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“The Fallacy of Estimates”: Bulfinch, Boston, and Debtors’ Prison

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“The Fallacy of Estimates”: Bulfinch, Boston, and Debtors’ Prison

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History Senior Thesis
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Spring, 2018

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Introduction

Boston's Board of Selectmen was missing its Chairman when it met in August of 1811. Charles Bulfinch, who had been narrowly elected to the Board previous year, had been incarcerated in Boston's town jail as the result of a lawsuit brought by a shopkeeper over a debt of a little of \$400. He had borrowed money and leveraged his assets far beyond his means, and while none of his most largest creditors had brought lawsuits, his precarious financial situation made ultimate failure almost an inevitability.

Bulfinch was invested in a number of real estate development schemes that were transforming the topography of Boston in the wake of the Revolutionary War. Debtors' prisons and almshouses in cities and towns across the country were filling up as riskier and riskier financial schemes built on land investments were tying Americans into ever-widening circles of debt. The story of financial failure in such a climate was a common one. Charles Bulfinch's was not.

Bulfinch's debts far exceeded most people incarcerated, and his largest creditors offered him an unusually generous degree of forbearance. Boston's Brahmin class was reluctant to incarcerate one of its own, particularly one with a useful set of skills. We know little of Bulfinch's day-to-day experience while incarcerated, and he speaks of it little in his writing. Accounts of other incarcerated debtors that appeared in newspapers and the materials produced by prison reform societies give us a sense of the institutions, but the day-to-day life within the facilities themselves remain difficult to precisely describe.

Debtors' prisons have been examined at length by a number of different historians from many fields, in addition to political economists and policymakers. Debtors' prison has broad academic appeal, as it sits at the intersection of history, economics, criminal justice, law, and

architecture. Discussions of debtors' prisons are nested in histories of law, prisons, economics, but there are very few discussions of debtors' prisons in and of themselves. Bruce Mann's *Republic of Debtors* comes close, though debtors' prison is situated in a discussion of debt in early America, of which debtors' prison was naturally a central theme.

The academic treatment of prisons in America focuses on a shift of the philosophy of punishment from the Puritan model of Calvinist determinism to the more forgiving, rehabilitation-focused model of 1820s reformers. Incarcerated debtors complicate this narrative. Fairly sophisticated legislation was passed in colonial courts (albeit very inconsistently) restraining creditors from levying particularly nasty punishments against debtors. Prison facilities were made available in a culture that did not believe in rehabilitation and for which incarceration was not seen as an effective punishment. Debtors were not seen as criminals. They were stigmatized and abused, to be certain, but only fraudulent debtors were thought to have some latent criminality.

Prison reformers wanted debtors' prison abolished, comparing the practice to slavery. The reformers, like the Puritans whose practices they were trying to rectify, did not see debtors as criminals. The stories that they published in newspapers and the reports that prison reform societies produced all noted the good character of many incarcerated debtors.

Biography could serve as a valuable vehicle for understanding debtors' prison. Accounts from within debtors' prisons are rare, and usually produced through the editorial lens of either newspapers and other journalistic publications or through the materials of prison reform societies. Both tended to valorize debtors and demonize creditors. Thus, any debtor who kept detailed accounts of their time incarcerated would be invaluable. Martin Hershock's work, "A New England Prison Diary" attempts to do exactly this, describing the diary of a young man

incarcerated in a debtors' prison in Haverhill, Massachusetts. Hershock's work is not hugely useful for understanding debtors' prison for two reasons: firstly, Joy was incarcerated for libel, and happened to be held in a debtors' prison. For another, Hershock is more interested in Joy as a character, and devotes little time to discussing life inside of Haverill's debtors' prison and its facilities.

Individual cases can be used to craft a compelling image of debtors' prison as well. George Washington visited the Prune Street debtors' apartments in Philadelphia and was leered at by poor and insolvent debtors as he visited Robert Morris, a prominent financier of the American Revolution and a signer of the Declaration of Independence, Articles of Confederation, and the Constitution.¹ The newspaper magnate Horace Greeley was incarcerated in a French debtors' prison while visiting an American man being held there.² Debtors' prison touched the lives of many Americans, prominent and obscure alike. Yet, for all the experience of Americans in debtors' prison, there are very few accounts from within the prison walls. While this naturally presents methodological challenges for historians, it also makes incarcerated debtors interesting subjects for historical study.

By that token, Charles Bulfinch's life offers a unique view of debtors' prison. Bulfinch's economic, social, and political position made him an unlikely denizen of debtors' prison. Descended from prominent Loyalist families in Boston and educated at Harvard, he was connected and educated enough to comfortably assume a place in Boston's Brahmin class. His passion for architecture did not translate well into a career in Boston after the Revolution. Despite a substantial inheritance, augmented by his marriage to his cousin Hannah Apthorp, he

¹ Ryan K. Smith, *Robert Morris's Folly: The Architectural and Financial Failures of an American Founder* (New Haven: Yale Univ. Press, 2014), 3.

² "TWO DAYS AT CLICHY," *Boston Evening Transcript* (Boston, MA), June 22, 1855.

invested recklessly and found himself mired in debt. Political allies in the Brahmin establishment secured him a number of positions to give him a steady salary, but he took on more debt almost as soon as he had gotten out.

Historical work on Bulfinch's life is prolific, but much of it is rather outdated. The Kirker brothers wrote extensively on Bulfinch's life and civic service, but pay lip service to his numerous business failures. Ellen Susan Bulfinch (Charles Bulfinch's granddaughter) produced a very use collection of letters and family documents in 1896 that details Bulfinch's history and correspondences, but it is shot through with her commentary as a family member and does not make an historical argument about Bulfinch. Most other writing about Bulfinch concerns his architectural expertise and style. His incarceration is covered specifically by Jay Wickersham, whose article "The Financial Misadventures of Charles Bulfinch" proved invaluable to my research. Outside of Wickersham's work, Bulfinch's incarceration is little more than a footnote in writing about him.

Approaching this topic as a descendant of Bulfinch served as a powerful motivator; I grew up hearing stories of my great-great-great-great grandfather's achievements. Simultaneously, however, the family mythology is unsurprisingly incomplete. That 200 people of color were expelled from Boston under Bulfinch's authority in 1800 never made its way into the family history. Similarly, that the Apthorp family's wealth was, at least in part, the product of the slave trade never entered the oral history either. The shattering of the myths that I had been taught was inevitable, and I found that it actually helped me to see Charles Bulfinch as an individual product of his environment, not as a reflection on myself or my family today. In a larger sense, it also gave a dim outline of the genesis of the privilege that my family and I still enjoy today.

This project was an attempt on my part to understand the historical circumstances that Bulfinch lived in. I was drawn to his time in debtors' prison partly because it flew in the face of my understanding of Bulfinch, and partly because the prison in which he was housed in was designed by an architect who was deeply influenced by Bulfinch. That he built his own prison, both financially and literally, is an irony that I find compelling.

My first chapter describes changes to American understandings of debt and the function of debt as a financial mechanism. Puritan religious leaders such as Cotton Mather described debt as a moral failing, though debtors were still among the few wrongdoers in early colonial history who were incarcerated instead of subjected to public corporal punishment. As the thirteen colonies' economies became increasingly mercantile and different forms of paper currency allowed for debt to become a circulating medium, debt was seen less as a moral failing and more as a product of forces outside of any individual's control. These economic and cultural shifts called into question the justness of debtors' prisons, as the old Puritan models of morality did not prescribe any particular punishment. As colonial economies expanded and merchants, traders, and citizens of different states became more economically connected, particularly after the Seven Years' War and the Revolution, public sentiment about debtors became increasingly sympathetic, hardening opinion against the practice of incarcerating debtors. Bulfinch

My second chapter examines the legal environment surrounding debt in America after the Revolution, particularly in Massachusetts. There was no colonial template for legislation laying out procedures to adjudicate cases between, as each state had its own set of laws (or lack thereof). Massachusetts had fairly sophisticated legal apparatuses for dealing with debtors, including statutes restricting the power of creditors. During the Revolution, state legislatures seized Loyalist assets and nullified debts owed to them by other colonists and the states

themselves. Bulfinch's ancestors, particularly members of the Apthorp family, were dispossessed as a result of such policies, and although the Massachusetts State Legislatures returned some of their assets, the overall wealth of the family was impacted. Several members of the family were also either exiled or left after the Revolutionary War. Though Charles Bulfinch's inheritance was substantial, what he did inherit was diminished somewhat as a result of policies concerning debt in Massachusetts. By the same token, Bulfinch was lucky to have inherited anything from the Apthorps. Though many British and Loyalist claimants were compensated for the property taken by American authorities, many were not, further distinguishing Bulfinch's inheritance.

My third chapter details the prison facilities used to incarcerated debtors. Most cities and towns had a debtors' section attached to their local jails, though room was made in state prison if local facilities proved inadequate. Conditions were not markedly different between the two, though debtors or their creditors had to pay for their own supplies and upkeep. The divide between debtors and "criminals", as other prisoners were referred to by both incarcerated debtors and outside observers, was clear and strictly maintained. Many debtors and sympathetic outsiders wrote with concern and indignation about any mixing of debtors and criminals. According to the prevailing beliefs about crime in the nineteenth, criminality was communicable, mostly through speech and fraternization between criminals and non-criminals. Thus, debtors had to be kept safe from the corrupting influences of criminals. Wealthy debtors and those who were deemed unlikely to make an attempt at escape were sometimes allowed to go "out on the limits", where they were allowed a limited amount of freedom of movement during the day, allowed to roam within a certain distance of the prison. In the first decades of the nineteenth century, a number of legal cases about debtors who strayed, in the view of the their creditors, too far from their cell or apartment. In 1822, for example, Boston expanded the limits for debtors' travel to encompass all

of Suffolk County; in 1823, under pressure from creditors, the Massachusetts State Legislature restricted the limits once again to a few blocks around the prison. There is nothing in Bulfinch's correspondences and documents to suggest that he had any contact with criminals, though he was not out on the limits, as he and his friends and family were unable to put up a bond to secure partial freedom.

My final chapter deals with the abolition of debtors' prison, both at the federal level and in Massachusetts. The distinction that was drawn between debtors and criminals forced the question of whether incarceration was an appropriate punishment for debtors. As the philosophy of punishment changed from the Puritan model, where there was little purpose for incarceration, to the model championed by prison reformers, which stressed the role of prison as a mechanism of rehabilitation. Other reform movements, namely the abolition and temperance movements, fought for the abolition of debtors' prisons, likening the practice of incarcerating debtors to slavery, and arguing that debtors would become intemperate if exposed to criminals. Public opinion began to influence politicians, and legislative efforts to help debtors out of prison became proliferated in the 1820s and 1830s. These efforts culminated with the federal abolition of debtors' prison in 1833. Massachusetts, for its part, did not abolish debtors' prison entirely until 1855.

Charles Bulfinch took part in the debate about prison reform, himself the architect of a federal penitentiary in Washington DC. An adherent to what would later be referred as the Auburn philosophy of incarceration, which allowed a greater degree of social interaction between prisoners than the Philadelphia system, which emphasized solitary confinement as a method of purging criminality. Whether Bulfinch's month of incarceration in 1811 impacted his philosophy and design of prisons is unclear, but that he took up the banner of prison reform, a

movement that was opposed to the incarceration of debtors, suggests that he at the very least harbored doubts about the practice.

Charles Bulfinch's experiences appeal to a number of historical disciplines. His upbringing in Boston's upper-class social circles appeals to anyone trying to understand the origins of Boston's Brahmin class. His contributions to American architecture appeal to art historians, while his civic service demonstrates both the process of formation of the city government in one of America's oldest cities and how even elected government positions could function as patronage positions used to support political allies. However little Bulfinch's experience in debtors' prison is discussed, it in many ways ties all of the disparate themes of his life together. His passion for architecture and poor business acumen destroyed his financial life, prompting his allies in Boston's Federalist establishment to help him acquire administrative employment that would provide him with a steadier income than he would have as an architect. Despite his allies' efforts, his speculative investments brought him to financial ruin. Despite the assistance of his allies and the forbearance of his creditors, he wound up in one of the facilities that he would later have a hand in creating.

However atypical his story, Bulfinch's was only one of countless stories of indebtedness and financial failure in the early republic. Profound shifts in the pervasiveness, form, and economic function of debt through the seventeenth and eighteenth centuries set the stage for its sociopolitical redefinition. After Independence, the new nation was forced to grapple with how to treat their citizens who fell into debt. As debtors' prisons swelled with the victims of expanding markets and speculative schemes, Americans had to decide if debtors' misfortune was deserving of punishment, or if their destitution was sufficient penance for their ambition, or their failure. Charles Bulfinch occupies the story of that choice, as both an observer and a participant

in profound changes occurring in the American economy that would have profound ramifications not only in the economic life of the new country but in its moral and carceral life as well.

Chapter I: Social Constructions of Debt and the Moral Economy

A letter ran on May 22, 1790, in the *Gazette of the United States*. “Mr. Printer, By inserting this into your valuable paper, you will oblige a Debtor.”³ It continued, “TO WHOM IT MAY CONCERN,” and explained its author as the youngest of two brothers, denied inheritance by virtue of his birth, the younger sibling bought a large tract from “the Aborigines” and, he said, “by my own industry soon acquired a valuable estate.”⁴ The author explains that his older brother tried to wrest control of the property from him in 1775, and that the legal fees and other costs associated with the property mounted, causing him to go into debt.⁵ He described the deteriorating relationship between he and his creditors, as they accused him of trying “to jockey them”, their frustration reaching an apex when they said that “they would not trust me a penny to save me from the gallows, which I think is a very ungenerous treatment...”⁶

The letter concludes with a prescient question: “for who, in these modern times, would not discharge his debts with as little interest and inconvenience as possible?”⁷

The unnamed debtors’ letter illuminates issues relevant to the culture of American debt during the mid-eighteenth and early-nineteenth centuries. Land, the origin of the author’s debt, was a common asset in economic exchange. The credit on which he purchased his land and the degree of flexibility extended by his creditors (born, the author suggests, in personal friendship) was common too. The role of written credit instruments, and the author’s concern about paying off his notes at face value reflects the increasingly complex terrain of circulating credit and paper money that complicated transactions and economic relations before, during, and after the

³ "From the PENNSYLVANIA JOURNAL," *Gazette of the United States* (New York City, New York), May 22, 1790.

⁴ "From the PENNSYLVANIA JOURNAL."

⁵ *Ibid.*

⁶ *Ibid.*

⁷ "From the PENNSYLVANIA JOURNAL," *Gazette of the United States* (New York City, New York), May 22, 1790.

American Revolution. The anxiety that the author and his creditors expressed reveals the tension of creditor/debtor relationships, and how those relationships often deteriorated to the point of litigiousness.

This chapter examines the impact of economic development on social views of debt, and the impact of debt on personal and familial relationships in the culture of the early republic. I use the experiences of Charles Bulfinch as a guiding narrative and an example of a well-to-do debtor navigating the social and economic pitfalls of expansion and the relationships of debt that came to define much of his life and would lead to his incarceration for debt in 1811.

I. Evolving Views of Debt in Colonial America

America's first colonists brought definitions about and attitudes towards debt across the Atlantic with them. Early Puritan leaders eyed large commercial enterprises with suspicion and viewed personal debt as a moral failing. Escaping what they saw as decadence and corruption, the Puritans arrived in what would become Massachusetts Bay Colony with a different vision of their society than their counterparts in Virginia. Jamestown was founded with a strictly commercial purpose, designed to take the "waste land" of the New World and take the "refuse" of English society and wring as much profit from the land as possible.⁸ The Puritans who settled Massachusetts had a different purpose, and their society took a different form. Their religious views produced a very static class hierarchy and an entrepreneurial spirit that soon made Boston one of the thirteen colonies' major port cities.⁹

⁸ Nancy Isenberg, *White Trash. The 400-Year Untold History of Class in America* (London: Atlantic Books, 2017), 28-29.

⁹ Robert J. Allison, *A Short History of Boston* (Carlisle, MA: Commonwealth Editions, 2015), 10.

Some historians have argued that the distinctly Christian, Puritan mission of the first American colonists pushed them away from mercantile interests. John Winthrop is supposed to have said that “the care of the public must overshadow all private respects.”¹⁰ Samuel Moody, a preacher in York, Maine, said in 1715 that people who “bring Debts upon themselves” had engaged in “a Folly nothing short of Criminal”¹¹ elaborating that debtors were guilty of “not having the Fear of God before their eyes.”¹² Similarly, Cotton Mather said that debt should be acquired “with the Pace of a Tortoise,” and that one should “get out of [debt] with the Flight of an Eagle.”¹³

Perhaps most telling was Moody’s warning that “If God, in his Providence, has thus brought you; or if you, by Extravagance or Imprudence have brought your selves into Poverty, Poor you must contentedly be... It is no Sin to be Poor; but to lie in Debt, is a sin.”¹⁴ This fatalistic vision of economic and social status was pervasive in the seventeenth and early-eighteenth century, but would fade from relevance as the colonies (and later the United States) saw economic expansion and accordingly, more debtors. The image of debt that informed colonial Americans attached a distinct moral stigma to indebtedness, a stigma that would never quite be erased.¹⁵

As agriculture boomed and more products could be made in the colonies, they naturally became more mercantile in character. Deep harbors allowed for coastal cities like Boston, New York, Charleston, and Philadelphia to become trading hubs, and the influx of capital naturally

¹⁰ Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard University Press, 2009), 38.

¹¹ Mann, 39.

¹² Mann, 40.

¹³ *Ibid.*

¹⁴ Mann, 38.

¹⁵ Scott A. Sandage, *Born Losers: A History of Failure in America* (Cambridge: Harvard University Press, 2006), 6-11.

promoted commercial activity, which in turn created more creditor/debtor relationships.¹⁶ As networks of trade expanded and debt became a circulating medium of exchange, debt became less personal and more disembodied, making economic failure less a matter of personal morality and more a function of personal competence and responsibility.

The Seven Years' War proved to be a significant economic stimulus as the pressures of wartime helped to expand business, thus expanding the web of interconnected creditors and debtors.¹⁷ The Revolutionary War had a similar, and more pronounced, impact, as both the federal and state governments had to issue more and more "written credit instruments" to keep up the war effort.¹⁸ The inability of the notes to be converted into land, specie, or anything of practical value, compounded with the economic ups and down, made currency unstable both during wartime and in the aftermath of the Revolution. In fact, many women admitted to almshouses reflected that their loved ones had either fought in or been ruined financially by both the Seven Years' War and the American Revolution.¹⁹ Further, advancements in transportation technologies and a boom in the number of farmers in the new nation both served as impetuses for increased business activity.²⁰ As more business ventures began and capital began to flow to fund the war effort, "written credit instruments" became increasingly common. Shortages of specie and the more cumbersome transactions that specie necessitated could be circumvented with paper money, documents that constituted glorified IOUS.²¹

¹⁶ Charles Sellers, *The Market Revolution: Jacksonian America 1815-1846* (New York: Oxford University Press, 1994), 5.

¹⁷ Mann, 59.

¹⁸ Robert Eric Wright, *One Nation Under Debt - Hamilton, Jefferson, and the History of What We Owe*, (New York: McGraw-Hill, 2008), 47-48.

¹⁹ Ruth Wallis Herndon, "Poor Women and the Boston Almshouse in the Early Republic," *Journal of the Early Republic* 32, no. 3 (Fall 2012): 350, <http://www.jstor.org/stable/23315159>.

²⁰ Sellers, 5.

²¹ Mann, 44.

II. Views of Debt After the Revolution and Evolving Stigma

As a commercial center and a port city, Boston did experience the changes to both the economy and the culture of debt that was being experienced nationally, changes that ensnared more and more people, across lines of class, in webs of debt. Boston's developmental path towards the nineteenth century was erratic and certainly did not precisely reflect the significant increases in commercial and economic activity experienced by the nation at large, however. Boston had remained smaller than its fellow coastal cities for a variety of reasons, ranging from the poor conditions experienced by the poor to the city's reputation as being "rigidly forbidding to aliens".²² After a precipitous drop in population during the Revolution, Boston experienced spastic expansion of denizens in the early 1780s and early 1790s, as more unskilled laborers came to the city, largely from rural areas of New England and New York. The workers who flocked to Boston found employment with small-scale artisans and tradesmen around the city; there was, however, a surplus of labor, and the populations of Boston's almshouses increased steadily.²³ These poor and unskilled laborers were often in and out of almshouses, and according to an article in the *New England Galaxy* in 1818, a "Captain Brewer", incarcerated for an eight-dollar debt, wound up owing the jail more than \$300 for his maintenance.²⁴ Given his heroic conduct in the Revolutionary War, the paper encouraged Bostonians to contribute money to relieve him from his debts.²⁵ In Philadelphia a man was imprisoned for a mere 50 cents in 1822, according to a Boston newspaper.²⁶ These tiny debts demonstrate that incarceration for debt

²² Jacqueline Barbara Carr, "A Change "As Remarkable as the Revolution Itself": Boston's Demographics, 1780-1800," *The New England Quarterly* 73, no. 4 (December 2000): 583, 2017, <http://www.jstor.org/stable/366583>.

²³ Ruth Wallis Herndon, "Poor Women and the Boston Almshouse in the Early Republic," *Journal of the Early Republic* 32, no. 3 (Fall 2012): 368, <http://www.jstor.org/stable/23315159>.

²⁴ *New England Galaxy and Masonic Magazine* (Boston, MA), August 14, 1818.

²⁵ *Ibid.*

²⁶ "Domestic Intelligence," *The Repertory* (Boston, MA), October 22, 1822.

swept up the poor of many cities, including Boston, some of whom had less than 50 cents to their names.

Boston's distinctive character also had implications with regard to debt. The hostility that many noticed manifested towards outsiders and the decidedly Puritan character of the city both distinguished Bostonian attitudes towards debt.²⁷ A rigid class system defined Boston's historical social topography, concentrating wealth, and therefore access to capital (given the lack of inter-class lending), in the hands of a few individuals and families.²⁸ This concentration of capital meant that fewer individual entrepreneurs were starting businesses and building infrastructure, houses, or engaging in development projects. There was still a considerable amount debt and economic hardship in the city, despite a slower rate of development, and by extension a slower rate of the proliferation of debtor/creditor relationships,.

Like other cities, economic inequality advanced rapidly in Boston as the city modernized and debt became a more normalized part of everyday life. Despite being decidedly "provincial" during most of the eighteenth century, after the Revolutionary War, Boston expanded substantially.²⁹ New housing and urban development projects allowed not only for a greater population, but for potentially lucrative construction and renting projects.³⁰ The most significant opportunities for money-making were generally found by the city's elite, but there was a middle class of artisans who could make savvy decisions that could earn them some material and

²⁷ Michael Rawson, *Eden on the Charles: The Making of Boston* (Cambridge, MA: Harvard University Press, 2014), 13.

²⁸ Nancy Isenberg, *White Trash. The 400-Year Untold History of Class in America* (London: Atlantic Books, 2017), 32.

²⁹ Jacqueline Barbara Carr, "A Change "As Remarkable as the Revolution Itself": Boston's Demographics, 1780-1800," *The New England Quarterly* 73, no. 4 (December 2000): 590, <http://www.jstor.org/stable/366583>.

³⁰ Michael Rawson, *Eden on the Charles: The Making of Boston* (Cambridge, MA: Harvard University Press, 2014), 117.

financial success.³¹ These projects multiplied the opportunities for success and failure in the same way that those opportunities were expanding nationwide. The Tontine Crescent fit into part of this developmental trajectory.

As wealthy Bostonians began expanding out of their traditional enclave in the Boston's West End, opportunities to turn a profit building the lodgings of the "Brahmins". Many of the homes that Bulfinch designed occupy Beacon Hill, which was rapidly becoming an upper-class enclave, casting off its old nickname, "Mount Whoredom", a reference to the numerous brothels that occupied its slopes during the colonial period.³² Bulfinch's spectacular financial failure, the Tontine Crescent, began as an effort to fill this demand. Conceived as a set of apartments and townhouses to be rented or sold to Boston's upper class, Bulfinch poured more and more of his own money into the project, eventually miring himself deep in debt.³³ As the next chapter will elaborate, Bulfinch was able to escape debtors' prison by virtue of his social status, forbearance of his creditors, and deep connections to Boston's Federalist political establishment.

Simultaneously, Boston's civic and public spaces were becoming more commercial in nature. Boston's Town Hall had taken on the function of a "marketplace of information"; as early as 1664, Boston's city council reflected on the need for a public building for business and government. John Winthrop Jr., whose father had spoken about the greater importance of community in relation to business interests, wrote to an acquaintance in London planning out business ventures in Boston and spoke of the "New England walke", the collection of merchants who surrounded the town hall while trading and exchanging.³⁴ Bulfinch also participated in the

³¹ Allan Kulikoff, "The Progress of Inequality in Revolutionary Boston," *The William and Mary Quarterly* 28, no. 3 (July 1971): 379-380, <http://www.jstor.org/stable/1918824>.

³² Robert J. Allison, *A Short History of Boston* (Carlisle, MA: Commonwealth Editions, 2015), 13.

³³ Jay Wickersham, "The Financial Misadventures of Charles Bulfinch," *The New England Quarterly* 83, no. 3 (September 2010): 426, <http://www.jstor.org/stable/20752713>.

³⁴ Martha J. McNamara, "'In the Face of the Court...': Law, Commerce, and the Transformation of Public Space in Boston, 1650-1770," *Winterthur Portfolio* 36, no. 2/3 (Autumn 2001): 129, <http://www.jstor.org/stable/1215306>.

commercialization of Boston's public spaces. He deigned an expansion Faneuil Hall, which functioned as both a meetinghouse and marketplace, in 1806, and designed the building that sat atop India Wharf, a center of Boston's trading life, in 1807.³⁵ These buildings, like the Town Hall in the seventeenth century, underscored the changing economic conditions in the city, and their impact on public life. The increasingly commercial public spaces in Boston were a physical testament to the economic growth that was changing the culture of debt.

The Tontine Crescent was not Bulfinch's only participation in the social and physical movement of Boston's "Brahmin" class. Bulfinch designed and was a patron of the Federal Street Theatre, a venue propagated, funded, and attended by the wealthy and well-to-do of the city. Additionally, Bulfinch helped to fund the voyage of the *Columbia*, the first American ship to successfully circumnavigate the globe.³⁶ He helped to found the Massachusetts Charitable Fire Society, a group of wealthy Bostonians who donated to the Boston Fire Department, and was a gathering place for many influential people in the city.³⁷ Bulfinch's role in the "Tontine Crescent fiasco" as Jay Wickersham has called it can thus be seen as his contribution to the migration of the upper class out of their West End seclusion and their broader participation in the modernization of the city on the aftermath of the Revolution. The city's expansion and the work to expand middle and upper-class housing served as another engine of debt production, ensnaring even the wealthy and well-heeled Bulfinch.

³⁵ Eric Streiff, "Charles Bulfinch," *Sibley's Harvard Graduates*, 2017, 9.

³⁶ Heather S. Nathans, "Forging a Powerful Engine: Building Theaters and Elites in Post-Revolutionary Boston and Philadelphia," *Pennsylvania History: A Journal of Mid-Atlantic Studies* 66 (1999): 114, <http://jstor.org/stable/27774238>. AND S. A. G. and J. C., "AN EARLY BOSTON MEDAL," *American Journal of Numismatics, and Bulletin of the American Numismatic and Archaeological Society* 6, no. 2 (October 1871): 34, <http://www.jstor.org.ezproxy.trincoll.edu/stable/43586968>.

³⁷ Henry Harrison. Sprague, *An Old Boston Institution. A Brief History of the Massachusetts Charitable Fire Society. Organized 1792.--Incorporated 1794*(Boston: Little, Brown, 1893), 14.

The Tontine Crescent did not ultimately lead to Bulfinch's incarceration. Bulfinch's stint in prison came about as the result of more expansion of Beacon Hill, as Bulfinch had bought up parcels of undeveloped land with a plan to construct more upper-class housing. Difficulties arose filling in the muddy flats around the base of the hill, and land sales did not materialize as Bulfinch had hoped.³⁸ More and more of his assets were taken to pay his again-mounting debts, and eventually a small debt to a shopkeeper sent him to prison.

III. Evolving Stigma and the Impact of Debt on Early American Families

Creditor/debtor relationships tended to form along socioeconomic lines, underscoring the role of class in debt-related issues in both America's colonial experience and history after the Revolution. Credit was extended only within a social class.³⁹ Requests for payment and punishment for nonpayment made between members of the same social class, particularly in the highest echelons of society were, to borrow from Mann, "thought gauche."⁴⁰ Charles Bulfinch's experiences with debt demonstrate very clearly; his largest creditors were among Boston's aristocracy, among them Harrison Grey Otis, a significant figure in Federalist politics.⁴¹ The two men had grown up around each other, neighbors in Bowdoin Square.⁴² In a sense, extension of credit was confined geographically as much as it was confined in a class. Denizens of Beacon Hill might lend to their peers in the West End, but never to the lower-class people of the North End.

³⁸ Jay Wickersham, "The Financial Misadventures of Charles Bulfinch," *The New England Quarterly* 83, no. 3 (September 2010): 465-469, <http://www.jstor.org/stable/20752713>.

³⁹ Mann, 58.

⁴⁰ *Ibid.*

⁴¹ Mann, 117

⁴² Jay Wickersham, "The Financial Misadventures of Charles Bulfinch," *The New England Quarterly* 83, no. 3 (September 2010): 414, <http://www.jstor.org/stable/20752713>.

Good credit and good reputation were conflated both before and after the Revolution. The anonymous debtor who penned the May 22nd letter from the *Gazette of the United States* reflected on the shifting attitudes of his creditors, how questioned his honesty and integrity after he failed to pay his debts.⁴³ Debts in Colonial America tended to be more local in nature, with friends, neighbors, and fellow citizens being both the creditors and the debtors. Limited personal mobility and less sophisticated systems of travel and exchange restricted economic activity more to specific localities, where issues between debtors and creditors could be worked out more easily in the community.⁴⁴ Burgeoning mercantilism would change this dynamic markedly, particularly as “written credit instruments” became more and more common.

There was widespread suspicion of paper money, as evidenced by a number of articles that circulated in the national gazettes. This distrust of “circulating debt” made debtor/creditor relations all the more fraught, and the litigiousness of debt cases increased as a result. “A Gentleman from Virginia” wrote in the *Gazette of the United States* in October of 1789 that noted that paper money confused “cases of dispute about the just amount of payment to be made,” and that in a paper money system “the debtor is deprived of the means of knowing, with certainty, what quantity of gold or silver he ought to tender.”⁴⁵ This anxiety over the instability of the price notes was not unwarranted. Notes from failed banks or individuals were often rendered worthless if the issuer went bankrupt and was no longer able to honor the notes written.⁴⁶ A major effect of the proliferation of paper money was the depersonalization of debt. Where a debt between two neighbors or members of the same community was visible, insofar as

⁴³ “From the PENNSYLVANIA JOURNAL,” *Gazette of the United States* (New York City, New York), May 22, 1790.

⁴⁴ Mann, 48.

⁴⁵ “A Few THOUGHTS concerning a Proper MONEY of ACCOUNT,” *Gazette of the United States* (Philadelphia, Pennsylvania), October 21, 1789, *Chronicling America: Historic American Newspapers*.

⁴⁶ Jane Kamensky, *The Exchange Artist: A Tale of High-Flying Speculation and America's First Banking Collapse* (London: Penguin Books, 2009), 323.

a debtor and a creditor would likely see one another and be in similar social networks, written credit instruments and trade systems that extended outside of particular localities allowed debt to exit some peoples' social spheres entirely. Similarly, the circulation of personal notes and notes from banks and other financial institutions made people more accustomed to the idea of indebtedness as a condition of participation in the evolving economy, the "cost of doing business".

Proliferating economic opportunities, potential stumbling blocks, and the depersonalization of debt necessitated a shift in the social culture surrounding debt. Increasingly, debt was seen not as a moral failing but the product of larger forces, debtors changed from people motivated by hubris to transcend their God-given station to unfortunate casualties from economic and financial battles in the marketplace. Debt began to animate the social consciousness of the newly-minted Americans in a much more serious way after independence. On May 19th, 1790, a poem entitled "The Debtor" appeared on the pages of the *Gazette of the United States*, featuring the stanzas:

Children of affluence! Hear a poor man's prayer,
O haste, and free me from this dungeon's gloom,
Let not the hand of comfortless despair,
Sink my grey hairs with sorrow to the tomb!

But ah! How quick the change the morning gleam/
That cheer'd my fancy with her magic ray/
Fled like the garish pageant of a dream/
And sorrow closed the evening of my day⁴⁷

Debt is here equated with "comfortless despair", without any sense of it being understood as a failing, personal or moral. The locus of responsibility for the narrator's indebtedness is not any

⁴⁷ John Moore, "THE DEBTOR (By Sir John Moore).," *Gazette of the United States* (New York City, New York), May 19, 1790, II ed.

personal failing or vice, but “the change the morning gleam” that “Fled like the garish pageant of a dream”.

The advertisements changed in their language over time, as both the legal mechanisms for the adjudication of debtors’ cases became more robust and the culture and social perception of debt changed. Women’s names also began to appear. Writing on assignment for a publication called *Russell’s Gazette*, a man writing under the pseudonym “HOWARD” described a “plea of compassion most powerfully enforced by the decent manners and silent distress of a female...”⁴⁸ The woman “HOWARD” wrote about, “Mrs. Melsom”, had been caring for her husband while he was incarcerated in Boston’s debtors’ prison.⁴⁹ She reflected on her own experience, blaming her and her husband’s descent into debt on “the unbounded indulgence of my father whose profits as a wealthy citizen [which] enabled him to supply all the purposes of female extravagance...”⁵⁰ Her husband had apparently “by the most delicate and tender remonstrances to attack the foible that I have mentioned”, but her father apparently continued to indulge the lifestyle that she had become accustomed to.⁵¹ The article located blame for the young couples’ misfortunes almost exclusively on the woman, and her proclivity for an extravagant lifestyle. Women could, in a limited way, be economic actors, but it is also clear that they could be viewed as financial liabilities as well.

Women’s names also appear in debtors’ advertisements, and on the rolls of inmates in debtors’ prisons, in addition to their presence on men’s debtors’ advertisements. In many cases, women would become the executors (or, as many papers said, executrixes) of their male relatives’ estates. Women’s economic and trading agency was often obfuscated by the husbands,

⁴⁸ "Simple Incidents," *The Independent Chronicle and Universal Advertiser* (Boston, MA), September 12-16, 1799.

⁴⁹ *Ibid.*

⁵⁰ "Simple Incidents," *The Independent Chronicle and Universal Advertiser* (Boston, MA), September 12-16, 1799.

⁵¹ *Ibid.*

fathers, and sons on whose behalf they sometimes dealt, yet women could also get into debt the same as men.⁵² On September 3rd, 1804, an advertisement was taken out on behalf of Elizabeth Lewis, “an insolvent debtor confined in the prison of Washington County for debt...”⁵³ Like other debtors’ notices, Elizabeth Lewis’ advertisement mentions a court date to sort out her finances. The inclusion of women in the market meant that they had to face the consequences of business failure, and it changed the characterization of debt. As Bruce Mann points out, debt did not discriminate by gender, and women in fact occupied debtors’ prison, usually alongside their male counterparts.⁵⁴ While it was much more common for impoverished or insolvent women to end up in the almshouse, women occupied debtors prison.

The presence of women in both the marketplace and debtors’ prison helped to introduce a gendered component to social constructions of debt as well, complicating the early republic’s views of debt and the adjudication of conflicts between debtors and creditors. Failure had been stigmatized morally before but the depersonalization of debt turned male debtors from sinners into weaklings, men emasculated by the market and rendered dependent, no different in their society’s eyes than women.

Debt itself carried its own gendered imagery as economic forces were divorced from personal morality in the public mind. Insolvency and indebtedness now carried connotations of dependency, which rankled traditional conceptions of masculinity. Incarcerated debtors reflected that their independence, both financial and literal, was damaged by their vulnerable and dependent state; to borrow from Mann, such a condition was the “antithesis of republican

⁵² Serena Zabin, "Women's Trading Networks and Dangerous Economies in Eighteenth-Century New York City," *Early American Studies* 4, no. 2 (Fall 2006): 317, <http://jstor.org/stable/23546425>.

⁵³ "In the Case of Elizabeth Lewis, an Insolvent Debtor, District of Columbia, Washington, to Win," *National Intelligencer and Washington Advertiser* (Washington DC), September 3, 1804.

⁵⁴ Mann, 194.

independence”.⁵⁵ In the debtors’ section of New York City’s “New Gaol” an incarcerated debtor named William Keteltas, “an impecunious lawyer with a flair for dramatizing humanitarian causes” published his own newspaper in the 1790s from within the walls of the prison, entitled *Forlorn Hope*⁵⁶. The paper’s masthead, which featured two shackled men, one a simply-dressed white man and the other a black man bent at the knee as though in prayer, read “LIBERTY SUSPENDED BUT WILL BE RESTORED,” while a smaller banner above the unfortunate men read “We Should Starve Were It Not For The Humane Society.”⁵⁷

The fact that debtors could be women, that debt impacted women and families in significant ways, and the fact that debtors were often characterized with feminine rhetoric and imagery all had bearing on both the social construction of debt, which in turn impacted how debt would be understood politically. The stigma associated with femininity and dependence in late-eighteenth and nineteenth-century masculine identity oriented political discussion on the topic of abolishing incarceration for debt largely around the lack of agency that debtors had and the effects of debt on “honest” debtors and their families.

Interestingly, debt even became a part of marital relations. Many men took out advertisements in newspapers warning potential creditors or economic partners that they would not take on any debts of their spouses’ contracting. William Fiss wrote an ad that appeared in the *Gazette of the United States* on February 1st, 1799, that said “NOTICE. All persons are hereby requested not to trust my wife, Sarah Fiss, from this date, as I am determined not to pay any debts of her contracting.”⁵⁸ William Fiss did not specify what about his wife’s conduct prompted his withdrawal of financial support, but other men were less reticent about the source of their

⁵⁵ Mann, 38.

⁵⁶ Mann, 103.

⁵⁷ Mann, ii.

⁵⁸ William Fiss, “NOTICE (Fiss),” *Gazette of the United States* (New York City, New York), February 1, 1799.

dissatisfaction. Richard Wilson, who took out an advertisement in the *National Intelligencer and Washington Advertiser* on May 25th, 1804, claimed that his wife “has, without any cause from my conduct, absented herself from me after being guilty of much intemperance.”⁵⁹ Whether “intemperance” refers to alcohol consumption or some other excess is unclear; what is clear is that there existed a debt-based economy within marital relationships. Many early American marriages were apparently built on a quid-pro-quo, where wives were given some financial assets in exchange for certain obligations.

Debt could also be the undoing of both families and family estates and assets. John Bloor, who took out an advertisement to announce that his wife “has left my bed and board without just cause or provocation,” posted, in the same day, an advertisement for “A two story BRICK HOUSE AND LOT, situated in the city of Washington” for “very reasonable” terms.⁶⁰ The advertisement does not explain the circumstances behind the house’s sale, but it appeared on the same page of the *National Intelligencer and Washington Daily Advertiser* as the advertisement about his wife’s departure on August 28th, 1805.

It is remarkable that men would admit that their wives were either unfaithful or failing to perform their perceived duties, given the gender roles and social mores of the time. Such a revelation would likely have been embarrassing.

The strain that debt put on families and the feminized imagery that accompanied indebtedness in the early republic did not escape Charles Bulfinch or his family. While Bulfinch never had to take out an advertisement complaining of his wife “absenting herself,” he did absent

⁵⁹ Richard Wilson, "WHEREAS My Wife, Mary Wilson...", *National Intelligencer and Washington Advertiser* (Washington DC), May 25, 1804.

⁶⁰ John Bloor, "Caution (Ellen Bloor)," *National Intelligencer and Washington Advertiser* (Washington DC), August 28, 1805, AND John Bloor, "FOR SALE - A Two Story BRICK HOUSE AND LOT," *National Intelligencer and Washington Advertiser* (Washington DC), August 28, 1805.

himself when he was taken to debtors' prison in 1811. Hannah, his wife, seemed genuinely distraught by his absence "for the first time since our marriage, and my anxious heart sincerely hopes it may be the last."⁶¹ She reflected that the experience of business failure and indebtedness had "produced upon his naturally serious temper a deep and lasting impression."⁶² Charles Bulfinch himself said that "they all [his wife and family] bore the loss and mortification without repining."⁶³

It is remarkable that men would admit that their wives were either unfaithful or failing to perform their perceived duties, given the gender roles and social mores of the time. Such a revelation would likely have been embarrassing.

The civil liberties of debtors became an issue for popular debate as well. The issue of the seizure of debtors' property was hotly contested, particularly along partisan lines. The *National Gazette*, a Democrat-Republican answer to the Federalist *Gazette of the United States*, ran a story debating the merits of allowing Justices of the Peace to seize money and assets without a trial, as the above advertisements suggests.⁶⁴ The piece, which was published on February 13th, 1793, asked "is this particular class of men [Justices of the Peace] to serve an apprenticeship at the expense of the poor debtors in the commonwealth?"⁶⁵ The obvious anxiety expressed by the author about the authority of Justices of the Peace reflects what would become an intensely partisan debate about the role of government in creditor/debtor relations, as well as the social character of the nation itself.

⁶¹ Ellen Susan Bulfinch, *Life and Letters of Charles Bulfinch, Architect: With Other Family Papers..* (Houghton - Mifflin, 1896), 102.

⁶² *Ibid.*

⁶³ Ellen Susan Bulfinch, *Life and Letters of Charles Bulfinch, Architect: With Other Family Papers..* (Houghton - Mifflin, 1896), 98.

⁶⁴ Jeffrey L. Pasley, "The Tyranny of Printers": *Newspaper Politics in the Early American Republic* (Charlottesville: University Press of Virginia, 2003), 60.

⁶⁵ "For the National Gazette," *National Gazette* (Philadelphia, Pennsylvania), February 13, 1793.

In Newark, on January 20th, 1790, a group of more than half a dozen debtors was being held at the town jail; the advertisement, which ran in the *Gazette of the United States* read “Notice is hereby given to all of the creditors of... Insolvent Debtor, now confined in the common gaol [an archaic spelling of the word “jail”] of Newark.”⁶⁶ The debtors were “requested to appear Monday the Twenty Second day of February next, at Nine o’ Clock in the forenoon of said day at the Court House in Newark aforesaid... and the they the Insolvents be discharged agreeable to law.”⁶⁷ This practice, referred to as “incarceration on mense process”, or the internment of debtors without a trial was referred, was also a serious issue on the minds of debtors and their advocates.

Debtors were acutely aware of their vulnerable position, and that vulnerability was taken advantage of by politicians of the era. An article published in the *Gazette of the United States* on June 21st, 1792 explained that “according to a New York paper” there had been instances of “various mal-practices observed in an election at Ostego...”⁶⁸ Candidates in the election had apparently “undue influence towards the weak, threats towards the debtor, and impositions upon the ignorant have been grossly practiced by certain leading Characters.”⁶⁹ The article’s equation of debtors with “the weak” and “the ignorant” demonstrate a common public view of debtors; as helpless victims deserving of protection from those who would take advantage of their dispossessed state.

The deliberate equation of debtors with slaves or free but disenfranchised people of color suggests how the debtors felt about themselves in relation to the rest of society. Dependence and servility were conflated, and many debtors acutely felt the social stigma associated with their

⁶⁶ *Gazette of the United States* (New York City, New York), January 20, 1790,

⁶⁷ *Ibid.*

⁶⁸ *National Gazette* (Philadelphia, Pennsylvania), June 21, 1792.

⁶⁹ *Ibid.*

status. Robert McKoy an insolvent debtor, announced his seeking legal relief on the pages of the *National Intelligencer* on April 1st, 1808 with the words “the subscriber under painful sensations announces to the public his intention to apply to the next Prince Georges county court... for the benefit of an act of Assembly, entitled ‘An act for the relief of insolvent debtors’ ...”⁷⁰ McKoy was not specific about the source of his pain. However, his “painful sensations” seem to have something to do with his seeking relief for his indebtedness.

Charles Bulfinch, for his part, reflected on his status as a debtor in similar terms. “With what remorse have I looked back on these events,” Bulfinch wrote of his financial failures, “I involved for life myself and wife with our children, my Father and Mother and Sisters, who all held the utmost confidence in my measures and pride in my expected success.”⁷¹ The sense not only of personal failure, but of the expectations of others, primarily those of his family, clearly weighed heavily on Bulfinch, underscoring the social constructions of debt and the stigma associated with indebtedness. Bulfinch’s use of the term “mortification” for the experience of his family makes the shame that he felt very clear. Bulfinch’s reflections further demonstrate that the failure and debt of a male head of household could have significant ramifications for all members of the family, in addition to once again showing the gendered imagery of debt and dependence in the early republic. Importantly, however, Bulfinch and his family did not wind up in an institution to support destitute families, like the almshouse. Largely due to an extensive network of social and familial relationships and their high social standing before Bulfinch’s financial failures, the family’s indebtedness did not prove their utter ruin. The Bulfinches always

⁷⁰ Robert McKoy, "NOTICE (Robt. McKoy)," *National Intelligencer and Washington Advertiser* (Washington DC), April 1, 1808.

⁷¹ Ellen Susan Bulfinch, *Life and Letters of Charles Bulfinch, Architect: With Other Family Papers..* (Houghton - Mifflin, 1896), 98, <http://archive.org/stream/lifeoflettersofc027198mbp/lifeandlettersofcharlesbulfinch>.

had a roof over their heads and friends to turn to, despite the emotional wounds that debt and incarceration had on Bulfinch himself.

Debt was clearly on the minds of the first Americans. From its Puritan roots, debt's existence in America's socioeconomic consciousness shifted over time, from a community issue and a moral ill to the product of an expanding and increasingly mercantile economy. Men and women alike were impacted by debt, and in many cases had to bear the burden of their financial difficulties publicly, on the pages of the nation's early newspapers. Debt was generally contracted among members of the same social circles and it was handled very differently by different classes; it is those distinctions, and how those distinctions impacted the adjudication of debtors' laws, that I will turn to in the next chapter.

Chapter Two: Legal Apparatuses and Mechanisms of Debt Collection in Boston

“Creditors also must run considerable risks in the possible and probable change in the circumstances of their debtors during this tedious process.”

-*Columbian Centinel*, March 19th, 1806⁷²

“It has been justly observed,” a writer for *The Massachusetts Centinel* argued in an article published on October 30th, 1784, “that in proportion as civilization has advanced, the lenity of laws towards unfortunate debtors has increased.”⁷³ Signed by an anonymous author working under the pen name “Aristides”, the article continues, “In barbarous ages, an inhumane creditor might confine the person of his unfortunate debtor in chains, put him to the most excruciating tortures, violate the chastity of his wife, and sell them and their wretched offspring in foreign countries for slaves.”⁷⁴ The legal structures developed in the former 13 colonies certainly became more robust, particularly after the Revolutionary War, though many laws regarding creditors, debtors, and debt lacked the leniency that “Aristides” celebrated. While the practice of incarcerating debtors was certainly not as nightmarish as the situation that “Aristides” describes, and debtors were afforded more legal remedies for their indebtedness than existed before independence, the legal position of an insolvent debtor was nonetheless a precarious and potentially ruinous one.

Early American legal culture surrounding debt sprung up from English antecedents, and gradually changed as the socioeconomic and political topography of the early republic shifted. Debt became an acute social ill to a class of newly American merchants, instead of a permanent moral affliction as it was understood by Puritans. Incarceration for debt increasingly fell out of

⁷² "Miscellany for the Centinel - The Supreme Judicial Court in Massachusetts - What the Judiciary Has Been, and Is in Massachusetts," *Columbian Centinel*(Boston, MA), April 19, 1806.

⁷³ "For the CENTINEL," *The Massachusetts Centinel* (Boston, MA), October 30, 1784, *America's Historical Newspapers*.

⁷⁴ *Ibid*.

political favor, particularly after the War of 1812, and legislative alternatives to jailing those in debt, including more salient protections for debtors, became more common. These efforts were complicated by a number of factors in the immediate aftermath of the Revolution. Inconsistent currency and specie shortages compounded the difficulty of adjudicating debts owed by former colonists to agents in Great Britain and vice versa. Trade with their former colonial overlords was the lifeblood for many Americans' occupations, particularly in New England, making the resolution of debts all the touchier an issue. Nonetheless, debt and debtors' prison remained a potential punishment for the denizens of Boston, as all over the new nation and a weapon for less charitable creditors. The pages of newspapers and the halls of legislatures, both state and national, carried stories of the debates about "just debts" and if whether to be in debt was in fact a crime that warranted a citizen's removal from society.

Debt and debtors' prison served as a lightning rod for some of the anxiety building over the threat that debt and commercial interests posed to early American Republican ideals immediately after the Revolution. Politicians and columnists alike expressed their sympathy for incarcerated debtors and laws were passed to provide for the relief of poor debtors in prison.

Charles Bulfinch understood that there were different kinds of debt and different kinds of creditors, and his experience with the legal structures associated with debt underscored precisely that difference. He was treated with kid gloves, legally speaking, by his largest creditors who were members of his own class of well-connected Protestants. From a smaller creditor, the proprietor of a small shop in Boston's North End, he found none of the leniency that "Aristides" had proclaimed. His four week sentence in Boston's city jail for debt was a fairly typical even though he was incarcerated for a higher than usual amount. What was atypical was that he was incarcerated to begin with. His experiences with debt and debtors' prison occurred at odd

intervals in the context of Boston's legal topography regarding bankruptcy and insolvency; his first financial stumble came as Boston was pulling out of economic doldrums imposed by the Revolutionary War and the disruption of trade with England, and his political life kicked into high gear just as the Bankruptcy Law was being debated across the nation. By the time of his financial fall in 1811, the Bankruptcy Act of 1800 had long since expired, and he found himself one of many economic casualties of the business failures leading up to the War of 1812. His experience, however, was significantly different than the countless others who were in and out of Boston's City Jail. He was the beneficiary of a fortuitous marriage to an heiress of a Loyalist fortune that was not seized during the Revolution, he was allowed to borrow massive sums of money and was treated with much greater restraint by his creditors than other debtors.

Bulfinch's financial failures were not themselves unique. What distinguishes his experience is the class background that he came from, and how that background changed the process of adjudicating his debts.

I. Laws about Debt and Debtors' Prison before the American Revolution

Laws about debt and debtors' prison predate the Revolution by close to 150 years. In the seventeenth century debt and insolvent debtors were not a large enough problem to merit widespread or durable legal solutions. There were nonetheless a number of legislative enactments that dealt with the treatment of debtors and the adjudication of their unpaid debts. Beginning with its English antecedents, American legal culture surrounding debt changed in many ways paralleled the cultural shifts concerning debt; as America became an increasingly commercial and debt became an affliction to more and more people actors different strata of

society, there was an impulse to decriminalize debt, particular after the federal abolishment of incarceration for debt in 1833.⁷⁵

Laws surrounding debt and debtors' prison in America were largely inherited from England. Once interest was decriminalized from lending in the sixteenth century, more and more debtors' cases would reach English courts, necessitating more robust legal apparatuses to deal with all of the insolvent debtors.⁷⁶ The English legal regime dealing with debt that came out of the Middle Ages had two features that were important for American debtors' culture, government bond markets and insolvency process for debtors. Taking after the Dutch example, the British government began financing projects and military exploits by selling bonds to the public.⁷⁷ Such a practice encouraged widespread speculation and contributed to an already complex mixture of notes and other written credit instruments that were already circulating.⁷⁸ Speculation proved as pervasive a problem in the United States, both before and after independence, evidenced by the public animosity towards speculators. After Independence, government debt would circulate widely in the United States as well; in 1781, for example, Massachusetts passed a number of laws allowing federal bonds to be deposited in the State Treasury, and for both state and federal bonds to be used to pay back debts.⁷⁹

British insolvency process established all of the principles that would define American legal process. English law made the distinction between insolvency and bankruptcy, though the

⁷⁵ "Ending Modern-Day Debtors' Prisons," American Civil Liberties Union, <https://www.aclu.org/issues/criminal-law-reform/sentencing/ending-modern-day-debtors-prisons?redirect=feature%2Fending-modern-day-debtors-prisons>.

⁷⁶ Graeber, 333-334.

⁷⁷ Robert E. Wright, *One Nation Under Debt: Hamilton, Jefferson, and the History of What We Owe* (New York: McGraw-Hill, 2008), 23.

⁷⁸ Elizabeth E. Dunn, 8 "Grasping at the Shadow": The Massachusetts Currency Debate, 1690-1751," *The New England Quarterly* 71, no. 1 (March 1998): 57, <http://www.jstor.org/stable/366724>.

⁷⁹ Uni, Massachusetts State Legislature, "An Act in Addition to an Act Entitled 'An Act to Empower the Treasurer to Receive Government Securities on Load, to the Amount of Eight Hundred Thousand Pounds (Boston, 1781), <http://archives.lib.state.ma.us/handle/2452/103951>.

terms were often used interchangeably, particularly in legal documents and political rhetoric – insolvency was, broadly defined, owing more money than one’s legally available assets could cover, while bankruptcy was a statutory state where debtors and creditors could reach a resolution with the help of the government. In the event of a failure of a debtor to be able to pay, and provided the debtor met certain conditions, commissioners were appointed who would work with the debtor to establish what assets could be used to pay back the debt, and report to creditors and legal authorities.⁸⁰ This laid the foundation for legal mechanisms that would allow debtors to be liberated from jails in America. Debtors’ prison was largely a coercive mechanism in the English system, as it would be in the American one. Incarcerating debtors was not an uncommon practice however, fraudulent or not, in England.

Philanthropy served as an extralegal method to resolve debtors’ issues in England, as it would in America both before and after independence. Members of the nobility, as well as sympathetic law enforcement officials and relief societies would often release debtors by paying off their debts or reaching an understanding with their creditors. In February of 1739, the Prince of Wales released all of the debtors in the Bristol prison, while an alderman in London found all of the creditors for the debtors incarcerated in London and arrived at agreements to have all of them released in 1735.⁸¹ A “Reverend Canham” traveled from town to town in England freeing imprisoned debtors in the summer of 1751.⁸² Philanthropy would play an important role in debtors’ experiences in prison in America as well. As America’s debtors’ prisons swelled and reform-minded movements in the first decades of the nineteenth century, efforts of philanthropic

⁸⁰ David Graeber, *Debt: The First 5,000 Years*, Third ed. (Brooklyn, NY, NY: Melville House, 2014), 333.

⁸¹ "LONDON, October 11, 1735," *Boston News-Letter* (Boston, MA), February 26, 1736, AND "Bristol, Dec. 2," *The Boston Weekly News-Letter* (Boston, MA), March 8, 1739, accessed January 19, 2018.e3

⁸² "LONDON, July 11," *The Boston Weekly News-Letter* (Boston, MA), September 26, 1751.

institutions would help accelerate the abolition of debtors' prisons in Massachusetts and America.

With the English colonists arriving in North America in the seventeenth century came their social and legal practices surrounding debt. With the changing environment and culture that the New World wrought upon the people who colonized it came changes to the social and legal environment surrounding debt.

In the seventeenth and eighteenth centuries, colonial America lacked a cohesive legislative regime for adjudicating disputes between debtors and creditors. The progress of settlement, size and sophistication of colonial legislatures, and number of debts largely determined when the first legislation concerning debtors and their incarceration; Massachusetts and Maryland passed their first debtors' laws in 1638 and 1639, respectively, while Connecticut did not pass a statute addressing insolvent debtors until 1716.⁸³

The adjudication process for debtors in colonial America looked very similar to that of England, albeit on a smaller and often more individual scale. As discussed in the first chapter, debt was often handled by the community in which the debtors resided in a neighborly fashion, and this tendency meant that adjudicating conflicts between creditors and debtors was often a less legalistic and more personal affair. Debtors' cases were uncommon in colonial courts, though there were legal structures in place.⁸⁴

Early debtors' laws stayed very close to their English forbears. In Massachusetts, according to *Laws and Liberties*, a compendium of the Commonwealth's laws published in 1648,

⁸³ Robert A. Feer, "Imprisonment for Debt in Massachusetts before 1800," *The Mississippi Valley Historical Review* 48, no. 2 (September 1961): 253, <http://www.jstor.org/stable/1902514>. AND Mann, 61.

⁸⁴ Paul Takagi, "The Walnut Street Jail: A Penal Reform to Centralize the Powers of the State," in *Crime and Capitalism: Readings in Marxist Criminology*, by David Frank Greenberg (Philadelphia: Temple University Press, 1993), 534, <http://www.jstor.org/stable/j.ctt14btbrw.28>.

debtors could be kept in prison for private debts until their obligations were met.⁸⁵ Debtors could also be taken as indentured servants as a means of squaring themselves with their creditors, with the stipulation that if they were to be sold, it could only be to another Englishman.⁸⁶ The incarceration of debtors was never a requirement of the law, but a tool available to creditors dealing with troublesome debtors.

In 1672, insolvent debtors were given an alternative to prison with an amendment made to the statute in *Laws and Liberties*.⁸⁷ It forced creditors to pay for the expenses of maintaining a debtor in prison if the incarcerated could not cover the fees themselves. If said debtor could demonstrate that their assets were worth £5 or less in total, they would be released.⁸⁸ The valuation of a debtors' assets was complicated significantly by statutes

The deficiencies of the multi-layered and sometimes overlapping statutes in *Laws and Liberties* became clear, and in an effort to create a more comprehensive system for dealing the debtors and creditors, Massachusetts passed an "Act for the Relief and Release of Poor Prisoners for Debt" in 1698⁸⁹ If a debtor unable to pay for their incarceration swore that they were unable to pay their debts, they could apply to be released; given that debtors had to spend a minimum of thirty days in jail before they could take the oath, and they had to provide the court with 15 days' notice of their intention to take the oath.⁹⁰ Debtors were then able to extricate themselves from the impossible position of being unable to pay to even be incarcerated, though the solution often took some time to provide its benefits. Further, it was not a discharge of a debtor's obligations,

⁸⁵ Robert A. Feer, "Imprisonment for Debt in Massachusetts before 1800," *The Mississippi Valley Historical Review* 48, no. 2 (September 1961): 253, <http://www.jstor.org/stable/1902514>.

⁸⁶ *Ibid.*

⁸⁷ Robert A. Feer, "Imprisonment for Debt in Massachusetts before 1800," *The Mississippi Valley Historical Review* 48, no. 2 (September 1961): 254, accessed January 18, 2018, <http://www.jstor.org/stable/1902514>.

⁸⁸ *Ibid.*

⁸⁹ Feer, 255.

⁹⁰ *Ibid.*

and any debtor who owed more than £500 to any creditor could not take advantage of it.⁹¹ These limits demonstrate a crucial fact about pre-Revolutionary American bankruptcy legislation; it was largely intended for small and truly desperate debtors.

The 1698 statute encoded a concept important to debtor/creditor relations both before and after the Revolution, the pauper's oath (known later as the Poor Debtor's Oath). It would be a major facet of the majority of all legislation concerning debt on a state and national level.

England still exerted a degree of influence over American laws concerning debtors and creditors.

The final major pre-Revolutionary adjustment to Massachusetts' debtors' laws came in 1733. Similar to previous statutes, 1733's law allowed for debtors to be released if unable to pay jail fees, but freed debtors would work off wither their debt to their creditors or their jail fees.⁹² Additional acts "For the Relief of Poor prisoners for Debt" in 1737 and 1763 eliminated the work requirement and increased the amount of notice that debtors had to give their creditors and the courts of their intention to take the pauper's oath to forty days.⁹³ This statutory environment would persist until after the Revolution, when a number of factors would compel both state and national legislatures to confront the growing problem of insolvent debtors and the laws that governed creditor/debtor relationships.

Philanthropy was a significant force in American debtor-creditor relations as it had been in England for centuries. Aid societies for debtors sprang up in many American cities, and agitation against incarceration for debt began to pick up in the waning decades of the eighteenth century, gaining momentum into the nineteenth century. In Boston, the "Society for Relieving

⁹¹ Mann, 112.

⁹² Feer, 255.

⁹³ Feer, 256.

and Liberating Small Debtors” went to the town jail in March of 1787 to determine the status of debtors incarcerated there; they were able to obtain discharges on behalf of two of the debtors.⁹⁴

II. American Debtors’ Law

Despite its advances, the English system and its North American descendant faced tough criticism both in England and the New World, and cultural changes in perceptions of debt and debtors prompted legislative change particularly after the Revolution. These legal changes were complicated by a number of unfolding historical realities. Disrupted trade relations with England and their attendant economic ramifications, an inconsistent currency landscape, public sympathies, and political conflict, on both a national and state level, simultaneously confounded and motivated reforms to debtors’ laws in Massachusetts.

A traveler, freshly returned to Boston from Liverpool in February of 1769, remarked “There is no enslaved nation in the known world, whose policy, in respect to debtors, is so cruel and tyrannical as that of this kingdom,” continuing “Is it not amazingly strange, that in this country so much famed for the liberties of its people, the laws should suffer private persons to indulge their resentment and revenge against their debtors, so far as to confine them in prison?”⁹⁵ Evidently, the English legal system regarding insolvency and bankruptcy which had so profoundly influenced the colonial model was regarded with animosity by many.

Further, trade imbalances and debts to English creditors were increasingly seen as a mechanism of oppression by American colonists on the eve of the Revolution. A “LETTER from a Gentleman in a neighbouring Government to his Friend in Boston” published in the *Boston Evening Post* asked “Will not this occasion of a greater Consumption of Foreign goods, [cause]

⁹⁴ "From the NEW YORK PACKET – March 6, 1787," *American Herald* (Boston, MA).

⁹⁵ Gray, "Arrived Here from Liverpool," *The Boston Chronicle* (Boston, MA).

still greater Damage of the Country?"⁹⁶ while another writer observed that "by this very war (for the expense of which the British empire would make us wholly debtors) a country is added to the British empire, more than six times bigger than Britain... part of which contains numerous inhabitants subjected by the regular and provincial forces, it must look like a direct deign of enslaving us, to talk of the infinite obligation and debt we are under to Old England..."⁹⁷ The language of slavery was frequently applied to debt in the early republic, and the imagery of shackles of obligation to England further chafed colonists, fermenting an economic nationalism that railed against debt not as a moral failing but a political yolk under which America was suffering.

The animosity, about debt and legal wrangling surrounding it, as in other facets of colonial life, was mutual. An English expatriate who settled near Boston wrote in 1773 to business associates based in England "we have not been able to recover our property for years past, no matter how great our exigencies may have been... We are unwilling to enter into a [litigious] contestation with them because the perversion of their iniquitous courts of justice are so great that experience has convinced us we had better lose the half, to obtain the other quietly, than pursue compulsory measures."⁹⁸ English agents in the Commonwealth evidently felt that the adjudication process for debtors was both biased and lacking.

The tension, both social and economic, that was building between colonists and the English had significant effects on Charles Bulfinch's experience. Bulfinch, not unlike members of many prominent families both in Boston and throughout the country, had deep social and

⁹⁶ "A LETTER from a Gentleman in a Neighbouring Government, to His Friend in Boston," *Boston Evening Post* (Boston, MA), September 3, 1750.

⁹⁷ "A New-Englandman, ""From the PROVIDENCE GAZETTE, Aug. 18, 1764," *The Boston Evening Post* (Boston, MA), September 17, 1764.

⁹⁸ "Copy of a Letter Returned with Those Signed Tho. Hutchinson, and Oliver, &C. from England; Narragansett, 22nd December, 1767," *Boston Evening Post* (Boston, MA), June 28, 1773, 1790th ed.

economic ties to Loyalists and colonial authorities. His wife Hannah Apthorp's maternal grandfather was Stephen Greenleaf, Boston's final loyalist sheriff who was exiled during the Revolution – Bulfinch would name his youngest son Stephen Greenleaf Bulfinch after him.⁹⁹ Bulfinch and Hannah shared a grandfather, Charles Apthorp, who was at one time one of the wealthiest men in Boston before he died in 1758.¹⁰⁰ Charles Bulfinch was descended from Charles Apthorp's daughter Susan, while Hannah's father was Apthorp's son John, who served in the Loyalist Massachusetts militia noted for "his loyalty and good conduct and to the accuracy of his accounts".¹⁰¹ One of their uncles, Thomas Apthorp, was a paymaster in the British army.¹⁰² Bulfinch was deeply connected, both by blood and financial inheritance, to Boston's old Loyalist establishment; their collective economic fate and his were thus inextricably linked.

The conflict over the adjudication of transatlantic debt during wartime would ultimately translate into coercive legislative action. In 1776, the Massachusetts legislature passed "An Act to Prevent the Waste, Destruction, and Embezzlement of the Goods or Estates of Such Persons Who Have Left the Same, And Fled to Our Enemies for Protection; And Also for Payments of Their Just Debts, Out of their Estates" which protected the property of Loyalists and people displaced by the Revolutionary War.¹⁰³ Just a few years later, in 1780, the Massachusetts legislature passed "An Act to Provide for the Payment of Debts Due from the Conspirators and

⁹⁹ Marie Cleary, "Thomas Bulfinch, The Age of Fable, and the Continuity of the Classics in American Education" (PhD diss., Graduate School of the University of Massachusetts, 1982), 69.

¹⁰⁰ Charles Bulfinch and Ellen Susan. Bulfinch, "Early Plans and Disappointment," in *The Life and Letters of Charles Bulfinch, Architect, with Other Family Papers, Edited by His Granddaughter, Ellen Susan Bulfinch. With an Introd. by Charles A. Cummings* (New York: B. Franklin, 1973), 70.

¹⁰¹ Henry Wilder Foote, Henry Herbert Edes, and Winslow Warren, *Annals of King's Chapel from the Puritan Age of New England to the Present Day*, vol. II (Boston: Little, Brown and, 1896), 143 AND E. Alfred Jones, *The Loyalists of Massachusetts: Their Memorials, Petitions and Claims* (Baltimore, MD: Clearfield, 2012), 7.

¹⁰² E. Alfred Jones, *The Loyalists of Massachusetts: Their Memorials, Petitions and Claims* (Baltimore, MD: Clearfield, 2012), 7.

¹⁰³ United States of America, Massachusetts State Legislature, *An Act To Prevent The Waste, Destruction And Embezzlement Of The Goods Or Estates Of Such Persons Who Have Left The Same, And Fled To Our Enemies For Protection; And Also For Payment Of Their Just Debts, Out Of Their Estates*. (Boston, April 9, 1777), <http://archives.lib.state.ma.us/bitstream/handle/2452/117061/1776acts0038.txt?sequence=1&isAllowed=y>.

Absentees, and for the Recovery of Debts due to Them” which essentially turned the process of dealing with the debts of Loyalists and refugees entirely over to the Commonwealth’s authorities.¹⁰⁴ After the seizure of such estates, sanctioned in another piece of legislation entitled “An Act for Confiscating the Estate of Certain Persons, Commonly Called Absentees”, the state would take inventory of the total assets, then accept claims from creditors, who were asked to first pay a bond into the estates to ensure that all creditors could obtain something from the process.¹⁰⁵ After all claims had been assessed, any additional funds or assets were put into the Massachusetts Treasury, ostensibly to cover soldiers’ salaries.¹⁰⁶

Such legislative action did help to fund both federal and state legislatures, and allowed for the issuance of even more state-written credit instruments. Simultaneously, however, state legislatures did restrict the sheer diversity of paper money in circulation, as many state legislatures invalidated promissory notes and bills of credit issued by Loyalists; Massachusetts in 1780 passed a statute entitled:

“An Act Repealing Certain Parts of An Act Postponing the Payment of Government Securities to a Distant Period; And for Payment of Interest Now Due on Said Securities; And for Altering the Several Acts of Govt. Which Now Relate to the Currency of the State, and Conforming the Same to the Principles of Equality and Justice.”¹⁰⁷

The law deferred payment of interest on government bonds and other paper currency until 1788.¹⁰⁸ This kind of deferment could impact debtors and others who needed the

¹⁰⁴ United States of America, Massachusetts State Legislature, *"An Act in Addition to an Act Entitled 'An Act to Provide For the Payment of Debts Due from the Conspirators and Absentees, and For the Recovery of Debts Due to Them'"*, May 15, 1781 (Boston, 1781).

¹⁰⁵ United States of America, Massachusetts State Legislature, *An Act To Confiscate The Estates Of Certain Notorious Conspirators Against The Government And Liberties Of The Inhabitants Of The Late Province, Now State, Of Massachusetts Bay*. (Boston, April 30, 1778).

¹⁰⁶ *Ibid.*

¹⁰⁷ Massachusetts States Legislature, *An Act Repealing Certain Parts of An Act Postponing the Payment of Government Securities to a Distant Period; And for Payment of Interest Now Due on Said Securities; And for Altering the Several Acts of Govt. Which Now Relate to the Currency of the State, and Conforming the Same to the Principles of Equality and Justice* (Boston, January 21, 1781).

¹⁰⁸ *Ibid.*

government to meet its obligations on time so they in turn could meet their obligations. A writer for the *Columbian Centinel* remarked “much has already been said about trading Justices and petty fogging Attorneys. That both exist and that in their united efforts to sponge a living from the creditor on the one hand and the debtor on the other who fall within their gripe, they perpetrate wrong in the seeming pursuit of right.”¹⁰⁹

The result of policies dispossessing Loyalists and British merchants of their estates was a disruption of commerce in Boston and the exile of some Loyalists; Charles Bulfinch’s own family was affected. Stephen Greenleaf was exiled from Boston to London, where he would live for the rest of his life, and his wife joined him.¹¹⁰ Despite the exiling of Greenleaf, his daughter Hannah possessed a considerable dowry when she and Charles Bulfinch were married in 1788.¹¹¹ The Apthorps and their extended family who remained in America, despite the ignominy of their strong Loyalist ties, maintained their estate. Charles Ward Apthorp, Charles and Hannah Bulfinch’s uncle, was able to recover his assets in Connecticut, though “he [was] almost in want... and his son Charles, a Captain in the 23rd Regiment Royal Welch Fusiliers, was sick and in debt” and had “lost considerably in his property by the war.”¹¹² Thomas Apthorp, the scrupulous British Army paymaster, petitioned the Massachusetts State Legislature to recover 977 pounds that had been confiscated during the Revolution.¹¹³ He received 400 pounds, while the commissioners reviewing his case wrote “in [his] loyalty there is no merit... [he] confesses that he has made as much by the War as he has lost by it even supposing that he never recovers a

¹⁰⁹ "NO CANDIDATE FOR OFFICE", "FOR THE CENTINEL - To the Tradesmen and Mechanics of Boston," *American Federalist Columbian Centinel* (Boston, MA), January 26, 1822.

¹¹⁰ Charles Bulfinch and Ellen Susan Bulfinch, "Early Plans and Disappointment," in *The Life and Letters of Charles Bulfinch, Architect, with Other Family Papers, Edited by His Granddaughter, Ellen Susan Bulfinch. With an Introduction by Charles A. Cummings* (New York: B. Franklin, 1973), 70.

¹¹¹ *Ibid.*

¹¹² E. Alfred Jones, *The Loyalists of Massachusetts: Their Memorials, Petitions and Claims* (Baltimore, MD: Clearfield, 2012), 7.

¹¹³ *The Loyalists of Massachusetts: Their Memorials, Petitions and Claims*, 8.

Shilling of his Debts...”¹¹⁴ The commissioners continued: “Moreover, it was presumed that he had been guilty of bad conduct in his office, having been turned out of it in 1777.”¹¹⁵

Why their estate was spared has much to do with their status and the role that had played in Boston. Charles Apthorp’s business interests were intimately connected to several development projects in Boston, and a number of prominent citizens’ fortunes were, in one way or another, wrapped up in his.¹¹⁶ The seizure of his estate by the state might not have been a great blow to those to whom he owed money, but the risk of damaging both public works projects and damaging the fortunes of many Bostonians was too great; thus the Apthorps, and by extension Charles Bulfinch, were still able to tap into significant financial resources.¹¹⁷ This stood in contrast to the majority of Bostonians, most of whom had little access to capital. Between 1687 and 1771, the percentage of wealth held by the poorest 30% of taxpayers decreased from 2.48% to 0.1%, while the lower-mid 30% (from 30-60%) of taxpayer’s share of wealth decreased from 11.29% to 9.43%.¹¹⁸ Between 1771 and 1790, the poorest 30% of people in Boston saw their share of wealth decrease even further, from 0.1% to .03%, while the lower-mid 30% saw their percentage shrink from 9.43% to 4.8%.¹¹⁹ In an environment where so few people had enough money to participate in the ventures that provided the greatest opportunity, it is unsurprising that Bulfinch would have caught at the opportunity to use the capital that he had access to. The consolidation of wealth with the richest people in Boston meant that people from lower classes would start soliciting them for loans, and as Bulfinch’s case demonstrates, inter-

¹¹⁴ *The Loyalists of Massachusetts: Their Memorials, Petitions and Claims*, 8.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ Jay Wickersham, "The Financial Misadventures of Charles Bulfinch," *The New England Quarterly* 83, no. 3 (September 2010): 430, <http://www.jstor.org/stable/20752713>.

¹¹⁸ Allan Kulikoff, "The Progress of Inequality in Revolutionary Boston," *The William and Mary Quarterly* 28, no. 3 (July 1971): 381, <http://www.jstor.org/stable/1918824>.

¹¹⁹ *Ibid.*

class loans would become to a limited extent reciprocal. It would have been highly unusual for Bulfinch to have borrow money from someone of a lower socioeconomic class, but with his Brahmin kin unwilling to lend any more to him, he turned to unconventional options.

Despite the disruption caused by the seizure of British and Loyalist estates and the failure of their businesses, the 1790s witnessed economic expansion and development. With the Revolutionary War over, and trade resuming, Boston set its sight on development. Large projects like filling in the tidal flats and marshland that would become Back Bay would not begin until the 1840s, and development began around Beacon Hill in the late eighteenth century. Despite the growth of income inequality in Boston throughout the eighteenth century there was considerable interest on the part of the city's wealthy in developing the south slope of what the hill that had once been known as "Mount Whoredom" due to the large number of brothels that had occupied it from the early seventeenth century.¹²⁰ Charles Bulfinch was intimately involved in Beacon Hill's development, and his architectural ambitions would ultimately prove to be his financial undoing.

Charles Bulfinch's path to debt in some ways reflected the historical experience of his fellow Bostonians and countrymen, in that land and development were the central mechanisms of his financial downfall. In 1793, he embarked upon the Tontine Crescent, a housing development in Boston West End intended to cater to Boston's expanding upper class; as economic inequality became more acute, there were more wealthy merchants and professionals expanding into Boston's West End.¹²¹ Bulfinch was involved in the project as the architect, and was tasked with

¹²⁰ Jeffrey Klee, "Civic Order on Beacon Hill," *Buildings and Landscapes: Journal of the Vernacular Architecture Forum* 15 (Fall 2008): 44, <http://www.jstor.org/stable/27804882>. AND Robert J. Allison, *A Short History of Boston* (Carlisle, MA: Commonwealth Editions, 2015), 13.

¹²¹ Jacqueline Barbara Carr, "A Change "As Remarkable as the Revolution Itself": Boston's Demographics, 1780-1800," *The New England Quarterly* 73, no. 4 (December 2000): 592, <http://www.jstor.org/stable/366583>.

recruiting investors. Alongside his wife's brother-in-law, Charles Vaughn, and a merchant, William Scollay (after whom Scollay Square was named), he began by investing some of his and his wife's more-than-modest estate while pursuing other financiers.¹²² The Tontine Crescent's name was derived from its original proposed funding structure, a tontine. Popularized in France early in the eighteenth century, tontines were made of investors who funded the project in exchange for shares that could not be sold or inherited; other tontine members would absorb a member's share in the event of their death.¹²³ Tontines were not as popular in America as they were in Europe, however, and the Massachusetts Legislature did not grant Bulfinch and the other proprietors of the Tontine Crescent a charter.¹²⁴

By 1794, with the project growing riskier as investors failed to properly materialize, Bulfinch and his cohorts changed their funding scheme to a "tenancy-in-common", wherein investors could also claim an apartment and shares could be sold or passed down.¹²⁵ With this new and more lax structure in place, Vaughan, who owned half of the property that the Tontine Crescent would sit on, pulled out of the Tontine Crescent project in 1794. Bulfinch then purchased all of Vaughn's obligations, totaling \$4,667, and by 1795 had more than \$130,000 invested, and was more than \$68,000 in debt.¹²⁶

Ultimately, Bulfinch was able to escape the massive financial hole that he dug for himself between 1793 and 1796 only through sophisticated financial maneuvering and considerable sacrifice. He and his wife collectively owned several properties in Bowdoin Square and around

¹²² Jay Wickersham, "The Financial Misadventures of Charles Bulfinch," *The New England Quarterly* 83, no. 3 (September 2010): 425, <http://www.jstor.org/stable/20752713>.

¹²³ Wickersham, 423

¹²⁴ *Ibid.*

¹²⁵ Wickersham, 423

¹²⁶ Wickersham, 428

Beacon Hill, and over the course of 1795 and 1796, he sold off all of his property and he and his family lived in a succession of rented houses, managing to raise \$105,000 in one week.¹²⁷

During bankruptcy proceedings, some creditors found the legal exertion required to recoup extant debts needlessly bothersome or financially impractical. Some debtors intentionally made it more difficult for their creditors to bring them to court, seize their property, or incarcerate them (which will be discussed in the next chapter), while many simply did not have means enough to make litigation profitable. Some creditors were flexible in their repayment, offering forbearance in exchange for a percentage of what was owed. In Massachusetts, a law was passed in 1783 establishing a standard rate for the purchasing of forbearance.¹²⁸ If a debtor paid six percent of the principle, then they could be shielded in court from a creditor for an amount of time determined by the debtor, their creditor, and the court.¹²⁹

The dip in economic productivity during the Revolution, both in Boston as across the nation, was primarily caused by wartime exigencies and shifts of population as people moved around to avoid zones of conflict. The damage done to British business and estates by policies of coastal states was also a contributing factor. The dislocation of British economic agents called into question what debts were valid and should be honored, which in turn called into question what punishments, if any, should be leveraged against insolvent debtors. In the case of debts to British creditors, there was a sharp divide in public opinion.

After the Revolution, Massachusetts passed a number of statutes relating to debt that maintained debtors' prison as an institution. The laws established that a debtor could take the

¹²⁷ Wickersham, 435.

¹²⁸ United States of America, Massachusetts States Legislature, *An Act Prescribing The Manner of Devising Lands, Tenements, And Hereditaments* (Boston, 1783), pg. #, <http://archives.lib.state.ma.us/handle/2452/104389>.

¹²⁹ *Ibid.*

Poor Debtors' Oath and be released after 30 days of incarceration.¹³⁰ As before the Revolution, friends and relatives of debtors often secured loans, and social ties often got debtors out of prison, if a friend or relative was able to pay off a debt. In Charles Bulfinch's case, it was his network of prominent and well-to-do family members that allowed him to recover from his first disastrous business failings and subsequent imprisonment.

All of the statutes passed before, during, and immediately after the Revolution had the effect of formalizing the fragmentary legislative environment concerning debt and debtors, and establishing procedures for debtors to recover their dues from the estates and assets of debtors, insolvent or not. The procedures inevitably had to confront the reality that many debtors would never be able to pay back all that they owed; the question that would ultimately confront lawmakers and the public was whether defaulting on debts was criminal. In Boston, which owed its early prominence to a mercantile culture that necessitated good credit and thrived on lending and entrepreneurship, was particularly concerned with the ability of creditors to be able to settle with their debtors, and the laws and municipal apparatus of debtors' prison demonstrated the state's endorsement of that agenda. Boston's culture, forged in the crucible of Puritan values and holding that extreme indebtedness was in fact a crime, allowed the institution of debtors' prison to remain in place significantly longer than the rest of the nation. Debtors' prison was outlawed at the federal level in 1833; it would take Boston 22 years to make incarceration for debt illegal.

The recession leading up to the War of 1812 impacted Bulfinch as well, and the expiration of the federal bankruptcy law limited his options when, in 1811, a shopkeeper called in a debt.

¹³⁰ *An Act For The Relief Of Poor Prisoners, Who Are Committed By Execution For Debt*, November 19, 1787, A law from the Massachusetts State Legislature, Massachusetts State Legislature, Boston, MA.

The Revolutionary War, like the Seven Years' War before it, deepened commercial connections and increased networks of debt. The ever-increasing prominence of written credit instruments and the capital-forming effects of military mobilization made debtors out of more and more Americans, particularly in port cities like Boston that subsisted on trade. The need for a uniform nationwide bankruptcy policy was felt acutely by many state and federal representatives, particularly the Federalists that counted Boston as a bastion of their values. Debt and debtors' prison would become a contentious battleground between the two dominant ideologies, both across the new nation and in Boston, as debtors' prisons swelled and the fortunes of many Americans were swept up in the wave of mercantile indebtedness that washed over the country.

III. Political Leveraging of Debt and Debtors' Prison

By 1800, it had become abundantly clear to debtors, creditors, and the elected officials who represented them that debt and incarcerated debtors represented a significant challenge on a federal, state, and municipal level. Exhortations against debtors' prison and articles detailing the plight of the incarcerated debtors both individually and collectively that had been appearing in America's newspapers and state legislatures since the seventeenth century began to appear in the national gazettes and in the halls of the United States Congress. A nationwide bankruptcy law became a point of political contention across the nation, even in the Federalist bastion of Boston. Political debates over different approaches and proposed pieces of legislation morphed into a discussion about the character of the nation, with both major political parties staking their claim to different ideological visions. While both parties agreed that debt and debtors' prison were significant social ills that needed to be addressed, the dichotomies between their two legislative agendas demonstrate the parties' views towards debt.

Charles Bulfinch, for his part, was a lifelong Federalist, and his political involvement in Boston's city government contrasted with his six-week stint in Boston's town jail. In the same way that Bulfinch's experience with the legal process surrounding debt was atypical, his involvement in Boston's political machine insulated him from the worst fallout from his significant debts. His political kin were those advocating for nationwide bankruptcy laws; interestingly, Harrison Gray Otis, one of Bulfinch's creditors and one of the commissioners appointed to oversee the adjudication of Bulfinch's debt after his flirtation with ruin in 1796, was an ardent proponent of both the Bankruptcy Act of 1800 and of debtors' relief laws more broadly.¹³¹

On November 4th, 1791, the US House of Representatives was reviewing a report assembled by a committee that included Boston's then-sheriff, Jeremiah Allen.¹³² A House member noted that "certain indulgences... are allowed to prisoners in some states, which are not granted in others" while another "[expressed] his hope that the house possessed sufficient authority to make such provisions in favor of unfortunate debtors, as humanity itself dictated."¹³³ Debt and incarcerated debtors had apparently become an acute enough problem to concern the federal government, and the first house member cited identified the issue of legal plurality; as long as some states had different bankruptcy procedures than others, than adjudicating cases across state lines would be difficult. Given the economic expansion that was occurring and the ever-larger networks of debt that existed between creditors and debtors from different states, in

¹³¹ Jay Wickersham, "The Financial Misadventures of Charles Bulfinch," *The New England Quarterly* 83, no. 3 (September 2010): 432, <http://www.jstor.org/stable/20752713>.

¹³² "History of Sheriffs," History of Sheriffs – Suffolk County Sheriff's Department, <http://www.scsdma.org/history-of-sheriffs/>.

¹³³ "USA Congress - Philadelphia - House of Representatives, Friday, November 4, 1791," *Gazette of the United States* (Philadelphia), November 9, 1791.

addition to the above-mentioned plurality and instability of private and state notes and currencies, the usefulness of a nationwide piece of bankruptcy legislation was clear.

Democrat-Republicans and Federalists, despite their broad agreement that debt was a growing social ill and that the number of insolvent and/or incarcerated debtors was far too high. On the pages of two of the “national gazettes,” the Federalist-backed *Gazette of the United States* and the Democrat-Republican’s *National Gazette*, the two parties articulated their respective positions on national bankruptcy legislation.¹³⁴ The commerce-minded Federalists endorsed a national bankruptcy regime while skeptical Democrat-Republicans worried that empowering the federal government to intercede in debtor/creditor relations would infringe on citizen’s property rights.¹³⁵ The Federalists realized that insolvency proceedings needed to be standardized because the difficulty of conducting business and resolving debtor/creditor conflicts across state lines demanded a consistent set of laws, not the variety of statutes that governed each state. The Democrat-Republicans, for their part, understood that their rural constituents lent money on a more individual, localized basis and that a federal system for adjudicating debtors’ cases would force lenders into a more static and unwieldy system not tailored for local needs.

Both gazettes covered political discussion of different states’ debtors’ laws, with predictably partisan language. On May 16th, 1792, the *Gazette of the United States* ran the text of “An Act for the Relief of Persons Imprisoned for Debt,” which stipulated that debtors would have “privileges of the yard” while incarcerated, established a set of procedures for serving judgements on debtors, mandated that creditors could not provide their debtors more than one

¹³⁴ Jeffrey L. Pasley, *The Tyranny of Printers: Newspaper Politics in the Early American Republic* (Charlottesville: University Press of Virginia, 2003), 51 and 61.

¹³⁵ Pasley, 55.

dollar a week of supplies; the law would only last for a year.¹³⁶ Further, on May 1st, 1792, an article ran in the *Gazette of the United States* detailing “a meeting of citizens” in a Charleston coffee house, where a number of citizens bought up the obligations of a number of debtors.¹³⁷ “Privileges of the yard” would ultimately become apppoint of contention both legally and in the context of prison administration, as will be seen in the next chapter. The article elaborated that such cooperation was “highly beneficial both to the debtors and creditors, and to the community at large.”¹³⁸ The uncritical focus on a state law trying to bring some order to debtor-creditor relations, in addition to an article extolling the value of the forgiveness of debt as a public good, demonstrates the clear Federalist bent to the *Gazette of the United States*’ writing.

In 1793, the *National Gazette* ran an article republished from the *Boston Independent Chronicle* that read: “picture then the situation of such a vast body of debtors, assembled at the public sales to behold their property sacrificed to answer the purposes of government.”¹³⁹ The article continued, “follow the minister into the house of commons, hear the pitiful tale of woe there related... the nation universally convulsed in consequence of the merchants and manufacturers becoming bankrupts...”¹⁴⁰ Similarly, an article entitled “observations of the propriety of extending the powers of the Justices of the Peace,” ran in the *National Gazette* on February 13th, 1793, asking “is this particular class of men [Justices of the Peace] to serve an apprenticeship at the expense of the poor debtors in the commonwealth?”¹⁴¹ The Democrat-Republican paper was evidently wondering if the Justices of the Peace should be endowed with

¹³⁶ "AN ACT for the Relief of Persons Imprisoned for Debt," *Gazette of the United States* (New York City, New York), May 16, 1792, 110th ed., Volume III sec.

¹³⁷ "CHARLESTON, May 1," *Gazette of the United States* (New York City, New York), June 9, 1792.

¹³⁸ "CHARLESTON, May 1," *Gazette of the United States* (New York City, New York), June 9, 1792.

¹³⁹ "[EXTRACT from the Boston DAILY CHRONICLE]," *National Gazette*(Philadelphia, Pennsylvania), July 3, 1793.

¹⁴⁰ *Ibid.*

¹⁴¹ "For the National Gazette," *National Gazette* (Philadelphia, Pennsylvania), February 13, 1793.

the power to seize a debtors' assets on behalf of their creditors. This reflected a broader ideological concern about the involvement of government in commercial relations and the ability of the government to seize citizens' property on behalf of other citizens.

In Boston, justices of the peace were empowered to act on behalf of creditors dealing with insolvent debtors; Bulfinch in fact surrendered himself to Boston's sheriff, Samuel Bradford, in July of 1811 despite having previously served the city as Police Superintendent precisely to provide him a salary to pay off his debts.¹⁴² Bulfinch, largely by virtue of his social standing and attendant political connections, had been appointed to a variety of municipal offices to provide him with a consistent salary and keep him out of debt.¹⁴³ The Federalist political machine in Boston was powerful enough to guarantee his continuous re-election to the Board of Selectmen, albeit by the narrowest of margins; in 1815, Bulfinch actually lost his seat on the Board only to be reinstated as the result of a recount.¹⁴⁴

The Bankruptcy Act of 1800 was repealed nearly a year before it would have expired on its own, in 1803, with limited Federalist efforts to keep it alive.¹⁴⁵ Neither of the "national gazettes" had survived to see the ultimate fate of the Bankruptcy Law, after the *National Gazette* folded in 1793 and the *Gazette of the United States* stopped circulation in 1801.¹⁴⁶ Both political parties, through their journalistic extensions, made their positions plain. The *National Intelligencer and Washington Advertiser*, a Democrat-Republican-leaning paper and spiritual successor to the *National Gazette*, complete with Jefferson's backing, published in Washington

¹⁴² "History of Sheriffs," History of Sheriffs – Suffolk County Sheriff's Department, <http://www.scsdma.org/history-of-sheriffs/>.

¹⁴³ Charles Bulfinch and Ellen Susan. Bulfinch, "Early Plans and Disappointment," in *The Life and Letters of Charles Bulfinch, Architect, with Other Family Papers, Edited by His Granddaughter, Ellen Susan Bulfinch. With an Introd. by Charles A. Cummings* (New York: B. Franklin, 1973), 129.

¹⁴⁴ *Ibid.*

¹⁴⁵ Mann, 248.

¹⁴⁶ Jeffrey L. Pasley, *"The Tyranny of Printers": Newspaper Politics in the Early American Republic* (Charlottesville: University Press of Virginia, 2003), 75.

D.C. ran coverage of the Congressional debates about the Bankruptcy Law. The *National Intelligencer*, in its coverage of the debates around the Bankruptcy Law, quoted a “Mr. Hastings” (a Democrat-Republican Congressman) as saying “I believe the bankruptcy law to be entirely for the benefit of the debtor.” A “Mr. Smith” disagreed, saying that “the debtor might feel obliged by the liberation of his person and property.”¹⁴⁷

In Massachusetts after the expiration of the Bankruptcy Act, debt and debtors’ prison remained a persistent problem, but more and more legislative restrictions were being placed on between March 11th and April 9th of 1806, the courts of Suffolk county adjudicated, in one form or another, 661 cases relating to creditors trying to get their due from debtors.¹⁴⁸ A number of limits were imposed in response to the sheer volume of cases. In 1811, the Massachusetts Legislature passed a law imposing a five-dollar minimum on debt cases; in essence, no debt less than five dollars could be brought in a court in the Commonwealth.¹⁴⁹ Similarly, “An act to Exempt Certain Goods and Chattels of Debtors from Attachment and Execution” forbade creditors from seizing pieces of a debtors’ property deemed essential for survival and industry, such as Bibles and school books, anything “necessary for his trade or occupation”, and certain household implements, including livestock.¹⁵⁰ Each family could keep up to one cow and pig.¹⁵¹ Many of these laws had existed in one form another prior to and during the Revolutionary War,

¹⁴⁷ "An ACT Respecting the Debts to This State, and the Debtors Thereof, and for Other Purposes," *National Intelligencer and Washington Daily Advertiser* (Washington D.C.), March 9, 1803.

¹⁴⁸ "Miscellany for the Centinel - The Supreme Judicial Court in Massachusetts - What the Judiciary Has Been, and Is in Massachusetts," *Columbian Centinel* (Boston, MA), April 19, 1806.

¹⁴⁹ "Commonwealth of Massachusetts - In the Year of Our Lord, One Thousand Eight Hundred and Eleven," *New-England Palladium* (Boston, MA), March 5, 1811.

¹⁵⁰ "By Authority - Commonwealth of Massachusetts - In the Year of Our Lord One Thousand Eight Hundred and Six - An Act to Exempt Certain Goods and Chattels of Debtors from Attachment and Execution," *New-England Palladium*(Boston, MA), April 11, 1806.

¹⁵¹ *Ibid.*

but expanding commerce and political pressure pushed the Massachusetts Legislature to formalize many “best practices” or understood norms in debtor/creditor relations.

The Bankruptcy Act expired eight years before Bulfinch could make use of it, and most of the state statutes being passed applied to smaller debtors living hand-to-mouth. The forgiveness of his creditors and his own improvisation kept his head above water, financially, until another series of business failures between 1808 and 1811 made Bulfinch insolvent. His social standing and the economic customs of his class could only protect him as far as his debts were owed to other prominent Bostonians. That he had contracted debts with people outside of his social circle made him vulnerable to conventional legal treatment.

Despite the steady income afforded to him by his rarefied government positions, his creditors’ unusual forbearance, and the sale of much of his family’s real estate, Bulfinch found himself unable to pay a debt of \$409.50.¹⁵²

Both gazettes and their political patrons recognized debt adjudication as a difficult and partisan legal issue; the methods proposed for ameliorating the issues confronting debtors and their creditors were very different. The Federalist position (and by extension, the position of the *Gazette of the United States*) favored a federally-mandated bankruptcy procedure. In 1800, as Congress was considering a bill that would provide a nationwide legal mechanism for the relief of debtors and the repayment of creditors, the *Gazette of the United States* published a number of reports on congressional debates around the issue. While the *National Gazette* had ended its circulation nearly seven years before the Bankruptcy Act of 1800, its position on a federal bankruptcy law was fairly clear. Jefferson was vehemently opposed to a federal bankruptcy

¹⁵² Jay Wickersham, "The Financial Misadventures of Charles Bulfinch," *The New England Quarterly* 83, no. 3 (September 2010): 470, <http://www.jstor.org/stable/20752713>.

statute of any kind. An article run on January 30th, 1792 in the *National Gazette* mused that to alleviate debt,

“to I pose taxes for the discharge of... debt, puts in mind of the covetous man in Moliere, who, chagrined beyond measure at the loss of his money, and ignorant of whom to accuse of the theft, or where to apply for restitution, seizes his own left hand with the right, and cried out in a praoxyim of passion ‘and myself too! I will charge myself with the robbery!’”¹⁵³ The reference to French theater was not entirely in keeping with the more nativist impulses of the Democrat-Republicans but the point of the piece in terms of debt is clear; the federal government should not have a role in alleviating debt. The *National Gazette*’s position seems to be that government debt relief is akin to cutting off the nation’s collective nose to spite the face.

Bulfinch wrote and was the top signer of a petition that was published in the *Independent Chronicle* in February of 1814 that said “we could not but observe the pretended condolence for this class of citizens. But wherein have they been depressed? – Let the town of Boston and the county of Suffolk say, whether men of this description do not hold the best *pecuniary offices*? What man of this class of citizens is now suffering under the vengeance of his creditors? For a few years back, the greatest recommendation to the most responsible lucrative offices, are those who have received benefit from the *indulgence of their creditors* – And, strange to say, that a petition is now before the Legislature, to establish a court with one judge, to give [unreadable] to creditors to obtain their debts from debtors - ”¹⁵⁴ The text of the petition references the creation of a court for debtors that was part of proposed legislation to help adjudicate debtor/creditor disputes that was proposed after the collapse of the federal Bankruptcy Law of 1800.

¹⁵³ "Structures on Mr. Pitt's SINKING FUND: With the Best Means of Alleviating the NATIONAL DEBT," *National Gazette* (Philadelphia, Pennsylvania), January 30, 1792.

¹⁵⁴ *Independent Chronicle* (Boston, MA), February 7, 1814, accessed February 10, 2018.

The indictment that Bulfinch levies in this petition seems hypocritical because he himself was a man who had received “indulgence” from his creditors and held city government positions largely because of the influence of his creditors and political allies. Bulfinch’s sympathies seem to lie with jilted creditors, which might explain his own feelings of responsibility for his own failure. Yet, the irony in Bulfinch advocating against a debtors’ court and criticizing debtors who had been shown forbearance suggests his desire to externalize his feelings of responsibility for his own business failings.

The legal system for jailing debtors in Massachusetts evolved, like similar legal systems throughout the colonies and later the United States, from a patchwork collection of statutes designed both to mediate debtor/creditor disputes and ensure that debtors were not treated too harshly by their creditors. The inconsistency of the laws in different states made inter-state debt cases difficult to adjudicate, and the expansion of borrowing across state lines only compounded the problem. Loyalist estates such as the one that Bulfinch inherited also presented a challenge to the legal structure. State governments were obliged to return at least some of the assets that they had seized from Loyalists, and the subsequent emptying of the governments’ coffers meant that note redemption was suspended, making repayment of debts harder and forcing creditors to decide whether to accept potentially worthless paper money or enter into legal proceedings that could prove long and costly. Bulfinch’s inheritance was affected, to at least a small degree, by the dispossession of the Loyalist Apthorps, but his financial difficulties were not brought about by the state. His failures were the result of forces outside of his control, but his feelings of personal responsibility made him leery of attempts to create a centralized and standardized legal body to adjudicate cases between debtors and creditors. The need for a standard legal process was apparent, however, as more and more debtors from around the nation began applying for

release from prison on the basis of different state laws, and as political pressure mounted from disgruntled debtors and creditors alike for a solution that would resolve differences between individual cases and provide a template for debt proceedings.

Chapter 3: Prison Yards and Debtors – Life in Debtors’ Prison

In the July 1806, Selleck Osborn to Boston’s, *The Democrat*, proclaiming that although “a man’s frequent speaking of his own sufferings is odious to hear”, there had transpired “some late circumstances, which have occurred, ought to be known by my friends and the public at large...”¹⁵⁵

Incarcerated in a debtors’ prison in Litchfield, Massachusetts, as the result of costs incurred in a libel lawsuit, Osborn had written to *The Democrat* to protest the incarceration of “an unfortunate young man, who had been insane for several years” who had “shed the blood of an innocent female” in his own cell.¹⁵⁶ He castigated “Mr. Sheriff Landon” for taking the very unusual action of putting the murderous young man in his cell, in a “sullen and contemptuous” manner. Osborn continued “the maniac whom, for the safety of society, it was deemed necessary to confine in prison, was left in a close room with me, without a single word of explanation or caution from the *humane, polite, and dignified* sheriff!”¹⁵⁷ Elaborating that many debtors had expressed their willingness to share a cell with him, Osborn criticized the sheriff for “[putting] all the *criminals*, as he stiled them, together... he was fearful that if he out debtors with me, who was a *criminal*, even of their own choice and consent, he should be troubled; of course debtors must go by themselves!”¹⁵⁸

His derision for Sheriff Landon notwithstanding, Osborn’s case proved compelling; *The Democrat* published as an addendum to Osborn’s account a series of letters written by a concerned group of citizens (“mostly Republicans” according to Osborn) expressing concern

¹⁵⁵ Selleck Osborn, "From the "Litchfield Witness", " *The Democrat* (Boston, MA), July 16, 1806, accessed February 23, 2018.

¹⁵⁶ *Ibid.*

¹⁵⁷ Selleck Osborn, "From the "Litchfield Witness", " *The Democrat* (Boston, MA), July 16, 1806, accessed February 23, 2018.

¹⁵⁸ *Ibid.*

about Sheriff Landon's conduct and advocating for Osborn to be given "liberties of the yard".¹⁵⁹ Arguing that his incarceration had to do with nonpayment of fees resulting from a libel trial and not due to the libel itself, the "many republicans" demanded that Osborn be moved back in with the debtors in the Litchfield jail and that he be allowed "liberties of the yard". After a series of letters received no response, the petitioners argued that "his feelings and sentiments... make it of the first importance that he should be allowed, *publicly*, to join in the worship of his God."¹⁶⁰

In response to mounting public pressure, Sheriff Landon responded to Osborn and his Republican allies, writing "This mode of confining debtor prisoners, was practiced, by consent of debtors, at various times, until the 27th of June last year, *for the express purpose of accommodating O...* when an unfortunate young man... was brought to the jail... the reason why I put Baldwin [the murderer] into the room with O. at that time was for the purpose of dividing the prisoners in each room, equally..."¹⁶¹ Landon elaborated that there was "*no other room in which I could secure a prisoner for a night,*" and that after consulting a number of lawyers and other legal authorities he had concluded that while "there is generally some very honest men confined in jail for debt; who might very justly think themselves hardly treated should they be denied the attention granted to *criminals*", the murderer, Baldwin, though accused of a "very heinous and capital crime" had "not having had a trial is at present to be *presumed innocent*."¹⁶²

Osborn's case highlights several facets of carceral culture in post-Revolutionary America, particularly the experience of debtors. Since the first debtor was incarcerated in North America, debtors and criminals were perceived as fundamentally different and treated as such.

¹⁵⁹ Selleck Osborn, "From the 'Litchfield Witness'," *The Democrat* (Boston, MA), July 16, 1806, accessed February 23, 2018.

¹⁶⁰ *Ibid.*

¹⁶¹ John B. Landon, "Osborn Selleck's Case," *New-England Palladium* (Boston, MA), August 5, 1806, accessed February 24, 2018.

¹⁶² John B. Landon, "Osborn Selleck's Case," *New-England Palladium* (Boston, MA), August 5, 1806, accessed February 24, 2018.

Housed in different facilities from the seventeenth century on, and allowed different privileges while incarcerated, debtors' terms of incarceration ranged from a day to many years, and the quarters in which they were imprisoned varied from the dank stone of state prisons to townhouses located in the middle of cities. Debtors were almost always kept in better conditions than their more common and "less valuable" brethren, criminals. Despite the distinction, incarceration was often difficult and dangerous for debtors. Their paths into jail were very different and their options for obtaining release were similarly diverse. This debtors' experience with incarceration and penal structures contrasts with the experience of "criminals" in ways that demonstrate the divide in public perception of the two groups, a divide that would eventually precipitate the death of debt incarceration as a practice. Difference in practices in the incarceration of the two groups reveal a perception that debtors were wretched and pitiable figures deserving of public forgiveness and even support, where criminals were treated in a way that reflected the public's lack of interest in their upkeep. Public discourse frequently drew this distinction, demonstrating the re-imagining of debtors not as criminals but pitiable people fallen on hard times.

I. History of Debtors' Prisons in America and Boston

For the Puritans who initially settled Massachusetts Bay Colony, the purpose of punishment was moral instead of economic. Policing individuals' behavior in accordance with scripture and community norms was more important than the defense of property rights.¹⁶³ This prioritization meant that debtors were treated as criminals, as their inability to square their debts was seen as a sinful violation of community. The Calvinist logic that informed the Puritan sense

¹⁶³ Alan Rogers, "Murder and Due Proceeding in Colonial Massachusetts," in *Murder and the Death Penalty in Massachusetts* (Amherst: University of Massachusetts Press, 2008), 1, <http://www.jstor.org/stable/j.ctt5vk3ct.5>.

of justice saw sinfulness as ingrained and all people, debtors included, irrevocably bound for either paradise or damnation. Thus, their punishments were intended to serve as deterrents, not to rehabilitate lawbreakers.¹⁶⁴ Yet, debtors were not typically incarcerated alongside other criminals, even in the seventeenth century. Before the formalization of legal norms and practices for mediating disputes between debtors and creditors, different communities dealt with debt in different ways.¹⁶⁵ For the most part, a town council or local church would serve as the adjudicating body, and whatever facility was used to incarcerate criminals would also be used to incarcerate debtors.¹⁶⁶ Extended incarceration as punishment was fairly rare in the seventeenth and early-eighteenth century, but as *Law and Liberties* demonstrated, debtors were incarcerated for as long as their creditors thought sufficient.¹⁶⁷

Prisons of any sort in the eighteenth and nineteenth-century, whether for criminals or debtors, were grim places to live. Cold and unheated stone buildings with often-inadequate provisions and lavatory facilities, combined with hard labor resulted in high mortality rates in the colonial period. Their number proliferated through the seventeenth and eighteenth centuries

During the Revolution, both American and British soldiers and writers accused the other side of the horrific mistreatments of prisoners of war. The complaints of soldiers on both sides ranged from disregard for rank to whippings, starvation and exposure to the elements, and intentional poisoning.¹⁶⁸ Wartime memories of the “black holes” of prison ships lived large in

¹⁶⁴ Matthew W. Meskell, "An American Revolution: The History of Prisons in the United States from 1777 to 1877," *Stanford Law Review* 51, no. 4 (April 1999): 842, accessed March 16, 2018, <http://www.jstor.org/stable/1229442>.

¹⁶⁵ Jennifer Graber, *The Furnace of Affliction: Prisons & Religion in Antebellum America* (Chapel Hill: Univ. of North Carolina Press, 2014), 16-17.

¹⁶⁶ Robert A. Feer, "Imprisonment for Debt in Massachusetts before 1800," *The Mississippi Valley Historical Review* 48, no. 2 (September 1961): 253, <http://www.jstor.org/stable/1902514>.

¹⁶⁷ Brian Jarvis, "The Scarlet Letter and the Long Forever of Puritan Punishment," in *Cruel and Unusual: Punishment and US Culture* (London: Pluto Press, 2004), 22, 2018, <http://www.jstor.org/stable/j.ctt183q5xb.4>.

¹⁶⁸ Holger Hoock, "Black Holes," in *Scars of Independence America's Violent Birth* (Broadway Books, 2018), 193.

the minds of Americans when thinking about the treatment of prisoners.¹⁶⁹ Anchored in American harbors and used to house prisoners when jails on land were full, the British used decommissioned warships and old cargo hulks as jailhouses, keeping dozens, sometimes hundreds, of men locked in the holds together.¹⁷⁰ With limited ventilation and no sanitation to speak of, disease and insanity claimed many lives. More American colonists died in British captivity than from combat during the American Revolution, and the scars left by the brutality of wartime incarceration imbued the new government with a deep desire for justice and effective and humane penal systems.¹⁷¹

Charles Bulfinch and his family had very little experience with prison of any kind. Bulfinch's Loyalist forbears largely managed to escape punishment for their loyalties, and the diffusion of the Apthorp estate over successive generations meant that the families economic future was assured, unlike some other Loyalists.¹⁷² Aside from Stephen Greenleaf's exile during the Revolution, there are no records to suggest that the Bulfinch family had any experience with incarceration.

Punishment for debtors had long roots in America. As early as 1638, incarceration for debt was a practice in the colonies with the consent of the legislature, and the specter of imprisonment for unpaid debts hung over debtors after independence as well.¹⁷³ Newspapers were full of notices of people being held for debt; some of the earliest debtors' advertisements that appeared in fact talked about "absconding debtors," often explaining that they were

¹⁶⁹ Hoock, 231

¹⁷⁰ Hoock, 230

¹⁷¹ Brian Jarvis, "The Birth of a Prison Nation," in *Cruel and Unusual: Punishment and US Culture* (London: Pluto Press, 2004), 5, <http://www.jstor.org/stable/j.ctt183q5xb.3>.

¹⁷² E. Alfred Jones, *The Loyalists of Massachusetts: Their Memorials, Petitions and Claims* (Baltimore, MD: Clearfield, 2012), 35.

¹⁷³ Robert A. Feer, "Imprisonment for Debt in Massachusetts before 1800," *The Mississippi Valley Historical Review* 48, no. 2 (September 1961): 253.

incarcerated in local jails. The *Gazette of the United States* ran an advertisement about “Paul Dreyell, an absconding debtor, and all other whom it may concern.”¹⁷⁴ The advertisement elaborates that John Sloss Hobart, a Justice on New York’s Supreme Court Justice, “has directed all this the said Paul Dreyell’s estate, real and personal, within this state, to be seized; and that unless he shall discharge his debts within three months of the publication of this notice; all his estate real and personal will be sold for the payment and satisfaction of his creditors.”¹⁷⁵

Given that most towns and small cities in the colonial era were capable of incarcerating their own criminals and debtors, a larger discussion of penal institutions, and their usefulness in cases of insolvent debtors was slow to develop, even after the Revolution. While Puritan leaders themselves acknowledged in *Body of Liberties*, a list of rights and laws developed in 1648, that there was a fundamental difference between debtors and criminals, debt was a punishable offense in colonial America.¹⁷⁶

The growth of prisons in the colonies corresponded to population growth. By the time the American Revolution was over, both the size of the population of the United States revealed the inadequacies of the town and city jails. State prisons arose after the Revolution as state legislatures responded to the pressure of growing population and a proportionately growing group of criminals.

At the same time, debtors increased the pressure of both the number of criminals and the conditions in which they were kept. The proliferation of debtor/creditor relationships that accompanied both the economic growth and the booms and busts of the late-eighteenth and early-nineteenth centuries meant that more and more debtors were entering prison. In 1817, the

¹⁷⁴ *Gazette of the United States* (New York City, New York), April 7, 1790.

¹⁷⁵ *Gazette of the United States* (New York City, New York), April 7, 1790.

¹⁷⁶ Robert A. Feer, "Imprisonment for Debt in Massachusetts before 1800," *The Mississippi Valley Historical Review* 48, no. 2 (September 1961): 253.

Boston Daily Advertiser ran a report from “The Humane Society” claiming that 1120 debtors were incarcerated that year.¹⁷⁷ The Society has provided 24,430 quarts of soup the prisoners, at a cost \$1051.52, suggesting the tremendous cost associated with maintaining the debtors in prison.¹⁷⁸ By 1830, the number of debtors incarcerated annually had climbed over 3000, according to a report from “Boston’s Prison Discipline Society.”¹⁷⁹ At the time that the report was published, there were 1211 debtors incarcerated in Suffolk County.¹⁸⁰ At the same time in Worcester, incarcerated debtors outnumbered criminals three to one.¹⁸¹ The proliferation of incarcerated debtors, largely a function of increased economic activity after the revolution, forced a public reckoning with the practice of incarcerating debtors.

Insolvent debtors represented both a serious economic disruption for their creditors and a persistent social problem, to the extent that they were perceived to be defrauding their creditors. The dishonesty of absconding debtors was used as an argument against debtor relief legislation. It further served to complicate the social image of debtors in early America. Debtors confounded early Americans’ ability to precisely categorize them on the spectrum of criminality. If, as popular public sentiment suggested, debtors were not sinners but victims of the market, then was incarceration just?

Charles Bulfinch’s debt offered Boston a version of this question. Could the city’s leaders lock up a native son, a fellow Brahmin, who had contributed to the city’s economic and cultural development and held public offices, offices given to him specifically to help him avoid prison?

¹⁷⁷ Matthew Clarkson and Henry M. Francis, "Humane Society," *Boston Daily Advertiser* (Boston, MA), September 21, 1815.

¹⁷⁸ Matthew Clarkson and Henry M. Francis, "Humane Society," *Boston Daily Advertiser* (Boston, MA), September 21, 1815.

¹⁷⁹ The Prison Discipline Society, "IMPRISONMENT FOR DEBT," *Boston Courier* (Boston, MA), December 6, 1830.

¹⁸⁰ The Prison Discipline Society, "IMPRISONMENT FOR DEBT," *Boston Courier* (Boston, MA), December 6, 1830.

¹⁸¹ *Ibid.*

Once Bulfinch's financial failures crossed class boundaries, the city gave its answer, and Bulfinch was incarcerated. His contemporaries did not consider him a criminal, but the laws that governed his class no longer applied to him, and left to face the legal world that unconnected debtors had to face, he ended up in prison.

The problem posed by debtors also called into question the philosophy undergirding incarceration in America. The Puritan model of punishment, which relied heavily on public punishment to dissuade bad behavior with little or no interest in reforming lawbreakers, was not workable because of the population boom and the declining popularity of public punishment.¹⁸² To be sure, public executions were still a part of American life after the Revolution, but incarceration took the place of public punishment, particularly as prison reform movements began to reassess how best to discipline criminals.

II. "One Promiscuous Crowd without Distinction": Incarcerating Criminals and Debtors

According to an article printed on September 1, 1792 in the *National Gazette*:

"The Grand Jury of Baltimore county, after having examined the jail, observe 'That they have found the prisoners (*debtors* and *criminals*) thrust in together in one promiscuous crowd without distinction, or respect to person or character; that a custom prevails in this unhappy mansion... of mulcting each new guest with a sum of money, termed GARNISH, and on failure of payment to strip the unfortunate stranger of his cloathing, which, in the cold season of the year, may prove an *evil* of a very *serious* nature, and if possible, ought to be suppressed.'

The author's indignation that debtors and criminals were being housed together underscores the popular opinion that debtors were distinct from criminals and ought to be treated as such. The separation, though sometimes only cosmetic, delineated more than simply the category of the debtors' transgression against society. Debtors were separated because they were acknowledged

¹⁸² Jennifer Graber, *The Furnace of Affliction: Prisons & Religion in Antebellum America* (Chapel Hill: Univ. of North Carolina Press, 2014), 19.

¹⁸³ "PHILADELPHIA - September 1, 1792," *The National Gazette* (Philadelphia, Pennsylvania), September 1, 1792.

as fundamentally different than criminals. The divide between debtors and criminals also represents a class divide. Not only did debtors tend to enjoy higher socioeconomic status than their criminal counterparts, their terms of incarceration tended to be much shorter and less consistent, and they were offered much more flexibility about where they would be incarcerated and greater freedoms while incarcerated. Charles Bulfinch in many ways epitomizes the favored status of debtors. Despite the enormity of his debts, he was incarcerated for only four weeks, and he was allowed to leave the prison facility during the day and had full freedom to travel the city. He even retained his employment and position as chairman of Boston's Board of Selectmen, despite missing a meeting due to his incarceration. The irony of a former Superintendent of Police and an elected representative locked in a prison that he had a hand in designing was certainly not lost on Bulfinch, and adds historical color to his experience.

It is very difficult to discuss Bulfinch's time in debtors' prison with any specificity because he did not keep any account of the conditions of his incarceration. All that is left is the knowledge that he was in debtors' prison for four weeks in the summer of 1811. Further, it is very difficult to construct an idea of the conditions inside debtors' prisons, as historians such as Bruce Mann have pointed out.¹⁸⁴ Debtors often did not choose to discuss their incarceration, and public records of debtors' prisons tended to be folded in with reports about the larger facilities that they were attached to, with few specific references to debtors' accommodations. Thus, the best image of debtors' prisons, in Boston and elsewhere in America, can only be constructed from newspapers and reports from prison reform societies. While these offer fairly thorough descriptions and interesting information, a picture of Bulfinch's experience is still very elusive.

¹⁸⁴ Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard University Press, 2009), 85-87.

People incarcerated in debtors' prison tended to be wealthier than the criminals housed near them. Though lending did take place along class lines, to trust anyone with any amount of money more than a few dollars would require some amount of trust on the part of the creditor. Further, people likely to take on loans to expand businesses, purchase property, or otherwise try to improve their financial position tended to be better-educated. There were of course debtors from all classes and backgrounds, though there was class tension between the debtors. The almshouse also tended to absorb more poor minor debtors and their families, as in cases of small debts, it was more common for a creditor to simply take everything they could from a poor debtor and simply leave them to the street.¹⁸⁵

The path to debtors' prison usually looked quite different than the path that led to "regular" prison, whether in a town jail or a state prison. Reverend Jared Curtis, who served as a chaplain at the Massachusetts State Prison from 1828 to 1852, conducted interviews with many inmates from 1829 to 1831 as the state prepared to move the inmates into the new facility that the state had mandated in 1826.¹⁸⁶ Their stories detailed everything from domestic violence and crushing poverty to larceny, rape, and murder. Elisha Dillingham, who was the same age as Bulfinch and was also born in Massachusetts, had markedly different experiences and whose path to prison was likewise different to Bulfinch's. After a "pretty good education", Dillingham entered the Continental Army during the Revolution and developed "irregular habits", and after being incarcerated three different times, he "in a perfect agony of feeling".¹⁸⁷ Dillingham "felt dreadfully he has lived, how he has abused God's goodness" and "intends to seek something

¹⁸⁵ Ruth Wallis Herndon, "Poor Women and the Almshouse in the Early Republic," *Journal of the Early Republic* 32, no. 3 (Fall 2012): 356, accessed April 1, 2018, <http://www.jstor.org/stable/23315159>.

¹⁸⁶ Philip F. Gura, "Introduction," introduction to *Buried From the World: Inside the Massachusetts State Prison, 1829-1831* (Boston, MA: Northeastern University Press, 2002), xvi - xvii.

¹⁸⁷ Gura, 208

better than the fruits of sin.”¹⁸⁸ Not only does Dillingham’s experience provide a foil to Bulfinch’s, but Reverend Curtis’ focus on redemption demonstrates the evolving notions of punishment and incarceration.

Debtors’ prisons were also used to hold people whose crimes did not merit criminal incarceration but who were deemed worthy of holding on to. Consequently, some inmates in debtors’ prison had strange stories of how they came to be locked up that did not necessarily have anything to do with financial failure. One young man was “confined in the debtors’ prison for seduction” in February of 1820.¹⁸⁹ “A wag... put to his tramps for bail” eventually agreed to a “compromise by marriage”, but escaped while shopping for appropriate clothing, leaving the woman “lamenting her credulity.”¹⁹⁰ Similarly, Timothy M. Joy, a veteran who fled New Hampshire to avoid being incarcerated for debt was seized in Haverhill, Massachusetts for drunkenly ranting about Timothy Pickering, a prominent Federalist politician from nearby Salem.¹⁹¹

Captured slaves and other people of color were also incarcerated in debtors’ prison. Early newspapers abounded with not only advertisements offering rewards for the return of captured slaves, but notices from law enforcement officials of captured runaways being held to be claimed. On one page of one issue of *The National Intelligencer and Washington Advertiser* published on November 11, 1803, advertisements appeared for insolvent debtors, offering rewards for escaped slaves and servants, and reporting on people incarcerated on suspicion of being fugitive slaves.¹⁹² \$200 was being offered for the return of two slaves, “Wat and Ben” to

¹⁸⁸ *Ibid.*

¹⁸⁹ "Love's Last Shift," *Ladies' Port Folio* (Boston, MA), February 5, 1820.

¹⁹⁰ "Love's Last Shift," *Ladies' Port Folio* (Boston, MA), February 5, 1820.

¹⁹¹ Martin J. Hershock, *A New England Prison Diary: Slander, Religion, and Markets in Early America* (Ann Arbor: University of Michigan Press, 2012), 38.

¹⁹² *The National Intelligencer and Washington Advertiser* (Washington D.C.), November 11, 1803.

“Brice J. Gassaway”, while \$100 was being offered for the return of “Dick”, a runaway servant.¹⁹³ A woman named “Rachel May” had been held by the sheriff on suspicion of being since September 30, and an the ad indicated that she would be sold to cover her incarceration fees.¹⁹⁴ Two other “runaways”, named “Tom” and “William Groche”, were being held in Baltimore’s jail, to be sold if they were not claimed by their owners.¹⁹⁵ Two debtors, Robert Ellis and James McDonald, were both petitioning to be released from debtors’ prison.¹⁹⁶

The presence of so many slaves in debtors’ prison facilities casts them as a kind of repository for second-class citizens, people deprived of their freedom without due process. Parallels between race and debt were often made by debtors. The masthead of *Forlorn Hope*, a newspaper produced by incarcerated debtors in New York City’s debtors’ facility, featured a chained black man standing side-by-side with a modestly-dressed white man. The presence of slaves likely contributed to this equation and identification on the part of the debtors. The stories of individual slaves and people of color are largely lost, but the key difference between their experience and the debtors next to them was the permanence of their condition. Debtors had at least a prayer of legal liberation, while people of color were incarcerated into debtors’ prison mostly as a stopgap place of residence until they could be claimed or sold to cover their jail fees. It is impossible to say whether the debtors fully appreciated this distinction when they drew the equation between themselves and slaves, but the equation itself is telling about how the debtors

¹⁹³ Brice J. Gassaway, "200 Dollars Reward," *The National Intelligencer and Washington Advertiser* (Washington D.C.), November 11, 1803, *Chronicling America: Historic American Newspapers* AND James Thompson, "100 Dollars Reward - DICK," *The National Intelligencer and Washington Advertiser* (Washington D.C.), November 11, 1803.

¹⁹⁴ James Wilson, "Rachel May," *The National Intelligencer and Washington Advertiser* (Washington D.C.), November 11, 1803, *Chronicling America: Historic American Newspapers*.

¹⁹⁵ James Wilson, Sheriff, *National Intelligencer and Washington Advertiser*(Washington D.C.), November 11, 1803.

¹⁹⁶ Richard Forrest, "In the Case of JAMES MCDONALD (A Bankrupt)," *National Intelligencer and Washington Advertiser* (Washington D.C.), November 11, 1803, AND Uriah Forrest, Clerk, "On the Petition of ROBERT ELLIS," *National Intelligencer and Washington Advertiser* (Washington D.C.), November 11, 1803.

understood their loss of liberty. They evidently saw themselves as exploited and abused, and saw a kinship between themselves and slaves. Whether the people of color shared the sentiment is unclear.

In Boston, escaped slaves were also incarcerated in any available prisons, including those holding debtors. Of course, incarceration was not the only way that Boston dealt with runaway slaves or unwanted people of color. Mass expulsions were performed periodically, sending some back to slavery and others to other cities. In his capacity of Chairman of Boston's Board of Selectmen, Charles Bulfinch oversaw the deportation of 235 black people from the city as fugitives in 1800.¹⁹⁷ Whether their expulsion was simply a procedural matter or a more deliberate attack on a vulnerable community is not clear (it could of course be both) is not entirely clear, but expulsion did reduce the prison population, and would avoid the mixing of fugitive slaves or other people of color with white debtors. This may not have been a conscious political consideration in the decision to expel the 235 people of color, but the concern about the intermingling of debtors with undesirable elements of society certainly had a racial dimension.

The inmates of New York City's debtors' prison collectively had enough talent to produce their own constitution. Signed by all of the debtors incarcerated in New York City's facility, the constitution created a court system for the inmates that was sophisticated enough to adjudicate cases among debtors and hand down sentences that ranged from reprimands to expulsion from the debtors' wing of the prison.¹⁹⁸ When the educated, middle-class debtors tried to annex the working-class debtors in a different part of the prison, to get them to ratify the

¹⁹⁷ Arthur O. White, "The Black Leadership Class and Education in Antebellum Boston," *The Journal of Negro Education* 42, no. 4 (Autumn 1973): 507, accessed March 23, 2018, <http://www.jstor.org/stable/2966563>.

¹⁹⁸ Mann, 50.

constitution, they were flatly rebuffed, underscoring the class tensions that existed even among men incarcerated together.¹⁹⁹

In addition to their constitution, incarcerated debtors in New York City produced, *Forlorn Hope*, a newspaper in which debtors lamented their position and agitated for both better conditions and an end to incarceration for debt. Annual subscriptions were sold for three dollars, and the paper proved popular with early prison reformers.²⁰⁰ The first newspaper of its kind, *Forlorn Hope* demonstrates the abilities and education of many incarcerated for debt and the advocacy that they were willing take on their own behalf.

A second newspaper was published from the New Gaol, *The Supporter and Daily Repast*. Published by Robert Morris and John Nicholson, two major Revolutionary-era speculators, the paper was created as a means for the men to maintain their families outside of the prison.²⁰¹ Though it did not enjoy circulation as wide as *Forlorn Hope*, it did wind up in the hands of influential people; President John Adam was apparently a subscriber.²⁰² The content of the paper did not focus on life inside the prison, differentiating it from *Forlorn Hope*.²⁰³

The Supporter highlights the efforts of incarcerated debtors to continue providing for their family or other dependents while in jail. Though there is no evidence that he engaged in any specific money-making endeavors from Boston's debtors' prison, Bulfinch was still paid his salary for his services in his public offices while incarcerated.

Debtors' terms of incarceration were far less consistent than those of criminals. Since incarceration was used primarily to ensure that ostensibly insolvent debtors were not concealing

¹⁹⁹ Mann, 153.

²⁰⁰ James McGrath Morris, *Jailhouse Journalism: The Fourth Estate Behind Bars* (New Brunswick, New Jersey: Transaction Publishers, 2017), 23.

²⁰¹ Morris, 26.

²⁰² Morris, 27.

²⁰³ *Ibid.*

assets of any kind, and there was no official sentence from a court to determine how much time a debtor had to serve, some debtors would be incarcerated for a day or two, while some would remain for a period of years.²⁰⁴ William Duer, whose speculation was at least partially responsible for the Panic of 1792, was incarcerated for seven years until his death in 1799.²⁰⁵ Similarly, between May 15th and 31st of 1823, 105 people were incarcerated for debt in Suffolk County, a number that worried city administrators according to the Boston-based newspaper *The Repertory*.²⁰⁶ Of those initial 105, 50 were released within two weeks of their imprisonment, while 32 were placed “on the limits”, and 29 were still incarcerated as of the paper’s publication of May 31 of 1823.²⁰⁷ Of the 29 who were still in jail, 19 were white and 10 were black, most of them imprisoned for small debts, according to the article.²⁰⁸ The differences in length of debtors’ terms of incarceration demonstrated not only the individual nature of each debtors’ circumstance, but the unsureness of the courts and citizens about what a proper punishment, if any, was for debtors.

III. Facilities for Criminals and Debtors

Boston’s Prison Discipline Society published a report in July of 1823 detailing the conditions of debtors in the Boston Jail.²⁰⁹ The cells were 15 by 10 feet, and about seven feet high, furnished with a meager bed of a straw mattress and a blanket.²¹⁰ Debtors were given a pound of bread with “inferior pieces” of boiled beef and some “gruel”.²¹¹ The report noted that

²⁰⁴ Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard University Press, 2009), 153.

²⁰⁵ *Ibid.*

²⁰⁶ "Poor Debtors," *The Repertory* (Boston, MA), May 31, 1823.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

²⁰⁹ John W. Quincy and John Mackay, "BOSTON, July 12, 1823," *The Repertory* (Boston, MA), July 15, 1823.

²¹⁰ *Ibid.*

²¹¹ John W. Quincy and John Mackay, "BOSTON, July 12, 1823," *The Repertory* (Boston, MA), July 15, 1823.

any cell with more than two inmates was not given additional provisions, with exception of the mattress and blankets, “nor a supply of soap or vinegar articles of cleanliness and comfort which have been from time immemorial, in all civilized countries, included in the rations of a captive, even on board the most loathsome prison ships.”²¹² Conditions in debtors’ prison were evidently grim.

“HOWARD” described the Boston debtors’ prison as “a disgrace to the metropolis of the New England states”, arguing that it “should be removed or enlarged; the garden at the rear thereof might at a reasonable expence be purchased... then additional rooms for the debtors could be built and the necessity of crowding them could be avoided...”²¹³ “HOWARD” praised the jail’s warden, writing “with the best exertions of Mr. Hartshorne it is impossible to remedy the evil of putting debtors into rooms indiscriminately, but he cannot do better... I am sure he draws as far as is in his power, proper lines of distinction, between persons both as to color and character.”²¹⁴ HOWARD’s article demonstrates not only the problem of overcrowding that faced debtors’ prison, in Boston as elsewhere, that resulted from the post-Revolutionary economic growth, but the clear division of opinion in the minds of many about how debtors ought to be treated. HOWARD evidently felt that the warden was right in separating criminals and debtors, and that the conditions of the debtors alone should be improved.

The state itself consistently recognized this difference between debtors and criminals, and designed their prisons accordingly. Most prisons had a separate section for debtors, and the Boston Jail was no exception, but the isolation did not protect the debtors from the dangers

²¹² John W. Quincy and John Mackay, "BOSTON, July 12, 1823," *The Repertory* (Boston, MA), July 15, 1823.

²¹³ HOWARD, "For the COMMERCIAL GAZETTE," *Russell's Gazette, Commercial and Political* (Boston, MA), July 30, 1798.

²¹⁴ HOWARD, "For the COMMERCIAL GAZETTE," *Russell's Gazette, Commercial and Political* (Boston, MA), July 30, 1798.

associated with incarceration. There were many dangers in debtors' prison. During outbreaks of disease, all inmates in town or state prisons were very vulnerable, by virtue of the proximity of the inmates and the people who visited the jails. One debtor wrote to his creditor during the Yellow Fever outbreak of 1793 in Philadelphia, essentially accusing him of murder, saying "it would be considered most barbarous... if the city gaol was on fire, for the gaoler to flee from it with the keys in his pocket, and leave the prisoners to be consumed in the flames... in this sickly season – to be shut up in a prison in the raging of a mortal disease is the same."²¹⁵ In 1803, a debtor in Boston was the first person infected with a fever and was quickly quarantined in the prison grounds.²¹⁶

Debtors were not safe from freak accidents, either. In August of 1810, while expanding the Boston Jail, a beam fell into the debtors' section and killed a black debtor named Scipio and severely injured two others.²¹⁷ Part of New York's debtors prison burned down in 1811, but the stone building survived the blaze for the most part.²¹⁸ The only reported casualty was a tiger in an adjacent museum.²¹⁹ Though the debtors were kept separately, the dangers that they faced behind bars were as real as those that existed for criminals. This reality demonstrated that though debtors may have had shorter terms of incarceration, prison was not just a punishment of time, but could prove a lethal mechanism to compel a debtor to give up assets that they did not necessarily have.

Fight among debtors were not common, though disputes were not unheard of. The court assembled by the debtors in the New Gaol often heard cases of debtors complaining about one

²¹⁵ Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard University Press, 2009), 97.

²¹⁶ "Record of Diseases," *Columbian Centinel and Massachusetts Federalist* (Boston, MA), October 1, 1803.

²¹⁷ *The Repertory* (Boston, MA), August 24, 1810.

²¹⁸ "Distressing Conflagration," *Essex Register* (Salem, MA), May 25, 1811.

²¹⁹ *Ibid.*

another's behavior, whether causing a disturbance or, as one former sheriff incarcerated for debt in New York found, stealing communal firewood.²²⁰ The relationships between debtors were often amicable, as there was a sense of shared identity, of being victims of the same oppression.

Debtors also had a complicated relationship with their jailors. Reports of abuses were rare, though debtors did levy accusations of various kinds against their jailors. Theft by orderlies or other guards was not unheard of, though when caught, those responsible for stealing were usually arrested in their turn. A black orderly named "Mr. Cuffee", "considered a very faithful, honest fellow" was caught stealing from debtors and was awaiting trial for his "guilt and treachery."²²¹ The punishment awaiting Cuffee, as well as the entire the situation, might well have been softer had he been white, but the use of language like "treachery" implies that at least the newspaper felt that theft of debtors' possessions violated an understood boundary protecting debtors in a way that criminals might not enjoy.

Incarcerated debtors in Brooklyn alleged in 1844 that the prison was testing a new medicine, called "Sugared Indian Vegetable Pills", on incarcerated debtors participate in the smuggling of liquor and other contraband items.²²² In fact, debtors actually helped to put down riots and escape attempt, usually of criminals housed elsewhere in the prison.²²³ Not only does debtors' participation in maintaining order with other inmates underscore their difference from the criminals housed near them, it suggests that they had some investment in the rules and order of the prison, acknowledging the legitimacy of their jailors, however they felt about the larger system of creditors and bankruptcy laws that put them there.

²²⁰ "OUTRAGE," *Boston Courier* (re-printed from *The New York Courier and Enquirer* (Boston, MA and New York, NY), December 19, 1833.

²²¹ American., "Larceny Extraordinary," *The Repertory* (Boston, MA), November 5, 1822.

²²² Jas J. Bevin, "Brooklyn, June 10th, 1844.," *Emancipator and Republican and Weekly Chronicle* (Boston, MA), October 16, 1844.

²²³ "Domestic Intelligence - Savannah - July 8. -," *Boston Daily Advertiser* (Boston, MA), July 19, 1817.

We cannot be sure if Charles Bulfinch experienced any of the dangers of debtors' prison. Without any record of his day-to-day experiences, we do not know if there were mortal threats, instances of larceny, or what his relationship with his jailers was like. Judging from his accommodations in a debtors' apartment, it is reasonable to say that he did not face many of those challenges, but it is impossible to know.

Simultaneously, debtors could often come and go from the places they were incarcerated, particularly if they were housed in apartments, a matter that caused great contention as the debtors' wings of America's prisons filled. Wealthier debtors who were able to pay were often given either better accommodations within jails or allowed to rent apartments within a certain proximity to the jail. Even some debtors within the main jail were allowed to move freely about a predetermined area, usually the limits of a town or city. In Boston, the limits of debtors' movements became a serious legal and political issue.

Debtors' prison limits were a persistent legal issue. *Baxter v. Taber*, a case that arose in 1809 in Portland, Maine, where debtors were allowed similar liberties to those in Boston, demonstrated the problems associated with allowing debtors "freedom of the yard". The defendant in the case, Taber, was a debtor who had fallen ill on a public street outside of the limits of Portland's jail.²²⁴ When the man taken in to receive medical care, he had to stay overnight in a house "10 rods", or 55 yards, from the main prison building.²²⁵ His creditors sued, arguing that the house's distance from the prison meant that the man's "sickness" constituted an attempted escape.²²⁶

²²⁴ "Gaz.", "PORTLAND, Dec. 3 - Gaol Yard," *Boston Daily Advertiser* (Boston, MA), December 7, 1822.

²²⁵ "Gaz.", "PORTLAND, Dec. 3 - Gaol Yard," *Boston Daily Advertiser* (Boston, MA), December 7, 1822.

²²⁶ *Boston Daily Advertiser*, December 7, 1822.

To be sure, some debtors did try to escape prison and their creditors in different ways. Flight was an option for debtors who did not want to face their debts. The countless reports of “absconded debtors” demonstrate that in an era before sophisticated law enforcement surveillance apparatuses, men could just try to slip away. Still others, before creditors were authorized to aggressively pursue their debtors, would lock themselves in their homes; one man remained in his home for seven years, leaving only on Sunday, the one day of the week that his creditors could not seize him.²²⁷

Once imprisoned, some debtors tried to make escapes. One man tried to escape dressed as his wife, who had come to the prison to visit him.²²⁸ A “Hungarian chemist” apparently assisted seven debtors in making an escape in the spring of 1855 by “manufactured some solution the application of which to the iron bars at the windows of the prison had reduced them to the softness of lead, so that they could be cut or sawed off with ease.”²²⁹

In 1822, a law was passed allowing people incarcerated in Boston for debt, who met certain conditions, to have freedom to go anywhere in Suffolk county, which included the suburb of Chelsea.²³⁰ The law was promulgated by a committee assembled by the Massachusetts State Legislature to “consider the expediency of altering the laws in relation to imprisonment on execution for debt, so as to provide adequate relief for unfortunate and just punishment to fraudulent, debtors...”²³¹ One of the results of the committee’s work was a piece of legislation that allowed incarcerated debtors to have full access to Suffolk County. The Board of Aldermen

²²⁷ Mann, 26-27.

²²⁸ "Case of Habeas Corpus," *Boston Courier* (Boston, MA), July 21, 1842.

²²⁹ "News and Miscellaneous Items - Rendering Prison Bars Useless," *Boston Evening Transcript* (Boston, MA), May 4, 1855.

²³⁰ "Prison Limits," *American Federalist Columbian Centinel* (Boston, MA), July 24, 1822, accessed March 26, 2018.

²³¹ "HOUSE OF REPRESENTATIVE - Friday, June 14," *Independent Chronicle and Boston Patriot* (Boston, MA), June 15, 1822.

were responsible for signing off on the law, which was the result of “the memorials of a large number of citizens”.²³² The 1822 law proved unpopular, as the freedom it allowed debtors was restricted again in February of 1823.²³³ No reason was provided for the quick legal about-face, but it seems that the citizens and representatives of Boston, like those nationwide, had not quite made up their minds as to precisely what to do with debtors.

Bulfinch was evidently not afforded the liberties that caused such a legal fracas, as he missed a meeting of the Board of Selectmen while he was incarcerated. That such a prominent prisoner would not be afforded the same opportunity is odd, and suggests that Bulfinch did experience hardship in debtors’ prison beyond the inconvenience of imprisonment and the shame of his status as an insolvent debtor.

In late-eighteenth and early-nineteenth century Boston, there were two distinct classes of prison experiences. Debtors and “criminals” were clearly seen by the public and elected representatives as distinct, and the dichotomy in their experiences with prison underscores this distinction. The earliest prisons in America were designed with this distinction in mind, and the practice of incarcerating debtors and criminals separately persisted for decades after the Revolution. Debtors and criminals typically came from different backgrounds and their paths to incarceration tended to be quite different; debtors tended to be victims of the market and economic conditions, while criminals tended to come from difficult circumstances, and often had been imprisoned multiple times. There was a class dimension to the separation of debtors and criminals as well. The ability to get credit enough to warrant incarceration was generally only afforded to people who were middle-class, or who were trying to improve their own status and position. Incarceration for debt was accompanied by the some of the same risks and peculiarities

²³² *Ibid.*

²³³ "Boston - Thursday Morning, Feb. 13," *Boston Daily Advertiser* (Boston, MA), February 13, 1823.

as more conventional incarceration. Issues relating to debtors' rights and privileges became pressing legal question as the prison reform movement began to gain steam. Debtors tested the limits of incarceration, both because of their number and the public feeling that debtors ought to have greater freedom of movement than their criminal counterparts. That impulse for greater autonomy and freedom for debtors, compared to criminals, reflects a public uneasiness and skepticism about incarcerating debtors, a sentiment that could culminate in the eventual abolition of the practice.

Chapter Four: The Legal Demise of Debtors' Prison

“However, this may be estimated in others, certain it is, that if imprisonment be deemed a punishment in any one case, it is absurd to suppose it none in another. And, if it be a punishment, it ought not to be inflicted onto debtors at all; supposing insolvency not criminal, the debtor, by suffering such punishment, ought surely, as in all other criminal cases, to expiate his offense. A man who has paid the penalties imposed, and undergone the pains inflicted by law, in other cases, is conceived to have made a full reparation to society; and it is actionable to reproach him for the ignominy of his sufferings. But the insolvency of a debtor renders him the property, the slave of his creditor, with this cruel, absurd difference...”²³⁴

The Independent Chronicle and Universal Advertiser, September 4, 1788

On Christmas Eve of 1831, about a year after Charles Bulfinch returned to his native Boston after 12 successful years in Washington D.C., the *Boston Courier* published an eight-point list of condemnations of incarceration for debt.²³⁵ Addressed “TO THE EDITORS OF THE COURIER” with no person claiming to be its author, the author levied an eight-part criticism of debt incarceration. In his view, incarceration for debt was:

1. Impolitic
2. I think that the law in question is ‘evil and only evil continually in its effects
3. In my opinion, the law in question is unrighteous or inequitable
4. Is a violation of a fundamental principle in all administration of law... that no man shall be judge in his own case”
5. Its glaring *absurdity* is, in my opinion, a striking feature of the law in question, regarded as a means of enforcing payment
6. A punishment? Punishment, in all righteous governments... has relation to antecedent crime
7. Is imprisonment of a debtor *punishment* or is it *torture*? I leave its friends to hang themselves on this horn of the dilemma...
8. The inconsistencies of the present laws affecting debtor and creditor are... an argument against them; I mean their inconsistency with themselves, and each other.²³⁶

The author’s beliefs and arguments about debtors’ prison were hardly novel. For decades since the Revolution, condemnation of imprisoning debtors had come from many quarters of early

²³⁴ "A Friend to Liberty", "Debt, &c.," *The Independent Chronicle and Universal Advertiser* (Boston, MA), September 4, 1788.

²³⁵ "IMPRISONMENT FOR DEBT - TO THE EDITORS OF THE COURIER," *Boston Courier* (Boston, MA), December 24, 1831.

²³⁶ *Ibid.*

American society. Countless column inches were devoted to expressing sympathy for debtors and lambasting the institutions that kept them imprisoned. By the 1820s, those opposed to incarcerating debtors found political allies in prison reformers. The rise of prison discipline and aid societies in cities across the country, combined with increased legislative will to help imprisoned debtors, made the practice of incarcerating debtors difficult to maintain. Congress would eventually abolish incarceration for debt in 1833, though the practice would remain in some states past that time. Massachusetts would not officially close its debtors' prison until 1855, making it the last state to do so.

The writer of the Christmas Eve column touched on several of the anti-incarceration movement's primary arguments, specifically the adverse effects of incarcerating debtors, both on the debtors themselves and society at large, the "absurdity" of imprisoning debtors, and the role of punishment in debtor/creditor relations. Further, the legal complexity and inconsistency of laws governing creditor/debtor relations were other points of contention.

Prison reform became the vehicle for a larger conversation about the incarceration of debtors. As politicians, religious authorities, and citizens across the nation asked question about the purpose and proper form of jails, the countless debtors in prisons of all kinds became an unavoidable topic of public interest. Newspaper across the country ran articles detailing the progress of legislation about debtors and creditors, while human-interest and opinion pieces debated the merits of the practice. Charles Bulfinch made his own contribution to the unfolding discussion of prisons and debt with his design of a federal prison in Washington. An adherent to the "Auburn" philosophy, one of the schools of thought about prisons that arose from the reform era of the early nineteenth century, Bulfinch made his own views about the purpose of prisons and how prisoners should be treated fairly plain. Though there are no documents that elaborate

on how Bulfinch's brief time in prison may have impacted his thoughts about incarceration and prison design, his memories of a debtors' apartment in Boston in the summer of 1811 influenced his opinions and his work. Bulfinch's major prison designs were all drafted after his time in debtors' prison, particularly his design of a federal penitentiary in Washington DC and a report on prison design that he submitted to Congress in 1827.²³⁷

I. Prison Reform: Debtors' Prison in the Auburn v. Pennsylvania Debate

As the nineteenth century began, many in America were beginning to question the effectiveness and morality of their prison systems. The Puritan model of painful and public punishment to make an example of lawbreakers was falling out of favor, and different schools of thought about the purpose of incarceration were emerging. Increasingly, prison was seen not simply as a punishment but as a mechanism of rehabilitation. Lawbreakers were no longer seen as irredeemable sinners, but rather lost souls, gone astray. Prison reform societies began springing up across the country to transform prisons from dungeons of punishments full of society's refuse into institutions of social improvement. Out of this reform movement came the Auburn and Pennsylvania systems, two different philosophies of prison design and management.²³⁸ The Pennsylvania system encouraged near-perpetual solitary confinement, while the Auburn system allowed prisoners to interact with one another, as well as prison authorities. Charles Bulfinch was an ardent believer in the Auburn School, informed by his Unitarian faith and, possibly, his experience in debtors' prison.

²³⁷ "The Architect of Penitence – *The Federal Penitentiary*", Jay Wickersham, *Wickersham / Bulfinch / 24 July 2017*, 2017, Chapter of a forthcoming biography of Charles Bulfinch, 183, Boston, MA.

²³⁸ Jennifer Graber, *The Furnace of Affliction: Prisons & Religion in Antebellum America* (Chapel Hill: Univ. of North Carolina Press, 2014), 29.

Prisons in colonial America housed all prisoners in individual cells to foster penitence and repentance as a method of reformation. The logic behind this system rested in the Puritan ethos of punishment as a deterrent. The inherent goodness or sinfulness of the individual assumed by the Puritans' Calvinist doctrine precluded the possibility of reform, so punishment was made as brutal and public as possible, to dissuade the innately evil people from acting on their inborn impulses. Incarceration was thus not the most common punishment for crime – there were many capital offenses in America before the Revolution and execution or corporal punishments were used even for petty crimes.²³⁹ The prisons that did exist were austere and generally held prisoners in large common areas, with no division based on class of crime or previous behavior.²⁴⁰ Though some thinkers had considered the idea of punishment and incarceration as the answer to social ills, in the seventeenth and early-eighteenth centuries, prison was an extension of punishment-as-deterrent. Prison in America would not be thought of as a place for reform until after the Revolution. A new nation presented the opportunity for a new role for prison.

Prison reform originated not only in shifting sensibilities about punishment but religious ideals as well. Quakers were prominent members in prison reform societies, their belief in social justice and history of religious persecution animating their desire to see prisons, both in their practical forms and the purpose for their existence, changed radically.²⁴¹ Organizations such as the Pennsylvania Prison Society and Boston's Organization for the Relief of Poor debtors began springing up in cities around the country. These groups performed a variety of tasks, from

²³⁹ Jennifer Graber, *The Furnace of Affliction: Prisons & Religion in Antebellum America* (Chapel Hill: Univ. of North Carolina Press, 2014), 17.

²⁴⁰ Dell Upton, *Another City: Urban Life and Urban Spaces in the New American Republic* (New Haven: Yale University Press, 2008), 249.

²⁴¹ *Ibid.*

providing food and clothes to destitute debtors to helping secure release for debtors. Individual acts of charity were also common. Christmas Dinner was provided in 1810 to debtors incarcerated in Boston by “a liberal friend”, while a woman provided a Thanksgiving meal to Boston’s debtors in 1814.²⁴²

The initial result of the reform movement was the Pennsylvania System. Named for Eastern State Penitentiary in Pennsylvania, the first prison to incorporate many of the ideas and design that reformers were advocating, the Pennsylvania System was the first major step in the evolution of prisons in America away from the Puritan model. Solitary confinement replaced the group common rooms, as reformers believed that solitude would allow for contemplation and spiritual renewal. Even the exercise yard was divided into small sections for each inmate. The thinking undergirding this was that crime was a communicable vice, and that isolation would lead inmates away from criminality. The Pennsylvania allowed social contact only in the context of labor.²⁴³ Labor, which had been a punishment that had occasionally used earlier, became a very common facet of incarceration. Manual labor was seen as a moral cleanser, a way to wash away sin and learn the value of a full day’s work. The design of prisons aimed to recreate lawbreakers as moral citizens capable of effectively participating in the Republican ideal of an enlightened and productive electorate.

The Auburn System, conceived in Auburn, New York, continued in the Pennsylvania tradition of manual labor but eschewed the idea that isolating prisoners was necessary for their rehabilitation. Prisoners still had individual cells, but would eat meals in common spaces.

²⁴² "CHRISTMAS DAY," *Columbian Centinel* (Boston, MA), December 26, 1810. AND "'Naked and Ye Clothed Me - in Prison and Ye Visited Me.," *The Repertory* (Boston, MA), December 5, 1814.

²⁴³ Dell Upton, *Another City: Urban Life and Urban Spaces in the New American Republic* (New Haven: Yale University Press, 2008), 257.

Auburn reformers believed that isolation from society produced criminality.²⁴⁴ Speaking, however, was strictly forbidden and the lash, a vestige of the corporal punishment of the Puritan era, was used to control infractions. Criminality was understood to be inherited from speech and habit, and moral instruction could only be properly absorbed if an inmate was insulated from the influence of fellow wrongdoers.

Bulfinch had fairly extensive experience with prison design, notwithstanding his brief incarceration. He designed a new Massachusetts State Prison in 1803, though he was unhappy with modifications made to his design that reduced the size of the cells and windows, allowing much less light (for reading the bible or writing letters by) than Bulfinch's large windows that allowed for lots of natural light.²⁴⁵ Bulfinch's 1803 prison design demonstrated some of the sensibilities of prison reformers who would come to prominence two decades later. He was concerned for the prisoners' comfort and well-being, both physically and spiritually. His large windows were meant to allow prisoners light to read the Bible and other books by, so that prisoners could learn and, in theory, help correctional officers with rehabilitation. On his 1803 plans, Bulfinch wrote "Lord which asks us to cultivate a garden – or care for our souls."²⁴⁶ This inscription directly reflects the religious redemption that Bulfinch sought to bestow upon people incarcerated in his building. These same sentiments would be expressed by reformers 20 years after Bulfinch's Massachusetts State prison was completed. In addition to his experience designing prisons, Bulfinch was intimately familiar with the criminal justice system of early-nineteenth century Boston. Since he served as the Police Superintendent, the Chairman of the

²⁴⁴ Upton, 258.

²⁴⁵ "The Architect of Penitence – *The Federal Penitentiary*", Jay Wickersham, *Wickersham / Bulfinch / 24 July 2017*, 2017, Chapter of a forthcoming biography of Charles Bulfinch, 181, Boston, MA.

²⁴⁶ Wickersham, *Wickersham / Bulfinch / 24 July 2017*, 184.

Board of Selectmen, and was incarcerated, Bulfinch was familiar with how laws were made and enforced, and was familiar with the punishment for breaking them.

After he moved to Washington in 1818, Bulfinch became directly involved in the prison reform movement when he was tasked with designing a federal prison. He took many of the principles that guided his work on the Massachusetts State Prison and applied them to his new project in Washington. He had visited both the Auburn and Pennsylvania prisons that had inspired the two schools of thought about prisons, and in his report advocated for the Auburn system.²⁴⁷ Bulfinch worried as a result of his incarceration in that in old prisons and jails, criminals and suspects were incarcerated “in rooms occupied indiscriminately by offenders of all descriptions.”²⁴⁸ Bulfinch reflects the same concern about mixing hardened criminals with debtors or other less serious offenders as inmates and reformers on the pages of newspapers and prison reform publications.

This anxiety about the social and verbal contagion of criminality explains, at least in part, the physical separation of debtors and criminals. The sympathy felt towards debtors as their failure was stripped of moral stigma compounded fears that upstanding and productive, if unlucky, people might be turned into criminals by interacting with them.

In the context of these prison reforms, debtors presented a particular problem. The social perception of debt had changed, and debtors were seen with sympathy, as victims of the market and their own financial failures, not greedy sinners. Thus, the methods of punishment of both the Puritan and reform models were not appropriate. Debtors had done nothing wrong in the eyes of reformers, poor debtors all the less so. Since there were no moral lessons that needed to be

²⁴⁷ Wickersham, *Wickersham / Bulfinch / 24 July 2017*, 184-185.

²⁴⁸ Wickersham, *Wickersham / Bulfinch / 24 July 2017*, 183.

learned, the reformers' systems of incarceration would do them no good; in fact, incarceration only made it more likely that the debtors would contract the virus of criminality.

The result of this understanding of criminality contrasted against debt meant not only that there was a conscious and deliberate effort to keep criminals and debtors incarcerated in different facilities, but that debtors and reformers responded with outrage whenever the two groups mixed, as Selleck Osborn's exchange with the Worcester sheriff attests.

Public sentiment strongly opposed the mixing of debtors and criminals, casting incarceration as an infective and absurd punishment for debtors.

Countless articles described people underserving of incarceration who were locked up for debt. An article entitled "An Unchristian Clergyman" described an 85-year-old woman who was locked up over a debt of seven pounds sterling; the judge refused to incarcerate her, and delivered "some sharp remarks on the unmerciful conduct of the reverend prosecutor."²⁴⁹ Many articles described the ridiculously small amounts for which some people were incarcerated, with some articles describing amounts as small as 50 cents.²⁵⁰

Other articles worried that the national loyalties of debtors might be swayed if they were treated too harshly by the creditors that had indicted them and the state that had incarcerated them. Before and during the War of 1812, writers and thinkers worried that disaffected debtors might join the British ranks. The *New England Palladium* ran an article that noted "in a single paper of yours, no less than twenty-seven absconding debtors, which, with hundreds of others... have probably gone to the very country of our enemy."²⁵¹ Another piece described how the deputy sheriff of Boston, "his pockets filled with executions... seized the poor and embarrassed

²⁴⁹ "AN UNCHRISTIAN CLERGYMAN," *Boston Evening Transcript* (Boston, MA), July 9, 1842.

²⁵⁰ Y., "From the Debtors' Journal, Published in Boston by E.G. House, Rogers' Building, Congress Street," *P.P.F. DeGrand's Boston Weekly Report* (Boston, MA), December 2, 1820.

²⁵¹ "FROM THE ALBANY REGISTER - Mr. Southwick," *New-England Palladium* (Boston, MA), July 9, 1812.

debtors, dragged them to the prison, and told them, ‘now enlist, and you have your liberty.’”²⁵²

The author described the impressment as a “low and dishonorable means to procure soldiers”, and asked readers,

“Will such men take Canada? Never – they have been cheated into service. They believe war is nothing, but a speculation. Then discharge all those poor and unfortunate men and *go yourselves*. You have property, and they have none; still you are no better than they. You have encouraged the government to declare war, therefore go and fight its battles. Our failures and misfortunes, are to be attributed to you... you wish to stay here, and riot in sumptuous living, while the poor soldier is only half-clothed, half-fed, and half-paid. Will he believe in your *patriotism*? Will he fight your battles? NO.”²⁵³

Whether impressment of debtors actually occurred, or if debtors were discharged in exchange for military service, is unclear. The anxiety reflected in the call to arms is not only an indictment of Americans unwilling to fight the British in Canada but a reflection on the loyalty of debtors.

While the author of the screed seems to admire the debtors’ service, there is a skepticism of the debtors’ commitment to the army, and by extension, the national project.

II. “Absurdity”: Criticism of and Advocacy for Debtors’ Prison Over Time

Incarcerating debtors had been a controversial practice for decades before the Revolution especially as trade networks deepened and mercantile activity became such an integral part of American life. Skepticism about the fairness of incarcerating debtors, and the efficacy of incarceration as a method of ensuring payment, began to pervade the discourse about debtors’ prisons. Writers, politicians, and thinkers alike wondered how locking someone up for debt would help the debtor get out of debt and the creditor to recoup his or her money.

²⁵² "Hear the Drum, the Drum!" *The Repertory* (Boston, MA), March 29, 1814.

²⁵³ "Hear the Drum, the Drum!" *The Repertory* (Boston, MA), March 29, 1814.

“The confinement.. of any man in the sloth and darkness of a prison, is a loss to the nation and of no gain to the creditor” mused an article from *The Massachusetts Centinel* in 1787.²⁵⁴ A writer working under the pseudonym “A Friend to Liberty” published an article in 1788 described “insolvency of a debtor renders him the property, the slave, of his creditor, with this cruel, this absurd, difference, that, excluded from the common benefits of earth and air... he is denied the opportunities of acquiring anything to discharge the debt he owes...”²⁵⁵ “Absurdity” became the byword for opponents of debtors’ prison, who believed that incarceration denied a debtor the ability to work or engage in some kind of productive work to make money to repay their debts.

Underscoring the absurdity that many saw in incarcerating debtors were references to the practice in satirical writing and publications. A book published and sold in 1817, entitled *The Humor of the Times* describes “Debtors paying their creditors by rambling for 80 days within the extensive promenade of the prison limits, or jockeying them by conveying their property beyond the reach of an attachment. Little rogues punished with severity, and great rogues treated with leniency.”²⁵⁶ Bulfinch’s experience echoes the irony of large debtors being shown leniency while small debtors were often incarcerated or wound up in the almshouse. *The Satirist*, by contrast, offered a thinly-veiled critique of the practice. The introduction to *The Satirist’s* article on debt begins with “Were I inspired with the eloquence of a Howard, I might perhaps be heard in an appeal to your sensibility; but as the humble advocate of the children of misfortune, I am confident that you, who are enveloped in the robes of power, and rolling in profusion, will

²⁵⁴ "MISCELLANY - On IMPRISONMENT of DEBTORS," *The Massachusetts Centinel* (Boston, MA), November 14, 1787.

²⁵⁵ "A Friend to Liberty", "Debt, &c.," *The Independent Chronicle and Universal Advertiser* (Boston, MA), September 4, 1788.

²⁵⁶ "THE HUMORS OF THE TIMES," *The Independent Chronicle* (Boston, MA), February 20, 1817.

bestow upon me but little regard.”²⁵⁷ The cynicism of the article about the interest of the government in the plight of debtors reflects the public discontent with the practice of incarcerating debtors. Also, *The Satirist* acknowledges the absurdity of expecting debtors to get themselves out of debt from prison:

“It is contended that the prison is a salutary reformer of *morale*. This position is so absurd, applied to the case of a debtor, that none but an idiot would give it credence. The public stewards are not more celebrated for riot and drunkenness, than the prisons of this commonwealth. When an unfortunate debtor is committed to gaol, unless he possesses a strong mind, he will, to destroy rejection, give himself up to intoxication. He feels that he is ‘Despis’d neglected, left alone to day!’ – and often, has been the instance where the wretched sufferer has escaped by opening with his own hands a passage to another world.”²⁵⁸

Despite widespread criticism of incarcerating debtors, there were voices, in Boston as elsewhere in the country, who advocated for the practice. “Imprisonment is a most efficacious means of compelling payment,” reflected an article that appeared in the *Boston Patriot* in 1811, a few months before Charles Bulfinch ended up in Boston’s debtors’ prison.²⁵⁹ The article acknowledged that while “men are indeed sometimes imprisoned from malice and revenge, and others are needlessly subjected to duress” it was important to remember that “A man who knows that his creditor has the power to commit him to prison, will probably be more desirous of paying the sum due and more industrious to acquire the means of doing it than if no such power existed with the creditor...”²⁶⁰ The threat of prison to compel repayment of debts was evidently great, as debtors like Bulfinch scrambled and bargained around the specter of incarceration.

Similarly, “Aristides” jumped back into the discussion about debt and debtors’ prison, writing “we will not use the term *relief* for the only additional relief which they can have, would

²⁵⁷ "Humanitas", "AN ADDRESS To Those Members of the Massachusetts Legislature who voted against the Insolvent Law," *The Satirist* (Boston, MA), February 3, 1812, accessed April 7, 2018.

²⁵⁸ "Humanitas", "AN ADDRESS To Those Members of the Massachusetts Legislature who voted against the Insolvent Law," *The Satirist* (Boston, MA), February 3, 1812, accessed April 7, 2018.

²⁵⁹ "Juris Publicus", "FOR THE BOSTON PATRIOT - IMPRISONMENT for DEBT," *Boston Patriot* (Boston, MA), February 20, 1811.

²⁶⁰ *Ibid.*

be giving them habits of industry, and temperance, and giving them faculties of getting a living honestly.”²⁶¹ He continued, reflecting that “the creditor is often the poorest, the most honest, and virtuous – why this class should be forgotten by a benevolent public we are unable to discover. But this seems to be the case; for all our benevolent feelings are squandered upon the debtors, without a single instance of a law being passed for the benefit of poor creditors.”²⁶² While Aristides evidently did not pay much mind to numerous laws ensuring fair and equitable division of a debtor’s assets and effects among creditors that were passed after the demise of the national Bankruptcy Law of 1800, his sympathies evidently lay with creditors. Though creditors were reticent in the media on the topic, Aristides’ sentiments were shared by many merchants.

Advocacy against incarcerating debtors was also helped greatly by the publication of accounts of debtors’ prison. The *Debtors’ Journal*, published in Boston, brought stories of the poor conditions of prisons and financial quagmire of debt. Articles described how under existing law, “a man may be confined for a very trifling sum, and kept five days without food, if he cannot find means to pay his keeper for it.”²⁶³ “an industrious old black man was committed to... jail for *forty-two cents*”, while another debtor had been confined for over twenty years, at his creditors’ expense.²⁶⁴ Further, educated debtors began to publish their accounts of their time incarcerated. In 1811, a debtor who had been incarcerated for debt in New York for more than 16 years published a book, “Essays of Howard; or Tales of the Prison” describing his experience.²⁶⁵

²⁶¹ "Aristides", "COMMUNICATION - IMPRISONMENT FOR DEBT," *Boston Daily Advertiser* (Boston, MA), January 21, 1820.

²⁶² "Aristides", "COMMUNICATION - IMPRISONMENT FOR DEBT," *Boston Daily Advertiser* (Boston, MA), January 21, 1820.

²⁶³ "Y.", "From the Debtors' Journal, Published in Boston by E.G. House, Rogers' Building, Congress Street.," *P.P.F. DeGrand's Boston Weekly Report* (Boston, MA), December 2, 1820.

²⁶⁴ *Ibid.*

²⁶⁵ "Tales of the Prison," *The Repertory* (Boston, MA), March 26, 1811.

Sold for 50 cents, the book was prefaced with the inscription “disguise thyself as thou wilt, still, Slavery, still thou art a bitter draught.”²⁶⁶

Evidently, these narratives had some impact on their readers; in New York, a group of “one hundred of the most respectable members of the New-York Bar, impressed with the impolitic cruelty of confining persons in prison for small debts... and regretting its legalized and continued existence... have pledged themselves, if called upon, to give their professional services gratuitously to procure the discharge of such debtors from imprisonment.”²⁶⁷ Similarly, Boston’s mayor gave a speech in 1843 where he referenced a report compiled by Boston’s Prison Discipline society and expressed his concern that for “the many debtors who are confined, and it is impossible to prevent evil communication from the apartments of pirates, highwaymen, and murderers, with debtors, as the case may be, of pure minds and heavy misfortunes.”²⁶⁸ Professionals and politicians were becoming increasingly critical of the system of incarcerating debtors and willing to take action against it.

III. Slaves and Drunkards: Abolition, Temperance, and Debtors’ Prison

Reformation of prisons was just one part of the reformation of society imagined in the 1820s. Abolitionists yearned to see the death of slavery, while the Temperance movement, believing that many social ills originated with alcohol, sought to reduce Americans’ consumption of spirits. Both social movements saw the incarceration of debtors as wrong, and used rhetoric from their respective causes to argue against it. Abolitionists highlighted the precarious position of people of color who were in debt, lamented the tendency of debtors’ prison to function as a kind of poor house, and drew parallels between those incarcerated for debt and the people of color

²⁶⁶ *Ibid.*

²⁶⁷ *Boston Commercial Gazette* (Boston, MA), January 10, 1825.

²⁶⁸ “MAYOR’S ADDRESS,” *The Daily Atlas* (Boston, MA), January 1, 1843.

held in bondage. While opponents of debtors' prison often invoked imagery of slavery without any real desire to abolish slavery itself, the abolition movement did take a stand against debtors' prison. The Temperance movement, for its part, linked drinking to the financial failures of debtors, as well as the presence of alcohol in prison as a potential corrupting influence on otherwise upstanding debtors. The energy of the two movements propelled the abolition of debtors' prison and demonstrated the role that the elimination of debt incarceration had in the larger reform movements of the antebellum period.

Aside its fiery exhortations against slavery, the Boston-based Abolitionist newspaper *The Liberator* often featured articles about debtors and debtors' prisons, linking them to other issues confronting slaves and other people of color. An article from *The Liberator* explained that free people of color in the South could be enslaved or re-enslaved if they owed a white person a debt that they could not pay back.²⁶⁹ Further, *The Liberator* took notice of the incarceration of runaway slaves in debtors' prison in Boston, asking "tell us if these miserable beings *themselves* are our brothers and sisters, whom we have buried *alive*, with our own hands, in corruption."²⁷⁰ The *Emancipator and Free Republican* noted while in Congress "the members are full of human feeling and ready to act with headlong heed in any case of *white* suffering that may be presented to them... this retrograde clause is a novelty in legislation. In all the improvements of the last twenty-five years, in mitigation of the ancient severity of the laws against debtors... it was designed to relief a slaveholder against a northern creditor, I dare say that it is all very consistent with the general action of this government."²⁷¹

²⁶⁹ "From the New World - Caste in the Church - Upright Men Shall Be Astonished at This - JOB.," *The Liberator* (Boston, MA), April 14, 1843.

²⁷⁰ "From the New-York Evangelist - AMERICAN ANTI-SLAVERY SOCIETY. First Anniversary," *The Liberator* (Boston, MA), May 17, 1834.

²⁷¹ "Imprisonment on Mense Process," *Emancipator and Free Republican* (Boston, MA), June 30, 1842.

Abolitionists were aware of the reach of Southern slaveholders, and Massachusetts state law allowed for the incarceration of debtors on behalf of creditors, and these laws were liberally applied to help Southerners track and detain their human property. An article appeared in the *Boston Courier* that explained that “somebody, by fugitive from this ‘service or labor,’ who is to be pursued from States where he owes the service, to other states where it can’t be owed – and who is to be delivered up, absolutely, to the claimant of the service.”²⁷² Indentured servants could be detained and reclaimed by faraway masters, but the law was generally applied by slave-owners to reclaim their slaves.²⁷³ Though the role of debtors’ prison was incidental to slavery, the issue of debt, whether of money or labor, was evidently on the minds of abolitionists.

Charles Bulfinch’s stance on slavery, irrespective of his position on debtors’ prison is difficult to ascertain. While much of the fortune that he and his wife inherited stemmed from the slave trade, and the family had at least two people of color working in their house as servants (whose status, free or enslaved, is also difficult to determine as they are only mentioned obliquely in Bulfinch’s correspondences), his son Stephen Greenleaf preached from his Unitarian pulpit against slavery, and signed onto a “Protest Against American Slavery by One Hundred and Seventy Unitarian Ministers”.²⁷⁴

The causes of abolition and temperance often overlapped. *The Liberator* ran an article describing 1077 people in Lynn who signed temperance pledges, which apparently led to a decrease in the number of families in almshouses.²⁷⁵ Though almshouses and debtors’ prisons

²⁷² "Wythe", "TO THE EDITOR OF THE COURIER," *Boston Courier* (Boston, MA), March 21, 1844.

²⁷³ *Ibid.*

²⁷⁴ Charles Bulfinch and Ellen Susan Bulfinch, "Early Plans and Disappointment," in *The Life and Letters of Charles Bulfinch, Architect, with Other Family Papers, Edited by His Granddaughter, Ellen Susan Bulfinch. With an Introd. by Charles A. Cummings* (New York: B. Franklin, 1973), 141, AND Hervey Sullings, "SELECTIONS - PROTEST AGAINST AMERICAN SLAVERY BY ONE HUNDRED AND SEVENTY UNITARIAN MINISTERS," *The Liberator* (Boston, MA), accessed October 10, 1845.

²⁷⁵ "Lynn," *The Liberator* (Boston, MA), March 24, 1843.

were distinct, they served a similar purpose, particularly for poor debtors. Temperance advocates evidently saw alcohol as a cause of poverty and indebtedness.

The temperance movement also saw connections between their advocacy and incarcerating debtors. Most prison reports, of both debtors and criminals, included some reference to the drinking habits of inmates; almost every one of Reverend Jared Curtis' entries about inmates in his prison referenced their sobriety, or lack thereof.²⁷⁶ Reverend Curtis believed that prisoners who swore off drinking were more likely to be reformed, and expressed the most hope for prisoners who were willing to swear off alcohol after they left prison.

Similarly, temperance societies began connecting their crusade to debt and debtors. An article published in 1838 alleged, with little supporting data, that three-quarters of incarcerated criminals and half of incarcerated debtors were intemperate.²⁷⁷ A liquor store owner's son, Charles Torrey, reflected on the pages of the *Emancipator* that when reviewing his father's books, he saw the names of many of families of his schoolmates and peers, and the amounts that they owed, which ranged from five to several hundred dollars.²⁷⁸ Torrey remembered his father telling him that "it would have turned forty families out of doors" to have called in these "rum debts".²⁷⁹ He wondered "What had wrought – what had continued these eighteen years of poverty and woe in a community proverbial for industry, good morals, and wealth? *It was the work of Alcohol!*"²⁸⁰ In the eyes of the temperance movement, indebtedness and its attendant incarceration was not simply caused by the whims of the market, but by alcohol. Temperance

²⁷⁶ Philip F. Gura, "Introduction," introduction to *Buried From the World: Inside the Massachusetts State Prison, 1829-1831* (Boston, MA: Northeastern University Press, 2002).

²⁷⁷ "G.", "[For The Courier] - THE TRAFFIC IN ARDENT SPIRIT - To Be Used as a Drink, Is a Violation of the Law of God; and Is an Immorality," *Boston Courier* (Boston, MA), April 30, 1838.

²⁷⁸ Charles T. Torrey, "MISCELLANEOUS - THE DEAD HEART - A TALE OF A PRISONER," *The Emancipator and Republican* (Boston, MA), April 8, 1846.

²⁷⁹ *Ibid.*

²⁸⁰ Charles T. Torrey, "MISCELLANEOUS - THE DEAD HEART - A TALE OF A PRISONER," *The Emancipator and Republican* (Boston, MA), April 8, 1846.

advocates cast the social ill of debt as a social ill brought on by a sinful vice, while not making the debtor or the drinker the target of condemnation. They recognized that debt, like drinking, was a common vice and one from which there was redemption.

There are no records to suggest Charles Bulfinch's drinking habits, though his constant work, even while fending off insolvency, was evidence that he was not idle.

IV. The Abolishment of Debtors' Prison, Federally and in Massachusetts

At least partially as a result of the work of the reform societies and the considerable public discourse on the topic, many states, including Massachusetts, began to take a much more serious look at their debtors' prisons. Committees were put together by the Massachusetts State Legislature to examine the issues, and their findings began to compel political action. In 1829, a committee visited the Suffolk County debtors' prison and:

“[saw] with regret the debtors' Apartments, numbers of their fellow citizens confined in prison for the comparatively small sum of seven to ten and twenty dollars, and thereby compelled to leave their families without protection or support; and we sincerely hope that some effort will be made on the part of behalf of the public to obtain such a modification of the laws as shall protect the *poor* but honest debtor from such apparently useless and unjustifiable severity of treatment.”²⁸¹

Here again the arguments of the reform movement can be clearly seen; a concern for the well-being of men and women seen to be innocent of a crime, but incarcerated anyway. Taken together with the burgeoning prison reform movement, the long-simmering criticism of the “absurdity” of debtors' prison and their human cost, and the actions and positions of other social reform movements like the abolition and temperance movements meant that the political landscape was proving less and less friendly to the practice of incarcerating debtors.

²⁸¹ Robert Rogers, "COMMONWEALTH OF MASSACHUSETTS - SUFFOLK, TO WIT," *Boston Weekly Messenger* (Boston, MA), November, 12, 1829.

After the repeal of the Bankruptcy Act of 1800 in 1803, the state were left to their own devices for debtors' relief and prison legislation. As public opinion about debt and debtors' incarceration soured, states began establishing minimum amounts for which citizens could be incarcerated, or abolishing the practice altogether. Kentucky established in 1821 that no one could be incarcerated for debt except where fraud could be proven.²⁸² Ohio abolished the practice entirely in 1828, followed by Vermont and New Jersey in 1830.²⁸³ The federal government abolished the practice nationally in 1833. Some states would retain the practice after its federal abolishment; Massachusetts would not do away with the practice entirely until 1855.²⁸⁴

Massachusetts, for its part, abolished the incarceration of women for debt in 1831, and established a 10-dollar minimum for incarceration of men later that year.²⁸⁵ Nonetheless, it would take numerous iterations of debtors' relief and prison reform legislation to finally abandon debtors' prison. Removing women from debtors' prisons was a concern of prison reformers, who saw the incarceration of men and women together as a form of temptation, notwithstanding the possibility for physical abuse.

Political support for abolishing debtors' prison came in fits and starts to the Massachusetts Legislature. In 1811, a major piece of relief legislation was introduced that would have established a system of appointing commissioners to help fairly divide a debtors' assets, in addition to "an equal right for all classes to apply for relief", a thousand-dollar fine and five years' hard labor for fraudulently concealing assets, and the primacy of the claim of the creditor

²⁸² Don McNay, "Debtor's Prisons in Kentucky and Other Horrors of the Justice System," The Huffington Post, December 07, 2017, https://www.huffingtonpost.com/don-mcnay/debtors-prisons-in-kentuc_b_5980624.html.

²⁸³ Mann, 198.

²⁸⁴ *Ibid.*

²⁸⁵ Mann, 199.

who initiated the legal action against a debtor.²⁸⁶ The measure received only a single vote. Its sole champion, William Willis, wrote:

“It is against every principle of that religion which every member of the legislature has solemnly professed to believe – in which we are particularly directed to attend to the cries of the poor... I then ask --- is there any one of us who, if placed in the situation of the poor debtor, would wish to have himself and his family at the mercy of an unfeeling creditor, who might drag him from an amiable and afflicted wife, who is left to be surrounded by helpless children, clinging about her and crying for bread?”²⁸⁷

By 1819, a similar piece of legislation was defeated much more narrowly, by a margin of just two votes.²⁸⁸ Evidently, some members of the Massachusetts legislature were starting to “get religion” about debtors’ prison.

Changes to the electorate were occurring in Boston as throughout the nation, putting pressure on legislators to provide debtor relief legislation, or to abolish the practice altogether. The number of registered voters grew continuously throughout the nineteenth century, and voters turned out at remarkable rates.²⁸⁹ In his position as Chairman of the Board of Selectmen, Charles Bulfinch signed off on notices that were posted around the city announcing his and other selectmen’s “office hours” where people could register to vote.²⁹⁰ With the development of suburbs and an influx of migrant workers, the electorate was increasingly composed of middle- and working-class voters. Bulfinch was also a founding member of “The Massachusetts Society for the Aid of Emigrants”, a philanthropic group to provide “for the information and aid of Foreigners in their migration and settlement”.²⁹¹ Though Bulfinch may not have directly

²⁸⁶ William Willis, "FOR THE BOSTON PATRIOT - Dear Mr. Editor," *Boston Patriot* (Boston, MA), February 23, 1811.

²⁸⁷ *Ibid.*

²⁸⁸ "POOR DEBTORS," *Franklin Monitor and Charlestown General Advertiser* (Boston, MA), June 26, 1819.

²⁸⁹ Gerald Ginsburg, "Computing Antebellum Turnout," *The Journal of Interdisciplinary History* 16, no. 4 (Spring 1986): 579, <http://www.jstor.org/stable/204537>.

²⁹⁰ Charles Bulfinch, "List of Voter in the Town of Boston," *The Independent Chronicle* (Boston, MA), March 23, 1807.

²⁹¹ "Laws of Massachusetts - PUBLISHED BY AUTHORITY of the Commonwealth of Massachusetts - In the Year of Our LORD, One Thousand Seven Hundred and Ninety-Five," *The Courier* (Boston, MA), August 22, 1795.

supported diversifying the electorate, aid societies for immigrants would naturally change the composition of those voting for different legislative initiatives. Many people who wound up in almshouses and debtors' prisons were middle- or lower-class foreigners, meaning that the society that Bulfinch participated in may have added a few more "mechanics" to the voter rolls.

Political pressure began to mount on legislators to enact meaningful reforms. A pseudonymous "Anti-Speculation and Fraud" wrote an article entitled "A subject too serious to joke with" which described how "there is now confined in the Boston jail an unusual number of respectable mechanics, men who have, till of late, seen better days, and to whose industry and genius our town is largely indebted for its sudden, increased splendor..."²⁹² The piece continued "the very fathers of the community – men whose neglect of official vigilance, has caused these unsuspecting unfortunates to be placed in their present, unhappy situation..."²⁹³ The critique of Boston's leaders for failing workers, and the credit given to the "numerous mechanics" for Boston's development suggests not only sympathy on the part of the middle class for poor debtors, but a sense of their political value and agency. This trend is further exemplified by an article in the *Boston Weekly Messenger* that reminds elected officials that "these mechanics are votes. Be careful or you will never again be selected for public office."²⁹⁴

The Massachusetts State Legislature proved to be responsive to the advocacy against debtors' prisons. After ordering 500 copies of a report from the Prison Discipline Society describing the conditions of debtors' prisons in the Commonwealth, the Legislature continued

²⁹² "Anti-Speculation and Fraud", "A Subject Too Serious to Joke with," *Columbian Detector* (Boston, MA), May 9, 1809.

²⁹³ "Anti-Speculation and Fraud", "A Subject Too Serious to Joke with," *Columbian Detector* (Boston, MA), May 9, 1809.

²⁹⁴ "A FEDERALIST", "IMPRISONMENT FOR DEBT," *Boston Weekly Messenger* (Boston, MA), August 17, 1820.

repealing and enacting various statutes for debtors' relief.²⁹⁵ The first bill abolishing debtors' prison entirely was introduced in 1841, ten years after Massachusetts had abolished incarcerating women for debt, and establish a \$10 limit for incarcerating debtors.²⁹⁶

A number of different pieces of legislation attempting to address the number of incarcerated debtors were proposed, all while the number of incarcerated debtors, particularly in Boston, remained consistently high. In the first six months of 1850, 442 people were jailed for debt in Suffolk county.²⁹⁷ The concentration of debtors seemed to be densest around Boston – in 1852, there were only two debtors incarcerated in Cambridge, Massachusetts' debtors' prison.²⁹⁸

Eventually, the Massachusetts Legislature abolished the practice of incarcerating debtors. The bill was "passed to engrossed" on May 2, 1855, and had its third reading on May 14, and was passed the next day.²⁹⁹ In early July, Boston's city jail still held nine debtors; by the end of August, all of the debtors had been removed, but a doctor ordered a patient to stay overnight in the old debtors' prison.³⁰⁰

The reform movements of the early nineteenth century sought to address a number of social ills, and debtors' prison found its place on the agenda of a number of groups, and found a champion of sorts in Charles Bulfinch. Though Bulfinch never specifically expressed opposition to the practice of incarcerating debtors, he did endorse the Auburn system of prison reform. As the number of incarcerated debtors continued climbing in the first decades of the nineteenth

²⁹⁵ "MASSACHUSETTS LEGISLATURE - SENATE - Wednesday, February 2nd," *The Daily Atlas* (Boston, MA), February 3, 1842.

²⁹⁶ "MASSACHUSETTS LEGISLATURE - SENATE - Monday, Feb. 15," *Boston Courier* (Boston, MA), February 18, 1841.

²⁹⁷ "Jail Sentences," *Emancipator and Republican* (Boston, MA), July 18, 1850.

²⁹⁸ "The Cambridge Jail," *Boston Daily Evening Transcript* (Boston, MA), September 3, 1852.

²⁹⁹ "MASSACHUSETTS LEGISLATURE - SESSION OF 1855," *Boston Daily Atlas* (Boston, MA), May 2, 1855, AND "Massachusetts Legislature," *Boston Courier* (Boston, MA), May 17, 1855.

³⁰⁰ "THE CITY JAIL," *Boston Evening Transcript* (Boston, MA), July 2, 1855, AND "Passmore Williamson," *Boston Daily Atlas* (Boston, MA), August 27, 1855.

century and reform societies began to publish accounts of the most unsavory aspects of incarcerating debtors, the political will to maintain debtors' prison was rapidly eroding. Other major reform groups, namely the abolition and temperance movements, published articles and advocated against debtors' prison. *The Liberator* frequently ran ads for the "Liberty Ticket", a small political group in Boston that ran candidates on a platform of abolition, prison reform, and the abolition of debtors' prison.³⁰¹ Debtors' prison became an important political issue, and after its federal abolition in 1833, the national tide had shifted decisively against the practice. Massachusetts took longer to fully abolish debtors' prison, and Charles Bulfinch had passed away 11 years before Boston's debtors' prison closed.

³⁰¹ "THE LIBERTY TICKET," *Emancipator and Weekly Chronicle* (Boston, MA), August 7, 1844.

Conclusion

Charles Bulfinch lived through a period of profound change both in Boston and the United States. He witnessed the Revolution unfold, and his ancestors were partially dispossessed by the Massachusetts State Legislature. Despite his deep ties to Loyalist families, or perhaps because of them, Bulfinch had many connections to Boston's upper-class elite after the Revolution. As he was touring Europe and cutting his teeth on his first architectural projects, Bulfinch's hometown was expanding and its economy becoming increasingly mercantile. Bulfinch used his wealth and architectural talent to participate in the development of Beacon Hill and surrounding property, and this participation ultimately cost him his fortune and sent him to prison.

Charles Bulfinch reflected bitterly on his financial failures in later years. He criticized himself for his own hubris, his belief that his passion for architecture could be turned into a viable career. He saw his failure as internal, as a failure of judgement. Yet, there were so many stories like his unfolding across the new nation, that it is difficult to not see his story as part of a broader context. Stories of financial ruin, great and small, played out on the pages of America's newspapers and in debtors' prisons and almshouses in every major town and city.

Debt was a prominent reality of America both before and after the Revolution. Americans inherited debtors' prison from their British forbears, and from the seventeenth century onwards, each successive generation tried to grapple with the challenge that it posed. Puritans were content to restrict the power of the creditor to exact too dear a punishment on unfortunate debtors, while discouraging the lower classes from using credit to advance their God-given social position. Debt was a sign of greed and a moral failing. As conflicts generated more sophisticated

and widespread commercial relationships and increasing numbers of colonists created more consumers and economic actors, debt became more accepted as a fact of economic life.

The Revolution only served to make the economic networks of the colonies more dense, diffusing debt over greater distances. Independence might have forced the question of debtors' prison, but mercantile interests and their speculative schemes were integral to the burgeoning American economy. Only after waves of speculative crashes and failures sent scores of Americans to prison hopelessly mired in debt did state legislatures and the federal government begin to take the scope of the problem and its political ramifications seriously.

The repeal of the Bankruptcy Act of 1800 opened the question to the states, and by fits and starts, state began to abolish debtors' prison entirely. The initial federal push for a consistent policy to deal with bankruptcies impelled states to standardize their haphazard collections of state and local statutes regarding both the proper legal conduct for debtors and creditors grappling with a debtors' bankruptcy. The justness of debtors' prison was then called up the question; if debtors were not guilty of a moral or legal infraction, could they be incarcerated without a trial by their creditors? Increasingly, the public seemed to feel that debtors were victims of unfeeling creditors, not perpetrators of a financial crime.

The debate over the nature of criminality dovetailed into a larger conversation about prison reform more broadly. The Puritan model of performative corporal punishment gave way to incarceration, and reformers began to search for ways to have incarceration serve as a rehabilitative punishment. Prison reform forced the question of debtors' prison, and helped make the institution a more pressing political priority. Debtors were not criminals, and without some kind of criminality, there was nothing to reform. Poor financial judgement or bad luck could not be expunged by a jail cell, according to reformers. Other reform movements, namely abolition

and temperance, also took up the banner of abolishing debtors' prison. Debt, like slavery or alcohol, was a social ill in the eyes of the crusaders of the early nineteenth century, that needed to be washed away, and those afflicted by them reintegrated into a more perfect society.

From the advocacy of reformers and the building pressure of ever-refilling debtors' facilities, state legislatures and the federal government found the will to act. After debt incarceration was abolished, almost all states fell into line, abandon debtors' prisons and setting their unfortunates free.

Charles Bulfinch's experience with incarceration both exemplified the ubiquity of debt and the ability of credit networks and speculation to seize even the most well-to-do, while also demonstrating how class and privilege distinguished Bulfinch's financial failure and the punishment (or lack thereof) that he suffered. The amount that he owed and the amount of forbearance he was shown were both considerably greater than that of more "common" debtors. His accommodations were more comfortable than those of other debtors, thus significantly more comfortable than the criminals that he was housed near. His path out of prison and out of debt was paved largely by generous assistance from family and friends, as well as the salary that was afforded him by his contacts in Boston's Federalist political establishment. He was not intemperate, nor was such an allegation ever levied against him. No one suspected him of being a criminal; indeed, his incarceration was lent rich irony by virtue of his service as Superintendent of Police.

All of the ways that Bulfinch's experiences diverges from the "average" debtors' experience demonstrates his unique vantage on the culture of debt in the early republic. Debt was not an all-consuming condition for Bulfinch the way it was for so many others; however tortured he was about his failures, he never experienced the full scope of the consequences that his

behavior would have normally invited. The Brahmins of Boston protected their own and, aside from one shopkeeper who managed to ensnare him in prison, Bulfinch managed to have a successful career that would earn him a prominent place in the annals of American architectural history.

The story of six weeks of Bulfinch's life spent in debtors' prison, and the succession of business failures that landed him there, all correlate to larger trends of what debt meant to Americans, and how the new society grappled with those who borrowed beyond their means and failed. A complex web of social perceptions, state and federal legislation, prison facilities and philosophy, and social reform movements emerges the closer one looks. Bulfinch's own position gave him a unique way to navigate that web and his actions within act as both a snapshot of and exception to the rule.

Studying debtors' prison presents challenges for research and methodology. Debtors did not often write about their experiences while incarcerated, whether because of the shame and stigma attached to indebtedness, because they were poor, minor debtors who may have not been able to write or did not have the inclination. Further, records from debtors' prison were usually subsumed into larger prison records, and debtors were discussed mainly as victims of "unfeeling creditors" or bad luck. Criticism of debtors' prison was common before the Revolution but with independence came a fresh wave of criticism, and the discontent with incarcerating debtors swelled after the failure of Bankruptcy Act of 1800. Without a consistent legal regime to adjudicate disputes between debtors and creditors, debtors' prisons and almshouses absorbed the casualties of a speculative economy which thrived on circulating debt and glorified IOUs.

The patchwork system could not last indefinitely, and as prison reform groups mobilized to redefine the purpose of punishment in America. Alongside other reformers and politicians, the

institution was gradually abolished, with Massachusetts being one of the final holdouts. Charles Bulfinch, whatever shame and conflicted feelings he had about his incarceration, was in good company in debtors' prison. Countless Americans, rich and poor, prominent and unknown, passed through the dysfunctional system born of a fundamental confusion about whether borrowing beyond one's means was a crime or simply an unfortunate reality of an increasingly mercantile economy.

Appendix: An Interview With Bruce Mann

Christopher:

And, alright. This one's working too. I figure having two is probably safe.

In *Republic of Debtors*, one of the sort of open-ended questions that you brought up was saying that the investigating the actual conditions inside debtors' prison could be really, sort of rich area of exploration. How do you think an investigation of that sort of thing, what kind of documents, and what sort of thing? I Where would be a good place to search to find that kind of narrative, if someone was interested in telling that story?

Mann:

It's a hard thing to get access to. Because it's very much dependent on the letters from imprisoned debtors that you might get. As I recall, I used all those letters that I could find for New York and Philadelphia, which obviously also involves first identifying who the debtors are. And then you find some in the reform literature. The places like, in Philadelphia, the Philadelphia Society of Alleviating Miseries in Public Prisons regularly had inspections, inspector reports, although they were more interested in the criminal side. The principle source is the newsletters.

Now of course there's the interpretive problem, because the letters that I found at least were typically from debtors to their creditors begging for relief, based on the hardness of their situation, which right away makes them potentially unreliable narrators of their own circumstances. So you do have to discount some.

But it can be hard to find, since you have to start out with identifying who is at the debtors' prison before you can start tracking down whether they left correspondence. You have to figure out who's in the debtors' prison. And oftentimes those records themselves are not very well kept. They can be difficult to determine who's in prison in the end. But that was the principal source for me.

C:

Interesting. Shifting gears to sort of the larger picture of the culture of debt at that time, in your view, what was the primary cause? In *Republic of Debtors* you discuss a number of different causes. What was the primary cause, or sort of constellation of causes, in the shift in social and cultural attitudes towards debt in the period that we're discussing, from late 17th into the 18th and early 19th centuries?

M:

It was very much a function of the commercialization of the economy. Pretty much throughout the northeast you see trade breaking free from its previously quasi-localized channels and being conducted over greater distances. You have people developing business ties with merchants in distant counties or cities or towns. That commercialization, as people from different areas become tied together in webs of trade and commerce, expose people increasingly to the notion of risk. And they could see the consequences. They could see that if you lost a cargo to pirates or privateers or to a storm, or if the crops failed because of a hail storm, the crops that you were

counting on to repay your debt, it became harder to see those kinds of failure as reflections of your own moral worth. And more the notion of just risk. It's the, all sorts of unpredictable things happen that do not flow from the moral merit or demerit of the individual. Or it was particularly important in oppressing on people the randomness of, not simply of life, but of commercial transactions as well. I really think that was the biggest shift, and everything else followed from that.

As you know, the shift was never complete. The insolvency, bankruptcy, debt itself is never the lost. It's the moral trappings. And even today people seem quite willing to treat people who are deeply in debt, or who have to file for bankruptcy, as somehow morally culpable, when all the evidence points in the completely opposite direction. But it's as though the moral framework took such a deep root. And in part because it was religiously driven. And that's with us still.

C:
Interesting.

To what extent, if any ... this was discussed at some length, but just for a point of clarification, were bankruptcy proceedings used by the state to ensure payment of taxes or public dues of any kind?

M:
No, it was purely private.

C:
It was purely private?

M:
Right.

C:
So individual to individual?

M:
Yeah.

C:
Okay, great. So when the Bankruptcy Law of 1800 was passed, how did it interact with, sort of, existing legislation about debtors' prison and insolvency procedures? How did it interact with those kinds of laws passed by the individual states?

M:
I didn't come across any evidence that indicated that it interacted at all. State procedures were sufficiently spotty, and often inconstant. And since none of them offered a discharge, I think the opportunities for conflict were fairly few. Now, had there been conflict, the federal bankruptcy procedures would've trumped the [inaudible 07:30]. But I never came across anyone indicating

that they didn't have to follow the restrictions of the federal law, because of some state proceeding.

C:

Great. I guess we've sort of discussed this already, but I guess what I'm curious about is what evidence you found of this, and how ... and sort of specific experiences that people might've had with this. There was clearly a significant difference between insolvency proceedings for wealthy, prominent citizens and people who were less well off. There is clearly a class dimension to these proceedings. But how salient was that divide? And how frequently were notions of class sort of invoked? And how aware, from your research and your experience, how aware were people of that class divide? And did status within a community, irrespective of how much money you had, did that impact these proceedings in a significant way?

M:

Yes, I don't know. I never found some direct evidence. When I was looking at the material, as always, obviously I have to try and stop and ask how much I was projecting. It was clear in the different insolvency procedures, for example, that there were mechanisms that permitted truly poor debtors to get out of debtors' jail, in ways that, people owed more money. They're not taking advantage of the ... and yet, at the same time, wealthier imprisoned debtors were denied their physical circumstances, and they were confined in more comfortable ... at least in places like New York and Philadelphia.

The wealthier debtors also had the means to shield themselves from arrest by being able to hole up in their homes. Which is something they could only do if they had the financial means to do so. [inaudible 9:56] available to run of the mill debtors. And I do think there's one, the [inaudible 10:16] that use that is printed by Benjamin Franklin page in the Philadelphia Aurora of the sailor who sees an oyster seller on the streets of Philadelphia under a coffeehouse. And he orders up a half a dozen, dozen oysters, polishes them off, and says, "They are so good." And then he has another half a dozen, dozen. Then he walks off without paying, and when the oyster seller comes after him, the sailor says, "Haven't you heard? That was just a down payment." And it's obviously made up, but this would've been from 1793 maybe? But it's [inaudible 11:25] the publisher's comment on class distinctions and indebtedness.

Only people who engaged in trade could stop payment, because they were the only ones who would issue the kinds of instruments that sort of laid those promises that stopped. For poor debtors, they just grew poorer. It was underscoring that only wealthier could fail in the ... that sort of comes in to a commercial connotation, which of course then carries over to insolvency and payments. Everyone else just grew poorer. So I do think that people at the time were very aware of class distinctions. The evidence for it is the indirect, something like that made-up story in the Aurora. But one given the nature of the Aurora and Benjamin Franklin page, the [inaudible 12:44] represents an accurate view of the time.

Excuse me.

C:

Please, please.

M:

(phone conversation)

So I have no doubt that it represented the accurate recognition of the distinction. And you occasionally get other comments. There's a European traveler who reported seeing in a New York jail the fancy debtors kind of promenading on the roof, which it might be a little exaggerated, but it's also clear from divisions in the New York jail that there were social distinctions recognized as well. So, the distinctions, I think, were clearly recognized. I don't think that that recognition took the next step into any kind of the sort of actionable resentment part, and all that.

C:

Hmm, actionable resentment.

M:

Actually, in the sense that people who saw the distinction and resented it were then moved to act on that resentment in any way. I don't think it necessarily became caught up in any kind of social resentment or unrest.

C:

Hmm. Where you do think that disconnect between the perceived injustice ... because I get the sense from letters from incarcerated debtors and all the things in newspapers. There's a perceived injustice. Where is the disconnect between the perceived injustice and any kind of social agitation on behalf of the incarcerated? Where's that disconnect?

M:

Yeah. That's a good question. That's a very good question. And it's a recurring question in American history. Why weren't the people who lost their life savings in the economic collapse of 2008, why weren't they in the streets with pitchforks? They lost everything. At other times and other places, that would have been an expected reaction. Whether it is something in our history that often tends to tamp down the class based economic, the demonstrations or resentment. Although, certainly in the late 19th century, early 20th century, union organization was often accompanied with violence. In the late 18th, early 19th century there was still enough residue of deference in class relations. Although deference was clearly on its way out. That might've been a factor. It might've been that the extremes of wealth were not as great. But I'm not sure. It's a good question. I have no clear answer for it.

C:

As you said, even today there isn't really a clear answer for why there's such a disconnect.

M:

Yep.

C:

Interesting. So were there significant regional variations in the kind of legislation that states passed to regulate debt and debtors prison. Obviously there's a significant difference between cities, particularly coastal cities, and the interior. There's the distinction in scale, but was debt perceived, acted on, and legislated on differently in different parts of the country?

M:

Yeah. I think it was. I never looked into it too deeply. But there was sort of longstanding differences. The northern colonies, and later states, often had an option of binding the debtors service for a period of time. And I don't think that appeared anywhere in the southern colonies or states, because the labor in those states had been taken over so completely by enslaved labor, and that the period of indentured servitude in the southern colonies which had existed in the early, mid-17th century in the Chesapeake and in the early 18th century in Georgia very quickly gave way to slave labor. So the notion of binding a white debtor to an unfree status, even a temporary one of indentured servitude, was simply not thinkable.

C:

Did that have anything to do in the south, recognizing that this question is a little bit farther afield, did that in the south have anything to do with sort of the symbolism of servitude?

M:

It could.

C:

Because it would've been hateful to them, the idea of descending to that status, and not wanting to equalize anything with enslaved persons.

M:

Yeah, yeah. I wouldn't be surprised. But yeah.

C:

So there's some symbolic resonance there.

M:

Right.

C:

This is an interesting question, I guess, for someone who's been researching far longer than I've been alive. In your own research, what's an argument or a group of documents that you wish you had time to make, or to access, or anything like that.

M:

Oh, yeah, yeah. When I started out on the *Republic of Debtors* project, I'd initially planned to spend a lot more time with court records to get more patterns of debt litigation. I just never got around to it. I got so wrapped up in everything else that to dive into court records just would have taken a very long time. So I had to go with what I had. So that would've been a natural

place. I would've liked to have done more with different state insolvency proceedings. I wanted to keep it fairly localized. I did some in Pennsylvania, because Pennsylvania had a bankruptcy act in 1785. But I didn't dig very deeply into the ways states after the revolution got through state process. Because by then my argument was focused on, or started leaning towards the federal act of 1800. So those would've been two areas that I wished I had spent time in.

C:

Okay. Did political arguments about debt, you discuss in *Republic of Debtors* the sort of Republican federalist impulses, not only about the act of 1800, but their sort of larger conceptions of how to properly adjudicate debt, and the role of the state in that litigation. Was there sort of a town and local government component in those arguments? Were there political divides within towns typically? In Boston, for example, like what I found is, it's sort of known as a federalist bastion, and though that would fade by the Jacksonian era, they were just sort of shifting political trends. Boston is sort of distinct compared to other places. What were the regional political variations, and were there differences in insolvency proceedings in towns, as opposed to cities?

M:

The answer is, I don't know. That was a level I didn't get down to. Formally, there would have been no difference, because the roles would have been statutory. So the question is, is there any difference in the application? If I had to guess it would be that you wouldn't find a whole lot of difference, in part because the procedures would still be directed, at the very least, out of the county seats through the county courts. There were state statutory ones ... the city filter probably would have dominated. So if I had to guess, it would be that you would not find a whole lot of difference.

C:

Great. And we actually have sort of partially answered this one, but ... so most debts that were contracted, whether between individuals or companies and individuals, the whole set of different things, because I found little newspaper ads that talk about companies trying to call in debt, and a variety of other things. And I guess what's confusing me is, were most debts sort of commercial? In the sense of whether it's with a bank, or a large company, or whatever the sort of larger financial institution is. Or were they more personal? Like person to person for some small quibbling expense, maybe a pair of shoes, you owe me so much money. Were most of them personal or commercial?

M:

Well, that might not be quite the right frame, because when we think commercial we often think in terms of banks. And you don't really start getting banks in America until the 1790s. You have one or two in the 1780s. Handful more in the 1790s, but they don't really become much more common until the 19th century. When banks did lending it was typically to their investors, their shareholders. So these are already men of substance who are in business. Most of the transactions represented by debt were commercial transactions of one kind or another. But that's

the category that would extend down to buying stuff on credit from a local shopkeeper to an established merchant, or the large farm owner who would borrow money, either as advances on goods, or the like. And so the debts were mostly commercial in the sense that they all sprang from some kind of economic or business transaction. I think of personal debts as, at one extreme, sort of friendly loans. But there would be a traditional social debt among social equals in different parts of the country. Virginia plantation society, for example, often ran on a culture of social loans. Not so much in other parts of the country.

I think part of what complicates the categories and the way you think about it is that now one thinks of personal bankruptcy or business bankruptcy. The chapter 7 or chapter 11. And business bankruptcy would be something where you have a corporation or a business that has incurred debt. And the individual bankruptcy, personal bankruptcy, is for everyone else. In reality, the personal bankruptcy also sweeps in a lot of business, because you have a lot of small business owners who operate not as corporations, but as [inaudible 27:53], so that the debt to the shop are their personal debts, or personal guarantees. So within chapter 7, which we think of as consumer bankruptcy, there's a lot of small business, the small shop, things like that. Not stuff with more than a few employees. So even in the modern notion, we have the division of doing consumer bankruptcy and business bankruptcy. The late notion is that business bankruptcy is just for businesses, consumer is just for people who use their credit cards. But when you dig into it, you see that there's a lot of business within consumer bankruptcy, and if you take that understanding and project it back to the 18th century, I think you see a false distinction. I think it's more appropriate to see the debt as occupying a continuum that starts with people buying a few items on credit from a local shop. That even extends all the way up to the largest merchant.

And one of the reasons we're on the same continuum is that, before you have the creation of a limited liability cooperation, basically all business, no matter how large, was done as partnerships. And the deaths of the partnerships were deaths of the partners. And so the partners who went bankrupt were treated basically just as much larger versions of small farmers. And of course bankruptcy law tried to introduce some distinction by at least initially reserving bankruptcy relief for people who follow certain commercial occupations. Excluding the mass of the small shopkeepers, the farmers. And if anything, that was a class based distinction, and it was one that sort of reserved the older moral economy for lesser individuals, and the notion of bankruptcy discharge should be available only to those who put themselves at risk by going into business on a large scale, by trading on a large scale. So in a sense it was a culturally and socially determined distinction.

C:

So to what extent would these social debts, should they amount to too large a volume of money, or be sort of contracted over too long a period of time, to what extent did social status fall with indebtedness? Was there a point at which a local elite or someone who was part of an aristocracy, if you want to sort of think of it in those terms, could be brought down by their debt? That their debt would knock them down social ladders, as well as economic ladders.

M:

I assume so, I assume so. We saw people were able to keep up the pretenses until they died. John Robinson in Virginia, who was Treasurer of the colony in the 18th century, he never said no to his friends who asked for money. Turns out he was taking it from the public treasury. And that didn't come out until he died. And the social convention was that he should not refuse such requests, but he did not have the resources himself to do it, and so he took the money from the public treasury, over which he had authority as Treasurer. And the other thing, it's not as though we would see it as a modern embezzlement scheme. It was someone who deeply felt a social obligation, who couldn't say no. Like I said, it didn't come out until he died.

And so the key question to answer your initial question is how long someone keeps up pretenses. It is certainly the case that you see men who, after they have taken bankruptcy through the 1800 act, if you follow them after, they're often feeling a sense of shame, recognizing their diminished circumstances, recognizing the diminished respect in which they are held. And they're really unable to recover.

C:

Now certainly to expound on that, that was the case with Charles. His writing reflected this profound sort of ... I don't want to go so far as to call it self-loathing, but he certainly was not proud of his business failures, and that sense of regret occupied him for the rest of his life. Which is something that I am going to discuss in the sort of social context of debt. Which is very interesting.

M:

No, it is. I would still say you see this distinction today, when individuals with families are sliding towards insolvency, and they're being dumped by creditors, the credit card companies, and the line. And they go to great lengths to pay those debts. They clean out their retirement accounts. They clean out the kids' college accounts. They take second or third mortgages on their house. All to pay credit card debts. So by the time they get up and take bankruptcy, which is the ultimate failure, there's nothing left to say. And yet on the other hand, CEOs who take their business into chapter 11, I doubt they lose a single night's sleep. It's business for them.

C:

That's a distinction that I think many people are grappling with now. I think especially given the politics of the last couple of years, those questions have sort of come to the fore. In your view, why is that? Why do we, as a society, refuse to hold very wealthy, very powerful people accountable? Is it just too big to fail, sort of writ onto individuals? Or is there a larger sort of cultural ...?

M:

I think it's in part cultural. I think that we've been so conditioned to think of people who succeed in business as somehow better than everyone, because they often think so, because they make more money. And they've monetized their whole status. And they see money as a way of keeping score, and many of them have just really disdain for people who choose not to maximize their incomes. And yet they present themselves as kind of avatars of America. That American is built on entrepreneurship and success, and people taking risks, and therefore we should be

rewarded, and you should hold us in the same regard that we hold ourselves. And at the same time, many of those same people are just good at making consumers feel guilty.

Maybe about ten years ago, eleven years ago or so ... it came up in a case in Massachusetts. Sears, for a while, when one of his credit card customers would declare bankruptcy and discharge the Sears debt. Sears would wait a little bit, and then it had a call center of very motherly sounding middle aged women, who would call up the former customer, and just say in very soothing tones, "We know how sorry you feel about this. And we know that you really wanted to pay us. But I'll tell you what. We'll give you a credit card, and you can come back to Sears, like you've been doing for years. All you have to do is just pay us a little bit on the old debt. Because we know you really want to do that." And just pretend as though Sears is this person, with warm feelings for you, the customer. And playing on the customer's sense of failure and guilt. Now some, I'd say, would get that and the response would likely be, "Screw you, lady." But they got a lot of people to do that. And of course what happens is, once you make even a small payment on a debt that's been discharged on bankruptcy, it's known as reaffirmation. The entire debt is revived, you have reaffirmed it, and you're now on the hook for it again. And that was part of Sears's business model.

C:

That's horribly predatory.

M:

Yeah. Yeah. In fact, in the case, when you look at the transcription of the case, it's really funny. I think the Civil Law Foundation is bringing a case against Sears, and Sears's lawyer was trying to explain why this was an innocent practice, and you read the transcript and the judge just says, "Bullshit." And the lawyer for Sears says, "Excuse me your honor?" and the judge says, "You heard me. Bullshit." Sears lost that case and had to change. But you had this notion of businesses often, and I'm really talking sort of large scale businesses, I'm not talking about corner shops, saying that whatever they do, it's just business, and it doesn't reflect on them personally, except it's that they make all the money that they can. But they see everyone else as somehow lesser, and that they have to operate by a different moral code.

And that's why in the late '90s and the early part of this century, ten year debates over bankruptcy reform, you had the folks, the credit card companies and the law groups that were pushing reforms that were meant to gut the bankruptcy system, saying that we have to restore stigma to bankruptcy. Because people just use it as financial planning. And the notion that, of course, anyone that takes bankruptcy, they're just gaming the system. And I think it's reality. Bankruptcy is never lost as a stigma. And there are ways that you can demonstrate that empirically.

And it's also the case during this period that ... Okay, were there individuals who gamed the system? Yeah, sure. It was a mass bureaucratic system, in which a million and a half families went through it every year. Yeah, there are going to be some people that are gaming the system. Vast majority of them, 91% of people filing for consumer bankruptcy, the trigger that put them into bankruptcy was one or more of three things. Job loss, uninsured medical expenses, or death or divorce. Death [inaudible 40:40] or divorce. These were people who, demographically just

look like everyone else. Have gone to school, got married, bought houses, jobs, families, doing what they were supposed to do. And then stuff happened. Not because of any moral fault, but because they lost their jobs, or the medical expenses, or divorce.

C:

Is there, in your view, enough political gumption, or traction, or however it is you wanna conceptualize it, do you think enough people ... there's a critical mass of discontent that there might actually be meaningful reform to these kinds of things? Or is it sort of an intractable, or at least seemingly intractable sort of power?

M:

It's very, very difficult. I mean, there are groups that will not give up, God bless them. But the folks on the other side are powerful, determined, and wealthy. And so, in trying to push the bankruptcy bill through that would gut the bankruptcy system, the banks and financial industry generally, in terms of political contributions and lobbying expenses, were spending \$100 million a year to extract money from families that were earning on average \$24,000 a year. And they eventually bought enough people on both sides of the aisle to get it through.

C:

That's disheartening, but can't say I'm surprised.

M:

So the consumer/business distinction is a complex one.

C:

Sure. To get back to the 18th and 19th century, when navigating complex, sort of landscape of currencies, written credit instruments, builder credit, all these things, which sort of ... and you discuss this in *Republic of Debtors* at some length, but I'm just curious, if you could elaborate a little bit on what were the most stable instruments being traded, and sort of circulating in this economy, and what were the failure rates of certain kinds of instruments?

M:

Oh, good question. I do not know the answer to that. Because they all had different qualities. In terms of the failure rates, occasionally you would have promissory notes issued by very prominent merchants or speculators that there would be enough of them in circulation that you could start talking about a failure rate. Because those would be promissory notes that were sufficiently plentiful that they traded on standard discounts that would be published in newspapers. That was particularly the case with M and Ns. The notes of Robert Morris and John Nicholson. But there weren't many folks whose volume of promissory notes and whose reputation combined to have standard discount rates.

I've always made the assumption that the default rate was relatively high, just because there was so much risk, there was so much economic uncertainty, because there was so little that was available to secure debt. So you just have naked promises. But I don't have any more than that.

C:

Recognizing that your study was very broad in scope, could you characterize the sort of legal and economic terrain in terms of debt, you know, circulating debt, and the institution of debtors' prison in Boston, or in Massachusetts, and how ... this is sort of essence of my thesis in a lot of ways ... and how does that compare with the rest of the country? Is there any sort of marked cultural or economic distinctions?

M:

You know, I don't know. That's one of the questions I wish I had spent more time on. I did not do as much in Massachusetts as I should have, or wanted to. You know, apart from stuff like in the Shay's Rebellion. So I'm afraid I don't know.

C:

Sure. Well if I dig anything particularly interesting up, you know. So lastly, I guess, is there any literature ... I mean, I've read a lot of different things, articles, books, records. Is there any literature on the topic that you would recommend as being particularly good, interesting, reveal something noteworthy, or that's really just worth reading on this topic for a more robust sort of bibliography and understanding?

M:

This stuff is getting a bit old now, but about the same time, you already know Scott Sanders's [inaudible 46:41], and Ed Balleisen's *Navigating Failure*. Let me see, there's been ... I'm blocking now ... a couple of more recent pieces. I can't remember if any of ... What am I thinking of here? Well this one, I haven't had a chance to read this one. Oh this is earlier. That one. It's much earlier for you. Let's see. Yeah, this one's a little bit later, but it's good. Just in terms to give you some idea on ... you know, part of the problem with looking farther into 19th century stuff is that, as good as some of things are, it's that the whole way business looked changed, once you get into corporations it's just a very different world that doesn't have a lot of bearing on your period.

C:

Sure. When is that shift, roughly, to the corporate? Judging by the stuff I've read I could sort of hazard some broad guesses, but ...

M:

It's really more before general corporations, so about 1840s or about. Early on you have legislative incorporation for railroads, for example, or canal companies, or turnpikes, by application to the legislature. It doesn't come to characterize business generally until you have the ... as part of general incorporations statutes. You'll have people who wanted to take this corporate form for business purposes, something to file without it being a discretionary award. But I think you can say that in effect that transportation companies, railroad companies, railroads in particular sharpened the difference, in part because of the financial investment required, in part because of the death and destruction that they left in their wake in the early years of operation.

C:

Okay, great. I actually don't have either one of these. These would actually make for great additions, so I'll be sure to get onto Amazon, get that figured out. Incidentally, does the name Jay Wickersham mean anything to you?

M:

I'm not sure why. I've heard of it, and it may just be that I think of it as Cadwalader, Wickersham & Taft, which is a law firm in New York. I know the family name, but I don't ...

C:

Sure. The reason I ask is I encountered an article. He's a partner at a law firm here in Boston, and he wrote an article about, not the trial of Bulfinch, but sort of his insolvency proceeding.

M:

Oh really?

C:

And I'm just curious if that name had sort of appeared on your radar at all in the studies of ... I got in contact with him. I hope to meet, sort of have a similar meeting to this with him. It's nice being in New England, I can get where I need to get relatively easily. But I just didn't know if that had sort of appeared on your radar.

M:

No, no.

C:

As far as articles, are there any sort of journals that would have a lot of ... I mean, I'm referencing stuff from the larger journals, things you come across on JSTOR, and things like that, but are there any sort of large groups of that you ... or individual articles that are particularly illuminating?

M:

No, nothing I can recall. But I think that's probably just a failure of my memory.

C:

Fair enough. I mean, I can barely keep track of things that I'm citing, and I only have one 80ish page thesis, so I can certainly sympathize. Alright, well thank you so much for your time, I really appreciate it.

M:

This has been fun. Glad to be of help. And any questions come up, feel free to be in touch.

Acknowledgements

First and foremost, I would like to thank Scott Gac, for serving as an incisive and patient advisor for this thesis. Navigating the process for the first time was very difficult and Professor Gac was very specific about what I needed to do to be successful. Alex Manevitz also provided very helpful and constructive comments, and his uncompromising editing has changed my writing permanently for the better.

I would like to thank the Trinity College History Department for giving me a rich and rewarding academic experience and for giving me the intellectual opportunity to write this thesis. I owe particular thanks to Jeffrey Bayliss for running a helpful and enjoyable thesis seminar for the first semester of this project.

I am greatly indebted to Bruce Mann and Jay Wickersham for their time and scholarship. Both of their works were enormously helpful for my writing and understanding. They were both generous enough to meet with me to share their perspective on their work and my own project. Jay Wickersham in particular took the time to read over my chapter drafts and offered very helpful feedback.

The idea for this project came out of a conversation had over lunch with my mentors and friends at the Leonard E. Greenberg Center for the Study of Religion in Public Life. I am very grateful to Mark Silk, Andrew Walsh, and Christine McMorris for their advice and support.

Last but certainly not least, my parents and my family were a constant source of ideas and support, and I am grateful beyond words for their generosity in providing me the opportunity

to have as great an education as I could achieve. They provided me the opportunity not only to attend school but to discover and pursue my passions. Their faith in me and their generosity has made this project possible. My extended family also showed a lively interest in my work and have generously offered their help should I choose to pursue this project further in the future.

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