

Specialization and the Permanence of Federal Bankruptcy Law

Rafael I. Pardo*

Traditional historical accounts posit that federal bankruptcy specialization in the United States first developed under the system established by the Bankruptcy Act of 1898. That view assumes that the structural and temporal conditions necessary to foster specialization did not exist under the nation's earlier federal bankruptcy systems – those created by the Bankruptcy Acts of 1800, 1841, and 1867. This Article theorizes that federal bankruptcy specialization very likely occurred under the pre-1898 systems and marshals evidence to that effect, primarily focusing on the Bankruptcy Act of 1841 (the 1841 Act). That statute marked a critical turning point in federal bankruptcy law, shifting its primary focus to debtor relief and granting federal district courts substantial policymaking authority and administrative responsibilities to effectuate the law's reorientation. Drawing on a detailed framework for assessing specialization, this Article shows how the surge of cases under the 1841 Act reshaped the operation of federal district courts, producing a specialized judiciary that facilitated specialization among attorneys and other legal professionals through the creation of patronage networks. Recovering this history invites a broader investigation into federal bankruptcy specialization before 1898, not merely to determine whether it existed, but to reconsider the extent to which it was a causal factor in the emergence of a durable bankruptcy regime in the twentieth century.

* Walter D. Coles Professor of Law, Washington University in St. Louis. I am grateful to Michael Francus, Lawrence Ponoroff, John Pottow, Jonathan Seymour, and David Skeel for their comments and suggestions. This Article also benefited from participant feedback at a faculty workshop at Washington University in St. Louis School of Law, the 2024 *BYU Law Review* Symposium, and the 2025 Association of Business Historians Annual Conference. Copyright © 2025 by Rafael I. Pardo.

INTRODUCTION

Federal bankruptcy relief as a stable fixture of American law is of relatively recent vintage, having been continuously available to a broad range of debtors for just over 125 years, first under the Bankruptcy Act of 1898 (the 1898 Act) and then under the Bankruptcy Reform Act of 1978 (the Bankruptcy Code).¹ It becomes easy to forget with each passing year how different things used to be. During the nation's first 109 years, debtors could obtain such relief for only sixteen cumulative years under the Bankruptcy Acts of 1800, 1841, and 1867 (respectively, the 1800 Act, the 1841 Act, and the 1867 Act, and collectively, the pre-1898 federal acts) due to their relatively quick repeals.² Congress's about-face—from largely neglecting bankruptcy throughout much of the nineteenth century to making it a durable feature of the legal landscape from the twentieth century onward—raises a fundamental question: What caused the shift?

Professor David Skeel has offered the most persuasive account to date, arguing that the emergence of a specialized bankruptcy bar during the 1898 Act's nascent stage created a new interest group with financial incentives to sustain the law.³ While he identifies

1. Act of July 1, 1898, ch. 541, 30 Stat. 544 (repealed 1979); Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (codified as amended at 11 U.S.C. §§ 101-1532); see Rafael I. Pardo, *Rethinking Antebellum Bankruptcy*, 95 U. COLO. L. REV. 995, 1004 (2024) [hereinafter Pardo, *Rethinking Antebellum Bankruptcy*].

2. Act of Apr. 4, 1800, ch. 19, 2 Stat. 19 (repealed 1803); Act of Aug. 19, 1841, ch. 9, 5 Stat. 440 (repealed 1843); Act of Mar. 2, 1867, ch. 176, 14 Stat. 517 (repealed 1878); see Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1004-06.

3. See David A. Skeel, Jr., *Bankruptcy Lawyers and the Shape of American Bankruptcy Law*, 67 FORDHAM L. REV. 497, 497-98, 505-07, 522 (1998) [hereinafter Skeel, *Bankruptcy Lawyers*]; David A. Skeel, Jr., *The Genius of the 1898 Bankruptcy Act*, 15 BANKR. DEV. J. 321, 322, 336-40 (1999) [hereinafter Skeel, *Genius*]; DAVID A. SKEEL, JR., *DEBT'S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA* 17, 44-47 (2001) [hereinafter SKEEL, *DEBT'S DOMINION*]. Nearly twenty-five years before Skeel's earliest article on the topic, historian Peter Coleman gestured briefly and without elaboration toward the interest-group dynamic that Skeel would later explore in depth. See PETER J. COLEMAN, *DEBTORS AND CREDITORS IN AMERICA: INSOLVENCY, IMPRISONMENT FOR DEBT, AND BANKRUPTCY, 1607-1900*, at 29-30 (Beard Books 1999) (1974) ("The system [established by the 1898 Act] endured because it was well drawn in the first place, and because it soon created support from powerful vested interests—lawyers specializing in federal bankruptcy law, and politicians [sic], who used the power to appoint referees in bankruptcy to expand the federal patronage system."). Twenty years later, Richard Sauer offered a somewhat more developed, though still brief, interest-group account of the 1898 Act's durability. See Richard C. Sauer, *Bankruptcy Law and the Maturing of American Capitalism*, 55 OHIO ST. L.J. 291, 333 (1994) ("The developments described above were responsible not only for the passage of the 1898 Act but also its permanence. While

Nineteenth-Century Bankruptcy Specialization

other contributing factors,⁴ the crux of his argument lies in the mutually reinforcing dynamic between the law and the bankruptcy professionals who administered it.⁵ Federal bankruptcy law, Skeel contends, could not become durable without a threshold period of legislative stability sufficient for specialization to take root and for an interest group of specialists to emerge whose support would secure the law's long-term institutional entrenchment.⁶ In his view, Congress repealed the pre-1898 federal acts before such specialization had developed.⁷

previous bankruptcy statutes had floated to enactment on the passing waves of popular demand that attended financial panics, to be repealed upon the return of prosperity, the 1898 Act was supported by an ongoing constituency of groups conscious of their vulnerability to those systemic tendencies, organized to enlist government power in their aid." (footnote omitted)). Coleman's statement that politicians appointed bankruptcy referees under the 1898 Act, as quoted above in the explanatory parenthetical, is incorrect. The statute gave federal district courts that authority. See § 34, 30 Stat. at 555. See generally Jonathan Remy Nash & Rafael I. Pardo, *An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review*, 61 VAND. L. REV. 1745, 1753–54 (2008) ("Under the [1898 Act] . . . , district courts delegated much of their responsibility over bankruptcy cases to bankruptcy referees The limited role and status of the referees at the inception of the . . . Act expanded over time, which in turn increased the cadre of full-time judicial officers involved in the administration of bankruptcy cases." (footnotes and internal quotation marks omitted)).

4. See, e.g., Skeel, *Bankruptcy Lawyers*, *supra* note 3, at 503–05; Skeel, *Genius*, *supra* note 3, at 322, 341; SKEEL, *DEBT'S DOMINION*, *supra* note 3, 17, 46.

5. See, e.g., Skeel, *Bankruptcy Lawyers*, *supra* note 3, at 498, 500; Skeel, *Genius*, *supra* note 3, at 339–40; SKEEL, *DEBT'S DOMINION*, *supra* note 3, at 46–47. Professor Skeel's earliest article on the topic broadly defines "bankruptcy bar" to encompass a variety of professionals in the field. See Skeel, *Bankruptcy Lawyers*, *supra* note 3, at 498 n.8 ("This Article uses 'bankruptcy bar' as a general term encompassing bankruptcy lawyers, bankruptcy judges and other bankruptcy professionals, and academics.").

6. Cf., e.g., Skeel, *Bankruptcy Lawyers*, *supra* note 3, at 506 ("Continued Republican control kept the [1898 Act] in place long enough for the bar to develop. Bankruptcy lawyers, together with the creditors that had originally proposed the Act, then served the principal bulwark against repeal."); Skeel, *Genius*, *supra* note 3, at 338 ("Republican control kept the 1898 Act in place long enough for the bankruptcy bar to get on its feet. By the time the Republicans finally slipped from power after 1910, the bankruptcy referees and bar that owed their existence to the Act were now in a position to help make sure that the Act was not repealed." (footnote omitted)); SKEEL, *DEBT'S DOMINION*, *supra* note 3, at 44 ("Republican control helped put bankruptcy legislation on the front burner in 1898, and it helped keep the 1898 Bankruptcy Act in place long enough for the bankruptcy bar to develop and cement the coalition in favor of its retention.").

7. See SKEEL, *DEBT'S DOMINION*, *supra* note 3, 34–35 ("A few attorneys seem to have developed a particular expertise in bankruptcy during the brief periods when federal bankruptcy legislation was in place. . . . Specialization was relatively unusual, however. For thousands of attorneys, the bankruptcy acts provided one or a small number of new cases. When the acts were repealed, the attorneys simply plugged along with their usual assortment of state law collection cases and other matters. Although the 1867 act lasted over ten years, long enough for

This argument raises important questions about the nature and extent of nineteenth-century bankruptcy specialization and, if it existed, why it did not prevent the pre-1898 federal acts' repeal. Notably, other historical accounts, like Skeel's, portray the nineteenth century as a germinal period that merely set the stage for the emergence of the specialized bankruptcy bar in the early twentieth century.⁸ That standard narrative, however, warrants closer scrutiny for three reasons.

First, scholars often use "specialized," "specialization," and similar terms without explicating their meaning,⁹ making it difficult to assess the criteria used to determine whether the

somewhat more specialization to occur, bankruptcy remained a limited, peripheral practice for all but a few attorneys. The raw materials for a bankruptcy bar were in place, but a true bar could not emerge in the absence of a permanent federal bankruptcy law." (emphasis added) (endnote omitted)). In his other work, Skeel asserts that no bankruptcy bar existed when Congress passed the 1898 Act, but he does not otherwise address the question of nineteenth-century bankruptcy specialization. See Skeel, *Bankruptcy Lawyers*, *supra* note 3, at 498; Skeel, *Genius*, *supra* note 3, at 338.

Professor Thomas Plank, reviewing *Debt's Dominion* a year after its publication, noted the first chapter's minimal treatment of the nineteenth century, while suggesting that a more extensive analysis would have been extraneous to the book's primary focus. See Thomas E. Plank, *Bankruptcy Professionals, Debtor Dominance, and the Future of Bankruptcy: A Review and a Rhapsody on a Theme*, 18 BANKR. DEV. J. 337, 340 (2002). As argued below, however, fully documenting and analyzing nineteenth-century bankruptcy specialization is essential to understanding the causes of federal bankruptcy law's durability in the twentieth century. See *infra* Conclusion.

8. For example, in their book chapter on the history of the Second Circuit's bankruptcy bar, Leonard Rosen and Jane Vris identify the second half of the nineteenth century "as the conventional starting point for tracing the growth of legal specialization." Leonard M. Rosen & Jane Lee Vris, *A History of the Bankruptcy Bar in the Second Circuit*, in *THE DEVELOPMENT OF BANKRUPTCY & REORGANIZATION LAW IN THE COURTS OF THE SECOND CIRCUIT OF THE UNITED STATES* 155, 173 (1995). While acknowledging that "[s]ome level of specialization in the American bar predated the Civil War, for example, patent law and admiralty law," *id.* at 173 n.109, they explicitly claim that Second Circuit attorneys did not specialize in federal bankruptcy law during most of the nineteenth century, *see id.* at 156. According to Rosen and Vris, a specialized attorney is one whose practice focuses primarily on a single legal field, with the extent of the bar's specialization based on the number of attorneys satisfying that standard. *See id.* at 158. This approach, however, overlooks a critical dimension of specialization—namely, the extent to which work in a given legal field is handled disproportionately by a relatively small number of legal professionals. *See infra* note 42 and accompanying text. On this basis, along with other omissions, Rosen's and Vris's historical account offers an incomplete analysis of nineteenth-century federal bankruptcy specialization among attorneys.

9. *See, e.g., supra* note 7 and accompanying text; *infra* notes 216–221 and accompanying text.

Nineteenth-Century Bankruptcy Specialization

threshold for specialization has been met. In other words, existing accounts lack clarity on what exactly is being measured.

Second, the prevailing narrative overlooks two key dynamics: specialization under nineteenth-century *state* bankruptcy systems and the continued operation of the pre-1898 federal systems long after repeal of their enabling legislation. The myriad and overlapping professional opportunities for bankruptcy work at both the state and federal levels created space for layered bankruptcy specialization—an important phenomenon that scholars have failed to recognize.

Third, much of the most relevant evidence for evaluating federal bankruptcy specialization during the nineteenth century resides in the vast archive of manuscript court records generated by the pre-1898 systems. Most historical accounts of federal bankruptcy law do not rely on these records, and those that do generally lack the kind of quantitative analysis needed to draw conclusions about specialization among the professionals who administered the systems.¹⁰ Simply put, we know very little about specialization in these systems—not necessarily because it was absent, but more likely because of significant obstacles to conducting a sufficiently searching inquiry.¹¹

Taken together, these omissions call for a more robust account of nineteenth-century federal bankruptcy specialization. This Article offers a first step in that direction by focusing primarily on the 1841 Act system and identifying promising avenues for future research. The Act marked a turning point in the design of federal bankruptcy law by shifting the government's response to financial failure toward debtor relief and by assigning federal district courts an outsized role in administering the system.¹² Subsequent federal bankruptcy legislation retained this orientation and institutional structure to varying degrees, making the 1841 Act the first clear antecedent of modern U.S. bankruptcy law.¹³

This Article proceeds as follows. Part I establishes a framework that operationalizes the concept of specialization and addresses

10. See *infra* Section III.A.

11. Cf. Warren M. Billings, Book Review, 30 LA. HIST. 324, 324 (1989) (“To be sure, most state legal systems in the antebellum period still loom as *terra incognita*, which makes the prospect of trying to unravel the intricacies of one, let alone several, daunting enough.”).

12. See *infra* notes 151–162 and accompanying text.

13. See *infra* notes 163–164 and accompanying text.

factors relevant to understanding the substantive nature and temporal scope of nineteenth-century bankruptcy specialization. Part II applies this framework to analyze federal district court specialization within the 1841 Act system, examining the distribution of bankruptcy cases and related proceedings among district judges and the share of their dockets occupied by such matters. Part III applies the framework to analyze whether certain legal professionals who participated in the system became specialized and how judicial specialization under the Act may have shaped their professional practice. This Article concludes that the patterns of judicial and legal professional specialization revealed by this analysis warrant reevaluating whether such specialization was more widespread across time and place during the nineteenth century and, if so, why a durable federal bankruptcy regime did not emerge until the twentieth century.

I. BUILDING AN ANALYTICAL FRAMEWORK FOR NINETEENTH-CENTURY BANKRUPTCY SPECIALIZATION

This Part addresses three foundational issues that must be considered when investigating federal bankruptcy specialization during the nineteenth century: a method for assessing the specialization of legal institutions and their personnel, the landscape of state bankruptcy systems, and the temporal boundaries of the pre-1898 federal bankruptcy systems. Without a framework that establishes the various dimensions of “specialization,” mere use of the term (and its variants) when referring to actions, patterns, or practices will not meaningfully advance our understanding of the extent to which specialization caused federal bankruptcy law’s long-term institutional entrenchment. Moreover, one ends up with an incomplete picture of the conditions facilitating layered bankruptcy specialization across both state and federal regimes by ignoring (1) state bankruptcy systems that regulated debtor-creditor relations during the periods of the nineteenth century when federal bankruptcy cases could not be commenced and (2) the continued operation of the pre-1898 federal bankruptcy systems after Congress repealed their establishing legislation.

Section I.A begins by describing and adopting political scientist Lawrence Baum’s framework for assessing judicial specialization—which focuses on the distribution of specific case types among

Nineteenth-Century Bankruptcy Specialization

judges and the proportion of such cases relative to judges' overall caseloads—and then extends that framework to other legal professionals, such as attorneys.¹⁴ Section I.B discusses nineteenth-century state bankruptcy laws and argues that the systems established by them provided opportunities for specialization that could carry over to the systems established by the pre-1898 federal acts. Section I.C explains how the duration of the latter systems beyond the repeal of their establishing legislation allowed federal bankruptcy work to persist, thereby fostering the potential for ongoing specialization.

A. On Specialization

"Specialized" denotes something "[n]arrow or specific in focus" or "developed so as to have a special character or function."¹⁵ One might be inclined to say that bankruptcy's specialization is writ large. After all, what could be more specialized than "a hypertechnical, code-based, number-crunching field of law" focused on restructuring debtor-creditor relations?¹⁶ That bankruptcy law itself is specialized,¹⁷ however, does not automatically mean that the field's institutions and personnel are as well. To see why this is so, consider the two key dimensions of

14. LAWRENCE BAUM, *SPECIALIZING THE COURTS* (2011).

15. *Specialized*, OXFORD ENG. DICTIONARY, <https://doi.org/10.1093/OED/4920902271> (on file with the BYU Law Review) (last modified July 2023). Along similar lines, to "specialize" something is "[t]o make [the thing] special, specific, or narrower in scope; to invest [it] with a special character or function." *Specialize*, OXFORD ENG. DICTIONARY, <https://doi.org/10.1093/OED/2566400720> (on file with the BYU Law Review) (last modified Mar. 2024).

16. Rafael I. Pardo, *The Utility of Opacity in Judicial Selection*, 64 N.Y.U. ANN. SURV. AM. L. 633, 642 (2009); see, e.g., *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982) (Brennan, J., plurality opinion) ("[T]he restructuring of debtor-creditor relations . . . is at the core of the federal bankruptcy power . . ."); *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 209 (2024) ("The bankruptcy code contains hundreds of interlocking rules about the relations between a debtor and its creditors." (citation modified)).

17. See, e.g., BRUCE A. MARKELL, LAWRENCE PONOROFF & RAFAEL I. PARDO, *BANKRUPTCY: DEALING WITH FINANCIAL FAILURE FOR INDIVIDUALS AND BUSINESSES* 269 (6th ed. 2024) ("Chapter 7 [of the Bankruptcy Code] is divided into five subchapters. . . . The provisions of subchapters III and IV only apply in cases where the debtor is, respectively, a stockbroker or a commodity broker. Subchapter V applies only in a case involving clearing bank liquidations. *Pretty specialized stuff.*" (emphasis added) (footnote and citation omitted)). The extent to which bankruptcy law is specialized, however, is a matter of debate. See, e.g., Troy A. McKenzie, *Judicial Independence, Autonomy, and the Bankruptcy Courts*, 62 STAN. L. REV. 747, 751 (2010).

judicial specialization identified by Baum. The first, *judge concentration*, measures “the extent to which individual judges concentrate on a limited range of cases.”¹⁸ The second, *case concentration*, measures “the extent to which cases in a particular field at one level of the court system are concentrated among a limited number of judges.”¹⁹ A court is “specialized” under Baum’s framework if it exhibits a high degree of either judge or case concentration, or both.²⁰

Baum points to modern U.S. bankruptcy courts as a primary example of how judicial specialization’s two key dimensions can vary across federal courts.²¹ He ranks bankruptcy courts high on the judge-concentration dimension because their judges focus on a limited set of cases,²² in stark contrast to, for example, modern U.S. district courts whose judges hear many different types of cases.²³ Conversely, Baum ranks bankruptcy courts low on the case-concentration dimension due to the wide dispersion of bankruptcy cases among more than 300 judges nationwide.²⁴ Despite this

18. BAUM, *supra* note 14, at 7.

19. *Id.*

20. *Id.* at 9.

21. *See id.* at 7 tbl. 1.1.

22. Bankruptcy judges primarily “hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11.” 28 U.S.C. § 157(b)(1). Courts and commentators colloquially refer to title 11 of the United States Code as the Bankruptcy Code. *See, e.g.,* Stern v. Marshall, 564 U.S. 462, 472 (2011); Rafael I. Pardo & Kathryn A. Watts, *The Structural Exceptionalism of Bankruptcy Administration*, 60 UCLA L. REV. 384, 386 n.1 (2012).

23. *See* BAUM, *supra* note 14, at 7; *cf.* Nash & Pardo, *supra* note 3, at 1759–60 (“[T]he bankruptcy judges who comprise bankruptcy appellate panels are (by virtue of their appointment as bankruptcy judges) presumably experts in bankruptcy law. Thus, they are well suited to resolve legal issues that might arise in core bankruptcy proceedings. District judges, by contrast, are more often characterized as generalists in the law, without special training or experience in bankruptcy law.” (footnotes omitted)).

24. *See* BAUM, *supra* note 14, at 7 tbl. 1.1, 8–9, 16 tbl. 1.3. *See generally* Admin. Office of the U.S. Cts., *Status of Bankruptcy Judgeships – Judicial Business 2024*, U.S. CTS., <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024/status-bankruptcy-judgeships-judicial-business-2024> [https://perma.cc/EL3J-HK9J] (last visited Oct. 10, 2025) (“As of September 30, 2024, a total of 345 bankruptcy judgeships were authorized and funded, the same number as one year earlier. Of these judgeships, 289 were filled and 56 were vacant (compared with 298 filled and 47 vacant positions on the same date in 2023). In addition to judges in authorized positions, 28 retired bankruptcy judges who had been recalled by various circuit councils were providing service to the Judiciary at the end of September 2024.”).

Importantly, bankruptcy cases are heterogeneous, and focusing on particular subsets could yield different conclusions about judicial specialization along the case-

Nineteenth-Century Bankruptcy Specialization

divergence—high judge concentration but low case concentration—bankruptcy courts still qualify as specialized under Baum’s definition,²⁵ which is satisfied by a high degree of either type of concentration.²⁶

Because each of these “conceptually distinct” specialization dimensions is “a continuum,”²⁷ courts classified as specialized according to Baum’s framework will not necessarily resemble one another with regard to their levels of case and judge concentration.²⁸ This matters from an institutional-design perspective given that “the two dimensions of specialization [likely] have powerful effects on court outputs.”²⁹ Accordingly, one needs to be attuned to how changes across both dimensions impact a court’s ability to accomplish the goals of the system to which it belongs.³⁰

Baum posits that judicial specialization can both positively and negatively affect the uniformity, efficiency, and quality of court outputs, in addition to the substance of judicial policy.³¹ These

concentration dimension. Cf. Anthony J. Casey & Joshua C. Macey, *Bankruptcy Shopping: Domestic Venue Races and Global Forum Wars*, 37 EMORY BANKR. DEV. J. 463, 465 (2021) (“[L]enient venue selection rules long have allowed bankruptcy courts in the District of Delaware and the Southern District of New York to dominate the market for large chapter 11 cases. Recently the Southern District of Texas has also begun to attract a large number of cases . . .”). Baum recognizes this possibility with respect to specialization along the judge-concentration dimension. See BAUM, *supra* note 14, at 201 (“This body of scholarship [on large corporate bankruptcies] relates directly to the impact of specialization, and it raises some interesting issues about concentration of judges.”).

25. See BAUM, *supra* note 14, at 9, 16 tbl. 1.3.

26. See *supra* text accompanying note 20.

27. *Id.* at 9. Baum acknowledges that this presents categorization challenges. See *id.*

28. For example, Baum identifies the following, among others, as specialized federal courts despite differing levels of judge and case concentration: the U.S. Foreign Intelligence Surveillance Court (high case concentration and low judge concentration), the U.S. Court of Appeals for Veterans Claims (high case and judge concentration), and U.S. bankruptcy courts (low case concentration and high judge concentration). See *id.* at 16 tbl. 1.3.

29. *Id.* at 31.

30. Cf. *id.* (“The significance of judicial specialization rests primarily on its effects—the difference it makes for a court’s outputs if that court has high levels of judge concentration or case concentration.”).

31. See *id.* at 31–41. Baum views the quality of court outputs to be a function of increased expertise acquired through specialization and argues that quality ought to be assessed “in relation to what judges are trying to accomplish,” such as legal interpretation or judicial policymaking. *Id.* at 33. He distinguishes the quality of court outputs from their substance, which he specifies as “the place of judicial policy on a spectrum defined by ideology or by the interests of competing sides in a field.” *Id.* at 32. But he acknowledges that the uniformity, efficiency, and quality of court outputs and the substance of judicial policy

effects can be wide-ranging. While specialization through high case concentration can enhance uniform application of the law,³² optimal judicial policy might be achieved in a system of low case concentration through a process that eventually settles competing resolutions to the same legal issue.³³ Specialization through high judge concentration could enhance or decrease the efficiency of judicial outputs,³⁴ as well as their quality.³⁵ Such specialization can also affect the substance of judicial policy by making judges “more inclined to make sweeping decisions,”³⁶ creating a “professional bias” in judges that makes them more likely to “strongly adhere to certain positions,”³⁷ and increasing the propensity of judges to “develop stereotypes about cases in a field.”³⁸ These are just some of the examples provided by Baum to support his claim that judicial specialization’s “effects are not entirely predictable because they depend largely on the idiosyncratic conditions under which specialization is adopted and carried out.”³⁹

One effect of specialization particularly relevant to this Article is the increased susceptibility of specialized courts to influence by interested groups.⁴⁰ As Baum explains,

can be interconnected, emphasizing that “changes in the quality of decisions could affect their substance as well.” *Id.*

32. *See id.* at 32.

33. *See id.* at 33–34.

34. *Contrast id.* at 32–33 (“[J]udges who regularly handle a single class of cases are expected to dispose of their work in less time than their counterparts on generalist courts who see that class of cases less frequently.”), *with id.* at 33 (“Concentration of judges could reduce efficiency if it means that some judges are assigned exclusively to a category of cases that does not fully occupy their time in certain periods.” (citation omitted)).

35. *Contrast id.* at 33 (“High judge concentration is widely assumed to produce greater expertise and thus higher-quality policy outputs.”), *with id.* at 34 (“If high concentration of judges brings the benefits of expertise, it may also detract from judges’ knowledge about developments in other fields of law that could inform their judgment.”).

36. *Id.* at 35.

37. *Id.* at 36.

38. *Id.*

39. *Id.* at 4–5.

40. *Id.* at 38. Baum uses the term “interested groups” to expand the class of persons generally referred to by the term “interest groups.” *See id.* at 37 (“In every field of litigation, . . . there are sets of litigants and lawyers on the two sides. Other sets of people do not participate directly in litigation but care about the outcomes of cases and the content of legal doctrine, either because they have a stake in the field or simply because they have strong policy preferences about it. To refer to all these people, I use the term ‘interested groups,’ because that term is somewhat broader than what we usually mean by interest groups.”).

Nineteenth-Century Bankruptcy Specialization

high case concentration strengthens the incentive to seek influence over judges' choices. In addition, interested groups are more capable of influencing judges who hear only a narrow set of cases. Specialized judges interact more frequently with the lawyers who represent a particular interest. Thus the specialized bar in a field . . . has a better opportunity to shape judges' attitudes toward the issues they confront in a field. Moreover, to the extent that judges benefit from the cooperation of lawyers and litigants or care about their approval, specialized judges are dependent on a relatively narrow set of court participants.⁴¹

Despite highlighting the interaction between specialized courts and a specialized bar, Baum does not address when a bar itself should be deemed specialized. One logical extension of his framework would apply the concepts of case and judge concentration to attorneys. On this view, a specialized bar would consist of lawyers who either constitute a relatively small group handling most cases in a particular field (case concentration), devote a substantial share of their practice to that field's cases (attorney concentration), or both.⁴² The same logic could extend to other legal professionals involved in administering the law within a particular field, who likewise might be expected to influence specialized courts. Building on Baum's framework—and its extension to other legal professionals—the remainder of this Part examines key substantive and temporal considerations essential to understanding the contours of bankruptcy specialization during the nineteenth century.

B. State Bankruptcy Specialization

The concept of bankruptcy specialization during the nineteenth century demands an analytical lens that accounts for the work of legal professionals within state bankruptcy systems. As the discussion that follows will show, no hermetic seal separated these systems from their three federal counterparts. Rather, the state and federal regimes operated in ways that were more continuous and overlapping than the episodic nature of the pre-1898 federal acts might suggest, giving rise to a broader ecosystem of mutually

41. *Id.* at 38 (citations omitted).

42. *Cf. supra* text accompanying notes 18–20 (discussing Baum's framework for judicial specialization).

reinforcing bankruptcy specialization. This section first provides an overview of bankruptcy law's general aims, then examines the early nineteenth-century legal debate over constitutional limits on states' authority to enact bankruptcy laws, and concludes with a descriptive account of how state bankruptcy systems functioned—both during periods when federal bankruptcy relief was unavailable and alongside the federal systems up to the 1898 Act.

Broadly speaking, bankruptcy represents one of many types of legal responses to the problems that arise when debtors cannot repay their creditors in full. Accordingly, a threshold issue for a legislature is whether it should enact bankruptcy legislation.⁴³ After all, other mechanisms may be deemed adequate, such as statutes of limitations for collecting debts and exemption statutes that shield debtors' property from creditors' judicial collection efforts.⁴⁴ But if a legislature does enact a bankruptcy law, several key issues must be tackled to resolve debtors' financial failure: (1) defining the class of debtors eligible for relief; (2) determining whether the request for relief should be voluntary or involuntary (i.e., initiated, respectively, at debtors' or creditors' behest); (3) determining whether the granting of relief should depend on creditor consent; (4) defining the scope of relief (e.g., the extent to which debtors' prebankruptcy debts should be forgiven, if at all); (5) determining what debtors must surrender in exchange for relief (e.g., certain prebankruptcy assets, a portion of future income); (6) determining whether to provide mechanisms for the recovery of debtors' prebankruptcy transfers; (7) establishing a framework for

43. See, e.g., H.R. COMM. ON THE JUDICIARY, 36TH CONG., UNIFORM SYSTEM OF BANKRUPTCY, H.R. REP. NO. 36-92, at 2 (1861) ("The [federal bankruptcy] power . . . was given [to Congress] . . . because it was thought, from the previous action of different States, that its exercise might some day be needful. No obligation, however, was imposed on the new government to exercise it. That was left to its own discretion. Whether the power should or should not be exercised was a mere question of policy, to be determined by Congress with reference to the circumstances of the day and the exigencies of the times. This seems to have been the opinion of all those who took part in the framing of the Constitution, and has certainly been that of the masses of the American people ever since, as is shown by our whole congressional history.").

44. See Ronald J. Mann, *Bankruptcy and the Entitlements of the Government: Whose Money Is It Anyway?*, 70 N.Y.U. L. REV. 993, 1004 (1995); cf. CONG. GLOBE, 27th Cong., 1st Sess. app. at 469 (1841) (statement of Sen. Tallmadge) ("If Congress shall fail to discharge its constitutional duty by the passage of a bankrupt law, the States will be driven to the exercise of their powers, so far as they have retained them, over the subject of debtor and creditor. They will resort to a system of exemptions.").

Nineteenth-Century Bankruptcy Specialization

distributing among creditors what their debtors surrendered in exchange for relief; (8) providing a mechanism for debtors to enforce the relief granted to them; and (9) designing a system for administering the law.⁴⁵

When we think of a legislature confronting these issues today in the United States, we instinctively picture Congress doing the work and for good reason: The Constitution expressly grants Congress the power “to establish uniform Laws on the Subject of Bankruptcies throughout the United States,”⁴⁶ and federal legislation has made bankruptcy relief available without interruption since 1898 for many types of debtors, both individuals and artificial entities (e.g., corporations).⁴⁷ But prior to 1898, the tendency would have been, more often than not, to picture state legislatures doing the work given the long stretches of time during the nineteenth century when Congress absented itself from the field.⁴⁸ In these fallow periods, however, legal relief from financial distress existed for some debtors at the state level.

Prior to the Constitution’s ratification, the North American colonies under British rule and then the states under the Articles of Confederation implemented a wide array of legal approaches to debtor relief. Some provided none or very little.⁴⁹ Others were more generous, providing for either release from debtors’ prison or a discharge of debts, or both.⁵⁰ Once the federalist system of dual sovereigns—that is, federal and state governments with shared authority—commenced under the Constitution, the question arose whether states could provide debtors with debt discharges in the absence of federal bankruptcy legislation. Such relief was arguably

45. See Rafael I. Pardo, *Bankruptcy*, in INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES 353, 353–56 (James D. Wright ed., 2d ed. 2015).

46. U.S. CONST. art. I, § 8, cl. 4.

47. See *supra* note 1 and accompanying text.

48. See *supra* note 2 and accompanying text; *infra* notes 69–70 and accompanying text.

49. See COLEMAN, *supra* note 3, at 9–11, 14, 16–17.

50. See *id.*

the most robust,⁵¹ and each of the pre-1898 federal acts provided for it.⁵²

Whether Congress exclusively wielded the power to legislate in the field given its enumerated bankruptcy power and, if not, the permissible scope of debt discharges under state bankruptcy laws were highly contested issues.⁵³ A divided U.S. Supreme Court first confronted them in 1819 in *Sturges v. Crowninshield*.⁵⁴ Over a series

51. See, e.g., *In re Klein*, 14 F. Cas. 716, 718 (C.C.D. Mo. 1843) (No. 7,865) (Catron, Circuit J.) (discussing the limits of the federal bankruptcy power and holding that “[i]ts greatest is a discharge of the debtor from his contracts”); Rafael I. Pardo, *Taking Bankruptcy Rights Seriously*, 91 WASH. L. REV. 1115, 1119 (2016); 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, 415–16 (2005).

52. See Act of Apr. 4, 1800, ch. 19, § 34, 2 Stat. 19, 30–31 (repealed 1803); Act of Aug. 19, 1841, ch. 9, § 4, 5 Stat. 440, 443–44 (repealed 1843); Act of Mar. 2, 1867, ch. 176, § 29, 14 Stat. 517, 531–32 (repealed 1878).

53. For the view that the federal bankruptcy power was exclusive, thereby precluding states from exercising such power even in the absence of federal bankruptcy legislation, see, for example, *Golden v. Prince*, 10 F. Cas. 542, 545–47 (C.C.D. Pa. 1814) (No. 5,509) (Washington, Circuit J.); and *Gill v. Jacobs*, 10 F. Cas. 373, 375 (C.C.D.S.C. 1816) (No. 5,426) (Drayton, J.). For a qualified version of this view, see *United States v. Mundell*, 27 F. Cas. 23, 30 (C.C.D. Va. 1795) (No. 15,834) (Iredell, Circuit J.).

54. *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122 (1819) (Marshall, C.J.); see also *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 272 (1827) (Johnson, J.) (“The report of the case of *Sturges v. Crowninshield* needs also some explanation. The Court was, in that case, greatly divided in their views of the doctrine, and the judgment partakes as much of a compromise, as of a legal adjudication.”); *Ex parte Eames*, 8 F. Cas. 236, 237 (C.C.D. Mass. 1842) (No. 4,237) (Story, Circuit J.) (“Mr. Justice Washington and myself were of opinion in [*Sturges*], that the power to pass a bankrupt law was exclusively vested in congress by the constitution of the United States; and that no state could pass a bankrupt law, or an insolvent law, having the effect of a bankrupt law, where it discharged the debtor from the obligation of his prior contracts.”). The debate partly centered on substantive differences attributed to the descriptive categories of bankrupt laws and insolvency laws (e.g., discharge from debt versus discharge from imprisonment for debt, creditor-initiated proceedings versus debtor-initiated proceedings). See *Sturges*, 17 U.S. (4 Wheat.) at 194. Chief Justice Marshall, writing for the Court in *Sturges*, deemed these distinctions to be irrelevant for purposes of defining the scope of the federal bankruptcy power (i.e., both categories of laws fell within the “subject of bankruptcies”) and determining whether states could enact the same range of laws, subject to constitutional limitations, in the absence of federal legislation. See *id.* at 194–97. This Article uses the term “state bankruptcy law” to refer to any state law on the subject of bankruptcies as broadly conceived by Chief Justice Marshall. See *id.* at 195 (“This difficulty of discriminating with any accuracy between insolvent and bankrupt laws, would lead to the opinion, that a bankrupt law may contain those regulations which are generally found in insolvent laws; and that an insolvent law may contain those which are common to a bankrupt law.”); cf. *In re Klein*, 14 F. Cas. at 718 (Catron, Circuit J.) (“I deem every state law a bankrupt law, in substance and fact, that causes to be distributed by a tribunal the property of a debtor among his creditors; and it is especially such if it causes the debtor to be discharged from contracts within the limits prescribed by the case of *Ogden v. Saunders*. Such a law may be

Nineteenth-Century Bankruptcy Specialization

of decisions during the 1820s, a majority view emerged: In the absence of conflicting federal bankruptcy law, a state could enact a bankruptcy law that discharged debts provided that the discharge applied only to contractual debts between the state's citizens that arose subsequent to the law's enactment.⁵⁵ The flip side of that coin was that a state bankruptcy law could not discharge debtors from contractual debts that either arose before the relevant law's enactment date or were owed to citizens from another state.⁵⁶ As such, debt discharges under state bankruptcy laws were subject to temporal and territorial limitations, the former as a result of the Constitution's Contracts Clause, which prohibits states, but not the federal government, from impairing contractual obligations.⁵⁷ This starkly contrasted with the type of relief that could be granted under a federal bankruptcy system operating independently of the restrictions imposed by the Contracts Clause. Without that restraint, Congress could, pursuant to the Bankruptcy Clause, provide for forgiveness of debt without temporal or territorial limitation—that is, a federal bankruptcy system could discharge all of a debtor's intra- and interstate debts, regardless of whether they arose before or after the legislation establishing the bankruptcy system.⁵⁸

denominated an insolvent law. Still it deals directly with the subject of bankruptcies, and is a bankrupt law, in the sense of the constitution" (citation omitted)); Samuel Williston, *The Effect of a National Bankruptcy Law upon State Laws*, 22 HARV. L. REV. 547, 557 (1909) ("But quite commonly an insolvent law or an insolvency law is used as a synonym for a state bankruptcy law. Perhaps because the federal Constitution gave Congress power to pass bankruptcy laws, it was thought best by state legislatures to give another name to their enactments, even though these enactments in fact were bankruptcy laws.").

55. See, e.g., *Ogden*, 25 U.S. (12 Wheat.) at 273, 369 (Johnson, J.); Williston, *supra* note 54, at 547. Despite the emergence of the Court's majority view, some Justices continued to view the federal bankruptcy power as exclusive. See, e.g., *In re Irwine*, 13 F. Cas. 125, 130 (C.C.E.D. Pa. 1842) (No. 7,086) (Baldwin, Circuit J.); *McLean v. Lafayette Bank*, 16 F. Cas. 253, 254–55 (C.C.D. Ohio 1843) (No. 8,885) (McClean, Circuit J.).

56. But see, e.g., COLEMAN, *supra* note 3, at 175–76 ("Under Maryland law, a discharge applied to all claims, including contracts made elsewhere. Though the Supreme Court of the United States had denied such scope to state bankruptcy laws, some states, most notably Delaware, honored Maryland discharges." (emphasis added)).

57. See U.S. CONST. art. I, § 10. But cf. Jay S. Bybee, *The Congruent Constitution (Part Two): Reverse Incorporation*, 48 BYU L. REV. 303, 314–38 (2022) (analyzing how the Supreme Court has "reverse incorporated" the Contracts Clause against the federal government).

58. See, e.g., *Ogden*, 25 U.S. (12 Wheat.) at 274 (Johnson, J.); H.R. COMM. ON THE JUDICIARY, 27TH CONG., BANKRUPTCY, H.R. REP. NO. 27-5, at 4 (1841).

The litigation that brought the issue of debt discharges under state bankruptcy laws before the Supreme Court stemmed, of course, from disputes involving existing laws.⁵⁹ Although failing to perfectly clarify the constitutional limits to such relief,⁶⁰ the Court unequivocally approved of states experimenting in the field—regardless of whether they had already entered it, had yet to enter, or had entered but then exited.⁶¹ While this Article does not trace the full evolution of state bankruptcy systems prior to the 1898 Act's effective date, a key point for establishing that a broader ecosystem of mutually reinforcing bankruptcy specialization existed during the nineteenth century is that, at various points when federal bankruptcy relief was unavailable, a number of state systems granted debt discharges,⁶² while others authorized discharge from imprisonment for debt.⁶³ Importantly, both types of state systems functioned, to varying degrees, as models for the design and administration of the 1841 Act and 1867 Act systems,⁶⁴

59. See *Sturges*, 17 U.S. (4 Wheat.) at 122 (New York bankruptcy law); *McMillan v. McNeill*, 17 U.S. (4 Wheat.) 209, 211 (1819) (Louisiana bankruptcy law); *Ogden*, 25 U.S. (12 Wheat.) at 214 (New York bankruptcy law).

60. See, e.g., *Boyle v. Zacharie*, 31 U.S. (6 Pet.) 635, 643 (1832) (Story, J.) (rectifying “erroneous impression of the bar” regarding the Court’s decision in *Ogden*).

61. Cf. *In re Klein*, 14 F. Cas. 716, 717 (C.C.D. Mo. 1843) (No. 7,865) (discussing the Court’s decisions in *Sturges*, *Ogden*, and *Boyle* and observing that, subject to constitutional limitations, states “may frame a bankrupt law in any form they see proper”).

62. See Williston, *supra* note 54, at 549; see also S. WHITNEY DUNSCOMB, JR., *BANKRUPTCY: A STUDY IN COMPARATIVE LEGISLATION* 156–57 (Univ. Fac. of Pol. Sci. of Columbia Coll. ed., New York, Columbia Coll. 1893) (identifying state laws providing for the discharge of debts).

63. See, e.g., *THE PUBLIC AND GENERAL STATUTE LAWS OF THE STATE OF ILLINOIS* 345–49 (Chicago, Stephen F. Gale 1839) (setting forth 1829 Illinois bankruptcy law); *THE REVISED STATUTES OF THE STATE OF INDIANA* 227–33 (Indianapolis, Douglas & Noel 1838) (setting forth 1831 Indiana bankruptcy law); *STATUTES OF THE STATE OF OHIO* 440–52 (Columbus, Samuel Medary 1841) (setting forth 1831 Ohio bankruptcy law); *THE REVISED STATUTES OF THE STATE OF MISSOURI* 327–33 (Saint Louis, Chambers & Knapp 3d ed. 1841) (setting forth 1835 Missouri bankruptcy law); see also DUNSCOMB, *supra* note 62, at 161 (identifying state laws providing for discharge from imprisonment for debt). The Supreme Court did not view such relief as running afoul of the limitation imposed by the Contracts Clause on states. See *Sturges*, 17 U.S. (4 Wheat.) at 201; *Mason v. Haile*, 25 U.S. (12 Wheat.) 370, 378 (1827) (quoting *Sturges*, 17 U.S. (4 Wheat.) at 122, 200–01). It should be noted that some state bankruptcy systems, like New York’s, provided for both debt discharges and discharge from imprisonment for debt. See COLEMAN, *supra* note 3, at 123 (mentioning availability of both forms of relief under New York’s bankruptcy system); DUNSCOMB, *supra* note 62, at 157, 161 (same).

64. See, e.g., *In re Klein*, 14 F. Cas. at 717 (“The insolvent laws of Pennsylvania are in substance, and to a great extent in detail, similar to the act of congress of 1841, and no doubt

Nineteenth-Century Bankruptcy Specialization

though not the 1800 Act system, which Congress modeled on eighteenth-century English bankruptcy law.⁶⁵

Against this backdrop, the contours of nineteenth-century state bankruptcy specialization come into view, which predominantly occurred during the long stretches when federal bankruptcy relief was unavailable. The filing periods for cases under the pre-1898 federal acts were as follows:

- June 1, 1800, to December 19, 1803, for the 1800 Act (3.6 years);⁶⁶
- February 1, 1842, to March 3, 1843, for the 1841 Act (1.1 years);⁶⁷ and
- June 1, 1867, to September 1, 1878, for the 1867 Act (11.3 years).⁶⁸

Accordingly, from the start of government under the Constitution up to the date when case filings could commence under the 1898 Act,⁶⁹ there were four interregna—cumulatively

furnished some of the ideas that were incorporated into the act.”); CARL B. SWISHER, 5 HISTORY OF THE SUPREME COURT OF THE UNITED STATES: THE TANEY PERIOD, 1836–64, at 133 (Paul A. Freund ed., 1974) (“Early in 1840, . . . the Whig-dominated Senate went seriously to work to enact a federal bankruptcy statute According to Millard Fillmore the bill as introduced . . . was based on the insolvency law of Massachusetts of 1838.”); M. SUSAN MURNANE, BANKRUPTCY IN AN INDUSTRIAL SOCIETY: A HISTORY OF THE BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF OHIO 39 (2015) (“The United States District Court for the District of Ohio operated a relatively efficient bankruptcy system [under the 1841 Act] closely resembling the state of Ohio’s insolvency system.”); William H. Hotchkiss, *Bankruptcy Laws, Past and Present*, 167 N. AM. REV. 580, 582 (1898) (stating that the 1867 Act “was framed largely on the Massachusetts insolvency law of 1838”).

65. See *Roosevelt v. Mark*, 6 Johns. Ch. 266, 285 (N.Y. Ch. 1822).

66. Congress passed the 1800 Act on April 4, 1800, but delayed its effective date to June 1, 1800. See Act of Apr. 4, 1800, ch. 19, § 1, 2 Stat. 19, 19–20 (repealed 1803).

67. Congress passed the 1841 Act on August 19, 1841, but delayed its effective date to February 1, 1842. See Act of Aug. 19, 1841, ch. 9, § 17, 5 Stat. 440, 449 (repealed 1843).

68. Congress passed the 1867 Act on March 2, 1867, but delayed the effective date of when cases could be commenced to June 1, 1867. Act of Mar. 2, 1867, ch. 176, § 50, 14 Stat. 517, 541 (repealed 1878). Congress repealed the 1867 Act on June 7, 1878, but delayed the repeal’s effective date to September 1, 1878. See Act of June 7, 1878, ch. 160, 20 Stat. 99, 99.

69. Government under the Constitution began on March 4, 1789. See Michael Herz & Katherine Shaw, *Transition Administration*, 106 MINN. L. REV. 607, 617 & n.48 (2021). Congress passed the 1898 Act on July 1, 1898, see Act of July 1, 1898, ch. 541, 30 Stat. 544 (repealed 1979), but delayed when voluntary and involuntary cases could be commenced under the Act to, respectively, August 1 and November 1, 1898, see § 71a, 30 Stat. at 566. Notably, confusion arose within the legal community over whether voluntary cases could in fact be commenced on August 1. The source of uncertainty was section 30 of the Act, which provided that “[a]ll necessary rules, forms, and orders as to procedure and for carrying this Act into force and

totaling approximately ninety-three and a half years—during which federal bankruptcy relief was unavailable: (1) the period prior to the 1800 Act (the first interregnum), (2) the period between the 1800 and 1841 Acts (the second interregnum), (3) the period between the 1841 and 1867 Acts (the third interregnum), and (4) the period between the 1867 and 1898 Acts (the fourth interregnum).⁷⁰ Now, for illustrative purposes, consider the debt-discharging bankruptcy systems of seven states: New York, Maryland, Louisiana, Massachusetts, California, Connecticut, and Vermont. These states established their systems across successive interregna and, critically, maintained them through—and beyond—the start of the 1898 Act case-filing period.⁷¹

The oldest was New York's, a legacy regime predating the first interregnum, with roots extending back to the colonial era.⁷² Notably, the system's 1811 statute authorizing debt discharges became the subject of the Supreme Court's landmark decision in

effect shall be prescribed . . . by the Supreme Court of the United States." § 30, 30 Stat. at 554. Because Congress passed the Act during the Court's summer recess, some believed that no cases could commence until the Court reconvened in October and promulgated the Act's procedural rules. *Contrast, e.g., When Will New Law Apply*, SIOUX CITY J. (Iowa), July 29, 1898, at 7 (filings prohibited without Court rules), *with, e.g., The New Bankruptcy Law*, DAILY PICAYUNE (New Orleans), July 26, 1898, at 11 (filings allowed without Court rules).

70. Congress did not completely absent itself from enacting debt-forgiveness measures during the second interregnum. In 1831, Congress created a program pursuant to which an insolvent debtor could apply to the Secretary of the Treasury for a discharge of debts owed to the Department of the Treasury. Congress amended and reauthorized the program on multiple occasions, which continued its operations in tandem with the 1841 Act. *See* Rafael I. Pardo, *On Bankruptcy's Promethean Gap: Building Enslaving Capacity into the Antebellum Administrative State*, 48 FORDHAM URB. L.J. 801, 850–51 (2021) [hereinafter Pardo, *Promethean Gap*]. One could take the view that Congress promulgated the program at least partly pursuant to the Constitution's Bankruptcy Clause. *Cf. In re Klein*, 14 F. Cas. 716, 718 (C.C.D. Mo. 1843) (No. 7,865) (Catron, Circuit J.) ("I hold [the Bankruptcy Clause] extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of congress."); 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1108, at 14 n.3 (Boston, Hilliard, Gray & Co.; Cambridge, Brown, Shattuck & Co. 1833) ("And a law on the subject of bankruptcies, in the sense of the constitution, is a law making provisions for cases of persons failing to pay their debts."). On that account, the opportunity arose for certain debtors to seek a narrow form of federal bankruptcy relief starting more than a decade before the beginning of the 1841 Act's case-filing period.

71. Congress expressly provided that the 1898 Act would not affect state bankruptcy cases pending at the time of its passage. *See* § 71b, 30 Stat. at 566.

72. *See* COLEMAN, *supra* note 3, at 109, 123.

Nineteenth-Century Bankruptcy Specialization

Sturges v. Crowninshield,⁷³ which held that the statute was unconstitutional only insofar as it applied retroactively to contractual obligations predating its enactment.⁷⁴ The state's bankruptcy system would continue operating through the century's final three interregna.⁷⁵

Maryland, Louisiana, and Massachusetts established their debt-discharging bankruptcy systems during the second interregnum—Maryland in 1805,⁷⁶ Louisiana in 1808,⁷⁷ and Massachusetts in 1838.⁷⁸ The early adoption of such regimes in Maryland and Louisiana meant that more than three decades of state-level bankruptcy experience accrued in each jurisdiction before the 1841 Act's case-filing period began.⁷⁹ Although Massachusetts's system operated for a shorter period prior to the 1841 Act (less than five years), that experience was particularly significant given that the state's statute served as a model for the design of the 1841 Act and, later, the 1867 Act.⁸⁰ Following the repeal of the 1841 Act, all three jurisdictions maintained their state bankruptcy systems during the final two interregna of the nineteenth century.⁸¹

73. *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122 (1819) (Marshall, C.J.); see COLEMAN, *supra* note 3, at 127 ("This is what made the *Crowninshield* case so important. It gave the Supreme Court its first opportunity to lay out the broad lines along which state relief systems could be developed.").

74. See *Sturges*, 17 U.S. (4 Wheat.) at 122, 208.

75. See COLEMAN, *supra* note 3, at 123–24.

76. See *id.* at 171–72.

77. See A DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS 294 (New Orleans, Bradford & Anderson 1808) (setting forth provisions governing Orleans Territory's bankruptcy system).

78. See COLEMAN, *supra* note 3, at 50.

79. Louisiana did not attain statehood until April 30, 1812. See Act of Apr. 8, 1812, ch. 50, § 6, 2 Stat 701, 704. Accordingly, it is more accurate to characterize its bankruptcy regime during the second interregnum as initially operating as a territorial system (from 1808 to 1812) and subsequently as a state system for nearly three decades leading up to the commencement of the 1841 Act's case-filing period (from April 30, 1812, to February 1, 1842).

80. See *supra* note 64 and accompanying text.

81. See, e.g., COLEMAN, *supra* note 3, at 175, 178 (discussing the operation of Maryland's bankruptcy system throughout the nineteenth century); *Tua v. Carriere*, 117 U.S. 201, 209 (1886) (discussing the operation of Louisiana's bankruptcy system throughout the nineteenth century); EDWIN T. MERRICK, THE REVISED CIVIL CODE OF THE STATE OF LOUISIANA 506–10 (1900) (setting forth provisions governing Louisiana's bankruptcy system); THE GENERAL STATUTES OF THE COMMONWEALTH OF MASSACHUSETTS 579–601 (Boston, William White 1860) (setting forth provisions governing Massachusetts's bankruptcy system); *Parmenter Mfg. Co. v. Hamilton*, 172 Mass. 178, 178–79 (1898) ("The question in this case is whether [the 1898 Act] so far superseded the insolvency laws of this commonwealth from the time of its

California and Connecticut established their debt-discharging bankruptcy systems during the third interregnum—California in 1852 and Connecticut in 1853.⁸² Notably, Connecticut, one of the original states under the Constitution, waited more than sixty years before adopting such a system. By contrast, California enacted its bankruptcy law less than two years after gaining statehood.⁸³ In both jurisdictions, however, approximately a decade and a half of state-level bankruptcy experience accrued before the 1867 Act's case-filing period began. Looking beyond that period's conclusion in 1878, both states' systems remained operational through the fourth interregnum and into the 1898 Act's case-filing period.⁸⁴

The final example, Vermont, not only illustrates the establishment of a debt-discharging bankruptcy system in the final quarter of the nineteenth century but also raises a broader issue regarding the vitality of state regimes during the case-filing periods of the pre-1898 federal acts. Unlike the prior six examples, Vermont enacted its system in 1876,⁸⁵ *before* the 1867 Act's repeal took effect on September 1, 1878.⁸⁶ In other words, Vermont implemented its system *during* the 1867 Act case-filing period, on the cusp of the fourth interregnum.⁸⁷ Relying on the principle that a federal bankruptcy law merely suspends a state bankruptcy law to the extent the two conflict while otherwise leaving the state law operative, the Supreme Court of Vermont held in 1879 that the

passage as to deprive our courts of jurisdiction to entertain petitions for the commencement of insolvency proceedings filed after July 1, 1898.”).

82. See Act of May 4, 1852, ch. 34, 1852 Cal. Stat. 69; COLEMAN, *supra* note 3, at 84 (discussing Connecticut's bankruptcy system established in 1853).

83. California attained statehood on September 9, 1850. See Act of Sep. 9, 1850, ch. 50, § 1, 9 Stat. 452, 452. The California legislature passed the state's bankruptcy statute on May 4, 1852. See *supra* note 82.

84. A compilation of state insolvency laws in force on November 1, 1878, indicates that the California and Connecticut bankruptcy systems were operative then. See RAPHAEL J. MOSES, JR., STATE INSOLVENT LAWS 27–35, 110–18 (New York, Baker, Voorhees & Co. 1879). Moreover, the laws governing those systems remained in force even after the 1898 Act's case-filing period began. See THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA § 1822, at 681 (James H. Deering ed., 1903); THE GENERAL STATUTES OF CONNECTICUT 141–50 (1902).

85. See *Baldwin v. Buswell*, 52 Vt. 57, 62 (1879) (noting that Vermont's 1876 bankruptcy law “was passed while the [1867 Act] was in force”).

86. Act of June 7, 1878, ch. 160, 20 Stat. 99, 99.

87. Vermont is not a unique example on this front. Maine also established its debt-discharging bankruptcy system during the 1867 Act case-filing period, though in 1878. See *In re Damon*, 70 Me. 153, 154 (1879).

Nineteenth-Century Bankruptcy Specialization

state's 1876 bankruptcy statute had been validly promulgated.⁸⁸ Statutory compilations indicate that Vermont's bankruptcy system continued to operate well into the fourth interregnum and remained in force even after the start of the 1898 Act's case-filing period.⁸⁹

The Vermont example spotlights the issue of federal bankruptcy law's preemptive effect on state bankruptcy law. Noting the lack of consensus on the matter, one commentator writing eleven years after the 1898 Act had taken effect framed the debate as follows: "[T]he chiefly disputed question is this: are . . . state bankruptcy laws . . . suspended altogether on the passage of a federal bankruptcy law, or are such parts of them still in force *as relate to persons or matters not covered by the national law*?"⁹⁰ Whatever the correct answer to this question, some state courts in the nineteenth century maintained that their state bankruptcy systems could still accommodate new cases, in limited circumstances, alongside the pre-1898 federal systems.⁹¹ Moreover, with respect to the 1800 Act system, Congress expressly authorized state bankruptcy laws, whether existing or subsequently enacted, to supplement the Act's relief provisions with respect to two types of debtors: (1) those who were ineligible for relief under the Act; and (2) those who, although eligible for relief, had been imprisoned for debt for three months without an 1800 Act case being commenced against them.⁹² Ultimately, the start of case-filing periods under the

88. See *Baldwin*, 52 Vt. at 62–63; cf. *Damon*, 70 Me. at 155–57 (holding on similar grounds that Maine's 1878 bankruptcy law was valid despite being promulgated before Congress repealed the 1867 Act).

89. See THE VERMONT STATUTES, 1894, at 396–420 (Rutland, The Tuttle Co. 1895); THE PUBLIC STATUTES OF VERMONT, 1906, at 503–28 (1907).

90. Williston, *supra* note 54, at 549 (emphasis added). In modern terms, the question is that of federal field preemption. See, e.g., *Guthrie v. PHH Mortg. Corp.*, 79 F.4th 328, 336 (4th Cir. 2023) ("[F]ederal law may so thoroughly occupy a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it. This is called field preemption." (citation modified)).

91. See, e.g., Williston, *supra* note 54, at 549 ("While the national law of 1867 was in force, it was held by the Supreme Court of Connecticut that as that act applied only to cases where the debtor owed provable debts exceeding the amount of \$300, the state insolvent law which contained no such limitation remained in force as to debtors owing amounts insufficient to give the federal court jurisdiction." (citing *Appeal of Shepardson*, 36 Conn. 23, 23 (1869))); cf. COLEMAN, *supra* note 3, at 176 n.30 ("Nor did Maryland suspend its relief system following the passage of the federal bankruptcy act of 1841.").

92. See Act of Apr. 4, 1800, ch. 19, § 61, 2 Stat. 19, 36 (repealed 1803). For Chief Justice Marshall's commentary construing section 61 of the 1800 Act, see *Sturges v. Crowninshield*, 17

pre-1898 federal acts did not completely shut down existing state bankruptcy systems—at least not with respect to pending state cases,⁹³ and in some instances not even for new ones.⁹⁴ This constituted one of two scenarios during the nineteenth century in which state and federal bankruptcy systems operated concurrently, creating opportunities for parallel bankruptcy practice: the operation of a state bankruptcy system during a federal case-filing period.⁹⁵

Given the substantive and procedural similarities between some of the state and federal bankruptcy systems during the nineteenth century,⁹⁶ one can readily imagine attorneys gaining experience under a state regime and then leveraging that expertise to build a portfolio of federal bankruptcy work. Consider, for example, the advertisement reproduced below in *Figure 1*, placed

U.S. (4 Wheat.) 122, 201–02 (1819). While a member of the U.S. House of Representatives, Marshall served on the committee that drafted the 1800 Act. See Herbert A. Johnson, *Bushrod Washington*, 62 VAND. L. REV. 447, 464 (2009).

Congress limited relief under the 1800 Act to a small class of debtors—specifically, merchants, bankers, brokers, factors, underwriters, and marine insurers who, with an intent to delay or defraud their creditors, committed one of the acts of bankruptcy enumerated in the statute. See § 1, 2 Stat. at 19–21. Cases could be commenced only by creditors against their debtors, and the debt owed to the petitioning creditor or creditors had to equal or exceed specified dollar thresholds. See § 2, 2 Stat. at 21. The Act’s case-filing period was from June 1, 1800, to December 19, 1803. See *supra* note 66 and accompanying text. During this time, Maryland, South Carolina, and New York had state bankruptcy laws that provided for the discharge of debts, see COLEMAN, *supra* note 3, at 123–24, 171, 184, 186–87, and debtors in Connecticut, Rhode Island, and Vermont could obtain debt discharges by directly petitioning their state legislatures, see *id.* at 69, 79–84, 93–96. From 1800 through 1803, the Connecticut and Rhode Island legislatures respectively granted fifty-five and fifty-six debt discharges. See *id.* at 81 tbl. 2, 96 tbl. 3. The Vermont legislature, on the other hand, granted no more than two debt discharges during this period. See *id.* at 71 tbl. 1.

93. See, e.g., *West v. His Creditors*, 5 Rob. 261, 263 (La. 1843); cf. *Ex Parte Eames*, 8 F. Cas. 236, 237 (C.C.D. Mass. 1842) (No. 4,237) (Story, Circuit J.) (“My opinion is, that, as soon as the bankrupt act went into operation in February last, it, ipso facto, suspended all action upon future cases, arising under the state insolvent laws, where the insolvent persons were within the purview of the bankrupt act. I say future cases, because very different considerations would, or might apply, where proceedings under any state insolvent laws were commenced, and were in progress before the bankrupt act went into operation.”).

94. See *supra* notes 91–92 and accompanying text.

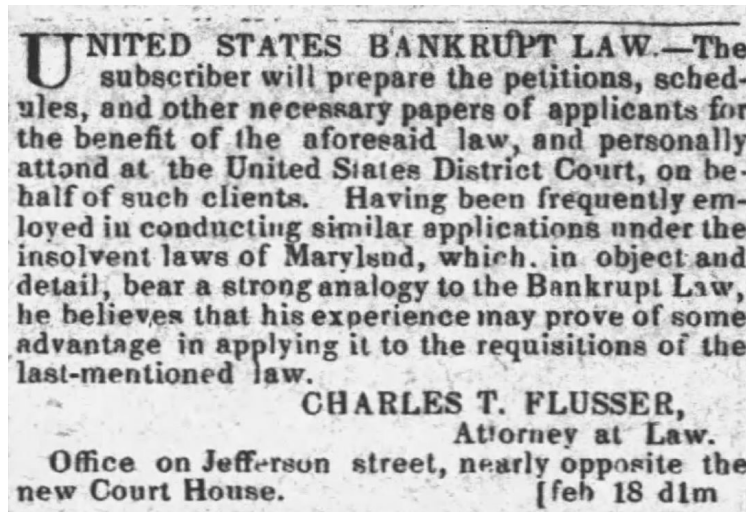
95. The other scenario, discussed below, involved the resolution of federal bankruptcy cases during any of the century’s last three interregna. See *infra* Section I.C.

96. See *supra* note 64 and accompanying text.

Nineteenth-Century Bankruptcy Specialization

in the *Louisville Daily Journal* by Charles Flusser, a Kentucky attorney.⁹⁷

Figure 1: Flusser Advertisement



Just seventeen days after the 1841 Act took effect, Flusser advertised his services to represent individuals seeking relief under the new federal law, promoting his frequent prior work in Maryland's state bankruptcy system as a comparative advantage over attorneys without analogous experience.⁹⁸ The advertisement may even have conveyed the impression that he had attained a degree of state bankruptcy specialization. After all, his repeated engagements in the field may well have comprised a substantial share of his practice (i.e., high attorney concentration).⁹⁹ Either way, Flusser's attempted crossover illustrates how bankruptcy specialization could develop in a layered fashion, with a state regime feeding into a federal one.¹⁰⁰ Attorneys who had made

97. See *United States Bankrupt Law*, LOUISVILLE DAILY J., Feb. 18, 1842, at 2 (emphasis added).

98. See *id.*

99. See *supra* text accompanying note 42.

100. Cf. BRUCE H. MANN, *REPUBLIC OF DEBTORS: BANKRUPTCY IN THE AGE OF AMERICAN INDEPENDENCE* 224–25 (2002) (“[E]veryone labored in trying to understand the [1800] Act.

professional investments in the former would be poised to strike while the iron was hot, positioning themselves to capitalize on the emergence of a new federal legal market. Moreover, because of ongoing state bankruptcy work during the pre-1898 federal acts' case-filing periods,¹⁰¹ some attorneys likely remained active in both types of systems, potentially amassing a great deal of bankruptcy work. We might therefore theorize that, at the inception of each pre-1898 federal system, a segment of attorneys brought with them a well-developed base of state bankruptcy expertise that supercharged their entry into federal bankruptcy practice and allowed them to dominate the field—not only during the acts' case-filing periods but also, as the next section explains, during the pre-1898 federal acts' post-repeal years when federal bankruptcy cases continued to be administered.

C. *The Duration of the Pre-1898 Federal Bankruptcy Systems*

As previously discussed, because Congress repealed the pre-1898 federal acts relatively soon after their enactment, the nineteenth-century legal landscape included long stretches during which no new federal bankruptcy cases could be commenced.¹⁰² While this naturally curtailed the volume of federal bankruptcy work, it did not mean that such work disappeared entirely outside the pre-1898 federal acts' case-filing periods. Importantly, the repeal legislation included savings clauses that authorized the final resolution of pending cases and related proceedings under the

There was no American law of bankruptcy to use as a guide. Only in Pennsylvania did lawyers and judges have any familiarity with operating under an established bankruptcy statute, from the eight-year experiment after the Revolution.”); Edward J. Balleisen, *Vulture Capitalism in Antebellum America: The 1841 Federal Bankruptcy Act and the Exploitation of Financial Distress*, 70 BUS. HIST. REV. 473, 488 (1996) (“C.W. Swift similarly had a professional advantage in gaining bankruptcy clients [under the 1841 Act], as he was a Master in Chancery for the state of New York and thus had extensive experience with lawsuits arising from insolvency.”); *id.* at 490 n.33 (“Among the attorneys who gained regular bankruptcy work in Boston [under the 1841 Act] were: William Dehon, Francis G. Loring, Edward G. Loring, A.H. Fiske, William Gray, Henry H. Fuller, Benjamin R. Curtis, and Peleg W. Chandler. . . . Edward G. Loring was a Master in Chancery under the Massachusetts insolvency system in the late 1830s, while, William Dehon and A.H. Fiske served as insolvency assignees.” (citation omitted)).

101. See *supra* notes 93–95 and accompanying text.

102. See *supra* note 70 and accompanying text.

Nineteenth-Century Bankruptcy Specialization

terms of the repealed acts.¹⁰³ As a result, the federal systems established by the 1800, 1841, and 1867 Acts remained operational even after their case-filing periods had ended—persisting, respectively, beyond December 19, 1803; March 3, 1843; and September 1, 1878.¹⁰⁴ Put another way, federal bankruptcy work spilled over into the final three interregna of the nineteenth century,¹⁰⁵ during which time state bankruptcy systems could operate free from federal preemption constraints.¹⁰⁶

The duration of the pre-1898 federal systems beyond their case-filing periods depended on several factors, including (1) the number and complexity of matters that were in progress or would subsequently arise in cases pending on the acts' effective dates of repeal,¹⁰⁷ (2) the number of personnel who would attend to those matters, and (3) the extent of competing demands on those personnel's time. All else being equal, a large number of matters

103. See Act of Dec. 19, 1803, ch. 6, 2 Stat. 248, 248; Act of Mar. 3, 1843, ch. 82, 5 Stat. 614, 614; Act of June 7, 1878, ch. 160, 20 Stat. 99, 99. By way of contrast, English bankruptcy repeal legislation historically did not contain savings clauses. See, e.g., *Pac. Mail S.S. Co. v. Joliffe*, 69 U.S. 450, 464–65 (1864) (Miller, J., dissenting).

104. See *supra* notes 66–68 and accompanying text (setting forth dates for pre-1898 federal acts' case-filing periods). This point has been lost on scholars who have discussed the history of federal bankruptcy law during the nineteenth century. See Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1003 & n.37, 1006 & n.48. Commentary conflating the duration of the case-filing periods for the pre-1898 federal acts with the duration of their bankruptcy systems is typically along the following lines: “[F]rom the birth of the nation until 1898, there were only sixteen years in which there were federal laws governing bankruptcies.” Rhett Frimet, *The Birth of Bankruptcy in the United States*, 96 COM. L.J. 160, 164–65 (1991); see also, e.g., Frank R. Kennedy, *The Bankruptcy Court*, in *THE DEVELOPMENT OF BANKRUPTCY & REORGANIZATION LAW IN THE COURTS OF THE SECOND CIRCUIT OF THE UNITED STATES*, *supra* note 8, at 3, 32 (“There was no bankruptcy law during most of the first century after ratification of the Constitution”); MURNANE, *supra* note 64, at 23 (“For most of the nineteenth century, no federal bankruptcy law existed.”).

105. See *supra* note 70 and accompanying text (discussing the nineteenth century's four interregna during which federal bankruptcy cases could not be commenced).

106. See *supra* notes 90–94 and accompanying text (discussing federal bankruptcy law's preemptive effect on state bankruptcy law during the nineteenth century).

107. See generally, e.g., Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1013 (“A bankruptcy case can spawn multiple disputes among many different litigants such that the number of bankruptcy matters to be resolved by a court can exponentially explode as case filings increase.”); *The Bankrupt Law*, 4 L. Rep. 403, 406 (1842) (“It is to be remembered that each case in bankruptcy is not a single law suit, but of itself a brood of lawsuits. Every bankruptcy estate is rife with contracts, broken, or partially formed—liens, mortgages, conflicting and intricate claims, and liabilities, and all other elements of litigation”); *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 37 (2020) (“A bankruptcy case embraces ‘an aggregation of individual controversies.’” (quoting 1 COLLIER ON BANKRUPTCY ¶ 5.08[1][b], at 5–43 (16th ed. 2019))).

distributed across a small number of personnel with significant time constraints would be expected to significantly extend a system's post-repeal life. Conversely, a small number of matters distributed across a large number of personnel with few competing demands would be expected to significantly decrease a system's post-repeal life. These factors also bear directly on the degree of specialization within the pre-1898 federal systems—an issue explored in greater detail below, with specific reference to the 1841 Act.¹⁰⁸ For now, suffice it to say that the post-repeal persistence of each system suggests that conditions may have been conducive to federal bankruptcy specialization. That possibility is supported by the following evidence.

First, consider the 1800 Act system. A report submitted by then-Secretary of State John Quincy Adams to President James Monroe, who in turn transmitted it to the U.S. House of Representatives, indicated that the proceedings of bankruptcy commissioners in 1800 Act cases in the District of Pennsylvania had been completed in only twenty-two percent of the cases (45 of 208) as of January 18, 1822,¹⁰⁹ more than a decade and a half after the Act's repeal. Public

108. See *infra* Parts II–III.

109. See H.R. Doc. No. 17-49, at 3, 5, 8–17 (1822). See generally John C. McCoid, II, *Right to Jury Trial in Bankruptcy*: *Granfinanciera, S.A. v. Nordberg*, 65 AM. BANKR. L.J. 15, 33 (1991) [hereinafter McCoid, *Right to Jury Trial*] (“[The 1800 Act] authorized a judge of the district court to appoint commissioners, who were sworn to execute the powers conferred by the statute, and largely left administration of the law to them.”). Secretary Adams's report (the Adams Report) also includes information on proceedings initiated in Virginia, Maryland, New York, and the District of Columbia. See H.R. Doc. No. 17-49, at 7–8, 18–22. Even though the 1800 Act required bankruptcy commissioners “once in every year, [to] carefully file, in the clerk's office of the district court, all the proceedings had in every case before them, and which shall have been finished, including the commissions, examinations, dividends, entries, and other determinations of the said commissioners,” Act of Apr. 4, 1800, Ch. 19, § 51, 2 Stat. 19, 34 (repealed 1803), the Adams Report does not include statistics on the number of completed proceedings in Virginia, Maryland, or in Washington County in the District of Columbia. Federal court clerks from the Districts of Virginia and Maryland appeared to suggest in their letters to Secretary Adams that the districts' bankruptcy commissioners had not complied with their filing obligations under the Act. See H.R. Doc. No. 17-49, at 7–8. On the other hand, the federal court clerk for Washington County in the District of Columbia explained that the relevant records had been destroyed during the War of 1812. See *id.* at 22. The Adams Report does provide partial statistics for proceedings in the District of New York—specifically, for 71 of 166 proceedings, all initiated between July 5, 1802, and December 23, 1803. See *id.* at 18–19. Of these, over 90% (64 of 71) had been completed as of January 26, 1822. See *id.* at 19–21. For the remaining 95 proceedings, all initiated before July 5, 1802, a letter to Secretary Adams from the Southern District of New York's federal court clerk appears to suggest that the missing data likely resulted from the commissioners' noncompliance with the Act's filing requirement. See *id.* at 18. Finally, none of the fourteen

Nineteenth-Century Bankruptcy Specialization

notices of dividends to creditors, which the Act required,¹¹⁰ further reveal ongoing proceedings in the District of South Carolina during the late 1810s,¹¹¹ the Southern District of New York during the late 1820s,¹¹² and the District of Pennsylvania during the late 1820s and early 1830s.¹¹³ And while perhaps an outlier, a published decision provides evidence of continuing administration of an 1800 Act case *after* the start of the 1841 Act case-filing period.¹¹⁴

Next, consider the 1841 Act system. In prior scholarship, I have documented that a noteworthy volume of post-repeal work resolving pending cases under the Act continued well into the 1850s.¹¹⁵ Moreover, two legal notices – one from 1859 and the other from 1866 – offer striking examples of the long tail of residual administration of the 1841 Act during the third interregnum.¹¹⁶ In

proceedings initiated in Alexandria County in the District of Columbia had been completed as of January 16, 1822. *See id.* at 22. *See generally* PETER GRAHAM FISH, *FEDERAL JUSTICE IN THE MID-ATLANTIC SOUTH: UNITED STATES COURTS FROM MARYLAND TO THE CAROLINAS, 1836–1861*, at 106 (2015) [hereinafter FISH, *FEDERAL JUSTICE*] (“Until retrocession by Congress of Alexandria County to Virginia in July, 1846, the Potomac port town . . . together with Washington County had been part of the District of Columbia. . . . For it, Congress had authorized both district and circuit courts for the District of Columbia circuit to sit in Washington and at Alexandria.” (footnotes omitted)).

110. *See* Act of Apr. 4, 1800, ch. 19, §§ 29–30, 2 Stat. 19, 29–30 (repealed 1803).

111. *See, e.g., In re Peppin* Notice, CHARLESTON COURIER (S.C.), Aug. 8, 1817, at 2; *In re Latham* Notice, CHARLESTON COURIER (S.C.), June 17, 1819, at 2.

112. *See, e.g., In re Bird* Notice, NEW-YORK EVENING POST, Aug. 26, 1828. For a discussion of the federal government’s participation as a creditor in Robert Bird’s 1800 Act case, *see Harrison v. Sterry*, 9 U.S. (5 Cranch) 289, 291–92, 294, 299–300 (1809).

113. *See, e.g., In re Butler* Notice, NAT’L GAZETTE & LITERARY REG. (Phila.), Feb. 5, 1828, at 1; *In re Meade* Notice, NAT’L GAZETTE & LITERARY REG. (Phila.), Apr. 8, 1828; *In re Davis & Maris* Notice, NAT’L GAZETTE & LITERARY REG. (Phila.), July 10, 1828, at 1; *In re Murgatroyd & Sons* Notice, NAT’L GAZETTE & LITERARY REG. (Phila.), May 10, 1832, at 1. *See generally* MANN, *supra* note 100, at 227 (“In reality, however, some [1800 Act] estates remained open and under active management by the assignees for years and even decades after the debtor had received his discharge.”).

114. *See In re Blight’s Estate*, 3 F. Cas. 697, 697 (E.D. Pa. 1842) (No. 1,540). The federal district court’s decision referred to various dividends made in the case, including one in 1825. *See id.* For a public notice announcing that dividend, *see In re Blight* Notice, NAT’L GAZETTE & LITERARY REG. (Phila.), June 30, 1825, at 3. For a discussion of Blight’s case, *see* MANN, *supra* note 100, at 242–43.

115. *See* Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1006–12, 1055, 1079; *cf.* FISH, *FEDERAL JUSTICE*, *supra* note 109, at 437 (“[P]roceedings [under the 1841 Act] would drag on into the late 1850s.”).

116. In prior scholarship, I have drawn attention to the 1841 Act case of William Hackett in the District of New Hampshire, which generated more than a decade’s worth of litigation that culminated in a decision by the Supreme Court in 1862. *See* Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1009–11.

the first, Wyndham Kemp, the assignee in the case of John Hudgins in the Eastern District of Virginia, placed a notice in the *Richmond Enquirer* announcing the impending distribution of \$21,000 in proceeds to Hudgins's creditors, more than sixteen years after the Act's repeal.¹¹⁷ In the second, Cyrus Miller, the assignee in the case of Isaac Harrell in the Northern District of Illinois, placed a notice in the *Ottawa Free Trader* announcing that real estate surrendered by Harrell would be sold on January 22, 1867, slightly more than a month before Congress passed the 1867 Act.¹¹⁸

Finally, consider the 1867 Act system. As previously noted, Congress delayed the Act's effective repeal date to September 1, 1878.¹¹⁹ The U.S. Attorney General's annual report to Congress in 1878 indicated that, as of July 1 that year, at least 26,177 cases under the Act remained pending nationwide before bankruptcy registers to whom the cases had been assigned by federal district courts.¹²⁰

117. See *In re Hudgins* Notice, RICHMOND ENQUIRER, May 13, 1859, at 3. Federal district courts appointed assignees in 1841 Act cases to manage and liquidate bankrupt estates. See *infra* note 170 and accompanying text. The amount of proceeds identified in the *In re Hudgins* notice would be worth approximately \$817,000 in 2024 dollars according to a conservative estimate of relative value based on changes in the Consumer Price Index. See Samuel H. Williamson, *Seven Ways to Compute the Relative Value of a U.S. Dollar Amount, 1790 to Present*, MEASURINGWORTH, <https://www.measuringworth.com/calculators/uscompare> [https://perma.cc/38XK-7TU6] (on file with the BYU Law Review) (last visited Sep. 13, 2025). If, on the other hand, one were to estimate relative value based on changes in per capita gross domestic product, the proceeds would have been worth approximately \$12.4 million in 2024 dollars. See *id.*

118. See *In re Harris* Notice, OTTAWA FREE TRADER (Ill.), Dec. 29, 1866, at 2. In order to receive a discharge of debts under the 1841 Act, debtors had to surrender all of their property existing as of the date that they had been declared bankrupts by a federal district court, with the exception of a limited amount of property necessary for their support (and, if applicable, their spouses and children). See Act of Aug. 19, 1841, ch. 9, §§ 3–4, 5 Stat. 440, 442–43 (repealed 1843).

119. See *supra* note 68 and accompanying text.

120. See CHARLES DEVENS, ANNUAL REPORT OF THE ATTORNEY-GENERAL OF THE UNITED STATES FOR THE YEAR 1878, at 64–65 exhibit H (1878). See generally Act of Mar. 2, 1867, ch. 176, § 3, 14 Stat. 517, 518 (requiring federal district court judges “to appoint . . . one or more registers in bankruptcy, to assist the judge of the district court in the performance of his duties under this act”) (repealed 1878); MURNANE, *supra* note 64, at 47 (“[T]he 1874 amendments to the 1867 Bankruptcy Act required regular data collection on bankruptcy cases. Marshals, registers, clerks of court and assignees were required to keep records and send reports to the attorney general for inclusion in his annual report to Congress.”). The Attorney General's report understated the number of pending 1867 Act cases for several reasons. First, the clerks for the federal district courts in the Districts of Louisiana and South Carolina failed to report the number of cases pending in their districts. See DEVENS, *supra*, at 64–65 exhibit H. Second, the clerks for the federal district courts in the Northern and Southern Districts of Florida, the District of Indiana, the Southern District of Mississippi, the

Nineteenth-Century Bankruptcy Specialization

And, of course, additional cases were filed in the roughly two-month window between the date of that statistic and the Act's repeal,¹²¹ thereby increasing the volume of residual administration of pending matters. Public notices concerning 1867 Act cases reveal that federal bankruptcy work continued nationwide from the mid-1880s through the mid-1890s.¹²² Reinforcing this broader pattern and extending it into the twentieth century, of the four 1867 Act bankruptcy registers in the District of Connecticut who held that office in 1878, three of them continued in their positions through 1904,¹²³ more than half a decade after case filings began under the 1898 Act.¹²⁴ This suggests that two *federal* bankruptcy systems co-existed at the start of the twentieth century, akin to the early 1840s,

District of Nevada, and the Western District of Tennessee failed to send any 1867 Act case statistics to the Attorney General. *See id.* Finally, some bankruptcy registers failed to file their annual reports. *See id.* at 15 ("The registers from whom no reports have been received are, with few exceptions, those who have had the last year little or no business to report, and this abstract [i.e., Exhibit H] embraces probably more than nine-tenths of all the bankruptcy cases referred to registers during the past year.").

121. *See, e.g.,* *Panic Stricken Debtors*, N.Y. HERALD, Aug. 31, 1878, at 8 ("One hundred and thirty-five petitions in bankruptcy were filed yesterday, the largest number in any single day since the law has been in existence, and to-day it is expected that the number will reach 200 . . ."); *The Bankrupt Band*, DAILY GLOBE (St. Paul, Minn.), Aug. 31, 1878, at 1 (reporting on number of 1867 Act cases commenced in Chicago, Cleveland, and Cincinnati, among other places, on the eve of the Act's effective date of repeal).

122. *See, e.g.,* *In re Forry Notice*, ST. JOSEPH WEEKLY HERALD (Mo.), Mar. 13, 1884, at 6; *In re Peacock & Co. Notice*, ATLANTA J., Aug. 27, 1884, at 1; *In re Brightman & Sons Notice*, BOS. POST, June 8, 1887, at 7; *In re Adams, Hume, & Mansur Notice*, INDIANAPOLIS J., Sep. 5, 1888, at 7; *In re Decker Notice*, YONKERS STATESMAN, Dec. 29, 1888, at 4; *In re Ligon Notice*, RICHMOND DISPATCH, Mar. 19, 1890, at 2; *In re Cavaroc & Son Notice*, DAILY PICAYUNE (New Orleans), May 19, 1890, at 5; *In re Bank of North Carolina Notice*, NEWS & OBSERVER (Raleigh), Dec. 11, 1890, at 4; *In re Durkee Notice*, WIS. STATE J. (Madison), July 3, 1891, at 2; *In re Hoar Notice*, STANDARD UNION (Brooklyn), May 31, 1894, at 4. For an example of post-repeal litigation relating to an 1867 Act case and culminating in a decision by the Supreme Court in the mid-1880s, see *Strang v. Bradner*, 114 U.S. 555 (1885).

123. Compare THE CONNECTICUT REGISTER: A STATE CALENDAR OF PUBLIC OFFICERS AND INSTITUTIONS FOR 1878, at 36 (Hartford, Brown & Gross 1878) (listing Henry E. Burton, Johnson T. Platt, Robert Coit, and Louis N. Middlebrook as Connecticut's bankruptcy registers under the 1867 Act), with REGISTER AND MANUAL OF THE STATE OF CONNECTICUT 149 (1904) (listing Henry E. Burton, Robert Coit, and Louis N. Middlebrook as Connecticut's bankruptcy registers under the 1867 Act). In 1905, Louis N. Middlebrook became the lone 1867 Act bankruptcy register in Connecticut, and he continued to hold that office through 1908, thirty years after the Act's repeal. *See* REGISTER AND MANUAL OF THE STATE OF CONNECTICUT 150 (1905); STATE OF CONNECTICUT: REGISTER AND MANUAL 155 (1908).

124. *See supra* note 69. Of course, the fact that the bankruptcy registers remained in office as of 1904 does not necessarily indicate that they were still engaged in substantive or voluminous residual administration of the 1867 Act. Establishing the nature and extent of their work would require thorough research of court records generated under the Act.

when residual administration of the 1800 Act overlapped with the 1841 Act system.¹²⁵ Significantly, the Connecticut example is not an isolated one. In his address on July 27, 1899, at the Proceedings of the National Convention of Referees in Bankruptcy, William H. Comstock, who had been appointed to serve as an 1898 Act referee in Utica in the Northern District of New York, began by noting that he had “been registrar [sic] in bankruptcy from March, 1867, until [his] resignation became necessary in order to accept the office of referee” and explained that “when the 1867 law was repealed they continued the registrars [sic] in office for the closing of old business.”¹²⁶ One can reasonably infer from these statements that Comstock served as a bankruptcy register continuously from the start of the 1867 Act system through the launch of the 1898 Act system.¹²⁷

Having marshaled evidence of the pre-1898 federal acts’ long post-repeal persistence, it is instructive to take a closer look at the 1867 Act. With the longest case-filing period of the three regimes,¹²⁸ it created conditions for both federal bankruptcy specialization across successive systems and layered specialization across federal and state regimes. Newspaper editorials and attorney advertisements published nationwide just before the start of the 1898 Act’s case-filing period illustrate how legal professionals with

125. See *supra* note 114 and accompanying text. Remarkably, it is possible that three federal bankruptcy systems co-existed at the start of the twentieth century. In 1912, more than a decade after the 1898 Act system had begun operations, William Scott commenced litigation in his capacity as assignee in Tilly Allen’s 1841 Act case in the Southern District of New York. Scott sought to recover (1) shares in a Maryland corporation, worth more than \$14,000 at the time of the litigation, issued to Allen before his bankruptcy filing and never disclosed in his schedule of assets, and (2) nearly \$21,000 in dividends that had accrued on those shares. See *Scott v. George’s Creek Coal & Iron Co.*, 202 F. 251, 252–53 (D. Md. 1913); see also *Scott v. Gittings*, 94 A. 209, 211–12 (Md. 1915) (discussing the litigation stemming from *In re Allen* as well as *In re Webb*); EDWARD J. BALLEISEN, *NAVIGATING FAILURE: BANKRUPTCY AND COMMERCIAL SOCIETY IN ANTEBELLUM AMERICA* 95 & 256 n.68 (2001) (discussing *In re Allen*).

126. William H. Comstock, Ref. in Bankr., U.S. Dist. Ct. for the N. Dist. of N.Y., Address at the Proceedings of the National Convention of Referees in Bankruptcy (July 27, 1899), in 1 NAT’L BANKR. NEWS 456, 456 (1899). See generally *supra* note 3 (discussing 1898 Act bankruptcy referees).

127. Although delaying the start of the 1867 Act’s case-filing period to June 1, 1867, Congress provided that the Act would “commence and take effect as to the appointment of the officers created hereby . . . from and after the date of its approval” on March 2, 1867. Act of Mar. 2, 1867, ch. 176, § 50, 14 Stat. 517, 541 (repealed 1878).

128. See *supra* notes 66–68 and accompanying text.

Nineteenth-Century Bankruptcy Specialization

1867 Act experience, like Comstock, were well positioned to leverage their accumulated expertise spanning the fourth interregnum to capitalize on professional opportunities under the new law.¹²⁹ Three examples from the Midwest and two examples from the Mid-Atlantic illustrate this dynamic.

In Emporia, Kansas, “court officers, members of the bar, county and city officials and other citizens” lobbied the state’s federal district court judge to appoint Ed S. Waterbury as a bankruptcy referee under the 1898 Act, “an office corresponding to that of register under the former law.”¹³⁰ The editors of the *Emporia Weekly Gazette* opined, “Mr. Waterbury is well equipped for the business. He has a complete outfit and library of the bankruptcy reports and publications, and has had ample experience and carried many cases through under the old law.”¹³¹ The Sandusky, Ohio, law firm of Wickham, Guerin & French sought to distinguish itself from others offering representation under the 1898 Act by emphasizing that one of the firm’s members, Judge C.O. French, had previously served as a bankruptcy register “under and during the life of the old Bankruptcy Law”; he was therefore “specially qualified to handle all bankruptcy matters” and would “give special attention as counsel and to matters of practice under” the 1898 Act.¹³² In Indianapolis, attorney Frank Foster declared in an advertisement titled “The New Bankruptcy Law” that he had been “in charge of Bankruptcy Department, United States Clerk’s Office, under act of 1867,” and planned to “practice in bankruptcy matters in Federal and State Courts.”¹³³

In Raleigh, North Carolina, attorney A.W. Shaffer explicitly announced his intent to specialize in bankruptcy work under the new law by declaring, “Will Practice Only in the Courts of Bankruptcy,” while parenthetically noting his prior experience as a “Late Register in Bankruptcy.”¹³⁴ In an ironic twist, Shaffer soon

129. For a discussion of the 1898 Act’s case-filing period, see *supra* note 69.

130. *New Bankruptcy Law*, EMPORIA WEEKLY GAZETTE (Kan.), July 21, 1898, at 1.

131. *Id.*

132. *Notice*, SANDUSKY STAR (Ohio), July 30, 1898, at 2.

133. *The New Bankruptcy Law*, SUNDAY J. (Indianapolis, Ind.), July 31, 1898, at 8.

134. A.W. Shaffer, MORNING POST (Raleigh), July 30, 1898, at 5; see also Announcement, N. CAROLINIAN (Raleigh), Feb. 5, 1868, at 3 (“Col. A.W. Shaffer has been appointed by Chief Justice Chase, additional register in bankruptcy for the 6th Congressional District in this State. Col. Shaffer will reside in Charlotte.”); A.W. Shaffer, W. DEMOCRAT (Charlotte), Feb. 4,

thereafter became the first debtor in the Eastern District of North Carolina to seek relief under the 1898 Act, representing himself in the matter.¹³⁵ Finally, Alexandria attorney Anthony Armstrong, who had been appointed as an assignee in several 1867 Act cases in the Eastern District of Virginia in December 1878,¹³⁶ after the Act's effective repeal date,¹³⁷ and who continued to work in that role at least as late as 1881,¹³⁸ was appointed by the district's federal district court in January 1899 to serve as a bankruptcy referee under the 1898 Act,¹³⁹ thereby demonstrating yet another pathway by

1868, at 3 ("A.W. Shaffer, Attorney at Law and Register in Bankruptcy, Charlotte, N.C., Will hold Courts in Bankruptcy in any County in which Bankrupts reside.").

135. See *The First Bankrupt*, MORNING POST (Raleigh, N.C.), August 4, 1898, at 8; *In re Shaffer*, 104 F. 982, 983, 985 (E.D.N.C. 1900); see also *In re Shaffer* Notice, TIMES-VISITOR (Raleigh, N.C.), Sep. 14, 1898, at 4 ("Notice is hereby given that a petition has been filed . . . by A. Webster Shaffer heretofore declared a bankrupt under the act of Congress of July 1st, 1898 for a discharge and certificate thereof from all his debts provable under the same . . .").

136. See 1867 Act Case Notices, ALEXANDRIA GAZETTE (Va.), Dec. 30, 1878, at 3 (setting forth five notices for the 1867 Act cases of *In re Carr* (No. 5611), *In re Throckmorton* (No. 5612), *In re Adams* (No. 5667), *In re Carter* (No. 5692), and *In re Blondheim* (No. 5694) in the Eastern District of Virginia, each dated December 16, 1878, and signed "A.W. Armstrong, Assignee"). The 1867 Act granted assignees the "right, title, power, and authority to sell, manage [and] dispose of" a bankrupt's property. Act of Mar. 2, 1867, ch. 176, § 14, 14 Stat. 517, 523 (repealed 1878). Assignees were either selected by creditor election or appointed by a bankruptcy register or the federal district court. See § 13, 14 Stat. at 522. In cases where assignees were elected by creditors or appointed by a register, their selection was subject to court approval. See *id.*

137. See *supra* note 68 and accompanying text

138. See *In re Jamieson & Collins* Notice, ALEXANDRIA GAZETTE (Va.), Mar. 7, 1881, at 4 (announcing the date for a second meeting of creditors in *In re Jamieson & Collins* and signed "A.W. Armstrong, Assignee").

139. See *Referee in Bankruptcy*, ALEXANDRIA GAZETTE (Va.), Jan. 10, 1899, at 3 ("It is understood that Judge Edmund Waddill, of the U.S. Court for this district, will soon appoint Mr. A.W. Armstrong, of this city, referee in bankruptcy for the district composed of Alexandria city and county and the counties of Fairfax and Loudoun."); *Register in Bankruptcy*, ALEXANDRIA GAZETTE (Va.), Jan. 21, 1899, at 3 ("As anticipated in the *Gazette*, Judge Edmund Waddill, of the U.S. Court, has appointed Mr. A.W. Armstrong, of this city, register [sic] in bankruptcy for this district . . ."); see also, e.g., *In re Rogers* Notice, ALEXANDRIA GAZETTE (Va.), Feb. 14, 1899, at 2 (announcing the date for the first meeting of creditors in *In re Rogers* and signed "A.W. Armstrong, Referee in Bankruptcy"). City directories for Alexandria, Virginia, were consulted to confirm that the 1867 Act assignee "A.W. Armstrong" from Alexandria referred to in the *Alexandria Gazette* legal notices from December 1878 and March 1881 was the same individual as the "A.W. Armstrong" from Alexandria who was appointed as an 1898 Act bankruptcy referee in the Eastern District of Virginia. The 1881-1882 directory listed two individuals with the surname "Armstrong": Lucy Armstrong and Anthony W. Armstrong, the latter identified as an "attorney at law" with an office at "56 King." CHATAIGNE'S ALEXANDRIA CITY DIRECTORY 40 (J.H. Chataigne 1881). In the directory's list of lawyers, only one entry appeared for "Armstrong": "ARMSTRONG A W, 56 King." *Id.* at 176. The 1899-1900 directory had only one listing under

Nineteenth-Century Bankruptcy Specialization

which professional experience under the prior federal regime flowed into administration of the new one.¹⁴⁰

While these five examples illustrate how professional experience under one federal bankruptcy system could extend into a subsequent one, the example of San Francisco attorney James M. Haven reveals the limitations of a purely federal-to-federal perspective, which yields an overly reductive periodization. His practice experience demonstrates how layered specialization might develop across both federal and state bankruptcy systems over time. In 1877, Haven and his then-law partner, Giles H. Gray,¹⁴¹ represented Lawrence Casey in the latter's 1867 Act case.¹⁴² By 1891, during the fourth interregnum, Haven had joined with Thomas Haven to form the firm Haven & Haven,¹⁴³ which included among its clients the assignee in a California state bankruptcy case.¹⁴⁴ Six years later, just before the 1898 Act's case-filing period commenced,

the surname "Armstrong": "Armstrong Anthony W, lawyer, 212 King, h 511 Prince." RICHMOND'S DIRECTORY OF ALEXANDRIA, VA., 1899-1900, at 75 (Washington, D.C., Richmond & Co. 1899). The directory's list of lawyers included only a single entry for "Armstrong": "Armstrong Anthony W, 212 King." *Id.* at 245. Based on this evidence, it appears almost certain that the various cited sources regarding the 1867 Act assignee and the 1898 Act bankruptcy referee all refer to the same individual.

140. The extent to which legal professionals transferred 1867 Act expertise developed during the fourth interregnum into the 1898 Act system is a question that cannot be answered without extensive empirical investigation. That said, the examples discussed here point to patterns of experiential continuity and transition that complicate Skeel's descriptive account of the state of bankruptcy specialization when the 1898 Act took effect. *See Skeel, Bankruptcy Lawyers*, *supra* note 3, at 498 ("When the Act was passed in 1898, there had not been a federal bankruptcy law for twenty years, and the bankruptcy bar did not even exist."); Skeel, *Genius*, *supra* note 3, at 338 ("Because there had not been a federal bankruptcy law in place for two decades, the bankruptcy bar did not even exist when President McKinley signed the new legislation into law in 1898.").

141. *Compare Gray & Haven*, DAILY EXAMINER (S.F.), Apr. 11, 1874, at 1 (identifying Giles H. Gray and James M. Haven as members of Gray & Haven and listing the firm's address as 420 California Street in San Francisco), with *Administratrix Sale of Real Estate*, OAKLAND DAILY EVENING TRIB., May 14, 1877, at 1 ("All bids or offers must be in writing and left at the office of Gray & Haven, Attorneys-at-Law, No. 420 California street, San Francisco . . .").

142. *See In re Casey* Notice, PLUMAS NAT'L (Quincy), June 30, 1877, at 3 (providing notice of hearing date for Casey's discharge petition and identifying "Gray & Haven, Esqs., Attorneys for Petitioner").

143. *See Haven & Haven*, OAKLAND ENQUIRER, Oct. 3, 1891, at 12 ("Haven & Haven, Attorneys and Counselors at Law, 530 California street, San Francisco, Cal. Telephone No. 1746. James M. Haven, 1329 Harrison street, Oakland; Thomas E. Haven, Notary Public.").

144. *See Assignee's Sale of Real Estate*, OAKLAND ENQUIRER, May, 24, 1892, at 6 (listing Haven & Haven as the attorneys representing W.E. Hale, "Assignee of Harvey S. Brown, Insolvent Debtor"). *See generally supra* notes 82-84 and accompanying text (discussing California's nineteenth-century bankruptcy system).

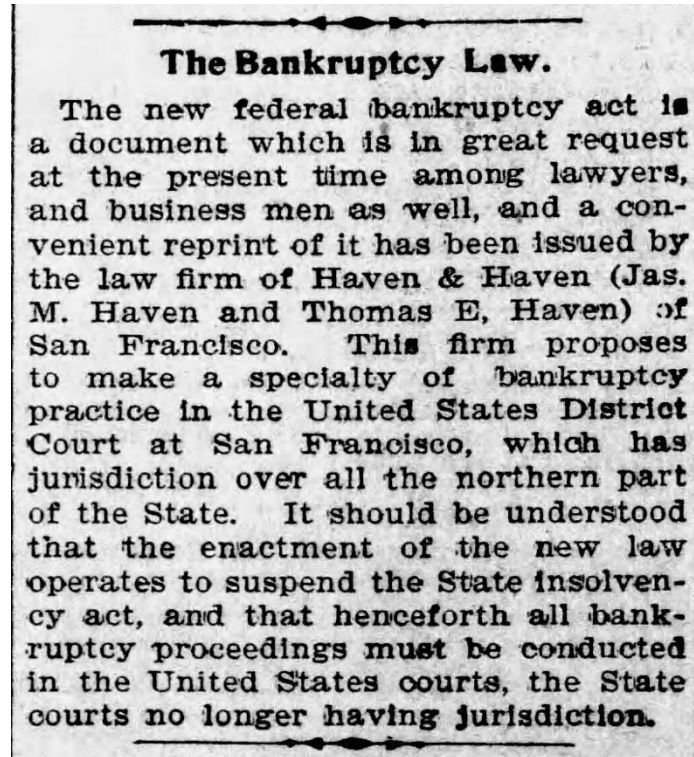
the firm ran a series of advertisements across numerous California newspapers, including the one reproduced below in *Figure 2*,¹⁴⁵ announcing that the firm intended to specialize in federal bankruptcy practice.¹⁴⁶ To explain this newfound focus and to signal to prospective clients why bankruptcy issues would need to be addressed within the 1898 Act system, the firm explicitly mentioned the law's preemptive effect on the state's bankruptcy system.¹⁴⁷ Much like Kentucky attorney Charles Flusser's determination to translate his experience under Maryland's bankruptcy system into professional opportunity under the 1841 Act system,¹⁴⁸ Haven & Haven's repositioning suggests a broader pattern: attorneys who had already invested in bankruptcy representation—whether under federal or state regimes—rapidly and strategically redeploying that expertise in response to a changing legal landscape.

145. *The Bankruptcy Law*, OAKLAND ENQUIRER, July 16, 1898, at 4.

146. See, e.g., *The Bankruptcy Law*, VALLEJO EVENING CHRON., July 19, 1898, at 2; *The Bankruptcy Law*, DAILY ENCINAL (Alameda), July 21, 1898, at 4; *Specialists in Bankruptcy Practice*, NEV. CITY DAILY TRANSCRIPT, July 28, 1898, at 3; *Haven & Haven*, PLACER HERALD (Auburn), July 30, 1898, at 1.

147. See *The Bankruptcy Law*, *supra* note 146 ("It should be understood that the enactment of the new law operates to suspend the State insolvency act, and that henceforth all bankruptcy proceedings must be conducted in the United States courts, the State courts no longer having jurisdiction.").

148. See *supra* notes 96–100 and accompanying text.

*Nineteenth-Century Bankruptcy Specialization**Figure 2: Haven & Haven Advertisement*

At the dawn of what would become the era of continuously available federal bankruptcy relief, we thus encounter potential signs of layered specialization—an outgrowth of combined experiences under (1) state bankruptcy regimes that emerged and endured throughout the nineteenth century and (2) the pre-1898 federal acts and their long tails of post-repeal residual administration. The porous boundaries of both types of bankruptcy systems created conditions under which expertise could develop and deepen, even amid repeated legal and institutional shifts. Yet to move beyond informed speculation, concrete data are needed. This Article now turns to the 1841 Act system to show how quantitative analysis illuminates this hypothesized specialization story.

II. 1841 ACT SPECIALIZATION: FEDERAL DISTRICT COURTS

To illustrate how analytical precision can be brought to the study of federal bankruptcy specialization in the nineteenth century, this Part applies Baum's framework for judicial specialization to federal district courts during the operative period of the 1841 Act.¹⁴⁹ Part III then extends this framework to other legal professionals who played key roles in administering the Act. Before considering either application, however, it is first helpful to explain why the 1841 Act system is particularly fruitful for such analysis.¹⁵⁰

The Act represented a seminal moment in reorienting federal bankruptcy law as a mechanism for debtor relief, shifting the focus away from its origins primarily as a creditor-collection device.¹⁵¹ Under the 1800 Act, creditors determined if and when bankruptcy proceedings were to be initiated against their debtors,¹⁵² and the legislation narrowly defined the class of individuals eligible to be declared a bankrupt¹⁵³ while making substantial creditor consent a

149. See *supra* notes 15–41 and accompanying text (discussing Baum's judicial specialization framework).

150. The discussion that follows in *infra* notes 151–160 and accompanying text is excerpted, with revisions, from Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1020–22.

151. See, e.g., *Cont'l Ill. Nat'l Bank & Tr. Co. of Chi. v. Chi., R.I. & P. Ry. Co.*, 294 U.S. 648, 670 (1935) (“The act of 1800 was one exclusively in the interest of the creditor.”); see also, e.g., CONG. GLOBE, 27th Cong., 1st Sess. 324 (1841) (statement of Rep. Trumbull) (“Under this law [i.e., the Senate bill that became the 1841 Act], 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.”).

152. As a formal matter, the 1800 Act provided that bankruptcy cases could only be commenced by creditors against debtors (i.e., involuntary relief from the debtor's perspective). See Act of Apr. 4, 1800, ch. 19, §§ 1–2, 2 Stat. 19, 21–22 (repealed 1803). But see 31 ANNALS OF CONG. 997–98 (1818) (statement of Rep. Joseph Hopkinson) (“The public then saw hundreds of men obtaining the discharge afforded by the [1800 Act] system, who surrendered little or nothing to their creditors They saw, too, that in almost all the cases the commission was evidently taken out at the instance of the bankrupt himself, although pretending to be a proceeding of the creditor against the bankrupt.”); MANN, *supra* note 100, at 229–30 (“In truth, there is little direct evidence that American bankruptcy proceedings [under the 1800 Act] were often voluntary, although there is enough to know that they could be. . . . Indirect evidence, however, abounds Any of these [patterns], by themselves, would be equivocal. Taken together, they indicate a bankruptcy system that debtors as well as creditors could invoke — one substantively, the other formally.”).

153. The 1800 Act's involuntary bankruptcy scheme applied only to a “merchant, or other person, residing within the United States, actually using the trade of merchandise, by buying and selling in gross, or by retail, or dealing in exchange, or as a banker, broker, factor, underwriter, or marine insurer” who committed one of the acts of bankruptcy enumerated

Nineteenth-Century Bankruptcy Specialization

prerequisite for granting debt discharges.¹⁵⁴ In stark contrast, the 1841 Act permitted “[a]ll persons whatsoever, residing in any State, District or Territory of the United States, owing debts” to seek relief voluntarily,¹⁵⁵ while subjecting only a narrow class of individuals to the threat of involuntary bankruptcy proceedings.¹⁵⁶ Moreover, the Act not only rendered the overwhelming majority of debtors immune from being forced into bankruptcy, leaving them free to seek relief on their own terms,¹⁵⁷ but also generally allowed them to obtain debt discharges without creditor approval.¹⁵⁸

in the statute. § 1, 2 Stat. at 20–21. Federal bankruptcy law prior to the Bankruptcy Code used the term “bankrupt” as a specific legal classification. *See, e.g., id.* at 22 (stating that “every such person shall be deemed and adjudged a bankrupt”); Act of Aug. 19, 1841, ch. 9, § 1, 5 Stat. 440, 441 (stating that certain persons “shall be deemed bankrupts within the purview of this act”) (repealed 1843); Act of Mar. 2, 1867, ch. 176, § 11, 14 Stat. 517, 521 (stating that “such petitioner shall be adjudged a bankrupt”) (repealed 1878); Act of July 1, 1898, ch. 541, § 1, 30 Stat. 544, 544 (defining bankrupt to “include a person . . . who has been adjudged a bankrupt”) (repealed 1978). Congress stopped using the term when it enacted the Bankruptcy Code. *See* H.R. REP. NO. 95-595, at 310 (1977) (“The general term debtor is used . . . as a means of reducing the stigma connected with the term bankrupt.”), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6267.

154. *See* § 36, 2 Stat. at 31.

155. § 1, 5 Stat. at 441. Debtors who petitioned to be deemed bankrupts under the Act had to “declare themselves to be unable to meet their debts and engagements.” *Id.* Put another way, the Act imposed a debtor’s insolvency declaration as a statutory precondition to voluntary relief. *See In re Dodge*, 7 F. Cas. 785, 786 (S.D.N.Y. 1842) (No. 3,946a).

156. *See* § 1, 5 Stat. at 441–42 (providing for involuntary bankruptcy proceedings under a limited set of circumstances against merchants, retailers of merchandise, bankers, factors, brokers, underwriters, and marine insurers).

157. *Cf.* CONG. GLOBE, 27th Cong., 1st Sess. app. at 205 (1841) (statement of Sen. Buchanan) (“It was said that the bill contained provisions both for voluntary and involuntary bankruptcy; and so it did nominally; but in truth and in fact, it would prove to be almost exclusively a voluntary bankrupt bill. The involuntary clause would scarcely ever be resorted to . . . [C]ould it be supposed that any merchant or man of business, in insolvent circumstances, would wait and subject himself to this compulsory process . . . whilst the bill threw the door wide open to him, in common with all other persons, to become a voluntary bankrupt, at any time he might think proper? He would select the most convenient time for himself to be discharged from his debts; and would cautiously avoid any one of these acts of bankruptcy, which might restrain the freedom of his own will, and place him in some degree within the power of his creditors. . . . This bill, then, although in name compulsory as well as voluntary, was in fact, from beginning to end, neither more nor less than a voluntary bankruptcy law.”).

158. *See* § 4, 5 Stat. at 443–44; *see also, e.g., In re Klein*, 14 F. Cas. 716, 718 (C.C.D. Mo. 1843) (No. 7,865) (Catron, Circuit J.); Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1025 & n.145. A voluntary bankrupt who had made a preferential transfer to a creditor under certain conditions could not obtain a discharge unless a majority of the bankrupt’s nonpreferred creditors consented. *See* § 2, 5 Stat. at 442.

The introduction of voluntary bankruptcy relief on such a wide scale constituted a dramatic departure from the 1800 Act,¹⁵⁹ which had adhered to the principles of eighteenth-century English bankruptcy law.¹⁶⁰ To effectuate this reinvention, Congress fundamentally restructured the administration of the federal bankruptcy system by vesting near maximal control in the federal district courts.¹⁶¹ While substantive and structural differences existed between the 1841 Act system and those established by the

159. In his partial dissent in *Ex parte Christy*, 44 U.S. (3 How.) 292 (1844), Associate Justice John Catron incorporated former Associate Justice Henry Baldwin's unpublished opinion in *In re Kerlin*, which Baldwin issued on October 26, 1843, while sitting as Circuit Justice on the U.S. Circuit Court for the Eastern District of Pennsylvania. *See id.* at 326 (Catron, J., concurring in part and dissenting in part). Baldwin's opinion characterized the 1841 Act system as completely novel:

That the act of 1841 is anomalous in its provisions, unlike any other known in any legislation here or elsewhere, cannot be doubted. In the great outlines as well as in the details of the system, we feel the exercise of an express plenary power, competent to act at its own unlimited discretion, (so that the action be uniform,) either by adopting or modifying some old system on the subject of bankruptcy or prescribing a new one; the latter mode has seemed the better in the eye of the legislature, and the duty of the judicial department is to consider its intentions and to carry it into effect.

Id. at 327 (quoting *In re Kerlin*); *cf.* *Cont'l Ill. Nat'l Bank & Tr. Co. of Chi. v. Chi., R.I. & P. 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.").

160. *See supra* note 65 and accompanying text. English bankruptcy law authorized voluntary bankruptcy starting in 1844. *See* John C. McCoid, II, *Bankruptcy, Preferences, and Efficiency: An Expression of Doubt*, 67 VA. L. REV. 249, 260 n.74 (1981).

161. Contrast McCoid, *Right to Jury Trial*, *supra* note 109, at 33 ("[The 1800 Act] authorized a judge of the district court to appoint commissioners, who were sworn to execute the powers conferred by the statute, and largely left administration of the law to them."), with *Clarke v. Rosenda*, 5 Rob. 27, 31 (La. 1843) ("Having premised, that the object of the late law of Congress, was to relieve debtors, to secure to creditors the proceeds of the property surrendered, and to dispense with the State insolvent laws, I will proceed to examine the different clauses of the bankrupt act, and endeavor to show, that the United States' Courts are vested with ample powers to effect all these purposes . . ."), and *McLean v. Lafayette Bank*, 16 F. Cas. 253, 255 (C.C.D. Ohio 1843) (No. 8,885) (McClean, Circuit J.) ("A system of bankruptcy has been adopted, and its details are spread out in this act. And summary and extraordinary powers are given to the courts of the United States, to carry out and give effect to this system."). *See generally* Pardo, *Promethean Gap*, *supra* note 70, at 853–54 ("The 1841 Act bankruptcy trust, a legal entity created by federal law, existed for the primary purpose of pursuing Congress's objective to provide robust relief to financially distressed debtors through the discharge of debt . . . [T]he federal district courts directed and controlled [the trust] with the assistance of their agents (e.g., assignees and commissioners). In exerting control over the trust, the federal district courts used their residual policymaking authority to ensure that the 1841 Act's machinery would properly function." (footnotes omitted)).

Nineteenth-Century Bankruptcy Specialization

1867 Act, the 1898 Act, and the Bankruptcy Code, these regimes maintained an emphasis on debtor relief.¹⁶² That continuity makes the 1841 Act system “the origin story for modern-day bankruptcy law.”¹⁶³ Given this foundational status, examining the extent to which specialization emerged among federal district court judges and other legal professionals during the Act’s operation provides a critical benchmark for assessing continuity and change across the successor bankruptcy systems.¹⁶⁴

The remainder of this Part applies Baum’s judicial specialization framework in two stages: first, by examining the extent to which 1841 Act cases and trial-level proceedings were concentrated in the hands of a limited number of judges (1841 Act case concentration);¹⁶⁵ and second, by analyzing the extent to which such matters came to occupy judges’ dockets (1841 Act judge concentration). The analysis reveals that federal district courts developed a high degree of specialization across both dimensions.

A. 1841 Act Case Concentration

To evaluate 1841 Act case concentration, it is essential to understand how Congress allocated bankruptcy jurisdiction under the Act between federal and state courts, and how the structure of the federal judicial districts—and the staffing of their courts—

162. Cf. *Cont’l Ill. Nat’l Bank*, 294 U.S. at 670 (“The act of 1800, like the English law, was conceived in the view that the bankrupt was dishonest; while the act of 1841 and the later acts [i.e., the 1867 and 1898 Acts] proceeded upon the assumption that he might be honest but unfortunate.”); Lawrence Ponoroff, *Exemption Impairing Liens Under Bankruptcy Code Section 522(f): One Step Forward and One Step Back*, 70 U. COLO. L. REV. 1, 6–7 (1999) (“[A]doption of the Bankruptcy Code in 1978 marked a significant shift in favor of consumer debtor relief in the precarious and elusive balance that American bankruptcy law has long sought to achieve between the fresh start for individual debtors and protection of the legitimate collection rights of creditors.”).

163. Rafael I. Pardo, *Financial Freedom Suits: Bankruptcy, Race, and Citizenship in Antebellum America*, 62 ARIZ. L. REV. 125, 129 (2020) [hereinafter Pardo, *Financial Freedom Suits*].

164. I do not mean to suggest that analyzing specialization under the 1800 Act system would lack value. To be sure, its sharp contrasts with the ensuing federal bankruptcy regimes could yield meaningful insights. But given that this Article constitutes the first sustained effort to examine nineteenth-century bankruptcy specialization, the starting point ought to be one with broader applicability to future scholarship on the subject.

165. On the distinction between bankruptcy cases and their related proceedings, see *supra* note 107.

corresponded to that allocation.¹⁶⁶ Within the federal judicial system, and subject to the geographical exceptions of the District of Columbia and the federal territories, federal district courts had exclusive original jurisdiction over cases commenced under the Act and most proceedings in those cases.¹⁶⁷ Federal circuit courts, then the federal judiciary's principal trial forum,¹⁶⁸ exercised concurrent original jurisdiction with the district courts over some litigation involving 1841 Act assignees,¹⁶⁹ the court-appointed fiduciaries charged with administering property surrendered by bankrupts.¹⁷⁰ Outside the federal judicial system, state courts also exercised concurrent original jurisdiction over certain proceedings in cases under the Act.¹⁷¹ Despite these limited areas of concurrent jurisdiction, the vast majority of trial-level work generated by the 1841 Act lay squarely within the exclusive jurisdiction of the federal

166. The discussion that follows in *infra* notes 167–179 and accompanying text is excerpted, with revisions, from Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1013 n.91, 1014.

167. See Act of Aug. 19, 1841, ch. 9, §§ 6–7, 16, 5 Stat. 440, 445–46, 448–49 (repealed 1843). For the District of Columbia and the federal territories, the Act conferred bankruptcy jurisdiction on, respectively, the District of Columbia's federal circuit court and the territories' supreme or superior courts. See § 16, 5 Stat. at 448–49. Territorial administration of the 1841 Act occurred in the Territories of Florida, Iowa, and Wisconsin. See Rafael I. Pardo, *Documenting Bankrupted Slaves*, 71 VAND. L. REV. EN BANC 73, 75 n.13 (2018) [hereinafter Pardo, *Documenting Bankrupted Slaves*]; H.R. Doc. No. 29-223, at 23–27 (1846). The 1841 Act's use of the phrase "the supreme or superior courts of any of the Territories of the United States," § 16, 5 Stat. at 449, raised uncertainty as to whether Iowa's and Wisconsin's territorial trial courts, which were denominated "district courts," were authorized to administer the Act, see H.R. REP. NO. 27-931, at 1 (1842). A unanimous report by the House Judiciary Committee stated that the Committee had "no doubt whatever that jurisdiction was intended to be conferred, and is plainly conferred, by the bankrupt act, on the district courts of the Territories of Wisconsin [sic] and Iowa." *Id.*

168. See FISH, *FEDERAL JUSTICE*, *supra* note 109, at 12.

169. See § 8, 5 Stat. at 446–47.

170. See § 3, 5 Stat. at 442–43; see also *Ex parte Christy*, 44 U.S. (3 How.) 292, 330 (1844) (Catron, J., concurring in part and dissenting in part) (referring to the 1841 Act assignee as a "mere creature and servant of a judge of the District Court" (quoting *In re Kerlin* (C.C.E.D. Pa. Oct. 26, 1843) (Baldwin, Circuit J.))). See generally Pardo, *Promethean Gap*, *supra* note 70, at 819–34 (discussing the appointment, powers, and duties of 1841 Act assignees).

171. See, e.g., *Peck v. Jenness*, 48 U.S. (7 How.) 612, 625–26 (1849) ("Instead of drawing the decision of the case into the District Court, the act sends the assignee in bankruptcy to the State court where the suit is pending, and admits its power to decide the cause."); see also *Mitchell v. Great Works Mill. & Mfg. Co.*, 17 F. Cas. 496, 500 (C.C.D. Me. 1843) (No. 9,662) (Story, Circuit J.) ("It was not necessary to say, that the courts of the United States should possess exclusive jurisdiction. It was only necessary to say, that they should possess full jurisdiction, and to leave to the state courts the exercise of any concurrent jurisdiction, which they could or might right-fully maintain.").

Nineteenth-Century Bankruptcy Specialization

district courts, as a contemporary commentator thoroughly described:

By the requirement of the statute, petitions, and all hearings on petitions—on contested debts—for and against the debtors discharged—for compromises of claims—for sales of property—applications for, and payments of, money by the assignees, and all jury trials, (except as *to the act* of bankruptcy,) on every [1841 Act] case arising in the state of Massachusetts, must be had before the district court in Boston.¹⁷²

Having established that the federal district courts bore primary responsibility for administering the 1841 Act system at the trial level, the critical question becomes whether that burden was concentrated in the hands of relatively few judges. The answer turns on the number of federal judicial districts and district court judgeships that Congress had established. During the 1841 Act's case-filing period, and excluding the federal territories, the nation comprised twenty-six states and the District of Columbia, organized into thirty-eight federal judicial districts.¹⁷³ Each district had a single federal district court,¹⁷⁴ served by a single district judge.¹⁷⁵ In five of the eight states that then contained multiple

172. *The Bankrupt Law*, *supra* note 107, at 406.

173. See Pardo, *Documenting Bankrupted Slaves*, *supra* note 167, at 75. Technically, Congress did not formally designate the District of Columbia as a federal judicial district until 1948. See Jake Kobrick, *The Codification of Federal Statutes on the Judiciary*, FED. JUD. CTR., <https://www.fjc.gov/history/spotlight-judicial-history/federal-judicial-statutes> [<https://perma.cc/WX2W-FSAU>] (on file with the BYU Law Review) (last visited Oct. 6, 2025). That said, the Judiciary Act of 1802 required the chief judge of the Circuit Court of the District of Columbia to convene two annual sessions of a district court possessing “the same powers and jurisdiction which [we]re by law vested in the district courts of the United States.” Act of Apr. 29, 1802, ch. 31, § 24, 2 Stat. 156, 166. See generally Act of Feb. 27, 1801, ch. 15, § 3, 2 Stat. 103, 105 (establishing the Circuit Court for the District of Columbia, composed of one chief judge and two assistant judges, and providing that both the court and its judges would “have all the powers vested in the circuit courts and the judges of the circuit courts of the United States”). Given this functional equivalence, and for ease of exposition, this Article treats the District of Columbia as comprising a federal judicial district.

174. See *The U.S. District Courts and the Federal Judiciary*, FED. JUD. CTR., <https://www.fjc.gov/node/5586> [<https://perma.cc/W256-B7LQ>] (on file with the BYU Law Review) (last visited Oct. 6, 2025); *cf. supra* note 173 (discussing the statutory obligation of the chief judge of the Circuit Court of the District of Columbia to convene federal district court sessions).

175. See Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, app. at 1085–87 tbl. A1. When the chief judge of the Circuit Court of the District of Columbia convened a federal district court session, he exercised the powers of a federal district court judge, including those conferred by the 1841 Act. See *supra* notes 167, 173.

districts, Congress authorized only one district judgeship for the entire state, meaning that a single district judge administered the Act across multiple districts.¹⁷⁶ Moreover, although Congress reorganized some districts during the third interregnum while residual administration of pending 1841 Act cases continued,¹⁷⁷ it did not authorize a second judgeship for any district court until the start of the twentieth century.¹⁷⁸ As a result, no more than thirty district judges administered the Act at any one time.¹⁷⁹

Given this structure and staffing, nearly all adjudicative responsibility under the Act rested in the hands of a remarkably small judicial cohort.¹⁸⁰ The result was a high degree of 1841 Act case concentration. On this metric alone, the federal district courts functioned as specialized bankruptcy tribunals within the meaning of Baum's judicial specialization framework.¹⁸¹ But as we will now see, they also exhibited a high degree of specialization in terms of judge concentration.

B. 1841 Act Judge Concentration

Analyzing 1841 Act judge concentration requires examining the extent to which cases and proceedings under the Act came to dominate federal district court dockets. While the historical record makes clear that district judges became overwhelmed by the volume of bankruptcy work during the Act's peak period of administration,¹⁸² this shift becomes especially stark when one

176. The eight states were Alabama, Louisiana, Mississippi, New York, North Carolina, Pennsylvania, Tennessee, and Virginia. New York, Pennsylvania, and Virginia were each composed of two federal judicial districts, and each district within those states had a different judge. See Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, app. at 1085–87 tbl. A1.

177. See, e.g., Act of Feb. 13, 1845, ch. 5, 5 Stat. 722 (consolidating the Eastern and Western Districts of Louisiana into the District of Louisiana) (current version at 28 U.S.C. § 98); Act of Aug. 11, 1848, ch. 151, § 1, 9 Stat. 280, 280 (dividing the District of Georgia into the Northern and Southern Districts of Georgia) (current version at 28 U.S.C. § 90).

178. See *The U.S. District Courts and the Federal Judiciary*, *supra* note 174.

179. See Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, app. at 1085–87 tbl. A1.

180. Compare FISH, *FEDERAL JUSTICE*, *supra* note 109, at 10 (“Widely dispersed federal judges and supporting personnel [during the antebellum period] were few in number . . .”), with *id.* at 435 (stating that the 1841 Act “designated federal district courts as the central forums for processing bankruptcy petitions”).

181. See *supra* note 20 and accompanying text.

182. See *infra* notes 194–211 and accompanying text.

Nineteenth-Century Bankruptcy Specialization

considers district courts' limited jurisdiction prior to the Act,¹⁸³ which resulted in relatively light caseloads. From 1836 through 1841, for example, then-district judge Peter Daniel of the Eastern District of Virginia averaged fewer than twelve "ended causes" (e.g., cases, orders, warrants) per year.¹⁸⁴ By Daniel's own estimate, the position "left him with almost ninety percent of his time free."¹⁸⁵ That reality would be transformed with the arrival of the 1841 Act, which brought an unprecedented influx of cases that fundamentally altered the day-to-day work of district judges.¹⁸⁶

The overwhelming demand for bankruptcy relief that followed the 1841 Act should not have come as a surprise to contemporaries. The politics surrounding the Act made it abundantly clear that many debtors were eager for such a relief measure.¹⁸⁷ For example, when the New Orleans Chamber of Commerce lobbied Congress in January 1841 to enact federal bankruptcy legislation, the

183. See PETER GRAHAM FISH, *THE POLITICS OF FEDERAL JUDICIAL ADMINISTRATION* 13 n.55 (1973) [hereinafter FISH, *JUDICIAL ADMINISTRATION*] ("Nationwide, the bulk of mid-nineteenth-century district court business consisted of admiralty and criminal cases."). Compare RUSSELL R. WHEELER & CYNTHIA HARRISON, *FED. JUD. CTR., CREATING THE FEDERAL JUDICIAL SYSTEM* 4 (3d ed. 2005) (stating that, pursuant to the Judiciary Act of 1789, "district courts served mainly as courts for admiralty cases, for forfeitures and penalties, for petty federal crimes, and for minor U.S. plaintiff cases"), with *id.* at 6 ("Congress added incrementally to federal courts' federal-question jurisdiction—starting in 1790 with certain patent cases—but it didn't grant federal courts a general federal-question jurisdiction until 1875." (endnote omitted)).

184. See FISH, *FEDERAL JUSTICE*, *supra* note 109, 153, app. F at 676. Fish provides two tabulations of ended causes in the U.S. District Court for the Eastern District of Virginia that differ slightly. Contrast *id.* at 154 tbl. 21 (reporting a total of 79 ended causes by the U.S. District Court for the Eastern District of Virginia from 1836 through 1841), with *id.* app. F at 676 (reporting a total of sixty-eight ended causes by the U.S. District Court for the Eastern District of Virginia from 1836 through 1841). This Article relies on the latter figure. The discrepancy, however, does not affect the descriptive claim regarding the federal district court's light workload.

185. JOHN P. FRANK, *JUSTICE DANIEL DISSENTING* 143 (1964), quoted in FISH, *JUDICIAL ADMINISTRATION*, *supra* note 183, at 13 n.54.

186. The discussion that follows in *infra* notes 187–210 and accompanying text is excerpted, with revisions, from Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1013–19.

187. See David Beesley, *The Politics of Bankruptcy in the United States, 1837–1845*, at 104 (Aug. 1968) (Ph.D. dissertation, University of Utah) (on file with author) ("Whatever reasons pushed the Whigs to force a vote on the measure in the face of certain defeat in the House, it is probable that one had to do with the pressure exerted from their constituents at home. It has been estimated that there were nearly a half-million insolvent debtors in the country in 1840, with their numbers being chiefly concentrated in the states of New York, Massachusetts, Michigan, Mississippi, and Louisiana.").

organization referred to the “[t]housands of industrious and enterprising citizens, who ha[d] been bowed down to the earth by the commercial derangements of the past three years.”¹⁸⁸ Similarly, a group of St. Louis citizens pleaded that such legislation “would impart life and energy to, and inspire with hope, thousands who are now desponding and depressed under the weight of accumulated misfortunes, from which it is impossible for them ever to extricate themselves.”¹⁸⁹ President John Tyler, who ultimately signed the Act into law, alluded to the “large numbers of . . . fellow-citizens with hopeless insolvency” in his June 1841 message to the House of Representatives accompanying a pro-bankruptcy memorial signed by approximately three thousand New York City residents.¹⁹⁰

Not only did members of Congress widely anticipate the tidal wave of bankruptcy filings that would follow the implementation of the 1841 Act system, but then-Senator James Buchanan warned his colleagues in a speech opposing the Act that, “for want of the necessary judicial machinery,”¹⁹¹ bankruptcy matters would overwhelm the federal district courts and bring their nonbankruptcy dockets to a grinding halt.¹⁹² His warning proved to be prescient.

As of this writing, available evidence indicates that there were at least 46,402 cases filed under the 1841 Act across the nation’s thirty-eight nonterritorial federal judicial districts,¹⁹³ most of which

188. Memorial of the Chamber of Com. of New Orleans, Praying the Passage of a General Bankrupt Law, to the U.S. Senate and House of Representatives (Jan. 6, 1841), in S. Doc. No. 26-44, at 2 (1841).

189. Memorial of a Number of Citizens of St. Louis, Mo., Praying the Passage of a General Bankrupt Law, to the U.S. Senate and House of Representatives (Jan. 15, 1841), in S. Doc. No. 26-81, at 1 (1841).

190. Message from John Tyler, U.S. President, to U.S. House of Representatives (June 30, 1841), in 4 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 1907, 1908 (James D. Richardson ed., New York, Bureau of Nat’l Literature, Inc. 1897).

191. CONG. GLOBE, 27th Cong., 1st Sess. app. at 206 (1841) (statement of Sen. Buchanan).

192. See *id.* (“The moment [the 1841 Act] goes into operation these unfortunate bankrupts will rush eagerly to the district courts in such numbers, as to arrest all other judicial business.”).

193. The number of filings are based primarily on the data from Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, app. at 1085–87 tbl. A1. I explain in that work that “the filing figures reported in *italics* are those for which the true number is currently unknown but for which evidence of at least that amount of filings has been documented.” *Id.* at 1085. Two districts in this category are North Carolina’s Cape Fear and Pamlico Districts. See *id.* app. at 1086 tbl. A1. Since compiling those data, I have identified additional filings in both

Nineteenth-Century Bankruptcy Specialization

were voluntary.¹⁹⁴ The distribution of these cases among the thirty district judges sitting during the Act's case-filing period was far from uniform. The average and median judges respectively administered 1,547 and 1,551 cases.¹⁹⁵ A subset of judges bore especially heavy bankruptcy caseloads. Approximately 23% of the district judges (7 of 30) administered 47% of the nation's cases (21,939 of 46,402) – specifically:

- 5,598 for Judge Alfred Conkling in the Northern District of New York;
- 3,478 for Judge Ashur Ware in the District of Maine;
- 3,257 for Judge Peleg Sprague in the District of Massachusetts;
- 2,550 for Judge Samuel Rossiter Betts in the Southern District of New York;
- at least 2,501 for Judge Morgan Welles Brown across Tennessee's three districts;
- 2,373 for Judge Thomas Bell Monroe in the District of Kentucky; and
- 2,182 for Judge William Crawford across Alabama's three districts.¹⁹⁶

Even at the low end of the distribution, when juxtaposed against the workload of federal district courts prior to the 1841 Act,¹⁹⁷ Judge Willard Hall's ninety-one bankruptcy cases in the District of Delaware likely exceeded all other business on his

districts based on bankruptcy petition notices published in the districts' newspapers. *See id.* at 1084 & nn.412–13 (discussing identification methodology and providing examples). I originally reported 338 filings in the Cape Fear District and 159 filings in the Pamptico District. *See id.* app. at 1086 tbl. A1. The updated figures are 541 filings for Cape Fear (i.e., 203 additional cases) and 206 filings for Pamptico (i.e., 47 additional cases), increasing the total number of reported 1841 Act filings from 46,152 to 46,402. *See id.* app. at 1087 tbl. A1.

194. *See, e.g.,* H.R. Doc. No. 29-223, at 6 (1846) (reporting that 1,510 voluntary petitions and 27 involuntary petitions were filed in the District of Connecticut under the 1841 Act); *id.* at 8 (reporting that 2,466 voluntary petitions and 84 involuntary petitions were filed in the Southern District of New York under the 1841 Act).

195. *See* Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, app. at 1085–87 tbl. A1; *supra* note 193.

196. *See* Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, app. at 1085–87 tbl. A1.

197. *See supra* notes 182–185 and accompanying text (discussing the workload of the Eastern District of Virginia's federal district court prior to the 1841 Act).

court's docket.¹⁹⁸ For the skeleton crew of district judges superintending the 1841 Act system, bankruptcy work came to dominate their time,¹⁹⁹ which contemporary commentary perceptively grasped: "Thus, to the present duties of the district court in Massachusetts, consisting of a single judge, will be added a distinct burden, far greater of itself, than that borne by all the judges of any court in the commonwealth."²⁰⁰

Echoing this commentary, federal district court judges did not hesitate to express their consternation when responding to a letter sent by Secretary of State Daniel Webster, acting pursuant to a Senate resolution adopted on December 13, 1842, that sought feedback from those administering the 1841 Act.²⁰¹ Judge Andrew Judson of the District of Connecticut sought to convey the enormous burden of individualized review that the Act imposed: "Since the 1st day of February, 1842, and up to this day, there have been presented within this district about *fourteen hundred applications*, all of which, at three distinct periods of their progress, pass through my hands and under my personal examination."²⁰² Judge Isaac Pennybacker of the Western District of Virginia likewise wrote that "[t]he business of the courts has been greatly increased by [the Act]," adding that "[t]o judges living at a distance from the place or places at which the business is transacted, the

198. See Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, app. at 1085 tbl. A1.

199. See *In re Klein*, 14 F. Cas. 719, 729 (D. Mo. 1842) (No. 7,866) (Wells, J.) ("Here is a state of upwards of 70,000 square miles in extent; all the business in regard to insolvents as well as bankrupts is to be transacted in the United States' court, at the city of Jefferson. All who have an interest in a case, either as petitioners or creditors, must go to that court, and there remain, perhaps with a number of witnesses; delayed by the accumulation of business in the one court, for months."), *rev'd*, 14 F. Cas. 716 (C.C.D. Mo. 1843) (No. 7,865) (Catron, Circuit J.). Judge Robert Wells issued the federal district court's opinion in *In re Klein* on September 17, 1842. Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1038–39 & 1039 n.204.

200. *The Bankrupt Law*, *supra* note 107, at 406; see also, e.g., *Duties of the Judges in Bankruptcy: Imposition by Bankrupts*, STAUNTON SPECTATOR, & GEN. ADVERTISER (Va.), June 23, 1842, at 2 ("[T]he duties of the Judges under the late Bankrupt law, are not fairly considered nor by any means adequately compensated. The increased number of courts which the Judge is now compelled to hold and the immense increase of business, were not considered, or were not properly regarded by any means . . .").

201. See CONG. GLOBE, 27th Cong., 3d Sess. 46 (1842); Letter from Daniel Webster, Sec'y of State, U.S. Dep't of State, to the U.S. Senate (Dec. 27, 1842), in S. Doc. No. 27-19, at 1 (1842).

202. Letter from Andrew T. Judson, U.S. J., Dist. of Conn., to Daniel Webster, Sec'y of State (Dec. 24, 1842), in S. Doc. No. 27-19, at 29, 30.

Nineteenth-Century Bankruptcy Specialization

courts being deemed to be always open, and the business immense, the operation of the law is very onerous.”²⁰³

Judge Betts of the Southern District of New York made the point more forcefully, noting that the zero-sum nature of judicial time threatened to derail the court’s nonbankruptcy work entirely:

[U]nless the courts can be, in some degree, relieved of the administration of the bankrupt act, all other judicial business must be left unattended to. More than an entire half of the time is devoted by the district court here to bankrupt cases, and that is insufficient to dispose of them as fast as they arise. . . .

. . . .

I feel it owing to myself to add, that although I have endeavored to apply the most assiduous diligence to all branches of my duties, and have been actually sitting and hearing causes every day of business since the first of February last (with an intermission of about two weeks in mid-summer), it has not been within my power to dispose of the bankrupt business and the law and admiralty cases pressing upon the court for trial and decision.

This difficulty must continue to augment, and will soon become a great evil, in regard to the rights and interests of suitors, as well as those of the Government.²⁰⁴

As we have seen, Congress failed to provide the federal judiciary with the necessary workforce to deal with this problem.²⁰⁵ The federal district courts accordingly had to confront their case-management crisis with very limited tools at their disposal—the primary one being the bankruptcy rulemaking authority granted to them under the Act.²⁰⁶ For example, Judge Robert Gilchrist of the District of South Carolina promulgated a rule that almost

203. Letter from Isaac Samuels Pennybacker, U.S. J., W. Dist. of Va., to Daniel Webster, Sec’y of State (Dec. 26, 1842), *in* S. Doc. No. 27-19, at 55, 56. For purposes of administering the 1841 Act, Congress mandated that the federal district courts would “be deemed always open.” Act of Aug. 19, 1841, ch. 9, § 6, 5 Stat. 440, 445 (repealed 1843).

204. Letter from Samuel R. Betts, U.S. J., S. Dist. of N.Y., to Daniel Webster, Sec’y of State (Dec. 19, 1842), *in* S. Doc. No. 27-19, at 7, 11.

205. *See supra* notes 173–180 and accompanying text.

206. *See* § 6, 5 Stat. 440, 445–46 (“[I]t shall be the duty of the district court in each district, from time to time, to prescribe suitable rules and regulations, and forms of proceeding, in all matters of bankruptcy.”).

exclusively prioritized the court's bankruptcy docket,²⁰⁷ and Judge Monroe of the District of Kentucky promulgated a series of rules that referred some bankruptcy matters to a master in chancery.²⁰⁸ These measures, however, merely represented tweaks at the margins,²⁰⁹ as indicated by the 1841 Act's persistence.²¹⁰ Ultimately, the historical record strongly indicates that, in their district court capacities, federal district court judges could do little else than preside over bankruptcy matters during the Act's case-filing period—and during the portion of the third interregnum when residual administration of pending cases and proceedings remained at peak intensity.²¹¹ As such, the federal district courts were highly specialized in terms of 1841 Act judge concentration.

207. See BANKR. D.S.C. R. 7 (1842) ("Proceedings in bankruptcy will have the precedence of all other business in the District Court except actions for seamen's wages, motions to re-deliver or discharge vessels or property under attachment or seizure, or the examination or bailing of persons arrested upon criminal charges.") (repealed), *reprinted in* RULES AND REGULATIONS IN BANKRUPTCY, ADOPTED BY THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF SOUTH CAROLINA 2 (Charleston, W. Riley 1842) (on file with Coll. of Charleston, Special Collections, Thomas Smith Grimké Pamphlet Collection, A Pamphlets, Label 10).

208. See, e.g., BANKR. D. KY. R. CXXXVII, CXCI, CC, CCI (1842) (repealed), *reprinted in* S. Doc. No. 27-19, at 109, 119, 124, 128. See generally Irving R. Kaufman, *Masters in the Federal Courts: Rule 53*, 58 COLUM. L. REV. 452, 454 n.12 (1958) ("Rule XXIX of the Federal Equity Rules of 1822 made provision for the reference of matters to a master 'to examine and report thereon.' The revised rules of 1842 re-enacted this rule in an expanded form" (citations omitted)). Notably, Judge Monroe's rules enlisting the aid of masters in chancery expanded the adjunct workforce available for managing his court's bankruptcy docket beyond the statutorily authorized use of commissioners. See § 5, 5 Stat. at 445 (authorizing federal district courts to appoint commissioners to perform certain duties, such as receiving proof of debts); see also, e.g., BANKR. D. KY. R. XXXVII-XXXIX, LXXVIII, CIV, CVI (referring certain bankruptcy matters to commissioners) (repealed), *reprinted in* S. Doc. No. 27-19, at 93, 99, 103.

209. But cf. MURNANE, *supra* note 64, at 40 (stating that, in its administration of the 1841 Act, the U.S. District Court for the District of Ohio "immediately referred the [bankruptcy] petition to the bankruptcy commissioner of the county of the debtor's residence for all subsequent hearings").

210. See *supra* notes 115-118 and accompanying text.

211. During the 1841 Act's case-filing period and throughout the third interregnum, district judges also had duties as circuit court judges. See Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1026 ("Importantly, from the time that the 1841 Act took effect on February 1, 1842, until 1869, the federal circuit courts convened in the federal judicial districts as two-judge panels consisting of (1) the Supreme Court Justice assigned to the circuit within which the federal judicial district was located and (2) the federal district court judge from the district in which the circuit court convened."). This was true even for district judges whose districts had not been assigned to a federal circuit. See WHEELER & HARRISON, *supra* note 183, at 14 ("The Northern and Middle Districts of Alabama, the Western District of Louisiana, and the Northern District of Mississippi were not part of a circuit [in 1842]; their district courts exercised the jurisdiction of district and circuit courts."). Regardless of how circuit

Nineteenth-Century Bankruptcy Specialization

III. 1841 ACT SPECIALIZATION: LEGAL PROFESSIONALS

The preceding analysis in Part II showed that, for a nontrivial period of time, federal district courts became specialized in bankruptcy due to high levels of both case concentration and judge concentration. This specialization had the potential to shape not only how district courts processed cases in the 1841 Act system but also how they interacted with the legal professionals who participated in it. As previously discussed, Baum has emphasized that high case concentration can foster attitudinal convergence and professional interdependence between specialized judges and a specialized bar.²¹² Complementing Baum's account, historian Peter Graham Fish has shown that the antebellum federal judiciary was highly decentralized and autonomous: District judges wielded considerable discretion over both adjudicatory and administrative functions within their courts, often insulated from external oversight, though subject to the influence of the local communities in which they were embedded.²¹³ These conditions may have amplified the potential for professional networks to form around the specialized work of the 1841 Act system.

This Part shifts focus to the legal professionals who participated in that system, exploring whether, and to what extent, attorneys and assignees became specialized in bankruptcy—and whether

court duties may have affected a judge's ability to focus on district court business, this does not alter the analysis of 1841 Act case concentration at the district court level. As previously discussed, the jurisdiction of federal district courts prior to the Act was quite limited. *See supra* notes 183–185 and accompanying text. Its expansion to include bankruptcy cases resulted in a period during which district judges, in their district court capacities, remained focused on a narrow range of matters—of which 1841 Act cases overwhelmingly predominated. Accordingly, even if circuit court duties diverted some judicial capacity, the core function of the district court during this period remained centered on bankruptcy, thereby fostering specialization within that institutional role. Moreover, even if one were to blur the institutional boundary between district and circuit courts, Congress had granted the latter concurrent jurisdiction over certain bankruptcy matters. *See supra* notes 168–169 and accompanying text. Thus, a district judge's bankruptcy work could extend into both fora, further reinforcing the 1841 Act concentration developed at the district court level.

212. *See supra* notes 40–41 and accompanying text.

213. *See* FISH, JUDICIAL ADMINISTRATION, *supra* note 183, at 3–4, 7, 12–14; *cf.* Rafael I. Pardo, *Eliminating the Judicial Function in Consumer Bankruptcy*, 81 AM. BANKR. L.J. 471, 479 n.44 (2007) (“As a general matter, bankruptcy courts are not autonomous decision-making bodies and can adjudicate only those disputes brought before them. It thus bears mentioning that the selection of cases for litigation, which is driven by litigant choices, will necessarily constrain judicial discretion insofar as judges will have the opportunity to exercise discretion only in a select group of cases.”).

they did so in ways that intersected with, or were shaped by, the dynamics of 1841 Act judicial specialization. To contextualize my analytical approach, section III.A offers a brief commentary on the sparse literature that has provided sustained examination of professional specialization under the pre-1898 federal acts. Section III.B analyzes layered bankruptcy specialization among attorneys in the Eastern District of Louisiana during the tail end of the second interregnum, the 1841 Act's case-filing period, and the start of the third interregnum. Section III.C analyzes specialization by assignees appointed in the district's 1841 Act cases.

A. *Historical Scholarship on Bankruptcy Specialization*

To my knowledge, Edward Balleisen and Elizabeth Lee Thompson are the only scholars who have relied on manuscript court records to conduct extensive analysis of federal bankruptcy specialization during the nineteenth century.²¹⁴ More specifically,

214. Without extensively analyzing the topic, two other scholars have gestured toward the possibility of federal bankruptcy specialization under the pre-1898 federal acts. First, Bruce Mann identifies pronounced patterns in the appointment of 1800 Act bankruptcy commissioners by federal district courts. Drawing on manuscript records from the federal district courts in Massachusetts, New York, and Pennsylvania, *see* MANN, *supra* note 100, at 265, 330 n.7, he observes that “[t]he men appointed commissioners were politically connected lawyers and merchants, a very small number of who received most or all of the commissions in each jurisdiction—a practice that promoted efficiency and uniformity in the proceedings by creating, in effect, permanent commissions,” *id.* at 225. His compiled statistics for the three jurisdictions point to a high concentration of cases among one category of professionals involved in the 1800 Act system. *See id.* at 330 n.7 (“[O]nly twelve different men were appointed to fill 708 of the 802 available positions on the 271 commissions issued in Massachusetts for which we have the names of commissioners. . . . The same pattern prevailed in New York, where sixteen men . . . filled 245 of the 246 positions available on the 88 commissions for which we have the commissioners’ names, and in Pennsylvania, where eleven prominent Philadelphians filled all 528 seats on the 176 commissions for which we have the names.”). This evidence suggests legal professional specialization along one of its two key dimensions, *see supra* note 40 and accompanying text, even though Mann does not frame the phenomenon in those terms. Still, his discussion stands as an early and important recognition of professional dynamics underlying the 1800 Act system.

Second, in her institutional history of what would eventually become the U.S. Bankruptcy Court for the Northern District of Ohio, M. Susan Murnane briefly discusses administration of the 1841 Act by the federal district court for what was then the District of Ohio. *See* MURNANE, *supra* note 64, at 39–41. Commenting on the geographic distribution of debtors who sought relief under the Act, she notes that “[e]ven though petitions had to be filed with the district court, and in 1842 the only Ohio district court was in Cincinnati, roughly half of the petitions came from the northern counties that later formed the Northern Judicial District of Ohio.” *Id.* at 40. She further observes that “the records reveal a frequent pattern of multiple petitions from distant counties filed simultaneously by the same

Nineteenth-Century Bankruptcy Specialization

Balleisen examines attorney specialization under the 1841 Act, while Thompson does so under the 1867 Act.²¹⁵

Balleisen offers valuable qualitative insights into attorney participation under the 1841 Act, focusing almost exclusively on the Southern District of New York and relying predominantly on that district's federal district court records.²¹⁶ While he identifies several lawyers who developed bankruptcy practices, his analysis does not generally provide data on (1) the distribution of 1841 Act matters across the district's attorney population or (2) the proportion of bankruptcy work within the practices of attorneys engaged in it.²¹⁷ Nor does he define what constitutes "specialization" or explain the threshold that distinguishes generalist participation from a specialized practice.²¹⁸ This omission makes it difficult to evaluate his claims that "[s]ome lawyers . . . viewed the opportunities presented by the 1841 [Act] as sufficient to justify specialization in bankruptcy practice"²¹⁹ or that a subset "became even more specialized, particularly by concentrating on the representation of creditors who wished to oppose the voluntary petition of a

attorney," but offers no elaboration. *Id.* This claim hints at the possibility of some attorney-level case concentration under the 1841 Act in Ohio, but the absence of any further detail makes it impossible to draw conclusions. Murnane provides no citation for the proposition, which appears in a single paragraph whose only endnote relates to a different topic (i.e., the district's bankruptcy commissioners). *See id.* at 40 & 372 n.37. She presumably based her observation on the federal district court's 1841 Act manuscript records. *See, e.g.,* U.S. Dist. Ct. for the Dist. of Ohio, *Bankruptcy Act of 1841 Case Files, 1841–1843*, NAT'L ARCHIVES CATALOG, <https://catalog.archives.gov/id/6997963> [<https://perma.cc/Y6AA-WH7S>] (on file with the BYU Law Review) (last visited Oct. 8, 2025) ("This series consists of voluntary petitions for bankruptcy filed by debtors throughout Ohio, involuntary bankruptcy petitions filed by creditors against debtors, and the related case papers filed in subsequent proceedings in each bankruptcy case."). That said, the only citations in Murnane's book to federal district court records stored in the National Archives pertain to the 1867 and 1898 Acts. *See* MURNANE, *supra* note 64, at 373 n.56, 376 nn.33–35. Ultimately, in the absence of elaboration, citation, or quantitative evidence, her brief remark cannot support any firm conclusions about attorney specialization under the 1841 Act.

215. *See* Balleisen, *supra* note 100, at 486–90; ELIZABETH LEE THOMPSON, *THE RECONSTRUCTION OF SOUTHERN DEBTORS: BANKRUPTCY AFTER THE CIVIL WAR* 60–69 (2004). Balleisen's article subsequently appeared as a chapter in his book on the 1841 Act. *See* BALLEISEN, *supra* note 125, ch. 5.

216. *See* Balleisen, *supra* note 100, at 480 & n.9, 486 n.24. Balleisen relies on reported opinions to identify Boston and Philadelphia "attorneys who gained regular bankruptcy work," but he does not provide data on the number of their appearances or the nature of their representations. *Id.* at 490 n.33.

217. *See id.* at 486–90.

218. *See id.*

219. *Id.* at 487.

bankrupt.”²²⁰ Although his anecdotal narratives plausibly suggest meaningful patterns, they do not constitute the kind of systematic analysis required to assess attorney specialization’s two key dimensions—case concentration and attorney concentration.²²¹

Thompson’s analysis is more explicitly quantitative and, like Balleisen’s, represents an important contribution to the study of nineteenth-century federal bankruptcy specialization. Focusing on the District of South Carolina, the Eastern District of Tennessee, and the Southern District of Mississippi, she presents statistics on the share of attorneys in those districts who represented voluntary bankrupts and creditors initiating involuntary cases under the 1867 Act.²²² To explore whether particular attorneys dominated such representations, she attempts to identify those who served as counsel in at least ten cases of either type.²²³

While Thompson’s descriptive statistics offer a basis for evaluating case concentration among attorneys, several issues complicate the interpretation of her findings. First, she analyzes a subset of 864 cases drawn from the 3,810 filed in the three districts over the Act’s roughly eleven-year case-filing period.²²⁴ The subset includes all 257 cases filed in the Eastern District of Tennessee.²²⁵ For the other two districts, Thompson draws on partial samples: 331 cases from two counties in the District of South Carolina (out of a district total of 1,893), and 276 cases from two counties in the Southern District of Mississippi (out of a district total of 1,660).²²⁶ In each of these districts, one of the two selected counties contained the district’s principal urban center.²²⁷ But because Thompson does not explain how the county-level subsamples for the latter two districts were selected, their representativeness—either relative to

220. *Id.* at 488.

221. *See supra* note 42 and accompanying text.

222. *See* THOMPSON, *supra* note 215, at 62–69.

223. *See id.* at 61.

224. *See id.* at 8–9, 60, 143; *supra* note 68 and accompanying text (discussing 1867 Act’s case-filing period). Thompson states that her study includes “all 3,180 voluntary and involuntary filings in the three districts.” *Id.* at 9 (emphasis added). Later, she notes that “[f]ive bankruptcy cases filed in the three southern districts *could not be categorized* as voluntary or involuntary filings based on the information available in court documents.” *Id.* at 143 (emphasis added). Her breakdown of voluntary and involuntary cases across the three districts totals 3,180. Accordingly, it appears that there were 3,185 total filings.

225. *See id.* at 9, 143.

226. *See id.*

227. *See id.* at 9.

Nineteenth-Century Bankruptcy Specialization

the counties themselves or the districts to which they belonged—remains unclear. Second, she does not explain the reasoning behind the threshold she adopted for identifying attorney dominance. Finally, she makes a quantitatively unsubstantiated claim about attorney concentration.²²⁸ These gaps limit the ability to evaluate her broad claim, based on a narrow subset of representations in three Southern federal judicial districts, that “bankruptcy representation under the 1867 Bankruptcy Act was neither highly concentrated nor specialized.”²²⁹

These observations on Balleisen’s and Thompson’s studies are not meant to detract from their foundational contributions. Both works broke new ground by using archival research to draw sustained attention to the question of federal bankruptcy specialization during the nineteenth century. At the same time, the studies underscore the difficulty of empirically establishing legal professional concentration in historical practice. Doing so requires access to comprehensive archival records that document a professional’s full practice—records that are rarely available and methodologically daunting, if not impossible, to reconstruct. For this reason, the analyses of 1841 Act specialization in sections III.B and III.C focus only on case concentration: whether a relatively small group of legal professionals handled most 1841 Act matters. The broader point, however, is that definitive claims about the overall landscape of nineteenth-century bankruptcy specialization

228. Thompson filters her claim through the lens of a *Vicksburg Daily Herald* advertisement placed by attorneys McGarr and Smedes. *See id.* at 60. The advertisement first stated their willingness to take on any type of representation, then indicated that they would practice before certain Mississippi state courts, and finally announced that they were prepared to provide representation in 1867 Act cases. *See id.* From this sequencing, Thompson infers that the attorneys’ “primary practice was before the state courts” and offers, as context, that they appeared in sixteen 1867 Act cases in the Southern District of Mississippi, “either together or separately.” *Id.* Thompson ultimately concludes that “bankruptcy was a component—indeed, an appendage—to their overall workload.” *Id.* at 61. Yet the advertisement’s mere reference to state court practice does not reveal the volume of the attorneys’ nonbankruptcy work. Without more comprehensive data on McGarr’s and Smedes’s overall client base, no meaningful determination can be made about the relative prominence of bankruptcy work in their practice. Finally, the broader data Thompson presents—limited to attorney representations of debtors in voluntary cases and petitioning creditors in involuntary ones—provide no insight into how much nonbankruptcy work those attorneys performed. As such, her analysis does not support her general claim that “bankruptcy was but one element of a broader practice” for attorneys who appeared in bankruptcy cases across the three districts she analyzed. *Id.* at 61.

229. *Id.* at 61.

should await further exploration of the evidentiary terrain. Finally, nothing in the discussion above should be read as a criticism of studies that focus on a limited number of judicial districts, or even just one. On the contrary, such work is essential. As discussed below, by prioritizing depth over breadth, this type of research can surface complex dynamics that will lay the groundwork for future inquiry.²³⁰ I have adopted a similar approach in prior studies and do so again here.²³¹

B. 1841 Act Attorney Specialization

This section presents the results of a preliminary investigation into bankruptcy specialization by attorneys in the Eastern District of Louisiana (the “Eastern District”) during the tail end of the second interregnum, the 1841 Act’s case-filing period, and the start of the third interregnum. The decision to focus on a single district is guided by the insight that “the specifics of region, political economy, and jurisdiction [are] critical to how law [is] constructed at the intersection of formal edicts and lived experience.”²³² Differences across federal judicial districts almost certainly shaped how institutions and individuals interacted with the Act.²³³ Accordingly, the findings presented here do not purport to offer a definitive or exhaustive account of bankruptcy specialization within the Eastern District, let alone beyond it. They do, however,

230. See *infra* notes 232–233 and accompanying text.

231. See, e.g., Rafael I. Pardo, *Bankrupted Slaves*, 71 VAND. L. REV. 1071, 1081 (2018) [hereinafter Pardo, *Bankrupted Slaves*] (“The remainder of the Article explores how the bankruptcy slave trade functioned in the Eastern District of Louisiana . . . , home to New Orleans, antebellum America’s largest slave market.”).

232. MARTHA S. JONES, *BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA* 12 (2018).

233. See, e.g., Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1070–71 n.361 (“The 1841 Act gave federal district courts the authority to establish the fees of court officials who administered the Act, including assignees. Courts used this authority to promulgate rules structuring assignee compensation based on the funds disbursed by the assignee in a case, with a schedule of compensation calculated as decreasing percentages of increasing amounts of such disbursements A complete set of 1841 Act bankruptcy rules for the Eastern District of Louisiana has yet to be unearthed. But evidence from the district’s case files indicates that assignees routinely received a 5 percent commission on all disbursed amounts. Assigneeships in the Eastern District of Louisiana may thus have been among the most, if not the most, lucrative in the nation.” (citations omitted)); cf. Elizabeth Gaspard, *The Rise of the Louisiana Bar: The Early Period, 1813–1839*, 28 LA. HIST. 183, 192 (1987) (“[T]he wages earned by a prominent attorney could be quite lucrative, since maximum fees were not regulated in Louisiana as they were in other states.”).

Nineteenth-Century Bankruptcy Specialization

supply a substantial body of quantitative evidence concerning attorney participation in antebellum bankruptcy matters—evidence that begins to fill a longstanding gap in the scholarly literature and lends empirical support to this Article’s claim that bankruptcy specialization could develop in layered fashion across state and federal regimes.

Three key mechanisms of debtor relief under Louisiana law—(1) the contract of respite, (2) the contract of remission, and (3) the cession of property—created recurring opportunities for attorneys to represent a range of clients (e.g., debtors, creditors, syndics).²³⁴ Such experience could translate into expertise relevant under the 1841 Act.

The *contract of respite* allowed an insolvent debtor to obtain an extension of time to repay existing debts,²³⁵ either through unanimous agreement with creditors or, if unanimity could not be achieved, through a judicially imposed arrangement known as a *forced respite*.²³⁶ A forced respite required approval by creditors holding at least three-fourths of the claims, in both number and value, against the debtor,²³⁷ and was subject to multiple procedural safeguards.²³⁸ The debtor was required to file a sworn schedule of assets and liabilities;²³⁹ the court was required to convene a meeting of creditors, held before a notary public, to vote on the proposal;²⁴⁰ and the judge had to homologate the resulting agreement.²⁴¹ With

234. The Louisiana Civil Code of 1825 governed these debtor-relief mechanisms during the latter part of the second interregnum, throughout the third interregnum, and for much of the 1867 Act’s case-filing period, after which the Revised Civil Code of 1870 governed for the remainder of the nineteenth century. See LA. STATE L. INST., 3 LOUISIANA LEGAL ARCHIVES: COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA, pt. 2, at 1189–96, 1694–1704 (1940). On the role of a syndic in a cession of property, see *infra* note 251 and accompanying text.

235. See LA. CIV. CODE art. 3051 (1825), reprinted in WHEELOCK S. UPTON & NEEDLER R. JENNINGS, CIVIL CODE OF THE STATE OF LOUISIANA 465 (New Orleans, E. Johns & Co. 1838); see also *id.* art. 3058 (referring to “the contract of respite”), reprinted in UPTON & JENNINGS, *supra*, at 466.

236. See *id.* art. 3052, reprinted in UPTON & JENNINGS, *supra* note 235, at 465.

237. See *id.* art. 3053, reprinted in UPTON & JENNINGS, *supra* note 235, at 465.

238. See, e.g., *id.* art. 3054, reprinted in UPTON & JENNINGS, *supra* note 235, at 465–66.

239. See *id.* art. 3054, reprinted in UPTON & JENNINGS, *supra* note 235, at 465.

240. See *id.*

241. See *id.* art. 3058, reprinted in UPTON & JENNINGS, *supra* note 235, at 466. See generally *Homologate*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“To approve or confirm officially <the court homologated the sale>.”).

limited exceptions, a forced respite could not extend beyond three years.²⁴²

In connection with a contract of respite, a debtor could propose a *contract of remission*, pursuant to which creditors would be repaid less than the full amount owed to them.²⁴³ No creditor, however, could be compelled to accept the proposal—even if the court had approved a forced respite.²⁴⁴

If a debtor failed to secure the required creditor approval for a forced respite, the proceeding was converted into a *cession of property* and continued as though a cession had been initiated in the first instance.²⁴⁵ A cession,²⁴⁶ also referred to as a surrender of property,²⁴⁷ could be voluntary or involuntary.²⁴⁸ The Louisiana Civil Code defined a cession as “the relinquishment that a debtor makes of all his property to his creditors, when he finds himself unable to pay his debts.”²⁴⁹ A debtor could obtain a discharge of all scheduled debts in a cession case if creditors holding more than half of the claims against the debtor, in both number and value, consented.²⁵⁰ A syndic appointed at the creditors’ meeting oversaw the sale of the debtor’s property at public auction for the creditors’ benefit.²⁵¹

In Orleans Parish, three courts had concurrent jurisdiction over forced respite proceedings and cession cases: (1) the Orleans Parish Court, (2) the First Judicial District Court, and (3) the Commercial Court of New Orleans.²⁵² Because some forced respite proceedings

242. See LA. CIV. CODE art. 3063, reprinted in UPTON & JENNINGS, *supra* note 235, at 467.

243. See *id.* art. 3061, reprinted in UPTON & JENNINGS, *supra* note 235, at 466; see also *id.* art. 3062 (referring to “contract of respite or remission”), reprinted in UPTON & JENNINGS, *supra* note 235, at 467.

244. See *id.* art. 3061, reprinted in UPTON & JENNINGS, *supra* note 235, at 466–67.

245. See *id.* art. 3065, reprinted in UPTON & JENNINGS, *supra* note 235, at 467.

246. *Id.* book III, tit. IV, ch. 5, sec. 1, § V (1825), reprinted in UPTON & JENNINGS, *supra* note 235, at 338.

247. *Id.* art. 2166, reprinted in UPTON & JENNINGS, *supra* note 235, at 338.

248. *Id.* art. 2167, reprinted in UPTON & JENNINGS, *supra* note 235, at 338.

249. *Id.* art. 2166, reprinted in UPTON & JENNINGS, *supra* note 235, at 338.

250. See *id.* art. 2173, reprinted in UPTON & JENNINGS, *supra* note 235, at 339.

251. See *id.* arts. 2171, 2180, reprinted in UPTON & JENNINGS, *supra* note 235, at 339–40. For a description of cession cases, including the syndic’s appointment, see *Tyler v. Their Creditors*, 9 Rob. 372, 375 (La. 1844).

252. See generally 1 A NEW DIGEST OF THE STATUTE LAWS OF THE STATE OF LOUISIANA ch. 36, pts. II, V, VIII (Henry A. Bullard & Thomas Curry eds., New Orleans, E. Johns & Co. 1842) (setting forth statutory provisions relating to, respectively, Louisiana’s district and parish courts and the Commercial Court of New Orleans); RICHARD HOLCOMBE KILBOURNE, JR.,

Nineteenth-Century Bankruptcy Specialization

culminated in cession cases, and because cession cases functionally resembled 1841 Act cases in certain respects,²⁵³ attorneys who handled such matters in Orleans Parish would have been well positioned to carry their state bankruptcy experience into federal bankruptcy practice. That likelihood is reinforced by the fact that Orleans Parish lay within the Eastern District of Louisiana, making it probable that such attorneys also appeared in 1841 Act cases—particularly in light of the filing activity discussed below.

During the 1841 Act's case-filing period (February 1, 1842, to March 3, 1843),²⁵⁴ the Eastern District encompassed twenty-four parishes, including Orleans Parish, which was home to New Orleans—then the nation's third-largest city, one of its principal money markets, and the site where the U.S. District Court for the Eastern District of Louisiana convened.²⁵⁵ The Act required debtors to file their bankruptcy petitions in the district where they resided

LOUISIANA COMMERCIAL LAW: THE ANTEBELLUM PERIOD 84–107 (1980) (discussing the Commercial Court of New Orleans).

253. For a discussion of the procedural progression of an 1841 Act case, see Pardo, *Bankrupted Slaves*, *supra* note 231, at 1083–91.

254. See *supra* note 67 and accompanying text. Courts were split on the issue of whether a bankruptcy petition filed on the day of the 1841 Act's repeal was untimely and thus ineffective to commence a case. Contrast *In re Richardson*, 20 F. Cas. 699, 703 (C.C.D. Mass. 1843) (No. 11,777) (Story, Circuit J.) (timely filing), with *In re Welman*, 29 F. Cas. 681, 684 (D. Vt. 1844) (No. 17,407) (untimely filing). The U.S. District Court for the Eastern District of Louisiana appears to have adopted the view that 1841 Act cases commenced on the Act's repeal date were effective: The court declared four debtors who filed voluntary cases on that date to be bankrupts under the Act and proceeded to administer their cases. See Docket Report, *In re Rushton*, No. 756 (E.D. La. Mar. 3, 1843) (on file with Nat'l Archives at Kan. City, Records of the District Courts of the United States, Record Group 21, U.S. District Court for the Eastern District of Louisiana, Bankruptcy Act of 1841 Dockets (1842–1843), Container 4 [hereinafter 4 NARA EDLA Docket Book]); Bankruptcy Decree and Order Appointing Assignee, *In re Rushton*, No. 756 (E.D. La. Mar. 31, 1843) (on file with Nat'l Archives at Kan. City, Records of the District Courts of the United States, Record Group 21, U.S. District Court for the Eastern District of Louisiana, Bankruptcy Act of 1841 Provisional and Discharge Decrees (1842–1843), Container 1 [hereinafter 1 NARA EDLA Decree Book]); Docket Report, *In re Unruh*, No. 757 (E.D. La. Mar. 3, 1843) (on file with 4 NARA EDLA Docket Book, *supra*); Bankruptcy Decree and Order Appointing Assignee, *In re Unruh*, No. 757 (E.D. La. Apr. 7, 1843) (on file with 1 NARA EDLA Decree Book, *supra*); Docket Report, *In re Darling*, No. 758 (E.D. La. Mar. 3, 1843) (on file with 4 NARA EDLA Docket Book, *supra*); Bankruptcy Decree and Order Appointing Assignee, *In re Darling*, No. 758 (E.D. La. Apr. 7, 1843) (on file with 1 NARA EDLA Decree Book, *supra*); Docket Report, *In re Colomb*, No. 759 (E.D. La. Mar. 3, 1843) (on file with 4 NARA EDLA Docket Book, *supra*); Bankruptcy Decree and Order Appointing Assignee, *In re Colomb*, No. 759 (E.D. La. Mar. 31, 1843) (on file with 1 NARA EDLA Decree Book, *supra*).

255. See Pardo, *Financial Freedom Suits*, *supra* note 163, at 149; Act of Mar. 3, 1823, ch. 44, § 1, 3 Stat. 774, 774–45 (current version at 28 U.S.C. § 98(a)).

or had their principal place of business at the time of filing.²⁵⁶ In the Eastern District, 763 cases involving 841 debtors (the “Eastern District debtors”) were filed under the Act.²⁵⁷ By reference to court records and legal notices published in newspapers pursuant to the Act’s various notice requirements,²⁵⁸ I have confirmed that 584 of these debtors resided in or had their principal place of business in New Orleans. Listings from an 1842 New Orleans directory (the *Pitts & Clarke Directory*)²⁵⁹ indicate that another 72 of the Eastern District debtors likely resided and/or transacted business in the city around the time they filed their bankruptcy petitions. Accordingly, at least 78% of the Eastern District debtors (656 of 841) likely looked primarily to the New Orleans legal market for securing representation. Moreover, some of the district’s debtors from outside of Orleans Parish likely sought representation from attorneys in New Orleans given that 1841 Act cases were administered by the federal district court there.²⁶⁰ For the same reason, other participants in 1841 Act cases (e.g., assignees, creditors) would also have relied on New Orleans attorneys to represent them.

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

257. See Pardo, *Financial Freedom Suits*, *supra* note 163, at 173–74. The Act permitted partners in trade to file jointly for relief with a single petition. See § 14, 5 Stat. at 448. For this reason, the number of 1841 Act debtors exceeded the number of cases in the Eastern District.

258. See, e.g., § 7, 5 Stat. at 446 (stating that, with regard to “all petitions by any bankrupt for the benefit of this act, . . . notice thereof shall be published in one or more public newspapers printed in such district, to be designated by such court at least twenty days before the hearing thereof”).

259. NEW-ORLEANS DIRECTORY FOR 1842 (New Orleans, Pitts & Clarke 1842) [hereinafter 1842 NEW-ORLEANS DIRECTORY].

260. See, e.g., Bankruptcy Petition, *In re Bossie*, No. 162 (E.D. La. Apr. 9, 1842) (on file with Nat’l Archives at Kan. City; Records of the District Courts of the United States, Record Group 21, U.S. District Court for the Eastern District of Louisiana; Bankruptcy Act of 1841 Case Files, 1842–1843 [hereinafter NARA EDLA Case Files]) (indicating that P. Soule represented Bossie, who resided in St. John the Baptist Parish); 1842 NEW-ORLEANS DIRECTORY, *supra* note 259, at 379 (providing a listing for “Soule, Pierre attorney at law, office and residence 154 Royal street”); cf. Letter from Montgomery Blair, U.S. Att’y, Dist. of Mo., to Daniel Webster, Sec’y of State, U.S. Dep’t of State (Jan. 5, 1843), in S. Doc. No. 27-19, at 164 (1842) (“No cases under [the 1841 Act] have been acted upon in this district, except in the district court in which, in consequence of the distance of Jefferson city, the place of holding its sessions, from my residence [in St. Louis], I have not practised [sic]. I have never proceeded farther in the cases in which I am employed, than to prepare the petitions and schedules, and to forward them to a gentleman of the bar residing at Jefferson city, to be managed by him in court.”).

Nineteenth-Century Bankruptcy Specialization

To investigate layered bankruptcy specialization in the Eastern District, I sought to identify the population of attorneys practicing in New Orleans and then determine the subset who participated in forced respite proceedings, cession cases (including litigation by or against a cession syndic), and 1841 Act cases. To identify the population of attorneys, I consulted the *Pitts & Clarke Directory*—a source that is admittedly imperfect, being both over- and underinclusive,²⁶¹ the latter in particular given the source’s limited temporal scope. For forced respite proceedings and cession cases, I examined the docket books of the three Orleans Parish courts with jurisdiction over such matters,²⁶² focusing on the period from

261. The directory’s publishers acknowledged that it likely contained errors and omissions. See 1842 NEW-ORLEANS DIRECTORY, *supra* note 259, at 5 (“The various languages spoken in the city, and the impossibility of ascertaining whether all the agents employed in procuring statistics and names in distant parts of the city have done their duty faithfully, open many avenues to mistake and omission which the publishers have had a small chance to prevent.”). One such error, previously documented, involved listing the surname of the Eastern District’s federal marshal as Robinson rather than Robertson. See Pardo, *Documenting Bankrupted Slaves*, *supra* note 167, at 113 n.206. If such a mistake could occur, it is not difficult to imagine that the directory might have erroneously listed an individual as an attorney, thereby rendering it overinclusive for purposes of analyzing layered bankruptcy specialization.

The reverse problem—omissions—could make the directory underinclusive. For example, Hilary Breton Cenas, William Christy, and Theodore Seghers have been identified as New Orleans attorneys based on information in the manuscript minute books of the Louisiana Supreme Court. See Gaspard, *supra* note 233, at 183 & n.2, 195. None is listed as an attorney in the *Pitts & Clarke Directory*. See 1842 NEW-ORLEANS DIRECTORY, *supra* note 259, at 72, 77, 368. Instead, each is listed as a notary public, *see id.*, an office that was filled by gubernatorial appointment and not restricted to members of the bar, *see* 1 BULLARD & CURRY, *supra* note 252, at 14. Thus, their designation as notaries would not have revealed their attorney status. While these examples illustrate how the *Pitts & Clarke Directory* could be underinclusive, none of the three appeared as an attorney in the state or federal bankruptcy matters examined for this Article’s analysis.

262. See *Orleans Parish, Parish Court Records*, NEW ORLEANS CITY ARCHIVES & SPECIAL COLLECTIONS, <https://archivesnolibrary.as.atlas-sys.com/repositories/2/resources/469> (on file with author) (last visited Oct. 10, 2025); *Orleans Parish First Judicial District Court Records*, NEW ORLEANS CITY ARCHIVES & SPECIAL COLLECTIONS, <https://archivesnolibrary.as.atlas-sys.com/repositories/2/resources/470> (on file with author) (last visited Oct. 10, 2025); *Orleans Parish Commercial Court Records*, NEW ORLEANS CITY ARCHIVES & SPECIAL COLLECTIONS, <https://archivesnolibrary.as.atlas-sys.com/repositories/2/resources/471> (on file with author) (last visited Oct. 10, 2025). The extant docket book for the First Judicial District Court only covers cases filed from January 23, 1839, to April 11, 1842. See *Orleans Parish First Judicial District Court Records*, *supra*.

During the relevant time period, the docket reports encompass 17 forced-respite proceedings, 5 forced-respite proceedings converted to cession cases, 94 original cession cases, and 84 suits by or against cession syndics, for a total of 200 matters. Of these, 65.5%

February 1, 1840, to March 3, 1844 (i.e., one year before the start and one year after the end of the 1841 Act case-filing period) and recorded the names of attorneys who made appearances in a total of 200 documented matters. For the Eastern District's 1841 Act cases, I have thus far compiled attorney-representation data from documents filed in approximately 19% of the cases (143 of 763), whether during the Act's case-filing period or after its repeal. These documents include bankruptcy petitions, schedules of assets and liabilities, discharge petitions, assignee reports, proofs of debts, depositions, notices, motions, and oppositions.²⁶³

Of the 188 individuals identified as attorneys in the *Pitts & Clarke Directory*, only 62% of them (116 of 188) made at least one appearance on behalf of a litigant in connection with matters relating to either the Eastern District's 1841 Act cases or the Orleans Parish matters investigated for this analysis. Breaking down these attorneys by appearance patterns reveals three distinct practice groups. The attorneys who appeared in at least one Eastern District 1841 Act case but no state matters (the "federal-appearance attorneys") comprised 15% of the total (28 of 188) and accounted for just 10% of all documented appearances (51 of 530). The attorneys who appeared in at least one Louisiana forced-respite proceeding or cession case but no Eastern District 1841 Act case (the "state-appearance attorneys") represented 26% of the total (48 of 188) and accounted for 22% of all appearances (117 of 530). The attorneys who appeared in both federal and state matters (the "hybrid-appearance attorneys") comprised 21% of the total (40 of 188) but were responsible for a disproportionate 68% of all appearances (362 of 530). This distribution strongly suggests a significant degree of case concentration and highlights a form of

(131 of 200) commenced before the 1841 Act's case-filing period, 17.0% (34 of 200) during that period, and 17.5% (35 of 200) after its conclusion.

263. See U.S. Dist. Ct. for the E. Dist. of La., *Bankruptcy Act of 1841 Case Files, 1842-1843*, NAT'L ARCHIVES CATALOG, <https://catalog.archives.gov/id/4513381> [<https://perma.cc/D3R3-2GDZ>] (Nat'l Archives at Kan. City, Records of the District Courts of the United States, Record Group 21) (last visited Oct. 10, 2025) ("This series contains papers filed in bankruptcy proceedings including 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.").

Nineteenth-Century Bankruptcy Specialization

layered bankruptcy specialization rooted in active practice across both federal and state regimes.

Average appearance figures underscore this concentration. Federal-appearance attorneys averaged 1.8 appearances, and state-appearance attorneys averaged 2.4 appearances. By contrast, hybrid-appearance attorneys averaged 9.1 appearances, with roughly equal participation in the two systems (4.2 state appearances and 4.9 federal appearances). The higher average points toward a deeper engagement with bankruptcy-related work among hybrid-appearance attorneys, raising the question of whether that activity was broadly shared or concentrated among a few dominant figures.

The distribution of appearances within the hybrid group reveals a pronounced right skew: The median hybrid-appearance attorney made 2.5 state appearances and 3 federal appearances, whereas the average hybrid-appearance attorney made 4.2 state appearances and 4.9 federal appearances. While most hybrid-appearance attorneys made appearances only a few times in either system, a handful of high-volume practitioners were active at levels far exceeding the group median. The group of hybrid-appearance attorneys as a whole constituted 34% of the identified New Orleans attorneys with any bankruptcy-related appearance (40 of 116) but were responsible for 79% of the federal appearances in the dataset (194 of 245) and 59% of the state appearances (168 of 285). This imbalance points to a small circle of especially active practitioners who were positioned to play an outsized role in bankruptcy practice across both systems.

The most active of hybrid-appearance attorneys were a small cadre whose combined appearance totals exceeded the hybrid group's 75th percentile across federal, state, or both systems. Five attorneys—Judah P. Benjamin, Arnold Bodin, Pierre Soulé, Louis Eyma, and William Micou—together accounted for 22% of all recorded appearances (117 of 530) despite comprising only 4% of the 116 identified New Orleans attorneys who made any bankruptcy-related appearance. The five attorneys' appearances were evenly split between the two systems, accounting for approximately 22% of both the federal appearances (55 of 245) and state appearances (62 of 285). Importantly, these were not obscure figures. Judah P. Benjamin, for example, was one of the most prominent attorneys in New Orleans. He would go on to decline a

nomination to the U.S. Supreme Court, serve as a U.S. Senator, and later hold multiple cabinet posts in the Confederate government during the Civil War, including Secretary of State.²⁶⁴ In the 1850s, one of Benjamin's law partners was William Micou, who was also nominated to serve on the U.S. Supreme Court.²⁶⁵

These data, bolstered by such qualitative details, hint at the possibility that layered specialization under the 1841 Act, if present, was concentrated in the hands of a relatively small number of highly prominent attorneys with the capacity to dominate practice in both state and federal bankruptcy systems. Moreover, as discussed in the next section, more patterns of concentration appeared among another pivotal group of legal professionals in the 1841 Act bankruptcy system—court-appointed assignees responsible for administering the property surrendered by bankrupts.

C. 1841 Act Assignee Specialization

To date, I have identified the court-appointed assignee in approximately 74% of the Eastern District's 763 cases filed under the 1841 Act, yielding a sample of 568 cases and 93 distinct assignees. The distribution of these appointments was markedly skewed. Only five assignees, about 5% of the total (5 of 93), administered 52% of the cases in the sample (293 of 568)—Edward A. Bradford (76 cases), Arnold Bodin (63 cases), Francis B. Conrad (63 cases), Judah P. Benjamin (50 cases), and Lucien Hermann (41 cases). Notably, four of these five were practicing attorneys,²⁶⁶ and two of them—Bodin and Benjamin—were among the most active hybrid-appearance attorneys identified in section III.B. Their dual

264. See ROBERT DOUTHAT MEADE, JUDAH P. BENJAMIN: CONFEDERATE STATESMAN 84–86, 161, 208, 235 (1943).

265. See *id.* at 85.

266. The *Pitts & Clarke Directory* lists Benjamin, Bodin, Bradford, and Conrad as attorneys. See 1842 NEW-ORLEANS DIRECTORY, *supra* note 259, at 29, 38, 47, 88. For examples of their representation of debtors in the Eastern District's 1841 Act cases, see Bankruptcy Petition, *In re Creon*, No. 496 (E.D. La. Dec. 6, 1842) (on file with NARA EDLA Case Files, *supra* note 260) (indicating that J.P. Benjamin represented Creon); Bankruptcy Petition, *In re Armant*, No. 688 (E.D. La. Feb. 2, 1843) (on file with NARA EDLA Case Files, *supra* note 260) (indicating that Arnold Bodin represented Armant); Bankruptcy Petition, *In re Andrews*, No. 260 (E.D. La. June 9, 1842) (on file with NARA EDLA Case Files, *supra* note 260) (indicating that E.A. Bradford represented Andrews); Bankruptcy Petition, *In re Walden*, No. 274 (E.D. La. June 18, 1842) (on file with NARA EDLA Case Files, *supra* note 260) (indicating that F.B. Conrad represented Walden).

Nineteenth-Century Bankruptcy Specialization

roles demonstrate how certain legal professionals consolidated positions of influence across multiple dimensions of the 1841 Act system.²⁶⁷

The concentration of assignee appointments was especially pronounced in a significant subset of the cases involving high-value estates — those including enslaved persons as property. I have identified 14% of the Eastern District’s 1841 Act cases (105 of 763) as having involved such estates. Assignee identification was possible for 98% of these cases (103 of 105), covering 41 distinct assignees — a smaller and more selective pool than the 93 assignees in the broader sample. Within this subset, just seven assignees — 17% of the total (7 of 41) — were appointed in 53% of the enslaved-persons cases (55 of 103). This group included Hermann (10 cases), Benjamin (9 cases), Bodin (8 cases), Bradford (8 cases), Conrad (7 cases), William H. White (7 cases), and Richard Nugent (6 cases). Once again, Bodin and Benjamin — two of the most active hybrid-appearance attorneys and prominent assignees overall — appear in this select group, reinforcing the deep entrenchment of certain legal professionals in the 1841 Act system.

The financial incentives for securing these appointments were considerable. Assignees were paid a commission based on the proceeds they distributed in each case,²⁶⁸ which meant that high-asset cases offered significant earning potential. Presumably pursuant to a district bankruptcy rule promulgated by Judge Theodore McCaleb,²⁶⁹ the Eastern District’s federal district court judge, the district’s assignees earned a flat commission of five percent on all amounts disbursed to creditors — a uniform rate that equaled the maximum allowed under the sliding-scale commission schedules adopted in other districts, thereby making assignee compensation in the Eastern District potentially more lucrative.²⁷⁰

267. Cf. Balleisen, *supra* note 100, at 488 n.29 (“Other lawyers in the lower Hudson Valley who cultivated bankruptcy practices [under the 1841 Act] included . . . Archibald C. Niven, in Sullivan County. Niven also served as the county’s bankruptcy commissioner.”); *id.* at 490 n.33 (“Among the attorneys who gained regular bankruptcy work [under the 1841 Act] in Boston were . . . Edward G. Loring, . . . William Gray, . . . and Peleg W. Chandler . . . Loring was also a Bankruptcy Commissioner, as were William Gray and Peleg Chandler.”).

268. See Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1070 n.361.

269. For further discussion on the promulgation of district bankruptcy rules under the 1841 Act, see Pardo, *Promethean Gap*, *supra* note 70, at 851–53. For additional background on Judge McCaleb, see Pardo, *Bankrupted Slaves*, *supra* note 231, at 1142–43.

270. See Pardo, *Rethinking Antebellum Bankruptcy*, *supra* note 1, at 1070 n.361.

To date, I have documented bankruptcy sales of the enslaved in 89% of the enslaved-persons cases with identified assignees (92 of 103). For these cases, I divided the assignees into two groups: the seven assignees who handled more than half of all such cases (the “dominant group”) and the remainder (the “nondominant group”). The dominant group comprised approximately 18% of the slave-selling assignees (7 of 38) yet administered 55% of the cases (51 of 92), selling an average of 28 enslaved persons per assignee compared to 7 enslaved persons per assignee for the nondominant group. The dominant group also earned substantially more from these sales, with an average commission of \$367 per assignee compared to an average commission of \$114 per assignee for the nondominant group.²⁷¹ These disparities hint at the possibility that Judge McCaleb may have steered the most lucrative of the enslaved-persons cases to the dominant group. Such a pattern would align with Balleisen’s observation that “[t]he remuneration attached to most of the offices in the bankruptcy system made them highly sought after positions, creating opportunities for federal judges to create patronage networks.”²⁷²

Taken together, these data indicate that assignee appointments were concentrated in the hands of a targeted group of legal professionals. While the findings cannot be assumed to represent the full contours of assignee practice in the Eastern District, they point to the potential for significant specialization within this role and reinforce the broader possibility that federal bankruptcy specialization could spread across professional categories.

D. Limits and Implications of the 1841 Act Findings

The findings from sections III.B and III.C point to a notable pattern of concentration across two pivotal categories of legal professionals in the Eastern District of Louisiana. Among attorneys, a relatively small cohort with prominent positions in the New

271. The commission figures are limited to those earned from the distribution of proceeds derived from the sale of enslaved persons and do not include commissions earned on proceeds from the sale of non-enslaved property. To place these figures in perspective, Judge McCaleb’s annual salary during the 1841 Act’s case-filing period was \$3,000. See *Judicial Salaries: U.S. District Court Judges by State, 1789-1891*, FED. JUD. CTR. <https://www.fjc.gov/history/judges/judicial-salaries-u.s.-district-court-judges-state-1789-1891> [<https://perma.cc/3NGQ-H3UE>] (last visited Oct. 10, 2025).

272. Balleisen, *supra* note 100, at 485.

Nineteenth-Century Bankruptcy Specialization

Orleans bar appeared repeatedly in both Orleans Parish bankruptcy-related proceedings and the Eastern District's 1841 Act cases. Among assignees, a similarly small, closely interconnected group secured a disproportionate share of appointments, including in cases involving the sale of enslaved persons, where the economic stakes were particularly high. In both contexts, the evidence is consistent with the possibility of layered specialization: a professional dynamic in which experience developed in state bankruptcy fora could be leveraged in federal bankruptcy practice, and vice versa.

Several caveats are warranted before drawing broader conclusions from these patterns. First, the attorney analysis covers representation in 19% of the Eastern District's 1841 Act cases,²⁷³ while the assignee analysis identifies appointees in approximately 74% of such cases. Second, the geographic focus on a single federal district—one with a complex and distinctive state bankruptcy environment—means that these findings may not translate wholesale to other districts. Third, selection effects are possible: Surviving records may disproportionately capture the work of attorneys or assignees involved in higher-value or more contentious cases. Fourth, the patterns observed span the 1841 Act's case-filing period and are bookended by brief intervals of the second and third interregna, raising the question of whether comparable dynamics operated at other times.

These limitations, however, do not strip the findings of interpretive value. Even with incomplete attorney data, the level of concentration observed is striking, particularly given the corroborating evidence from the assignee sample. Moreover, the

273. Additionally, my analysis does not attempt to identify 1841 Act litigation in state courts, which possessed limited concurrent jurisdiction over certain matters under the Act. *See supra* note 171 and accompanying text. In reviewing the docket books of the Orleans Parish courts for forced respite proceedings and cession cases, I did encounter instances of such litigation, including cases involving prominent Eastern District assignees such as Lucien Hermann and Richard Nugent. *See, e.g.*, Docket Report, Hermann v. Claiborne, No. 15,317 (La. Orleans Par. Ct. Nov. 22, 1842) (on file with New Orleans City Archives & Special Collections; Orleans Parish, Parish Court Records; Docket Books, 1813–1846; General Docket, 1822–1846; Volume 3); Docket Report, Nugent v. Gaiennie, No. 5536 (La. New Orleans Com. Ct. Nov. 22, 1842) (on file with New Orleans City Archives & Special Collections; Orleans Parish Commercial Court Records; Docket Books; General Docket, 1839–1846; Volume 3). Systematic inclusion of these matters would require a separate, comprehensive review of state court records and could shed additional light on the range of fora in which assignees (and attorneys) engaged in 1841 Act practice.

Eastern District's institutional environment makes it a particularly revealing site for examining how state and federal bankruptcy systems could intersect in ways that fostered layered specialization. Finally, to the extent that the record overrepresents high-value cases, that skew is analytically significant: It is in those matters that the economic incentives for professional engagement, and the opportunities for cultivating influence, were at their strongest.

Taken together, these data point to the potential for layered bankruptcy specialization to emerge and persist across professional categories in a single district. They further suggest that, if such dynamics existed elsewhere, localized concentrations of professional expertise may have functioned as a form of institutional memory, shaping the trajectory of federal bankruptcy law in ways that extend beyond formal enactment and repeal dates. The implications of that possibility for the emergence of a durable bankruptcy regime in the twentieth century are taken up in the Conclusion.

CONCLUSION

For more than a quarter century, Skeel's permanence thesis has provided the dominant lens for understanding Congress's sporadic approach to bankruptcy legislation in the nineteenth century. His insight—that the 1898 Act's survival was due in part to the emergence of a specialized cadre of bankruptcy lawyers with a vested interest in preserving the system—has proved enormously influential. It has also been generative, encouraging scholars to think seriously about the institutional and professional conditions that sustain federal bankruptcy law. The evidence presented here builds on that legacy, while also suggesting that the story is more complicated than we have appreciated.

The patterns of 1841 Act case concentration among the legal professionals identified in this Article point to the development of federal bankruptcy specialization decades before 1898. If these patterns hold across additional districts and other pre-1898 federal bankruptcy systems, the profession's origins and trajectory will need to be reconsidered. In turn, the permanence thesis may require elaboration. Skeel's account, while attentive to the lobbying incentives of bankruptcy specialists, does not address the persistence of federal bankruptcy work after repeal of the pre-1898

Nineteenth-Century Bankruptcy Specialization

federal acts or its interplay with contemporaneous state bankruptcy systems. Rather, he writes that “[w]hen the acts were repealed, the attorneys simply plugged along with their usual assortment of state law collection cases and other matters.”²⁷⁴ Yet the evidence of post-repeal residual administration—sometimes lasting years—shows that many lawyers remained engaged in federal bankruptcy practice well beyond formal repeal, often alongside active state bankruptcy systems. The possibility that specialization could persist, deepen, and even migrate between state and federal regimes complicates the distinct discontinuities that the permanence thesis presumes.

The findings also sharpen the question of why the lobbying dynamic Skeel so persuasively identifies in connection with the 1898 Act did not operate to prevent repeal of the 1841 or 1867 Acts. If the pre-1898 bar included pockets of meaningful specialization, why did these professionals not mobilize to preserve federal bankruptcy law?²⁷⁵ One possibility is that the critical mass necessary to forestall repeal never materialized.²⁷⁶ Professionals in jurisdictions with state bankruptcy systems may have anticipated continued bankruptcy work post-repeal in state fora, blunting their incentive to fight for federal preservation, while those in jurisdictions without such laws were perhaps too few in number or too politically marginal to influence congressional delegations. Federal district court judges, for their part, had little reason to advocate for retaining a federal bankruptcy system that added to their workloads, especially as Congress continued to increase their nonbankruptcy jurisdiction.

274. SKEEL, *DEBT’S DOMINION*, *supra* note 3, at 34–35.

275. *Compare., e.g.*, Letter from Franklin Dexter, U.S. Att’y, Dist. of Mass., to Daniel Webster, Sec’y of State, U.S. Dep’t of State (Dec. 26, 1842), in S. Doc. No. 27-19, at 26 (1842) (“The very prevailing opinion among the bar is in favor of the [1841 Act], subject to the objections noticed.”), with Skeel, *Bankruptcy Lawyers*, *supra* note 3, at 512 (“As a general starting point, bankruptcy lawyers have an obvious incentive to lobby for rules that encourage the use of bankruptcy, because more bankruptcy means more work.”), and *id.* at 505 (“Bankruptcy lawyers quickly rushed into the vacuum in most cities, and soon had a large stake in the survival of the [1898] Act.”).

276. See generally Susan Block-Lieb, *Congress’ Temptation to Defect: A Political and Economic Theory of Legislative Resolutions to Financial Common Pool Problems*, 39 ARIZ. L. REV. 801, 855 (1997) (“The relative strength of interest groups in the bankruptcy context is, thus, critically important to understanding the circumstances under which bankruptcy legislation will be enacted, repealed and revised.”).

This suggests that the 1898 Act may have emerged at a “Goldilocks moment,” when the confluence of professional, political, and institutional conditions was just right to trigger the tipping point for permanence. Sustained specialization may have flourished under the pre-1898 federal acts, but without the scale and thus collective interest to translate that specialization into legislative durability. In that sense, Skeel’s thesis remains a touchstone, but one that now invites refinement—a thicker account that integrates the layered and overlapping bankruptcy systems of the nineteenth century, the persistence of residual federal bankruptcy administration, and the uneven geography of specialization.