

The History of Credit & Debt – Bankruptcy



By [Steve Rhode](#)
[Ask me your question.](#)

Click on the star rating below to rate this article.
 ★★★★★ (No Ratings Yet)

1
 tweet
 retweet

[Bankruptcy Laws](#)

Get Free Info on Bankruptcy Laws. Fast, Effective Debt Relief Plans.
www.DebtReliefUSA.org

[Filing for Bankruptcy](#)

Thinking about Filing Bankruptcy? Free Online Bankruptcy Evaluation
www.Chapter7.com

[Cut Debt 60%-Set Own Pymt](#)

A+ BBB - Call Now 1-888-200-9094 40yr Law Firm
 -20K Min. Debt Req'd
FastDebtConsolidation.net

[Christian Debt Reduction](#)

Non Profit Christian Debt Help. Cut Payments Up to 50%. 1-866-958-3328
www.ChristianDebtConsolidators.net

Ads by Google

[Bankruptcy](#) has been around for over four hundred years. However, what we assume to be [bankruptcy](#), the elimination of debts, is not what bankruptcy started out as or was intended to become.

The word bankruptcy comes from bancus, the tradesman's counter, and ruptus, broken, denoting one whose place of business was broken or gone. Under pre-English bankruptcy laws, Rome, under the Casars had debt collection laws, a practice of appointing trustees after the market-place bench was either broken or removed as a declaration of a merchant's bankruptcy. The trustee auctioned off the property of the bankrupt to the bidder who would pay the most to creditors. The trustee was appointed by the creditors or by a magistrate if creditors could not agree. The trustee was called the "curator bonorum" meaning "protector" or "caretaker" of the property which he held for the benefit of the creditors.

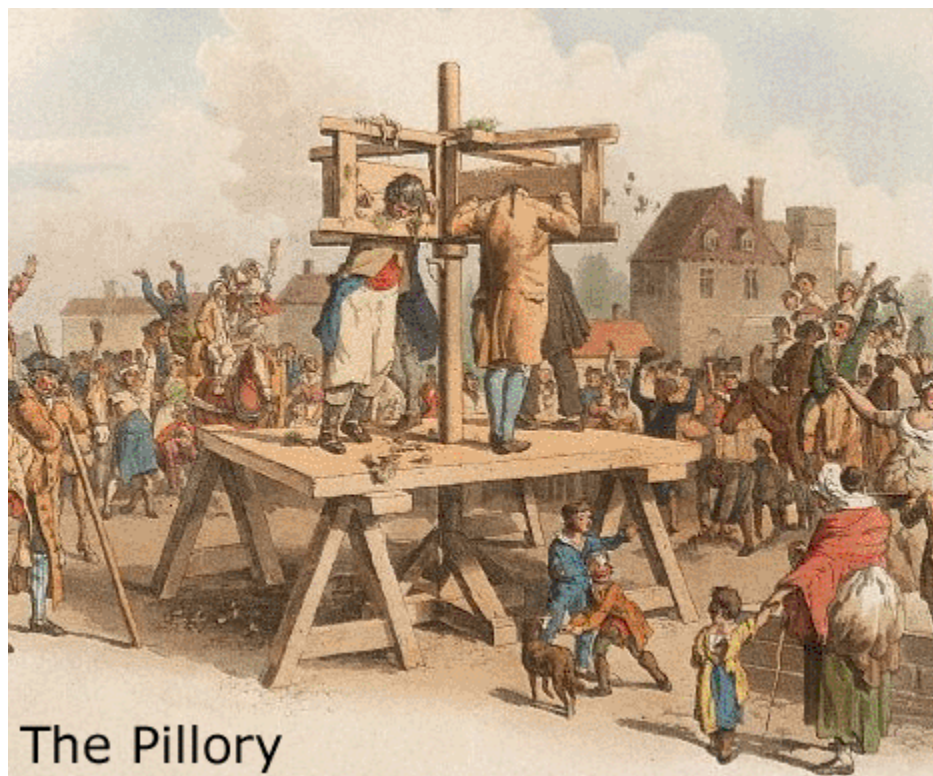
The first English bankruptcy law was passed in England in 1570 during the rein of Henry VIII. It is the foundation of the American bankruptcy laws. While some historians claim a statute passed in 1542 was the first bankruptcy law, it was not. The 1542 statute was designed to prevent frauds on creditors. Under that statute the debtor was summoned to appear before a Chancellor and on the demand of the creditor, to be examined under oath, and if the debtor failed to surrender his possessions to pay his debt, off to [debtors' prison](#) he went.

In 1570 the first real bankruptcy statute was approved. It was necessary since the debtors' prisons were at capacity and this incarceration was creating a national problem in England. Under the English

1705 Statute of Anne bankruptcy act, uncooperative debtors could be executed. It is estimated that five were executed under this law.

Early bankruptcy certainly had some provisions that would be considered unusual under today's bankruptcy law. For example:

- Only a creditor could commence a bankruptcy case against the debtor.
- Citizens were imprisoned for debts and individuals could not file for bankruptcy.
- Only a merchant could be a debtor.
- Bankruptcy was not for individual debtors but as relief for creditors from the debtors.
- During bankruptcy, assets were seized, sold and distributed to creditors but that did not stop the collection of remaining monies owed. There was no discharge of obligation for the remaining debts. Collection efforts continued after the sale of all of the debtor's property.
- Bankruptcy was not something that you did but rather something that you were. An act of bankruptcy was a form of conduct that occurred when a debtor was avoiding repaying debts owed.
- Bankruptcy commissioners (trustees) could break into your home and seize assets which could be sold to satisfy the debt.
- Debtors could have an ear cut off or have an ear nailed, while still attached, to a pillory in a public place.



Since early American law followed English law closely there is no doubt that the process of bankruptcy was known during the first days of American colonization. During the first session of Congress, in 1790, there was even a proposal that a general system of Bankruptcy in the United States should be considered. In spite of the agreement for a need for such a process the argument was made that before we develop a process of discharging debts we should first develop a banking system. Good idea. Members were aware that our country's Constitution required a bankruptcy act but there was no rush to enact it.

During the next ten years before a federal bankruptcy law finally passed, the individual states maintained laws about debtor and creditor relations.

Most people assume today that America was in a rush to pass bankruptcy laws to allow its citizens the ease of discharging their financial obligations. America was interested in passing bankruptcy legislation to protect merchants and creditors who otherwise would have little ability to enforce or collect debts. It was understood that bankruptcy fostered the growth of commerce and not the avoidance of debt.

Bankruptcy laws were desired in early America because as was noted during the first session of Congress England had “had enjoyed a degree of tranquility and domestic happiness unknown for a century before” under their bankruptcy act.

America closely adopted bankruptcy laws in 1800 that closely resembled the then current 1732 English bankruptcy laws. Under this law only creditors could commence against a debtor who had committed an act of bankruptcy. Before a discharge of debts, which occurred after the liquidation and distribution of the debtors assets, proof that the debtor had been cooperative and that two-thirds of the creditors agreed to the plan had to be presented.

The new law also permitted the debtor to receive a small allowance out of the estate and modest exemptions were also permitted.

Since the 1800 act allowed for the discharge of obligations by prominent speculators like Robert Morris and since it was believed that the bankruptcy act did little to assist merchants because only small amounts were recovered, the law was repealed in 1803.

Now that the federal bankruptcy law was no longer in effect, the states went back to establishing their own insolvency laws.

A federal bankruptcy law was passed again in 1841 following the economic [depression](#) of 1837. Relief was desired and Congress finally acted. The 1841 act created the first opportunity for debtors to [file bankruptcy](#) instead of being filed against by their creditors. The new law proved to be unsuitable again and was accused of being outside of the intent of the framers of the Constitution. Many debtors received discharges from their debts and creditors received very little. Well, back to the drawing board again. The law was repealed in 1843.

After the repeal of the bankruptcy act in 1843 the United States experienced a significant economic upturn. There was little demand for a new bankruptcy bill during this time. However, the devastation caused by the American Civil War created a demand that a bankruptcy law be enacted again. It wasn't until 1867 that federal bankruptcy legislation emerged again. Guess what? It was repealed in 1878 because the act was accused of being too unwieldy, too expensive, created long delays, and resulted in little repayment to creditors.



Merchant out of business. Store in Georgetown, Colorado around 1870 has a “Bankrupt Sale” sign in front window. From Western History/Genealogy Department, Denver Public Library

Following a national economic panic in 1893, Congress started working again on a new bankruptcy act, much of which remains in effect today. The Bankruptcy Act of 1898 brought us the modern era of liberal debtor treatment. One commentator of the time suggested Congress went too far in favoring debtors. He reminded them that bankruptcy was primarily a “commercial regulation,” not a general debtor “jubilee” as provided in the Bible. The Bible contains provisions for a forgiveness of debts by creditors and return of land to the original owners. This jubilee year occurred every fifty years. While it is often assumed that today’s voluntary bankruptcy and the biblical jubilee are similar, they are not. Voluntary bankruptcy is for many, an avoidance of their rightful obligations. The biblical jubilee was a voluntary forgiveness of debts by creditors.

In 1938, Congress overhauled the bankruptcy law and created the [Chapter 13](#) plan. Another major overhaul took place in 1978. One feature of the act was the hope that more people would use the [Chapter 13](#) provisions and repay their creditors over a multi-year period. Congress did consider making Chapter 13 mandatory for all filers but later allowed it to be voluntary. In the end Congress simply weakened Chapter 13 protections and made [Chapter 7](#), total discharge of debts, more attractive.



1939 — Farmer meets with a committee of his creditors to avoid bankruptcy.