Spring 2022

Portraits of Bankruptcy Filers

Pamela Foohey
Benjamin N. Cardozo School of Law, pamela.foohey@yu.edu

Robert M. Lawless
University of Illinois College of Law

Deborah Thorne
University of Idaho

PORTRAITS OF BANKRUPTCY FILERS

*Pamela Foohey, Robert M. Lawless & Deborah Thorne**

One in ten adult Americans has turned to the consumer bankruptcy system for help. For almost forty years, the only systematic data collection about the people who file bankruptcy has come from the Consumer Bankruptcy Project (CBP), for which we serve as co-principal investigators. In this Article, we use CBP data from 2013 to 2019 to describe who is using the bankruptcy system, providing the first comprehensive overview of bankruptcy filers in thirty years. We use principal component analysis to leverage these data to identify distinct groups of people who file bankruptcy. This technique allows us to situate the distinctions among filers' financial and household situations within what bankruptcy laws and courts can and cannot provide. We critique the consumer bankruptcy system, based on the totality of people who have used it recently, to identify avenues for reforming bankruptcy and to underscore the broader economic, racial, and social issues that consumer bankruptcy filings highlight.

* Pamela Foohey is Professor of Law at Cardozo School of Law, Yeshiva University. Robert M. Lawless is Max L. Rowe Professor of Law at the University of Illinois. Deborah Thorne is Professor of Sociology at the University of Idaho. The authors contributed equally and are listed in alphabetical order. The authors thank their research assistants who have contributed to the success of this project. Without their contributions, it would not have been possible to assemble the data that underlie this Article.

TABLE OF CONTENTS

I. INTRODUCTION

One in ten adult Americans has turned to the consumer bankruptcy system for help, often after struggling for years to pay their debts.[1] Between 2009 and 2018 alone, over 11 million individuals filed bankruptcy.[2] From these numbers, we can infer that there must be bankruptcy filers among our neighbors, our coworkers, our children's teachers, local shop owners, nurses who provide essential healthcare, and the people sitting next to us in church, mosque, or synagogue.

Although bankruptcy touches the lives of many Americans, the only systematic data collection about bankruptcy filers comes from the Consumer Bankruptcy Project (CBP), for which we serve as co-principal investigators.[3] In this Article, we use CBP data to evaluate who is using the bankruptcy system today and provide the first comprehensive overview of the people who file bankruptcy in thirty years.

Understanding the characteristics of the people who file bankruptcy yields valuable insights into the consumer bankruptcy system specifically and American households broadly. Knowing who files bankruptcy is necessary to evaluate whether current bankruptcy laws are achieving their goal of providing a fresh start for "the honest but unfortunate debtor."[4] Also, although not every person in financial distress files bankruptcy, the data available in

---

[1] *See* Pamela Foohey, Robert M. Lawless, Katherine Porter & Deborah Thorne, *Life in the Sweatbox*, 94 NOTRE DAME L. REV. 219, 235 (2018) [hereinafter Foohey et al., *Sweatbox*] (finding that 66.4% of the people who file bankruptcy indicate that they "seriously struggled with their debts" for two or more years prior to filing).

[2] Bob Lawless, *How Many People Have Filed Bankruptcy?*, CREDIT SLIPS (June 23, 2020, 3:02 PM), https://www.creditslips.org/creditslips/2020/06/how-many-people-have-filed-bankruptcy.html (relying on data from the Federal Judicial Center to calculate how many people filed bankruptcy between 2009 and 2018, and using population estimates and bankruptcy filing data to extrapolate how many living adults have filed bankruptcy).

[3] The CBP "is an on-going, long-term research project studying persons who file bankruptcy" that has proceeded in iterations; the current iteration is from 2013 through 2019. For further details about the CBP, see *Welcome to the Consumer Bankruptcy Project*, CONSUMER BANKR. PROJECT, http://www.consumerbankruptcyproject.org/ (last visited Feb. 24, 2022); *see also infra* Part III.

[4] Loc. Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) (alluding to a debtor's ability "to *start afresh* free from the obligations and responsibilities consequent upon business misfortunes" (emphasis added) (quoting Williams v. U.S. Fid. & Guar. Co., 236 U.S. 549, 554–55 (1915))).

bankruptcy court records provide a window into the economic stress on American families. The financial and other problems that people bring with them to bankruptcy courts may stem from systemic disparities in the economy and society. Understanding how these issues appear in the bankruptcy system will bring into sharper focus more effective loci for legal and policy changes.

Knowing who files bankruptcy is even more important as the United States revives its economy in the wake of the COVID-19 pandemic. Many armchair experts predicted consumer bankruptcy filings would increase in spring or summer 2020.[5] Informed by our work on the CBP, one of this Article's authors expressed skepticism that, despite the financial devastation wrought by COVID-19, there would be a sudden spike in consumer filings.[6] As 2021 drew to a close, almost twenty-two months into the pandemic, the spike had yet to come.[7]

---

[5] The headlines in local papers across the country said it all. *See, e.g.*, Peter McGuire, *Where Are All the Bankruptcies Experts Predicted?*, PORTLAND PRESS HERALD (Sept. 8, 2020), https://www.pressherald.com/2020/09/08/where-are-all-the-bankruptcies/ ("This spring, experts predicted economic devastation caused by the coronavirus pandemic would lead to a surge of bankruptcy filings . . . ."); David Dayen, *Unsanitized: How People Seeking Bankruptcy Will Suffer in the Pandemic*, AM. PROSPECT (Apr. 4, 2020), https://prospect.org/unsanitized-how-people-seeking-bankruptcy-will-suffer-in-the/ (discussing predictions in early April 2020 that "[t]he cases aren't likely to start piling up for a few months"); Jon Chavez, *Experts: Increase in Bankruptcies Likely as Pandemic Continues*, BLADE (Apr. 2, 2020), https://www.toledoblade.com/business/development/2020/04/02/increase-in-bankruptcies-likely-as-pandemic-continues-experts-say/stories/20200402126 (discussing predictions that "the number of individual and business bankruptcies will grow slowly and explode later this summer"); Adam Tamburin, *Bankruptcy Lawyers' Warning as Coronavirus Crisis Mounts: Act Now*, TENNESSEAN (Mar. 18, 2020, 1:38 PM), https://www.tennessean.com/story/news/2020/03/18/bankruptcy-lawyers-warning-coronavirus-crisis-mounts-act-now/5073669002/ (providing expert opinions that there was a "substantial risk that individuals [were] going to have to file for bankruptcy").

[6] *See* Bob Lawless, *Most of What You Read About the Bankruptcy Filing Rate Is Wrong*, CREDIT SLIPS (Aug. 5, 2020, 3:23 PM), https://www.creditslips.org/creditslips/2020/08/most-of-what-you-read-about-the-bankruptcy-filing-rate-is-wrong.html (discussing bankruptcy filings through the end of July 2020); Bob Lawless, *A Coming Consumer Bankruptcy Tsunami, Wave, or Ripple?*, CREDIT SLIPS (Apr. 16, 2020, 5:06 PM), https://www.creditslips.org/creditslips/2020/04/a-coming-consumer-bankruptcy-tsunami-wave-or-ripple.html (discussing the difficulties in predicting bankruptcy filing rates).

[7] *See* Bob Lawless, *Bankruptcy Filing Rate Is Lowest Since Bankruptcy Code's Enactment—The Question Is Why*, CREDIT SLIPS (Dec. 27, 2021, 8:30 AM), https://www.creditslips.org/creditslips/2021/12/bankruptcy-filing-rate-is-lowest-since-

COVID-19's financial distress likely will have a long tail. In the coming years, it is probable that more people will turn to bankruptcy for help. Policy makers likely will target the bankruptcy law revisions in legislative packages to stimulate the economy. For instance, the Consolidated Appropriations Act of 2021, passed by Congress and signed into law at the end of December 2020, which provided additional COVID-19 relief following the CARES Act,[8] included a few consumer bankruptcy provisions aimed at allowing people to stay in their homes and to have working utilities.[9]

More substantially, in December 2020, Senators Elizabeth Warren, Dick Durbin, and Sheldon Whitehouse and Representatives Jerrold Nadler and David Cicilline introduced the Consumer Bankruptcy Reform Act of 2020 (CBRA).[10] CBRA proposes a sweeping restructuring of the consumer bankruptcy system with the goals of simplifying the system and addressing racial and gender disparities in the current system.[11] The press

---

bankruptcy-codes-enactment-the-question-is-why-.html (providing hypotheses for why bankruptcy filings are low despite the pandemic).

[8] *See About the CARES Act and the Consolidated Appropriations Act*, U.S. DEP'T TREASURY, https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act (last visited Mar. 11, 2022) ("The Consolidated Appropriations Act continued many of [the CARES Act's] programs by adding new phases, new allocations, and new guidance to address issues related to the continuation of the COVID-19 pandemic.").

[9] *See* Christopher L. Hawkins, Elizabeth R. Brusa & Alexandra Dugan, *Four Significant Changes to Consumer Bankruptcy Included in the Consolidated Appropriations Act, 2021*, FIN. SERVS. PERSPS. (Jan. 8, 2021), https://www.financialservicesperspectives.com/2021/01/four-significant-changes-to-consumer-bankruptcy-included-in-the-consolidated-appropriations-act-2021/ (providing a discharge of residential mortgages in chapter 13 under specific circumstances and noting that utilities may not be terminated under specific circumstances).

[10] Consumer Bankruptcy Reform Act of 2020, S. 4991, 116th Cong. (2020), https://www.congress.gov/bill/116th-congress/senate-bill/4991; *see also* Press Release, Elizabeth Warren, Warren and Nadler Introduce the Consumer Bankruptcy Reform Act of 2020 (Dec. 9, 2020) [hereinafter Warren Press Release], https://www.warren.senate.gov/newsroom/press-releases/warren-and-nadler-introduce-the-consumer-bankruptcy-reform-act-of-2020.

[11] *See* Warren Press Release, *supra* note 10 (discussing the goals of CBRA and explaining how CBRA will simplify the bankruptcy process and address both gender and racial disparities in the bankruptcy system); Adam Levitin, *The Consumer Bankruptcy Reform Act of 2020*, CREDIT SLIPS (Dec. 9, 2020, 9:15 AM), https://www.creditslips.org/creditslips/2020/12/the-consumer-bankruptcy-reform-act-of-2020.html (providing an extensive overview of CBRA).

release announcing CBRA's introduction references COVID-19's economic impact on American families.[12] The details about the financial and life situations of the people who file bankruptcy will make for more informed legislative changes, including CBRA. Additionally, establishing a baseline now will tell us if the people who file bankruptcy in the coming months and years differed from those who filed in the years preceding the pandemic.

The CBP dataset has 474 variables from 5,600 randomly selected consumer bankruptcy cases filed during the seven-year period between 2013 and 2019. To make sense of this mass of data, we use principal component analysis (PCA), a statistical technique that exposes strong patterns in a dataset. For our data, this technique suggests nine groupings of financial and household situations among bankruptcy filers. These nine groupings demonstrate the heterogeneity among bankruptcy filers, as well as how larger patterns in society turn up in the consumer bankruptcy system.

Our analyses distill to five principal findings. First, the two most distinct groups of financial situations involve homes and cars, and most people have little equity in these homes and cars when they file. Second, people file to deal with a handful of other key debts: debt secured by other real property, small business debts, and priority and unsecured debts—particularly tax debt. Third, people file after threatened or actual legal actions: following state court lawsuits, facing the financial fallout from their divorces, and after struggling to pay their debts for years, which we have previously linked with debt collection.[13] Notable among these issues is divorce. Divorce links with our other two principal findings, which center on demographics. Fourth, bankruptcy remains a women's issue.[14] Younger parents, including single women, constitute a distinct

---

[12] *Warren and Nadler Introduce the Consumer Bankruptcy Reform Act of 2020*, *supra* note 10 (referencing the intensely negative economic effects of COVID-19 on many American families increasing the need for CBRA).

[13] *See* Foohey et al., *Sweatbox*, *supra* note 1, at 221, 240 (discussing how financial stressors such as lawsuits may lead many people who should have filed years before to finally file bankruptcy).

[14] *See* Elizabeth Warren, *What Is a Women's Issue? Bankruptcy, Commercial Law, and Other Gender-Neutral Topics*, 25 HARV. WOMEN'S L.J. 19, 24 (2002) [hereinafter Warren, *Women's Issue?*] ("[N]early 40% of those filing for bankruptcy were divorced or single women. . . . [B]ankruptcy filings by women has grown nearly 800% in less than two decades.").

grouping of debtors. Fifth (and finally), Black households file bankruptcy at more than twice the rate that they appear in the general population. Black single women, in particular, constitute a grouping of filers. These two findings of racial disparity highlight bankruptcy's intersection with larger economic and social issues.

Some of these findings are new, and some confirm what scholars established decades ago about the people who filed bankruptcy at that time, which researchers and policymakers have largely assumed continue to be present among bankruptcy filers. That some of our findings track with prior studies of bankruptcy filers from thirty years ago was far from predetermined. A lot has happened since Teresa Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook published *The Fragile Middle Class: Americans in Debt*,[15] which relied on an earlier wave of the CBP to detail the demographics and finances of consumer bankruptcy filers in 1991.[16] They sought to assess what the people who filed bankruptcy at that time suggested about "economic fractures in American society."[17] With this frame, they organized their analysis around identified financial risks that middle-class households face, including

---

[15] TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT (2000). Since this book's publication, to the best of our knowledge, the only publication that more comprehensively assessed the people who file bankruptcy is a white paper from the United States Census Bureau's Center for Economic Studies that combines bankruptcy records with the 2000 Decennial Census and the 2001–2009 American Community Surveys. *See* Jonathan Fisher, *Who Files for Personal Bankruptcy in the United States?* 7–11 (Ctr. for Econ. Stud., Working Paper No. CES 17-54, 2017), https://www2.census.gov/ces/wp/2017/CES-WP-17-54.pdf (reporting income, employment, race, ethnicity, education, age, and marital status of people who filed bankruptcy based on a sample of debtors from 1994 through 2009). The Consumer Financial Protection Bureau (CFPB) also published a report focusing on changes in the volume and types of bankruptcy filings between 2001 and 2018; this report uses credit reporting data to detail filers' credit scores and debts owed prior to their filings. Catherine Razeto & Charles Romeo, Consumer Fin. Prot. Bureau, CONSUMER BANKRUPTCY, BAPCPA, AND THE GREAT RECESSION 5–7 (2019), https://files.consumerfinance.gov/f/documents/cfpb_quarterly-consumer-credit-trends_consumer-bankruptcy_2019-08.pdf.

[16] The data came from bankruptcy courts in five states scattered across the country that were thought to be representative of filers nationwide. SULLIVAN, ET AL., *supra* note 15, at app. 1 at 265–66 (discussing the data collection process and what districts the researchers chose to analyze from Illinois, Pennsylvania, Texas, California, and Tennessee). As a comparison, Sullivan, Warren, and Westbrook also reported data about people who filed bankruptcy in 1997 in the Southern District of Ohio. *Id.* at app. 1 at 282–84.

[17] *Id.* at xiv.

employment, use of credit cards, medical issues, divorce, and housing.[18] They also reported demographics to evaluate whether bankruptcy filers represented a cross-section of Americans.[19]

Since the 1991 iteration of the CBP, published empirical studies of bankruptcy filers have proceeded with similar frames.[20] Researchers have identified distinct financial issues known to plague households and focused on people filing bankruptcy to deal

[18] *See id.* at ch. 3–7 (outlining "Unemployed or Underemployed," "Credit Cards," "Sickness and Injury," "Divorce," and "Housing").

[19] *See id.* at ch. 2 (analyzing bankruptcy filers in "Middle-Class and Broke: The Demography of Bankruptcy").

[20] There are a handful of publications using CBP data from subsequent iterations that report financial and demographic characteristics of bankruptcy filers more generally. These articles, however, do not comprehensively overview the people who file bankruptcy. *See, e.g.*, Robert M. Lawless, Angela K. Littwin, Katherine M. Porter, John A.E. Pottow, Deborah K. Thorne & Elizabeth Warren, *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 404, (2008) [hereinafter Lawless et al., *Did Bankruptcy Reform Fail?*] (reporting 2007 CBP data and detailing debtors' income, total assets, total debts, and secured and unsecured debts); Elizabeth Warren, *Financial Collapse and Class Status: Who Goes Bankrupt?*, 41 OSGOODE HALL L.J. 115, 142–44 (2003) (reporting 2001 CBP data focusing on education, occupation, and home ownership); Elizabeth Warren & Deborah Thorne, *A Vulnerable Middle Class: Bankruptcy and Class Status*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS 36–37 (Katherine Porter ed., 2012) (detailing debtors' income, education, occupation, and homeownership based on data from the 2007 CBP).

with them, such as to save their homes,[21] to keep their cars,[22] to

[21] For recent work on bankruptcy's relation to home ownership, see, e.g., Nathaniel Pattison & Richard M. Hynes, *Asset Exemptions and Consumer Bankruptcies: Evidence from Individual Filings*, 63 J.L. & ECON. 557, 565–70 (2020) (connecting homestead exemption levels with the composition of bankruptcy filers with home equity); Alan M. White & Carolina Reid, *Saving Homes? Bankruptcies and Loan Modifications in the Foreclosure Crisis*, 65 FLA. L. REV. 1713, 1732 (2013) (analyzing home loan data to determine whether filing bankruptcy influences foreclosure or default cure); Melissa B. Jacoby, Daniel T. McCue & Eric S. Belsky, *In or Out of Mortgage Trouble? A Study of Bankrupt Homeowners*, 85 AM. BANKR. L.J. 291, 299–300 (2011) (using 2007 CBP data to examine missed payments and foreclosures among people who file); Sarah W. Carroll & Wenli Li, *The Homeownership Experience of Households in Bankruptcy*, 13 CITYSCAPE 113, 115 (2011) (analyzing data on bankruptcy filers in Delaware collected from 2001 to 2007 to assess whether they retained their homes); John Eggum, Katherine Porter & Tara Twomey, *Saving Homes in Bankruptcy: Housing Affordability and Loan Modification*, 2008 UTAH L. REV. 1123, 1132–33 (analyzing a sample of chapter 13 filings from 2006 to assess housing affordability for bankruptcy debtors); Marianne B. Culhane, *No Forwarding Address: Losing Homes in Bankruptcy*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS, *supra* note 20, at 123–29 (relying on 2007 CBP data to discuss home loss after filing bankruptcy); Mark R. Lindblad, Roberto G. Quercia, Melissa B. Jacoby, Ling Wang & Huifang Zhao, *Bankruptcy During Foreclosure: Home Preservation Through Chapters 7 and 13*, 25 HOUS. POL'Y DEBATE 41, 57 (2015) (analyzing delinquent lower-income homeowners to find that filing bankruptcy reduces the incidence of foreclosure auction); Michelle J. White & Ning Zhu, *Saving Your Home in Chapter 13 Bankruptcy*, 39 J. LEGAL STUD. 33, 37–39 (2010) (discussing mortgage repayments by chapter 13 debtors). Other recent works focus on how bankruptcy law can address problems in the mortgage market. *See, e.g.*, Abbye Atkinson, *Modifying Mortgage Discrimination in Consumer Bankruptcy*, 57 ARIZ. L. REV. 1041, 1048 (2015) (arguing that allowing debtors to modify mortgages in bankruptcy will address racial discrimination in the mortgage market); Andrea Boyack & Robert Berger, *Bankruptcy Weapons to Terminate a Zombie Mortgage*, 54 WASHBURN L.J. 451, 471–73 (2015) (detailing how bankruptcy may help people deal with mortgage defaults); Tara Twomey, *Crossing Paths: The Intersection of Reverse Mortgages and Bankruptcy*, 89 AM. BANKR. L.J. 363, 392–94 (2015) (overviewing how bankruptcy and reverse mortgages may intersect in light of seniors' growing financial insecurity); Lynn M. LoPucki, *House Swaps: A Strategic Bankruptcy Solution to the Foreclosure Crisis*, 112 MICH. L. REV. 689, 694–95 (2014) (presenting a legal strategy for home mortgage modification in bankruptcy); Adam J. Levitin, *Resolving the Foreclosure Crisis: Modification of Mortgages in Bankruptcy*, 2009 WIS. L. REV. 565, 589–93 (relying on mortgage data to argue that permitting modification in bankruptcy would have little impact on mortgage cost or availability).

[22] *See* Pamela Foohey, Robert M. Lawless & Deborah Thorne, *Driven to Bankruptcy*, 55 WAKE FOREST L. REV. 287, 312–13 (2020) [hereinafter Foohey et al., *Driven*] (documenting what happens to car owners and their auto loans in bankruptcy); Edward R. Morrison & Antoine Uettwiller, *Consumer Bankruptcy Pathologies*, 173 J. INST. & THEORETICAL ECON. 174, 175 (2017) (analyzing data from chapter 13 cases filed in Cook County, Illinois to find that between 33% and 50% of the debtors used bankruptcy to combat license suspensions or save cars from seizure).

restructure finances in the wake of medical problems and job loss because of illness,[23] and to recover after small businesses failures.[24]

---

[23] For recent works, see, e.g., David U. Himmelstein, Robert M. Lawless, Deborah Thorne, Pamela Foohey & Steffie Woolhandler, Editorial, *Medical Bankruptcy: Still Common Despite Affordable Care Act*, 109 AM. J. PUB. HEALTH 431, 432 (2019) [hereinafter Himmelstein et al., *Medical Bankruptcy*] (reporting based on data from the current CBP that two-thirds of debtors cite medical expenses or illness-related work loss as contributors to their filings); Brook E. Gotberg & Michael D. Sousa, *Moving Beyond Medical Debt*, 27 AM. BANKR. INST. L. REV. 93, 122 (2019) (relying on a longitudinal survey of adults from 2004 to 2014 to find that a predictor of filings is a lapse in medical insurance coverage); Gordon Burtch & Jason Chan, *Investigating the Relationship Between Medical Crowdfunding and Personal Bankruptcy in the United States: Evidence of A Digital Divide*, 43 MGMT. INFO. SYS. Q. 237, 239 (2019) (exploring the connection between medical-related donations via crowdfunding platforms and bankruptcy filings); Daniel A. Austin, *Medical Debt as a Cause of Consumer Bankruptcy*, 67 ME. L. REV. 1, 2 (2014) (reporting data from filings in 2013 to adduce "that medical bills are the single largest causal factor in consumer bankruptcy"); Tal Gross & Matthew J. Notowidigdo, *Health Insurance and the Consumer Bankruptcy Decision: Evidence from Expansions of Medicaid*, 95 J. PUB. ECON. 767, 776 (2011) (concluding that out-of-pocket medical expenses are "pivotal" in about 26% of bankruptcies filed by low-income households); Melissa B. Jacoby & Mirya Holman, *Managing Medical Bills on the Brink of Bankruptcy*, 10 YALE J. HEALTH POL'Y L. & ETHICS 239, 242 (2010) (analyzing data from the 2007 CBP to find that bankruptcy schedules under-report medical debts that contribute to people's financial distress and bankruptcies); David U. Himmelstein, Deborah Thorne, Elizabeth Warren & Steffie Woolhandler, *Medical Bankruptcy in the United States, 2007: Results of a National Study*, 122 AM. J. MED. 741, 743 (2009) (relying on 2007 CBP data to find that 62% of debtors cited a medical contributor to their filings); David U. Himmelstein, Elizabeth Warren, Deborah Thorne & Steffie Woolhandler, *Illness and Injury as Contributors to Bankruptcy*, 24 HEALTH AFFS. W5-63, W5-66 (2005), https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.W5.63 (relying on 2001 CBP data to find that over half of debtors cited a medical contributor to their filings); Melissa B. Jacoby, Teresa A. Sullivan & Elizabeth Warren, *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375, 376–77 (2001) [hereinafter Jacoby et al., *Rethinking the Debates*] (relying on data from the 1999 CBP to establish that half of filings involved a medical problem); Edward R. Morrison, Arpit Gupta, Lenora M. Olson, Lawrence J. Cook & Heather Keenan, *Health and Financial Fragility: Evidence from Car Crashes and Consumer Bankruptcy* 2–3 (Univ. Chi. L. Sch. Coase-Sandor Inst. L. & Econ., Working Paper No. 655, 2013), https://ssrn.com/abstract=2353328 (examining adverse health shocks as a bankruptcy filing trigger based on Utah drivers involved in auto accidents).

[24] *See* Robert M. Lawless & Elizabeth Warren, *The Myth of the Disappearing Business Bankruptcy*, 93 CAL. L. REV. 743, 747 (2005) (relying on 2001 CBP data to find that about 17% of consumer bankruptcy filings involve the failure of a business); Robert M. Lawless, *Striking Out on Their Own: The Self-Employed in Bankruptcy*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS, *supra* note 20, at 105 [hereinafter Lawless, *Striking Out*] (reporting, based on 2007 CBP data, that 14% of debtors were self-employed when they filed

Subsequent studies likewise have centered on particular demographics, such as the age of filers,[25] education levels,[26] people living in rural areas,[27] undocumented individuals,[28] women,[29] households with children,[30] and race and ethnicity.[31] Additional

---

bankruptcy or in the two years preceding bankruptcy and that 58.4% of debtors reported self-employment as a reason for their filings).

[25] *See* Deborah Thorne, Pamela Foohey, Robert M. Lawless & Katherine Porter, *Graying of U.S. Bankruptcy: Fallout from Life in a Risk Society*, 90 SOCIO. INQUIRY 681, 700 (2020) [hereinafter Thorne at al., *Graying*] (relying on current CBP data to document a two-fold increase in the rate at which older Americans file bankruptcy); John A.E. Pottow, *The Rise in Elderly Bankruptcy Filings and the Failure of U.S. Bankruptcy Law*, 19 ELDER L.J. 119, 121 (2012) (relying on 2007 CBP data to detail increased bankruptcy filings among older Americans); Deborah Thorne, *The (Interconnected) Reasons Elder Americans File Consumer Bankruptcy*, 22 J. AGING & SOC. POL'Y 188, 189 (2010) (relying on 2007 CBP data to detail the contributors to increased bankruptcy filings among older people); Deborah Thorne, Elizabeth Warren & Teresa A. Sullivan, *The Increasing Vulnerability of Older Americans: Evidence from the Bankruptcy Court*, 3 HARV. L. & POL'Y REV. 87, 87–88 (2009) (relying on 2007 CBP data to detail increased filings among older Americans).

[26] *See* Abbye Atkinson, *Race, Educational Loans & Bankruptcy*, 16 MICH. J. RACE & L. 1, 3–4 (2010) (relying on 2007 CBP data to detail higher bankruptcy filings among Black debtors with college educations than white debtors with college educations); Katherine Porter, *College Lessons: The Financial Risks of Dropping Out*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS, *supra* note 20, at 85, 87–100 [hereinafter Porter, *College Lessons*] (relying on 2007 CBP data to analyze education and bankruptcy).

[27] *See generally* Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969 (relying on data from bankruptcies filed in 2001 and 2002 in rural counties of Iowa and Tennessee to explore differences in finances of rural and urban households).

[28] *See* Chrystin Ondersma, *Debt Without Relief: An Empirical Study of Undocumented Immigrants*, 68 RUTGERS U.L. REV. 1801, 1804 (2016) (relying on interviews with undocumented individuals in New York City to detail their bankruptcies); Nathalie Martin, *Giving Credit Where Credit Is Due: What We Can Learn from the Banking and Credit Habits of Undocumented Immigrants*, 2015 MICH. ST. L. REV. 989, 992, 1017–20 (relying on interviews with undocumented individuals in New Mexico to detail their bankruptcies); Chrystin Ondersma, *Undocumented Debtors*, 45 U. MICH. J.L. REFORM 517, 535 (2012) (assessing how many undocumented individuals filed bankruptcy from 2004 to 2010).

[29] *See* Warren, *Women's Issue?*, *supra* note 14, at 25 (detailing women in bankruptcy based on 2001 CBP data); Jacoby et al., *Rethinking the Debates*, *supra* note 22, at 386 (noting that "women are especially likely to have medically related bankruptcies").

[30] *See* Elizabeth Warren, *Families Alone: The Changing Economics of Rearing Children*, 58 OKLA. L. REV. 551, 552 (2005) (discussing 2001 CBP data to overview financial issues faced by parents); Elizabeth Warren, *Bankrupt Children*, 86 MINN. L. REV. 1003, 1009, 1011 (2002) (relying on 2001 CBP data to document how many children's families file bankruptcy).

[31] *See* Foohey et al., *Driven*, *supra* note 22, at 322–23 (detailing racial disparities in car

studies detail disparities in the use of the bankruptcy system and the incidence of obtaining a debt discharge based on race and pro se status.[32]

Although each of these inquiries is important, these studies do not provide general details about the people who file bankruptcy, such as median assets, debts, marital status, and number of children in the household. And because these studies focus on demographics, particular financial issues, and bankruptcy system outcomes, they generally do not situate their research subjects among the totality of bankruptcy filers.[33] Explicit or implicit in

ownership and auto debt of bankruptcy filers); Elizabeth Warren, *The Economics of Race: When Making It to the Middle Is Not Enough*, 61 WASH. & LEE L. REV. 1777, 1786 (2004) (relying on 2001 CBP data to document disparities in the finances among Black, Latinx, and white households that file bankruptcy).

[32] *See* Robert M. Lawless & Angela Littwin, *Local Legal Culture from R2D2 to Big Data*, 96 TEX. L. REV. 1353, 1357 (2018) (detailing racial disparities in filing chapters 7 and 13 based on filings between 2012 and 2016); Pamela Foohey, Robert M. Lawless, Katherine Porter & Deborah Thorne, *"No Money Down" Bankruptcy*, 90 S. CAL. L. REV. 1055, 1081–82 (2017) [hereinafter Foohey et al., *"No Money Down"*] (analyzing data from the 2007 and 2013–2015 CBPs to detail racial disparities in chapter choice and its intersection with attorneys' fees and payment timing); Sara S. Greene, Parina Patel & Katherine Porter, *Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes*, 101 MINN. L. REV. 1031, 1085–90 (2017) (assessing the predictors of obtaining a discharge in chapter 13 based on people who filed in 2007); Jean Braucher, Dov Cohen & Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEGAL STUD. 393, 393–94 (2012) (documenting disparities in chapter filing based on race and connecting the disparity to attorneys' influence in chapter choice); Lois R. Lupica, *The Costs of BAPCPA: Report of the Pilot Study of Consumer Bankruptcy Cases*, 18 AM. BANKR. INST. L. REV. 43, 65, 73 (2010) (detailing changes in attorneys' fees and outcomes in light of the 2005 amendments to the Bankruptcy Code); Rory Van Loo, *A Tale of Two Debtors: Bankruptcy Disparities by Race*, 72 ALB. L. REV. 231, 234–35 (2009) (finding that Black debtors are 40% and Latinx debtors are 43% less likely than white debtors to receive a discharge in chapter 13 after controlling for variables that may influence the incidence of discharge); Angela Littwin, *The Do-It-Yourself Mirage: Complexity in the Bankruptcy System*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS, *supra* note 20, at 157, 157–158, 160 (relying on 2007 CBP data to detail the characteristics of debtors who succeed without an attorney); Sumit Agarwal, Souphala Chomsisengphetz, Robert McMenamin & Paige Marta Skiba, *Dismissal with Prejudice? Race and Politics in Personal Bankruptcy* 15, 27 (5th Ann. Conf. on Empirical Legal Stud. Paper, 2020), https://ssrn.com/abstract=1633083 (predicting dismissal rates based on debtor household's race).

[33] *See* Foohey et al., *Driven*, *supra* note 22, at 288–89 (documenting what happens to car owners and their auto loans in bankruptcy). In our recent article based on CBP data, we focused on people who file who own cars and generally only reported data about car-owning filers. *See generally id.*

many of these studies is the assumption that the people who file bankruptcy are heterogenous, as was established by Sullivan, Warren, and Westbrook in the 1980s and 1990s.[34]

In the three decades that have passed since 1991, our world has changed in myriad ways. Income and wealth inequality have expanded drastically.[35] Outstanding consumer credit has increased more than 150%, from an inflation adjusted $1.5 trillion in 1991 to over $4 trillion in 2019.[36] The Internet has transformed from a novelty to a ubiquity. People bank online and take out home and auto loans through a fingertip's touch on their smartphones.[37] Home and auto loans now are routinely bundled and sold to investors, decoupling the loan servicing from the institutions that own the loans.[38] The debt collection industry has exploded as collectors

---

[34] *See* SULLIVAN ET AL., *supra* note 15, at 2–6 (exploring "the persistence of the stereotype that bankruptcy is a lower-class, not a middle-class, phenomenon"); *see also* Morrison & Uetweiller, *supra* note 22, at 1 (noting the substantial heterogeneity in people who file bankruptcy).

[35] *See* Pamela Foohey & Nathalie Martin, *Fintech's Role in Exacerbating or Reducing the Wealth Gap*, 2021 U. ILL. L. REV. 459, 467–68 (2021) [hereinafter Foohey & Martin, *Fintech's Role*] (detailing income and wealth inequality in America since the 1970s); Juliana Menasce Horowitz, Ruth Igielnik & Rakesh Kochhar, *Trends in Income and Wealth Inequality*, PEW RSCH. CTR. (Jan. 9, 2020), https://www.pewsocialtrends.org/2020/01/09/trends-in-income-and-wealth-inequality/ ("[I]ncome inequality in the U.S. is found to have increased by about 20% from 1980 to 2016.").

[36] The total amount of outstanding consumer credit in January 1991 was $806.6 billion, and in January 2019 it was $4,022.4 billion. *Consumer Credit Outstanding (Levels)*, BD. GOV. FED. RES. SYS., https://www.federalreserve.gov/releases/g19/hist/cc_hist_sa_levels.html (last visited Feb. 25, 2022). Consumer credit includes non-revolving and revolving credit, such as mortgages, auto loans, student loans, and credit cards. *Id.* The calculated percentage increase accounts for inflation since 1991 based on the Consumer Price Index (CPI). *See CPI Inflation Calculator*, U.S. BUREAU LAB. STAT., https://www.bls.gov/data/inflation_calculator.htm (last visited Feb. 24, 2022) (calculating data that represents changes in the price of all goods and services purchased for consumption by urban households).

[37] *See* Pamela Foohey, *Consumers' Declining Power in the Fintech Auto Loan Market*, 15 BROOK. J. CORP. FIN. & COM. L. 5, 16–17 (2020) (overviewing fintech platforms that allow people to get auto loans online and via their smartphones); Christopher K. Odinet, *Consumer Bitcredit and Fintech Lending*, 69 ALA. L. REV. 781, 783–84 (2018) (detailing how online firms have infiltrated lending markets, including home loans).

[38] *See* Foohey & Martin, *Fintech's Role*, *supra* note 35, at 477 (discussing asset securitization in the home mortgage market); Joy Wiltermuth, *Cracks in the $1.3 Trillion Auto-Finance Market Aren't Curbing Investor Demand for Risky Debt*, MARKETWATCH (Feb. 20, 2020, 11:05 AM), https://www.marketwatch.com/story/cracks-in-the-13-trillion-auto-

leverage technology to hound people for debts, even those that are decades old.[39]

Along with the economy, society, and technology, the people who file bankruptcy may have changed over the past thirty years. Even if their general finances and demographics have remained relatively constant—that is, they are still middle-class households teetering on a financial cliff[40]—the landscape of the financial cliff may have shifted. If so, the primary problem or confluence of problems that people bring with them to bankruptcy may have changed.

Now is the time to revisit the assumptions about the people who file that underlie much of the scholarship about consumer bankruptcy. Our extensive data collection allows us to step back and assess the consumer bankruptcy forest rather than its individual trees. This Article takes that broader perspective and systematically evaluates who files bankruptcy. Part II provides the necessary background about the consumer bankruptcy system to appraise the extent to which it can assist the people who use it. Part III details the CBP's methodology for collecting data.

Part IV presents the results of our analysis. We identify nine distinct groups of bankruptcy filers and consider the financial, legal, and demographic hallmarks of each group through a frame of four categories of problems that people bring to bankruptcy—assets and debts, education and employment, lawsuits filed by creditors and debt collectors, and household characteristics. This framing allows for a comprehensive description of consumer bankruptcy filers and the telling of representative stories about the individuals and families who seek help through the bankruptcy system. We also link our findings with prior strands of research about the key financial

---

finance-market-arent-curbing-investor-demand-for-risky-debt-2020-02-19 (discussing asset securitization in the auto loan market).

[39] *See* Foohey, et al., *Sweatbox*, *supra* note 1, at 250–51 (detailing changes in debt collection over the past several decades); PEW CHARITABLE TRS., HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS, 1–2 (2020), https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf (discussing a large uptick in the filing of debt collection lawsuits).

[40] *See* SULLIVAN ET AL., *supra* note 15, at 2–6 (arguing that aspects of the American economy practically guarantee that "in good times and in bad, some [middle-class] families will fall over the financial edge").

issues and demographic characteristics that people bring, or are assumed to bring, with them to bankruptcy.[41]

From this analysis, as detailed in Part V, we make two recommendations. First, there are some groups of people who file to deal with issues that are outside the wheelhouse of consumer bankruptcy. To a degree, bankruptcy has become the legal proceeding that certain groups of people who suffer from discrimination and inequities in lending markets, the workforce, and society at large turn to for help. Molding the bankruptcy system to address these filings will not affect their root causes, and bankruptcy law is not where solutions to these injustices should be situated.

Second, consumer bankruptcy laws and processes should be better tailored to the needs of the people who file. As in the 1980s and 1990s, the people who file bankruptcy continue to be heterogenous. But bankruptcy law provides only two options for them to deal with more than two distinct sets of financial problems: chapter 7 or chapter 13.[42] Based on the patterns our analysis shows, we identify avenues for reforming consumer bankruptcy to address the financial issues of filers more nimbly and effectively. In pinpointing potential reforms, we discuss CBRA. We also note where the consumer bankruptcy system itself serves to impede access to justice—which disproportionately affects the groups of people who turn to bankruptcy to deal with broader issues—and we discuss how our avenues for reform also will address these systemic issues. Part VI highlights our conclusions.

---

[41] *See supra* notes 21–31 and accompanying text.

[42] *See infra* Section II.B.

II. CONSUMER BANKRUPTCY PROCESS

People confronting financial distress have a range of choices in how to respond. Some people will sell property, ask their creditors for forbearance, try to find additional work, extract money from their retirement savings, trim their expenses, forego doctor visits and prescriptions, sell their plasma, or take on more debt to pay their current debt.[43] Others will file bankruptcy, despite taking some or all of those actions to try to pay their debts. In thinking about whether they should file, people will face barriers to access, will need to decide which of two chapters—chapter 7 or chapter 13—they should file,[44] and will realize that there is much that bankruptcy does not and cannot address. This Part details consumer bankruptcy's barriers to entry, chapters, and limitations. Readers familiar with the United States' consumer bankruptcy system may want to skip to the next Part.

A. BARRIERS TO ENTRY

For many people, bankruptcy is an expensive, time-consuming, and confusing process, particularly after the changes that the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005 made to the Bankruptcy Code.[45] Because of the

---

[43] *See* Foohey et al., *Sweatbox*, *supra* note 1, at 241–44 (detailing people's privations and tactics to pay their debts prior to their bankruptcy filings); *see also* H. Luke Shaefer & Analidis Ochoa, *How Blood-Plasma Companies Target the Poorest Americans*, ATL. (Mar. 15, 2018), https://www.theatlantic.com/business/archive/2018/03/plasma-donations/555599/ (discussing Americans "flooding into . . . plasma donation centers in greater numbers than ever before, seeking to make up for low wages").

[44] Although people also may file chapter 11, very few do so because it is expensive and cumbersome. *See* Foohey et al., *Sweatbox*, *supra* note 1, at 226 n.32 (providing that "Chapter 11 cases accounted for 0.15% of all nonbusiness cases filed in 2016"). This discussion thus focuses on chapters 7 and 13.

[45] *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2015, Pub. L. No. 109-8, 119 Stat. 23 (2005). The law's effective date was October 17, 2005. *Id.* § 1406(a), 119 Stat. at 215; *see also* Angela Littwin, *Adapting to BAPCPA*, 90 AM. BANKR. L. J. 183, 183–87 (2016) (overviewing BAPCPA's changes to the Code that "appeared likely to impair the consumer bankruptcy system's ability to function"); Lois R. Lupica, *The Consumer Bankruptcy Fee Study: Final Report*, 20 AM. BANKR. INST. L. REV. 17, 27 (2012) (noting BAPCPA's goals of reducing "consumer bankruptcy filings, . . . declin[ing] consumer cases

bankruptcy system's complexity, most people who file do so with the help of an attorney. In recent years, based on CBP data, 88% of debtors were represented when they filed.[46] The consequences of filing without an attorney can be severe. Bankruptcy judges dismiss pro se filings at much higher rates than attorney-represented cases. Consequently, pro se debtors are less likely to receive a discharge of debts.[47]

Because of the system's complexity, attorneys charge their clients a sizable amount for a financially struggling household. On average, attorneys charge $1,313 to assist with chapter 7 cases and $3,792 for chapter 13 cases.[48] Prior studies have shown that attorneys' fees rose after BAPCPA's passage, based, according to interviewed attorneys, on the added documentation and other requirements.[49]

After meeting with their attorney, debtors must provide financial information to complete extensive paperwork, including schedules that detail what they own (assets) and the amounts they owe to creditors (debts), six months of pay stubs, and tax returns.[50] To

---

filed under chapter 7," and stopping perceived abuse in the bankruptcy system); Ronald J. Mann, *Bankruptcy Reform and the "Sweat Box" of Credit Card Debt*, 2007 U. ILL. L. REV. 375, 377 (describing BAPCPA's changes to the Code).

[46] *See infra* Table 7; *see also* Lupica, *supra* note 45, at 31 (finding in a sample of cases filed in 2007 and 2008 that 5.8% of the chapter 7 cases and 2% of the chapter 13 cases were filed pro se); A. Mechele Dickerson, *Racial Steering in Bankruptcy*, 20 AM. BANKR. INST. L. REV. 623, 630 (2012) ("*Pro se* chapter 7 filings increased by more than 200% post-BAPCPA and [*pro se*] chapter 13 filings rose by almost 190%.").

[47] *See* Foohey et al., *Sweatbox*, *supra* note 1, at 229 n.55 (discussing findings about discharge and dismissal (citing Lupica, *supra* note 45, at 81, 139 tbl.A–7)).

[48] These figures are based on CBP data from 2013 to 2019. *See infra* Part III. "Because of how bankruptcy attorneys report their fees, we are unable to disaggregate attorneys' fees from bankruptcy petition filing fees. Most of the attorneys' fee data likely include the filing fee. The filing fee is $335 for a chapter 7 [case] and $310 for a chapter 13 [case]." Foohey et al., *"No Money Down"*, *supra* note 32, at 1058 n.10. For a discussion of how attorneys' fees affect bankruptcy filings, see generally *id.*

[49] *See* Lupica, *supra* note 45, at 30, 57 (finding that attorneys' fees increased from 24% to 48% after BAPCPA, depending on the chapter filed, the amount of administrable assets, and whether the debtor received a discharge).

[50] *See* 11 U.S.C. § 521(a) (listing all of the debtor's duties including, among other things, a "schedule of assets and liabilities" and "a schedule of current income"); *Bankruptcy Forms*, U.S. CTS., https://www.uscourts.gov/forms/bankruptcy-forms (last visited Feb. 24, 2022) (providing all of the various forms required to successfully petition for bankruptcy as an individual).

construct those schedules, debtors need their bank statements and must calculate their monthly expenses.[51] Consumer debtor attorneys have remarked that these requirements "impose an accountant-like document retrieval on a slice of the population that is neither trained nor dispositionally [sic] oriented to."[52] As perceived by attorneys, people who file bankruptcy often are "incapacitate[d]" by stress, and their financial situations are "perhaps too painful to them."[53] For some people who contemplate filing, the added stress of bankruptcy's requirements may stop them from ever filing.[54]

In addition to the paperwork, all debtors must complete credit counseling prior to filing.[55] The pre-bankruptcy credit counseling is offered for as little as $25 and consists of a sixty-minute session conducted over the Internet or telephone.[56] The pre-bankruptcy credit counseling is universally disdained as a pointless and demeaning hurdle that debtors must jump before filing bankruptcy.[57] Before exiting bankruptcy, consumers also must complete a financial management course, which has been similarly criticized, although it has its defenders for chapter 13 filers.[58]

---

[51] *See* Littwin, *supra* note 32, at 195–96 (discussing the arduous documentation requirements necessary to file a chapter 7 bankruptcy).

[52] *Id.* at 196 (alteration in original) (quoting from interviews of consumer debtor attorneys).

[53] *Id.* (quoting from interviews of consumer debtor attorneys).

[54] *See id.* (noting the difficulties for self-employed individuals to meet the requirements); Foohey et al., *Sweatbox*, *supra* note 1, at 228 (noting the cumulative onerousness of these little requirements and how BAPCPA was described "death by a thousand cuts").

[55] *See* 11 U.S.C. §§ 109(h)(1), 727(a)(11), 1328(g) (listing various requirements necessary to be a debtor).

[56] *See* AM. BANKR. INST., FINAL REPORT OF THE ABI COMMISSION ON CONSUMER BANKRUPTCY 126 (2019), https://consumercommission.abi.org/commission-report ("The average cost for credit counseling is $25 with fee waivers for 19% of the debtors who cannot afford it.").

[57] *See* Littwin, *supra* note 32, at 196–98 (noting that the credit counseling creates a hurdle to filing and discharge and quoting interviewed attorneys as deeming this course "burdensome" and "a complete and utter waste of my clients' time").

[58] *See* Michael D. Sousa, *Just Punch My Bankruptcy Ticket: A Qualitative Study of Mandatory Debtor Financial Education*, 97 MARQ. L. REV. 391, 444–450 (2013) (interviewing chapter 7 filers about these requirements); Deborah Thorne & Katherine Porter, *Financial Education for Bankrupt Families: Attitudes and Needs*, 24 J. CONSUMER EDUC. 15, 18 (2007) [hereinafter Thorne & Porter, *Financial Education*] (examining debtors' perceptions of the financial management course); AM. BANKR. INST., *supra* note 56, at 126 (recommending that the financial management course be retained in chapter 13).

B. CHAPTERS 7 AND 13

The Code provides only two options for people who file bankruptcy.[59] People must fit their particular issues into either chapter 7 or chapter 13, even if the chapter is designed primarily to deal with other types of financial problems. Historically, nationwide, about two-thirds of consumer debtors file chapter 7, and one-third file chapter 13.[60]

Both chapters begin with filing the petition with the bankruptcy court, which creates the bankruptcy estate and activates the automatic stay.[61] The automatic stay halts most collection attempts against the debtor and the debtor's property, such as collection calls, car repossession, wage garnishment, and foreclosure sales of their houses.[62]

Chapter 7 provides for liquidation of a consumer debtor's nonexempt assets in exchange for a discharge of most unsecured debts. The debtor can exempt specific assets from their bankruptcy estate.[63] The chapter 7 trustee sells nonexempt assets in the estate and distributes the proceeds to creditors.[64]

Some of the debtor's property—such as houses and cars—may be subject to liens. Bankruptcy law discharges the debtor's personal

---

[59] *See supra* note 44 (noting that very few people file chapter 11).

[60] *See* Foohey et al., *"No Money Down"*, *supra* note 32, at 1063 n.36 (noting that in 2013–14 CBP, 34.4% of the sampled cases were chapter 13); Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 TEX. L. REV. 103, 116, 119 (2011) [hereinafter Porter, *Pretend Solution*] (overviewing filing statistics, and noting that two-thirds file chapter 7 while "Chapter 13 attracts about one in three" filers).

[61] *See* 11 U.S.C. §§ 362(a), 541(a) (creating an automatic stay and an estate upon commencement of a bankruptcy petition).

[62] 11 U.S.C. § 362(a).

[63] 11 U.S.C. § 522(b) (allowing debtors the ability to "exempt from property of the estate" various assets); *see* Foohey et al., *Driven*, *supra* note 22, at 299–300 (discussing several property exemptions).

[64] *See* Pamela Foohey, *A New Deal for Debtors: Providing Procedural Justice in Consumer Bankruptcy*, 60 B.C. L. REV. 2297, 2338 (2019) [hereinafter Foohey, *New Deal for Debtors*] (discussing the trustee's role). In chapters 7 and 13, the trustee is a private attorney charged with overseeing the bankruptcy case. *Id.* Research has shown that more than 90% of chapter 7 cases are "no-asset," meaning that the debtor owns no property subject to liquidation. *See* Dalié Jiménez, *The Distribution of Assets in Consumer Chapter 7 Bankruptcy Cases*, 83 AM. BANKR. L.J. 795, 797 (2009) (finding that 93% of nonbusiness chapter 7 debtors who filed in 2007 had no distributable assets).

liability on the loan, but not the lien.[65] That is, bankruptcy does not change the promise that the debtor has made to its lender about the collateral. For a home loan, the lender still can foreclose. For a car loan, the lender still can repossess the car. Post-bankruptcy, the debtor will have to pay the amount owed to prevent foreclosure or repossession. But the discharge means that foreclosure or repossession is all that these creditors can do to collect on the debt.[66]

Bankruptcy law—on the books and on the ground—provides ways for the debtor to keep property subject to liens. The Code specifically addresses personal property, such as cars, but not real property, such as houses.[67] The law on the ground has developed to allow debtors to keep their real property in chapter 7, and many people file chapter 7 owning homes subject to liens.[68] Chapter 13, in contrast, provides special tools to people who are behind on their mortgages and want to keep their homes.

Thus, chapter 7 is considered to be most useful to people with few assets of value that they want to keep, with considerable unsecured debts that they hope to discharge, and without home ownership. The proceeding typically lasts four to six months and ends with the debtor receiving a discharge of most debts.[69] Historically, more than 95% of people who file chapter 7 receive a discharge.[70]

Since 2005, with the enactment of BAPCPA, people must pass the "means test" to file under chapter 7, which is meant to serve as an income screen that restricts eligibility to chapter 7's quick

---

[65] *See* 11 U.S.C. §§ 727, 1328 (requiring the court to enter a discharge).

[66] While a bankruptcy case is pending, the trustee also may abandon the asset, allowing the creditor to foreclose or repossess it as allowed under applicable law. *See* 11 U.S.C. § 554(a) ("After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.").

[67] For personal property, the debtor must file a Statement of Intention that specifies whether the debtor intends to surrender, redeem, or reaffirm the debt on the asset. 11 U.S.C. § 521(a)(2)(A); *see also* Foohey et al., *Driven*, *supra* note 22, at 301–02 (describing the Statement of Intention).

[68] *See* Foohey et al., *"No Money Down"*, *supra* note 32, at 1063 & n.37 (detailing how debtors may keep houses in chapter 7); *infra* Section IV.B.*1*.

[69] *See* 11 U.S.C. §§ 523, 727 (providing which debts under chapter 7 will be discharged).

[70] In the 2007 CBP, 97% of debtors who filed chapter 7 received a discharge. *See* Foohey et al., *"No Money Down"*, *supra* note 32, at 1093 tbl.5 (displaying the outcomes of cases by chapter from the 2007 CBP); *see also* Foohey et al., *Sweatbox*, *supra* note 1, at 226–27 (detailing the distinctions between chapter 7 filings and chapter 13 filings).

discharge.[71] If a household has too much income in comparison to allowed expenses and debts, it must either file chapter 13 or not file bankruptcy at all.[72]

Chapter 13 requires repayment to creditors over a three- to five-year repayment plan that is funded by a debtor's "disposable income."[73] Generally, debtors must live on tight budgets while making plan payments.[74] In return, the debtor keeps all property, regardless of exemptions, and is allowed to use the property during the pendency of the case.[75]

For property subject to a lien, such as houses and cars, the chapter 13 plan will provide for payment of any missed payments prior to filing and for ongoing payments on the creditor's secured claim, including interest on that claim.[76] For the debtor's principal residence[77] and any automobiles purchased in the two and a half years before filing bankruptcy, [78] the chapter 13 plan cannot alter the principal owing on the loan or the interest rate on the loan. For

---

[71] *See* H.R. REP. NO. 109-31, pt. 1, at 2 (2005) ("The heart of the bill's consumer bankruptcy reforms consists of the implementation of an income/expense screening mechanism . . . ."); Lawless et al., *Did Bankruptcy Reform Fail?*, *supra* note 20, at 352–53 (explaining the origins of the means test).

[72] *See* Foohey et al., *Sweatbox*, *supra* note 1, at 228 (explaining the intention behind the means test). A small minority of people may file chapter 11, or they may not file at all. *See supra* note 44 and accompanying text; *see also* Charles J. Tabb, *Consumer Bankruptcy After the Fall: United States Law Under S. 256*, 43 CAN. BUS. L.J. 28, 40 (2006) (arguing that the means test was designed to keep people from filing bankruptcy by limiting their access to chapter 7).

[73] 11 U.S.C. §§ 1322, 1325 (detailing the contents of the repayment plan and the grounds on which the court confirms the repayment plan).

[74] *See* 11 U.S.C. § 1325(b) (detailing plan confirmation for debtors with a disposable income).

[75] *See* Foohey et al., *"No Money Down"*, *supra* note 32, at 1062–63 (overviewing chapter 13 proceedings).

[76] A secured creditor may consent to different treatment. *See* Foohey et al., *Driven*, *supra* note 22, at 302 (detailing the treatment of secured creditors in chapter 13); Porter, *Pretend Solution*, *supra* note 60, at 117–18 (discussing payment of secured debts).

[77] *See* 11 U.S.C. § 1322(b)(2) (providing that the plan may "modify the rights of holders of secured claims" other than those secured by the debtor's principal residence).

[78] *See* 11 U.S.C. § 1325(a)(9) (specifying the requirements for confirmation of the repayment plan). This provision also applies to purchase money security interests granted by the debtor to creditors in personal property acquired within one year before the bankruptcy petition date. *Id.* A "purchase-money security interest" is one that secures a loan for the purchase price of the car. *See* Foohey et al., *Driven*, *supra* note 22, at 302–03 (discussing the role of vehicle debt that is more than two and a half years old in chapter 13).

loans secured by other assets, the debtor can write down the principal to the value of the asset and reset the interest rate to a current market rate, but of course, few consumers have loans secured by assets other than their houses and newer cars.

The ability to spread missed payments over the three- to five-year life of the plan instead of paying arrearages all at once, as people must do outside of bankruptcy, makes chapter 13 particularly useful for those who have fallen behind on payments to secured creditors, such as mortgage and auto lenders.[79] Likewise, because of the ability to retain property and because the Code's plan confirmation requirements will generally require mortgage lenders to deal with debtors, chapter 13 is considered most useful to people who want to save their homes.[80] The historical development of chapter 13 also shows an explicit home-saving purpose. [81]

Debtors must balance these benefits against the timing of the chapter 13 discharge, which comes only after the debtor makes all payments under the repayment plan (barring an uncommon "hardship discharge").[82] Because chapter 13 debtors must journey from filing the initial petition through plan confirmation and completion, the proceeding may take over six years. Not only is that a long time to wait for a discharge, but extensive data also show that, historically, only one-third of chapter 13 cases end with the discharge.[83] The remaining two-thirds of chapter 13 cases are dismissed or converted to chapter 7.[84] If a chapter 13 case ends in

---

[79] *See* Foohey et al., *Driven*, *supra* note 22, at 302 ("[C]hapter 13 can be an especially useful tool. The debtor can spread repayment of the arrearage over the three- or five-year life of the plan instead of paying it all at once, as they would need to do outside of bankruptcy.").

[80] *See* Porter, *Pretend Solution*, *supra* note 60, at 117–18 ("Chapter 13 is widely used by homeowners facing foreclosure . . . .").

[81] *See id.* at 135–36 (discussing the development of chapter 13 with the government's aim toward home ownership).

[82] *See* 11 U.S.C. § 1328(a)–(b) (directing the court to enter a discharge after completion of plan but also providing that the judge may enter a discharge if "the failure to complete such payments under the plan is due to circumstances for which the debtor should not justly be held accountable").

[83] In the 2007 CBP, 36.5% of chapter 13 cases resulted in a discharge following plan completion. *See* Greene et al., *supra* note 32, at 1042–43 (noting that the CBP's one-third statistic has endured for decades); *see also* Porter, *Pretend Solution*, *supra* note 60, at 107–08 (overviewing studies confirming the one-third statistic).

[84] *See* Greene et al., *supra* note 32, at 1043 (reporting dismissal or conversion outcomes in 62.5% of the chapter 13 cases in the CBP's 2007 sample).

dismissal, the debtor does not receive debt forgiveness and remains personally liable for all debts not paid during the chapter 13 case, potentially including additional accrued interest and fees.[85]

People also must think about the scope of bankruptcy's discharge, which does not encompass all debts. The discharge in chapter 13 includes a few more unsecured debts than in chapter 7—most notably, certain government fines and fees, like parking tickets,[86] and certain past-due property and income taxes.[87] Neither chapter allows for the discharge of "domestic support obligations," such as child support and alimony,[88] and some debts incurred because of the debtor's willful or malicious misconduct.[89] Likewise, chapters 7 and 13 do not discharge student loans absent a showing of "undue hardship."[90] Caselaw has developed such that bankruptcy courts require debtors to show an inability to repay the student

---

[85] *See* Porter, *Pretend Solution*, *supra* note 60, at 112 ("The remaining . . . cases ended in dismissals. This meant families still owed the full amount of their debts plus interest that accrued during the time they were in Chapter 13.").

[86] *Compare* 11 U.S.C. § 727(b) (failing to provide for discharge of civil fines under chapter 7), *with* 11 U.S.C. § 1328(a)(3) (excepting criminal fines, but not civil fines, from discharge under chapter 13). For a discussion of the scope of the chapter 7 and 13 discharge as regards civil fines and fees, see generally Pamela Foohey, *Fines, Fees, and Filing Bankruptcy*, 98 N.C. L. REV. 419 (2020) [hereinafter Foohey, *Fines, Fees*].

[87] *Compare* 11 U.S.C. § 727(b) (failing to provide for discharge of past-due taxes), *with* 11 U.S.C. § 1328(a)(2) (providing for the discharge of certain past-due property and income taxes).

[88] *See* 11 U.S.C. § 523(a)(5) ("A discharge under section 727, . . . or 1328(b) of this title does not discharge an individual debtor from any debt— . . . for a domestic support obligation . . . ."). Chapter 13 provides for the discharge of certain divorce and separation agreements. *See* 11 U.S.C. § 1328(a)(2) (excepting domestic support obligations from discharge but allowing discharge of property division debt because it is not specifically listed).

[89] *See* 11 U.S.C. § 523(a)(6) ("A discharge under section 727, . . . or 1328(b) of this title does not discharge an individual debtor from any debt— . . . for willful and malicious injury by the debtor . . . ."); *see also* Foohey, *Fines, Fees*, *supra* note 86, at 421–22 (detailing chapter 13's "superdischarge").

[90] 11 U.S.C. § 523(a)(8); *see* McDaniel v. Navient Solutions, LLC (*In re* McDaniel), 973 F.3d 1083, 1100 (10th Cir. 2020) (holding that private student loans not otherwise covered by 11 U.S.C. § 523(a)(8) are dischargeable); *see also* Jason Iuliano, *Student Loan Bankruptcy and the Meaning of Educational Benefit*, 93 AM. BANKR. L.J. 277, 313 (2019) (arguing that the language of 11 U.S.C. § 523(a)(8) does not encompass most private student loans).

loans in the past, currently, and in the future to prove "undue hardship," which is a burden that most debtors cannot meet.[91]

If people's primary financial stressors stem from these nondischargeable debts, filing bankruptcy may not be productive for them. Alternatively, discharging other debts may free them up to pay student loans, taxes, or other nondischargeable debts going forward. Studying who files bankruptcy will shed light on how bankruptcy laws align with the problems people bring with them to bankruptcy courts and, more broadly, on the economic issues that American households face.

III. CONSUMER BANKRUPTCY PROJECT METHODOLOGY

To assess the people who file bankruptcy, we rely on data from the CBP, a long-running study of consumer bankruptcy filers. The CBP began in 1981 and has since proceeded in iterations in 1991, 1999, 2001, and 2007.[92] The CBP started continuous data collection in 2013. This Article uses data collected by the CBP from 2013–2019, hereinafter referred to as the "current CBP." The authors of this Article now serve as the co-principal investigators (co-PIs) for the CBP.[93]

---

[91] *See* Matthew Bruckner, Brook Gotberg, Dalié Jiménez & Chrystin D. Ondersma, *A No-Contest Discharge for Uncollectible Student Loans*, 91 U. COLO. L. REV. 183, 193–205 (2020) (discussing how courts assess "undue hardship"); John Patrick Hunt, *Student Loan Purpose and the* Brunner *Test*, 15 HARV. L. & POL'Y REV. 237, 251–264 (2020) (discussing the ordinary meaning of "undue hardship," reviewing courts' historic interpretation of the phrase, and proposing a new definition of the phrase). *But see* Jason Iuliano, *An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard*, 86 AM. BANKR. L.J. 495, 499, 505 (2012) (finding that, among the sample of bankruptcy cases filed in 2007, 0.1% of filers with student loans attempted to discharge their student loans and that courts granted a discharge to almost 40% of debtors who sought a discharge).

[92] *See* Lawless et al., *Did Bankruptcy Reform Fail?*, *supra* note 20, at 387–98 (detailing the extensive history of the CBP); Jacoby et al., *Rethinking the Debates*, *supra* note 23, at 386–91 (discussing the 1999 "Phase III" of the CBP); Katherine Porter, *Appendix: Methodology of the 2007 Consumer Bankruptcy Project*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS, *supra* note 20, at 235, 236–44 (overviewing the CBP and detailing the 2007 CBP methodology); *see also* TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA 17, 19 (1989) (reporting on the people who filed bankruptcy in 1981); SULLIVAN ET AL., *supra* note 15, at 264 (detailing the initiation of the Consumer Bankruptcy Project in 1981 and its later adaptations).

[93] For more about the CBP, see *Consumer Bankruptcy Project*, *supra* note 3.

In the current CBP, co-investigators draw a national random sample of 200 bankruptcy cases (chapter 7 and chapter 13) every three months.[94] Bankruptcy court records are publicly and electronically available. The court records for each household that filed bankruptcy in the sample are downloaded and coded into a database by law students supervised by one of the co-PIs. Over 100 financial variables, such as assets, debts, income, and expenses, are coded from each court record. One or more of the co-PIs double-checks the court-record coding with a computer program to identify potentially inaccurate data entries.[95] The current CBP thus consists of court records for 5,600 households that filed bankruptcy between 2013 and 2019.

The judicial status of each case (dismissed, discharged, or pending) is recorded at the time the bankruptcy files are collected. Because most cases are still pending, the dispositions are recorded again approximately one year after initial data collection. As with the court record data, the dispositions data are double-checked for accuracy.

Each household in the sample is mailed a seven-page questionnaire requesting information about the household's circumstances before and after their bankruptcy filings, money management tactics used prior to filing, reasons for filing, basic health information, and demographic information. Respondents who complete the questionnaire receive a fifty-dollar gift card for participating.[96] In total, exactly 1,500 questionnaires were returned for a response rate of 27%.[97] One of the co-PIs entered the questionnaire data into Qualtrics.

---

[94] *See* Foohey et al., *Driven*, *supra* note 22, at 305–06 (discussing the CBP methodology); *see also* Foohey et al., *Sweatbox*, *supra* note 1, at 233 (discussing the method of collection as it pertains to the six-month bankruptcy case study); Foohey et al., *"No Money Down"*, *supra* note 32, at 1071–74 (discussing the collection method for a separate study).

[95] *See* Foohey et al., *Driven*, *supra* note 22, at 305–06 (overviewing data collection procedures and detailing data about cars collected); Foohey et al., *"No Money Down"*, *supra* note 32, at 1072–73 (overviewing court record data collection).

[96] *See* Foohey et al., *Sweatbox*, *supra* note 1, at 233–34 (detailing the procedure for soliciting responses and data collected); Foohey et al., *"No Money Down"*, *supra* note 32, at 1073 (describing the data collection process).

[97] *See* Foohey et al., *"No Money Down"*, *supra* note 32, at 1073–74 (detailing methodology for assessing response bias in the questionnaire).

This Article uses the full set of 5,600 bankruptcy cases when reporting data solely from court records, and the set of 1,500 questionnaires when reporting other information, such as age, sex, marital status, and race. We generally report medians rather than means in this Article because outliers heavily influence the means. All dollar-denominated data, such as attorneys' fees, asset values, and debt amounts, are adjusted to July 2019 dollars based on the Consumer Price Index.[98]

Because this Article draws upon seven years of data collection, we looked for time effects in our data. We analyzed fixed effects with each year and time trends across the seven years. We found no time effects with one exception. Specifically, people in our dataset who filed in 2013 and 2014 are somewhat more likely to have problems with a principal residence. They have more secured debt and are more likely to have had a home foreclosure. For example, 6.8% of the 2013–2014 filers have a foreclosure compared to 5.2% of the filers from 2015–2019. The likely reason is the closer proximity to the Great Recession. We examined all of our home-related variables, and when excluding 2013–2014, the only variable that changes a result by 10% or more is home equity, which we note in a footnote to Table 2.[99]

IV. RESULTS: HETEROGENEITY OF FILERS

Relying on current CBP data, this Part comprehensively assesses the people who have filed bankruptcy in the past seven years. It begins with the results of our principal component analysis (PCA), through which we identify nine groups of people who file bankruptcy. Most of this Part is devoted to detailing the characteristics of the financial, legal, and household situations that each group of filers brings to bankruptcy. This Part ends by returning to how people access the consumer bankruptcy system, including retention of an attorney and chapter choice, and the correlation of those decisions with whether a debtor receives a discharge.

---

[98] *See Consumer Price Index*, BUREAU LAB. STAT., http://www.bls.gov/cpi (last visited Feb. 24, 2022) (mapping the monthly change in CPI among select categories such as food and energy).

[99] *See infra* Table 2 (showing the finances of bankruptcy filers).

A. NINE GROUPS OF FILERS

This Article's primary goal is to provide a current and complete analysis of the people who file bankruptcy. Descriptive statistics, such as income or race, provide insights into who files bankruptcy. For example, based on current CBP data, we know that 43% of bankruptcy filers own a home. Other analyses can help explain how variables relate to each other, such as the fact that homeowners are more likely to own a car than non-homeowners (89.7% vs. 80.7%, $X^2 = 78.73$, $p < .001$). Correlation and regression are other familiar techniques that can show relationships among variables.

To identify patterns in our data, we relied on a different, more sophisticated technique—PCA. An advantage of PCA is that it is an unsupervised analysis. Namely, without interference from the researcher, it identifies relationships that emerge from the data. PCA's advantage is also a weakness, though. It produces components that themselves have no independent meaning.[100] Our PCA identified nine components—which we refer to as groups—that we characterized based on the variables loaded onto each component and our experience as bankruptcy researchers. Different researchers might have characterized the components differently.

We began our PCA with 1,229 bankruptcy cases for which we had non-missing values for all of twenty-seven variables.[101] By definition, the totality of the relationships among all those data is captured by the twenty-seven variables. PCA identified a first component that by itself explained 10.9% of the variation in the dataset, a substantial improvement of the explanatory power of any

---

[100] *See, e.g.*, Felipe L. Gewers, Gustavo R. Ferreira, Henrique F. de Arruda, Filipi N. Silva, Cesar H. Comin, Diego R. Amancio & Luciano da F. Costa, *Principal Component Analysis: A Natural Approach to Data Exploration*, 54 ACM COMPUTING SURV. 1, 17–18 (2021), https://arxiv.org/pdf/1804.02502.pdf (overviewing PCA and discussing studies from a variety of fields, including economics, that have relied on PCA); Rasmus Bro & Age K. Smilde, *Principal Component Analysis*, 6 ANALYTICAL METHODS 2812, 2825 (2014), https://pubs.rsc.org/en/content/articlepdf/2014/ay/c3ay41907j (noting that "[i]t is quite common to use PCA as a preprocessing step in order to get a nicely compact representation of a dataset").

[101] Because we included variables from the CBP questionnaire in our PCA, we necessarily began the analysis with 1,500 bankruptcy cases, which is the number of debtors who returned the CBP questionnaire. But not every participant responded to every question, which decreased the total number of bankruptcy cases relied for our PCA by 271 cases. For a listing and description of the 27 variables, see *infra* Appendix.

one of twenty-seven variables (3.7%). We retained all components that explained at least 10% more variance than any single variable or, put more formally, any components with an eigenvalue of 1.1 or more.[102] Nine components met that criterion. That is, our PCA identified nine groups of filers.[103]

Each component of the PCA has a value that can be understood as the "direction" of variation within the dataset that the component explains. Formally, this measure of direction is called an "eigenvector." The PCA also measures the influence each variable has on each component's eigenvector. This influence can be positive or negative, depending on whether the eigenvector and variable increase in value together (positive) or not (negative).[104] Our PCA's insights come from identifying which groups of variables most strongly influence or "load" each component. Loading values can range from -1 to +1. After obtaining our initial loading values, we did a conventional transformation of the data by "rotating" the results. This transformation makes it easier to identify patterns in the data. We considered a variable to strongly influence a component if the absolute value of its loading on the rotated component was 0.4 or greater.

Table 1 summarizes the results of the PCA. The full results appear in Appendix. For each component, we have identified the variables that most strongly influenced that component. We can consider each component as representing a type of bankruptcy filer, which we have labeled based on the variables that strongly influenced it. Because the components are presented in the order of

---

[102] *See* Valerie P. Hans, Rebecca K. Helm & Valerie F. Reyna, *From Meaning to Money: Translating Injury into Dollars*, 42 L. & HUM. BEHAV. 95, 101–02 (2018) (using PCA to extract five independent factors with eigenvalues over 1.0, accounting for 59.41% of the dataset's variance, to understand how jurors perceived and processed cases); Bro & Smilde, *supra* note 100, at 2824 ("[I]f a component has an eigenvalue larger than [1.0], it explains variation of more than one variable. This has led to the rule of selecting all components with eigenvalues exceeding [1.0] . . . .").

[103] At the end of Part III, we note that the 2013–2014 filers had more secured debt and were more likely to have a foreclosure against the principal residence. We re-ran the PCA excluding the 2013–2014 filers, and we got the same components. In this alternative analysis, the final component has an eigenvalue just below our 1.1 threshold (1.08 to be precise), which we attribute to having fewer observations.

[104] *See* Bro & Smilde, *supra* note 100, at 2823–24 (explaining how eigenvectors can be understood as a measure of direction in the PCA context).

which they each explain the variance in the dataset, we can think of lower-numbered components as representing more distinct types of bankruptcy filers.

Table 1. Summary of PCA Results

	Car Owners Component 1	**Homeowners** Component 2	**Long Strugglers** Component 3
Strongly influencing variables	Owns a car Value of all cars Amt. of car loans	Mortgage debt Value of home Mortgage reason for bkr.	Num. of prebkr. "privations" Num. of prebkr. "copes" Prebkr. time struggling
	Young, with Children Component 4	**Owners, other real prop.** Component 5	**Black and/or Women** Component 6
Strongly influencing variables	*Age (-)* # of dependents	Value, other real estate Nonhome secured debt	Black Female head of household
	Self-employed Component 7	**Unsecured debtors** Component 8	**Judgment Lienees** Component 9
Strongly influencing variables	*Med. reason for bkr. (-)* Self-employment Educational level	Amt. of priority debt Amt. of unsec. debt	Amt. home invol. liens Prebkr. lawsuit

Notes: Table 1 summarizes the results of a principal-component analysis (PCA) of twenty-seven variables measuring the characteristics of 1,229 bankruptcy filers. Full results appear in Appendix. Components with an eigenvalue of 1.1 were retained. The PCA used a correlation matrix with polychoric and polyserial correlations for ordinal and dichotomous variables. A varimax rotation was applied to the initial PCA results. A variable was considered to "strongly influence" a component if its loading was greater than 0.4 or less than -0.4. Variables shown in italics with a negative sign had a negative influence on the component.

Before discussing the PCA results, it is important to note some limitations. First, the PCA obviously only uses the variables in the dataset. Table 1 is not an exclusive list of all types of bankruptcy filers. If other variables were used, other groups might emerge. Relatedly, the PCA results in total only explained 63.3% of the variance in the dataset. Even the nine groups that our components represent leave on the table more than one-third of the differences between bankruptcy filers. It is also important not to think of the components as representing any particular bankruptcy filer. For example, many bankruptcy filers own both a house and a car. Another noteworthy caveat is that our thresholds for including components and which variables significantly influence a variable are necessarily arbitrary.

We chose the names for the component labels. For ease of discussion, we named component 1 "car owners," component 2 "homeowners," and so forth. PCA is useful for exploratory analysis that identifies commonalities in a complex dataset, and that is what we use it for here.

The nine components that our PCA yielded represent groupings of debtors that are well known and not-so well known in the literature about bankruptcy filers. As bankruptcy experts, we see four larger themes among the PCA groupings. First, some debtors have characteristics that capture the financial benefits of filing: holding onto large assets like cars and houses, dealing with secured debts encumbering those assets (components 1, 2, and 5), or getting rid of unsecured debts (component 8). Second, other debtors are tackling the challenges of running small businesses (component 7). Third, some debtors (component 9) file after being sued in state courts and seem to use bankruptcy, in key part, to handle these lawsuits. Fourth, debtors come to bankruptcy with demographic characteristics that reflect social and life circumstances that lead to unsustainable debts: people who have struggled with their debts for multiple years and tried various tactics to pay their debts (component 3), younger people with children whose financial lives are getting off to a bumpy start (component 4), and Black women-led households (component 6).

The next four subparts build out these themes. In detailing each component, we provide relevant data about the people who file bankruptcy, thereby building a comprehensive profile of the financial, legal, and demographic characteristics of consumer debtors in recent years. We also either ground each component in existing literature or point out groups of debtors in our PCA results that are under-explored in the literature.

B. ASSET AND DEBT SITUATIONS

Prior literature about consumer bankruptcy frequently casts filing as a financial decision and focuses on specific economic aspects, such as keeping homes and discharging debts.[105] This framing reflects bankruptcy's formal role of removing debts from household balance sheets and allowing people to catch up on past due debts over time.[106] Consistent with bankruptcy's formal role, the two components in our PCA results that explain the most variance in our dataset revolve around the two most expensive assets that most American households will buy: cars and homes.[107] These assets also often come with a hefty loan that gives the lender the right to take the asset back upon default.[108]

Table 2 details the assets and debts of households in the current CBP. Because less than half of debtors (43%) come to bankruptcy with primary residences, Table 2 reports home values, equity, and mortgages for only those debtors that enter bankruptcy with a home. For the same reason, it reports retirement account values only for debtors with those accounts. Even though a significantly higher percentage of debtors file owning at least one car, Table 2 reports car values, equity, and loans for only those debtors with one or more cars for consistency.

---

[105] *See supra* notes 21–22.

[106] Generally speaking, the ability to cure arrearages in a chapter 13 filing is one of its main advantages over a chapter 7 filing. *See supra* Section II.B.

[107] *See* Jesse Bricker, Lisa J. Dettling, Alice Henriques, Joanne W. Hsu, Lindsay Jacobs, Kevin B. Moore, Sarah Pack, John Sabelhaus, Jeffrey Thompson & Richard A. Windle, *Changes in U.S. Family Finances from 2013 to 2016: Evidence from the Survey of Consumer Finances*, 103 FED. RSRV. BULL. 1, 18 tbl.3 (2017) (reporting that 85.2% of households owned a car and that 63.7% of households owned a home based on the Survey of Consumer Finances from 2016).

[108] *See* Foohey et al., *Driven*, *supra* note 22, at 290–92 (discussing car loans and secured lending).

Table 2. Finances of Bankruptcy Filers

	All Cases	Ch. 7 Cases	Ch. 13 Cases
Total Assets (medians)	**$35,066**	**$23,559**	**$90,726**
% homeowners	43%	35%	59%
Home value	$135,414	$133,282	$139,760
Home equity[109]	$8,058	$7,858	$8,381
% car owners	85%	82%	89%
All cars, value	$8,206	$6,766	$10,805
All cars, equity	$820	$1,098	$0
% w/ retirement accts.	33%	33%	33%
Retirement acct. value	$7,564	$7,144	$9,523
Total value, other prop.	$4,098	$3,981	$4,441
Total Debts (medians)	**$95,619**	**$ 84,907**	**$124,357**
% homeowners w/mtg.	91.1%	90.8%	91.3%
Mtg., primary residence	$125,551	$124,090	$128,796
% cars with liens	53.4%	47.3%	63.0%
Car loans, total	$7,426	$4,511	$11,590
Priority debts	$0	$0	$0
Unsecured debts	$38,725	$43,774	$27,190
Ratios			
Total debts / total assets	2.0	2.5	1.5
(mean in parens)	(9.5)	(12.8)	(3.5)
Total debts / yearly income	2.3	2.3	2.3
(mean in parens)	(3.8)	(4.1)	(3.1)

Notes: Table 2 reports financial characteristics of cases in the current CBP. Home value, home equity, percentage of homeowners with mortgages, mortgage amounts, and liens were reported only for debtors who own homes. Retirement accounts value is reported only for debtors with these accounts. Percentage of cars with liens is reported based on the total number of cars. Car value and equity are reported only for debtors who own cars. All numerical amounts are inflated to July 2019 dollars based on the CPI.

[109] At the end of Part III, we note that the debtors from 2013–2014 were more likely to have problems from a home. If the cases from 2013–2014 are excluded, median home equity in all cases would be $11,091, in chapter 7 cases would be $11,260, and in chapter 13 cases would be $10,291.

As evident in Table 2, the people who file bankruptcy own little property overall. That chapter 13 filers own more valuable property is predominately attributable to their higher incidence of homeownership. If these filers own cars or have any money in retirement accounts, then the value of those cars and the amount of retirement savings are both slightly higher than people who file chapter 7. Focusing on retirement accounts, only one-third of debtors have any retirement savings at all, and those who do, at the median, have saved only $7,500. Likewise, the median value of other property that households come to bankruptcy with, about $4,100, shows that most people who file bankruptcy have little savings of any kind. For most people who file bankruptcy, their wealth is tied up in their homes and cars to the extent that they hold any equity in those properties. Most of those people have little equity in these items; at the median, they have under $10,000 in homes and under $1,000 in cars.

1. Cars and Homes. Cars and homes constitute the bulk of the property owned by most bankruptcy filers, and debtors are likely to owe money to a secured creditor on these pieces of property. As detailed in Table 2, more than nine out of ten (91.1%) debtors with homes also owe money to a mortgage lender. Stated differently, few people who file bankruptcy own their homes free and clear. Debtors with cars most likely have an auto loan on their most valuable car. Among debtors in the current CBP, 62.0% of people's most valuable cars are subject to lien when they file bankruptcy.

The prominence of cars and homes on the financial ledgers of bankruptcy filers, the importance of cars and homes to people's lives, and bankruptcy law's usefulness in dealing with liens on cars and houses, support the PCA result that the two components that explain the most variance in the dataset center on cars and homes. For decades, bankruptcy scholars have focused on people filing to keep their homes—that is, component 2.[110] In contrast, in our most recent publication, *Driven to Bankruptcy*, which relies on CBP data from 2013 to 2018, we provided the first in-depth empirical analysis of people filing bankruptcy owning cars and, in some cases, seemingly with the goal of keeping one or more of those cars.[111] Prior

---

[110] *See supra* note 21 (surveying publications about homeowners declaring bankruptcy).

[111] *See generally* Foohey et al., *Driven*, *supra* note 22 (detailing the importance of cars to filers and their attempts to save them through bankruptcy).

to the current CBP, the co-investigators did not collect data about cars in bankruptcy cases, and these data still are not reported elsewhere, which likely accounts for the lack of sustained focus on cars as a key component of consumer bankruptcy cases.[112] Owning a car, the value of all cars, and the amount owed on all cars are the variables in the PCA that explain the most variance in the dataset.[113] This result reinforces our previous finding that cars are an important factor in many bankruptcy cases and that continued focus on bankruptcy's provisions regarding cars is warranted.

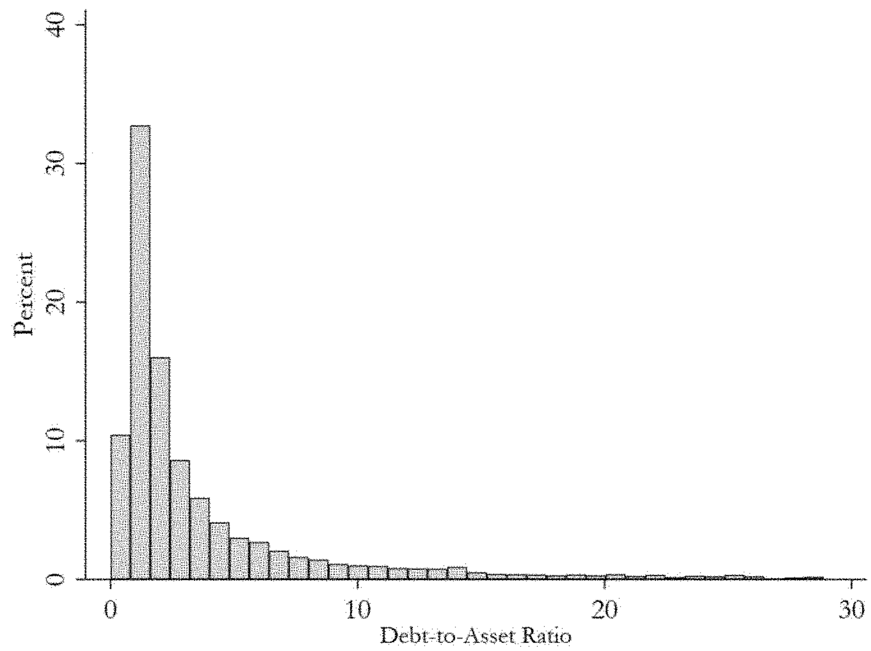
Here, it is worth re-emphasizing an earlier point. The debtors in component 1 do not necessarily own cars and not homes, and the debtors in component 2 do not necessarily own homes and not cars. There is significant overlap among all debtors in the current CBP in car and home ownership, particularly in chapter 13 cases because more chapter 13 filers come to bankruptcy owning a home. About one-third (31.3%) of chapter 7 filers and more than half (52.5%) of chapter 13 filers own at least one car *and* a home. Some of these debtors' cases may be characterized as more about cars than homes, and vice versa, but many households may enter bankruptcy concerned about keeping both cars and homes. The primary takeaway from components 1 and 2 is that cars and homes are particularly important in many bankruptcies.

---

[112] *See id.* at 305–06 (discussing the history of CBP data collection about cars).

[113] Components 1 and 2 stand apart from the other components, explaining 10.9% and 10.8% of the variance, respectively. In comparison, component 3 explains 6.9% of the variance. *See infra* Table 10 (detailing how much variance each component explains).

Figure 1. Total Debt/Total Assets



Notes: Figure 1 depicts the debt-to-asset ratio for all cases in the current CBP, except for cases in the top five percentiles. Including those outliers distorts the histogram to the point where it is meaningless. The total debt/total asset ratio was calculated using values of the underlying variables that were trimmed at 3.5 standard deviations.

In addition, the amount that debtors owe dwarfs the value of what they own. At the median, bankruptcy filers owe twice what they own. To put this into context, they would have to sell all of their property twice to pay their debts. Filing bankruptcy may not only allow people to keep cars and homes, but it may also discharge a large portion of their total debts, which in turn may help them hold onto cars and homes post-bankruptcy. Some debtors may find this discharge even more useful because they owe an even greater amount of debt in relation to the value of their assets. We report medians in Table 2 because of the presence of outliers. But the medians obscure the fact that there are debtors who come to bankruptcy with three, four, five, or more times the debts as the value of their assets. To visualize the variation in financial situations, Figure 1 presents a histogram of debtors' debts-to-assets ratios.

Reporting medians similarly obscures that there are a handful of debtors who come to bankruptcy owning real property other than their primary residence. Likewise, some debtors owe large amounts of priority and general unsecured debts, such as domestic support obligations and credit card debt. The other two components with strongly influencing variables that connect with the financial benefits of filing bankruptcy highlight that some people do so, in part, to deal with more than cars and homes.

2. Non-Home Real Property. Component 5, termed "owners, other real property," has two strongly influencing variables: the value of real estate other than homes and the presence of non-home secured debt. The CBP considers a property listed in the bankruptcy schedules to be the debtor's principal residence if it matches the debtor's residential address. As detailed in Table 3, although only 7.2% of all debtors own real property that is not their principal residence, for some of these debtors, this real property is a distinguishing feature of their bankruptcies.

Table 3. Finances of Bankruptcy Filers with Real Property Other Than Homes

	All Cases	Ch. 7 Cases	Ch. 13 Cases
% owners, other real prop.	7.2%	5.7%	10.0%
Total Assets (medians)	$189,808	$158,651	$227,561
% homeowners	67.5%	55.1%	80.8%
% car owners	87.9%	86.6%	89.3%
Other real prop. value	$49,379	$40,853	$71,543
Total Debts (medians)	$238,306	$246,895	$236,106
% non-home/non-car secured debt	73.9%	76.7%	70.9%
Non-home/non-car secured debts	$30,148	$48,546	$20,658
Priority debts	$0	$0	$0
Unsecured debts	$43,598	$57,437	$33,000

Notes: Table 3 reports financial characteristics about cases that include real property other than the debtors' primary residences in the current CBP. All percentages and numerical amounts are reported only for those debtors who file owning real property other than primary residences. All numerical amounts are inflated to July 2019 dollars based on the CPI.

Based on Table 3, the percentage of bankruptcy filers who own real property other than homes (7.2%) is half the rate of non-home real property ownership among all Americans (13.8%).[114] In reality, though, the percentage is even lower. About one-third of debtors did not own a primary residence when they filed, meaning that they only owned "other real property," none of which they lived in at the time of their bankruptcies.

To better understand the "other real property" debtors, we examined cases in which the debtor had real property that was not a home. Based on notes in the bankruptcy schedules, ex-spouses received some of these properties in a divorce, the property was in foreclosure when debtors filed, or the debtors hoped to sell their properties. For these properties, although people technically owned

[114] *See* Bricker et al., *supra* note 107, at 18 tbl.2 (reporting on ownership of other real property in 2016).

them when they file bankruptcy, they did not have access to them and were living elsewhere.

Other debtors owned one low-value second residence, undeveloped land, or property that they inherited and co-owned with siblings. A handful of debtors owned one or more rental properties, which usually were worth less than debtors' homes. For instance, a jointly-filing couple entered bankruptcy with a home with a stated value of $260,600 and a condo with a stated value of $39,800.[115] Similarly, a solo filer with a non-filing spouse entered bankruptcy owning a home with a stated value of $251,500 and a rental property with a stated value of $98,900.

Of course, some debtors come to bankruptcy with higher-valued other real property. For example, a single filer owned a home valued at $138,200 and three rental properties with a total stated value of $663,900. A solo filer with a non-filing-spouse listed a house worth $320,000 and a five-acre orchard worth $450,000. Overall, the other real property owned by bankruptcy filers is more likely to be secured by a loan than non-bankruptcy filers' other real property.[116]

The presence of the "other real estate" component underscores the heterogeneity of filers, which reflects the heterogeneity of American households' finances. A sliver of non-bankruptcy households own real property other than their homes, some of these households owe debt secured by those properties, and some of these households file bankruptcy. For these people, bankruptcy law's ability to deal with this property and this secured debt is likely to be of heightened importance. Although filing bankruptcy to keep primary residences has occupied scholars for decades,[117] the bankruptcies filed, in part, to deal with other real property and other non-home and non-car secured debt have remained unexplored. Most notably, houses that people rent out are among the higher value other real properties owned by bankruptcy filers. Saving rental property, which produces some income for debtors,

---

[115] All numerical amounts in examples in this Part are inflated to July 2019 dollars based on the CPI and rounded to the nearest $100.

[116] *See* Bricker et al., *supra* note 107, at 22 tbl.4 (reporting that in 2016, 5.6% of all households owed debt secured by real property other than their homes, as compared to the 13.8% of all households that owned real property other than their homes).

[117] *See supra* note 21 (providing studies about bankruptcy's treatment of primary residences).

may set these debtors and their cases apart from other bankruptcies.[118]

3. Unsecured Debts. Another component that connects with the financial benefits of filing bankruptcy—component 8—centers on unsecured debts, including priority and general unsecured debt. Priority debts include child support, alimony, and taxes.[119] General unsecured debt includes amounts owed on credit cards and for medical expenses. Although the median debtor in the current CBP owes nothing in priority debts, 28.3% of debtors come to bankruptcy owing priority debts. The median amount of priority debts these filers owe is $4,040.[120]

Among those debtors who owe priority debts, many more owe past-due taxes than domestic support obligations. More than eight in ten debtors (82.8%) with priority debts owe taxes. In comparison, 9.8% of debtors with priority debts owe child support or alimony.[121] People who file owing priority debts also owe slightly more unsecured debts, a median of $42,592, than filers overall who enter bankruptcy owing a median of $38,725 of unsecured debts.[122]

Some filers with priority debts owe significant amounts of priority debts and general unsecured debts—much higher than the median amount of priority debts and general unsecured debts among debtors that enter bankruptcy owing priority debts. Based on what people wrote in response to our questionnaire, for these debtors, their journey to bankruptcy features mounting debts that they cannot manage, which sometimes spills over to falling behind on taxes. For example, a chapter 7 filer with $51,000 in priority tax debt and $126,700 in general unsecured debts wrote, "I would really like to buy a home someday, and that will never be possible with all of the debts that I have. I had back surgery without insurance a few years ago, and that contributed a lot to me getting behind on my

---

[118] One of component 7's influencing variables is self-employment. The cases in this component may also include rental property, which serves as another reminder that the PCA identifies which variables seem to have outsized influences on cases, not specific types of cases or debtors. For a discussion of component 7, see *infra* Section IV.C.

[119] *See* 11 U.S.C. § 507(a) (listing priority unsecured debts).

[120] Among persons who owe priority debt, the median priority debts owed is effectively the same for chapter 7 filers ($4,046) and chapter 13 filers ($4,054).

[121] Few debtors—about 5% of those debtors with priority debts—owe both taxes and domestic support obligations.

[122] *See supra* Table 2.

bills." These debtors seem to be concerned with dealing with both their priority debts and their general unsecured debts.

For other filers, dealing with either priority debts or general unsecured debts is their primary concern. A debtor who filed owing $10,000 in taxes and approximately $17,950 in general unsecured debts stated that she had "tried to work with health/medical bills. IRS was biggest reason for filing because of interest and penalties faced with. Could never pay them off." A married couple with three children filed owing $234,458 in general unsecured debts, about $185,000 of which was from student loans, and no priority debts. That couple's stated reason for bankruptcy was "medical expenses for a child."

Component 8 shows that for some of the people who come to bankruptcy with priority debts and general unsecured debts, settling these debts is a primary concern. Bankruptcy's discharge takes care of most unsecured debts, with the notable exception of student loans, and some priority debts, with the notable exception of some taxes.[123] To the extent that priority or other debts are nondischargeable, getting rid of general unsecured debts may free up future income to pay nondischargeable debts and to meet necessary household expenses. The benefits of discharging unsecured debts, particularly through chapter 7, are a key element of the promised fresh start, and prior literature has assumed that some of the people who file bankruptcy do so for the discharge.[124] Our PCA confirms that there are people who file bankruptcy with particular interest in resolving unsecured debts. It also highlights the previously under-explored role of taxes in people's use of bankruptcy.

---

[123] *See* 11 U.S.C. § 523 (excepting taxes and student loans from discharge); *see also supra* notes 86–91 and accompanying text.

[124] *See supra* note 4 and accompanying text (describing the debtors' "fresh start" after bankruptcy); *see also, e.g.*, Jonathon S. Byington, *The Fresh Start Canon*, 69 FLA. L. REV. 115, 116–17 (2017) ("The Bankruptcy Code implements the fresh start through several different sections, but it is primarily accomplished by discharging a debtor's debt.").

C. EDUCATION AND EMPLOYMENT SITUATIONS

Component 7 focuses on employment situations, which also raise the issue of income. There is a strong relationship between people's income and level of education: people with more education generally make more money, but the full bump in income from education largely comes only upon its completion, such as graduating from college.[125] Table 4 reports the income, education, and employment of households in the current CBP.

[125] *See* Scott A. Wolla & Jessica Sullivan, *Education, Income, and Wealth*, PAGE ONE ECON., Jan. 2017, at 2–3, https://files.stlouisfed.org/files/htdocs/publications/page1-econ/2017-01-03/education-income-and-wealth_SE.pdf (detailing income and employment statistics of American households based on education); Porter, *College Lessons*, *supra* note 26, at 88–90 (detailing the benefits that accrue upon graduation as compared to completing some college); Warren & Thorne, *supra* note 20, at 29 (noting the long established link between education and social class). The benefits of higher education to income and employment are less for Black and Latinx individuals as compared to white individuals. *See* Dalié Jiménez & Jonathan D. Glater, *Student Debt Is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform*, 55 HARV. C.R.-C.L. L. REV. 131, 132–36 (2020) (overviewing disparate income and employment outcomes with education based on race and ethnicity).

Table 4. Income, Education, and Employment of Bankruptcy Filers

	All Debtors	Ch. 7 Debtors	Ch. 13 Debtors
Monthly Income (medians)			
All debtors	$3,537	$3,225	$4,330
Single filers with 1 income	$2,960	$2,743	$3,432
Single filers with 2 incomes	$5,590	$4,937	$6,155
Joint filers with 1 income	$4,213	$3,844	$5,103
Joint filers with 2 incomes	$5,435	$5,001	$6,214
Education			
No high school degree	6%	5%	6%
High school degree	32%	33%	29%
Some college	39%	39%	39%
Bachelor's degree or higher	23%	22%	25%
Other	1%	1%	1%
Either debtor, bachelor's degree or higher	27%	26%	30%
Employment			
Any household employment, all debtors	75%	73%	78%
Any household employment, debtors < 65	83%	82%	87%
Any self-employment	9%	9%	8%
Current employment tenure, years (median)	3	3	5

Notes: Table 4 reports the pre-tax income, education, and employment of households in the current CBP. If a joint petition was filed, education for the first listed petitioner is reported, and the longest employment time was used to calculate years employed. If a joint petition was filed and there were two heads of household, employment was counted if either head of household reported employment. All numerical amounts are inflated to July 2019 dollars based on the CPI.

The people who file bankruptcy continue to make less, on average, than the general United States population[126] and continue

[126] *See* Gloria Guzman, *New Data Show Income Increased in 14 States and 10 of the Largest Metros*, U.S. CENSUS BUREAU (Sept. 26, 2019),

to be more educated, but less likely to have graduated college, than the general population.[127] People predominately are employed when they file, particularly those debtors who are younger than retirement age. Across all debtors, the median tenure of employment is three years, suggesting that breaks in employment and changes in jobs feature in filers' pre-bankruptcy lives. In comparison, the median tenure of employment in the United States is 4.1 years, further suggesting that the people who file bankruptcy have less stable employment situations than typical Americans.[128] There also is significant variation among the debtors' incomes based on household composition and the number of earners currently working, which again underscores the diversity in financial situations among the people who file bankruptcy. Figure 2's histogram of the debt-to-income ratios of households in the current CBP visually shows this heterogeneity.

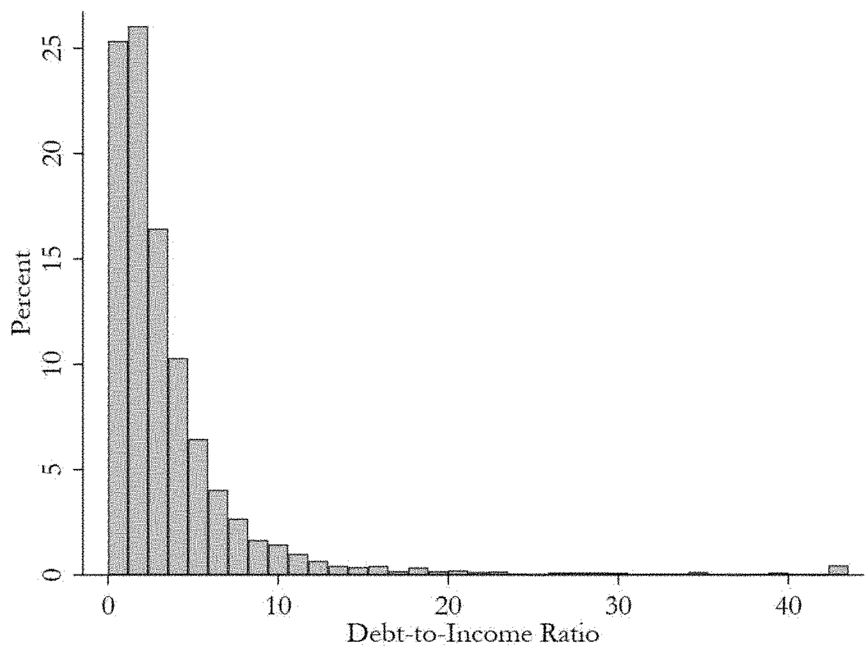
---

https://www.census.gov/library/stories/2019/09/us-median-household-income-up-in-2018-from-2017.html (reporting based on the American Community Survey that median household income in the United States was $61,937 (or $5,161 per month) in 2018); Porter, *College Lessons*, *supra* note 26, at 88, 89 fig.5.2 (relying on 2007 CBP data to detail that the average income of people in bankruptcy at every level of educational attainment was lower than the general population).

[127] *See* Am. Counts Staff, *About 13.1 Percent Have a Master's, Professional Degree or Doctorate*, U.S. CENSUS BUREAU (Feb. 21, 2019), https://www.census.gov/library/stories/2019/02/number-of-people-with-masters-and-phd-degrees-double-since-2000.html (reporting that in 2018, 35% of people aged 25 years or older had a bachelor's degree); Porter, *College Lessons*, *supra* note 26, at 86–88 (relying on 2007 CBP data to detail the high rate of bankruptcy filers with college attendance but not bachelor's degrees); Warren & Thorne, *supra* note 20, at 30 fig.2.3 (relying on 2007 CBP data to detail educational attainment of the general population versus people who file bankruptcy).

[128] *See Employment Tenure in 2020*, BUREAU OF LAB. STATS. (Sept. 22, 2020), https://www.bls.gov/news.release/pdf/tenure.pdf ("The median number of years that wage and salary workers had been with their current employer was 4.1 years in January 2020 . . . .").

Figure 2. Total Debts/Total Income



Notes: Figure 2 depicts the debt-to-income ratio for all cases in the current CBP. To minimize distorting effects of outliers in the graph, Figure 2 shows the debt-to-income ratio trimmed at 3.5 standard deviations, which explains the slightly higher incidence of cases at the highest value.

Most filing households' yearly incomes would cover about half of the amount of debts they owe—that is, it would take them two years to pay their debts if they devoted all of their income to doing so. But for some debtors, their income is low relative to their debt, or their debt is high relative to their income, such that it likely will take decades to climb out of their financial hole.

Component 7 of our PCA highlights one notable variation at the intersection of education and employment: self-employed individuals. In the United States' population, people who start small businesses generally have higher educational attainment.[129] The same is true of bankruptcy filers. As compared to the 27% of all households in the current CBP with at least one adult with a bachelor's degree or higher, 43% of households reporting self-employment in the current CBP have at least one adult with a bachelor's degree or higher. The PCA results indicate that there is a subset of bankruptcy filers who are self-employed and who have higher educational attainment and that these two factors are distinguishing characteristics of their cases. These debtors' cases likely focus on the financial fallout from their running of small businesses. Self-employed debtors enter bankruptcy owing a median of $162,563 to creditors, higher than the median of $95,619 that debtors overall owe to creditors, as reported in Table 2.

To reiterate, there are self-employed people who come to bankruptcy with other primary issues than their small businesses. In large part, some debtors who file to deal with "other real property" also may run small businesses, such as the debtors with the five-acre orchard mentioned above.[130] Nonetheless, many small businesses fail each year in the United States: based on data from the Small Business Administration, 20% of small businesses fail in their first year, and only about half of small businesses survive past year five.[131] Some of the people who run these failed or still struggling businesses will file bankruptcy. In a previous publication, one of this Article's authors wrote about the self-employed in bankruptcy, detailing how their cases diverge from other consumer debtors' cases.[132] Component 7 confirms that self-

---

[129] *See* Rakesh Kochhar, *The Financial Risk to U.S. Business Owners Posed by COVID-19 Outbreak Varies by Demographic Group*, PEW RSCH. CTR. (Apr. 23, 2020), https://www.pewresearch.org/fact-tank/2020/04/23/the-financial-risk-to-u-s-business-owners-posed-by-covid-19-outbreak-varies-by-demographic-group/ (noting that "college graduates are more likely to be business owners compared with their shares in the workforce overall").

[130] *See supra* Section IV.B.*2*.

[131] *See* Chad Otar, *What Percentage of Small Businesses Fail – And How Can You Avoid Being One of Them?*, FORBES (Oct. 25, 2018, 8:00 AM), https://www.forbes.com/sites/forbesfinancecouncil/2018/10/25/what-percentage-of-small-businesses-fail-and-how-can-you-avoid-being-one-of-them/ (reporting survival rate data from the Small Business Administration).

[132] *See generally* Lawless & Warren, *supra* note 24 (relying on 2001 CBP data to detail consumer bankruptcy filings that involved small businesses); Lawless, *Striking Out*, *supra* note 24 (relying on 2007 CBP data to detail the cases of self-employed debtors who reported that their small businesses were a reason for their filings).

employed people continue to file bankruptcy, in part, because of the financial consequences of owning a business.

D. STATE COURT LAWSUIT SITUATIONS

Financial problems can lead to legal problems. If people do not pay their debts, creditors may call them repeatedly or may sell the debts to collectors who then call the debtors repeatedly. At some point, creditors and debt collectors may resort to suing people in state court to collect delinquent debts. These lawsuits and other legal actions can take the form of home foreclosure, repossession of automobiles, seizure of property, eviction from rental housing, wage garnishment, and garnishment of bank accounts.[133] Additionally, before bankruptcy people may be parties to other civil actions that impact their finances, such as divorce proceedings. As summarized in Table 5, 49.3% of all households in the current CBP had some sort of legal action taken against them prior to filing bankruptcy.

Table 5. Pre-Bankruptcy Legal Actions Against Bankruptcy Filers

	All Debtors	Ch. 7 Debtors	Ch. 13 Debtors
% legal action against primary residence	5.7%	3.9%	9.0%
% legal action against non-home property	12.6%	13.0%	11.8%
% other legal action against debtor	39.4%	42.7%	33.3%
% any legal action	49.3%	50.7%	46.7%

Notes: Table 5 reports legal actions filed pre-bankruptcy against households in the current CBP. These data are from Form 107, Statement of Financial Affairs for Individuals Filing Bankruptcy.

Legal actions against primary residences and non-home property brought against people before they filed bankruptcy connect, in part, with components 1 and 2, which focus on car owners and

[133] *See* LYNN M. LOPUCKI, ELIZABETH WARREN & ROBERT M. LAWLESS, SECURED TRANSACTIONS: A SYSTEMS APPROACH 3–89 (9th ed. 2020) (describing creditors remedies).

homeowners. The presence of component 9 in our PCA emphasizes that there are people who file bankruptcy in the wake of legal proceedings that threaten their car ownership and homeownership. As with debtors who own cars and homes when they file bankruptcy, these people also may hope to use bankruptcy to keep their cars and homes. A key distinction of their use of bankruptcy is that their property may be in danger of being sold imminently.

Alternatively, some people may file bankruptcy after losing their homes, cars, and other property. With these items now gone, they may hope to use bankruptcy to clean up their finances and start fresh. For instance, a debtor who answered our questionnaire wrote that she "got some evictions," that her "lemon car" was repossessed, and that 25% of her wages were being garnished when she filed—the pre-bankruptcy legal action trifecta. She "filed bankruptcy for a clean slate."

Part of this debtor's story was wage garnishment. As shown in Table 5, debtors involved in civil legal actions prior to filing are most likely to come to bankruptcy in the wake of "other legal actions," which include garnishment. Another "other legal action" is a divorce proceeding. Of the universe of other legal actions, based partially on the stories that debtors wrote in their questionnaires, divorce stands out as a life event that brings people to bankruptcy court. For instance, a solo chapter-7 filer wrote, "Divorced first husband and he kept everything, vehicles, house, business, etc. My name was on all loans as co-debtor." Her debt-to-asset ratio was 2.9, higher than the median chapter 7 debtor.[134]

Component 9's presence in the PCA confirms the importance of pre-bankruptcy legal actions to people's filings. There is some prior literature about the timing of bankruptcy filings and home foreclosure actions[135] and some prior literature discussing divorce as a financial shock that can lead to bankruptcy.[136] The PCA results reinforce the primacy of these legal actions to some people's use of

---

[134] *See supra* Table 2.

[135] *See, e.g.*, Ronald J. Mann & Katherine Porter, *Saving Up for Bankruptcy*, 98 GEO. L.J. 289, 292 (2010) (discussing bankruptcy filings to deal with imminent home foreclosures).

[136] *See* SULLIVAN ET AL., *supra* note 15, at 194–96 (discussing the relationship between bankruptcy and divorce); Jonathan D. Fisher & Angela C. Lyons, *Till Debt Do Us Part: A Model of Divorce and Personal Bankruptcy*, 4 REV. ECON. HOUSEHOLD 35, 37 (2006) (modeling the role that financial distress plays within marriage, divorce, and filing bankruptcy).

bankruptcy. The results also suggest the usefulness, in the future, of focusing on the role of civil legal actions that threaten people's property and ability to make ends meets, such as garnishments and divorce, in pushing people to file bankruptcy.

E. HOUSEHOLD SITUATIONS

The remaining components in our PCA have strongly influencing variables that touch on the non-financial aspects of people's lives, similar to the divorces that stand out as part of Component 9. Divorce can have devastating financial effects for both ex-spouses, and the financial situations that couples find themselves in pre-divorce may lead to marital strife and divorce.[137] But it seems odd to describe divorce in such economic terms. Likewise, the remaining components in the PCA contend with people's daily struggles in life that may develop into financial problems.

1. Lengthy Struggles with Debts. Component 3's variables reflect the myriad setbacks that people may encounter in their lives prior to filing bankruptcy. In the CBP questionnaire, we asked people a series of questions about their pre-bankruptcy financial problems. We began by asking people how long they seriously struggled with their debts prior to filing. The question provided six options, ranging from: not seriously struggling at all to struggling for five years or more.[138] More than two-thirds of respondents indicated that they struggled for two years or more.[139] In our prior article, *Life in the Sweatbox,* we termed those people who indicated that they struggled for two or more years "long strugglers" and compared them to people who indicated that they struggled for a shorter period of time.[140]

---

[137] *See* Deborah Thorne, *Women's Work, Women's Worry? Debt Management in Financially Distressed Families*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS, *supra* note 20, at 138, 146–47 (discussing how couples manage debt and how debt can put a strain on marriages).

[138] The six preset categories are: (1) did not seriously struggle, (2) fewer than six months, (3) at least six months but less than one year, (4) at least one year but less than two years, (5) at least two years but less than five years, and (6) five years or more.

[139] *See* Foohey et al., *Sweatbox*, *supra* note 1, at 236 fig.1 (comparing the percentage of people that answered in each category in the Current CBP with the 2007 CBP).

[140] *Id.* at 237.

In *Life in the Sweatbox*, we based our comparison of bankruptcy filers partly on debtors' answers to two other questions. First, we asked people how they coped with trying to make financial ends meet during the two years prior to their bankruptcy filings and provided respondents with fourteen actions that they may have taken, such as working more, borrowing money, selling property, and asking creditors to work with them on payments. Second, we also asked people what necessities they, or members of their household, went without in the two years prior to their filings because they could not afford it. We provided people with a list of twelve common expenses that they may have cut from their budgets—that is, privations—when they were over-burdened with debt, including health-related expenses, food, utilities, and education.

Component 3 includes cases filed by people whose answers to our questions about their pre-bankruptcy lives, financial and otherwise, showed significant and persistent attempts to try to make ends meet and pay back their creditors. The debtors in this component indicated that they tried to cope with burdensome debts and difficult financial situations by employing many of the fourteen actions that we identified. These people took on a second job *and* sold property *and* contacted their creditors to try to work out deals *and* cashed out retirement accounts. Debtors in this component also went without more things than other debtors. They cut back on food and utilities *and* stopped going to the doctor and dentist *and* paused their education *and* did not get their cars repaired. They also seriously struggled to pay their debts longer than other debtors. Debtors in component 3 are some of the long strugglers who we wrote about in *Life in the Sweatbox*.

As we detailed in that article, long strugglers stand apart from other debtors based on the variety of tactics they employed pre-bankruptcy to try to pay their debts.[141] At some point, though, long strugglers become worn down, particularly by pressure from creditors.[142] As component 9 shows, state court collection actions are distinguishing features of many bankruptcy cases. Component 3

---

[141] *See id.* at 242–44 (discussing the tendency of long strugglers to forego healthcare, food, utilities, and other crucial needs while attempting to pay their debts).

[142] *See id.* at 246 (reporting that long strugglers are more likely than other debtors to indicate that pressure from debt collectors was a reason for their bankruptcy filings).

adds to that finding by capturing threatened legal actions that the creditors have yet to undertake or may never undertake.[143]

People also will run out of ideas for how else to cope or what else to cut from their budgets. For those who have already tried multiple tactics to right their financial ship, filing bankruptcy may be the last remaining viable option for dealing with crushing debt situations. Based on the lengths that they indicate they have gone to in trying to pay their debts, many eventual filers likely are adept at identifying worthwhile ways to adjust their financial lives at the margins. Bankruptcy is the ultimate financial re-adjustment. Given that their prior experiences with trying to get out from under burdensome debts have failed, filing bankruptcy is a smart solution.

With respect to understanding the people who use the consumer bankruptcy system, what stands out about this component is that its strongly influencing variables, in the end, have little to do with the numbers on the household balance sheet. They instead have to do with the limits of people's ability to cut expenses or make sufficient money to pay debts that often were incurred because of medical problems or losing a job.[144] Behind the individuals and families who cut back on essential expenses and look for more work are an economy and society in which increasing income and wealth inequality make it difficult for people to meet their everyday expenses, let alone to recover from an unexpected financial shock.[145] Stated in terms that scholars have used to describe the bankruptcy system's role in a country with an increasingly thin social safety net,[146] bankruptcy is an "insurer of last resort."[147]

What also stands out about this component is that it explains 6.9% of the variance in the dataset of the people who file

---

[143] *See id.* at 249, 251–52 (theorizing that persistent efforts by debt collectors may push people into the bankruptcy system).

[144] This observation is based on debtors' responses to the CBP survey's question about the factors that contributed to people's bankruptcies. We reported similar findings in *Life in the Sweatbox*. *See id.* at 245 (referencing CBP data suggesting that long strugglers file bankruptcy in response to medical expenses more often than other debtors); *see also id.* at 231 (listing "exogenous shocks" that cause people to file bankruptcy, including job loss).

[145] *See* Foohey & Martin, *Fintech's Role*, *supra* note 35, at 466–67 (describing income and wealth inequality as "one of America's most defining features").

[146] *See* Thorne et al., *Graying*, *supra* note 25, at 683–84 (discussing the "weakening of the welfare state").

[147] Jacoby et al., *Rethinking the Debates*, *supra* note 23, at 410.

bankruptcy. Only the components dealing with homes and cars explain more variance.[148] A key part of people's use of bankruptcy is addressing their financial situations *after* they have tried and failed several other tactics to pay their debts.

2. Raising Children and Living as a Single Black Woman. The final two components in our PCA also have strongly influencing variables that are not about the numbers in the bankruptcy schedules. Instead, they relate to the challenges that come with raising children and surviving in an economy marked by systemic racial, ethnic, and gender inequality. To introduce components 4 and 6, Table 6 overviews key demographics of the people who file bankruptcy.

[148] *See infra* Table 9 (showing that only components 1 and 2 explain a greater percentage of variance than component 3).

Table 6. Household Situation

	All Filers	Ch. 7 Filers	Ch. 13 Filers
Single man	15%	17%	12%
Single woman	38%	36%	40%
Married or domestic partner	48%	47%	48%
Filing alone, man	27%	28%	26%
Filing alone, woman	49%	48%	51%
Joint filing	24%	24%	24%
Age (median)	49	48	51
Has children under 18	42%	42%	43%
Median # of children	2	2	2
Median age, youngest child	8	7	9
Median age, oldest child	12	11	13
Has other dependents	15%	14%	16%
Median # other dependents	1	1	1
Median age, other deps.	20	20	20
Race			
Black	28%	21%	43%
Asian	3%	4%	1%
Hispanic	11%	13%	8%
White	63%	70%	51%
Other	5%	4%	6%

Notes: Table 6 reports statistics of the households in the current CBP. If a joint petition was filed, age is the average of both heads of household. Data about number and ages of dependents are reported for those debtors with children or with other dependents. Across all debtors, the median number of children or other dependents is zero. For households with two heads of household, the household is considered to be of a particular race if either of the two persons self-identified as that race on a questionnaire. Respondents could identify with more than one race.

The demographics of households that file bankruptcy as compared to the United States population differ in a few notable ways. Although the people who file bankruptcy are married at the same rate as the population, single women are much more likely to file bankruptcy than their incidence in the population.[149] The disparity between single men filing versus single women filing is even starker when considering that women are more likely than men to have been married and that women marry at younger ages than men.[150] A significant portion of married couples do not file jointly. Instead, one person files alone. In addition, people who file bankruptcy have the same median number of children as the population.[151] Their children, however, are in the middle of their childhoods. Bankruptcy filers also are older than the general adult population.[152]

Most notably, Black households are significantly over-represented in the consumer bankruptcy system relative to their share of the population. Thirteen percent of the population identifies as Black or African American.[153] Black households file bankruptcy at more than twice the rate of their incidence in the population. Also, as evident in Table 6, Black households file chapter 13 at a higher rate than other households. Their over-

---

[149] *See* USAFacts, *The State of American Households: Smaller, More Diverse and Unmarried*, U.S. NEWS & WORLD REP. (Feb. 14, 2020), https://www.usnews.com/news/elections/articles/2020-02-14/the-state-of-american-households-smaller-more-diverse-and-unmarried (overviewing marriage trends in the United States and showing that 48.2% of households had married couples and roughly 49% of women were currently unmarried); *QuickFacts*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/US/LFE046219 (last visited Feb. 24, 2021) (providing that women account for 50.8% of the U.S. population).

[150] *See* USAFacts, *supra* note 149 (stating that the median age of first marriage for women is 28, whereas for men it is 30, and that 30% of women had never been married, compared to 35% of men).

[151] *See* Gretchen Livingston, *They're Waiting Longer, but U.S. Women Today More Likely to Have Children Than a Decade Ago*, PEW RSCH. CTR. (Jan. 18, 2018), https://www.pewsocialtrends.org/2018/01/18/theyre-waiting-longer-but-u-s-women-today-more-likely-to-have-children-than-a-decade-ago/ (reporting that women have approximately two children on average during their lives).

[152] *See* Thorne et al., *Graying*, *supra* note 25, at 681 (noting that "the rate at which older Americans (age 65 and over) file for consumer bankruptcy" has doubled and that there has been "an almost fivefold increase in the percentage of older persons in the U.S. bankruptcy system"); *Median Age of the Labor Force, by Sex, Race, and Ethnicity*, U.S. BUREAU OF LAB. STATS., https://www.bls.gov/emp/tables/median-age-labor-force.htm (last modified Sept. 8, 2021) (reporting that the median age for the labor force in the United States in 2020 was 42 years).

[153] *See QuickFacts*, *supra* note 149 (reporting that people who identify as Black or African American are 13.4% of the population).

representation in chapter 13 is counter-balanced by an under-representation in chapter 7, which is the chapter more often filed by white households. Prior literature, including our own work, has highlighted the long-standing racial disparities in bankruptcy filings and has discussed the consequences.[154]

The remaining two components' strongly influencing variables consist of most of these demographic differences. Component 4 focuses on younger people with dependents who file bankruptcy. Although the variable for dependents includes anyone, such as parents and fully-grown (adult) children, these debtors' dependents generally are their young and adolescent children. The stories of younger filers with children highlight the pitfalls of adulthood and of raising children.

Some of these families file bankruptcy because of a cataclysmic event that they cannot recover from financially. For example, a couple, both in their early 40s, with three younger children, filed after their "child was born with special needs and has required ongoing specialist care as she gets older. It is because of her medical expenses that we found ourselves in a frightening situation of insurmountable debt that was continuing to increase." Bankruptcy was a "last resort."

For other families, the expenses and stresses of everyday life slowly added up to a serious financial situation that created additional stress. For instance, a couple filed when they both were thirty-seven years old and had two children, ages four and six. They wrote on the CBP questionnaire that they "got so stressed out having to work enough to come up with enough money every month to just pay the min. balance on our cards, plus the mortgage, utilities, groceries, cars. This all took a serious toll on the marriage and it is still undecided how that is going to work out."

As with the other components, there are debtors with characteristics that match component 4 and the influencing variables of other components. Most notable is women with children who wrote about their divorces. One debtor explained that she "co-signed a large student loan with my now ex-husband" and lamented that "he no longer pays child support, leaving me fully responsible

---

[154] *See, e.g.*, Foohey et al., *"No Money Down"*, *supra* note 32, at 1081, 1099–1102 (detailing racial disparities in bankruptcy and the consequence of those disparities); *accord supra* note 32 (providing numerous sources showing race's role in bankruptcy); *infra* Section V.B.

for financially supporting our daughter." She noted that she "saw the storm coming and tried to compensate by supplementing with credit cards and working out payment arrangements, but I was constantly in the red. . . . [B]ankruptcy was my only option left."

Bankruptcy as a last option also fits with the long strugglers of component 3. The distinguishing feature of the cases in component 4, though, is that they are younger people and people with dependents. Staying financially afloat through job loss, unexpected medical problems, or divorce is difficult. Raising children or caring for other dependents, as a couple or alone, is itself difficult, even if people do not experience events that throw their lives into turmoil. Some people will be able to recover financially. But others will not. For those who do not, filing bankruptcy is a sensible last resort. And, again, these cases, while about problematic financial situations, at their core are about the various setbacks that all people might face and what happens to those people who cannot recover given the economic and social reality of their lives.

Component 6, the other component with strongly influencing demographic characteristics, shows that having a female head of household is a distinguishing characteristic of a large subset of bankruptcies, and in particular, that single Black women may face financial pressures that lead them to bankruptcy. We considered there to be a female head of household if (i) the person identified as female and did not report living with someone or (ii) reported demographic information for two persons who identified as female. For purposes of this Article, it is highly likely that if someone is a "head of household," that person is the only adult in the house.[155]

With its distinguishing demographic characteristics of female head of household and Black household, component 6 includes single Black men and single women of all races and ethnicities. But the intersection of Black households and single women is worth exploring more in depth. Like the people whose cases have the hallmarks of component 4, based, in part, on their responses to the CBP questionnaire, single Black women file in the wake of job loss and divorce. For instance, one woman with three children, ranging from ten to nineteen years old, wrote that, post-divorce, she had

[155] Thirteen of the 1,500 (0.9%) CBP questionnaires returned listed two women as the two adults in the household.

"[f]ound a job but it doesn't pay me enough money to pay for my house and take care of my kids. . . . I was tired of lying to . . . creditors about when I would pay them. I was sick of their threats. I was looking for a fresh start."

The prior quote reflects an important aspect of component 6. Women—and even more so Black women—make less money than men in comparable markets.[156] Black women are more likely to have unstable employment: they lose their jobs or have their working hours cut more frequently than other workers.[157] They face more obstacles to finding affordable and reliable childcare, although all women in the workforce report persistent problems with childcare.[158] Also pertaining to childcare, if women have been awarded child support, Black women—particularly those with lower incomes—are less likely to collect that child support.[159] This all places single Black women in financially precarious situations.

---

[156] *See* Sarah O'Brien, *Here's How the Wage Gap Affects Black Women*, CNBC (Aug. 22, 2019, 3:11 PM), https://www.cnbc.com/2019/08/22/heres-how-the-gender-wage-gap-affects-this-minority-group.html (relying on the 2018 Census to report that Black women are paid 61 cents to every $1 their white male counterparts make and that all women are paid about 80 cents to every $1 made by their white male counterparts).

[157] *See* Christian E. Weller, *African Americans Face Systematic Obstacles to Getting Good Jobs*, CTR. FOR AM. PROGRESS (Dec. 5, 2019, 9:03 AM), https://www.americanprogress.org/issues/economy/reports/2019/12/05/478150/african-americans-face-systematic-obstacles-getting-good-jobs/ (detailing employment obstacles faced by Black men and women).

[158] *Cf.* Naomi R. Cahn & Linda C. McClain, *Gendered Complications of COVID-19: Towards a Feminist Recovery Plan*, 22 GEO. J. GENDER & L. 1, 18–22 (2021) (describing the disproportionate impact of the COVID-19 pandemic on single mothers and minorities).

[159] *See* Tonya L. Brito, *The Child Support Debt Bubble*, 9 U.C. IRVINE L. REV. 953, 955 (2019) (empirically detailing child support arrearages that many noncustodial fathers owe and noting that this debt is owed predominately by noncustodial fathers in no- and low-income Black families). A crucial aspect of the non-payment or partial payment of child support is the setting of award amounts that are effectively unpayable, which relates back to racial employment and wage disparities. *See* Weller, *supra* note 157; NINO RODRIGUEZ, CTR. FOR FAM. POL'Y & PRAC., IF I HAD MONEY: BLACK FATHERS AND CHILDREN, CHILD SUPPORT DEBT, AND ECONOMIC SECURITY IN MISSISSIPPI, 1, 11 (2016), https://cffpp.org/wp-content/uploads/If-I-Had-Money_Black-Fathers_Child-Support-Debt_Mississippi-1.pdf (discussing the roots of child support debt in Mississippi); Pamela Foohey, *Child Support and (In)ability to Pay: The Case for the Cost Shares Model*, 13 U.C. DAVIS J. JUV. L. & POL'Y 35, 78 (2009) (detailing research about why people do not pay child support).

In addition, research has repeatedly shown that Black households pay more for housing, cars, other goods, and credit.[160] Indeed, a single Black woman wrote on the CBP questionnaire that her "situation was worst due to high interest loan I took out to pay bills and daughter's college tuition and rent." With less income and higher expenses than other households, single Black women can be projected to struggle more to keep up with the everyday costs of life, plus unanticipated expenses. Stated differently, it may take less of a shock to put them into a downward financial spiral.

The same also may be true of all Black households and all female-headed households because of similar disparities in access to stable, higher-paying jobs and credit.[161] In this way, their bankruptcy filings are distinct, which our PCA results brought to the forefront. Again, these cases, while prompted by people's financial situations, are more about income inequality and other disparities in the American economy and society that lead particular groups to bankruptcy courts to wipe the slate clean. As with the debtors in components 3 and 4, the debtors in component 6 file bankruptcy to solve problems, and bankruptcy is a savvy solution when other efforts to stay financially afloat have failed.

Taken together, components 3, 4, and 6 explain almost 20% of the variance in our dataset.[162] These cases present a paradox. On their face, they are not strictly related to financial concerns, but at their core, they are all about financial issues. These cases involve people struggling to recover from job loss, health setbacks, and divorce, as well as people doing their best while structural racism makes it more difficult to succeed financially. For these individuals, filing bankruptcy is a solution to manifestations of systemic problems in their lives.

---

[160] *See infra* Section V.A (discussing issues that bankruptcy reveals but cannot correct, including systemic discrimination of communities of color).

[161] *See, e.g.*, Sarah Jane Glynn, *Breadwinning Mothers Continue to Be the U.S. Norm*, CTR. FOR AM. PROGRESS (May 10, 2019, 5:17 PM), https://www.americanprogress.org/issues/women/reports/2019/05/10/469739/breadwinning-mothers-continue-u-s-norm/ (detailing how women increasingly are the sole earner in a household or earn more than half of the household's income).

[162] *See infra* Table 9 (showing the proportion of variance explained by each component, including component 3 (8.3%), component 4 (6.6%), and component 6 (5.2%)).

Overall, delving into the details of the components in our PCA results draws attention to the multitude of problems that people filing bankruptcy seek to manage. It also shows that particular issues will be of greater or lesser importance to different filers, even when they may enter bankruptcy with similar financial and demographic profiles. But, at present, filers must fit their diverse financial and life issues into one of two bankruptcy chapters.

F. ACCESSING BANKRUPTCY, CHOOSING A CHAPTER, AND OBTAINING A DISCHARGE

In the past, people nationwide have filed chapter 7 at twice the rate of chapter 13.[163] That is, two-thirds of consumer bankruptcy filings are chapter 7 cases, and one-third are chapter 13 cases. Also, historically, most people have filed bankruptcy with the assistance of an attorney.[164] As detailed in Table 7, based on current CBP data, how people access and use the bankruptcy system has remained the same in recent years.

Table 7. Representation in Bankruptcy and Chapter Choice

	All Cases	Ch. 7 Cases	Ch. 13 Cases
Chapter		63%	37%
Pro se	8%	7%	8%
Petition preparer	5%	6%	4%
Attorney	88%	87%	88%
Repeat filers	17%	7%	34%

Notes: Table 7 reports statistics about how people access the consumer bankruptcy system and chapter choice based on data from the current CBP.

Only 8% of debtors filed pro se without any assistance at all. Another 5% of debtors used a petition preparer to help assemble their petitions and schedules. The percentage of debtors who filed

[163] Specifically, two-thirds of consumer bankruptcy filings are chapter 7 cases and one-third are chapter 13 cases. *See supra* note 60 and accompanying text.

[164] *See supra* note 46 and accompanying text.

pro se or who relied on a petition preparer was the same among people who file chapter 7 and those who file chapter 13. Because of chapter 13's complexity, filing chapter 13 bankruptcy without an attorney seems even riskier given that the case likely has a higher probability of being dismissed for failure to submit all required information in the correct format, including a proposed repayment plan.[165] The outcomes of cases in the current CBP show that filing chapter 13 pro se indeed is riskier.[166]

Debtors in the current CBP followed the historic filing trend, with about two-thirds filing chapter 7 and one-third filing chapter 13. The higher incidence of repeat filers—people who file bankruptcy more than once in an eight-year period—in chapter 13 can be attributed to the Code's provisions that limit the usefulness of filing chapter 7 repeatedly.[167] Debtors cannot obtain a discharge in chapter 7 if they received a discharge in chapter 7 within the last eight years or a discharge in chapter 13 within the last six years.[168] In contrast, if a person files chapter 7, that debtor is eligible to obtain a discharge in chapter 13 after four years.[169] If they had previously filed chapter 13 and obtained a discharge, they may obtain another discharge in chapter 13 once two years have passed.[170] The mean number of years that the repeat filers in the

---

[165] *See* Dickerson, *Racial Steering*, *supra* note 46, at 630–31 ("[M]ost *pro se* debtors are destined for failure because of the complexities involved with filing for bankruptcy . . . ."). For details about filing chapter 13 bankruptcy, see *supra* Section II.B.

[166] *See infra* Table 8 (showing bankruptcy case outcomes by chapter).

[167] The bankruptcy petition asks debtors if they have filed within the last 8 years. *Voluntary Petition for Individuals Filing for Bankruptcy*, U.S. COURTS 3, https://www.uscourts.gov/sites/default/files/b_101.pdf (last visited Feb. 25, 2020). Based on what mandatory data from bankruptcy petitions, repeat filers in our dataset filed bankruptcy again after a mean of 4.6 years. The mean number of years since their prior filing was higher in chapter 7 (6.7 years) than chapter 13 cases (3.9 years).

[168] *See* 11 U.S.C. §§ 727(a)(8)–(9) (discussing the exceptions to granting a debtor's discharge). If the debtor's prior chapter 13 plan paid 100% of unsecured claims or if it paid 70% of unsecured claims and the court determined that the plan was proposed in "good faith" and represented the "debtor's best efforts," the debtor can receive a discharge in chapter 7 without waiting six years. 11 U.S.C. § 727(a)(9).

[169] *See* 11 U.S.C. § 1328(f)(1) ("[T]he court shall not grant a discharge . . . in a case filed under chapter 7 . . . during the 4-year period preceding the date of the order for relief under this chapter.").

[170] *See* 11 U.S.C. § 1328(f)(2) ("[T]he court shall not grant a discharge . . . in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.").

current CBP waited before filing bankruptcy again coincide with these discharge timeframes. In addition, the higher incidence of repeat filers in chapter 13 reflects the reality that many repeat filers are people who are filing chapter 13 again within a year of their first chapter 13 petitions.[171] This again highlights the difficulties of meeting chapter 13's requirements.

Also as in prior decades, debtors in the current CBP are much less likely to have their case dismissed if they file chapter 7 and if they are represented by an attorney.[172] Table 8 reports case outcomes based on chapter filed and whether the debtor filed pro se without the help of an attorney.

Table 8. Case Outcomes

		Ch. 7		**Ch. 13**	
	All Cases	All Cases	Pro se Cases	All Cases	Pro se Cases
Discharged	48%	68%	45%	15%	2%
Dismissed	16%	4%	34%	35%	84%
Prior to plan confirmation				20%	81%
After plan confirmation				14%	2%
Pending	36%	28%	21%	50%	14%

Notes: Table 8 reports statistics about the outcomes of the bankruptcy cases in the current CBP sorted by chapter at the time of filing. Twenty-nine percent of the discharged Chapter 13 cases were initially filed as chapter 13 cases but converted to chapter 7 and received a discharge.

The higher percentage of pending chapter 13 cases reflects these cases' length. But even with half of the chapter 13 cases in the current CBP pending, the disparities in discharge between chapter 7 and chapter 13 are clear. The disparities in pro se outcomes also stand out, particularly the high pro se chapter 13 dismissal rate

[171] *See* Sara Sternberg Greene, *The Failed Reform: Congressional Crackdown on Repeat Chapter 13 Bankruptcy Filers*, 89 AM. BANKR. L.J. 241, 252 (2015) (finding that 14.7% of all sampled bankruptcy petitions filed in 2007 were of repeat filers, and of chapter 13 repeat filers, 69% filed a new petition within a year after a previous petition's failure).

[172] *See supra* note 47 and accompanying text (describing the difficulties that pro se filers face with bankruptcy judges).

prior to plan confirmation. If a person files chapter 13 pro se, there is only a 19% chance that their case will make it past the repayment plan proposal stage. As of our most recent update of outcomes, only one pro se chapter 13 case had achieved discharge.

Discharge is not the goal of all chapter 13 cases. Instead, people wish to stave off foreclosure to sell their homes at market value. Or they want to get back repossessed vehicles. Or they need time to work out a deal with the IRS and local taxing authorities. Nonetheless, that chapter 13 is the bankruptcy option to achieve all of these distinct goals means that people must pay (at least presumably) about $3,800 in attorneys' fees and filing fees for these outcomes.[173] Focusing on what people seek to do in their cases makes it clear that consumer bankruptcy's two chapters fail to respond to the needs of the people who actually file bankruptcy.

V. LESSONS FROM THE PORTRAITS OF CONSUMER BANKRUPTCY FILERS

The different pieces of data about the people who file bankruptcy tell interesting and important stories when taken apart and systematically organized. These stories and groupings offer important lessons about bankruptcy law and policy. This Part begins with policy lessons beyond bankruptcy and ends with solutions for crafting a consumer bankruptcy system that responds to the key financial differences among the people who use the system.

A. WHAT BANKRUPTCY SHOWS BUT CANNOT ADDRESS

Studying the people who file bankruptcy has always shone a light on economic, social, and family structures in the United States. When Sullivan, Warren, and Westbrook analyzed data from the 1991 iteration of the CBP, they did so with a stated focus on the "economic fractures in American society."[174] Likewise, our results identify groups of debtors whose cases, at their core, revolve around issues that speak much more to larger economic and social

---

[173] *See supra* note 48 and accompanying text.

[174] SULLIVAN ET AL., *supra* note 15, at xiii; *see also supra* note 15.

inequalities than to how bankruptcy law and courts can provide people with an efficient and effective way to get back on their financial feet. The over-representation of Black households and single women in bankruptcy, particularly the confluence of these two demographic characteristics, stand out as spotlighting consumer bankruptcy's intersection with ongoing conversations about how to remove barriers to certain groups' economic well-being.

For some debtors, filing bankruptcy will not address their life problems, no matter what changes are made to bankruptcy laws. If barriers to employment prevent someone from finding and keeping a well-paying job,[175] then the bankruptcy trustee or judge cannot give that debtor a new job or a second job. In fact, the filing will appear on the debtor's credit report, which could dissuade potential employers from hiring the debtor.[176] Bankruptcy judges cannot pass or enforce equal pay for equal work legislation, bring the United States into line with other developed countries in guaranteeing paid time off work to new parents, or require employers or the government to offer the affordable and reliable childcare that parents need to be able to work.[177] Neither bankruptcy laws nor judges can remedy the underlying factors that lead some people to

---

[175] Black Americans are more likely to lose their jobs during economic downturns. *See* Joseph Zeballos-Roig, *The Economic Prospects of Black Americans Have Stayed Largely Unchanged for Decades. Here Are 12 Charts Demonstrating Alarming Rates of Inequality*, BUS. INSIDER (June 10, 2020, 10:16 AM), https://www.businessinsider.com/charts-black-americans-gaping-economic-inequality-white-unemployment-earnings-financial-2020-6 (noting that economists characterize the issue as "first fired, last hired").

[176] *See* 11 U.S.C. § 525 (providing for when an employer may not discriminate against a person because they filed bankruptcy); Deborah Thorne, *Personal Bankruptcy and the Credit Report: Conflicting Mechanisms of Social Mobility*, 11 J. POVERTY 23, 36 (2007) (finding that more than one in ten bankruptcy filers reported having trouble finding a job and 0.05% of those filers reported being fired from their jobs due to their bankruptcies).

[177] *See* Deborah A. Widiss, *Equalizing Parental Leave*, 105 MINN. L. REV. 2175, 2176–77 (2021), (detailing the lack of paid parental leave in the United States); Cahn & McClain, *supra* note 158, at 10–15 (discussing the gender wage gap and disparities in childcare prior to the pandemic); Jaclyn Diaz, *States Look to Remedy Pay Gap as Federal Legislation Stalls*, BLOOMBERG L. (July 31, 2019 10:38 AM), https://news.bloomberglaw.com/daily-labor-report/states-look-to-remedy-the-pay-gap-as-federal-legislation-stalls (discussing states' equal pay for equal work legislation); Grover J. "Russ" Whitehurst, *Why the Federal Government Should Subsidize Childcare and How to Pay for It*, BROOKINGS (Mar. 9, 2017), https://www.brookings.edu/research/why-the-federal-government-should-subsidize-childcare-and-how-to-pay-for-it/ (detailing public support for nationally subsidized childcare).

simply not have enough money to keep themselves and their children financially afloat.

Filing bankruptcy similarly will not change fixed expenses that account for a larger portion of household budgets than in prior decades.[178] It will not stop bills from continuing to arrive for new or reaffirmed car and home loans. It will not decrease the cost of utilities, fuel, or food. And it will not solve the financial fallout of a divorce's splitting one household into two that our data suggest continues to fall disproportionately on women and partially accounts for women's overrepresentation among bankruptcy filers.[179]

Bankruptcy also will not remedy systemic discrimination in the United States that results in communities of color paying more for houses, cars, and all types of consumer credit, and in women and minorities being paid less for their work.[180] Making student loans dischargeable will not address the reality that Black and Latinx

---

[178] *See* Elizabeth Warren, *The New Economics of the American Family*, 12 AM. BANKR. INST. L. REV. 1, 4–10 (2004) [hereinafter Warren, *New Economics*] (noting immense decreases in household budgets over the preceding twenty years); *see also* ADAM J. LEVITIN, CONSUMER FINANCE: MARKETS AND REGULATION 4–8 (2018) (detailing a budget for "the median-income Smiths" and noting changes to fixed expenses in recent decades).

[179] *See* Warren, *New Economics*, *supra* note 178, at 2, 6–10 (noting how changes in families' economic structure and a fraying social safety net have left parents vulnerable, particularly after divorce); *see also* Warren, *What Is a Women's Issue?*, *supra* note 14, at 24–31 (discussing economics' and bankruptcy's intersection with women's well-being); ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS AND FATHERS ARE GOING BROKE 97–99, 108–11 (2003) (overviewing American families' financial situations).

[180] *See* Foohey & Martin, *Fintech's Role*, *supra* note 35, at 475–87 (detailing research about discrimination against communities of color in the housing, auto, student loan, and high-cost, alternative financing markets); Pamela Foohey, *Lender Discrimination, Black Churches, and Bankruptcy*, 54 HOUS. L. REV. 1079, 1096–1100 (2017) (detailing research regarding racial and ethnic disparities in the home, car, credit, and other financial markets); *see also* Elise Gould, *Black-White Wage Gaps Are Worse Today Than in 2000*, ECON. POL'Y INST.: WORKING ECON. BLOG (Feb. 27, 2020, 5:34 PM), https://www.epi.org/blog/black-white-wage-gaps-are-worse-today-than-in-2000/ (detailing the Black–white wage gap). *But see* Rakesh Kochhar, *Key Findings on Gains Made by Women amid a Rising Demand for Skilled Workers*, PEW RSCH. CTR. (Jan. 30, 2020), https://www.pewresearch.org/fact-tank/2020/01/30/key-findings-on-gains-made-by-women-amid-a-rising-demand-for-skilled-workers/ (detailing the decreasing gender wage gap from 33 cents on the dollar in 1980 to 15 cents on the dollar in 2018 and attributing the shift to the greater number of women in higher-skilled occupations).

students pay more for education loans than other populations.[181] Providing greater relief for home loans will not increase the value of houses in Black communities to match similar houses in white neighborhoods.[182] When Black households emerge from bankruptcy, they will continue to face serious disparities that prevent them from accumulating wealth, which may lead them to turn back to the bankruptcy system for help, absent larger structural changes to the employment, education, and homeownership markets.

Likewise, bankruptcy will not cure people's or their children's physical or mental ailments, which may continue to saddle them with hefty medical and prescription bills. Solutions to the healthcare crisis in the United States lie within the healthcare and insurance systems. Absent changes to these systems, all types of people (young, old, single, married, child-less, or with children) will continue to file bankruptcy in the wake of medical crises and chronic health issues.[183]

Bankruptcy will not resolve these nor other root causes of people's financial distress because, at its core, it merely provides a discharge of debts, which, in theory, allows filers to take advantage

---

[181] *See* Jiménez & Glater, *supra* note 125, at 131 ("[S]tudent indebtedness works systematically to disadvantage those students who belong to groups historically subordinated . . . ."); Christopher K. Odinet, *The New Data of Student Debt*, 92 S. CAL. L. REV. 1617, 1623 (2019) (detailing disparities in education price and education loans that result in Black and Latinx students paying more for education).

[182] *See* ANDRE PERRY, JONATHAN ROTHWELL & DAVID HARSHBARGER, METRO. POL'Y PROGRAM AT BROOKINGS, THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS: THE CASE OF RESIDENTIAL PROPERTY 11 (2018), https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf ("In the average U.S. metropolitan area, homes in neighborhoods where the share of the population is 50 percent Black are valued at roughly half the price as homes in neighborhoods with no Black residents."); KEEANGA-YAMAHTTA TAYLOR, RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP 48–54 (2019) (discussing housing discrimination and the "Black tax"); MECHELE DICKERSON, HOMEOWNERSHIP AND AMERICA'S FINANCIAL UNDERCLASS: FLAWED PREMISES, BROKEN PROMISES, NEW PRESCRIPTIONS 145–78 (2014) (discussing why the promise of homeownership as part of the American dream is flawed, particularly for Black and Latinx families).

[183] *See* Himmelstein et al., *Medical Bankruptcy*, *supra* note 23, at 431–32 (detailing debtors' reports of medical contributors to their bankruptcies).

of brightened future financial prospects.[184] But many people's lives do not get sunnier in the years following bankruptcy filings. Based on the interviews of one of this Article's authors with people who had filed chapter 7 in 2007, about 65% of those filers interviewed reported having difficulties paying one or more bills three years after filing bankruptcy.[185] Respondents cited medical and home-related expenses, such as mortgage and utilities, as costs causing the greatest number of continued troubles.[186] Similarly, based on interviews with chapter 7 debtors who filed in 2001,[187] one of this Article's authors found that one-quarter of debtors reported that they had trouble paying debts a mere one year after their bankruptcies.[188] These debtors cited utility, car, and housing bills as the sources of their difficulties.[189] Overall, 35% of respondents reported that their financial situation had stayed the same or worsened one-year post-filing.[190] The initial factors that propelled these people into bankruptcy—job loss and medical issues—also determined their post-bankruptcy recovery.[191]

Our data about the people who file bankruptcy provide another vantage point to see how systemic racial and gender discrimination, childcare deficiencies, healthcare failures, and a broken higher education system infect people's finances, leading to serious struggles with debt and eventual trips to bankruptcy courts for help. Bankruptcy filings highlight how these problems—not all of which may manifest as economic issues initially—can wreak havoc on people's ability to financially survive. Crucially, research has

---

[184] *See* Katherine Porter & Deborah Thorne, *The Failure of Bankruptcy's Fresh Start*, 92 CORNELL L. REV. 67, 68, 71–75 (2006) [hereinafter Porter & Thorne, *Failure of Bankruptcy's Fresh Start*] (discussing bankruptcy's "rhetoric of rehabilitation").

[185] Thorne & Porter, *Financial Education*, supra note 58, at 15 (discussing interviews with people who filed chapter 7 in 2007).

[186] *Id.* at 21.

[187] Porter & Thorne, *Failure of Bankruptcy's Fresh Start*, *supra* note 184, at 80–83 (detailing the CBP methodology).

[188] *Id.* at 84 ("Postbankruptcy, new bills remain a challenge for a significant number of families.").

[189] *Id.* at 85 (showing statistical evidence and providing anecdotal accounts of the impact of such issues on debtors who file).

[190] *Id.* at 86–87 (demonstrating, through survey evidence, 8% felt "Worse Off" while 27% felt their financial situations was "Unchanged").

[191] *See id.* at 93–109 (finding that income instability and health problems undermine people's attempts to recover financially post-bankruptcy).

established that these economic issues harm some Americans more than others.[192] Our results reinforce this research. Changes to bankruptcy laws will only chip away at these problems by alleviating the financial fallout from these circumstances at the margins. Descriptions of the people who file bankruptcy, however, can provide another avenue to emphasize how these disparities hurt American families and to advocate for solutions to the root causes of people's financial distress.

B. TAILORING BANKRUPTCY TO ACCOUNT FOR DIFFERENCES AMONG FILERS

Although bankruptcy laws may only marginally address the deeper economic and social disparities that appear in bankruptcy courts, our analysis of the people who file indicates that there are ways to make the system a more productive place for the people who use it. The people who file bankruptcy are as heterogenous as they were in the 1980s and 1990s.[193] Our claim that there are differences among the people who file bankruptcy is hardly novel. But the fact that, thirty years later, people continue to come to bankruptcy courts with diverse financial and demographic profiles is significant. Much has changed in the world of consumer credit over the past three decades.[194]

Our findings also reinforce, with data, scholars' intuitions about bankruptcy filers. Our analysis highlights some of the differences among the people who file bankruptcy now. The variables in our dataset display the distinguishing characteristics of many bankruptcy cases—some, but not all of which scholars have focused on in prior literature.[195] Through PCA results, our claim is not that we have identified the absolutely correct groupings of people who choose to file bankruptcy. Rather, we claim that we have identified some fundamental groupings of filers that provide important

---

[192] *See supra* notes 174–183 and accompanying text.

[193] *See supra* notes 15–20 and accompanying text.

[194] *See supra* notes 36–39 and accompanying text.

[195] Most notably, again, scholars have spent considerable effort debating the intersection of homeownership and bankruptcy. *See supra* note 21. Our results show that dealing with homes and home loans is central to the cases of *some* filers who come to bankruptcy owning homes.

lessons for the consumer bankruptcy laws and system. A database with different variables would produce other groupings.[196]

Nonetheless, bankruptcy laws and courts cannot effectively achieve the goal of giving people a fresh start without knowing about the primary financial problems of the individuals and families who actually use the system.[197] Understanding the range of financial problems is necessary to achieve that goal. At its extreme, establishing heterogeneity among bankruptcy filers simply recognizes that every case is unique. Knowing that fact will not establish anything useful. But our analysis shows both filers' differences *and* paradoxically that these differences manifest in patterns in bankruptcy cases. Establishing the existence of these patterns makes our results particularly useful for evaluating the consumer bankruptcy system and distinctive from prior descriptions of the people who file bankruptcy.

Knowing the specific ways in which differences manifest among bankruptcy filers is useful in two main ways. First is the point made above. Many of these differences stem from circumstances outside the bankruptcy system. Bankruptcy alone will not eliminate the differences.

Second, notwithstanding this insight, bankruptcy law is an important part of the social safety net, and despite its limits, it can help to alleviate the financial fallout from these circumstances. Our results show that people come to bankruptcy with more than one or two specific sets of financial issues on which their cases turn, essentially what consumer bankruptcy laws currently presume. Crucially, there almost certainly will be more than two distinct sets of financial problems that people bring with them to bankruptcy

---

[196] *See supra* Section IV.A (discussing our PCA and its resulting groupings). For instance, because of limitations in how student loan debt is reported on bankruptcy schedules, our dataset does not include a specific variable for student loan debt. Instead, we include educational debt with general unsecured debts. If the PCA included a specific variable for student loan debt, then a group of people who file bankruptcy with student loan debt as a principal concern of their cases may be part of the results. Like debtors who file with large priority tax debts, which will not be discharged, student loan debtors may file to deal with other debts so that they can concentrate on paying their student loans. *See supra* notes 86–91, 123–124 and accompanying text.

[197] *See* Foohey, *New Deal for Debtors*, *supra* note 64, at 2302–04 (overviewing justifications for giving people a fresh start).

courts, and analyses like our PCA slice through detailed data about the people who file bankruptcy.

The differences inside the bankruptcy system should cause lawmakers to ask whether the current law effectively addresses the patterns among the people who file bankruptcy. Our analysis shows that there are home, car, other real property, tax debt, credit card debt, small business entrepreneurship cases, and so forth. Forcing people to conform their primary financial issues into the two current chapters is inefficient on several levels—for filers, the legal system, and the economy. A more effective consumer bankruptcy system would provide pathways for people to address their most pressing concerns, whether that be keeping homes, keeping cars, or discharging debts.

CBRA proposes the most sweeping changes to the Bankruptcy Code since its enactment over forty years ago.[198] If CBRA is enacted, it would change the consumer bankruptcy system in ways consistent with what our analysis shows about the differences among bankruptcy filers. Although at a superficial level CBRA may appear to reduce options by eliminating chapters 7 and 13 for individual filers and introducing a single consumer bankruptcy chapter, this single chapter decouples the sorts of relief that a consumer might need.[199] CBRA's single point of entry offers "à la carte" options to filers.

Under CBRA, a debtor may choose to file repayment plans to deal only with a home loan, a car loan, or unsecured debt, or any combination that the filer decides is necessary.[200] For instance, a consumer may turn to bankruptcy primarily because of debt collection that escalated into a lawsuit to collect a particular debt. Under CBRA, the debtor could file to deal with that lawsuit and that debt. Similarly, a consumer may be having problems working with

---

[198] *See supra* note 10 and accompanying text (noting the intentions of the proposed CBRA to make financial relief more accessible and efficient and to address racial and gender disparities in the bankruptcy system).

[199] *See* Levitin, *The Consumer Bankruptcy Reform Act of 2020*, *supra* note 11 ("Chapter 10 is meant to be the single point of entry for almost all consumers.").

[200] *See id.* (discussing the "limited proceeding" option provided by chapter 10 wherein a debtor may address "a mortgage or car loan without a full-blown bankruptcy").

the Internal Revenue Service to settle their tax debt.[201] They can file to deal with other debts so that they can allocate funds to the tax debt.

As a bonus, reformation of the consumer bankruptcy system in this way can address other inefficiencies, some of which BAPCPA introduced, and many of which impact access to justice.[202] Most notably, racial disparities in the current consumer bankruptcy system have important consequences. Black Americans file at twice the rate they appear in the population.[203] Providing that education loans are dischargeable, in whole or in part, would help with the student loan crisis, the effects of which disproportionately fall on communities of color.[204] Likewise, allowing home mortgages to be modified such that the unsecured portion of the debt can be "stripped down" would benefit communities of color, who receive more expensive loans for houses that tend to appreciate less over time.[205]

Black Americans also file chapter 13 more often than other debtors. As a consequence, Black households pay more to access the bankruptcy system, are likely to pay more to their creditors in bankruptcy through repayment plans, and are less likely to receive a discharge of their debts.[206] A single portal will eliminate initial chapter choice. Reforming the consumer bankruptcy system also

---

[201] *See* Shu-Yi Oei, *Getting More by Asking Less: Justifying and Reforming Tax Law's Offer-in-Compromise Procedure*, 160 U. PENN. L. REV. 1071, 1077–81 (2012) (discussing the IRS's "Offer-in-Compromise" program); *Offer in Compromise*, INTERNAL REV. SERV., https://www.irs.gov/payments/offer-in-compromise (last visited Mar. 28, 2022) ("An offer in compromise allows you to settle your tax debt for less than the full amount you owe. It may be a legitimate option if you can't pay your full tax liability[] or doing so creates a financial hardship.").

[202] *See supra* Part II (overviewing the consumer bankruptcy system and BAPCPA).

[203] *See supra* Section II.E.*4*.

[204] *See supra* note 181 and accompanying text (noting that Black and Latinx students pay more for student loans than other populations).

[205] *See supra* note 182 and accompanying text (providing that homes in Black communities are not valued as highly as other communities); Levitin, *Resolving the Foreclosure Crisis*, *supra* note 21, at 579 (defining "strip-down" as "bifurcat[ing] an undersecured lender's claim into a secured claim for the value of the collateral and a general unsecured claim for the deficiency" (footnote omitted)).

[206] *See generally* Foohey et al., *"No Money Down"*, *supra* note 32 (detailing racial disparities in bankruptcy and the consequence of those disparities); *supra* Section II.B (discussing chapter 13).

provides the opportunity to change how people pay their attorneys, which currently feeds into the racially disparate use of chapter 13,[207] and to address abusive debt collection practices that not only push people to file bankruptcy but also have spilled over into bankruptcy.[208]

Overall, the most significant takeaway from our analysis is that certain debts are the most distinguishing characteristics of bankruptcy cases, particularly home debt, car debt, real property debt, and large unsecured debts. An improved consumer bankruptcy system should offer people the ability to tailor their cases to their primary needs, which is what CBRA provides. In addition, although some of the problems that our analysis highlights cannot be addressed in large part through changes to bankruptcy laws, the consumer bankruptcy system should not make it harder on the people who file to get relief from the financial fallout of these circumstances. Besides offering pathways to address people's most pressing concerns, reforms to consumer bankruptcy should respond to the access to justice problems that currently plague the system.

VI. CONCLUSION

Congress enacted the current Bankruptcy Code in 1978.[209] When Sullivan, Warren, and Westbrook last comprehensively overviewed the people who file bankruptcy, the Code was only a little over a decade old.[210] Much has changed since the Code was enacted, since it was updated by BAPCPA, and since Sullivan, Warren, and Westbrook's snapshot of bankruptcy filers.[211] Our analysis of the people who file now shows not only that they continue to come to bankruptcy with a variety of problems but also, more importantly,

---

[207] *See generally* Foohey et al., *"No Money Down"*, *supra* note 32 (discussing attorneys' fees, chapter choice, and racial disparities in the current consumer bankruptcy system).

[208] *See generally* Kara J. Bruce & Alexandra P.E. Sickler, *Private Remedies and Access to Justice in a Post-*Midland *World*, 34 EMORY BANKR. DEVS. J. 365 (2018) (discussing creditors' pursuit of time-barred debt in consumer bankruptcy); Alexandra Sickler & Kara Bruce, *Bankruptcy's Adjunct Regulator*, 72 FLA. L. REV. 159 (2020) (proposing a bankruptcy-focused regulatory direction for the Consumer Financial Protection Bureau); Levitin, *Resolving the Foreclosure Crisis*, *supra* note 21 (discussing CBRA).

[209] Bankruptcy Reform Act of 1978, Pub. L. No. 85-598, 92 Stat. 2549.

[210] *See generally* SULLIVAN ET AL., *supra* note 15.

[211] *See supra* notes 20–32 and accompanying text.

that there are patterns in how these differences manifest in bankruptcy cases. These patterns provide a rough blueprint for reforming the consumer bankruptcy system to make it more efficient and effective for the people who actually use it and underscore deeper faults in the United States' economy and society.

APPENDIX: PRINCIPAL COMPONENT ANALYSIS DETAILS

We performed a principal component analysis (PCA) on twenty-seven variables from the Consumer Bankruptcy Project. These variables represented almost every aspect of the court-record and questionnaire data. PCA begins by computing a correlation matrix of the data. Where the variables were ordinal or dichotomous, we used polychoric or polyserial correlations as appropriate.

The variables used in the PCA and their sources were:

Court-Record Data

Value of home
Value of other real estate
Owns a car
Value of all cars
Value of retirement accounts
Value, other personal property
Mortgage debt
Amt. of inv. liens on home
Amt. of car loans
Amt. of other secured debt
Priority debt
General unsecured debt
Pretax income
Number of dependents
Prebkr. home foreclosure
Prebkr. car repossession
Prebkr. other lawsuit

Questionnaire Data

Age of filer
Black
Female head of household
Self-employment
Educational level
# of prebkr. coping mechanisms
# of prebkr. privations
Any medical reason for bkr.
Any mortgage reason for bkr.
Time struggling before bkr.

To limit the effects of outliers, court-record data were Winsorized at three standard deviations. For questionnaires with two heads of household, respondents were considered Black or self-employed if either person so identified. Where there are two heads of household, age and educational level are averages. The questionnaire asked respondents if they did one of fourteen things, such as working more hours or selling something, in the two years before bankruptcy as "a way to make ends meet." We call these "coping mechanisms" and counted the number of coping mechanisms respondents reported. The questionnaire also asked respondents if they went without one of twelve things, such as medical care or food, in the two years before bankruptcy. We refer to these as "privations" and counted the number of privations reported by each respondent. We considered respondents to have a medical reason for bankruptcy if they indicated on the questionnaire that a contributory reason for bankruptcy was missed work because of a medical problem or medical expenses. We considered respondents to have a mortgage reason for bankruptcy if they said a contributory reason for bankruptcy was either missed mortgage payments or a mortgage foreclosure.

The initial eigenvalues of the PCA are reported in Table 9.

Table 9. Initial Eigenvalues for PCA Results

	Eigenvalue	Proportion of Variance Explained	Cumulative Variance Explained
Component 1	3.826	14.2%	14.2%
Component 2	2.646	9.8%	24.0%
Component 3	2.232	8.3%	32.2%
Component 4	1.789	6.6%	38.9%
Component 5	1.581	5.9%	44.7%
Component 6	1.405	5.2%	49.9%
Component 7	1.291	4.8%	54.7%
Component 8	1.194	4.4%	59.1%
Component 9	1.134	4.2%	63.3%
Component 10	1.063	3.9%	67.3%
Component 11	0.997	3.7%	71.0%
Component 12	0.925	3.4%	74.4%
Component 13	0.855	3.2%	77.6%
Component 14	0.790	2.9%	80.5%
Component 15	0.729	2.7%	83.2%
Component 16	0.671	2.5%	85.7%
Component 17	0.638	2.4%	88.0%
Component 18	0.579	2.1%	90.2%

	Eigenvalue	Proportion of Variance Explained	Cumulative Variance Explained
Component 19	0.548	2.0%	92.2%
Component 20	0.483	1.8%	94.0%
Component 21	0.472	1.8%	95.7%
Component 22	0.379	1.4%	97.1%
Component 23	0.300	1.1%	98.3%
Component 24	0.252	0.9%	99.2%
Component 25	0.122	0.5%	99.6%
Component 26	0.089	0.3%	100.0%
Component 27	0.010	0.0%	100.0%
	N = 1,229		

Components with an eigenvalue of *1.1 or greater* were retained. Table 10 reports the loadings on each of these nine components after a varimax rotation with loadings of *0.4 or greater or -0.4 or less* in boldface.

Table 10A. PCA Component Loadings After Varimax Rotation (Components 1–3)

	Comp. 1	Comp. 2	Comp. 3
Value of home	0.008	**0.481**	-0.063
Value of other real estate	0.013	-0.022	-0.029
Owns a car	**0.570**	-0.006	0.080
Value of all cars	**0.555**	0.003	-0.026
Value of retirement accounts	0.082	0.141	-0.107
Value of other personal property	0.051	0.138	-0.065
Mortgage debt	-0.011	**0.511**	-0.048
Amt. of involuntary liens, home	0.073	0.065	-0.055
Amt. of car loans	**0.541**	-0.032	-0.010
Amt. of other secured debt	0.018	0.000	0.018
Priority debt	-0.054	-0.005	0.020
General unsecured debt	-0.028	-0.111	0.004
Pretax income	0.135	0.270	-0.134
Number of dependents	0.019	0.106	0.034
Prebkr. home foreclosure	-0.074	0.328	0.055

	Comp. 1	Comp. 2	Comp. 3
Prebkr. car repossession	-0.063	-0.029	-0.072
Prebkr. other lawsuit	-0.038	-0.120	0.054
Age of filer	0.005	0.115	-0.060
Black	-0.023	0.067	-0.033
Female head of household	-0.002	-0.119	0.036
Self-employment	-0.064	0.073	0.254
Educational level	0.089	0.072	0.106
# of prebkr. coping mechanisms	0.070	0.033	**0.515**
# of prebkr. privations	0.021	-0.055	**0.580**
Any medical reason for bkr.	0.015	0.037	0.243
Any mortgage reason for bkr.	-0.060	**0.440**	0.171
Time struggling before bkr.	-0.061	0.047	**0.404**
Variance explained by component	10.9%	10.8%	6.9%
Cumulative variance explained	10.9%	21.7%	28.6%

Table 10B. PCA Component Loadings After Varimax Rotation (Components 4–6)

	Comp. 4	Comp. 5	Comp. 6
Value of home	-0.076	-0.090	-0.102
Value of other real estate	-0.020	**0.669**	0.036
Owns a car	-0.069	0.006	-0.073
Value of all cars	0.008	0.033	0.000
Value of retirement accounts	0.001	0.029	-0.017
Value of other personal property	0.047	0.091	-0.106
Mortgage debt	-0.040	-0.088	-0.070
Amt. of involuntary liens, home	-0.135	-0.068	-0.017
Amt. of car loans	0.065	0.011	0.067
Amt. of other secured debt	-0.019	**0.649**	-0.060
Priority debt	-0.070	0.072	0.109
General unsecured debt	0.069	-0.009	-0.179
Pretax income	0.214	-0.050	-0.053
Number of dependents	**0.539**	-0.041	0.026
Prebkr. home foreclosure	0.087	0.170	0.114
Prebkr. car repossession	0.392	0.126	-0.086
Prebkr. other lawsuit	0.157	-0.013	-0.044

	Comp. 4	Comp. 5	Comp. 6
Age of filer	**-0.577**	0.058	-0.016
Black	0.111	-0.046	**0.608**
Female head of household	-0.135	0.043	**0.555**
Self-employment	-0.036	0.060	-0.294
Educational level	-0.083	-0.095	0.254
# of prebkr. coping mechanisms	0.168	0.009	0.116
# of prebkr. privations	0.000	-0.020	-0.068
Any medical reason for bkr.	-0.133	-0.074	-0.089
Any mortgage reason for bkr.	0.023	0.138	0.181
Time struggling before bkr.	-0.111	-0.016	-0.031
Variance explained by component	6.2%	6.2%	6.2%
Cumulative variance explained	34.9%	41.1%	47.3%

Table 10C. PCA Component Loadings After Varimax Rotation (Components 7–9)

	Comp. 7	Comp. 8	Comp. 9
Value of home	0.063	0.018	-0.018
Value of other real estate	-0.010	0.023	0.000
Owns a car	0.037	-0.059	0.127
Value of all cars	-0.025	-0.003	-0.032
Value of retirement accounts	0.040	0.192	-0.022
Value of other personal property	-0.019	0.134	-0.043
Mortgage debt	0.081	-0.015	-0.044
Amt. of involuntary liens, home	-0.018	-0.051	**0.635**
Amt. of car loans	-0.033	-0.011	-0.047
Amt. of other secured debt	0.057	0.034	-0.056
Priority debt	-0.102	**0.656**	-0.026
General unsecured debt	0.217	**0.469**	0.148
Pretax income	-0.087	0.295	-0.080
Number of dependents	0.001	0.031	-0.032
Prebkr. home foreclosure	0.069	-0.229	0.328
Prebkr. car repossession	-0.253	0.024	0.163
Prebkr. other lawsuit	0.030	0.135	**0.558**
Age of filer	-0.141	0.100	0.037
Black	-0.020	0.091	-0.120

	Comp. 7	Comp. 8	Comp. 9
Female head of household	0.090	-0.058	0.081
Self-employment	**0.493**	-0.057	-0.172
Educational level	**0.436**	0.247	0.051
# of prebkr. coping mechanisms	0.019	-0.007	-0.102
# of prebkr. privations	-0.049	-0.024	0.025
Any medical reason for bkr.	**-0.594**	0.098	-0.087
Any mortgage reason for bkr.	-0.163	-0.067	0.064
Time struggling before bkr.	-0.057	0.164	0.128
Variance explained by component	5.5%	5.5%	5.0%
Cumulative variance explained	52.8%	58.3%	63.3%