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Congress, framing, media and bankruptcy reform, 1997-2005.

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CONGRESS, FRAMING, MEDIA AND
BANKRUPTCY REFORM, 1997-2005

By

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B.A., University of Louisville, 2006

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ABSTRACT

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April 02, 2008

The purpose of this study is to analyze two Congressional decisionmaking models and two policymaking models to identify which provides the strongest explanation of the bankruptcy reform process between 1997 and 2005. The two models of Congressional decisionmaking are the partisan model described by Mann and Ornstein and Binder's institutional model. The two policymaking models considered in this project are Kingdon's revision of the "garbage can model" delineated in his work on policymaking, and Baumgartner and Jones' punctuated equilibrium model described in their policymaking research. The Binder and Kingdon models provide the most accurate description of the bankruptcy reform process largely due to their emphasis on internal structures in the policymaking process. Baumgartner and Jones overestimate of the impact of the media's agenda setting role. Mann and Ornstein fail to explain the long period of debate in Congress despite the legislation passing every floor vote.

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INTRODUCTION:

The process of reforming bankruptcy laws began in 1994 with the passage of the *Bankruptcy Reform Act of 1994*, PL 103-394. The legislation provided for the creation of the National Bankruptcy Review Commission (NBRC). Rather than providing suggestions for minor changes, the Commission released a 1,300 page report approved by a 5-4 majority and included a scathing dissent. The resulting reforms spent a long and difficult 8 years in Congress, incredibly attaining large margins of victory in nearly every floor vote and maintaining nearly the same text. This reform movement, however, proved to be far more successful for Republicans than for Democrats.

Bankruptcy reform is an ideal case study of Congressional decisionmaking because of the ideological reversal of the policy reforms and the clear differences between the rhetoric of both parties on this issue. The formation and adoption of bankruptcy legislation differed from the traditional reform process due to Congress' sole control of the reforms and the evolution of the text within each Congressional chamber. Bankruptcy is an issue that many argue possesses elements of fiscal and social policy. Furthermore, bankruptcy reform is a recurrent issue on the legislative agenda. It is included as an enumerated power in the Constitution (Article I, Section 8) and in 1898 Congress passed the first federal legislation creating a national bankruptcy system at the bequest of the growing number of companies engaging in interstate commerce (Zywicki, 2003). However, the law contained many more pro-debtor and pro-lawyer provisions

than corporations expected (Zywicki, 2003). Zywicki (2003) argues these “friendly” provisions have influenced bankruptcy law ever since and established judges and lawyers as the traditional experts for policy questions in bankruptcy legislation. By the late 1970’s creditors once again brought bankruptcy reform back to the table and the 1978 reforms created a bankruptcy system that was more accessible and attractive to both individuals and corporations, once again establishing lawyers and judges as the dominant actors and the primary winners in the resulting legislation (Zywicki, 2003). Bankruptcy will always be an important issue to the credit industry, businesses both small and large, and according to the NBRC report an increasing number of consumers (pp. 77-78).

This study attempts to identify an appropriate policy model that can explain the formation and adoption of bankruptcy reform. Kingdon (1995) develops a model that explains policy change when “process streams” combine. The punctuated equilibrium model, developed by Baumgartner and Jones (1993), attempts to explain long periods of policy stability with intervening reform movements that occur quickly when policy subsystems disintegrate and new subsystems develop to take its place. However, Mann and Ornstein (2006) argue that this period of bankruptcy reform is a consequence of Republican control of both houses of Congress and the Presidency. In addition, Binder (1999) contends that policymaking in Congress can be best understood from an institutional perspective, suggesting that bicameralism plays a large role in the policy formation process.

This project includes an analysis of the Democratic and Republican frames, coding of news articles directly addressing bankruptcy reform proposals according to frame, and an analysis of the legislative proposals for bankruptcy reform from the 105th

Congress to the 109th Congress. The information collected in this study is applied to the models listed above to determine which provides the explanation most similar to the reform process.

Because Congress drove the bankruptcy reform agenda rather than the media or other forces outside government, this study incorporates evidence from Congressional decisionmaking literature to attempt to explain the reform process. The two Congressional decisionmaking models are Mann and Ornstein's partisan model and Binder's institutional model. The partisan model suggests the majority party in Congress determines the direction of policy and the strength of the partisan coalition determines the speed with which the legislation is passed and the amount of compromise the legislation will reflect (Mann & Ornstein, 2006). Binder's institutional model argues that division between the chambers will determine the success or failure of legislation in Congress (Binder, 1999).

Binder's account of Congressional decisionmaking most closely aligns with the bankruptcy reform process because the eight-year stalemate over bankruptcy legislation reflects the failure of House and Senate leaders to come to a compromise. The Senate legislation tended to include more Democratic provisions, while the House legislation consistently represented Republican principles. In 1997, there was a vast difference between the legislation offered by the Senate and the legislation offered by the House. Even though the House was able to pass reforms in every Congressional session, House-members had to wait until the Republican leadership in the Senate was strong enough to build a coalition to pass bankruptcy reform. Although, the Congressional decision

making models do not offer a complete explanation of policymaking they make important theoretical contributions to the study of policy.

The two policymaking models analyzed are Kingdon's revision of the "garbage can model" and the punctuated equilibrium model. Kingdon's model is the most explanatory when applied to the bankruptcy reform process. Kingdon emphasizes the internal actors within policy communities. Baumgartner and Jones contend that outside actors, such as the media and interest groups play a larger role than Kingdon suggests. The media does not have the impact that Baumgartner and Jones suggest in their research. In the case of bankruptcy reform, the media does not reflect the same interests represented in Congressional committee hearings and reports. The media instead rely on the traditional experts of bankruptcy policy representing the old policy community rather than the new community gaining influence with Congressional decision-makers.

POLICYMAKING IN THE US CONGRESS:

This study attempts to combine two separate literatures on policymaking and Congressional decisionmaking. Because the bankruptcy reforms took place in the Legislative branch, it was necessary to include a discussion of Congressional decisionmaking theories. The institutional model offered by Binder (1999) provides the strongest explanation for the bankruptcy reform process and the Kingdon (1995) model provides the best description from policymaking literature. The partisan model offered by Mann and Ornstein (2006), fails to account for the many bipartisan votes cast in the Senate and cannot explain the length of time the legislation spent in Congress. Baumgartner and Jones' (1993) punctuated equilibrium model places too much weight on the media's agenda setting role and actors outside of government.

Policymaking Literature

Policymaking is a difficult issue to study in political science. Until recently, the development of general measures for agenda setting and modeling the many facets of the decisionmaking process presented an intractable problem for scholars in this field. Kingdon (1995) revises the Cohen-March-Olsen, "garbage can model," originally developed to analyze organizational choice, to apply to agenda setting in public policy. Kingdon (1995) adopts the properties that describe institutions, participants: have a vague understanding of their own preferences, fail to comprehend the processes through which

decisions are made, and flow in and out of the decisionmaking process easily and often (pp. 84). However, Kingdon (1995) modifies the process streams, which he identifies as problem recognition, policy formation, and political atmosphere (pp. 86-87).

Kingdon's problem stream indicates that problem recognition occurs through quantitative or qualitative indicators such as focusing events or feedback mechanisms (Kingdon, 1995, pp. 90-115). Policy formation takes place within policy communities, which determine the policy alternatives and determine proposals (Kingdon, 1995, pp. 116-143). The political atmosphere incorporates forces within government and popular support to take into account factors such as interest groups, public opinion, and elections (Kingdon, 1995, pp. 145-164). When process streams couple, policy change becomes possible (Kingdon, 1995, pp. 87).

Baumgartner and Jones (1991) develop the punctuated equilibrium policy-making model to explain periods of rapid policy reversals separated by long periods of stability within a policy arena. Changes in rhetoric combine with changes in policy venue to create a change in the image of the policy itself (Baumgartner & Jones, 1991). This process gains momentum and creates a self-reinforcing, positive feedback mechanism that leads to new policy subsystems, resulting in new problem definitions and eventually reversals in policy (Baumgartner & Jones, 1991).

Baumgartner and Jones (1993) identify five indicators of subsystem breakdowns: media attention, venue access, nature of the problem, policy outputs, and secular change in institutional structures (pp. 50-55). Baumgartner and Jones' (1991) rely largely on the premise that either concurrent with or soon following the destruction of a policy subsystem there must be a new system developing and lying wait for a chance to redefine

the policy problem. When an event occurs that demonstrates weakness or possible problems, Baumgartner and Jones (1991) predict a flurry of negative media attention focusing on the old policy and the actors who created the system, or positive attention focusing on the developing subsystem actors and policy. The negative media attention is more important than positive attention according to Baumgartner and Jones (1991). The coding scheme applied by Baumgartner and Jones is very broad. In order to provide evidence of agenda setting, they include a count of all articles relating to the policy issue and code only the headline (Baumgartner & Jones, 1993, pp. 50-51).

Venue access acts as an indicator of the governmental policy agenda (Baumgartner & Jones, 1993, pp. 52-53). Baumgartner and Jones (1993) have an expansive characterization of what measures can act as venue access indicators. They include not only all legislative and executive branch activities, but activities at the state and local level and looking at financial markets for evidence of regulatory policy outcomes (Baumgartner & Jones, 1993, pp. 52-53).

The nature of the problem is included in the analysis to account for the increasing or possible decreasing severity of a policy problem (Baumgartner & Jones, 1993, pp. 53). The fourth indicator, policy outputs, refers to changes made in the structure of policymaking that lead to policy change, expenditures by governmental departments, and changes in governmental activities (Baumgartner & Jones, 1993, pp. 54). Examples given by Baumgartner and Jones (1993) include the dismantling of the Atomic Energy Commission, which lead to changes in nuclear policy (pp. 54). The final indicator provided by Baumgartner and Jones (1993), is the change in institutional structures over time, which attempts to account for cultural and contextual changes in policy issues over

time (pp. 55). Because of the period in which the reform of bankruptcy laws took place, an important structure is partisanship.

While the Kingdon (1995) model differs in many ways from the punctuated equilibrium model, the strongest point of contention is the influence of actors outside government on the agenda setting process. Kingdon (1995) argues that interest groups, consultants, academics, researchers, and members of the media do not have a significant effect on setting the governmental agenda (pp. 67-70). Participants outside the government are also not likely to attain suggested policy alternatives, but are more successful in blocking alternatives from consideration (Kingdon, 1995, pp. 67-70). This is a much more limited role than many other scholars suggest.

Recent research in agenda setting has begun to develop models incorporating agenda setting and framing (Jasperson et al., 1998; McCombs, 1997). McCombs (1997) develops a continuum of journalistic involvement in agenda setting ranging from the passive professional detachment, to targeted involvement, boosterism, and finally proactive agenda setting. The proactive agenda setting stage describes a situation where the media not only act as active agenda setters, but also actively participate in the development of frames (McCombs, 1997). McCombs' (1997) study looking at first and second-level agenda setting in Charlotte and San Antonio demonstrated the media had a startling effect on the community. In San Antonio, a local newspaper began to publish goals for city spending for children's issues on their editorial page and within a year the funding for those programs increased 14% (McCombs, 1997). The situation in Charlotte involved a series of investigative reports in the local newspaper, which prompted record turnout levels in the next election (McCombs, 1997). Jasperson et al. (1998) contend that

studies of the salience of agendas should include a content analysis of the issue frames to get a more accurate description of causes of shifting public opinion about issues.

Chyi and McCombs (2004) study framing over the “life-span” of a news event and argue that the media can define the salient aspects of an event by what they emphasize in news stories. This study examines New York Times coverage of the Columbine school shootings and attempts to understand how frames evolve over time (Chyi & McCombs, 2004). With this research, Chyi and McCombs (2004) attempt to add time and space dimensions into the study of framing effects. Space is defined as the level of analysis, ranging from the individual (micro) to community, region, society, and finally the international (macro) level of analysis (Chyi & McCombs, 2004). Time refers to the variation in time-period news stories emphasize, from a historical perspective to stories predicting future events (Chyi & McCombs, 2004). Chyi and McCombs (2004) conclude that the media emphasize different aspects of a news story across the life-span of the issue to keep the issue interesting and alive.

In her seminal work on the social construction of news, Tuchman (1978) describes the media as a “social institution,” that not only disseminates information to the public but also has relationships with other institutions and institutional norms for those working within the system (pp. 4-5). This process promotes the status quo in society by defining what is important to people and defining deviant behavior (Andsager & Powers, 1999; Ashley & Olsen, 1998; Boyle et al., 2005; Tuchman, 1978, pp. 4-5, pp. 182-185). This does not imply the structure of society produces the norms of social behavior; social meanings and the construction of behavioral norms requires constant definition and redefinition, construction and reconstruction, which reinforces the consistent aspects and

recreates the inconsistencies (Tuchman, 1978, pp. 182-185). According to Tuchman (1978, pp. 183), “as newswriters simultaneously invoke and apply norms, they define them.” Those working in media must constantly re-evaluate their interpretive decisions to ensure equal representation of perspectives and equal treatment for all sides of an issue (Tuchman, 1978, 183-185).

Another important aspect of this line of research is the media autonomy model developed by Terkildsen, Schnell, and Ling (1998) to disentangle the relationships between the media, interest groups, and political elites. This model regards journalists as the gatekeepers of information, allowing facts and interpretations of issues that correspond with the traditional news narrative style or with their own personal views to pass, while keeping information that lacks these values from reaching the general public (Terkildsen et al., 1998). Political actors are able to take advantage of the influences in three ways: through message structure, rhetoric, and source cues (Callahan & Schnell, 2001; Terkildsen et al., 1998).

Message structure includes the use of interpretive packages, framing, and issue dualism (Callahan & Schnell, 2001; Terkildsen et al., 1998). In this context, interpretive packages refer broadly to groupings of frames that work together to reinforce issue salience and structure the meaning of an argument (Terkildsen et al., 1998). Successful packages usually have a narrative structure and the ability to coherently incorporate new information into the package (Gamson & Modigliani, 1989; Graber, 1989). Framing refers to political actors’ use of storylines and narratives to reinforce the salience of particular attributes of issues and debates (Gamson & Modigliani, 1989; Graber, 1989; Terkildsen et al., 1998). Issue dualism is a concept that describes media actions to appear

objective. According to the hypothesis of issue dualism, journalists report statements from at least two sides of an issue regardless of expertise or factual content to appear to be reporting the objective truth (Terkildsen et al., 1998). When policy elites frame issues in terms of the message structure employing interpretive packages and taking advantage of issue dualism, the media generally report the frame in its entirety (Callahan & Schnell, 2001).

Rhetoric refers to the use of symbols and metasymbols by political actors (Callahan & Schnell, 2001; Terkildsen et al., 1998). The study applies the definition of symbols from Gamson and Mondigliani (1987), “metaphors, catchphrases, and other condensing symbols,” (Terkildsen et al., 1998, pp. 48). However, symbols are just as likely to be visual as they are verbal Terkildsen et al. (1998) provide the example of the American flag and pictures of enthusiastic crowds as two very common symbolic images in politics. Metasymbols are media prescribed labels for groups that generally encourage an “insider vs. outsider” debate and provide some groups with more power than others (Callahan & Schnell, 2001; Terkildsen et al., 1998). Although the use of message rhetoric by political elites delegates a lot of interpretive power to the media, it can occasionally be beneficial to groups, particularly if they can take advantage of metasymbols (Callahan & Schnell, 2001; Terkildsen et al., 1998).

Policy elites have the least control over the representation of sources in the media (Terkildsen et al., 1998). Terkildsen et al. (1998) define source cues to include citations from sources and descriptions of sources that can take either positive or negative forms. Source citations can refer to either an interview with a source or less commonly in news stories, documents provided by sources (Callahan & Schnell, 2001; Terkildsen et

al.,1998). Source descriptors refer to the ways in which the media portray sources and in particular, the language used to describe them (Callahan & Schnell, 2001; Terkildsen et al., 1998).

Political elites have a natural advantage in gaining media attention, especially in public policy debates (Callahan & Schnell, 2001; Druckman, 2001). Callahan and Schnell (2001) suggest that due to the authority and accessibility of policy makers, their frames are more likely to get media coverage and their coverage is more likely to be unedited. However, Callahan and Schnell (2001) caution that the ability to gain media coverage is qualified by the policy maker's "status, credibility, and organizational resources," (pp. 188). Druckman (2001) echoes this sentiment. However, unlike Callahan and Schnell (2001), Druckman (2001) argues that this is the case because citizens delegate political decisions to credible elites.

Decisionmaking in Congress

Recent scholarship analyzing the institutional relationship between the House of Representatives and the Senate provide evidence that partisanship is superseding the "institutional ambition" so carefully constructed in the Constitution. The House and Senate have changed dramatically since the drafting of the Constitution and the founders could never have imagined the scope of issues the federal government manages, the expansion of executive power, and the new role of the media in the policymaking process. This study hopes to add to current research analyzing whether these changes have altered the nature of legislative power.

Within each Congressional chamber, the majority party often creates rules and exploits procedural control to establish strategic coalitions and relationships within committees that solidify and maintain policy subsystems (Schickler & Rich, 1997). There is general agreement among recent studies on the U.S. Congress that the institutional differences between the House and Senate increase the likelihood of the House producing extreme legislation and moderate legislation being more successful in the Senate (Evans and Lipinski, 2005). There is also considerable research arguing that partisanship has been on the rise since the Republicans won control of Congress in the 1994 elections (Dodd and Oppenheimer, 2005; Gershtenson, 2006; Smith and Gamm, 2005).

Mann and Ornstein argue that intense partisanship has led a unified Republican party to subordinate the legislative process to dictates from the executive branch, and offers that as evidence of the institutional decline of Congress (2006; pp. 212-4). Mann and Ornstein (2006) portray the Republican controlled Congress and Presidency as a pseudo-parliament and accuse Republican Congressional leaders of using rules and procedures to circumvent the legislative process. The source of this problem is the growing polarization within the population and the recruitment of more polarizing politicians to appeal to those voters (Mann & Ornstein, 2006, pp. 224-6). As a result, policy making in Congress is less deliberative and the policy outcomes reflect the lack of thought put into them (Mann & Ornstein, 2006, pp. 212-4).

Dodd and Oppenheimer (2005) stress the impact on the rule changes occurring after Newt Gingrich [R-GA] assumed the role of Speaker in the House. When the Republicans claimed control of the House after the 1994 elections, the leadership

changed House rules to allow the Speaker to assign chairs, rather than the more decentralized approach of the Democrats in which seniority was the deciding factor in the designation of committee chairs (Dodd & Oppenheimer, 2005). The new rules regarding committee leadership also limited chair positions to three terms preventing other members from achieving political standing to make them capable of challenging House leadership (Dodd & Oppenheimer, 2005). These rules allowed Gingrich and other House leaders unfettered agenda control, which Gingrich used to unify the party and increase the political standing of the party (Dodd & Oppenheimer, 2005).

Even though it was not long before Gingrich resigned his House seat, the rule changes instituted under his leadership established the most powerful House speaker position since 1910 (Dodd & Oppenheimer, 2005). According to Schickler and Pearson (2005), Dennis Hastert [R-IL] has successfully expanded the rules established by his predecessor, Gingrich. However, Schickler and Pearson (2005) include the Democratic response to Republican unification in their analysis and contend that the increasing unification of the Republican Party in the House precipitated an increasing unification of the Democratic Party. Furthermore, the expansion of Republican dominance to the executive branch decreases the incentive of House Republicans to make policy concessions to Democrats (Schickler & Pearson, 2005).

Although some focus on the moderation of the Senate compared to the House, Sinclair (2005) presents another picture of the modern U.S. Senate. Sinclair (2005) describes the evolution of perceptions of the Senate from the 1950's when much of the policy process occurred behind closed doors in committees, then the 1970's when the public regarded Senators as independent actors pursuing individual policy goals. Sinclair

(2005) depicts Senators as partisan players working in coalitions to thwart maneuvers of the opposing party, while at the same time demonstrating great respect for fellow members and the institution by allowing some pieces of legislation to pass without incident.

Senate rules and traditions allowing significant freedom to individual members, such as the filibuster and the more informal “hold,” grant individual Senators the power to hinder and in many cases prevent a piece of legislation from obtaining a floor vote. On the other hand, Sinclair (2005) also notes the remarkable restraint shown by members when they allow a piece of legislation they dislike to receive a favorable vote in the chamber. Sinclair (2005) states, “Most of the time, the Senate manages to maintain the minimum restraint and cooperation necessary to avoid total gridlock, yet the chamber regularly seems to teeter on the precipice of legislative breakdown” (pp. 19-20).

Poole (2007) uses the NOMINATE dataset to analyze the voting patterns of individual members of Congress and finds it is extremely rare for elected members of Congress to change their ideological positions. However, it is difficult to apply datasets to the liberal-conservative ideological continuum because liberal and conservative ideologies are not always logically consistent, particularly across issues (Poole, 2007). Snyder and Groseclose (2000) attempt to measure party influence in roll call voting across several issues. They find that there is little variation in partisan behavior between chambers (Snyder & Groseclose, 2000). There is variation, though in party influence across issue types (Snyder & Groseclose, 2000). Budget resolutions, tax policy, social security, social welfare, and the national debt limit are the issues with the most partisan voting behavior (Snyder & Groseclose, 2000).

On the other hand, Binder (1999) argues that intrabran­ch conflicts in Congress are more likely to derail the policy process than partisan differences between the legislative and executive powers. Binder (1999) presents eight hypotheses regarding gridlock in government: divided government, percentage of moderates, ideological diversity, amount of time since the majority party previously held majority status, ideological distance between the chambers, severity of filibuster threat, budgetary situation, and policy mood. The strongest indicator of gridlock is the ideological distance between the chambers (Binder, 1999).

Tsebelis (1995) studies bicameralism from a comparative perspective and analyzes differences in policy stability across countries with unicameral and bicameral legislatures. Among his findings, Tsebelis (1995) argues that bicameralism establishes an additional veto point for legislation, which decreases the likelihood of extreme reforms. The United States has three “veto players” because a bill must receive approval by both houses of Congress and the President before it becomes a law (Tsebelis, 1995, pp. 310). According to Tsebelis (1995), this system diminishes the impact of Congressional elections because it would take a substantial electoral change to alter both chambers to a degree that would facilitate changes in policy. However, Tsebelis (1995) includes the qualification that party unity between “veto players” is likely to alter the institutional relationship.

Mann and Ornstein (2006) discuss the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 as an ideal example of the ascendancy of partisanship in Congressional policymaking and the institutional decline of the legislative branch (pp. 141). Congress spent eight years deliberating and debating the provisions of this

legislation without being able to come to a consensus that can pass both houses of Congress and receive Presidential approval. Surprisingly, with two months and a little prodding by the Republican leadership, Congress was able to pass a law that is remarkably similar to its earliest 1998 version. The law incorporates a few provisions that developed in the debate and leaves a few notable provisions aside. Mann and Ornstein (2006) highlight the firestorm of debate that took place after Hurricane Katrina hit New Orleans in September of 2005 only a few weeks before the legislation would take effect. Mann and Ornstein argue that because of the failure of Congress to properly deliberate and compromise in this legislation, the law is essentially flawed and needs reform (2006, pp. 141-147).

The means testing procedure included in the legislation requires anyone earning more than the state median income 180 days before they file for bankruptcy or capable of repaying more than 25% of their non-dischargeable debt without undue hardship, to file additional paperwork to demonstrate "special circumstances," to file under Chapter 7 (U.S. House Report, 2005, pp. 15-17). This provision creates difficulties for victims of natural disaster who may not have the necessary paperwork to prove their special circumstances and might not be able to wait 180-days, after losing a job and relocating, to file for bankruptcy to avoid the means test. Hurricane Katrina provided the perfect political circumstance for amending the law; however, no amendment ever passed Congress.

Mann and Ornstein (2006) point to an amendment offered by Rep. Jackson-Lee (D-TX) on the original legislation while in committee that would have allowed victims of natural disaster to avoid these filing problems, but the amendment was rejected without

debate by a voice vote (pp. 142). Although Mann and Ornstein (2006) claim this legislation requires amending, all the proposed amendments failed, even after Hurricane Katrina when there was bi-partisan congressional and popular support for an amendment that would waive the means testing requirement for victims of natural disaster (Walsh and Atlas, 2005). In fact, Chairman of the House Judiciary Committee Rep. Sensenbrenner argued there was not a need for an amendment because the law contains plenty of provisions to account for Katrina victims and encouraged people to “get over it” (Walsh and Atlas, 2005). Only days after Sensenbrenner’s statement, and two weeks before the law was set to take effect, the Justice Department waived the means testing requirement for residents of Southern Louisiana and Mississippi affected by the storm, although some still argued the mandatory financial counseling should have also been waived (New York Times, 2005).

The evolution of this legislation does resemble Mann and Ornstein’s diagnosis of Congress subordinating institutional identity to party identity, but Mann and Ornstein’s representation of the bankruptcy reform process is misleading. The House and Senate presented distinct versions of the legislation and in many floor votes attained strong bipartisan support in the Senate, though House versions of the legislation were more divisive and conference committees were repeatedly unsuccessful. Although the Republican leadership attempted on many occasions to thwart the legislative process with procedural sleight of hand, they were not as successful as Mann and Ornstein (2006) suggest, which is evidenced by the length of time the legislation spent in Congress. In fact, the strong institutional identity of the House and Senate creates an interesting

dichotomy in Congress, which preserves a deliberative legislative process despite party unity or unified control of government.

There are competing explanations for the peculiar manner in which this legislation became public law. Zywicki (2003) argues this legislation is the result of a policy pendulum swinging back in favor of creditors, after years of expansion of the Bankruptcy system. In Zywicki's estimation, the Bankruptcy reform in 1978 shifted policy to a liberal extreme, and thus even if Democrats were in control of Congress during this period, the policy would have made a similar change. Mann and Ornstein (2006) also highlight the absence of "experts" in the drafting of this legislation as evidence of institutional decline. Zywicki (2003), however, rationalizes that the traditional "experts" in bankruptcy reform are the same judges and lawyers that gain professional dominance and security from the expansion of bankruptcy laws and consultation with this constituency would be limited in any reforms constricting the system.

The only explanation for the eight-year stalemate on bankruptcy reform is the failure of the House and Senate to negotiate a compromise that both chambers could accept. Binder (1999) provides the best explanation for this institutional breakdown resulting in the long period of debate. Mann and Ornstein (2006) provide an explanation for the passage of the final version of bankruptcy legislation, but cannot account for the years leading up to the final passage of reforms. Kingdon allows for this bicameral disagreement by including the concept of "softening" on issues into his model, but the punctuated equilibrium model is unable to account for this observable fact.

METHODOLOGY:

This thesis applies collected data to two models of policymaking and two Congressional decisionmaking models. The policymaking models are: Kingdon's (1995) revision of the "garbage can model" and the punctuated equilibrium model developed by Baumgartner and Jones (1993). The two Congressional decisionmaking models are the institutional model offered by Binder (1999) and the partisan model described by Mann and Ornstein (2006). The analysis will take place in three parts: identification of Democratic and Republican interpretive packages, a determination of the media salience of packages, and an analysis of Democratic and Republican principles in key pieces of legislation.

To determine the underlying perspective of each party, this study incorporates a "signature matrix" developed by Gamson and Modigliani (1989). The signature matrix includes metaphors, exemplars, catchphrases, depictions, and visual images (Gamson & Modigliani, 1989). These five framing devices describe the various argumentative strategies political elites use to frame issues. The signature matrix also includes roots, consequences, and appeals to principle. These reasoning devices analyze the ideological foundations of interpretive packages to further differentiate the Democratic and Republican perspectives.

To assess the relative media salience of the various frames, news articles were collected from the *New York Times*, *Washington Post*, *Wall Street Journal*, and *USA*

Today and coded to identify to which frame they belong. The news articles in this study attempt to represent the total population of news content (not editorials and commentary) discussing the provisions of consumer bankruptcy legislation in either house of Congress or waiting for Executive Branch approval, between October 1, 1997 and April 20, 2005. The unit of analysis is each paragraph.

This study identifies three media-sponsored frames in addition to the frames included in the elite interpretive packages. The three new frames are the anti-lobbying, Republican obstructionist, and the Democratic obstructionist frames. The additional frames in this section emerged during the coding process and were included to add nuance and explanation to this study.

The anti-lobbying and Republican obstructionist frames are included in the Democratic narrative and the Democratic obstructionist frame is included in the Republican narrative. Although many of the anti-lobbying issues developed in the media attack Democrats as well as Republicans, it is part of the Democratic narrative because those employing it always use it to attack the reform measure in Congress.

The Republican and Democratic obstructionist frames refer to comments in news articles attacking one of the groups for using unfair tactics to delay the legislative process. The Democrats were the focus of most of these remarks in reference to attaching controversial amendments to legislation to delay and obstruct debate. Republicans are also susceptible to attack, however, with suggestions that the majority is abusing procedural mechanisms, mostly in the House, to restrict amendments and debate on the legislation.

There are three layers of coding for each article. After each paragraph is identified as representing either a pro-debtor (PD), anti-lobbying (AL), women's issue (WI), Republican obstructionist (RO), pro-system (PS), personal responsibility (PR), economic effect (EE), or Democratic obstructionist (DO) frame, the article is assigned a (1) for representing a Democratic narrative, (0) for neutral articles, and (-1) for those articles representing a Republican narrative. A (1) is assigned to an article if a majority of the coded paragraphs represent the Democratic frames (PD, AL, WI, or RO) and 20% of the total paragraphs in the article represent the Democratic frames. A (-1) is assigned to an article if a majority of the coded paragraphs represent the Republican frames (PR, EE, or DO) and 20% of the total paragraphs represent the Republican frames. Within these groups dominate frames are assigned if one particular frame represents 20% or more of the total paragraphs and greater than 50% of the coded paragraphs.

A second reader established inter-coder reliability at 72% for the newspaper coding procedure. The nine selected articles represented 10.23% of the 88 total articles and 10.71% of the 1,541 total paragraphs. The selected articles include three articles from the New York Times, and two articles from the Washington Post, USA Today, and Wall Street Journal. Although the inter-coder reliability statistic is low, only one article coded by the second reader changed dominant frame and no article was coded to reflect a different ideological perspective.

In the case of bankruptcy reform, the text of the legislation remains remarkably consistent in each chamber; however, each chamber produced substantively different legislation. The legislation offered by the Senate is more moderate and less expansive in scope than the legislation offered by the House. To account for this difference, this

analysis will code each piece of legislation according to the underlying ideological perspective. Using the signature matrix as a tool, this project identifies six key areas of dispute in the National Bankruptcy Review Commission report and places the policy outcomes suggested by the majority of the Commission and the dissenters within the respective party narratives. The recommendations of the majority of the Commissioners correspond to the Democratic package, while the recommendations offered by the dissenters correspond to the Republican package.

Every piece of substantive legislation will receive a code between (0), for a piece of legislation representing purely Democratic principles and (1) if the legislation incorporates purely Republican principles. Each code will represent the ratio of Republican principles present in the legislation and only those principles listed above will be coded. The coding will include evidence from the text of the legislation and the substance of amendments.

The six key issues disputed in the National Bankruptcy Review Commission report and the legislation in Congress and codes the presence of each of the policy outcomes that develop from the narratives in each piece of substantive legislation. The seven key issues and resulting policy outcomes are below:

1. Fraud: Democratic legislation deals with debtor abuse with financial penalties through the bankruptcy system Republicans argue for imposing criminal penalties on debtors.
2. Means Testing: Democrats favor the judicially administered version that requires the consent of the debtor to convert a case from Chapter 7 to Chapter 13 Republicans prefer the formulaic means testing.

3. Exemptions: Democratic reforms attempt to balance federal exemptions and create a uniform standard Republicans prefer residency requirements for exemptions.
4. Priority of Unsecured Creditors (Ch 7): Democrats argue that raising the priority status of unsecured creditors increases the competition families have to face to collect family support obligations. Republicans argue that the priority status of unsecured creditors is irrelevant because judges have more freedom in Chapter 7 cases to distribute payments to creditors and families will always be considered more favorably.
5. Repetitive Filings: Democrats once again prefer a judicially administered restriction Republicans support a clear prohibition for a period, generally 10 years on a Chapter 7 case and five years on a Chapter 13 case.
6. Predatory Lending: Democratic reforms include an emphasis on controlling predatory lending practices Republican reforms do not identify lending practices as a cause of bankruptcy and therefore do not address this issue.

This study also includes an analysis of the committee consideration of each piece of legislation and data from major roll call votes. Information about the committee consideration of legislation is collected from House and Senate reports and varies from bill to bill. The roll call voting data consists of eleven votes in the House of Representatives, incorporating four procedural votes and seven substantive votes. In the Senate, the analysis contains 13 votes, including six procedural votes and seven substantive votes.

The votes included in this study will include major actions, which include final floor votes on rules to consider the legislation, cloture votes in the Senate, and final floor votes on the legislation. The analysis will include a discussion of the amendments proposed and incorporated into the various versions of the legislation, but due to the expansive substantive nature of amendments, a quantitative analysis of votes would be less revealing for this project. Data from the roll call votes is gathered from *Thomas*, the online database for the Library of Congress.

The institutional model proposed by Binder (1999) suggests that the ideological difference between the chambers is the strongest indicator of gridlock. Since the unit of analysis in this study is the piece of legislation, Binder's hypothesis is tested by determining the percentage of Republican reforms included in each piece of legislation. According to Binder's research, the larger the difference between the bills proposed by each chamber, the more difficult it will be to pass the legislation. This study predicts that Binder's hypothesis will hold true for bankruptcy reform.

Mann and Ornstein's (2006) hypothesis that partisan struggle provides the best explanation for the bankruptcy reform, is tested through an analysis of roll call votes. Mann and Ornstein (2006) portray the bankruptcy reform process as one in which the majority party excludes minority party perspectives from the policy formation process and majority views dominate the legislation. Mann and Ornstein (2006) suggest partisan outcomes of roll call votes will reflect this one-sided control of the policymaking process. This study disagrees with Mann and Ornstein's (2006) hypothesis and predicts that there will not be consistent partisan floor votes on bankruptcy legislation.

Kingdon (1995) hypothesizes that policies are successful when process streams couple. The three process streams identified by Kingdon (1995) are: the problem stream, the policy stream, and the political stream (pp. 90-115). The two streams this study focuses on are the policy stream and the political stream. This study assumes the recognition of bankruptcy as a policy problem in Congress initially occurred because the NBRC acted as a feedback mechanism for Congress. In order to measure the strength of the policy communities in the policy stream, this study analyzes the evolution of legislative proposals and the percentage of Republican reforms included in each piece of legislation. This study uses the analysis of the media salience of frames as an indicator of the national mood and interest group representation in Congressional committee hearings to provide evidence of the political stream.

The application of this case study to the punctuated equilibrium model is somewhat problematic because studies employing this model generally study longer time frames. However, the indicators Baumgartner and Jones (1993) offer should still be apparent in the policy adoption phase of the policymaking process. This study focuses on three indicators suggested by Baumgartner and Jones: media attention, policy outputs, and partisanship. It is not necessary to include venue access in the discussion of this analysis because the legislative proposals were on the legislative agenda in Congress for the entirety of the study and there was no shift in venue. Unfortunately, there is little objective research available analyzing the nature of the bankruptcy problem. The NBRC report includes statistics, but due to the controversy surrounding the report those statistics were not incorporated into the study. The inclusion of objective information about the extent of the bankruptcy problem during this period would enhance this research. Data

collected by the U.S. Courts is available in a consistent format only since 2001, although information provided by both sides of the debate indicates a sharp increase in personal bankruptcy filings beginning in 1996 (Anderson, 2003, pp. 148-152).

The primary indicator relied upon by Baumgartner and Jones (1993) is media attention. This study will measure the media attention by the salience of Democratic and Republican frames in news articles. The content of legislative proposals will measure policy outputs, and an analysis of the partisan influences in roll call voting is included to account for contextual changes.

ANALYSIS OF DEMOCRATIC AND REPUBLICAN FRAMES:

The purpose of this study is to compare two models of Congressional decisionmaking and two models of policymaking to the bankruptcy reform process. The two Congressional decisionmaking models are the institutional model and the partisan model, and the two policymaking models are the garbage can model and the punctuated equilibrium model. The primary disagreement between the two Congressional decisionmaking models is whether the source of gridlock is the ideological distance between the House and the Senate or partisanship. The policymaking models disagree on the influence of outside actors on the formation of legislative policy the most important outside actor is the media. The data collected in this project on the salience of frames in the media and the percentage of Republican reforms included in each legislative proposal rely on the existence of a clear difference between Democratic and Republican arguments on bankruptcy reform.

The following signature matrix clarifies the interpretive packages employed by the Democratic and Republican parties. The Democratic package includes three identifiable frames: a pro-system frame, women's issue frame, and a pro-debtor frame. Even though these frames are distinct, Democratic elites generally combine the three frames when developing their arguments in floor speeches and Congressional reports. The Republican package focuses on the personal responsibility frame, which emphasizes

on the moral aspects of filing for bankruptcy; and the economic effect frame, focusing on the impact of increased bankruptcy filings on the overall US economy.

Table 1

Signature Matrix for Elite Interpretive Packages of Bankruptcy Reform:

	Democratic Package:	Republican Package:
	<i>Pro-System Frame</i>	<i>Personal Responsibility Frame</i>
	<i>Women's Issue Frame</i>	<i>Economic Effect Frame</i>
	<i>Pro-Debtor Frame</i>	
Metaphors	<i>Pro-System:</i> One-size-fits-all bankruptcy; <i>Women's Issue:</i> Victims of bankruptcy; <i>Pro-Debtor:</i> Traps; debtor's prison.	<i>Personal Responsibility:</i> Walking away from debt; opportunistic debtors; <i>Economic Effect:</i> free riders.
Exemplars	Enron and the collapse of pension systems across the country; bankruptcies caused by unemployment and lack of health insurance; increases in the number of credit solicitations; increases in credit solicitations targeted at college students; credit card companies are making record profits.	Anecdotal stories of individual debtors taking advantage of the bankruptcy system; increases in the number of bankruptcy filings over the past 20 years; increases in the amount of consumer debt in the past 20 years.
Catchphrases	<i>Pro-System:</i> Arbitrary means testing; presumption of abuse; <i>Women's Issue:</i> Deadbeat parents; protect children not creditors; <i>Pro-Debtor:</i> Fresh start; one bad diagnosis away from financial disaster.	<i>Personal Responsibility:</i> Needs-based bankruptcy; balance needs of creditors and debtors; <i>Economic Effect:</i> Bankruptcy is no longer a last resort; spendthrifts.
Depictions	<i>Pro-System:</i> People in unfortunate situations will be treated the same as people who are abusing the system. <i>Women's Issue:</i> Competition with unsecured creditors will make it more difficult for families to collect	<i>Personal Responsibility:</i> Consumers defrauding the bankruptcy system; creditors suffering because of lax rulings by bankruptcy judges handicapped by restrictions in laws and lack of investigative resources; <i>Economic Effect:</i>

Visual Images

payment on child support and alimony debts.

Pro-Debtor:

Debtors buried with paperwork and the increased number of priority creditors under the new law will put debtors in the same financial position after discharging debts because of the increased cost of filing for bankruptcy and the limitations on what debts are dischargeable.

Pro-System:

Judges will be unable to respond to the individual needs of cases; lawyers will be reluctant to take on cases due to the increased liability.

Women’s Issue:

Families unable to collect alimony and child support from deadbeat parents because a proportion of future income will go to priority unsecured creditors.

Pro-Debtor:

Debtor who has health insurance at the time of diagnosis of disease, but because of illness loses job and therefore their health insurance and becomes strapped with tens of thousands of dollars of debt.

Middle income, honest, consumers unable to find mortgages to buy homes and unable to attain credit at affordable rates.

Personal Responsibility:

Consumers loading up credit cards with luxury items and then filing bankruptcy and discharging all the purchases;

Economic Effect:

Loss of the “American Dream” for the middle class because of huge default rates on credit, middle class America will no longer be able to afford houses and cars.

Roots

The increase in bankruptcies in the past 20 years is due to failures of the economic system rather than the failures of individuals. Populist ideology.

The increase in bankruptcies in the past 20 years is due to an increased cultural acceptance of bankruptcy; people who file for bankruptcy should feel a sense of moral shame. Conservative moralistic ideology.

Consequences

Individuals should not be punished during bankruptcy proceedings, they should be

Individuals who file for bankruptcy should have to pay back whatever they can afford

	<p>educated if necessary, but debt incurred at no fault of the debtor should be dischargeable. There should be more restrictions placed on creditors engaging in unfair lending practices.</p> <p>Corporations are more likely to abuse the bankruptcy system, and with greater detriment to the economy than individual consumers.</p>	<p>regardless of the reason for incurring the debt. The current bankruptcy system offers too many advantages to debtors; therefore, this legislation needs to add more provisions in the interest of creditors.</p> <p>Consumer abuse of the bankruptcy system is damaging to the economy.</p>
Appeals to Principle	<p>People should not be punished for finding themselves in unfortunate circumstances.</p>	<p>People have a responsibility to pay for the debts they incur. It is immoral to exploit creditors by not repaying them the promised amount.</p>

Analysis of Democratic Package

The Democratic pro-system frame is generally used to address the development of a “means test” for Chapter 7 bankruptcy filers included in post-1994 reforms. Democrats have labeled the means test as “arbitrary” and “one-size-fits-all bankruptcy.” Barack Obama summarized the frame nicely in a floor speech, “This bill would take us from a system where judges weed out the abusers from the honest to a system where all the honest are presumed to be abusers,” (Congressional Record, 109th Congress, 1st Session, March 2, 2005, S1904). The means test included in this legislation is the first means test to be included in bankruptcy law. With this frame, Democrats argue that the legislation is “tying the hands of judges” because it includes far too many specifics. Below, Senator Feingold uses aspects the pro-system frame to portray the reforms pertaining to lawyers as unfair to both attorneys and debtors (Congressional Record, 105th Congress, 2nd Session, S10568):

Mr. President, section 102(A)(3) of S. 1301, the section of the bill that would make a debtor's attorney responsible for the costs and the fees of the trustee if the attorney loses a

707(b) motion and the chapter 7 filing if it is found not to be 'substantially justified' is a very troubling provision. [...] There certainly is some abuse by some debtors' attorneys. However, this provision does not punish the attorneys. It actually punishes their clients. This provision, Mr. President, in effect, will deny debtors their right to be represented by counsel. What it will do is deny debtors any meaningful access to chapter 7 of the bankruptcy code. Therefore, ultimately, this provision will have the effect of denying debtors equal access to justice.

Democrats also developed a women's issue frame that discusses the bankruptcy legislation in terms of its effect on women and children. This frame argues that the reforms in the legislation will make it more difficult for families to collect alimony and child support payments because of the increased number of creditors that given "priority" status. In 1994 and previous bankruptcy reforms "priority" status was reserved for taxes and family support, the post-1994 reforms expanded the types of debts considered non-dischargeable. Therefore, debtors will be responsible for paying more types of creditors and families will be less likely to collect the same amount of money they would have under the pre-reform laws. In addition, because the reforms lengthen the period of time of payment schedules it is difficult for judges to accelerate payment of alimony and child support to families struggling to make ends meet. Increasing the difficulty of the bankruptcy process for individuals also hurts debtors who are trying to get back on their feet and support their families. Senator Kennedy used this frame in the passage below (Congressional Record, 106th Congress, 2nd Session, S11447):

Under the pending bills, credit card companies are given a new right to compete with women and children for the husband's limited income after bankruptcy. It is true that the bill moves support payments to the first priority position in the bankruptcy code. But that only matters in the limited number of cases in which the debtor has assets to distribute to a creditor. In most cases--over 95 percent--there are no assets, and the list of priorities has no effect. The claim of "first priority" is a sham to conceal the real problem--the competition for resources after bankruptcy. This legislation creates a new category of debt that cannot be discharged after bankruptcy--credit card debt. It will, therefore, create intense competition for the former husband's limited income. Under current law, he can devote his post-bankruptcy income to meeting his basic responsibilities, including his student loans, his tax liability, and his support payments for his former wife and their children. But if this bill becomes law, one of his so-called "basic" responsibilities will be a new one--to Visa and MasterCard. We all know what happens when women and children are forced to compete with these sophisticated lenders--they always lose.

Another aspect of the reform debate related to the women's issue frame is not incorporated into the table because it only became integrated into the text of one piece of legislation, is known as the Schumer abortion amendment. The amendment makes legal judgments non-dischargeable under bankruptcy law for activists who damage abortion clinics. Senator Schumer offered this amendment on nearly all versions of the legislation beginning in 1999. The wording of the amendment took various forms and actually passed the Senate in 2002 after collaboration with Senator Hatch. Senator Reid summarizes the amendment below (Congressional Record, 106th Congress, 2nd Session, S11466):

It said that these people--these very, in my opinion, evil people, who go to clinics where women come to get advice--some people may not like the advice they get in these clinics because some of the advice results in obtaining an abortion. But we live in a free country; people have the right to go where they want to go and talk about what they want. What these women are doing is lawful, not illegal. People spray chemicals into those facilities, and they can't get rid of the stench for up to 1 year, and many times they have to simply tear the insides of the facility down so it can be reused. In this legislation, Senator Schumer and I said if you do that, you cannot discharge that debt in bankruptcy as a result of the damages incurred, whether to the facilities or those women who use those facilities.

The two main issues addressed by the pro-debtor frame are the additional "priority" creditors and whether debtors are able to pay their bills or not. This frame argues the additional paperwork required under the legislation and the increased responsibility for lawyers to ensure the statements of their clients are true make it more expensive and more difficult for debtors to file for bankruptcy. Senator Kennedy employed the language of the pro-debtor frame below (Congressional Record, 109th Congress, 1st Session, S1836):

Yet this legislation turns its back on that spirit of American entrepreneurship. It tells our citizens that they cannot get that fresh start unless they can maneuver through a maze of procedural obstacles created by the credit card companies and debt collection agencies. It imposes paperwork burdens that bankrupt Americans can not afford. It forces them to pay for credit counselors, who may be predatory themselves. It forces them to miss work to

go to audits of their meager assets. It requires them to hire a lawyer to mitigate this maze, but then tells the lawyer that any error will make the lawyer personally liable. In short, this bill does everything the mind of the purveyors of predatory plastic could think up to make their cardholders pay in full, and prevent them from getting the “fresh start” that bankruptcy offers them. Its purpose is to keep the credit card payments rolling in, and prevent that money from being used to feed their children or pay their hospital bills or make their mortgage payments. It labels them as abusers of the system.

Toward the second point, the pro-debtor frame also focuses attention on the increase in the cost of medical care that drives people into bankruptcy for reasons outside their control. Elizabeth Warren, former reporter for the National Bankruptcy Review Commission (NBRC), said in testimony to the Senate Judiciary Committee, “Overwhelmingly, American families file for bankruptcy because they have been driven there—largely by medical and economic catastrophe—not because they want to go there. Your legislation should respect that harsh reality and the families who face it.” This is the most common frame when attempting to provoke visual images.

Despite these differences, these frames are all interconnected. They share many important aspects of Democratic ideology and lead to the same conclusions. Democrats also used similar historical examples to oppose bankruptcy reform. In the post-2001 debate, Enron became the most powerful example for Democrats of corporate excess in bankruptcy and consumers being taken advantage of. Senator Kennedy utilized these examples in the 2005 debate (Congressional Record, 109th Congress, 1st Session, S1836):

This is supposed to be a bill about spendthrifts, about people who abuse the credit system and abuse the bankruptcy system. If that were really what this bill was about, maybe there would be some reason for us to be here. If this were a bill that dealt with the truly incredible abuses of the bankruptcy system that we have seen in the Enron case, in the WorldCom case, in the Adelphia case, and the Polaroid case in my own State, then maybe there would be reason to be spending our time working on this bill.

However, there was also a community in the Democratic Party that targeted the credit card companies, emphasizing the increases in profits and seemingly random solicitations for “pre-approved” credit cards.

The primary uniting factor for the Democratic package is the populist ideological foundation supporting the belief that the system should make it easier for the people with the fewest resources to file for bankruptcy. This is distinguishable from the Republican argument because Republicans argue that the amount of debt a person has is important, but the reasons for incurring the debt matter too. The theme of the Democratic package is the failures of the economic system create a far more widespread problem than the failures of individuals. The visual images espoused by each of the frames offer examples of individuals who are trapped in debt because of the increased cost of filing for bankruptcy, increased health care expenses, and greedy creditors. Thus Democrats tend to argue for increased debtor education, full dischargeability of medical expenses, restricted lending practices, and restrictions on corporate bankruptcies.

Analysis of Republican Package

Republican elites in Congress have a more focused frame than the Democratic elites, focusing primarily on increasing the personal responsibility of individual debtors and to a certain extent corporations and lenders. Senator Hatch uses this emphasis on personal responsibility during debate in 2005 (Congressional Record, 109th Congress, 1st Session, S1842):

Let me say with regard to credit card debt. I think it is a nice, populist appeal here, to blame all the credit card companies for the problems everybody has in our society today. Look, we have an intelligent society, a highly educated society, and I think everybody knows when they take those credit cards and they accrue debt, they are supposed to repay that debt. Frankly, we have far too many people taking advantage of credit cards and not paying their debt.

Republicans argue that there is an increased cultural acceptance of bankruptcy, which has led to increases in filing and abuse of the system. One of the arguments in the personal responsibility frame is that the bankruptcy system requires a balance between

the needs of creditors and the needs of debtors. The revolutionary reforms in 1978 were too lax and made it too easy to file for bankruptcy, which has accelerated the decline of moral shame associated with the bankruptcy process. Senator Grassley, a central figure in the bankruptcy debate and a sponsor of many versions of reform legislation, is one of the entrepreneurs of this argument. The following is a statement he made on the floor of the Senate in 1998 (Congressional Record, 105th Congress, 2nd Session, S9952):

In the opinion of this Senator, of course, one of the main bankruptcy crises is, as I just stated, the overly liberal bankruptcy law of 1978. Remember, since 1978 I have had hundreds of people tell me it is too easy to get into bankruptcy. And it shouldn't be that easy. I have not had one person tell me that it ought to be easier to get into bankruptcy. And I even have had some people tell me who have been through bankruptcy that it is too easy to get into bankruptcy. That sort of attitude of the public is what is behind the 68 percent nationally and the 78 percent of the people in my State in polls who say the bankruptcy laws should be reformed. Quite simply, current law discourages personal responsibility. I want to say that again. Current law actually discourages personal responsibility. As a result, bankruptcy has become a first option, not as a last resort for many with financial difficulties. Bankruptcy is seen as a quick and easy way of avoiding debt. Bankruptcy is now a matter of convenience rather than a matter of necessity. The moral stigma that used to be associated with not being able to pay your debt is now almost completely gone.

The Republican personal responsibility and economic effect frames portray debtors as opportunistic and taking advantage of the system and creditors alike. Many of the stories told by Congressional elites depict upper middle class professionals hiding assets and filing for bankruptcy to discharge huge amounts of credit card debt. Republicans argue the reforms they suggest are not intended to increase the difficulty for debtors who are poor and suffering; it attempts to close loopholes that the wealthy and upper middle class filers exploit and to provide judges with the tools necessary to stop the abuse. The economic effect frame argues that bankruptcy reform is necessary because responsible consumers are suffering as a result of fraudulent bankruptcy filings. Representative Dooley [D-CA] provided this statement in the 1999 debate (Congressional Record, 106th Congress, 1st Session, H2639):

Mr. Speaker, today we are going to be considering bankruptcy reform legislation, and I rise in strong support of it. In 1998 we had studies that showed that at least \$3 billion was written off in bankruptcy by wealthy debtors who could have afforded to pay it back. More and more wealthy Americans are using the bankruptcy system to buy a throwaway lifestyle that they cannot afford, then expecting hard-working Americans who pay their bills each month to pick up the tab. That is not right, and Congress needs to do something about it.

Rep. Dooley's statement illustrates the stance of many Democrats and Republicans that the increases in bankruptcy filings are due to an increase in abuse of the system. It also exploits the most popular visual image employed in the personal responsibility frame: wealthy consumers discharging debt incurred buying luxury items. Dooley's argument also includes aspects of the frame that forecast damage to the entire economy because of the bankruptcy boom. This visual image is also used by Rep. McInnis [R-CO] in a statement made in the 1998 debate (Congressional Record, 105th Congress, 2nd Session, H4343):

Bankruptcy was always intended to be for a person who ran into unintended consequences who could not pay their bills to give them a new chance on life. Now what we have seen is we have seen that overwhelmed by the bankruptcy of convenience. These bankruptcies of convenience, initiated, by the way, from abusers of our bankruptcy laws, are having a very harmful impact on our Nation's competitiveness. The current system is unfair to all people who are fiscally responsible, who are penalized in the form of higher prices, credit card rates, interest rate increases. In other words, the people who do pay their bills have to carry the load for those who do not pay their bills.

With this statement Rep. McInnis describes the type of economic damage bankruptcy abuse imposes on the economy: less access to affordable credit.

An important part of this frame is the contention that much of the economic boom in the 1990's was made possible by easy access to credit, which led to an increase in consumer spending and job growth. However, with millions of consumers now defaulting on their debts with easy access to the bankruptcy system, creditors will have to increase interest rates on loans and credit cards because of the increased risk of debt evasion. The crux of the economic effect frame is that the bankruptcy system should be

available to those who need it, but access should be restricted to only those who need it to limit the negative impact of the recent rise in bankruptcy petitions. Although this frame places some responsibility for the increase in filings on creditors, they agree with the personal responsibility frame that many of the debtors filing for bankruptcy can afford to repay at least some of their debts. Many of the economic effect frame sponsors also suggest that it is too easy to file for bankruptcy and even though some families do need the system, it should be made difficult for them.

Thus, the source of the disagreement between the Republicans and Democrats on bankruptcy reform is the question of who is responsible for the recent increase in filings: creditors or debtors? This disagreement leads the two parties to divergent policy outcomes concerning the direction reform measures should take. Democrats wish to preserve consumer protections, while Republicans are interested in reversing the harm of the 1978 legislation, by increasing the oversight for debtors filing for bankruptcy relief and limiting the generous provisions included in the 1978 legislation.

ANALYSIS OF MEDIA FRAMES:

The garbage can model and the punctuated equilibrium model disagree on the importance of the agenda setting role of the media. Baumgartner and Jones (1993) emphasize the consequence that negative media attention can have on a policy subsystem and the resulting legislative outputs. The punctuated equilibrium model suggests the media can act as agents of change by undermining confidence in the traditional policy community. On the other hand, Kingdon (1995) claims outside actors have a limited impact on the policymaking process, the garbage can model focuses instead on the power of internal actors. Kingdon (1995) argues that outside actors are not effective agenda setters, but can be powerful agenda blockers. Media and interest group actors are capable of blocking policy alternatives from the agenda although they are not successful at suggesting alternatives for legislative consideration.

To assess the media salience of the frames, news articles were collected from four national newspapers: the *New York Times*, *Washington Post*, *Wall Street Journal*, and *USA Today*. To select articles from the *New York Times*, *Washington Post*, and *USA Today*, I searched the *Lexis-Nexis* database for articles relating to “consumer bankruptcy” and “bankruptcy reform”; for articles from the *Wall Street Journal*, I searched the *Proquest* database with comparable search terms. The search yielded 127 articles from the *New York Times*, 132 articles from the *Washington Post*, 71 articles from the *USA Today*, and 81 articles from the *Wall Street Journal*. This study only included “hard”

news stories (no editorials or letters to the editor) and only news stories about a particular piece of legislation. Thus, only 88 total articles are coded in this project, 28 from the *New York Times*, 18 from the *Washington Post*, 19 from *USA Today*, and 23 from the *Wall Street Journal*.

Each paragraph received a code to identify to which package it belongs. The news articles in this study attempt to represent the total population of news content (not editorials and commentary) discussing the provisions of consumer bankruptcy legislation in either house of Congress or waiting for Executive Branch approval, between October 1, 1997 and April 20, 2005. There are three layers of coding for each article. Each paragraph is identified as representing a pro-debtor (PD), anti-lobbying (AL), women’s issue (WI), Republican obstructionist (RO), pro-system (PS), personal responsibility (PR), economic effect (EE), or Democratic obstructionist (DO) frame. Each article is also assigned a (1) for representing a Democratic narrative, (0) for neutrality, and (-1) for representing a Republican narrative. A (1) is assigned to an article if 20% of the total paragraphs in the article represent the Democratic frames (PD, AL, WI, RO, or PS) and a majority of the paragraphs coded represent the Democratic frames. A (-1) is assigned to an article if 20% of the total paragraphs represent the Republican frames (PR, EE, or DO) and a majority of the coded paragraphs represent the Republican frames. Within these groups dominate frames are assigned if one particular frame represents 20% or more of the total paragraphs and greater than 50% of the coded paragraphs.

Table 2
Percentage of Total Paragraphs Representing News Codes

Frame	Percentage
Pro-Debtor	14.47%
Anti-Lobbying	8.11%
Women’s Issue	2.08%

Pro-System	0.58%
Republican Obstructionist	0.52%
Personal Responsibility	7.72%
Economic Effect	1.43%
Democratic Obstructionist	1.43%
Not Coded	63.66%
Total Democratic Frames	25.76%
Total Republican Frames	10.58%

The table above summarizes the total results from the coding. Of all paragraphs included in the study, 63.66% did not receive a code. This is because this study only coded biased news content and much of the news content reported on this issue was neutral. Much of the coded content is information quoted from sources, what Callahan and Schnell (2001) and Terkildsen et al. (1998) refer to as “source cues.” One possible factor that may skew the analysis is that the *Wall Street Journal* tends to use a different structure for its stories, which includes longer paragraphs. However, much like the other newspapers, *Wall Street Journal* stories generally do not incorporate different perspectives into the same paragraph.

In the analysis of only the coded portion of the newspaper paragraphs, it becomes much more apparent that the pro-debtor frame is the most media salient, while the pro-system and Republican obstructionist frames seldom appear in the media. The most salient Republican frame is the personal responsibility frame, representing 21% of coded paragraphs, but it is only the third most salient frame included in this study.

Table 3
Percentage of Coded Paragraphs Representing News Codes

Frame	Percentage
Pro-Debtor	39.82%
Anti-Lobbying	22.32%
Women’s Issue	5.71%
Pro-System	1.61%
Republican Obstructionist	1.43%
Personal Responsibility	21.25%

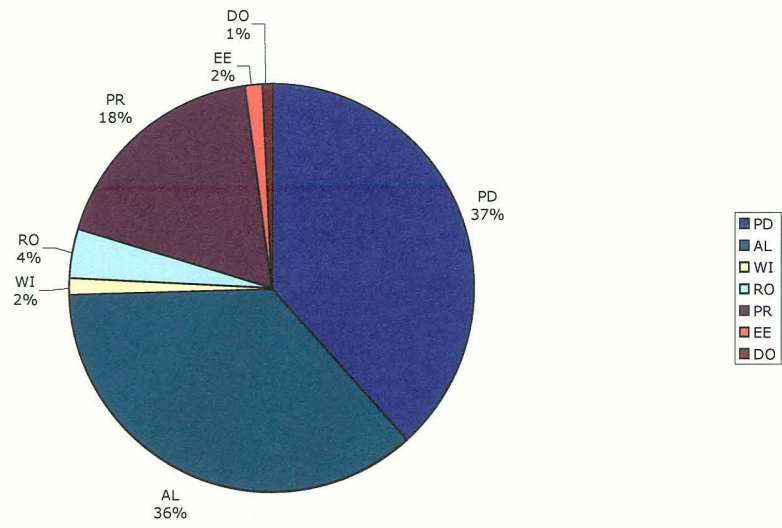
Economic Effect	3.93%
Democratic Obstructionist	3.93%
Total Democratic Frames	70.89%
Total Republican Frames	29.11%

Figure 1 shows the distribution of individual news frames for each paper. It is clear that the pro-debtor frame is the most salient news frame of all the coded paragraphs in the articles, representing 37% of coded paragraphs in the *Washington Post* articles, 39% in the *New York Times*, 44% in the *USA Today*, and 42% in the *Wall Street Journal*. The other Democratic frames also fare well in the distribution of news coverage, the anti-lobbying and women's issue frames appear to be relatively salient frames as well.

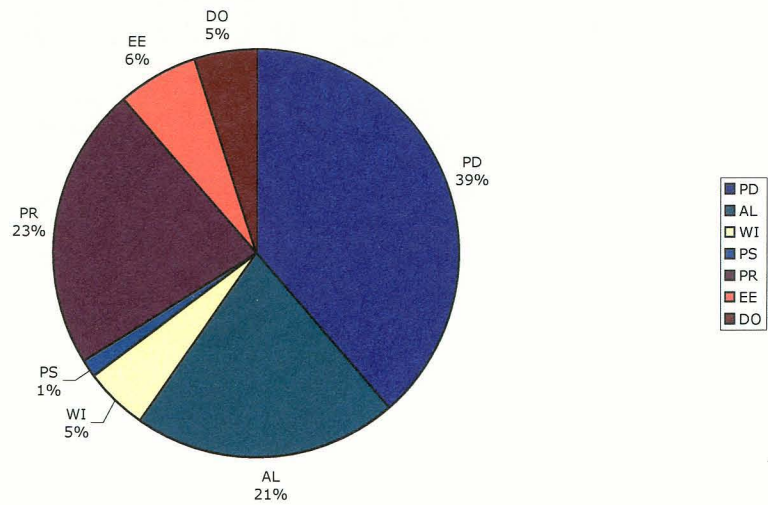
The most salient Republican frame is the personal responsibility frame, which represents 18% of coded paragraphs in the *Washington Post*, 23% in the *New York Times*, 24% in the *USA Today*, and 19% in the *Wall Street Journal*. The economic effect and the Democratic obstructionist frame reach similar percentages of the coded paragraphs in each newspaper, but never rise above single digits.

Figure 1:
Distribution of News Frames for Individual Newspapers

Washington Post



New York Times



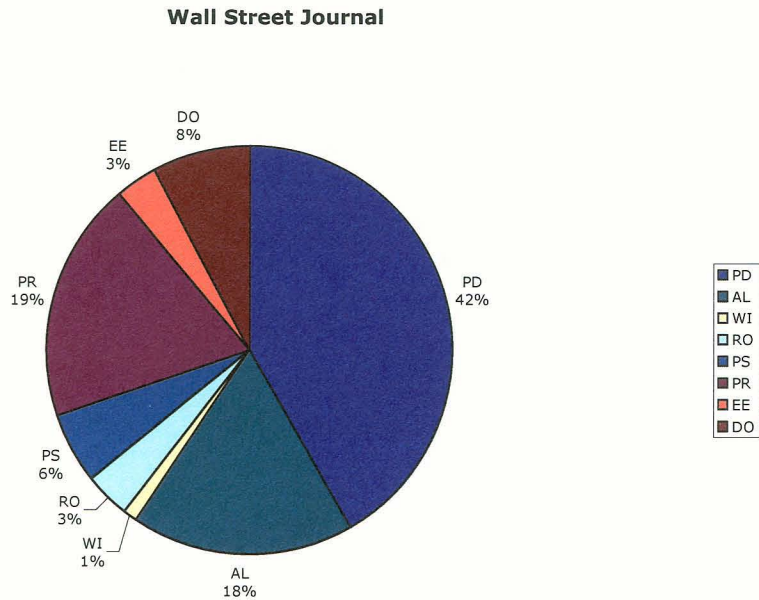
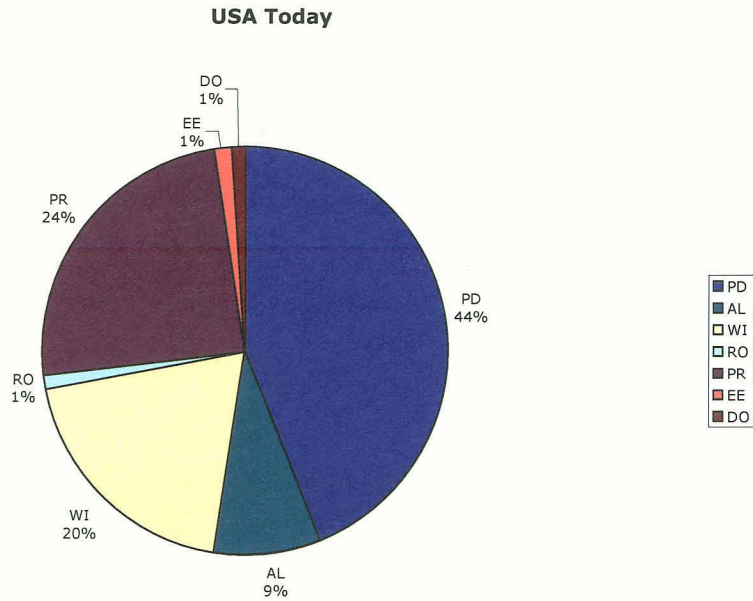


Figure 2, illustrates the percentage of coded paragraphs acknowledging either a Democratic or Republican issue frame. Seventy-one percent of all coded paragraphs have a Democratic frame; 29% of coded paragraphs represent Republican frames.

Figure 2:
Distribution of total Democratic and Republican Frames for total Newspaper Articles

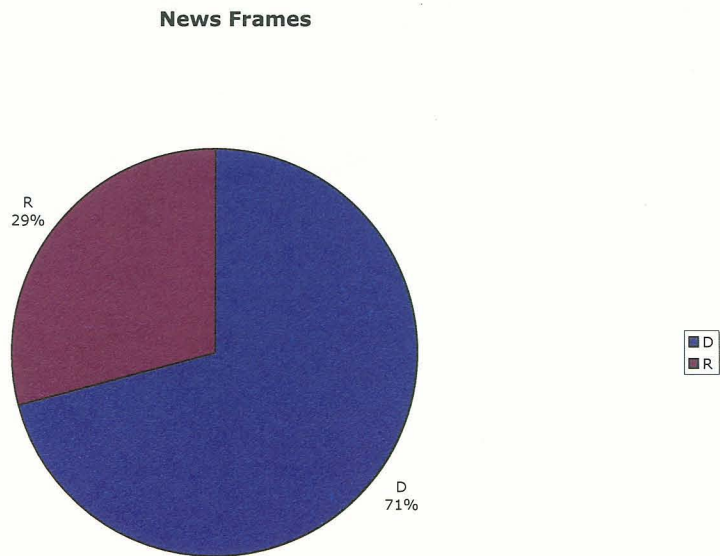
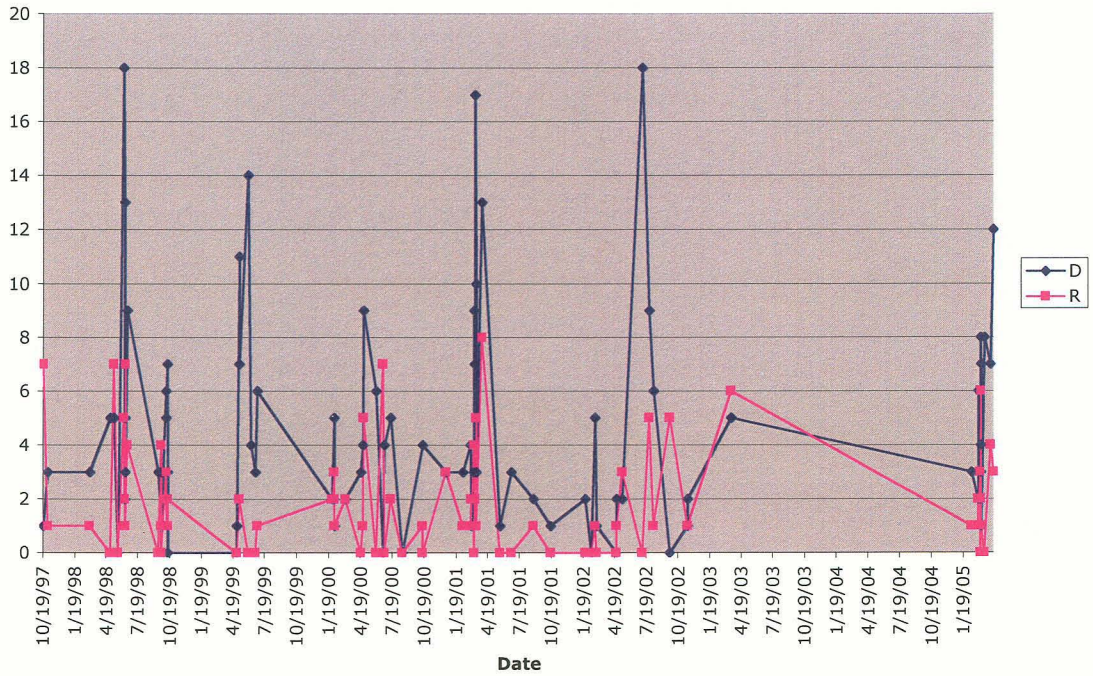


Figure 3, is a representation of the frequency of Democratic and Republican frames over time. There appears to be no trend in media coverage as predicted in the punctuated equilibrium model. Each of the spikes on the graph correspond to periods when the legislation was active in Congress and the Republican frames, which appear with increasing frequency in the legislative process, appear less frequently in the media. Since most of the coded paragraphs reflect source cues, the media is relying on the traditional bankruptcy experts, such as bankruptcy judges, law professors and consumer groups, rather than the new creditor interests gaining support in Congress. Therefore, media actors neither possess agenda setting power on this policy nor reflect the policy community gaining support in Congress.

Figure 3:

Democratic Versus Republican Codes



This chapter suggests that Kingdon’s (1995) garbage can model is a better representation of the policymaking process of bankruptcy reform due to its emphasis on internal actors. The punctuated equilibrium model relies on the existence of negative media attention to explain policy reversals, however, this data does not support that hypothesis. Overall, the media did not seem to play a significant role in the formation and adoption of bankruptcy reform.

ANALYSIS OF LEGISLATIVE PROPOSALS

This chapter will focus on important aspects of the legislative proposals including: committee consideration, ideology represented by each proposal, and the roll call votes. Data collected on the committee consideration will identify the groups that Congress considers experts on bankruptcy to provide evidence to assess the political stream in Kingdon's (1995) garbage can model. The identification of the ideology represented by legislative proposals is necessary to analyze the distance between House and Senate proposals to assess Binder's (1999) institutional model of Congressional decisionmaking. This information is also helpful in analyzing the partisan model suggested by Mann and Ornstein (2006) to determine whether minority perspectives are included in the legislative process. The primary source of evidence for the partisan model is from the floor votes recorded in the House and Senate.

Background

The Bankruptcy Reform Act of 1994, PL 103-394, is the starting point for the major reforms debated in later Congressional sessions beginning in 1997. This legislation was proposed to clarify portions of the bankruptcy code established in 1978, in particular parts of the legislation dealing with when the automatic stay is applicable (CRS Summary, H.R.5116—103rd Congress, Sec. 116, Sec 218, Sec. 304). Another reason for the legislation was to expand the bankruptcy code to apply to bankruptcies of international corporations. The most notable reform offered in the legislation is the

creation of the National Bankruptcy Review Commission (CRS Summary, H.R.5116—103rd Congress, Title V).

The consumer reforms that the Bankruptcy Reform Act of 1994 did contain were mostly Democratic. Title I of the Act permits an extension of the automatic stay protections under certain circumstances and increases the amount of debt consumers can possess when filing for bankruptcy under the Chapter 13 reorganization (CRS, 1994, Sec. 108). Under Title III, the portion of the legislation dealing specifically with consumer bankruptcy issues, Chapter 13 debtors can cure a lien against their principle residence until the sale of the property and the legislation includes language excluding family support obligations from the automatic stay or any judicial injunction (CRS, 1994, Sec. 304). The language goes even further to make any judicial lien against a debtor's property for family support payments unavoidable (CRS, 1994, Sec. 304). The Republican reforms included civil and criminal penalties for fraudulent bankruptcy filings (CRS, 1994, Sec. 308, 312).

Because of the technical nature of this reform, there was little discussion of it on the floor and less dissention. HR 5116 passed the House on October 5, 1994, the Senate on October 6, 1994, and President Clinton signed the legislation into law on October 22, 1994 (Thomas, H.R.5116—103rd Congress). The bill passed both houses of Congress with a voice vote (Thomas, H.R.5116—103rd Congress). Rep. Jack Brooks [D-TX], Chairman of the House Judiciary Committee, sponsored the legislation, with Rep. Hamilton Fish [R-NY] and Rep. Michael Synar [D-OK] co-sponsoring (Thomas, H.R.5116—103rd Congress). Other than the sponsors of the legislation, only two other

Representatives made floor statements on the bill: Rep. Howard Berman [D-CA] and Rep. Louise Slaughter [D-CA]. Both spoke in support of the legislation.

The National Bankruptcy Review Commission (NBRC) largely viewed its role as “fine-tuning” the bankruptcy code, and instructions in the House and Senate Reports accompanying the legislation creating the Commission made clear that Congress was for the most part pleased with the performance of the bankruptcy code (H.R. Rep. 103-835, pp. 59; S. Rep. 103-168, pp. 54). The Commission's purpose was simply to update the laws to incorporate new legislation and developments in the economy (NBRC, 1997, pp. 50-51). The legislation permitted the President to appoint two members to the Commission and the Chair (NBRC, 1997, pp. 55). The Chief Justice of the Supreme Court also appointed two members with the remaining four members appointed by the majority and minority leadership of each house of Congress (NBRC, 1997, pp. 55). President Clinton appointed Chair Brady Williamson (NBRC, 1997, pp. 55).

On October 20, 1997, the Commission released its long awaited, 1,300-page report. Although the Commission was non-partisan and its membership included mostly judges, lawyers, and accountants, the Commission's proposals were extremely divisive. The Commission approved the report in a 5-4 vote and the consumer bankruptcy recommendations included were primarily pro-debtor. The last chapter of the report included statements from the dissenting Commissioners and a 156-page statement on the consumer bankruptcy provisions that included additional recommendations to prevent abuse and fraud in the bankruptcy system. The joint statement by the dissenters emphasizes a personal responsibility frame that accentuates the role of social stigma and shame in preventing bankruptcy (NBRC, 1997).

Lenders everywhere are reporting an increase in the number of bankruptcy petitions filed

by people who were current on their debt payments. This phenomenon implies that bankruptcy relief is too easy to obtain, that the moral stigma once attached to bankruptcy has eroded, and that debtors are insufficiently counseled both about personal financial management and about the use of bankruptcy. (pp. 1044)

One creditor went so far as to describe the bankruptcy system as “legalized theft.” Others have suggested that it can be a “haven for criminals” and creates significant opportunities to defraud creditors. This group of proposals tightens up the accuracy of the schedules and statements of affairs and facilitates notice to creditors by requiring a list of the debtor’s account numbers. (pp. 1044)

One basic defect in the Framework is philosophical. The Framework is based upon two major assumptions: first, that debtors are financially disadvantaged through no fault of their own; and second, that debtors are inadequately represented in the bankruptcy process. From these two assumptions come the Framework’s inevitable conclusion: that as a matter of social justice, it is necessary to level the playing field by insuring that debtors are treated better under the reformed Code than they were before. *As a result, much of the Framework can be characterized as social engineering designed to redistribute wealth, rather than bankruptcy reform.* (Italics added, pp. 1116)

The recommendations supported by the majority of Commissioners represent principles adopted by the Democratic Party. The Republican Party adopted the principles represented by the dissenting group of Commissioners, which are noticeably broader and more far-reaching than the reforms offered by the majority.

Opponents of bankruptcy reform in Congress often denounce the legislation’s sponsors for not incorporating all of the recommendations from the NBRC report that Congress itself commissioned. Supporters of reform regularly call into question the objectivity of the report and cite the division among the Commissioners as evidence of ideological influence in the recommendations. Thus, the NBRC report served to fuel the debate over bankruptcy reform rather than providing solutions. The NBRC report also provides a foundation for the two most media-salient frames in the consumer bankruptcy debate: personal responsibility vs. pro-debtor. This study assumes that the NBRC report functioned as a feedback mechanism to goad Congress to recognize bankruptcy as a problem in need of reform.

Committee Consideration

At the first hearing, held on April 11, 1997, the Subcommittee of Administrative Oversight and the Courts of the Committee on the Judiciary heard testimony from five witnesses: Michael E. Staten, Director of the Credit Research Center, Purdue University; Ian Domowitz, Professor of Economics at Northwestern University; Edward Bankole, Vice-President, Moody's Investors Service; Kim Kowalewski, Chief, Financial and General Macroeconomic Analysis Division, Congressional Budget Office; and Michael McEnaney, National Consumer Bankruptcy Coalition (US Senate Report 105-253, 1998, pp. 30). At the second hearing, held on October 21, 1997, witnesses represented the NBRC: Brady C. Williamson, Chair; Hon. Robert E. Ginsberg, Vice-Chair, U.S. Bankruptcy Judge; M. Caldwell Butler; Jim Sheppard; Hon. Edith Hollan Jones; John Gose; Babette Ceccotti; and Jay Alix (US Senate Report 105-253, 1998, pp. 30). The third hearing took place on March 11, 1998 and heard from three panels (US Senate Report 105-253, 1998, pp. 31). The first panel included representatives from the bankruptcy system, the second panel included representatives from organizations protecting consumer interests, and the third panel included primarily law professors and scholars studying bankruptcy reform (US Senate Report 105-253, 1998, pp. 31). All of the interests represented above are the traditional experts in bankruptcy policy. The hearings did not include testimony from either business interests or the credit industry.

The subcommittee on Administrative Oversight and the Courts reported the bill favorably with a 6-1 vote (US Senate Report 105-253, 1998, pp. 32). Republican Senators Thurmond [R-SC], Kyl [R-AZ], Sessions [R-AL], and Grassley [R-IA] voted for the bill along with Democratic Senators Durbin [D-IL] and Kohl [D-WI] (US Senate

Report 105-253, 1998, pp. 32). Senator Feingold [D-WI] cast the only vote against the measure (US Senate Report 105-253, 1998, pp. 32).

Thirteen amendments were debated in the Judiciary Committee with eight accepted, two deferred for floor consideration, and three defeated (US Senate Report 105-253, 1998, pp. 32). The two amendments offered by Senator Specter [R-PA], which dealt with filing fees for indigent filers and attorney's fees in frivolous lawsuits, both failed in votes of 9-9 (US Senate Report 105-253, 1998, pp. 32-33). For the first amendment, regarding the release of filing fees for debtors unable to pay, all the Democratic committee members and Senator Specter [R-PA] voted in favor and the remaining nine Republican members voted in opposition (US Senate Report 105-253, 1998, pp. 32). Senator Specter's second amendment, charging the debtor's attorney all court costs and attorney's fees in frivolous lawsuits, received Senator Thompson's [R-TN] vote in favor and Senator Kennedy's [D-MA] vote in opposition (US Senate Report 105-253, 1998, pp. 32-33).

The committee accepted seven (mostly technical) amendments by unanimous consent (US Senate Report 105-253, 1998, pp. 33-34). The only exception was an amendment offered by Senator Durbin [D-IL] disallowing claims from lenders in violation of the Truth in Lending Act (US Senate Report 105-253, 1998, pp. 33). The only amendment to pass with a roll call vote was an amendment from Senator Abraham changing the treatment of liens in cases converted from Chapter 13 to Chapter 7 (US Senate Report 105-253, 1998, pp. 33). The amendment passed with a 10-7 vote Senators Leahy [D-VT], Kennedy [D-MA], Biden [D-DE], Kohl [D-WI], Feinstien [D-CA], Feingold [D-WI], and Durbin [D-IL] voted against the legislation, Senator Torricelli [D-

NJ] voted in favor of the amendment and Senator Specter failed to vote (US Senate Report 105-253, 1998, pp. 33). The Judiciary Committee reported the bill favorably with a 15-2 vote Senators Feingold [D-WI] and Kennedy [D-MA] voted against the legislation and Senator Feinstein [D-CA] did not vote (US Senate Report 105-253, 1998, pp. 34).

The House Subcommittee on Commercial and Administrative Law held four hearings between March 10, 1998 and March 19, 1998 and heard testimony from over 60 witnesses (US House Report 105-540, 1998, pp. 61-63). While the House heard testimony from the same interests included in the Senate hearings, the House also incorporated testimony from the banking and credit industry, which was largely missing from the Senate consideration. The House Subcommittee on Commercial and Administrative Law passed H.R.3150 by an 18 to 10 vote (US House Report 105-540, 1998, pp. 68). All twelve amendments proposed in committee failed (US House Report 105-540, 1998, pp. 63-68). The committee reported the bill favorably with a vote of 18-10 (US House Report 105-540, 1998, pp. 68). Democratic Representatives Boucher [D-VA] and Rothman [D-NJ] voted against the amendment and five Republicans and four Democrats failed to cast votes (US House Report 105-540, 1998, pp. 68). The House Committee on Judiciary also filed a written report released on May 18, 1998.

In the 106th Congress, the House Subcommittee on Commercial and Administrative Law conducted four additional hearings on H.R. 833, one of which was a joint hearing with the Senate Subcommittee on Administrative Oversight and Courts (US House Report 106-123, 1999, pp. 95). At the joint hearing, the committee heard from nine witnesses, six of which were representing the interests of creditors (US House Report 106-123, 1999, pp. 95). The House Subcommittee conducted three more hearings

between March 11, 1999 and March 18, 1999 and heard testimony from nearly 70 witnesses from 23 organizations, including both traditional and creditor interests (US House Report 106-123, 1999, pp. 95-97).

In the House Judiciary Committee markup offered 29 amendments, only ten of which passed (US House Report 106-123, 1999, pp. 98-109). The Representative Jackson Lee [D-TX] amendment to allow states to opt out of the homestead exemption passed on a vote of 18-15 (US House Report 106-123, 1999, pp. 99). Sixteen Republicans and two Democrats joined together to pass the amendment (US House Report 106-123, 1999, pp. 99). The two Democratic Representatives were Representatives Jackson Lee [D-TX] and Wexler [D-FL], both hailing from states with unlimited homestead exemptions (US House Report 106-123, 1999, pp. 99). Twelve Democrats and three Republicans voted against the legislation (US House Report 106-123, 1999, pp. 99). The three Republicans were Representatives Hyde [R-IL], Sensenbrenner [R-WI], and Pease [R-IN] (US House Report 106-123, 1999, pp. 99). The committee reported the bill favorably by a vote of 22-13, no Republicans opposed the measure, and only two Democrats voted for the legislation, Representatives Boucher [D-VA] and Rothman [D-NJ] (US House Report 106-123, 1999, pp. 106).

The Senate did not hold additional hearings, except the aforementioned joint hearing with the House (US Senate Report 106-49, 1999, pp. 15). There was an extensive committee markup session with over twenty-five amendments proposed, including Senator Schumer's abortion amendment. Only nine of the amendments received favorable consideration and those were either technical or specialized in nature; none affected the major compromises in the legislation (US Senate Report 106-49, 1999,

pp. 15-18). The bill was reported favorably by the committee with a 14-4 vote (US Senate Report 106-49, 1999, pp. 18-19). Senators Biden [D-DE], Kohl [D-WI], Feinstein [D-CA], and Torricelli [D-NJ] joined with the Republicans on the committee to vote in favor of the bill (US Senate Report 106-49, 1999, pp. 18-19). Senators Leahy [D-VT], Kennedy [D-MA], Feingold [D-WI], and Schumer [D-NY] opposed the legislation (US Senate Report 106-49, 1999, pp. 18-19).

On February 7, 2001 the 107th Congress House Judiciary Committee heard from Kenneth Beine, Credit Union National Association; R. Bruce Josten, U.S. Chamber of Commerce; Phillip Strauss, California District Attorneys Association and the California Family Support Council; and George Wallace, The Coalition for Responsible Bankruptcy Laws (US House Report 107-3, 2001, pp. 15). All of the witnesses testified in favor of the legislation (US House Report 107-3, 2001, pp. 15). On February 8, 2001, the Committee heard testimony from those witness in opposing the bill. The witness list included Charles Trapp, a former chapter 7 debtor; Ralph Mabey, National Bankruptcy Conference; Professor Karen Gross, New York Law School; and Damon Silvers, AFL-CIO (US House Report 107-3, 2001, pp. 15-16).

During the committee markup, fifteen amendments were proposed and debated, but only two passed (US House Report 107-3, 2001, pp. 16-22). Chairman Sensenbrenner proposed the two passing amendments, both technical in nature (US House Report 107-3, 2001, pp. 16-22). The first passed by a vote of 22-0, and the second passed by a vote of 21-0 (US House Report 107-3, 2001, pp. 21-22). The committee reported the legislation favorably by a vote of 18-9; the only Democrat to vote for the bill

was Representative Boucher [D-VA], although seven Democrats and three Republicans neglected to vote (US House Report 107-3, 2001, pp. 21-22).

The House Committee on the Judiciary in the 108th Congress held one hearing on March 4, 2003 and four witnesses testified representing the Department of Justice and organizations of creditors (US House Report 108-40, 2003, pp. 136-137). None of the nine amendments offered in committee passed, and the legislation proceeded to the floor by an 18-11 vote (US House Report 108-40, 2003, pp. 137-145). Representative Boucher [D-VA], who previously supported the bill, did not cast a vote and no other Representatives cast crossover votes from either the Republican or Democratic Party (US House Report 108-40, 2003, pp. 137-145).

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 in the 109th Congress spent just over two months in Congress before President Bush signed it into law. Although the votes in both houses indicate bi-partisan agreement, this is not necessarily the case. Senator Grassley introduced the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 in the Senate on February 1, 2005. On February 10, the Senate Committee on the Judiciary began hearings and received testimony from eight experts representing the different interests affected by bankruptcy legislation.

Testimony came from Kenneth Beine, representing the Credit Union National Association; Malcolm Bennett, representing the National Multi-Housing Council and National Apartment Association; Dave McCall, representing the United Steel Workers of America and the AFLCIO; Philip Strauss, a retired attorney from the San Francisco Department of Child Support Services; Mike Menzies, representing the Independent and Community Bankers of America; Maria Vullo, representing Planned Parenthood;

Elizabeth Warren, a Professor from Harvard Law School; and Todd Zywicki, a Professor from George Mason Law School (U.S. Senate Report 109-31, 2005, pp. 8-9). The testimony represented largely positive views of the legislation. The only dissenting opinions came from Maria Vullo who argued in favor of the abortion amendment, and Elizabeth Warren, the former reporter for the NBRC who represented the interests of debtors (U.S. Senate Report 109-31, 2005, pp. 8-9).

Three Committee members read statements into the Congressional Record: Senator Leahy [D-VT], Senator Durbin [D-IL], and Senator Cornyn [R-TX]. In a notable change, Senator Durbin, one of the original co-sponsors of the Bankruptcy Reform Act of 1998 and one of the first high profile Democratic Senators to support bankruptcy reform, made a statement opposing the legislation:

Much has changed in four years. Our nation was attacked by terrorists. We endured a prolonged recession. A wave of corporate scandals shook our economy, leading to massive layoffs and ravaged pensions and 401(k) plans. Large corporate bankruptcies left workers and retirees across the country with reduced wages, crippled pensions plans and significantly reduced health benefits.

Senator Durbin's statement went on to contend that there was a lack of evidence that bankruptcies were continuing to rise and the recent economic downturn resulting in increased layoffs, made this is an inappropriate time to consider bankruptcy reform (Durbin, 2005). Senator Leahy included his reasons for opposing the reform (Leahy, 2005):

We know who will suffer most if this bill passes: hard working, middle class families, especially those with children. Who stands to gain? Some of the most profitable industries in America today: credit card companies and banks. In 2003, credit card companies enjoyed a \$30 million profit – their highest profits in 15 years.

Senator Cornyn's [R-TX] statement focused on the bankruptcy bill he introduced in the Senate that added tougher restrictions on venue changes for corporations seeking bankruptcy relief (Cornyn, 2005). Despite these objections, Senator Cornyn [R-TX]

voted for the bill when it was up for final passage in the Senate. The legislation emerged from committee markup with only five amendments added (U.S. Senate Report 109-31, 2005, pp. 9):

1. Senator Edward Kennedy [D-MA] clarifying that a debtor's reasonably necessary expenses for health insurance, disability insurance, and health savings accounts for the debtor and for the debtor's spouse and dependents are allowed expenses under the bill's needs-based test;
2. Senator Kennedy limiting retention bonuses, severance pay, and other payments to insiders of the debtor, under certain circumstances;
3. Senator Russell Feingold [D-WI] increasing the monetary threshold with respect to the venue of a proceeding to recover a consumer debt;
4. Senator Patrick Leahy [D-VT] clarifying that a debt based on a Federal or state securities law violation is nondischargeable; and
5. Senator Kennedy requiring the United States trustee to apply to the court for the appointment of a chapter 11 trustee if there are reasonable grounds to suspect fraud, under certain circumstances.

The mostly technical nature of the amendments was stark when compared to the amendments introduced on the floor of the Senate, demonstrating a great deal of restraint on the part of the Committee members. This led to reports that there was a deal between House and Senate leadership to speed the legislation through without amendments to ensure its final passage, which Republican leaders in both houses do not deny (Morgenson and Labaton, 2005).

On February 17, the Senate Committee on the Judiciary ordered a favorable report of the bill to the Senate by a vote of 12-5 (U.S. Senate Report 109-31, 2005, pp. 9). Although the report does not specify who voted against the legislation, the five votes probably came from Senators Kennedy [D-MA], Feingold [D-WI], Leahy [D-VT], Durbin [D-IL], and Schumer [D-NY], all of whom voted against the final version of the legislation on the floor. Senators Kennedy [D-MA] and Feingold [D-WI] opposed the legislation primarily because of its failures to provide what they viewed as sufficient security for the debtors who are not abusing the system, Kennedy [D-MA] went so far as to call it "mean spirited and unfair." (U.S. House Report, 1998, pp. 79-92). Senator

Leahy [D-VT] in addition to his opposition mentioned earlier, did not support the bill because of the removal of the “abortion amendment” language, its failure to include exceptions for military personnel, and concerns about ensuring the security of debtor’s personal information (Leahy, 2005). Senator Durbin’s [D-IL] primary criticism of the bill was that he does not believe there was a problem with the current system, arguing that the vast majority of debtors who filed for bankruptcy did so because of medical bills or other circumstances beyond their control and Congress should not place additional obstacles for people seeking relief (Durbin, 2005). Senator Schumer [D-NY], as mentioned before, opposed the bill because it did not include the language of the “abortion amendment” drafted for the 1999 legislation (Stolberg, 2005).

The Senate hearings in the 105th Congress represented the last time the credit industry would be absent from hearings. During the same period, the House held four hearings all of which included representatives from the credit industry. In the 106th Congressional session the Senate only conducted one hearing which was a joint hearing with the House Committee on the Judiciary, of the nine witnesses, six were representatives of the credit industry. The House held three additional hearings all of which included the traditional bankruptcy experts and credit industry representatives. In the 107th Congress, the House only held two hearings one representing the traditional bankruptcy interests and one representing creditor interests. There was only one hearing in the 108th Congress and only one hearing in the 109th Congress. The House hearing in 2003 represented both consumer and creditor interests and the Senate hearing in 2005 included almost exclusively creditor interests. Only two of the eight witnesses testified in opposition to the legislation.

Analysis of Policy Proposals

Binder (1999) argues that the ideological distance between Congressional chambers is the best predictor of gridlock. Since this study uses the piece of legislation as the unit of analysis rather than the individual legislator, this project applies a coding scheme to determine the percentage of Republican reforms. The analysis will compare the percentage of Republican reforms included in legislative proposals introduced in each chamber.

Table 4 summarizes the substance of the legislative proposals analyzed in this project. The bills S.1301, H.R.3150, and H.R.3150c (“c” is meant to identify the proposal as a conference report on the bill), were introduced in the 105th Congress. H.R.833, S.625, and H.R. 2415, were introduced in the 106th Congress, and in the 107th Congress, H.R.333, S.420, and H.R.333c were introduced. There was only one bill apiece introduced in the 108th and 109th Congresses: H.R.975 and S.256, respectively. The Senate bills represent increasing percentages of Republican reforms, while House bills are more inconsistent. Conference reports (listed in italics) include H.R.3150c, H.R.2415, and H.R.333c; they do not always reflect a compromise between the legislation introduced in the two chambers.

Table 4
Summary of Substance of Legislative Proposals

Bill	Fraud	MeansTest	Exempt	Ch7USC	RepFiling	PredLending	Code
S1301	0	0	0	1	0	0	16.67%
HR3150	0	1	1	1	1	1	83.33%
<i>HR3150c</i>	<i>0</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>0</i>	<i>0</i>	<i>50%</i>
HR833	0	1	1	1	0	0	50%
S625	0	0	1	1	1	0	50%
<i>HR2415</i>	<i>1</i>	<i>0</i>	<i>0.5</i>	<i>1</i>	<i>1</i>	<i>0</i>	<i>58.33%</i>
HR333	1	1	0.5	1	1	0	75%

S420	1	0	0.5	1	1	0	58.33%
<i>HR333c</i>	<i>1</i>	<i>1</i>	<i>0.5</i>	<i>1</i>	<i>1</i>	<i>0</i>	<i>75%</i>
HR975	1	1	0.5	1	1	0	75%
S256	1	1	0.5	1	1	0	75%

Although both the House and Senate bills in the 105th Congress focused on consumer bankruptcy issues, there were major and controversial differences between the two pieces of legislation. The Senate legislation incorporates the institution of financial penalties for debtors found making fraudulent claims (S.1301, Title II, Section 201-205). An amendment offered by Senator Kyl [R-AZ] reinforced this measure by making debts incurred through a fraudulent bankruptcy filing nondischargeable in Chapter 13 cases. The Senate agreed to the amendment in a voice vote (US Senate Report 105-253, 1998, pp. 31). Legislation in the House requires civil punishments for fraud and contains similar monetary penalties to the Senate version of the bill (H.R.3150, Title I, Section 143). House legislation also included a provision to make fraudulent claims nondischargeable in Chapter 13 cases (H.R.3150, Title I, Section 143).

Many Senate Democrats portrayed the House legislation as draconian because of the strict means test it attempted to impose. Under the House legislation a debtor cannot file for Chapter 7 bankruptcy if their household income for the six months before filing their bankruptcy petition is more than the national median income, their monthly net income is more than fifty dollars, and they are capable of repaying 20% of unsecured debts (H.R.3150, Title I, Section 101). The Senate bill also includes a means test, but the Senate proposed a judicially administered test which would allow a judge to require a debtor to change his or her filing to Chapter 13 if they can repay 20% of their general, unsecured debts (US Senate Report 105-253, 1998, pp. 24).

The three Republican reforms included in the Senate legislation were the capping of exemptions and the increasing the priority level of unsecured creditors in Chapter 7 and Chapter 13 cases. An amendment offered by Senator Kohl [R-WI] during subcommittee markup capped the homestead exemption at \$100,000; the subcommittee adopted the amendment by unanimous consent. The original legislation in the House included a \$100,000 cap on the homestead exemption (H.R.3150, Title I, Section 182); however, a floor amendment offered by Rep. Gekas [R-PA], struck the language and denied the exemption to those buying homes within a year of filing for bankruptcy (H.Amdt.666, H.R.3150). The amendment passed by a vote of 222-204 (Roll Call No. 221; June 10, 1998).

The Senate bill also increased the priority level of unsecured creditors in both Chapter 7 and Chapter 13 cases by making certain unsecured debt nondischargeable (S.1301, Title III, Sections 302, 305, 310-311, 314-319, 321). Democrats argued these reforms made it more difficult for families to collect family support obligations due to increased competition with creditors. Section 314 of the legislation made restitution awards nondischargeable in Chapter 13 cases, and Sections 315-316 add to the list of nondischargeable debts in Chapter 7 and Chapter 13 cases: all debts incurred in order to pay nondischargeable debts and all debts incurred 90 days before filing for bankruptcy. The House legislation attempted to distribute payments to unsecured creditors throughout the lifespan of a Chapter 13 repayment schedule (H.R.3150, Title I, Section 102). The House also incorporated similar language adding certain creditors to the list of nondischargeable creditors (H.R.3150, Title I, Section 141-143, 144-150).

Instead of prohibiting repetitive filings, the Senate version of the legislation “discourages” them (S.1301, Title III, Section 303). Under the legislation, there is a presumption of “bad faith,” which required the debtor to file additional paperwork demonstrating a need for bankruptcy, rather than a prohibition on a certain group of debtors. The House version of the bill included identical language as the Senate version to discourage repeat filings (H.R.3150, Title I, Section 121); however, the House expanded on this language and added a prohibition of repeat Chapter 7 filings within 10 years and Chapter 13 filings within 5 years (H.R. 3150, Title I, Section 171).

The Senate legislation also provided several consumer protection provisions, prohibiting claims from creditors in violation of the Truth in Lending Act (S.1301, Title II, Section 206). Consumer protections were adapted in the House legislation with the creation of a “Debtors Bill of Rights,” which required the preparer of any bankruptcy petition to provide debtors with information concerning the consequences of filing for bankruptcy, but the legislation did not restrict the practices of creditors (H.R.3150, Title I, Section 115).

In the 106th Congress, the two legislative proposals introduced for consideration were H.R.833, in the House of Representatives and S.625 in the Senate. H.R. 833 punished fraudulent filings with monetary penalties within the bankruptcy system (H.R.833, Title VIII, Section 807). The Senate legislation does not address penalties for fraud.

The means testing procedure implemented in this legislation resembled versions in earlier legislation. If in the six months prior to filing a bankruptcy petition: a debtors household income is above the national median, the debtor has over \$100.00 monthly net

income, and they are capable of repaying at least 20% of their unsecured debts, a petitioner is ineligible for a Chapter 7 discharge (H.R.833, Title I, Section 102). In the Senate version of the legislation the means testing ultimately relied on a judicial determination, though the bill stated there is a presumption of “bad faith” if the debtor can repay the lesser of \$15,000 or 25% of debts (S.625, Title I, Section 102).

The exemptions included in H.R. 833, capped the amount of money a debtor can claim; however, it also provided an opportunity for states to opt out of this measure (H.R.833, Title I, Section 147). The original cap was set at \$100,000, but in subcommittee markup an amendment offered by Representative Delahunt increased the cap to \$250,000 (US House Report 106-123, 1999, pp. 378). The legislation also included a residency requirement of 730 days before a claimant can receive an exemption (H.R. 833, Title I, Section 126). In a change from the previous Senate legislation, the Senate version of the bill included a residency requirement of 730 days before a debtor qualified for state exemptions rather than a cap (S.625, Title III, Section 307).

Similar to the earlier versions of the legislation, H.R.833 increased the priority of unsecured creditors incurred to pay nondischargeable debts (H.R.833, Title I, Section 146). The language in the Senate legislation is more complicated. It extended nondischargeability status to all debts incurred within 70 days of filing for bankruptcy and all debts incurred to pay nondischargeable debts with the intent of then discharging them (S.625, Title III, Section 314). The only exception to this exemption was all debt incurred to pay family support obligations would be considered dischargeable under the proposed legislation (S.625, Title III, Section 314).

The House legislation included language similar to the conference report on H.R.3150 in the 105th Congress, which presumed “bad faith” on filings occurring within one year of each other; however, the ultimate decisionmaking power resided with the judge in these cases (H.R.833, Title I, Section 117). Conversely, the Senate legislation included a prohibition of filings, extending the time limit to eight years for Chapter 7 cases and five years for Chapter 13 cases (S.625, Title III, Section 312).

H.R.833 took steps to require creditors to provide more information about finance charges and interest for those debtors choosing to make only minimum monthly payments on their bills (H.R.833, Title I, Section 112). The measures meant to deter predatory lending practices were more rigorous in the Senate legislation. For creditors proved to not reasonably participate in negotiations, fail to credit payments received, or attempt to coerce an agreement can have their credits reduced by up to 20% and are subject to damages and payment of legal fees (S.625, Title II, Sections 202-204).

In the 107th Congress, both the House and the Senate legislation included a clause instructing the Attorney General and Federal Bureau of Investigation to enforce criminal penalties on those participants in the bankruptcy system making false or misleading statements in petitions and addressing abusive reaffirmation agreements (H.R.333; Title II, Section 203; S.420, Title II, Section 203).

The House version of the legislation replaced the presumption of abuse in H.R.2415, with a mandatory presumption of abuse when the debtor failed to meet the requirements specified in the means test (US House Report 107-3, 2001, pp. 27; H.R.333, Title I, Section 102). A debtor would not qualify for Chapter 7 bankruptcy if the debtor’s monthly income, after expenses, multiplied by 60 was greater than the lower of: (1) 25%

of the debtor's non-priority unsecured claims or \$6,000; or (2) \$10,000 (H.R.333, Title I, Section 102). The Senate preserved the judicially administered means test with a presumption of abuse if a debtor did not meet the qualifications of the above formula (S.420, Title I, Section 102).

House and Senate legislation both included a 730-day residency requirement before a debtor would qualify for state exemptions (H.R.333, Title III, Section 307; S.420, Title III, Section 307). The Senate legislation also included a \$125,000 cap on property acquired more than two years before the bankruptcy filing (S.420, Title III, Section 308). The House legislation on the other had capped the homestead exemption at \$125,000 for property acquired 1,215 days before filing a bankruptcy petition (H.R.333, Title III, Section 322).

Both the House and Senate bills made debt nondischargeable ensuing from restitution or civil damages against the debtor for willful or malicious injury that resulted in either personal injury or death (H.R.333, Title III, Section 314; S.420, Title III, Section 314). The House and Senate used identical language in this section to ban successive Chapter 7 filings for eight years after the first Chapter 7 case (H.R.333, Title III, Section 312; S.420, Title III, Section 312). The legislation also prohibited Chapter 13 filings if in the previous three years a debtor filed a Chapter 7, 11, or 12 case or another Chapter 13 case within the two previous years (H.R.333, Title III, Section 312; S.420, Title III, Section 312).

Both House and Senate legislation contained the same language imposing both financial penalties on creditors providing false information in bankruptcy proceedings (H.R.333, Title II, Sections 202-205; S.420, Title II, Sections 202-205). For the first

time, the bankruptcy legislation instructed the Federal Bureau of Investigation to pursue criminal investigations against fraudulent actions by creditors (H.R.333, Title II, Section 203; S.420, Title II, Section 203).

The provisions of H.R.975, in the 108th Congress were nearly identical to those of H.R.333. Both bills instituted criminal penalties for fraudulent bankruptcy filings (H.R.975, Title II, Section 203); identical means testing procedures (H.R.975, Title I, Section 102); increased in the priority status of unsecured creditors in Chapter 13 and Chapter 7 cases (H.R.975, Title III, Section 314), and prohibited repetitive filings (H.R.975, Title III, Section 312). Since both bills also include both Democratic and Republican reforms for exemptions, the category receives a code of 0.5 (rather than as either 0 or 1). The Democratic principles included in the legislation are (1) not requiring payment of unsecured creditors throughout Chapter 13 repayment plans and (2) strict provisions holding creditors accountable for predatory lending practices (H.R.975, Title II, Sections 202-205). H.R.975 contains 75% Republican reforms according to the coding scheme.

The provisions of S.256 are nearly identical to those of H.R.975 and H.R.333. All the most recent versions of the legislation institute criminal penalties for fraudulent bankruptcy filings (S.256; Title II, Section 203), include the same means testing procedure (S.256; Title I, Section 102) increase in the priority status of unsecured creditors in Chapter 13 and Chapter 7 cases (S.256; Title III, Section 314), and prohibitions on repetitive filings (S.256; Title III, Section 312). Since both bills also include both Democratic and Republican reforms for exemptions, the category receives a code of 0.5 (rather than as either 0 or 1). Identical to H.R.975, the Democratic principles

included in the legislation are: (1) not requiring payment to unsecured creditors throughout Chapter 13 repayment plans and (2) strict provisions holding creditors accountable for predatory lending practices (S.256, Title II, Sections 202-205). S.256 contains 75% Republican reforms according to the coding scheme.

Analysis of Floor Votes

Mann and Ornstein (2006) argue that the inclusion of such a large percentage of Republican reforms and the final roll call votes in the 109th Congress was evidence of an intense partisan struggle over this legislation. This study collects roll call data from every final floor vote on bankruptcy reform legislation to assess the validity of these claims. The result of this analysis suggests that Mann and Ornstein (2006) come close to explaining legislative behavior in the House, however, not in the Senate and they cannot explain the length of time it took Congress to pass bankruptcy legislation.

The first significant reform measure to be introduced in Congress after the 1994 reforms was S. 1301, The Consumer Bankruptcy Reform Act of 1998, introduced by Senator Grassley on October 21, 1997, the day after the NBRC released its report. Senator Durbin [D-IL] was an initial co-sponsor of the legislation; Senator Grams [R-MN] and Senator Sessions [R-AL] added their support nearly a year later as the bill gained momentum on the agenda. The Judiciary Committee held three hearings focusing primarily on consumer bankruptcy and released a report on July 21, 1998.

On February 3, 1998, Rep. Gekas [R-PA] introduced a similar measure in the House with Rep. McCollum [R-FL], Rep. Boucher [D-VA], and Rep. Moran [D-VA]. Co-sponsorship in the House eventually ballooned to include a largely bi-partisan 75

members. On June 10, 1998, the House passed H.Res.462 with a vote of 251-172, which allowed for one hour of general debate on H.R.3150 (Roll Call No. 218). The vote on H.Res.462 was relatively partisan compared to other votes on bankruptcy reform, with 98% of Republicans voting in favor of the rule and 82% of Democrats voting in opposition.

Table 5
House Vote on H.Res.462

Roll#218	Y	N	NV	T
R	222	1	3	226
	98.23%	0.44%	1.33%	
D	29	170	7	206
	14.08%	82.52%	3.40%	
I	0	1	0	1
T	251	172	10	433

There were eleven floor amendments in the debate, six of which passed. Among the significant amendments was H.Amdt.670 proposed by Rep. Nadler [D-NY]. The amendment took the form of a substitution and sought to delete the means testing procedure and eliminate the sections of the bill making unsecured credit nondischargeable. The amendment failed in a vote of 140-288 (Roll Call No. 223, June 10, 1998). The final vote in the House was 306-118, with only four Republicans not voting (Roll Call No. 225, June 10, 1998).

Table 6
House Vote on H.R.3150

Roll#225	Y	N	NV	T
R	222	0	4	226
	98.23%	0.00%	1.77%	
D	84	117	5	206
	40.78%	56.80%	2.43%	
I	0	1	0	1
T	306	118	9	433

According to the system of coding, the House legislation represents 83.33% Republican reforms. The only Democratic proposal incorporated into the legislation was

the incorporation of civil penalties for fraud. Republican proposals included in this reform were: strict means testing, residency requirements to qualify for the homestead exemption, increased the priority for unsecured creditors in Chapter 7 and Chapter 13 cases, the prohibition of repetitive filings, and the failure to address predatory lending practices. This bill received the highest percentage of Republican reforms of any legislative proposal analyzed in this case study.

The Senate debated and voted on 15 amendments when the legislation reached the floor. Senator Grassley proposed an amendment in the nature of a substitute, adding sections clarifying the bankruptcy proceedings of international corporations and municipalities, but not altering the major consumer compromises already included in the bill (S.Amdt.3559, September 23, 1998, voice vote). The amendment did not initially include the negotiated cap on homestead exemptions; however, Senator Kohl offered the same text as a floor amendment, which passed in a voice vote (S.Amdt.3599, September 23, 1998). Senator Kennedy attempted to attach an amendment increasing the minimum wage. A motion to table this amendment passed by a straight partisan vote of 55-44, with Senator Glenn [D-OH] not voting. (S.Amdt.3540, September 22, 1998, Roll Call No. 278). Eight of the proposed amendments passed, seven were tabled. Most of the seven amendments that did not pass attempted to place increased restrictions on creditors such as limiting the fees on ATM machines and amendments to the Truth in Lending Act. The amended version of the bill represented the same compromises negotiated through the committee process.

S.1301 contains six Democratic reforms: financial punishment for fraud, judicially administered means testing, uniform federal standards for exemptions,

“discouragement” of repetitive filings rather than prohibition, and curtailing of predatory lending practices. The only Republican reforms present in the bill were increases in the priority status of unsecured creditors in Chapter 13 and Chapter 7 cases. Therefore, the coding scheme identifies S.1301 as containing 16.67% Republican reforms, the lowest percentage of Republican reforms of any legislative proposal in this study.

The Cloture motion in the Senate passed in a 99-1 vote on September 9, 1998 (Roll Call No. 263); Senator Brownback [R-KS] cast the only vote in opposition to the measure. Senator Brownback expressed in floor debate a concern with the wording of the homestead exemption. Kansas is one of five states with an unlimited homestead exemption, which Senator Brownback argued helps family farmers keep their property and their career in bankruptcy proceedings (Brownback, September 23, 1998, S10746).

Table 7
Senate Vote on Cloture for S.1301

Roll#263	Y	N	NV	T
R	54	1	0	55
	98.18%	1.82%	0.00%	
D	45	0	0	45
	100.00%	0.00%	0.00%	
T	99	1	0	100

The Senate substituted the language from S.1301 into the House version of the bill and the measure passed in a 97-1 vote on September 23, 1998, with only Senator Wellstone [D-MN] voting against the legislation and Senators Glenn [D-OH] and Warner [R-VA] not voting (Roll Call No. 284). Senator Wellstone opposed the legislation because he viewed it as favoring credit card companies (September 23, 1998, S10765):

It will encourage riskier lending habits by credit companies. It will lead to more credit being extended to poor families. It will ensure that those families will file more bankruptcies. It will force these families to file different types of bankruptcies, the kind of bankruptcy that ensures that they will never be free of their debt and able to restart their lives.

Senators Glenn and Warner did not express opinions on this legislation in floor statements.

Table 8
Senate Vote on H.R.3150

Roll#284	Y	N	NV	T
R	54	0	1	55
	98.18%	0.00%	1.82%	
D	43	1	1	45
	95.56%	2.22%	2.22%	
T	97	1	2	100

Since the Senate substituted its own language for the House language, the Congressional leadership convened a conference committee to balance the positions of the House and Senate. Conferees agreed to file their report on October 7, 1998. The House and Senate already agreed on the monetary penalties for fraudulent filings and increasing the priority status of unsecured creditors in Chapter 13 and Chapter 7 cases.

The conference report incorporated the House means testing formula, but preserved the right of judges to use discretion in extreme cases (US House Conference Report 105-794, 1998, pp. 121). For exemptions, the Senate bill included a uniform standard, while the House favored the residency requirement. The compromise agreement was a two-year residency requirement before a debtor is eligible for the homestead exemption (US House Conference Report 105-794, 1998, pp. 123). The conference report also allowed unsecured creditors priority status during bankruptcy proceedings (US House Conference Report 105-794, 1998, pp. 121-122). However, it did not allow payment to unsecured creditors throughout Chapter 13 cases (US House Conference Report 105-794, 1998, pp. 121-122). Rather than incorporating the House measures prohibiting repetitious filings, the conference report featured the Senate version, presuming “bad faith” for multiple filers and allowing bankruptcy judges to

decide whether the case is abusive (US House Conference Report 105-794, 1998, pp. 123). The conference report also included the Senate restrictions on predatory lending (US House Conference Report 105-794, 1998, pp. 122). According to the coding, the conference report reflects 50% Republican principles.

Table 9
House Vote on Conference Report

Roll#506	Y	N	NV	T
R	224	1	2	227
	98.68%	0.44%	0.88%	
D	76	123	7	206
	36.89%	59.71%	3.40%	
I	0	1	0	1
T	300	125	9	434

Despite its balance, the bill lost six votes in the House, passing on a 300-125 vote on October 9, 1998 (Roll Call No. 506). Representative Marge Roukema was the only Republican to oppose the legislation and did so because of the provisions increasing the priority of unsecured creditors with respect to family support obligations (Nadler, October 9, 1998, H10237). Representative Roukema voted for the House version of the legislation, which included the same language increasing the priority of unsecured creditors in Chapter 13 and Chapter 7 cases. The legislation did not receive another vote in the Senate, although Senator Brownback, who voted against the cloture motion on the Senate version of the legislation, announced his support of the conference report because of the inclusion of a residency requirement rather than caps on the homestead exemption (Brownback, October 9, 1998, S12147).

With bankruptcy reform reaching such an anticlimax in the 105th Congress, both the House and Senate were eager to try again in a new legislative year. The House introduced *The Bankruptcy Reform Act of 1999* on February 24, 1999, sponsored by Representative Gekas [R-PA]. Within two months, 106 cosponsors signed on to the

House legislation 40 of which were Democrats. The Senate introduced its version of *The Bankruptcy Reform Act of 1999* on March 16, 1998, sponsored by Senator Grassley [R-IA]. The Senate legislation actually attracted more Democratic co-sponsors than Republican. The six Democratic co-sponsors were Senators Biden [D-DE], Torricelli [D-NJ], Johnson [D-SD], Breaux [D-LA], Kerrey [D-NE], and Robb [D-VA]. The four Republicans to co-sponsors of the legislation were Senators Sessions [R-AL], Roth [R-DE], Helms [R-NC], and Crapo [R-ID].

The development of bankruptcy reform in the 106th Congress took a similar course as it did in the 105th Congress. The House passed a piece of legislation, the Senate struck the House language and passed its own version of the legislation, but with a provision for tax breaks for small businesses. The tax breaks were a compromise negotiated to compensate for the minimum wage amendment Senator Kennedy was nearly able to attach to the legislation. The attachment of the tax provision by the Senate made the bill unconstitutional, because all appropriations bills must originate in the House, and there was no attempt to reconcile the differences.

Rather than giving up, on October 11, 2000 leadership in both houses struck all the language from a State Department Appropriations bill already in conference H.R.2415, and inserted negotiated language on bankruptcy reform. The bill won approval in the House on October 12, 2000 by a voice vote and approval in the Senate on December 7, 2000, but eventually received a pocket veto from President Clinton.

The House proposal was similar to the conference report in the 105th Congress and contained 50% Republican reforms, with identical consumer reforms as those made in the 105th Congress conference report. The Democratic principles in the legislation

were monetary penalties for fraud, no prohibition of repetitious filings, and incorporation of proposals to deter predatory lending. The Republican principles included a means testing formula, residency requirements to qualify for exemptions, and increased priority status of unsecured creditors in both Chapter 13 and Chapter 7 cases. The House attached eight amendments to the bill on the floor. None however changed the major compromises in the legislation.

The first vote in the House to pass H.Res.158 occurred on May 5, 1999, the resolution provided for one hour of general debate on H.R.833.

Table 10
House Vote on H.Res.158

Roll#109	Y	N	NV	T
R	214	0	7	221
	96.83%	0.00%	3.17%	
D	13	189	9	211
	6.16%	89.57%	4.27%	
I	0	1	0	1
T	227	190	16	433

The substantive vote in the House reflected less partisan influence than the procedural vote. Despite the similarities between this bill and the conference report from the 105th Congress, H.R.833 received twenty more votes from Democratic representatives than the H.R.3150 conference legislation. Democrats were almost evenly divided on this legislation with 45% voting for the legislation and 50% voting against the bill. On the other hand, Republicans demonstrated party unity with 97.75% voting in favor of the legislation.

Table 11
House Vote on H.R.833

Roll#115	Y	N	NV	T
R	217	0	5	222
	97.75%	0.00%	2.25%	
D	96	107	8	211
	45.50%	50.71%	3.79%	
I	0	1	0	1

T	<i>313</i>	<i>108</i>	<i>13</i>	<i>434</i>
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The Senate legislation also received a code of 50% Republican reforms; however, there are some interesting changes distinguishing it from the conference report and previous Senate legislation. Notably, the means testing procedure included in the legislation was more lax than in any previous version of the bill and the severe restrictions on predatory lending were in sharp contrast to previous House legislation. On the other hand, the Senate placed a ban on repetitious filings, which although less stringent than the earlier House version, is a substantial change from previous legislation. The Democratic principles incorporated in this bill were (1) no change in penalties for fraud, (2) judicially administered means testing, and (3) strict requirements on predatory lending practices. The Republican reforms included were residency requirements for exemptions, priority level of unsecured creditors, and a prohibition of repetitive filings. Among the numerous amendments offered on the floor, was Senator Schumer's "abortion amendment," which would make criminal fines resulting from violence at abortion clinics nondischargeable in bankruptcy proceedings. The amendment passed in a vote of 80-17 (February 2, 2000, Roll Call No. 2). All Senate Democrats voted in favor of the legislation, with seventeen Republicans voting in opposition and three not casting votes.

Table 12

Senate Vote on Cloture for S.625

Roll#280	Y	N	NV	T
R	53	0	2	55
	96.36%	0.00%	3.64%	
D	0	45	0	45
	0.00%	100.00%	0.00%	
T	53	45	2	100

Table 13

Senate Vote on H.R.833

Roll#5	Y	N	NV	T
R	49	2	3	54

	90.74%	3.70%	3.70%	
D	34	12	0	46
	73.91%	26.09%	0.00%	
T	83	14	3	100

The compromise language was most similar to the Senate version of the legislation, but the compromise language included more Republican reforms that either the House or Senate legislation, scoring 58.33% on the coding scale. The Democratic principles in H.R.2415 include judicially administered means testing (H.R.2415, Title I, Section 102) and restrictions on predatory lending with the same language as the Senate proposal S.625 (H.R.2415, Title II, Section 202-203; H.R.2415, Title XIII, Sections 1301-1310).

Republicans increased the priority of unsecured creditors (H.R.2415, Title III, Section 314), and created a ban on repetitious filings (H.R.2415, Title III, Section 312). This bill also included criminal penalties for fraudulent filings by either debtors or creditors (H.R.2415, Title II, Section 203). The compromise legislation included both residency requirements for debtors to qualify for state exemption and capped the amount of the exemption at \$100,000 (H.R.2415, Title III, Section 307, 322). Because there were both Republican and Democratic reforms present for the same issue, the exemption is coded as 0.5, rather than as 0 or 1. The compromise language included an extensive section on taxes associated with the bankruptcy process, but neither the minimum wage amendment nor the abortion amendment, included in the Senate legislation, are incorporated in this bill.

The first vote on a cloture motion for H.R.2415 on November 1, 2000 failed to pass the Senate. Neither party exhibited strong unity during this vote, which is unusual

for procedural votes. For the second cloture vote on December 5, 2000, 98% of Republicans voted for the motion with 30% of Democrats.

Table 14

Failed Senate Vote on Cloture Motion for H.R.2415

Roll#294	Y	N	NV	T
R	41	1	12	54
	75.93%	1.85%	22.22%	
D	12	29	5	46
	26.09%	63.04%	10.87%	
T	53	30	17	100

Table 15

Successful Senate Vote on Cloture Motion for H.R.2415

Roll#296	Y	N	NV	T
R	53	0	1	54
	98.15%	0.00%	1.85%	
D	14	31	1	46
	30.43%	67.39%	2.17%	
T	67	31	2	100

Table 16

Senate Vote on H.R.2415

Roll#297	Y	N	NV	T
R	53	0	1	54
	98.15%	0.00%	1.85%	
D	17	28	1	46
	36.96%	60.87%	2.00%	
T	70	28	2	100

In the final vote, 98% of Republicans voted in favor of the measure. This legislation incorporated more Democratic principles than Republican; however, the bill did not receive the same number of favorable Democratic votes as the previous Senate legislation, scoring 14.29% on the coding scale. Despite finally achieving success in Congress, the bankruptcy bill went to President Clinton and received a pocket veto.

Once again, Congress was nearly able to pass bankruptcy reform legislation, but due to President Clinton's pocket veto, the bill failed to become law. On January 31, 2001, Representative Gekas introduced H.R.333: *The Bankruptcy Abuse Prevention and Consumer Protection Act of 2001*, in the House. Co-sponsorship for the bill was largely

bipartisan with 22 Democratic representatives and 45 Republicans. The House Judiciary Committee held hearings on February 7 and 8, 2001; the committee heard from eight witnesses representing seven organizations.

Senator Grassley introduced the Senate version of the legislation, S.420, on March 1, 2001. Once again, the Democratic co-sponsors on this bill outnumbered the Republican co-sponsors. The co-sponsors included Senators Biden [D-DE], Torricelli [D-NJ], Johnson [D-SD], Carper [D-DE], Nelson [D-NE], Sessions [R-AL], and Hatch [R-UT]. On March 1, 2001 the Judiciary Committee released S.420 without written report.

The House and Senate versions of the legislation in the 107th Congress were nearly identical, differing only in their treatment of means testing. Both bills included the following Republican reforms: institution of criminal penalties for fraudulent bankruptcy filings, increase in the priority status of unsecured creditors in Chapter 13 and Chapter 7 cases, and prohibitions on repetitive filings. Since both bills also included Democratic and Republican reforms for exemptions, the category received a code of 0.5 (rather than as either 0 or 1). The Democratic principles included the exclusion of requirements to pay unsecured creditors at the same time as secured creditors during Chapter 13 cases and strict provisions holding creditors accountable for predatory lending practices. The House bill contains 75% Republican reforms, while the Senate bill contained 58.33% Republican reforms. Since the conference report adopted the House version of the means test, the conference report has the same code as the House bill, 75%.

Table 17
House Vote on H.Res.71

Roll#22	Y	N	NV	T
R	212	1	6	219
	96.80%	0.46%	2.74%	

D	68	130	13	211
	32.23%	61.61%	6.16%	
I	1	1	0	2
T	281	132	19	432

Table 18
House Vote on H.R.333

Roll#25	Y	N	NV	T
R	212	0	7	219
	96.80%	0.00%	3.20%	
D	93	107	11	211
	44.08%	50.71%	5.21%	
I	1	1	0	2
T	306	108	18	432

On March 14, 2001, the Senate voted on a cloture motion to end debate on S.420. Although procedural votes tend to be partisan, 98% of Republicans joined with 62% of Democrats in an evenly divided Senate to end debate on this measure. The substantive vote following the cloture motion also reflected this bipartisanship, with 94% of Republican Senators and 72% of Democrats voting for the measure. This bipartisan support was somewhat surprising since according to the coding scheme, this bill represents the highest percentage of Republican reforms of any bankruptcy reform bill on which the Senate has voted. The two Republican Senators who voted against S.420 were Senator Brownback [R-KS] and Senator Hutchinson [R-TX], both representing states with unlimited homestead exemptions and opposed to capping exemptions.

Table 19
Senate Vote on Cloture Motion for S.420

Roll#29	Y	N	NV	T
R	49	0	1	50
	98.00%	0.00%	2.00%	
D	31	19	0	50
	62.00%	38.00%	0.00%	
T	80	19	1	100

Table 20
Senate Vote on S.420

Roll#36	Y	N	NV	T
R	47	2	1	50

	94.00%	4.00%	2.00%	
D	36	13	1	50
	72.00%	26.00%	2.00%	
T	83	15	2	100

The vote totals from the July 17, 2001 vote on H.R.333 were nearly identical to the vote totals for S.420, reflecting the fact that the Senate struck text of H.R.333 and incorporated the provisions of S.420. However, in the months between the votes on the two pieces of legislation, Senator Jeffords [R-VT] switched parties, allowing the Democrats to regain slight control in the Senate. Despite their majority party status, Democrats were not successful at increasing party unity. Seventy-two percent of Democrats voted for H.R.333, while 28% voted against the legislation. Senator Boxer [D-CA] was the only Democrat to change her vote, switching from not voting to voting against the bill. Both Senators Brownback [R-KS] and Hutchinson [R-TX] voted against this bill again. Senator Smith [R-NH] was the only Republican to change voting positions, but he made no floor statements explaining his decision.

Table 21

Senate Vote on Cloture Motion for H.R.333

Roll#230	Y	N	NV	T
R	46	2	1	49
	93.88%	4.08%	2.04%	
D	41	8	1	50
	82.00%	16.00%	2.00%	
I	1	0	0	1
T	88	10	2	100

Table 22

Senate Vote on H.R.333

Roll#236	Y	N	NV	T
R	45	2	2	49
	91.84%	4.08%	4.08%	
D	36	14	0	50
	72.00%	28.00%	0.00%	
I	1	0	0	1
T	82	16	2	100

The conference report, which was more similar to the House legislation than the Senate version of the bill, based on the coding procedure adopted in this study, did not receive similar vote totals as the previous version of the legislation. The House voted on the conference report on November 15, 2002, over a year after the original vote on the legislation, which took place on March 1, 2001. During that period, the bill lost 62 votes. The strong Republican Party cohesion once noticeable in the vote also diminished with 15% of Republican Representatives not voting. The same inconsistency is apparent in the Democratic Party votes, with 26% voting in favor of the legislation, 55% voting against the bill, and 18% not voting at all.

Table 23
House Vote on H.R.333 Conference Report

Roll#484	Y	N	NV	T
R	189	0	34	223
	84.75%	0.00%	15.25%	
D	55	115	38	208
	26.44%	55.29%	18.27%	
I	0	1	0	1
T	244	116	72	432

In another attempt to pass comprehensive bankruptcy reform legislation, Representative Sensenbrenner [R-WI] introduced *The Bankruptcy Abuse Prevention and Consumer Protection Act of 2003*, H.R.975. The co-sponsorship of this bill was not as bipartisan as earlier versions; of the 89 co-sponsors, only 15 were Democrats. In the 108th Congress, the House vote on H.R.975 was the only vote on bankruptcy reform.

Table 24
House Vote on H.R.975

Roll#74	Y	N	NV	T
R	225	0	3	228
	98.68%	0.00%	1.32%	
D	90	112	2	204
	43.90%	54.63%	0.98%	
I	0	1	0	1
T	315	113	5	433

Even though the provisions in the bill were nearly identical to those contained in the conference report on H.R.333 in the 107th Congress, this bill attained almost twice as much support from House Democrats. This vote also demonstrated stronger party unity within the Republican Party, which is more consistent with previous votes excepting the vote on the H.R.333 conference report.

The Senate in the 109th Congress began debate on S.256 on February 28, 2005 (CRS Bill Summary, 2005). On the same day, the White House released a “Statement of Administration Policy,” supporting the legislation as reported by the Judiciary Committee (Executive Office of the President, 2005). The Senate debated the bill for nine days and Senators offered nearly 130 amendments, only eight of which passed to be included in the final text of the bill (U.S. Senate Report, 2005, pp. 9). Similar to the amendments passed by the Judiciary Committee, the amendments added on the floor were primarily technical in nature, some of which aimed to exempt disabled and active duty military personnel. Senator Leahy did manage to pass one substantive amendment adding privacy protections for the personal information of bankruptcy filers (U.S. Senate Report, 2005, pp. 9-10).

The most controversial amendment in the Senate was Senator Schumer’s “abortion amendment.” The same text, which Senator Hatch re-wrote and added to the 2001 text of the legislation in committee and passed by the Senate in 2002, failed in 2005 by a slim margin (Schumer, 2005; Stolberg, 2005). The amendment attempted, “To prohibit the discharge, in bankruptcy, of a debt resulting from the debtor's unlawful interference with the provision of lawful goods or services or damage to property used to provide lawful goods or services,” (Schumer, 2005; Stolberg, 2005). The amendment

failed by a vote of 46-53, with Senator Corzine [D-NJ], not voting. Four Republicans broke with their party to vote for this amendment: Senators Chaffee [R-RI], Collins [R-ME], Snowe [R-ME], and Specter [R-PA]. Two Democrats also split from the party line to oppose this amendment: Senators Byrd [D-WV] and Nelson [D-NE].

Among the Republicans who were vocal supporters of this language in 2002 and changed their votes in 2005 were: Senators Hatch, Grassley, Kyl, and Sessions (Schumer, 2005). Senator Schumer also accused the Senate Republicans of opposing amendments by Democrats to ensure the later passage of the legislation in the House (Schumer, 2005). All the Senators named by Senator Schumer deny their support of the language, and Senator Hatch argued that although he did assist Senator Schumer in making the language of this amendment “more palatable” to Republicans, he never supported the language in the amendment (Hatch, 2005). Senator Hatch also went so far as to label the amendment the “poison pill amendment” that would kill the legislation (Hatch, 2005).

Table 25
Senate Vote on Cloture for S.256

Roll#29	Y	N	NV	T
R	55	0	0	55
	100.00%	0.00%	0.00%	
D	14	30	0	44
	31.82%	68.18%	0.00%	
I	0	1	0	1
T	69	31	0	100

Table 26
Senate Vote on S.256

Roll#44	Y	N	NV	T
R	55	0	0	55
	100.00%	0.00%	0.00%	
D	18	25	1	44
	40.91%	56.82%	2.27%	
I	1	0	0	1
T	74	25	1	100

S.256 finally passed the Senate on March 10, 2005 by a vote of 74-25. Eighteen Democrats voted for the bill and no Republicans voted against the legislation. Senator Clinton abstained from the vote despite her well-documented opposition to similar texts of the bill in the late 1990's when there was speculation of her involvement in the formation of the Clinton Administration policy on the issue and during her 2000 Senate campaign.

The House received S.256 on March 14, 2005 and referred the bill to both the Committee on the Judiciary and the Committee on Financial Services. The Committee on the Judiciary began markup on March 16, 2005 and on March 23, 2005, the Committee on Financial Services waived consideration of the bill to allow it to proceed to the floor (US Senate Report, 2005, pp. 373-375). In his first speech to the Committee Chairman of the House Committee on the Judiciary, Rep. Sensenbrenner [R-WI] asked the Committee to report S.256 without amendments (US Senate Report, 2005, pp. 378). Ranking Member, Rep. Conyers [D-MI] responded, "This is the first time I've heard us urge that amendments be rejected before they've been named, identified, or offered" (U.S. Senate Report, 2005, pp. 378). The debate continued along these lines with minority members of the Committee expressing their discontent at the manner in which the majority denied their right to change the legislation (U.S. Senate Report, 2005, pp. 376-539). In all, the House Judiciary Committee defeated 11 of the amendments proposed in markup by roll call vote, and voice votes defeated the rest (U.S. Senate Report, 2005, pp. 26-37).

Among the more controversial amendments defeated was an amendment offered by Rep. Schiff [D-CA] to allow identity theft victims to file under Chapter 7 regardless of

their ability to repay the debt (U.S. House Report, 2005, pp. 30). The amendment was defeated in a straight party-line vote of 13-15, with four Democrats and seven Republicans not voting (U.S. House Report, 2005, pp. 30-31).

Table 27
House Vote on H.Res.211

Roll#105	Y	N	NV	T
R	225	0	6	231
	97.40%	0.00%	2.60%	
D	2	195	5	202
	0.99%	96.53%	2.48%	
I	0	1	0	1
T	227	196	11	434

After one day of consideration, the House Judiciary Committee ordered a favorable report of S.256 to the House without any amendments (U.S. Senate Report, 2005, pp. 36). On April 13, 2005 the House voted on H.Res.211, a closed rule that would close the bill to amendments and only allow for one hour of debate. Despite the apparent bi-partisan support of S.256, the 227-196 vote in favor of H.Res.211 was starkly partisan. It received only two favorable votes from Democrats and no negative votes from Republicans. The final House vote, however, showed once again a typical vote distribution for this legislation.

Table 28
House Vote on S.265

Roll#108	Y	N	NV	T
R	229	0	3	232
	98.71%	0.00%	1.29%	
D	73	125	4	202
	36.14%	61.88%	1.98%	
I	0	1	0	1
T	302	126	7	435

On April 14, 2005, the bill passed the House by a vote of 302-126. Since the House passed the same language as the Senate, there was no need for a Conference Committee, allowing the bill to go straight to the President. The House sent the bill to

President Bush for approval on April 15, 2005 and on April 20, 2005, the President signed the legislation and the bankruptcy reform bill became Public Law No: 109-8. In his signing statement, the President reaffirmed that the law re-established personal responsibility by allowing the bankruptcy system to be available for those who needed it, but making it harder for those who did not need bankruptcy to gain access to the system (Bush, 2005). Since the passage of this bill, there have been no other major legislative attempts to reform the bankruptcy system.

SUMMARY AND CONCLUSION

This thesis attempts to analyze two Congressional decisionmaking models and two policymaking models to explain the bankruptcy reform process from 1997-2005. The two Congressional decisionmaking models are: Binder's (1999) institutional model and the partisan model suggested by Mann and Ornstein (2006). The two policymaking models are: Kingdon's (1995) garbage can model and the punctuated equilibrium model developed by Baumgartner and Jones (1993).

This data suggests that Binder's (1999) institutional model provides the strongest explanation for the inability of Congressional leaders to reform bankruptcy policy. In 1997, the Senate proposed a measure with 16% Republican reforms while the House legislation contained 83%. This vast difference began to close by 2000, when both chambers produced legislation containing 50% Republican reforms, however, the conference report that President Clinton eventually pocket vetoed contained 58% Republican reforms. This conciliation was not sustainable into future legislative sessions because it included many outside concessions such as a minimum wage proposal and a package of tax cuts. Bankruptcy began to fall off the agenda in the 107th Session after September 11, but was finally passed in 2005 after the Republicans strengthened their majorities in both chambers.

Partisanship does contribute to the passage of the bill in the 109th Congress, as Mann and Ornstein (2006) predict, but it cannot explain why the reform process took

eight years. The only evidence of partisan influence prior to 2005 was in the House roll call votes. Partisanship did not seem to have as great of an effect in the Senate.

However there are large partisan differences in the rhetoric between the parties on bankruptcy reform. The Democratic narrative focused attention on individual groups who will be hurt by bankruptcy reform. On the other hand, the Republican narrative concentrated on the problems of the system and the rampant fraud and abuse. The source of this disagreement is the definition of the problem and the attribution of cause. Both Democrats and Republicans agreed that there was a dramatic increase in the number of consumer bankruptcy filings, and in particular, Chapter 7 filings, resulting in large discharges of consumer debt, leading up to the passage of bankruptcy reform. Democrats argue the increase in filings is due to predatory lending practices by credit card companies and increases in the cost of health care. The Democratic narrative relies on the premise that the failures in the economic system forced consumers into placing large amounts of money on credit cards. Republicans maintain that individuals must be held accountable for the debts they incur, that it is irresponsible and immoral to exploit creditors and borrow money without intending to pay it back. The large discharges of consumer debt have an enormous impact on the economy and the amount of credit available for middle class debtors.

The policy reform process began in the Senate with a bill sponsored by Senator Grassley [R-IA]. The bill contained mostly Democratic reforms and achieved a huge margin of victory with 98% of Republicans and 95% of Democrats voting in favor of the measure. The House bill contained much stronger language and represented 83% Republican reforms. On the final vote in the House, 98% of Republicans voted in favor

of the bill combined with 40% of Democrats. The conference report reflected strong bipartisanship on the issues followed in this study, but despite 50% Republican reforms, only 36% of House Democrats voted for this measure.

In the 106th Congress, the House and Senate measures were much closer, both representing 50% Republican reforms, but the chambers still disagreed over means testing and repetitive filings. Ninety-seven percent of Republicans and 45% of Democrats supported the legislation in the House vote; the bill attained slightly more Democratic support than either House vote in the previous Congress. In the Senate 90% of Republicans supported the Senate version of the legislation along with 73% of Democrats. The conference report actually contained a higher percentage of Republican reforms, 58%, than either bill included prior to the conference committee. The bill won approval in the House by a voice vote and finally passed the Senate on December 7, 2000 with support from 98% of Republicans and 36% of Democrats. However, the bill received a pocket veto from President Clinton.

The 107th Congress considered another three pieces of legislation. The House bill, H.R.333, reflected 75% Republican reforms, and received support from 96% of Republicans and 44% of Democrats. The Senate legislation, S.420, on the other hand, reflected many of the same compromises negotiated in the conference report from the 106th Congress and contained 58% Republican reforms. In the Senate vote on S.420, 94% of Republicans supported the legislation along with 72% of Democrats. The Senate then received the House bill, H.R.333, struck all its language and replaced it with the Senate bill, S.420, and in the second vote 91% of Republicans along with 72% of Democrats. The conference report contained very similar language to the House

legislation, H.R.333, represented 75% Republican reforms. The resulting House vote won the support of 84% of Republicans and 26% of Democrats.

There was very little progress on bankruptcy reform in the 108th Congress; the bill was nearly identical to H.R.333 and represented 75% Republican reforms. There was only one recorded vote on bankruptcy reform in the 108th Congress, and it took place in the House. Ninety-eight percent of House Republicans voted in favor of the legislation and 44% of House Democrats voted against the bill. Senator Grassley [R-IA] sponsored the identical language in the 109th Congress as S.265; thus, it represented 75% Republican reforms. In the Senate 100% of Republicans supported the measure with only 40% of Democrats. In the House, 98% of Republicans voted in favor of the legislation with only 36% of Democrats. Because the House did not amend the bill, there was no need for a conference report and President Bush signed the legislation into law on April 20, 2005.

This analysis also demonstrates strong institutional differences between the houses. The Senate reflects a “softening” toward policy alternatives that Kingdon (1995) discusses. A gradual increase in the percentage of Republican reforms appears in the legislation, but that trend also corresponds with slight decreases in support from Democrats. As the proposals move from 16% (H.R.3150) to 50% (S.625), Democratic support drops from 95% to 74%. However, the next vote in the Senate on H.R.2415, which contains 58% Republican reforms, only 36% of Senate Democrats support the legislation. The only other bill that a majority of Senate Democrats opposed was S.256 in the 109th Congress, which contained 75% Republican reforms and only 41% of Senate

Democrats supported. House votes represent much less consistency and the proposals presented by the House are less consistent in developing policy reforms.

The Kingdon policy model seems to provide a more comprehensive explanation for the bankruptcy reform process. The release of the controversial and divisive NBRC report provided feedback to Congress that there was a problem with bankruptcy reform. The only piece of legislation containing less than 50% Republican reforms was the first Senate bill, S.1301 introduced by Senator Grassley [R-IA] the day following the release of the NBRC report. All the following pieces of legislation contain at least 50% Republican reforms.

This study measures the policy stream through the evolution of legislative proposals. Kingdon's adaptation of the garbage can model also incorporates the idea of softening, which provides an explanation of the long eight-year battle to pass reforms in both chambers. Excluding the first House bill in 1998, which contained 83% Republican reforms, there is a gradual increase in the percentage of Republican reforms included in the legislation produced by each chamber. This implies a gradual strengthening of the policy community supporting the Republican reforms.

To analyze the political stream this study uses evidence of the media salience of frames and interest group representation in Congressional hearings. Although the application of media frames as an indicator of national mood was unsuccessful, the number of witnesses in Congressional hearings expressing creditor interests increased, which opened the political stream allowing the passage of reforms. Rather than acting as agents of change, as predicted by Baumgartner and Jones (1991, 1993), this finds no evidence of a relationship between media attention and the process of bankruptcy reform.

Not only did the media fail to instigate change, they also failed to reflect the change in the policy subsystem by continuing to rely on the traditional experts, despite their declining presence in Congressional committee hearings. The data on committee consideration provides evidence for an increased presence of creditor interests in committee hearings throughout the time frame of the project.

The punctuated equilibrium model attempts to provide an explanation for long periods of stability in policymaking interrupted by hasty upheavals of policy communities. Bankruptcy reform seems a compelling case study for this particular model. The 1978 reforms represent an “ideal type” Democratic policy with few reforms in the years following. In 1994, the National Bankruptcy Review Commission was established by Congress to provide suggestions for modest reforms to the system, but rather the NBRC provides a 1,300 page report with hundreds of recommendations and hundreds of pages of dissent. The release of the NBRC report provides an opportunity for the new Republican Congress to redefine the bankruptcy problem, begin the break down of the 1978 policy subsystem, and develop a new brand of bankruptcy reform.

However, Figure 3 shows a time-series representation of Democratic and Republican frames appearing in news stories, which is not consistent with the punctuated equilibrium model. Baumgartner and Jones (1993) predict that as a policy subsystem disintegrates there will be more negative policy views represented in the media. Despite the increasing prominence of Republican reforms in legislation, newspapers did not reflect any increase in representations of Republican rhetoric in the media. Democratic reforms represent nearly three-fourths of all coded paragraphs, and a majority of all coded paragraphs within each newspaper. Although the decline of Democratic legislative

proposals represents the disintegration of the policy subsystem, there is no external evidence from the print media that the policy subsystem was destroyed.

Part of the reason for the lack of external evidence could be the broader coding scheme adopted by Baumgartner and Jones (1993). In their research, Baumgartner and Jones code the titles of articles for representing either a positive or a negative frame and code all articles associated with the policy topic, rather than limiting the scope of the articles to those discussing legislative proposals.

Both Binder (1999) and Kingdon (1995) provide strong explanations for the process of bankruptcy reform. These models are more successful than the partisan model and the punctuated equilibrium model because they focus solely on internal structures and actors. Forces outside Congress such as elections and national mood affect partisanship and the punctuated equilibrium model relies on the media to act as an agenda setter. The ideological distance between the House and the Senate provides the best explanation of the gridlock in the bankruptcy reform process. Kingdon's garbage can model also can explain the bankruptcy reform process with its problem, policy, and political streams. The NBRC report represents a feedback mechanism after which Congress began to redefine the bankruptcy issue. The policy stream gains intensity until September 11, 2001 and then falls on the agenda, however, since a policy community formed and developed a solution, bankruptcy reform was able to successfully reemerge in the 109th Congress. The political stream shows an increase in the representation of creditor interests in committee hearings corresponding to the increase in Republican reforms in the legislation.

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