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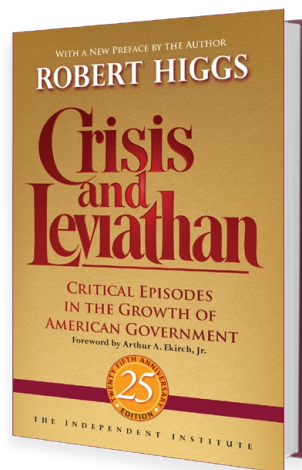
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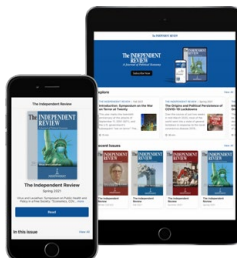
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# Repudiation in Antebellum Mississippi

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CLIFFORD THIES

In 1840, the state of Mississippi defaulted on interest payments on \$2 million of Planters Bank bonds and \$5 million of Mississippi Union Bank bonds. At about the same time, seven other states and one territory subsequently granted statehood defaulted on their debts (McGrane 1935; Ratchford 1941; English 1996; Wallis, Sylla, and Grinath 2004), as did the Republic of Texas, later annexed as a state (Pecquet and Thies 2006, 2007, 2009). Most of the states subsequently reconciled with their creditors—for instance, by resuming interest payments and funding interest arrears—and furthermore adopted constitutional restrictions on indebtedness (Thies 2002, 248–50; Dove 2012). Mississippi, however, proceeded to repudiate both issues of bonds and to undermine the private debts due to its banks. With respect to state bonds, why did Mississippi not reconcile with its creditors? With respect to private debts, Mississippi was apparently prohibited by the U.S. Constitution from interfering with these contracts, so how was it able to nullify them? Examining this episode of repudiation exemplifies the importance of institutional arrangements for the protection of debt.

An early literature argued that the value of continued access to foreign capital might be sufficient to motivate sovereigns to repay debt (e.g., Eaton and Gersowitz 1981). Jeremy Bulow and Kenneth Rogoff (1989a, 1989b) challenged this view, arguing that, under very general conditions, reputation alone is not sufficient, so that some form of sanction might be necessary to induce repayment. Douglass North and Barry Weingast (1989; see also Weingast 1997) explore the development of

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Clifford Thies is a professor of economics and finance at Shenandoah University.

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institutional arrangements to assure creditors of repayment and thereby to enhance the ability of sovereigns and private parties to borrow, given that reputation alone might not be sufficient to motivate repayment. Among the institutional arrangements they discuss is an independent judiciary.

William English (1996), examining the experience of the American states that defaulted during the early 1840s, found that those with lower per capita debt burdens tended to resume debt payments and fund interest arrears, whereas those with higher debt burdens tended to settle with creditors at less than the face value of their debt or repudiate. Curiously, Mississippi had a relatively light debt burden, yet it repudiated its debt. These findings might be taken to indicate that reputation may usually be sufficient to induce sovereign debt repayment if the debt burden is relatively small and to highlight the exceptional characteristic of repudiation in the case of Mississippi.

In 1841, soon after Mississippi defaulted, the state legislature passed an anti-repudiation resolution. But in the next election the composition of the state legislature was dramatically changed, and a pro-repudiation resolution was supported by large majorities in both chambers (Brough 1900, 336–37). As developed in this essay, the executive and legislative branches of the state government then engaged in a war against the state's banks. Against the popular sentiment, the judiciary proved insufficient. Significantly, by reason of the Constitution of 1832, judicial offices were made elective. No longer would jurists enjoy lifetime appointments, but circuit court judges would be elected to four-year terms, and the three justices of the state's supreme court (the High Court of Errors and Appeals) would be elected to overlapping six-year terms.

During the nineteenth century, nations that defaulted on their international debts put themselves at the risk of invasion. Such an invasion and threats of the same are referred to as “gunboat diplomacy” (Mitchener and Weidenmier 2005; Weidenmier 2005). Michael Tomz (2007), examining three centuries of sovereign-debt repayment, finds that reputation as opposed to sanctions better explains why some nations repay. Ugo Panizza, Federico Sturzenegger, and Jeromin Zettelmeyer (2009) review the literature on sovereign debt and default, concluding that we have not yet satisfactorily resolved the issues involved.

J. F. H. Claiborne tells of a debate between a pro-default Mississippi Democrat and an antidefault Democrat in 1843. The antidefault Democrat spoke of British cruisers off the shores of the state. At this point, a member of the audience spoke. “Sir, in that event I join my countryman who opposes the payment of the bonds. My sword . . . sir, the last drop of my blood, shall be spent in resisting the demand. My state, sir, may she be always right, but, right or wrong, the state, sacred, intangible and profane, forever” (1860, 208). In the U.S. Congress in 1843, former president John Quincy Adams, a Whig, offered a resolution that would deny to Mississippi the protection of the federal government in the event the state was invaded by its creditors: “[I]n the event of such a war, the State

involving herself therein will cease thereby to be a State of this Union, and will have no right to aid in her defense from the United States, or any one of them” (qtd. in Scott 1893, 243–44).

Whether to preserve the peace or to maintain the credit of the United States, some advocated a federal assumption of state debts. In 1841, U.S. senator Henry Clay of Kentucky, also a Whig, who described a federal assumption of state debts as “wicked,” nevertheless proposed that the federal government use the distribution of funds from land sales and from taxes on the importation of luxuries to help states reconcile with their creditors (Seager 1988, 491–92). At a later time, Clay included a scheme to resolve the debt of Texas as part of his proposed Compromise of 1850. Mississippi, like Texas, might have required special consideration. And because Mississippi seemed special, some thought that were the other states to reconcile with their creditors, the state of Mississippi might be treated as a pariah within an otherwise creditworthy United States and so would not be invaded (Austin 1842). Looking back, we know that invasion by creditors was not used to induce Mississippi to reconcile with its creditors. Nevertheless, the question remains: Why were institutional arrangements not sufficient to guarantee repayment?

The rest of this article is organized as follows: the next two sections detail the events concerning the repudiation of the Mississippi Union Bank bonds. The third section places Mississippi’s problems into the context of the Panic of 1839. The fourth section examines the undermining of the private debts owed to the state’s banks. Finally, the article turns its attention to the depressed economic conditions that followed Mississippi’s bank war and the broader implications of these events.

## Mississippi’s Banking Orgy

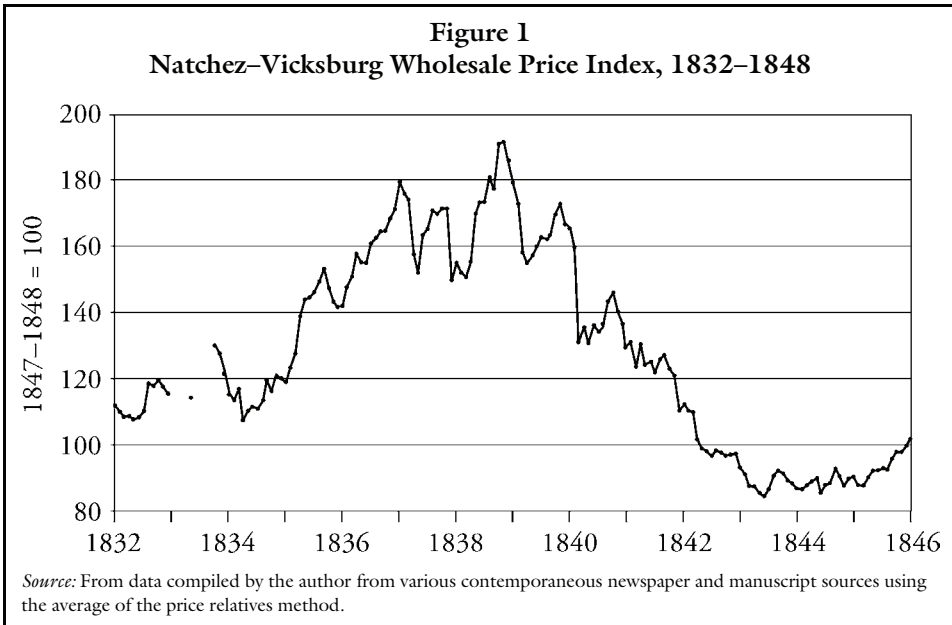
During the early to mid-1830s, the states, in particular Mississippi, were increasing the number and authorized capital of their banks in conjunction with the expiration of the charter of the (Second) Bank of the United States. Mississippi entered the 1830s with one bank. By 1837, it had fourteen, six of which were to use their banking powers to promote railroad construction. During 1838, another nine banks were organized, four of the new banks being railroad banks and one a waterworks bank (Weber 2006). From numismatic sources, it is known that at least a half-dozen note-issuing unincorporated banks, such as the Real Estate Bank of Hinds County, sprang up (Leggett 1975).

During this time, prices of cotton, commodities in general, land, and slaves were rising. Because banks were specie paying through early 1837, this rise of prices was befuddling. “Everyone is at loss to account for the high prices of ordinary articles of living” (*Natchez Free Trader*, hereafter *FT*, November 17, 1836). “Why is it, said a planter to his friend not long since, that every species of commodities has risen to double its former value; that now I cannot buy land,

or Negroes or provisions, or indeed anything else without paying double the sum that I did three years ago?” (*FT*, February 2, 1837). Then in May 1837, all the banks in Mississippi suspended specie payments (*FT*, May 23, 1837).

For a long time, the accepted explanation of the inflationary boom of the 1830s was the state banks’ easy-money policies. In real time, the *New York Journal of Commerce* (May 3, 1837) blamed the gathering panic on speculation in land along with actions of the Bank of England, state indebtedness for public works, the distribution of the surplus revenue by the federal government, the prohibition of small bills by New York and several other states, the weakened condition of the financial institutions of New York due to the fire of 1835, and the winding up of the Bank of the United States. President Andrew Jackson’s specie circular (which required that federal land purchases be paid in gold or silver) or his distribution of the federal surplus or both then served as the precipitating cause or causes that pricked the speculative bubble and ushered in the ensuing hard times (see, e.g., McGrane 1924; Hammond 1957; Timberlake 1960). Following Peter Temin (1969), we should consider the possibility that international developments were the root causes of the inflationary boom. More recently, Peter Rousseau (2002) has argued that the specie circular and the distribution of the surplus were crucial insofar as certain transfers of funds were the proximate cause of the suspension. Whatever the root causes of the inflationary boom or the precipitating cause or causes of the bust, the suspension of specie payments was accompanied by deflation and a suddenly increased burden of debt repayment.

Figure 1 presents an index of commodity prices in Mississippi during the period of this study. It shows the run-up in prices that preceded the Crash of 1837 and the fall in prices that occurred in conjunction with that crash. Relief from this deflation in Mississippi and in several other states was to be provided by the chartering of additional and much larger banks. As figure 1 shows, following the suspension of specie payments in 1837, the deflation was quickly reversed. The largest and most important of these new banks were the Mississippi & Alabama RR and Banking Company (Brandon Bank), which got under way during 1837, and the Mississippi Union Bank, which got under way during 1838. The ostensible purpose of the Brandon Bank was to construct a railroad from Jackson eastward to the Alabama border. It instead got massively into the business of extending loans to planters, secured by shipments of cotton. The bank’s scheme was to bypass New Orleans, where many Mississippi planters had already overextended their credit. Cotton was to be shipped directly from Mississippi to Philadelphia and New York. “Col. Shelton, the president of the Brandon bank, and its directors deserve much credit for the lead they have taken in this relief movement,” the *Natchez Free Trader* stated on August 2, 1837. And on September 30, it commented, “It will be seen at a glance that the master stroke of policy pursued by this bank last summer . . . will give it the command of eastern funds or specie, and thus place it in a better position than any other banking institution in the country.”



The Brandon Bank “has won the good opinion of the whole community. . . . The bank is now buying large amounts of cotton . . . and furnishing exchange to those who desire northern funds. . . . It will be the first bank in the state to resume specie payments,” stated the *Mississippian* on October 6, 1837. With high optimism, it argued, “It is natural that [the New Orleans] banks . . . should be envious of the Mississippi and Alabama Railroad Bank. . . . Mississippi . . . will be the first state to emerge from the commercial thrall which now weighs like an incubus upon the whole country. . . . The North will struggle for years amid the adverse currents of prostrate credit, but . . . Mississippi will spring like a Phoenix from the ashes, into a full tide of prosperity” (November 17, 1837). Moreover, it said scornfully, “[t]he Brandon Bank, having diverted a large portion of trade from the brokers and shavers of New Orleans, has become obnoxious to that piratical crew” (February 9, 1838).

The scheme of the Brandon Bank might have worked if the price of cotton had recovered, but it continued low.<sup>1</sup> By early 1838, Brandon Bank money fell to a discount in Natchez, trading for less than its face value, and apologists for the bank were becoming shrill: “The Brandon Bank, we are happy to add, will soon redeem (as we always believed it would) its notes by northern exchange at 6 percent premium” (*FT*, May 3, 1838); “The bills of the following banks are not bankable in this city: Brandon, . . . , for which brokers charge 10 percent”

1. James Watkins attributes the low price of cotton to supply-and-demand conditions in the international cotton market, not to monetary conditions (1969, 17–18).



(*FT*, May 18, 1838); “We . . . advise holders not to dispose of this money [Brandon Bank notes] at the late and ruinous rates of discount” (*FT*, August 2, 1838).

The discount on Brandon Bank notes in Natchez rapidly increased, reaching almost 40 percent by the end of the year (*FT*, various issues). In August 1838, a report by the State of Mississippi was released that was prejudicial to the bank, indicating that it was capitalized with mortgages on real estate, slaves, and cotton, with little or no “bone fide” capital, and that it was used extensively to enable its directors to finance their dealings in cotton (*FT*, August 30, 1838). During 1838, various merchants offered goods “at par” for Brandon money, presumably to discharge their own debts to the bank in the bank’s depreciated notes—for example, one advertisement said, “Brandon Money or other of equal value for goods at par—S. J. Boyd” (*FT*, May 31, 1838).

If the bank’s loans had been good, its circulation could have been sopped up in the repayment of loans coming due, as was not unusual then for banks that suffered liquidity problems but were fundamentally solvent. But, judging by the evolution of the discount of Brandon Bank notes in Natchez through the next several years, its loans could not be collected. The last time we hear of this bank is when its cashier fled the state, “Gone to Texas” (*Niles’ Register*, May 23, 1840). A few years later, its president, Colonel Shelton, committed suicide (*FT*, April 10, 1843; Rowland 1907, 196). As figure 1 shows, during 1838, as the notes of the Brandon Bank and several other banks lost their currency, deflationary pressure returned. Accordingly, the focus of relief efforts that year switched from the Brandon Bank to the Mississippi Union Bank.

## The Mississippi Union Bank

The Mississippi Union Bank was to be a 50 percent state-owned bank, headquartered in the state capital and capitalized through the issue of up to \$10 million in state bonds. Because of the state bond provision, the act chartering the bank had to be passed by two successive state legislatures. Upon the completion of this process, the new governor of the state, A. G. McNutt, a Democrat, signed the bill chartering the bank in February 1838 and subsequently appointed commissioners to sell \$5 million of state bonds.

As a member of the state legislature prior to being elected governor, McNutt had opposed the act chartering the Mississippi Union Bank. But in his Inaugural Address he recognized the problem the state faced, having incurred debts “when money [was] plenty and prices high,” relying for payment on the export of cotton, which was “entirely dependent on the demand and currency abroad, and does not rise and fall in proportion to other articles” (*Vicksburg Register*, January 13, 1838). He considered the alternatives suggested by his predecessor in the latter’s annual message of just a few days earlier (January 4, 1838), including making banknotes a legal tender, but he maintained that these options were prohibited by the

U.S. Constitution. In spite of his protestations, not only did McNutt risk the state's credit on the price of cotton in signing the Mississippi Union Bank bill and authorizing the issue of \$5 million of state bonds to provide its capital, but he would subsequently attempt to do so a second time, after his first attempt failed; in this second attempt, however, he was rebuffed by the market. He would then declare the Mississippi Union Bank bonds void because of a technicality and suspend interest payments.

The United States Bank of Pennsylvania famously bought the Mississippi Union Bank bonds and used them to secure loans from European investors. The proceeds of the bonds were largely used to refinance the obligations of Mississippi planters due in New Orleans: "Proceeds of the loan enabled the paying off of debts by planters in New Orleans" (*Natchez Courier*, February 5, 1839).<sup>2</sup> Planters were also enabled to obtain new credits through the issue of post notes.<sup>3</sup> These notes' lack of convertibility was no great disadvantage since the state's banks were then in suspension: "No one has been injured by the issuance of these post notes[;] on the contrary, everyone has benefited, and the currency of the state improved. Many who owed executions have been enabled to repay them and save their property from sacrifice. Merchants and foreign creditors have been enabled to collect and procure exchange on the North and New Orleans" (*Mississippian*, December 28, 1838). The scheme "will afford great relief to those who are required to pay money to the Marshall and Sheriff at the fall terms of the courts. . . . It will immediately revive our currency and resuscitate the depressed condition of all the monetary affairs of the state" (*Natchez Courier*, September 8, 1838). The Mississippi Union Bank, "we have no doubt, will well sustain its own credit and that of the state" (*Natchez Courier*, December 20, 1838).

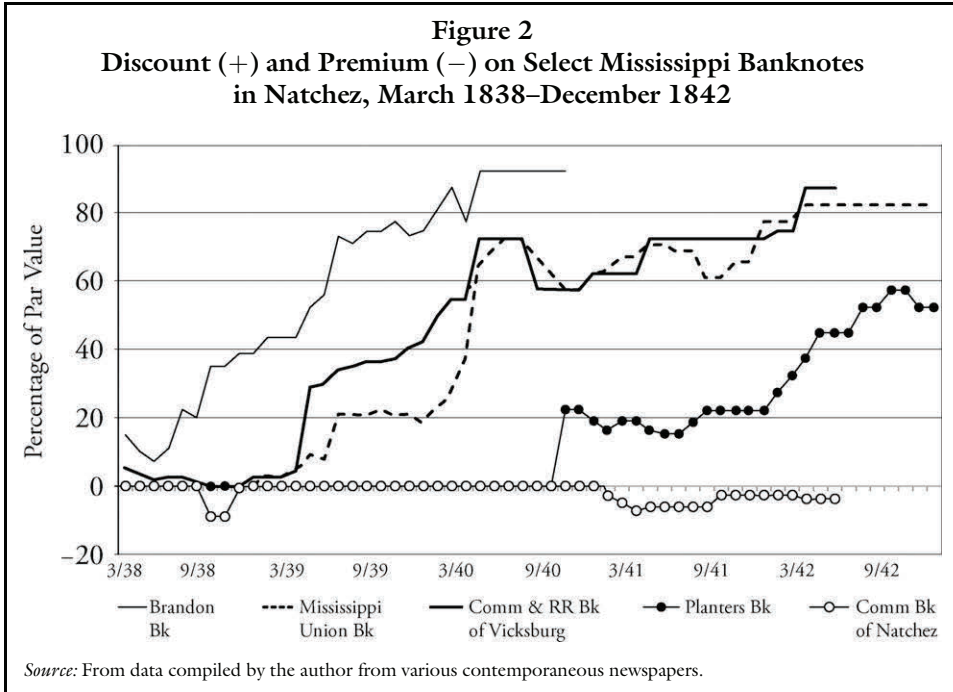
Through 1838, as the state's surviving banks prepared to resume specie payments, the premium on specie relative to current banknotes fell to zero. In October, the Commercial Bank of Natchez resumed specie payments on its own. Its notes then rose to a premium against the notes of the city's other banks. In December, the other banks of Natchez agreed to resume on January 1, 1839 (*FT*, December 13, 1838; *Vicksburg Sentinel*, December 29, 1838). The resumption proved to be somewhat nominal as the banks largely replaced their demand notes in circulation with post notes: "The post notes of the various banks are now

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2. Because the bulk of the proceeds of the sale of the Mississippi Union Bank bonds was used to refinance out-of-state debts, the following account, which has made its way into some of the authoritative histories of the state, apparently based on oral history, is largely if not completely fanciful: "In the course of time, the \$5,000,000 in specie and British gold arrived by ocean steamer at New Orleans; thence by river steamer at Vicksburg, thence by a guarded caravan of wagons to Jackson, where the central office [of the Mississippi Union Bank] was located on a plot of ground now occupied by E. P. Veren's store. Major Millsaps relates that the oldest citizens yet remember the crowds of people assembled along the line of the dirt road from Vicksburg to Jackson to witness the wagon train, as it moved along its burdensome way to the state capital" (Brough 1900, 330).

3. Specie could be demanded by holders of post notes only after a period of time.





almost our only currency” (*Natchez Courier*, April 11, 1839). Because the notes of Natchez banks actually in circulation lacked convertibility, the lack of convertibility of Mississippi Union Bank notes was, again, no great disadvantage. “Union Bank money,” the *Natchez Courier* commented on April 18, 1839, “has been in good demand at a handsome premium upon the post notes of our city banks.” Figure 2 shows that through 1838 Mississippi Union Bank notes passed current in Natchez, after which they fell to a discount. From 1838 to 1839, newspapers indicate that Mississippi Union Bank notes passed current in Jackson (*Mississippian*, November 23 and December 28, 1838), Lexington (*Lexington Union*, May 18, 1839), and Yazoo (*Yazoo States Rights Democrat*, August 13, September 10, October 16, and November 13, 1839).

During the course of 1839, the state-supported Mississippi RR & Banking Company and the state itself attempted to sell additional bonds to out-of-state investors. In February 1839, the state transferred its holdings of Planters Bank stock to the Mississippi RR & Banking Company to enable the latter to advance the work on its road projected from Natchez to Jackson (*Madison Whig Advocate*, February 22, 1839). The president of the company, John A. Quitman, a former acting governor and a future governor of the state, traveled to Europe to sell bonds secured by the stock (May 4 and June 26, 1839). But nothing came from this effort “in consequence of the times [and] the prostration of American securities” (Claiborne 1860, 181). In the summer of 1839, McNutt executed the remaining \$5 million of Mississippi Union Bank bonds, commissioned the president of that

bank—another former governor of the state, Hiram G. Runnels—to sell the bonds to northern investors, but he could find no buyers (Austin 1842, 3; Rowland 1907, 197).

The rebuff of the Mississippi bond offers made it clear that the speculative bubble would not be reinflated. The conclusion of the speculative bubble may have been inevitable, but it was not helpful for a second issue of Mississippi Union Bank bonds that the governor, in his annual message of 1839, questioned the actions of the commissioners he had appointed to sell the first issue of these bonds: “The commissioners in the sale of the bonds exceeded their instructions, but no doubt obtained as much for them as could have been had at the time of the sale. An anxious desire to place the bank into speedy operation was certainly commendable, but at the same time no violation of the charter should have been sanctioned” (qtd. in *Vicksburg Sentinel*, January 15, 1839). “The Union Bank,” an opposition newspaper said, “whose means and credit are greater than any other institution, and alone promises some hopes of relief was denounced in such terms as brought about distrust of the institution, and caused the paper of that bank to flow back upon it in the shape of demands for exchange. The bank thus crippled . . . was compelled to cease its loans” (*Madison Whig Advocate*, May 11, 1839).

By 1840, the focus of relief had shifted from gaining renewed and additional credits to avoiding repayment of debts. In his annual message of 1840, McNutt described the potential burden posed to the taxpayers of the state for the repayment of the Mississippi Union Bank bonds: “[E]ven with the most able and prudent management, [the bank] can never hereafter be made useful. . . . I have come to the conclusion that it is our duty to place the institution over in liquidation” (qtd. in *FT*, January 16, 1840). And, after saying that “[t]he faith of the State is pledged for the whole capital stock, and the property of all her citizens may hereafter be taxed to make up its losses and defalcations,” he rhetorically asked, “[H]ave we a right to borrow of posterity, and will a future generation redeem our pledges?” (qtd. in *Piney Woods Planter*, February 1, 1840).

Two months after giving his annual message, McNutt answered his rhetorical question by issuing a proclamation stating that the Mississippi Union Bank bonds had been sold below par because the entire amount of the loan was not immediately paid over to the state but was received in installments over several months. According to McNutt, the below-par sale was in contravention of the state constitution and made the transaction void (*FT*, March 5, 1840).<sup>4</sup> William Coker says that McNutt shifted to an antibond position because he aspired to be elected to the U.S. Senate (1969, 12). Nevertheless, he was defeated in this senatorial bid and then retired from politics.

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4. Years later the state supreme court ruled that the bonds might have not been issued for their full face value, but that the bonds nevertheless remained an obligation to the extent of the actual value accepted by the state (*Natchez Courier*, August 6, 1853). One of the justices joining in that decision was then defeated for reelection by a pro-repudiation/states rights candidate (Rowland 1935, 94). The 1853 ruling was many more years later negated by an amendment to the state constitution repudiating the Mississippi Union Bank and Planters Bank bonds (Coker 1969, 53).

## The Panic of 1839

As mentioned earlier, during 1838, as the state's banks prepared to resume specie payments, the premium on specie relative to current but nonconvertible banknotes fell. Figure 1 shows that during this time commodity prices were again rising, oddly displaying the same kind of "double-headedness" pointed out by John Wallis (2001, 4). Prices peaked in 1837, fluctuated during the next two years with the initial success and subsequent failure of the Brandon Bank, and then peaked again in 1839 with the initial success of the Mississippi Union Bank. The second suspension provided only fleeting relief from the deflationary pressure that would devastate the state's economy. Figure 1 shows that prices then fell more or less continuously through 1843.

As Wallis argues for the country as a whole, the deflation following the Panic of 1839 was due to a fall in the bank deposit component of the nation's money supply, a fall that was concentrated in the South and the West (2001, 11). In Mississippi, the collapse of the state's banking system ushered in a time of near moneylessness, with a curtailment of business and a resort to scrip and barterlike transactions until out-of-state banknotes and private banking arrangements eventually filled the void.

In April 1840, price currents in Natchez began to be annotated that their prices were in terms of specie (*FT*, April 23, 1840, and subsequently). Then in January 1841 price currents began to be annotated that their prices were in terms of New Orleans money (January 14, 1841, and subsequently).<sup>5</sup> "We have literally no money of our own in circulation in currency, even our shinplasters [small denomination notes issued by municipalities, tavern keepers, toll road operators, and such] having given way to those of the various municipalities of New Orleans, which now form our only small change," stated the *Madison Whig Advocate* on May 30, 1840. A few days earlier the *Natchez Free Trader* had commented, "Municipality Notes of New Orleans constitute a considerable portion of the small circulation of the western portion of this State" (May 26, 1842).

"Business is exceedingly dull," opined the *Natchez Courier*. "Transactions in every department of trade are confined to the immediate wants . . . owing partly to the extreme scarcity of money" (August 26, 1841, emphasis added). "For two months past," it stated, "no change has occurred in any department of trade. Business has been paralyzed. . . . In every branch of business necessity has been the mother of all transactions" (September 16, 1841). Another newspaper heavily intoned, "[W]e must acknowledge the depression of the time" (*Vicksburg Whig*, October 28, 1842).

5. It is similarly clear enough that Alabama money emerged as the medium of exchange in retail transactions in the eastern region of the state (e.g., *Columbus Democrat*, April 8, 1843) and that Tennessee money emerged as the medium of exchange in the northern region (e.g., Memphis price currents and banknote tables reprinted in the *Holly Springs Mississippi Palladium*, July 25, 1851, and subsequently).

The account book of James Fleming (Stamp 1986), a merchant, shows many in-kind transactions from 1839 to 1842; for example, paid “by labour” at the rate of \$20 per month, “paid for by one dollar per barrel [of corn],” and “paid in beef.” A particular payment to Fleming by a Mrs. Moore in 1848 stands out: paid with “three bushels and three pecks of oats, one bushel of potatoes [valued at \$1 per bushel], 10 bushels of seed oats, 1½ bushels of peas [valued at 75 cents per bushel], one bolt of Lowell cloth, and 25 cents in cash.” D. Clayton James describes the fall in daily revenue of a free Negro barber in Natchez who kept a diary from the halcyon days of the city, when he operated two smaller shops in addition to his shop on Main Street as well as a public bath house, to the depths of the depression, when he contemplated leaving the business (1968, 212). By the late 1840s, it began to be noticed that foreign banknotes were circulating within the state in some abundance.<sup>6</sup>

### The Mississippi Bank War

In addition to repudiating the Mississippi Union Bank bonds in 1840, the state effectively repudiated the debts due to the state’s banks. That year and for some years following, several legislative acts and lower courts that had become hypertechnical when considering pleas from banks disabled the state’s banks from collecting the debts in default due to them: “We believe that few if any of our banks have been able to obtain verdicts at the late sessions of our courts, where the cases were defended,” stated the *Natchez Free Trader* on December 3, 1840. Three years later the *Port Gibson Herald* was still complaining, “It is said to be almost impossible to collect a debt by judicial proceeding in this State. The whole tenor of legislation for several years has been directed against creditors” (May 25, 1843). The state supreme court said that “the process of collection was very slow from 1840 to 1843” (*FT*, February 18, 1846). Although the U.S. Supreme Court would eventually rule that the state had violated the U.S. Constitution’s prohibition of interference with contract, the state supreme court then effectively overruled the U.S. Supreme Court by saying that the statute of limitations for the collection of debt had been reached.

The war on the banks of Mississippi began with an 1840 act repealing the state’s post-note law, thus requiring banks to resume specie payments or else have their charters voided (*FT*, February 13, 1840). A provision of the act prohibited banks from selling (or “negotiating”) debts due to them. This provision prohibiting banks from transferring debts due to them was upheld by the state supreme court

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6. During the late 1850s, it was sometimes argued that foreign banknotes had driven specie out of circulation. However, at no time had anyone observed that specie was actually in (contemporaneous) circulation to any great extent. The memory of a “constitutional currency” was a projection of ideology. The collapse of Mississippi’s banks was not followed by the circulation of silver and gold coins but instead by a shortage of currency.

in *Payne v. Baldwin* in 1844. “Negotiability,” said the court, “is an incident or quality attached to notes by law [i.e., it is not a liberty], not by charter. It does not constitute an essential ingredient in a note” (qtd. in Long 1977, 33–34).

During 1840, the discount on notes of the Mississippi Union Bank rose to more than 50 percent in Natchez (*FT*, various issues). So too did the notes of the other non-Natchez Mississippi banks traded in that market not already quoted at such a discount. The discount on the notes of the Mississippi RR & Banking Company also rose to more than 50 percent during 1840 (May 1985, 105), leaving Natchez with only one bank whose notes remained current, the Commercial Bank of Natchez. Among those who departed the state, “Gone to Texas,” was the president of the Mississippi Union Bank (Lowry and McCardle 1891, 277).

Starting in June 1840, the governor began issuing proclamations that the charters of various banks in the state were void because they did not redeem their notes in specie (*FT*, June 18, 1840). By the end of the year, the governor had voided the charters of nine of the state’s twenty-two incorporated banks and was of the opinion that eight others had not complied with the new banking law (and were at risk of having their charters voided) and that only five banks—two of which were in the process of voluntarily winding up their business—were in compliance (*FT*, January 7, 1841).

The bank war continued with the so-called *quo warranto* law of 1843. This law suspended foreclosure on debt due to a bank accused of being in violation of its charter and, provided for the appointment of a trustee, as distinct from a receiver, for the purpose of winding up the affairs of a bank whose charter was voided. Certain Democrats were still arguing two years later that upon the voiding of a corporate charter, the debts due to the corporation also became void: “The debts due to or from the corporation are all extinguished. Neither the stockholder, nor the directors, nor trustees of the corporation can recover those debts” (*Yazoo Democrat*, September 10, 1845); “Our state will be the first where the crimes of corporations will be thoroughly probed and the law bearing upon them clearly demonstrated and settled” (*FT*, June 3, 1845); “[I]f the judges in our courts decide that the debtors to the bank are released from their obligations by reason of certain illegal acts on the part of the banks, . . . the people would abide by it without a murmur” (*Southern Reformer*, June 25, 1845).

The Whig press argued, contrariwise, that the amended method of winding up the affairs of shuttered banks would retire the banks’ liabilities through the process of collecting upon their assets: “[I]t is altogether a mistake to suggest that this act . . . abrogate[s] the debts of the banks. It is one of the most speedy and effectual modes of collecting the debts and settling with the creditors of the banks that we have yet had in Mississippi. . . . In a very short time, there will be no such thing as a Mississippi banknote to be found, the circulation will have been returned in payment for indebtedness to the banks” (*Vicksburg Whig*, June 21, 1845).

Following the law of 1843, writs of *quo warranto* were served on all or almost all of the state's remaining banks. Some of these banks, instead of resisting the law, surrendered their charters and wound up their business. Among them was the Bank of Port Gibson (*FT*, June 26, 1845), which converted from a chartered to a private bank, remaining in business but giving up the ability to issue banknotes. Some banks resisted, at least initially. Among them were the Agricultural, Commercial, and Planters Banks of Natchez, which appealed their decisions to the state supreme court (*Vicksburg Whig*, June 21, 1845).

The state supreme court sustained the *quo warranto* provision in 1845 (*FT*, March 8, 1845). The next year, in *Nevitt v. Bank of Port Gibson* (*Vicksburg Whig*, February 11, 1846), the court furthermore sustained the debt collection provision. In a two-to-one decision, the court affirmed the provisions both for suspending foreclosure upon a writ of *quo warranto* and for providing for a trustee to collect the debts due to the bank because the latter provision indicated that the "avowed and ostensible object of the former was to preserve the assets of the banks pending litigation" and therefore that the former was not an interference with contract (qtd. in *FT*, February 18, 1846).

The Democratic press's reaction was predictable: "The decision if carried into effect will cause much suffering and distress among those indebted to the banks, without benefitting any but the assignees, lawyers and a few capitalists who have bought up the paper of the bank at a mere nominal sum, and will extortion upon those who are compelled to have it to pay their liabilities" (*FT*, February 16, 1846). The state legislature responded to the *Nevitt v. Bank of Port Gibson* decision by passing a new banking law, the so-called Briscoe Bill. The Briscoe Bill created a two-year period during which the debtor could redeem property sold in foreclosure and furthermore gave debtors the right to pay the bank in (presumably depreciated) banknotes prior to foreclosure, but it also required that at foreclosure only gold and silver could be bid for the property (*Vicksburg Whig*, March 4, 1846), both of which provisions favored debtors at the expense of noteholders and shareholders.

The state supreme court soon declared the Briscoe Bill unconstitutional as an interference with contract (*Vicksburg Whig*, March 17, 1847). The Democratic press's reaction was again predictable: "The dead bodies of the banks are hereby galvanized and set on foot once more, and in the most pernicious way. A host of irresponsible lawyers and assignees . . . have been set upon the community . . . at an untold expense to the honest and hard-working men of the state. . . . [B]y this decision, the banks have been re-chartered" (*FT*, March 25, 1847).

The next year, 1848, in *Planters Bank v. Sharp* (47 U.S. 301) the U.S. Supreme Court decided an appeal from the 1844 decision of the state supreme court, which had upheld the provision of the law of 1840 prohibiting banks from negotiating debts due to them. The U.S. Supreme Court overturned the state court's decision, saying that negotiating debts due to banks was a long-established practice of banks



and that this right was vested in a bank unless specifically excluded in the bank's charter. In this decision, the Court recognized that the consequence of the right of banks to negotiate debts due to them was to enable the offsetting of the bank's debts against debts due to the bank and so to facilitate the winding up of the bank's business in a way that preserved the creditors' and bank owners' interests (Long 1977, 40).

With the 1848 U.S. Supreme Court *Planters Bank v. Sharp* decision, it might seem that still uncollected debts would be resolved in accordance with the rule of law. For example, in 1849 banknotes of the former Bank of Port Gibson and the former Commercial Bank of Rodney were offered for sale (*Port Gibson Herald*, December 14, 1849), presumably because debtors to the banks would be interested in acquiring them to offset still outstanding debts due to those banks. In 1850, the state supreme court considered whether a debt due in 1842, which was assigned by the Bank of Port Gibson in 1843, was made void by a forfeiture of the bank's charter under a writ of *quo warranto* of 1845. The court decided that the debt was not made void and remanded the case to circuit court (*Port Gibson Herald*, February 8, 1850).

Although the 1850 Port Gibson case indicated that long-overdue debts to banks might be collected by reason of the 1848 U.S. Supreme Court decision, at about the same time the state supreme court considered another case of a long-overdue debt to a bank. This case involved a debt due to the Commercial Bank of Natchez. The court decided, two to one, that an unconstitutional suspension of foreclosure did not suspend the statute of limitations on debt collection (*FT*, January 23, 1850; *Vicksburg Whig*, January 23, 1850). The court's tortured decision weighed enforcing contracts in accordance with the rule of law against avoiding what would otherwise be endless litigation.<sup>7</sup>

In the late 1840s, it appears from the course of prices shown in figure 1 that the economy of Mississippi began to recover: "The business season in Natchez seems to have opened with some considerable degree of animation," commented the *Natchez Courier* on September 22, 1847, and a couple of years later the *Port Gibson Herald* stated that "[i]t is pleasing to notice that great improvements in the business and future prospects of our town, within the last three to four years. Then business of all kinds was languishing, homes were going to decay, merchants were half employed and worse paid" (December 7, 1849).

Along with the revival of the economy, there was a kind of a revival of banking. The two chartered banks that survived the bank war—the Northern Bank of Mississippi and the Commercial Bank of Manchester—expanded or revived their business. In addition, a number of private bankers, insurance

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7. This decision did not quite bring the bank war to its conclusion. The final case also involved the Commercial Bank of Natchez. In it, the state supreme court decided that the trustee's power to collect debts due to a bank ended when the creditors of the bank were satisfied and that the bank's shareholders would not benefit from any remaining uncollected debts (*Natchez Courier*, January 27, 1853).

companies, commission merchants, cotton factors, and brokers provided banking services to the state. Julius Bentley says that these financial institutions' ability to raise money was limited relative to the former chartered banks' ability: the "banking institutions were unable to mobilize as much in loanable funds by circulating their demand liabilities," and the "financial institutions in the state mobilized comparatively little capital from out-of-state sources" (1969, 251–53).

Even with this recovery, the state's citizens resisted reconciliation with its creditors. In 1852, they defeated by a margin of two to one a referendum on whether taxes should be raised to pay the interest on the Planters Bank bonds—never argued to be illegitimate (Brough 1900, 337). The state became increasingly antibond, antibank, and anti—everything Yankee (Prentiss 1990; Olsen 1996).

### Summary and Implications

Although most of the U.S. states that defaulted during the 1840s eventually reconciled with their creditors, Mississippi repudiated its debts. It repudiated \$5 million of Union Bank bonds on the basis that not all the funds raised by the bond issue were provided immediately, with some being provided during the next several months, in spite of a state supreme court ruling that the state was obligated to repay the value of the funds actually received, if not the full amount. The state also repudiated \$2 million of Planters Bank bonds for no reason other than its decision not to pay. Although it is clear that the state subsequently suffered in terms of reduced availability of out-of-state and foreign capital, this loss was not sufficient to motivate the state to reconcile with its creditors. Indeed, the amount of state debt owed by Mississippi was relatively light compared to the debts of the other defaulting states. It would seem, then, that an explanation of Mississippi's repudiation would have to examine institutional safeguards.

The Mississippi experience speaks to the dependence of debt repayment on the interests of the electorate when the state's citizens are very much in debt—both privately and publicly—to outsiders and when the judicial branch is not sufficiently independent from the electorate. Even a U.S. Supreme Court ruling can be undermined. In the case of Mississippi, a series of state laws, together with the process of rulings and appeals from lower courts, served to delay enforcement of the prohibition of interference with contract until enforcement of the prohibition became problematic.

In Mississippi's case, many in the ruling class of planters financed their acquisition of land and slaves with funds borrowed from banks that either had no "bone fide" capital or had capital supplied by outsiders. In addition, as taxpayers, the planters were also responsible for the debts of their state government. Upon a softening in the price of cotton, their interest was both in avoiding foreclosure by their banks and in avoiding tax increases by their state government. After a series of attempts to continually refinance their debts ran its course, they turned their

attention to the repudiation of state debt and the undermining of private debt and then elected a state legislature that was so oriented. These actions might be expected. But what was crucially different in Mississippi was that, by reason of the Constitution of 1832, circuit court and supreme court jurists were elected directly by the people to relatively short terms. The independence of the judiciary was merely superficial.

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