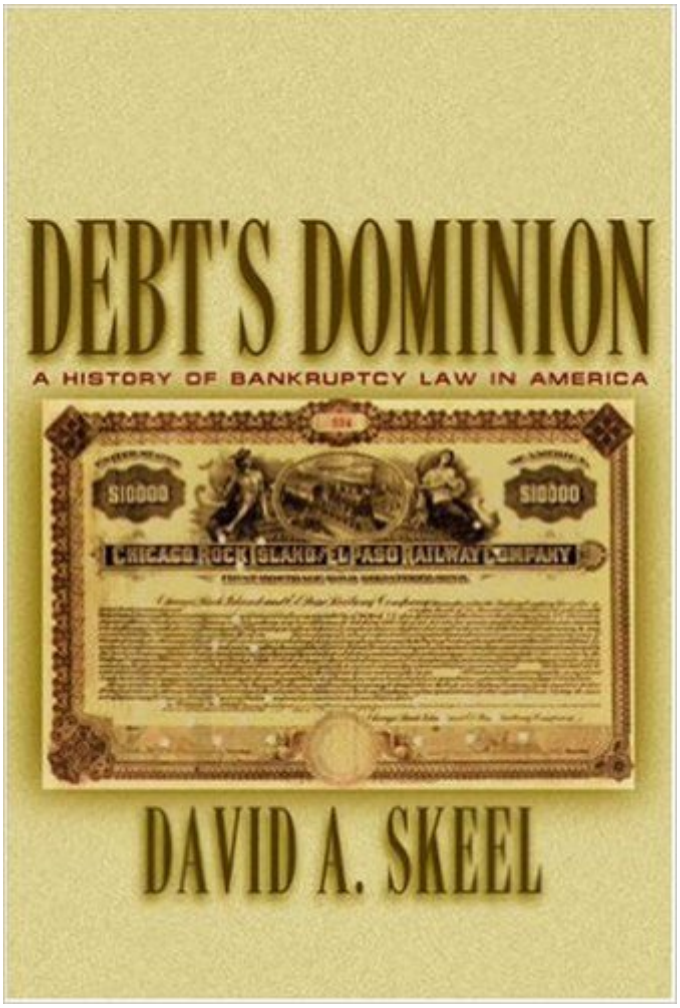
Debt's Dominion: A History Of Bankruptcy Law In America.



Synopsis

Bankruptcy in America, in stark contrast to its status in most other countries, typically signifies not a debtor's last gasp but an opportunity to catch one's breath and recoup. Why has the nation's legal system evolved to allow both corporate and individual debtors greater control over their fate than imaginable elsewhere? Masterfully probing the political dynamics behind this question, David Skeel here provides the first complete account of the remarkable journey American bankruptcy law has taken from its beginnings in 1800, when Congress lifted the country's first bankruptcy code right out of English law, to the present day. Skeel shows that the confluence of three forces that emerged over many years--an organized creditor lobby, pro-debtor ideological currents, and an increasingly powerful bankruptcy bar--explains the distinctive contours of American bankruptcy law. Their interplay, he argues in clear, inviting prose, has seen efforts to legislate bankruptcy become a compelling battle royale between bankers and lawyers--one in which the bankers recently seem to have gained the upper hand. Skeel demonstrates, for example, that a fiercely divided bankruptcy commission and the 1994 Republican takeover of Congress have yielded the recent, ideologically charged battles over consumer bankruptcy. The uniqueness of American bankruptcy has often been noted, but it has never been explained. As different as twenty-first century America is from the horse-and-buggy era origins of our bankruptcy laws, Skeel shows that the same political factors continue to shape our unique response to financial distress.

Book Information

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Customer Reviews

Mr. Skeel's book is an excellent description of the meandering history of bankruptcy legislation in

the United States, linked to the conflicting reactions bankruptcy legislation has always provoked (debtors are expected to pay; but those who for, reasons beyond their control, become unable to do it, are morally entitled to relief and to a fresh start). The book's introductory chapter explains well the basic legal concepts underlying subsequent chapters and makes the book quite accesible to non-specialists. Besides factual information about legislative changes since the beginning of the XIX century - I found particularly interesting Chapter 2, on how judges created de facto a regimen akin to modern Chapter 11 to deal with bankrupt railroads-, the book frames some of those changes in terms of "public choice" theory. For instance, I found interesting Mr. Skeel's view that the conflicting preferences of the various political groups represented in Congress led to a pattern of cyclical majorities among three alternatives (i.e. a)no bankruptcy law b)strict, "complete" pro-creditor bankruptcy code, and c)lenient, "voluntary-only" pro-debtor bankruptcy legislation) which might explain the instability of US bankruptcy law up to 1898. Chapter 4, on legislative changes introduced in the 30s in the backlash against the previous excesses in Wall Street, sheds significant light on some outstanding and recently-discussed differences between US and British bond legislation (e.g. the prohibition in the US, under the 1939 Trust Indenture Act, of many "collective action clauses" allowing bondholders to accept by majority -as oppposed to unanimity- changes in the terms of the bonds). Some short passages of the book -e.g.

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