LIFE AFTER DEBT: UNDERSTANDING THE CREDIT RESTRAINT OF BANKRUPTCY DEBTORS

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ABSTRACT

Bankruptcy gives individuals a fresh start by allowing them to discharge much of their unsecured debt. But the consequences of bankruptcy do not end when the legal process is complete. After bankruptcy, families still must figure out how to make ends meet and how to interact with the credit economy. This paper presents data showing that bankruptcy transforms how people borrow. Despite very difficult financial circumstances after bankruptcy, most families initially refuse new credit. As years elapse, more families begin to borrow. The overall pattern of credit use is restrained, however, compared both with Americans generally and with these families' pre-bankruptcy borrowing. While the modest use of credit could reflect an inability to access credit markets, this paper argues that the limited use of credit is consistent with an alternate hypothesis: that bankruptcy debtors discipline themselves in their future credit use, even in the face of temptation by lenders and their households' ongoing financial struggles. This interpretation of the data suggests that people who have endured financial failure may curtail their future economic activity. Such actions are evidence of the pain of declaring oneself broke and of the way in which bankruptcy may shape debtors' decisions for years to follow.

INTRODUCTION

The consumer bankruptcy system has the intended purpose of enabling debtors to achieve a fresh start. Freed from overwhelming debt loads, bankruptcy is supposed to improve debtors' incentives to work, spend, and save in the future. As an empirical matter, very little is known about the process of financial rehabilitation. With Deborah Thorne, I have documented the importance of stable, sufficient income to enable families to capitalize on bankruptcy's fresh start to achieve and sustain financial health.[1] This story about the primacy of income is only half the equation about post-bankruptcy financial health. Notwithstanding income, families will be vulnerable to financial distress if they are borrowing to make ends

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[1] Katherine Porter & Deborah Thorne, *The Failure of Bankruptcy's Fresh Start*, 92 CORNELL L. REV. 67, 124 (2006).

meet. New borrowing ratchets up demands on already insufficient income and can strain a family's ability to manage their post-bankruptcy bills.

This Article provides empirical evidence on whether and how families borrow after bankruptcy. Because creditors repeatedly solicit bankrupt families to borrow in the first few years after bankruptcy,[2] and many families continue to face financial pressures after bankruptcy, I hypothesized that families would quickly return to borrowing after bankruptcy. In this paper, I test this hypothesis using original data from the Consumer Bankruptcy Project and Han & Li's recent study using the Survey of Consumer Finance data. The findings refute the hypothesis that families return to borrowing as soon as they are able. In fact, bankrupt families are more likely to abstain from borrowing if they are vulnerable to post-bankruptcy financial problems. The negative correlation between credit card debt and income suggests that families may fear that credit will worsen their financial problems.

Overall, people who have filed bankruptcy use very modest amounts of credit. Even years after bankruptcy, people who have experienced financial failure are less likely to hold a credit card than those who have never gone bankrupt. Bankruptcy filers have many fewer credit cards than the general American population and seem to borrow in about the same proportion to their incomes as non-filers. Their secured lending habits also seem fairly similar to typical Americans.

I argue the pattern of post-bankruptcy credit reflects, at least in important part, debtors' self-restraint. Certainly, the supply of credit after bankruptcy is an important factor. Post-bankruptcy credit is more expensive, and some lenders avoid former debtors entirely. But the data are consistent with debtors themselves being reluctant to borrow, even in the face of significant supply. Families that have suffered through bankruptcy may have a powerful resolve to avoid the hardships and sufferings of overwhelming debt. These families have firsthand experience with the harsh consequences of a deregulated consumer credit economy. By avoiding or curtailing their borrowing, they limit their exposure to the dunning calls, stress, and privations of their financial lives before bankruptcy relief. Debtors may refuse to borrow in an effort to lower the odds that they will have to endure the financial and emotional costs of filing bankruptcy again.

These data are a reminder that bankruptcy operates as more than a radical adjustment to a debtor's balance sheet. Bankruptcy has behavioral effects that may be driven by psychological or social factors, not merely economic ones. Filing bankruptcy transforms how consumers react to credit opportunities in the future, and those decisions will help shape their long-term financial prospects.

Part I explains the methodology of the Consumer Bankruptcy Project and presents original data on the extent to which consumers borrow after bankruptcy. Part II discusses the recent paper by Song Han & Geng Li that compares the borrowing practices of bankruptcy filers and non-filers. Part III puts the data on post-bankruptcy borrowing in economic context, describing families' incomes and

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[2] *See* Katherine Porter, *Bankrupt Profits: The Credit Industry's Business Model for Postbankruptcy Lending*, 93 IOWA L. REV. 1369, 1373 (2008) (finding creditors repeatedly solicit debtors after bankruptcy).

financial well-being after bankruptcy. Part IV explores the supply and demand explanations for the equilibrium in the post-bankruptcy credit market. Therein, I argue that the data offer some evidence of positive self-restraint by debtors and not merely reduced ability to access credit. Part V briefly describes the implications of the findings.

I. PROFILE OF BANKRUPTS' BORROWING: CONSUMER BANKRUPTCY PROJECT

This Part briefly describes the prior studies on post-bankruptcy borrowing. It then presents original data from the Consumer Bankruptcy Project on debtors' borrowing one year and three years after bankruptcy. I find that a significant number of people who have filed bankruptcy refuse all new credit and that the vast majority of those who accept new credit accept few offers and use the credit modestly.

A. Prior Studies

Research on the post-bankruptcy experiences of consumer debtors is sparse. The lack of knowledge likely reflects both theoretical and practical concerns. Discharge of debts is the theoretical cornerstone of consumer bankruptcy because it is the primary legal tool for giving debtors a fresh start in the economy. Thus, numerous studies use the discharge as a metric,[3] and a vast literature debates the appropriate contours of the discharge's scope.[4] Because discharge is the terminal act in a bankruptcy case, scholars and policymakers may not look beyond the end of the legal process. In part, the research ending at discharge reflects the limited consensus about the meaning of a fresh start and the desired outcome from bankruptcy.[5]

As a practical matter, panel data collection is expensive and difficult. Households move or break-up, and people cannot be found. Other people may grow weary of participating in successive interviews. The attrition rate can be substantial over time. Further, most studies rely in part on the public court records of bankruptcy debtors, and those records end when the cases are closed, usually shortly after discharge. Yet the experience of bankruptcy may shape debtors' financial prospects for years to come.

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[3] *See, e.g.*, TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, AS WE FORGIVE OUR DEBTORS 215–18, 222 (Oxford University Press 1989) (analyzing outcomes for chapter 13 cases); Scott F. Norberg & Andrew J. Velkey, *Debtor Discharge and Creditor Repayment in Chapter 13*, 39 CREIGHTON L. REV. 473, 476 (2006) (discussing measure of discharge rates in findings).

[4] *See, e.g.*, Margaret Howard, *Exemptions Under the 2005 Bankruptcy Amendments: A Tale of Opportunity Lost*, 79 AM. BANKR. L.J. 397, 400–02 (2005) (analyzing debtor abuse of discharged debts).

[5] *See* Margaret Howard, *A Theory of Discharge in Consumer Bankruptcy*, 48 OHIO ST. L.J. 1047, 1059 (1987) (noting rehabilitation of debtor must go beyond discharge of debt).

In recent years, a small empirical literature has emerged on how debtors fare after bankruptcy.[6] A few of these pieces have focused on post-bankruptcy credit. David Musto examined the effect of the legal rule that a bankruptcy must be removed from an individual's credit report ten years after the filing.[7] His analysis finds that consumers' credit scores increased significantly after the bankruptcies were expunged, and that consumers increased their borrowing after this increase in credit score.[8] The latter finding suggests some pent-up demand to borrow, which could reflect that bankruptcy is a black-mark that inhibits one's ability to get credit or drives its price to a level that is unacceptable to borrowers.

Using credit reports from people who filed bankruptcy between 1978 and 1988, Michael Staten found that only 16.2 percent of debtors had accepted any new credit one year after bankruptcy.[9] He reports a steady pattern of increasing credit, with 38.6 percent obtaining new credit (either installment or revolving credit) in the three years after bankruptcy.[10] In another study, Joanna Stavins reports that bankruptcy debtors are less likely to have any credit cards than non-bankruptcy debtors.[11] However, even years after filing, bankruptcy debtors are more likely to be in default on credit obligations than non-bankruptcy debtors.[12]

The limitation of these studies is their age. In the last few decades, lenders have greatly improved the sophistication of credit-scoring models and expanded the amount of subprime credit.[13] These changes may produce a new equilibrium in the post-bankruptcy credit market. For example, the bankruptcy penalty suggested by Musto's work may have been eliminated or reduced as lenders developed high-cost, fee-based lending products that are profitable even for borrowers with a heightened risk of default. A recent study by Ethan Cohen-Cole, Burcu Duygan-Bump, and Judit Montoriol-Garriga [hereinafter Cohen-Cole] provides support for such a conclusion.[14] Using a large sample of credit reports that include people who filed

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[6] *See* Porter & Thorne, *supra* note 1, at 68 (discussing financial distress post-bankruptcy); Jay L. Zagorsky & Lois R. Lupica, *A Study of Consumers' Post-Discharge Finances: Struggle, Stasis, or Fresh-Start?*, 16 AM. BANK. INST. L. REV. 283, 283–84 (2008) (analyzing post-discharge finances of debtors).

[7] David K. Musto, *What Happens When Information Leaves a Market? Evidence from Post-Bankruptcy Consumers*, 77 J. BUS. 725 (2004) (studying "ten-year limit on reporting personal bankruptcy").

[8] *Id.* at 735–37 (explaining short-run effect on information removal).

[9] Michael E. Staten, *The Impact of Post-Bankruptcy Credit on the Number of Personal Bankruptcies* 13 (Credit Research Ctr., Purdue Univ., Working Paper No. 58, 1993), *available at* http://www.gwu.edu/~business/research/centers/fsrp/pdf/WP58.pdf.

[10] *Id.* at 26 ex.8 (displaying percentage of people receiving any new credit from one-eight years since bankruptcy).

[11] Joanna Stavins, *Credit Card Borrowing, Delinquency, and Personal Bankruptcy*, NEW ENG. ECON. REV., July/Aug. 2000, at 15, 21 tbl.1.

[12] *See id.* at 25.

[13] *See* Susan Block-Lieb & Edward J. Janger, *The Myth of the Rational Borrower: Rationality, Behavorialism, and the Misguided "Reform" of Bankruptcy Law*, 84 TEX. L. REV. 1481, 1514 (2006) ("Credit scoring and risk-based pricing have permitted financial institutions and other consumer lenders to open up entirely new markets for their products, including the market for subprime lending.").

[14] Ethan Cohen-Cole, Burcu Duygan-Bump & Judit Montoriol-Garriga, *Forgive and Forget: Who Gets Credit After Bankruptcy and Why?* (Fed. Reserve Bank of Boston, Working Paper No. QAU09-2, 2009), *available at* http://www.bos.frb.org/bankinfo/qau/wp/2009/qau0902.htm.

bankruptcy in 2004, the authors found that a significant fraction of people with very low credit scores appear to have more, rather than less, credit after bankruptcy than before.[15] Cohen-Cole concluded that those findings are consistent with my prior research that there is a robust lending market that targets recent bankrupts.[16] Nearly all bankrupts are repeatedly solicited for new unsecured credit immediately after their bankruptcies, typically at a rate of ten solicitations each month.[17] The available research suggests that most bankruptcy debtors will have ample opportunity to borrow in the aftermath of their bankruptcies, albeit at high costs.

This paper asks whether, and to what extent, individuals take up those opportunities. It relies on two main sources to do so. In the part immediately below, I present original data from the Consumer Bankruptcy Project on the borrowing behavior of bankruptcy debtors. In Part II, I consider recent research by Song Han & Geng Li comparing the borrowing of bankrupts and non-bankrupts.

B. Methodology and Sample

The Consumer Bankruptcy Project is a longitudinal, interdisciplinary study of consumer bankruptcy.[18] The core sample consists of 1250 consumer bankruptcy cases filed in the early months of 2001 in five judicial districts across the nation. The respondent debtors were contacted again in 2002 and 2004 to collect follow-up data.

The ratio of chapter 7 and chapter 13 cases in the sample reflects the distribution of bankruptcy cases in each judicial district in the sample. Consequently, the core sample comprises 780 chapter 7 bankruptcies and 470 chapter 13 bankruptcies.

The 2001 Consumer Bankruptcy Project used three instruments to gather data: a written survey, bankruptcy case records, and telephone interviews. First, a questionnaire was distributed to debtors at the mandatory meeting of creditors.[19] The questionnaire requested demographic information on the household such as age, occupation, number of dependents, and marital status, and inquired about the

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[15] *Id.* at 18–19 ("[T]hose with very low credit quality are much more likely to receive increases in credit.").

[16] *Id.* at 9; *see* Porter, *supra* note 2, at 1373–74 ("This Article's key finding is that creditors repeatedly solicit debtors to borrow after bankruptcy.").

[17] *See* Porter, *supra* note 2, at 1393 (showing median frequency of credit offers per month in year after bankruptcy as ten).

[18] *See* ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS & FATHERS ARE GOING BROKE app. at 181 (Basic Books 2003) (providing Consumer Bankruptcy Project's complete methodology.) I served as Project Director of the 2001 Consumer Bankruptcy Project during its first six months of data collection. My responsibilities included pre-testing the data instruments, overseeing the distribution and collection of the written questionnaires, and helping toe design the court record coding protocols. A more recent study, the 2007 Consumer Bankruptcy Project, collected data on debtors who filed after the enactment of the 2005 bankruptcy reforms. Because the 2007 Project did not include longitudinal interviews, the 2001 Consumer Bankruptcy Project data remain the most comprehensive examination of post-bankruptcy experiences of consumer debtors.

[19] *See* 11 U.S.C. § 341(a) (2006) ("Within a reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside at a meeting of creditors.").

household's reasons for seeking bankruptcy relief. For each household that completed a questionnaire, data were drawn from the corresponding public bankruptcy court records, such as the bankruptcy petition and schedules. Information was coded about the debtors' assets, liabilities, income, and expenses at the time of their bankruptcies.

The questionnaire invited debtors to participate in follow-up interviews in return for compensation of $50 per interview. Approximately one year after bankruptcy (spring 2001), researchers conducted telephone interviews with 601 families in the core sample. Approximately three years after the debtors filed bankruptcy (the spring of 2004), the Consumer Bankruptcy Project attempted to contact each family that completed an initial interview to do a second interview. Second interviews were completed with 474 families in the core sample. All data (questionnaire, court records, one-year interview, and three-year interview) are available for 38 percent of the original sample of 1250 households.

Both the one-year and three-year telephone interviews were approximately one hour long. A general set of questions was posed to every participant. Many of those questions were designed to explore families' post-bankruptcy experiences. Based on corresponding questionnaire or court record data, some participants were asked subsets of questions on topics such as homeownership and medical debt. The research team coded all responses into a specially designed database. Most questions were closed-ended, although several points in the interview invited less structured responses and all spontaneous comments to debtors in response to questions were also recorded.

For the data analysis in this Article, I limit the Consumer Bankruptcy Project sample in two ways. First, I include only chapter 7 cases and exclude chapter 13 cases. The two types of consumer bankruptcy differ in ways that directly bear on the use of credit after filing bankruptcy. After filing chapter 7, debtors receive a discharge of most of their unsecured debt within a few months.[20] The discharge effectively ends the bankruptcy process for chapter 7 debtors. No trustee or bankruptcy court supervises the credit activities of debtors after discharge. This last statement is equally true in chapter 13, but, importantly, the discharge under chapter 13 is deferred until the debtor has completed all payments under the repayment plan, which occurs between three and five years after plan confirmation.[21] Bankruptcy law creates obstacles for obtaining new credit while a debtor is subject to a chapter 13 plan. Specifically, debtors should obtain court authorization before obtaining new credit.[22] Many trustees emphasize this requirement to debtors,[23] although many trustees apparently liberally grant requests for new credit.[24]

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[20] *See* 6 COLLIER ON BANKRUPTCY, ¶ 700.05, at 700-4 (Alan N. Resnick et al. eds., 15th ed. rev. 2006) (indicating individual debtors usually receive discharge "shortly after the deadline for objections to discharge has passed," unless court has reason to withhold discharge).

[21] *See* 8 COLLIER ON BANKRUPTCY, ¶ 1328.01, at 1328-5 (explaining completion of chapter 13 plan discharges debtor "from all debts provided for by the plan, with some exceptions").

[22] *See, e.g.*, 11 U.S.C. § 549(a)(2)(B) (2006) (stating trustee may avoid "transfer of property of the estate . . . that is not authorized under this title or by the court"); 11 U.S.C. § 1305(c) (2006) ("A claim filed under

Even if chapter 7 and chapter 13 debtors have identical post-bankruptcy borrowing opportunities (a proposition that seems unlikely), the law creates differential risks for lending to debtors in the two chapters. Because consumers can convert their bankruptcies from chapter 13 to chapter 7,[25] credit extended to a chapter 13 debtor after their initial filing would be subject to discharge if the case was converted to chapter 7.[26] This may sharply constrain the availability of credit to chapter 13 debtors while they are paying into their bankruptcy plan. For ongoing chapter 13 cases, it would be very difficult (if not impossible) to untangle the influence of these legal rules from debtor behavior and creditor marketing.

The research design also inhibits a reliable examination of the borrowing activities of chapter 13 bankruptcies. The interviews were conducted one year and three years after the debtors' bankruptcies were filed. Because chapter 13 debtors must pay into their repayment plans for three to five years to discharge their debts, the timing of the interviews does not capture how chapter 13 debtors borrow *after* bankruptcy. Instead, the interviews of chapter 13 debtors either reflect the experience of being in the bankruptcy process or having exited bankruptcy without a discharge. I conclude that it would be premature to draw conclusions about post-bankruptcy borrowing from data based on chapter 13 cases in which orders for discharge were not entered. Additionally, this divergence in outcomes during the interview times divides the sample of chapter 13 debtors into three subgroups, each of which becomes small for quantitative analysis. For these reasons, I think it is inappropriate to combine chapter 7 and chapter 13 cases for analysis without carefully controlling for chapter and time after discharge.

The second way that I limit the core sample is to include only debtors who completed a telephone interview. At one year after bankruptcy, 359 debtors who

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subsection (a)(2) of this section shall be disallowed if the holder of such claim knew or should have known that prior approval by the trustee of the debtor's incurring the obligation was practicable and was not obtained."); 11 U.S.C. § 1306(a)(2) (2006) ("Property of the estate includes . . . earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under [a different chapter] of this title, whichever occurs first."); 11 U.S.C. § 1306(b) ("Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.").

[23] *See, e.g.*, Office of the Chapter 13 Trustee, Thomas P. King, http://www.ch13oshkosh.com/profile.html#newcredit (last visited Mar. 24, 2010) ("New credit cannot be obtained without first obtaining permission of the Court or the Trustee."). The Administrative Office of the U.S. Courts includes the limitation on new credit in its public information about chapter 13 Bankruptcy. *See* U.S. Courts, Chapter 13 Bankruptcy Basics: Individual Debt Adjustment, http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter13.html#work (last visited Mar. 24, 2010) ("[T]he debtor may not incur new debt without consulting the trustee, because additional debt may compromise the debtor's ability to complete the plan.").

[24] *See* Jean Braucher, *Lawyers and Consumer Bankruptcy*: *One Code, Many Cultures*, 67 AM. BANKR. L. J. 501, 539 n.130 (1993) (stating trustees receptive to new credit requests).

[25] *See* 11 U.S.C. § 1307(a) (2006) (allowing consumer debtors to convert from chapter 13 to chapter 7 proceeding "at any time" regardless of any attempt to waive such right).

[26] *See* Braucher, *supra* note 24, at 538 (observing chapter 7 debtors obtain credit more easily than chapter 13 debtors because creditors do not have to fear discharge of post-petition debt once the debtor is in chapter 7).

filed chapter 7 cases were interviewed. This respondent group captures 46 percent of the 780 chapter 7 cases in the initial core sample.[27] Of the 359 households who did a first interview, we were able to contact and interview 302 of these households two years later. Put another way, 57 of the 359 households that completed first interviews did not complete the later interview, resulting in a smaller sample size for analysis of the three-year post-bankruptcy interviews. This modest atrophy in the sample size reflects the increased difficulty in locating debtors as time elapsed following their bankruptcy filings and their completion of the written questionnaire.

Debtors who completed the telephone interviews were self-selected, introducing the possibility of respondent bias.[28] To test for this, Dr. Deborah Thorne,[29] an investigator with the Consumer Bankruptcy Project, compared one-year interview participants and nonparticipants on several important demographic and economic variables. Demographically, the two groups were comparable as to age, employment status, and homeownership. However, interview participants were significantly more likely to be single and white than those who did not complete interviews. Analysis of financial variables from the court records (such as amount of total assets, income, unsecured debt, etc.) did not reveal any statistically significant differences between the two groups. These analyses suggest that the telephone interview sample of 359 respondents appears to be generally representative of the 780 chapter 7 cases that comprised the Consumer Bankruptcy Project's core sample.[30]

To further test the validity of the sample, I compared summary statistics on the Consumer Bankruptcy Project to the findings of previous bankruptcy studies.[31] I examined key demographic and economic characteristics of debtors, such as age, marital status, occupational prestige score, homeownership, median annual income, and median unsecured debt. Respondents in the Consumer Bankruptcy Project interview sample used in this Article seem similar to other evidence on the families that file chapter 7 bankruptcy. Primary petitioners in the Consumer Bankruptcy

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[27] Some debtors could not be contacted at the contact information that they provided because the debtors had apparently moved or provided incorrect information. In anticipation of this problem, we asked debtors to provide us with two alternative contacts, which increased the response rate. Nevertheless, some debtors gave only their own information, and sometimes the alternative contacts could not be located. We were unable to complete interviews with these debtors. This nonparticipation may have skewed the data to over-represent the economic stability of the post-bankruptcy population. That is, those who could not be located for interview may be those facing the most severe financial distress, considering that they either moved and/or changed telephone numbers in the immediate aftermath of their bankruptcy.

[28] *See* EARL BABBIE, THE PRACTICE OF SOCIAL RESEARCH 187–90 (Eve Howard ed., Thomson Wadsworth 2004) (describing conscious and unconscious sampling bias).

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[30] For more detail on these analyses, see Porter & Thorne, *supra* note 1, at 125–28 (reporting detailed respondent and non-respondent data for the chapter 7 bankruptcy cases in the Consumer Bankruptcy Project).

[31] *See generally* SULLIVAN ET AL., *supra* note 3 (discussing various stresses on middle-class American families); WARREN & TYAGI, *supra* note 18, at 181–88 (giving complete methodology of Consumer Bankruptcy Project); Elizabeth Warren, *The New Economics of the American Family*, 12 AM. BANKR. INST. L. REV. 1, 1–2 (2004) (discussing effect of economic changes in American family on bankruptcy system).

Project averaged forty-three years old. Approximately one-third were married and living with a spouse, while another 7 percent were married but living separately. The median occupational prestige score was 36; occupations such as office clerk, bricklayer, teacher's assistant, and steel worker are represented by this score. Approximately 31 percent of the respondents reported that they owned their home at the time of filing.[32] The overall profile of debtors in this sample is consistent with prior research showing that people in bankruptcy have indicia of middle-class status.[33] At the time of bankruptcy, however, debtors' incomes are dramatically lower than the typical American household.

C. Use of Credit One Year After Bankruptcy

Chapter 7 bankruptcy for individuals is almost always a rapid process. Within about two months of filing, debtors receive a discharge of most of their ordinary unsecured debts, including credit card bills. The initial telephone interview was one year after bankruptcy. At that time, nearly all of the chapter 7 debtors had enjoyed several months of debt relief. The delay of one year after the bankruptcy filing also gave households ample opportunity to seek out and use new credit.

In the one-year post-bankruptcy interview, only about one-quarter of debtors (25.5 percent) reported that they had accepted any new credit since the bankruptcy filing.[34] The question about credit offers was broad and included all types of credit, such as credit cards, live checks, car loans, payday loans, etc. Three-quarters (74.5 percent) of debtors reported that they had refused all post-bankruptcy offers for any form of credit. The strong majority of families seem to refuse to engage in new credit transactions in the first year after bankruptcy.

This restraint in accepting new credit is remarkable in light of the consequences of a chapter 7 bankruptcy. Most debtors had all their general and retail credit cards canceled as soon as lenders learned of the bankruptcy, and some may have sold or lost a car or other personal property as a result of their financial distress. Notwithstanding the elimination of their prior credit lines and the possible need to replace property, the one-quarter of families that did choose to accept new credit accepted very few offers. Among those with any new credit, the average number of credit offers accepted was 1.3.[35] The median number was 1. As Figure 1 shows, more than two new credit sources were extremely rare. Of those households that

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[32] Fewer homeowners file chapter 7 bankruptcy; many prefer chapter 13 bankruptcy because it provides specific benefits to homeowners who may be in arrears on their mortgage loans. Among all bankruptcy debtors, the rate of homeownership is near fifty percent. *See* Elizabeth Warren, *Financial Collapse and Class Status: Who Goes Bankrupt?*, 41 OSGOODE HALL L.J. 115, 138 (2003).

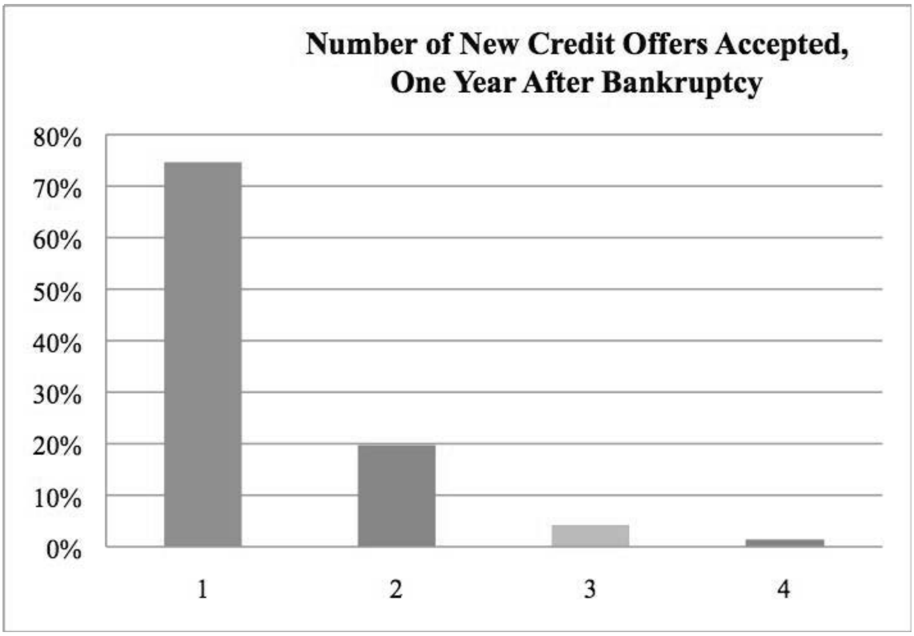
[33] *See* SULLIVAN ET AL., *supra* note 3, at 2; Warren, *supra* note 32, at 145.

[34] n=355. Three respondents were missing, and one respondent selected "don't know."

[35] This statistic reflects the number of cards among the 90 post-bankruptcy families that had at least one card. Calculated for the entire sample, the average number of new credit offers accepted was only 0.3, reflecting the fact that most families reported that they had not accepted any new credit.

accepted credit, only five percent had either three or four new sources of borrowing; no respondent said they had accepted more than four post-bankruptcy credit offers.

FIGURE 1



In the first year after bankruptcy, families eschewed credit, ignoring heaps of mailed credit solicitations. In so doing, these families shielded themselves from the possibility of running up multiple debts. The data show that families that have filed bankruptcy do not return to credit cards. They have changed their financial habits after bankruptcy, becoming not just unlike their prior selves, but also atypical Americans. Few Americans have only one or two credit cards; the average number of cards among people in the general population is much higher.[36]

Some may argue that mainstream credit may be of limited availability after bankruptcy, a possibility that I reject in Part IV of this Article. To assess this possibility, families were specifically queried about their use of so-called "fringe" credit. They were asked if they had borrowed from a payday or title lender during the year since they filed bankruptcy. Less than 5 percent of all families responded affirmatively. Two reasons justify characterizing this rate of payday or title loan as low. First, these are borrowers who are familiar with payday and title lenders. They are not hostile to non-traditional borrowing. When asked if they had used a

[36] *See* Patrick McGeehan, *Soaring Interest Compounds Credit Card Pain for Millions*, N.Y. TIMES, Nov. 21, 2004, *available at* http://www.nytimes.com/2004/11/21/business/21cards-web.html (reporting average American has eight credit cards); Experian: National Score Index, http://www.nationalscoreindex.com/USScore.aspx (last visited Feb.16,2008) (finding 1 in 10 Americans have 10 credit cards, while average American has 4 cards).

payday lender during the time *before* their bankruptcy, 18 percent of this same sample said yes. Fewer families used fringe credit after bankruptcy than before. This is true even though these families had their mainstream revolving credit sources, primarily credit cards, cut off when they filed, a change that would push them toward using fringe credit if they wished to borrow. Second, the rate of payday and title loan use is low given comparable rates of fringe borrowing by other credit-constrained groups (those with low credit scores, delinquencies on credit reports, etc.), who are likely to use payday or title lenders.[37] The limited use of fringe credit is consistent with families wanting to avoid contact with the credit industry out of concern with becoming overwhelmed by debt.

The majority of families simply appear to eschew all credit in the immediate aftermath of bankruptcy. Bankruptcy seems to act as a reset button, changing future borrowing as well as erasing past debts.

D. Use of Credit Three Years After Bankruptcy

Three years after bankruptcy, families have had more opportunities to borrow. More creditors may have solicited them for credit, particularly as their bankruptcy becomes more dated. Also, households may have needed or wanted to make a large purchase because of changed life circumstances, and purchases, such as a car or home, frequently involve borrowing, even among wealthy households. The supply and demand for credit changed as years elapsed after bankruptcy, producing a new, higher equilibrium point for borrowing activity.

Indeed, families had increased their use of credit three years after bankruptcy. This conclusion is true in two senses: some families that had not accepted any credit began to borrow, and some families increased their post-bankruptcy credit use. Despite this upward trend, the overall amount of borrowing remained modest compared to that of most Americans.

The data on car purchases illustrates how families that have filed bankruptcy make large, discrete borrowing decisions. Forty-three percent of families said that they had purchased a car during the three years after bankruptcy.[38] Among the car buyers, 65 percent took out a car loan. This finding reinforces that thousands of dollars of credit are available to families within a few years of filing bankruptcy. The remaining 35 percent of families said that they paid cash for a car—no small feat given the size of such a purchase and the families' modest incomes. The frequency of cash purchases shows that many bankrupt families eschew credit even for sizeable purchases. The proportion of cash purchases is even more remarkable given that these families emerged from bankruptcy with only exempt assets after bankruptcy, meaning they had no or almost no cash savings.

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[37] JOHN P. CASKEY, FRINGE BANKING: CHECK-CASHING OUTLETS, PAWNSHOPS, AND THE POOR 70–71 (1994) (analyzing pawnbroker loans).

[38] n=297. Two respondents said "don't know" and three observations were missing. The number of respondent households who had purchased a car in the three years after bankruptcy was 130.

Such decisions may be partly motivated by the high cost of post-bankruptcy credit. The average and median interest rates for post-bankruptcy car loans were 13 percent, a significant mark-up from the average rate in 2001 to 2004 for used-car financing. The car loan data are consistent with the pattern of constraint in credit use that families reported in the one-year post-bankruptcy interviews. Relative to the general American population, people who have recently filed bankruptcy appear less likely to borrow when purchasing a car.[39] Although the Consumer Bankruptcy Project did not ask for the purchase price of the car, the cash purchase rate may indicate families' decisions to drive an inexpensive and used vehicle in order to avoid a car loan and its risk of default and repossession.

Respondents were also queried about credit cards, the most common type of unsecured borrowing. The credit card data were remarkably consistent with the car loan data. About six in ten families (59.6 percent) reported that they had accepted at least one new credit card after bankruptcy.[40] Somewhat less than half of debtors (40.4 percent) still had not accepted a credit card since bankruptcy. This group's consistent refusal to hold a credit card shows an enduring commitment to negotiate the modern economy without a card.

Some segment of debtors changed their cardholding practices between one year and three years after bankruptcy. Over half of those who did not have any new credit one year after bankruptcy changed their minds and accepted a card in the second or third years after bankruptcy.[41] Put another way, the percentage of families with credit cards three years post-bankruptcy is more than double the rate reported one year post-bankruptcy.

Notwithstanding this increase over time, families that have filed bankruptcy remain less likely to have a credit card than the general population. An estimated 75 percent of all Americans have at least one credit card,[42] yet only 60 percent of debtors do. Filing bankruptcy appears to have a persistent and strong negative effect on a families' penchant for credit cards. This restraint is particularly

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[39] A study by CNW Research found that in 2009 only 11 percent of car purchases were cash. Another 18.5 percent were purchased on lease, with the majority (70.5 percent) being financed. Colin Bird, *Should I Pay Cash, Lease or Finance My New Car?*, CARS.COM, Apr. 27, 2009, http://www.cars.com/go/advice/Story.jsp?section=fin&subject=loan-quick-start&story=should-i-pay-cash&referer=advice. The question posed to respondents in the 2001 Consumer Bankruptcy Project did not clarify whether a lease should be considered a "car loan," creating further ambiguity in the data.

[40] n=300. One respondent selected "did not know" and one observation was missing.

[41] There were 130 families that were included in both the one-year and three-year interviews who had not accepted any new credit one year post-bankruptcy. Seventy of these households had credit cards when interviewed again three years after bankruptcy.

[42] *See* Liz Pulliam Weston, *The Basics: The Truth About Credit Card Debt*, MSN MONEY, http://moneycentral.msn.com/content/Banking/creditcardsmarts/P150744.asp (last visited Mar. 28, 2010) (indicating 25.1% American households do not have credit cards); *see also* Katherine Porter, *The Debt Dilemma*, 106 MICH. L. REV. 1167, 1171 (2008) (indicating 75% of Americans have credit cards); Brian K. Bucks et al., *Recent Changes in U.S. Family Finances: Evidence from the 2001 and 2004 Survey of Consumer Finances*, FEDERAL RESERVE BULLETIN Al, A31 (2006), *available at* http://www.federalreserve.gov/PUBS/oss/oss2/2004/bull0206.pdf (finding 74.9% of families had credit cards in 2004 and 76.2% of families had credit cards in 2001).

remarkable given that nearly all chapter 7 bankruptcy debtors (91.44 percent) had credit card obligations at the time of their bankruptcy.[43] These are not households who are unfamiliar with credit cards. These families' failure to return to holding a card even three years after bankruptcy suggests a sustained effort to reshape their financial practices.

Data on the number of credit cards per family reinforce the conclusion that post-bankruptcy families exercise more restraint in taking on credit cards than do typical Americans. Families were asked how many credit cards they had at the time of the three-year post-bankruptcy interview. The median debtor who had any cards reported that he or she had two credit cards.[44] The average number of cards was 1.96. As shown in Table 1, the standard deviation and range for the inquiry about current credit cards suggest that nearly all families have only a few cards. These statistics reflect the credit practices of only the 60 percent of families that accepted a new credit card since bankruptcy and the few additional families (eighteen households) who retained an active pre-bankruptcy card despite their bankruptcy filing. Thus, the total fraction of former debtors who reported having any credit card three years after bankruptcy was 65.6 percent.[45]

TABLE 1

Credit Cards Three Years After Bankruptcy				
Total Credit Cards			**Credit Cards with Balances**	
% with cards	65.6%		% with balances	54.6%
n=302			n=302	
Median	2		Median	1
Average	1.96		Average	1.67
Range			Range	
Minimum	1		Minimum	0
Maximum	6		Maximum	5
Standard Deviation	1.11		Standard Deviation	0.82
n=198			n=165	

Additional data provide insights on how families are actually using the one or two cards they have. Among the nearly two-thirds of families with a credit card, 83 percent are carrying a balance on at least one card. Only 17 of the 198 households with cards said they were not carrying a balance. Families with cards appear to be using them for more than identification purposes (such as to get an airline boarding pass). But, as shown in Table 1, even among "revolvers"—those who carry a

[43] *See* Porter, *supra* note 42, at 1178 n.47, 1179 (citing court record data from 780 chapter 7 debtors who were part of core sample of 2001 Consumer Bankruptcy Project).

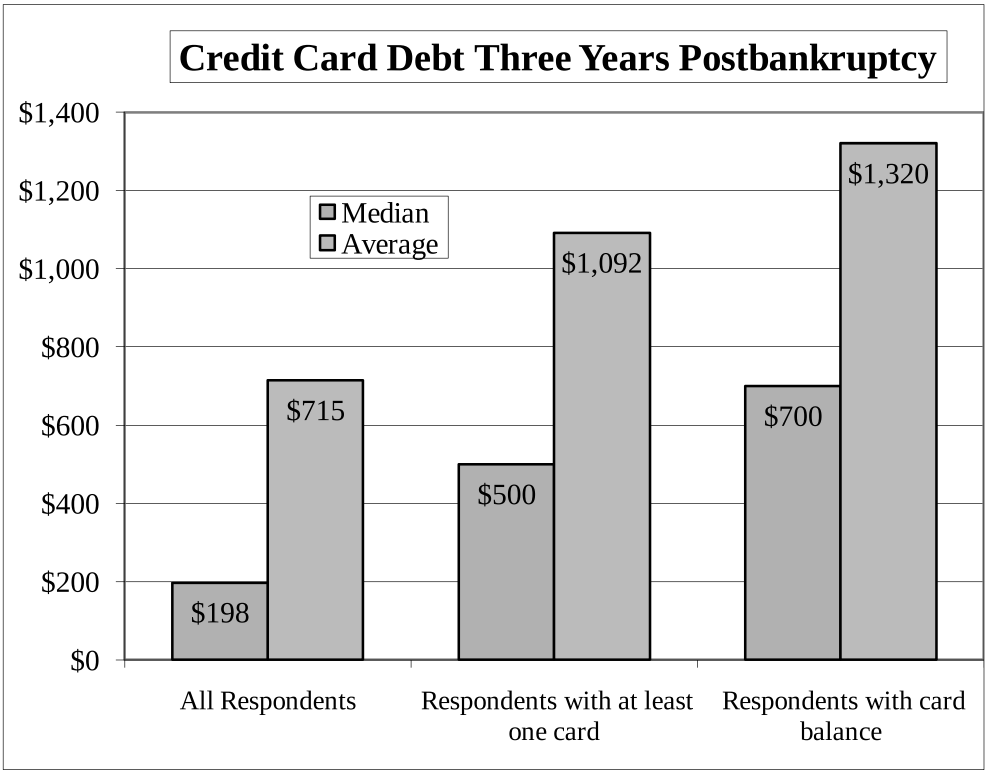
[44] n=180 (studying households that had accepted any new credit cards in three years after bankruptcy).

[45] n=302. A total of 198 families said they had any credit card; 180 families said they had gotten new cards after bankruptcy, suggesting that an additional 18 families still had access to a pre-bankruptcy credit card.

balance on their cards from month to month—the number of different cards was modest. These findings contradict the idea that people who file bankruptcy are chronic credit users who shuffle balances among dozens of cards or do not understand the consequences to their credit scores of having a large number of cards.

Families were asked to report the total amount of their current credit card debt. Figure 2 shows these data. The amounts of reported debt were quite modest, compared both with typical Americans and with these families' pre-bankruptcy debts. Among families with at least one credit card, the median amount of total credit card debt on all cards was $500. The average debt was $1,092, reflecting the fact that a few families had more substantial amounts of debt. Both of these statistics include families that had no debt (did not carry a balance) but did hold a credit card. The relatively small amount of debt may reflect the presence of "convenience" card users in the sample. These families may have the card for emergencies or use it when cash is not accepted or when they feel carrying large amounts of cash may not be safe.

FIGURE 2



The families that reported balances on their cards did have small to moderate amounts of credit card debt. The typical revolving household reported $700 in credit card debt; the average debtor had nearly double that amount, $1,320 in credit card debt. Because these data were collected three years after bankruptcy, families had many months to accumulate large balances, but largely failed to do so. While a few families had quite high debts, the majority of families were making modest purchases with their cards.

Measured against their current post-bankruptcy incomes, most families had manageable amounts of credit card debt.[46] Among all filers, the median household owed less than one percent of its income in credit card debt.[47] The average credit card debt-to-income ratio was 3.86. Even among the high end of the distribution, the ratio of credit card debt to income was modest. At the top quartile mark, the ratio was 0.019, meaning that a household had total credit card debt that equaled about two percent of its annual income. These statistics reinforce the conclusion that a vast majority of families are restrained in their card use, borrowing in a manner that is unlikely to lead to financial distress.

The constraint in credit card use among former bankruptcy filers starkly contrasts with the financial habits of most Americans. An estimated 75 to 80 percent of Americans has at least one credit card.[48] These cardholding families have a large number of cards, estimated to average between four and eight. This gap in credit card acquisition suggests that the experience of filing bankruptcy has a measurable impact on families' willingness to even hold credit cards. After bankruptcy, people may be averse to credit cards, perhaps worried that even having a card could result in high borrowing costs and further debt problems.

Among former bankruptcy debtors who have credit card debt, the amount of spending is consistent with significant credit restraint. Most Americans are much more leveraged with credit card debt. The Federal Reserve found that in 2001 the median debt among those who carried credit card balances was $1,900.[49] This figure is more than double the median of $700 debt reported by former bankruptcy debtors. While those who have never filed bankruptcy have had more years of uninterrupted card use to accumulate balances, the differential in average credit card debt shows that bankruptcy is effective in giving families a fresh start with respect to credit card borrowing.

Before bankruptcy, families have high debts and numerous credit cards. But after bankruptcy, their borrowing practices are more modest. The findings on car

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[46] The credit card debt-to-income ratio was calculated by dividing each household's total credit card debt at three years after bankruptcy by the household's current income at three years after bankruptcy. Only 272 families from the sample of 302 reported income. To calculate the ratios, families with zero income were removed; there were seven such families.

[47] n=267. The exact figure was .33.

[48] *See* Weston, *supra* note 42 (comparing data from Cardweb and 2001 Survey of Consumer Finances).

[49] *See* Ana M. Aizcorbe, Arthur B. Kennickell & Kevin B. Moore, *Recent Changes in U.S. Family Finances: Evidence From the 1998 and 2001 Survey of Consumer Finances*, FEDERAL RESERVE. BULLETIN 1, 23 tbl.11B (2003), *available at* http://www.federalreserve.gov/pubs/bulletin/2003/0103lead.pdf.

lending and credit cards are consistent with each other, suggesting that former bankrupts retain a lasting resistance to even the most popular forms of consumer credit. Families' reluctance to use credit cards suggests that bankruptcy may create a resistance to using open revolving lines of credit. Such a resistance to cards is a dramatic transformation from the families' heavy reliance on credit cards before bankruptcy.

E. Limitations of Findings

The findings from the Consumer Bankruptcy Project data are subject to several limitations. First, there are the general sampling issues described above. Replication of the study with a different sample would be useful in assessing the representativeness of the Consumer Bankruptcy Project sample.

Second, all data are self-reported. People may not remember all the credit that they have accepted. Or they may fail to report all their credit out of concerns about stigma or privacy. To a large degree, these limitations are inherent in survey research and cannot be addressed through different practices. The best reassurance would come from very similar findings from a study using a different data source, such as lenders' or third-party records of borrowing.

Third, the Consumer Bankruptcy Project is a study of people in bankruptcy. There is not a sample of non-debtors to use as a control or comparison group. The result is that the analysis is largely limited to description, albeit at a level of detail not usually possible in studies of the general population that may include only a few bankruptcy filers.

II. COMPARING BANKRUPTS AND NON-BANKRUPTS: SURVEY OF CONSUMER FINANCE

This Part discusses the results of a recent study of post-bankruptcy borrowing, *Household Borrowing After Personal Bankruptcy*, by Song Han and Geng Li.[50] This study adds to the Consumer Bankruptcy Project data in two very important ways: its design allows it to compare bankruptcy debtors with non-debtors and it offers a longer window in which to observe post-bankruptcy credit patterns.

A. Methodology and Sample

The Han & Li study used data from the Survey of Consumer Finance, regarded as the most complete and accurate data set on American household finances.[51] It is

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[50] Song Han & Geng Li, *Household Borrowing After Personal Bankruptcy* (Fed. Reserve Bd., Working Paper No. 2009-17, 2009), *available at* http://www.federalreserve.gov/PUBS/feds/2009/200917/200917pap.pdf.

[51] The construction of the Survey of Consumer Finance is complex, in part because by design, it oversamples wealthy people, but also because it uses multiple imputations to replace missing data and uses clustered random sampling. *See* Federal Reserve Board, Survey of Consumer Finances,

not a panel study; new households are sampled over time. The Survey of Consumer Finance is conducted triennially with the questions remaining largely consistent in subsequent administrations. Since 1998, participants have been asked if they or their spouse/partner have ever filed bankruptcy. If the answer is yes, the year of the most recent bankruptcy filing is coded. The chapter of bankruptcy filed is not coded and is unavailable.

For their analysis, Han & Li pooled observations from the 1998, 2002, and 2004 Surveys of Consumer Finance, presumably to increase the number of participants who have ever filed bankruptcy. They also restricted the sample to adults between twenty-five and sixty-five years old. The total sample contains over 800 bankruptcy filers and several thousand non-filers. While subject to its own limitations, the Han & Li study provides a useful benchmark for evaluating the reliability of the Consumer Bankruptcy Project data.

B. Use of Unsecured Credit

The study provides a careful comparative analysis of the credit card debts of bankruptcy filers and non-filers. Han & Li reported that 60.6 percent of people who have ever filed bankruptcy have a credit card.[52] This figure is quite close to the finding from the Consumer Bankruptcy Project that 65.6 percent of former bankruptcy debtors had credit cards, and may be somewhat lower due to the presence of chapter 13 filings in their sample.[53] This level of cardholding is markedly lower than the non-bankrupt sample. Among those who have never filed bankruptcy, 75.5 percent reported having at least one credit card.

Han & Li estimated regression models on credit card debt, controlling for demographic characteristics, income, and household preferences (such as credit attitude). They found that bankruptcy debtors are less likely to have credit cards than other Americans, reporting that "the likelihood of a [bankruptcy] filer obtaining a new credit card, unconditional on time since filing, is about half of that of a nonfiler with comparable characteristics."[54] Their model estimated how credit card use changes as time elapses after bankruptcy. They found that people who filed bankruptcy recently are much less likely to have credit cards (only a 14 percent chance) compared to a similarly situated person who has never declared bankruptcy.[55] Over time, credit card use increases. But until more than nine years after filing (and notably after the bankruptcy is removed from the person's credit report), those who have filed bankruptcy have a statistically significant lower

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http://www.federalreserve.gov/PUBS/oss/oss2/scfindex.html (last visited Mar. 22, 2010) (providing surveys from different years).

[52] Han & Li, *supra* note 50, at 16.

[53] Michael Staten's study of post-bankruptcy borrowing between 1978 and 1988 found that a lower percentage of chapter 13 filers accepted new credit for several years after bankruptcy compared to chapter 7 filers. Staten, *supra* note 9, at 26 ex.8.

[54] Han & Li, *supra* note 50, at 18.

[55] *Id.*

likelihood of having a credit card than non-filers.[56] Bankruptcy has an enduring effect of reducing consumer's participation in the credit card market, even controlling for other factors that might vary among filers and non-filers.

Han & Li then examined how those who have cards use them. Not surprisingly, people who have filed bankruptcy in the last nine years have higher interest rates than non-filers.[57] The relative cost of post-bankruptcy credit is consistent with a segmented credit market for people who have filed bankruptcy that may force debtors who want credit to borrow at higher cost. The data on the quantity of credit also show significant differences based on a prior bankruptcy. People who have filed bankruptcy in the last nine years have lower credit limits compared to similarly-situated people who have never filed bankruptcy. The average bankruptcy filer has a combined limit on all cards of $11,494, roughly half that of the average non-filers.[58] Bankruptcy debtors clearly have less credit than non-bankruptcy debtors. But that conclusion does not necessarily mean that bankruptcy debtors have a much lower supply of credit. While that seems likely to be true to at least some degree, it is not necessarily an exclusive explanation. It may be that the lower credit lines reflect willful decisions by bankruptcy debtors to select credit cards with lower limits or to use the cards sparingly, which could prompt the issuers to not raise the limits. While Han & Li say that debtors have less "access" to revolving credit,[59] the data do not themselves show that it is a supply-side effect limiting debtors' uptake of credit.

Han & Li also examined how cardholders are managing their credit card debt. They found two significant effects. First, bankruptcy filers have higher utilization rates; their credit card balances are closer to their credit limits than non-filers.[60] But, as shown above, bankruptcy filers have significantly lower credit limits. In fact, Han & Li report that as a descriptive matter (not controlling for differential characteristics of the two groups), the total amount of credit card debt is nearly identical among the two groups.[61] Bankruptcy filers, like non-filers, owe on average somewhat more than $3,000 in credit card debt. This amount of debt is a stark contrast to credit card debts of bankruptcy debtors at the time of bankruptcy. The average debtor in the 2001 Consumer Bankruptcy Project sample had accumulated $19,404 in credit card debt by the time of bankruptcy filing.[62]

Second, bankruptcy filers and non-filers had similar relationships between their card balances and their incomes. Han & Li found no statistically significant difference in the ratio of credit card balances and borrowers' incomes between those

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[56] *See id.* at 17–18 (examining negative effects filing for bankruptcy has on obtaining credit cards).
[57] *See id.* at 19.
[58] *See id.* at 34 tbl.3 (noting non-filers had credit card limit of $23,762).
[59] *Id.* at 2.
[60] *See id.* at 18 & n.17 (indicating filers are three times more likely to have credit card debt than non-filers).
[61] *Id.* at 34 tbl.3. (finding average non-filer has credit card debt of $3,358, and average filer has credit card debt of $3,551).
[62] *See* Porter, *supra* note 42, at 1179 n.53.

who filed bankruptcy in the prior nine years and those who have never filed.[63] This effect holds even right after bankruptcy, when filers are likely to have dramatically lower incomes than other Americans and may still be coping with financial distress. People who have filed bankruptcy are keeping their card debt in the same relationship to their incomes as those who have never filed bankruptcy, and who may have lower risk or incidence of employment difficulties, chronic illness or injury, or family instability that often precede financial failure. The indistinguishable ratios of debt to income may reflect careful efforts by bankruptcy debtors to keep their credit card balances manageable on their lower incomes.

C. Use of Secured Credit

Han & Li examined two kinds of secured credit: car loans and first-lien mortgages. They generally found some differences between bankruptcy filers and non-filers in car lending, but no reliable pattern of difference in mortgage lending.

As a descriptive matter, bankruptcy debtors are more likely to have car loans (48.3 percent compared to 38.3 percent).[64] Those findings are not consistent as time elapses after bankruptcy, making it difficult to interpret the data. Controlling for demographic characteristics and borrowing attitudes, Han & Li's regression estimates show no difference in the likelihood of having a car loan for those who are two to five years from bankruptcy compared to non-filers.[65] Because Han & Li have both chapter 7 and chapter 13 filers in their sample, this result may reflect people in chapter 13 being able to save their cars or being unable to get permission to get car loans until they complete five-year repayment plans. The Survey of Consumer Finance data do not contain chapter, making it impossible to test the presence and magnitude of such effects.

Han & Li did not report how many people purchased cars without a loan; however, they did compare the rate of car purchase among the two groups. As I note above, many people may lose their cars in bankruptcy, or in the period immediately before bankruptcy. We would expect bankruptcy filers to have a stronger demand for cars than non-filers. Thus, the higher likelihood of bankruptcy filers to have car loans may reflect more car purchasing by people who have filed bankruptcy, rather than a proclivity to *borrow* when purchasing a car.

Repeating the pattern from the credit card data, the management of car loans between filers and non-filers is similar. The regression models do not predict a difference in the ratio of one's car loan to one's income based on whether a person has filed bankruptcy. Coefficients for all time periods after bankruptcy are not statistically significant.[66] These findings suggest that those who have filed

[63] *See* Han & Li, *supra* note 50, at 35 tbl.4 (showing measurable effect for those who filed more than nine years ago, with bankruptcy filers having balance to income ratio 0.045 higher than non-bankruptcy filers).
[64] *See id.* at 34 tbl.3.
[65] *See id.* at 21–22 (finding difference statistically insignificant).
[66] *See id.* at 22.

bankruptcy are keeping their car borrowing within a proportion typical for their incomes. A past bankruptcy does not seem to predict an upward trajectory of heavy borrowing after discharge. This is true even nine years after filing, when debtors' credit reports no longer reflect bankruptcies.[67] The lack of difference after nine years suggests that a lack of credit supply does not fully explain the restrained pattern of car borrowing.

The Survey of Consumer Finance collects data on first-lien home loans. Han & Li conclude that there is a substantial restriction in mortgage lending for the first year after a bankruptcy filing, but thereafter lenders lower their barriers to borrowing.[68] In the subsequent years, there is no longer a statistically significant reduction in the likelihood of having a mortgage based on having filed bankruptcy. As with credit cards and car loans, bankruptcy filers pay higher rates than non-filers, even after controlling for income and other characteristics.[69]

Han & Li's analysis of the Survey of Consumer Finance data adds significantly to the findings from the Consumer Bankruptcy Project. Their data provide useful comparisons between bankruptcy filers and non-filers, showing that filers are less likely to have credit cards, more likely to have car loans, and about equally likely to have mortgages. The amounts of bankruptcy filers' debts, both in absolute terms and relative to their incomes, are very similar to non-filers.

D. Limitations of Findings

Bankruptcy scholars rarely use the Survey of Consumer Finance, despite its wealth of information about consumer credit behavior. A principal objection is the survey's failure to distinguish between chapter 7 and chapter 13 bankruptcies. Han & Li pooled the chapters saying that such a maneuver is "standard in the literature," although that characterization would not apply to the legal scholarship that emphasizes the differences in the two chapters.[70] While they assert that there are few chapter 13 filings, the bankruptcy data over the last decade consistently show that 30 to 40 percent of all consumer bankruptcies are chapter 13 cases.[71] Han & Li also seem to discount crucial facts about how chapter 13 works. Their accurate statement of law—that "[i]n addition, both chapters share the key feature of the U.S.

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[67] *See id.* (noting "differentials in rate spreads between those who filed nine years earlier and comparable nonfilers are not statistically different from zero . . .").

[68] *Id.* at 20 (indicating "those who filed one year earlier are . . . 81 percent[] less likely to obtain a mortgage than comparable nonfilers, while those who filed more than nine years earlier are . . . 37 percent[] more likely to obtain a mortgage than comparable nonfilers.").

[69] *See id.* at 20–21 (finding rate of interest higher on mortgages for filers than non-filers).

[70] *See id.* at 5 ("Pooling the two chapters . . . is standard . . . mostly because of the small number of Chapter 13 filings.").

[71] *See generally* U.S. Courts, Bankruptcy Statistics, http://www.uscourts.gov/bnkrpctystats/statistics.htm#calendar. Han & Li say that "many of the Chapter 13 filings convert to Chapter 7," Han & Li, *supra* note 50, at 5, but I think that overstates the data. The most comprehensive study of chapter 13 found that only 9.7 percent of all chapter 13 filings converted to chapter 7. *See* Norberg & Velkey, *supra* note 3, at 506 tbl.18.

personal bankruptcy law, that is, debt discharge"—is hard to square with the repeated finding of researchers that two in three chapter 13 filings do not end in a completed repayment plan.[72] The modal outcome in chapter 13 is no discharge, whereas nearly all chapter 7 cases end in discharge within a few months of filing. They may provide readers with too much confidence that the shortcomings of the Survey of Consumer Finance do not limit their ability to draw reliable conclusions from their analysis.

The lack of information about which chapter of bankruptcy relief respondents filed also complicates Han & Li's estimates of borrowing behaviors that are conditional on time from bankruptcy. Because most successful chapter 13 cases last five years (and even those that ultimately do not end in discharge may not be dismissed until more than one year into the case), Han & Li are not clearly reporting data on *post*-bankruptcy borrowing. Some of their respondents may have still been in bankruptcy, making payments to the bankruptcy trustee, and years from the termination of their cases. These debtors are forbidden from borrowing without court and trustee permission. Perhaps more importantly, they have not earned a discharge of debt, changing lenders' willingness to supply them with credit and leaving them still burdened with large unsecured debts. Although it is a smaller sample with a group of non-filers for comparison, the Consumer Bankruptcy Project sample of chapter 7 debtors is cleaner because it reflects only the effect of bankruptcy discharge on borrowing.

A less serious, but curious, limitation of Han & Li's analysis is their decision to restrict the sample to people who were twenty-five to sixty-five years old. Other investigators with the Consumer Bankruptcy Project have published research showing that older Americans are the fastest growing segment of the bankruptcy population, even after controlling for general demographic trends.[73]

Taken together, the Consumer Bankruptcy Project data and the Survey of Consumer Finance provide strong evidence that bankruptcy is correlated with a lower likelihood of holding credit cards and a lasting reduction in the use of unsecured credit as compared to before bankruptcy. The remainder of this paper turns to analyzing the appropriate conclusions about creditor and debtor behavior to draw from the restrained pattern of credit.

III. FINANCIAL HARDSHIP AFTER BANKRUPTCY

Borrowing decisions do not occur in a vacuum. At least in part, most families are motivated to make any particular borrowing decision because they need to pay a

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[72] *See* Norberg & Velkey, *supra* note 3, at 505 & n.70 ("The overall discharge rate for the debtors in the seven districts covered by the Project was exactly the oft-repeated statistic of one-third.").

[73] *See* Teresa Sullivan, Deborah Thorne & Elizabeth Warren, *Bankruptcy Ages*, 11 NORTON BANKR. L. ADVISER 1, 1 (2008) (finding, since 1991, Americans over age of 55 have sharpest increase in bankruptcy); Teresa A. Sullivan, Deborah Thorne & Elizabeth Warren, *Young, Old and In Between: Who Files for Bankruptcy?*, 9 NORTON BANKR. L. ADVISER 1, 1 (2001) (showing 213 percent increase in amount of people over 65 who filed for bankruptcy).

certain expense, to purchase a specific item, or to address a shortfall in income. If bankruptcy debtors have overall upward financial trajectories, we would expect their borrowing to be limited. Yet, a lack of borrowing after bankruptcy does not necessarily mean credit-resistant families are financially healthy. Some families could just barely be meeting expenses or could be suffering privations but refuse to turn to credit as a crutch to address their hardships. Under such circumstances, families may be separated only by sheer luck and determination from another round of intense borrowing that results in overindebtedness. As their hardships worsen, these families could again become mired in debt. This Part presents original data from the Consumer Bankruptcy Project on the financial situations of families after bankruptcy. The findings describe debtors' incomes, ongoing bills, and privations.

A. Income Data

Income problems are the most common trait shared by families that seek bankruptcy relief. Decades of empirical research document the reasons for these income problems, such as job loss, missed work due to illness or injury, or a family break-up.[74] Many families experience a significant drop in income in the period before their bankruptcy,[75] and the vast majority of families enter bankruptcy with low incomes. By the time they file bankruptcy, families are trying to live on incomes that are approximately half of those earned by non-bankrupt families.[76] The median income for chapter 7 debtors who completed first round telephone interviews was just $21,870.[77] The average income was $24,300.[78] These low incomes could persist for the first several months after filing because bankruptcy does not change debtors' income, instead only reducing the demands that debt payments put on income.[79] Thus, income data from the time of filing bankruptcy may not reflect the trajectory of household income after bankruptcy.

The Consumer Bankruptcy Project asked debtors about their incomes in post-bankruptcy interviews. Although self-reported income data may have reliability

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[74] *See, e.g.*, WARREN & TYAGI, *supra* note 18, at 81 fig.4.1 (displaying reasons why families with children file for bankruptcy); SULLIVAN ET AL., *supra* note 3, at 91–102 (providing debtor income data and hypothesizing that lower incomes due to, *inter alia*, layoffs and short job tenure).

[75] *See* SULLIVAN ET AL., *supra* note 3, at 98–99 (reporting more than one-quarter of chapter 7 debtors lost 10 percent or more of their income during two years before they filed bankruptcy).

[76] *See* Warren, *supra* note 32, at 125 (citing U.S. Census Bureau data for median household income in 2001 at $42,228 and comparing that figure with median bankrupt debtor's income of $24,108 in 2001).

[77] n=352. These statistics are for the chapter 7 debtors who completed at least the one-year post-bankruptcy interviews. Schedule I income data were missing for seven respondents. Figures from the bankruptcy court records are given in 2001 dollars, when the data were gathered.

[78] The standard deviation was 14,143. Eight debtors, or just over two percent of the sample, said they received no income whatsoever. At the other end of the spectrum, one debtor reported annual earnings of just over $101,000.

[79] *See* Porter & Thorne, *supra* note 1, at 99. ("Successful postbankruptcy rehabilitation appears to rest on sustained or increased income, yet bankruptcy law does not address this critically important need. Without income support or stability, bankruptcy provides only partial aid for those seeking financial rehabilitation.").

problems,[80] there are no continuing public court records for chapter 7 debtors, who are usually discharged within a few months of their bankruptcy filings. Even proprietary credit reports, the most detailed profile of families' financial activities, do not provide income data. To date, the Consumer Bankruptcy Project survey data are the best available data on post-bankruptcy income.

In the three-year post-bankruptcy interviews, debtors were asked to report their approximate annual household income before taxes. The median household reported that its household income was $36,000.[81] The average household had an annual income of $43,520.[82] These figures at three years post-bankruptcy are a substantial improvement from income reported at the time of bankruptcy filing, with the typical bankrupt household having an increase of 64 percent in income.

Even the lowest-earning quartile, reporting post-bankruptcy household income of only $24,000, showed marked improvement from the time of bankruptcy, when the income for that group was only $14,229. By three years post-bankruptcy, only 14.7 percent of debtors were earning this figure.[83]

At the other end of the spectrum, the top quartile of earners made very significant gains in income. At the time of bankruptcy, this group earned $31,833 or more, still well below the median household income for all Americans in 2001 of approximately $42,000.[84] When interviewed three years after bankruptcy, the top quartile of respondents estimated their annual earnings at $60,000 or more. This is nearly twice the top quartile cut-off of $31,833 in 2001 when these families filed bankruptcy. The entire income distribution shifted upward during the three years after bankruptcy, but the largest gains were among the high-earning households.

The fact that household incomes improved on average after bankruptcy should not distract from assessing debtors' income in absolute dollars. A minority of households still had poverty-level incomes, and people who file bankruptcy continue to have relatively low incomes. Figure 3 shows a comparison between the Consumer Bankruptcy Project chapter 7 bankruptcy debtors and the overall American population. While bankruptcy debtors made substantial progress toward closing the income gap with the median American in the three years that elapsed after their bankruptcies, there was still a disparity. The U.S. Census reports that the median household earned $44,389 in 2004.[85] The median household that filed

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[80] *See* NORMAN M. BRADBURN & SEYMOUR SUDMAN, IMPROVING INTERVIEW METHOD AND QUESTIONNAIRE DESIGN 69 (1979); Jennifer W. Reichert & John C. Kindelberger, *Reliability of Income and Poverty Data from the Current Population Survey Annual Demographic Supplement*, 2000 PROCEEDINGS OF THE SURVEY RESEARCH METHODS SECTION, AM. STATISTICAL ASS'N 151, 154–56, *available at* http://www.amstat.org/Sections/Srms/Proceedings/papers/2000_021.pdf (analyzing reliability of income data using reinterview techniques).

[81] n=272. Observations were missing for 30 households. Three households were excluded as outliers because each earned an income greater than $225,000. These figures are given in 2004 dollars.

[82] The sample is identical to that reported in the prior footnote. The standard deviation was 30,262.

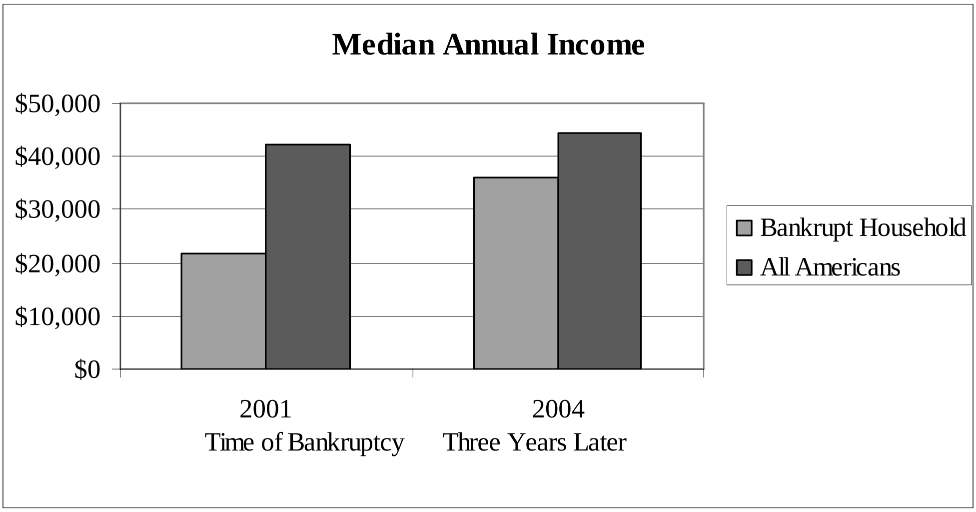
[83] These figures have not yet been adjusted to inflation, as they should be for comparison.

[84] *See* Warren, *supra* note 32 (noting median household income to be $42,228).

[85] U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2004*, 4 tbl.1 (2005) *available at* http://www.census.gov/prod/2005pubs/p60-229.pdf (last visited Mar. 23, 2010).

chapter 7 bankruptcy in 2001 earned $36,000 in 2004, only about 80 percent of the typical household. This is a substantial shortfall, both in percentage terms and in absolute dollars ($8,389). While debtors improved their earnings, they are still faced with the challenge of trying to make ends meet with fewer dollars than the typical household. Income problems seem to persist after bankruptcy that continue to retard debtors' financial health. Given the primacy of income to well-being, these data have important implications for how families may view credit solicitations during the post-bankruptcy period.

FIGURE 3



Another measure of income gives additional insight into the trajectory of post-bankruptcy financial life. Debtors were asked whether their income had changed by either increasing or decreasing by 10 percent or more, since they had filed bankruptcy.[86] More than six in ten respondents (62.2 percent) reported experiencing income volatility of 10 percent or greater.[87] The remaining respondents (37.8 percent) had stable or very small variation in income during the three years after bankruptcy. Figure 4 illustrates the proportion of families with increasing, decreasing, and stable incomes. Among households who had an income change,[88] two-thirds of households (65.5 percent) said their income had increased by ten percent or more (40.9 percent of the total sample). Just more than one-third of

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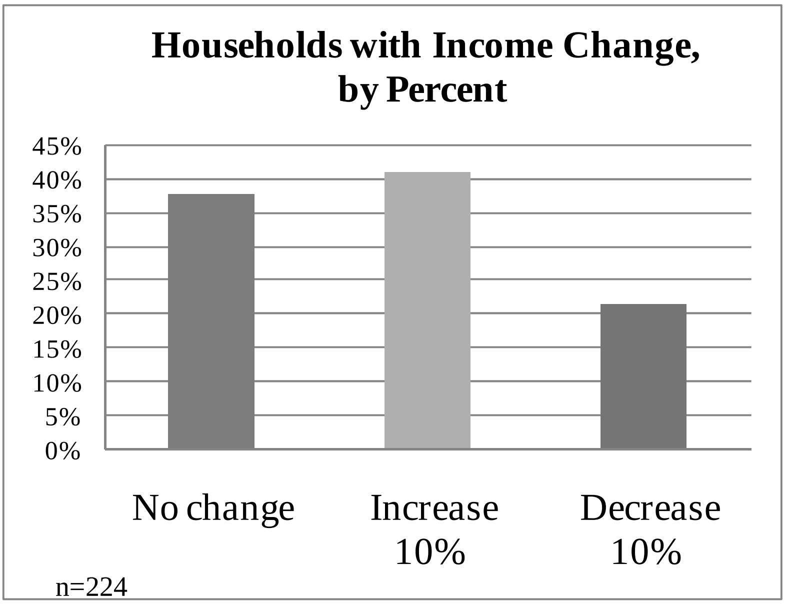
[86] n=224. Observations were missing for 75 respondents, and two respondents selected "do not know."

[87] These figures are calculated based only on data from the primary respondent. A later question asked whether a spouse's income had experienced change. The wording of the initial question, however, asked about "your income," and most respondents appeared to have considered the entire household in their answers to the initial question. Only seven respondents said their spouse's income had changed when they did not report such a change to the initial question about "your income."

[88] n=139.

households with income volatility, 34.5 percent, said they lost income of ten percent or more (21.3 percent of total sample).

FIGURE 4



Both income measures from the Consumer Bankruptcy Project show that income problems persist after bankruptcy. While most families increase their earnings, bankrupt families still have lower incomes than other Americans. The Han & Li study, which contains the only other data that I am aware of on post-bankruptcy income, supports this conclusion. They report summary statistics showing that the average household in which a person has *ever* filed bankruptcy has a much lower income ($53,100) than the average non-bankrupt household ($79,400).[89] This finding points to the persistence of the shorter-term trend shown in the Consumer Bankruptcy Project data—people who file bankruptcy suffer a long-term depression of income. People who file bankruptcy have to try to make ends meet on fewer dollars, a tempting circumstance in which to use revolving credit. The income data give crucial context to families' decisions about whether and when to begin borrowing after bankruptcy.

B. Bill-Paying Data

Income is only half the story of a manageable budget. Even with debt relief, families still have ongoing expenses and need adequate income to pay bills.

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[89] Han & Li, *supra* note 50, at 33 tbl.2.

Nothing in the nature of a bankruptcy discharge, for example, halts the need for a person with a chronic illness to need continued medical care. This section presents data from the Consumer Bankruptcy Project on how families fare paying bills after bankruptcy. The findings illustrate the specific kinds of financial needs that might prompt debtors to borrow.

Respondents were asked about bill-paying difficulties in both post-bankruptcy interviews. One year after bankruptcy, one in four families (25 percent) said they struggled to pay one or more debts one year after bankruptcy.[90] The bills that the largest fraction of families found difficult were for mundane but necessary expenses such as utilities, car payments, housing, and taxes.[91] The bill-paying query was repeated in the interviews conducted three years after bankruptcy when families were asked if they struggled with certain types of bills. Three years after their bankruptcy discharge, the fraction of families struggling with bills had more than doubled from one year after bankruptcy. A majority of respondents (60 percent) said that they found paying one or more bills difficult.[92] The difficulty in bill paying makes sense in context of the degree to which debtors continue to earn relatively low incomes. Some caution is needed in interpreting this upward trend. First, the nature of the bill-paying question differed somewhat in the two interviews.[93] The specific list of bills being read to every respondent in the three-year interviews may have triggered more affirmative respondents than the dichotomous question in the one-year interviews about whether a family did or did not have difficulty paying bills. Additionally, no parallel data are available for the general population. Even before the housing crisis, many middle-class Americans struggled with routine bills.

Nonetheless, these findings are useful to get a preliminary sense of the trajectory of families' economic situations after bankruptcy. It appears that the benefits of a bankruptcy discharge in relieving financial pressures do abate over time. I hypothesized that continued difficulty in paying such bills would push families toward relying on short-term, unsecured credit such as credit cards to make ends meet. Figure 5 shows the types of bills that families reported struggling to pay in the three-year post-bankruptcy interview.

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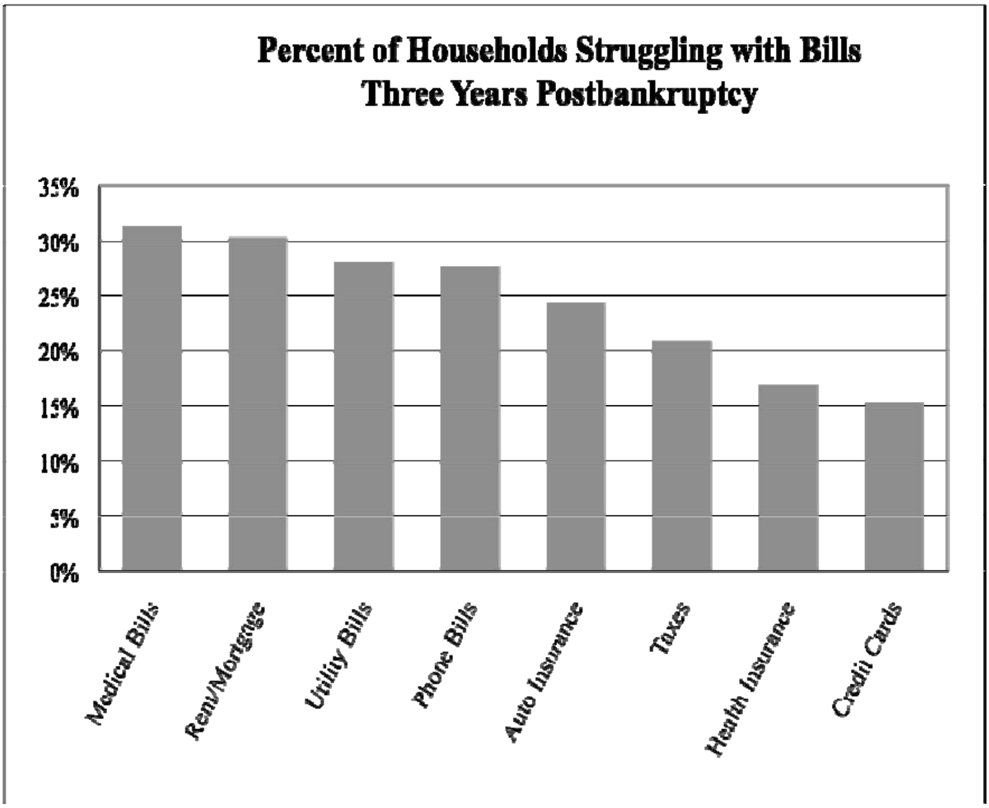
[90] *See* Porter & Thorne, *supra* note 1, at 84 fig.1.

[91] *See id.* at 85 fig.2.

[92] n=300.

[93] The exact language of the two questions was slightly different. In the one-year post-bankruptcy interview, respondents were asked, "Do you have any debts that you are currently having difficulties paying?" If the debtor said yes, they were asked, "What types of debts are those?" and given a closed-ended set of options (medical bills, mortgage or rent payments, credit card bills, utility bills, car payments or repairs, taxes, insurance payments, student loans, and child support or alimony payments). In the three-year post-bankruptcy interview, respondents were told, "Some people have told us that even after bankruptcy, they are still struggling to pay some of their bills. As I read the following list, would you tell me if you are struggling to pay that type of bill?" The list of options that respondents heard was identical to the first interview, except that the types of insurance were broken out separately and car payments were omitted as an option (the latter choice was an oversight). *See* Porter & Thorne, *supra* note 1, at 83 & 85 n.101.

FIGURE 5



Respondents most frequently cited bills that arise on an ongoing basis, such as rent or mortgage payments, utility bills, or phone bills. Medical bills were the most common, with approximately one-third (31.3 percent) of households finding this expense hard to manage three years after bankruptcy. The prevalence of medical bills is consistent with the high rate of chronic illness or injury among bankrupt households. For present purposes, the key point is that the most common bills listed were not explicit credit obligations. Families typically prepay expenses such as utilities, phone bills, and insurance, and many other expenses, such as medical bills or taxes, do not routinely offer an option for financed payment. Such obligations can, however, be paid by credit card. This makes it particularly notable that only 15.5 percent of households reported struggling with credit card bills.[94]

These data are inconsistent with families being unable to manage credit after bankruptcy or relying heavily on credit as a crutch to make ends meet. While more than half of families are struggling with bills three years after a bankruptcy

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[94] Families were also asked about their bill-paying difficulties when interviewed one year after bankruptcy. They were asked if they had difficulty paying any bill, and those who said yes were asked what kinds of bills. Fifteen percent of those struggling to pay bills one year after bankruptcy cited credit card debt as a problem. *See* Porter & Thorne, *supra* note 1, at 85 fig.2.

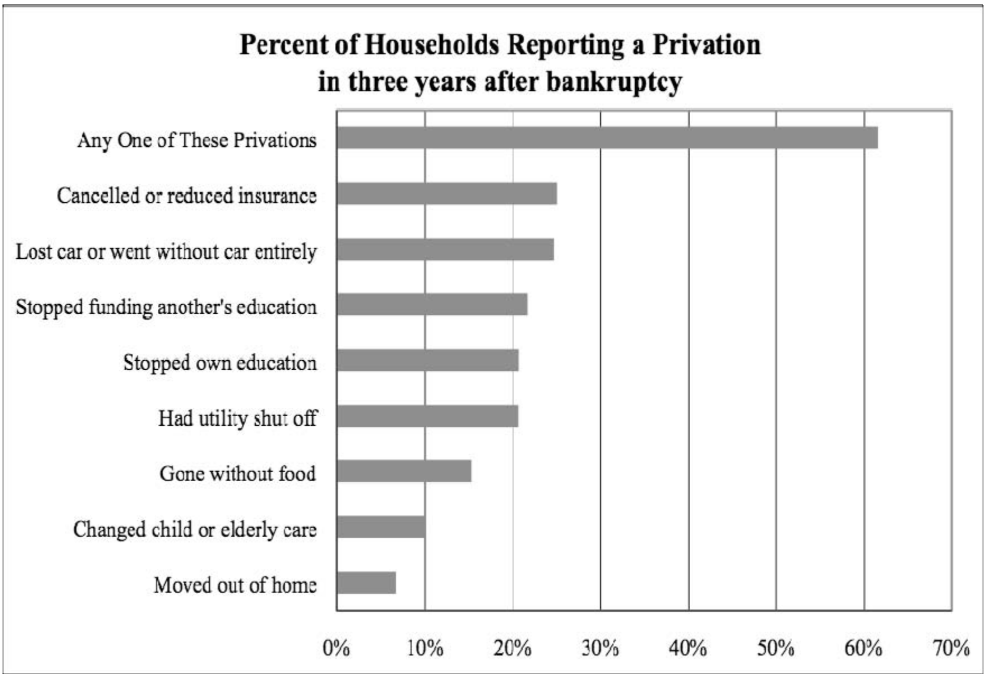
discharge, those financial difficulties are primarily in meeting ordinary household expenses. The bill-paying data are consistent with the credit-use data from both the Consumer Bankruptcy Project and the Survey of Consumer Finance: households are avoiding reliance on credit cards, despite pressing financial needs that could be eased by borrowing. The families that do use credit cards after bankruptcy appear to be managing those bills successfully, at least compared to how they are faring in meeting other obligations.

C. Privations Data

The third type of data describes the extent to which families suffer material hardship after bankruptcy. The bill-paying difficulties put families to painful choices. While some may use general unsecured credit to pay routine bills, other families may eschew borrowing. Instead, they may simply try to eliminate expenses to make ends meet. Such families may prefer to do without than take on the risks of credit card borrowing.

In the three-year post-bankruptcy interviews, families were asked if they had suffered certain privations *since* they filed bankruptcy. Figure 6 shows these findings. More than 61 percent of all households had experienced at least one of these privations in the first three years after their bankruptcies. The fraction of respondents who said that they did without food (15.3 percent) or had a utility shut off (20.7 percent) presents a stark portrait of the level of material hardship that families can incur, even after bankruptcy relief. Other families made choices that impose direct consequences on the quality of their daily lives, such as going without a car or making different arrangements for child or elderly care, based on cost concerns.

FIGURE 6



Some of these financial decisions have long-term consequences for a household's well-being. Stopping an education is likely to mean lower job prospects in the future for the household's wage-earners. Similarly, the termination of efforts to fund a child's education reduces the likelihood that one's children will have the means to offer financial support during retirement. Canceling or reducing insurance leaves a family vulnerable to a financial disaster from the possibility of a death, illness, or accident. The privations findings show that debtors continue to endure privations, even after bankruptcy eliminated most of their unsecured debts. It is in the context of these privations that debtors decide whether to return to using credit.

The overall picture of families' post-bankruptcy circumstances suggests that bankruptcy does offer relief, particularly in the immediate months following the discharge. While most families have increasing income, the typical household still earns less than the typical American. In light of those income data, it is not surprising that a significant number of families report problems in meeting ongoing bills or report suffering privations in the three years after bankruptcy. These findings on the realities of post-bankruptcy life offer crucial context for analyzing families' borrowing decisions. Families that have filed bankruptcy make credit decisions while under significant financial pressure and in the midst of struggles to reconcile income and expenses.

IV. INTERPRETING THE PATTERN OF CREDIT USE

The modest use of credit among bankruptcy debtors, described in Parts I and II, *supra*, suggests that credit use changes markedly after filing bankruptcy. Also, families who have ever filed bankruptcy appear to rely less on unsecured credit than the non-bankrupt population. Credit is a consensual arrangement, requiring both a willing lender and a willing borrower. Post-bankruptcy borrowing reflects the interaction between the supply and demand for such credit. This section explores two explanations for the credit patterns of bankruptcy debtors: 1) creditors are reluctant to lend to people who have filed bankruptcy, and 2) debtors are reluctant to borrow in the years after their bankruptcy. These supply and demand factors obviously overlap to produce equilibrium. My primary argument is that prior literature has failed to appreciate the likely role of debtor self-restraint as an explanation for the pattern of limited credit use after bankruptcy. I use the data on debtors' hardships in Part III to support the argument that debtors' lesser use of credit may reflect deliberate decision-making, rather than a lack of need for borrowing or an inability to access additional credit.

A. Supply Story: Credit Availability

The conventional story is that credit is very difficult to obtain after bankruptcy.[95] Numerous websites warn that bankruptcy can cut off one's access to credit,[96] and debtors' attorneys report that this is one of the most pressing concerns of their clients who are considering bankruptcy. Bankruptcy may demarcate an individual as a deadbeat, a person who will seek debt relief instead of continuing to pay, and creditors may avoid lending to people who have sought a discharge of debt. Because bankruptcy appears on credit reports for seven to ten years after bankruptcy, most conventional lenders could refuse to make any loans to recent bankrupts.

The empirical evidence suggests that lenders take a more nuanced and profit-oriented view to what a bankruptcy filing signals about a person's potential as a customer. Two recent studies document that unsecured credit is widely available to recent bankrupts. In a prior paper entitled *Bankrupt Profits*, I present Consumer Bankruptcy Project data showing the extent to which households are repeatedly solicited for new credit in their first few years after bankruptcy. The median debtor reported ten offers for credit per month in the year after bankruptcy, about one every three days.[97] Such offers were not accidental; debtors explained that many solicitations mentioned their bankruptcy and urged them to take on new credit to

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[95] *See, e.g.*, Cohen-Cole et al., *supra* note 14, at 2 ("Conventional wisdom holds that individuals who have gone bankrupt face difficulties getting credit for at least some time [after bankruptcy].").

[96] *See, e.g.*, Michael Moody, *Obtaining Credit After Bankruptcy: Mission Impossible*, Ezine Articles, Oct. 16, 2006, http://ezinearticles.com/?Obtaining-credit-after-bankruptcy:-mission-impossible&id=330141.

[97] Porter, *supra* note 2, at 1393 tbl.1.

rebuild their creditworthiness.[98] While credit card solicitations were ubiquitous,[99] secured credit was also available. The vast majority of debtors reported getting solicitations for car loans and home equity loans.

These Consumer Bankruptcy Project data are self-reported, but they are generally consistent with the findings of a recent study using lender-supplied credit bureau data. Cohen-Cole's paper, *Forgive and Forget: Who Gets Credit After Bankruptcy and Why?*, examined panel data from a nationally representative sample of credit reports to examine post-bankruptcy access to credit. They conclude that "while individuals do see significant drops in their credit lines immediately after they file for bankruptcy . . . they seem to be able to regain access to credit very soon thereafter."[100] Within eighteen months of bankruptcy or less, three-fourths (75.02%) of bankrupt individuals have a positive credit limit.[101] This figure is substantially higher than the Consumer Bankruptcy Project finding on new credit one year after bankruptcy. This discrepancy appears to be somewhat explained by a sharp uptick in lending after about the fourteenth or fifteenth month after bankruptcy.

It also appears that the Cohen-Cole sample includes chapter 13 bankruptcies, whereas the Consumer Bankruptcy Project data include only chapter 7 cases. Lenders may be more likely to avoid canceling pre-bankruptcy cards if a debtor is in chapter 13 and making partial payment on their card debts. Further, the revolving credit reported on the credit reports would include retail cards, which respondents in the Consumer Bankruptcy Project interview may not have included in their responses on post-bankruptcy credit cards. Perhaps the most likely explanation for the disparity is that the Consumer Bankruptcy Project asked about *new* credit, not whether debtors had any credit. Some debtors retain pre-bankruptcy credit cards by reaffirming the debt (in exchange for the creditor keeping the credit line open). Anecdotally, many debtors do not tell attorneys about one card, preventing that creditor from getting notice of the bankruptcy and excluding the debt from discharge. Debtors do this out of an apparent desire to ensure access to at least one card after bankruptcy.

Cohen-Cole also find, consistent with my prior research, that installment secured credit is more restricted than revolving credit in the immediate post-bankruptcy period. Their paper concludes that lending on mortgages, car loans, and other installment credit does not seem to recover within the same eighteen-month framework observed for credit cards and other traditional revolving credit.[102] Since collateral is thought to mitigate the risks of nonpayment, the weaker supply of secured lending suggests that the unsecured credit products may be designed to be profitable even at high rates of default.

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[98] *See id.* at 1398 ("Nearly eight-eight percent of debtors reported that lenders had referenced the debtor's bankruptcy in their credit marketing.").

[99] *See id.* at 1403 fig.3 (showing 92.7% of debtors reported receiving offers for general-purpose credit cards).

[100] Cohen-Cole et al., *supra* note 14, at 21.

[101] *Id.* at tbl.III.

[102] *Id.* at 20.

Cohen-Cole identifies data that he believes offer strong support that lenders target the lowest credit-worthiness individuals with the most access to post-bankruptcy credit. For those with credit scores below 300 when they filed bankruptcy, the average bankruptcy penalty ratio is *positive* and equal to 173%, meaning that individuals obtain more credit after bankruptcy with respect to the credit limit they would have if they did not file.[103] Just fewer than one in four (23.8%) of all bankruptcy filers had a positive penalty, an increase in the amount of their total revolving credit limit after bankruptcy as compared to their pre-bankruptcy condition.[104] Some lenders seem to view a significant fraction of recent bankrupts as profitable customers.

The Cohen-Cole paper and my prior paper both support an active market for post-bankruptcy lending, with significant access to unsecured credit. The evidence that lenders target post-bankrupt individuals with credit offers diminishes the force of supply-side explanations for the modest amount of credit used by households in the aftermath of bankruptcy. The data from the credit bureaus (Cohen-Cole) and from debtors themselves (*Bankrupt Profits* paper) both show that the modern credit economy provides a robust market for post-bankruptcy lending. The modest credit use among the bankrupt population does not seem to be solely a story about supply deprivation. Debtors receive many more solicitations than they accept, turning down opportunities to borrow and keeping the amount of their borrowing in proportion to their incomes in a manner nearly identical to those who have never filed bankruptcy. To be sure, the causation issues are complex. The supply of credit may exist largely only at very high rates, driving down demand that would exist if the costs of post-bankruptcy borrowing were more typical of the general population. Han & Li's findings and the reported interest rate on new post-bankruptcy car loans taken out by debtors in the Consumer Bankruptcy Project sample both show that there is a price penalty to borrowing after bankruptcy. But the opportunity for new credit exists, suggesting that caution is appropriate in concluding that the restrained pattern of post-bankruptcy borrowing data show "more restricted access" to credit.[105]

B. Demand Story: Debtor Restraint

Supply is only one part of the equilibrium outcome. Demand is also a plausible determinant of the data on limited post-bankruptcy borrowing. Han & Li consider the possibility that people who have filed bankruptcy have a lower demand for credit but generally reject that explanation in favor of concluding that a lower supply of credit explains the pattern of credit. Yet Han & Li find a higher likelihood of being a borrower only for car loans. There is no statistically significant difference between filers and non-filers in the predicted frequency of

[103] *Id.* at 28.
[104] *Id.*
[105] Han & Li, *supra* note 50, at 26.

mortgage loans, and filers are much less likely to have credit cards. In this section, I argue that former bankrupts may have a persistently reduced appetite for credit. I offer qualitative and quantitative data from the Consumer Bankruptcy Project to support a demand-side explanation for the pattern of post-bankruptcy credit.

The research design of the Consumer Bankruptcy Project allowed debtors to share their thoughts on bankruptcy. These qualitative data provide insights into debtors' own understanding of their bankruptcy and their behavior toward credit. In response to an open-ended question at the end of the interview that invited the respondents to share anything else they wanted the researcher to know about their bankruptcy,[106] several families shared their opinions about credit. Many debtors expressed strong resolve to avoid credit cards after bankruptcy. A sixty-two year-old single woman from California described her new financial habits. "I've become smarter with credit cards and that sort of thing. I won't buy unless I can afford it; if I need something and I don't have the money, it can wait."[107] Other debtors volunteered that they intended never to use credit cards again,[108] or that they would only use a credit card for an emergency.[109] These statements suggest that many people who have filed bankruptcy are often suspicious of, or hostile to, credit.

A few debtors expressed frustration with a perceived paradox about post-bankruptcy credit. A Tennessee woman told us that "credit should not be necessary" and that people should be encouraged to live without credit. Yet she noted that the "credit card companies have created a market for themselves," a statement that could reflect how difficult ordinary tasks can be without a credit card.[110] Another debtor lamented that without new credit cards, she would be unable to improve her credit score, and explained that "I don't want credit cards again. There needs to be other ways to build credit."[111] These debtors' comments suggest a preference for avoiding credit cards, and that a return to credit is often reluctant, motivated by a need to rebuild their financial credibility rather than a "demand" for true borrowing.

Several debtors volunteered that their financial failure, including bankruptcy, had been a "learning experience."[112] One debtor explained how her overwhelming debts had provided an education for her about credit. She told researchers: "I was young and moved out and got all these credit cards. I didn't know about interest rates. Before I knew it my payments were so high that I could not pay them. It came to the point that I had to get out of the payments and it was a learning

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[106] This question was the last one in the interview. The exact wording was: "Is there anything else that you would like the researchers to know about your bankruptcy? About your experience, your feelings, your reactions? Anything else?"

[107] Interview with Respondent CA-07-007, Consumer Bankruptcy Project (2001).

[108] *See, e.g.*, Interview with Respondent, TX-07-051, Consumer Bankruptcy Project (2001).

[109] *See, e.g.*, Interview with Respondent CA-07025 Consumer Bankruptcy Project (2001).

[110] Interview with Respondent TN-07-029, Consumer Bankruptcy Project (2001).

[111] Interview with Respondent TN-07-051, Consumer Bankruptcy Project (2001).

[112] Interview with Respondent CA-07-091, Consumer Bankruptcy Project (2001) ("I hated the process but it was a learning experience. I learned a lot."); *see, e.g.*, Interview with Respondent TN-07-012, Consumer Bankruptcy Project (2001).

experience."[113] The learning experience may have taught debtors that on their incomes and with their money management skills they would not be able to keep up with numerous credit cards and the escalating interest and fees of those products. These debtors may have concluded that credit is dangerous and that they must restrain their borrowing to prevent further financial failure. One woman expressed her resolve to avoid credit card trouble in her future. She expressed regret about her bankruptcy and determination to change her behavior. "I'm sorry, I felt like it was so easy to charge things, I didn't realize how fast the charges added up. Wish I hadn't done it. I will never do it again. The credit card companies made it so easy."[114] This woman appears resolved to change her credit card behavior in the future, seeing her own actions as a crucial component to combating the "easy" path to substantial credit card debt supplied by lenders.

This idea of a fresh start embodies more than an adjustment to the debt column of a families' balance sheet. It suggests a behavioral component to the bankruptcy experience that gives individuals a sense of their own ability to engage in a different set of financial behaviors going forward.[115] In the face of numerous offers for credit, debtors will have to rely on self-restraint to avoid credit in the future. Many debtors commented that they found filing bankruptcy to be an emotionally draining and difficult experience. The pain of financial failure seemed to motivate willpower to avoid bankruptcy again. A middle-aged debtor explained this view in some detail. "Bankruptcy should be a lesson in life, not a practice. When we filed, the trustee said something about if you file again, and me and my wife were thinking, 'People actually file more than one time!?!' I'd die before I would file again."[116] These statements suggest that experience of bankruptcy powerfully shapes individuals' attitudes toward credit. The qualitative data on bankrupt households suggest a population that is fearful of further financial failure and is committed to avoiding overuse of credit as an inoculation against overwhelming debt.

The quantitative data from the Consumer Bankruptcy Project also support a story of debtor restraint. This finding is particularly surprising given data showing that lenders target the most vulnerable bankrupt consumers with new credit offers and that many debtors continue to earn low incomes and struggle to make ends meet after bankruptcy. One might have predicted that families whose financial situations were difficult after bankruptcy would be more likely to be heavy users of credit. The idea is that demand for credit is driven in large part by financial need, and that, in particular, it might be reasonable for those who are suffering a downturn in financial well-being to turn to credit as a crutch. To test this hypothesis, I examined the association between financial health and credit card use.

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[113] Interview with Respondent CA-07-042, Consumer Bankruptcy Project (2001).

[114] Interview with Respondent CA-07-002, Consumer Bankruptcy Project (2001).

[115] *See* Interview with Respondent CA-07-089, Consumer Bankruptcy Project (2001) ("It helped me to regain some control of my finances. It will help me move ahead.").

[116] Interview with Respondent PA-07-019, Consumer Bankruptcy Project (2001).

Debtors in the Consumer Bankruptcy Project interviews were asked if their financial situation now was better, the same, or worse than when they filed bankruptcy. A significant minority of debtors reported that their financial situations had failed to improve, or had even worsened, in the time since their bankruptcy. I tested whether such households were particularly likely to have accepted any new credit. I ran these analyses on the Consumer Bankruptcy Project data from both one-year post-bankruptcy interviews and the three-year post-bankruptcy interviews. The results do not provide any evidence that the families who use credit after bankruptcy are doing so as a way of coping with ongoing financial hardship.

One year after bankruptcy, about one in three households did not report an improvement in financial condition in the first year after bankruptcy.[117] But those households seem in general to have the same pattern of credit as households who reported a better financial situation after bankruptcy. A cross-tabulation showed no statistically significant difference in credit uptake among families whose financial situation was better-off, the same, or worse-off.[118] I also found no identifiable correlation between the number of new credit offers that a household accepted and its self-reported financial situation.[119] One year after bankruptcy, households' credit decisions do not seem to be correlated with their financial trajectory. The three-fourths of households that avoid all new credit in the first year after bankruptcy contain a mix of households with improving, stable, and deteriorating financial conditions.

The interviews at three years after bankruptcy reflect a different pattern. Whether a family reported that their financial situation was better, the same, or worse than immediately after their bankruptcy filing did significantly influence whether they accepted any credit cards, but in the opposite direction of the hypothesized relationship that financial trouble would lead to reliance on credit cards. In fact, families that perceived that their financial condition was stable or worsening were underrepresented among those who accepted new credit. But families whose financial condition was better-off than immediately after their bankruptcy were more likely to have accepted a credit card in the post-bankruptcy period.[120] Neither the findings from one-year interviews nor the findings from three-year interviews support an idea of bankruptcy debtors as profligates. Families with declining financial circumstances are less likely to rely on credit to make ends meet, refuting the idea that bankruptcy debtors' large credit card debts before bankruptcy reflects a permanently heightened appetite for credit. Hardship does not seem to be driving families to accept new credit. Instead, the primary driver of demand for immediate post-bankruptcy credit may be a desire to rebuild one's credit history, rather than a desire to borrow. This would explain why financial condition is not related to credit acceptance one year after bankruptcy, and why nearly all families

[117] *See* Porter & Thorne, *supra* note 1, at 85.
[118] p=0.102 (Pearson chi-square).
[119] Pearson correlation co-efficient = 0.022; p = 0.680.
[120] p=0.008 (Pearson chi-square).

have only one card, despite an onslaught of solicitations. Over time, by three years after bankruptcy, many families may be comfortable that their fresh start after bankruptcy will last. Their enduring financial recovery may embolden such families to begin using revolving credit, confident that they can successfully manage the bills, and avoiding debt-driven financial failure.

Self-reported financial situation is likely to reflect, in large parts, the income levels of families after bankruptcy. If income is low, debtors might turn to credit to support their households and avoid privations. This hypothesis is realistic given the findings that debtors have ample access to post-bankruptcy credit, including debtors whose creditworthiness was the lowest before bankruptcy.[121] Moreover, the bankrupt population is a group that used credit cards heavily before bankruptcy to cope with the underlying causes of their financial failure, such as income shortages from job problems or high expenses from medical bills.

In contrast to expectations, the Consumer Bankruptcy Project data show that low income families are particularly likely to eschew new credit. The average family *with* credit cards reported $50,665 in annual pre-tax income. The average family *without* credit cards reported about one-third less income ($37,255).[122] The median figures reflect the same pattern. The typical family that accepted one or more post-bankruptcy cards had $40,000 in income, compared to $32,000 for the typical family who eschewed credit cards after bankruptcy. A logit regression showed a positive, statistically significant association between acceptance of cards and income. As income increases, families are more likely to accept new credit cards.[123] Families with no credit cards are making ends meet with less income than families that accept post-bankruptcy cards.

I also examined the correlation between a families' annual income and the amount of credit the family had as measured, both by number of different credit lines and dollar amount of debt. There was a statistically significant positive relationship between income and number of cards.[124] Families with higher incomes had more credit lines. This finding supports a supply-side explanation—that lenders extend more credit to people with higher incomes. But it also fits into the self-restraint argument—that people who are earning more are willing to spend more, including borrowing on credit cards to finance some purchases.

To further study the interaction of income with credit use, I tested for a correlation between income and total amount of credit card debt. This relationship

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[121] *See* Cohen-Cole et al., *supra* note 14, at 4 (stating much of population receives more credit post bankruptcy).

[122] A t-test was performed to measure whether the difference between the means was statistically significant. $t = -2.643$. $p = 0.009$.

[123] The model had a modest number of independent variables, including income, self-reported post-bankruptcy financial situation, and a family's confidence that it would not need to file bankruptcy again. Income was the only significant predictor in the logit regression model. Although other demographic data are available, such as homeownership and occupational prestige, these correlate strongly with income, suggesting that a simpler model might be a more appropriate fit for these data.

[124] Pearson correlation coefficient = 0.183; p = 0.002.

was not statistically significant.[125] The amount of credit card debt did not correlate with annual income. This is consistent with the prior analyses, leading me to reject the hypothesis that families that have filed bankruptcy return quickly to credit if they experience continued financial problems. Families with less income are apparently making ends meet by suffering privations or continuing to cut expenses, rather than resorting to credit cards.

These findings suggest that as families have more discretionary income, they may feel more confident about their ability to manage credit and self-discipline themselves from overindebtedness. Families may understand that their low incomes expose them to financial risks. They may be reluctant to accept even one credit card because they believe that credit card spending could worsen their financial situation. Nation-level data suggest that these families' intuitions may be correct. Ronald Mann has identified a relationship between the fraction of a nation's *spending* that is done with credit cards and the national per capita bankruptcy rate, even holding constant consumer borrowing.[126] His research suggests that, in aggregate, even holding credit cards may heighten the risk of financial failure. Bankrupt households may have learned the results of Mann's research on a personal level, by experiencing the danger of credit cards in their own households.

The overall pattern of post-bankruptcy credit use shows that families do not become ensnared with significant credit-related debts. While most households reenter the credit economy after bankruptcy, doing normal activities such as purchasing new cars and holding a credit card, the data are consistent with a sustained reluctance to borrow and a desire to achieve a lasting fresh start after bankruptcy, freed from overwhelming debts. Although some families will suffer continued financial problems and low incomes after bankruptcy, these families do not rely heavily on credit cards to weather such difficulties. Analyses show negative correlations between credit card use and precarious financial situations. The most frequent borrowers are actually families that show the strongest indicia of lasting financial recovery.

Collectively, the findings offer support for both supply- and demand-side explanations for the limited use of revolving credit exhibited by recent bankruptcy filers. Lenders may be more willing to lend as debtors' incomes go up, and they are almost certainly willing to lend at a lower cost. However, given that lenders make intense and targeted solicitations of post-bankruptcy households, a demand-driven story also is likely at play in determining the equilibrium of post-bankruptcy credit. Bankruptcy may transform how families respond to financial vulnerability and reduce their willingness to borrow to cope with financial pressures.

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[125] Pearson correlation coefficient = -0.011; p = 0.860. An OLS regression did not find that income was a significant predictor of total credit card debt.

[126] RONALD J. MANN, CHARGING AHEAD: THE GROWTH AND REGULATION OF PAYMENT CARD MARKETS 68–69 (2006).

V. IMPLICATIONS

The data on post-bankruptcy credit are a reminder that the experience of financial failure is not erased by a bankruptcy discharge, even if most of a household's debts are. A household's past financial failure will haunt its future. In this final section, I discuss how researchers may have underappreciated the transformative possibilities of bankruptcy that go beyond balance sheet adjustments and lender incentives. I then discuss the implications of the pattern of post-bankruptcy credit for policymaking and offer some ideas for further research.

A. Lessons From Failure

Many families apparently exit the bankruptcy system desperate to avoid another round of overindebtedness, willing to suffer privations and make do on low incomes, rather than return to borrowing. Taken together, these data suggest that bankruptcy is a painful event. Debtors' self-restraint after bankruptcy is one measure of the non-financial consequences of financial failure. Debtors may have suffered emotional harm and social stigmatization from being unable to pay their debts. They may recoil from credit in an effort to avoid such harms in the future. The restraint in post-bankruptcy borrowing gives some hint at the ways in which families suffer before bankruptcy, a reality that went largely unheard in the debates about bankruptcy abuse and means testing.

The data also are a powerful reminder of the need to take a long view of legal outcomes. Discharge is a single event in time, but its consequences may be manifold and lasting. A full evaluation of the bankruptcy system requires an appreciation of bankruptcy as a long-term transformative event. Financial failure appears to make enduring changes to debtors' preferences and behavior, giving them a different appetite for credit that endures for years after filing. Habits in borrowing may be only one way in which bankruptcy may shape households' preferences and economic life. Bankruptcy could also make lasting changes to people's risk preferences in a more general way, altering their engagement with the economy in several spheres including investment in education, employment decisions, and attitudes toward social welfare programs. Such changes would be consistent with the experience of filing bankruptcy as a catastrophe or a crisis event, which are typically understood to have strong and lasting cognitive and emotional effects.

The bankruptcy system does little to explicitly acknowledge the power of financial failure to alter and shape people's futures. For filings after 2005, bankruptcy law mandates that debtors attend a post-bankruptcy financial program that provides instruction on credit use as a prerequisite to receiving a discharge.[127]

[127] *See* 11 U.S.C. § 109(h)(1) (2006) ("[A]n individual may not be a debtor under this title unless such individual had, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency.").

Because these data were gathered in 2001, before that requirement took effect, the families in the Consumer Bankruptcy Project sample were not required to attend financial education courses. Nevertheless, the substantial portion of families that had no card even three years after bankruptcy and the relatively small balances carried by those who did borrow on cards suggest that financial education programs are misusing their limited time to lecture families on the "evils" of credit cards. To the extent that educational curricula are designed consciously or subconsciously around a conception of debtors as profligate, they do not appreciate the "lessons" that the pain of financial failure seem to teach debtors. The data show that bankruptcy itself provides a powerful deterrent to future use of credit cards. A failure to appreciate families' commitment to changed financial habits can cause bankruptcy debtors to perceive that financial education curricula are not tailored to their needs. This will reduce the efficacy of such education. Bankruptcy financial education needs to be based on the extent and nature of post-bankruptcy borrowing and needs to take into account the ways in which bankruptcy may shape families' post-bankruptcy financial decisions.[128]

The data about actual post-bankruptcy borrowing provide some empirical foundation for a policy debate about the optimal use of credit after bankruptcy. Because there were few prior data and there is no clear consensus on what credit rehabilitation actually means, it remains difficult to reach a normative conclusion about whether the post-bankruptcy behaviors of debtors are ideal or in need of reform. To the extent that credit rehabilitation is one of the specific goals of the fresh start, however, the data in this Article provide an initial benchmark for measuring bankruptcy's success. There have been sporadic proposals to prohibit post-bankruptcy borrowing,[129] but such proposals have had little momentum. Because the data show that most families are avoiding or moderating their use of credit, despite unfettered access to new borrowing opportunities, I think it is difficult to make a persuasive case for barring access to post-bankruptcy credit. The data show limited use of post-bankruptcy credit, suggesting that perhaps policymaking efforts should consider whether the use of credit is suboptimal. Some debtors may be deterred from borrowing even when there would be a positive benefit to their doing so, say, for example, to fund an educational program or to start up a solo entrepreneurship.

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[128] Deborah Thorne & Katherine Porter, *Financial Education for Bankrupt Families: Attitudes and Needs*, 24 J. OF CONSUMER EDUC. 15, 24–25 (2007) (presenting data on attitudes toward financial education and specialized needs of families after bankruptcy).

[129] *See* SELWYN ENZER, RAUL DE BRIGARD & FREDERICK D. LAZAR, SOME CONSIDERATIONS CONCERNING BANKRUPTCY REFORM 90 (1973) (reporting only suggestion specifically directed at issue of post-bankruptcy credit was six-month prohibition on credit, which was found to be "very undesirable" with problems of "feasibility" and "interference" with debtors' lives raised).

B. Legal Tools for Shaping Post-Bankruptcy Credit

Bankruptcy law explicitly shapes incentives to lend and to borrow. At least in part, the law motivates lenders to target recently bankrupt families with credit solicitations because it mandates that eight years must pass before a family may receive another chapter 7 bankruptcy discharge.[130] This prohibition offers lenders some insulation from the risk of nonpayment. If the rule on the frequency of bankruptcy discharge were adjusted upward or downward, it would likely change lenders' supply of credit. A key consideration in changing the period between discharges is understanding the pattern of post-bankruptcy credit under the existing rule.

The overall pattern of restraint in borrowing suggests that families may discipline themselves against borrowing. Despite rampant solicitations, families report sustained reluctance to use credit. The data, which were collected from cases filed when the time period between discharges was six years, do not suggest that families' post-bankruptcy borrowing needed to be curbed or that the post-bankruptcy supply of credit was too tight. The lengthened wait for a chapter 7 discharge may benefit creditors who lend post-bankruptcy but cannot be justified as necessary to facilitate bankruptcy's fresh start policy in ensuring debtors have some opportunity to rebuild their credit. Indeed, given families' modest borrowing, the ban on discharges may be too long to encourage optimal credit rehabilitation. The data on post-bankruptcy credit suggest that the longer wait for a discharge included in the 2005 bankruptcy reforms could not plausibly have been responsive to a widespread pattern of bankrupt families abusing the credit system by quickly loading up on debt after a prior discharge.

Families' actual post-bankruptcy borrowing habits seem to reflect a concern with avoiding future problems with credit. As with the ban on repeat discharges, the law directly affects the route to credit rehabilitation. The Fair Credit Reporting Act only permits a bankruptcy filing to stay on a credit report for ten years.[131] This rule appears to lower families' credit scores for this period.[132] The act of bankruptcy follows families into the future, conditioning the amount and type of credit they can get.

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[130] *See* 11 U.S.C. § 727(a)(8) (2006) ("The court shall grant the debtor a discharge, unless . . . the debtor has been granted a discharge under this section . . . in a case commenced within 8 years before the date of the filing of the petition . . . .").

[131] *See* 15 U.S.C. § 1681c(a)(1) (2006) (listing "[c]ases under title 11 of the United States Code or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years" as information excluded from consumer reports). Apparently, many of the credit bureaus chose to remove bankruptcy filings in only seven years. The federal law is a ceiling, not a requirement that the bankruptcy appear at all or for any length of time on the credit reports.

[132] *See* Musto, *supra* note 7, at 726 (considering "one of the intuitively most-important limits, the 10-year limit on reporting personal bankruptcy, analyzing its immediate effect on credit access and its longer-run effect on creditworthiness").

Changing the credit reporting of bankruptcies would also likely influence families' post-bankruptcy borrowing practices. Given the substantial fraction of debtors who report eschewing credit altogether for years after bankruptcy, families' consumption of credit may be suboptimal. Without data on actual borrowing practices, no considered determination can be made of the appropriate length of time that bankruptcies should stay on credit reports.

The law could also give bankruptcy debtors greater rights to control how discharged debt is reported. While the Federal Trade Commission has opined that credit reports should show a balance of zero for debts that are discharged in bankruptcy,[133] many companies cease to report any data on discharged debts, so that balances remain frozen at the time of bankruptcy. Without extensive credit bureau data and access to the bureau's proprietary quantitative models, it is impossible to discern the exact effect of this practice on consumers' credit scores. If policymakers wanted to enhance the quality of credit available to bankruptcy debtors, they could create penalties for misreporting discharged debt. Such changes might facilitate consumers' credit rehabilitation by raising their credit scores and lowering the price of credit, thus encouraging consumers to borrow after bankruptcy. The debtor-restraint hypothesis developed herein suggests that consumers may continue to curtail their borrowing even if credit reporting laws on bankruptcy were more favorable.

C. Further Research

The Consumer Bankruptcy Projects' telephone interviews provided some of the only longitudinal data ever gathered about the long-term outcomes of bankruptcy. Those data leave unanswered a number of important questions. First, is there something peculiar about bankruptcy, as opposed to severe debt problems, that shapes borrowing behavior? Many families are seriously delinquent on debts but rebound without filing for bankruptcy.[134] The process of bankruptcy or its social stigma may be the operative factor in shaping future financial behavior, rather than merely having endured overwhelming debts. Those who climb out of a financial hole without legal relief may feel more confident in their future ability to again navigate the credit economy, replete with its risks of nonpayment.

Another useful set of studies would be to compare bankrupt individuals with other populations in severe financial distress. Studies could examine how people who have lost their homes to foreclosure use credit in the future. The use of unsecured credit following foreclosure would be a useful comparison for the behavior of bankrupt households. It also seems crucial to homeownership policy to

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[133] Commentary on the Fair Credit Reporting Act, 16 C.F.R. pt. 600 app. 505–06 (2003) ("A consumer report may include an account that was discharged in bankruptcy (as well as a the bankruptcy itself), as long as it reports a zero balance due to reflect the fact that the consumer is no longer liable for the discharged debt.").

[134] *See* Ronald J. Mann & Katherine M. Porter, *Saving Up for Bankruptcy*, 98 GEO. L.J. 289, 290 (2010) ("[M]ost families in financial distress do not file for bankruptcy.").

understand how failing at homeownership may change one's willingness to borrow in the future, including borrowing to purchase another home.

Second, the data on hardship (income, bill-paying, and privation) show that a robust financial recovery eludes some bankruptcy filers. These families may be at particular risk of severe material hardship. And even those families that have rebounded financially in the first three years after bankruptcy remain at risk for the types of financial insecurity that are widespread in America's middle class today.[135] While the data show that many families are staying out of debt and avoiding new credit in the first few years after bankruptcy, they do not indicate the extent to which families are affirmatively saving or insuring to prevent future financial collapse. Adequate savings and insurance can shield families from many common job, medical, and family problems. More complete data on the household finances of bankrupt families would be very useful. We simply do not know the extent to which families are protecting themselves after bankruptcy. Avoiding high credit card debt may prevent bankruptcy by ensuring little or no debt, but credit restraint does not affirmatively help shield families from unexpected expenses or income shocks.

CONCLUSION

After bankruptcy, families have to rebuild their financial lives. The road is not easy, with many families continuing to earn relatively low incomes and finding it difficult to make ends meet. While bankruptcy alters the supply of credit, it also seems to transform debtors' demand for credit. In the face of credit solicitations, some families do not return to the credit economy and avoid credit cards or other borrowing entirely. Families that use credit cards or borrow to purchase a house or car pay higher rates, but generally borrow in amounts that are similar to those who have never filed bankruptcy. Bankruptcy may steel families with determination to avoid unmanageable debts in the future. Their credit restraint is a sign of the pain and hardship that accompanies financial failure. Bankrupt families have learned for themselves, by playing and losing big, that the modern credit economy is a high stakes game. These families sit on the sidelines or bet conservatively in their post-bankruptcy financial lives, attempting a life that is truly after debt.

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[135] *See* JACOB HACKER, THE GREAT RISK SHIFT 5–6 (2006) (discussing pervasiveness of financial insecurity among middle-class Americans).