Seeing Past Emergencies:
The Institutionalization of State-Level Debtor Protections

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Introduction

On March 4, 1933, William Langer, the governor of North Dakota, declared an economic emergency and instituted, through executive proclamation, "a general moratorium on all debts of every kind and description." Langer took this step primarily at the behest of the states' farmers, who had organized in response to overwhelming economic crisis. One of their key demands was the suspension of mortgage foreclosures. While organized farmers worked through the state's political institutions, there were also several instances in which North Dakota farmers mounted armed resistance to particular foreclosure sales.

After declaring his moratorium, Langer set about enforcing it through pressure on district court judges and state sheriffs and through his use of the National Guard. He enlisted the help of the state's organized farmers to keep him informed about potentially recalcitrant judges, and then wrote letters directly to those judges to persuade them to participate in the moratorium by issuing restraining orders. He also sent grateful letters to judges after they issued orders restraining government officials from executing judgments in foreclosure cases, and kept in close contact with these cooperating judges, even asking them to intervene in the cases of individual foreclosures that had come to his attention.[1] At the same time, he solicited letters from sheriffs who had been ordered to conduct foreclosure sales, and responded to these letters with an assurance that he would protect them from any legal consequences of their compliance with his moratorium. Langer also ordered the Acting Adjutant General of the North Dakota National Guard to gather evidence against any sheriff who violated his proclamation, and on thirty separate occasions, ordered the National Guard to halt impending foreclosure sales.[2]

Langer was not the only governor to take such steps. Indeed, in issuing his proclamation, he was following in the footsteps of Minnesota's governor, Floyd B. Olson, who addressed thousands of angry farmers from the steps of the state capitol, declaring "if the legislature. . .does not make ample provision for the sufferers in this State. . .I shall invoke the powers that I hold. I shall declare martial law."[3] On February 23rd of 1933, citing the economic emergency and the mounting threat of armed resistance to foreclosure sales, Olson declared a moratorium on mortgage foreclosures until May 1st of that year. This executive proclamation, coupled with increasing pressure from the farmers that supported it, prompted the legislature to pass a law validating all postponements made in compliance with the governor's

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[1] Walter Anhalt and Glen Smith, "He Saved the Farm? Governor Langer and the Mortgage Moratoria," *North Dakota Quarterly* 44, no. Autumn (1976): 10-11.
[2] Ibid., 12-13.
[3] Quoted in William L. Prosser, "The Minnesota Mortgage Moratorium," *Southern California Law Review* 7, no. 4 (1933): 355.

moratorium and authorizing sheriffs to adjourn foreclosure sales until May 1st. The constitutionality of this moratorium would become the subject of the Supreme Court case, *Home Building & Loan Association v. Blaisdell,*[4] a touchstone in American conversations about emergency powers and the Constitution.

In this ticket I propose that we examine *Blaisdell* and the New Deal mortgage moratoria it reviewed through the lens of political, rather than doctrinal history. In other words, I situate this constitutional episode not in the context of emergency powers cases and questions, but in the context of debt politics and legal protections for debtors. American laws for the protection of debtors were not sporadic aberrations from constitutional and political norms, and the Minnesota moratorium, which the Court upheld in *Blaisdell*, was not the rare product of an exceptional situation, but a standard and well-established state response to economic crisis. In fact, states' legal protection of debtors was a standard feature of nineteenth-century politics. States not only routinely passed temporary relief laws, but also enacted enduring and evolving property exemptions, as well as separate laws allowing insolvent debtors to discharge their debts. These state-level debtor protections were ubiquitous, durable, and continually built on previous developments. In other words, the governors and state legislatures that responded to debtors during the New Deal were not merely attempting to loose their constitutional bounds in times of emergency, but were also participating in a long-term, state-driven process of institution building that pre-dated the New Deal by at least a century.

I argue that state governments routinely regulated the relationship between debtors and creditors (both through temporary responses to crises and enduring policies) in an attempt to ensure that insolvent debtors would not face ruinous consequences when they could not meet their contractual obligations. In other words, there was never a libertarian golden age in which the Contracts clause successfully blocked state officials from intervening in contractual relationships at the expense of creditors. What resulted instead was an enduring regime of statutory protections for insolvent debtors, so popular and entrenched that it shaped both federal bankruptcy laws and federal constitutional understandings. This "ticket" sketches the political and constitutional development of that regime, arguing that the governmental prerogative to protect debtors existed well before the Great Depression, and shaped political and constitutional development well before *Blaisdell*. It highlights the role of state governments in building a safety net for debtors, both through temporary relief laws, which were often deemed to violate the federal Constitution, and through more permanent bankruptcy-type protections, which consistently survived judicial scrutiny.

Blaisdell as a case about debt politics:

Executives Langer and Olson took dramatic and unusual measures on behalf of their states' debtors, but their actions were not isolated moments of gubernatorial overreaching. Not only had governors begun to assume increasing

[4] Home Building & Loan Association v. Blaisdell, 290 U.S. 398 (1934)

responsibility for policymaking throughout the nineteenth century,[5] but many state legislatures reacted to the economic crisis of the Great Depression by temporarily delaying (or staying) creditors' collection efforts. In the course of eighteen months, over 1933-4, twenty-seven states passed some form of legislation to delay mortgage foreclosures.[6]

These state measures were widely understood as constitutionally suspect. In fact, the original purpose of the Contracts clause was, arguably, to prohibit just this sort of measure. One object of the Federalists in designing the Constitution was clearly to create a national commercial republic by ensuring the availability of credit, both between states and from other nations. In ratifying the Contracts clause, then, states would cede authority over the relations between debtors and creditors to the federal government, which would eliminate the variety of state practices that made it so difficult for creditors to reliably collect the money owed to them. The Bankruptcy clause is also understood as part of this same project, giving power to the federal government over debtor-creditor relations precisely in order to take this power away from the states, ensuring that the law would be uniform across them, and that in the event of a debtor's insolvency, state legislatures would not give preference to his local creditors.[7]

Throughout the nineteenth and early twentieth centuries, the Supreme Court consistently nullified state relief laws as violations of the Contracts clause. One New-Deal-era law review article noted that states' debt-relief measures had very rarely survived judicial scrutiny, and never before at the Supreme Court level. Until *Blaisdell*, it explained "The path of each preceding depression [could] be traced through the courts by the wreckage of legislative 'relief' which impaired the obligation of contracts. A body of two hundred state decisions, with perhaps twenty in the Supreme Court, bear witness to the fact that, heretofore at least, the contracts clause has withstood attack."[8] Before the Supreme Court decided *Blaisdell*, there was widespread doubt about whether Minnesota's law would survive review, and widespread conviction among its opponents that it ought not to.

When the Supreme Court upheld the Minnesota foreclosure moratorium law in *Blaisdell*, it seemed to back away from its well-established, restrictive reading of the Contracts clause. Thus, this decision seems to have loosened the well-established constitutional restriction of the Contracts clause in the name of economic emergency. Justice Hughes's majority opinion declared, somewhat confusingly, that even before the emergency, the state had possessed the

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[5] Michael Besso, "Constitutional Amendment Procedures and the Informal Political Construction of Constitutions," *The Journal of Politics* 67, no. 1 (2005).
[6] Robert H. Skilton, "Mortgage Moratoria since 1933," *University of Pennsylvania Law Review* 92, no. 1 (1943): 55.
[7] Judith Koffler put it this way: "History leaves little doubt that the parochial interests enshrined in state exemption laws were among the precise evils impeding national Contracts and credit addressed by the Framers."Judith Schenck Koffler, "Bankruptcy Clause and Exemption Laws: A Reexamination of the Doctrine of Geographic Uniformity, The," *New York University Law Review* 58, no. 1 (1983): 96.
[8] Prosser, "The Minnesota Mortgage Moratorium."

constitutional power "to safeguard the vital interests of her people," and that the economic emergency had merely "furnish[ed] the occasion for the exercise of this reserved power." This opinion features prominently in discussions of American constitutionalism and emergency powers in large part because it seemed to stretch the bounds of the Contracts clause, or as some have argued, simply destroy its restraints.

Scholarly attention to *Blaisdell* has therefore tended to revolve around whether the Contracts clause would, could, and/or should recover from the *Blaisdell* decision and the larger New Deal settlement of which it was a part.[9] Justice Hughes was quite clear about his expectation that the Contracts clause would operate in its accustomed fashion once the emergency had ended. He explained that courts could and should invalidate moratorium laws as soon as, and whenever, no emergency existed to justify them. The picture here is that an emergency can stretch the contracts clause, but that after the emergency has ended, the Constitution (as enforced by courts) will snap back to its normal state, effectively constraining the state once again and once again limiting its interference in the contractual relationships between debtors and creditors. Unsurprisingly, *Blaisdell*'s critics tend to describe moratorium laws like Minnesota's as products of irrational and overheated majoritarian politics, exactly the kind of outcome against which the federal Constitution and its Contracts clause were designed to stand guard. By stretching the restrictive Contracts clause to permit these policies, they argue that *Blaisdell* undermined the principle of limited government, and dramatically diminished the sphere of personal freedom that the Constitution guaranteed.[10]

Rather than debating the normative merits of a stretchy Contracts clause, several scholars have presented a historicized account of the case, treating *Blaisdell* as one event in a much longer history of constitutional development. I join them in arguing that state-level violations of the Contracts clause, through temporary stay laws, were so common throughout the nineteenth century that states' practical ability to pass those laws became institutionalized, part of a set of responses for which states routinely reached in times of economic crisis, with only limited concern about their constitutionality. This argument builds on Sandy Levinson's urging that we remember the regularity of crises in American history, and the pressure that they tend to place on settled constitutional meanings. Professor Levinson reminds us that the country has faced many emergencies, each of which has forced citizens, leaders, and judges to grapple with the tension between adherence to constitutional norms and adaptation to new and pressing circumstances, and that adaptation has often won the day. Professor Levinson points out that this adaptation has not destroyed the basic rule of law or the principle of limited government, but has

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[9] For example, see Rebecca M. Kahan, "Constitutional Stretch, Snap-Back, & (and) Sag: Why Blaisdell Was a Harsher Blow to Liberty Than Korematsu Comment," *Northwestern University Law Review* 99, no. 3 (2004).
[10] See for example: ibid., and Richard A. Epstein, "Toward a Revitalization of the Contract Clause," *University of Chicago Law Review* 51, no. 3 (1984).

thoroughly transformed the legal order.[11]

This ticket also builds on Kim Scheppele's urging to attend to the way that normal constitutionalism and normal political practices are shot through, and even built on, emergencies. Professor Scheppele cautions us against framing transformative, emergency moments as departures from normal constitutionalism. Instead, she demonstrates that what we consider "normal constitutionalism" is in fact the product of a series of emergencies. She explains: "the 'normal' American constitutional order can be seen as thoroughly shot through with emergency law and. . .this constant sense of emergency has fundamentally shaped the possibilities of American constitutionalism."[12] In other words, governments do not (as Carl Schmitt so famously posited) toggle between the normal operation of the law and its exceptional, emergency suspension. Emergency is not a special legal state or status that takes us outside normal law, in other words, but is the very foundation of the "normal" law. Thus, I describe the way that debtor protections, often passed in the wake of economic crises, became entrenched in "normal" (i.e. non-emergency) practices and shaped the development of enduring legal policies.

While drawing on the work of Professors Levinson and Scheppele, this ticket differs from their treatments of *Blaisdell* because it examines *Blaisdell* as a case about debtor protections, rather than focusing on its implications for the nature of emergency powers. This altered perspective reveals that although *Blaisdell* may have been transformative in terms of Contracts clause doctrine, it was not nearly so politically transformative. In fact, states had long been violating the Contracts clause to pass relief laws with relative impunity. Thus, *Blaisdell* did not reflect the exercise of a new government power or government's adaption to an unprecedented exigency. On the contrary, temporary relief laws were woven into the fabric of American politics well before the Great Depression. Furthermore, these temporary relief laws were only one type of legal measure that states took to protect insolvent debtors, and the nineteenth-century Court routinely upheld many of these other measures. Through this lens, *Blaisdell* does not seem, as Professor Levinson argues, to be "an essential symbol of the transformation of the duties of the state,"[13] but appears instead to be the reflection of a fairly routine state action in the performance of a long-established state role in the protection of debtors.

Temporary Debtor Protections

The mortgage moratoria that states passed during the New Deal were, therefore, far from exceptional. They were instead part of an institutionalized state practice of meeting debtors' demands through the passage of temporary stay laws. While individual stay laws were temporary by their very nature, the practice of

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[11] Sanford Levinson, "Constitutional Norms in a State of Permanent Emergency Symposium: Emergency Powers and the Constitution," *Georgia Law Review* 40, no. 3 (2005).

[12] Kim Lane Scheppele, "Small Emergencies Symposium: Emergency Powers and the Constitution: Comment," *Georgia Law Review* 40, no. 3 (2005).

[13] Levinson, "Constitutional Norms in a State of Permanent Emergency Symposium: Emergency Powers and the Constitution," 722.

passing stay laws when states faced economic disaster was a well-entrenched norm that the Constitution's ratification did not successfully eradicate.[14] The nineteenth-century economy was characterized by periods of deep and potentially ruinous deflation. Real economic crises, then, were not the exception for the first century of American history, but the rule, and debtors clamored for relief from the terms of their contracts with creditors during each of these crises. When enough insolvent debtors demanded relief, state governments consistently acquiesced.

State governments ultimately invented a wide variety of statutory debtor protections. Most of these protections took the form of "stay laws", staying the execution of judgments against debtors, installment laws, extending the period of time over which debts could be repaid, and/or appraisal laws, forbidding sale of debtor's property at "fire-sale" prices. States combined these three types of protections in different ways, returning to them with each economic crisis. This tradition began with the birth of the United States, as the new states passed a wave of stay, installment, and appraisal laws.[15] After the panic of 1819, many states again intervened in private debt contracts, as ten (of the nineteen existing) states passed stay laws.[16] Following the panic of 1837, states passed new stay and appraisal laws for the protection of debtors, and some legislatures extended the time for redemption of mortgages.[17] States returned to this form of legislation in response to the panic of 1857 and the economic devastation of the Civil War.

The continual passage of state relief laws came to define the possibilities of state-level governance by establishing the states' practical ability (if not their constitutional authority) to pass such laws when they became sufficiently popular with their voters. Since stay laws were generally passed as temporary measures, the fact that relief laws were likely to be voided a year or two after their passage did not deprive them of political value, and some have argued that judicial nullification did not even deprive them of their salutary effect for debtors.[18] As one critic of these relief laws complained, "Until these statutes have been declared unconstitutional by some competent tribunal, their operation is the same as if their validity were unimpeachable. Many years must elapse before all the classes of these laws can be brought to the examination of the highest national tribunal. And new statutes can be passed much faster than the old ones can be declared unconstitutional."[19] The time between the passage of a relief law and its nullification by a constitutional court created a space in which these potentially unconstitutional laws operated like any others.

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[14] Steven R. Boyd, "The Contract Clause and the Evolution of American Federalism, 1789-1815," *The William and Mary Quarterly* 44, no. 3 (1987).
[15] Ibid., 538.
[16] Patrick Bolton and Howard Rosenthal, "Political Intervention in Debt Contracts," *Journal of Political Economy* 110, no. 5 (2002).
[17] Charles Warren, *Bankruptcy in United States History* (Cambridge, Mass.,: Harvard University Press, 1935), 87-8.
[18] Ibid.
[19] "On a National Bankrupt Law," *The American Jurist and Law Magazine* 1, no. Jan. (1829).

The Supreme Court could nullify relief laws, but only after their authors had reaped political rewards from their passage. Therefore, the knowledge that stay laws might not survive judicial scrutiny did not prevent governors from promoting or legislatures from passing them. For instance, Governor Olson knew that he lacked constitutional authority to make his proclamation,[20] and several members of the Minnesota legislature seem to have voted to ratify his moratorium despite their conviction that the resulting law would be held unconstitutional.[21]

The Supreme Court's interpretation of the Contracts clause may not have shifted until *Blaisdell*, but as we have seen, the courts' stringent enforcement of the Contracts clause was never able to eradicate the state practice of protecting debtors by staying the execution of judgments against them. States' ability to pass these temporary relief measures was effectively institutionalized, regardless of a Contracts clause that seemed to disavow it. Although the Supreme Court continued to insist that stay laws violated the Contracts clause, the practical possibility that state actors might pass some kind of stay law had had been an enduring feature of American federalism for over a century before the Supreme Court upheld Minnesota's moratorium law.

<u>Long-Term Debtor Protections</u>

Although states consistently ignored the Contracts clause to pass stay laws, a different constitutional story characterizes the development of other types of protections for debtors. Nineteenth-century state governments offered protection to debtors not only through measures that were designed to operate in the midst of a public crisis, but also through legislation that was intended to be longer lasting, and to regulate the non-emergency relationships between debtors and creditors. In particular, states passed laws that allowed insolvent debtors to discharge their debts in exchange for a liquidation of their assets, which would be divided among their creditors. (Some states called these bankruptcy acts, but they were more frequently described as insolvency laws). States also passed property exemptions, which ensured that debtors could keep certain types and/or amounts of property

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[20] George H. Mayer, *The Political Career of Floyd B. Olson* (Minneapolis: University of Minnesota Press, 1951), 127.

[21] See Prosser, "The Minnesota Mortgage Moratorium," 360. It is worth noting here that, while the threat of judicial review was not sufficient to prevent the passage of these laws, it does seem to have altered their shape. For instance**,** although the MN legislature had doubts about the constitutionality of the law, its members did shape the law with the hope that it would allow it to survive judicial scrutiny. Thus, legislators worked closely with the state Attorney General to draft the moratorium act. See "Minnesota Attorney General Reports and Opinions," (1934). MN was not alone in crafting a relief law to maximize the chances that it would survive judicial review. Surveying state relief laws passed during the Great Depression, one scholar concluded "Legislatures have evidently attempted in these stay acts to avoid some of the pitfalls into which their predecessors fell." Joseph P. Chamberlain, "Legislatures and Relief of Debtors," *American Bar Association Journal* 19(1933).

even if they were unable to re-pay their creditors. Both measures were often passed in response to economic crises, but were also intended to protect insolvent debtors in non-crisis times, not simply to ameliorate emergency situations.

As with temporary stay laws, these more permanent bankrtuptcy-type statutes were widespread and persistent throughout the nineteenth century. By 1815 alone, ten states had already passed such statutes,[22] and by 1909, eleven additional states had passed laws that provided for the discharge of an insolvent debtor's debts and the distribution of his property to creditors.[23] Unlike stay laws, the Supreme Court deemed the prospective application of these laws to be constitutionally permissible well before the twentieth century.

The first time that the Supreme Court reviewed one of these bankruptcy-type laws, in 1819, however, the Court declared it to be a violation of the Contracts clause. This case, *Sturges v. Crowninshield*,[24] dealt with a New York statute that allowed insolvent debtors to liquidate their assets and divide them among their creditors, safeguarded the debtor's person from prison and his future earnings from his creditors in exchange, thereby discharging the debtor from liability for all of his existing debts. The Marshall Court (famous for its enthusiastic enforcement of the Contracts clause) ruled that New York's law did indeed violate the Contracts clause. Yet, for most of the nineteenth century, states maintained the constitutional authority to create legal procedures through which insolvent debtors could discharge their debts.

While Sturges struck down New York's law, it nonetheless created a constitutional space for states to regulate the relationship between insolvent debtors and creditors. In *Sturges*, New York's law was challenged not only on the grounds that it violated the Contracts clause, but and also on the grounds that it was a bankruptcy law, and that it therefore violated the Constitution's Bankruptcy clause. The argument here was that, by endowing Congress with the power to create bankruptcy laws, the Constitution had deprived the states of the power to pass them. The Marshall Court disagreed, ruling that that only the enactment of a federal law, not the mere ratification of the Bankruptcy clause, could prevent states from enacting bankruptcy statutes of their own. Absent Congressional action on the subject, states were free to continue passing bankruptcy laws, as long as those laws did not violate any of the other constitutional restrictions placed on states. Of course, the Marshall Court's reading of the Bankruptcy clause might have been little more than a footnote in the story of debtor protections if Congress had passed its own bankruptcy law. However, despite the fact that bankruptcy law was a highly salient political issue throughout the late eighteenth and entire nineteenth centuries, Congress did not pass a permanent Bankruptcy statute until 1898. Before that, Congress only managed to pass three very short-lived bankruptcy acts, leaving state governments empowered to discharge debtors' throughout almost the entire

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[22] Boyd, "The Contract Clause and the Evolution of American Federalism, 1789-1815."

[23] Samuel Williston, "The Effect of a National Bankruptcy Law Upon State Laws," *Harvard Law Review* 22, no. 8 (1909).

[24] Sturges v. Crowninshield, 17 US 122 (1819)

nineteenth century as long as those discharge laws did not violate the Contracts clause.

The 1820 Supreme Court opinion in *Ogden v. Saunders*[25] left states with significant room to continue creating debtor protections that would not be seen as Contracts clause violations. In *Ogden*, the Court held that prospective laws, that is laws applying to debts contracted after the passage of a bankruptcy law were constitutional. Only retrospective laws, those applying to debts contracted before the passage of the law, violated the Contracts clause. Justice Washington reasoned that bankruptcy laws passed before the creation of a contract are effectively incorporated into that contract, and cannot therefore impair its obligations. "It is, then, the municipal law of the state, whether that be written or unwritten, which is emphatically the law of the contract made within the state, and must govern it throughout wherever its performance is sought to be enforced. It forms, in my humble opinion, a part of the contract and travels with it wherever the parties to it may be found." Washington's reasoning here reflects the fact that states were not active in protecting debtors merely during times of economic crisis. Instead, Washington recognized that state-level debtor protections already established the background of legal rules and norms against which debt contracts were constantly being undertaken.

State legislatures, particularly in agrarian states, were not shy about establishing a set of background rules that would help to protect debtors who found they could not repay their debts. One nineteenth-century innovation, the property exemption, became a particularly popular way to effect this type of protection. The property exemption specified certain types and/or amounts of property that could never be seized, even from insolvent debtors, to be sold for the benefit of creditors. By 1845, fifteen of the twenty-seven states had exempted various kinds of chattel, like tools of the trade and livestock from forced sale.[26] Just as the Supreme Court ruled, in *Ogden*, that prospective state bankruptcy laws did not violate the contracts clause, it also ruled that the Contracts clause did not prohibit states from passing prospective property exemptions. The 1843 decision in *Bronson v. Kinzie*[27] held that such property exemptions did not violate the Contracts clause and explained that "regulations of this description have always been considered, in every civilized community, as properly belonging to the remedy to be exercised or not by every sovereignty, according to its own views of policy and humanity. It must reside in every state. . .to protect them in those pursuits which are necessary to the existence and well-being of every community." Clearly, then, even in the 1840s, the property exemption was an entrenched feature of American law, and the state authority to provide some measure of protection to insolvent debtors was already established.

In the 1840s, states expanded the property exemption by guaranteeing that, in the case of insolvency, the debtors' entire homestead would be protected from

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[25] *Ogden v. Saunders*, 25 U.S. 213 (1827)

[26] Paul Goodman, "The Emergence of Homestead Exemption in the United States: Accimmodation and Resistance to the Market Revolution, 1840-1880," *The Journal of American History* 80, no. 2 (1993).

[27] *Bronson v. Kinzie*, 42 U.S. 311 (1843)

forced sale. Texas passed the first such law in 1839 in response to an economic depression, which hit the South with particular force in the 1830s, and lingered into the following decade.[28] This policy innovation spread quickly. “In the half dozen years after Texas passed its law, other southern states followed, for Texas threatened to attract migrants from a South prostrated by the depression. Citizens disinclined to move also demanded protection.”[29] Between 1839 and 1920, forty-six states passed at least one homestead exemption law (Goodman, 472). These laws, though invented in the wake of an economic emergency, became an enduring, and particularly influential, feature of the law regulating debtor-creditor relations.

Not only were homestead exemptions extremely durable at the state-level, even finding their way into many state constitutions, but states’ authority to control these exemptions was maintained even after the passage of federal bankruptcy statutes. When Congress succeeded in creating federal bankruptcy acts in 1867 and again in 1898, it incorporated existing state property exemptions directly into these laws. In other words, these national bankruptcy statutes allowed insolvent debtors, when seeking to discharge their debts, to withhold from creditors the amount and type of property that their state legislatures had designated as exempt through state law. It is important to note that, in the creation of American bankruptcy policy, states were not serving as laboratories for democracy, in which experimental policies could be tested and, if proved effective, could be adopted by the federal government. Instead, Congress carved spheres of state autonomy directly into the federal law, allowing states to preserve their long-standing roles in the protection of debtors.[30]

When Congress finally acted to regulate the relationship between creditor and insolvent debtor, it did not deprive the states of authority in matters of debtor-creditor relations, and thus did not achieve the uniformity of commercial law associated with the federal constitutionalist project. However, when the bankruptcy code of 1898 was challenged as a violation of the requirement that Congress pass uniform bankruptcy law, the Supreme Court once again interpreted the Constitution to accommodate the established state role in the protection for insolvent debtors. In 1902, the Supreme Court ruled that, in relinquishing control equally to all states, Congress had created a law that was uniform in its general operation, “although it may result in certain particulars differently in different states.”[31] Here, the Supreme

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[28] Ibid., 477.
[29] Ibid., 478.
[30] Unsurprisingly, where debtors were prevalent, state officials were loathed to cede authority over debtor-creditor relations to the federal government even when Congress did enact a bankruptcy statute. After the enactment of bankruptcy laws in both 1867 and 1898, some states kept pieces of their bankruptcy law in force, arguing that the state bankruptcy act was so different from the new federal law that it had not been superseded or replaced, but that both laws could constitutionally continue to operate. Some even argued that the state law could operate so long as bankruptcy proceedings had not actually been initiated under federal law. See Williston, "The Effect of a National Bankruptcy Law Upon State Laws."
[31] Hanover National Bank v. Moyses, 186 U.S. 181 (1902)

Court interpreted (or perhaps re-interpreted) uniformity not as a check on state variation, but as an even-handed federal commitment to its maintenance.[32] This ruling hearkens back to *Sturges*, in which Marshall found that "The Constitution does not grant to the states the power of passing bankrupt laws, or any other power; but finds them in possession of it." Interpreted in this way, the Bankruptcy clause did not, itself, prevent states from regulating the relationships between debtors and creditors. Instead, Congress could leave that long-exercised power in the hands of state governments, either by choosing not pass a bankruptcy law or by crafting one to include areas of continued state autonomy. Congress's repeated choice to leave property exemptions under state control reflected the deeply entrenched state practice of protecting debtors.

Conclusion

Reading the scholarly literature on *Blaisdell* and emergency powers, one might well imagine that Minnesota had passed the kind of debtor protection law not seen in America since the adoption of the federal Constitution, which so clearly forbade this type of state interference in private contracts (at least in non-emergency times). Yet, while many Federalists may have hoped that the Constitution would eradicate states' activities on behalf of debtors, that hope was never fulfilled. Neither the Contracts clause nor the Bankruptcy clause eliminated governmental efforts to protect insolvent debtors, and neither clause succeeded in wresting the ability to protect debtors from the states.

These debtor protections produced a (limited) safety net that private individuals could not contract away, regardless of the terms of their particular private contracts. The creation of this safety was gradual as new pieces were built upon existing ones, and as states learned new forms of debtor protections from one another. The Great Depression certainly prompted further action to fulfill this role, but it did not create it. Scholars have largely neglected this feature of American constitutional and political development. Debtors' demands have received attention in the context of controversies surrounding bimetallism and the Gold Clause cases, but even these cases are part of a much older tradition of influential agrarian demands for economic policies to relieve debtors. Elizabeth Sanders has described this agrarian statist agenda and its significant impact upon Congressional legislation and national state-building during the Progressive Era.[33] Here, I have begun to sketch a nationwide project of welfarist government dating back to the Revolution.

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[32] For an argument that this interpretation is not faithful to the original purpose of the Bankruptcy clause see Koffler, "Bankruptcy Clause and Exemption Laws: A Reexamination of the Doctrine of Geographic Uniformity, The."

[33] Elizabeth Sanders, *Roots of Reform : Farmers, Workers, and the American State, 1877-1917*, American Politics and Political Economy (Chicago: University of Chicago Press, 1999).

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