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Ladies in Red: Learning From America's First Female Bankrupts

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Ladies in Red: Learning From America's First Female Bankrupts

by KAREN GROSS, MARIE STEFANINI NEWMAN, AND
DENISE CAMPBELL¹

Susannah Kneeland, Catherine Isabelle de Alpruente, Frances Ashley, Hannah Benjamin, Delphine Bolly, Mrs. Benjamin Bossie, Hortense Bournot, Angelina Brown, Lois Caulk, Marie Azelie Creon, Phoebe Cuddy, Lois Curtis, Elizabeth Dewars, Mary Dotson, Susan Fifield, Sina Foster, Elizabeth Fulcher, Judith Goddard, Amelia Goudkos, Sally Hagan, Mary Ann Harrington, Ann Bennett Hays, Mary Ann Hodgson, Ann Hunt, Nancy J. Hussey, Lydia Ingham, Cleophine Allain Jone, Aquilla Kirk, Charlotte Lawrence, Eleanor Mays, Ann Martin, Mary C. Martin, Caroline McCaney, Eliza Milford, Elizabeth Norton, Joy Pandalton, Elvira Phipps, Emeline Porter, Violet Primrose, Daria Rally, Jane Richmond, Anna Eliza Russell, Matilda Skinner, Ann Stone, Elizabeth Webb, Mary Wheeler, Mary Willey, Mary Williams, Mary Young.²

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Numerous people assisted us in this empirical undertaking, and we are deeply indebted to everyone who volunteered their time, expertise and insights. The names of the individuals, libraries and institutions that helped us appear as Appendix 1 to this article. This research project was generously funded by the Educational Endowment Fund of the National Conference of Bankruptcy Judges and several summer research grants from New York Law School. Professor Gross extends special thanks to her husband and son who understood her frequent travels and listened carefully and willingly to the tales of women whose lives everyone else had long forgotten.

2. These are the names of the first female bankrupts under An Act to Establish a Uniform System of Bankruptcy throughout the United States, ch. 19, 2 Stat. 19 (1800) (repealed 1803) (hereinafter cited as "Bankruptcy Act of 1800"), and An Act to Establish a Uniform System of Bankruptcy throughout the United States, ch. 9, 5 Stat. 440 (1841) (repealed 1843) (hereinafter cited as "Bankruptcy Act of 1841"). For a specific discussion of the finding with respect to these women, *see infra* notes 63-99. A chart identifying the states in which the women filed for bankruptcy appears as Appendix 2.

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Prologue

Several years ago, the Honorable Joyce Bihary, a bankruptcy judge in Atlanta, Georgia, asked me³ why our country's first bankruptcy law specifically referred to debtors using "he" or "she" rather than a gender-neutral noun (such as "bankrupts") or the male possessive pronoun "he."⁴ Implicitly, she was also asking whether there were any women debtors under our early bankruptcy laws. Although I had read the Bankruptcy Act of 1800 more than once, I did not recollect its use of these gender-inclusive pronouns. Nor did I know why the Act employed them. Despite having given considerable thought to contemporary women in debt,⁵ I too had no inkling as to whether there were women debtors under the Bankruptcy Act of 1800. And so I set out, with the help of my co-authors, to find the answers to Judge Bihary's two questions. Those answers led us to new questions and concerns, most particularly questions about how bankruptcy history has been told to date.

I. Use of Gender in Early Federal Bankruptcy Laws

In response to the first of Judge Bihary's questions, we confirmed her observation that the Act of 1800 explicitly refers to debtors, albeit not consistently, using male and female pronouns. For example, Section 1 provides in relevant part,⁷

. . . [I]f any merchant or other person residing in the United States, actually using the trade or merchandise, by buying and selling in gross, by retail, or in dealing in exchange, or as a banker, broker, factor, underwriter or marine insurer, shall with intent unlawfully to delay or refund HIS OR HER creditors . . . (Emphasis added).

Use of this gender-inclusive language can be explained by looking at the roots of the Bankruptcy Act of 1800. Our first bankruptcy law was drafted, in all likelihood, against the backdrop of the English bankruptcy

3. The personal pronoun refers to Karen Gross. Throughout the article, we have used the plural pronoun "we" to refer to the three co-authors.

4. See Bankruptcy Act of 1800, *supra* note 2. For a detailed discussion of the use of gender in this and later bankruptcy laws, see *infra* text accompanying notes 7-22.

5. See, e.g., Karen Gross, *Re-Vision of the Bankruptcy System: New Images of Individual Debtors*, 88 Mich. L. Rev. 1506 (1990) (hereinafter cited as "GROSS").

6. Bankruptcy Act of 1800, *supra* note 2, §§ 1, 3, 17, 34. Section 3 provides that the Commissioners are charged with declaring "HIM OR HER to be a bankrupt." Section 17 provides that ". . . if any person, prior to HIS OR HER becoming a bankrupt . . .". Section 34 provides that a discharge not release someone who was a partner of the bankrupt ". . . at the time HE OR SHE became a bankrupt . . ." (Emphasis added).

A good example of the inconsistency appears in Section 53, which provides, "[T]he commissioners . . . may from time to time make such allowance out of the bankrupt's estate until HE shall have obtained HIS final discharge, as in their [the commissioners'] opinion may be requisite for the necessary support of the said bankrupt and HIS family." (Emphasis added). *Id.* However, we know this section was applied to a female bankrupt because Susannah Kneeland received an allowance. See *infra* note 139.

7. *Id.* § 1.

law.⁸ The first English bankruptcy law was enacted in 1542 and referred to debtors as “he,” “they,” and as “personne.”⁹ However, by the time of the next major bankruptcy enactment in 1570, debtors were systematically referred to as “he” and “she.”¹⁰ The use of gender-inclusive pronouns in bankruptcy legislation continued, with limited exceptions, through the 17th century.¹¹ This practice was retained in the 18th century as well. In 1705, the Statute of 4 Anne was enacted, and it utilized the terminology “he” and “she” to refer to debtors.¹² English bankruptcy law was revised and codified by Parliament in 1732 in 5 George 2,¹³ and this legislation, too, employed gender inclusive pronouns.¹⁴ It is this latter statute which was in effect when our Constitution was drafted and our first bankruptcy law enacted, and it may well have been the basis for the Bankruptcy Act of 1800.¹⁵ In addition to the language within English statutes, there is evidence of women debtors in early English history. Both early cases and treatises refer to women as debtors.¹⁶ Other more recent scholarship has also uncovered English women in debt.¹⁷

8. Vern Countryman, *A History of American Bankruptcy Law*, 81 Com. L.J. 226, 228 (1976) (hereinafter cited as “COUNTRYMAN”); Charles Jordan Tabb, *The Historical Evolution of the Bankruptcy Discharge*, 65 Am. Bankr. L.J. 325, 345 (1991) (hereinafter cited as “TABB”); Andrew J. Duncan, *From Dismemberment to Discharge: The Origins of Modern American Bankruptcy Law*, 100 Com L.J. 191 (1995) (hereinafter cited as “DUNCAN”); Rhett Frimet, *The Birth of Bankruptcy in the United States*, 96 Com. L.J. 160 (1991).

9. An Acte against such Persones as doo make Bankrupte, 34 & 35 HEN. VIII, ch. 4 (1542) (Eng.). For a discussion of early English bankruptcy law, see generally 8 William Holdsworth, *A History of English Law* 229-236 (2d ed. 1937); W.J. Jones, *The Foundations of English Bankruptcy: Statutes and Commissions of the Early Modern Period* (1979) (hereinafter cited as “JONES, FOUNDATIONS”); COUNTRYMAN, *supra* note 8, at 226-227; TABB, *supra* note 8, at 327-344.

10. An Acte touchyng Orders for Banckruptes, 13 ELIZ., ch. 7 (1570).

11. See An Acte for the better Reliefe of the Creditors against such as shall become Banckrupte, 1 JAC. 1, ch. 15 (1640); An Acte for the Discription of a Banckrupt and Reliefe of Credytors, 21 JAC. 1, ch. 19 (1623); An Act declaratory concerning Banckrupts, 14 CAR. 2, ch. 24 (1662) (referring only to “his” or “theire”).

12. 4 ANNE, c. 17 (1705).

13. An Act to Prevent the Committing of Frauds by Banckrupts, 5 GEO. 2, ch. 30 (1732).

14. This act was repealed by 5 Geo. 4, ch. 98, § 1 (1824). Interestingly, the 1824 act does away with gender-inclusive language but it specifically provides at the very end of the act in Section CXXXII that the act “. . . shall extend to Aliens, Denizens and Women, both to make them subject thereto, and to entitle then to all the Benefits given thereby.” This is reminiscent of the United States bankruptcy law that defines “Person” to include women. See The Bankruptcy Act of 1898, ch. 541, § 1, 30 Stat. 544 William Miller Collier has a special section in his bankruptcy treatise relating to married women and this section is placed between two others, one on lunatics and one on aliens. See William Miller Collier, *The Law and Practice in Bankruptcy Under the National Bankruptcy Act of 1898*, 109, 199, 125, 126 (10th ed. 1914).

15. See *supra* note 8.

16. See Thomas Cooper, *The Bankrupt Law of America Compared with the Bankrupt Law of England* 129-30 (1801); Robert Henley Eden, *A Practical Treatise on the Bankrupt Law* 1-2 (1825); *Ex Parte Carrington*, 26 Eng. Rpts. 134, 1 Atkin’s 206 (1739); *Lowie and Another, Assignees of Jane Cox, a Bankrupt, vs. Phillips and other Assignees of John Cox, Bankrupt*, 97 Eng. Rpts. 1094, 3 Burr 1777 (1765).

17. See Jones, *Foundations*, *supra* note 9, at 24; Joan Perkins, *Women and Marriage in Nineteenth Century England* 72 (1989).

While it seems unusual, even progressive, to have gender-inclusive language in early laws, the Bankruptcy Act of 1800 was not the only federal law of its time period to employ the terms "he" and "she."¹⁸ Moreover, a number of state laws in the 18th century employed gender-inclusive language. For example, a 1789 Massachusetts law referred to school masters and school mistresses,¹⁹ and a New Jersey law referred to voters as "he" and "she."²⁰

We cannot explain why English law utilized gender inclusive language in its bankruptcy laws. Nor can we specifically explain whether our legislators were employing similar language in our country's first bankruptcy law through a conscious effort.²¹ All we can suggest, at least at present, is that the use of gender-inclusive language in the Act of 1800 probably was derived from our British ancestors.²²

II. Methodology for Locating Female Bankrupts²³

a) Empiricism and Bankruptcy

Responding to the second of Judge Bihary's questions was considerably more difficult. To identify women debtors, we examined the original

18. See, e.g., An Act concerning the duties on spirits distilled within the United States, ch. 32, 1 Stat. 266 (1792); An Act to incorporate the Union Bank of Georgetown, ch. 19, 2 Stat. 636 (1811); An Act laying duties on Sugar refined within the United States, ch. 21, 3 Stat. 35 (1813); An Act laying duties on carriages for the conveyance of persons, ch. 24, 3 Stat. 40 (1813); An Act providing for the indemnification of certain claimants of public lands in the Mississippi territory, ch. 39, 3 Stat. 116 (1814).

19. Sara M. Evans, *Born for Liberty: A History of Women in America* 48 (1989) (hereinafter cited as "EVANS").

20. Mary Beth Norton, *Liberty's Daughters: The Revolutionary Experience of American Women* 191 (1980) (hereinafter cited as "NORTON").

21. We recognize the need to do additional legislative history research on the Act of 1800 and its English antecedents which focuses on gender-inclusive terminology. As to English law, there may be a host of complex reasons for gender-inclusivity. A partial explanation may rest in the ambiguities concerning the impact of women's marital status on women's legal status in 16th-18th century law. Further examination of the use of gender in state laws of this period would also be productive.

22. Unlike the Bankruptcy Act of 1800, the Bankruptcy Act of 1841 did not use gender-inclusive language in referring to debtors, although women debtors were not explicitly excluded from the Act's scope. Instead, the Act of 1841 referred to debtors using the term "bankrupt," plural pronouns or the male pronoun. Bankruptcy Act of 1841, *supra* note 2, §§ 1, 3.

None of our subsequent bankruptcy laws has employed the female pronoun either, although the existence of women as debtors has never been precluded. See The Bankruptcy Act of 1867, ch. 176, 14 Stat. 517 (1867) (repealed 1878) (utilizes the terms "bankrupt," "debtor" or the male pronoun); The Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (1898) (repealed 1978) (defines "persons" to include, among others, women but also refers to debtors as "bankrupts" or with the male pronoun); Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978) (refers to "debtors;" defines "person" to include individuals and avoids use of pronouns).

23. Throughout the article, we use the terms "female bankrupt," "female debtor," and "woman debtor" although we recognize that this can be seen as demeaning because it adopts the presumption that all debtors are male. Similar observations can be made about terms like "woman lawyer" and "male nurse." See Karen Gross, *Foreword: She's My Lawyer and*

bankruptcy files for the Acts of 1800 and 1841. The material we have collected is part of the recent effort to gather empirical data about the bankruptcy system, although virtually all of the data collected to date focus on contemporary debtors and creditors.²⁴ Like some of the recent studies, though, we have embarked on a project to look at bankruptcy “from the ground up,”²⁵ telling bankruptcy’s story through the lives of those who participated in the bankruptcy process.²⁶

Our research represents only a part of the ultimate story that can be told of the experiences of debtors and creditors under the early federal bankruptcy laws. We recognize that empirical research presents certain

She’s a Woman, 35 N.Y.L. Sch. L. Rev. 293, 294 (1991). The words “bankrupt” and “debtor” should refer to all those who are subject to the federal bankruptcy laws, regardless of gender. To compensate for a phraseology that can only be justified on pragmatic grounds, we also refer, where appropriate, to debtors as “male debtors.”

24. See, e.g., Teresa Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *As We Forgive Our Debtors: Bankruptcy And Consumer Credit In America* (1989) (hereinafter cited as “SW & W, AS WE FORGIVE OUR DEBTORS:”); Teresa Sullivan, Elizabeth Warren, & Jay Lawrence Westbrook, *The Use of Empirical Data in Formulating Bankruptcy Policy*, 50 Law & Contemp. Probs. Spring 1987, at 195 (hereinafter cited as “SW & W, EMPIRICAL DATA”); Stuart C. Gilson & Michael R. Vetsuypens, *CEO Compensation in Financially Distressed Firms: An Empirical Analysis*, 48 J. Fin. 425 (1993); Susan Jensen-Conklin, *Do Confirmed Chapter 11 Plans Consummate? The Results of a Study and Analysis of the Law*, 97 Com. L.J. 297 (1992); Lynn M. LoPucki & William C. Whitford, *Corporate Governance in the Bankruptcy Reorganization of Large, Publicly Held Companies*, 141 U. Pa. L. Rev. 669 (1993); Philip Shuchman, *The Average Bankrupt: A Description and Analysis of 753 Bankruptcy Filings in Nine States*, 88 Com. L.J. 288 (1983).

25. For a discussion of this method of historiography, see Jesse Lemisch, “The American Revolution Seen from the Bottom Up,” in *Towards A New Past: Dissenting Essays In American History* 3-46 (Barton J. Bernstein ed., 1969).

Using original legal records as a research tool, including for an understanding of women’s history, has been recognized. See, e.g., Joan Hoff Wilson, “Hidden Riches: Legal Records and Women, 1750-1825,” reprinted in *Woman’s Being, Woman’s Place: Female Identity and Vocation in American History* 7-25 (Mary Kelly ed., 1979) (hereinafter cited as “KELLY, WOMAN’S PLACE”); William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830* (1975, rev. preface 1994) (hereinafter cited as “NELSON, AMERICANIZATION”); Warren M. Billings, “Louisiana Legal History and Its Sources: Needs, Opportunities and Approaches,” in *Louisiana’s Legal Heritage 189-202*, (Edward F. Haas ed., 1983); Richard H. Chused, *Married Women’s Property Law: 1800-1850*, 71 Geo. L. J. 1359 (1983) (hereinafter cited as “CHUSED, MARRIED WOMEN”); Marylynn Salmon, *Women and Property in South Carolina: The Evidence from Marriage Settlements, 1730-1830*, 39 Wm. & Mary Q. 655 (1982) (hereinafter cited as “SALMON, MARRIAGE SETTLEMENTS”).

26. This methodological approach has been advocated by feminist scholars. See generally *Feminism & Methodology* (Sandra Harding, ed., 1987); Katherine Bartlett, *Feminist Legal Method*, 103 Harv. L. Rev. 829 (1990); Mari J. Matsuda, *Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls’ Theory of Justice*, 16 N.M. L. Rev. 613 (1986); Heather Ruth Wishik, *To Question Everything: The Inquiries of Feminist Jurisprudence*, reprinted in *Feminist Legal Theory: Foundations* (D. Kelly Weisberg ed., 1993). This methodology extends beyond the study of history. See, e.g., Ronald Dworkin, *Life’s Dominion: An Argument About Abortion, Euthanasia, And Individual Freedom* (1993); Ruth Colker, *Pregnant Men: Practice, Theory, and the Law* xi-xvi (1994).

risks,²⁷ and our findings are limited in several significant respects. First, we studied only women debtors,²⁸ and we still have incomplete knowledge about their lives.²⁹ Second, our review of the files of male debtors was not systematic,³⁰ and as a result, we cannot compare the experiences of early women debtors to those of their male counterparts. Finally, the data we collected can be subjected to differing interpretations, depending on one's areas of expertise. We appreciate the difficulty of evaluating our findings and have proceeded with caution, avoiding over-generalizations based on our circumscribed sample.

However, we believe that limited data, carefully interpreted, are better than no data at all. This is particularly true of data about women. Their stories have so seldom been told that they are valuable in expanding our understanding of the past and the present. The data provide new information that can enrich the work of other scholars working on aspects of women's history, particularly women's economic and social history. Moreover, as Anne Firor Scott so pointedly observed,

[I]t does matter [that we study women] because the more we examine women's experience, women's behavior, and women's cultural values, the clearer it becomes that they are often different from those of men . . . [and] it follows that their influence in families, communities, and ultimately in the whole society is different from the influence of men, and both must be understood if we are adequately to describe the social dynamics of any particular situation.³¹

b) Using Original Documents

Original bankruptcy files³² are located in regional archives around the United States.³³ After identifying the six regional archives that contained bankruptcy files under the Bankruptcy Acts of 1800 and 1841,³⁴

27. See, e.g., S W & W, EMPIRICAL DATA, *supra* note 24, at 197; Peter H. Schuck, *Why Don't Law Professors Do More Empirical Research?*, 39 J. Legal Educ. 323 (1989); Elizabeth Warren, *The Untenable Case for Repeal of Chapter 11*, 102 Yale L. J. 437 (1992).

28. We suspect that we have not identified all the women debtors under the Bankruptcy Acts of 1800 and 1814 and hence even within the subgroup of women debtors, our results must be assessed judiciously. See *infra* notes 44-45. Moreover, we did not examine systematically women who filed under state insolvency laws. See *infra* note 182.

29. See text accompanying notes 77-78.

30. See *infra* notes 38-40.

31. Anne Firor Scott, *Making the Invisible Woman Visible* 367-368 (1984) (hereinafter cited as "SCOTT, MAKING WOMAN VISIBLE").

32. See *supra* text accompanying notes 23-25.

33. The GUIDE TO RECORDS IN THE NATIONAL ARCHIVES, NEW ENGLAND REGION, published by the National Archives and Records Administration in 1989, indicates that bankruptcy records are available as part of the Records of the District Courts. *Id.* at 5. See Appendix 2.

34. Although Judge Bihary's inquiry was directed at the first bankruptcy law in this country, we expanded our study to include the second bankruptcy law which, like its predecessor, was in existence for a limited period of time.

The six regional archives (out of a total of eleven archives) containing files from these two Acts were: New England Region (covering Connecticut, Maine, Massachusetts, New

we visited each archive. Because each archive has a unique approach to the records in its possession and the collection of records differs from archive to archive, our methodologies differed somewhat in each region.

Basically, to locate women debtors, we started by looking either at the jackets of the actual cases filed under the Bankruptcy Acts of 1800 and 1841, or the original docket books that listed bankruptcy filings by the name of the debtor. In one archive, we looked at some original files under the Act of 1800 on microfilm as the actual filings were unavailable to us in hard copy.³⁵ In another case, the regional archive had prepared its own index to the original bankruptcy files, in contrast to the original indexes we employed in other locations.³⁶ In total, we reviewed 827 files under the Act of 1800 and 26,310 files under the Act of 1841.³⁷

From the actual file jackets and docket books, we identified any file that was in a woman's name or in a name that arguably could have been that of a woman.³⁸ We then looked at each original file itself to see if the debtor we had pinpointed was, indeed, a woman.³⁹ Many of the files we pulled were not that of a woman debtor which meant, although our focus was on women as debtors, we had occasion to review a number of files of male debtors. Further, some of the files we requested were missing which means that we could not verify that files with ambiguous names were, in fact, those of women.⁴⁰ We then duplicated the file of every woman debtor we could identify.⁴¹

The contents of the files we duplicated vary dramatically. Some,

Hampshire Rhode Island and Vermont); Northeast Region (covering New York and New Jersey); Mid-Atlantic Region (covering Delaware, Maryland, Pennsylvania, Virginia and West Virginia); Southeast Region (covering Alabama, Florida, Kentucky, Georgia, Mississippi, North Carolina, South Carolina and Tennessee); Southwest Region (covering Arkansas, Louisiana, Oklahoma, New Mexico and Texas) and Great Lakes Region (covering Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin).

35. In the Northeast Region, the bankruptcy files from Pennsylvania under the Act of 1800 were on microfilm.

36. The New England Region had prepared an index for bankruptcy cases in Massachusetts from the Act of 1800. Since we were concerned about the accuracy of this index, we did spot check various of the files themselves to assure ourselves that the prepared list correctly reflected the filings, and we are reasonably confident as to its completeness.

37. The import of this count is addressed *infra* notes 112-119, 141-146.

38. There is clearly the possibility of some error in our approach. If a woman debtor happened to have a man's name or if she had a name that we did not associate with a woman, we would not have identified her as a woman debtor. Additionally, human error might have caused us to miss some easily identified women's names.

39. Tell-tale signs of a woman debtor, in addition to the name itself on the jacket or in the docket book, were a change in the preprinted forms of the pronoun "he" or "she" by the handwritten addition of the letter "s," creditor references to the debtor by name or gender and official court documents utilizing female pronouns.

40. Our findings do include the names of three women debtors where we did not see a file but the name in the docket entry was undisputedly female.

41. When our work is completed, the files of all the women debtors we identified will be placed on reserve at the New York Law School Library should other scholars wish to review them.

including the files of Susannah Kneeland, Mrs. Benjamin Bossie,⁴² and Daria Rally, contain a plethora of information. Other files, such as those of Lydia Ingham, Aquilla Kirk, and Mary Ann Hodgson, contain almost no information at all. One file, that of Angelina Brown, includes a lengthy personal statement.⁴³

Despite the wide variations among the files, we have attempted to cull certain demographic data. Specifically, we have sought to gather the following: (1) debtor's occupation; (2) debtor's marital status; (3) number of children the debtor had; (4) number of creditors of the debtor; (5) amount owed to the debtor's creditors; (6) description of the debtor's creditors; (7) nature of the debtor's assets; and (8) value of the debtor's assets.⁴⁴ Although some data are missing,⁴⁵ these eight categories provide us with a framework for making some preliminary observations about America's early ladies in red.

III. Findings

a) A Brief Overview of the Early Bankruptcy Acts

A basic understanding of the Bankruptcy Acts of 1800 and 1841 is instructive because it gives some context to the findings that will follow. The Bankruptcy Act of 1800⁴⁶ allowed only involuntary bankruptcy filings. To be an eligible debtor, someone had to be a merchant or trader and owe at least \$1,000.⁴⁷ The bankruptcy case was overseen by commission-

42. Mrs. Benjamin Bossie is the only female debtor we refer to by her married name. While it looks anomalous, Mrs. Benjamin Bossie's file does not include her first name.

43. See text accompanying note 55.

44. This is clearly only part of the wealth of information that could be gathered on the women we have identified. We have not looked specifically at issues of race, class, ethnicity, religion, age, immigration status or city vs. rural domicile. We have also not examined the lawyers or judges involved in the cases of women debtors, and this could yield significant insights into the development of the bar and bench. While these are all important factors and no doubt are significant in developing a full profile, it was not information that could readily be collected from the bankruptcy file themselves and hence must await our further research. See *infra* note 194 and accompanying text.

45. Filling in the gaps means moving beyond the actual cases files and researching in greater detail the lives of the women debtors we have identified. We have already begun further research, with the assistance of student research assistants including Matthew Couloutte and Wendy Rosenthal, New York Law School Class of 1996, on the lives of the following women debtors: Susannah Kneeland, Hortense Bournet, Angelina Brown, Phoebe Cuddy, Susan Fifield, Mary Ann Harrington, Mary Ann Hodgson, Ann Bennett Hays, Eliza Milford, Elvira Phipps, Emeline Porter, Jane Richmond, Anna Eliza Russell and Mary Wheeler. A fuller discussion of their lives, as well as resolution of some of the other issues left open in this article, is part of a larger project, namely a book on America's first female bankrupts. In particular, we are looking at the lives of women debtors in the Second Circuit for a forthcoming article.

46. For a detailed overview of the Acts of 1800 and 1814, see TABB, *supra* note 8, at 344-53.

47. Bankruptcy Act of 1800, *supra* note 2, §§ 1-2.

ers who acted under the direction of a District Court Judge.⁴⁸ Debtors could obtain a discharge of their indebtedness if the majority of the commissioners approved and if consent was obtained from at least two-thirds in number and amount of creditors owed at least \$50.00.⁴⁹ A debtor was entitled to exempt certain personal property and obtain a monetary allowance.⁵⁰ In contrast, the Bankruptcy Act of 1841 permitted both voluntary and involuntary filings, and debtors were not limited to merchants and traders.⁵¹ A discharge was available with the consent of half in number and amount of the creditors, and the debtor could retain select exempt property.⁵²

b) Identifying the First Female Bankrupts⁵³

Susannah Kneeland was the first woman debtor under any American federal bankruptcy law,⁵⁴ and she was, by virtue of then existing law, an involuntary debtor under the Act of 1800.⁵⁵ A commission of bankruptcy was issued against her by the Honorable John Davis, District Judge of Massachusetts, on April 12, 1802. Thomas Dawes, Jr., Joseph Hall, and Nathan Goodale were appointed the Commissioners on the same date. The two petitioning creditors, Samuel Elliot and Obadiah Thayer, co-partners in trade, were owed \$1,378.46.

Under the Bankruptcy Act of 1841, we have identified forty-eight women debtors.⁵⁶ Forty-seven of these filings were voluntary and only one, that of Caroline McCaney, was involuntary.⁵⁷ These filings were spread among the six regional archives, with the most filings (eleven) in the Mid-Atlantic Region and the fewest (six) in the Great Lakes Region.⁵⁸ Our numbers do not include the joint filing of Isabelle and William Montgomery, who sought relief in New York.

For several reasons, we suspect that more than the forty-nine women

48. *Id.* § 2.

49. *Id.* §§ 34, 55. Unfortunately, numerous scholars have indicated that a discharge was not available under the Act of 1800. *See, e.g.*, Kevin J. Delaney, *Strategic Bankruptcy* 19 (1992). This observation is simply *not* accurate. A discharge was available, albeit conditioned on creditor approval.

50. *Id.* §§ 5, 19, 34.

51. Bankruptcy Act of 1841, *supra* note 2, § 1. Involuntary cases could only be commenced against merchants and traders. *Id.*

52. *Id.* at §§ 3, 4.

53. All the information about the women debtors, unless specifically identified, is derived from documents within the actual bankruptcy files.

54. Her name appears in the headnote to this article. *See supra* note 2.

55. Only involuntary filings were permitted under the Bankruptcy Act of 1800. *See supra* text accompanying note 46.

56. Their names appear in the headnote to this article. *See also* Appendix 2.

57. The Bankruptcy Act of 1841 permitted both voluntary and involuntary filings. *See supra* text accompanying note 51.

58. *See* Appendix 2.

we identified were affected by the Bankruptcy Acts of 1800 and 1841. First, some of the files under both Acts were missing from the Regional Archives, and there could have been, indeed likely were, women debtors among them.⁵⁹ Second, our approach was limited to counting the number of files with women specifically named as debtors.⁶⁰ However, a male spouse could have sought bankruptcy relief in his name only but then included among his assets property belonging to his wife.⁶¹ Finding these women “debtors” would have required an evaluation of every bankruptcy case filed under the early Acts, something beyond the scope of this project. Finally, even if a wife’s sole assets were not included in her husband’s filing, a bankruptcy filing by a wife’s spouse could affect her standard of living, how she viewed herself and how she was viewed by her family and her community.⁶²

c) Demographic Information

1) Susannah Kneeland

We know more about Susannah Kneeland than any of the other

59. For a fuller discussion of problems with the actual count, *see infra* notes 112-119, 141-146. For example, under the Act of 1841, we saw approximately 7,000 fewer filings than reported in State Department figures. Since we found 48 debtors in 26,300 filings, that means that there were approximately 12 women debtors for every 6,500 filings. We can infer, then, that the number of female bankrupts under the Act of 1841 was closer to 60. Of course, this assumes the women debtors were not concentrated within the group of debtors we examined and that there were debtors in the regions of the country where we did not see files. Even taking into account the possibility that the rate of filings among women was not constant and may have differed across the country, the count of 48 is likely smaller than the actual number. Unfortunately, there is no way, absent the recovery of the missing files, to reach more certainty on this issue.

60. *See supra* note 38.

61. James K. Owens reports in his article *Documenting Regional Business History: The Bankruptcy Acts of 1800 and 1841*, *Bus. Hist.* 179 (1989) that David Lee Child, the husband of the well-known author Lydia Maria Child, included the copyrights on his wife’s books among his assets. *Id.*

The ability of married women to own property (prior to the Married Women’s Property Acts) has been the subject of considerable scholarship of late and it is believed that, contrary to earlier suppositions, some married women did indeed own property in their own names. *See generally* Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth Century New York* (1982) (hereinafter cited as “BASCH”); Marylynn Salmon, “Equality or Submersion? Feme Covert Status in Early Pennsylvania,” *reprinted in Women of America: A History* 92-113 (Carol Ruth Berkin & Mary Beth Norton, eds. 1979) (hereinafter cited as “BERKIN & NORTON, WOMEN OF AMERICA”); CHUSED, MARRIED WOMEN, *supra* note 25, at 1361.

62. There is evidence that early lawmakers were concerned about a wife’s property being taken by her husband’s creditors. Indeed, some suggest that this was the motivating factor behind the Married Women’s Property Acts. *See* Salmon, *Women and Property*, *supra* note 61, at 97; Norma Basch, *The Emerging Legal History of Women in the United States: Property, Divorce and the Constitution*, 12 *Signs* 97 (1986); CHUSED, MARRIED WOMEN, *supra* note 25, at 1400-04; James W. Ely, Jr., “Book Review: *In the Eyes of the Law: Women, Marriage, and Property*,” 31 *U.C.L.A. L. Rev.* 294, 300 (1983).

female bankrupts we have located. She was the first female debtor under the federal bankruptcy laws, and so she is where our story begins—both literally and figuratively. Therefore, it seemed appropriate to do research beyond her bankruptcy file itself to develop a better understanding of her life.⁶³ For Susannah, we can complete a profile based on the demographic categories identified above.⁶⁴

Susannah Kneeland, a member of the well-known Sewall family,⁶⁵ was a fifty-seven year old widow at the time of her bankruptcy filing, her husband of fifteen years (Bartholomew Kneeland) having died in 1792.⁶⁶ She and Bartholomew had two children, William (born in 1778; died 1809) and Elizabeth (born in 1780; died 1838).⁶⁷ At the time of his moth-

For examples of women suffering as a consequence of their husband's indebtedness, albeit not necessarily in the bankruptcy context, see Susan Koppelman, *Women's Friendships: A Collection of Short Stories* at 4-5 (1991) (discussing Lydia Maria Child); Margaret Fuller, *Woman in the Nineteenth Century* 31-32 (Norton Library ed. 1971) (discussing husband's incurring debts); Laurel Thatcher Ulrich, *The Life of Martha Ballard, Based on her Diary, 1785-1812* 265-85 (1990) (discussing Martha's response to her husband's imprisonment for debt) (hereinafter cited as "ULRICH, A MIDWIFE'S TALE"); see also Lawrence M. Ginsberg and Sybil A. Ginsberg, "A Psychoanalytic View of Personal Bankruptcy, reprinted in *The Last Taboo: Money as Symbol and Reality in Psychotherapy and Psychoanalysis* 70-78 (David W. Krueger ed., 1986).

63. A good deal of the material in respect of Susannah and her family goes beyond the scope of this article and will appear in a separate forthcoming article.

64. See *supra* text accompanying notes 43-44.

65. Susannah was the fourth of six children born to Hannah Kelly and Captain Samuel Sewall, according to records on file at the York (Maine) Historical Society. See *Transcription of Family Records, York (Maine) Town Records*, annotated by Nathaniel G. Marshall, at 107, entry 168. (Copies on file with authors.) Susannah's father was a descendant of Henry Sewall who was born in 1576. See Material prepared by the New England Historic Genealogical Society, which includes information from Charles N. Sennett, *The Sewall Genealogy* (hereinafter cited as "MATERIAL OF NEHGS"). (Copies on file with authors.) Her lineage is also mentioned in Stillman Foster Kneeland, *Seven Centuries in The Kneeland Family* 63 (1897) (hereinafter cited as "KNEELAND, SEVEN CENTURIES"). For a general discussion of the Sewall Family of Maine, see Cecil Hamden Cutts Howard, *The Sewalls of Maine: Sketch of the Most Distinguished Members of this Great Family*, Ark. Dem., July 24, 1898. (Copy on file with authors.)

66. Susannah and Bartholomew's life is detailed in their daughter Elizabeth McFarland's diary, portions of which are reprinted in Nathaniel Bouton, *Memoir of Mrs. McFarland* (1839) (hereinafter cited as "BOUTON, MEMOIR"). Bartholomew's life is described in Kneeland, *Seven Centuries* 61-63, *supra* note 65. Susannah was apparently born in 1745 according to *Transcription of Family Records, York (Maine) Town Records* at 107, entry 168. (Copies on file with authors); MATERIAL OF NEHGS, *supra* note 65, at 58 (Copies on file with authors). Susannah and Bartholomew's marriage took place in 1777. See *Early History of Boston, Containing Marriages From 1752 to 1809* 439 (1903) (Copy on file with authors); 15 *New England Historic Genealogical Society Register*, at 218 (1961) (Copies on file with authors) Bartholomew's death in 1792 is evidenced by his probate file. See Bartholomew Kneeland, Supreme Judicial Court (MA.), Archives and Records Preservation, Docket No. 19952 (hereinafter cited as "KNEELAND PROBATE RECORD"). (Copy on file with authors.) Susannah acted as the Administrator of her husband's estate. Id.

67. See BOUTON, MEMOIR, *supra* note 66; KNEELAND, SEVEN CENTURIES, *supra* note 65, at 63-64. Elizabeth's life has been detailed in numerous places as she gained

er's bankruptcy case, William also became the subject of a bankruptcy commission filed on April 14, 1802. Many of William's creditors were also listed as creditors of Susannah because she had endorsed many of his obligations. Susannah's efforts to help her son undoubtedly contributed to her financial difficulties.

During their marriage, Susannah and Bartholomew had run a substantial store at 73 Cornhill⁶⁸ in Boston,⁶⁹ and Susannah continued the business after her husband's death.⁷⁰ At the time of her bankruptcy, she had an inventory (described in nine hand-written pages with over 250 separate entries) which included fabrics, shoes, sewing goods, hose and gloves, worth over \$5,000. Susannah's bankruptcy file reveals that, in addition to this inventory, her assets consisted of accounts receivable, deeds, stock, real estate (including the home at 73 Cornhill and land in York, Maine where she was from originally),⁷¹ and significant personal property such as furniture (mahogany chairs, a maple desk, and painted tables), books and pamphlets (approximately 100), mirrors, carpets, silver urn and tankard, pewter dishes, and kitchenware. In total, her assets approximated \$14,000.

Susannah owed fifty-three creditors, consisting of both individuals (men and women) and businesses, the aggregate sum of \$15,910.98. Several of her creditors were owed over \$1,000 although the vast majority were owed between \$100 and \$500. Most of her creditors, other than those related to her son's business, were suppliers of merchandise for her store. But, she also owed money for city, county, and state taxes, domestic help and groceries. The creditors in her bankruptcy case received a distribution equal to fifty-seven cents (57¢) on the dollar.⁷²

prominence as a religious leader in New Hampshire. See Nathaniel Bouton, *History of Concord 1725-1853* 144 (1856); Grace F. Amsden, *A Capital for New Hampshire* (1950); Edwin J. Aiken, *The First Hundred Years of the New Hampshire Description of Boston* 678 (3d. ed. 1890).

68. Cornhill was a street filled with merchants. See Walter Muir Whitehall, *Boston: A Topological History* 13, 21, 24, 27 (2d ed. 1968); Nathaniel Bradstreet Shurtleff, *A Topological and Historical Description of Boston* 678 (3d ed. 1890).

69. Elizabeth's diary states that during their marriage, her parents were in business together. See BOUTON, MEMOIR, *supra* note 66, at 19. Bartholomew's probate records refer to him as a merchant and demonstrate that when died, he had a substantial inventory of goods (covering five handwritten pages and approximately 99 entries). See KNEELAND PROBATE RECORD, *supra* note 66. The *Thwing Index*, maintained by the Massachusetts Historical Society, contains references to Bartholomew as a merchant dating back to 1769. He is also referred to as a merchant in KNEELAND, SEVEN CENTURIES, *supra* note 65, at 61. The store on Cornhill is referenced in the Boston Directories. Bartholomew's name appears in the 1789 directory. Susannah's name appears in the directories for 1796, 1798 and 1800, all dates subsequent to Bartholomew's death.

70. *Id.* On her death, Susannah's obituary refers to her as a "well-known shopkeeper." See *Columbian Centinel*, Sept. 2, 1809.

71. See *supra* note 65.

72. This is confirmed by the transcription of a meeting of the Commissioners in her bankruptcy case in December, 1802. (Copy on file with authors.)

Following the bankruptcy commission, Susannah continued in business as a shopkeeper at 14 Marshall's Lane.⁷³ On her death in 1809 in Concord, New Hampshire, where she had been living with her daughter and her family, Susannah's store had an inventory valued at over \$3,200.⁷⁴ Susannah appears to have died of physical illness accompanied by considerable mental anguish,⁷⁵ and her simple headstone reads: "My flesh shall rest in hope."⁷⁶

2) Women under the Act of 1841

The women under the Act of 1841 can also be described by looking at the eight demographic categories identified earlier.⁷⁷ Although these findings are broken down by category, they are summarized in the following chart which may be a useful reference tool for readers.⁷⁸

Category 1) Marital Status⁷⁹

We have identified the marital status of nineteen of the female debtors under the Act of 1841.⁸⁰ The breakdown is as follows:

<u>Status</u>	<u>Number</u>
Married:	3
Divorced:	2
Widowed:	10
Unmarried:	4

73. This is confirmed in the Boston Directories for 1803 and 1805.

74. For a discussion of the last months of Susannah's life, see BOUTON, MEMOIR, *supra* note 66, at 78-82. Her estate was administered by her son-in-law, Reverend Asa McFarland. See *Supreme Judicial Court (MA.), Archives and Records Preservation*, Docket No. 23406. (Copies on file with authors.) The inventory of her store on her death totalled \$3,249.86, appearing on two handwritten pages with over 65 entries. *Id.*

75. See BOUTON, MEMOIR, *supra* note 66, at 81-82.

76. Susannah Kneeland is buried in Concord, New Hampshire. Her daughter and son-in-law are buried in the same cemetery. Susannah's headstone, which we photographed, reads as follows: "THIS MONUMENT IS ERECTED TO THE MEMORY OF MRS. SUSANNAH KNEELAND, LATE OF BOSTON, WHO DIED AT CONCORD, AUGUST 28, 1809 AT 65 YEARS, MY FLESH SHALL REST IN HOPE." (Photo on file with authors.)

77. *Id.*

78. Data were not available in all categories for all women. See *supra* notes 27-30 and accompanying text.

79. Marital status is an important issue in looking at 18th and 19th century American women. Although we looked at the groupings "married, widowed, divorced and unmarried," a further investigation should be made as to whether the "married" debtors were separated from their husbands. For a general discussion of marital status during this time period, see Lee Virginia Chambers-Schiller, *Liberty, A Better Husband - Single Women in America: The Generations of 1780-1840* (1984) (hereinafter cited as "CHAMBERS-SCHILLER, LIBERTY"); CHUSED, MARRIED WOMEN, *supra* note 25, at 1405-06; Hendrik Hartog, *Marital Exits and Marital Expectations in Nineteenth Century America*, 80 *Geo. L.J.* 96 (1991); SALMON, MARRIAGE SETTLEMENTS, *supra* note 25; Laura Ferguson, *Widows in the Nineteenth Century: Dependence and Independence*, *Harv. Univ. Gazette*, March 4, 1994, Supplement of Radcliffe College's Schlesinger Lib. at p 2, 6 (reporting on the research of Marilyn Wood Hill on widows).

**Preliminary Demographic Data on Women Debtors
The Bankruptcy Act of 1841**

REGION	NEW ENGLAND REGION (7)	NORTHEAST REGION (8)	MID-ATLANTIC REGION (11)	SOUTHEAST REGION (8)	SOUTHWEST REGION (8)	GREAT LAKES REGION (6)
OCCUPATION	1 milliner 1 bdhs. keeper	2 milliners 2 bdhs. keeper 1 hotelier 1 spinster	2 bdhs. keeper 2 retailers	1 bdhs. keeper	1 milliner 1 hotelier 1 sugar cane plantation owner	3 retailers 1 teacher
	5 unknown	2 unknown	7 unknown	7 unknown	5 unknown	2 unknown
MARITAL STATUS	2 widows	1 widow 2 divorced 3 unmarried	2 widows		4 widows 3 married	1 widow 1 unmarried
	5 unknown	2 unknown	9 unknown	8 unknown	1 unknown	1 unknown
CHILDREN	4 w/children 3 unknown	3 w/children 5 unknown	2 w/children 9 unknown	8 unknown	2 w/children 1 unknown	1 w/children 1 unknown
# OF CREDITORS:						
HIGH	28	39	21	44	80	51
LOW	2	7	2	5	6	3
AMOUNT OWED:						
HIGH	\$4,534.00	\$7,211.25	\$19,045.19	\$3,680.00	\$104,712.30	\$13,656.38
LOW	\$70.42	\$1,670.20	\$396.92	\$605.00	\$1,736.00	\$563.53
ASSETS KEY	furniture clothes real estate	furniture clothes real estate bus. supplies	furniture clothes real estate	furniture clothes slaves	furniture clothes real estate slaves	furniture clothes real estate

The vast majority of the women we identified (sixteen) were not married (divorced, widowed, or unmarried) at the time of their bankruptcy filing, and the largest subgroup is widows. The number of widows is not surprising because apparently a sizeable number of women inherited their husband's businesses and their debts.⁸¹ The files of Mary Young, Ann Stone, and Catherine Isabelle de Alpruente specifically allude to them inheriting debts from their husbands. Because many women of this period were widowed at a young age, they often had children living at home, like Phoebe Cuddy, who had a six-year-old son, which could have produced additional financial stress.⁸² Divorced women also suffered from their husbands' behavior, and Jane Richmond presents such an example. Her bankruptcy file shows that a court had awarded her \$250 annually in maintenance for herself and \$390 annually for the maintenance and education of her children. However, her ex-husband never contributed more than \$200 to her in any one year, leaving her without adequate means to support herself and her children. There is also an interesting geographic pattern in that all the female bankrupts who were married lived in Louisiana (the Southwest Region).⁸³

Category 2) Children

Of the forty-eight women debtors under the Act of 1841, we could determine that twelve had children, in most instances more than one.⁸⁴ For example, Mary Young had three children; Daria Rally had two children; and Ann Hunt had four children. We suspect that many more of the women had children because the number of widows and married and

80. One debtor, Angelina Brown, appears in the chart as "divorced" although she considered herself widowed since her ex-husband passed away before her bankruptcy filing. Hence, the number of widows is "increased" by one if you accept Angelina's characterization. The remaining women do have a marital status but we need to conduct research beyond the bankruptcy files to ascertain it.

81. See generally Elizabeth Anthony Dexter, *Colonial Women of Affairs* 53, 105, 169-70, 183 (1931) (hereinafter cited as "DEXTER"); Caroline Bird, *Enterprising Women* (1976) (noting that many successful women took over their husbands' businesses and in many cases, those businesses were failing); Barbara Berg, *The Remembered Gate: Origins of Modern Feminism, The Woman and the City, 1800-1860* 26 (1978) (hereinafter cited as "BERG, REMEMBERED GATE"); NORTON, *supra* note 20, at 6-7, 133-37, 143-44 (1980).

82. Although we list her as widowed, it appears that Phoebe may have remarried someone with the last name Hamilton, although when that marriage took place in relation to her bankruptcy filing is unknown.

83. We speculate that this may be because Louisiana then (as now) utilized a civil code that provided for community property. *The Louisiana Civil Code: A Humanistic Appraisal* 41 (Tulane Law School ed. 1981); Eugene D. Sanders, *Lectures on the Civil Code of Louisiana* 96-97 (1925). The interplay of community property law and bankruptcy law is murky and unclear.

84. It was not uncommon during this period for one woman to bear many children. See generally ULRICH, *A MIDWIFE'S TALE*, *supra* note 37. But see CHUSED, *MARRIED WOMEN*, *supra* note 25, at 1419-20 (noting that birth rates declined over the course of the 19th century).

divorced women exceeds the twelve women we identified with children. The bankruptcy files usually do not reveal the age of the children and whether they resided with their mother. However, even children living outside the home could have placed a financial drain on their parents.⁸⁵ It appears that at least some of the women with children worked.⁸⁶ Ann Hunt ran a boarding house and a grocery while engaging in quarrying and construction work. Anna Eliza Russell, who had two children, ran a boarding house. Daria Rally intended to open a day and boarding school for girls.

Category 3) Occupations⁸⁷

We can specifically identify twenty women debtors under the Bankruptcy Act of 1841 with defined occupations. Many of the debtors were working at jobs that were common for women of that time.⁸⁸ They were milliners, boarding house keepers, hoteliers, retailers (of all sorts), and teachers. For example, Hortense Bournot, Phoebe Cuddy, Lois Curtis, and Cleophine Allain Jone were milliners. Mary Wheeler, Ann Stone, Angelina Brown, and Elizabeth Milford were either boarding house keepers or hoteliers.⁸⁹ Caroline McCaney, Mary Young, and Ann Martin,

85. As an example outside the bankruptcy context, see SCOTT, MAKING THE WOMAN VISIBLE, *supra* note 31, at 4-13 (describing the life of Jane Franklin Mecom).

86. The term "work" in relation to "woman" is problematic. Women have always worked, if we define "work" broadly to include the many activities in the home that produce value, thereby encompassing labor that is not directly income producing. See generally, Alice Kessler Harris, *Women Have Always Worked- A Historical Overview* (1981) (hereinafter cited as "KESSLER HARRIS, WOMEN WORKED"); Susan Strasser, *Never Done: A History of American Housework* (1982) (hereinafter cited as "STRASSER, NEVER DONE"); Christine Stansell, *City of Women: Sex and Class in New York, 1789-1860* (1986) (hereinafter cited as "STANSELL, CITY OF WOMEN"); Jeanne Boydston, *Home and Work. Housework, Wages, and the Ideology of Labor in the Early Republic* (1990). For our purposes here, the terms "work" and "occupation" refer to income generating activities, other than housework and family and child-care, whether the activity takes place within or outside the home.

87. For a discussion of the term itself, see *supra* note 86.

88. See *infra*, notes 89-90. For a discussion of women's employment in the 19th century, see generally Nancy F. Cott, *The Bonds of Womanhood: Women's Sphere in New England, 1780-1835* (1977) (hereinafter cited as "COTT, BONDS OF WOMANHOOD"); Jill Ker Conway, *The Female Experience in Eighteenth and Nineteenth Century America: A Guide to the History of American Women* (1980); Thomas Dublin, *Transforming Women's Work: New England Lives in the Industrial Revolution* (1994); STANSELL, CITY OF WOMEN, *supra* note 86; EVANS, *supra* note 19; *To Toil the Livelong Day: America's Women at Work, 1780-1980* (Carol Groneman & Mary Beth Norton eds., 1987).

89. There were different types of boarding houses. Many were "hand-to-mouth" with the boarders giving money to the proprietress for her to buy food. Anna Russell must have operated in this way because her creditors included a grocer, baker, butcher, milkman and ice dealer. Angelina Brown purchased and stored liquor for her boarders. For a discussion of boarding houses, see generally STANSELL, CITY OF WOMEN, *supra* note 86. We are also investigating whether any of the boarding houses were actually houses of prostitution, a possibility that has come to the fore in light of recent scholarship. See *infra* note 189.

among others, were merchants. Emeline Porter and Daria Rally were teachers, and Anna Eliza Russell had run a boarding school before becoming a boarding house keeper. Some of the women debtors had less common occupations. For instance, Mrs. Benjamin Bossie was a sugar cane grower. Working among the women debtors was not isolated to select regions of the country. Among the three married women, we can specifically identify one who worked, Cleophine Allain Jone.⁹⁰

Categories 4-6) Number, Nature and Amount of Creditors

The number of creditors the female bankrupts owed under the Act of 1841 varied considerably, ranging from a high of eighty creditors owed by Catherine Isabelle de Alpruente, to a low of two creditors owed by Mary Ann Hodgson. The following chart lists the number of creditors that some of the debtors owed and gives the average and median number of the creditors of all women debtors where we could make such a count.

<u>Name of Debtor</u>	<u>Number of Creditors</u>
Judith Goddard	44
Sina Foster	21
Hortense Bournot	20
Emeline Porter	20
Ann Stone	14
Mary Martin	13
Nancy Hussey	8
Elizabeth Norton	8
Average # of creditors	18.8
Median # of creditors	15.5

The nature of the credit extended was also variable. Some of the women got credit to buy supplies for their businesses. For example, Hannah Benjamin, a liquor merchant, owed liquor vendors. Daria Rally purchased items to open a school. Other women debtors got credit to purchase land or a home. For example, Mary Williams owed two mortgagors. Other women debtors got credit to purchase food and other household items. Hannah Benjamin owed \$6.00 to the milkman and \$12.00 to the baker. Still other women got credit from laborers, and some owed money for slaves. Mary Young owed John C. Carlow \$1.50 for his labors. Daria Rally owed \$60.00 for the balance due on a "Negro Hire" named Martha Ann and \$50.00 for a "Negro Hire" named Nancy. Ann Stone owed her children \$125.00 for a slave named Harriet, and Marie Azelie Creon owed T. Asbury \$500.00 on a note secured by a mortgage on her slaves.

90. Professor Chused suggested that following marriage, many women in the nineteenth century stopped working. See CHUSED, MARRIED WOMEN, *supra* note 25, at 1363-64.

The women debtors owed individuals (both male and female), businesses, and some owed their own families.⁹¹ Some of the indebtedness was evidenced by notes, mortgages, and endorsements, but the vast majority were sums owed on account, namely open credit. Some of the debtors owed creditors located close to home while other debtors had creditors sizable distances away. Phoebe Cuddy, for example, lived in New York and nine of her eleven creditors were located in New York. Delphine Bolly had one and Cleophine Allain Jone had several creditors in France. Mary Young, who lived and sought bankruptcy relief in Ohio, had creditors in Maryland, Pennsylvania, and New York.

The women debtors owed wide-ranging amounts from a high of \$104,712.30 owed by Catherine Isabelle de Alpruente to a low of \$70 owed by Susan Fifield. Looking at the filings as a whole, twenty-seven of the forty-eight women debtors owed in excess of \$1,000 and eleven women owed in excess of \$5,000. However, there are dramatic differences among the regions. For example, in the New England Region, Elvira Phipps owed the greatest amount, \$4,543. The remaining six debtors in the region all were obligated for less than \$975. The women in the Southwest Region owed the greatest amounts where six of the eight women debtors owed in excess of \$11,000!

Categories 7-8) Nature and Value of Assets

Among the women under the Act of 1841, there were asset values covering a broad spectrum, although overall these data were hard to cull because many of the bankruptcy files did not put a value on the debtor's assets. Catherine Isabelle de Alpruente's estate was valued at over \$96,700 whereas the estate of Ann Martin had a value of \$3.00, plus clothing. Most of the debtors included household furniture among their assets. Some of the debtors listed clothing, including for their children. Jane Richmond and Phoebe Cuddy both included clothing for their children. A sizable number of the debtors, such as Amelia Goudkos, Aquilla Kirk, and Mary Williams, owned real estate. Several women debtors owned slaves, including Charlotte Lawrence, Marie Azelie Creon, Elizabeth Norton, Mrs. Benjamin Bossie, and Ann Stone. Several owned books, such as Eliza Milford who had an extensive collection of foreign language, history, music, and school books. Accounts receivable were also a common asset as evidenced by the files of Ann Stone, Mary C.

91. The following provides examples. Ann Martin's creditors included Walter Harper and Delos Davis. Lois Caulk's creditors included Joseph Brown, T. Bannister, Samuel Edwards, Townsend Sharpless and Joseph Miller. Hannah Benjamin owed, among others, Anne Allen and Ellen Roundell. Mary Willey owed, among others, Esther Hall, Esther Willey, Sally Buarhuth and Polly Heald. Delphine Bolly's creditors included Jariollr & Co., Cuerrin & Louisiana and New Orleans Whisky. Ann Stone owed thousands of dollars to her children from property that belonged to their father. Mrs. Benjamin Bossie lists her two minor children as creditors. Cleophine Allain Jone lists Arma Jone as a creditor who was owed three years salary. Mary Williams owed Nancy Williams over \$7,000 on a mortgage.

Martin, Lois Caulk, and Susan Fifield. Mary Willey listed cash as an asset, and Mrs. Benjamin Bossie's assets included livestock.

Again, regional differences were visible. Women debtors in the Southwest Region had asset values greater than many of the other regions. Of the eight women in the Southwest Region, five had assets valued at \$4,500 or greater. In contrast, all eight women in the Southeast Region had assets valued at less than \$3,300.

d) Summary of Demographic Findings

The demographic data reveal that there is marked diversity among the forty-nine women debtors that we identified. There are also some distinct regional patterns suggesting that the experiences of women debtors could have varied depending on where they lived. What propelled the identified women into financial distress and what precipitating event finally pushed them over the edge are also likely to vary. This suggests that, as with contemporary debtors, there are no easy or pat answers in unravelling the problems of women in debt.

Although the portrait of contemporary women in debt is still incomplete,⁹² some parallels between them and the forty-nine early women debtors are already emerging. For example, patterns of marital status are strikingly similar. We have noted that most of the early women debtors were single at the time of filing.⁹³ Contemporary women debtors filing singly are also by and large unmarried, although divorce rather than widowhood appears to be the reason for this status.⁹⁴ Unlike early debtors, the majority of contemporary women debtors appear as joint filers with their spouses. For example, in 1992, over 300,000 petitions involved a joint filing.⁹⁵

Another point of similarity involves receipt of financial support from an ex-husband. Commentators have noted that a contemporary woman's non-receipt of supplementary income from a former spouse may be enough to precipitate her filing for bankruptcy relief.⁹⁶ Jane Richmond sought relief under the 1841 Act because her ex-husband failed to pay the full amount of court-ordered maintenance for herself and their children.⁹⁷ Finally, we have already noted regional differences in bankruptcy filings under the Acts of 1800 and 1841.⁹⁸ This phenomenon continues today,

92. See GROSS, *supra* note 5; S W & W, AS WE FORGIVE OUR DEBTORS, *supra* note 24.

93. See *supra* notes 79-81.

94. GROSS, *supra* note 5, at 1526; S W & W, AS WE FORGIVE OUR DEBTORS, *supra* note 24, at 150.

95. Data obtained from the Administrative Office of the United States Courts.

96. GROSS, *supra* note 5, at 1527-28; S W & W, AS WE FORGIVE OUR DEBTORS, *supra* note 24, at 156.

97. See *supra* note 82 and accompanying text.

98. See *supra* note 58.

with several scholars noting that geography may be destiny in contemporary bankruptcy practice.⁹⁹

IV. The Lessons Already Learned and Yet to be Learned

Our findings begin to answer the second of Judge Bihary's questions, namely whether there were women debtors under our country's early bankruptcy laws. In and of itself, their discovery has historical significance.¹⁰⁰ But their import is more than as a footnote in American legal history.

Bankruptcy history and women's history have occupied separate spheres. Bankruptcy history has generally been told from the top down,¹⁰¹ and the work of Charles Warren,¹⁰² bankruptcy's leading historian,¹⁰³ epitomizes this approach.¹⁰⁴ The history of women in early America barely acknowledges that women were debtors under either federal or state bankruptcy laws¹⁰⁵ and certainly has not probed the import of this reality. Our findings demonstrate that both histories are incomplete, and each can be enriched by the other, yielding a new sphere where these two histories—bankruptcy and women—intersect. From this meeting, we can

99. GROSS, *supra* note 5 at n. 83; Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 Am. Bankr. L. J. 501 (1993); Gary Neustadter, *When Law and Client Meet: Observations of Interviewing and Counselling Behavior in the Consumer Bankruptcy Law Office*, 35 Buff. L. Rev. 177 (1986).

100. SCOTT, MAKING WOMAN VISIBLE, *supra* note 31.

101. See *supra* note 25 suggesting that history can be better told by working from the bottom up.

102. CHARLES WARREN, *Bankruptcy in United States History* (1935) (hereinafter cited as "WARREN, BANKRUPTCY HISTORY").

103. See, e.g., Lawrence Friedman, *A History of American Law* 238-239 (1973) (hereinafter cited as "FRIEDMAN, HISTORY"); Patrick W. Fischer, *Sweat Equity: In re Ahlers*, 23 Tulsa L. J. 37, 42 n. 25 (1987); Lawrence Ponoroff, *The Limits of Good Faith Analyses: Unraveling and Redefining Bad Faith in Involuntary Bankruptcy Proceedings*, 71 Neb. L. Rev. 209, 210 n. 1 (1992); Barry Winograd, *San Jose Revisited: A Proposal for Negotiated Modification of Public Sector Bargaining Agreements Rejected Under Chapter 9 of the Bankruptcy Code*, 37 Hastings L. J. 231, 333 n. 165 (1985). Professor Warren's book, *Bankruptcy in United States History*, was cited in sixty-seven documents included in Westlaw's JLR (Journals and Law Reviews) database as of August 2, 1994. This frequency of citation is significant in that the database only includes articles published within the past decade. Thus, *Bankruptcy in United States History* is still relied upon extensively by contemporary scholars.

104. We are not the first to criticize Professor Warren's approach as the following reviews of *Bankruptcy in United States History* demonstrate. See generally James Angell McLaughlin, *Book Review*, 49 Harv. L. Rev. 861, 862-63 (1936); Homer D. Crotty, *Book Review*, 24 Cal. L. Rev. 619, 620-21 (1936) (hereinafter cited as "CROTTY, BOOK REVIEW"); Donald L. Stumpf, *Book Review*, 25 Geo. L. J. 501 (1937).

105. See, e.g., COTT, BONDS OF WOMANHOOD, *supra* note 88; EVANS, *supra* note 19; Alice Kessler-Harris, *Out-To-Work: A History of Wage-Earning Women in the United States* (1982); Julie A. Matthaei, *An Economic History of Women in America: Women's Work, The Sexual Division of Labor, and the Development of Capitalism* (1982); Chused, MARRIED WOMEN, *supra* note 25, at 1400-01.

rewrite portions of bankruptcy history, eradicating errors that have pervaded its telling.¹⁰⁶ We also now have additional support for the growing realization that although many women in 18th and 19th century America led circumscribed lives, some women were actively involved in the commercial marketplace and the world of debt and credit.¹⁰⁷ What emerges from our findings, then, is a cross-fertilized history of bankruptcy and women.¹⁰⁸

One way of beginning the re-telling of bankruptcy history is to look at the ways in which that history has been told. So, we begin by assessing the work of bankruptcy's chief historian, Charles Warren. As we'll see, his story is problematic. But, identifying, evaluating and correcting those problems are the first steps in re-writing bankruptcy history.

a) Charles Warren's Telling of Bankruptcy History

Our findings reveal that Professor Warren's discussion of the Bankruptcy Acts of 1800 and 1841¹⁰⁹ is incomplete or flawed (or both) with respect to the following topics: (1) the number of bankruptcy filings; (2) the descriptions of the debtors who obtained relief; and (3) the size of distributions to creditors. Professor Warren's analysis suffers from three weaknesses: (1) his over-reliance on and misinterpretation of published government data; (2) his belief that legislators and others in positions of power accurately described what happened under the bankruptcy law; and (3) his overwhelming focus on macro-economic events to explain bankruptcy law, thus excluding consideration of the experiences of the actual participants in the bankruptcy process.¹¹⁰ Because of Professor Warren's preeminence, it is all the more important to correct the way in which he told bankruptcy history.¹¹¹

106. See *infra* notes 112-115 and accompanying text.

107. See *infra* notes 163-175 and accompanying text.

108. This is an approach that would make George Boole proud. Boole, a British mathematician who lived from 1815-1864, developed a calculus of symbolic logic. Retrieval searches that use logical connectors (such as "and" and "or") are referred to as Boolean searches. WESTLAW and LEXIS are frequently employed to conduct searches based on Boolean logic.

109. WARREN, BANKRUPTCY HISTORY *supra* note 102, *infra* notes 112-115; 130-131, 141, 145-151.

110. In the latter context, the study of women as women is less important than the study of any group of individuals who are debtors. It is the analysis of a subgroup of debtors that yields information rebutting previously accepted descriptions of the world of bankruptcy based on aggregated data.

111. Other scholars have picked up on and quoted Professor Warren's observations about the Bankruptcy Acts of 1800 and 1841. So, by correcting Professor Warren's telling of bankruptcy's story, we are alerting other scholars to be careful about their use of *Bankruptcy in United States History*. For scholars relying on Professor Warren, see, e.g., FRIEDMAN, HISTORY, *supra* note 103, at 238-39; Peter J. Coleman, *Debtors and Creditors in America: Insolvency Imprisonment for Debt, and Bankruptcy, 1607-1900* 18-30 (1974) (citing Warren in numerous footnotes) (hereinafter cited as "COLEMAN, DEBTORS AND CREDITORS"); TABB, *supra* note 8 (citing Warren in numerous footnotes); COUNTRYMAN, *supra* note 8 (citing Warren in numerous footnotes); DUNCAN, *supra* note 8 (citing Warren or others relying on or quoting Warren).

1) Revising the Story of the Act of 1800

Referring to the Bankruptcy Act of 1800, Professor Warren observes that, "The number of cases begun under the law was in fact *extremely small*—not over 500 in Pennsylvania, New York, Maryland, and the District of Columbia, the four places where *most* advantage was taken of the law . . ." ¹¹² (emphasis added). In support of this statement, he cites the figures submitted to Congress in 1822 by President Monroe pursuant to a House Resolution requesting the number of filings under the Bankruptcy Act of 1800 ("government figures"). ¹¹³ By relying exclusively on these government figures, Professor Warren misses counting almost one-half of the actual filings under the Bankruptcy Act of 1800!

Professor Warren correctly reports that the number of filings in the four indicated states was under 500; ¹¹⁴ there were exactly 491 filings in these states according to the government figures. ¹¹⁵ However, he completely ignores the filings under the Act of 1800 in both the New England and Southeast Regions, ¹¹⁶ which we discovered through our examination of original case files. ¹¹⁷ In total, we uncovered 423 bankruptcy files in these two regions. ¹¹⁸

Our research reveals that there were more filings in Massachusetts (23) than in *any* of the four specific states Professor Warren specifically

112. WARREN, *BANKRUPTCY HISTORY*, *supra* note 102, at 20-21.

113. These letters were submitted pursuant to a House Resolution dated January 8, 1822 and were directed to John Quincy Adams, the then Secretary of State, who in turn delivered them to President Monroe. *See* House Resolution dated January 8, 1822, 17th Cong. 1st Sess., No. 514 and 515.

114. These states are located in the Northeast and Mid-Atlantic Regional Archives. *See supra* note 34.

115. *Id.*

116. The Regional Archives and the states within each one that we investigated appear *supra* note 34.

117. *See infra* notes 118-119 and accompanying text. We actually counted 827 cases in total under the Act of 1800.

118. This total of 423 files breaks down as 414 filings in the New England Region and 9 filings the Southeast Region. The state by state breakdown is as follows:

New England Region:

Connecticut.....	74 cases
Maine.....	51 cases
Massachusetts.....	230 cases
Rhode Island.....	35 cases
Vermont.....	24 cases
Total Cases:.....	414

Southeast Region:

Georgia.....	4 cases
North Carolina.....	5 cases
Total Cases:.....	9

Total in both Regional Archives:.....423

references as those with the greatest filings (Pennsylvania (208), New York (166), Maryland (58), and the District of Columbia (14)). Our findings also demonstrate that there were more filings in Connecticut (74) than in two of the four “high” filing areas Professor Warren identifies. The New England Region figures also do not include filings from New Hampshire, as these documents are missing from the Regional Archive, but such filings could have been sizable given the large number of filings in the surrounding states of Massachusetts, Maine, and Vermont.¹¹⁹

Assuming the accuracy of the government count,¹²⁰ there were at least 914 filings (the 491 identified in the government figures and the 423 which we identified in the New England and Southeast Regions) under the Act of 1800. In reviewing the government figures, it is surprising that Professor Warren did not observe and was not sensitive to the absence of any filings from the New England states, an economic mecca in early America.¹²¹ Professor Warren’s attention to the economic issues antedating, and the political debates surrounding the passage of, the Act of 1800 should have alerted him to the importance of New England and the distinct possibility of bankruptcy cases in Boston specifically and New England generally.¹²² The absence of this recognition is all the more startling because Professor Warren specifically refers to Congressmen Harrison Gray Otis and Samuel Sewall of Massachusetts¹²³ as supporters of bankruptcy legislation and notes that Congressman Theodore Sedgwick of Massachusetts, as Speaker, cast the deciding vote in favor of the bankruptcy bill in the House of Representatives.¹²⁴ Finally, having been born, educated, and employed in Boston, Professor Warren was no doubt familiar with the role of his home city in American history,¹²⁵ thereby making his inattention to bankruptcy files in this region all the more difficult to comprehend and accept.

119. See *supra* note 118.

120. Our physical count of the files differs from the government figures and reveals other, albeit less significant, discrepancies. For example, we counted 61 rather than 58 cases in Maryland, and 210 rather than 208 cases in Pennsylvania. We counted fewer cases in New York than reported in the government figures, and we could not locate any cases in Virginia and the District of Columbia. We were advised that the cases in the District of Columbia had burned. It is also possible that the number of cases in Virginia exceeds the number reported by Professor Warren, although we cannot independently verify this by a physical count. However, the letter submitted to Secretary of State Adams suggests additional files in the Richmond, Virginia area. See letter from Richard Jeffries to the Honorable John Quincy Adams, Secretary of State, dated January 18, 1822, 17th Cong., 1st Sess., No. 514.

121. See generally Edwin J. Perkins, *The Economy of Colonial America* (1988) (hereinafter cited as “PERKINS”).

122. The political debate surrounding bankruptcy legislation, and the key role of the New England states, is documented in George Philip Bauer, *The Movement Against Imprisonment for Debt in the United States* 117-25; Appendix D, at X-XII (1935) (Ph.D. dissertation, Harvard University) (hereinafter cited as “BAUER, THE MOVEMENT”).

123. It is ironic that the first woman debtor under the federal bankruptcy law of 1800, Susannah Kneeland, was related to Samuel Sewall, one of the proponents of the legislation. See *supra* note 65.

124. WARREN, BANKRUPTCY HISTORY, *supra* note 102, at 15, 17, 19.

125. [Obituary of Charles Warren], *N. Y. Times*, August 17, 1954 at 21, col. 1.

Professor Warren's characterization of the number of filings under the Act of 1800 as "extremely small" is also troubling. Had Professor Warren known that the correct number of filings was not under 500 but over 900, would he still have characterized the number in the same way? Moreover, "small" is a relative term, and we need to consider whether Professor Warren means, for example, "small" as an absolute number, "small" as a percentage of the population, "small" as compared to utilization of state debtor-creditor laws, or "small" as compared to then anticipated filing rates in light of the economic crises to which the early law was, at least in part, a response.

We cannot test all these meanings of "extremely small." But it is noteworthy that as a percentage of population, filings under the Act of 1800 are within less than one percentage point of that same ratio under the Bankruptcy Acts of 1841, 1867, 1898, and 1978.¹²⁶ Perhaps what accounts for Professor Warren's observation has less to do with the Act of 1800 and more to do with the comparatively large number of and rate of increase in bankruptcy filings during the Great Depression,¹²⁷ the period

126. The difference in percentages, even if all within one percent, are not insignificant. Determining bankruptcy filing rates as a percentage of population is neither an easy nor a trouble-free calculation. Population figures themselves are problematic in that they contain inaccuracies including under-counting. See Gerald Carson & Bernard A. Weisberger, *The Great Countdown; the Story of the U. S. Census, 1790-1990* (pt. 1), *Forbes*, Oct. 30, 1989, at §1; Steven V. Roberts, *An All-American Snapshot: How We Count and Why*, *U. S. News & World Rep.* April 2, 1990, at 10; Kirsten K. West & David J. Fein, *Census Undercount: An Historical and Contemporary Sociological Issue*, 60 *Soc. Inquiry* 127 (1990). Further annualizing filing rates under the early bankruptcy laws is also difficult. Moreover, whether the calculation of bankruptcy filings as a percentage of population, even if we can determine it, is meaningful raises yet another layer of difficulty. See Jagdeep S. Bhandari & Lawrence A. Weiss, *The Increasing Bankruptcy Filing Rate: An Historical Analysis*, 67 *Am. Bankr. L. J.* 1 (1993); COUNTRYMAN, *supra* note 8.

These potential difficulties notwithstanding, consider the following rough calculation of filings as a percentage of population under our five bankruptcy laws.

<i>Bankr. Law</i>	<i>No. of Filings</i>	<i>Popul. (est.)</i>	<i>%</i>
1800	914 (est.)*	5,297,000	.00017
1841	33,700*	17,733,000	.0019
1867	11,400**	39,905,000 (1870)	.00029
1898	62,845 (1930)	122,923,000 (1930)	.005
1978	812,898 (1993)	259,353,627 (1993)	.031

*These Acts were short-lived and figures have not been annualized. Annualization would yield smaller percentages.

** This is an annualized figure calculated by Professor Countryman. See COUNTRYMAN, *supra* note 8, at 230.

127. The following data are culled from *The 1994 Bankruptcy Yearbook & Almanac* at 14.

<u>Year</u>	<u>No. of Filings</u>
1920	13,558
1925	45,641
1930	62,845
1935	69,153*
1940	52,320
1945	12,862

*This was the year Professor Warren's book was published.

of time when *Bankruptcy Law in the United States* was being written.¹²⁸

Professor Warren then goes on to describe the debtors under the Act of 1800 and states, “. . . *very small* dividends had been paid to creditors, as most debtors petitioned into bankruptcy were already in jail . . .”¹²⁹ He continues, “. . . the Act had been largely used by rich debtors and speculators and in some cases fraudulent debtors, to obtain discharge from their debts and start operations afresh.”¹³⁰ He supplies no specific support for these observations.¹³¹

The bankruptcy files of Susannah Kneeland and her son William rebut Professor Warren’s observations. Neither Susannah nor her son William could be characterized as “rich,”¹³² although Susannah could certainly not be characterized as “poor.”¹³³ Neither was in jail at the time of their bankruptcy cases.¹³⁴ Neither was accused of acting fraudulently.¹³⁵ Neither was a speculator;¹³⁶ both were shopkeepers on Cornhill in Boston.¹³⁷ Susannah made a distribution to her creditors of fifty-seven cents on the dollar and William made a distribution of forty cents on the dollar to his creditors,¹³⁸ neither of which would seem to fit within Professor Warren’s characterization of “very small.”¹³⁹ Both obtained a discharge, although only Susannah appears to have commenced “afresh” in the same type of business.¹⁴⁰

128. *Bankruptcy Law in United States History* is an amplification of lectures delivered in 1934 at Northwestern University School of Law. The publication bears a 1935 copyright date, and Charles Warren’s foreword is dated June, 1935. See WARREN, BANKRUPTCY HISTORY, *supra* note 102, at foreword (unnumbered).

129. WARREN, BANKRUPTCY HISTORY, *supra* note 102, at 19.

130. *Id.* at 19-20.

131. See CROTTY, BOOK REVIEW, *supra* note 104, at 620.

132. See *supra* notes 70-72. William Kneeland’s bankruptcy file reveals that he had substantially fewer assets than his mother. His assets totalled approximately \$4,500 compared to her assets which were valued at approximately \$14,000.

133. See *supra* notes 70-72.

134. Both Susannah and William’s files contain a sworn statement from S. Bell, the Sheriff of Suffolk County, indicating that he had tried unsuccessfully to arrest each of them, and they refused to go to jail.

135. Only two of the 49 women debtors we identified, Angelina Brown and involuntary debtor Carolina McCaney, were accused of acting fraudulently, and both were debtors under the Act of 1841.

136. We assume that Professor Warren is referring to speculation in government scrip and shares in corporations as well as real estate speculation. See WARREN, BANKRUPTCY HISTORY, *supra* note 102, at 10-13.

137. See *supra* note 68. Susannah’s shop was at 73 Cornhill and William’s was at 46 Cornhill.

138. Those creditors of William who were also creditors of Susannah by virtue of her endorsement of his notes (there were approximately 15 such creditors) received 75¢ on the dollar distributions.

139. Both Susannah and William made sufficient distributions to entitle them to an allowance under the Bankruptcy Act of 1800, *supra* note 2, §§ 34-35.

140. See *supra* notes 73-74. What happened to William Kneeland immediately following his bankruptcy filing remains unclear. It appears that he did not go back into business as a shopkeeper. His sister, Elizabeth McFarland, reported that he went out as a mate on a shipping vessel and died in Jamaica of consumption 10 days before his mother’s death in 1809. See BOUTON, MEMOIR, *supra* note 66, at 86.

These two cases do not prove that *all* or even a majority of debtors fall outside Professor Warren's description of the stereotypic debtor and common distribution amounts under the Act of 1800. A sample of two is clearly too small to use as a basis for proof. However, these two cases do raise the troubling possibility that by failing to look at all regions of the country (and specifically the region where Susannah and William sought relief), Professor Warren's description of debtors and distributions under the Act of 1800 is incomplete and lacks universality. No doubt, some debtors under the Act of 1800 fit his profile, and our examination of the files of some male debtors under the Act of 1800 confirms this. But our findings also support the view that we have not yet uncovered the whole story about debtors under the Act of 1800. Our findings alert us to the need to develop the other sides of the story.

2) Revising the Story of the Act of 1841

In reporting the number of debtors under the Act of 1841, Professor Warren again relies on government data. According to Department of State figures, there were 33,739 filings under the Act of 1841 ("State Department figures").¹⁴¹ Our investigation of case files under the Act of 1841 reveals quite different numbers from the State Department figures as we saw "only" 26,310 files. These differences fall into three categories: (1) the State Department figures show files we could not locate; (2) we located files in areas of the country where the State Department figures do not report any filings; and (3) there are small variations in the number of files in certain locations.

Several examples suffice. The State Department figures show forty-six files in Florida but we could not locate any such files, although it is highly likely that these files were either destroyed unintentionally or were missing but in existence. More importantly, we could not find, despite repeated requests, 5,598 files from the Northern District of New York which were reported in the State Department figures.¹⁴² We examined 1,705 files in Vermont and 342 files in Rhode Island, and the State Department figures show no filings in these two states.¹⁴³ We also reviewed 763 files in Louisiana and yet the State Department files show no filings in this location.¹⁴⁴ Finally, the State Department figures list 3,478 files in Maine while we actually reviewed 3,502 files. Similarly, the

141. WARREN, *BANKRUPTCY HISTORY*, *supra* note 102, at 81. His footnote references a speech of Senator Lafayette Foster dated December 8, 1862 to which were appended the Secretary of State's filing figures. See 37th Cong., 2d Sess. The government figures themselves appear at 27th Cong., 2d Sess., Senate Doc. No. 19.

142. This one difference explains a large portion of the discrepancy between our figures and those of the State Department.

143. We did not locate any women debtors in these two states.

144. We uncovered eight women debtors from Louisiana, the greatest number of women in a single state (as distinguished from a single Regional Archive).

State Department figures reveal 2,737 files in Kentucky while we reviewed 2,454 files in that state.

Again, Professor Warren has failed to recognize the missing New England states from the State Department figures. Had he realized that there were bankruptcy filings in Vermont under the Act of 1800, he could logically have assumed that there would have been filings in that state under the Act of 1841. With respect to Rhode Island, it was one of the original Thirteen Colonies so one would expect that it, too, would have debtors. Interestingly, Professor Warren acknowledges that the State of Vermont was involved in debtor-creditor issues because it was one of the first states to curtail the laws on imprisonment for debt.¹⁴⁵ Professor Warren also observes that Rhode Island “had a perfect bankruptcy law in 1787,” suggesting that the absence of filings in Rhode Island, in a government report, should have struck him as worthy of additional checking.¹⁴⁶

In describing debtors and distributions under the Act of 1841, Professor Warren, again citing the State Department figures, notes that the amount of debt involved under the Act of 1841 was \$440,934,000 and the amount of property surrendered by debtors totalled \$43,697,357.¹⁴⁷ He then states that, “Owing to the expenses of administration, and also owing to the fact that large numbers of debtors had already been through State Insolvency Courts, *very small* dividends were paid to creditors.”¹⁴⁸ (footnote omitted; emphasis added.) He then suggests that small distributions were one of the reasons creditors were dissatisfied with the Act and that this, among other factors, accounted for the Act’s repeal.¹⁴⁹

Implicit in Professor Warren’s observation is that all creditors received less than 10¢ on the dollar (\$440 million divided by \$43 million).¹⁵⁰ By aggregating the debtors in this fashion, Professor Warren completely ignores the possibility that different debtors in different parts of the country, or even debtors within the same region, may have paid their creditors differing amounts.¹⁵¹ Our evaluation of the files of women

145. WARREN, *BANKRUPTCY HISTORY*, *supra* note 102, at 52.

146. *Id.* at 6.

147. *Id.* at 81.

148. *Id.*

149. *Id.* at 82.

150. Professor Tabb makes the same assumption explicitly. See TABB, *supra* note 8, at 353 n. 212.

151. There are extant data suggesting that no distributions were made in certain locations, namely Pennsylvania, East Virginia, South Alabama, and Washington. See TABB, *supra* note 8, at 353 n. 212. See also COUNTRYMAN, *supra* note 8, at 229. Among the 48 debtors we located, four appear to be from East Virginia: Daria Rally, Elizabeth Fulcher, Amelia Goudkos, and Elizabeth Dewars. Their files do not indicate the amount of distribution, if any, that was made to creditors. Professor Tabb also reports that dividends of 1¢ on the dollar were distributed in the Southern District of New York. See TABB, *supra* note 8, at 353 n. 212. Again, we have identified six women debtors in this location but we have not determined the amount they distributed to creditors. Obviously, with further research, we could probe the accuracy of these statements, at least as they relate to one subgroup of debtors under the Act of 1841.

debtors under the Act of 1841 suggests just that. Again, our sample size in comparison to *all* debtors is small (48 out of approximately 26,300 files). However, our “sample” does suggest that the amount of possible payout to creditors could have varied quite substantially among debtors within a single region and among the regions and that distributions, while “very small” in some instances, were sizable in others.¹⁵² Stated differently, based on our analysis of our subgroup of forty-eight debtors, distributions of 10¢ on the dollar were not necessarily the norm among debtors.

Consider the following examples. Judith Goddard owed her forty-four creditors \$3,680 and she had \$3,231 in assets. Aquilla Kirk owed her three creditors \$2,500, and she had assets of \$2,500. Susan Fifield owed her ten creditors \$70.42, and she had assets totalling \$190.50 (more than twice what she owed). Mrs. Benjamin Bossie owed her thirty-two creditors \$18,842.80, and she had assets valued at \$18,472. Catherine Isabelle de Alpruente owed her eighty creditors \$104,712.30 but she had assets valued at \$96,768.13. Even taking exempt property and administrative expenses into account, all of these debtors appear to have been able to repay their creditors more than 10¢ on the dollar.

It is tempting to hypothesize that Professor Warren’s observations are applicable only to male debtors as a sizable portion of female debtors were capable of repaying their creditors more than 10¢ on the dollar. However, this statement cannot be made, at least not yet.¹⁵³ What we can safely say is that the women debtors we have identified suggest that Professor Warren’s description of distributions made by all debtors under the Act of 1841 is not complete and there are, as with the prior Bankruptcy Act, other stories yet to be told about female and male debtors under the Act of 1841.

3) Retelling History

Our findings suggest that bankruptcy history cannot be told by looking only at government data, the remarks of politicians, and outside economic events. Such a limited approach is like telling ancient history only through the eyes of kings, princes, and wealthy lords.¹⁵⁴ An important part of the real story gets lost. Bankruptcy history must include a look at

152. Determining pay-outs is much more complicated than simply dividing the total indebtedness by the surrendered property. For one thing, costs of administration had to be paid, and the bankruptcy files we examined do not provide a clear, across the board assessment of administration costs. Also, assets surrendered are not synonymous with liquid assets available for distribution. Indeed, valuation and liquidation of assets are major hurdles that could affect the levels of distribution. Finally, the amount of property surrendered could have included exempt property which the debtor was ultimately entitled to retain.

153. For a discussion of the risks involved in interpreting empirical data, *see supra* text accompanying notes 24-31.

154. Ernest Breisach, *Historiography - Ancient, Medieval, & Modern* 316 (1983) (discussing the approach taken by the great historian Frederick Jackson Turner who made common people the subject of history).

the real people who partook of the bankruptcy system and must consider their experiences, not aggregated, but individually. As Ruth Sidel put it, "Statistics . . . are 'people with the tears washed off.'"¹⁵⁵

With our data, we can start to retell bankruptcy history. We know enough now to say that the history of bankruptcy as told by Professor Warren and repeated by other scholars needs to be revised. The number of filings, descriptions of debtors, and the determination of distributions all need refinement, if not outright correction. But even more is required. A revision of bankruptcy history requires implementation of a new methodological approach, namely a reorientation towards the experiences of actual debtors. We are only beginning the task of reconstructing the lives and experiences of the women and *men* who sought relief under the Bankruptcy Acts of 1800 and 1841. Only when that task is completed will we be able to rewrite bankruptcy history.

Angelina Brown's bankruptcy file, particularly her personal statement, reveals the abundant (and poignant) data that can be revealed through doing bankruptcy research from the bottom up. Angelina Brown filed for relief in New York under the Bankruptcy Act of 1841. She owed thirty-four creditors \$5,443. She was divorced although she considered herself widowed since her ex-husband was dead. She was accused of defrauding her creditors. Her personal statement declares in part:

I am a Boarding House Keeper. I keep house at 37 Broadway in the City of New York. I have kept house there for two years last May . . . I should think I have twenty boarders or even more. Some of them pay five dollars a week. It depends on the rooms they occupy . . . I do not keep a supply of wines and liquors. When my boarders call for it I send and buy it by the bottle. I have no plate [sic], no silver spoons. I have a plated sugar bowl. I have no jewelry, no watch. I think I have several servants. I have lost many in that house and have not been able to meet my expenses. I cannot tell how I am doing now. I get along the best way I can. I am not making money. I am managing to live . . .

I have no real estate . . . I have a mother living. She resides with me . . . She is now with me on account of sickness . . .

. . . I owe Mr. Bell for much oil and candles about sixty or seventy dollars. I am endorsee on a note held by Mr. Whitney. He did not pay me anything on the endorsement . . . When I bought the house for my mother I expected to pay all my debts.

This statement explains a good deal about why Angelina Brown was in financial trouble. It reveals how she felt about her financial situation. It details her involvement in the commercial marketplace, buying products for her boarders and endorsing notes. Her story enriches bankruptcy history and, as we will now see, it also enriches women's history.

b) Enriching the History of Women in Early America

History has frequently been written without taking the experiences of women into account, and this has given rise to numerous myths about

155. Ruth Sidel, *Women and Children Last* xvi (1986).

the role of women in early America.¹⁵⁶ People not familiar with revisionist history assume, for example, that women in 18th and 19th century America did not work, own property, or obtain credit. In this sense, our research is galvanizing because our findings upset preconceived notions of what women in early America were like.¹⁵⁷

Recent research has revealed that there is no simple description of the lives of women between 1790 and 1845.¹⁵⁸ It is true that the opportunities available to women during this period were considerably more limited than the opportunities that were available to men. For example, married women's property rights were impaired, although the extent of that impairment is the subject of considerable debate.¹⁵⁹ Women's educational opportunities were limited, and they lacked the right to vote at the federal level.¹⁶⁰ Women were discriminated against at every level—in their work, in their homes, in their churches, in the law and in society.¹⁶¹

156. For a discussion of the importance of considering the experiences of women in writing history and the criticism (both explicit and implicit) of histories that do not, see Teresa L. Amott & Julie A. Matthaei, *Race, Gender & Work: A Multicultural Economic History of Women in the United States* (1991) (hereinafter cited as "AMOTT & MATTHAEI"); Mary R. Beard, *Women as Force in History* (1946) (hereinafter cited as "BEARD"); BERKIN & NORTON, *WOMEN OF AMERICA*, *supra* note 61; Elise Boulding, *The Underside of History: A View of Women Through Time* (1976); SCOTT, *MAKING WOMEN VISIBLE*, *supra* note 31; Sheila Rowbotham, *Hidden From History: Rediscovering Women in History from the 17th Century to the Present* (1973).

There are some notable older histories that discuss women. See, e.g., Edith Abbott, *Women in Industry: A Study of American Economic History* (1969); DEXTER, *supra* note 81; Sarah Hale, *Woman's Record: Or Sketches of All Distinguished Women, From Creation to A.D. 1654* (1853); Julie Ward Howe, *Woman's Work in America* (1891).

157. Transforming people's perception of early women can operate on numerous levels. It can change history as we know it, and it has the potential to change how people think about women today.

158. See generally Katherine T. Bartlett, *Gender and Law Theory, Doctrine, Comment* 66-67 (1993); COTT, *BONDS OF WOMANHOOD*, *supra* note 88; Martha Minow, *Forming Underneath Everything that Grows; Toward a History of Family Law*, 1985 *Wis. L. Rev.* 819, 852-57; Mary Beth Norton, *The Evolution of White Women's Experience in Early America*, 89 *Am. Hist. Rev.* 5923 (1984). As Professor Norton observed, "[f]or over fifty years, one theme has dominated historians' thinking about women in early America: the notion that colonial women were better off than either their English contemporaries or their nineteenth century descendants . . . Many scholars who have recently started to question the favorable assessment of the status of colonial women still accept the paradigm of women's nineteenth century decline from a preferable past." *Id.* at 593-94.

159. See generally BASCH, *supra* note 61; SALMON, *MARRIAGE SETTLEMENTS*, *supra* note 25; CHUSED, *supra* note 25.

160. See generally EVANS, *supra* note 19; Jane Randall, *The Origins of Modern Feminism: Women in Britain, France and the United States, 1780-1860* (1985); Glenda Riley, *Inventing the American Woman: A Perspective on Women's History* (1986); Nancy Green, "Female Education and School Competition: 1820-1850" *reprinted in Woman's Being, Woman's Place: Female Identity and Vocation in American History* 127-141 (Mary Kelly ed., 1979) (hereinafter cited as "KELLY, WOMAN'S PLACE"); Carol Ruth Berkin & Mary Beth Norton, "Women and American History," *reprinted in BERKIN & NORTON, WOMEN OF AMERICA*, *supra* note 61, at 3-15.

Standing in contrast to this negative description are the forty-nine women debtors we uncovered. They do represent only a small sample of the women of their era. However, they do represent an identifiable group that have a different story to tell. As such, their collective story is worth our attention. Their stories may turn out to be idiosyncratic. However, new research is suggesting that these women debtors are exemplars of previously untold history. Many of the debtors we identified worked, owned property, and obtained credit,¹⁶² thereby demonstrating that at least some women were economic actors in early America. They participated in a federal legal process where we did not previously know of women's involvement. In terms of deviations from the myths, we tend to be familiar with only the "famous" and "successful" women from this period, the women whose stories have been publicized.¹⁶³ However, even before or at the same time as the women we uncovered, women were functioning in the commercial marketplace and utilizing formalized mechanisms to deal with their indebtedness. But the stories of these women tend not to be told because, for the most part, their lives were "ordinary."¹⁶⁴ They were the plain people.¹⁶⁵

1) Women in the Commercial Marketplace

There are many accounts of women in the 18th and 19th centuries who worked either at home or at a shop or factory¹⁶⁶ as seamstresses,

161. See generally AMOTT & MATTHAEI, *supra* note 156; Martha Banta, *Imaging the American Woman: Idea and Ideals in Cultural History* (1987); bell hooks, *ain't i a woman: black women and feminism* (1981); Mary P. Ryan, *Womanhood in America: From Colonial Times to the Present* (1963); Albie Sachs & Joan Hoff Wilson, *Sexism and The Law : A Study of Male Beliefs and Legal Bias in Britain and the United States* (1987); *Women and the Law: A Sociological Perspective* (D. Kelly Weisberg ed., 1982); Linda K. Kerber, *The Paradox of Women's Citizenship in the Early Republic: The Case of Martin v. Massachusetts, 1805*, 97 Am. Hist. Rev. 349 (1991).

162. See *supra* note 91 and accompanying text.

163. For example, the names Emma Willard, Sarah Hale, Elizabeth Cady Stanton, Lydia Maria Child may be familiar. For a discussion of these and other well-known women of this period, see Lucy M. Freibert & Barbara A. White, *Hidden Hands: An Anthology of Women Writers, 1790-1870* (1984); Lynne Griffin & Kelly McCann, *The Book of Women: 330 Notable Women History Passed By* (1992); Carol Hymowitz & Michael Weissman, *A History of Women in America* (1978); Phyllis J. Read & Bernard L. Witlieb, *The Book of Women's Firsts* (1992).

164. For an interesting discussion of who merits attention, the famous or the ordinary, see Katherine T. Corbett, *Louisa Catherine Adams: The Anguished 'Adventures of a Nobody'*, reprinted in KELLY, WOMAN'S PLACE, *supra* note 160, at 76-84.

165. The study of "plain" people has gained in prominence. See generally Peter Knights, *The Plain People of Boston, 1830-1860: A Study in City Growth* (1971) (hereinafter cited as "KNIGHTS, THE PLAIN PEOPLE"); Carol Ruth Berkin, *Within the Conjurer's Circle: Women in Colonial America* (1971).

166. This is not to devalue the work of women as economic actors within the home as wives, mothers and caregivers. See generally Jane C. Nylander, *Our Own Snug Fireside: Images of the New England Home, 1760-1860* (1993) (hereinafter cited as "NYLANDER, OUR FIRESIDE"); Reva B. Siegel, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 Yale L. J. 1073 (1994).

weavers, spinners, milliners, and knitters.¹⁶⁷ Both married and unmarried women were involved in buying and selling goods, such women being termed "She Merchants."¹⁶⁸ Women were also creditors.¹⁶⁹ Another indicator of women's participation in commercial life is the number of advertisements for their businesses in the newspapers.¹⁷⁰

Other women ran boarding houses and taverns.¹⁷¹ Some women

167. See Benita Eisler, *The Lowell Offering: Writing of New England Mill Women* (1977); Joan M. Jensen, *Loosening The Bonds: Mid-Atlantic Farm Women, 1750-1850* (1986) (hereinafter cited as "JENSEN, LOOSENING THE BONDS"); NYLANDER, OUR FIRESIDE, *supra* note 166; David Montgomery, *The Working Classes of the Pre-Industrial American City, 1780-1830*, 10 *Lab. Hist.* 3 (1968).

168. EVANS, *supra* note 19, at 60-61; DEXTER, *supra* note 81; BERG, REMEMBERED GATE, *supra* note 81 at 25; Mary Beth Norton, *A Cherished Spirit of Independence; The Life of an Eighteenth Century Businesswoman*, reprinted in BERKIN & NORTON, WOMEN OF AMERICA, *supra* note 61, at 48-67; Marylynn Salmon, "Equality or Submersion? Feme Covert Status in Early Pennsylvania," reprinted in BERKIN & NORTON, WOMEN OF AMERICA, *supra* note 61, at 92-113. For a useful discussion of "Feme Sole Trader" status, see CHUSED, MARRIED WOMEN, *supra* note 25, at 1395-96.

169. Both Susannah and William Kneeland's bankruptcy files from the Act of 1800 show women creditors. Specifically, Susannah owed the following women creditors:

<i>Name of Creditor</i>	<i>Amount Owed</i>
John Grew for Mary Grew	\$202.72
Chrisiana Colson	\$257.72
Abigail Hinkley	\$47.71
Elizabeth Kettell	\$137.35
Margaret Phillips	\$21.66
Joseph & Hannah Sewall	\$744.20
Ruth Tory	\$45.00

William's file alerts us to the possibility that more creditors were female than meets the eye because women's names may not have appeared on the court documents. For example, one of William's creditors is John Simpkins. However, his claim for \$21.74 states that ". . . several of the above articles were furnished by Mrs. Simpkins [,] wife of this deponent & without his knowledge."

The files of male and female debtors under the Act of 1841 reveal female creditors as well. For example, Charles Cheever, who sought relief in Massachusetts, had 134 creditors of whom 40 were women. Mary Willey, who filed for relief in Maine, listed the following women creditors:

<i>Name of Creditors</i>	<i>Amount Owed</i>
Sally Buarhuth	\$15.00
Esther Hall	\$25.00
Polly Heald	\$5.00
Lola Littlefied	\$3.00
Esther Willey	\$25.00

170. Elizabeth Dexter noted that the names of six women appeared in the Boston Evening Post during the first six months of 1773 compared to the names of 64 men. DEXTER, *supra* note 81, at 38. See also Arthur W. Calhoun, *A Social History of the American Family From the Colonial Times to the Present* 101 (1945); PERKINS, *supra* note 121, at 148 (1988). In Professor Gross's review of the Columbian Centinel, a Boston newspaper, between August 20, 1800 and October 12, 1803 (Reel 4 of 10), she too noted women placing advertisements. For example, on May 22, 1802, Miss M. Sprague had a notice that she was opening a library in her shop, and men and women were invited to borrow books.

171. See generally NORTON, *supra* note 20, at 144-45; STANSELL, CITY OF WOMEN, *supra* note 86, at 44-45; Susan Strasser, *Never Done: A History of American Housework* 145-49 (1982).

operated schools while others taught students at home or in a school setting.¹⁷² Some were involved in publishing and literary ventures.¹⁷³ Others ran plantations or other real estate endeavors.¹⁷⁴ Some women were involved in benevolent or religious organizations, raising money and assisting the poor.¹⁷⁵

2) Lack of Financial Success

Despite their involvement in the world of commerce, women, like their male counterparts, did not always enjoy financial success.¹⁷⁶ For example, in 1725 in New York, Joost Sooy gained the services of Mary Vander Ripe for four years because she was unable to repay him £15.¹⁷⁷ Although the federal bankruptcy laws were one source of relief from fiscal distress, albeit for limited periods of time,¹⁷⁸ state insolvency laws were also available.¹⁷⁹ In Massachusetts between 1765 and 1768, creditors instituted insolvency proceedings against a widow, Elizabeth Richardson.¹⁸⁰ Mary Bellamy obtained a discharge under Connecticut

172. Annie Nathan Meyer, *Woman's Work in America* 3-106 (1891) (containing three separate articles by different women on education of women in different parts of the United States) (hereinafter cited as "MEYER"); Alma Lutz, *Emma Willard: Pioneer Educator of American Women* (1964); Jean Sarah Pond, *Bradford: A New England Academy* 13-38 (1930); Jo Anne Preston, *Teaching Becomes Women's Work in 19th Century New England* (1994); Jeanette Saton, *Narcissa Whitman: Pioneer of Oregon* (1941); Susan Strane, *A Whole Souled Woman: Prudence Crandall and the Education of Black Women* (1990).

173. Edward Halsey, *Catherine Maria Sedgwick* (1974); Elizabeth K. Helsinger, Robin Lauterbach Sheets & William Veeder, *The Women Question; Society and Literature in Britain and America, 1837-1883* 38-62 (1983); MEYER, *supra* note 172, at 107-27 (article by Helen Gary Cone); Sherbrooke Rogers, *Sarah Josepha Hale: A New England Pioneer, 1788-1879* (1985); 4 Justin Winsor, *The Memorial History of Boston, 1630-1880*, 350-52 (1881-1883).

174. See Caroline Bird, *Enterprising Women Passim* (1976); PERKINS, *supra* note 121, at 147-48 (1988); SCOTT, MAKING WOMAN VISIBLE, *supra* note 31, at 4-13 (describing Eliza Lucas Pinckney); Frances Leigh Williams, *Plantation Patriot: A Biography of Eliza Lucas Pinckney* (1967).

175. BOUTON, MEMOIR, *supra* note 66 (1839); COTT, BONDS OF WOMANHOOD, *supra* note 88, at 126-59; SCOTT, MAKING WOMAN VISIBLE, *supra* note 31, at 261-78; Nancy F. England, *Young Women in the Second Great Awakening in New England*, 3 *Feminist Stud.* 15 (1975); Mary Beth Norton, *The Evolution of Women's Experiences in Early America*, 89 *Am. Hist. Rev.* 593, 615-16 (1984).

176. For a law review article noting the possibility of women debtors, see J.H. Bissell, *Married Women as Bankrupts*, 13 *Am. L. Reg.* 129 (1874).

177. Alexander Flick, *Under Duke & King* (1933).

178. See *supra* notes 46-52.

179. The most comprehensive work on state insolvency laws is COLEMAN, DEBTORS AND CREDITORS, *supra* note 111. Some attention is paid to state debtor-creditor law in NELSON, AMERICANIZATION, *supra* note 25, at 41-45, 147-54; FRIEDMAN, HISTORY, *supra* note 103, at 240-43; CHUSED, MARRIED WOMEN, *supra* note 25, at 1401-02.

180. COLEMAN, DEBTORS & CREDITORS, *supra* note 111, at 47.

insolvency laws.¹⁸¹ Ann Reynolds, Abigail Stevens, and Margaret Willett all obtained relief under various eighteenth-century New York State debtor-creditor laws.¹⁸² Some women in debt lived in poorhouses.¹⁸³ Others, including Elizabeth Beaty, were supported by local communities.¹⁸⁴

A number of women debtors were imprisoned.¹⁸⁵ Our research into New York insolvency files shows that Ann Aldison, Clara Batterby, Eliza Carey, Ann and Margaret Howe, Sarah Miller and Jane Noe were all in jail for non-payment of debt.¹⁸⁶ A widow who owed 68¢ was in jail in Rhode Island in 1830.¹⁸⁷ Women were in debtor's prison in South Carolina in the 17th century.¹⁸⁸ It has even been suggested that women manufactured debts so they could spend time in debtor's prison to partake of the apparent orgies that took place there.¹⁸⁹

The story of Hannah Crispy, in jail in Boston in 1820 for a debt of \$12, is worth retelling because it highlights the impact of women's involvement in the world of debt.¹⁹⁰

A woman by the name of Hannah Crispy, was confined in Boston jail, July 12, 1820, on an execution for a debt of \$12, and the cost \$4.63; with an infant at her

181. *Id.* at 79.

182. This information was obtained by an examination of original New York state insolvency files for the period 1790-1840. We uncovered numerous women debtors who sought relief. This state research should, at some future time, be compared with our findings under the Bankruptcy Acts of 1800 and 1841 to see if the profile of women debtors differed under federal and state law.

183. Martha Branscombe, *The Courts and the Poor Laws in New York State, 1784-1929* (1943); Raymond Mohl, *Poverty in New York, 1783-1825* 52-121 (1971).

184. JENSEN, LOOSENING THE BONDS, *supra* note 167, at 57-62; SCOTT, MAKING WOMAN VISIBLE, *supra* note 31, at 261-78; Douglas Lamar Jones, *The Strolling Poor: Transiency in Eighteenth Century Massachusetts*, 7 *J. Soc. Sci.* 28 (1975).

185. *See infra* notes 186-189 and accompanying text. Evidence of women in prison is suggested by *Report of a Committee of the Humane Society Appointed to Inquire into the Number of Tavern Licenses and to Visit Bridewell 1810* (available at the New-York Historical Society) and George Bishop, *Every Woman Her Own Lawyer: A Private Guide to all Matters of Law, of Essential Interest to Women* 348-51 (1858) (hereinafter cited as "BISHOP").

186. *See supra* note 182.

187. This debtor is referenced by both COLEMAN, DEBTORS AND CREDITORS, *supra* note 111, at 89 and FRIEDMAN, HISTORY, *supra* note 103, at 240.

188. *See* Lawrence Friedman, *Crime and Punishment in American History* 50 (1993).

189. *See* Mary Sumner Benson, *Women in Eighteenth Century America: A Study of Opinion and Social Usage* 231 (1935); Marshall Van Winkle, *Imprisonment for Debt*, 55 *Alb. L. J.* 282, 326 (1897). Even assuming the accuracy of the fictitious debt stories, there is another likeness between women debtors and prostitutes. Some women may have turned to prostitution as a way of repaying their debts and thereby avoiding the use of any formalized insolvency process. Indeed, there is evidence that some women turned to prostitution to increase their income in light of the low wages paid to women. *See* Timothy Gilfoyle, *City of Eros: New York City, Prostitution, and the Commercialization of Sex* 59-62 (1992).

190. She is mentioned in an appendix to a speech made by Colonel Richard M. Johnson of Kentucky titled *On a Proposition to Abolish Imprisonment for Debt*, submitted to the United States Senate on January 14, 1832 and published independently by the SOCIETY FOR THE RELIEF OF THE DISTRESSED. (Original on file with Karen Gross.)

breast, so feeble as to require constant attention. She and the child remained in a crowded apartment of the jail over 20 days, when the infant became so bad that its life was despaired of, being constantly in fits for three or four days' [.A] few hours before it died, it was taken out to breathe its last in the arms of a stranger, while its miserable mother was kept in confinement; the unfeeling creditor refusing to discharge her on any condition short of getting his debt. After the child died, many severe remarks were made, and considerable excitement was caused by the circumstance, and the attorney discharged her on his own responsibility, to attend the funeral of her child. The facts were stated by the attorney, and can be proved by unquestionable evidence.

In light of this and similar stories, perhaps it is not surprising that one of the first inroads into eliminating imprisonment for debt generally was to exempt women from the scope of these laws.¹⁹¹

3) Women's History Expanded

In the context of their time, then, the forty-nine women debtors we have identified offer further support for rebutting the persistent myths that women in the 18th and 19th centuries did not work, own property, or obtain credit. They are part of a group of women who may not have achieved fame in the traditional sense, but they are women whose lives change the way history should be told.

In a certain sense, the financial failure of the women debtors we identified is evidence of their success. The first female bankrupts found a way to resolve their economic difficulties that we were not aware was used by women at that time. Although a distinct minority within the world of debtors, they partook of the benefits of the federal bankruptcy laws.¹⁹² We do not know what propelled the voluntary debtors to seek a legal mechanism as the avenue for redressing their financial ills. But because they made that choice, they suggest that we have only scratched the surface in our thinking about early women's rights and opportunities within the legal system.

V. Conclusion

We have now answered Judge Bihary's two questions. We have critiqued the work of Professor Warren as a means of beginning a new telling of bankruptcy history. We have generated new empirical data, and the forty-nine ladies in red now hopefully will become part of the history of bankruptcy and the history of women. In the process of developing

191. See COLEMAN, DEBTORS AND CREDITORS, *supra* note 111, at 45, 52, 62, 64, 68, 73, 77-78, 119, 138, 149, 155, 177, 224, 243, 247; BISHOP, *supra* note 185, at 48-53; BAUER, THE MOVEMENT, *supra* note 122, at 144, 265; CHUSED, MARRIED WOMEN, *supra* note 25, at 1406-08.

192. Even the involuntary debtors obtained the benefits of bankruptcy, including the possibility of a discharge.

answers, we have raised many questions.¹⁹³ These are questions that, when answered, may change how we think about bankruptcy — in the past, present and future. Since these questions cover a wide range of topics, we have grouped them thematically.

- **The Language of Statutes:** Why did British bankruptcy laws utilize gender-inclusive language and is that consistent with other British laws? Why did Congress carry over the gender-inclusive language from the British bankruptcy law into the Act of 1800? Why was the gender-inclusive language eliminated from the Act of 1841? How pervasive was the use of gender-inclusive language in state statutes, and was it used in any state debtor-creditor laws?
- **Profiles of Debtors:**¹⁹⁴ What will our profiles of women bankrupts look like once we have compiled the missing data? What are the profiles of male bankrupts under early federal bankruptcy laws? How do the profiles of male bankrupts compare to those of female bankrupts? How did both groups of debtors experience the bankruptcy process, and how did it affect them differently? How do debtors under state insolvency laws compare to both?
- **Operation of the Bankruptcy System:** Who were the judges, commissioners and lawyers serving in bankruptcy cases and how, if at all, did they affect the operation of the bankruptcy process? What were the actual distributions to creditors under the Acts, and how did administrative expenses and exemptions figure into those calculations? How did payouts under state insolvency proceedings compare to those under the early federal bankruptcy laws? Are there regional or gender differences in the amount of distributions made to creditors under either federal or state bankruptcy/insolvency laws? Why would debtors opt for federal bankruptcy law over state insolvency proceedings?
- **Women's Studies:** Do our findings provide further evidence for the perception that the bonds of womanhood during the 19th century were not as binding as was previously thought? Is there now an additional basis for examining women's involvement in legal affairs beyond those "naturally" raising women's issues such as marriage, divorce, property, inheritance and children? Did marriage impinge on women's independence as much as we have presumed? Are the negative connotations associated with the phrase "working woman" a product of myths created in the twentieth century?
- **Modern Implications:** What has happened to women debtors under subsequent bankruptcy laws: the Act of 1867, the Bankruptcy Act of 1898 and the Bankruptcy Reform Act of 1978? What have been the

193. This is reminiscent of the comment of Marshall Smelser and William Davisson in their article "The Historian and the Computer: A Simple Introduction to Complex Computation," *ESSEX INSTITUTE HIST. COLLECT.*, April 1968, at 104. "After all, what is a collection of historical data but a collection of answers waiting to be questioned." *Id.* at 118, reprinted in *KNIGHTS, THE PLAIN PEOPLE*, *supra* note 165, at 3.

194. Many of the same questions can and should be asked about creditors.

experiences of women debtors in other countries from 1800 to the present? What are the implications of our findings for the understanding and development of contemporary bankruptcy law and practice?

We end as we began—with questions, albeit different ones. Resolution of these new questions must await further research. In the meanwhile, we can derive significant satisfaction from knowing that the voices of the ladies in red will be heard.

Appendix 1

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Appendix 2

New England Region

Curtis, Lois (Conn.)
 Fifield, Susan (Ma.)
 Hodgson, Mary Ann (Ma.)
 Hussey, Nancy J. (Me.)
 Phipps, Elvira (Ma.)
 Wheeler, Mary (Ma.)
 Willey, Mary (Me.)

Northeast Region

Bournot, Hortense (N.Y.)
 Brown, Angelina (N.Y.)
 Cuddy, Phoebe (N.Y.)
 Harrington, Mary Ann (N.Y.)
 Hays, Ann Bennett (N.Y.)
 Milford, Eliza (N.Y.)
 Richmond, Jane (N.J.)
 Russell, Anna Eliza (N.Y.)

Mid-Atlantic Region

Caulk, Lois (Del.)
 Dewars, Elizabeth (Va.)
 Fulcher, Elizabeth (Va.)
 Goudkos, Amelia (Va.)
 Hunt, Ann (Md.)
 Ingham, Lydia (Pa.)
 McCaney, Caroline (Md.)
 Primrose, Violet (Md.)
 Webb, Elizabeth (Md.)
 Williams, Mary (Md.)

Southeast Region

Ashley, Frances (Tenn.)
 Dotson, Mary (Ky.)
 Foster, Sina (Tenn.)
 Goddard, Judith (N.C.)
 Hagan, Sally (Ky./Tenn.)
 Lawrence, Charlotte (Tenn.)
 Mays, Eleanor (Tenn.)
 Skinner, Matilda (N.C.)

Southwest Region

de Alpruente, Cath. Isa. (La.)
 Bolly, Delphine (La.)
 Bossie, Mrs. Benjamin (La.)
 Creon, Marie Azalie (La.)
 Jone, Cleophine Allain (La.)
 Martin, Mary C. (La.)
 Norton, Elizabeth (La.)
 Stone, Ann (La.)

Great Lakes Region

Benjamin, Hannah (Oh.)
 Kirk, Aquilla M. (Oh.)
 Martin, Ann (Mich.)
 Pandalton, Joy (Oh.)
 Porter, Emeline (Oh.)
 Young, Mary (Oh.)