Attribution Theory Bias and The Perception of Abuse in Consumer Bankruptcy

Rafael Efrat*

Currently pending in the United States Congress is a dramatic reform proposal of the consumer bankruptcy law. The reform proposal aims to significantly curtail bankruptcy relief to financially troubled individuals. The reform is premised in part on the widely held belief that the rather broad fresh-start opportunities currently provided by the bankruptcy system are, by and large, abused by consumers. Many reform proponents contend that clever manipulators, and not the truly needy, are the primary users of bankruptcy. Refuting this widely held belief, a number of scholars have empirically tested the assertions of abuse and found that widespread abuse in bankruptcy is largely a perceived phenomenon, not well grounded in facts.

Using attribution theory, this Article attempts to explain the widespread public perception of abuse in consumer bankruptcy despite the lack of robust evidence to that effect. At the most fundamental level, attribution theory addresses the question of how people identify the causes of human behavior. Under attribution theory, one may postulate that people perceive pervasive abuse in consumer bankruptcy because of the way they explain and identify the causes of the underlying behavior of bankruptcy filing. The public tends to explain the behavior of bankruptcy filing by attributing fault or blame to the bankruptcy petitioner. Because the public perceives bankruptcy filing to be the product of the debtor's own fault, the public does not regard the petitioner as deserving much protection. Hence, by virtue of debtors' resorting to such protection in bankruptcy, the public tends to generally view such conduct as indicative of inherent abuse of the system. The public's perception of bankruptcy is not based on an objective reading of behavioral facts and empirical figures. Instead, the public's perception of the bankrupt population is largely distorted from reality due to individuals' inherent cognitive deficiencies, their tendency to over-attribute personal fault and under-attribute external factors to the act of bankruptcy filing, as well as their motivational and stereotyping biases.

Based on the application of these attribution theory biases to bankruptcy, this Article then hypothesizes that a similar disparity would exist between the

---

* Assistant Professor, California State University, Northridge. J.S.D., 2002, Stanford Law School; J.S.M., 1998, Stanford Law School; J.D., 1992, University of Southern California Law Center. The author would like to acknowledge the helpful comments made on earlier drafts of this article by Professor Elizabeth Warren from Harvard Law School, as well as Professor Marcus Cole and Professor Lawrence M. Friedman from Stanford Law School.
perception of abuse and the reality of abuse in the Israeli consumer bankruptcy context. As no study has ever been conducted outside the United States to empirically test the extent to which bankruptcy abuse is prevalent, this Article undertakes the first step to fill the gap in the comparative bankruptcy literature on the issue of abuse. Based on an analysis of 213 bankruptcy files collected in Israel in the late 1990s, this study suggests that despite the widespread perception of bankruptcy abuse in Israel, the vast majority of Israeli bankruptcy petitioners, like their counterparts in the United States, do not abuse the bankruptcy system.

I. INTRODUCTION

In the summer of 2002, following prolonged legislative maneuvering, congressional conferees reportedly were close to reaching a compromise on a major overhaul of consumer bankruptcy law.1 As in the last two legislative sessions of Congress, Congressional members predicted overwhelming bipartisan support for the passage of the compromise conference bill.2 The bankruptcy legislative reform bill was largely premised on the need to counteract a growing trend of consumer abuse.3 The perception of pervasive consumer bankruptcy abuse is shared by a wide spectrum of the general public. Two relatively recent surveys suggest that a large majority of the American people believe declaring bankruptcy is too easy.4 This perception of abuse is also widespread among members of Congress,5 members of the

1. See Philip Shenon, A Sudden Rush To Declare Bankruptcy Is Expected, N.Y. TIMES, July 27, 2002, at C1 (“The compromise bill, which was approved on Thursday by Congressional negotiators and is expected to be adopted in both the House and Senate by the end of next week, will make it much harder for Americans to wipe out their debts when they declare bankruptcy.”).

2. See Congress Finishes Work on Bankruptcy Reform Bill, 11 CONSUMER BANKR. NEWS 22 (2002) (quoting Senator Grassley) (“It’s been five years in the making. We just finished a historic third conference on a major piece of legislation that has many times won overwhelming approval from lawmakers.”).

3. See Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, Rep. of the Comm. on the Judiciary H.R. to Accompany H.R. 333 Together with Dissenting Views, H.R. Rep. No. 107-3, pt. 1, at 6 (2001) (“With respect to the interests of creditors, this legislation responds to many of the factors contributing to the increase in consumer bankruptcy filings, such as lack of personal financial accountability, the proliferation of serial filings, and the absence of effective oversight to eliminate abuse in the system.”); id. at 24 (“The bill is intended to improve the bankruptcy system by deterring abuse . . . .”)

4. See The Increase in Personal Bankruptcy and the Crisis in Consumer Credit: Hearing Before the Subcomm. on Admin. Oversight and the Courts of the Senate Comm. on the Judiciary, 105th Cong. 1-2 (1997) (opening statement of Sen. Charles E. Grassley) (“[A] poll conducted by the Opinion Research Corporation in December of last year indicates that a large majority of the American people also believe declaring bankruptcy is too easy.”); NATIONAL CONSUMER LEAGUE, SURVEY SHOWS CONFUSION ON CURRENT BANKRUPTCY LAWS 1 (June 17, 1997) (“In addition, the survey showed that most consumers (71 percent) think that it is ‘somewhat’ or ‘much too’ easy to declare personal bankruptcy.”).

5. See 146 CONG. REC. S49-06, S50 (daily ed. Jan. 26, 2000) (statement of Sen. Hatch) (“Not long ago in our Nation’s past, there was an expectation that people should repay what they have borrowed . . . . Our current system, I am sorry to say, allows some people who are able to repay their debts to avoid doing so.”); 105th Cong. 2 (1997) (opening statement of Sen. Charles E. Grassley) (“In my opinion, the
The perception of abuse in consumer bankruptcy is premised on a number of assertions, including that pre-bankruptcy strategic planning is on the rise, that bankruptcy petitioners routinely conceal valuable assets, and that the rate of serial bankruptcy filings is alarming. However, most of the discourse surrounding the claim of abuse is centered on the recent trend of increasing bankruptcy petitions. That trend culminated in the spring of 2002, when bankruptcy filings broke the record for filings in any given twelve-month period, reaching just over one and a half million petitions. Finally, claims of abuse are.

explosive increase in personal bankruptcies is yet another symptom of a bigger problem in America... Too many people don’t respect their financial obligations.”); 144 Cong. Rec. H10224, 10229 (1998) (statement of Rep. George W. Gekas) (“[T]he [bankruptcy] conference bill prevents manipulation of the system by those who seek to take advantage of this provision to the detriment of their creditors.”).

6. See American Bankruptcy Institute, Perception and Reality: American Bankruptcy Institute Survey on Selected Provisions of the 1984 Amendments to the Bankruptcy Code, 32 (1987) (finding that 15% of the federal bankruptcy judges believed there was a “great deal” of abuse in the bankruptcy system and 38% of bankruptcy judges in the 9th Circuit believed the same).

7. See id. (finding that 50% of the United States Trustee respondents believed there was a great deal of abuse in the bankruptcy system).

8. See Judge Edith H. Jones and Todd J. Zywicki, It’s Time for Means-Testing, 1999 B.Y.U. L. Rev. 177, 209-222; Lynn M. LoPucki, Common Sense Consumer Bankruptcy, 71 Am. Bankr. L.J. 461, 469-70 (1997) (“Although there have been no studies of the number of debtors who ought to be denied discharge, this writer’s experience suggests that the number is significant. If one includes debtors guilty of dishonest conduct that affects their creditors generally, but who can’t be denied discharge under current legal standards, the number of dishonest debtors receiving discharges is substantial. The rhetoric of the consumer bankruptcy system is contrary to the reality; dishonest debtors routinely receive discharges.”).

9. See The Increase in Personal Bankruptcy and the Crisis in Consumer Credit: Hearing Before the Subcomm. on Admin. Oversight and the Courts of the Senate Comm. on the Judiciary, 105th Cong. 52 (1997) (prepared statement of Michael F. McEneney) (“In all but the most exceptional cases, there is no check performed to determine whether the consumer has inadvertently or deliberately failed to identify assets which could be liquidated for the benefit of creditors. The net result is that under Chapter 7, consumers typically keep their assets...”); Teresa A. Sullivan, Elizabeth Warren & Jay L. Westbrook, Consumer Bankruptcy in the United States: A Study of Alleged Abuse and of Local Legal Culture, 20 J. Consumer Pol’y 223, 235-36 (1997) (alluding to the widely held perception that there are a significant number of serial filers of bankruptcy protection, but finding that “the proportion of [filers who are ‘repeaters’] is quite small”); Elizabeth Warren, A Principled Approach to Consumer Bankruptcy, 71 Am. Bankr. L.J. 483, 495 (1997) (“Exemptions were designed to help ensure that families were not put out of their homes in times of temporary financial reversal, but they have become investment vehicles for savvy debtors to protect significant cash assets from creditors.”).

10. See Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, supra note 3, at 5 (indicating that the bankruptcy reform bill responds to several significant developments, including the record high number of bankruptcy filings); Rodney Ho, Bankruptcy Panel’s Ideas Anger Creditors: Group to Present Proposal to Ease Some Standards on Sheltering Assets, Wall St. J., Oct. 16, 1997, at A2 (maintaining that there is a growing tide of personal bankruptcy filings nationwide); American Bankruptcy Institute, Bankruptcy Filings Hit Record High – Again (Mar. 16, 2002), available at http://www.abiworld.org/stats/IQ02PressRelease.html (citing data released by the Administrative Office of the U.S. Courts reporting that new bankruptcy filings for the 12 month period ending March 31, 2002 reached 1,504,806).
premised largely on the alleged inherent unfairness of the increase in the number of bankruptcy filers who obtain debt-forgiveness despite their ability to make substantial payments to their creditors.11

The current legislative endeavor to neutralize perceived abuse in the consumer bankruptcy system is not an isolated attempt. Before the 1978 bankruptcy reform, efforts were made in Congress to require bankruptcy petitioners to submit to a mandatory repayment schedule.12 In 1984, Congress adopted a provision in the Bankruptcy Code that provided a mechanism for a judge to dismiss a petition when the judge found that the petition amounted to substantial abuse of the bankruptcy law.13 Two years later, Congress expanded that provision, inviting the attorneys from the United States Trustee’s Office to bring a similar motion to dismiss a bankruptcy petition for “substantial abuse.”14

This Article suggests that while perception of pervasive abuse in the consumer bankruptcy system in the United States is rampant, existing studies indicate that this perception of abuse largely lacks solid empirical support. This Article then identifies similar discrepancies between public perception of abuse and the actual rate of abuse in other entitlement programs in the United States and abroad. Relying on social-psychology attribution theories, this study proceeds to explore the possible explanations for the disparity between the widespread public perception of pervasive consumer bankruptcy abuse and empirical studies’ findings suggesting that consumer bankruptcy abuse is largely a marginal phenomenon. To test some of the plausible explanatory factors for the discrepancy between the perception of abuse in bankruptcy and reality, this paper describes the results of an empirical study of abuse in the consumer bankruptcy system in Israel as compared to public perception of the same. The findings of this study provide plausible support for the attribution theories, which explain the root cause for the striking differences between the perception and actual reality of pervasive abuse in bankruptcy.

11. See, e.g., 144 Cong. Rec. H10224, 10224 (1998) (statement of Rep. John Linder) (“[B]ankruptcy of convenience has provided a loophole for those who are financially able to pay their debts, but simply have found a way to avoid personal responsibility and escape their financial responsibilities .... Nonetheless, the abusers of bankruptcy laws need to receive a message that Federal bankruptcy laws are not a haven of personal fiscal irresponsibility.”).


13. See 11 U.S.C. § 707(b) (1994). This provision was added “as part of a package of consumer credit amendments designed to reduce perceived abuses in the use of Chapter 7.” 6 LAWRENCE P. KING ET AL., COLLIER ON BANKRUPTCY § 707.LH[2], at 707-30 (15th ed. REV. 2000). It was intended to respond “to concerns that some debtors who could easily pay their creditors might resort to Chapter 7 to avoid their obligations.” Id. § 707.04, at 707-15.

II. THE DEBATE OVER BANKRUPTCY ABUSE IN THE UNITED STATES

A. Bankruptcy Abuse and Empirical Evidence

While there is a general acknowledgment that some abuse is inherent and inevitable in consumer bankruptcy, just as in any institution serving more than a million households annually,\textsuperscript{15} there is no persuasive empirical evidence that demonstrates an all-encompassing problem of abuse. As suggested earlier, those who contend that consumer bankruptcy abuse is pervasive generally advance two main arguments. First, they point out that the dramatic increase in the annual consumer bankruptcy filings over the last twenty years suggests that more individuals are engaging in opportunistic behavior to defeat the legitimate debt-repayment interests of creditors.\textsuperscript{16} Indeed, a 1996 study by VISA, Inc. on consumer bankruptcy indirectly attributed the increase in consumer bankruptcy filings to a corresponding but non-quantifiable increase in exploitation tendencies among the indebted consumer population.\textsuperscript{17} However, a chief analyst from the Congressional Budget Office roundly criticized the conclusions of that study and found that the method of analysis employed in the Visa study was "unsound," and that it contained an "unfounded" and "unreliable explanation of personal bankruptcy filings."\textsuperscript{18}

Further, one study refuted the notion that the bankruptcy filing rate is particularly high in the United States by calculating that the proportion of the households that could benefit financially from a bankruptcy filing is as high as fifteen percent while the actual consumer bankruptcy filing rate is much lower.\textsuperscript{19} More importantly, numerous empirical studies suggest that the recent rapid rise in the number of bankruptcy filings is primarily a function of consumers having a higher debt-to-income ratio fueled by the increased availability of consumer

\textsuperscript{15} See National Bankr. Review Comm'n, Bankruptcy: The Next Twenty Years 79-81 (1997) (recognizing that there is some abuse in the bankruptcy system and providing a series of recommendations that would attempt to reduce such practices (e.g., uniform exemption limits, limits on repeat filings)); Henry J. Sommer, Causes of the Consumer Bankruptcy Explosion: Debtor Abuse or Easy Credit?, 27 Hofstra L. Rev. 33, 42 (1998) ("It is true that there is some outright fraud and abuse in the bankruptcy system. As in any system, there will always be some dishonest people."); Elizabeth Warren, What is a Women's Issue? Bankruptcy, Commercial Law, and Other Gender-Neutral Topics, 25 Harv. Women's L.J. 19, 47 (2002).

\textsuperscript{16} See Visa U.S.A. Inc., Consumer Bankruptcy: Causes and Implications 22 (1996) (concluding that social factors play an important role in influencing personal bankruptcy rates). These may include an erosion of the social stigma against filing for bankruptcy, increased legal advertising, and the increased availability of credit to individuals who have declared bankruptcy in the past.

\textsuperscript{17} Id.


\textsuperscript{19} See Michelle J. White, Why Don't More Households File for Bankruptcy?, 14 J. L. Econ. & Org. 205 (1998).
Second, proponents of the claim of pervasive abuse in consumer bankruptcy maintain that a significant number of bankruptcy petitioners are capable of making substantial repayments to their creditors, but fail to commit any of their future income for repayment. These advocates rely on a series of studies that were sponsored by the credit industry starting in the early 1980s and culminating in the late 1990s. In general, these studies assert that a significant number of bankruptcy petitioners have the ability to repay a substantial portion of their debts. For example, in a study from 1982 of the credit industry, the authors concluded that more than thirty percent of the bankruptcy petitioners could have repaid their debts in full and that petitioners who could have repaid discharged over a billion dollars each year. In 1997, the same group, the Credit Research Center, authored another study that widely publicized its finding that a sizeable

20. See Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, Report of the Committee on the Judiciary House of Representatives to Accompany H.R. 333 Together with Dissenting Views, H.R. Rep. No. 107-73, pt. 1, at 478 (2001) ("The overwhelming weight of authority establishes that it is the massive increase in consumer debt, not any change in bankruptcy laws, which has brought about the increases in consumer filings. Indeed, there is an almost perfect correlation between the increasing amount of consumer debt and the number of consumer bankruptcy filings."); The Increase in Personal Bankruptcy and the Crisis in Consumer Credit: Hearing Before the Subcomm. on Admin. Oversight and the Courts of the Senate Comm. on the Judiciary, 105th Cong. 39 (1997) (statement of Kim J. Kowalewski, Chief, Financial and General Macroeconomic Analysis Unit, Macroeconomic Analysis Division, Congressional Budget Office) ("The incidence of bankruptcy in the adult population closely follows the indebtedness of the household sector."); id. at 21 (prepared statement by Ian Domowitz) ("Credit card use is very highly correlated with, if not a causal determinant of, consumer bankruptcy."); National Bankr. Review Comm’n, Bankruptcy: The Next Twenty Years 85 (1997) (calculating that in 1977, before passage of the Bankruptcy Code, “there were 0.74 bankruptcies for every one million dollars of consumer credit outstanding; and in 1997 there were 0.73 bankruptcy filings for every one million dollars of consumer credit”); Lawrence M. Ausubel, Credit Card Defaults, Credit Card Profits, and Bankruptcy, 71 Am. Bankr. L. J. 249, 250 (1997) (noting that the rate of consumer bankruptcies is “astonishingly highly correlated with the rise in credit card defaults”); Jagdeep S. Bhandari & Lawrence A. Weiss, The Increasing Bankruptcy Filing Rate: An Historical Analysis, 67 Am. Bankr. L. J. 1, 1 (1993) (“Our evidence indicates that the increase in the number of bankruptcy filings is primarily due to the increased level of debt as a percentage of income . . . .”); Diane Ellis, The Effect of Consumer Interest Rate Deregulation on Credit Card Volumes, Charge-Offs, and the Personal Bankruptcy Rate, in Bank Trends No. 98-05 (Federal Deposit Ins. Corp., Washington, D.C.), Mar. 1998, at 1, available at http://www.fdic.gov/bank/analytical/bktr_9805.html (concluding that “a tightly regulated world, marked by restricted access to consumer credit and a low level of personal bankruptcies was exchanged for a deregulated world, marked by expanded access to consumer credit and a higher level of personal bankruptcies”); David A. Moss & Gibbs A. Johnson, The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both?, 73 Am. Bankr. L. J. 311, 311-312 (1999) (review of empirical evidence indicates that increased availability of credit, rather than declining stigma, are the most likely source of the recent increase in bankruptcy filings); Elizabeth Warren, The Bankruptcy Crisis, 73 Ind. L. J. 1079, 1080 (1998) (“The simple explanation is that consumer bankruptcies are rising because consumers’ debts are rising faster than their incomes.”); Lawrence A. Weiss et al., An Analysis of State-Wide Variation in Bankruptcy Rates in the United States, 17 Bank. Dev. J. 407, 416 (2001) (“The economic variables measuring debt-paying capacity show a strong positive relationship to the bankruptcy filing rates.”).
22. See 1 Credit Research Ctr., Purdue Univ., Consumer Bankruptcy Study 88-91 (1982).
23. Id.
24. Id.
minority of Chapter 7 petitioners could make a significant repayment of their non-housing debt over a five year period. A year later, the credit industry sponsored yet another set of studies from an accounting firm that concluded that ten percent of Chapter 7 filers in 1997 could have repaid all of their debt and that “large numbers of 1997 U.S. Chapter 7 filers had the ability to repay large portions of the debts.” Lastly, in the same year, the credit industry subsidized yet another group, the WEFA Group, to author a report that suggested that the proposed reform of the consumer bankruptcy law through the means-testing feature could save creditors anywhere between $3.6 to $7.4 billion per year.

Despite the abundance of reports that purport to establish pervasive abuse by financially capable bankruptcy petitioners, a number of reviewers have posed serious questions about the validity of the studies’ findings. A review of the 1982 credit industry study concluded that “[a]s a scientific study it is deeply flawed. The study lacks crucial expertise, is designed incorrectly, asks a series of inartful questions, gathers its data improperly, miscalculates the statistical data and draws erroneous and biased inferences from the data analysis.” Similarly, the Congressional Budget Office reviewed the Credit Research Center study from 1997 and concluded that for multiple reasons the credit industry report was “misleading” and it “overstat[ed]” capacity to repay. The review pointed to problems with the study’s data reporting that “make it impossible to determine the reliability of the study’s findings.” The analysis raised further concerns regarding assumptions made about current and future income, current and future expenses, amount of debt, the sample’s representative selection, the data

25. See John M. Barron & Michael E. Staten, Personal Bankruptcy: A Report on Petitioners’ Ability-to-Pay (Oct. 6, 1997), available at http://www.gsb.georgetown.edu/pog/crc/pdf/monograph33.pdf (concluding that 5% of Chapter 7 debtors could repay all of their non-priority, non-housing debt over five years, 10% could repay at least 78% of such debt, and 25% could repay 30% of their debt) (on file with the GEO. J. ON POVERTY L. & Pol’y).


30. See id. at 8.
collection techniques, the sample weighing methods and faulty data comparisons.\textsuperscript{31} Moreover, a number of critiques of the 1997 Credit Research Center study questioned the independence and credibility of the source.\textsuperscript{32} Lastly, independent reviewers identified similar deficiencies in the reports produced by the accounting firm and by the WEFA Group in the late 1990s.\textsuperscript{33}

In contrast to the much criticized studies sponsored by the credit industry during the 1980s and 1990s, a number of empirical studies recently conducted by government agencies, institutes and academics suggest that most bankruptcy petitioners are in dire financial need and that the vast majority cannot afford to pay significant sums to their creditors. Results from several comprehensive longitudinal empirical studies by scholars from Harvard Law School and the University of Texas show that generally Americans who are in desperate financial circumstances resort to the bankruptcy system and that people who file for

\textsuperscript{31} See id. at 8-10. Other reviewers had similar concerns. See The Increase in Personal Bankruptcy and the Crisis in Consumer Credit: Hearing Before the Subcomm. on Admin. Oversight and the Courts of the Senate Comm. on the Judiciary, 105th Cong. 151 (Apr. 11, 1997) (prepared statement by Professor Jeffrey W. Morris on behalf of the National Bankruptcy Conference); U.S. General Accounting Office, Personal Bankruptcy: The Credit Research Center Report on Debtors’ Ability to Pay, GAO/GGD-98-47 (Feb. 1998) [hereinafter GAO, Personal Bankruptcy] (after examining the 1997 Credit Research Center’s study, finding a number of concerns, including the Report’s failure to validate the accuracy of the data collected, its failure to account for substantial expenses such as payments on non-housing secured debt and on reaffirmed or nondischarged nonpriority debts, its failure to evaluate potential differences among the sites chosen for the study and its failure to use statistically valid research techniques); Gary Klein, Means Tested Bankruptcy: What Would it Mean?, 28 U. Memphis L. Rev. 711, 725 (1998) (concluding that the study authored in 1997 by the Credit Research Center “makes a minimum of four mistaken assumptions or miscalculations that compel a conclusion that this amount is grossly overstated”); Warren, supra note 20, at 1089 (questioning the validity of the assumptions made by the study’s authors regarding household income and expenses); Letter from Ian Domowitz, Professor, Department of Economics and Institute for Policy Research, Northwestern University, to Bradley Williamson, Chairman, National Bankruptcy Review Commission (June 9, 1997); Letter from Marianne Culhane and Michaela White, Professors, Creighton University School of Law, to Bradley Williamson, Chairman, National Bankruptcy Review Commission (June 11, 1997); Statement of Professor William Whitford before the National Bankruptcy Review Commission (Jan. 23, 1997). For a response to some of these critiques, see Jones & Zywicki, supra note 8, at 192-99.

\textsuperscript{32} See Elizabeth Warren, The Market for Data: The Changing Role of Social Sciences in Shaping the Law, 2002 Wis. L. Rev. 1, 22 ("The [Credit Research] Center’s mission statement touts its independent review of its scholarship, but it makes no mention that the bankruptcy petition research, so generously funded by the credit industry, has been published only through credit industry press releases and self-published working papers."); Robert Cwiklik, Ivory Tower Inc.: When Research and Lobbying Mesh, Wall St. J., June 9, 1998, at B1 ("[The Credit Research Center] is supported entirely by credit-card companies, banks, retailers and others in the credit industry. The [1997 bankruptcy] study itself was produced with a $100,000 grant from Visa U.S.A. and MasterCard International, Inc.").

bankruptcy generally are those who need it.\textsuperscript{34} Examining repayment ability of bankruptcy petitioners from the early 1980s, the authors concluded that the overwhelming majority of Chapter 7 bankruptcy petitioners could not pay their debts in Chapter 13 or sustain even the most minimal standard of living.\textsuperscript{35} Ten years later, the same authors embarked on a similar project examining bankruptcy petitioners from the early 1990s.\textsuperscript{36} They again found that in the early 1990s, a typical family filed for bankruptcy with an annual combined median income of about half the median family income for those outside of bankruptcy, while at the same time the bankruptcy petitioners' debts were overwhelming, far exceeding debt burdens for most Americans.\textsuperscript{37} The authors concluded that "the bankruptcy system is used by the people for whom it was intended: those drowning in debt."\textsuperscript{38} To dispel any notion that consumer bankruptcy abuse has begun to somehow accelerate during the 1990s, another article traced the income and debt of petitioners from the early 1980s through 1997 and found that the petitioners' income was progressively declining and that their debt-to-income ratio was not improving.\textsuperscript{39}

Consistent with the findings of these empirical studies, a study sponsored by the non-partisan American Bankruptcy Institute reached similar conclusions.\textsuperscript{40} It concluded that a mere 3.6\% of the sampled Chapter 7 bankruptcy petitioners had sufficient income to pay all of their non-housing secured debts, all of their unsecured priority debts, and at least twenty percent of their unsecured non-priority debts.\textsuperscript{41} Included in this study are several other credit industry sponsored studies that have suggested that creditors may be able to recover four billion dollars annually from able petitioners, when in fact this study documents that creditors would only receive 450 million dollars from such collection.\textsuperscript{42} These two findings were further collaborated by a subsequent study issued by the

---

\textsuperscript{34} \textit{See} Teresa A. Sullivan, Elizabeth Warren & Jay L. Westbrook, \textit{As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America} 212-13 (1989) [hereinafter Sullivan et al., \textit{As We Forgive Our Debtors}].

\textsuperscript{35} \textit{Id.}


\textsuperscript{37} \textit{Id.} at 138, 140 (documenting debt and income data for 1981 and 1991 bankruptcy petitioners, and noting that the average debtor in bankruptcy owes short-term, non-mortgage debts equivalent to one year, seven months of income).

\textsuperscript{38} \textit{Id.} at 140.

\textsuperscript{39} \textit{See} Warren, \textit{supra} note 20, at 1097. The author attributed the progressive trend of lower household income among bankruptcy petitioners to growing tendencies among sophisticated creditors to extend credit to lower-income people and to otherwise financially troubled individuals. \textit{See id.} at 1099. ("If there were widespread abuse, the debtors who filed in later years should be on average somewhat more prosperous than their counterparts who filed earlier. Instead, income among the pool of bankruptcy debtors declined significantly.").


\textsuperscript{41} \textit{See id.} at 31.

\textsuperscript{42} \textit{See id.} at 58, 61.
B. Perception of Abuse in Other Welfare Programs

Evidence based mostly on the findings of these studies is accumulating to show that while abuse in the consumer bankruptcy system clearly exists, it is neither widespread nor substantial.\(^{44}\) This apparent disconnect between the perception and reality of the extent of abuse is not limited to the context of consumer bankruptcy. Just as little empirical data supports the widespread perception of insidious abuse in consumer bankruptcy, such detachment from reality is all too familiar in the perception of other types of government social support programs. As the perception of bankruptcy abuse triggered public debate and legislative reform proposals aimed at placing constraints on available debt relief, similar perceptions of pervasive abuse in a variety of social support programs have also prompted a debate and legislative reform proposals on restricting the availability and scope of these other relief-type programs.\(^{45}\)

For example, similar to the bankruptcy abuse discourse, public debate relating to prevalent abuse in the unemployment benefit programs centers around the belief that many unemployment benefit recipients lack the need for such relief because they are receiving more or less regular earnings from unofficial work.\(^{46}\) In contrast to such widely held beliefs by the general public, a number of studies indicate that abuse in the unemployment benefit programs is merely a marginal phenomenon.\(^{47}\) Despite the lack of empirical support for pervasive abuse in the unemployment benefit programs, many such programs in the United States have

---

\(^{43}\) See Gordon Berman & Ed Flynn, Income, Debts, and Repayment Capacities of Recently Discharged Chapter 7 Debtors 8 (Jan. 1999), available at http://www.abiworld.org/legis/reform/oeoust-99jan.html (concluding that “[o]nly a small percentage of current Chapter 7 debtors have income sufficient to repay any portion of their unsecured debts [and that t]he means tests contained in the Conference bill would result in less than $1 billion annually being returned to unsecured creditors”).

\(^{44}\) See, e.g., The Increase in Personal Bankruptcy and the Crisis in Consumer Credit: Hearing Before the Subcomm. on Admin. Oversight and the Courts of the Senate Comm. on the Judiciary, 105th Cong. 20 (1997) (prepared statement of Ian Dannowitz, Professor of Economics, Northwestern University) (“Like the vast majority of researchers in the area of consumer bankruptcy, I fail to find any evidence of substantial Chapter 7 abuse.”).

\(^{45}\) See, e.g. Saul Blaustein et al., Policy Issues: An Overview, in UNEMPLOYMENT INSURANCE IN THE UNITED STATES ANALYSIS OF POLICY ISSUES 1, 29-30 (Christopher J. O’Leary & Stephen A. Wandner eds., 1997) (describing perception of abuse in the unemployment benefits program as manifested through media reports).

\(^{46}\) Id.

\(^{47}\) See id. at 30-31 (describing the results of a random audit study that found that about 14% of all benefits paid were in excess of the entitled amount, which mostly resulted from the recipient in inadequate work search); Jerry L. Kingston et al., Unemployment Insurance Overpayments: Evidence and Implications, 39 INDUS. & LAB. REL. REV. 323, 327 (1986) (“These results show that relatively few of the detected overpayments were due to claimants working (but concealing their employment) during weeks which they received Unemployment Insurance support.”).
recently experienced serious reform aimed at tightening available relief.48

Likewise, studies have also documented the American public’s entrenched fear that the welfare system is routinely being abused by individuals who do not want to work, have it too easy, receive too many benefits, and under-report their income.49 Nonetheless, studies have demonstrated that such perception of abuse is not well founded and in fact underreporting of earnings was identified in merely three percent of the cases.50 Regardless, public perception of abuse in the welfare system prompted a major overhaul of the welfare system in the United States in 1996.51 Lastly, despite the widespread public belief of social security fraud, social security fraud appears to be neither extensive nor expansive.52

In the next section, this Article identifies a number of plausible reasons for the disparity between perception and reality of consumer bankruptcy abuse.

III. THE REASONS FOR THE DISCONNECT BETWEEN REALITY AND PERCEPTION OF ABUSE IN CONSUMER BANKRUPTCY

A. Introduction

The widespread public perception of abuse in consumer bankruptcy, despite the lack of robust evidence to that effect, can be best understood using attribution theory. At the most fundamental level, attribution theory addresses the question of how people identify the causes of human behavior.53 Under attribution theory, one may postulate that people in the United States perceive pervasive abuse in consumer bankruptcy because of the way they explain and identify the causes of the underlying behavior of bankruptcy filing. The public tends to explain the behavior of bankruptcy filing by attributing fault or blame to the bankruptcy

48. See id. at 30 (“Given the criticism of the mid-1970s and the mounting pressures exerted by the financial strains on most state programs, it is not surprising that the trend turned strongly in the direction of stiffer eligibility rules, more severe qualifications, and tighter administration.”).


51. See generally R. KENT WEAVER, ENDING WELFARE AS WE KNOW IT (2000).


petitioner.\textsuperscript{54} As the public perceives bankruptcy filing as the product of the debtor's own fault, the public does not regard the petitioner as deserving much protection. Hence, by virtue of debtors' resorting to such protection in bankruptcy, the public tends to generally view such conduct as indicative of inherent abuse of the system. That is, the public's perception of bankruptcy is not based on objective reading of behavioral facts and empirical figures. The public's perception of the bankrupt population in the United States is largely distorted from reality due to the individuals' inherent cognitive deficiencies, their tendency to over-attribute personal fault and under-attribute external factors to the act of bankruptcy filing, as well as, their motivational and stereotype bias.

**B. Attribution Theory and Its Biases**

As suggested above, attribution theory is a generic term for a group of theories that describe how people explain the causes of human behavior.\textsuperscript{55} When an event occurs, there is a tendency among individuals to try to attribute a cause to that event. Such causal inferences are called attribution.\textsuperscript{56} At its core, attribution theory assumes that people function as naive scientists in their attempts to understand the causes of behavior by engaging in an objective and elaborate reading of behavioral facts and empirical figures.\textsuperscript{57}

However, over time social psychologists have begun to question whether social perceivers do indeed choose or even have the capacity to engage in such an intricate and attentive process of behavioral analysis.\textsuperscript{58} In fact, the notion that human judgment is based on sound and evenhanded use of available objective information has been disputed in a number of influential studies. Researches find that the average person often fails to make adequate use of objective information in analyzing the behavior of others. Many individuals simply lack the necessary

\textsuperscript{54} See, e.g. 144 Cong. Rec. H10224, 10224 (1998) (statement of Rep. John Linder) ("[B]ankruptcy of convenience has provided a loophole for those who are financially able to pay their debts, but simply have found a way to avoid personal responsibility and escape their financial responsibilities... . Nonetheless, the abusers of bankruptcy laws need to receive a message that Federal bankruptcy laws are not a haven of personal fiscal irresponsibility.").

\textsuperscript{55} See Ajzen and Fishbein, supra note 53, at 73.

\textsuperscript{56} See Elliot Aronson, The Social Animal 235, 236 (5th ed. 1988) ("Attribution theory deals with the rules most people use in attempting to infer the causes of the behavior they observe.").


cognitive ability to process all relevant information, while others lack the necessary skills needed to apply the principles of attribution theory.59 Furthermore, those who have the ability and skills needed to employ the principles of attribution theory often do not follow the elaborate process of attribution.60 Overwhelmed with so much to explain and limited time availability, many individuals instead take mental short cuts and ignore the principles embodied in attribution theory.61

As a result of the failure to follow the objective paradigm envisioned in the attribution theory, a person’s perception of the cause of another’s behavior becomes vulnerable to a number of biases, thus becoming less accurate.62 A number of such attribution biases interfere with the adequate use of objective information in analyzing the behavior of others.63

1. Cognitive Heuristics

Researchers have traced attribution bias to cognitive heuristics. According to these theorists, people do not process information in a systematic manner but rather use quick and easy strategies or heuristics as rules of thumb to arrive at their judgments.64 These theorists have argued that people’s reliance on their intuitive understanding of causal relationships biases their judgments and also leads people to systematically make judgments that defy logic. People’s reliance on a given heuristic predisposes them to consider certain types of evidence and to disregard other information.65

One cognitive heuristic that has particularly troublesome consequences for the attribution process is the availability heuristic. Under the availability heuristic, the likelihood that a given disposition can be inferred from a behavior is a function of the ease with which other evidence, examples or instances in support of the inference come to mind.66 An individual infers that if an example comes to

59. See Judith L. Allen et al., Attributions and Attribution-Behavior Relations: The Effect of Level of Cognitive Development, 52 J. PERSONALITY & SOC. PSYCHOL. 1099, 1107 (1987) (“We believe the obtained data suggest the existence of a boundary condition for the applicability of attribution theory. Our findings imply that cognitive ability may also limit rational attributional processes, particularly if the attributional task requires some cognitive skills that the attributor has not acquired.”); Saul M. Kassin, Consensus Information, Prediction, and Causal Attribution: A Review of the Literature and Issues, 37 J. PERSONALITY & SOC. PSYCHOL. 1966 (1979) (finding that the average person, unlike a scientist, often fails to make adequate use of normative information, which is necessary for an appropriate application of attribution theory).
61. See id.
64. See Ajzen & Fishbein, supra note 53, at 73.
65. See id. at 79.
66. See id. at 78.
mind more quickly, then there must be many of them.\textsuperscript{67} Similarly, an individual assumes that if a particular association is effortlessly made, then that association must be correct.\textsuperscript{68} Hence, under the availability heuristic bias, it is the \textit{ease} (not the sum total of examples) by which other evidence, examples or instances are retrieved that constructs the individual's assessment of the likelihood that a given disposition can be inferred.\textsuperscript{69} One implication of the availability heuristic is that people's judgments about others are influenced more by a single, dramatic life anecdote than by solid empirical and statistical data.\textsuperscript{70} This implication is indicative of the base-rate fallacy that people are relatively numb to statistical data or numerical probabilities, and are persuaded instead by graphic, vivid episodes.\textsuperscript{71} The availability heuristic causes people to defy logic by prompting them to ignore powerful empirical data that capture the experiences of many, and instead to focus on the isolated, perhaps even uncharacteristic, yet striking and memorable event. As long as the anecdotal evidence is viewed to be relevant, and from a source that is reliable, studies find that in many cases one memorable tale has the potential to trump solid numerical evidence to the contrary.\textsuperscript{72}

Graphic and vivid images of events that so powerfully influence the perception of people about the character of others are frequently transmitted through the mass media.\textsuperscript{73} Indeed, there is a general agreement among media researchers that the media has an indirect but powerful role in influencing people's perception of others.\textsuperscript{74} Individuals do form their perceptions about events from the media, and even though they do not recall the specifics, they retain general perceptions.\textsuperscript{75} These general perceptions, apart from their accuracy, have a potent impact on individuals' perceptions of others.\textsuperscript{76}

Media representations of social reality are often found to be conflicting from empirical data, such as official statistics.\textsuperscript{77} In fact, a number of studies have

\textsuperscript{67} See id.
\textsuperscript{68} See id.
\textsuperscript{69} See Taylor, supra note 57, at 191-92.
\textsuperscript{70} See Maya Bar-Hillel, The Base-Rate Fallacy in Probability Judgments, 44 ACTA PSYCHOLOGICA 211, 211-12 (1980).
\textsuperscript{71} See id.
\textsuperscript{73} See Edward Donnerstein, Mass Media, in THE BLACKWELL ENCYCLOPEDIA OF SOCIAL PSYCHOLOGY, supra note 57, at 370, 373.
\textsuperscript{74} See id.
\textsuperscript{75} See Doris A. Graber, PROCESSING THE NEWS: HOW PEOPLE TAME THE INFORMATION TIDE 258-59 (1988).
\textsuperscript{76} See W. James Potter, Examining Cultivation from a Psychological Perspective, 18 COMM. RES. 77, 100 (1991); Mira Sotirovic, Media Use and Perceptions of Welfare, 51 J. COMM. 750, 750 (2001).
\textsuperscript{77} See, e.g., J.W. McLeod et al., The Synthetic Crisis: Media Influences on Perceptions of Crime (1995) (paper presented at the annual meeting of the Association for Education in Journalism and Mass Communication, Washington, D.C.) (finding that almost half of television local news stories deal with
documented how graphic and vivid, but yet inaccurate, media reports of certain entitlement programs (such as welfare and unemployment benefits programs) in the United States and abroad have contributed to the public’s perception of abuse of such programs.\(^\text{78}\)

A similar impact on the public’s perception of abuse could be postulated in regard to consumer bankruptcy. The public attribution in the United States of fault to the bankruptcy petitioners, rather than situational factors, could be the product of availability heuristics. In spite of empirical evidence suggesting no widespread abuse of the system, the public seems to rely on their intuitive understanding of causal relationships, which biases their judgments and leads them to systematically make judgments about the bankruptcy petitioners that are inconsistent with objective reality.\(^\text{79}\) One implication of the availability heuristic to people’s perception of bankruptcy petitioners is that people’s judgments about the bankruptcy petitioners are influenced more by a single but memorable and dramatic life anecdote than by solid empirical and statistical data. This unforgettable episode is imparted to people through the mass media by its frequent depiction of rare instances of a millionaire, a public figure or otherwise an irresponsible debtor, who takes advantage of bankruptcy protection.\(^\text{80}\) Just as crime and over 85% of the criminal acts portrayed are violent—six times the proportion of actual violent crime).

78. See Blaustein et al., Policy Issues: An Overview, supra note 45, at 30-31 (contending that perception of abuse in the unemployment benefits program has been fueled in part by periodic out of context and incomplete reports in the news media of widespread abuse); Alan Deacon, The Scrounging Controversy: Public Attitudes Towards the Unemployed in Contemporary Britain, 12 SOC. & ECON. ADMIN. 120, 130 (1978) (reporting that the public controversy in Britain during the 1970s regarding pervasive abuse of the unemployment benefits system was stimulated in part following well publicized mass media allegations of abuse); Jerry L. Kingston et al., Overpayments in the Unemployment Insurance System in the United States, 34 INT’L SOC. SECURITY REV. 462, 464 (1981) (asserting that public perception of fraud and abuse in the unemployment insurance program in the United States has increased due in part to media coverage affirming such perceptions); Gerard Maassen & Marijn de Goede, Changes in Public Opinion on the Unemployed: The Case of the Netherlands, 3 INT’L J. PUB. OPINION RES. 182, 193 (1991) (“The part played by the mass media in shaping public opinion on the unemployed was (and is) a major one. Mass-media information was an important factor in the rise of a rather negative view during the second half of the 1970s . . . .”); Sotirovic, supra note 76, at 765 (finding “that media use has an important influence on perceptions of welfare after controlling for demographics, ideology and interpersonal communication”).

79. See supra text accompanying note 40.

80. See, e.g., Amend Too-Lenient Bankruptcy Rules: Florida Shouldn’t Be ‘Debtor’s Haven’, SUN SENTINEL (Fort Lauderdale, FL), Aug. 29, 1997, at A6A; A Society of Deadbeats, ROANOKE TIMES & WORLD NEWS, May 7, 1997, at A18 (“But for too many people, bankruptcy has become just a lifestyle option: Live beyond your means. Get so deep in debt that there’s no getting out. If collection agencies come knocking- no problem. Declare bankruptcy; wipe the slate clean; start over. Live beyond your means. . . .”); Peter S. Canelllos, Sheltered From Bankruptcy: Fla. Home Exemption Gives Debtors a Haven, BOSTON GLOBE, Apr. 22, 1997, at A1; Jeff Jacoby, Bankruptcy Judge Forces Sears to Reward Deadbeats, DAYTON DAILY NEWS, June 19, 1997, at 19A (“Once upon a time, it was understood that customers paid for their purchases and borrowers honored their debts. If you couldn’t afford something, you didn’t buy it. If you took out a loan, you found a way to pay it back. To go bankrupt was a humiliation; unless you were the victim of a natural disaster or were wiped out in a depression, you shunned bankruptcy at all costs.”); Loophole for Millionaires, WASH. POST, July 16, 2001, at A14; Joshua
mass media fuels public perception of abuse in welfare and unemployment benefits programs, the isolated but dramatic and memorable stories about bankruptcy abuse have plausibly resulted in people attributing fault to the bankrupt and perceiving widespread abuse in the system despite solid numerical evidence to the contrary.

The subtle mass media message of consumer bankruptcy abuse has been recently steered, to some extent, by an aggressive public relations campaign by the credit card industry.81 Beginning in the mid 1990s, the credit industry started to capitalize on people’s inherent cognitive vulnerabilities of availability heuristics.82 In a vigorous undertaking, the credit card industry has attempted to reach the public through the media by tendering to media outlets’ numerous press releases and by buying advertisement pages that tout the implicit, dramatic and vivid message of consumer bankruptcy abuse.83 Their message of abuse was couched in terms of burden on the public and unsupported projections of annual costs inflicted on middle class America by the ever-increasing number of purportedly profligate bankruptcy petitioners.84 The credit industry message of abuse was also publicized to the media through press releases that hyped a highly criticized study’s finding that a large portion of the bankruptcy petitioners could

Wolf Shenk, Bankrupt Policy, New Republic, May 18, 1998, at 18 (noting that Toni Braxton, Kim Basinger, Burt Reynolds, and M.C. Hammer have all filed bankruptcy thereby being able to “fend off creditors while continuing to live in luxury”); Amy Stevens, Some Folks Hide Cash in Darndest Places, Wall St. J., Nov. 8, 1996, at B1 (including pictures, article reports on former ambassador Marvin Warner who bought a $2.2 million estate before his filing, Paul A. Bilzerian who declared bankruptcy protecting a 22,000 square foot waterfront estate near Tampa, and investor Martin Siegel who bought a $1 million estate before declaring bankruptcy).

81. See Sommer, supra note 15, at 48 (discussing the credit card industry media campaign in the late 1990s that included buying big newspaper ads and television commercials); Warren, supra note 32, at 12-13 (“What the industry undertook this time [by the mid-1990s] was a public relations campaign designed to show the media—and hence the public—that bankruptcy legislation was not special interest legislation designed to increase profits for powerful creditors, but was instead a good measure for middle class families. . . . One can gauge the magnitude of the effort by the remarks of reporters that for years press packages touting the industry point of view arrived weekly and that press releases came through the newsroom almost daily.”); Paul Starobin, Distressed Debtors, 23 Nat’l J. 2468, 2468 (Oct. 12, 1991) (“In a well-honed message that is being broadcast on Capitol Hill and to journalists across the country, the credit industry says that the bankruptcy process is being abused by out-and-out cheaters and by people who are able but unwilling to pay off their bills and who see bankruptcy as a relatively painless escape route.”).

82. See id.

83. See id.

84. See Warren, supra note 32, at 13 (“The credit industry launched its public relations campaign to amend the bankruptcy laws with a blizzard of press releases and advertisements that purported to show that bankruptcy costs every American family $400 each year. A typical full-page advertisement in the Washington Post carried the headline: ‘What do Bankruptcies Cost American Families? A month’s worth of groceries’ above a picture of a family with a full grocery cart. The text followed: ‘Today’s record number of personal bankruptcies costs every American family $400 a year. . . .’”). The credit card industry assertion that bankruptcy costs each family in America $400 annually has never been documented in another study. Indeed, one researcher has referred to that figure as “absurd.” Id at. 14-15.
repay some of their debts.\textsuperscript{85} This assertion of abuse was adopted and repeated by the mass media as an objective fact.\textsuperscript{86}

2. Fundamental Attribution Error

In addition to cognitive heuristics, social psychologists have identified fundamental attribution error as a form of attribution bias.\textsuperscript{87} Under the theory of fundamental attribution error, when observers attempt to explain an actor’s behavior, they are likely to overestimate the importance of personal or dispositional factors and to underestimate the influence of situational or environmental factors.\textsuperscript{88} Western culture and its embedded orientation towards individualism lead people to assume a link between acts and personal disposition.\textsuperscript{89} Therefore, in individualistic societies, where the ethic of competition is valued, the public generally has a negative predisposition towards those who fail and for the social benefits they receive.\textsuperscript{90} Westerners tend to believe that individuals are autonomous and responsible for their own actions.\textsuperscript{91} In contrast, many non-Western or socialist-leaning cultures take a holistic approach that stresses the relationship between individuals and other members of society.\textsuperscript{92} Under this theory, a person living in a non-Western, collectivist society is more likely to be concerned about social relationships and construct themselves interdependently. Such a person is then assumed to be more knowledgeable, sensitive and

\textsuperscript{85} See Warren, supra note 20, at 1089 ("The credit industry’s press releases widely touted the finding that 40% of debtors could repay some of their debts."). For a criticism of the study’s finding, see id.

\textsuperscript{86} See ‘Last Resort’ Is Coming First, Something’s Wrong: In these Good Times, Bankruptcy is Booming, L.A. TIMES, July 28, 1997, at B4 ("Much of [consumers’] debt relief is simply unwarranted. Experts say that about 45% of Americans who seek complete relief from their debts through Chapter 7 personal bankruptcy filings could afford to pay off an average of one-third of their debts within three years."); Lax Bankruptcy Laws Make Everyone Pay, USA TODAY, June 12, 1997, at 14A ("Purdue University Researchers found a third of debtors could pay some of their bills but don’t."); Daniel McGinn, Deadbeat Nation: Why Are so Many People in Bankruptcy Court?, NEWSWEEK, Apr. 14, 1997, at 50 ("[O]ne study says 45 percent of bankruptcy filers could pay back much of their debt.").

\textsuperscript{87} See Ajzen & Fishbein, supra note 53, at 81.

\textsuperscript{88} See id.

\textsuperscript{89} See Harry C. Triandis, The Self and Social Behavior in Differing Cultural Contexts, 96 PSYCHOL. REV. 506, 510 (1989) (citing G. HOFSTEDE, CULTURE’S CONSEQUENCES (1980) (referring to an earlier study that attributes individualism to cultures in North America, Northern and Western Europe and attributes collectivism to cultures in Latin America, Asia and Africa)).

\textsuperscript{90} See P. GOLDING, & S. MIDDLETON, IMAGES OF WELFARE 244 (1982) ("A society so firmly anchored in an ethic of competition and reward will only with difficulty dispose of scarce resources to those conspicuously unsuccessful in a system ostensibly offering equal opportunity to all. For success to glisten seductively to the winners the failure of poverty must display its burden of guilt and shame. While blaming the victim remains the cornerstone of our conceptions of poverty, the grinding and enduring misery of the poor is unlikely to evoke any feeling other than contempt, malign distrust or a corrosive pity.").

\textsuperscript{91} See Triandis, supra note 89, at 510.

\textsuperscript{92} See id.
attentive to the environment of others than are individualistic persons.\textsuperscript{93} For example, in the United States more than two-thirds of a survey’s respondents attributed the fault of unemployment to the unemployed themselves and a plurality of Americans blame the welfare recipient for lack of personal effort.\textsuperscript{94} In contrast, only six percent of the respondents in Poland blamed the unemployed for their condition.\textsuperscript{95} Likewise, most of the collectivist-oriented respondents in Britain expressed positive views towards the unemployed, while the majority of the individualistic-oriented respondents expressed a negative view towards the unemployed.\textsuperscript{96} Similarly, studies on people’s perspectives on poverty demonstrate that people with individualistic orientation on social and economic issues are more inclined to blame the poor for their predicament and to consequently retain negative attitudes towards them.\textsuperscript{97}

In addition to Western culture and its emphasis on individualism, fundamental attribution error can also be viewed as a product of right-leaning political ideology. Ideology has an unyielding impact on society’s perceptions, as well as its views about goals society should pursue and about the course of action society should follow to achieve those goals. “In other words ideology construes the social world in more or less systematic and meaningful terms, within which an individual can understand and explain social phenomenon, whatever of the validity or veracity.”\textsuperscript{98} For example, one study found that one’s political affiliation influences the perception of causes of poverty.\textsuperscript{99} People affiliated with the “right” attribute poverty more to the person than the “lefts.”\textsuperscript{100} Similarly, people affiliated with the “right” attribute poverty less to government and


\textsuperscript{94} Blaustein et al., Policy Issues- An Overview, supra note 45, at 6 (citing a sample survey of urban Ohio households undertaken by Ohio State University Foundation); Greg M. Shaw & Robert Y. Shapiro, The Polls- Poverty and Public Assistance, 66 PUB. OPINION Q. 105, 107 (2002) (finding that 40% of Americans blamed the welfare recipients for lack of personal effort).

\textsuperscript{95} Krzysztof Zagorski, Unemployment in Polish and Bulgarian Public Opinion 6-7 (1999) (unpublished manuscript) (on file with the Georgetown Journal on Poverty Law and Policy) (finding that the majority of Poles think that the unemployed have lost their jobs because of the situation in their workplace rather than because of their own fault).

\textsuperscript{96} See Adrian Furnham, Attitudes Toward the Unemployed Receiving Social Security Benefits, 36 HUM. REL. 135, 142 (1983) (finding that British “people with specific beliefs who appear to explain poverty or unemployment in individualistic terms, expressed negative attitudes towards the unemployed, whereas those who explain poverty or unemployment in societal terms express positive attitudes towards the unemployed”).

\textsuperscript{97} See Adrian Furnham & Barrie Gunter, Just World Beliefs and Attitudes Toward the Poor, 23 Brit. J. Soc. Psychol. 265, 268 (1984).


\textsuperscript{100} Id.
dominance than the people on the "left" do.101 In another study, political orientation was also correlated with opinion about the unemployed.102 The more liberal leaning the respondents, the less negative view the respondents held about the unemployed.103

Similarly, one plausible explanation for the disparity in the United States between actual versus perceived rate of abuse in the consumer bankruptcy system is the bias stemming from the fundamental attribution error. As the American society is generally viewed as having individualistic and conservative-leaning tendencies, individuals in the United States would seem particularly vulnerable to the bias in perception arising out of the fundamental attribution error.104 Rather than attributing the blame of the financial failure leading up to bankruptcy to environmental factors, such as workforce downsizing, medical catastrophe, family dissolution, etc., the public in the United States seems to place the blame on the individual and overestimate the importance of personal or dispositional factors, such as lack of personal responsibility.105 As the public perceives bankruptcy filing as the product of the debtor’s own fault, the public does not regard the petitioner as deserving much protection. Hence, by virtue of debtors’ resorting to such protection in bankruptcy, the public tends to generally view such conduct as indicative of inherent abuse of the system.

Indeed, many who have publicly voiced their concerns about pervasive abuse in the consumer bankruptcy system premise their apprehension of abuse on the bankruptcy petitioners’ alleged irresponsible conduct.106

101. Id.
103. See id.
104. See Triandis, supra note 89, at 510.
105. See Blaustein et al., Policy Issues- An Overview, supra note 45, at 6 (citing a sample survey of urban Ohio households undertaken by Ohio State University Foundation); Greg M. Shaw & Robert Y. Shapiro, The Polls- Poverty and Public Assistance, 66 PUB. OPINION Q. 105, 107 (2002) (finding that 40% of Americans blamed the welfare recipients for lack of personal effort).
106. See, e.g., Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, Report of the Committee on the Judiciary House of Representatives to Accompany H.R. 333 Together with Dissenting Views, H.R. REP. No. 107-3, pt. 1, at 2 (2001) ("The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility . . ."); 144 Cong. Rec. H10224, 10224 (1998) (statement of Rep. John Linder) ("[B]ankruptcy of convenience has provided a loophole for those who are financially able to pay their debts, but simply have found a way to avoid personal responsibility and escape their financial responsibilities. . . . Nonetheless, the abusers of bankruptcy laws need to receive a message that Federal bankruptcy laws are not a haven of personal fiscal irresponsibility."); Todd Zywicki, Bankruptcy Law as Social Legislation, 5 TEX. J. L. & POL’y 394, 427 (2001) ("The current American bankruptcy system is thus unique in the legal systems of the world- it provides powerful economic incentives to file bankruptcy and places few limitations on opportunistic use of bankruptcy. In so doing, it mocks the traditions of personal responsibility. . . ."); 147 CONG. REC. H517 (daily ed. Mar. 1, 2001) (statement of Rep. Sensenbrenner) (during the debate on enactment on consumer bankruptcy reform the Congressman remarked: "The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system . . ."); Letter to Editor, Credit Overload, Easy Bankruptcy Harm Others, HARRISBURG PATRIOT & EVENING NEWS, Jan. 8, 1998, at A12 (attributing the rise in consumer bankruptcy to irresponsible debtors abusing their credit card obligations).
3. Just World Theory

Motivational bias theory might provide another explanation for people’s perception that bankruptcy is the fault of the petitioner and that bankruptcy is largely being abused by undeserving debtors. One form of motivational bias is the Just World Theory. Under this theory, people’s tendency to blame victims for their own victimization and to hold them responsible for their own predicaments is often motivated by a desire to see the world as a just place.\textsuperscript{107} People tend to view the world as a just place where one gets what one deserves and one deserves what one gets; a world where hard work and an ethical life always pay off and where idleness and an immoral life are castigated.\textsuperscript{108} To believe otherwise would cause people to admit that the world is chaotic and hence that they too are susceptible to similar misfortunes as all such predicaments are a product of unpredictable chance and fate over which they have no control.\textsuperscript{109} A way of psychologically defending oneself against such misfortunes is to construe the causes of the events as being less due to coincidence or luck.\textsuperscript{110} If such events were to be construed as due to chance, then it could occur any time and to anyone, including oneself. In other words, attributing greater causality to chance makes one vulnerable.\textsuperscript{111} One may attempt to defend their shaken belief in a just world by distancing oneself psychologically from the victim through disparagement and by holding the victims responsible for their own adversities.\textsuperscript{112}

For example, negative attitudes toward the poor, including blaming them for their own plight, are more prevalent among individuals who display a comparatively strong belief in a just world.\textsuperscript{113} One study demonstrated that persons belonging to high-income groups tended to attribute the plight of the poor to the poor person himself, whereas persons belonging to low-income groups tended to attribute the plight of the poor to situational factors, such as government failure or dominance by other groups.\textsuperscript{114} The attributional profile of the high-income subjects can be understood in light of motivational bias. For a high-income subject, a way of defending oneself against the unwanted happening of poverty is to construe the causes of poverty as being less due to chance or luck, and more due to personal fault. If a high-income subject were to construe poverty to be the

\textsuperscript{108} Id.
\textsuperscript{109} Id.
\textsuperscript{110} Id.
\textsuperscript{111} Id.
\textsuperscript{112} Id.
\textsuperscript{113} Furnham & Gunter, \textit{supra} note 97, at 268 (“The results [of this study] strongly support the hypothesis that strong just world beliefs are associated with negative attitudes to the poor.”).
\textsuperscript{114} Yoganand Sinha et al., \textit{Attribution of Causality to Poverty}, 8 J. SOC. ECON. AFF. 349 (1980).
product of chance, then poverty could plausibly inflict the high-income subject at any time. Hence, the high-income groups’ belief in a just world causes them to attribute more causality to the poor individual, thereby reducing their perceived vulnerability.115

Similarly, in consumer bankruptcy, one may hypothesize that as a way of defending their shaken belief in a just world, the general public holds the bankruptcy petitioners at fault and responsible for their financial demise. As a way of perceiving themselves as not vulnerable to a similar outcome, people simply construe the causes of the bankruptcy event as not being due to some haphazard environmental factor. After all, if they were to perceive the bankruptcy filing as a product of such random situational factor, then it could conceivably occur to them at any time too. By attributing fault and by disparaging the bankrupt for his own downfall, the observing public maintains a certain psychological security about their lives.

4. Defensive Attribution Bias

Another form of motivational bias in attribution theory is referred to as the Defensive Attribution Bias. According to this theory, people increase or reduce blame on others “depending on their perceived resemblance with the victim and the perceived likelihood of similar future victimization befalling them.”116 Under the Defensive Attribution Bias, one may expect an observer’s perception of blame on the victim to decrease as the resemblance of the observer to the victim increases.117 The observer triggers this defensive mechanism to protect himself from being blamed if a similar destiny should happen to him in the future.118 Alternatively, this bias may be triggered in order to maintain or enhance the observer’s self-esteem.119

For example, one study found that female subjects are reluctant to blame a rape victim, in the sense of moral wrongdoing, in order to safeguard themselves against the possibility of being involved in and blamed for similar incidents in the

115. See id.
116. Anderson et al., supra note 107, at 447; see also Alan L. Chaikin & John M. M. Darley, Victim or Perpetrator?: Defensive Attribution of Responsibility and the Need for Order and Justice, 25 J. PERSONALITY & SOC. PSYCHOL. 268, 273 (1973) (“The defensive attribution hypothesis suggests that people who perceive themselves as potential victims of similar accidents should not devalue the observed victim; to do so would be threatening to themselves.”); Kelly G. Shaver, Defensive Attribution: Effects of Severity and Relevant on the Responsibility Assigned to an Accident, 14 J. PERSONALITY & SOC. PSYCHOL. 101, 108 (1970) (finding in one of his experiments, that the more relevant the stimulus person in the story was to the subject, the less responsibility for causing the accident was attributed to the stimulus person and suggesting that this finding may reflect defensive attribution (e.g., I may cause a similar accident in the future; if I do, I will want people to think chance is responsible, and not I)).
117. Id.
118. Id.
119. Id.
future.\textsuperscript{120} Also, in studies conducted measuring public attitudes towards the unemployed, researchers have detected a longitudinal reduction in negative perception towards the unemployed. The researchers attributed the decline in negative attitudes to macroeconomic changes and large-scale labor work dislocation that have prompted more people to become personally concerned about unemployment.\textsuperscript{121} As the public started to perceive a higher degree of similarities with the unemployed population and a higher degree of probability of similar future outcome, the public has started to blame the unemployed less and to attribute the cause of their condition more to situational factors.\textsuperscript{122} This shift in public perception may have been the product of the Defensive Attribution Bias: a defensive mechanism to protect themselves from being blamed if a similar destiny of unemployment should happen to them in the future.\textsuperscript{123}

The Defensive Attribution Bias may have also played a role in contributing to a negative perception of the bankrupt during the robust economic years of the 1990s. As the country experienced a record low unemployment rate and record high economic growth, few individuals perceived much similarity between themselves and the typical bankrupt, who is generally a wage earner who had suffered some significant employment setback.\textsuperscript{124} The limited perception of resemblance with the bankrupt diminished the likelihood that the public’s defensive mechanism would be triggered and would cause them to view bankruptcy as a product of situational rather than dispositional factors.\textsuperscript{125}

5. Stereotyping Bias

Lastly, the disparity between the perception and empirical evidence of consumer bankruptcy abuse in the United States may be the result of stereotyping bias. Stereotyping is a form of attribution bias.\textsuperscript{126} Stereotypes are socially shared perceptions about the personality characteristics that are recognized to be true of

\begin{flushleft}
\textsuperscript{121} See Blaustein et al., Policy Issues: An Overview, supra note 45, at 4-5; Maassen & de Goede, supra note 78, at 192-93.
\textsuperscript{122} See id.
\textsuperscript{123} See id.
\textsuperscript{124} See Sullivan et al., As We Forgive Our Debtors, supra note 34, at 85 ("The wage earners [in the United States] comprise the largest group in bankruptcy; about 90% of the debtors currently work for someone else. The currently self-employed . . . make up the remaining 10% of the sample.").
\textsuperscript{125} During legislative debate in the 1990s, members of Congress expressed sentiments consistent with the lack of Defensive Attribution Bias. See The Increase in Personal Bankruptcy and the Crisis in Consumer Credit: Hearing Before the Sub.Committee on Admin. Oversight and the Courts of the Senate Comm. On the Judiciary, 105th Cong. 4 (Apr. 11, 1997, statement by Richard J. Durbin, U.S. Senator from the State of Illinois) ("This surge in bankruptcies, particularly when the economy is doing so well, when millions of new jobs are being created, is disturbing.").
\textsuperscript{126} See Aronson, supra note 56, at 235.
\end{flushleft}
social groups and their constituents. As perceivers, people naturally sort single individuals into groups rather than think of each one as entirely distinctive. Stereotypes are thought to be formed, in part, as a result of a process referred to as out-group homogeneity bias. Under the out-group homogeneity bias theory, observers tend to classify society into in-groups and out-groups. Groups with which the observers identify are called in-groups; those that the observers do not identify with are called out-groups. Observers are predisposed to assume that there is greater similarity among the members of out-groups than among the members of our in-groups. This is so because the interactions of an observer with out-group members are more isolated and are more likely to take place on an inter-group rather than an individual level. As a consequence of the out-group homogeneity bias, stereotypes tend to develop more strongly about out-groups than about in-groups. Furthermore, people observing a negative act by an out-group member are swift to attribute personality deficiency as a causal factor to that act and to generalize that deficiency to all members of that out-group.

The Realistic Conflict theory may explain why the out-group homogeneity bias endures. This theory hypothesizes that members of the in-group tend to become fearful that members of an out-group who are viewed as competitors threaten the quality of their lives. In-group members' belief that members of the out-group fare better compared to the members of the in-group causes them to

128. George A. Quattrone & Edward E. Jones, The Perception of Variability Within In-Groups and Out-Groups: Implications for the Law of Small Numbers, 38 J. PERSONALITY & SOC. PSYCHOL. 141, 142 (1980) (hypothesizing that members of the in-group are generally aware of the fine differences between members of that in-group but that, when in-group members look at members of out-groups, all the out-group members seem to be similar).
129. Id.
130. Id.
131. Id.
132. See Quattrone & Jones, supra note 132, at 142 (members of the in-group are generally aware of the fine differences between members of that in-group, but when they look at out-groups, they all seem to be similar).
133. See Patricia W. Linville et al., Perceived Distributions of the Characteristics of In-Group and Out-Group Members: Empirical Evidence and a Computer Simulation, 57 J. PERSONALITY & SOC. PSYCHOL. 165 (1989) (demonstrating that increased familiarity with out-group members reduces the perception of out-group homogeneity).
134. See Thomas Pettigrew, The Ultimate Attribution Error: Extending Allport's Cognitive Analysis of Prejudice, 5 PERSONALITY & SOC. PSYCHOL. BULL. 461 (1979) (suggesting that "when prejudiced people perceive what they regard as a negative act by an out-group member, they will, more than others, attribute it dispositionally, often as genetically determined, in comparison to the same act by an ingroup member. . . ."); Quattrone & Jones, supra note 132, at 149; Stangor, supra note 131, at 630.
135. See R.A. Levine & D. T. Campbell, ETHNOCENTRISM: THEORIES OF CONFLICT, ETHNIC ATTITUDES, AND GROUP BEHAVIOR (1972) (describing the view that competition for valuable but limited resources breeds hostility between in-groups and out-groups is called realistic conflict theory); see also Faye Crosby, A Model of Egoistical Relative Deprivation, 83 PSYCHOL. REV. 85 (1976) (finding that people become resentful not because of what they have, but because of their belief that they fare poorly relative to members of the out-group).
become resentful of members of the out-group. According to this view, given the limited resources and the discontent shared by members of the in-group, members of the in-group might negatively perceive members of the out-group in an attempt to gain some material advantage. Such prejudiced attitudes tend to increase when times are tense and there is conflict over mutually exclusive goals. For example, perception of abuse increases in bad economic times when the public is more likely to believe that help to the poor will be on their account by a reduction in their standard of living.

Similarly, negative perception of the public relative to bankruptcy petitioners, including the perception of pervasive abuse in consumer bankruptcy, may plausibly be the product of prejudice bias. Under the realistic conflict theory, members of the in-group, the general public who regularly consume using credit but do not file for bankruptcy, may become fearful that the quality of their lives is being threatened by members of the out-group, those members of the public who undertake consumer debt and then file for bankruptcy to get their debt obligation forgiven. The perceived threat and resentment may be triggered by the belief held by members of the in-group that bankruptcy filers fare better compared to the debt-paying members of the general public. First, members of the in-group may believe that members of the out-group fare better since they are relieved of the obligation to further sacrifice to repay for the goods and services they have consumed, whereas members of the in-group forego various pleasures to live up to their repayment obligations. Second, members of the in-group may believe that members of the out-group fare better since the cost of the out-group members’ bankruptcy filing would now be shifted to members of the in-group.

The public discourse on consumer bankruptcy provides some manifestations of the Realistic Conflict theory in prejudice bias. Many perceivers of pervasive abuse in the consumer bankruptcy system point to alarming yet unsubstantiated reports that consumer bankruptcy costs each American household $400 per year. This assertion plausibly triggers in the mind of debt-paying consumers a

136. See id.
137. See id.
138. See ARONSON, supra note 56, at 254.
139. See Deacon, supra note 78, at 126 (suggesting that the negative perception of the British public hardened in the late 1970s as the public began to recognize that any additional help given to the unemployed would amount to a deterioration of the general public’s standard of living).
140. See LoPucki, supra note 8, at 464-65.
141. See id.
142. See id.
143. See id.
perception that those members in the out-group, who default on their debts and file for bankruptcy, are threatening the quality of their lives by shifting the cost of consumer credit to members of the in-group—the general public who regularly consume using credit but do not file for bankruptcy. This perceived threat plausibly causes discontent among members of the debt paying in-group, which is further evident in the negative views and outright perception of abuse towards all members of the consumer bankruptcy population.

IV. PERCEPTION VS. REALITY OF BANKRUPTCY ABUSE: A COMPARATIVE PERSPECTIVE

A. Introduction

To test some of these hypotheses, this study has embarked on investigating the disparity between the perception and reality of personal bankruptcy abuse in Israel. Israel is a suitable country to study because of the wealth of information in the bankruptcy files, including valuable financial data and detailed accounts of each petitioner’s pre- and post-bankruptcy circumstances.
As is in the United States, one would expect to find non-conformity between the perception in the Israeli public of the prevalence of abuse in bankruptcy, on the one hand, and the true extent and scope of the phenomenon. The disparity between perception and reality may similarly be the product of a number of attribution biases, including availability heuristic, fundamental attribution error, motivational biases, or even, stereotyping bias. Furthermore, the well-embedded culture of "illegalism" in Israel may also be a contributing factor to the disparity between perception and reality of abuse in personal bankruptcy. Illegalism, the phenomenon of non-compliance with Israeli law, has been defined by Israeli scholars as "the orientation [in Israeli society] that does not view respect to the law and respect to the legal system as a basic value, rather the prevailing view is that law should or should not be obeyed depending on calculations of benefits." Some believe that the non-conformity with the law has become so embedded in Israeli culture that they refer to it as an Israeli sport. The view that people in Israel have tendencies to routinely disobey and ignore the law whenever possible is widely shared among the Israeli public. This entrenched belief plausibly could have led people in Israel to suspect that bankruptcy petitioners lack the fundamental respect for bankruptcy law and would find every available loophole to abuse the process by dishonoring their obligation to repay their debts.

As discussed below, the findings of this study confirm the underlying hypothesis that, just as in the United States, there is a distinct disconnect between reality and perception of abuse in consumer bankruptcy in Israel.


149. See SAM N. LEHMAN-WILZIG, WILDFIRE: GRASSROOTS REVOLTS IN ISRAEL IN THE POST-SOCIALIST ERA 115 (1992) ("In conclusion, in whatever angle one examines the behavior of the public in Israel, one will find that non-conformity with the law is an Israeli sport acceptable in all aspects of life: politics, social and economics.").

150. See, e.g., Marjorie Miller, It’s a Sin to Be a Sucker in Israel, L.A. TIMES, July 25, 1997, at A1 ("If Israelis could agree on anything . . . it just might be that the cardinal sin is to be a freier . . . [A] freier is anyone who cedes ground, plays completely by the rules or allows someone to get the better of him.").

151. Minutes of the Levin Commission 5 (Nov. 5, 1991) (on file with author) (statement of Judge Bar-Ofir) ("One must distinguish between debtors that have nothing (and they are the minority) and those [debtors] that have [money] who explore all avenues to avoid [repayment]."). During a legislative hearing on bankruptcy reform in 1976, one legislator asked an expert witness testifying before the subcommittee: "Why should we be concerned about ending [the bankruptcy] process quickly? Don’t you think that the fact that the vast majority of bankruptcy petitions [in Israel] are initiated by the debtors indicates that most of the bankrupts are attempting to defraud the creditors?" Proposed Amendments to the Bankruptcy Ordinance (no. 6): Hearings Before the Judiciary Comm., 8th Knesset 7 (Jan. 5, 1976) (statement of S.J. Abramov, committee member): Others share the legislators’ concern. An editorial comment in a major daily newspaper also voiced its concern that the public may interpret a liberalization of the debt-collection laws as a signal that debts need not be repaid. See Yoseph Lapid, Hot’za La’poal [Judgment Execution Laws], MA’ARIV, June 23, 1993, at 3.
B. Research Methodology

To collect empirical data for this study on the Israeli personal bankruptcy system and the extent of abuse in this setting, a sample of 213 bankruptcy files of individuals was selected, analyzed and coded. The schedules found in the bankruptcy files included extensive information on the debtors' financial condition. The bankruptcy files also contained detailed investigatory reports authored by the agency charged with administering bankruptcy cases in Israel, the Official Receiver, and they provided valuable insight into the bankruptcy process.

The sample is composed exclusively of individuals; individuals who

---

152. The data-collection technique of analyzing bankruptcy files was used primarily because of the wealth of information and the accuracy this data collection method provides. The bankruptcy files, as maintained by the Official Receiver, include debtor’s bankruptcy petition, detailed investigatory reports, notes and analyses by officers from the Official Receiver’s office, internal memoranda of the Official Receiver, transcripts of various court hearings, minutes of creditors’ meetings, correspondence with the debtor and other interested parties, transcripts of periodic questioning of the debtor by the Official Receiver, and inspection reports of the debtor’s assets completed by the Official Receiver. Such detailed and comprehensive information relating to the debtor’s affairs could not have been obtained merely through informal interviews with the debtors. Furthermore, this form of data gathering not only provided a significant amount of information, but it also maximized accuracy, because the debtor provided the information under penalty of perjury and under the Official Receiver’s close scrutiny. For similar conclusions in the American bankruptcy context on the benefits of court files rather than interviews as the preferred method of data-collection, see SULLIVAN AT AL., AS WE FORGIVE OUR DEBTORS, supra note 34, at 18 (“We decided to focus on the bankruptcy forms because more information is available in these forms than most people could explain in a half-hour interview. Moreover, the accuracy of the information is likely to be higher than it would be when people are trying to recall complex information and give immediate answers.”).

153. The data from the debtor’s bankruptcy schedules included: debtor’s gender, date of birth, current and former address, place of work; names and types of creditors; amount of and reason for each debt; number and amount of outstanding debtor’s guarantees; number of creditors; number and status of pending collection activities against the debtor; number of prior bankruptcy filings by debtor; name and employment status of debtor’s spouse; age and marital status of debtor’s children; debtor’s monthly expenses; a list of outstanding judgments against and in favor of the debtor; gross and net monthly income of the debtor, the debtor’s spouse, and the debtor’s children; occupation of the debtor and the debtor’s spouse; unearned income of the debtor and the debtor’s spouse (including rent, social security benefits, dividends, etc.); a list of real estate owned by the debtor and the amount of any related lien; as well as debtor’s stocks and negotiable instruments, business inventory, automobiles, household goods, bank accounts, credit cards, and insurance policies.

154. The information in the Official Receiver’s investigatory reports was not uniform but it included some of the following data about the formal bankruptcy proceedings: the debtor’s applications for a stay order, a receiving order, any adjudication order and discharge order, any response to the debtor’s applications by the Official Receiver, as well as any transcripts of court hearings and rulings on these applications. In addition, the files included minutes of the creditors’ meeting.

155. All filings were non-joint filings as the judicial system considers the bankruptcy petition of the debtor and her spouse as two separate bankruptcy filings. Thus, both spouses have to file separate petitions, pay separate filing fees, and go through a parallel process. At times, courts consolidate the hearings on the two separate bankruptcy petitions. The sample in this study contains thirty-eight bankruptcy petitions that were filed separately by petitioners and their spouses.
voluntarily filed for bankruptcy between September 1996 and July 1998. The files were randomly collected, taken from all four judicial districts in Israel, in rough proportion to each district's percentage of total individual filings over that time period. The sample of 213 files constitutes thirty-eight percent of the average annualized number of actual filings during the sample period.

C. The Perception of Abuse

A commonly held perception among Israeli legislators, members of the executive branch, judges, and high-level government administrators is that bankruptcy abuse is rampant in Israel. Prior to every bankruptcy reform

---

156. The start date of the sample was selected to be September 1996 to coincide with the significant reform of Israel's personal bankruptcy system. The data were collected in July 1998, while almost all of the cases were still active. More than 90% of the sampled cases had been active between six and twenty-four months at the time of data collection. Less than 8% had been active for less than six months at the time of data collection.

157. The bankruptcy files were randomly hand picked from the shelves at the four regional Official Receiver's offices in Israel. The Official Receiver generally maintains, chronologically on storage shelves, all active personal bankruptcy files. Since most of the bankruptcy files generally remain active for years, at the time of data collection the shelves at the Official Receiver's offices contained almost all the bankruptcy files of cases filed after September 1996. On any given data-gathering day, a number of active files may have been used by the staff at the regional Official Receiver's office, and hence would not have been selected for the sample of this study. However, because of the small number of such files, any impact on the randomness of the sample was not significant. Also, due to limited access to the Official Receiver's office in Tel-Aviv, additional bankruptcy files were retrieved from the central courthouse in Tel-Aviv, where similar data collection methodology was used. However, although the courthouse files included data similar to that found in the Official Receivers' files, some informal investigation reports of the Official Receiver were generally not part of the court files.

158. The four judicial districts are: Jerusalem District, Central District (including Tel-Aviv), Southern District (including Be'er-Sheva) & Northern District (including Haifa).

159. The average distribution of the actual number of petitions filed by individuals during 1996 and 1997 was: Jerusalem District: 10%; Central District: 59%; Northern District: 19%; Southern District: 12%. The distribution of the sample collected in this study was: Jerusalem District: 19%; Central District: 51%; Northern District: 11%; Southern District: 19%. These distributions also roughly approximate the overall population distribution in Israel: Jerusalem District: 12%; Central District: 42%; Northern District: 30%; Southern District: 14%. See STATE OF ISRAEL CENTRAL BUREAU OF STATISTICS, STATISTICAL ABSTRACT OF ISRAEL 1997, 3, 57 (1998); Computerized Printouts from the Official Receiver of the Central, Jerusalem and Southern districts (July-Sept. 1998) (on file with author).


161. This study did not measure directly the general public's perception of abuse, but instead indirectly examined public perception by reviewing attitudes held by key players in the bankruptcy system, such as judges, legislators, and administrators. While examination of the general public's attitude would have been interesting, it was deemed unnecessary because the general public in Israel has very little familiarity or even awareness of the existence of bankruptcy relief for individuals. See YISRAEL ITSUKHITS, BE-HEZKAT ASHEM: HAKOL AL HA-MISHPAT VEHA-MISHPACH BE YISRAEL, [PRESUMED GUILTY] 44 & 150 (1997). Based on a pilot and unscientific survey of adults in Israel by a former bankruptcy petitioner and founder of a grass roots organization for the rights of insolvent individuals in Israel, it seems that many do not even realize that individuals may commence bankruptcy protection and many
undertaking, legislators in Israel have vocally expressed their alarm and antipathy towards the bankruptcy population in Israel, who are perceived as morally poor and opportunistic members of society.\(^{162}\) Similarly, influential members of the Justice Department have expressed their serious reservations about the tendencies of many bankruptcy petitioners to abuse the benefits offered to them in the bankruptcy system.\(^{163}\) Likewise, judges have voiced their reluctance to support further liberalization of the bankruptcy relief available to individuals in Israel on others believe that it is impossible for individuals to obtain debt forgiveness in bankruptcy. \textit{Id.} (suggesting that individuals in Israel do not have much knowledge about the bankruptcy relief that is available for individuals in Israel). \textit{See also} Ron Harris, \textit{From Imprisonment to Discharge: Setting an Agenda for Reform in Debtor-Creditor Law}, 23 \textit{TEL-AVIV U. L. REV} 641, 666 (2000) (attributing the small number of bankruptcy petitions filed in Israel partly to lack of public awareness about the bankruptcy option, as well as to the lack of bankruptcy advertising).

162. \textit{See, e.g.}, D.K. (1996) 83 (statement of Yitzhak Levi, chair of the bankruptcy reform subcommittee) ("In order to prevent abuse of the benefits provided to the debtor by this bankruptcy reform, and most importantly to prevent the assets concealment and discharge granting without justification, this proposal grants new investigatory powers to the Official Receiver relating to his assets, income and expenditures."); D.K. (1994) 4757 & 4761 (concerns about the debtors' abuse of the judicial system and ignorance of the obligations to repay their debts were prevalent during the legislative debate on the reform of the Judgment Execution Law); D.K. (1994) 10136 (statement of Knesset member Mr. Tichon) ("[D]eptors [in Israel] avoid repayment, escape, disappear, trick everyone."); \textit{Proposed Amendment of the Judgment Execution Law, 1974: Hearings Before the Judiciary Comm.,} 8th Knesset 4 (June 10, 1974) (statement of the chairman, Mr. Verheptig) ("Bankruptcy ruins a person economically. It also ruins the morals in the economy.").

Unfortunately, there were incidents in Israel that constitute a cause of concern. There were businesses that preferred and fraudulently obtained bankruptcy protection while their assets were registered under someone else's name, or by leaving the country or by staying outside of the country for an extended period of time, or by changing their address and a prolonged absence from the place of business. In my opinion, there is a need to apply with full force the laws in those cases, and if these laws are insufficient, then there is a need to initiate amendments to prevent acts of concealment such as these.

D.K. (1975) 383-84 (statement of member Eliezer Abetbi); D.K. (1975) 312 (statement of member Meir Cohen) ("This growing phenomenon [of increased bankruptcy filings] damages the commercial practices, the public order and the economic life. . . . I am looking forward to a comprehensive reform of the bankruptcy system which will improve the commercial practices and the morality of debt-repayment in Israel.").

163. \textit{See Proposed Amendment of the Bankruptcy Ordinance: Hearings Before the Subcomm. on Bankruptcy Reform of the Judiciary Comm.,} 13th Knesset 2 (May 30, 1995) (statement of Davida Lachman-Messer, Deputy Justice Minister) (arguing, in favor of imposing a rigorous reporting requirements on the bankrupt, that "[i]t seems to me that this is the way we can accomplish the balance that is needed between the dignity and respect of the individual on the one hand, and the need to deter people from abusing the bankruptcy system"); \textit{Proposed Amendment of the Bankruptcy Ordinance: Hearings Before the Subcomm. on Bankruptcy Reform of the Judiciary Comm.,} 13th Knesset 29 (May 23, 1995) (statement of Davida Lachman-Messer, Deputy Justice Minister) (stating to the subcommittee members that they "must understand that the phenomena of assets concealment is very problematic"); D.K. (1975) 385-86 (statement of Justice Minister Zadok) ("The main objective of this proposed reform is to prevent abuse of the bankruptcy system by debtors, who know that it is easy to avoid repayment, undertake obligations and then obtain a discharge through the bankruptcy system. I do not support a liberalization of this [bankruptcy] process.").
the grounds that such reform would only invite further abuse and fraud.164 Lastly, the pervasive nature of perception of abuse in bankruptcy is also illustrated by the remarks made during an interview by the head of the northern region of the Official Receiver in Israel. During an interview, the regional head asserted that while some of the bankruptcy petitioners in her district are honest and unfortunate debtors in financial distress, the vast majority of the bankruptcy applicants in her region are crooks attempting to take advantage of the system.165

D. The Evidence of Abuse

In the United States, some have attempted to measure the level of bankruptcy abuse by studying the extent of repeat use of bankruptcy by former petitioners,166 and the extent to which bankruptcy petitioners have the ability to repay.167 Lastly, some have regarded bankruptcy-filing numbers as an indicator of bankruptcy abuse.168

164. See, e.g., Minutes of the Levin’s Commission on Bankruptcy Reform 4-5 (Sept. 4, 1991) (on file with author) (statement of Justice Levin) (alluding to a case where a bankrupt, who received a conditional discharge, was later found to own a luxurious apartment and a jewelry business with twelve employees) [In the past, the voluntary bankruptcy process has become a tool for debtors who unjustifiably sought to avoid repayment of their debts. . . . [T]his development arose, historically, from the fact that pursuant to § 7 of the 1936 Bankruptcy Ordinance a debtor’s application for commencement of bankruptcy proceedings would routinely be granted without judicial discretion in the matter. This abuse brought about the changes in the bankruptcy law. . . . As a result, the court now has discretion before approving a debtor’s application for bankruptcy relief. 4892/91, Ashkenazi v. Official Receiver, 48(1) P.D. 45, 55.

165. Interview with Levana Bar-Oz, head of the northern district of the Official Receiver, in Haifa, Isr. (July 9, 1998); see also Letter from Hana Yanun, staff attorney at the Official Receiver, to Amram Blum, head of the Official Receiver 4 (Apr. 29, 1992) (on file with author) (“[A]n expansive discharge provision is likely to give incentives to the general public to incur debts in the hope that the debts will be forgiven . . . . Even today, under the present bankruptcy ordinance, there are people who abuse the bankruptcy system.”); Letter from Amram Blum, head of the Official Receiver, to Dan Meridor, Justice Minister 1 (Nov. 22, 1991) (on file with author) (“[I]t is likely that public knowledge about the opening of the doors of bankruptcy will quickly spread, and the number of debtors that will take advantage of the situation in order to avoid their creditors may rise to a startling proportion.”).

166. See Sullivan et al., As We Forgive Our Debtors, supra note 34, at 191-97 (examining, as a way of detecting abuse, the extent of repeat use of bankruptcy relief); Visa U.S.A. Inc., Bankruptcy Petition Study: Visa Consumer Bankruptcy Reports 19 (1997) (reporting, as part of a study of the extent of abuse of personal bankruptcy in the United States, on the extent of repeat use of personal bankruptcy relief); Sullivan, Warren & Westbrook, supra note 9, at 235 (“If many bankrupt debtors are repeaters, then it is reasonable to infer that what separates them from other working people—including other people in financial trouble—is that they are abusing the system. A substantial proportion of repeat debtors in bankruptcy might suggest widespread abuse.”).

167. See Sullivan, Warren & Westbrook, supra note 9, at 236 (“Another possibility of abuse is that the debtors in bankruptcy are not in financial difficulty and therefore are abusing a system intended for people in disastrous circumstances.”); Warren, supra note 20, at 1087 (“[T]here appears to be some joinder in the debates that has created a working definition of abuse: if debtors use bankruptcy when they could repay their debts, then they have abused the system . . . .”).

168. See Warren, supra note 20, at 1084 (describing a view in the credit industry that rising bankruptcy filings suggest abuse of the bankruptcy system).
1. Serial Bankruptcy Filings

A review of the empirical data collected for this study suggests that contrary to popular belief, none of the three alleged manifestations of bankruptcy abuse can be shown to exist in Israel. First, very few petitioners in the Israeli bankruptcy sample are “true repeaters.” A true repeater has been defined “as someone who files bankruptcy and discharges all accumulated debt, only to follow that fresh start by running up more debts and getting yet another bankruptcy discharge.” 169 Fourteen percent of the petitioners in the bankruptcy sample have sought bankruptcy protection in the past. 170 However, not all applicants for bankruptcy relief are subsequently adjudicated as such 171 and granted a discharge. In fact, only four and half percent of the sample population had been previously adjudicated as bankrupt. 172 Furthermore, since very few bankruptcy petitioners in Israel receive a discharge, the estimated number of repeat bankruptcy filers who had received a discharge in their previous petition is less than one percent. 173

2. Ability To Pay

Second, the data reported in this study paint a stark picture of the acute financial crisis facing the average debtor in Israeli bankruptcy, suggesting that the vast majority would be unable to repay more than a de-minimis portion of their

169. See SULLIVAN ET AL., AS WE FORGIVE OUR DEBTORS, supra note 34, at 192.

170. Specifically, 14.4% of the bankruptcy petitioners in the sample previously filed for bankruptcy protection.

171. For example, in the bankruptcy sample of this study, only 30.6% of individuals who filed for bankruptcy protection were subsequently adjudicated as bankrupt.

172. Many of the previous bankruptcy filers were not adjudicated as bankrupt in their previous petition because their petition was dismissed under the older law, due to lack of demonstrable benefit to creditors. See, e.g., Official Receiver Case Number 1554/96 (Southern District) (reporting that the debtor previously filed for bankruptcy protection in 1992 and that the bankruptcy petition was dismissed because the debtor was unable to establish under the previous law that his bankruptcy petition would benefit creditors.); Official Receiver Case Number 1556/96 (Southern District) (reporting that the debtor’s 1980 bankruptcy petition was dismissed because he could not establish that the process would benefit creditors and that his petition was re-filed in 1996, following an amendment of the bankruptcy law with much of the same debts from the 1980s still outstanding).

173. Because this study suggests that less than 4% of the sampled petitioners received a discharge within the time period of this study, the estimated percentage of the previous bankruptcy filers who received a discharge as part of their previous petition is less than 58%. A higher true repeater rate was reported in the United States. See SULLIVAN ET AL., AS WE FORGIVE OUR DEBTORS, supra note 34, at 194 (reporting that while 8% of the sampled debtors had filed a bankruptcy petition at some time in the past, 3.7% of the sample were true repeaters). Bankruptcy repeat rate in the United States was found to be higher for individuals who had filed formerly under chapter 13 of the Bankruptcy Code. See VISA U.S.A. INC., 2000 LIFE AFTER BANKRUPTCY STUDY 15 (2000) (“26.9% of Chapter 13 respondents said they have filed more than one case. Only 8.1% of Chapter 7’s indicated repeat filings.”) Studies found a similar bankruptcy repeat rate in Australia. See Bankruptcy Regulation and Policy Branch of the Insolvency & Trustee Service Australia, Profiles of Debtors: Who Became Bankrupt or Entered into Debt Agreements in 1997, 7 (July 1998) (unpublished manuscript on file with author) (“The sample indicated that 8% of persons who became bankrupt during 1997 has been bankrupt previously.”).
debts. In general, debtors can repay their debts either by selling assets or by committing a portion of their future income for repayment.\textsuperscript{174} The average Israeli debtor’s net worth is extremely bleak, so paying debts by selling assets is not feasible. First, the mean net worth of the Israeli bankruptcy sample was a negative $192,531, and their median net worth was a negative $128,554.\textsuperscript{175} In stark contrast, the average net worth of Israelis generally in 1998 was a positive $99,215,\textsuperscript{176} a difference of over $290,000. Furthermore, an overwhelming ninety-two percent of the petitioners in the Israeli bankruptcy sample had a negative net worth at the time of filing. Third, if all of the sampled petitioners’ exempt and non-exempt assets were liquidated as part of the bankruptcy process as the sole form of repayment to creditors, half of the creditors would collect six percent or less of debts owed.\textsuperscript{177}

While the net worth analysis suggests little, if any, repayment capacity by the debtors, the income analysis provides an even grimmer picture. The average total gross income of the individual debtor in Israel is only a little over half that of the general population.\textsuperscript{178} The average monthly gross income per household in Israel was approximately $3,118 in 1997,\textsuperscript{179} but the average monthly gross income for the sample bankrupt’s household was only $1,675.\textsuperscript{180} These earnings positioned

\textsuperscript{174} See SULLIVAN ET AL., AS WE FORGIVE OUR DEBTORS, supra note 34, at 201 (“Debtors might repay by selling their assets and giving the cash to their creditors, or they might repay by committing a portion of their future income to repayment.”).

\textsuperscript{175} After removing outliers, the average net worth of the debtors at the time of bankruptcy filing was a negative 673,860 New Israeli Shekels (NIS) and the median net worth was a negative 449,939 NIS. The outliers were cases with net worth lower than negative 3,746,856 NIS and higher than 286,637 NIS. Before outliers were removed, the average net worth was a negative 807,644 NIS, or -$230,531. The standard deviation was 1,107,117 NIS. The highest quartile of debtor sample reported net worth of a negative 167,332 NIS. The lowest quartile of debtor sample reported net worth of a negative 1,071,117 NIS. All monetary figures reported here have been roughly converted from the Israeli currency into American dollar based on the dollar exchange rate existing in Israel at the second quarter of 1997 of 3.5 New Israeli Shekels (NIS) for one United States dollar. See STATE OF ISRAEL, CENTRAL BUREAU OF STATISTICS, STATISTICAL ABSTRACT OF ISRAEL 1997, FIRST FINDINGS, Table 9.12 (1998).

\textsuperscript{176} The average net worth of the general population was calculated by subtracting average debts owed by the general population of $33,650 from the average value of assets owned by the individuals in the general population in 1998 of $132,865.

\textsuperscript{177} The median payout figure of the sample was calculated by dividing, for each petitioner, total assets by total liabilities and then computing the median for the sample. The sample’s mean payout figure was calculated by dividing, for each petitioner, total assets by total liabilities and then computing the mean for the sample. After removing outliers, the mean payout figure of the sample was .25. That is, in the bankruptcy sample, creditors would have received on average a quarter of debts owed. However, these payout figures are overstated, because they include exempt assets, which are generally not liquidated as part of the bankruptcy process.

\textsuperscript{178} See STATE OF ISRAEL, CENTRAL BUREAU OF STATISTICS, HOUSEHOLD EXPENDITURE SURVEY, 1997, FIRST FINDINGS 43 (showing an average monthly total gross income per household of 10,915 New Israeli Shekels).

\textsuperscript{179} Id.

\textsuperscript{180} The bankrupt household average monthly gross income of 5,862 NIS, includes debtor’s earnings from work, debtor’s spouse’s earnings from work, government welfare receipts, rental income, and other income. Figures for average income, expenses, assets and debts were calculated in this study after cases
the bankrupt’s household income approximately in the thirtieth percentile of the average monthly gross income of the general population in Israel. Further, the average outstanding debt owed by petitioners in the sample was an exceedingly high $277,782, with a median of approximately $200,000. Not only was the average debtor burdened by an enormous debt in absolute terms, but the debt level was also very high relative to the average debt level in the general population. In 1998, the average Israeli citizen had debts only twelve percent as high as those held by the sampled bankrupts. At the mean, a petitioner’s family owed debts greater than fifteen years’ worth of income. In contrast, the average

with extreme values were removed from the sample to avoid distortions. Total household average monthly gross income before outliers were removed was 6,238 NIS, or $1,753. An outlier is an observation that is unusually small or unusually large. In this study, outliers are defined as observations in the lowest and the highest 5% of the data set. The outliers here were cases with average household income greater than 17,069 NIS. The median income for the bankrupt’s household was 5,708 NIS, with standard deviation of 4,175 NIS. The lowest quartile of debtor sample reported only 3,002 NIS in total household income, but the highest quartile of debtor sample reported a total household income of 8,364 NIS. While some have suggested that debtor’s have an incentive to understate their income in the bankruptcy petitions, the figures reported here are the numbers that have been thoroughly verified by the governmental agency of the Official Receiver. See Tom Neubig et al., Ernst & Young: Chapter 7 Bankruptcy Petitioners’ Repayment Ability Under H.R. 833: The National Perspective, 7 Am. Bankr. Inst. L.R. 79, 96 (1999) (“Some have suggested that chapter 7 filers may have an incentive to exaggerate their financial distress by overstating expenses and understating income.”). 181. See State of Israel Central Bureau of Statistics, Household Expenditure Survey, 1997, First Findings 43.

182. After outliers were removed from the sample, the average total debt of the Israeli bankruptcy sample was 972,241 NIS and the median was 702,634 NIS. The outliers were cases with total debts greater than 4,684,857 NIS and lower than 70,000 NIS. Before outliers were removed, the average total debts owed by petitioners in the sample was 1,120,942 NIS, or $320,270. While some scholars have suggested that debtors frequently understate total debts in their filings, it is not likely to be the case here. See Sullivan et al., As We Forgive Our Debtors, supra note 34, at 68 (outlining the persistent understatement bias the debtor’s bankruptcy reports of debts tend to have). Because the data used in this study is primarily based on the debtor’s figures as confirmed by the Official Receiver in most instances, any understatement bias in this study is likely to be minimal.

183. The calculated average debt held by individuals in Israel at the end of 1998 was $33,650 (117,777 NIS). Since there was no readily available data relating to the average debt held by individuals in Israel, the figure presented here was deduced by dividing the total liabilities held by individuals in the private sector in Israel in 1998 by the number of individuals who were living in Israel and were twenty years old or older at the end of 1997. Based on these calculations, the average amount of debt held by individuals in Israel was 117,777 NIS. See State of Israel Central Bureau of Statistics, Statistical Abstract of Israel 2000, Figure 2.19 (2000) (reporting that the total population in Israel in 1997 of individuals 20 years old or older was 3,617,000); Doron Wisembrod et al., Magamot Be’Hitpatchat Tik Ha’Nechasim Ve’Hahtichaivout Shel Ha’Zibur Be’Yisrael [Trends in the Israeli public Asset holdings and Liabilities], 32 Executive 62, 62 (1999) (reporting that the total debts held by individuals in the Israeli private sector at the end of 1998 was 426,000,000,000 NIS).

184. After outliers were removed, the average total debt to income ratio was calculated by dividing total debts for each petitioner in the sample by his or her average total annualized household income and then computing the average for all the petitioners’ individual debt to income ratio. The outliers were cases with debt to income ratio greater than 117 and lower than .93. Before outliers were removed, the average debt to income ratio was 22. The lowest quartile in the sample had a debt to income ratio of 5, while the highest quartile had a debt-to-income ratio of 24.
debt to income ratio in the general population was less than one.185

Both the net worth and the income examinations indicate that the financial condition of the average Israeli bankruptcy petitioner is disastrous, with few cases that have some prospect of meaningful repayment to creditors. The data suggest that the vast majority of the bankruptcy petitioners in the sample are not crafty manipulators of a system, but rather deeply indebted individuals who resort to bankruptcy as the only available venue available to deal with their financial trouble. Numerous bankruptcy files portray a situation where the debtor resorted to bankruptcy relief only after taking drastic steps to repay creditors outside of the bankruptcy forum. Among other things, in an attempt to repay their creditors, petitioners in the sample have sold their homes and automobiles, liquidated their savings, life insurance and retirement accounts, and turned over their household goods.186

185. The average total debt to income ratio in the general population in Israel was calculated by dividing total average debts of 117,777 NIS owed by individuals by average annualized household income of 130,980 NIS. See STATE OF ISRAEL CENTRAL BUREAU OF STATISTICS, HOUSEHOLD EXPENDITURE SURVEY, 1997, FIRST FINDINGS 43 (showing that the average monthly total gross income per household in the general population was 10,915 NIS). These figures indicate that the average total debt to income ratio in the bankruptcy sample was more than fifteen times higher than the level among the general population. In contrast, in Canada the disparity between the bankruptcy sample and the general population is a little over two. See also Iain D.C. Ramsay, Individual Bankruptcy: Preliminary Findings of Socio-Legal Analysis, 37 OSGOODE HALL L.J. 15, 36 (1999) (“The total debt debt-to-income ratio [in the Canadian bankruptcy sample] was over twice the level among the general population.”).

186. See, e.g., Official Receiver Case Number 179/96 (Jerusalem D.) (reporting that prior to bankruptcy filing, the debtor allegedly sold the family home for $240,000 to repay the business debts and creditors repossessed the family car and household goods as well as attached debtor’s saving and retirement accounts); Official Receiver Case Number 1592/96 (S.D.) (reporting that the debtor sold the family home prior to bankruptcy in an attempt to repay some of his business debts which he guaranteed); Official Receiver Case Number 1043/97 (N.D.) (reporting that, prior to bankruptcy filing, the debtor and his spouse sold their house, car and business inventory to pay off some creditors); Official Receiver Case Number 96/5 (N.D.) (reporting that the debtor and his family moved into a rented apartment after selling their house to pay some trade creditors; the remaining trade creditors continued pursuing the debtor and garnished his wages, allegedly leaving the debtor with no money to feed his family and leading the debtor to consider suicide seriously); Official Receiver Case Number 742/97 (C.D.) (regarding a 63-year-old debtor who indicated that prior to bankruptcy he had sold the family home to repay creditors after creditors had repossessed all accessible household belongings, leaving the debtor and his family with no house, no household belongings, and no car); Official Receiver Case Number 206/97 (C.D.) (reporting that, in an attempt to avoid bankruptcy, the debtor liquidated much of the family assets prior to filing the petition, including retirement savings, cash in the amount of the value of the debtor’s life insurance policy, a vacant lot valued at $280,000, the debtor’s condo, a relative’s condo and that the debtor used several loans from friends and family members); Official Receiver Case Number 24/97 (C.D.) (reporting that, despite selling the family home to avoid bankruptcy, the remaining unpaid debts led the debtor to resort to bankruptcy after moving in to the house of his parents-in-law with his spouse and two young children).
3. Bankruptcy Filing Rate

Lastly, the relatively low per capita rate of personal bankruptcy filings in Israel also counters claims of pervasive abuse of the bankruptcy system in Israel. In 1997, Israel had 16 personal bankruptcies for every 47 English and Welsh, 300 Canadian, and 510 American personal bankruptcies.\(^{187}\)

The strikingly low personal bankruptcy rate in Israel is due to several factors, including the strong social safety net offered to its citizens,\(^{188}\) the relatively stringent consumer credit standards used by financial institutions,\(^{189}\) the stingy financial relief provided by the bankruptcy regime,\(^{190}\) the higher overall personal saving rate which provides a higher margin of safety against changes in financial condition,\(^{191}\) the lack of public awareness about available bankruptcy relief,\(^{192}\) the societal stigmatization of the bankruptcy process,\(^{193}\) the strong family and

\(^{187}\) See Rafael Efrat, Global Trends in Personal Bankruptcy, 76 AM. BANKR. L.J. 81, 100-01 (2002).


\(^{190}\) See Rafael Efrat, The Fresh-Start Policy in Bankruptcy in Modern Day Israel, 7 AM. BANKR. INST. L. REV. 555, 578-600 (1999) (identifying some of the laws that make it difficult for bankruptcy petitioners in Israel to obtain a fresh-start).

\(^{191}\) See INTERNATIONAL MONETARY FUND, ISRAEL: SELECTED ISSUES AND STATISTICAL APPENDIX 80 (Apr. 2000) (reporting that private savings in Israel between 1994 and 1998 ranged from 24% to 26% of gross private disposable income). In contrast, both Canada and the United States have much lower personal saving rates. See also TERESA A. SULLIVAN ET AL., THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 32 (2000) (Hereinafter THE FRAGILE MIDDLE CLASS] (reporting that in 1998 individuals in the United States had a negative savings rate); Ramsay, supra note 186, at 78 n.134.

\(^{192}\) See ITSKOVITS, supra note 161, at 44, 150 (suggesting that individuals in Israel do not have much knowledge about the bankruptcy relief that is available to them). See also Harris, supra note 161, at 666 (attributing the small number of bankruptcy petitions filed in Israel partly due to lack of public awareness about the bankruptcy option, as well as to the lack of bankruptcy advertising). In contrast, in the United States, advertising of consumer bankruptcy by attorneys is legal and widespread. See Jean Braucher, Lawyer, and Consumer Bankruptcy: One Code, Many Cultures, 67 AM. BANKR. L.J. 501, 543-45 (1993). Increased lawyer’s advertising in the United States may have contributed to the increased number of bankruptcy filings. See ELIZABETH WARREN & JAY L. WESTBROOK, THE LAW OF DEBTORS AND CREDITORS: TEXT, CASES AND PROBLEMS 433-36 (3d ed. 1996); Diane Ellis, The Influence of Legal Factors on Personal Bankruptcy Filings, 98-03 BANK TRENDS 2 (1998) (“In the past two decades, at least three events have altered the legal framework at the national level and may have contributed to the long-term increase in the United States personal bankruptcy rate. The first event is a Supreme Court decision in 1977 that paved the way for lawyers to advertise on television.”); William T. Vukovich, Reforming the Bankruptcy Reform Act of 1978: An Alternative Approach, 71 GEO. L.J. 1129, 1131 (1983).

\(^{193}\) See ITSKOVITS, supra note 161, at 43 (asserting that the main reason for the traditional restrain in Israel from resorting to bankruptcy protection is the shame associated with it); Philip Shuchman, Field Observations and Archival Data On Execution Process and Bankruptcy in Jerusalem, 52 AM. BANKR. L.J. 341, 353 (1978) [hereinafter Shuchman, Field Observations] (“In Israel, there is a stigma attached to being bankrupt. From our few interviews . . . we infer that many debtors who might benefit from bankruptcy are deterred by the fear of shame and stigma.”); Official Receiver Case Number 1559/96 (Southern District) (reporting that the debtors who resided in a Kibbutz asked the Official Receiver to communicate with them via telephone only and not to send them correspondence by mail since they did not want their fellow Kibbutz members to know about their bankruptcy filing). Furthermore, the stigma of bankruptcy was recognized during several subcommittee hearings on bankruptcy reform. In one
community networks that keep many insolvent individuals afloat,\(^\text{194}\) and the high access costs to the bankruptcy system.\(^\text{195}\)

---


\(^{195}\) See Harris, *supra* note 161, at 660 (attributing the small number of bankruptcy petitions filed in Israel partly to high filing costs). In 1997, the non-waivable bankruptcy-filing fee in Israel was $498 per person (1,745 NIS). See Itskovits, *supra* note 161, at 117. Similarly, England’s relatively low personal bankruptcy rate may be partly associated with the high court fees for initiating bankruptcy. See Alexander Karpf, *Comparative Study of the Law of Debt Collection of Consumer Debts in England and Austria* 16 (unpublished manuscript, on file with the Georgetown Journal on Poverty Law and Policy) ("The payment [in England] of the court fee [to initiate bankruptcy proceedings] and of the deposit for the administration costs can be insurmountable barrier for some consumers in spite of the possibility for the court to waive the former."). In contrast, the bankruptcy-filing fee in Canada is $50, plus $170 for two counseling sessions. See Ramsay, *supra* note 186, at 75. In the United States, the bankruptcy-filing rate is $130 for chapter 7 & 13. See Susan Block-Lieb, *A Comparison of Pro Bono Representation Programs for Consumer Debtors, 2 AM. BANKR. INST. L. REV. 37, 39 n.15 (1994). In addition to higher filing fees, attorney fees for bankruptcy services in Israel seem to be significantly higher than similar services in the United States and Canada. See Interview with Levana Bar-Oz, *supra* note 165 (noting that the range of attorneys fees in personal bankruptcy cases in Israel is between $1,000 to $5,000). In contrast, average bankruptcy attorneys’ fees in the United States are significantly lower. See *The Fragile Middle Class, supra* note 192, at 11 ("Most people [in the U.S.] hire a lawyer to help them through the bankruptcy process. It generally costs between $750 and $1,500."); Barron & Staten, *supra* note 25, at 15 (reporting that the average fee paid by represented bankruptcy petitioners to a lawyer in the United States was $702 in Chapter 7 and $1,139 in Chapter 13).
4. Life Before Bankruptcy

Another strong indication of the limited extent of bankruptcy abuse in Israel is the immense and prolonged hardships many of the petitioners faced prior to resorting to bankruptcy. These hardships suggest that, as a group, the debtors did not take the decision to commence bankruptcy lightly, but rather were almost forced to do so as a last resort. The vast majority of the bankruptcy petitioners faced continuous collection pursuits by their creditors prior to the bankruptcy filing. 196 The average bankruptcy petitioner had to deal with eleven active collection files and approximately three outstanding judgments just before filing for bankruptcy. 197 In some cases, the creditors’ collection pursuits were going on for several years before the debtor finally commenced bankruptcy protection. 198

The judgment collection system (commonly referred to as the judgment execution system), where many debtors spent significant time prior to resorting to bankruptcy trying to repay their debts, is largely a creditor oriented regime with little, if any, safeguards and protection for the debtor. 199 The judgment execution system facilitated, by design or by practice, pre-petition collection activities that made life particularly difficult and unbearable for many debtors, who later ended

---

196. Specifically, 95.7% of the sampled cases had collection suits pending at the commencement of the bankruptcy petition. Just as most bankruptcy petitioners in this sample had to face collection pursuits in the judgment execution system prior to bankruptcy filing, nearly all the bankruptcy petitioners in the early 1970s in Israel had been previously subjected to the judgment execution process. See Shuchman, Field Observations, supra note 194, at 342. Pre-petition collection activities including wage garnishments and repossessions have been reported with significant less frequency in the United States and Canada. See Phillip Shuchman, Social Science Research on Bankruptcy, 43 Rutgers L. Rev. 185, 235 (1990) [hereinafter Shuchman, Social Science Research], (book review) (reporting that only between 10% and 36% of all bankruptcy petitioners in the U.S. have sustained repossessions, attachment, or wage garnishments prior to bankruptcy filing); Barron & Staten, supra note 25, at 15 (reporting that only 6% of Chapter 7 and 5.4% of Chapter 13 bankruptcy petitioners had their wages garnished prior to the bankruptcy filing, while 11.8% of Chapter 7 and 9.6% of Chapter 13 bankruptcy petitioners experienced repossession or foreclosure prior to the bankruptcy filing); Ramsay, supra note 186, at 66-67 (reporting that in addition to a small number of pre-petition garnishments, in 14% of the bankruptcy petitions in Canada assets had been seized by creditors and a small number of garnishments).

197. Specifically, on average 10.97 creditors were actively pursuing the sampled bankruptcy petitioner in the judgment execution system at the time of bankruptcy filing. Also, the average debtor had 2.68 outstanding judgments.

198. See, e.g., Official Receiver Case Number 179/97 (Jerusalem District) (reporting that collection activities were going on for years before the debtor’s bankruptcy filing); Official Receiver Case Number 740/97 (Central District) (reporting that, although the debtor’s financial trouble arose during the Gulf War, following the collapse of his business, he did not commence bankruptcy protection until 1997); Official Receiver Case Number 306/97 (Central District) (reporting that the debtor’s underlying debts were in default beginning in the mid-1980s, that, at that time, the debtor’s bankruptcy petition was dismissed because the debtor did not have adequate assets to distribute to the creditors, and that, following the reform of the bankruptcy law in 1996, the debtor filed for bankruptcy protection yet again, hoping to get some form of relief from the debts the debtor incurred more than ten years earlier); Official Receiver Case Number 493/97 (Central District) (reporting that the debtor had been pursued by creditors for five years prior to his application for bankruptcy relief).

up in bankruptcy. For example, creditors' continuous garnishment of debtors' wages made it hard for some debtors to keep a job for an extended period of time both because employers were generally not tolerant of the collection process in the workplace and because the little wages remaining after garnishment left hardly any incentive for the debtor to remain working in that same workplace.200 Garnishment was particularly injurious to the sixty percent of the welfare-dependent bankruptcy petitioners who had their government assistance garnished prior to bankruptcy.201

Also, life in the judgment execution system was made miserable for many petitioners because their creditors at times repossessed exempt property and other essential personal effects.202 Moreover, prior to filing for bankruptcy a significant

200. See, e.g., Official Receiver Case Number 5/98 (Central District) (following the collapse of his business, the debtor was unable to keep a job in one place for an extended period of time due to the continuous garnishment of his wages); Official Receiver Case Number 420/96 (Central District) (The debtor reported that following his business failure, he attempted to find a job as an employee. Several of these attempts failed because the employer felt uncomfortable with the garnishments of the debtor's wages); Official Receiver Case Number 5136/97 (Southern District) (debtor, a former entrepreneur, reported that on numerous occasions he had to leave his job and to find another as the garnishments of his wages left him with little to take home). Studies in the United States have also documented how garnishment may cost a debtor his job. See George Brunn, Wage Garnishment in California: A Study and Recommendations, 53 Cal. L. Rev. 1214, 1234 (1965).

201. Specifically, out of all files in the sample where relevant information was available, 59.4% of the sampled petitioners, who were recipients of some form of government financial assistance, reported that their government assistance had been garnished in some part prior to the bankruptcy filing. See, e.g., Official Receiver Case Number 1574/96 (Southern District) (garnishment proceedings with respect to debtor's monthly government child allowance entitlement were underway prior to the bankruptcy filing); Official Receiver Case Number 425/96 (Central District) (debtor's government subsidy of child allowance was garnished by creditors prior to the bankruptcy filing).

202. See, e.g., Official Receiver Case Number 156/97 (Jerusalem District) (reporting that debtor's creditors repossessed debtor's car and washing machine prior to the bankruptcy filing); Official Receiver Case Number 1029/97 (Jerusalem District) (reporting that debtor's household furniture was repossessed by the tax authorities prior to the bankruptcy filing); Official Receiver Case Number 5023/97 (Southern District) (reporting that an officer from the judgment execution office came to the debtor's apartment at 6:30 a.m. and searched the entire apartment for valuables; that he repossessed the debtor television and a home soda machine; and that the debtor described his experience with the judgment execution officers as follows: "The judgment execution people were after us all the time and were making our life a nightmare."); Official Receiver Case Number 1559/96 (Southern District) (reporting that an officer from the judgment execution office seized the debtor's television, oven and stereo); Official Receiver Case Number 1592/96 (Southern District) (reporting that an officer from the judgment execution office allegedly repossessed all of the debtor's household effects); Official Receiver Case Number 425/96 (Central District) (reporting that creditors alleged repossessed debtor's furniture and electronic goods); Official Receiver Case Number 742/97 (Central District) (reporting that the 63 years old debtor stated that creditors repossessed all personal property their hands could grab from her house and stated that her house was now empty); Official Receiver Case Number 306/97 (Central District) (reporting that, following 12 years of collection pursuits, the creditors had repossessed all of the household goods leading the debtor to rent furniture and other household goods); Official Receiver Case Number 157/97 (Central District) (regarding a debtor who was a tailor who used to work from home and who alleged that officers from the judgment execution office used to arrive at her home and repossess the clothes that she produced, her work tools, including her sewing machine, and her clothing presses and who alleged that all of her other household effects were also repossessed by the judgment execution officer, leaving her house empty). An empirical study on consumer bankruptcy in Canada observed a similar, but not as
majority of the petitioners were routinely arrested or threatened with arrests and imprisonment for failure to pay their debts.\textsuperscript{203} Furthermore, many debtors were confronted with unrealistic repayment orders in the judgment execution system, which they were unable to fulfill.\textsuperscript{204} Indeed, whereas the average monthly repayment amount ordered by officers in the judgment execution system was $682, the average monthly order amount ordered by the court as a condition of the bankruptcy receiving order was substantially lower at $206.\textsuperscript{205} Lastly, prior to pervasive, phenomenon. See Iain Ramsay, \textit{Market Imperatives, Professional Discretion and the Role of Intermediaries in Consumer Bankruptcy: A Comparative Study of the Canadian Trustee in Bankruptcy}, 74 \textit{Am. Bankr. L.J.} 399, 438, 448 (2000) ("Several trustees were very concerned about the extent to which in their view the consumer finance companies terrorized debtors by threatening to enter their homes and take away all their household goods as part of a strategy to induce debtors to enter onerous rescheduling of existing loan contracts.").

\textsuperscript{203} Specifically, approximately 77.78\% of the sampled population had an imprisonment order issued or about to be issued against them shortly before their bankruptcy filing. See, e.g., Official Receiver Case Number 425/96 (Central District) (reporting that, prior to bankruptcy filing, the debtor had been routinely detained and imprisoned by police for failure to pay creditors under a repayment order issued by officials at the judgment execution office); Official Receiver Case Number 5037/97 (Southern District) (reporting that, prior to the bankruptcy petition, the debtor was imprisoned on several occasions for not paying his debts); Official Receiver Case Number 1574/96 (Southern District) (regarding a 52-year-old former entrepreneur who claimed that he was arrested several times and spent several nights in jail prior to the bankruptcy filing for not paying his debts). Bankruptcy petitioners in Israel from the early 1970s were also often confronted with arrest orders. See Shuchman, \textit{Field Observations}, supra note 194, at 344-45 ("Many of the bankruptcy files in our sample evidenced that the petition in bankruptcy is an escape from what seemed worse alternatives, execution process. That is largely because being in bankruptcy effectively prevents the arrest of the bankrupt debtors.").

\textsuperscript{204} A similar observation was made relating to the non-realistic nature of repayment orders issued in the judgment execution system in Israel during the early 1970s. See Shuchman, \textit{Field Observations}, supra note 194, at 346-47 ("The files revealed virtually no investigation conducted by the personnel of the Execution Office. Thus, the routine order for payment, usually in monthly installments, is issued by the Execution Officer without any knowledge of the debtor’s income or the size of his family.").

\textsuperscript{205} The average monthly repayment amount ordered by officers in the judgment execution system was 2,386 NIS and the average monthly amount ordered by the court as a condition of the bankruptcy receiving order was substantially lower at 721 NIS. See, e.g., Official Receiver Case Number 4209/66 (Central District) (reporting that, prior to filing for bankruptcy protection, the debtor was unable to comply with the judgment execution officer’s order to pay his creditors \$514 (or 1,800 NIS) per month; that a repayment order in that amount was issued despite the debtor’s reported monthly income of only \$428 (or 1,500 NIS), despite his spouse’s disability, and despite the debtor’s need to care for two dependent children; that the debtor’s bankruptcy filing was promoted by the issuance of an imprisonment order for failure to comply with the repayment order; and that, in bankruptcy, the debtor was ordered to pay \$85 (or 300 NIS) as a condition of the receiving order); Official Receiver Case Number 7069/7 (Central District) (reporting that the seriously ill 62 years old debtor was ordered to pay \$171 (or 600 NIS) per month in the judgment execution system, in the bankruptcy regime he was ordered to pay only \$25 per month as a condition of the stay); Official Receiver Case Number 740/97 (Central District) (reporting that the debtor resorted to bankruptcy protection following repossessions, arrests and threats from creditors. The filing was prompted by his inability to comply with the repayment order issued by the judgment execution system in the amount of \$257 (or 900 NIS) per month. In bankruptcy, the Official Receiver agreed to the issuance of a stay in exchange for \$100 (or 350 NIS) per month.). An empirical bankruptcy study in Israel from the 1970s reached a similar finding. See Shuchman, \textit{Field Observations}, supra note 194, at 354 ("The sample of bankruptcy files reveals that the payment orders entered by the Official Receiver generally allow the bankrupt to retain more income than he could in direct execution process with the full exemption permitted by the regulatory law.").
resorting to bankruptcy some debtors in the sample were subjected to abuse and harassment by their creditors. Among other collection tactics creditors reportedly utilized were knocking on the debtor’s home or calling the debtor’s home early in the morning or late at night, harassing the debtor’s children on school grounds, and threatening to use and employing physical force against the debtor or the debtor’s spouse. These unpleasant and at times cruel experiences were part of an unfortunate reality for many debtors as part of the judgment execution system.

V. CONCLUSION

As was anticipated, there seems to be a disparity between public perception of pervasive abuse in the personal bankruptcy system in Israel, on the one hand, and

206. See, e.g., Official Receiver Case Number 692/97 (Central District) (regarding a debtor who reported that some of his creditors have threatened him and his spouse with physical force, causing their family to abandon their apartment); Official Receiver Case Number 9/98 (Central District) (regarding a debtor who reported that as part of her creditors’ collection strategy, some of them have begun harassing her young children on the school premises); Official Receiver Case Number 45/98 (Central District) (regarding a debtor who was married with three young children and who reported that he had been threatened and beaten by his creditors, some of whom belong to the black market, and who remarked that he believed that his life is in real danger); Official Receiver Case Number 203/97 (Central District) (regarding a debtor who was unemployed due to 100% disability and who reported that prior to his bankruptcy filing he had been physically attacked by some creditors when he was unable to pay them); Official Receiver Case Number 141/97 (Central District) (regarding a debtor, a single mother of three young children, who mentioned that creditors were continuously knocking on her apartment door early in the mornings and late at nights); Official Receiver Case Number 153/97 (Central District) (regarding a debtor who sought a stay of collection activities in bankruptcy partly because he believed that allowing creditors to pursue him now would result in a situation where the violent creditors will receive more than the creditors who pursue collection legally); Official Receiver Case Number 67/97 (Central District) (regarding a debtor who reported that some of his creditors have threatened his life and have made his life and his family life a living hell); Interview with Isaac Solomon, bankruptcy petitioner, in Tel-Aviv, Isr. (July 1, 1998) (reporting that, at times, his creditors knock on his door after midnight demanding payment). Similar collection tactics were recently observed in Australia, England and Canada. See AUSTRALIAN COMPETITION AND CONSUMER COMMISSION, UNDUE HARASSMENT AND COERCION IN DEBT COLLECTION 1 (1999) (detailing harassment and coercion in Australia that was deemed “systemic in the area of debt collection.”); Alexander Karpf, Comparative Study of the Law of Debt Collection of Consumer Debts in England and Austria (2001) (unpublished manuscript) (on file with author), supra note 196, at 24-25 (“However, many debt collectors [in England] go much further, and their methods become oppressive and unlawful. . . . To mention some of the many different ways of unlawful debt collection: unreasonably threatening language or behaviour [sic], repeated visits or phone calls, telling—or threatening to tell—neighbours [sic] or the employer that a borrower is in debt, making false representations about possible criminal proceedings, or using a special car and parking it in front of the debtor’s house so as to make neighbours [sic] aware of her/his debt problems.”); Ramsay, supra note 203, at 448 (“While a minority [of the Canadian Trustees that were interviewed] said little about collection agency harassment many provided vivid examples of improper practices used by collection agencies. . . . For example, trustees stated that collectors threatened debtors that they could have them put in jail; that a debtor’s children would be picked up by the Children’s Aid Society; and one trustee alleged that a collector had suggested to a debtor that she prostitute herself in order to pay off the debt.”).

207. Similar practices have also been documented in Israeli judgment execution system in the early 1970s. See Shuchman, Field Observations, supra note 194, at 345-52.
limited, if any, empirical data to support such proposition. Similar to their counterparts in the United States, Israeli bankruptcy petitioners, by and large, do not abuse the bankruptcy system. Empirical data suggests that the true bankruptcy repeater rate is exceedingly low. Further, their acute financial vulnerability makes their prospects for meaningful repayment to creditors awfully slim. Moreover, the relatively negligible per capita bankruptcy-filing rate makes abuse claims highly suspect. Lastly, the harsh reality facing the bankruptcy petitioners in the judgment execution system suggest that, by and large, bankruptcy petitioners are not lightly pursuing bankruptcy, but instead are doing so as a very last resort to an almost unimaginable ordeal.

Just as the public in Israel has an unfounded perception that debtors routinely abuse the bankruptcy system, other studies also found a similar gap in the United States. While this paper has not isolated the particular cause of such disconnect in Israel or in the United States, it has identified a number of plausible explanations for this phenomenon. The disparities seem to stem from deficiencies people have when attributing causes to an event. Attribution biases, such as availability heuristic, fundamental attribution error, motivational biases, and stereotyping bias could all plausibly explain the tendencies people have in perceiving abuse and attributing fault to the bankrupts.