The Political Origin of Finance:

The Case of Federal Bankruptcy Law in the United States

Erik Berglöf, SITE, Stockholm School of Economics

Howard Rosenthal, Princeton University and Russell Sage Foundation

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Abstract

This paper draws on the legislative history of U.S. bankruptcy law to challenge the influential view that a country's legal origin and mechanism shape investor protection and ultimately financial development and economic growth. Even though the United States has an English legal origin, uses common law, and copied its first federal bankruptcy law from English law, the current U.S. bankruptcy regimes is diametrically opposite to that of the U.K. We show that the American experience can only be understood in the perspective of politics. During the formative 19th century legislative activity was strongly related to general economic conditions: every major reform attempts came in severe economic downturns. Legislative proposals only led to adoption of laws when there was a conservative lock on Congress and the Presidency. Moreover, an in-depth analysis of voting behavior during two critical episodes shows that congressional voting on bankruptcy was strongly influenced by general ideological positions, i.e., how legislators vote on other issues. In fact, even though we show that banking, but not commercial, interests influence outcomes, ideology is a much more important factor explaining voting behavior. We argue that political origins and ideological divides are grossly overlooked in our understanding of the determinants of financial (and legal) development. The ideologically charged congressional debate over bankruptcy reform at the turn of the twenty-first century echoes our historical analysis.

1. Introduction

In the United States bankruptcy law has recently triggered an ideologically charged debate and intense activity from special interests.[1] This article uses the legislative history of U.S. bankruptcy law to challenge the influential view in the recent law and finance literature that a country's legal origin (whether English, German, French or Scandinavian) and mechanism (common law or civil law) explain the level of protection offered to investors (LaPorta et al., 1997, 1998a and b, and 2000).[2] Investor protection, in turn, is claimed to determine financial development, and ultimately, economic growth. But the history of investor protection, in particular creditor protection, in the United States suggests that politics has played a much more important role in shaping investor protection.

The U.S. Bankruptcy Act of 1800 essentially copied the English Statute of Anne, but today – two centuries later – bankruptcy laws in the United States and United Kingdom differ dramatically. Despite a common (Anglo-Saxon) legal origin, and legal mechanism (common law), the two countries come out as diametrical opposites on all but one of the LaPorta et al. measures of creditor protection, with UK bankruptcy law generally protecting creditors better. Moreover, US law is generally viewed as having a bias towards keeping firms in operation and as discriminating against bank involvement in bankruptcy. UK law, on the other hand, is perceived as more prone to liquidate firms

[1] For an analysis of this debate see Nunez and Rosenthal (2002).

[2] In the LaPorta et al. framework legal origin is essentially indistinguishable from legal mechanism, i.e., common law or civil law.

prematurely and as having a bias in favor of the main bank (the holder of the *floating charge*).

The predominance of legal origin is further brought into question by the dramatic fluctuations over time in American bankruptcy law.[3] From 1789 through 1898, there were seven major pushes for federal bankruptcy legislation. While four of these attempts succeeded, the U.S. was almost always without any federal bankruptcy law prior to 1898 since the first three laws were repealed within a few years of adoption. The laws adopted had very different degrees of creditor protection (Warren, 1935; Domowitz and Tamer, 1997; and Skeel, 2002).

This paper suggests that the explanation for these variations over time and the divergence from England should be sought in the legislative process, rather than in the courts. We first analyze data on all congressional roll calls related to bankruptcy reform. We link congressional activity to the business cycle. We then focus on the nineteenth century when the U.S. bankruptcy law developed most of its current features. For certain critical votes we examine more closely the influence of key interest groups and how voting on bankruptcy is related to overall, ideological voting behavior by individual members of Congress We also use data on local interest rates and the strength of special interests in individual constituencies.

We show a very strong political origin of bankruptcy law during the formative 19th century. Our measure of legislative activity shows that bankruptcy was a controversial political issue that engendered substantial voting in Congress. We find a strong correlation between the level of legislative activity and economic downturns: all major reform attempts came at, or close to, the bottom of severe economic crises. But actually passing a law required a certain political constellation: legislative initiatives resulted in laws only when there was a conservative lock on both houses of Congress and the Presidency.

When bankruptcy bills were passed, most notably in 1841 and 1898, roll call voting by members of Congress was strongly linked to "ideology." More precisely, the entire voting history of individual congressmen across *all* issues explains well how they voted on bankruptcy. That is, a legislator's "ideology" is simply the legislator's position on a left-right dimension, the position being computed from the legislator's voting record across all issues. How legislators voted in general explains how they voted on bankruptcy. A bankruptcy vote, to a large degree, simply is a cutpoint on the left-right dimension, with legislators left of the cutpoint voting one way and those to the right voting the other. Cutpoints on the ideological dimension allow for more powerful explanations of voting behavior than simply assuming disciplined party voting in a two-party system. Our measure of the ideological dimension is the widely used DW-NOMINATE coordinates of Poole and Rosenthal (1997)).[4]

A multivariate analysis of voting on the Bankruptcy Act of 1898 shows that a strong role for ideology remains after we have controlled for special interests. Nevertheless, if a congressional district was in a banking center, its representative was

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[3] Bankruptcy law in England also went through considerable swings in the 19th century, with major changes in fundamental aspects of the law occurring in 183, 1861, and 1883 (Lester, 1995).

[4] Available at voteview.uh.edu. Over 20 articles in the three major political science journals (*American Political Science Review, American Journal of Political Science, Journal of Politics)* and two major economics journals (*American Economic Review* and *Journal of Political Economy)* have either used the NOMINATE measures for Congress or the NOMINATE methodology to score other data. Applications to financial markets include Romer and Weingast (1991) and Romano (1997). The methodology is developed at length in Poole and Rosenthal (1901, 1997) and McCarty, Poole, and Rosenthal (1997).

more likely to support the Act. Non-financial interests seem to have been less involved, or at least less influential, in shaping the outcome of this legislative event. The presence of trade associations or chambers of commerce in the congressional district was unrelated to voting on the Act.

The strong role for ideology, in the sense used here, is by no means unique to bankruptcy. In the last 20 years, one liberal-conservative or left-right economic dimension correctly classifies over 90 percent of the individual voting decisions in Congress. (Poole and Rosenthal, 2001) The 90 percent figure is impressive given that the average majority is far more modest, about 65 percent.

In the late nineteenth century a similar dimension, again centered on economic redistribution, existed. We show that bankruptcy was largely split on this dimension, with the left being pro-debtor and pro-state law and the right being pro-creditor and pro-federal law. The same dimension explains votes on tariffs, railroad regulation, antitrust, monetary policy, and other issues, suggesting that bankruptcy legislation and indeed other legislation related to the financial system should be understood in the context of this divide. Interestingly, special economic interests in fact appear to play only a secondary or residual role to ideology.

In contrast to the late 19th century, roll call voting in the 1840s also reflected a second dimension related to the slavery issue. We indicate, however, that bankruptcy voting largely reflected the main, economic redistribution dimension.

Our findings are closely related to those of Rajan and Zingales (2001) who observe large variations over time in the functioning of financial systems, in particular within Europe. They put forward a political-economy explanation where legislation in recessions is more favorable to protecting interests of managers, owners, and workers of incumbent firms in at the expense of creditors and potential new entrants. An alternative view suggests that economic crises serve to shake up incumbent interests and promote institutional change (Olson, 1984). While the evidence on bankruptcy legislation in the United States is consistent with the view that severe recessions play an important role in promoting institutional change, the strong pro-debtor orientation is consistent with the Rajan and Zingales view.

Our analysis focuses on the role of the legislative process in shaping the institution of bankruptcy law. By contrast, in their comparison of English and US bankruptcy law Franks and Sussman (2002) emphasize the difference in legal innovation regime – incremental common law (England) vs. codification (United States). The contrast is mistaken in that bankruptcy law in England was not common law and was ripe with administrative intervention.[5] Even if English courts were, however, to have had the importance ascribed by Franks and Sussman, we would argue for the primacy of the political-legislative process. Political choices determine the discretion available to the courts. During the 19th century U.S. legislators faced a choice between a federal bankruptcy law and a default environment based on state law and state courts. The default was a moving target; state policy was increasingly constitutionally limited by the U.S. Supreme Court, particularly with regard to debt that involved parties from different states. In adopting a federal bankruptcy law and designing its provisions, legislators could

[5] Skeel (2002) emphasizes how U.S. legislators left considerable discretion to the judicial system, whereas in England the government preferred to intervene directly through administrative procedures. Lester (1995) documents the extent of government intervention in English bankruptcy law during the 19th century.

largely decide on the degree of discretion given to the judiciary and to state governments. What we want to explain is what determined these choices.

The paper starts by discussing the broad outlines of the legislative history of U.S. bankruptcy law (Section 2). We show how economic conditions and partisan politics interacted in legislative activity and the passage of reform initiatives. In Section 3 we use the DW-NOMINATE methodology to analyze two critical votes on bankruptcy reform. We find that the overall ideological positions of individual members of Congress have a strong effect on their voting on bankruptcy law. Section 4 analyzes the influence of local economic conditions and special interests. It suggests that banking, but not industry, interests also seem to play a role, but ideology remains the single strongest determinant of voting behavior. In the concluding Section 5 we discuss the findings and their implications for our understanding of financial development.

2. The legislative history

Article I, Section 8 of the Constitution gives Congress the power "To establish uniform Laws on the subject of Bankruptcies throughout the United States." This clause was adopted with practically no debate (Warren, 1935, p. 5). In *Federalist* 42, Madison wrote simply, "The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States that the expediency of it seems not likely to be drawn into question."[6]

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

Madison would discover how wrong he was within his own political lifetime. Bankruptcy law was a contentious issue in the United States from the adoption of the Constitution until 1898, the year of passage of the act that forms the basis of the current bankruptcy system (Table 1 in the Appendix summarizes the legislative history). The 1800 act was repealed in 1803. The 1841 act was repealed in 1843 by the very Congress that enacted it. The 1867 act was frequently amended and then vanished entirely in 1878. For most of the 19th century, including the period of Madison's presidency, there was no national bankruptcy law.

Much of the controversy was about federal powers vs. states rights. In voting on bankruptcy bills, members of Congress would respond to the status quo: state policies, subject to constitutional constraints imposed by the Supreme Court (during the 19th century except brief periods of federal law), and federal law. In the absence of federal law, many states enacted their own legislation.[7] On balance, the Supreme Court in the nineteenth century appeared as the guardian of ex ante commitment while the more politically responsive state legislatures were the advocates of ex post flexibility.[8] In current bankruptcy law state legislation defines exemptions and priorities, resulting in

[7] In *Sturges v. Crowinshield* (1819) and *Ogden v. Saunders* (1827), the Supreme Court ruled that state laws were legal in the absence of a federal statute. The applicability of the laws was, however, sharply limited. The interstate commerce clause was used to judge the laws inapplicable to contracts between citizens of different states. The contracts clause was used to deem the laws inapplicable to contracts concluded before the legislation went into force. The Court's use of the contracts clause was not rigid insofar as the Court tried to strike a balance that extended flexibility to debtors. It did allow the states to modify legal remedies or methods of enforcing contracts. Consequently, the states freely enacted "stay laws" which provided for debt moratoria or prolonged installment payments. Yet when these laws tilted too strongly against foreclosure, the Court, in *Baron v. Kinzie* (1843) intervened on the creditor side. Similarly while the Supreme Court was "a conservative stronghold against the growing power of state democracy and popular sovereignty" and "favored vested interests at the expense of the states" (Kelly and Harbison, 1970, 283), state courts were politically sensitive. In a largely agrarian society, it was more favorable to property [debtor] rights in land and mortgages than to rights in corporate property.

[8] However, many states passed farm mortgage moratoria during the Depression, and the statutes were upheld by the Supreme Court (Alston, 1983a, b, Rucker and Alston, 1987).

differences across states in the type and value of assets that can be sheltered in federal bankruptcy proceedings. The states thus retain ex ante power over bankruptcy, but since bankruptcy proceedings take place in federal courts, federal officials have residual powers to ex post influence property rights through discretionary interpretation and enforcement relying on case law. In the nineteenth Century, Congress also exercised ex post power by enacting and then repealing the Bankruptcy Acts.[9]

Domowitz and Tamer (1997) have carefully inventoried the historical record of legislative activity on bankruptcy. Their results, reproduced in Table 1, cover bills, petitions, resolutions, and acts. Bills and petitions unaccompanied by roll call voting may not be indicative of substantial public concern over policy. They may be the initiatives of individual members barking in the dark. Or they may command some support but be "bottled up in committee". The observation of a bill (or in earlier times, a petition) without further information is not indicative of significant demands for legislation, either by interest groups or larger publics.

Bills accompanied by roll call voting are indicative of a more salient policy debate. Consequently, it is relevant to add counts of roll calls to the Domowitz-Tamer chronology. But not all roll call voting leads to legislation, either because the bill is defeated or vetoed or because one house fails to act. On the other hand, there are many "acts" (1872, 1903, 1906, 1910, 1917, 1922, 1938, 1960, 1974) that have no roll call voting in one or both houses of Congress. That is because legislation can be passed by

[9] Congress, of course, retains all residual ex post power and uses it from time to time in revisions to the law, in bailouts of private firms (Chrysler) or in assuming state ownership (Conrail). Perhaps the most notable exercise of ex post power in the twentieth century occurred in 1933 when Congress abrogated the gold clauses in bonds, including nearly all corporate bonds listed on the New York Stock Exchange. Congress essentially reduced the real value of debts by 31% (Kroszner, 1999).

teller vote or voice vote. These changes, such as the Chandler Act in 1938 and the Bankruptcy Reform Act of 1978, may be of great importance to interest groups. They may, insofar as they pertain to personal bankruptcies or the employees and shareholders of large firms, also be very important to the public. Nonetheless, the acts largely avoid public scrutiny. Acts that engender important policy debates are, in contrast, the focus of roll call voting.

The history of congressional action can be broken into three periods with distinct characteristics. The first period, shown in Part A of Table 1, ranges from the Constitution through the Civil War. In these early Congresses, bills were introduced and substantial roll call voting took place only after each of the severe economic downturns (the major "panics" are dated in Table 1). In the intervals between panics, there was no legislative activity. The second period, shown in Part B, is the three decades leading up to the 1898 bill. During this period, there is activity, sometimes with substantial roll call voting, in most Congresses. The more continual activity suggests a demand for a national law but an inability to forge a national consensus.

To provide contrast, we show also, in Part C of Table 1, the twentieth century through 1996, Part C, thus prior to the renewal of partisan bankruptcy politics.[10] During this period, we see almost no roll call voting until the introduction of electronic voting in the House in the 1970s. Between 1898 and the Depression, the Act avoids repeal and is "perfected" by several pieces of non-controversial legislation. The Depression changes are pushed through by the huge Democratic majorities. Complete stability occurs between

[10] Nunez and Rosenthal (2002) show a return to ideology on the recent bankruptcy reform legislation.

1938 and 1960. Even the more recent changes occasion only limited voting. In the rest of the paper we focus on the first and second periods.

The overview provided in Table 1 suggests that bankruptcy legislation was a major item on the national agenda only in the first half of the nineteenth century. Compared to more recent times, roll call voting on bankruptcy represented large chunks of the total floor activity of Congress. The 27th House devoted 68 of its 974 roll calls to passing and repealing the 1841 Act, the Senate 23 of 822. When the 55th Congress passed the 1898 Act, activity had already declined significantly, with bankruptcy votes represented by only 5 of 183 House and 4 of 183 Senate roll calls. The 1978 Act was largely a non-issue, generating only 6 of the 1540 roll calls in the 95th House, and just one of 1156 roll calls in the Senate. The decline in floor voting on bankruptcy is one mark of its passage from a partisan, ideological issue to one of behind-the-scene battles by interest groups for changes in an institution that has broad acceptance. Moreover, the intensity of legislative activity exhibits a secular decline from the 1840s onwards, suggesting lower visibility of the issue.

During the 19th century bills become Acts only when there is unified conservative government. Bankruptcy Acts were passed during periods when parties that represented commercial interests in the New England and Middle Atlantic states, that is the “right”, had unified control of the federal government:

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

- The 1867 Act under veto-proof Republican majorities in both houses and Andrew Johnson, elected as Lincoln's vice-president on the Republican 1864 ticket.
- The 1898 Act under a Republican Congress and Republican president, William McKinley.

Every major downturn in the business cycle thus triggered a demand for bankruptcy law, but no bankruptcy legislation could be passed as long as the "left" was in control or control was divided. No legislation followed the panics of 1819 and 1857.[11] (The Jeffersonian Democrat-Republicans controlled the presidency and Congress from 1819 until 1825 and the Democrats controlled the presidency from 1857 to 1861.) The Acts that followed the panics of 1837 and 1893 were not passed immediately but only after political control had passed to the right.

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

The various reform attempts during the 19th century span a wide range of possible laws. Domowitz and Tamer (1997) classify them roughly in terms of debtor-creditor friendliness. The 1800 Act, inspired by English law, applied only to merchant-traders and was ostensibly creditor-friendly. Only creditors could initiate bankruptcy. Yet Warren

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

(1935) reports that perhaps most bankruptcies were debtor-induced, in which a debtor colluded with a friendly creditor to obtain terms to the disadvantage of other creditors.

The 1841 Law allowed for voluntary bankruptcy of individuals; creditor-induced bankruptcy could be once again applied only to merchant-traders. In practice the law strongly favored debtors. During its brief existence, over 40,000 individuals (representing over 1 in every 100 adult white males) canceled over $441 million in debt. Creditors recovered only about ten cents on the dollar.[12] Thus, in effect, the 1841 Act wrote off the Panic of 1837 and was then canceled by repeal in 1843.

The 1867 law allowed for both voluntary and involuntary bankruptcy for all classes of individuals. Warren (1935) suggests the law led to costly administration that was both inefficient and corrupt. Apparently the law was creditor-friendly since the Democrat-controlled House voted repeal *after* the Panic of 1873. The Republican Senate rejected full repeal but compromised on pro-debtor amendments, including provisions for composition (an agreement by a ¾ majority of the creditors) and extended repayment terms. Finally, in 1878 the bill was fully repealed.

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

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opposed the land bill. In contrast, a bankruptcy bill, favored by merchant interests, failed. See Rothbard (1962).

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

bankruptcy was allowed and wage earners and farmers were exempt from involuntary bankruptcy.

3 Explaining voting patterns

In order to understand better the origin and outcome of legislative activity we want to disentangle factors influencing general voting behavior, like ideology, party politics and general socioeconomic conditions, from factors influencing bankruptcy votes specifically. The analysis in this section concentrates on the power of general factors in explaining voting behavior during two major episodes: the 1841 Act (and its repeal); and the 1898 Act. [13] The voting in the 27th House, which passed and repealed the 1841 Act, illustrates ideological or spatial voting in the ante-bellum period. The 1898 Act marked the origin of modern bankruptcy law and established a new status quo for legislative activity on this issue. First, however, we must digress to discuss our methodology.

3.1 A Spatial Model of Roll Call Voting

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

[13] A more complete analysis covering more episodes can be found in Berglöf and Rosenthal (2000)

alternatives are equidistant from the ideal point, the legislator flips a fair coin in voting. The cutting line on each roll call, also shown in figure 1, 2A, and 3, gives the locus of points equidistant from the two alternatives.

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

The two-dimensional, linear DW-NOMINATE model accounts for 85% of all the individual choices in both the House and Senate on all roll calls with over 2.5% voting on the minority side for the period 1789-1985. On roll calls with over 40% voting on the minority side, the model accounts for 84% of the choices in both houses (Poole and Rosenthal, 1997). For the period 1947-1995, the overall classification is 86% in both houses (McCarty, Poole, and Rosenthal, 1997).

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

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

The average PRE for 1789-1985 is 0.55 in the House and 0.54 in the Senate (Poole and Rosenthal, 1997).[14] The average PRE is substantially higher for close roll calls than for lopsided ones.

3.2 The 1841 Act in the 27th House of Representatives

The Panic of 1837 had resulted in demand for bankruptcy legislation. Many roll call votes took place in 1839-40 (see Table 1). But bankruptcy proponents were blocked by the Democratic majority. A bill passed only after the Whigs took control in Washington after the 1840 elections. The bankruptcy bill includes provisions for voluntary and involuntary bankruptcy for individuals but no provisions for corporations, which were, at the time, chiefly banks. The voluntary bankruptcy provision was a Whig innovation, presumably to get debt relief for Whig merchants and traders.

We present data on important votes on bankruptcy for the 27th House in Table 2: the votes leading to passage in 1841, the vote that passed repeal in the House (but not the Senate) in January 1842, and votes leading to repeal in early 1843.[15] The episode is characterized by a virtual absence of substantive amendments. Most of the votes not in Table 2 are on procedural attempts to kill a bill or to delay action, a reflection of a bitter, close division, where turnout on a given day could influence the outcome. With the

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[14] A technically more appealing measure would be the geometric mean probability of the observed choices. Results are similar.

[15] For an expanded table with all votes, see Berglöf and Rosenthal (2000).

exception of attempts to maintain state debt relief laws in force and to delay the effective date of repeal, members either manifested support or opposition to the bill. There was an absence of floor action aimed at reform or perfection. Positions were polarized.

The bill initially met strong opposition. In fact, the bill was tabled on August 17 by a vote of 110-99. The Democrats were unified against with only five defectors. These were all “Wall Street” Democrats (Roosevelt, Sanford, Ward, and Wood of New York and Plumer of Pennsylvania). Northern Whigs were just as unified in favor, with only six defectors. The swing votes were Southern Whigs who voted 25-10 to table. The bill fit the spatial model quite well, with only 28 classification errors in 209 votes and a PRE of 0.72. Predicting straight party-line voting would have resulted in 36 classification errors.

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

Developing a logroll in this period involved influencing abstentions as well as simply switching votes. Opponents could be persuaded to abstain. The turnout of supporters could be increased. Between the motion to table and passage, the pro-bankrupt law side lost 1 vote among Democrats voting both times[16] and gained 3 votes among Whigs.[17] The net gain was 2 votes. They needed a switch of six to swing the 110-99 defeat on tabling to a victory. The missing votes came from earlier non-voters. In fact, the Whigs were able to increase their turnout by six voters while the Democrats could increase turnout by only one.

Of the many votes prior to passage of the Act, there was only one substantive amendment. This amendment, by Clifford (D-ME), a Northern Democrat in the left wing of his party, manifests an important issue that divided proponents from opponents of the bill. On August 17, Clifford moved to amend "adding that nothing in this act shall be construed to alter or repeal any state law for the relief of insolvent debtors, or any such law exempting certain goods and chattels from attachment, execution and distress."[18] With the amendment, debtors would have been allowed to use relatively friendly state laws as protection from creditors. Clifford's amendment passed 99-94. The vote on the amendment, shown in figure 1, was perhaps the purest vote in terms of preferences. Democrats supported the amendment 73-4, Northern Whigs opposed 8-69. The amendment passed because of the division of Southern Whigs (17-21). There were only 19 classification errors and the PRE was 0.80. (Party line voting implies 29 classification errors.)

Over the night from Aug. 17 to Aug. 18, the Whigs rallied. After additional voting, the Clifford amendment was finally defeated by 91-119 on a nearly straight party-line vote. The spatial model has only 8 errors and a PRE of 0.912. Of those voting both

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[16] Two went against and one switched to for.
[17] Four switched to for, one switched to against.
[18] The source of the citation is the VOTEVIEW codebook entry for the roll call.

times on the amendment, 1 Democrat and 11 Whigs, including 8 from slave states, swung in favor of restricting state law. The House then passed the unamended bill.

Why did the law become unpopular so quickly after passage? On the one hand, the bill was viewed as a success since over 40,000 individuals took advantage of voluntary bankruptcy and many more used the threat of voluntary bankruptcy to secure favorable terms from their creditors (Warren, 1935, 81). On the other, Warren argues that the bill alienated creditors because in practice it became a mechanism to write off the debt of the Panic of 1837 and alienated debtors because it took precedence over even more debtor-favorable state laws that were enacted following the Panic. Warren's creditor story is at odds with the roll call record since conservative Whigs remain the legislators most likely to vote against repeal. In addition, during the debate on repeal, motions are made concerning repeal petitions from citizens in Louisville, Kentucky, Madison and Bullitt counties Kentucky, Otsego county New York, and Montgomery and Kickman counties Tennessee. These were all rural or western areas.[19] A great source of opposition might just have been the transaction cost of pursuing relief in distant federal district courts.

The bill took effect on Feb. 1, 1842. The House in fact voted repeal, at the end of a debate lasting from Jan. 8 to Jan. 17, 1842. There were a total of 27 roll call votes, the large number reflecting efforts by the Whigs to both delay repeal and to include specie-issuing banks under the law. The repeal vote fit the spatial model well, with a PRE of 0.70 and 28 errors. The movement to repeal at this point reflects more the collapse of the

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

logroll than a dramatic shift in preferences. Of those voting on both Underwood's original motion to table, which was thought to have killed the bill, and on repeal, only 9 Whigs and 4 Democrats changed camps. Both parties had only a single individual who switched to the pro-bankruptcy law side. The others switched against, including 3 New York and Pennsylvania Democrats and 8 southern and western Whigs. The net gain of 9 votes by the anti-bankruptcy side between the Underwood motion and repeal suggests only a mild shift in basic preferences. Since there had been no experience with the law in January, the first repeal effort was largely the unraveling of the logroll. As the Senate failed to act, however, the bill took effect.

In the period between the failed attempt at repeal in early 1842 and the successful repeal a year later, there were 18 roll calls on bankruptcy. The last 13 votes were in Dec. 1842 and Jan. 1843 on the repeal bill, HR 642.

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

The bill was repealed by a 140-71 vote, on Jan. 17, 1843, less than one year since assuming force. The Democrats voted for repeal unanimously. The Whig party had become sharply divided. Southern Whigs voted for repeal by more than a 3-1 margin; even 20 Northern Whigs supported repeal. The swing against the bill was unambiguous. (All members who had voted against passage voted to repeal.) The effect of experience with the bill is demonstrated by observing a gain of 15 more votes favorable to repeal in 1843 compared to the earlier repeal vote just prior to the bill's taking effect in 1842.[20]

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

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

The story of the 1841 Bankruptcy Bill illustrates the instability of bankruptcy policy in the 19th century.[21] Basic ideological preferences are fundamental for understanding this pattern. The "indirect" preferences that result from the mapping of bankruptcy legislation onto ideology are conditioned by the state of the economy and

[20] Three Whig representatives who voted for repeal in 1842 did vote against in 1843, but 13 switched from against to for, as did five Democrats.
[21] Skeel (2002) suggests a role for voting cycles. Cycles that are germane to bankruptcy do not seem to be fundamental to the absence of law. If anything, because of the evolution of technology and corporate structure, the dimensionality of bankruptcy legislation might be far higher today than in the nineteenth

public reaction to the effectiveness of the law. The distribution of preferences in Congress is determined by the volatile outcomes of national elections. Economics, elections, and ideology, themselves closely intertwined, combined to produce legislative volatility.

3.3 The 1898 Bankruptcy Act

Congressional roll call votes leading up to the 1898 Act both indicated a division over the standard ideological lines of the nineteenth century and a consensus that some form of national law was necessary. The ideological battles were evident in the votes on amendments in both chambers and on passage in the House. Consensus was visible from the large, nearly bipartisan, majorities agreeing to passage in the Senate and to the conference report in both houses. In both the Senate and the House, in strong contrast to the 1841 Act, both chambers took up and passed the bill in a single day. They also both took only one day to approve the conference report.

The Senate considered and passed the bill early in its first session. The Republican Party majority depended on five "Silver Republicans" who would be subject to populist, anti-corporate appeals.[22] Indeed, as Table 3 shows, the Senate passed, on a roll call, an amendment excluding corporations from the act. The amendment was supported 9-0 by Populists, Silver Republicans, and Silvers, 12-3 by Southern Democrats. Northern Democrats were divided 3-3. Only Republicans were opposed. Sixteen of the 22 votes

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century. However, Congress has rather easily found ways to bargain and negotiate across the multiple aspects of the law (if not about the recent abortion-related Schumer amendment).

[22] We use the party classifications of Martis (1989). In Table 3 and the text, we treat the lone Independent Republican in the House as a Republican and, in both houses, combine Silver Republicans and Silvers as Silvers.

against came from states east of the Mississippi and north of the Mason-Dixon Line, i.e., the industrial part of the country. The most serious prediction error of the model was the vote in support of the amendment by Mark Hanna of Ohio, who symbolized corporate Republicanism. On the whole, the fit by the spatial model was good, with a negatively angled cutting line very similar to those found on railroad regulation (Poole and Rosenthal, 1994), another matter of anti-corporate or anti-commercial ideology. As table 3 shows, when the House took up the bill, there were motions to eliminate corporate bankruptcy, to eliminate involuntary bankruptcy, and to restrict the bill's duration to two years. The provision with regard to corporations had, as in the Senate, a populist ring. Similarly, the prohibition of involuntary *individual* bankruptcies seemed designed to appeal to debtors. Restricting the bill's duration to two years would allow it to sunset during the 56th Congress, to be elected in midterm elections where the Democrats would be expected to make gains.

The three amendment votes and the passage vote all had similar majorities and cutting lines. The pro-bankruptcy side obtained 156 to 158 votes on all 4 votes. The cutting lines were all negatively sloped, as with the corporate amendment in the Senate. All votes fit the spatial model exceptionally well, with PREs ranging from 0.78 to 0.80. Few individual votes changed sides across the four votes. The nine individuals who switched sides between the restrictive Underwood amendment vote and the passage vote were all representatives who supported the amendment but also supported the bill. This behavior indicates consensus on the need for a bill. These nine representatives preferred the bill to the status quo of no bill even though they would have preferred an amended bill.

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

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

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[23] Passage in the Senate had been less divisive than in the House. The Senate passed the bill by an overwhelming 49-8 majority. The spatial fit is only modest. The South does come through as the source of

Corporate bankruptcy was introduced in the United States after the House prevailed in conference.[24] Senators expressed their anger by giving a smaller pro-bankruptcy margin (43-13) to the conference report than to passage (49-8). Nonetheless, there was broad support for a bill across the nation. The House also passed the conference report without controversy, with a far larger majority than had voted for passage. Moreover, turnout in the House dropped by about 100 members between the amendment and passage voting in February and the conference report voting in June. Approval was pro forma. Although House Democrats continued to oppose the law by a 2-1 margin, Populists and Silvers approved it 9 votes to 4. Bankruptcy law had ceased to be a major political issue.

4. The Role of Special Interests

Factors specific to bankruptcy could also have played a role in shaping legislation. We study the roles of bankruptcy-specific economic factors and two prime candidates for special interests – the banking industry and trade (industry) associations – in House votes on the 1898 Act.

We first look at the role of local financial conditions. At the end of the nineteenth-century, there were wide discrepancies in nominal interest rates across the nation. Nominal rates in the South and the West were more than double the rates in New England. One might expect that areas where debtors were faced with stiff payments might offer correspondingly stiff opposition to a Republican backed measure.

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opposition since the 8 votes against came from Alabama (2), Louisiana, Arkansas, Georgia, Kentucky, Maryland, and Delaware.

[24] The House did make significant concessions on the details. See Skeel (2002).

Breckenridge (1898) provides data from *Bradstreet's* on the average discount rate (loan rate on first-class double-name commercial paper) from 1893 to 1897 for 43 cities.[25]

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

If high interest rates did not spark opposition to a bankruptcy law, the presence of a banking sector did. Although Warren's (1935) view is that the bill was in the "national interest", urban areas with creditors in the form of banks appeared to be the major demanders. We created a dummy variable whose value was 1 if the district was wholly or partly contained in one of the 43 Dun and Bradstreet banking center cities and was 0 otherwise. Our coding generated 76 banking center congressional districts out of the 371 congressional districts in 1898.[26] We ran logits based on this dummy variable, BANKCEN, and the two Nominate coordinates, DNOM1 and DNOM2, for the legislator. Since neither political party, interest rates, or interaction between interest rates and banking centers made significant improvements to the likelihood, we present, in Table 4, only the basic results for the five votes in the House.

[25] In looking at annual data for these years, we found a consistent cross-sectional pattern across years.
[26] New York City had 9 districts, Chicago 8, Brooklyn 6, Philadelphia 5, St. Louis 3, and San Francisco, New Orleans, Boston, Baltimore, and Buffalo, two each.

To clarify the table, we coded a pro-bankruptcy vote as a "1" for all five votes. Thus, for all five roll calls BANKCEN is expected to have a positive coefficient. The results confirm this. Moreover, the coefficient on BANKCEN is statistically significant in all but the final, lopsided vote on the conference report. The impact of being a banking center is substantial. A district that would otherwise have had only a 50% chance of favoring the bankruptcy act had an 80% chance if it were a banking center.

An alternative and more compelling interest group explanation of support for the 1898 Act has been proposed by Hansen (1996). He indicates how trade creditors involved in interstate commerce developed voluntary associations in urban centers. These local associations were then easily tied together in national umbrella organizations. (In contrast, banks, given the limits on branch banking in the United States, may have seen less need for a federal law.) It is possible that BANKCEN is just a reasonable proxy for trade creditor organization.[27]

We can provide an empirical test of the trade creditor vs. banking interest hypotheses by taking advantage of a unique set of data compiled by the Treasury in 1890. This is a *List of Boards of Trade and Other Commercial and Industrial Organizations of the United States*.[28] The organizations in the list can be broken down into three main categories, namely, Boards of Trade, Chambers of Commerce, and other, more specialized organizations, such as the Grocers' Association of Lowell, Massachusetts. In addition, the list contains the number or, more likely, an estimate of the number of the

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

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

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

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

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

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

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

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

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

In contrast, the third column for the Underwood amendment shows that only banking centers strongly supported the 1898 Act. The coefficient for districts with trade associations but no banking centers is small and opposite in sign to that for banking centers. The strongly positive coefficients for the two types of districts with banking centers are both large and similar in magnitude. Indeed, the improvement in the log-likelihood of the third column over that of the second is not statistically significant. Consequently, only banking centers supported a strong Act in 1898. Districts with trade associations only were not particularly opposed to the pro-debtor Underwood amendment. The Hansen thesis is not supported. Indeed trade associations may have included both trade creditors and trade debtors; there was ample opportunity for internal conflict in these local organizations. In contrast, insolvent banks would not have benefited from the Act. All banks had a common interest in, for the long run, of a bankruptcy law for their debtors.

5. Conclusion

The clear conclusion from our analysis is that legislative politics, rather than legal origin (mechanism) or court-initiated developments, shaped the evolution of bankruptcy law in the United States. Bankruptcy law was a highly visible and heavily voted issue in 19th century congressional politics. State and court actions influenced the legislative status quo, but Congress was, and is still, always free to intervene, ex post as well as ex ante. Congress, not the courts, dictated that there was no federal law for most of the 19th century and federal law continuously for the 20th, and that ex ante control over exemptions and priorities still remain based in state law, again by explicit congressional decision. Economic downturns triggered legislative activity, but passage was ensured only when there was a conservative lock on both Houses of Congress and the Presidency.

In fact, we argue that politics affected both the substantial fluctuations over time and the specific orientation of U.S. bankruptcy law. Our view is consistent with the more general view that Congress dominates in shaping policy in the United States[29] and the view that courts do not exercise discretion on non-constitutional matters in a manner that invites overturning congressional legislation (Gely and Spiller, 1992).

Legislative activity was triggered by strong downturns in the economy. In between "panics" there were virtually no initiatives. This observation suggests that in the formative 19th century the primary motive for bankruptcy bills was to give debtors relief. Since acts were quickly repealed, they were *de facto* stay laws or moratoria.[30] On the other hand, at least on the surface, bankruptcy acts also represented *ex ante* legislation, perhaps so as to satisfy creditors and provide some credibility to the government. By 1898, the notion of a "national and uniform" bankruptcy law that applied to contracts *ex ante* had become generally accepted.

Why did the 1898 legislation achieve stability? Skeel (2002) argues that the Act created entrenched interests in both the bankruptcy bar and bankruptcy judges (referees before 1973) who sought to maintain and expand the scope of bankruptcy proceedings. He also emphasizes the influence of committee jurisdictions within Congress, with Judiciary not wanting to surrender turf. The role of the legal community is clearly important, particularly since, as Posner (1997) indicates, trade creditors are no longer major players in shaping legislation.[31].

In addition, though, national elections continued to be influential. Repeal attempts were made early in the twentieth century, attempts that may well have succeeded if the Democrats had returned to power earlier than 1912. Similarly, passage in 1938 of the

[29] See, for example, Weingast and Moran (1983) and Romer and Weingast (1991).
[30] In fact, the 1841 Act clearly applied to debts incurred before passage.

Chandler Act, which destroyed the power of the elite Wall Street bankruptcy bar and transferred it to the SEC (Skeel, 2002), almost certainly depended on the large Democratic majorities produced by the Depression. Stability, in our view, depends neither solely on national politics nor on interest groups but on their interaction.

If economic shocks triggered legislative activity, specific institutional rules helped shape the outcome of the process (see, e.g., Shepsle and Weingast, 1981). Without the Constitution's clear call for a "national and uniform" bankruptcy law, and the Supreme Court's strict interpretation of this statute, the United States may still not have had a federal bankruptcy law. The bicameral structure also seemed to have led to legislative inertia. The federal structure of the nation influences bankruptcy law as state interests seek to retain powers in state legislatures rather than Congress. Localism is also a force in the courts, with politically appointed bankruptcy judges having roots in their jurisdictions as against being parachuted bureaucrats.[32] Interestingly, the involvement of the executive branch of the government is remarkably absent in the legislative process, particularly during the 19th century.

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[31] Similarly, insolvency practioners have become major players in the UK (Armour, Cheffins, and Skeel, 2002).

[32] More importantly, the desire to establish a federal law may have been sufficiently strong among its supporters, primarily the conservatives, to try to win over those in support of a debtor-friendly law with a continuation bias, most prominent in the South and the West. According to this argument the necessary majority for a "national and uniform" bankruptcy law was achieved at the expense of a compromise on substance.

Our analysis identifies a third set of variables, related to ideology or broad political preference, influencing the outcome of the legislative process. First, a conservative lock on both houses of Congress and the Presidency was, at least during this period, a precondition for a bill to pass into law. Second, general voting patterns, and particularly the left-right division, played an important role in many of the critical votes on bankruptcy reform. Obviously, this raises the question why preferences over redistribution should enter into votes on the adoption of a federal bankruptcy law.[33]

Courts can still can be important, but their role is primarily determined by the legislator's decision on how much discretion to give them and how much of the law to codify (federalize). In addition, courts may be able to assume greater powers in anticipation of gridlock preventing the legislator from overriding their decisions (Spiller and Gely, 1992). The fundamental nature of bankruptcy law, nonetheless, is a legislative matter, wide open to politics.

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[33] Biais (2001) has analyzed formally how an individual's preferences over different bankruptcy laws may depend on where in the income distribution he or she is. Unfortunately, the lack of income data for congressional districts in the 1800s prevented us from testing this hypothesis.

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Table 1. Legislation and Roll Call Voting on Bankruptcy

A. 1789-1866

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

Table 1. (continued)

B. 1867-1898

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

Notes:

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

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

Source for entries in tables 1 A, B, C.:

Roll Call counts. Authors from Voteview database. (voteview.uh.edu)

Legislative Activity. Domowitz and Tamer (1997).

Table 1. (continued)

C. 1897-1994

Years of Congress	Total Roll Calls House	Senate	Legislative Activity	Economy	Politics
97-98	5	4	Act 7/98		Republicans
99-00					
01-02	1		Act 2/03		Republicans
03-04					
05-06			Act 6/06		Republicans
07-08	2				
09-10	1		Act 6/10		Republicans
11-16	**6 years of no activity**				
17-18			Act 6/17		Democrats
19-20					
21-22			Act 1/22		Republicans
23-24					
25-26	1		Act 5/26		Republicans
27-28					
29-30					
31-32		3	Act 2/32 (1933?)	**Depression**	Divided
33-34	5	2	Act 3/33. Act 5/33, Act 5/34, Act 6/34, Act 7/34		Democrats
35-36					
37-38			Act 6/38		Democrats
39-40	1				
41-42					
43-44					
45-46	1				
47-48					
49-50		1			
51-58	**8 years of no activity**				
59-60			Act 7/60		Divided
61-62					
63-64					
65-66		2			
67-68		2			
69-70	1	1	Act 10/70		Divided
71-72					
73-74			Act 2/74		Divided
75-76	2	5	Act 10/76		Democrats
77-78	6	1	Act 11/78		Democrats
79-80	1				
81-82					
83-84	13	4	Act 7/84		Divided
85-86.		2	Act 10/86		Divided
87-88.	2				
89-90					
91-92		2			
93-94	1	2	Act 10/94		Democrats
95-96	1				

Table 2. House Roll Call Voting on the 1841 Bankruptcy Act

Roll Call	Vote	No. Whig	So. Whig	No. Dem.	So. Dem.	PRE	Class. Errors
Passage of the 1841 Act							
#174, 8/17/41, Clifford, state debt relief laws to remain in force	99-94	8-69	17-21	40-3	33-1	0.80	19
#175, 8/17/41, Underwood, table S. 3	110-99	6-76	25-18	43-5	35-0	0.72	28
#181, 8/18/41, Underwood, table S. 3	99-111	3-85	13-25	47-1	35-0	0.89	11
#182, 8/18/41, Sollers, reconsider Clifford amd. on state debt relief	116-93	89-1	27-11	0-43	0-33	0.93	7
#183, 8/18/41, Clifford, state debt relief laws to remain in force	91-119	1-88	10-30	45-1	34-0	0.91	8
#184, 8/18/41, Wise, order call of House	89-116	1-85	7-31	48-0	32-0	0.94	5
#185, 8/18/41, Pass S. 3	111-105	86-4	22-19	2-47	1-34	0.85	16
#186. 8/18/41, Fillmore, reconsider vote to pass	98-115	2-88	16-26	45-1	34-0	0.87	13
First Repeal							
#343, 1/17/42, Barnard, pass H.R. 72, repeal of 1841 Act	126-94	9-75	30-12	50-4	35-3	0.70	28
Second, Successful Repeal							
#852, 1/16/43, Weller, table resolution that repeal would not affect pending bankruptcy cases	61-115	1-68	7-26	28-16	24-5	0.54	28
#853, 1/16/43, Cushing, amend such that repeal would not affect pending bankruptcy cases	148-62	80-1	31-8	25-30	11-23	0.45	34
#854, 1/17/43, Barnard, limit repeal to cases after July 4, 1843	74-136	63-16	9-30	0-56	1-32	0.70	22
#855, 1/17/43, Everett, pass H.R. 614, repeal of 1841 Act	140-71	20-61	32-10	56-0	30-0	0.59	29

Notes to Table 2. There was one Independent and one Independent Democrat in the House. The votes of these two members are not included in the party breakdowns. Voteview does not record paired and announced votes for the 27th House.

Table 3. Roll Call Voting on the 1898 Bankruptcy Act

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

Table 4. Banking Centers and the 1898 Act

	Roll Call				
Variable	**#61 Sunset after 2 years**	**#62, No involuntary bankruptcy, no corporate bankruptcy**	**#63 Sunset after 2 years, no involuntary bankruptcy**	**#64. Passage**	**#65 Conference report**
Constant	-1.102	-0.764	-0.352	-0.103	1.207
	(0.394)	(0.353)	(0.319)	(0.279)	(0.293)
BANKCEN	1.620	1.882	1.542	1.372	0.816
	(0.700)	(0.703)	(0.683)	(0.635)	(0.584)
DNOM1	6.126	5.761	5.258	4.696	2.682
	(0.780)	(0.701)	(0.597)	(0.519)	(0.432)
DNOM2	-5.475	-6.078	-5.175	-5.131	-3.390
	(1.331)	(1.40)	(1.361)	(0.519)	(1.277)
% Correctly Classified	90.4	90.9	91.7	91.7	81.8
Probability	0.835	0.868	0.823	0.798	0.693

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

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

	Roll Call					
Variable	Against Bailey Bill			Against Underwood Amendment to 1898 Bill (#62)		
Constant	-.212 (0.170)	-0.053 (0.199)	0.208 (0.245)	-.278 (0.248)	0.832 (0.348)	-0.729 (0.384)
BANKCEN		-.669 (0.429)			2.087 (0.731)	
DNOM1	2.466 (0.437)	2.481 (0.439)	2.655 (0.463)	4.930 (0.549)	5.368 (0.701)	5.329 (0.645)
DNOM2	-2.599 (0.653)	-3.023 (0.725)	-3.170 (0.738)	-5.496 (1.174)	-4.530 (1.25)	-4.471 (1.240)
BANK & TRADE			-0.853 (0.570)			2.264 (1.020)
BANK NO TRADE			-1.046 (0.584)			1.793 (.906)
TRADE NO BANK			-0.871 (0.461)			-0.275 (0.507)
% Correctly Classified	80.5	78.6	78.6	90.5	90.5	89.9
Probability	n.a.	0.339	0.299	n.a.	0.890	0.906

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

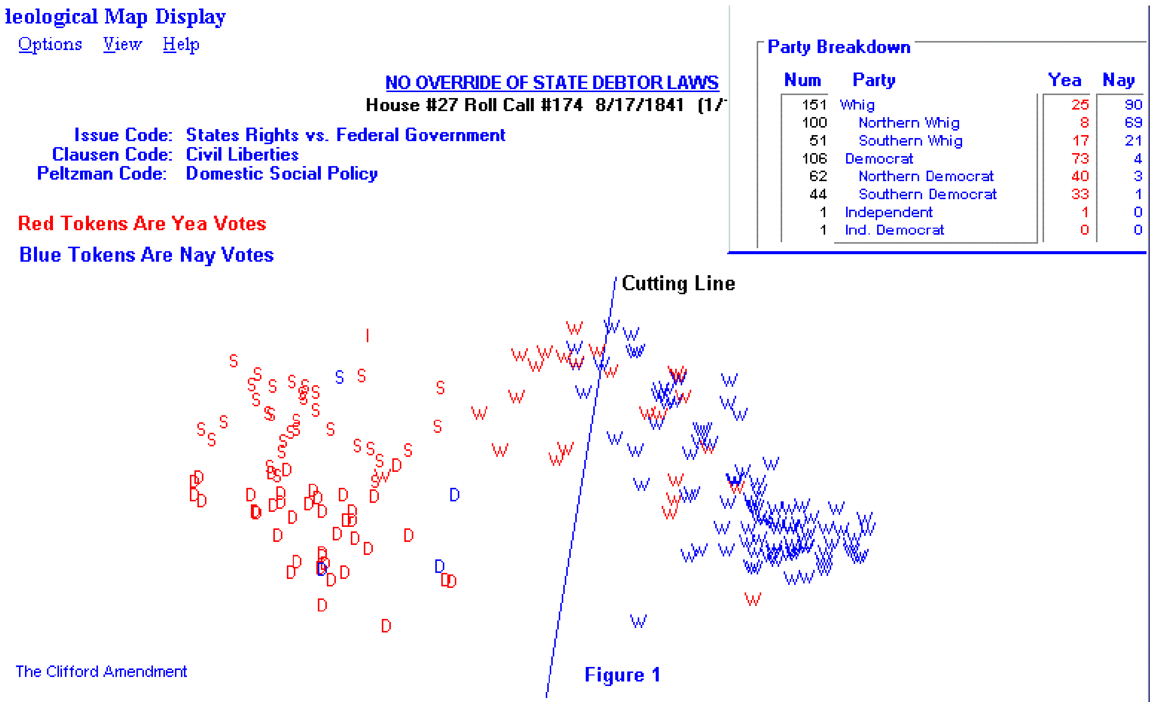
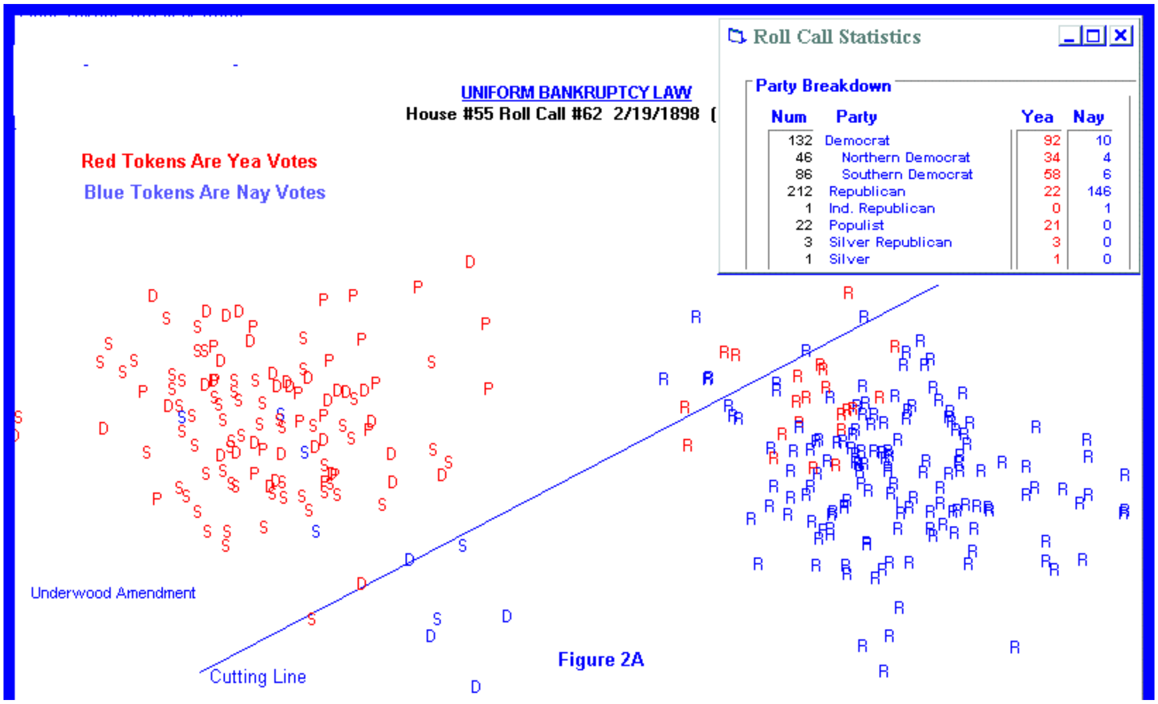
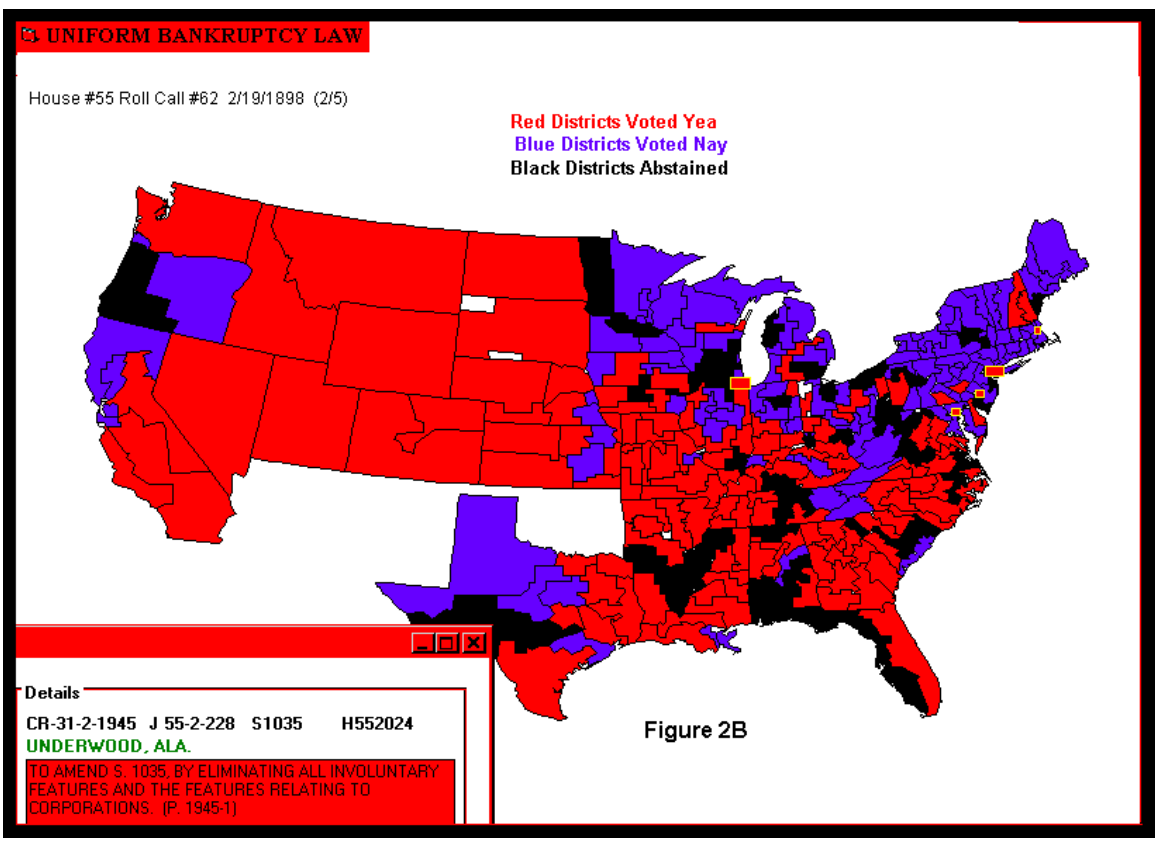

leological Map Display
Options View Help
NO OVERRIDE OF STATE DEBTOR LAWS
House #27 Roll Call #174 8/17/1841 (1/
Issue Code: States Rights vs. Federal Government
Clausen Code: Civil Liberties
Peltzman Code: Domestic Social Policy
Red Tokens Are Yea Votes
Blue Tokens Are Nay Votes
Party Breakdown
Num Party Yea Nay
151 Whig 25 90
100 Northern Whig 8 69
51 Southern Whig 17 21
106 Democrat 73 4
62 Northern Democrat 40 3
44 Southern Democrat 33 1
1 Independent 1 0
1 Ind. Democrat 0 0
Cutting Line
The Clifford Amendment

Figure 1



Roll Call Statistics
Party Breakdown
Num Party Yea Nay
132 Democrat 92 10
46 Northern Democrat 34 4
86 Southern Democrat 58 6
212 Republican 22 146
1 Ind. Republican 0 1
22 Populist 21 0
3 Silver Republican 3 0
1 Silver 1 0
UNIFORM BANKRUPTCY LAW
House #55 Roll Call #62 2/19/1898
Red Tokens Are Yea Votes
Blue Tokens Are Nay Votes
Underwood Amendment
Cutting Line
Figure 2A



UNIFORM BANKRUPTCY LAW
House #55 Roll Call #62 2/19/1898 (2/5)
Red Districts Voted Yea
Blue Districts Voted Nay
Black Districts Abstained
Details
CR-31-2-1945 J 55-2-228 S1035 H552024
UNDERWOOD, ALA.
TO AMEND S. 1035, BY ELIMINATING ALL INVOLUNTARY FEATURES AND THE FEATURES RELATING TO CORPORATIONS. (P. 1945-1)
Figure 2B

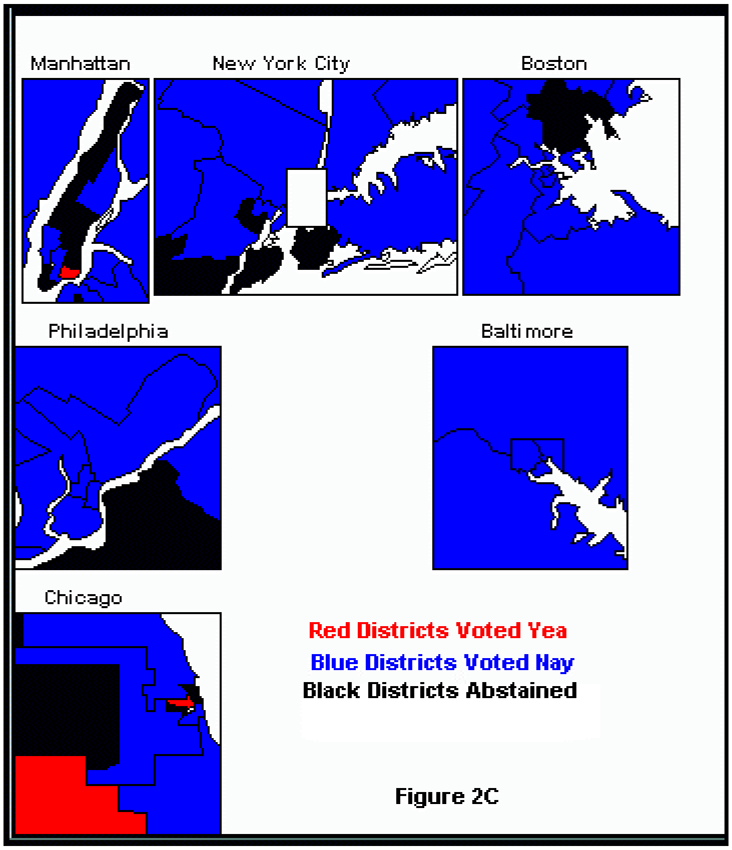


Figure 2C

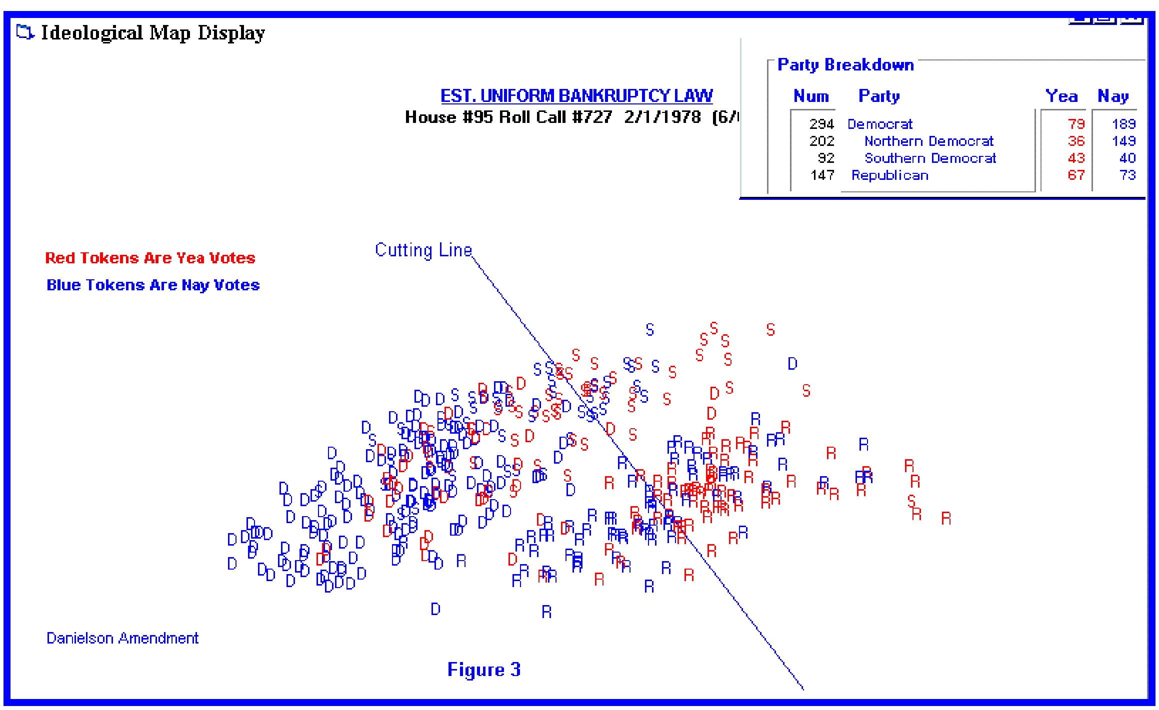


Figure 3