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Bankruptcy Stigma: A Socio-Legal Study

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Abstract

For as long as the institution of bankruptcy has existed, legal commentators have debated whether it is appropriate for debtors to experience some social stigma upon filing for personal bankruptcy--that is, whether it serves the goals of bankruptcy law for debtors to feel shame. While this issue has been extensively discussed as a theoretical matter, to date no legal commentator or scholar has examined the question as an empirical matter: do debtors in fact associate feelings of shame with filing for bankruptcy, and, if so, why (or why not)? This article, for the first time, undertakes precisely this inquiry. Specifically, the article relies on empirical methods to report findings gathered from extensive interviews with debtors themselves. What emerges is that debtors experience a wide array of feelings associated with filing for bankruptcy, from debilitating shame to no shame at all. This finding, in turn, raises serious questions about the theoretical role of shame and stigma in designing bankruptcy law and policy.

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ABSTRACT

For as long as the institution of bankruptcy has existed, legal commentators have debated whether it is appropriate for debtors to experience some social stigma upon filing for personal bankruptcy—that is, whether it serves the goals of bankruptcy law for debtors to feel shame. While this issue has been extensively discussed as a theoretical matter, to date no legal commentator or scholar has examined the question as an empirical matter: do debtors in fact associate feelings of shame with filing for bankruptcy, and, if so, why (or why not)? This article, for the first time, undertakes precisely this inquiry. Specifically, the article relies on empirical methods to report findings gathered from extensive interviews with debtors themselves. What emerges is that debtors experience a wide array of feelings associated with filing for bankruptcy, from debilitating shame to no shame at all. This finding, in turn, raises serious questions about the theoretical role of shame and stigma in designing bankruptcy law and policy.

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I. INTRODUCTION

While the definition of what constitutes "culture" may vary, perhaps the most famous definition of "culture" stems from one of the first professional anthropologists, E.B. Tylor. Tylor defined "culture" as "that complex whole which includes knowledge, belief, arts, morals, law, custom, and any other capabilities and habits acquired by man as a member of society." Significantly, and as Tylor's definition intimates, aspects of "culture" are acquired by individuals growing up in and residing in a particular society, rather than through any biological inheritance (Kottak, 2011). Simply put, culture is learned and shared among those in a given society (Kottak, 2011).

Within any given culture, there is a generally acceptable range of permissible individual behaviors that is culturally determined and culturally relevant (Ember & Ember, 1999). "Standards or rules about what is acceptable behavior are referred to by social scientists as norms. The importance of a norm usually can be judged by how members of a society respond when the norm is violated" (Ember & Ember, 1999, pg. 24). More specifically, prevailing cultural norms are "shared rules or guidelines that define how people [in a society] 'ought' to behave under certain circumstances" (Scupin, 2006, pg. 54). Contrasted to the normative ways in which people ought to behave, deviant behaviors are those that fall outside the norm for a particular sociocultural group (Murphy, 1976). Once a behavior is labeled as "deviant," it is ordinarily stigmatized by members of society. Importantly, "[t]he degree and type of stigmatization varies according to prevailing cultural norms" (Byrne, 1999, pg. 1).

The word "stigma" traces its origins to ancient Greece, where the citizens of Attica and Athens made it a practice of protecting their propertied slaves from theft or escape or by brandishing a criminal by tattooing them with a mark upon the skin; this mark was called a "stigma" because the ancient Greek word "to prick" is "stig" (Falk, 2001, pg. 17). In its modern usage, "stigmatization" refers generally to a societal sign of disapproval towards an individual or group based upon some characteristic, trait, or behavior that deviates from an accepted cultural norm or expectation (Falk, 2001). Further, the characteristics, traits, and behaviors that are stigmatized in a given society are culturally dependent (Coker 2005).

As Joan Ablon (1981) has recognized, the discipline of anthropology has "come late to studies of stigma, marginality, and deviance in American society" (pg. 5). Instead, Ablon notes, anthropologists traditionally turned their gazes "to the non-western, to the esoteric, and to the normative and the ideal in behavior" (pg. 5). Instead, studies of structural stigma in American society has largely been the province of sociological research. While anthropologists generally study individuals and groups "as culture bearers and behavior creators" (pg. 6), sociologists have studied "the institutional contextual structures with which individuals and groups must deal" (pg. 6). That is not to say or suggest that anthropological studies of stigma and deviant behavior have not been conducted. But to date, many, if not most, of the anthropological studies on deviant behavior and its corollary of stigma have involved mental illnesses, diseases, or physical disabilities (e.g., Ablon (1981); Coker (2005); Gussow & Tracy (1968); Weiss (2001). Further, anthropological studies have been conducted on the responses to perceived mental illness in non-western societies (e.g., Edgerton, 1966; Jenkins 1988; Lin & Lin, 1982). Additionally, studies of stigma with respect to mental illness have been conducted from a cross-cultural perspective as well (Weiss, Jadhav, Raguram, Vounatsou & Littlewood, 2001). For example, Murphy (1976) studied the meanings attached to mental illness in two non-western groups, namely, the Eskimos of northwest Alaska and the Yorubas of rural Nigeria. From this research, Murphy argues that in contravention of many anthropologists' and sociologists' beliefs that the personal attributes which are stigmatized are culturally dependent, she found that the reactions of Eskimos and Yorubas to people they define as mentally ill "are not greatly dissimilar from those that occur in western society" (Murphy, 1976, pg. 1027). To date, however, there are no anthropological studies of the stigma surrounding indebtedness or filing for bankruptcy relief as a result of overwhelming debt.

For their part, sociologists have traditionally focused on certain societal groups or categories in carrying on stigma-related research, including, but not limited to, the mentally ill, the mentally disabled, the homeless, criminals, prostitutes, the physically disabled, homosexuals, the elderly, and members of minority groups (Falk, 2001; Liazos, 1972). Sociologists consider the phenomenon of stigma to be universal (Becker & Arnold, 1986). That is, the characteristics and traits that receive social opprobrium may differ from one society to the next. Beliefs about what attributes receive a stigma are social constructs (Ainlay, Coleman & Becker, 1986) and are socially distributed throughout a particular culture (Ainlay & Crosby, 1986). In large, complex, heterogeneous societies, there may be less agreement over what attributes will receive the mark of a stigma (Becker & Arnold, 1986). But even in heterogeneously complex societies certain types of behavior that violate approved social norms have the capacity of garnering stigma even across time and culture (Ainlay, Coleman & Becker, 1986). In the western world, one such behavior appears to be the moral disapproval of personal indebtedness and the general societal disdain towards individuals who file for bankruptcy protection.

In contrast to the anthropological literature, the sociological literature on the phenomenon of stigma is, in a word, massive. But despite the expansiveness of the sociological literature on the numerous groups or classes of stigmatized individuals in modern society, one group has not received much attention in this scholarly canon, namely, individuals who file for bankruptcy relief. Despite the hundreds of years of American societal indebtedness and the existence of American bankruptcy law, only a small handful of studies published in the sociological literature have addressed the stigma surrounding indebtedness, and only one of those particular to filing for bankruptcy (Wang, 2010; Thorne & Anderson, 2006; Hayes, 2000). This is surprising because the existence and the extent of a social stigma associated with filing for bankruptcy relief has been the subject of question, conjecture and dispute for hundreds of years (Halliman, 1986).

With respect to the scholarly bankruptcy law literature, numerous articles over the decades have opined on the phenomenon, mainly arguing whether the stigma associated with bankruptcy still exists or has declined over time. To date, the legal literature has generally treated bankruptcy stigma as an "all or nothing" issue; that is, arguing over whether a stigma exists (or not), or exploring whether the stigma has declined (or not) over the past several decades. In this regard, legal scholars addressing bankruptcy stigma have fallen into two general camps. On one side of the divide are Professors Teresa Sullivan, Elizabeth Warren and Jay Westbrook who argue that not only is bankruptcy stigma alive and well, but that this social phenomenon may have increased in the past several decades (Sullivan, Warren & Westbrook, 2006). Conversely, Professors Todd Zywicki and Rafael Efrat contend that the stigma associated with filing for bankruptcy relief has declined over time (Zywicki, 2005; Efrat, 2006a). Each camp has in the past criticized the other regarding the merits of their respective claims over the continued vitality of bankruptcy stigma.

The need to study bankruptcy stigma remains relevant today. The filing rate for consumer bankruptcy debtors has risen steadily over time since the 1960s, with the greatest increase occurring during the 1990s. The dramatic spike in the number of consumer bankruptcy petitions during the 1990s reinvigorated the public debate over the role of stigma as a social phenomenon and its efficacy in controlling the bankruptcy filing rate. From the 1990s to the present date, more than one million individuals file for bankruptcy protection every year (Sousa, 2014). The 2005 Amendments to the Bankruptcy Code through the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") were predicated, in part, on a belief that debtors were abusing the bankruptcy process and that the shame and stigma associated with filing for bankruptcy had eroded (White, 2006). It has been approximately eight years since BAPCPA took effect so there is a need to investigate whether debtors still feel any shame associated with filing for bankruptcy or whether, as the proponents of BAPCPA believed, many debtors were resorting to the bankruptcy process without any compunction about shedding liabilities and breaking contractual obligations.

I am certainly not the first to observe that bankruptcy is a social issue and can be studied empirically (McIntyre, 1989). My approach in this thesis is not to explain the act of filing for bankruptcy relief in legal terms, but in social terms (Friedman, 1986; Silbey & Sarat, 1987) viewed through both an anthropological and sociological framework. Therefore, my main concern is not in advancing prescriptive arguments about bankruptcy law in general or in making recommendations for revising the Bankruptcy Code in particular. Rather, my overriding purpose is an attempt to explain how one small sliver of the institution of consumer bankruptcy actually operates in the lives of a population of individuals who have turned to the bankruptcy law system for financial relief. To borrow a phrase from Roger Cotterrell, my purpose is to offer a small "picture of the social world of law" (Cotterrell, 1994, pg. xv) from the perspective of former bankruptcy debtors, and to convey and describe their experiences with filing for bankruptcy. The data for this thesis stem from in-depth interviews conducted during the summer and fall of 2012 with fifty-eight former consumer debtors who filed for Chapter 7 bankruptcy.

Prior empirical studies of bankruptcy stigma have been conducted over the years. But at present no study exists that offers an in-depth empirical account of the varied ways in which debtors themselves experience stigmatization, if at all, after the enactment of

BAPCPA. The findings of this thesis suggest a much more nuanced and diversified portrait of bankruptcy stigma as felt by debtors themselves than is normally addressed in the bankruptcy literature. The debtors in this study expressed a range of attitudes regarding feelings of shame and embarrassment over filing for bankruptcy relief. As the data reveal, the issue of stigma is not a "one size fits all approach." In fact, the accounts of the participants in this study suggest that the arguments advanced by both sides of the bankruptcy stigma debate have merit. Debtors' internalized notions of shame and stigmatization occupy a spectrum of attitudes – from deep-seated shame to no shame or stigmatization at all.

After closely studying the data, the debtors' attitudes and emotions fell ultimately into three identifiable "sub-populations." On the one hand, a portion of the debtor participants did indeed exhibit the would-be expected raw feelings of shame and embarrassment over their bankruptcy filings. Though it had been several years since these individuals filed for bankruptcy, a handful of debtors in this sub-group cried during the interviews as they recounted their feelings and experiences. A second sub-group of debtors expressed little to no shame over their financial decision to file bankruptcy. The debtors in this sub-population attributed this lack of shame or embarrassment to exogenous events or engaged in psychological devices to distance themselves from their financial predicaments because of their own perceptions that their creditors did not act in good faith when the debtors requested some temporary financial relief. In addition, debtors who owned their own businesses all fell into this sub-population. For these small business owners, the decision to file for bankruptcy was an economic, business decision, simply a risk of doing business. Finally, the third sub-group proved most complex in their attitudes, which I have denominated here as experiencing a "diluted sense of shame," a new finding for the bankruptcy literature. This sub-group of debtors identified feeling internalized shame and stigma over filing for bankruptcy relief, but tempered these otherwise strong feelings by rationalizing their predicaments on several exogenous factors.

This thesis proceeds in the following manner. Because the study of indebtedness in general and the stigmatizing effects of resorting to bankruptcy as a result of crushing debt can be studied both anthropologically as well as sociologically, Part II will offer a theoretical background on credit and debt from an anthropological perspective while Part III provides a sociological account of the phenomenon of "stigma" and discusses some potential consequences for those who experience this social denunciation. Part IV offers an explanation for the ideation of bankruptcy stigma, the possible reasons for its continued prevalence over the millennia, and the arguments of those who claim that the stigma has declined over time, particularly since the early-to-mid twentieth century. Part V recounts the major existing empirical studies of bankruptcy stigma. Part VI discusses the methodology for this socio-legal study while Part VII presents the findings derived from the collected data. Part VIII ends by offering conclusions and implications for further study.[1]

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[1] By way of background, individuals who resort to the bankruptcy process usually do so under either Chapter 7 or Chapter 13 of the Bankruptcy Code. Most individual debtors choose to file a Chapter 7 liquidation proceeding. Since 1980, 95% of all bankruptcy petitions are filed by consumers, and 70% of those are filed under Chapter 7 of the Code (Landry, 2006). The goal of a consumer debtor in a Chapter 7 bankruptcy proceeding is to obtain a discharge of his or her pre-petition indebtedness, which results in the extinguishment of the debtor's *in personam* liability for the debt. In bankruptcy parlance and theory, once

II. ANTHROPOLOGICAL THEORIES OF FINANCIAL RELATIONS

The topic of economic exchange has been a mainstay in anthropology for nearly a hundred years (Hann, 2006).[2] In the late nineteenth and early twentieth centuries, "ethnographers began to provide useful descriptive accounts of non-European systems of production and trade" (Hann, 2006, pg. 210). Generally speaking, anthropologists have studied economic exchanges and their consequent dynamics in less advanced societies (Robbins, 2008). In these so-called "gift economies," individuals "exchange inalienable goods in order to make or reaffirm relationships" (Robbins, pg. 47). By contrast, in advanced capitalist-based economies, or "commodity economies," individuals exchange goods and money to acquire material things, and not to form enduring relationships. Moreover, these exchanges in the modern economy are brief and fleeting, which does not lend to longstanding relationship forming between consumers and sellers of material goods (Nicosia & Mayer, 1976).

As Hann describes, the first "breakthrough" in this area of anthropology was provided by Bronislaw Malinowski during his ethnography of the Trobriand Islanders. "Malinowski's first Trobriand monograph, *Argonauts of the Western Pacific* (1922), paid

a debtor receives a discharge of pre-petition debt, it is said that the debtor has received a "fresh start" in life. Unless the debtor violates a proscribed form of behavior contained within the Bankruptcy Code, an individual who files for Chapter 7 bankruptcy relief can ordinarily obtain a discharge from the majority of his or her pre-petition debts in exchange for surrendering any non-exempt assets to the bankruptcy trustee (Jackson, 1985).

[2] According to Miller, anthropology as a discipline traditionally shied away from the study of consumption (Miller 1995).

close attention to the exchange system known as *kula*, through which items circulated in varying directions across a wide region of Melanesia" (Hann, 2006, pg. 210). Malinowski identified eighty different types of exchanges among the Trobrianders, but he centered on the concept of reciprocal exchange and the notion of the "pure gift" (Malinowski, 1922).

Malinowski further developed his theory of reciprocal exchange in his follow-up work, *Crime and Custom in Savage Society* (Malinowski, 1926). In attempting to discern whether "primitive" societies had laws, Malinowski observed that all of the legal rules of the Trobriand Islanders were arranged into "well-balanced chains of reciprocal services" (Malinowski, 1926, pg. 46). These chains of reciprocal services and their corollary "binding obligations" provided for a social organization for the Trobriand. In particular, one type of binding obligation for the Trobriand Islanders occurred in their economic exchanges; through this Malinowski articulated his idea of the "principle of give and take" (Malinowski, 1926, pg. 39). Malinowski described the reciprocity of economic exchange of the Trobriand Islanders in the following terms:

> To take the economic transactions first: barter of goods and services is carried on mostly within a standing partnership, or is associated with definite social ties or coupled with a mutuality in non-economic matters. Most if not all economic acts are found to belong to some chain of reciprocal gifts and countergifts, which in the long run balance, benefiting both sides equally.
>
> ****
>
> The real reason why all these economic obligations are normally kept, and kept very scrupulously, is that failure to comply places a man in an intolerable position, while slackness in fulfillment covers him with opprobrium. The man who would persistently disobey the rulings of law in his economic dealings would soon find himself outside the social and economic order – and he is perfectly well aware of it. Test cases are

> supplied nowadays, when a number of natives through laziness, eccentricity, or a non-conforming spirit of enterprise, have chosen to ignore the obligations of their status and have become automatically outcasts and hangers-on to some white man or other.

(Malinowski, 1926, pgs. 39-42).

Despite the power of Malinowski's findings on economic reciprocity, it is a work by Marcel Mauss to which Hahn attributes as "dominat[ing] the anthropological discussion of [economic exchange] ever since its publication in 1924" (Hann, 2006, pg. 211). The work referenced by Hann is Marcel Mauss' *The Gift* (Mauss, 1967), published during the same period in which Malinowski was conducting his ethnography of the Trobriand Islanders. Though Mauss did not himself conduct any fieldwork, he drew on ethnographic reports of "primitive" or "archaic" societies in order to draw his own conclusions about the importance of giving and reciprocity "as the basis of human social life" (Hann, 2006, pg. 212).[3]

The ultimate argument advanced by Mauss in *The Gift* can be traced directly back to Malinowski's observations of the Trobriand Islanders' exchange system. For Mauss economic exchange, though occurring voluntarily, is actually done for the purpose of expecting obligatory reciprocity (Mauss, 1967). In other words, there are no "free gifts" (Hann, 2006, pg. 212). Rather, as Mauss contends: "[a]lmost always such [exchanges] have taken the form of the gift, the present generously given even when, in the gesture accompanying the transaction, there is only a polite fiction, formalism, and social deceit, and when really there is obligation and economic self-interest" (Mauss, 1967, pg. 3).

[3] Future anthropologists have challenged both Malinowski's and Mauss' implicit claims that giving and reciprocity are essential features of humanity in all cultures (Hann, 2006).

Viewed in this way, Mauss contends that each gift is part of a larger system of obligatory reciprocity between both individuals and groups, and these exchanges become perpetual cycles making up what Mauss describes as the "system of total services" (Mauss, 1967, pg. 6).

Significantly, the theoretical currents that run through Mauss's observations of exchange systems are the notions of morality, honor and prestige that undergird economic transactions between people. That is, for Mauss the most salient features that drove his "system of total services" were ideations of honor and prestige. Simply put, the obligation to reciprocate is occasioned because the recipient of the gift would not want to lose any honor or prestige as perceived by his or her fellow villagers (Mauss, 1967). As Mauss wrote: "[t]he obligation to reciprocate worthily is imperative. One loses face for[ever] if one does not reciprocate, or if one does not carry out destruction of equivalent value . . . . The individual unable to repay the loan or reciprocate the potlatch loses his rank and even his status as a free man" (Mauss, 1967, pg. 42).

Most applicable to this thesis is Mauss' characterization of his system of reciprocity in terms of creditor-debtor relations. For example, with respect to the Trobriand Islanders, the first gift of a *vaygu'a* is a "starting point," one that irrevocably commits the recipient to make a reciprocating gift, or a *yotile*. The cultural obligation and expectancy of a reciprocal gift now causes the two parties, according to Mauss, to be in a creditor-debtor relationship, where the initial donor is now expecting repayment by way of reciprocal gift while the original donee is obligated to repay. In other words, the initial gift operates as a putative loan. A failure of repayment, at least among the

Trobriand Islanders, could often lead the donor to seize the expected return gift by force or surprise, much like modern-day creditor remedies. The sanction for the failure to repay would be scorn, a loss of honor and a loss of rank (Mauss, 1967). More strikingly, among the Kwakiutl and the Tsimshian, a failure to reciprocate the initial gift, conceived of as a putative loan, could lead the failing donee to be sold into slavery for debt.

As Mauss concedes, the primitive societies that he studied did not have concepts of borrowing and lending in terms that govern financial relationships in modern capitalist societies. Consequently, the question becomes whether Mauss' theory can have applicability to debtors and creditors in capitalist societies. The answer, which Mauss himself considered, is yes. On this note, Mauss provides as follows:

> All the facts set out have been gathered in what we term the ethnographical field. Usually these kinds of facts are used as curiosities, or at the most comparison, to gauge how far our own societies are removed from or resemble these kinds of institutions, which are termed "primitive." However, they have general sociological value, since they allow us to understand a stage in social evolution. But there is more to them than this: they have also a bearing on social history. Institutions of this type have really provided the transition towards our own forms of law and economy. They can serve to explain historically our own societies. The morality and the practice of exchanges employed in societies immediately preceding our own still retain more-or-less important traces of all the principles we have just analysed. We believe, in fact[,] that we are in a position to show that our own systems of law and economies have emerged from institutions similar to those we describe.
>
> (Mauss, 1967, pg. 47).

The intellectual bridge between societies involving exchange systems and modern capitalist societies is provided by anthropologist David Graeber in his recent work, *Debt: the First 5,000 Years* (Graeber, 2011). Contrasted to less advanced societies, consumer debt is the life-blood of an economy, and modern nation states are built on principles of deficit spending (Graeber, 2011). And yet, despite the ubiquity of debt in modern society, we still view personal indebtedness through lenses of morality and power relations. As Graeber argues at the outset of his work, insofar as human relations involve debt, these relationships are "all morally compromised" (Graeber, 2011, pg. 12). This dynamic remains so despite the fact that, as opposed to insular, less advanced societies where relations between people are highly intimate and personalized, relations between creditor and debtors in modern society have become cold and impersonal.

At the beginning of his work, Graeber poses the question, what is the difference between an obligation of the kind articulated by Mauss and a "debt" as understood today? The answer for Graeber is "money." That is, the difference between a debt and an obligation is that a debt, perhaps unlike an obligation of reciprocity in an exchange system, can be precisely quantified. Graeber explains his fundamental starting point in the following terms:

> A debt is the obligation to pay a certain sum of money. As a result, a debt, unlike any other form of obligation, can be precisely quantified. This allows debts to become simple, cold, and impersonal – which, in turn, allows them to be transferable. If one owes a favor, or one's life, to another human being – it is owed to that person specifically. But if one owes forty thousand dollars at 12-percent interest, it doesn't really matter who the creditor is; neither does either of the two parties have to think much about what the other party needs, wants, is capable of doing – as they certainly would if what was owed was a favor, or respect, or gratitude. One does not need to calculate the human effects; one need only calculate principal, balances, penalties, and rates of interest. If you end up having to abandon your home and wander in other provinces, if your daughter ends up in a mining camp working as a prostitute, well, that's unfortunate, but incidental to the creditor. Money is money, and a deal's a deal.
>
> (Graeber, 2011, pg. 13-14).

And in moving from Mauss' theory of reciprocity to his own understanding of modern day creditor-debtor relations, Graeber contends that Mauss' theory of reciprocity and exchange assumes some form of equivalence between the parties. That is, in exchange systems "it's not that there is ever an exact equivalence – even if there were some way to measure an exact equivalence – but more a constant process of interaction tending toward equivalence" (Graeber, 2011, pg. 103). By contrast, what marks commercial exchange is its impersonal nature. And it is the resulting inequality between the contracting parties (and the presence of money) that moves the relationship from one of a Maussian exchange relationship to one of a creditor-debtor relationship.

It is here that Graeber's work reaches its theoretical apex. Graeber argues that the beginning of the modern-day lending relationship between creditor and debtor "requires a relationship between two people who do not consider each other fundamentally different sorts of being, who are at least potential equals, [and] who are equals in those ways that are really important . . . ." (Graeber, 2011, pg. 120). Mauss' theory of reciprocity required an equality of status, while for modern-day commerce Graeber contends that equality at the outset stems from the concept of "legal standing." It is in this notion of legal standing that the parties are equals. By this Graeber means that at the outset, both parties have the legal capacity and power to enter into a voluntary, contractual lending relationship.[4] But once the debt is undertaken and while it remains outstanding, Graeber

[4] The essential elements of a contract are: (1) competency of the parties to contract; (2) proper subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation. *Tague v. Missouri Private Sector Individual Self-Insurers Guaranty Corp.*, 186 S.W.3d 469, 475 (Mo. App. W.D. 2006). For example, a person might not have the mental capacity to enter into a contract. "The test of mental capacity to contract is whether the person in question possesses sufficient mind to understand, in a reasonable manner, the nature, extent, character, and effect of the particular transaction in which she is

argues that the parties are no longer in a position of equality; rather, "the logic of hierarchy takes hold . . . . Debtor and creditor confront each other like a peasant before a feudal lord" (Graeber, 2011, pg. 121). Viewed in these terms, a debt is just an exchange that cannot be brought to completion until the debtor repays its financial obligations.

In these modern-lending relationships then, the parties start off as equals and transition into a period of inequality while the debt remains unpaid. As Graeber argues, it is only when the debt is paid and canceled that equality is restored and both parties can walk away from the relationship (Graeber, 2011). When the debt cannot be repaid, however, equality cannot be restored and it is then that the undercurrent of morality enters the relationship; that is, the debtor must be at fault because from a moral standpoint the debt should have been repaid. Indeed, the etymology of the word debt is couched in terms of "sin," "fault," and "guilt" (Graeber, 2011).

In viewing a creditor-debtor relationship as a modern form of reciprocal exchange, Graeber contends as follows:

> Debt is what happens in between [the time of borrowing and repayment]: when the two parties cannot yet walk away from each other, because they are not yet equal. But it is carried out in the shadow of eventual equality. Because achieving that equality, however, destroys the very reason for having a relationship, just about everything happens in between. In fact, just about everything human happens in between – even if this means that all such human relations bear with them at least a tiny element of criminality, guilt, or shame.
>
> (Graeber, 2011, pg. 122).

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engaged, whether or not she is competent in transacting business generally." *Butler v. Harrison*, 578 A.2d 1098, 1100-01 (D.C. App. 1990).

When a debtor resorts to the bankruptcy process, it is arguably the most desperate form of failure to pay back one's financial obligations. Individuals who resort to the bankruptcy process usually do so under Chapter 7 of the Bankruptcy Code, which is a liquidation proceeding. The goal of a consumer debtor in a Chapter 7 bankruptcy proceeding is to obtain a discharge of his or her pre-petition indebtedness, which results in the extinguishment of the debtor's personal liability for the debt. In bankruptcy parlance and theory, once a debtor receives a discharge of pre-petition debt, it is said that the debtor has received a "fresh start" in life. Unless the debtor violates a proscribed form of behavior contained within the Bankruptcy Code, an individual who files for Chapter 7 bankruptcy relief can ordinarily obtain a discharge from the majority of his or her pre-petition debts in exchange for surrendering any non-exempt assets to the bankruptcy trustee.

Because of the debtor's forgiveness of his or her financial obligations, it is unavoidable that notions of morality enter the dynamic of the bankruptcy process. This is so even with the transition from personalized human economies studied by Mauss and Malinowski to the impersonal commercial markets of today (Graeber, 2011). As Graeber recounts, exchanges in insular, less advanced societies involve "social currencies" and notions of personal trust, whereas in financial relations between strangers (i.e., financial institution and individual debtor), the trust is removed and replaced by interest as a form of compulsion for debtors to repay their obligations and for a mechanism for creditors to protect their position should the debtor default. Yet despite the impersonal nature of modern-day credit relations, a debtor retains his or her "honor" when the debt is repaid.

By contrast, one is essentially dishonored when the debt is effectively cancelled through the bankruptcy process.

As noted by anthropology scholar Gustav Peebles, "[w]hen one surveys decades of anthropological literature on credit and debt, an astonishing consistency shines through much of the ethnographic data" (Peebles, pg. 226). When credit and debt are discussed, there arises a "moral stance that credit is considered beneficial and liberating for the creditor . . . whereas indebtedness is more likely to be seen as burdensome and imprisoning for the debtor" (pg. 226). In short, credit is described in terms of "power," while debt is characterized as a form of "weakness" (Peebles, 2010). Moreover, Peebles (relying upon Mauss and Graeber's earlier work) contends that there is a significant distinction between gifts and standard market forms of credit and debt; to wit, "they are both transferring resources across the spectrum of time,[5] but the gift 'contract' is silent and invisible, whereas the commodity contract is enunciated and visible" for all to examine (pg. 229).[6]

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[5] In this sense the debtor is borrowing money today to be used in the present against speculative resources in his or her future (i.e., wages to pay back the debt) while the creditor is denying himself or herself "the use of concrete resources today in exchange for speculative gains in the future" (Peebles, pg. 227).

[6] To some degree, filing for bankruptcy protection is a very public process too. In order to file for bankruptcy protection, the individual must complete necessary documentation, disclosing between thirty and fifty pages of private financial information, including the person's: (i) occupation; (ii) monthly income; (iii) itemization, identity, and value of all personal assets owned; (iv) amount of cash in bank accounts; (v) real property owned and its value; (vi) identity of creditors; (vii) types of debt; (viii) extent of retirement savings; and (ix) current living expenses and amounts spent on various items (e.g., car, cable). These documents are signed under oath, potentially subjecting the debtor to a risk of perjury and other serious consequences. The information filed becomes a public document, which is available to anyone willing to pay a small fee for an internet search. Thus, the consumer debtor is "laid bare" financially. Moreover, the Bankruptcy Code requires a debtor to attend a public meeting of creditors, where a bankruptcy trustee asks questions of the debtor under oath and creditors are given the opportunity to inquire more deeply into the debtor's financial affairs. There are at least two other acts of public ceremony attendant to a bankruptcy filing. Consumer debtors are required to partake in two financial education courses, one as a condition precedent to being eligible to file for bankruptcy and the other as a condition precedent to receiving a

Once the industrial revolution commenced, consumer credit became a commonplace phenomenon. Carruthers and Espeland (1998) correctly note that extensions of credit during this time established a personal relationship between creditor and debtor. Significantly, "[c]redit was based on a man's personal character – his moral standing, ethical rectitude, and trustworthiness" (Carruthers and Espeland, 1998, pg. 1393). Indeed, up until the beginning of the twentieth century, creditworthiness was still a matter that rested on the personal characteristics of the borrower. For example, Carruthers and Espeland note that in late nineteenth century New York, credit raters "put considerable emphasis on the ethnicity of the borrower, sharply distinguishing, for example, between Jews and non-Jews. Their assumption was that ethnic identity served as an indicator of character and trustworthiness" (pg. 1393).

While personal attributes and characteristics of the particular debtor undergirded debtor-creditor relations for centuries prior to the twentieth century, the industrial revolution caused a seismic cultural shift in this dynamic according to scholars like Colin Campbell (1983) and Simon Coleman (2004). At the same time that Max Weber's *The Protestant Ethic and the Spirit of Capitalism* imbued both Western Europe and America with the ethos of individualism, hard work and economic self-sufficiency, Campbell contends that the industrial revolution spawned a "social ethic of consumerism" (Campbell, 1983, pg. 280) which persists today. [7] According to Campbell, in traditional

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discharge of indebtedness. Some of these courses are offered on a group basis to debtors, so any anonymity for protecting one's identity as a bankruptcy debtor is lost.

[7] Coleman makes a similar point: "Yet industrial capitalism entailed the emergence of an apparently paradoxical consumer culture, with, ideally, the secularized entrepreneur acting as ascetic producer by day, and conspicuous consumer by night" (Coleman, 2004, pg. 424-425).

societies, where mass production of goods did not occur, individual "wants" were by nature suppressed. Usually "need satisfaction" (pg. 281) was locally managed through a subsistence economy without the benefit of either money or a developed market. But with an established market and the advent of mass production in the nineteenth century, the economies of Europe and America needed people to consume at ever-increasing levels to match the rapid production of goods. In turn, consumption as an activity became visible to one's neighbors and social network. Campbell describes this dynamic in the following terms:

> The revolution of rising expectations means that everyone not only expects to "better" himself but it is considered "immoral" not to strive to do so; this means an obligation to seek out and satisfy new "wants." This in turn is closely linked to social emulation and an ideology of the ease of inter-class mobility. The obligation to satisfy want is linked to a money market economy embodying the principle of consumer sovereignty and mechanisms to guarantee the perpetual stimulation of new wants.
>
> (pg. 281).

For Campbell, the mass production of goods, and the ever present need for the consumption of those goods, caused a cultural shift towards a desire "to want to want" (pg. 282). That is, a modern consumer is not born naturally, but is acculturated through social and cultural processes that teach him or her to want things without limit. Campbell summarizes his central theory as follows:

> The crucial feature of the role of [the] modern consumer is the primary obligation to want to want under all circumstances and at all times irrespective of what goods or services are actually acquired or consumed. This fact is not rooted in human psychology but in the culture of our civilization and constitutes the ethical basis of consumerism.
>
> (pg. 282).

Along with this idea is Campbell's notion of continuing consumer "discontent," whereby not only is there a cultural ethic of consumption for consumption's sake, but in order to drive a capitalist society the modern consumer needs to search for ever more novel and varied consumptive experiences as an end-in-itself. Simply put, we are programmed to be dissatisfied with what we have and desirous of what we do not have. Technological innovation, mass production, national advertising, and the rise of "easy" credit in the 1960s have made this all possible. Moreover, this process also engendered through the consumption of goods notions of social emulation, status attainment and "competition in prestige or honor" (pg. 283) of a stripe similar to the exchange or reciprocity of large feasts or gifts in traditional societies.

It is unquestionable that today we live in an age of consumer credit. To that end, it is beyond contention that the use of consumer credit has become a part of American culture. Indeed, during the course of the twentieth century, attitudes about debt and consumption shifted from moral shame to resounding acceptance (Calder, 1999). Many believe quite firmly that the escalation in the utilization of consumer credit during the past four or five decades is the result of a loss of personal self-discipline and the rise of materialistic cupidity by the average consumer (Sousa, 2010). Despite this belief, however, and as noted, borrowing and lending by American consumers have been prevalent practices since the late nineteenth century. But it is in the past few decades that the average American has become indebted and over-extended like never before. And while it would certainly be disingenuous to suggest that a segment of American consumers have not attempted to live avariciously beyond their practical means, in today's economic times "[t]he significance of consumer credit is now measured by the fact that for [both lower and] middle-class people it has become virtually impossible to live the American dream without access to" (Calder, 1999, pg. 291) consumer credit of all stripes. Consequently, the use of consumer credit has become a necessity of everyday life, a mechanism for a family to live beyond the bounds of poverty. Simply put, for America credit underscores everyday life. In our national economy, "most low-and moderate-income people borrow to live on their income. They are not borrowing to keep up with the Joneses; they are borrowing to stay afloat, to keep up with payments for housing, food, transportation, and health care" (Sousa, 2010, pg. 554).

Though the United States economy has been growing for the past several decades, the majority of individuals have little to show from such progress. Various economic indicators corroborate this assertion. For instance, as of 2004, the median wage in the United States was the same as it was thirty years before. Further, the "real income of the bottom 90 percent of American taxpayers has declined steadily: they earned $27,060 in real dollars in 1979, $25,646 in 2005" (McKibben, 2007, pg. 11). And, "[w]hile median net wealth grew from $69,465 to $93,001 from 1989 to 2004, it was outpaced by consumer debt, which more than doubled during the same period, from $22,000 to $55,300" (McKibben, 2007, pg. 11).

By all measures, American consumers are inundated with debt; today, the average person owes more money to more people than ever before. In 2004, 76.4% of all households reported some form of consumer borrowing, 46.2% carried a balance on at least one credit card, 48% reported paying a mortgage loan or line of credit, 39.5%

reported making loan or lease payments on an automobile, 13.4% reported obligations on student loans, and 19.3% reported some other form of borrowing indebtedness (Retsinas & Belsky, 2008). In the fall of 2005, household debt was 113% of annual income on average. Furthermore, according to the Federal Reserve, Americans are now carrying approximately $899.4 billion in revolving credit debt; indeed, the average outstanding credit-card debt for households with a credit card was $10,679 at the end of 2008. Even after the Great Recession of 2008, many Americans are finding themselves in a "debt trap" that they are having difficulty escaping. Admittedly, consumers are not entirely blameless in amassing unmanageable debt obligations. Granted, one way to prevent future consumer economic crises is to limit borrowing and to exercise personal self-restraint. Although it is true that Americans have been spending less and saving more to cope with the aftershocks of the recession, incremental savings and a newly found aversion to borrowing will not rescue the average American consumer from the noted "debt trap."

While theories explaining the expansion of consumer credit during the past decade or so abound, many scholars believe that the consumer credit market itself is primarily responsible for incentivizing increased consumerism through the liberalization of available credit. That is, the high debt levels for such possessions as residential homes, automobiles, and household goods for both the lower and middle classes have been prompted, and actively promoted, by the credit industry. As Professor Lois R. Lupica tellingly describes, "[c]onsumer debt provided the fuel for the explosion of the markets for consumer goods, services, and credit. Debt became necessary to sustain the markets' very existence, and thus widespread incentives to increase consumer debt levels emerged" (Lupica, 2009, pg. 603).

Based upon the unfortunate financial position in which many Americans find themselves in today, many scholars are shifting the dialogue regarding ideas of consumption and creditor-debtor relations. While traditional notions of indebtedness have centered upon the lack of restraint of the modern consumer and the moral failings of the modern debtor to honor his or her contractual obligations (Zywicki, 2005), many scholars have now shifted the blame for the current state of debtors' financial positions on the predatory practices of creditors themselves. From an anthropological standpoint, the most noted work is Brett Williams' *Debt for Sale: A Social History of the Credit Trap* (Williams 2004).

Williams' work explores credit and debt generally in American life, and in particular tracks the "connections between debts and debtors and the lenders and investors who profit from debt" (Williams, 2004, pg. 1). More importantly, though, Williams argues that over the past several decades large-scale financial institutions have systematically profited from, and preyed upon, ever more vulnerable populations of debtors nationwide, particularly through the mass solicitation of credit cards. As Williams sets forth, credit is "part of the ebb and flow of social life, for nobody is or can be or should be truly self-sufficient" (pg. 5). And in continuing the traditional themes of anthropologists' writings on creditor-debtor relationships, Williams recognizes that

> [c]redit and debt are also grimly implicated in power relations. People take on debt to large lending institutions in the corporate world. When inequalities between debtors and creditors are too stark, people may enter a modern form of peonage, as they pay for debt by being in hock with

> their lives, or experience usury when the interest on the debt is so great that it unjustly saps the debtor and perpetuates the inequalities that made it necessary in the first place.
>
> (pg. 5).

Indeed, much like Mauss and Graeber, Williams views creditor-debtor relations in terms of inequality. More narrowly, Williams argues that credit cards reproduce and exacerbate divisions of class “by creating a credit relationship in which individuals and banks are paired in a patronizing, asymmetrical economy of debt” (pg. 6). Williams characterizes this form of debt as “embodied domination,” (pg. 6) and the pernicious purpose of consumer credit is to keep the individual in perpetual debt. As Williams argues:

> You are not supposed to be able to pay enough to escape debt, but you are supposed to pay interest on time or be disciplined by higher interest, penalties, fees, and harping, dunning, threats, and infantilizing phone calls. Your detailed, precise credit history can be stigmatizing or enabling: it is your life, it legitimizes you. Your credit report is accepted as an objective measure of citizenship and personal financial responsibility; it is a seamless, convenient means of reproducing inequality.
>
> (pgs. 6-7).

The remainder of Williams’ work articulates how this vast inequality came to be. The national economic problems of the 1960s and 1970s were, simply put, masked by the expansion of the availability of consumer credit. During this time of stagnant wages, painful inflation, and the overseas movement of the manufacturing sector, many people turned to credit out of necessity to act as a form of masked social welfare. Beginning in the 1970s, the credit card industry marketed their credit cards to the most creditworthy borrowers, and creditworthiness was no longer judged by the personal characteristics of the individual debtor, but measured (as noted by both Williams and Graeber) by the cold mathematical calculation of one's credit score. But the creditworthy borrowers soon proved problematic to the lending institutions. In order to reap profit from the extensions of credit, lending institutions rely on annual membership fees, interest, overdraft fees, and other contractual penalties (Williams, 2004). However, the creditworthy borrowers that the lending institutions worked hard to attract generally paid their bills on time and generally paid no interest at all. Quickly realizing that this system of credit extension failed to maximize corporate profits, banks started targeting consumers a rung or two on the ladder below these "convenience users."

As Williams recounts, the credit card companies moved from soliciting creditworthy convenience users to purposefully courting "revolving" customers. In other words, the lending institutions revised its own standards of creditworthiness in order to "build portfolios of heavily burdened people, who, though bowed with debt, faithfully paid interest each month (Williams, 2004, pg. 35). As the lending institutions pushed farther down the socio-economic ladder in order to reap profits from less able borrowers, real wages continued to fall during the 1980s, low-paying service sector jobs replaced unionized manufacturing jobs, and as Williams notes, American society grew more unequal (Williams, 2004). According to Williams:

> Personal debt reflects the ravages and inequalities of the 1980s and people's desperate, sometimes misguided, often inescapable efforts to maintain the illusion of a middle-class standard of living that was in fact plummeting. They borrow to make ends meet. Women have been especially vulnerable, because of relatively low salaries and gendered mobility ladders, the high costs of child care and health insurance, and their lowered incomes after widowhood or divorce. Some people in their middle years have been able to call on older relatives who did well during

> the postwar boom, but for others credit cards have increasingly served as welfare, domestic partners, and the community chest.

(pg. 44).

With smaller monetary cushions available to them, during the 1980s and thereafter middle- and lower-class families turned to credit cards to supplement themselves during periods of unemployment or underemployment, or to simply pay for the unexpected expenses that crop up from time to time, like car repairs or medical bills. Williams argues, correctly, that credit cards "have helped to create an artificial middle class," (pg. 53) which effectively disguised individuals' declining fortunes. And as articulated by Mauss and Graeber before her, Williams contends that once serious credit card indebtedness occurs, dependency (psychological and actual) is the result. It is at this point that debtors begin to struggle to preserve their dignity, keep up appearances, and posit to themselves that they are still part of the proverbial middle class. At the same time, according to Williams, debtors "feel guilty, complicit, and conflicted, as though credit card companies are their (perhaps untrustworthy) friends" (pg. 53). Although lending institutions market credit cards that promise people a sense of freedom and independence, Williams finds that ultimately credit card indebtedness "drains resources, drags us and our future down, propels inequality [because lower-income borrowers supplement the maligned "convenience users" by paying higher rates of interest and penalties], and masks race, class, gender, and generational differences while exacerbating tensions, divisions, and inequities that run along precisely those axes" (pg. 57).

The remainder of Williams' anthropological exploration of consumer debt recounts a familiar tale. That is, not content with the profits earned by the "revolvers," during the late 1990s and 2000s, lending institutions intentionally sought out new customers to generate even more returns for their own investors. Large banks have successfully accomplished this in a variety of ways, mainly by soliciting college (and high school) students with credit card offers, backing and establishing check cashing stores (which invariably appear in lower-income neighborhoods), granting mortgage loans to a swath of subprime borrowers, and by creating a cottage industry of payday lenders that target the poor (Williams, 2004).

Williams does not hide her disdain for the practices of the lending industry over the past several decades, and her closing observations provide a useful summation of how the anthropological studies on credit and debt resonate with the findings of this study. On this note, Williams concludes her work as follows:

> Debt is the engine that drives all this [inequality, social immobility, etc.], the bloodsucker that makes us anxious and mean-spirited and drags us down. We tend to call it credit, which emphasizes its good parts. Credit can help us through emergencies and give us a fresh start. But credit becomes debt when it is so laden with interest and fees that it is impossible to pay back. The social relations are oppressive, not liberating, the fresh start is always elusive.
>
> (pg. 131).

In his work, Graeber (2011) makes a similar point as the aforementioned quote from Williams. That is, there has always been, and most likely there will always be, cultural confusion surrounding a society's understanding and perception of credit and debt. We as a society are socially enculturated to believe that having credit is a good thing, and many of us turn to our credit score as one indicia of our worth as a member of society. But if we ever find ourselves indebted beyond our reasonable capacity to repay, moral questions arise. Perhaps more significantly, we internalize that others will view us negatively if we admit our indebtedness, and our economic prospects will be dampened if the fruits of our labor benefit a single contingent, namely, our creditors. Ultimately, the themes of inequality, morality and power expressed by Mauss, Graeber and Williams regarding the relations between creditors and debtors find voice in the empirical data collected for this thesis project. But before turning to a discussion of this data, the next section will address the sociological account of the phenomenon of stigma and its consequences for individuals who experience stigmatization.

III. The Sociology of Stigma and its Consequences

Anthropologists studying stigma largely rely on Ervin Goffman's influential work, *Stigma: Notes on the Management of Spoiled Identity* (e.g., Ablon, 1981; Becker, 1980; Coker, 2005; Edgerton, 1993; Herskovits & Mitteness, 1994; Weiss, M., Jadhav, S., Raguram, R., Vounatsou, P. & Littlewood, R., 2001). In it Goffman contends that society as an institution devises the means of categorizing people and in turn establishes the personal attributes to be considered ordinary and normal for members of these created categories. Once delineated, these "favored" personal attributes become social anticipations, thereby "transforming them into normative expectations, into righteously presented demands" (Goffman, pg. 8). When we encounter someone for the first time or even learn something new about someone with whom we already have a relationship, we may learn that he or she possesses an undesirable characteristic or trait that makes the person different from others in the category of persons to which we believe he or she belongs. Because of this undesirable trait, Goffman argues that psychologically we "reduce in our minds [this individual] from a whole and usual person to a tainted, discounted one" (pg. 9). Consequently, this discrediting personal attribute is a stigma.

Goffman characterized three different types of stigma. First, there are physical deformities with which people must contend. Second, there are "tribal stigmas," such as race, nation, and ethnicity, which can be transmitted through lineage (pg. 14). Third, there are "blemishes of individual character" (pg. 14), attributes undetectable to the naked eye but brewing just below the skin, such as mental disorder, alcoholism, prostitution, and former imprisonment. When the stigma or undesirable trait is apparent and discoverable within a social context, such as a physical deformity, the individual is considered "discredited" *per se* (pg. 57). On the other hand, when the stigma is not immediately identifiable, like a drug addiction, Goffman maintains that such an individual is "discreditable" (pg. 57). For the potentially discreditable, "[t]he issue is not that of managing tension generated during social contacts, but rather that of managing information about his failing" (pg. 57). As a result, for the discreditable individual, choices become "to display or not to display; to tell or not to tell; to let on or not to let on; to lie or not to lie; and in each case, to whom, how, when, and where" (pg. 57).

The status of "bankruptcy debtor" would fall into Goffman's third category of stigma, namely, a blemish of individual character based upon conduct which may be discovered by fellow members of the community. Accordingly, bankruptcy debtors possess an undesirable trait and live with the status of "discreditable" by peers and by society. Faced with this societal position, bankruptcy debtors must resort to what Goffman refers to as the "management of undisclosed discrediting information about self" (pg. 58).

Once identified, stigmas take on a collective quality because there will be a general consensus in a given society about what is considered a stigma. Moreover, the attributes stigmatized in a community are passed along from one generation to the next through the socialization process. "[C]onceptualizations of stigma thus go hand in hand with the continuity of culture" (Ainlay, Coleman & Becker, pg. 4, 1986). The process of stigmatization in society, though more often than not damaging and hurtful to the targets of society opprobrium, serves the purpose of providing a sense of order in peoples' social and physical world. This ordering process routinizes our complex world. Thus, the identification of a deviant attribute and of a member of an outside group triggers an ordering and cataloguing function, a way for us to differentiate and separate ourselves from unenviable individuals.

The phenomenon of stigma intertwines with the study of deviance and is associated with labeling theory (Ainley, Coleman & Becker, 1986). A stigma arises precisely because society determines what constitutes deviant behavior and labels the particular characteristic or trait as devalued. Deviant behavior refers to conduct that violates valued social norms and subsequently is assigned a negative label and is stigmatized. Once the undesirable attribute or behavior is labeled, a psychological separation between "us" and "them" occurs and becomes the basis for those conforming to the ideal to believe that the negatively labeled individuals are fundamentally different (Link & Phelan, 2001). And once an individual is successfully labeled, he or she experiences a "downward placement" in the social status hierarchy (Link & Phelan, pg. 370). As Bruce G. Link and Jo C. Phelan write, "[t]he person is connected to undesirable characteristics that reduce his or her status in the eyes of the stigmatizer" (pg. 370).

The labeling of a deviant behavior can occur in three different ways, which are not mutually exclusive. First, a deviation in behavior can occasion "official labeling" where an individual or group experiences stigmatization from formal societal institutions, such as in employment and housing discrimination (Link, 1982, pg. 206). Second, the stigmatized individual can experience "informal labeling," which occurs in family, work and friendship groups (Link, pg. 206). Third, the individual can undergo a process of self-labeling, which Peggy Thoits describes in the following manner:

> These identity-making, identity-taking processes are not always dependent on the actual reactions of others. That is, role-taking abilities enable individuals to view themselves from the imagined perspective of others. One can anticipate and respond in advance to others' reactions regarding a contemplated course of action.
>
> These considerations suggest that one can also reflexively assess the *meaning* of one's actual or contemplated behaviors. Those people who contemplate violating social norms or who engage in actual rule breaking do not depend on the presence and reactions of others to assess the meaning of those actions. They can do so imaginatively or vicariously. In short, public, official labeling of one's rule breaking is not necessary for the emergence of a deviant identity; there can be private *self*-labeling.
>
> (Thoits, 1985, pg. 222).

Because of the prospect for self-labeling, the "downward placement" in the social hierarchy that Link and Phelan identify need not result exogenously from overt labeling or discriminatory behavior from the larger community. Accordingly, individuals can develop self-conceptions of deviant behaviors as a component of one's general socialization in a culture. When these ideas are formed the self-conceptions become a "lay theory" for the individual regarding what it means to possess such a trait (Thoits, 1985, pg. 222). This occurs because sentiments are internalized by individuals across society and in turn form a mental construct of what other people in general actually believe or should believe. Over time, this dynamic engenders a "cultural conception" of the offending characteristic, which can then lead to individual self-labeling. A labeling of a stigma or a deviant behavior can have a serious impact upon an individual. Empirical studies have demonstrated that a stigma can have negative consequences for an individual's employment prospects, quality of life, and self-esteem (Wright, Gronfein & Owens, 2000). For deviant behaviors that implicate a moral component, such as filing for bankruptcy, one can be affected by internal feelings of shame and social disgrace. Self-conceptions of shame arise particularly because the individual can see himself or herself from the viewpoint of others based upon the accepted norms of the relevant society (Scheff & Retzinger, 1991).

As Goffman recognized, the concept of stigmatization is inextricably bound with notions of morality; the primary issue from the perspective of the stigmatizer is one of responsibility -- who caused the stigma to arise in the first place? If the stigma inducing attribute or behavior is within the control of the individual, there is a tendency to perceive the stigmatized as immoral and the stigma punishment for the moral transgression (Gibbons, 1986). For the stigmatizer, the issue of responsibility and morality leads to notions of whether the stigmatized is deserving of pity or whether he or she should be treated with disdain. Sociological studies suggest that stigmatized characteristics over which the individual has no control (*e.g.*, a physical disability) are met with less disdain and greater pity than attributes over which the individual can exercise control (*e.g.*, obesity) (Albrecht, Walker & Levy, 1982). Furthermore, individuals with these onset-controllable stigmas are often rated in scientific studies as "low on liking," "evoking little pity and relatively high anger," and they elicit "low judgments regarding the receipt of personal assistance and charity" (Weiner, Perry & Magnusson, 1988, pg. 741).

Some stigmas can be easily concealed so "that they figure very little in the individual's relation to strangers and mere acquaintances, having their effect chiefly upon" people with whom we are intimate (Goffman, pg. 72). Perhaps one's act of filing for bankruptcy and the concomitant message of financial failure is one such stigma. Unlike the apparent discrediting stigma of, for example, a physical deformity, a person's filing for bankruptcy relief can be well-hidden from one's community. Nonetheless, individuals who file for bankruptcy relief can experience all three forms of labeling, with self-labeling perhaps being the strongest consequence of filing for bankruptcy.

Individuals who file for bankruptcy can experience official or institutional labeling in several different ways. In his classic article, *Notes on the Sociology of Deviance*, Kai T. Erikson described that a community's decision to bring sanctions against an individual for his or her behavior involves a "sharp rite of transition" which moves the individual from a normal position in society into a deviant role (Erikson, 1962, pg. 311). This change of status is usually occasioned through ritualized "ceremonies" (Erikson, 1962, pg. 311).

The consumer bankruptcy process contains several institutionalized "ceremonies" that cause an individual's status to change from citizen to the discredited position of bankruptcy debtor. First, in order to file for bankruptcy protection an individual must complete a bankruptcy petition and accompanying schedules, documents that ordinarily range between thirty and fifty pages. The petition and schedules must be filed with the bankruptcy court and constitute public documents, accessible to anyone in the community. Moreover, a short but savvy internet search may reveal the names of people who have filed for bankruptcy relief and companies advertise that for a fee they will collect personal information on almost anyone, including whether a bankruptcy filing has occurred. Further, the bankruptcy petition and schedules require an individual to reveal all of one's private financial information, including such items as: i) occupation; ii) monthly income; iii) itemization, identity and value of all personal assets owned; iv) amount of cash in bank accounts; v) real property owned and its value; vi) identity of creditors; vii) types of debt; viii) extent of retirement savings; and ix) current living expenses and amounts spent on various items (*e.g.*, car, cable). As a condition for filing for bankruptcy relief, a debtor must accept the act of disclosing publicly all of his or her financial information.

Second, § 343 of the Bankruptcy Code requires a debtor to attend a public "meeting of creditors," where a bankruptcy trustee asks questions of the debtor under oath and creditors are given the opportunity to attend and also inquire into the debtor's financial affairs. Requiring the debtor to submit to public questioning at the meeting of creditors affords the creditors and trustee with an opportunity to discover whether assets have been concealed or cause exists to object to the debtor's discharge. This public ritual is described by Professor Nathalie Martin in the following way regarding her work with a low-income clinic:

> Any reader wishing to experience [the] sense of shame first-hand can go and watch Section 341 creditors' meetings at their local Bankruptcy Court. The walls bear signs warning bankruptcy debtors that "the FBI investigates bankruptcy crimes." Debtors are milling around looking for their lawyers, with whom they often have spent very little time and can barely recognize. Most of the [debtors] are so nervous they could pass out . . . . As they approach the table to be questioned, many hang their heads in shame. They look like they would rather be anywhere else.
>
> (Martin, 2005, pg. 214).

The requirements placed upon a debtor to make a disclosure of assets and liabilities, to submit to questioning under oath, and by implication to reveal one's lifestyle choices, also result in a loss of privacy and personal dignity. These factors add to the shame of filing for bankruptcy relief.

In addition to these two acts of public ceremony, BAPCPA now requires consumer debtors to partake in two financial education courses, one as a condition precedent to being eligible to file for bankruptcy (a pre-filing credit counseling course) and the other as a condition precedent to receiving a discharge of indebtedness (a post-filing financial management course). As for the pre-filing credit counseling course, Congress's mission was to have prospective debtors understand the potential alternatives to filing for bankruptcy relief with the goal of having a significant portion of them settle their debt obligations outside of the bankruptcy system. With respect to the post-filing financial management course, Congress wanted debtors who went through the bankruptcy system to learn effective financial management techniques to employ after the closing of their bankruptcy cases, such as utilizing a budget and using credit wisely. The first credit counseling course sends a message to debtors that bankruptcy should be avoided if at all possible while the second course reifies the idea for debtors that they have failed in the financial game of life and need to be rehabilitated and educated before moving back into "normal" society. In fact, Professor A. Mechele Dickerson has argued that mandatory credit-focused education satisfies society's need to punish debtors for acting irresponsibility in their financial affairs (Dickerson, 1998).

Official labeling can also result from the routine participants in the institution itself. As Gaylene Becker and Regina Arnold describe, in advanced capitalist societies where social stratification is present, “those with the power and authority to influence legislation and court decisions . . . create stigmatized groups by assigning particular attributes . . . a negative value and applying sanctions against them” (Becker & Arnold, 1986, pg. 19). In this sense those with power label the less powerful in order to maintain their privileged position or to enhance it to some degree. In the consumer bankruptcy realm, large financial institutions and United States legislators have served to label consumer debtors, the former in order to increase profit margins and the latter to appease conservative constituents and Wall Street.

Particularly since the promulgation of the Bankruptcy Code in 1978, which the consumer credit industry viewed as a liberalization of the nation’s bankruptcy laws, the credit industry engaged in a relentless public campaign to amend the Bankruptcy Code in order to prevent debtors from “abusing” the bankruptcy process. Indeed, debtor “abuse” of the nation’s bankruptcy laws became the public rallying cry to amend the Bankruptcy Code and the credit industry lobbied Congress on this premise. Moreover, this reform campaign premised upon debtor “abuse” was echoed through the popular media all across the nation. The financial institutions believed that debtors with an ability to repay some portion of their unsecured debts were purposefully opting to file for Chapter 7 bankruptcy as an easy escape from their financial obligations. The power of the credit industry proved effective - - its efforts lead directly to the promulgation of BAPCPA, which most academics have observed as placing greater restraints on consumer debtors (White, 2006).

Influenced by the machinations of the credit industry and a handful of empirical studies produced by the credit industry itself which purportedly evidenced debtors' ability to repay their debts, a slew of United States congressmen issued public statements in the years preceding BAPCPA that effectively labeled those who file for bankruptcy as deadbeats and promise breakers. Moreover, the purported erosion of bankruptcy stigma became a rallying point for legislators seeking to amend the existing Bankruptcy Code. For example, during a public hearing of the House Judiciary Committee, Representative George W. Gekas noted that "bankruptcy has become a way for reckless spenders to escape their debts" (Jensen, 2005, pg. 495). To this he added the following commentary:

> The so-called bankruptcy of convenience is a new phenomenon, borne out of the loss of stigma the word bankruptcy once, but no longer, carri[es]. It used to be a sense of responsibility, or perhaps more appropriately, a sense of disgrace and embarrassment that discouraged Americans from declaring bankruptcy.
>
> (Braucher, 1998, pg. 5).

By way of another example, Representative Asa Hutchinson claimed that "'[h]aving lost its social stigma, bankruptcy convenience filings have become a tool to avoid financial obligations rather than a measure of last resort'" (Thorne & Anderson, 2006, pg. 79). Another public official, then Chairman of the Federal Reserve Alan Greenspan, once remarked that "[p]ersonal bankruptcies are soaring because Americans have lost their sense of shame" (Mols, 2012, pg. 302). And in perhaps the most public statement of all, during the signing ceremony to BAPCPA then President Bush noted that through the legislation "integrity" and "personal responsibility" would be restored to the bankruptcy system (Mols, 2012, pg. 310).

In all, from the 1990s through the 2005 Amendments to the Bankruptcy Code these two powerful groups, namely, financial institutions and United States legislators, set the public discourse over personal bankruptcy and messaged to the nation that the institution of bankruptcy had become a respite for abuse and those resorting to its protections lacked personal responsibility and deserved public scorn.

Official labeling and associated sanctions can also occur outside of the bankruptcy system. As a consequence of having filed for bankruptcy relief, debtors may have a difficult time acquiring future credit from financial institutions, and if acquired, the extension of credit will ordinarily be accompanied by high rates of interest and large finance charges for missed payments. Further, bankruptcy debtors face a very real risk that their discreditable attribute may be discovered if they seek to later buy a home, refinance a mortgage, rent a house or apply for a job that requires a credit check as a condition precedent to an offer of employment.

In addition to official labeling, perhaps the greater consequence to those who contemplate filing for bankruptcy or those who actually have filed is the private self-labeling process, occasioned by comparing one's conduct to the known prevalent cultural norms accepted by the larger community (Thoits, 1985). This private self-labeling can occur even in the absence of public labeling (Goode, 1975); self-labeling can also arise through a mere expectation of possible future stigmatization (Major & O'Brien, pg. 2005). Those who privately self-label for having filed bankruptcy can experience deep feelings of shame, embarrassment and stigmatization. These emotions arise due to “an implied framework of negative comparison with others” (Lewis, 1971, pg. 40-41) and a “vicarious experience of the significant other’s scorn” (Lewis, 1971, pg. 42).

To date, no academic has argued that all stigma associated with filing for bankruptcy has eroded. As this study suggests, a segment of consumer debtors do feel intense feelings of shame and embarrassment over filing for bankruptcy relief. Others, however, feel differently. What has not yet been explored to any significant degree, other than in a previous work by Professor Efrat (Efrat, B. 2006), are the possible explanations for why society stigmatizes those who file for bankruptcy relief and why many of those who do file engage in self-labeling. It is this topic, and to the purported decline in bankruptcy stigma, to which this thesis now turns.

IV. POTENTIAL SOURCES OF BANKRUPTCY STIGMA AND REASONS FOR ITS PERCEIVED DECLINE

My intent here is to serve two purposes. The first is to add to Professor Efrat's work by expounding upon and offering some explanations for the existence of the social stigma surrounding bankruptcy. The suggestions provided here are not meant to be definitive nor must they be viewed as mutually exclusive. To the extent that bankruptcy stigma exists and any particular individual experiences official labeling or private self-labeling, or both, one or more of these explanations could be the reason. The second purpose is less ambitious, which is to simply catalogue the arguments advanced in the past for the perceived decline in the stigma associated with bankruptcy.

A. SOURCES OF BANKRUPTCY STIGMA

i. THE AMERICAN ETHOS OF INDIVIDUALISM AND SELF-RELIANCE

Perhaps the strongest catalyst for the perceived stigma associated with filing for bankruptcy is the accepted American cultural ideals of individualism, self-reliance and independence (Kornhauser, 2009). Although these ideals are well-documented in various scholarly works, here I mainly draw on David M. Tucker's influential book, *The Decline of Thrift in America: Our Cultural Shift from Saving to Spending* (Tucker, 1991) which recounts the development of these American ideals through the founding of the republic through the 1980s (Tucker, 1991). According to Tucker, "[t]he United States was born into a thrift culture," which from inception emphasized frugality "as the best means for promoting the general welfare" (Tucker, 1991, pg. viii). The influences and evolution of the American notion of national thrift are varied and vast, ranging from hunting-gathering tribes to the religious fervor carried out in Western Europe in the 1600s. But as Tucker suggests, the best example of the notion of American thrift is Benjamin Franklin's *The Way to Wealth*, penned in 1757, which contained myriad pithy homilies and admonitions about incurring debt and living within one's means (Tucker, 1991). As to relationships between debtors and creditors, the following admonitions from Franklin resonate with as much force today as they did several hundred years ago:

> Think what you do when you run in Debt; *You give to another Power over your Liberty*. If you cannot pay at the Time, you will be ashamed to see your Creditor; you will be in Fear when you speak to him; you will make poor pitiful sneaking Excuses, and by Degrees come to lose your Veracity, and sink into base downright lying; for, as Poor Richard says, *The second Vice is Lying, the first is running in Debt* . . . . Poverty often deprives a Man of all Spirit and Virtue: *'Tis hard for an empty Bag to stand upright* . . . . *The Borrower is a Slave to the Lender, and the Debtor to the Creditor*, disdain the Chain, preserve your Freedom; and maintain your independency: Be *industrious* and *free*; be *frugal* and *free*.
>
> (Tucker, 1991, pg. 10-11).

As Tucker argues, Franklin's *The Way to Wealth* and other influential writings of the era, including Adam Smith's *The Wealth of Nations*, "repackaged peasant thrift advice" (Tucker, 1991, pg. 10) for the modern capitalistic world. In fact, Max Weber aligned his own "particular ethos" of work and diligence to the writings of Benjamin Franklin (Weber, 1958, pg. 48-53). Franklin transformed the notion of saving money from a necessary peasant trait "into part of the middle-class ethic – industry, frugality, and thrift—which economic individualism prescribed as the means to fulfill the hopes of individuals and their nations" (Tucker, 1991, pg. 10). From Franklin and other sources, the American republic emerged “admist feverish declarations” (Tucker, 1991, pg. 13) of industry, frugality, thrift and public virtue (Tucker, 1991). According to Tucker, the cultural emphases of industry and thrift implied a tenet of consumptive self-restraint. Commencing in America in the nineteenth century, a commitment to saving regularly increased the moral perception of the individual vis-à-vis his or her peers, and the exercise of self-restraint garnered admiration and respect from others in the community. A consequent American ideal that developed is the belief that individuals should be self-reliant, and thus held personally responsible for their actions (McClain, 1994, pg. 1001). These ideals have pervaded American society ever since.

Moreover, as Martha Fineman has observed, this American ideal of self-reliance or self-sufficiency relates to one’s financial and material well-being (Fineman, 2004). Thus, in American discourse the autonomous individual or family (*i.e.*, economically self-sufficient) is often assumed to be “ideal” or, according to Fineman, in “the natural order of things” (Fineman, 2004, pg. 22). Simply put, “[i]ndependence and self-sufficiency are characteristics of an idealized economic status” (Fineman, 2004, pg. 22). Consequently, a failure to attain this ideal is met by societal derision and scorn; and a need to resort to the bankruptcy process is arguably the paradigmatic expression of one’s failure to reach this vaulted societal status.

These precepts have proven influential in another American social institution as well, namely, the federal public assistance system. Indeed, scholars have characterized the bankruptcy process as a social welfare problem and analogized the generally negative societal attitude to public assistance to the shedding of one’s debts through the bankruptcy process (Rendleman, 1974). Professor Dickerson has noted that the American public's shift in attitude towards recipients of public benefits who in the late twentieth century became viewed not as "economic victims" (Dickerson, 2001, pg. 252), but as "individual failures who were allowed to exhibit dysfunctional behavior and maintain deviant lifestyles" (Dickerson, 2001, pg. 252), coincided with the widespread belief during this same period of time that individual debtors were recklessly accepting credit that they could not afford and later resorted to the bankruptcy process to callously shed their financial obligations (Dickerson, 2001). Viewed in this stereotypical manner by the public, Dickerson argues that recipients of federal welfare benefits and bankruptcy filers still garner disdain because both groups are cast as accepting unearned benefits while abandoning a sense of personal and social responsibility, and failing to maintain economic independence (Dickerson, 2001).

Studies of the existence of welfare stigma have been well-documented; the American ideal that able-bodied, working adults can lift themselves out of poverty through hard work and self-control has been identified as the reason many Americans feel disdain for those who accept public benefits (Fennell, 1994). As Fineman argues, because our society "mythologizes concepts such as 'self-sufficiency,' 'independence,' and 'autonomy,'" those among us who fail to meet these standards, and accept public assistance benefits "are rendered deviant" (Fineman, 1996, pg. 291), stigmatized, and subjected to scorn. The very same thing can be said of individuals who file for Chapter 7 bankruptcy protection.

ii. Law

One function of "law" in the law and society tradition is the "expression of a society's moral values" on various social, legal and political issues (Barkan, 2009, pg. 5). As Holmes observed at the end of the nineteenth century, "[t]he law is the witness and external deposit of our moral life" (Holmes, 1897, pg. 459). By expressing society's moral values in the context of legal disputes, the law serves to reinforce prevailing norms (Sunstein, 1996). In the American legal landscape, one long-standing prevailing norm has been the adherence to one's contractual obligations, in other words, the belief in the sanctity of contract (Hallinan, 1986). Moreover, in the past the breaking of one's contractual obligations has been characterized as deviant conduct (Stone, 1941).

English contract law of the seventeenth and eighteenth centuries, from which American contract law derives, emphasized the sanctity of contract and the moral obligation to keep promises (Hillman, 1990). The Anglican and Puritan churches in England promoted the concept of "contract as covenant," whereby a contract "was viewed as a covenant, much like the social contract or covenant with God, not to be lightly disregarded and to be strictly enforced" (DiMatteo, 1998, pg. 877). A breach of contract was equated with sin (DiMatteo, 1998, pg. 884). Although the religious dimension to contract-breaking has faded over the centuries (DiMatteo, 1998, pg. 877), the principle of adhering to one's contractual obligations has remained, albeit secularized, mainly due to concerns that routine contract-breaking would lead to "destabilized expectations" (Hillman, 1990, pg. 104) between parties, along with the resulting increased inefficiency in commercial transactions based on the lack of certainty and predictability overall. For this reason, modern American contract doctrine affords few justifications excusing promissory obligations. Aside from the few exceptions to contractual performance, such as the doctrines of impossibility and impracticability under Article 2 of the Uniform Commercial Code, the Bankruptcy Code sanctions millions of contractual breaches every year, and the Chapter 7 and Chapter 13 discharges enjoin creditors from recovering any pre-petition, unsecured claims against the debtor personally. While the Bankruptcy Code sanctions such legal results, this does not mean that such behavior is morally correct under principles of traditional contract law.

Perhaps the most notable modern effort in contextualizing contract doctrine as bound in principles of morality is Charles Fried's *Contract as Promise: A Theory of Contractual Obligation* (Fried, 1981). For Fried, the notion of contractual promise invokes conceptions of trust and individual autonomy (Fried, 1981). That is, our promise allows another to realize his or her own designs. Because this individual can now accomplish his or her objectives only through our promise, Fried argues that adhering to our promise is now morally compelled (Fried, 1981). Fried expressed his philosophy of the underlying morality of contract law in the following terms:

> An individual is morally bound to keep his promises because he has intentionally invoked a convention whose function it is to give grounds – moral grounds – for another to expect the promised performance. To renege is to abuse a confidence he was free to invite or not, and which he intentionally did invite. To abuse that confidence now is like (but only *like*) lying: the abuse of a shared social institution that is intended to invoke bonds of trust. A liar and a promise-breaker each *use* another person. In both speech and promising there is an invitation to the other to trust, to make himself vulnerable; the liar and the promise-breaker then abuse that trust.
>
> (Fried, 1981, pg. 16).

In sum, for Fried the act of promising and the calling upon of another individual's trust causes the promise to be imbued with both a legal as well as a "moral force" (Fried, 1981, pg. 17). This underlying force of trust in contracts can also occur in contractual relations between strangers. This is notable because many, if not most, modern contractual relations between debtors and creditors are occasioned between strangers, namely, an individual debtor and a faceless institution such as a mortgage company, bank or hospital. On this note, Dori Kimel contends that the trust underlying Fried's "contract as promise" notion implies or presupposes a previous, on-going relationship between the parties, a condition of pre-existing trust (Kimel, 2003, pg. 30). Nonetheless, according to Kimel the contract as promise theory also applies in contractual relationships between strangers. Once a promise is made to a stranger, Kimel argues, this implies that the promisor "plays by the rules" and is not only trustworthy but will treat the promisee with respect (Kimel, 2003, pg. 30). "By the very act of putting the practice of promising into use – [the promisor] by making the promise, inviting trust, suggesting respect; the promisee by taking the promise as a source of confidence, by trusting – [the parties] emulate the behavior of people in a relationship" (Kimel, 2003, pg. 31). Consequently, Kimel notes that the keeping of the promise "closes a circle through which [the parties] establish a bond of trust and respect," thereby removing them from "the domain of strangerhood" (Kimel, 2003, pg. 31).

The distinction between legally enforceable obligations and morally responsible behavior has found expression in bankruptcy-related judicial opinions from the nineteenth and twentieth centuries. The issue arises when a debtor has received a discharge of his or her debts under the Bankruptcy Code, and creditors continue to seek repayment or the debtor has an interest in repaying some portion of the now-discharged debt. This dynamic is exemplified in the Supreme Court's decision in *Zavelo v. Reeves*, wherein the Court noted that while the legal enforceability of the debt disintegrated upon discharge, the debtor is left under a moral obligation to repay the debt. Similarly, in *Silva v. Robinson* the state court pronounced that despite the discharge of the debt through the bankruptcy process, "the moral obligation continues precisely the same as though no discharge had been made." According to this reasoning, the moral obligation of a debtor to pay his or her creditors fully remains although the law cannot lend aid to enforce such a remedy (*Ludlow v. Van Camp*). This distinction finds support in the present Bankruptcy Code; for those debtors who feel a moral obligation to repay a portion of their debt, § 524(f) allows debtors to voluntarily repay any debt following discharge, even in the absence of a reaffirmation agreement with the particular creditor. Judicial pronouncements like those in *Zavelo* and *Silva*, taken together with the sanctioning of voluntary repayment under § 524(f) of the Bankruptcy Code, send a public message that there is a desirability for a debtor to repay his or her debt despite the bankruptcy experience, and the voluntary failure to do so is morally wrong.

In addition to this public messaging, federal court decisions have explicitly recognized the stigma associated with filing for Chapter 7 bankruptcy (e.g., *Perry v. Commerce Loan Co.*). This recognition is usually offered in bankruptcy court decisions where the debtor has chosen to repay a portion of debts through a sanctioned Chapter 13 plan. According to these judicial opinions, the debtor chose to repay a portion of his or her debts in order to avoid the stigma associated with choosing straight liquidation, namely, Chapter 7 bankruptcy.

iii. *Collective Social Norms*

The formal legal doctrine of performing one's contractual obligations serves to support and formally enforce the sociocultural norm of paying one's debts (Mather, 1999). Thus, the two ideas are intimately related and work in tandem. Sociologists define a norm as a "shared belief that persons ought to behavior in a certain way in certain circumstances" (Stafford & Scott, 1986, pg. 81). These shared beliefs are comprised of "nonlegal rules or obligations that certain individuals feel compelled to follow despite the lack of formal legal sanctions" (Carlson, 2001, pg. 1238). As Kai Erikson articulated decades ago:

> A social norm is rarely expressed as a firm rule or official code. It is an abstract synthesis of the many separate times a community has stated its sentiments on a given issue. Thus the norm has a history much like that of an article of common law: it is an accumulation of decisions made by the community over a long period of time which gradually gathers enough moral influence to serve as a precedent for future decisions (Erikson, 1962, pg. 310).

Social norms are socially distributed through a culture (Ainlay & Crosby, 1986). These norms and recipes are "shared by the actor with fellow social participants and define what is correct procedure and conduct as well as what is good and natural in a given society" (Ainlay & Crosby, 1986, pg. 22). The norms and recipes are also passed along inter-generationally and, if powerful enough, can become "woven into the institutional fabric of society" (Ainlay & Crosby, 1986, pg. 31). The obligation to follow the informal rule is thus internalized by the individual in order to avoid the societal disapproval that would result by breaking the norm or conversely by the societal approval and associated inner satisfaction gained by conforming to the norm (Carlson, 2001, pg. 1238-39).

The act of making promises and entering into contractual obligations with others takes place within the context of social practice, irrespective of any consequent legal enforcement mechanisms (Mather, 1999, pg. 1). As Henry Mather has noted, “[t]he behavioral regularity that we observe in a social practice is the result of people internalizing the rules of the practice and judging each other’s conduct by these rules” (Mather, 1999, pg. 1). Once internalized by a sufficient number of individuals, a shared consensus arises over the proper social practice and form of acceptable behavior. In turn, this consensus is then communicated throughout the relevant community and accepted and internalized by others (Carlson, 2001). Over time these societal values or morals can become sanctioned norms (Gibbs, 1965).

There is certainly nothing outrageous in suggesting that in American social practice, members of society adhere to the norm of keeping one’s promises (Fried, 1981), and by extrapolation, the norm of paying one’s promised monetary obligations. As Dickerson notes, “[e]mbedded in the American culture is the view that people should pay their bills and that they have a moral duty to make good on their promise to pay” (Dickerson, 2001, pg. 258). Todd J. Zywicki and Edith H. Jones describe the promise of repaying money and its concomitant adherence to this promise as the “fabric” of which “civil society” is woven (Jones & Zywicki, 1999, pg. 181).

But the notion that promises should be kept transcends American culture. The sociocultural norm of keeping one's promises runs, for example, from the Biblical precept of *motzeh sfassecha tishmor* ("thou shall keep thy word") to fulfilling all of one's obligations in the Islamic Qur'an (Sharma, 1998) to the Roman adage of *pacta sunt servanda ex fide bona* ("agreements must be kept") (Sharma, 1998, pg. 97). This norm eventually found its acceptance in all civilized nations with either common law or Western European legal systems (Sharma, 1998). Moreover, the social practice of keeping one's promises is arguably fundamentally ingrained in the human condition itself. According to philosopher Hannah Arendt, the principle of keeping one's promise arises "out of the will to live together with others in the mode of acting and speaking, and [is a] control mechanism built into the very faculty to start new and unending processes" (Arendt, 1958, pg. 246). Similarly, the notion of paying one's debts has been described as a fundamental component of being a moral human being (Bloom, 1987).

iv. The Historical Treatment of Debtors

The most documented explanation for the cultural stigma surrounding bankruptcy is the historically harsh treatment of debtors in Western Europe and the United States prior to the mid-nineteenth century (Efrat, B. 2006). Bankrupts in ancient societies were subjected to various forms of punishment, including forfeiture of all property, indentured servitude, surrendering one's children to slavery, loss of consortium of a spouse, pillory, loss of a body part, excommunication, and even death (Efrat, B. 2006). As Professor Rafael Efrat has argued, these various treatments "served to reinforce and perpetuate the social stigma associated with bankruptcy" (Efrat, B. 2006, pg. 374).

In addition to these various forms of punishment, countries historically subjected insolvent debtors to public shaming rituals of various types. Debtors were often hauled naked to the public square and forced to smash their backsides three times against a rock while crying out, “I declare bankruptcy” (Whitman, 1996, pg. 1873). In Italian cities debtors were susceptible to banishment while French cities required debtors to don a green hat in public, the financial equivalent of a scarlet letter (Whitman, 1996). Similarly, in Scotland debtors were required to wear a yellow and brown colored coat and cap in public (Efrat, B. 2006). In colonial America, debtors would have their palms branded with the letter “T” for “thief,” forced to stand in the public square with an ear nailed to a post, or have their hair cut off (Efrat, B. 2006). Indeed, the term “bankruptcy” is derived from the Italian term “banca rotta,” or “bench broken” (Honsberger, 1972, pg. 202). Banca rotta referred to the social practice of physically breaking a tradesman’s table or counter as an outwardly sign of the tradesman’s inability to repay his or her debts (Honsberger, 1972).

In addition to the physical punishment and acts of shame, Efrat notes that the various bankruptcy laws adopted by Western European countries from the Middle Ages through the 1600s intentionally linked the idea of entering bankruptcy (which could not be voluntarily commenced by the debtor but must have been initiated by creditors) to one or more fraudulent acts committed by the debtor (Efrat, B. 2006); that is, in order to place a debtor in bankruptcy, his or her creditors needed to demonstrate that the debtor committed a specific act, such as “keeping house” or transferring assets with fraudulent intent. By linking fraudulent conduct to the commencement of a bankruptcy case, Efrat contends that the bankrupt "automatically earned the disrespect of society" (Efrat, B. 2006, pg. 369).

Furthermore, the word "bankrupt" has historically carried a negative social connotation (Efrat, B. 2006). Medieval Italian society commonly referred to bankrupts as "deceivers and frauds," English society referred to bankrupts as "offenders," and the French word "Bankqueroute" is based on the Latin word "fallere," which means to "cheat, deceive, or trick" (Efrat, B. 2006, pg. 371). And as Efrat argues, associating bankrupts with criminals also served to foster the stigmatization of this social attribute.

During the seventeenth century, bankruptcy was particularly viewed in Europe as a "dangerously immoral" practice, characterized as a criminal act, and sanctioned accordingly (Whitman, 1996, pg. 1874). In addition to pillory and the potential loss of an ear, English and German law sanctioned the imprisonment of debtors, which became commonplace and a handful of individuals suffered the death penalty for their fraudulent bankruptcies (Tabb, 1995). The general conditions of the debtors' prisons were deplorable, and unlike the incarcerated criminal inmates, imprisoned debtors' sentences were indeterminate as to duration (Matejkovic & Rucinski, 2004).

The imprisonment of debtors as a sanction for failing to repay their financial obligations carried over to the American colonies in the 1600s. As Peter J. Coleman has noted, by the end of the seventeenth century in America, debtors' prisons had become an established social institution (Coleman, 1974). In less draconian ways, some of the newly-founded colonies substituted indentured service for imprisonment (Coleman, 1974), and for those owing only a modest amount of money, laws enabled these individuals to proclaim a "poor debtor's oath," which publicly stigmatized the person as a failure and a poor credit risk (Coleman, 1974, pg. 9). Although debtors' prisons extended in America until the mid-nineteenth century, over time the institution of their use declined because they simply did not work effectively (Coleman, 1974). As Coleman recounts, "imprisonment rarely pried loose concealed property and only sometimes prompted friends or relatives to pay off the debt" (Coleman, 1974, pg. 250). Because imprisoned debtors could not work and therefore remained indigent, debts remained unpaid and the prisoners' dependents were often left to fend for themselves, in turn burdening the community for necessary assistance (Coleman, 1974).

From a historical perspective, the various shaming rituals found throughout Western Europe, along with the harsh physical treatment of debtors in Europe and in America "served to both manifest and reinforce the already embedded stigma associated with bankruptcy" (Efrat, B. 2006, pg. 370). Admittedly, though, as lending and borrowing quickly became a common feature of American society after the founding of the republic, "pervading every facet of life from the wide-ranging operations of the largest merchants to the simplest purchases of humble farmers" (Coleman, 1974, pg. 251), attitudes about debt changed. By the early nineteenth century, few debtors in America were imprisoned for their debts and the institution was finally abolished during this time (Coleman, 1974). But while the use of debtors' prisons desisted in the 1820s, the nation was slow to enact federal bankruptcy legislation because, according to Coleman, most Americans viewed discharging debtors to be an immoral act and against public policy (Coleman, 1974). As much as Americans began to sympathize with the individual who suffered financial misfortune, they also "could not quite bring themselves to excuse or condone" (Coleman, 1974, pg. 272) personal failure. Although the advent of a permanent national bankruptcy law in 1898 was occasioned out of necessity due to the nation's complex, credit-based economy, and debtors began being treated with humanity (Tabb, 1995), the sense of morality in the failure to adhere to one's financial obligations never abated.

v. Religion

Religion "represents a vital social force capable of generating profound consequences" (Garrett, 1989, pg. 5) for individuals and their conduct during their lives. No doubt, this powerful influence extends to the incurrence of debt and the consequent repayment of debt obligations. As Professor Efrat has noted, the major religions of Judaism, Christianity, Islam and Hinduism instill in their followers a moral code and conviction against becoming a debtor at the outset, and if so, stress the importance of repaying financial obligations (Efrat, 1998). It is quite reasonable, then, to suggest that the doctrine of the major religions conveys a sense to millions of followers that indebtedness is to be avoided and resorting to bankruptcy is a sin. Indeed, several debtors in this study raised independently the issue of their personal religious beliefs as influencing or affecting their views on indebtedness.

Christians are taught from Psalms 37:21 that "[t]he wicked borrow and do not repay, but the righteous give generously." And although individuals will ultimately differ in their beliefs, at least one observer has noted the "widely-held" Christian conviction that filing for bankruptcy is wrong (Sutherland, 1988, pg. 921). On this front, this commentator argues as follows:

> The essence of the arguments posed against bankruptcy is that debts are lifelong obligations and, aside from certain very unusual circumstances, must eventually be met however long it takes to pay them off. Thus, bankruptcy is a means of shirking one's Christian responsibility.
>
> (Sutherland, 1988, pg. 922).

The Old Testament recognizes that people can suffer financially either through no fault of their own or through self-indulgent living. And while the Old Testament provides for the lenient treatment of debtors, in part by cancelling debts every seventh year and every seven Sabbaticals, the Old Testament encourages those in debt to reflect on the causes of their indebtedness:

> Now this is what the Lord Almighty says: "Give careful thought to your ways. You have planted much, but have harvested little. You eat, but never have enough . . . . You earn wages, only to put them in a purse with holes in it."
>
> (Sutherland, 1988, pg. 925).

As Professor Efrat has written, "Jewish tradition does not favorably view one taking upon herself onerous debt to finance an extravagant lifestyle. To that end, the Jewish tradition advocates in favor of reduced level individual consumption" (Efrat, 1998, pg. 164). In fact, Jewish tradition and culture emphasizes great stress on moderation in eating, clothing, and personal consumption (Tamari, 1995). In the event that an individual in the Jewish faith does become indebted as a result of financing his or her material consumption, there is a very strong moral obligation to repay the debt in full (Efrat, 1998). Simply stated, Jewish moral teachings provide that the "repayment of debt

[is] a moral and religious imperative. Most Jewish law authorities characterize the paying [of] one's debts as an affirmative biblical injunction" (Resnicoff, 2011, pg. 557).

For Muslims, "conduct in economic affairs is seen as an integral part of religious observance" (Wilson, 1997, pg. 116). Indeed, in Islam the fulfillment of one's contractual obligations "is exalted in the Quran to rank with the highest achievements and the noblest virtues" (Habachy, 1952, pg. 465). From this, Efrat argues that the "pervasive sacred nature of fulfilling one's contractual obligations is likely to influence the minds of financially troubled Muslims and deter them from filing bankruptcy to avoid debt repayment" (Efrat, 1998, pg. 166). Similarly, Hinduism also places great worth on debt repayment (Efrat, 1998); "the Hindu religion commands those who undertake personal debts to repay them" (Efrat, 1998, pg. 166), and Hindus "consider the failure to repay one's debts to be a sin" (Efrat, 1998, pg. 166).

In sum, the foregoing are suggested possible sources for why indebtedness, and in particular the act of filing for bankruptcy, is met with disdain and stigmatization in American society. While this study and others like it evidence the pervading nature of bankruptcy stigma, some have argued that the stigma traditionally associated with bankruptcy has declined over time

B. THE DECLINE OF BANKRUPTCY STIGMA

Professor Todd Zywicki is perhaps the most vocal proponent of the notion that the stigma associated with bankruptcy has declined. Zywicki, along with his co-author Edith H. Jones, has offered several explanations for this decline. First, Zywicki and Jones point to the stark increases in consumer bankruptcy filings themselves during the 1980s and

1990s as evidence that bankruptcy stigma has declined (Jones & Zywicki, 1999, pg. 209-10). Second, the two argue that the proliferation of attorney advertising during the 1980s caused bankruptcy filings to increase in two ways. Widespread attorney advertising reduced potential debtors' "search costs" about bankruptcy and also engendered competition for clients among bankruptcy attorneys, thereby reducing the costs of legal representation (Jones & Zywicki, 1999, pg. 212). Third, Zywicki and Jones point to a "water cooler" effect, namely, the idea that people learn about the bankruptcy experience from friends and relatives which causes heightened awareness that bankruptcy is available as a remedy to shed debt (and "cheap" and "easy" according to Zywicki and Jones), and this, over time, results in greater public acceptance of bankruptcy as a viable option (Jones & Zywicki, 1999, pg. 212).

Fourth, Zywicki and Jones argue that public bankruptcies of politicians and entertainers, which are discussed and touted in the media, create an increased social acceptance of filing for bankruptcy relief for the masses (Jones & Zywicki, 1999). Fifth, they contend that the ascendency of "do-it-yourself" bankruptcy books, which have "become a staple of bookstores and even grocery store check-out lines" (Jones & Zywicki, 1999, pg. 213) also contributes to the acceptance of bankruptcy as a social reality and a consequent decline in its moral displeasure. Sixth, Zywicki and Jones identify three structural changes in the 1978 Bankruptcy Code that they argue led to a decline in bankruptcy stigma. One involved replacing the term "bankrupt" with the term "debtor" throughout the Code, thereby removing society's traditional negative label from the bankruptcy process (Jones & Zywicki, 1999). Another alteration denominated the filing of a bankruptcy petition as an "order for relief" from creditors, and a third change expanded § 525 of the Code to prohibit forms of private discrimination against bankruptcy debtors (Jones & Zywicki, 1999, pg. 219). Regarding the wordsmith changes, Zywicki argues that these semantic changes strip bankruptcy of its "moral and emotional baggage" and through their expressive function may be responsible for reducing general attitudes of opprobrium towards individuals who file for bankruptcy (Zywicki, 2005, pg. 1108). Likewise, it has been argued that by prohibiting discrimination against former bankruptcy debtors Congress sent a message to the public that filing for bankruptcy relief is "normal," and not necessarily a deviant behavior (Efrat, 2006a, pg. 497).

Seventh, Zywicki notes that the "Baby Boom" generation brought a significant change to American cultural life, most notably regarding attitudes of "social engagement and personal responsibility" (Zywicki, 2005, pg. 1104). Just as this generation was willing to alter existing taboos on such issues as marriage, sexuality, and gender, Zywicki speculates that perhaps the social changes brought by the Baby Boom generation also liberalized their collective attitudes towards financial responsibility, leading to the undermining of the social norms regarding debt repayment (Zywicki, 2005). Zywicki's "Baby Boom" theory complements an argument advanced by Rafael Efrat on why the stigma associated with filing for bankruptcy has declined. Efrat maintains that beginning in the 1960s, American society shifted its discourse on the attribution of fault for financial failure (Efrat, 2006a, pg. 490). Whereas prior to the 1960s society attributed a bankruptcy filing to be occasioned by the debtor's personal fault, Efrat claims that subsequent to the 1960s society began attributing financial failure to uncontrollable environmental factors (Efrat, 2006a). Because society now assigned responsibility for financial ruin to uncontrollable events, as opposed to lack of personal self-restraint, Efrat argues that bankruptcy "was no longer viewed as deviant" after the 1960s (Efrat, 2006a, pg. 490-91). In support of this contention, Efrat relies on the widespread growth of consumerism and personal credit in the United States from the 1920s through the 1960s, whereby society embraced consumerism and accepted willfully the concept of debt for material consumption (Efrat, 2006a). The American vestiges of thrift were set aside and, according to Efrat, replaced with an attitude of spending and borrowing (Efrat, 2006a). Efrat contends that this attitudinal shift "transformed debt in the 1960s from a stigma to a status symbol" (Efrat, 2006a, pg. 495).

Eighth, and finally, Zywicki contends that bankruptcy attorneys may have also had a role in diminishing the shame associated with filing for bankruptcy through the messages communicated to their clients during the consultative process leading to a bankruptcy filing. Relying on an earlier qualitative study of the attitudes and practices of consumer bankruptcy attorneys conducted by Professor Jean Braucher, Zywicki contends (as Professor Braucher found) that bankruptcy attorneys sometimes impart during the course of a client consultation their own beliefs that filing for bankruptcy is not wrong because of such things as the high interest rates charged by the credit card companies along with the sentiment that because a discharge is legally provided for by the Bankruptcy Code, it must also be a moral thing to do (Zywicki, 2005, pg. 1107-08).

As the findings of this study suggest, debtors' attitudes regarding their bankruptcy experiences involve a range of emotions that integrate in a nuanced way both the explanations in favor of a stigma, for example, notions of personal responsibility and religious virtue, and of those arguments why the stigma associated with filing for bankruptcy may not be as strong as it once may have been. Before turning to these findings, however, it is first necessary to address the existing empirical work on bankruptcy stigma. These studies have appeared in the economic, legal and sociological literature. A summary discussion of these previous studies is presented next.

V. PRIOR EMPIRICAL STUDIES ON BANKRUPTCY STIGMA

A. ECONOMETRIC STUDIES

In 1998, Professors Scott Fay, Erik Hurst and Michelle White released an unpublished paper on bankruptcy stigma. Utilizing a data set derived from the 1996 round of the Panel Study of Income Dynamics, Professors Fay, Hurst and White estimated an econometric model of the bankruptcy filing decision in order to test two hypotheses, namely, whether i) "debtors respond to economic incentives in filing for bankruptcy" (that is, whether debtors are more prone to file for bankruptcy as the economic incentive for doing so rises) and ii) "stigma plays an important role in explaining bankruptcy filings" (Fay, Hurst, & White, 1998, pg. 2). Considering bankruptcy stigma to be one "expense" of filing for bankruptcy due to "the costs of self-disapproval and disapproval by others" (Fay, Hurst, & White, 1998, pg. 7) Fay, Hurst and White predicted that where this cost of bankruptcy decreases (*i.e.*, less stigma associated with bankruptcy) an increase in the probability of filing for bankruptcy will occur (Fay, Hurst, & White, 1998, pg. 9).

To measure decreased stigma quantitatively, Fay, Hurst and While relied on essentially two predictors: i) the number of lawyers per 1,000 population in a particular debtor's state of residence in a given year (based upon the assumption that an increase in lawyers practicing in a region translates into increased competition and consequent lower legal fees and heightened attorney advertising, thus leading to increased awareness and reduced stigma) and ii) "attitudes toward bankruptcy are assumed to depend on the number of people in the area who have filed for bankruptcy in the past few years" (Fay, Hurst, & White, 1998, pg. 13). In other words, the greater the percentage of individuals in a geographic region who have filed for bankruptcy in the past several years indicates a reduced stigma regarding the bankruptcy process due to "the spread of information and change in attitudes that results from high past bankruptcy filing rates" (Fay, Hurst, & White, 1998, pg. 13) or what the authors characterize as the "contagion effect" (Fay, Hurst, & White, 1998, pg. 13). After calculating their economic regressions, Fay, Hurst and White opined that the social disapproval of bankruptcy has decreased which has "caused more households to file for bankruptcy" (Fay, Hurst, & White, 1998, pg. 27). In short, an increase in the number of bankruptcy filings is indicative of an inverse proxy for stigma.

Shortly following the release of the Fay, Hurst and White study, Professors David B. Gross and Nicholas S. Souleles offered their own unpublished econometric study of bankruptcy stigma (Gross & Souleles, 1998). Reacting to the well-documented rise in consumer bankruptcy filings during the 1990s, Professors Gross and Souleles sought to investigate the two leading explanations for the increased filings, namely, the "risk effect," whereby recent credit extensions to a more risky populace resulted in greater defaults, and the "stigma effect," whereby it is believed that consumers have become increasingly willing to default on their financial obligations (Gross & Souleles, 1998, pg. 1). The data set utilized by Gross and Souleles comprised of several hundred thousand individual credit card accounts open during 1995 (Gross & Souleles, 1998). The primary units of analysis were not flesh and blood individuals, but credit card accounts (Gross & Souleles, 1998).

Gross and Souleles tracked the individual credit card accounts for a period of 24 to 32 months “to estimate hazard functions for consumer default, for both bankruptcy and credit card delinquency, and to assess the relative importance of different variables in predicting default” (Gross & Souleles, 1998, pg. 2). The authors’ principal finding is that after controlling for the “risk effect” (*i.e.*, less credit worthy borrowers obtaining credit which then led to increased defaults) and other variables such as account age, payment history, economic conditions and purchase history, “a given account was more likely to go bankrupt in 1996 and 1997 than in 1995” (Gross & Souleles, 1998, pg. 12). According to Gross and Souleles, their results “are consistent with the view that most of the recent increase in default is due to a decline in stigma” (Gross & Souleles, 1998, pg. 15).

Finally, in 2004 Kartik Athreya, a staff economist at the Federal Reserve Bank of Richmond, issued the results of his econometric study which concluded that the stigma associated with bankruptcy “is by no means dead,” but rather played a significant role in the bankruptcy rate (Athreya, 2004, pg. 3). Athreya’s model suggested that the increased bankruptcy filing rates during the 1990s were attributed not necessarily to a diminished stigma associated with bankruptcy, but to the reduced costs to financial institutions of extending credit to debtors as well as to an increased competitiveness among financiers in unsecured credit card lending (Athreya, 2004, pg. 16).

B. LEGAL SCHOLARSHIP

In 2006, Professors Teresa Sullivan, Elizabeth Warren and Jay Westbrook culled data from their long-standing Consumer Bankruptcy Study to test the claim that the stigma associated with consumer bankruptcy has fallen over time. Responding directly to the previous econometric studies, Professors Sullivan, Warren and Westbrook criticize that when the econometric studies cannot "find a strong statistical correlation between bankruptcy and a handful of macroeconomic indicators," the economists attribute the precipitous rise in bankruptcy filings "to the unmeasured concept that they conveniently label[ ] as a reduction in stigma" (Sullivan, Warren, & Westbrook, 2006, pg. 216-17). That is, the econometric studies assume a decline in stigma is the operative indicator for what otherwise cannot be explained (Sullivan, Warren, & Westbrook, 2006).

In reviewing their data from the Consumer Bankruptcy Study, Sullivan, Warren and Westbrook opined that if bankruptcy stigma had declined over time from 1981-2001, as Professors Zywicki, Efrat, and other observers argued, then there would be an appreciable change in the financial circumstances of Chapter 7 and Chapter 13 debtors over this twenty-year period (Sullivan, Warren, & Westbrook, 2006). More particularly, according to Sullivan, Warren and Westbrook, if stigma indeed declined for the years 1981-2001, the authors predicted a marked increase in the presence of "better off" or "can pay" debtors among the Chapter 7 and Chapter 13 pool of bankruptcy petitions (Sullivan, Warren, & Westbrook, 2006, pg. 237-38). The authors tested this hypothesis be examining the debt-to-income ratio of debtors in their data set; according to Sullivan, Warren and Westbrook, if the stigma has declined, then there should be a decreased median debt-to-income ratio for the group of debtors as a whole (Sullivan, Warren, & Westbrook, 2006).

However, the authors did not find this to be the case. Rather, as a group the debtors were much worse off financially in 2001 than in 1981. The debt-to-income ratio through the twenty-year period rose from 1.4 to 3.0 for overall debt (*i.e.*, total debt owed per debtor in 1981 was approximately 18 months' worth of income whereas in 2001 it jumped to approximately three years' worth of income) and from 0.79 to 1.5 for non-mortgage debt to income (Sullivan, Warren, & Westbrook, 2006). Professors Sullivan, Warren and Westbrook concluded as follows:

> Instead of finding more can-pay debtors in bankruptcy, our data suggest that even the most-able-to-pay debtors are in worst shape in 2001 than in 1981. In 1981, the top 10% of bankrupt debtors best able to pay owed an average of 17% of their annual incomes in nonmortgage debt; in 2001 they also owed 17% of a year's income. But the ratio of total debts to annual income got significantly worse: the average total debt-to-income ratio rose from 30% of income to 63% . . . .
> There is no evidence of a cohort of convenience filers who in 2001 were willing to enter bankruptcy with lighter debt burdens because they were no longer troubled by the stigma imposed by bankruptcy in times past. It would be hard to produce more compelling evidence that the rise in bankruptcy filings cannot be attributed in any significant part to a decline in the stigma associated with bankruptcy.
>
> (Sullivan, Warren, & Westbrook, 2006, pg. 239).

From this, Sullivan, Warren and Westbrook argue that contrary to those who profess a decline in bankruptcy stigma, the phenomenon has not declined since the enactment of the modern Bankruptcy Code (Sullivan, Warren, & Westbrook, 2006). Instead, the marked increase in bankruptcy filings from 1979 to 2001 is attributed to individuals experiencing increased financial distress in their lives (Sullivan, Warren, & Westbrook, 2006).

Much like Sullivan, Warren and Westbrook, Professors F.H. Buckley and Margaret F. Brinig conducted their own empirical study to shed light on the dramatic rise in consumer bankruptcy filings from 1985 to 1991, a time ironically marked by national economic prosperity and changes to the Bankruptcy Code in 1984 that were designed to make the use of Chapter 7 less palatable for some debtors (Buckley & Brinig, 1998). Buckley and Brinig utilized a statistical regression analysis of consumer bankruptcy filing rates with various legal, economic and social variables for eighty-six federal judicial districts from the period of 1980 to 1991 (Buckley & Brinig, 1998). According to Buckley and Brinig, neither legal variables, such as the level of allowable assets exempt from creditors reach, nor economic variables, such as unemployment rate and incidence of poverty, were able to explain the increased filing rates during this time period (Buckley & Brinig, 1998). Rather, Buckley and Brinig suggest that the increased filing rates during this period of time was attributable to changes in social norms, and more particularly, to a decline in the social sanctions surrounding bankruptcy, along with an overall weakening of the social stigma of promise breaking (Buckley & Brinig, 1998).

In response to what he perceived as the shortcomings of previous empirical studies on bankruptcy stigma, namely, the inability of both the econometric and statistical approaches to sufficiently represent the general public's perception of bankruptcy stigma, Professor Rafael Efrat sought to measure the evolution of bankruptcy stigma over time by examining the content of 176 newspaper articles published in the *New York Times* between 1864 and 2002 (Efrat, 2006). According to Efrat, the "examination of the consumer bankruptcy related newspaper articles provides valuable insight into the evolution of public perception of bankrupts during this period" (Efrat, 2006b, pg. 365). The study of the 176 newspaper articles enabled Efrat to ascertain the "embedded messages" contained within the articles and to evaluate whether a particular article struck a positive, negative or neutral tone with respect to filing for bankruptcy, the characterization of bankruptcy debtors, and the validity of seeking formal debt relief under the then-existing bankruptcy legislation for the time period (Efrat, 2006b).

Efrat used the embedded messages "as a proxy for broad and evolving societal perceptions about the bankruptcy population" (Efrat, 2006b, pg. 388). The result of Efrat's study suggests a shift in the discourse regarding bankruptcy stigma commencing in the 1960s (Efrat, 2006b). As Efrat found, prior to the 1960s, the *New York Times* newspaper articles referred to bankruptcy debtors in negative terms, such as "evil doers," "cheaters," and "crooks" while attributing debtors' financial failures as self-imposed (Efrat, 2006b, pg. 389). In contrast, newspaper articles beginning in the 1960s adopted a more positive attitude towards bankruptcy debtors, often characterizing them as "hardworking, poor, struggling and needy" (Efrat, 2006b, pg. 389) while at the same time attributing their respective financial woes to exogenous events, such as unemployment, high inflation, medical illness or divorce (Efrat, 2006b). Based on this, Efrat argues that the public's attitude towards debtors who file for bankruptcy has softened over time, calling into question whether bankruptcy stigma has indeed diminished during the last approximately 150 years.

C. Sociological Scholarship

In an effort to empirically determine whether labeling theory applies to individuals with the “low visibility” of indebtedness, Professor Terrell Hayes conducted a series of in-depth interviews with forty-six members of Debtors Anonymous (Hayes, 2000, pg. 30-31). Through the series of interviews, Hayes concluded that all forty-six individuals experienced a form of labeling, which in turn produced feelings of shame (Hayes, 2000). Some of Hayes’ participants experienced episodes of direct labeling, which occurred during interpersonal communications with family members, friends, and strangers where negative statements and opinions of indebtedness in general and dissatisfaction with the debtor’s conduct in particular were shared with the debtor (Hayes, 2000). Upon learning of the debt situation, some of these individuals also expressed their opinions that the debtor had a problem with finances that needed correcting (Hayes, 2000). At some point, these interactions caused the debtor to feel shame about their conduct in incurring debt (Hayes, 2000).

The participants in Hayes’ study also experienced indirect labeling, which is subtle and suggestive rather than confrontational as with direct labeling. The indirect labeling occurred in interpersonal exchanges through verbal cues (*e.g.*, suggestions or questions), nonverbal means (*e.g.*, body language, facial expressions) or a combination of both (Hayes, 2000). Similarly, episodes of indirect labeling also eventually led to feelings of shame for the debtors (Hayes, 2000). Finally, in Hayes’ study a percentage of the participants engaged in self-labeling, leading to feelings of embarrassment and shame over their conduct in incurring unmanageable debt even though no one else knew of their problem, in accordance with Thoits's theory of self-labeling (Hayes, 2000). Moreover, Hayes found that although shame is evoked through the three forms of labeling, it usually arose only after a period of the debtor's denial over the existence and extent of his or her financial problem (Hayes, 2000).

Most relevant to this empirical study is a qualitative study of bankruptcy debtors reported in 2006 by Professors Deborah Thorne and Leon Anderson. Recognizing that bankruptcy law scholarship routinely addresses issues on a macro-level of analysis, Thorne and Anderson collected data directly from debtors in order "to assess their experiences of stigmatization" (Thorne & Anderson, 2006, pg. 78). More particularly, Thorne and Anderson centered their analysis on the "stigma management strategies [debtors] invoke to mitigate the shame and social disapprobation [the debtors] experienced as a result of their bankruptcies" (Thorne & Anderson, 2006, pg. 78).

Thorne and Anderson conducted semi-structured interviews with thirty-seven (37) individuals from nineteen (19) married couples who had filed joint Chapter 7 bankruptcy petitions in 1999 in the Eastern District of Washington State (Thorne & Anderson, 2006). According to Thorne and Anderson, the choice to study married couples who had jointly filed Chapter 7 bankruptcy petitions was due to the fact that many of their research questions "concerned the effects of bankruptcy on marital relationships," and more pointedly, to explore how debt effected the couples' relationships (Thorne & Anderson, 2006, pg. 80).

Much like this study, there was a sizable age range for debtors in the Thorne and Anderson study, from mid-20s to early 80s (Thorne & Anderson, 2006). In addition, and again similar to the demographics of this study, there was a variety of educational levels in the Thorne and Anderson study, with some debtors having graduated high school, a percentage having some college, others possessing a bachelor's degree, and a minority holding a graduate or professional degree (Thorne & Anderson, 2006). As reported by the participants in the Thorne and Anderson study, the need to file for bankruptcy relief was attributed to several events, including job loss, underemployment, large medical expenses, credit card debt, and the cost of raising children (Thorne & Anderson, 2006). Many of the debtors in this study expressed similar precipitating events which caused them to ultimately file for bankruptcy relief.

Thorne and Anderson found that 95% of the debtors they interviewed in their study expressed feelings of shame and stigmatization as they underwent the bankruptcy process (Thorne & Anderson, 2006). Through their in-depth interviews with debtors, Thorne and Anderson concluded that stigma management among bankruptcy debtors can be loosely divided into three generalized categories, namely, "concealment," "avoidance," and "deviance avowal" (Thorne & Anderson, 2006, pg. 83). As to the first category, Thorne and Anderson found that eighty-percent (80%) of their participants made a concerted effort to conceal their bankruptcy filings from either parents, co-workers, or employers, or some combination of these constituencies. As Thorne and Anderson describe, "[a]nxiety over the possibility of . . . disclosure loomed large in interviewees' experiences" (Thorne & Anderson, 2006, pg. 85).

With respect to the management strategy of "avoidance," Thorne and Anderson found that the fear of potential stigmatization caused debtors to engage in a variety of behaviors in an effort "to avoid situations that might lead to embarrassing or degrading interactions with non-intimates who would have particular reason to uncover their economic troubles and failures" (Thorne & Anderson, 2006, pg. 86). Falling most prominently into this category are bill collectors, and the debtors in the Thorne and Anderson study avoided answering the phone, shunned opening the mailbox, and utilized caller ID to screen incoming phone calls (Thorne & Anderson, 2006). Other debtors engaged in a strategy of physically hiding from friends and family members, lest their economic situation be exposed and questioned (Thorne & Anderson, 2006).

The third management strategy utilized by debtors was identified by Thorne and Anderson as "deviance avowal," a theory which originates in the sociological literature. The disavowal of the discredited status, according to Thorne and Anderson, "enabled individuals to cope with stigma by arguing in one way or another that their particular cases were emphatically not examples of typical deviant role enactment" (Thorne & Anderson, 2006, pg. 87). In essence, by utilizing deviance avowal, the debtors in the Thorne and Anderson study attempted to separate themselves and their conduct from the discredited status of bankrupt debtor. They accomplished this feat through "distancing," "accounts," and "post-bankruptcy actions and statements directed toward transcending their stigmatized status" (Thorne & Anderson, 2006, pg. 87). As will be discussed in Part VI, this finding of deviance avowal as a management strategy resonates with and is complemented by my own categorization of a sub-population of debtors possessing a "diluted sense of stigma and shame."

As Thorne and Anderson found, the concept of distancing was very common among the debtors in their study; that is, debtors “went to considerable lengths to distinguish their ‘legitimate’ reasons for declaring bankruptcy from the otherwise illegitimate and morally objectionable actions and rationales of other bankrupt debtors” (Thorne & Anderson, 2006, pg. 87). The debtors in the Thorne and Anderson study accomplished this distancing by, among other ways, depicting other debtors as financially frivolous and profligate or as simply lacking in financial self-control (Thorne & Anderson, 2006). In contrast to these qualities, the debtors interviewed by Thorne and Anderson self-described their pre-bankruptcy consumption behaviors as “conservative” and “based on necessities” rather than luxuries (Thorne & Anderson, 2006, pg. 88).

Regarding the use of “accounts” as a deviance avowal strategy, Thorne and Anderson found that the debtors in their study often provided “excuses” and “justifications” for their bankruptcy filings, all in an effort to “soften the moral breach” of their deviant act (Thorne & Anderson, 2006, pg. 91). Using excuses to explain their bankruptcy filings allowed debtors to deny responsibility for their conduct and to find a scapegoat for their behavior (Thorne & Anderson, 2006). For example, debtors in the Thorne and Anderson study blamed lenders for the need to file bankruptcy relief; they characterized the lenders as irresponsibly setting debtors up for failure by virtue of their lending practices (Thorne & Anderson, 2006). Other debtors excused their bankruptcy filings by relying on unexpected or external events, such as a job downsizing, medical illness, or a downtrodden economy (Thorne & Anderson, 2006). Once again, this study complements the findings of Thorne and Anderson as several debtors I interviewed engaged in exactly the same type of deviance avowal, namely, by using accounts to distance their own need to file for bankruptcy from the great swath of other debtors.

In the last form of deviance avowal, Thorne and Anderson found that debtors attempted to "transcend" their bankruptcy experience by promising some form of future action that would hopefully effectuate a "destigmatization" of their devalued status, such as by repaying some of the discharged debt or by utilizing the knowledge gained "through their financial travails to help others avoid similar problems" in the future (Thorne & Anderson, 2006, pg. 93).

With this background, the thesis now turns to the methodology of my study in Part V, and the findings of the study in Part VI.

VI. METHODOLOGY

Some characteristics of qualitative research are worth briefly mentioning. Qualitative research "is a broad umbrella term for research methodologies that describe and explain persons' experiences, behaviours, interactions and social contexts" without relying on quantitative or statistical models (Fossey, Harvey, McDermott, & Davidson, 2002, pg. 717). More particularly, qualitative research attempts to develop an understanding of the meanings and importance of certain experiences in individuals' lives (Fossey, Harvey, McDermott, & Davidson, 2002). Generally speaking, qualitative research aims for depth and richness rather than breadth (Ambert, Adler, Adler & Detzner, 1995). Accordingly, rather than focusing on a large representative sample pool, qualitative researchers seek to obtain in-depth and intimate information from a smaller group of people (Ambert, Adler, Adler & Detzner, 1995). Because of this, qualitative research "makes no claim of the generalizability of findings to a specified larger population in a probabilistic sense" (Fossey, Harvey, McDermott, & Davidson, 2002, pg. 730).

Nevertheless, qualitative research often results in thematic generalizability to a single human experience (Asmussen & Creswell, 1995). On this note, E.G. Guba writes that qualitative research should have the element of "transferability," where the findings of the research can fit into contexts outside of the immediate study situation with a degree of "similarity or goodness of fit between the two contexts" (Kreting, 1991, pg. 216).

Furthermore, qualitative research is concerned with "the applicability of [its] findings, based on how the nature and processes involved in experiences generalize" (Fossey, Harvey, McDermott, & Davidson, 2002, pg. 730). In contrast to the deductive nature of quantitative research, qualitative research is inductive, and is often described in the social science literature as "emergent" (Creswell, 2013, pg. 47). In this sense, qualitative research is designed to be "flexible and responsive to context," (Fossey, Harvey, McDermott, & Davidson, 2002, pg. 723) as opposed to being tightly driven by a pre-set hypothesis or central research question. Simply put, this inductive approach serves to protect the phenomenological integrity of the collected data (Ambert, Adler, Adler, & Detzner, 1995).

To acquire a population of debtors to interview,[8] I isolated a listing of all individual Chapter 7 petitions (and their corresponding docket numbers) filed in the State of Colorado from the Public Access to Court Electronic Records ("PACER)" system. I selected Chapter 7 bankruptcy petitions that had been filed in 2006, 2008, and 2010 in an effort to gauge whether generalized feelings of shame and stigma had increased or decreased over a span of some years. For the three years considered for this study, a total of 52,932 individuals filed for Chapter 7 in the State of Colorado (N=52,932). More particularly, in 2006 7,963 individuals filed for Chapter 7, in 2008 17,856 people filed, and in 2010 27,113 consumer debtors filed for Chapter 7 in the State of Colorado. From this total population, I conducted a systematic random sampling of docket numbers which

[8] Prior to engaging in any data collection, I first received study approval from the Institutional Review Board ("IRB") at the University of Denver.

resulted ultimately in a total of 2,822 letters of invitation to be mailed out to prospective participants.

The invitation letter included a self-addressed, postage pre-paid, postcard which allowed individuals to indicate whether they were interested (or not) in participating in the study (by checking a box "yes" or "no"). The postcard had a place for the individuals to provide me with their contact information, which I in turn used to make personal contact. Out of the 2,822 letters of invitation sent out to participate in the study, I received 530 letters marked "undeliverable" by the Post Office. In addition thirty-four respondents returned the enclosed postcard affirmatively selecting their desire not to participate in the study. Finally, seven individuals initially contacted me to participate in the study, but later decided not to follow through with our scheduled interview session.

From the letters of invitation sent, fifty-eight (58) people ultimately agreed to be interviewed for this study from a combined total of forty-six bankruptcy cases.[9] Twenty-seven (27) of the participants were men (46.5%) while thirty-one were women (53.4%). Of the total number of cases, seventeen were married couples who filed joint Chapter 7 bankruptcy petitions. Fifty percent (50%) of the cases studied (23 petitions) were filed in 2010, thirty-seven percent (37%) of the cases studied (17 petitions) were filed in 2008, and thirteen percent (13%) of the cases studied (6 petitions) were filed in 2006. I interviewed all twenty-nine single filers, and I interviewed twenty-nine of the thirty-four individuals who filed jointly.[10] From the twenty-nine single petitions, eleven had been

[9] The total number of bankruptcy cases for this study amounted to forty-six, with seventeen being "joint" petitions for married couples.

[10] One of the couples had divorced since their joint bankruptcy filing, and the other four spouses

filed by men and eighteen had been filed by women. Exactly half (29) of the individuals interviewed for this study possessed a college degree, and several possessed graduate degrees (M.B.A., M.A., Ph.D.), while the other half (29) possessed no college degree when they filed their bankruptcy petitions.[11]

The participants lived throughout the State of Colorado, from cities such as Greeley, Denver, Grand Junction, Colorado Springs, Pueblo, and Boulder. The interviews themselves were conducted during the summer and early fall of 2012. During this time I traveled around the State of Colorado and interviewed most of the participants either in their homes or at a public location, such as a coffee shop or a restaurant. Three of the interviews were conducted by telephone at the request of the participants and three of the interviews were conducted in my office at the law school.

Semi-structured interviews were employed for all fifty-eight participants, and the interviews lasted anywhere from forty-five minutes to over two hours. The average interview lasted for more than one hour. The interviews followed an interview guide which consisted of a list of topics and questions exploring a range of issues such as the financial and life events leading up to the bankruptcy filing, how the debtors reached the decision to file for bankruptcy, how the participants felt about needing to file for bankruptcy, and their financial lives post-bankruptcy. In an effort to facilitate "open sharing" (Thorne & Anderson, 2006, pg. 81), I presented myself as non-judgmental and sympathetic, but knowledgeable about the bankruptcy process and laws. To privilege the

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did not attend the interview session.

[11] A handful of these debtors obtained a college degree in the years following their bankruptcy filings.

participants' voices, forty-five out of the forty-six interviews were audio-recorded and transcribed verbatim, after these forty-five participants expressly consented to be audio-recorded. One participant did not wish to be audio-recorded, so written notes were taken during the interview. The interview transcripts were later reviewed and coded for general themes and patterns.

The notions of privacy and confidentiality are critical to social science research and must be strictly adhered to by the researcher (Denzin & Lincoln, 2000). In this regard, codes of professional ethics insist on protecting participants' identities and related research locations so as not to cause harm, embarrassment, or "unwanted exposure" (Denzin & Lincoln, 2000, pg. 66). In upholding this basic tenet, all of the participants' names have been changed, pseudonyms have been used, and any particularly identifying characteristics of the participants have been omitted or slightly altered.

VII. QUALITATIVE FINDINGS

Upon commencing this study, I expected the overwhelming majority of debtors to identify deep feelings of shame and embarrassment regarding their conduct, even in retrospect. Surprisingly, and what has yet to be identified in the legal literature, is that consumer debtors experience a range of attitudes and feelings over their decisions to file for bankruptcy relief. The debtors in this study, once the data were examined, broke into three general sub-populations regarding their personal experiences with bankruptcy. A portion of the debtors did indeed convey the expected internalized feelings of shame and stigma previously identified by the Thorne and Anderson study. A second sub-population expressed little to no shame over having filed for bankruptcy, and in doing so identified several different justifications for why this was the case. Finally, a third sub-population articulated what I identify as a "diluted sense of shame" for having filed for bankruptcy. While these individuals did feel shame and embarrassment for filing bankruptcy, their feelings were tempered for a variety of reasons, some of which comport with Professor Zywicki's explanations for reduced stigma and others complement the strategy of deviance avowal identified by Thorne and Anderson.

A. EXPECTED FEELINGS OF INTERNALIZED SHAME AND STIGMA

Thorne and Anderson found that 95% of the debtors in their study expressed shame and stigmatization as they underwent the bankruptcy process (Thorne & Anderson, 2006). In the population for this study, only 33% expressed unconditional shame over having filed for bankruptcy relief. Despite this difference, however, the identification of shame and embarrassment by a sub-population in this study is significant because the two studies involved debtors who filed for bankruptcy at least seven years apart (1999 and 2006, respectively) and in two different geographic regions of the country. Consequently, both studies suggest that for some segment of the more than one million individuals who file for bankruptcy every year, notions of shame and stigma do persist. Furthermore, as this study evidences, these feelings of shame and embarrassment can persist for years after debtors file for bankruptcy.

Molly G., a forty-year old female small business owner and college graduate attributed her bankruptcy filing to the consequences of a divorce. Before filing for bankruptcy, however, Molly attempted to resolve her financial problems with a debt consolidation company because she "couldn't bring [herself]" to file as doing so would be "a black mark on my life resume. [I] didn't want that."[12] In an additional effort to prevent bankruptcy, Molly withdrew $30,000 from her 401K in an unsuccessful attempt to settle her debts.[13] Once the decision to file bankruptcy was made, Molly expressed her concerns about the consequences of her decision in the following way:

> It's more of what do people think of me? Who am I gonna run into? Who am I gonna see when I go to file this bankruptcy when I go to court? You know. Just 'cause I feel I know so many people [in the community] that I

[12] Interview with Molly G. dated Sept. 3, 2012.

[13] Interview with Molly G. dated Sept. 3, 2012.

> might run into somebody at the courthouse. You know, on the street. Oh, where you going? I don't wanna be that person.[14]

Once Molly filed for bankruptcy, she only told the most intimate and trusted individuals in her life, namely, her parents and her new romantic partner. With respect to the former, she experienced great hesitation about telling her father. As she described, "I remember my father, when I told him, I cried. I felt like I was in middle school telling him I got a C on a test when I was an A/B student."[15] When she told her new romantic partner, Molly described herself as making excuses for the bankruptcy, attributing it to "all these reasons" and "not really ever just owning up to it [and] saying I created debt and I owe it."[16]

Richard and Emily G., a retired couple ages seventy-six and eighty-one, respectively, fell into financial distress after lending money to close friends and assisting their adult children with their own finances. When asked about their bankruptcy experience, Emily first described it as a "humiliating and very stressful" experience.[17] From there, the following colloquy ensued:

> Interviewer: How did you feel about that decision [to file bankruptcy]?
>
> Emily: Not good. I felt ashamed. I felt that I was taking advantage of . . . of the people that have been good to me.
>
> Interviewer: Who? Your creditors? Because you didn't pay them back?

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[14] Interview with Molly G. dated Sept. 3, 2012.

[15] Interview with Molly G. dated Sept. 3, 2012.

[16] Interview with Molly G. dated Sept. 3, 2012.

[17] Interview with Richard and Emily G. dated July 27, 2012.

Emily: Um-hmm. I have always valued this. If I borrow something, I pay it back, even to my kids. Yes, I do because you lend it to me in good faith, I'm paying it back to you. That's the way it should be. It's not a very thing to be proud of or to think of [filing bankruptcy]. Not because you can do it. I'm ashamed to tell anybody that I filed for bankruptcy.[18]

Shelia D., a twenty-nine year old female with some college who was unemployed at the time she filed for bankruptcy, felt disappointed at not being able to repay her debts "because it's the right thing to do. If I financially would have been able to manage those debts I certainly would have."[19] Though she filed for bankruptcy, she was not proud of her decision and felt terrible about it, particularly as a result of judgmental comments made by a friend of hers about people who file for bankruptcy. Shelia's friend characterized bankruptcy as a "way of getting out of debt that you owe,"[20] and as a result, Sheila forestalled her own filing until she felt that she had "no other choice."

Ron T., a fifty-two year old high school graduate employed in the health care field, expressed his continuing "moral ambiguity"[21] over having filed for bankruptcy even three years after doing so. After describing feelings of "self-loathing" about filing,

[18] Interview with Richard and Emily G. dated July 27, 2012.

[19] Interview with Shelia D. dated July 27, 2012.

[20] Interview with Shelia D. dated July 27, 2012.

[21] Interview with Ron T. dated Oct. 10, 2012.

he attributed these emotions to his religious upbringing and to the disappointment expressed at the time by his significant other. When questioned on this, he responded:

> I think there was a couple, a couple of reasons and then they were amplified by my partner. We both came from pretty strong . . . European Catholic families. You know, me Irish, her Polish Catholic family. Our parents worked really hard, for the most part at the same jobs to raise pretty sizeable families. Hers in the Midwest, mine out here. So there was that work ethic. Both of our parents lived through the depression, survived through that, you know. And you know we had this kind of ethic built in that you paid your debts. So it was, it was [a] huge thing for me to say you know, there's a . . . big label or stamp of failure stamped on there I had to work through.[22]

Ron T.'s partner did not agree with his decision to file bankruptcy and strongly encouraged him to pay off his debts. He felt that he needed to regain his partner's respect after he filed for bankruptcy. The filing caused some friction in their relationship moving forward, and even today they do not speak "about the moral dilemma that it created between us."[23]

Brenda L. was a fifty-year old employed in human resources when she filed for bankruptcy, which she attributed to a combination of indulgent credit card use and her

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[22] Interview with Ron T. dated Oct. 10, 2012.

[23] Interview with Ron T. dated Oct. 10, 2012.

former's husband's failure to remain current on their secured debts. When asked about her financial situation at that time, Brenda quickly expressed the following: "I never thought, no I never thought, it never crossed my mind to file for bankruptcy; I wanted to do the right thing, to pay off my debt."[24] Though Brenda took responsibility for incurring insurmountable debt, she filed for bankruptcy nonetheless. However, she felt embarrassed about filing and by needing to appear at the § 341 meeting of creditors. She expressed internalized feelings of shame as she described the stigma of being "overwhelmed by debt" to the point that "you cannot pay your bills."[25] These feelings of shame were so strong for Brenda that she voluntarily repaid $22,000 to two credit cards even though these debts had been discharged in her Chapter 7 proceeding.

For some, the act of filing for bankruptcy is not only met with feelings of shame and embarrassment, but is also accompanied by feelings of loss of self-worth and personal identity. Jane R., who possesses a B.A., M.A., and Ph.D., filed for bankruptcy after incurring large amounts of credit card debt to defray living expenses during a time when her husband was in graduate school and her business was not receiving much revenue. Asked about her needing to file for bankruptcy, she quickly replied:

> I really didn't want to do it. I viewed it as, as an indication of the complete failure of my business and me, by extension. It felt like it meant

[24] Interview with Brenda L. dated Oct. 12, 2012.

[25] Interview with Brenda L. dated Oct. 12, 2012.

> that I was, I was a fraud in everything I had done and worked for for the last ten years was all a fraud.[26]

Though Jane R. felt shame when she filed her bankruptcy petition, her attitude has changed slightly over the past two years. She indicated to me that certain things may have "absolved me morally, from being that moral failure in bankruptcy"; when asked, she indicated the following three things that in hindsight has tempered her own sense of moral failure for filing for bankruptcy: i) the fact that it is not uncommon for business owners to file for bankruptcy; ii) the recession in the late 2000s; and iii) the fact that her and her husband had been in school for ten years earning graduate degrees.[27]

Feelings of embarrassment mixed with the loss of personal self-worth were a common thread among those debtors who expressed internalized shame over filing for bankruptcy. For example, Debbie G., a middle-aged warehouse employee who accumulated overwhelming debt by supporting her adult son, his wife, and their child expressed to me she has told only one other person about filing for bankruptcy even several years after the fact due to her embarrassment about doing so, including members of her immediate family.[28] She refused to do so over concerns that she would be judged and branded as a failure. Although Debbie owed thousands of dollars to her father at the time she filed for bankruptcy, she refused to list him as a creditor on the petition so that

[26] Interview with Jane R. dated September 27, 2012.

[27] Interview with Jane R. dated September 27, 2012.

[28] Similarly, Nora S., a sixty-year old middle school teacher with a bachelor's and master's degree refused to tell her parents about her bankruptcy filing because of her internalized feelings of failure and the possible judgment she would face by her parents. Interview with Nora S. dated July 12, 2012.

she could hide her bankruptcy filing from him. When asked why, the following exchange occurred:

> Debbie: I failed. I see it as a failure.
>
> Interviewer: Why is it a failure?
>
> Debbie: It just is.
>
> Interviewer: A failure of what?
>
> Debbie: Me. It is a personal failure. I didn't take care of business like I should have.

Jessica F., a forty-three year old who possesses a Ph.D. and is employed in the health care field, filed bankruptcy due to a combination of a period of underemployment and the need to attend to her own health issues. When asked how she felt about filing for bankruptcy, Jessica cried as the conversation proceeded as follows:

> Interviewer: How did you feel about the need to file?
>
> Jessica: I hated it.
>
> Interviewer: Why?
>
> Jessica: 'Cuz you feel like a failure, you know, and I grew up taking care of myself [due to a volatile family life]. And I took care of myself probably as fast as I could walk. And so it was hard to actually say out loud that I couldn't do it. That was really hard. It was humiliating because I think that people make judgments and I would even hear my own

family members say things about people who claim bankruptcy.

Interviewer: What would they say?

Jessica: They would say things like, you know, they would say what the stereotype is that people are going out and spending money on big screen TVs and living high on the hog and then they don't wanna take responsibility for what they've done and they just, you know, hand it over to bankruptcy, you know, and I would hear those things. Nobody in my family knows, not even my mother who lives with me. It's been a very hard thing for me to stomach and it was a very difficult thing for me . . . it affected my sense of who I thought I was 'cuz like I said I've never struggled with taking care of myself.[29]

This idea of failure and its relation to the perceptions of one's familial reactions was also strong for Byron and Rachel A., a college educated, fifty-eight year old couple who filed for bankruptcy due to a combination of events: admitted living beyond their means, the need to support their adult children for a period of time, and several years of unemployment or underemployment for both. Before turning to bankruptcy, Byron and Rachel believed that they could pay off their debts because they characterized themselves

[29] Interview with Jessica F. dated Oct. 1, 2012.

as "old fashioned people. We believe we should pay our debts."[30] In discussing their financial situation at the time, Rachel recounted how she never "remembered either of our parents ever being in this situation where creditors would call you." She was emphatic that both of their parents "would've never declared bankruptcy. Ever."[31] They were both embarrassed at the need to file and "didn't want anybody to know" because, according to Byron, "we'd be afraid that we'd be looked down upon. That we'd be a disappointment. I didn't want my Dad to ever know."[32] Several years after their bankruptcy experience, only one of Byron and Rachel's family members has been told about their bankruptcy, and only because this person was in the mortgage industry and helped them to refinance their home.

More than twenty years ago one bankruptcy scholar opined that "[t]he stigma suffered by an individual bankrupt may be more than offset by her liberation from the shame of being unable to honor her obligations and her renewed optimism and self-confidence upon obtaining a fresh start" (Hillman, 1990, pg. 124). Several of the debtors in this study conveyed similar sentiments. That is, although they recalled feeling deep shame at the time of their bankruptcy filings, several years later they now reflect upon the experience in a more positive way.

For example, Holly C., a forty-six year old female who was unemployed at the time she filed for bankruptcy, broke into tears during the interview after labeling herself

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[30] Interview with Byron and Rachel A. dated Oct. 22, 2012.

[31] Interview with Byron and Rachel A. dated Oct. 22, 2012.

[32] Interview with Byron and Rachel A. dated Oct. 22, 2012.

as a "failure" for filing bankruptcy.[33] Though she continues to feels this way about herself more than two years later, she indicated that her life has "been a lot easier"[34] since shedding her credit card debt and in hindsight the bankruptcy experience was a positive one financially, just not emotionally. Gina D., a thirty-five-year old single mother hid her bankruptcy filing from her parents and future husband due to embarrassment and the fear of being judged.[35] Nonetheless, she commented that "to get that stress off [her debt and creditors] was worth it. It was like oh, my God. Now I can start over. And it puts things in perspective."[36] Finally, Byron and Rachel A., who had expressed deep embarrassment at the time of filing for bankruptcy, also commented that bankruptcy had a silver lining for them financially, if only in hindsight:

> Byron: But the bankruptcy was the low part. Once we declared it, it was like being relieved.
>
> Rachel: There was a relief with the bankruptcy to us.
>
> Byron: It gave us a new start.
>
> Rachel: It felt like a new start. That all of a sudden, we were allowed to try to manage our money again.[37]

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[33] Interview with Holly C. dated Sept. 15, 2012.

[34] Interview with Holly C. dated Sept. 15, 2012.

[35] Interview with Gina D. dated Oct. 13, 2012.

[36] Interview with Gina D. dated Oct. 12, 2012.

[37] Interview with Byron and Rachel A. dated Oct. 22, 2012.

B. Little or No Shame

Contrary to the first sub-group of debtors, a second sub-group of those interviewed expressed little or no shame about filing for bankruptcy. The debtors in this sub-population attributed this lack of shame or embarrassment to exogenous events or they psychologically distanced themselves from their financial predicaments through feelings of anger towards their creditors' perceived failures to accommodate them when financial calamity struck. In addition, the debtors who owned their own businesses all fell into this sub-population. For these small business owners, the decision to file for bankruptcy was an economic, business decision, a risk of doing business of which the creditors were aware. The collective attitudes of these debtors who expressed little or no shame in filing for bankruptcy complement those in the Thorne and Anderson study who engaged in the deviance avowal strategy of "accounts," or mechanisms by which individuals relieve themselves of the responsibility for their condition (Thorne & Anderson, 2006).

i. Feelings of Anger, Survival and Blame

Jackie B., a forty-year old employed in the mortgage industry, filed for bankruptcy due to her former husband's underemployment and their inability to pay for the second mortgage on their marital home. The second mortgage was a home equity line of credit with a variable interest rate. Once the payments on the second mortgage jumped progressively from $250 a month to $600 per month, she fell behind with her second mortgage payments.[38] After this, she spent several months attempting to work out an

[38] Interview with Molly B. dated Oct. 25, 2012.

arrangement with the mortgage lender because she "did not want to be one of those people who got foreclosed on."[39] Indeed, Jackie equated her sense of self-worth with owning this home. She expressed anger and frustration with her mortgage lender for not working things out with her when she experienced financial distress, despite her voluntary act of accepting the mortgage loan originally. When asked how long she contemplated filing for bankruptcy, she answered as follows:

> I would say a good six months. Because I'm like, I was like kind of ashamed at first, pride, and I've never missed a payment on my first mortgage, to this day I have not missed it and I take pride in that. Now with this second mortgage I've never missed a payment but then you begin to miss one and you feel ashamed and then you begin to miss the second because you just can't, I mean where do you get the money . . . and my mom was not the frickin' bank, I cannot call her every second so she can help me with the mortgage.[40]

But when asked whether her shame stemmed from falling behind on her mortgage payments or needing to file bankruptcy to protect her home, Jackie was clear in that it was the former. When asked whether she felt stigmatized about filing for bankruptcy, Jackie responded as follows:

> No. It was survival, it was self-defense. It was like, you know, somebody's attacking you and you defending yourself. That's how I felt. It didn't feel shameful. I felt shame before, trust me, you know where you

[39] Interview with Molly B. dated Oct. 25, 2012.

[40] Interview with Molly B. dated Oct. 25, 2012.

> can't make a frickin' payment because I took such pride in, you know, having a good job and being single and having my own home and I had my car paid off for the longest time, you know, I've always been responsible and all of a sudden it's like, well, it's out of my control and I've tried, I paid [on the second mortgage] $219, then I paid $260, then I paid $300, then I paid $369, and then. After a while you just can't because money's not coming in, so what are you going to do?

This notion of survival as a psychological mechanism to deflect any shame about filing was a theme among several from this debtor sub-population. Jenny V., a twenty-six year old hospital aide claimed she was not embarrassed because it was "something that needed to be done to start over. It's a must if you wanna . . . think about doing anything."[41] Justin A. expressed frustration with his creditors' failure to assist him when he experienced a period of unemployment due to a serious medical condition while waiting for his government disability benefits to be approved. Though his wife, Mary A., expressed embarrassment at having to file for bankruptcy, Justin adamantly did not. He too couched the filing in terms of survival. According to him:

> What pissed me off is I worked hard for everything, I always did the right thing and stuff and it just went . . . when you go and try to get help and you go all these years I've paid into Medicare, I've paid into my . . . all these taxes they kept taking out, so I go I can't get help [getting Medicare] 'cause I don't have kids, I don't have this and that and I own a house. I

[41] Interview with Jenny V. dated October 1, 2012.

> mean, and I kept saying [to my creditors] I just need it [some mortgage payment relief] for like six months or a year until they okay my social security . . . .
>
> I was to the point I got broke. What I mean by that is, I got to the point where I didn't care, I was so tired of all the bullshit and with everything hitting me at once and stuff, I was like I don't care, I just don't want to hear it, don't want to deal with it, don't want . . . . I couldn't take it. Yeah, we weren't [like] "hey, we filed bankruptcy," [that] we're happy and everything [because of it]. No, you know, we were so stressed out, bummed out of all the medical and physical . . . you know feeling bad, I felt bad, but it wasn't because we filed bankruptcy, it was the stress, the pressure that we went through trying to survive, trying to do what was right and then getting kicked in the ass. That's the best way I can put it.[42]

Donna and Robert K. filed for bankruptcy after incurring large credit card charges in an effort to prop up their small construction business during the recent economic downturn and to supplement living expenses during this time. Prior to filing for bankruptcy, Donna and Robert lost their "dream" house in foreclosure. Neither Donna nor Robert felt any shame or stigma about filing for bankruptcy. Rather, they felt extreme anger towards their mortgage company that refused to help them when they could not afford to make the entire mortgage payment. Donna and Robert described themselves as "being such good people" and "always try[ing] to be extremely

[42] Interview with Justin and Mary A. dated Oct. 6, 2012.

responsible." But after denying any shame about filing bankruptcy, Donna commented as follows:

> Donna: And we were proud of the fact that we did everything possible we could to try and make it work. I think the home [loss] devastated me and anything and everything after that I was numb. I was complete[ly], I was dead, I was dead. The amount of money that I had put toward this house, and I actually sat down and I calculated it, and every ounce of me trying to make this not happen, there was more anger, there was more hurt . . . there was nobody out there to help where somebody was drowning. That's where I was and so when it got . . . and so the foreclosure, it did, I was completely numb. I was dead and a lot of [my] family members had made comment[s] that I wasn't the same any longer . . . that I had completely changed. The foreclosure is what got me. That was the embarrassment.[43]

[43] Interview with Donna and Robert K. dated Sept. 8, 2012.

Stephanie M., an office employee in her late twenties found herself in financial distress after her former husband failed to make their credit card and car loan payments. Stephanie filed bankruptcy because of the debt on one credit card; she owed $6,800 and offered the credit card company $6,500 to satisfy the debt. When the credit card company declined and refused to work with her, Stephanie turned to bankruptcy. According to Stephanie, she "really tried to avoid filing. I wanted to be a responsible citizen."[44] Despite this, though, Stephanie did not feel any shame about filing, but felt "frustration" and anger towards the credit card company "for not taking $.95 on the debt when it is all for extra fees anyway."[45]

Finally, Brandon L., a fifty-nine year old who had historically been employed in the construction industry, incurred approximately $20,000 in credit card debt to supplement his lost income after the 2008 Recession "tanked"[46] his industry. Though he often "lost sleep" over his financial predicament, he did not feel embarrassed or stigmatized over filing bankruptcy. Rather, he attributed his need to file on the national economy and expressed severe "anger towards Congress" for allowing the recession to occur, yelling during our interview at the "stupid, asshole, son of a bitches [in Congress] that fucked it up."[47]

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[44] Interview with Stephanie M. dated Oct. 15, 2012.

[45] Interview with Stephanie M. dated Oct. 15, 2012.

[46] Interview with Brandon L. dated June 15, 2012.

[47] Interview with Brandon L. dated June 15, 2012.

ii. *Bankruptcy is Commonplace*

Two participants of the sub-group who did not feel any internalized shame about filing for bankruptcy expressed attitudes that corroborate Professor Zywicki's argument that a "water cooler" effect may be one reason for his perceived decline in bankruptcy stigma. Betty W., a sixty-year old property manager who resorted to bankruptcy due to a large deficiency from the sale of a home, felt "sick to her stomach" about her pre-bankruptcy debt, so much so that she was a self-described "bucket of tears all the time."[48] Yet, she never felt shame or embarrassment about filing because

> Everybody around me . . . Everybody that comes into this building has the same problems. This economic downturn has kicked everybody in the butt. I mean, it has just been horrible. I don't get anybody that comes through the door hardly that doesn't have a bad credit check, credit report.[49]

Similarly, David H., a college educated school teacher who was unemployed at the time he filed bankruptcy described filing as "a sign of incompetence."[50] Nonetheless, he did not feel any shame or stigma about filing for bankruptcy because he knew of at least one neighbor and a co-worker that had filed for bankruptcy relief, and they each shared their stories with one another.

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[48] Interview with Betty W. dated Sept. 19, 2012.

[49] Interview with Betty W. dated Sept. 19, 2012.

[50] Interview with David H. dated June 18, 2012.

iii. Small Business Owners

Five of the participants in the study who filed for personal bankruptcy owned and operated small businesses at the time. None of the five felt any strong shame or stigma surrounding their bankruptcies; instead, they looked at the filing as a strategic decision and as a cost of doing business. For example, William K., a forty-five year old with a college degree who filed after his business suffered losses, indicated that he "gr[e]w up feeling very principled about paying back debt and all of these things, and all of a sudden you realize you're in the real world and ah, it doesn't work like that."[51] And while he described himself as being in a state of "clinical depression"[52] over his indebtedness, he accounted for his bankruptcy filing in these terms:

> The filing itself was a very practical business decision, and I say business decision in both the business sense and in the personal financial sense. This is the only way I can deal with this situation right now. I didn't worry too much about the credit card companies, I didn't worry about that.[53]

Peter V., a forty-three year old with a graduate degree, owned a small business investing in different rental properties. After experiencing a period of job loss and a devaluing of his properties, Peter turned to bankruptcy. Though he felt "a little

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[51] Interview with William K. dated July 20, 2012.

[52] Interview with William K. dated July 20, 2012.

[53] Interview with William K. dated July 20, 2012.

embarrassment"[54] about filing, he viewed it as "strictly a business decision."[55] In his words, "I was like well, I started thinking like if I was a company and I had this bad section, I would cut it loose. I would cut it loose. I would not, you know, manufacture widgets anymore if widgets were losing me money."[56] Similarly, Steve and Joan E., small business owners, turned to credit card debts to supplement their incomes during a period of business loss and to offset medical expenses. Though they described their financial situation as "stressful," they did not feel stigmatized about the decision to file because they "looked at it as a business decision. And so it was probably maybe more of a clinical and business decision for us because I mean, I just looked [at their business's financials] and it ain't happening."[57]

The theme of commercial risk was also expressed in this sub-group of debtors. Terrance M., fifty-five year old with a graduate education, owned a telecommunications business. Terrance leveraged his personal finances to support his needed business expenses, but ultimately resorted to personal bankruptcy. He did not feel any stigma by filing for bankruptcy. As he asserted:

> I mean personally I owed about a million dollars from the business side of this with all of the personal stuff, I would've loved to be able to pay all of that off, but that was impossible. I could die two times and still not be able to pay that off, so when the opportunity came to do the bankruptcy

[54] Interview with Peter V. dated Sept. 24, 2012.

[55] Interview with Peter V. dated Sept. 24, 2012.

[56] Interview with Peter V. dated Sept. 24, 2012.

[57] Interview with Steve and Joan E. dated Oct. 26, 2012.

> and understand the benefits of it, [snapping his fingers] I did it and never turned back.[58]

Terrance went on to describe his circumstances as a "risk/reward type of arrangement, you know, and this one didn't work out, maybe the next one will."[59] Terrance's outlook on bankruptcy was also influenced by his religious beliefs. Though he understood that his Christian faith advises him not to be in debt, he felt no stigma about his filing because he recognized "sabbatical year and all of that kind of stuff and the Jews did it for every seven years they [got a discharge of debt], that was the smartest."[60] Finally, Samuel N., a fifty-eight year old business owner with a graduate degree, summarized his feelings on filing for bankruptcy in the following way:

> To some extent there's a shame behind a bankruptcy, but I've since gotten a little better perspective just that it's a business tool as such, but since it was a personal business . . . you know, and it was a personal thing, but I think I have a better perspective on the business aspect of profit and loss, and sometimes risks don't work out, and certainly I'm not intent on doing it again, but it's a wonderful part of the American economic system that allows for moderate risk takers to take those business risks on an educated business plan . . . it's a tool to reconcile the otherwise irreconcilable.[61]

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[58] Interview with Terrance M. dated Sept. 12, 2012.

[59] Interview with Peter V. dated Sept. 24, 2012.

[60] Interview with Peter V. dated Sept. 24, 2012.

[61] Interview with Samuel N. dated Oct. 29, 2012.

C. A Diluted Sense of Stigma and Shame

The data reported by the Thorne and Anderson study suggest that consumer debtors experience deep feelings of shame and stigma over their bankruptcy filings, but engage in a variety of stigma management techniques to offset their negative perceptions of bankruptcy (Thorne & Anderson, 2006). Some of the participants in the Thorne and Anderson study actively concealed their bankruptcies, others avoided social situations which threatened to reveal their bankrupt status, and others distanced themselves from other bankruptcy debtors by stereotyping "other" bankruptcy debtors as either the "extravagant bankrupt," the "credit card bankrupt," or the "repeat filer" (Thorne & Anderson, 2006, 87-90). Indeed, according to Thorne and Anderson, "all 35 debtors who reported feelings of shame broached the subject independently in the course of more general conversation and without any direction from the interviewer" (Thorne & Anderson, 2006, pg. 81).

Although the debtors in my sample shared very similar characteristics overall to the Thorne and Anderson study, none of the debtors freely admitted any sense of stigma or shame about bankruptcy before being prompted with such a question. However, a sub-group of debtors in my study did engage in similar conduct as the Thorne and Anderson population. That is, these debtors expressed a certain level of stigma and shame regarding their bankruptcy filings, but tempered these feelings by engaging in psychological strategies resembling deviance avowal. I characterize this sub-group as possessing a "diluted sense of stigma and shame." Though expressing shame, the individuals in this sub-group relied on certain factors to somehow assuage their internalized feelings.

i. Blame on External Events

Some of the debtors in the sub-group expressed an element of shame over their bankruptcy filings, but rationalized those internalized feelings by placing blame on external events or people for having to file for bankruptcy relief. For example, Jonathan P., a thirty-year old male with a bachelor's and master's degree who admittedly filed for bankruptcy strategically to avoid high deficiencies resulting from two mortgages, first indicated that he felt stress, guilt, and concern about his debt situation leading up to the bankruptcy. According to him, "[i]t's about doing the right thing. You pay your damn debts."[62] But when asked whether he felt any shame or embarrassment over his petition, he feels that he personally made no moral mistakes, but rather attributed his financial downfall to the practices of the mortgage industry in the late 2000s and his impression that many people filed for bankruptcy to clean their slates when stuck in a property worth less than the amount secured by the mortgage. In his words:

> This is just business. And if a bank wants to get me into a mortgage so they can CDO it and make a ton of money and, you know, leverage it across the world, that's fine . . . . This isn't a moral issue necessarily. I did do my best. My biggest mistake was that I did the right thing for too long [trying to repay the mortgages]. And my biggest mistake was . . .

[62] Interview with Jonathan P. dated Aug. 8, 2012.

> that I bought a belief that the house would never go down in value. That was my fault. I take responsibility for it. But I'm not only one.[63]

The sentiments of Jonathan P. were echoed by Donna L., a thirty-three year old who was unemployed at the time she filed for bankruptcy. When asked about her feelings regarding the need to file for bankruptcy, she commented that it was "really embarrassing to file."[64] Nonetheless, she softened this feeling of embarrassment on the high interest rates charged by credit card companies and the fact that

> predatory lending is such [a] much more common practice. Especially before 2008, really twenty-five percent interest was the norm and even higher. And so . . . I used [that] to rationalize that it was okay to file as well because the creditors were . . . had some predatory practices . . . .[65]

Similarly, Daniel and Patricia H., ages fifty-nine and sixty years old, respectively, and both traditionally employed in the manufacturing sector, filed for bankruptcy as a result of a complex maelstrom of under-employment from a work-related injury, a job loss, a pattern of non-essential material spending, a feeling of optimism bias, and a history of charging on credit cards the costs of their children's weddings. While they initially expressed embarrassment over filing and shamed about needing to attend the trustee's meeting of creditors, Patricia quickly revised her answer by claiming that "you shouldn't feel that way because they're [the credit card companies] soaking you for more

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[63] Interview with Jonathan P. dated Aug. 8, 2012.

[64] Interview with Donna L. dated October 6, 2012.

[65] Interview with Donna L. dated October 6, 2012.

money than what you're paying for everything."[66] Later in the interview, Patricia disclaimed some responsibility for needing to file for bankruptcy "because we feel like there was a lot of stuff that happened that wasn't our fault."[67]

Russell and Joyce G., college educated and ages seventy-one and sixty-one, respectively, owned several successful companies. However, a series of related events caused the companies to implode: like many small business owners, Russell and Joyce personally guaranteed their business's debts and were facing personal liabilities over a million dollars. When they could no longer draw profits from the businesses or pay themselves salaries, they faced the foreclosure of their home. As a result, they filed for bankruptcy. Russell and Joyce's experience may be an outlier for this study for two reasons: the amount of money owed to their creditors is well above normal and they reported that their personal finances "were fine" when the filed, but it was the personal entanglements with their businesses that caused their financial demise. Nonetheless, both Russell and Joyce expressed "a little" shame about filing for bankruptcy. According to Joyce, they "owed them [their creditors and suppliers] the money, the suppliers gave [us] product on an honest basis, and we took it on an honest basis."[68] However, Russell and Joyce blamed other companies that owed them money for their financial predicament and

[66] Interview with Daniel and Patricia H. dated Sept. 26, 2012.

[67] Interview with Daniel and Patricia H. dated Sept. 26, 2012.

[68] Interview with Russell and Joyce G. dated Sept. 15, 2012.

further blamed the bankruptcy trustee for not "helping them turn the business around or assisting them in settling [their] business disputes with other companies."[69]

ii. Impression that Bankruptcy is Commonplace

Several debtors in this sub-group tempered their feelings of shame and embarrassment by their beliefs that filing for bankruptcy had become a common occurrence across the country or in their community. Some of these beliefs were influenced by interpersonal exchanges with family and friends, by watching attorney advertisements for bankruptcy services on television, and by comments made to the debtors by their bankruptcy lawyers regarding the prevalence of bankruptcy in general. These data serve to corroborate Professor Zywicki's assertions that attorney advertising and communications made by bankruptcy attorneys to their clients during consultations may be playing a role in a progressive decline in bankruptcy stigma, if this decline is indeed accurate (Zywicki, 2005, pg. 1107-08).

Donna L., the thirty-three year old who placed some blame on predatory lending practices also tempered her embarrassment with her belief that bankruptcy is a common practice. In her own words:

> I always tried to be fiscally responsible. That's the way I was raised and it was . . . it was really embarrassing to file. However, [filing for bankruptcy is a] social norm now, where it's so commonplace. People file bankruptcy all the time. Some of the stigma, I think, [is gone] as opposed to how it may have been a decade ago. It was embarrassing, but then I was so

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[69] Interview with Russell and Joyce G. dated Sept. 15, 2012.

> desperate for relief that I had no choice really. That helped the embarrassment factor.[70]

Later in the interview, and despite her feelings of embarrassment, Donna L. characterized the bankruptcy process as "an easy out" and analogized it to "something that is just like a giant eraser. People can do it any time and they don't realize the consequences or the diligence that has to be put into it to manage their [financial] affairs."[71]

Mitchell and Tina J., both age forty-three, filed for bankruptcy after turning to their credit cards to supplement their income after a job loss. Describing their financial situation as "robbing Peter to pay Paul,"[72] Tina felt "miserable" about their financial situation prior to the bankruptcy filing.[73] Like others interviewed for this study, Mitchell and Tina expressed their moral problem over not repaying their debts because they were taught to "work hard and pay your bills," and additionally felt that the creditors trusted their representations of repayment.[74] When asked about feelings of shame, Tina replied in the following way:

> I felt embarrassed, but the only thing that made it even a tiny bit better if you wanna say that was the fact that so many other people were doing it. They were upping the bankruptcy hearings in our county by . . . I mean, the

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[70] Interview with Donna L. dated October 6, 2012.

[71] Interview with Donna L. dated October 6, 2012.

[72] Interview with Mitchell and Tina J. dated July 9, 2012.

[73] Interview with Mitchell and Tina J. dated July 9, 2012.

[74] Interview with Mitchell and Tina J. dated July 9, 2012.

> bankruptcy lawyers were having a heyday. So that's the only thing that made us feel like we were on common ground was the fact that we were part of a large group at the time.[75]

As Tina admitted, their bankruptcy lawyer informed them that they should not feel bad about filing bankruptcy because "there w[ere] a lot of people doing it."[76] In other words, their attorney served as an outlet for assuaging any feelings of stigma regarding bankruptcy. This experience was also shared by Wendy G., a fifty-two year old single mother who needed to file bankruptcy after being sued for a car accident. Though she reported feeling stigmatized because filing for bankruptcy "would be seen as a failure," she was comforted to some degree by her attorney informing her "that there were a lot of people filing for bankruptcy" at the time.[77] Nora S., a fifty-six year old high school teacher who used her credit cards both to supplement her income after a divorce and to financially assist her adult children and grandchild, refused to tell anyone about her bankruptcy filing, and kept the fact hidden from her parents. Even after four years, Nora cried as she discussed her bankruptcy experience. But during her consultation with her bankruptcy attorney, he informed her that her life "would be just so much better and so much easier and it [bankruptcy] will give you some relief, you know. And granted, it

[75] Interview with Mitchell and Tina J. dated July 9, 2012.

[76] Interview with Mitchell and Tina J. dated July 9, 2012.

[77] Interview with Wendy G. dated July 16, 2012.

did. But I still feel like if I'd found the right debt relief outfit that I could've done better and not have this thing [of being a bankrupt debtor on her shoulders]."[78]

For Brian and Pam T., ages fifty-five and forty three, respectively, and employed in the service industry, the idea of bankruptcy was like a "big cuss word."[79] Pam did not want to file for bankruptcy out of her fear that "they're gonna make me look like I'm a horrible person."[80] Like many of those interviewed for this study, Pam described herself as "always been the type of person that if I owe somebody money, I wanna make sure that they get paid."[81] Despite these feelings, Brian and Pam perceived bankruptcy to be common for three reasons. First, one of their cousins filed for bankruptcy in the past and the cousin informed Brian and Pam that the bankruptcy process was easier than one would expect. Second, Brian also knew "plenty of people who have claimed bankruptcy"[82] and Pam claimed to be influenced by watching attorney television advertisements during nightly newscasts.

Peter V., the individual small business owner who invested in rental properties, reported feeling ashamed initially about filing for bankruptcy. However, he expressed to me that what helped these feelings was "seeing people come in [his workplace] and they were going through the same thing that I was going through. It's amazing to me how many people I've met that have gone, that have sent the keys back to their house, and

[78] Interview with Nora S. dated July 12, 2012.

[79] Interview with Brian and Pam T. dated June 28, 2012.

[80] Interview with Brian and Pam T. dated June 28, 2012.

[81] Interview with Brian and Pam T. dated June 28, 2012.

[82] Interview with Brian and Pam T. dated June 28, 2012.

done foreclosure [and filed for bankruptcy]."[83] The perceived commonality of bankruptcy helped assuage the embarrassment felt by Byron A., who along with his wife, filed due to a confluence of events. As he stated to me:

> That's not so bad. Because you're already feeling pretty crappy because, you know, people loan you money on good faith. And we feel that it's your word should mean something. That's your value. And from that . . . we failed on that mark. But, you know, we meant well. We tried hard. And then to try to soften the blow, we're told well, that's okay [filing for bankruptcy] everything's happening. All kinds of people are doing it now. Now it's the thing to do . . . .[84]

iii. DISTANCING FROM OTHER DEBTORS

Very similar to the debtors in the Thorne and Anderson study that engaged in "associational distancing" (Thorne & Anderson, 2006, pg. 87) as a form of deviance avowal, several of the debtors in this study employed comparable psychological tools to offset their feelings of shame over filing for bankruptcy. Like Thorne and Anderson found, these debtors attempted to "distinguish their 'legitimate' reasons for declaring bankruptcy from the otherwise illegitimate and morally objectionable actions and rationales of other bankruptcy debtors" (Thorne & Anderson, 2006, pg. 87).

One of the ways a few debtors disassociated themselves from other bankrupts was by comparing themselves to other debtors who they observed at the § 341 trustee's

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[83] Interview with Peter V. dated Sept. 24, 2012.

[84] Interview with Byron and Rachel A. dated Oct. 22, 2012.

meeting of creditors. Joyce G., the business owner who had personally guaranteed her business's debts, stated as follows regarding her experience at the meeting of creditors:

> We don't fit the . . . . We don't belong here, because the people that were there were, had gotten in trouble, like the little old couple had gotten in trouble because they bought too many cars to soon or something, somebody was there because she had been buying clothes and couldn't pay her rent, you know, we said "what are we here for?," this is not the kind of thing, I mean, we're here for serious business, there's serious wrongdoing here, [another company] owes us [a lot of money] so we can pay our creditors and go on with life. If these are the people that are using bankruptcy, they, somebody should give them a good stiff kick and say to them, take responsibility.[85]

Walter W., a sixty-four year old accountant, filed for bankruptcy after incurring several hundred thousand dollars in medical bills following a bought with a severe illness.[86] Prior to his medical crisis, he "didn't spend wildly"[87] and fought against filing for bankruptcy due to his own "basic integrity to pay your bills."[88] For Walter, his religious background and his "spiritual path" also influenced his belief that "you don't file for bankruptcy."[89] Ultimately, though, the medical debt situation made it necessary

[85] Interview with Russell and Joyce G. dated Sept. 15, 2012.

[86] Walter W. filed a joint petition with his wife, but I did not interview her for this study.

[87] Interview with Walter W. dated Sept. 18, 2012.

[88] Interview with Walter W. dated Sept. 18, 2012.

[89] Interview with Walter W. dated Sept. 18, 2012.

for him and his wife to file for bankruptcy and he did not feel any guilt about filing for bankruptcy. But he quickly separated himself from others by stating, "if we'd have spent lavishly and then filed bankruptcy, that would have been the most horrible thing we could have possibly done in our life."[90] Walter did, however, feel that having to attend the trustee's meeting of creditors was embarrassing. In his words:

> I think knowing who I am and feeling who I am, to have to go through that . . . and you're in the same rooms with people who obviously are not managing their lives very well . . . you sit there and listen to other people's stories, and you saw the way the trustee asked questions and so forth [of others], and then when it got to us, it was just "okay, bye" . . . because the circumstances were obvious, but with other people, you know, [the trustee asked] "why did you buy that car when you shouldn't have?, you didn't have the money to buy the car, but you did, why?," so there's huge differences.[91]

Similar sentiments were shared by Brian and Pam T., who needed to file bankruptcy after using credit cards to offset the loss of employment Brian experienced following a car accident. As noted earlier, Brian and Pam expressed their belief in repaying their debts. Nonetheless, they differentiated themselves from other debtors "[b]ecause, I think our story's a little bit different because it happened through an accident and we weren't people who were out buying big screen TVs and buying

[90] Interview with Walter W. dated Sept. 18, 2012.

[91] Interview with Walter W. dated Sept. 18, 2012.

diamonds and going on vacation."[92] Indeed, several other debtors legitimated their bankruptcy experiences from others who they perceived as engaging in "frivolous spending" by pointing out their own "unforeseen circumstances" of getting sick and not being able to maintain employment for a period of time.[93]

As Thorne and Anderson found in their own study, the debtors interviewed here made attempts to suggest that "illegitimacy and irresponsibility were prevalent among those who declare bankruptcy, but they asserted that they themselves were relatively exceptional in not fitting the stereotypical profiles" (Thorne & Anderson, 2006, pg. 90).

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[92] Interview with Brian and Pam T. dated June 28, 2012.

[93] Interview with Steve and Joan E. dated Oct. 26, 2012.

VIII. Conclusions and Implications

Since the social institution of bankruptcy has existed in this country, bankruptcy law professionals and scholars have speculated upon the level of shame and stigma felt by those who turned to the bankruptcy process for financial relief. Starting in the 1970s with a report issued by David T. Stanley and Marjorie Girth of the Brookings Institution, commentators and bankruptcy scholars began to research empirically notions of bankruptcy stigma (Stanley & Girth, 1971). The Thorne and Anderson study is arguably the first effort to measure bankruptcy stigma directly. This Article is the second, and serves in some ways to complement the Thorne and Anderson study. In other ways, the data collected from this study adds to the literature by suggesting that bankruptcy stigma is not an "all or nothing issue," but rather individuals experience a range of attitudes regarding their bankruptcy filings.

Because of this, continuing to debate simply whether the stigma associated with bankruptcy has increased or decreased over the past few decades may be a futility. For a certain segment of debtors who file for bankruptcy each year, this study suggests that the stigma exists and may likely never dissipate. On the other hand, this study also suggests that some population of bankruptcy filers do not feel a strong sense of stigma or shame regarding their conduct. In other words, this study demonstrates, albeit in a limited way, that Professors Sullivan, Warren and Westbrook are correct in contending that bankruptcy stigma is alive and well, but that Professors Zywicki and Efrat may also be correct in their assertions that the stigma of bankruptcy has declined. The appropriate question to ask, then, is to where should the study of bankruptcy stigma proceed?

In answering this question, two suggestions come to mind. First, one limitation of this study is that all of the participants interviewed filed for bankruptcy protection, so for these individuals the need for a fresh start outweighed any internalized personal feelings of shame and embarrassment. This, obviously, limits the generality of my findings. Nevertheless, if Congress is truly committed to understanding how the social phenomenon of bankruptcy stigma is perceived in the beginning of the twenty-first century, Congress should fund a statistically valid and representative nationwide empirical study of this issue. What is needed is a national study of the population's attitude regarding bankruptcy stigma in order to better understand whether the increased bankruptcy filings over the past two decades were occasioned, in whole or in part, by a societal decline in stigmatizing bankruptcy. Such data, if gathered, may help predict the bankruptcy filing rates for the foreseeable future, a significant discovery because billions of dollars are discharged through the bankruptcy process each and every year.

Second, there also needs to be a study conducted of a comparison population of individuals with unmanageable debt but who choose not to file bankruptcy because the stigmatization (whatever its origins) outweighs the potential benefits of bankruptcy relief. However, finding and identifying a representative population of such individuals is extremely difficult because public records do not exist to identify those who are struggling with the decision to file for bankruptcy. Some potentially fruitful avenues of inquiry is to conduct an empirical study of debtors enrolled in debt management plans or those who seek financial assistance from debt counseling or debt consolidation agencies. Such a study must be conducted so as to lend greater reliability to all of the existing studies on bankruptcy stigma.

As previously noted, my effort here was to simply shed light on a small corner of the consumer bankruptcy world by reporting on the experiences of a population of individuals who filed for bankruptcy relief. By providing a detailed analysis of bankruptcy stigma directly from the debtors themselves, the study demonstrates that notions of stigma surrounding bankruptcy are more nuanced and complex than previously believed. It is hoped that this effort will serve as another step in a broader discussion of this social phenomenon, particularly since the 2005 Amendments to the Bankruptcy Code were predicated on a set of assumptions which, when extrapolated nationally, may either prove to have been correct or seriously misplaced.

REFERENCES

Ablon, Joan
1981 Stigmatized Health Conditions. Social Science & Medicine 15(1) 5-9.

Ainlay, Stephen C., Coleman, Lerita M., & Becker, Gaylene
1986 Stigma Reconsidered. *In* The Dilemma of Difference: A Multidisciplinary View of Stigma. Stephen C. Ainlay, Lerita M. Coleman, and Gaylene Becker, eds. Pp. 1-13. New York and London: Plenum Press.

Ainlay, Stephen C., & Crosby, Faye
1986 Stigma, Justice, and the Dilemma of Difference. *In* The Dilemma of Difference: A Multidisciplinary View of Stigma. Stephen C. Ainlay, Lerita M. Coleman, and Gaylene Becker, eds. Pp. 17-37. New York and London: Plenum Press.

Albrecht, Gary L, Walker, Vivian G., and Levy, Judith A.
1982 Social Distance From the Stigmatized: A Test of Two Theories. Social Science Medicine 16(14):1319-1327.

Ambert, Anne-Marie, Adler, Patricia A., Adler, Peter and Detzner, Daniel F.
1995 Understanding and Evaluating Qualitative Research. Journal of Marriage and the Family 57(4):879-893.

Arendt, Hannah
1958 The Human Condition. Chicago: University of Chicago Press.

Asmussen, Kelly J. and Creswell, John W.
1995 Campus Response to a Student Gunman. Journal of Higher Education 66(5):575-591.

Athreya, Kartik
2004 Shame as it Ever Was: Stigma and Personal Bankruptcy. Economic Quarterly 90(2):1-19.

Barkan, Steven E.
2009 Law and Society: An Introduction. New Jersey: Pearson/Prentice Hall.

Becker, Gaylene
1980 Growing Old In Silence: Deaf People in Old Age. California: University of California Press.

Becker, Gaylene and Arnold, Regina
1986 Stigma as a Social and Cultural Construct. *In* The Dilemma of Difference: A Multidisciplinary View of Stigma. Stephen C. Ainlay, Lerita M. Coleman, and Gaylene Becker, eds. Pp. 17-37. New York and London: Plenum Press.

Bloom, Allan
1987 The Closing of the American Mind. New York: Simon and Schuster.

Braucher, Jean
1998 Increasing Uniformity in Consumer Bankruptcy: Means Testing as a Distraction and the National Bankruptcy Review Commission's Proposals as a Starting Point. American Bankruptcy Institute Law Review, 6(1):1-24.

Buckley, F.H. and Brinig, Margaret F.
1998 The Bankruptcy Puzzle. Journal of Legal Studies 27(1):187-207.

Byrne, P.
1999 Stigma of Mental Illness: Changing Minds, Changing Behavior. British Journal of Psychiatry 174(1):1-2.

Carlson, Ann E.
2001 Recycling Norms. California Law Review 89(5):1231-1300.

Coker, Elizabeth M.
2005 Selfhood and Social Distance: Toward a Cultural Understanding of Psychiatric Stigma in Egypt. Social Science & Medicine 61(5):920-930.

Coleman, Peter J.
1974 Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900. Washington D.C.: Beard Books.

Cotterrell, R.
1994 Law and Society. New York: New York University Press.

Creswell, John W.
2013 Qualitative Inquiry & Research Design: Choosing Among Five Approaches. California: Sage Publications, Inc.

Denzin, Norman K. and Lincoln, Yvonna S., eds.
2000 Handbook of Qualitative Research. California: Sage Publications.

Dickerson, A. Mechele
2001 Bankruptcy Reform: Does the End Justify the Means? American Bankruptcy Law Journal 74(2):243-277.

1998 Can Shame, Guilt, or Stigma Be Taught? Why Credit-Focused Debtor Education May Not Work. Loyola of Los Angeles Law Review 32(4):945-964.

DiMatteo, Larry A.
1998 The History of Natural Law Theory: Transforming Embedded Influenced into a Fuller Understanding of Modern Contract Law. University of Pittsburgh Law Review 60(3):839-922.

Edgerton, Robert B.
1966 Conceptions of Psychosis in Four East African Societies. American Anthropologist 68(2):408-425.

Edgerton, Robert B.
1993 The Cloak of Competence: Stigma in the Lives of the Mentally Retarded. California: University of California Press, Ltd.

Efrat, Rafael
2006a Bankruptcy Stigma: Plausible Causes For Shifting Norms. Emory Bankruptcy Developments Journal 22(2):481-520.

2006b The Evolution of Bankruptcy Stigma. Theoretical Inquiries in Law 7(2):365-394.

1998 The Moral Appeal of Personal Bankruptcy. Whittier Law Review 20(1):141-170.

Ember, Carol R., and Ember, Melvin
1999 Cultural Anthropology. New Jersey: Prentice Hall.

Erikson, Kai T.
1962 Notes on the Sociology of Deviance. Social Problems 9(4):307-314.

Falk, Gerhard
2001 Stigma: How We Treat Outsiders. New York: Prometheus Books.

Fay, Scott, Hurst, Erik, and White, Michelle
1998 The Bankruptcy Decision: Does Stigma Matter? University of Michigan Working Paper No. 98-01. Electronic Document, http://dx.doi.org/10.2139/ssrn.70915.

Fennell, Lee A.
1994 Interdependence and Choice in Distributive Justice: The Welfare Conundrum. Wisconsin Law Review 1994(2):235-330.

Fineman, Martha A.
1996 The Nature of Dependencies and Welfare "Reform." Santa Clara Law Review 36(2):287-311.

2004 The Autonomy Myth: A Theory of Dependency. New York: New Press.

Fossey, Ellie, Harvey, Carol, McDermott, Fiona, and Davidson, Larry
2002 Understanding and Evaluating Qualitative Research. Australian & New Zealand Journal of Psychiatry 36(6):717-732.

Fried, Charles
1981 Contract as Promise: A Theory of Contractual Obligation. United States: Harvard University Press.

Friedman, Lawrence M.
1985 The Law and Society Movement. Stanford Law Review 38(3):763-780.

Garrett, William R.
1989 The Micro/Macro Linkage in the Scientific Study of Religion: The Problem of Assessing the Influence of Religion on Individuals and Society. *In* Social Consequences of Religious Belief. William R. Garrett, ed. Pp. 5-24. New York: Paragon House.

Gibbons, Frederick X.
1986 Stigma and Interpersonal Relationships. *In* The Dilemma of Difference: A Multidisciplinary View of Stigma. Stephen C. Ainlay, Lerita M. Coleman, and Gaylene Becker, eds. Pp. 123-144. New York and London: Plenum Press.

Gibbs, Jack P.
1965 Norms: The Problem of Definition and Classification. American Journal of Sociology 70(5):586-594.

Goode, Erich
1975 On Behalf of Labeling Theory. Social Problems 22(5):570-583.

Gussow, Zachary and Tracy, George S.
1968 Status, Ideology, and Adaptation to Stigmatized Illness: A Study of Leprosy. Human Organization 27(4):316-325.

Graeber, David
2011 Debt: The First 5,000 Years. New York: First Melville House Printing.

Gross, David B. and Souleles, Nicholas S.
1998 Explaining the Increase in Bankruptcy and Delinquency: Stigma vs. Risk-Composition. Wharton Financial Institutions Center, University of Pennsylvania Working Paper No. 98-28-B.

Habachy, Saba
1962 Property, Right and Contract in Muslim Law. Columbia Law Review 62(3):450-473.

Hallinan, Charles G.
1986 The "Fresh Start" Policy in Consumer Bankruptcy: A Historical Inventory and an Interpretive Theory. University of Richmond Law Review 21(1):49-160.

Hann, Chris
2006 The Gift and Reciprocity: Perspectives from Economic Anthropology. *In* Handbook of the Economics of Giving, Altruism and Reciprocity. S. Kolm and Jean Mercier Ythier, eds. Pp. 207-223. England: Cambridge University Press.

Hayes, Terrell A.
2000 Stigmatizing Indebtedness: Implications for Labeling Theory. Symbolic Interaction 23(1):29-46.

Herskovits, Elizabeth J. & Mitteness, Linda S.
1994 Transgressions and Sickness in Old Age. Journal of Aging Studies 8(3):327-340.

Hillman, Robert A.
1990 Contract Excuse and Bankruptcy Discharge. Stanford Law Review 43(1):99-136.

Holmes, Oliver W.
1897 The Path of the Law. Harvard Law Review 10(8):457-478.

Honsberger, John
1972 The Nature of Bankruptcy and Insolvency in a Constitutional Perspective. Osgoode Hall Law Journal 10(1):199-208.

Jenson, Susan
2005 A Legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. American Bankruptcy Law Journal 79(3):485-569.

Jackson, Thomas H.
1985 The Fresh-Start Policy in Bankruptcy Law. Harvard Law Review 98(7):1393-1448.

Jenkins, Janis H.
1988 Ethnopsychiatric Interpretations of Schizophrenic Illness: The Problem of *Nervios* Within Mexican-American Families. Culture, Medicine and Psychiatry 12(3):301-329.

Jones, Edith H. and Zywicki, Todd J.
1999 It's Time for Means-Testing. Brigham Young University Law Review 1999(1):177-250.

Kimel, Dori
2003 From Promise to Contract: Towards a Liberal Theory of Contract. Oregon: Hart Publishing.

Kottak, Conrad P.
2011 Anthropology: Appreciating human diversity. New York: McGraw-Hill.

Kornhauser, Marjorie E.
2009 Cognitive Theory and the Delivery of Welfare Benefits. Loyola University of Chicago Law Journal 40(2):253-296.

Kreting, Laura
1991 Rigor in Qualitative Research: The Assessment of Trustworthiness. The American Journal of Occupational Therapy 45(3):214-222.

Landry, Robert J. III
2006 An Empirical Analysis of the Causes of Consumer Bankruptcy: Will Bankruptcy Reform Really Change Anything? Rutgers Business Law Journal, 3(1):2-50.

Lewis, Helen B.
1971 Shame and Guilt in Neurosis. New York: International Universities Press.

Liazos, A.
1972 The Poverty of the Sociology of Deviance: Nuts, Sluts, and Preverts. Social Problems 20(1):103-120.

Lin, Tsung-Yi and Lin, Mei-Chen
1982 Love, Denial and Rejection: Responses of Chinese Families to Mental Illness. *In* Normal and Abnormal Behavior in Chinese Culture. Arthur Kleinman and Tsung-Yi Lin, eds. Pp. 387-401. Dordrecht: D. Reidel Publishing Company.

Link, Bruce
1982 Mental Patient Status, Work, and Income: An Examination of the Effects of a Psychiatric Label. American Sociological Review 47(2):202-215.

Link, Bruce G. & Phelan, Jo C.
2001 Conceptualizing Stigma. Annual Review of Sociology 27:363-385.

Malinowski, Bronislaw
1926 Crime and Custom in Savage Society. London: Routledge and Kegan Paul, Ltd.

Major, Brenda and O'Brien, Laurie T.
1970 The Social Psychology of Stigma. Annual Review of Psychology 56(1):393-421.

Matejkovic, John E. and Rucinski, Keith
2004 Bankruptcy "Reform": The 21st Century's Debtors' Prison. American Bankruptcy Institute Law Review 12(2):473-500.

Mather, Henry
1999 Contract Law and Morality. Connecticut: Greenwood Publishing Group.

Mauss, Marcel
1923 The Gift: Forms and Functions of Exchange. New York: Norton & Company, Inc.

McClain, Linda C.
1994 Rights and Irresponsibility. Duke Law Journal 43(5):989-1088.

McIntyre, L.
1989 A Sociological Perspective on Bankruptcy. Indiana Law Journal, 65(1):123-140.

Miller, Daniel, ed.
1994 Acknowledging Consumption: A Review of New Studies. London: Routledge.

Mols, Yvanna L.B.H.
2012 Bankruptcy Stigma and Vulnerability: Questioning Autonomy and Structuring Resilience. Emory Bankruptcy Development Journal 29(1):289-332.

Murphy, Jane M.
1976 Psychiatric Labeling in Cross-Cultural Perspective. Science 191(4231):1019-1028.

Nicosia, Francesco M. and Mayer, Robert N.
1976 Toward a Sociology of Consumption. Journal of Consumer Research 3(2):65-75.

Peebles, Gustav
2010 The Anthropology of Credit and Debt. The Annual Review of Anthropology 39:225-240.

Rendleman, Douglas R.
1974 Bankruptcy Revision: Procedure and Process. North Carolina Law Review 53(6):1197-1236.

Resnicoff, Steven H.
2011 Jewish and American Bankruptcy Law: Their Similarities, Differences, and Interactions. American Bankruptcy Institute Law Review 19(2):551-584.

Robbins, Joel
2008 Rethinking Gifts and Commodities: Reciprocity, Recognition, and the Morality of Exchange. Economics and Morality: Anthropological Approaches. Katherine E. Browne and B. Lynne Milgram, eds. Pp. 43-58. Maryland: Altamira Press.

Scheff, Thomas J. and Retzinger, Suzanne M.
1991 Emotions and Violence: Shame and Rage in Destructive Conflicts. Massachusetts: Lexington Books.

Scupin, Raymond
1998 Cultural Anthropology: A Global Perspective. New Jersey: Prentice Hall.

Sharma, K.M.
1998 From "Sanctity" to "Fairness": An Uneasy Transition in the Law of Contracts? New York Law School Journal of International and Comparative Law 18(2):95-180.

Silbey, Susan S. & Sarat, Austin
1987 Critical Traditions in Law and Society Research. Law & Society Review 21(1):165-174.

Sousa, Michael
2014 Just punch my bankruptcy ticket: a qualitative study of mandatory debtor financial education. Marquette Law Review 97(2):391-467.

Stafford, Mark C. and Scott, Richard R.
1986 Stigma, Deviance, and Social Control: Some Conceptual Issues. *In* The Dilemma of Difference: A Multidisciplinary View of Stigma. Stephen C. Ainlay, Lerita M. Coleman, and Gaylene Becker, eds. Pp. 77-91. New York and London: Plenum Press.

Stanley, David T. and Girth, Marjorie
1971 Bankruptcy: Problem, Process, Reform. Washington: Brookings Institution.

Stone, Ferdinand F.
1941 A Primer on Bankruptcy. Tulane Law Review 16(3):339-361.

Sullivan, Teresa A., Warren, Elizabeth, and Westbrook, Jay L.
2006 Less Stigma or More Financial Distress: An Empirical Analysis of the Extraordinary Increase in Bankruptcy Filings. Stanford Law Review 59(2):213-256.

Sunstein, Cass
1996 On the Expressive Function of Law. University of Pennsylvania Law Review 144(5):2021-2053.

Sutherland, John R.
1988 The Ethics of Bankruptcy: A Biblical Perspective. Journal of Business Ethics 7(12):917-927.

Tabb, Charles J.
1995 The History of the Bankruptcy Laws in the United States. American Bankruptcy Institute Law Review 3(1):5-52.

Tamari, Meir
1995 The Challenge of Wealth: A Jewish Perspective on Earning and Spending Money. New Jersey: J. Aronson.

Thoits, Peggy
1985 Self-labeling Processes in Mental Illness: The Role of Emotional Deviance. American Journal of Sociology 91(2):221-249.

Thorne, Deborah and Anderson, Leon
2006 Managing the Stigma of Personal Bankruptcy. Sociological Focus 39(2):77-97.

Tucker, David M.
1991 The Decline of Thrift in America: Our Cultural Shift From Saving to Spending. New York: Praeger.

Tylor, Edward B.
1889 On a Method of Investigating the Development of Institutions: Applied to Laws of Marriage and Descent. Journal of the Royal Anthropological Institute 18:245-269.

Wang, Jeff J.
2010 Credit Counseling to Help Debtors Regain Footing. Journal of Consumer Affairs 44(1):44-69.

Weber, Max
1958 The Protestant Ethic and the Spirit of Capitalism. New York: Scribner.

Weiner, Bernard, Perry, Raymond P. & Magnusson, Jamie
1988 An Attributional Analysis of Reactions to Stigma. Journal of Personality and Social Psychology 55(5):738-748.

Weiss, Mitchell G.
2001 Cultural epidemiology: an introduction and overview. Anthropology & Medicine 8(1):5-29.

Weiss, Mitchell G., Jadhav, Sushrut, Raguram, R., Vounatsou, Penelope & Littlewood, Roland
2001 Psychiatric Stigma Across Cultures: Local Validation in Bangalore and London. Anthropology & Medicine 8(1):71-87.

White, James J.
2006 Abuse Prevention 2005. Missouri Law Review 71(4):863-878.

Whitman, James Q.
1996 The Moral Menace of Roman Law and the Making of Commerce: Some Dutch Evidence. Yale Law Journal 105(7):1841-1889.

Wilson, Rodney
1997 Economics, Ethics and Religion: Jewish, Christian and Muslim Economic Thought. New York: New York University Press.

Wright, Eric R., Gronfein, William P., & Owens, Timothy J.
2000 Deinstitutionalization, Social Rejection, and the Self-Esteem of Former Mental Patients. Journal of Health and Social Behavior 41(1):68-90.

Zywicki, Todd J.
2005 Institutions, Incentives, and Consumer Bankruptcy Reform. Washington & Lee Law Review 62(3):1071-1138.

CASE CITATIONS

Butler v. Harrison, 578 A.2d 1098, 1100-01 (D.C. App. 1990).

Ludlow v. Van Camp, 1823 WL 1340, *2 (N.J. 1823).

Perry v. Commerce Loan Co., 383 U.S. 392, 395 (1966)

Silva v. Robinson, 156 So. 280 (Fla. 1934).

Tague v. Missouri Private Sector Individual Self-Insurers Guaranty Corp., 186 S.W.3d 469, 475 (Mo. App. W.D. 2006).

Zavelo v. Reeves, 227 U.S. 625 (1913).