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Debtors' prisons in America: An economic analysis

Matthew J. Baker[a,*], Metin Cosgel[b,1], Thomas J. Miceli[b,2]

[a] Department of Economics, Hunter College and the Graduate Center, CUNY, New York, NY 10065, United States
[b] Department of Economics, University of Connecticut, Storrs, CT 06269, United States

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ABSTRACT

Debtors' prisons have been commonplace throughout history, including in the United States. While imprisonment for debt no doubt elicited some repayment by benefactors of the debtor, we argue that its primary function was to deter default in the first place by giving borrowers an incentive to disclose hidden assets. Because of its cost, however, imprisonment was destined to be replaced by more efficient ways of preventing borrowers from sheltering assets. Empirical analysis of state laws banning imprisonment for debt provides some support for this argument. In particular, the results suggest that states in which the publishing industry developed sooner (thus facilitating the flow of information) were more likely to enact early bans on imprisonment for debt.

> "Any society that admits the concept of debt has to develop some means of dealing with those who default on their obligations."
>
> -Coleman (1999, p. 3).

> "Annual income twenty pounds, annual expenditure nineteen nineteen and six, result, happiness. Annual income twenty pounds, annual expenditure twenty pounds ought and six, result misery."
>
> -Mr. Micawber's advice to David Copperfield on how to avoid debtors' prison (Dickens, [1850] 2006).

1. Introduction

The availability of credit is an important component of a growing economy. A fundamental problem facing any system that relies on credit, however, is how to ensure timely repayment, and also how to deal with those unable to repay. These questions present society with a difficult trade-off because, while an unbending policy toward defaulters is generally necessary to enforce repayment terms, it can result in harsh treatment of those down on their luck. In early English law, the ultimate penalty for defaulters was imprisonment, often at the debtor's own expense, until the debt was paid. Of course, this raises the obvious question of how one could repay debt while in prison, but the underlying presumption was that the threat of

* Corresponding author. Tel.: +1 212 772 4217; fax: +1 212 772 5398.
E-mail addresses: Matthew.Baker@Hunter.cuny.edu (M.J. Baker), Metin.Cosgel@UConn.edu (M. Cosgel), Thomas.Miceli@UConn.edu (T.J. Miceli).
[1] Tel.: +1 860 486 4662; fax: +1 860 486 4463.
[2] Tel.: +1 860 486 5810; fax: +1 860 486 4463.

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imprisonment would induce borrowers to avoid default in the first place. In other words, the prospect of prison would act as a deterrent. Additionally, Mann (2002, p. 79) notes that creditors "hoped that the rigors of imprisonment would induce debtors to disclose concealed wealth or to part with assets that were exempt from attachment or, perhaps, that family members might step into the breach. . ." Holton (2007, p. 43) similarly observes that the system contained a "cruel logic, since it forced the delinquent debtor to reveal hidden assets. . ."

Still, some debtors were bound to default, and others apparently were willing to sacrifice their freedom in order to protect their assets (Coleman, 1999, p. 9). As a result, debtors' prisons flourished as a costly method for enforcing repayment, both for society and for prisoners.

The fact is that, throughout history, imprisonment for debt was the norm rather than the exception to the rule. Ford (1926) describes the codification of imprisonment for debt in early Roman law, which evidently allowed debtors to be arrested and placed in jail for a prescribed period of time. References to imprisonment for debt can also be found in the bible, where it is suggested that if debts went unpaid by the end of the imprisonment term, the debtor could be killed or sold into slavery.[3] While the tendency to imprison debtors apparently abated as alternative means of dealing with delinquent debtors developed, it reemerged in full force in the Middle Ages, waned again in the era of feudalism, only to return to prominence in the later Middle Ages, partly through the approval of the Catholic Church.

For a variety of reasons discussed by Ford (1926), debtors' prisons surged in medieval England and spread throughout Europe. In fact, Ford (1926, p. 30) cites the 1834 report of a British parliamentary commission asserting that at the time imprisonment for debt was legal in every country in continental Europe except Portugal. The American colonies imported the practice, and "[b]y the end of the seventeenth century the debtors' prison had become an established colonial institution" (Coleman, 1999, p. 249). The system remained little changed until the beginning of the nineteenth century when most colonies began to enact reforms, driven in part by humanitarian concerns. And when Massachusetts abolished imprisonment for petty debts in 1811, the process of eliminating the practice altogether had begun. "Between 1811 and the end of Reconstruction most but not all of the eastern states gradually prohibited the imprisonment of defaulters except in cases of fraud and in damage suits for alimony, child support, and wrongful behavior" (Coleman, 1999, p. 256).

The demise of the debtors' prisons, however, was not driven entirely by compassion for debtors; it also reflected changes in lending practices. As credit became more impersonal, lenders began to require some form of security up front as protection against default. In addition, the legal system facilitated the seizure of secured assets in lieu of payment. Borrowers therefore had a harder time sheltering assets. Debtors' prisons thus became an anachronistic and costly way to enforce payment in this world, and undoubtedly would have disappeared even without legal action (Coleman, 1999, p. 268).

The goal of this paper is threefold. The first is to provide an historical picture of debtors' prisons in the United States as they existed in the early years of the Republic. The second is to develop an economic theory of debtors' prisons, focusing on their role in facilitating efficient lending and repayment of debt, and on the emergence of alternative enforcement measures. Finally, the paper offers some historical and empirical evidence on those factors that led to the demise of debtors' prisons in the United States during the mid-nineteenth century.

2. An overview of debtors' prisons in the United States

While much anecdotal evidence suggests that imprisonment for debt was an important part of life in the United States at the beginning of the 19th century, how prevalent, really, was the practice, and how exactly did it function? At least one group, the "Prison Discipline Society," a philanthropic society formed with the aim of improving prison conditions in the United States, kept careful records of debtors in prison. The Societies' 5th report, published in part in 1831, described the results of a detailed survey of the nature and extent of debtors' prisons across the United States.[4] We present portions of this report in Tables 1–3, as a way of giving readers a feel for the importance of imprisonment for debt in the early Republic.

The immediate lesson learned from these tables is that debtors' prisons were in full use in the early part of the 19th century, and the number of people imprisoned for debt was large both in an absolute and a relative sense. In fact, from the data reported in Table 1, it can be seen that in many places, the majority of prison populations was composed of debtors. The Prison Discipline Society's estimate is that five out of every six prisoners were in fact in prison for debt in the sampled states, and that this put the total number of people imprisoned for debt, at least across the northeastern United States, well into the tens of thousands.

In spite of the apparent widespread use of the debtors' prison, the data in Table 2 suggest that a relatively large fraction of debts for which people were imprisoned were small, with the majority being for $20 or less. This is borne out by the Prison Discipline Society's own estimate of the value of a days' time at $1. It is difficult to obtain readily comparable information about the distribution of wealth in the United States in 1830, which might be a better yardstick against which to compare the debt levels in Table 2. However, in 1850 the per capita value of personal estate across the United States was $122.59 (in

[3] See Matthew 18:29–31 (New International Version) on imprisonment for debt. Matthew 18:24–26 describes an episode in which a debtor is to be sold into slavery to repay a debt.

[4] While we refer to "debtors' prisons," generally speaking, imprisoned debtors were usually just kept in States' prison or jail facilities along with the rest of the general prison population.