

CONSUMER BANKRUPTCY, HOUSEHOLD DEBT AND
THE BIG PICTURE—PAMELA FOOHEY, BOB LAWLESS
AND DEBORAH THORNE, *DEBT’S GRIP*

by

Ted Janger*

Introduction

*Debt’s Grip*¹ opens with a bracing number: one in 11 Americans will file for bankruptcy; approximately 34 million people will file at some point in their lifetimes.² This, of course, is just the visible part of the iceberg. For individual households, this means that debt has become so unbearable that it can only be addressed by seeking forgiveness in a formal proceeding. Financial distress is substantially more pervasive. Many of those in financial distress simply default and go to ground. Others are able to work out a deal with their creditors. Many others struggle, try to make ends meet, but ultimately fail.

The percentage of people who experience financial distress either pervasively or at some point in their lives is a multiple of that 1:11 figure. Mortgage debt, auto loans and credit card debt are ubiquitous features of American life. Debt forces many Americans to make hard choices. Debt repayments compete with groceries, gas for the car, healthcare, or paying for piano lessons. For those on the edge, one missed paycheck or sick parent or child, or improvident purchase, can push a family’s finances over the edge.

The number gets our attention, but the goal of the book is broader than that. Foohey, Lawless, and Thorne (“FLT”) seek to show who those bankruptcy filers are, how they got there, and what that means for the bankruptcy system. Along the way, they offer an indictment of the role that debt plays in our economy. On the one hand, we expect individuals to use debt to finance consumption, to invest in their futures, and to make ends meet.³ Consumers borrow to buy their homes, borrow to buy their cars, borrow to cover medical expenses, borrow to bridge gaps in income or extraordinary expenses caused by life’s misfortunes. While these expenditures fuel the economy, the risk of misprediction falls on individual

* Edward J. Janger, David M. Barse Professor, Brooklyn Law School.

¹ PAMELA FOOHEY, ROBERT LAWLESS, DEBORAH THORNE, *DEBT’S GRIP: RISK AND CONSUMER BANKRUPTCY* (2025) [hereinafter “*DEBT’S GRIP*”]. Internal parentheticals refer to page numbers from *Debt’s Grip*.

² *Id.* at 1.

³ CHRYSTIN ONDERSMA, *DIGNITY NOT DEBT* (2025).

consumers. When viewed in this light, bankruptcy serves as a necessary catch-all—a patch to the holes in the social safety net. The stories of those in bankruptcy reveal the costs of our lack of public investment in human capital, and social insurance.

FLT use data gleaned from the bankruptcy system to show how the centrality of consumer debt to the United States economy fuels economic precarity and exacerbates inequality. In the United States, consumer debt is viewed as an essential tool to respond to temporarily economic shocks. However, FLT show that if, at the end of the day, ends don't meet, or the economic shock becomes permanent, consumers struggle, often for years. Eventually, they may turn to bankruptcy, but only as a last resort.⁴ Unlike many other countries that provide public support to help people get back on their feet, the US system of private credit and bankruptcy shifts the risk to debtors, and casts judgment—naming them a defaulter, or a bankrupt.⁵ This is the story that FLT tell, and it is the book's greatest strength; but it is also its limitation. FLT examine the people who find their way into bankruptcy. Their stories and characteristics paint a compelling picture. But they also illustrate how much we do not know. The filers are not the whole story. They represent an important incident of a society built on debt, but the effects of debt are pervasive: worse in some ways; better in others.

This is not a criticism. It is a request for more. This essay seeks to tell, in abbreviated fashion, the story told by *Debt's Grip*, and then offers an appraisal, both of the limits of the methodology, of the policy prescriptions for consumer bankruptcy, and of their suggestions for structural reform. The takeaway is threefold: (1) the data they provide generates a thirst for more data from outside the bankruptcy system; (2) the proposal for consumer bankruptcy reform is constructive but falls short of the comprehensive rethink the system may require; and (3) sadly, the need for structural reform is clear, but has never been less in the cards.

I. Debt's Grip in Context—The Consumer Bankruptcy Project

Foohy, Lawless and Thorne do not judge, they describe. *Debt's Grip* provides a picture of debt as it is experienced—debt as we live it. *Debt's Grip* stands on its own, but it also has a history. It is a product of the long running

⁴ Abbye Atkinson, *Rethinking Debt as Social Provision*, 71 STAN. L. REV. 1093 (2019).

⁵ Elizabeth Warren, Jay Westbrook, and Teresa A. Sullivan, *Less Stigma or More Financial Distress: An Empirical Analysis of the Extraordinary Increase in Bankruptcy Filings*, 59 STAN. L. REV. 213 (2006).

Consumer Bankruptcy Project.⁶ Indeed, it is the fifth book length study to draw on data collected by the Consumer Bankruptcy Project (“CBP”).⁷ It follows, *As We Forgive Our Debtors: Bankruptcy and Consumer Debt in America*, *The Fragile Middle Class: Americans in Debt*, *The Two-Income Trap: Why Middle Class Mothers and Fathers are Going Broke*, and *Broke* (an anthology). In 1981, 1991, 1999, 2001, and since 2013, the CBP has asked the same questions: (1) who files for individual bankruptcy; and (2) why? In the process, they paint a long running picture of the evolution of financial distress in the United States. The longevity of the project means that they can (and do) offer perspective on what has changed over the last 40 years and what has stayed the same.

Sullivan, Warren and Westbrook (“SWW”) began their work in the early 1980s. The questions of “who?” and “why?” were raised by the enactment of the 1978 Bankruptcy Code. As a political matter consumer bankruptcy was seen as a remedy for the poor. The new Bankruptcy Code was understood to make it easier for debtors to achieve a fresh start. As a result, both scholars and the consumer credit industry were raising questions

⁶ <https://consumerbankruptcyproject.org/>. A number of the recent publications of the Project demonstrate the breadth of their undertaking: Pamela Foohey, Robert Lawless, and Deborah Thorne, *Interdisciplinary Research Is Hard and Other Lessons from Debt’s Grip*, (July 22, 2025) Brooklyn Journal of Corporate, Financial & Commercial Law, forthcoming; Pamela Foohey, Robert Lawless, and Deborah Thorne, *Debt on the Ground: The Scholarly Discourse of Bankruptcy and Financial Precarity*, 20 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 219 (2024); Pamela Foohey, Robert Lawless, and Deborah Thorne, *Portraits of Bankruptcy Filers*, 56 GA. L. REV. 573 (2022); Pamela Foohey, Robert Lawless, and Deborah Thorne, *Driven to Bankruptcy*, 55 WAKE FOREST LAW REVIEW 287 (2020); Deborah Thorne, Pamela Foohey, Robert Lawless, and Katherine Porter, *Graying of U.S. Bankruptcy: Fallout from Life in a Risk Society*, Sociological Inquiry (online version September 2019); David Himmelstien, Robert Lawless, Deborah Thorne, Pamela Foohey, and Steffie Woolhandler, *Medical Bankruptcy: Still Common Despite the Affordable Care Act*, 109 AM. J. PUBLIC HEALTH 431 (2019); Pamela Foohey, Robert Lawless, Katherine Porter, and Deborah Thorne, *Life in the Sweatbox*, 94 NOTRE DAME L. REV. 219 (2018); Pamela Foohey, Robert Lawless, Katherine Porter, and Deborah Thorne, “No Money Down” *Bankruptcy*, 90 SO. CAL. L. REV. 1055 (2017).

⁷ *BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS* (Katherine Porter, ed., Stanford University Press 2012); ELIZABETH WARREN & AMELIA WARREN TYAGI, *ALL YOUR WORTH: THE ULTIMATE LIFETIME MONEY PLAN* (Free Press 2005); ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS AND FATHERS ARE GOING BROKE* (Basic Books 2004); TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (Yale University Press 2000); TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA* (Oxford University Press 1999).

about whether the new legislation had overshot the mark. By making debt more easily forgivable, was it encouraging debtors to take out more debt? Worse yet, was it causing them to make strategic use of bankruptcy—taking out debt with no intention of repaying it? Contrary to the common wisdom, the reality they observed showed that the common understanding was wrong, both about who used the bankruptcy system and why.

When they asked filers “why?” they had turned to bankruptcy, SWW found that consumer debtors were turning to bankruptcy only as a last resort. By the time they filed, the household’s debt often exceeded a full year’s salary. More importantly, the debts were not frivolous. They were incurred because of illness, job loss, or the needs of family members. The filers turned to bankruptcy to stop debt collection, to save their house, or car, because they were in desperate need of debt relief.

The second lesson of *As We Forgive*—“who?”—was demographic. The typical debtor was not “poor.” They were middle class. Truly poor debtors had little to gain from bankruptcy—no income or assets to protect. Bankruptcy, the investigators found, was a “lower middle class” phenomenon. Well-resourced families could survive an income shock. But families that were living closer to the edge—clinging to the middle class—were at risk. Job loss or sickness could derail the family’s finances and send them on a downward spiral. These families also needed bankruptcy—to protect their homes, their cars, and to be able to turn their limited income back towards necessities instead of debt repayment.

So, what has changed in 40 years? In some ways, the picture painted in *Debt’s Grip* is remarkably similar to the one painted in the 1980s. If one looks at the original table of contents of *As We Forgive*, many of the topics and categories are constants. There were homeowners and non-homeowners. Single female debtors faced different problems than men or two earner families, and medical debt played a significant role in many of the filings. There are two categories that are new—race and the elderly.⁸ Interestingly, one category has disappeared—“credit card junkies.” This is not because credit card debt has disappeared, but because it has been supplanted by student loan debt in size, and the nature of credit card usage has shifted. Forty years ago, the majority of credit card debt was “store card” debt. Now, credit cards are simply the way that people pay for things. Therefore, the credit card debt simply mirrors the various ways in which the debtors’ incomes are not meeting expenses. While student loans do not get their own chapter, they play

⁸ This is not necessarily because the world has changed (though it has), but because they were added to the inquiry.

a major role in the chapters on race and single women in bankruptcy. On the one hand, they are non-dischargeable in bankruptcy. This reinforces an inequity in the bankruptcy system. Student loans are, at least theoretically, a tool of social mobility. They are most needed by people who are seeking to move out of poverty or the lower middle class. So, their non-dischargeability hits those groups the hardest. But the most important and consistent finding is that the number of “can pay” debtors—i.e., debtors who file for bankruptcy but who have sufficient resource or income to pay a significant portion of their debt—is vanishingly small. Indeed, they identify only two debtors in their sample who look like “can pay” debtors, and nonetheless conclude that on closer examination, they are making appropriate use of bankruptcy.

Debt's Grip also contains some new and important lessons, about the role of bankruptcy, and more importantly about the role of credit in our society. The new stories that FLT tell about race, the elderly, and strugglers raise fundamental questions about whether bankruptcy is the right solution to the problems they identify. Is the problem over-indebtedness or lack of income? Debt is seen as a cushion that allows for consumption smoothing, but for many debtors it is more of a trap. Should we be using courts to solve this problem, or instead create a more holistic administrative solution that can link debt relief to social services? I will return to these questions at the end, but first, it makes sense to review the key findings.

II. Homes and Cars

Not surprisingly, one of the most important differences among those who file bankruptcy is whether they have houses or cars. Forty percent of bankrupt debtors have houses. Eighty-four percent have cars. Thirty-six percent have both houses and cars.⁹ Bankruptcy filers with houses look different from those without. They are more likely to have retirement assets, to be employed. They have more assets and income than non-homeowners. That said, they are, by and large, still extremely strapped. The median homeowner in bankruptcy has an annual income of \$62,256, a debt-to-income ratio of 3.61, and a net worth of negative \$36,076. While the median non-bankruptcy homeowner has an income of \$94,039, a debt-to-income ratio of .98 and a positive net worth of \$396,500.¹⁰

Debtors with houses and cars file bankruptcy for the same reasons, as others but it appears that debtors with houses differ in important ways. First,

⁹ DEBT'S GRIP, *supra* note 1, at 60.

¹⁰ *Id.* at 64.

they do not struggle as long, with more homeowners filing after 1–2 years of struggle and fewer filing after struggling for more than five years.¹¹ Homeowners, when they file, are less likely to have turned to other forms of financial assistance or credit.¹² The difference is explained, at least in part, by the home itself. One-third of the bankrupt homeowners reported taking out a home equity line of credit, entering into a mortgage modification, or refinancing their mortgage prior to bankruptcy. These transactions are often a way to tap into home equity, either to pay down or refinance debt. In other words, after they have run through their cash and their savings, they turn to their home as a way of staying out of bankruptcy. Indeed, an additional 8% of filers who did not have a home appear to have tried to save their home and failed in the years prior to bankruptcy.¹³ The home may also explain why the homeowners did not struggle as long. A threatened foreclosure may signal the end of the road, setting a deadline for filing.¹⁴

Cars, by contrast, are not an asset but a necessity. At least in theory, bankruptcy offers some help to debtors who want to keep their cars. They can redeem the car by paying its value and discharge the remaining debt. But this is only possible if the debtor can pull together enough money to redeem. For most chapter 7 debtors, the only way to keep the car is by reaffirming the debt, and agreeing to repay the loan in full, or continuing to make payments and hope the lender does not repossess.¹⁵ Chapter 13 allows for redemption over time—paying the value of the car under the plan. While this option is an improvement, it may not be worth the additional expenses of chapter 13.¹⁶

III. Medical Debt

The pathologies of American healthcare finance are reflected in the bankruptcy files. Medical debt is pervasive in bankruptcy and has been across the years. Medical bankruptcies appear to be evenly distributed amongst the

¹¹ *Id.* at 66.

¹² *Id.* at 64.

¹³ *Id.*

¹⁴ *Id.* FLT do not discuss this, but another reason that homeowners do not appear to have struggled for as long is that equity in the house itself may have delayed the need for privations and the perception of struggle, even though income was not meeting expenses.

¹⁵ One other technique for keeping a car is known as informal ride through, where the debtor simply keeps paying the loan without formally reaffirming. While this has some advantages over reaffirming, the bottom line is that the lender's lien on the car will only be released when the loan has been repaid in full.

¹⁶ *Id.* at 71.

groups who file for bankruptcy. Where precarity exists, for whatever reason illness in the household can be the event that pushes a debtor or their family over the edge. In this regard, FLT note that this is another place where bankruptcy can help, but the true problem lies outside of the bankruptcy system. Instead, it reflects the way healthcare is paid for in the United States.¹⁷ The results are the sorts of privations and struggling that appear whenever a household suffers an income or expense shock.

One category of medical debtors bears special mention—the long haulers. Sometimes medical expenses are transitory. The debtor experiences an illness and then gets better. While sick they may have had extra expenses, been unable to work, or may even have lost their job. This may leave a household with debt overhang that is unsustainable—even once the illness has subsided. For these debtors, with unsustainable debt, but steady income, the bankruptcy fresh start may be just what the doctor ordered. This is just the sort of problem that a chapter 7 bankruptcy can solve.

By contrast, some illnesses do not go away. Illness can lead to disability. The illness of a family member may impose expenses and demand time. Bankruptcy can help here, but if the problem is that income and expenses are out of balance for the long term, bankruptcy will not be a permanent solution. For the long haulers, the problem is simply not one that bankruptcy can solve.¹⁸

IV. Race

Inequalities in society are also reflected in the bankruptcy filing numbers, but the way in which debtors pay for bankruptcies appears to make matters worse. Blacks make up 14% of the United States population, but 27% of the households that file for bankruptcy. By contrast, whites are underrepresented in bankruptcy—76% of the population but only 64% of the filers.¹⁹ As FLT put it, “Black households’ higher than expected bankruptcy filing rate . . . parallels the economic disparities they encounter in nearly every aspect of their lives.”²⁰

The data regarding chapter choice reveals an even more troubling statistic. Current bankruptcy practice, in particular chapter choice, may be exacerbating, rather than ameliorating the problem. Consumer debtors who

¹⁷ *Id.* at 78.

¹⁸ *Id.*

¹⁹ *Id.* at 108.

²⁰ *Id.*

file for bankruptcy must choose between filing for chapter 7 (immediate liquidation and discharge) or chapter 13 (discharge after completion of a payment plan). Chapter 13 is more expensive (\$1,456 on average for a chapter 7 v. \$4,483 for a chapter 13), requires greater repayment to creditors, and the relief is less certain because many chapter 13 debtors fail to complete their plans. Its principal advantage is that it allows the debtor to retain assets like a house, a car, or other non-exempt assets that would otherwise have been liquidated for the benefit of creditors.²¹ Also, high income (or can pay) debtors—to the extent they exist—are required to file in chapter 13 by a “means test” that was added to the Bankruptcy Code in 2005.²²

Paradoxically, however, blacks are not just overrepresented in bankruptcy, they are overrepresented in chapter 13. For most racial and ethnic groups, the vast majority of consumer debtors file in chapter 7. It is 75% for white and latine filers, and closer to 80% for Asian filers. For blacks, the ratio is 50/50.²³ This is certainly not because they are the most resourced debtors, nor are they protecting non-exempt assets. The reason turns out to be complicated, but also troubling. Part of the explanation is local legal culture and history. The repayment plan mechanism that forms the core of chapter 13 was developed in the bankruptcy courts of Georgia, and the prevalence of chapter 13 filings is highest in the Southeast, where the population of filers is also more heavily black. That said, Lawless and other investigators have conducted careful studies that this does not account for the difference.

They find evidence that lawyers are disproportionately steering blacks into chapter 13. But the predominant reason seems to be the availability of the “no money down” bankruptcy in chapter 13. Filing for bankruptcy is not free. A peculiarity of bankruptcy in the United States, is that a chapter 7 debtor cannot pay their lawyer out of the estate, and any unpaid debts for work done prepetition are discharged. So, a feature of chapter 7 practice is that lawyers insist on payment up front. By contrast, chapter 13 debtors are permitted to pay their lawyers through their chapter 13 plan. So, debtors who cannot afford to pay their lawyers up front may be relegated to chapter 13. The result is perverse. Truly strapped debtors end up paying more for less. Forty-one percent of chapter 13 cases result in a discharge, while in chapter 7, the number is 95%. Worse yet, the dismissal rate for black households in chapter 13 is 59 %, as compared to 40% for white

²¹ 11 U.S.C. § 1325.

²² *Id.* § 727.

²³ DEBT’S GRIP, *supra* note 1, at 109.

households.²⁴ So, to the extent that there are social inequalities that force more people of color into bankruptcy, those same inequalities force debtors into a more expensive and less effective version of bankruptcy relief. Existing inequalities are exacerbated by this quirk of the bankruptcy system

V. Women and Struggling

While slightly less than half of all married filers file with children, single women are significantly more likely to file with dependents than single men. This is even more true for black filers than for white filers.²⁵ Worse yet, when women file, they are less likely to own a home, more likely to have student loans, and to be struggling with lower incomes than their male counterparts. These differences are even starker for black women²⁶ who are likely to be balancing childcare obligations and expenses against their work obligations. Further some women are recovering from domestic abuse, and, after divorce may also have been saddled with debts taken out by their spouse.²⁷ One of the themes that emerges throughout the book is how much bankruptcy filers have struggled in the years prior to filing for bankruptcy. In this regard women with dependents have the deck truly stacked against them, often struggling to keep afloat, often for years before filing. To do so, they endure privations (skipping car repairs, dental care, medical attention, for example),²⁸ incur additional debt,²⁹ and/or discontinue their own education.³⁰ These privations affect the entire household, and as discussed below, the length of the struggle may only make matters worse.

VI. Elderly Debtors

An increasing phenomenon is the prevalence of older filers. Since 1991, the percentage of debtors between the ages of 18 and 45 has gone down, while the percentage of debtors 45 or older has steadily increased.³¹ The causes of this are complex and can only be inferred from the stories told in bankruptcy. The move from defined benefit to defined contribution pensions

²⁴ *Id.* at 113–114.

²⁵ *Id.* at 134.

²⁶ *Id.* at 138–39.

²⁷ *Id.* at 146.

²⁸ *Id.* at 151.

²⁹ *Id.* at 148.

³⁰ *Id.*

³¹ *Id.* at 162.

is part of the problem.³² The stagnation of income over the last few decades means that many seniors hit their retirement years with no or almost no retirement savings. At the same time their income disappears, and their medical expenses increase. Worse yet, a feature of defined contribution retirement plans is that they can be “cannibalized” prior to retirement to fund current expenses.³³ In other words, long struggling debtors may manage to stay afloat by borrowing or withdrawing from their pensions, leaving them with fewer resources at the time of retirement.

VII. How We Use Debt

A theme that runs throughout the book, is the extent to which the role of debt in our society is complicated. Debt is used in a variety of ways, but often with unappreciated risks. Sometimes debt is taken on as part of a gamble on upward mobility. Many debtors report being self-employed. For some this is because they are underemployed, but for others, they set out on their own. In both cases, debt plays a crucial role in helping to start the business or helping to make ends meet if the debtor’s small business is producing insufficient income.³⁴ Student loan debt is another example of debt incurred as part of a gamble on the future. Education can be valuable, but if the debtor does not finish a degree, or is unable to find employment after incurring student debt, the student loans may end up an anchor around their neck.

Perhaps the most important way in which debt is used, both for good and ill, is “consumption smoothing” at least this is what it is called by economists. FLT use a different term. They call it “life in the sweatbox.” In America, life’s shocks show up as debt. When a person loses their job, they may turn to their credit cards to tide them over. When a person suffers an income shock, perhaps because the income in their small business is uneven, they may use credit to cushion the bumps. According to FLT, 9% of debtors were unemployed and seeking work when they filed for bankruptcy. The important thing is that their debt increased significantly during the period that they were unemployed.³⁵ Similarly underemployed households depleted their savings and used cards to pay for daily expenses.³⁶ This last category is

³² *Id.* at 181.

³³ *Id.*

³⁴ *Id.* at 98.

³⁵ *Id.* at 93.

³⁶ *Id.* at 94.

important because it reflects a change in the structure of work in the recent decades from stable jobs with benefits to jobs with less stability, fewer benefits—hence more need for credit to smooth the bumps.³⁷ Not surprisingly, this shift falls disproportionately on blacks, latines and single women.

It is harder to dig out of debt than it is to incur it. This leads to a category of debtor that crosses demographic groups—the strugglers. Struggling debtors use debt to cushion an income shock or expense shock in the present, and the debt makes the problem worse rather than better. When debt is used to cover current expenses today, it means that in the future, one must find income not just to cover current expenses but to repay the debt with interest—“the sweatbox.” Debtors saddled with unsustainable debt struggle to stay afloat, enduring privations, depleting savings, selling assets, all to make ends meet. The compelling result that emerges from the data is that struggling often only makes things worse. Throughout the book, the data shows that the longer a debtor struggles to avoid filing for bankruptcy, the worse their situation is, the fewer options they have, and the less bankruptcy can do. Struggling has costs. At the time they filed, long strugglers reported feeling more shame, guilt and fear than those who had filed sooner—but for longer.³⁸ They were more likely to have forgone medical care or car maintenance. They were more likely to have been late on their mortgage and to have depleted their retirement savings.³⁹ And since 2007, the percentage of long strugglers has increased.⁴⁰

VIII. Are we Using Debt for the Right Things?

The picture painted by FLT is dark, but it also illustrates a fundamental truth about the way we use debt in America in the twenty-first century. Businesspeople use debt to make investments. Every person who finances a business venture with debt is making a bet that the money can and will be used in a way that will provide a more than sufficient cash flow to pay back the debt back with interest.

Consumer debt follows a different logic. Some consumer debt can be considered “investment.” Real estate appreciates and rents go up. So, a house purchased with a 30-year mortgage may be a path to financial security—

³⁷ *Id.* at 95.

³⁸ *Id.* at 52.

³⁹ *Id.* at 45.

⁴⁰ *Id.* at 39.

unless values fall or income cannot support the mortgage. Student loans may provide a path to greater income over the course of one's career—unless it does not. But a tremendous amount of consumer debt is used as a shock absorber, facilitating a decision to continue to consume coupled with a bet that things will turn around. When an income shock such as job loss, illness, or family responsibilities leaves a family with insufficient funds, debt is used to make ends meet. This does not produce a countervailing cash flow. It shifts the expense into the future, where it will compete with the needs that arise at that later time. In other words, if a family that is just making ends meet suffers a period of unemployment, they may deplete savings and take on credit card debt to tide them over. When income returns to normal, life does not return to normal. The expenses going forward will be greater. Avoiding privations at the time of the shock may make the privations even worse when it comes time to repay.

Consumer debt can, therefore, mask economic distress and delay the need to adjust lifestyle. It can be a lifeline, but it is often a sinker. It should not be mistaken for part of the social safety net. If the problem is that families do not have enough money to make ends meet, then debt is not the solution. Even mortgages and student loans can be subjected to this critique. Student loans are an investment in human capital, but they are a perverse way for society to structure that investment. Using non-dischargeable student loans as a way to encourage education is a highly regressive way to enable upward mobility. Instead of operating as a public investment in human capital, student loans saddle those who use them with both the future expense, and risk associated with borrowing. The non-modification rule for home mortgages presents the same paradox. Buying a home can be a crucial asset, but if the home is purchased using a high loan to value ratio, and an adjustable rate—the sort of loan that poorer borrowers will get—there is a high risk that they may lose the home, or that any appreciation in value will be swallowed by interest. Worse yet, in chapter 7 any liens on the property ride through and loan modification is prohibited in chapter 13.

For FLT the collapse of the American social safety net since 1980 is a central part of their story.⁴¹ The changing nature of employment and the move away from defined benefit pension plans; the shrinking of Medicaid and other forms of welfare; and the decline in public funding of education have all put additional burdens on strapped families. As they put it, “Bankruptcy law can and should better address the problems that households will continue to bring with them when they file. At the least, the bankruptcy

⁴¹ *Id.* at 55, 129, 160.

system should add to people's financial battles.”⁴²

IX. Reform

Reduced to a set of conclusions, FLT offer the following takeaways from their data. First, the bankruptcy system functions against the backdrop of a broader set of social and political choices about how credit is used in our society. The result has been that many families live in a state of constant financial precarity.⁴³ They acknowledge that bankruptcy cannot solve the problems caused by the lack of a social safety net. It can help some people with specific problems, but it is not a comprehensive solution. Instead, the stories told in bankruptcy point the way towards broader social reforms:

Tackling . . . healthcare, employment education, housing and transportation . . . would overhaul how people use consumer credit. People would likely still have debt, but they would have less of it. And they would have less to fear. . . .⁴⁴

Short of this, they consider how to improve the bankruptcy system. While bankruptcy will always be a last resort, their data does offer guidance for how to solve the problems of real people in bankruptcy. The authors note that those reforms are largely reflected in the Consumer Bankruptcy Reform Act of 2024, proposed by Senators Warren and Whitehouse:

- 1) Provide a federal homestead exemption that adjusts for regional variations in home value.
- 2) Allow homeowners to modify their mortgages based on the market value of their homes.
- 3) Assist renters by allowing renters to discharge rent arrearages without being evicted from their homes.
- 4) Allow car owners to modify their car loans based on the value of their cars, particularly where the loans exceeded the value of the car at the time of initiation.
- 5) Penal debt—car loans and court fees—should be dischargeable.
- 6) Student loans should be dischargeable.
- 7) States should not be allowed to opt out of federal exemptions—and those federal exemptions should protect retirement savings, home health aids, and then a lump sum exemption for personal property that leaves it to the debtor to make their own decisions.

⁴² *Id.* at 217.

⁴³ *Id.*

⁴⁴ *Id.* at 220.

- 8) Finally, all debtors would be required to make scheduled payments to their creditors, and debtors who wish to retain non-exempt assets would be required to redeem them from their creditors.

A ninth change (abolishing the means test) is implicit in the last item, and a tenth (merging chapters 7 and 13 for consumer debtors) is fundamentally necessary if any of this is to work. Many of the inequalities and distortions in the system derive from the happenstance that the system is designed to require debtors to choose between chapter 7 and chapter 13. Chapter choice is problematic on two levels—the means test designed to force the extremely rare “can pay” debtors into chapter 13, and the problem of paying for legal help. The means test raises the cost of filing for everyone, and the inability to pay lawyers post-petition disadvantages the debtors who need bankruptcy most, and particularly debtors of color.

X. Appreciation, Caveats, and Reflection

Debt's Grip is a triumph. The work of the CBP over four decades is herculean and extraordinary. It documents the ways in which the use of credit in the United States has evolved, and it documents the crucial, yet evolving role that consumer bankruptcy plays. The story *Debt's Grip* tells is descriptive. It paints a picture of the collateral damage that results when a society uses debt to provide for basic needs, and as a substitute for social insurance. *Debt's Grip* is also evaluative. It asks whether bankruptcy is up to the task and identifies pathologies in the way the current statute works. Finally, *Debt's Grip* offers a cogent prescription—adopt the Bankruptcy Reform Act of 2024: (1) unify chapters 7 and 13; (2) simplify the obligations of can pay debtors and debtors who wish to retain assets; (3) make the discharge effective immediately; and (4) find a way to pay the lawyers.

That does not mean that there are not questions remaining, and/or next steps. To the extent that these questions sound like a critique, they are not. They are inherent in the nature, methodology, and history of the project. The authors are careful to acknowledge the limits of their approach. That care is one of the book's greatest strengths. But it, inevitably, leaves one wanting more, both in terms of empirics and policy prescription.

The first limitation of the book is the source of its data. Bankruptcy files are not necessarily representative because bankruptcy filers are not necessarily representative. FLT make the plausible, but not inevitable, assumption that bankruptcy filers are representative of those in financial distress—only more so. But there are some reasons to think that filers are not typical of those in distress. First, they are the ones who were pushed over the

edge. Second, they were the ones who had the savvy and resources to seek out legal help. Third, they are a group of people who, rather than succumbing, sought to turn things around. Importantly, *Debts Grip* tells us about the people who are in bankruptcy. It also suggests the attributes of the people who have not filed. But only if we assume that the same things that trigger bankruptcy are the indicia of financial distress outside of bankruptcy. We see the strugglers who failed, but we do not see the strugglers who succeeded. It would be helpful to know more about the outcomes for the successful strugglers. Is avoiding bankruptcy a success? What did it cost? Would they have been better off to seek debt relief, or seek debt relief sooner?

A second limitation also derives from the empirical method. The question that pervades the CBP is who uses bankruptcy and why? The long running conclusion is that for the debtors who file, bankruptcy is not a strategic choice but a necessary remedy to bad fortune. The debtor is honest and unfortunate and not strategic. To the extent that the reported causes of a bankruptcy filing are just that, reported. The data comes from surveys and interviews provided by the debtors themselves. Nobody is a villain in their own story. That said, the consistency of these stories across cases, and across time (40 years) gives credence to the stories told.

Another possible criticism merges the first and second concerns. While the stories may be honest, the filers are atypical. Many people suffer from illness and job loss. What is it about these debtors that resulted in a bankruptcy filing? Here is where FLT miss an opportunity. One might argue that the bankruptcy filers are, at the margin, worse at managing their finances than the non-filers, or that they were “more rational” than other strugglers because they chose to file. An examination of the non-filing strugglers would provide an important robustness check.

Some of this work is being done by others. In a recent article, Dalie Jimenez uses data gathered from state law debt-collection lawsuits to identify strugglers who are not in bankruptcy.⁴⁵ Jimenez proposes comparing the number of bankruptcy filings in particular jurisdictions to the number of debt collection lawsuits. An increase in the ratio indicates an increase in the number of people who are struggling without filing. This is just one example of an area that needs further work. To what extent is what we find in bankruptcy court representative of the true state of financial distress, and how much deeper into society does it go? There are other sources of data that

⁴⁵ Dalie Jimenez, *Missing Strugglers: Debt's Reach, Bankruptcy Limits, and a Proxy for Who's Left Out*, _ BROOK. J. CORP. FIN. & COMM. L. (forthcoming 2025). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5377387.

capture the scope of distress, most notably credit card delinquency and charge off numbers which dwarf in scope the number of people who file for bankruptcy. These numbers would help show just how deeply precarity goes into the fabric of American society. This only reinforces the need to learn more about this group and its characteristics.

Here, it is worth adding my strong intuition that their results are robust. In 2006, Susan Block-Lieb and I published an article called “*The Myth of the Rational Borrower*.”⁴⁶ We looked to the psychological literature to consider whether behavioral economics had to say about borrower behavior. In a nutshell, the lesson of behavioral economics is that over-indebtedness is not necessarily produced by strategy or the intention to take advantage of a bankruptcy discharge. Instead, it may be a product of rational behavior by lenders who take advantage of predictable consumer behaviors—framing, endowment effects and time inconsistent preferences to encourage consumers to borrow to the edge of their capacity. While this may increase the prevalence of default, it can still be profitable for lenders who benefit from high interest and fees while borrowers struggle to stay afloat. In the process, consumer debt increases rather than alleviating misery. This second insight complements the results shown in *Debt’s Grip*. Debtors who struggle for lengthy periods have worse outcomes in bankruptcy, struggle for longer, but are also more profitable to lenders. Indeed, in her own review of *Debt’s Grip*, Professor Block-Lieb notes that FLT’s work helps to “bust” the myth of the opportunistic debtor.⁴⁷

For these reasons, I am concerned that the lessons that *Debt’s Grip* teaches us may need a more radical response than the ones FLT propose. *Debt’s Grip* is certainly a positive, indeed, necessary step to reform the bankruptcy system. But the problem of debt in America, requires a reform to the way in which we use debt. We should not be requiring people to borrow in order to pay for necessities, education and healthcare.⁴⁸ Changes to the bankruptcy system are a help, but the problems run deeper. Other developed economies manage to provide universal healthcare, low-cost post-secondary education, and effective mass transit. Not everybody has a car or a freestanding house, but they are not saddled with the same levels of debt. Two other recent books engage with this question of middle class precarity,

⁴⁶ Susan Block-Lieb & Edward J. Janger, *The Myth of the Rational Borrower: Rationality, Behavioralism, and the Misguided “Reform” of Bankruptcy Law*, 84 TEX. L. REV. 1481 (2006).

⁴⁷ Susan Block-Lieb, *Myth Busters: A Review of “Debt’s Grip”*, __ BROOK. J. CORP. FIN. & COMM. L. __ (forthcoming 2025).

⁴⁸ CHRYSTIN ONDERSMA, *DIGNITY NOT DEBT* (2025).

and go beyond reforming the bankruptcy system, Pat McCoy presents a broader set of reforms for social risk sharing.⁴⁹ Mechelle Dickerson, calls for broader social policies to rebuild the middle class.⁵⁰ I do not think that FLT would disagree with either of them; *Debt's Grip* is of a piece with these broader proposals and should inform them.

A second question raised by the book goes to the way in which we provide debt relief to consumers. The Consumer Bankruptcy Reform Act of 2024 provides a road map for fixing the bankruptcy system we have now. But it runs into a deeper problem. While allowing lawyers to be paid after filing is helpful, it still puts the price tag for bankruptcy on the debtors, and the responsibility for billing on the lawyers. Experience (described by FLT) teaches us that debtor's attorneys may sometimes put getting paid ahead of their client's best interests. FLT concede that regulation of attorneys' fees is a necessary component to a regime that allows attorneys' fees to be part of the repayment obligation. It is not obvious, however, that for consumer bankruptcies, a privately financed, lawyer-controlled system of private adjudication is the best or most efficient. Many countries handle low income, no asset debtors without requiring them to go to court. Instead, the process is handled administratively by government officials who work with the debtors on both debt relief, and on budgeting and adjusting their lives to their means. To the extent that consumer bankruptcy is operating as a form of social insurance, this approach might make more sense than trying to deal with it through the courts. If debt is a substitute for social provision, it might/ought to be addressed forthrightly as public law, rather than tweaking an adversary private regime.⁵¹

Conclusion

Debt's Grip, it must be noted (wistfully), is being published in the Fall of 2025, in an uncertain and ever-changing economic environment. What does this mean for the world of consumer debtors? The reforms to the bankruptcy system proposed by FLT seem unlikely to be enacted. The broad programmatic reforms suggested by McCoy and Dickerson are not on the table either. The absorption of debt forgiveness by the administrative state that I suggest above, therefore, seems fanciful. The near future seems bleak.

⁴⁹ PATRICIA MCCOY, SHARING RISK: THE PATH TO ECONOMIC WELL-BEING FOR ALL (2025).

⁵⁰ MECHELLE DICKERSON, THE MIDDLE CLASS NEW DEAL (forthcoming 2026).

⁵¹ Abbye Atkinson, *Rethinking Debt as Social Provision*, 71 STAN. L. REV. 1093 (2019).

That said the CBP has been around for forty years. It may be necessary to take the somewhat longer view. It is likely that by the time reform is again on the political horizon, a lot of damage will be done. The reconstitution of the world of consumer bankruptcy and consumer debt is likely to require a rethinking from the ground-up. In this regard, the lessons of *Debt's Grip* will be all the more important. Here too, though, it is important that the solutions look beyond bankruptcy law to the broader question of constructing a meaningful social safety net, and a rethinking of the role of debt in household finance.

* * *