mar. 9, 1842, at 4. A New Orleans directory published in February 1842, prior to Pierson’s bankruptcy filing, also listed him as a commission merchant located at 69 Magazine Street. See NEW-ORLEANS DIRECTORY FOR 1842, *supra* note 34, at 326.

357. See, e.g., *Valuable Servant for Sale.*, NEW-ORLEANS COM. BULL., Mar. 16, 1843, at 2; *Valuable Servants for Sale.*, NEW-ORLEANS COM. BULL., June 1, 1843, at 3.

358. See *Slaves—Slaves!*, DAILY PICAYUNE (New Orleans), Mar. 21, 1844, at 3.

359. *Pierson & Bonneval*, NEW-ORLEANS COM. BULL., Mar. 4, 1848, at 4.

360. See *Dissolution*, NEW-ORLEANS COM. BULL., Sept. 5, 1848, at 3.

361. See, e.g., *Cooks, Washers and Ironers.*, DAILY PICAYUNE (New Orleans), Oct. 16, 1847, at 3; *Field Hands Without Limit.*, DAILY PICAYUNE (New Orleans), Feb. 3, 1848, at 3; *Slaves—Slaves.*, DAILY PICAYUNE (New Orleans), Dec. 21, 1847, at 3; *Slaves—Slaves—On Account of Departure.*, DAILY PICAYUNE (New Orleans), Nov. 22, 1847, at 3; *Valuable Family of Slaves.*, DAILY PICAYUNE (New Orleans), Dec. 15, 1847, at 1.

362. BANCROFT, *supra* note 4, at 120.

Methodist Episcopal Church).<sup>363</sup> He also happened to have filed for bankruptcy relief on July 22, 1842, in the District of Maryland.<sup>364</sup>

Denning's notoriety might be best attributed to his Baltimore newspaper advertisement on November 23, 1852, in which he announced that he would "pay the highest prices, in cash, for 5,000 NEGROES."<sup>365</sup> Harriet Beecher Stowe, in defending the account of slavery that she depicted in *Uncle Tom's Cabin*, excoriated Denning for this very advertisement:

Mr. John Denning, also, is a man of humanity. He never separates families. Don't you see it in his advertisement? If a man offers him a wife without her husband, Mr. John Denning won't buy her. O, no! His five thousand are all unbroken families; he never takes any other; and he transports them whole and entire. This is a comfort to reflect upon, certainly.<sup>366</sup>

In addition to his involvement in the Baltimore slave trade, Denning had dealings in the New Orleans slave market. On April 17, 1846, he advertised in the *Daily Picayune* the sale of various enslaved individuals "all from the Eastern shore of Maryland," including a forty-five-year-old mother and her eight-year old daughter; a twenty-two-year-old mother and her four-year-old daughter; and "[a] good house Girl, 15 years old."<sup>367</sup> Denning sought to mask his desperation to sell the slaves "for less than the market price," explaining that he was motivated to do so "[i]n order to obtain good homes for them," provided that the potential buyer would make an "immediate application."<sup>368</sup>

## 2. J.C. Peixotto

On July 7, 1842, J.C. Peixotto filed his petition to be declared a bankrupt in the Eastern District.<sup>369</sup> The following year brought new beginnings. On January 2, 1843, Peixotto ran an advertisement on the

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363. CLAYTON, *supra* note 315, at 111.

364. Petition in the Matter of the Bankruptcy of John N. Denning Merchant, of the City of Baltimore, *In re Denning*, No. 193 (D. Md. July 22, 1842) [hereinafter Denning Petition].

365. *5,000 Negroes Wanted.*, SUN (Baltimore), Nov. 23, 1852, at 4; *see also* BANCROFT, *supra* note 4, at 120 (mentioning Denning's advertisement for 5000 enslaved individuals); DEYLE, *supra* note 3, at 133 (same); SCHERMERHORN, *supra* note 12, at 39-40 (same).

366. HARRIET BEECHER STOWE, A KEY TO UNCLE TOM'S CABIN 142 (Boston, John P. Jewett & Co. 1853).

367. *Negroes for Sale.*, DAILY PICAYUNE (New Orleans), Apr. 17, 1846, at 2.

368. *Id.*

369. Petition of J.C. Peixotto to Be Declared Bankrupt, *In re Peixotto*, No. 300 (E.D. La. July 7, 1842).

first page of the *Commercial Bulletin* announcing, “NEGROES—Bought and sold by the subscriber.”<sup>370</sup> He sought to distinguish himself from other traders by emphasizing his capacity to operate his business on a large scale, claiming that he had “accommodation for the reception and safe keeping for two hundred negroes, at his spacious premises, 73 Baronne street.”<sup>371</sup> Peixotto also recognized that the quality of his business would be equally important to enticing customers, and so he noted that “[t]he house and yard having been thoroughly repaired and ventilated, renders it the most desirable and secure receptacle for Negro property in New Orleans.”<sup>372</sup> And if such representations might prove to be inadequate to attract business, he finished by adding for good measure that he would make “[l]iberal advances . . . on Negroes consigned to [his] care.”<sup>373</sup>

The new year, however, also ushered in a stumbling block for Peixotto in his quest for a financial fresh start. On the same date that the *Commercial Bulletin* ran his advertisement, the Parish Court for the Parish and City of New Orleans (New Orleans Parish Court) entered a judgment against Peixotto in favor of E.E. Vandrell, the plaintiff in the lawsuit.<sup>374</sup> The court ordered Vandrell to return to Meredith Watson, who had intervened in the lawsuit, William and Mary, two enslaved individuals in their twenties whom Peixotto had apparently sold, presumably as Watson’s agent, to Vandrell for \$1500 (approximately \$40,334 today).<sup>375</sup> The court further ordered Peixotto to pay Vandrell \$1500 in addition to “all the costs of suit.”<sup>376</sup> Vandrell recorded the judgment against Peixotto, which gave her a mortgage against his postbankruptcy property in Orleans Parish to secure repayment of the judgment.<sup>377</sup> The federal district court for the Eastern District

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370. *Negroes*, NEW-ORLEANS COM. BULL., Jan. 2, 1843, at 1.

371. *Id.*

372. *Id.*

373. *Id.* Peixotto ran a nearly identical advertisement in the *Daily Picayune* toward the end of December 1842. *Negroes Bought and Sold by the Subscriber.*, DAILY PICAYUNE (New Orleans), Dec. 23, 1842, at 3.

374. Certificate of Judgment, *Vandrell v. Patterson*, No. 14,421 (Parish & City of New Orleans Parish Ct. Feb. 6, 1843). The bankruptcy case file for *In re Peixotto* contains a certification by the New Orleans Parish Court’s clerk regarding that court’s judgment against Peixotto and in favor of Vandrell. This is the document on which I rely to recount the litigation in that court by Vandrell against Peixotto.

375. See Certificate of Judgment, *supra* note 374. It should be noted that the *Vandrell* judgment lists two defendants, Peixotto and Gustavus W. Patterson. *Id.*

376. *Id.*

377. See Rule on Recorder of Mortgages, *In re Peixotto*, No. 300 (E.D. La. Feb. 18, 1843).

ultimately determined that Peixotto's bankruptcy case would not affect the validity of Vandrell's mortgage given that it arose after Peixotto had filed his bankruptcy petition.<sup>378</sup>

While none of the documents in the bankruptcy case file for *In re Peixotto* indicate why Vandrell sued Peixotto, she may have done so pursuant to Louisiana's redhibition law, which permitted slave purchasers to rescind their purchases on the basis of the seller's breach of warranty.<sup>379</sup> In any event, Vandrell would not be the only customer to have issues with Peixotto's slaving business. A little more than four years after the judgment in *Vandrell v. Patterson*, a *Daily Picayune* advertisement placed by one H.A. Rodman warned the public "from purchasing the slaves Fanny, aged 30 years, and her 4 children" on the basis that Rodman "ha[d] purchased them at public auction on the 20th of April, 1847, from J. C. Peixotto, agent for Henry Levy, who refuse[d] to complete the sale."<sup>380</sup> Whatever the outcome may have been of the disputes between Peixotto and his customers, he nevertheless found a way to become a fixture in the Crescent City's slave trade after exiting bankruptcy with a federal discharge.

### 3. Samuel Nelson Hite

On Christmas Eve in 1842, Samuel Nelson Hite commenced his bankruptcy case in the Eastern District.<sup>381</sup> He appears to have been able to continue the slave trading business in which he had been engaged prior to filing for bankruptcy. As early as April 1, 1842, he began running a recurring advertisement in the *Commercial Bulletin*, simply titled "Negroes," regarding his counting room located at "123 Common street, 1 door from St Charles Exchange."<sup>382</sup> Hite had presumably set up shop next door to the St. Charles Exchange Hotel,<sup>383</sup> one of "the city's two leading hotels" in and around which slave traders

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378. *See id.*

379. *See generally* JUDITH KELLEHER SCHAFFER, SLAVERY, THE CIVIL LAW, AND THE SUPREME COURT OF LOUISIANA 127-48 (1994) (discussing Louisiana's redhibition law as applied to slave sales).

380. *Caution.*, DAILY PICAYUNE (New Orleans), Apr. 30, 1847, at 3.

381. Petition & Schedules Praying to Be Declared a Bankrupt, *In re Hite*, No. 544 (E.D. La. Dec. 24, 1842).

382. *Negroes*, NEW-ORLEANS COM. BULL., Apr. 1, 1842, at 1. A New Orleans directory published in February 1842 provided a listing for "Hite, S.N. trader, 123 Common street." NEW-ORLEANS DIRECTORY FOR 1842, *supra* note 34, at 197.

383. *See* MCINNIS, *supra* note 27, at 167 fig.6.14.

conducted their auctions.<sup>384</sup> Similar to Peixotto,<sup>385</sup> Hite informed readers that he was “ready at all times to make liberal advances on all consignments made to him, in cash.”<sup>386</sup> Unlike Peixotto, he tried to distinguish himself from other traders by announcing that he would “pay the highest prices for likely Negroes of good character and quality.”<sup>387</sup> Further attempting to cover all his bases and drum up business wherever he could find it, Hite indicated that he would “buy and sell Slaves on commission.”<sup>388</sup> Lest readers of the advertisement have any doubts, Hite stressed that “[p]ersons arriving at the city, [would] profit by giving [him] a show.”<sup>389</sup> Almost as an afterthought, he dropped one last bit of information—namely, that “a likely lot [we]re on hand for sale.”<sup>390</sup>

Hite would run the same advertisement in the *Commercial Bulletin* for at least over a year, up through May 1843.<sup>391</sup> More than two years later, he found himself still knee-deep in the slave trade, as evidenced by the fact that he had arranged for the arrest of James T. Crofford based on the allegation of Crofford “having sold five negroes for [Hite] for the sum of \$4100 [approximately \$110,250 today], and afterwards refusing to pay over all the proceeds.”<sup>392</sup> Hite, in turn, would be arrested based on Crofford’s allegation that Hite had committed perjury in arranging for Crofford’s arrest.<sup>393</sup> The prosecutor ended up dropping the charge against Hite the following year on the basis of “not being provided with evidence to prove any charge against the defendant.”<sup>394</sup> Although Hite escaped prosecution, the fact remains that an individual accused of perjuring himself and previously accused

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384. *Id.* at 164.

385. *See supra* note 373 and accompanying text.

386. *Negroes*, *supra* note 382, at 1.

387. *Id.*

388. *Id.*

389. *Id.*

390. *Id.*

391. *See, e.g., Negroes*, NEW-ORLEANS COM. BULL., May 15, 1843, at 4; *Negroes*, NEW-ORLEANS COM. BULL., Mar. 16, 1843, at 1; *Negroes*, NEW-ORLEANS COM. BULL., Feb. 15, 1843, at 1; *Negroes*, NEW-ORLEANS COM. BULL., Jan. 18, 1843, at 4; *Negroes*, NEW-ORLEANS COM. BULL., Aug. 1, 1842, at 4; *Negroes*, NEW-ORLEANS COM. BULL., July 15, 1842, at 4; *Negroes*, NEW-ORLEANS COM. BULL., June 4, 1842, at 4; *Negroes*, NEW-ORLEANS COM. BULL., May 14, 1842, at 4.

392. DAILY PICAYUNE (New Orleans), Sept. 24, 1845, at 2.

393. *See* DAILY PICAYUNE (New Orleans), Oct. 23, 1845, at 2.

394. *First District Court*, DAILY PICAYUNE (New Orleans), July 28, 1846, at 2.



of defrauding his creditors<sup>395</sup> had managed to obtain a federal government grant in the form of a discharge, which enabled him to stay committed to his slaving business.

#### 4. Benjamin Cocke Eaton

In a March 1840 advertisement in the *Daily Picayune*, Benjamin Cocke Eaton announced that “[a]t the subscribers [sic] house No. 58 Esplanade street, will be kept for sale from this date until the first June next, a constant supply of Slaves, of every description that will be offered in this market.”<sup>396</sup> The advertisement indicated that Eaton expected to receive for sale enslaved individuals “shipped from the Virginia, Maryland, and North Carolina markets,” among others.<sup>397</sup> He took particular care to establish his bona fides, noting “that all purchasers who may favor him with their patronage, may depend on having justice done them.”<sup>398</sup> Eaton’s advertisement concluded by instructing readers who needed additional information about his operations to “refer to Austin Woolfolk [at the] City Hotel.”<sup>399</sup> That reference suggests that Eaton had partnered with Austin Woolfolk of Baltimore, who “built one of the largest slave-trading firms in the country,”<sup>400</sup> and whose “ascent to the apex of the Baltimore-New Orleans trade was assisted by . . . allied traders.”<sup>401</sup>

Slightly more than two years after this advertisement, Eaton petitioned to be declared a bankrupt in the Eastern District.<sup>402</sup> Less than two years after obtaining a discharge,<sup>403</sup> his slaving business seemed to be moving ahead at full speed, as he gave notice of the recent arrival of

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395. Opposition of Jas McMaster at 1, *In re Hite*, No. 544 (E.D. La. May 10, 1843) (alleging that Hite, prior to filing for bankruptcy relief, “transferred away property, for the purpose of defrauding his creditors”).

396. *Negroes for Sale.*, DAILY PICAYUNE (New Orleans), Mar. 3, 1840, at 4.

397. *Id.*

398. *Id.*

399. *Id.*

400. SCHERMERHORN, *supra* note 12, at 33; *see also* DEYLE, *supra* note 3, at 100 (“[B]y the mid-1820s, Austin Woolfolk and his family had come to dominate the interregional trade.”).

401. SCHERMERHORN, *supra* note 12, at 54; *cf.* DEYLE, *supra* note 3, at 104-05 (“By the 1830s, large-scale, urban-based interregional dealers in slaves, like Austin Woolfolk . . . , had become an important part of the domestic trade. . . . Most of these larger firms continued to funnel their slaves into the two main selling centers of Natchez and New Orleans . . .”).

402. Petition of B.C. Eaton to Be Declared Bankrupt, *In re Eaton*, No. 286 (E.D. La. June 29, 1842).

403. 1 EDLA DOCKETS, *supra* note 80, at 286 (setting forth the docket for the bankruptcy case by B.C. Eaton and indicating that the court granted Eaton a discharge on Oct. 31, 1842).

“[e]ight Virginia Negroes, consisting of four grown males, two [grown] females, with two children,” while adding that he had “a constant supply of Negroes for sale.”<sup>404</sup>

About three years after that notice, Eaton’s fortunes appear to have further improved: He advertised to the public his “new and commodious three story brick building, No. 3, located on Union street, between Carondelet and St. Charles streets . . . to be occupied as a SLAVE DEPOT for boarding and vending Slaves.”<sup>405</sup> He assured would-be patrons that “there [was] room to keep *two hundred at a time* without being in any way too crowded, with hydrant and cistern water in the yard.”<sup>406</sup> Eaton once again emphasized that “[a] constant supply of imported negroes will be kept on hand throughout the season, which will be sold at market prices for cash or approved endorsed and negotiable city paper.”<sup>407</sup> Moreover, he sought to build trust with the public by referring to his “many years in the business, both [in New Orleans] and in the Natchez market.”<sup>408</sup> By the end of the year, business was booming for Eaton, as evidenced by his advertisement announcing for sale “50 LIKELY young Field Hands just arrived from Virginia and Maryland,”<sup>409</sup> a group that would occupy a quarter of his depot on Union Street.<sup>410</sup>

### C. *Quantifying Federally Funded Slaving*

Having provided a portrait of bankrupt slave traders involved in the New Orleans market, this Article now provides a quantitative account of the federal benefit that these twelve individuals received by virtue of obtaining a discharge under the 1841 Act. More specifically, the analysis will calculate the gross financial benefit that the federal government provided to these individuals.

The calculation focuses on the total amount of interstate debt reported by these individuals on the schedules of liabilities that they filed with the relevant federal district court. The 1841 Act required a debtor who petitioned to be declared a bankrupt to “set[] forth to the best of his knowledge and belief, a list of his . . . creditors, their

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404. *Negroes for Sale.*, DAILY PICAYUNE (New Orleans), Mar. 1, 1844, at 2.

405. *Negroes for Sale.*, DAILY PICAYUNE (New Orleans), Feb. 10, 1847, at 4.

406. *Id.* (emphasis added).

407. *Id.*

408. *Id.*

409. *Negroes for Sale.*, DAILY PICAYUNE (New Orleans), Dec. 16, 1847, at 3.

410. For a discussion of slave depots in New Orleans, see MCINNIS, *supra* note 27, at 157-61.

respective places of residence, and the amount due to each.”<sup>411</sup> For each schedule of liabilities,<sup>412</sup> an example of which appears below in Figure 7, and any related supplementary filings,<sup>413</sup> I first identified interstate creditors as those whose residence was outside of the state in which the debtor filed his bankruptcy case,<sup>414</sup> and I subsequently totaled the amounts owed to those creditors.<sup>415</sup> Because these debts could not have been discharged under state debt-forgiveness laws, the respective amounts represent the gross financial benefit granted by the federal government to each bankrupt slave trader.<sup>416</sup>

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411. See Act of Aug. 19, 1841, ch. 9, § 1, 5 Stat. 440, 441 (repealed 1843).

412. See, e.g., Schedules of H.R. Wood, *In re Wood*, No. 266 (E.D. La. June 11, 1842).

413. See, e.g., Supplemental & Amendatory Petition & Schedules A & B, *In re Spear*, No. 679 (E.D. La. Feb. 9, 1843); Supplemental Petition, *In re Beard & Bioren*, No. 96 (E.D. La. Apr. 1, 1842).

414. Some of the twelve traders owed money to creditors who resided outside of the United States. See, e.g., Schedule Setting Forth a List of Petitioners Creditors, Their Residence and the Amount Due to Each at 2, *In re Botts*, No. 545 (E.D. La. Dec. 24, 1842) (indicating that Botts owed \$136 to Eliza Potts, who resided in Geneva, Switzerland); Schedule of Wm. Berger at 1, *In re Berger*, No. 320 (E.D. La. July 21, 1842) (indicating that Berger owed \$400 to Louis Lemit and \$1686 to John Durand, both residents of Bordeaux, France). If these debts arose under contracts made outside of the United States, the discharges granted to the traders under the 1841 Act would have barred collection of the debts in the United States, but probably not in the foreign creditors' countries. See *Zarega's Case*, 30 F. Cas. 916, 916 (S.D.N.Y. 1842) (No. 18,204); cf. *Green v. Sarmiento*, 10 F. Cas. 1117, 1117 (Washington, Circuit Justice, C.C.D. Pa. 1810) (No. 5760) (“It is said, that France acknowledges the binding force of foreign bankrupt laws, to discharge the foreign debtor, from all his contracts, wherever made. If this be so, I can only say, that the comity of that nation, is marked by a whimsical, and I think an irrational opposition, to that which obtains in most other countries.”).

415. The Act permitted “partners in trade” to commence a joint bankruptcy case. Act of Aug. 19, 1841, § 14, 5 Stat. at 448. Two of the twelve bankrupt slave traders, Joseph Beard and Norbert Vignié, filed joint cases with their respective business partners. See Vignié & Soulet Petition, *supra* note 338; Beard & Bioren Petition, *supra* note 72. In calculating the amount of interstate debt in such cases, this Article only includes the amounts owed by the bankrupt slave trader in his individual capacity and in his joint capacity as a partner in trade. In other words, this Article excludes the amounts individually owed by the partners who have not been profiled in *supra* Part IV.B (i.e., Charles Bioren in *In re Beard & Bioren* and Jean Soulet in *In re Vignié & Soulet*).

416. Bankrupts had various incentives under the 1841 Act to ensure the accuracy and completeness of the information that they provided in their schedules. First, the Act required a petitioning debtor to “verif[y] by oath, or, if conscientiously scrupulous of taking an oath, by solemn affirmation,” the information provided in the schedules filed with the court. Act of Aug. 19, 1841, § 1, 5 Stat. at 441. Moreover, erroneous or incomplete schedule information could potentially constitute grounds for a court’s denial of discharge. See *id.* § 4, 5 Stat. at 443 (“[E]very bankrupt, who shall . . . otherwise conform to all the other requisitions of this act, shall . . . be entitled to a full discharge from all his debts” (emphasis added)); *Conrad v. Prieur*, 5 Rob. 49, 54 (La. 1843) (“The act of Congress makes it the duty of the bankrupt, under the penalty of not obtaining his discharge, to place upon his schedule or inventory, all his property without any exception . . .” (emphasis added)). For these reasons, researchers ought to have

Figure 7: Creditor List from *In re Denning*

**A LIST**

Of the CREDITORS of *John N. Denning* of *Baltimore City* in  
*Baltimore* County, and State of Maryland, with their respective places of  
residence, and the amount due to each, to the best of his knowledge and belief.

NAMES.	RESIDENCES.	AMOUNTS.
<i>Gloves, Arms &amp; Co</i>	<i>Philadelphia</i>	<i>1200</i>
<i>Willbank &amp; Co</i>	<i>do</i>	<i>300</i>
<i>White &amp; Peabody</i>	<i>do</i>	<i>150</i>
<i>S. &amp; L. &amp; Law</i>	<i>do</i>	<i>150</i>
<i>R. &amp; J. Smith</i>	<i>Baltimore</i>	<i>100</i>
<i>Maley &amp; Melsh</i>	<i>Philadelphia</i>	<i>400</i>
<i>John Gibson &amp; Co</i>	<i>Baltimore</i>	<i>300</i>
<i>Ridgely &amp; Son</i>	<i>do</i>	<i>300</i>
<i>James W. Scott</i>	<i>New York</i>	<i>200</i>
		<i>3100</i>
	<i>John N. Denning</i>	

To gain a more detailed sense of the gross financial benefit that the twelve traders enjoyed courtesy of the federal government, consider the following figures.<sup>417</sup> Collectively, this group owed \$253,238.33 of interstate debt (approximately more than \$6.6 million today), an amount exceeding the construction cost of the original St. Charles Theatre.<sup>418</sup> The median and mean amounts of interstate debt reported in their schedules were, respectively, approximately \$15,187 and \$21,103 (approximately \$394,288 and \$555,204 today). As for the proportion that the interstate debt represented of the traders' total debt (i.e., intra- and interstate debt combined), the median and mean percentages were, respectively, approximately forty-nine percent and forty-four percent. Finally, the median and mean number of interstate

reasonable confidence in the information appearing in the schedules filed by debtors who petitioned for relief under the 1841 Act.

417. A debt profile for the twelve traders appears below in Table 1 of the Appendix.

418. See *supra* note 33 and accompanying text.

creditors reported in the schedules were, respectively, approximately fifteen and twenty-one.<sup>419</sup>

From this quantitative profile, we witness that the twelve traders owed significant amounts of interstate debt, which constituted a substantial portion of their total liabilities. Moreover, they owed these amounts to sizable groups of creditors. By granting these bankrupt slave traders discharges under the 1841 Act, the federal government provided them with “a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.”<sup>420</sup> It just so happens that, in the case of these individuals, the clear field for future effort would entail the horrific business of selling black men, women, and children.

## V. CONCLUSION

When we think of the spectrum of the federal government’s complicity in legitimating and bolstering slavery during the antebellum era, we need to account for federally funded slaving—a muscular exercise of the federal bankruptcy power that ended up facilitating financial relief for severely indebted slave traders. Significantly, the 1841 Act represented a core feature of the Whig Party’s recovery plan to shore up and expand the national economy in the wake of the Panic of 1837. Because of the prevalence of the domestic slave trade, federally funded slaving cannot be viewed as an aberration. Rather, it has to be considered as a natural extension of a governmental assistance program that political leaders adopted to foster antebellum America’s capitalist drive.<sup>421</sup>

In permitting federally funded slaving, even if only for a brief window of time, the government unmistakably used its political might to prop up the domestic slave trade by giving bankrupt slave traders a

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419. These creditors resided in places far and wide, including Boston, Massachusetts; Charleston, South Carolina; Geneva, Switzerland; Louisville, Kentucky; New York, New York; Paris, France; Philadelphia, Pennsylvania; Tallahassee, Florida; and Vicksburg, Mississippi.

420. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

421. See Andrew Shankman, *Capitalism, Slavery, and the New Epoch: Mathew Carey’s 1819*, in *SLAVERY’S CAPITALISM: A NEW HISTORY OF AMERICAN ECONOMIC DEVELOPMENT*, *supra* note 43, at 243, 244 (“Whig political economy was embedded in the national embrace of slavery.”); cf. SVEN BECKERT, *EMPIRE OF COTTON: A GLOBAL HISTORY* 440 (2014) (“[C]apitalists and states arose hand in hand, each facilitating the ascendancy of the other.”); Ajay K. Mehrotra, *A Bridge Between: Law and the New Intellectual Histories of Capitalism*, 64 *BUFF. L. REV.* 1, 15 (2016) (“[I]n many ways, law is an organic part of capitalist development.”).

fresh start. These individuals, who had sought to profit from the slave trade but had failed, received the functional equivalent of financial grants from the government in the form of bankruptcy discharges. That relief enabled them to return to the business of making slaves and thus to continue imposing untold physical, mental, and emotional harm on black men, women, and children. Given that we cannot “understand[] the nation’s spectacular pattern of economic development without situating slavery front and center,”<sup>422</sup> it becomes imperative to recognize that the 1841 Act fostered the reproduction of the domestic slave trade,<sup>423</sup> in the process leaving a tragic stain on the development of U.S. capitalism. This Article is a first step in that direction. More work remains to be done.

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422. Sven Beckert & Seth Rockman, *Introduction* to SLAVERY’S CAPITALISM: A NEW HISTORY OF AMERICAN ECONOMIC DEVELOPMENT, *supra* note 43, at 1, 27; *cf.* JOHNSON, *supra* note 43, at 254 (“A materialist and historical analysis . . . begins from the premise that in actual historical fact there was no nineteenth-century capitalism without slavery.”); ROSENTHAL, *supra* note 12, at 3 (“[S]lavery was central to the emergence of the economic system that now goes by th[e] name [capitalism].”).

423. *Cf.* Alfred L. Brophy, *The Market, Utility, and Slavery in Southern Legal Thought*, in SLAVERY’S CAPITALISM: A NEW HISTORY OF AMERICAN ECONOMIC DEVELOPMENT, *supra* note 43, at 262, 262-63 (“The law was designed . . . to sustain slavery across a broad spectrum of areas, including criminal law, contracts, trusts, and tort liability.”).

## APPENDIX

Table 1: Debt Profile for Bankrupt Slave Traders

Trader	Interstate Debt	Total Debt <sup>424</sup>	Interstate Creditors
Samuel N. Hite	260.00	29,028.23	1
Thomas J. Spear	1,328.00	12,378.66	3
John N. Denning	2,400.00	3,100.00	6
George A. Botts	2,938.81	142,441.23	4
William Berger	4,194.55	8,991.38	5
Nathaniel J. Pegram	11,780.61	22,812.23	33
Hezekiah R. Wood	18,593.56	27,213.62	20
Joseph O. Pierson	21,253.36	530,868.89	12
J.C. Peixotto	25,617.81	42,526.71	17
Joseph A. Beard	28,863.71	64,513.67	39
Benjamin C. Eaton	42,585.89	60,084.90	18
Norbert Vignié	93,422.03	104,043.70	96
<b>Column Total</b>	<b>253,238.33</b>	<b>1,048,003.22</b>	<b>254</b>
<b>Column Mean</b>	<b>21,103.19</b>	<b>87,333.60</b>	<b>21.17</b>
<b>Column Median</b>	<b>15,187.09</b>	<b>35,777.47</b>	<b>14.50</b>

424. Evidence from the Eastern District case files indicates that three of the case study's twelve bankrupt slave traders availed themselves of Louisiana's debt-forgiveness law prior to seeking federal bankruptcy relief—specifically, (1) S.N. Hite, *see supra* note 317; (2) J.C. Peixotto, *see* Supplemental Petition at 1, *In re Peixotto*, No. 300 (E.D. La. Oct. 10, 1842); and (3) Norbert Vignié, *see* Report of Assignee at 1, *In re Vignié & Soulet*, No. 661 (E.D. La. Mar. 25, 1843). The liability schedules filed by these traders in their respective bankruptcy cases included debts that they had owed at the time they sought relief under state law. *See* Schedule A at 4, *In re Vignié & Soulet*, No. 661 (E.D. La. Jan. 28, 1843); Hite Schedule, *supra* note 317, at 1-2; Supplemental Petition, *supra*, at 1. *See generally* H.R. DOC. No. 29-99, at 7 n.† (1847) (“In many instances, . . . the applicants [in the Eastern District of Louisiana] had taken the benefit of the insolvent laws of the State [and had] filed similar schedules upon their application for the benefit of the bankrupt law . . .”). Given that these three traders may have obtained state-law forgiveness of their *intrastate* debts with the requisite creditor consent, the total amount of debt reported for these three individuals potentially *overstates* their total liabilities at the time that they sought federal bankruptcy relief. *See supra* notes 299-300 and accompanying text.

Table 2: Key Case Dates for Bankrupt Slave Traders<sup>425</sup>

Trader	Bankruptcy Petition	Bankruptcy Decree	Discharge Decree
Nathaniel J. Pegram	02/08/1842	03/05/1842	06/13/1842
Joseph O. Pierson	03/03/1842	04/12/1842	07/18/1842
Joseph A. Beard	03/08/1842	04/15/1842	07/11/1842
Hezekiah R. Wood	06/11/1842	07/05/1842	10/10/1842
Benjamin C. Eaton	06/29/1842	07/27/1842	10/31/1842
J.C. Peixotto	07/07/1842	09/05/1842	12/05/1842
William Berger	07/21/1842	09/05/1842	12/05/1842
John N. Denning	07/22/1842	08/31/1842	12/17/1842
Samuel N. Hite	12/24/1842	01/27/1843	05/11/1843
George A. Botts	12/24/1842	01/27/1843	05/12/1843
Norbert Vignié	01/28/1843	03/10/1843	06/16/1843
Thomas J. Spear	01/31/1843	03/10/1843	06/16/1843

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425. The key case dates for traders who filed for bankruptcy relief in the Eastern District (i.e., all of the traders except for John N. Denning) have been obtained from the federal district court's docket books for bankruptcy cases, *see supra* note 319, which set forth "the case number, name of the petitioner, and a brief abstract of papers filed and actions taken" in each case, *Bankruptcy Act of 1841 Dockets, 1842-1843*, NAT'L ARCHIVES CATALOG, <https://catalog.archives.gov/id/4513372> (last visited Feb. 28, 2019). The key case dates for John N. Denning have been obtained from his bankruptcy petition, bankruptcy decree, and discharge decree. *See* Final Decree, *supra* note 319; Decree, *In re Denning*, No. 193 (D. Md. Aug. 31, 1842); Denning Petition, *supra* note 364.