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Inside *Debt's Grip*: A Conversation with Prof. Bob Lawless

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Debt's Grip

RISK AND CONSUMER BANKRUPTCY

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Introduction

LIVING UNDER THE THREAT OF FINANCIAL COLLAPSE

Bankruptcy filing rates have gone up and down over the past thirty years, but on average, about one million individuals in the United States have filed every year during that time period. Roughly one of every eleven Americans files bankruptcy at some point during their lives.[1] Their bankruptcies are stories of personal struggle in the face of health battles, employment disruptions, and simply trying to keep up with daily expenses. Most consumer bankruptcies, however, are not stories of personal failure. They are stories of how society has failed its citizens.

The people who file bankruptcy in the United States, in aggregate, are a cross-section of households living on the financial edge. They are older, younger, single, married, divorced, and widowed. They live on isolated farms and in apartment buildings in large cities. Some have less than a high school education; others have professional and graduate degrees. They represent every race and ethnicity. They have young children, teenagers, grandchildren, and adult children living in their homes. They are recovering from health problems, from job loss, and from the death of loved ones. Some are young and will have decades to recover their financial footing, while others are in retirement with no idea of how they are going to finance their final years. They have dealt with repeated calls from debt collectors, lost their homes to foreclosure, and had their cars repossessed. They are our neighbors, our coworkers, the nurses who provide health care, the truck drivers who deliver goods to stores, and our children's teachers.

Bankrupt households show us the financial fault lines in our society. Two or three generations ago, the United States had a more robust social safety net that cushioned people from life's most powerful financial blows. Starting in the 1980s, we purposefully have ripped apart these protections. Without much support to deal with hardships, people file bankruptcy. This book tells their stories, describing what it means to teeter on the financial cliff and find that there is no net to catch your fall.

The most prevalent contributors to households' financial downfalls are health problems. People file bankruptcy in the wake of every type of health issue, from one-time health scares to chronic conditions. Health problems in turn lead to medical debt, missing work and a steady paycheck, outright job loss, or the inability to pay for future care or needed prescriptions. Sometimes the health crisis of a loved one creates financial issues. Sweeping reductions to federal health programs and legislative paralysis in enacting comprehensive health-care reforms have left people to fend for themselves and their loved ones during the scariest and most consequential moments of their lives.

The fastest growing group of bankruptcy filers is people in their elder years. They file when they realize that their meager retirement savings will not stretch far enough to cover their basic expenses, even if they are physically able to work into their seventies and eighties. Few employers now provide pensions, and Social Security benefits have lost purchasing power because of inflation and higher medical costs. Consequently, some senior Americans find themselves sitting in bankruptcy courts during their final years.

People also file bankruptcy in their younger years, as they begin to grow their families, only to find that their stagnant incomes cannot meet the essential expenses of starting a life. As college tuition increases, students must borrow more. Home prices have risen to the point that the cost of even a fixer-upper starter house is beyond many families. Employers barely increase employees' wages to match inflation, while executive compensation skyrockets. Gender and racial wage and wealth gaps persist. In their last-ditch attempts to make ends meet, families rack up credit card debt, take out expensive auto loans, and turn to fringe credit outfits, like payday lenders. For many families, bankruptcy is their last hope.

Dramatic changes in debt collection techniques may also push people into bankruptcy courts. Technology has made it possible for creditors to call, email, and text incessantly. Past-due debts are shuffled between debt collectors so frequently that it is difficult to know what debt is being called about, let alone whether to trust what the debt collector is claiming.[2] The costs of filing debt collection lawsuits are minimal, leading to a doubling of suits filed since the 1990s, with Black and Latine persons targeted for suit more often.[3] When faced with garnishment of their wages or bank accounts, foreclosure of their homes, and repossession of their cars, some people manage the immediate crisis by filing bankruptcy.

Beyond reflecting the weakening of the social safety net, a uniting theme of people's bankruptcy stories is their struggles in the years before their bankruptcies. Their struggles are a microcosm of household struggles. As they try to balance budgets and stay ahead of mounting debt, the people who ultimately file bankruptcy skip seeing the doctor and taking medications, go without food and utilities, look for extra work, move in with family, sell property, and try to negotiate with lenders.

The experiences of bankruptcy filers show how households collapse under the pressure of having to fend for themselves financially. Their bankruptcies collectively lay bare the structural reasons people continue to struggle. This book is the story of what happens to everyday people when risk remains privatized for decades while income inequality widens, told through the struggles of those who turned to the consumer bankruptcy system for help.

PRECARITY AMID THE PRIVATIZATION OF RISK

Many households in the United States have lived on the financial edge for decades. Over the last forty years, how people survive has shifted substantially. They pay more for housing, utilities, health care, prescriptions, transportation, daycare for their kids, and education for themselves and their children. Pensions are largely a thing of the past, leaving most workers responsible for funding their retirement years. People are expected to know how to grow their retirement savings and insulate those savings from the whims of financial markets.

Most adults also earn less relative to their expenses than four decades ago. Incomes have not risen in step with even the basic costs of living, let alone necessary large expenditures. As of 2020, the gap between the rich and everyone else reached levels not seen since the Gilded Age, the era marked by the opulent lives of railroad tycoons and wealthy financiers. Combined with shouldering more of life's expenses, rising income disparity has contributed to widening wealth inequality and an inability to accumulate meaningful savings. People have fallen behind financially, with Black persons and female-led households bearing the brunt of wage stagnation and the rising costs of living.

The privatization of risk accomplished by transferring major expenses away from the public and employer-sponsored programs and onto individuals has been termed by Jacob Hacker "the great risk shift."[4] When people must cover the full range of life's expenses, financial risk shifts onto individuals and families. Monthly expenses rise. People know that they should be planning far ahead for significant expenditures, such as purchasing homes and cars and financing their retirement, but they find it nearly impossible to do so. They also know that they should not trust that the government or their employers will support them in their educational goals or provide much meaningful assistance in times of unexpected need, such as if they or a family member falls ill or if the world faces a global pandemic.

The "great risk shift" is a product of neoliberalism's insistence that systemic risks, once deemed public and to be shared, must be dealt with privately. Neoliberalism relies on simplified notions about how free markets and trickle-down economics operate. A version of neoliberalism is Reaganomics, so called because of President Ronald Reagan's policies that emphasized individualism over the social safety net constructed during the Great Depression and in the aftermath of World War II.[5]

Privatization of risk manifests as *precarity*, a term used in sociology, anthropology, and philosophy to characterize how particular populations are denied stable lives because of failing social and economic networks.[6]

In the United States, many people now exist in a constant state of economic insecurity.[7] The privatization of risk that has created this precarity has occurred across almost every major household expense.

Housing costs more compared to twenty or thirty years ago. Home values have outpaced inflation, and rents have risen more than income in nearly every state.[8] The cost of insurance and health care has skyrocketed. The average household now spends $5,000 per year on health-care expenses, more than half of which goes to paying for insurance. According to government data, adjusted for inflation, this is nearly double what households spent per year on health care in the 1980s. Employed parents also must budget about a thousand dollars a month for their kids' daycare. For decades, the cost of attending a four-year college rose at twice the rate of inflation, although it has leveled off more recently.[9] Because defined-benefit pensions are so rare, most people must independently save and invest to have an adequate income for their retirement years.

All of this requires money. Sometimes lots of money. For instance, one financial services firm advised clients who retired in 2023 to anticipate spending another $315,000 in health-care costs during their retirement years.[10] Absent health-care reform, these costs will only increase in the coming years.

Conventional wisdom teaches that higher education is the gateway to financial stability and growth. But many students find that the conventional wisdom does not match reality. The government has retreated from supporting public education, especially smaller public universities that emphasize their educational mission over research and that used to be the mainstay for providing a higher education for the middle class. The idea that higher education is a public good that benefits all has become a quaint anachronism. To pay for their education and the education of their loved ones, people borrow.

Until 2006, student loan debt was such a small part of overall consumer debt that the Federal Reserve did not separately track it. Today, the Federal Reserve reports that households have more student loan debt than they owe on credit cards and as much as they owe on car loans. After borrowing tens of thousands of dollars in student loans, people work decades to repay their education debt, putting off buying homes, getting married, and starting families in the process.[11]

Black students and women students are even less likely to reap the benefits of higher education. Increased college attendance was supposed to chip away at the racial wealth gap. Instead, getting an education has put the median Black student even further behind their white counterpart. Black college graduates owe more on student loans and have not seen their incomes grow. Women tend to take on more education debt than men. Through a combination of lower earnings after graduation and childcare and eldercare responsibilities, women overall take longer to pay back student loans. Black women take on the most debt and struggle the most to pay off that debt.[12]

This shifting of risk onto individuals forces many people to spend their lives perpetually and single-handedly confronting financial instability and uncertainty. Households are expected to take care of their every need, yet they have few options when planning for their futures or when facing money troubles. The precarity people experience stems from their reliance on savings and wealth as their sole source of safety, while they are simultaneously living in an economy set up to prevent most people's accumulation of those savings and wealth.

To stay afloat, people take on debt for almost every expense, large or small. They purchase their homes with less money down and with higher interest payments. They finance their cars with seven-year auto loans. They put medical expenses on credit cards. They balance the cost of childcare by paying for necessities, like food, with credit cards. When conventional credit sources dry up, they turn to companies offering short-term, high-cost loans, such as payday lenders and auto title loan outfits. They take out student loans but often default on these loans because, quite simply, they have no more money.

Crucially, it has been this way in the United States for decades now. The roots of the economic policies that have plunged many households into precarity trace back to the early 1980s. Governmental inaction over the following forty years in the face of a changing economic and social context has further loaded risk onto individuals.

How people handle their financial precarity also has evolved over the past forty years. With the ubiquity of the internet, companies offer home loans and auto loans via cell phones and tablets. Many workers make a portion of their income in the "gig economy," a phrase that was meaningless to most a mere ten years ago. Side hustles include starting YouTube channels and live streaming shopping events as part of retailing for multilevel-marketing companies.[13] Setting up a GoFundMe campaign is an accepted and expected way to pay for life's emergencies. These examples illustrate how, for many people, a constant jumble of differing income sources has replaced a steady paycheck. Not surprisingly, debt collection has burgeoned into an industry with an annual revenue of about $13.4 billion.[14]

Of course, a family falling on financial hard times is nothing new. But the individualization of the financial risk and the associated struggles have been the norm for more than four decades, and they now seem routine and may go unnoticed. When people cannot manage financially, they draw accusations of overspending, irresponsibility, and lack of self-awareness. For example, Dave Ramsey, a self-proclaimed personal finance expert, tells millions on his popular radio shows that the answer to financial problems is "learning how to control yourself and your behavior with money." Financial problems are a "behavior issue."[15]

In reality, people cannot "personal finance" themselves out of skyrocketing rent, medical costs, and wage stagnation. Despite what they may hear about budgeting, many people are one illness, one job loss, or one unexpected pregnancy away from a financial tailspin. That financial tailspin, almost necessarily, will lead some people to file bankruptcy, and the bankruptcy files will tell us the story of that tailspin.

BANKRUPTCY AND THE CONSEQUENCES OF PRECARITY

The people who file bankruptcy reflect the financial precarity of households across the United States. Not everyone who experiences a large financial shock or the slow accumulation of debt will turn to bankruptcy for relief. Some may recover. Others may slip so far into debt and lose so much that filing bankruptcy will do virtually nothing to help them. Still others may worry about what their families and friends will think of them if they declare bankruptcy and will decide against it, even though they may benefit from filing.

Not everyone may file bankruptcy, but bankruptcy is a story of America.

The people who file bankruptcy bring with them accounts of the reality of decades of loading risk onto households. Their struggles prior to filing and what they hope to achieve through bankruptcy link with the structural barriers people face in their quests for financial stability. *Debt's Grip* tells how the landscape of households' finances has changed since the initial push of economic policies in the 1980s toward individualism that has led people to experience precarity. How people take out loans, the types of expenses for which they must incur debt, how their creditors and debt collectors deal with them in and out of court, and how those interactions push people into bankruptcy have shifted. Filers' journeys to and through bankruptcy illustrate how the core of Americans survive today in a society that has failed many.

In this book, we draw on data from the Consumer Bankruptcy Project, a long-term study of people who file bankruptcy. The roots of the CBP trace to 1981, when Teresa Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook set out to describe bankruptcy filers. As they detailed in *As We Forgive Our Debtors*, the people who landed in bankruptcy courts were a cross-section of the American middle class.[16] They were not, as so many assumed, profligates—cheats and overspenders who filed bankruptcy to escape debts that they definitely could pay, if only they wanted to. They also were not those from the lowest rung of the socioeconomic ladder, who might be thought to be most in need of debt relief. *As We Forgive Our Debtors* established who uses the consumer bankruptcy system. It also was a study of a bankruptcy system in flux. A congressional overhaul of the federal bankruptcy law had taken effect in 1979, only two years before Sullivan, Warren, and Westbrook gathered their data.

Their updated research in 1991 studied a bankruptcy system that had fully adjusted to the significant revamping of the bankruptcy law. Between the early 1980s and the late 1990s, consumer bankruptcy filings per capita more than doubled.[17] Little had changed about the bankruptcy filers themselves. They remained a cross-section of the middle class, often having moved downward in financial and social class. In *The Fragile Middle Class*, Sullivan, Warren, and Westbrook combined questionnaires and case file data from bankruptcy filers to identify the main ways in which households were being financially squeezed so that more of them turned to the bankruptcy system for protection. They identified five stressors: volatility in income and jobs, the rising cost of consumer credit, divorce and solo parenting, substantial rises in health-care costs, and increases in the cost of housing. These stressors reflected the early effects of the great risk shift on households' ability to survive financially. *The Fragile Middle Class* hinted at the connection between the privatization of risk and consumer bankruptcy filings.

In this book, readers will find similar details about the people who file bankruptcy. Since the 1990s, the number of consumer bankruptcy filings per year has remained rather steady and predictable. Except for a spike during the years surrounding the passage of 2005 legislation that changed bankruptcy law considerably, over a million households filed bankruptcy every year through the early 2010s. As the economy recovered from the Great Recession of 2007–2009, filings declined to around 750,000 per year for the remainder of the last decade; most recently they fell again during the COVID-19 pandemic that began in 2020.[18]

During those thirty years, bankruptcy filers also have remained a cross-section of the middle class. They continue to come to bankruptcy courts with many of the same problems that stressed households in prior decades but also with new problems such as student loans and supercharged debt collection.[19] Our main focus in this book is what happens to individuals and families when risk remains privatized for decades. In drawing on stories of people's financial collapse, we necessarily discuss the place of bankruptcy law for people facing the consequences of shifting risk and explore the who or why of consumer bankruptcy. But at its core, *Debt's Grip* focuses on the structural reasons that households struggle financially in today's economy and society.

THE CURRENT CONSUMER BANKRUPTCY PROJECT

Over the past forty years, the CBP has functioned in iterations. The first took place in the 1980s and drew data from consumer bankruptcy cases filed in 1981. Ten years later, the second iteration drew data from people's bankruptcy filings in 1991.[20] The third and fourth iterations were based on data from bankruptcy filings in 2001 and 2007, respectively, both supplemented by surveys of and interviews with the people who filed.[21] Where relevant, we refer to these previous studies by their year of data collection (e.g., "the 2007 CBP").

In 2013 we launched the fifth and current iteration of the CBP.[22] We switched from episodic collection of large samples to continuous data collection of samples that individually are smaller but aggregate to larger datasets than in the previous iterations. We refer to this iteration as the "current CBP." We collect our data from two sources.

First, we gather data from documents in bankruptcy cases. Bankruptcy court files are public records and electronically available. Every three months, we draw a random sample of two hundred consumer bankruptcy cases from all the consumer bankruptcy cases filed across the United States. The households in our study come from every state and are found in rural, suburban, and urban settings. The data we draw from in this book come from court records for eighty-eight hundred households that filed bankruptcy in the eleven-year period between the beginning of 2013 and the end of 2023.

From those cases, we collect financial information, such as assets, debts, income, expenses, and employment history. We also track the cases' outcomes: whether debtors receive discharges of their debts as provided by bankruptcy law or have their cases dismissed, leaving them to again face all the debts they owed when they filed.

Second, we mail each household in our sample a survey that asks about their circumstances before and after their bankruptcy filings, their money management techniques before bankruptcy, their reasons for filing, their interactions with their attorney, some basic health information, and their demographics. At several points in the survey, we provide space for people to write about their struggles and decisions to file bankruptcy. In total, of the 8,800 households in our sample, 2,314 (26 percent) returned the survey to us.

The survey responses provide key information about age, education, race, and cohabitation and marital status that bankruptcy court records do not contain. People's responses also add texture about their struggles to the financial information that debtors are required to submit to bankruptcy courts. In this book, we provide excerpts of what people wrote on the surveys. Some state that the experiences that led them to file bankruptcy are still too raw for them to write anything. Others write long, complex stories of the travails that led them to turn to bankruptcy for help. When we draw from what people write, we disguise their names and other identifying information to protect their privacy. When people include dollar figures in what they write, we generally inflate those figures for consistency with other dollar figures used in this book; we indicate when we have done so by putting inflated figures in brackets. Other than these edits, we include what people wrote, exactly as they wrote it. The debtors in this book are not composites. They are actual individuals and families who have lived through the consequences of the systematic gutting of the social safety net.

Between the court records and surveys, the current CBP includes tens of thousands of pieces of data. The current CBP also is the first study of consumer bankruptcy that collects data on a rolling basis. We use our entire database, drawing on data from eleven years. This allows us to look for changes over time in the characteristics and financial problems of the people who turn to bankruptcy for help.

The nitty-gritty details about our methodology are included in the appendix. In it, we provide more history about the CBP, our data collection process, and tests for response bias. Of note, the data we collect from court records are self-reported. However, almost all bankruptcy filers enlist the help of an attorney or bankruptcy petition preparer. The Bankruptcy Code requires attorneys and bankruptcy petition preparers to collect supporting documents to corroborate the debtor's financial information. Debtors sign the bankruptcy petition under penalty of perjury, swearing that the information provided is true and accurate to the best of their ability. Attorneys must certify they have "no knowledge after an inquiry" that anything in the case file is incorrect. The bankruptcy trustee assigned to the case will review everything that is submitted and then question the debtors, under oath, about their finances. People risk losing the bankruptcy discharge and being subject to other penalties if they misrepresent or omit the required information. In extreme cases, the penalties can include criminal convictions for fraudulently concealing information in their bankruptcy forms. These legal safeguards do not guarantee 100 percent accuracy, but they do mean the court-record data are not wild guesses about asset values, debts owed, and income levels.

Obviously, people respond to our surveys without these legal consequences in the background. Money troubles and filing bankruptcy are stigmatizing and shameful.[23] In general, discussing one's salary and finances, even with one's own family, is often frowned upon.[24] People who return the survey show courage in being willing to answer questions about their lives and share stories about some of their most difficult moments. Some write notes expressing their hope that by providing their information they can help others in a similar situation. We can corroborate some survey information from the court records. Nonetheless, our survey data rely on the respondents' self-reported information, as is the case for most surveys. We offer the survey data for what they are: valuable firsthand accounts of the lived experience of financial precarity, including people's stories in the words with which they wrote them.

Personal finance and bankruptcy filings are sensitive subjects laden with value judgments. Everyone has attitudes about how they and others spend money, including us. In the chapters that follow, we examine the circumstances of the people who file bankruptcy to highlight the reality of living on a financial cliff. We organized this book around findings based on current CBP data using unsupervised statistical techniques. These techniques are "unsupervised" because they draw inferences from the data without mediation by researchers, meaning that the results of the analysis around which we have organized this book were not driven by our preconceptions of bankruptcy filers.[25]

FINANCIAL COLLAPSE AND BANKRUPTCY AMID PRECARITY

This is a book about how people's bankruptcies reflect a failure of the United States to provide for its citizens. Financial insecurity is pervasive. In 2019 more than half of Americans said they were struggling with some aspect of their financial lives, and almost one-fifth said they were struggling with all or nearly all parts of their financial lives.[26] A few months into the COVID pandemic, the depth of the financial precarity of households was on full display. Fifty-four percent of households with incomes under $100,000 reported serious financial problems, with Black and Latine households hit the hardest.[27] How bankruptcy sometimes remedies financial problems aligns with what we know about the barriers to financial stability that many households now face.

The Road to Bankruptcy

In chapter 1 of the book, we explain the consumer bankruptcy system in a way that presupposes the reader has no prior knowledge of its workings. The book's institutional setting is bankruptcy law. Although the law is not in the book's foreground, one must understand this institutional setting to understand its findings.

People's financial problems begin long before they formally file bankruptcy. The years leading up to their bankruptcies are filled with worry about how to make ends meet; tough decisions about whether to sell homes and where to move; trying to find more work to make a few extra bucks; and skimping on food, utilities, and medications. These coping mechanisms exacerbate health problems and cause tension with spouses and partners, children, family, and friends. Their struggles also deplete assets and resources, making it less and less likely that they will recover financially. Under the weight of mounting debts and diminishing options to deal with those debts, some people will turn to bankruptcy for help.

Although the people who file bankruptcy are a cross-section of the middle class, there are patterns in their bankruptcy cases. These patterns describe the consequences of decades of offloading risk onto households. The patterns also allow us to tease apart and explore the structural reasons that so many individuals and families are struggling now.

Seeking a Financial Reset

Filing bankruptcy is a declaration that one cannot pay all their debts. Being able to pay one's debts requires enough income to meet what is owed when it becomes due. That financial formula may seem tautological. But the details about how public policies have affected its two sides—income and expenses—are the main reasons bankruptcy filers are seeking a financial reset.

Some people who file bankruptcy are concerned about specific debts that have grown out of control. Mortgages and car loans are secured debts, meaning they are secured by collateral. When people fall behind on them, their continued ownership of a house or car is threatened. Mortgage and car loans are pervasive. US policies have prioritized homeownership. Most Americans own their homes rather than renting. Moving is complicated. Approval for rental housing is uncertain, particularly for those with fair or poor credit scores. Bankruptcy offers people a way to hold onto their homes while dealing with mortgage delinquencies. Similarly, surviving without a car in most parts of the United States is difficult. Eighty-five percent of households own at least one car. People file bankruptcy hoping to hold onto their cars and deal with car loans.

Debt incurred because of medical problems has stood out in bankruptcy filings for decades. Two-thirds of filers now cite a medical contributor to their bankruptcies, either expenses from a health problem or illness-related work loss. Health-related financial issues show up in credit card debt from the medical expenses themselves or from the buildup of small expenditures during health crises, including the time that people must take off from work to care for themselves or sick loved ones. The continued frequency of medical bankruptcies is an indictment of the health-care system.

People also file bankruptcy to deal with unsecured debts separate from medical expenses. Primarily, these are student loans and debt incurred to deal with the vagaries of employment. Public policies have individualized the funding of higher education. People also rack up balances on credit cards and take out other unsecured debts because they cannot make enough money to stay afloat. This includes students who have attended college, some of whom are trying to pay hefty education loans, and people who start their own small businesses as an alternative to traditional employment. Workers without college degrees often are left even further behind as job opportunities have become more limited.[28]

Surviving in a Rigged Society

The finances of bankrupt households demonstrate an economy that squeezes individuals and families by foisting on them the bulk of the expenses of every facet of life, from finding a place to live, to financing the education that will get them a job, to paying for every aspect of a health crisis. Many are crushed, but some are bulldozed. American society is not equal. Some groups live in social contexts that make surviving financially more precarious. This precarity shows up in bankruptcy courts through skewed demographics of the people who file.

Three demographic groups take center stage. First, Black persons are significantly overrepresented in bankruptcy. Black households make up 27 percent of the households that file bankruptcy, which is more than double the proportion of the population that is Black. The reasons Black households turn to bankruptcy reflect systemic disparities and discrimination in the economy and society, from paying more for homes, cars, mortgages, car loans, and education, to being less likely to find stable employment and being paid less in the jobs they find.

Second, women are more likely to file bankruptcy than their share of the population. Fifty-seven percent of bankruptcy filers are women. Single women appear to be more vulnerable to bankruptcy than single men. There are more than twice as many single women in bankruptcy (37 percent) as single men (16 percent). The remaining filers are married, which matches the marriage rate across the United States. Bankruptcy continues to be a women's issue.[29]

As with Black households, why single women, in particular, may turn to bankruptcy more often reflects disparities and discrimination inherent in the economy and society. Many single women, but fewer single men, who file are responsible for children. Women pay more for education and face employment problems because they tend to be their families' first responders for childcare and health-care emergencies. When we searched for patterns in bankruptcy cases, the intersection of Black and women-led households comprised a distinct group of filers. Black single women deal with the same disparities and discrimination, but the effects on their lives are magnified as compared to other women, a reality apparent in their bankruptcy cases.

Third, bankruptcy filers are older than the general population. The rate at which older Americans (sixty-five and over) file bankruptcy has increased markedly over the last few decades; it is fair to characterize older Americans as the fastest growing demographic of bankruptcy filers. Those over sixty-five now make up 18 percent of people who use the bankruptcy system. In 1991 that figure was 2 percent. The magnitude of growth of the elderly filing bankruptcy is so large that the broader trend of an aging US population can explain only a small portion of the effect.

Why older individuals turn to bankruptcy reflects failures in public policies that provide for people as they age. Older persons file when they can no longer work and earn enough money to survive, when their retirement savings run out, and when they face daunting and unending end-of-life medical bills. As with Black households and single women, the increasing prevalence of older Americans filing bankruptcy shows the effects of decades of privatizing risk.

Dealing with Legal Woes

Prior to filing bankruptcy, people may feel as though their debts are haunting them. Part of this haunting comes from creditors' and debt collectors' attempts to extract payment for past due debts. Many people simply cannot pay, no matter how many times collectors call them or how many lawsuits collectors file against them in state courts. More than three-quarters of the people who file cite debt collection as a contributor to their bankruptcy. Half of filers come to bankruptcy court in the wake of a lawsuit, such as home foreclosure, car repossession, or wage garnishment. Debt collection attempts exacerbate the misery of the prebankruptcy experience, with persons in debt collection reporting more privations than those who were not contacted by collectors.

Not everyone with financial problems waits for years to file bankruptcy or files following lawsuits. We searched for *resourced filers*, people who might reasonably be described as "can pay" debtors looking to escape from obligations they could otherwise afford to repay. Because the concept of "can pay" is subjective, we think about the concept in several different ways, but we find almost no filers who fit the definition. For filers whose financial circumstances facially suggest some ability to repay, a more careful review of the bankruptcy file shows they were only exercising their legal rights to solve a problem they had. Most often, these are attempts to save a home. Rather than "can pay" debtors, *savvy* is the more apt term.

This book ends with the bankruptcy system itself. To a degree, bankruptcy has become the legal proceeding that certain groups of people who suffer from discrimination and inequities turn to for help. Bankruptcy law can exacerbate these socioeconomic disparities. In identifying how and when it does, our data offer pathways for reforms to make bankruptcy work better for the people who use it—while we wait for the United States to confront the structural reasons that people struggle in today's economy and society.

Debt's Grip is about people who file bankruptcy. It also is a book about the consequences of decades of risk privatization. Most people come to bankruptcy after seriously struggling to pay their debts for years. After we describe the consumer bankruptcy system in the next chapter, we turn to their stories of living with financial precarity.

Faculty

Hon. Michelle M. Harner is a U.S. Bankruptcy Judge for the District of Maryland in Baltimore, appointed in 2017. Prior to her appointment to the bench, she was the Francis King Carey Professor of Law and the Director of the Business Law Program at the University of Maryland Francis King Carey School of Law, where she taught courses in bankruptcy and creditors' rights, business associations, business planning, corporate finance and the legal profession. Judge Harner lectured frequently during her academic career on various topics involving corporate governance, financially distressed entities, risk management and related legal issues. Her academic scholarship is widely published, with her publications appearing in, among others, the *Vanderbilt Law Review*, *Notre Dame Law Review*, *Washington University Law Review*, *Minnesota Law Review*, *Indiana Law Journal*, *Fordham Law Review* (reprinted in *Corporate Practice Commentator*), *Washington & Lee Law Review*, *William & Mary Law Review*, *University of Illinois Law Review*, *Arizona Law Review* (reprinted in *Corporate Practice Commentator*) and *Florida Law Review*. Judge Harner has served as the Associate Reporter to the Advisory Committee on the Federal Rules of Bankruptcy Procedure, the Reporter to the ABI Commission to Study the Reform of Chapter 11, and most recently chaired the Dodd-Frank Study Working Group for the Administrative Office of the U.S. Courts. She also served as the Robert M. Zinman ABI Resident Scholar for the fall of 2015. She most recently served as the chair of the Dodd-Frank Study Working Group for the Administrative Office of the U.S. Courts, and she is currently serving as a member of the Advisory Committee on the Federal Rules of Bankruptcy Procedure and an associate editor of the *American Bankruptcy Law Journal*. Judge Harner is an elected conferee of the National Bankruptcy Conference, an elected Fellow of the American College of Bankruptcy, and an elected member of the American Law Institute. She previously was in private practice in the business restructuring, insolvency, bankruptcy and related transactional fields, most recently as a partner at the Chicago office of the international law firm Jones Day. Judge Harner received her B.A. *cum laude* from Boston College in 1992 and her J.D. *summa cum laude* from The Ohio State University College of Law in 1995.

Prof. Robert M. Lawless is the Max L. Rowe Professor of Law and co-director of the Program on Law, Behavior & Social Science at the University of Illinois College of Law in Champaign, Ill., where he writes and teaches about bankruptcy, consumer finance and business law. He also served as the College's associate dean for research from 2013-16. Committed to bridging scholarship and real-world policy, Prof. Lawless has played a key role in shaping discussions on bankruptcy reform. He served as the reporter for the ABI's Commission on Consumer Bankruptcy and received ABI's Service Award in 2019. He is a co-author of *Secured Transactions: A Systems Approach* and *Empirical Methods in Law*. He also administers the blog Credit Slips, a discussion on credit, finance and bankruptcy. He also is a co-principal investigator in the Consumer Bankruptcy Project, a long-term research project studying persons who file bankruptcy. Prof. Lawless has testified before Congress, and his work has been featured in media outlets such as CNN, C-SPAN, NPR, the *New York Times*, the *Wall Street Journal*, "Last Week Tonight with John Oliver," ABC News and the *Financial Times*. He is a member of the American Law Institute and the National Bankruptcy Conference, and he is a Fellow in the American College of Bankruptcy. Prior to joining the Illinois law faculty, Prof. Lawless served on the law faculties of the University of Nevada-Las Vegas and the University of Missouri-Columbia School of Law, and he has been a visiting faculty member at Ohio State University and

Washington University in St. Louis. Prof. Lawless began his career as a law clerk for Hon. Harlington Wood, Jr. of the U.S. Court of Appeals for the Seventh Circuit, then practiced law in Washington, D.C., with the firm of Zuckert, Scoutt & Rasenberger. He received both his undergraduate degree in accounting and his J.D. from the University of Illinois, during which time he served as editor-in-chief of the *University of Illinois Law Review*.