

Comparative Empiricism

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COMPARATIVE EMPIRICISM®

BY JAY LAWRENCE WESTBROOK*

I. INTRODUCTION

The new millennium is emerging in a sea of economic confusion. Even Alan Greenspan, Chairman of the United States Federal Reserve Board, admits to uncertainty as he reads the economic entrails for his congressional acolytes. Nowhere is the confusion more apparent than with respect to consumer bankruptcy, where the dramatic increases in bankruptcy filings among consumers in Canada and the United States have puzzled and alarmed policymakers. We are thus especially fortunate to have the benefit of two new and important studies of consumer bankruptcy in Canada.

Some years ago I suggested that scholars and policymakers in both countries could benefit greatly from comparative empirical work;¹ Saul Schwartz and Iain Ramsay have made it possible.² I will do the obvious and compare their findings with some of the work that has been done in the United States.³ These articles are so rich with findings that

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* Benno C. Schmidt Chair of Business Law, The University of Texas School of Law. I am grateful to David Johnson, class of 1999, and Ryan Bull, class of 2000, for their research assistance. I am grateful to Jacob Ziegel for existing, making it unnecessary for the rest of us to invent him.

¹ See J.L. Westbrook, "A Comparative Empirical Research Agenda in Consumer Bankruptcy" (1993) 21 Can. Bus. L.J. 30 [hereinafter "Comparative Agenda"].

² See I.D.C. Ramsay, "Individual Bankruptcy: Preliminary Findings of a Socio-Legal Analysis" (1999) 37 Osgoode Hall L.J. 15; and S. Schwartz, "The Empirical Dimensions of Consumer Bankruptcy: Results From a Survey of Canadian Bankrupts" (1999) 37 Osgoode Hall L.J. 83. Saul Schwartz's article is based on the findings from an earlier study: see S. Schwartz & L. Anderson, *An Empirical Study of Canadians Seeking Personal Bankruptcy Protection* (Ottawa: Industry Canada, 1998), online: Industry Canada <<http://strategis.ic.gc.ca/SSG/ca00889e.html>> (date accessed: 10 August 1999).

³ Because these authors have referred primarily to the work done by an American group of which I am a member, the Consumer Bankruptcy Project, and because that is the work I know best, I will refer primarily to our findings. However, a number of other studies have been done. Teresa Sullivan, Elizabeth Warren, and I briefly review the American literature in our second book, forthcoming in February, 2000, which I will not attempt to repeat here: see T.A. Sullivan, E. Warren & J.L. Westbrook, *The Fragile Middle Class* (New Haven, Conn.: Yale University Press) [forthcoming in 2000], Appendix 2 [hereinafter *Fragile Middle Class*]. That study was based on questionnaires and file data from cases first filed in 1991. Of recent note is a very helpful new study by Professors Marianne Culhane and Michaela White that was announced after these Canadian

many comparisons and contrasts could be explored, but I will limit myself to a few of the most interesting.

II. SIMILARITIES

A. *Indebtedness*

Both Schwartz and Ramsay find that their debtors are deeply in debt.⁴ Schwartz compares his figures to a 1977 study in Canada,⁵ and finds that the debt burden of bankrupts is very similar to what it was then.⁶ Teresa Sullivan, Elizabeth Warren, and I have made precisely the same finding with respect to consumer bankrupts in the United States, comparing 1981 and 1991 filings.⁷ This finding lends strong support to two ideas. One is that there may be a “tipping point” of economic distress at which substantial numbers of people decide to file for bankruptcy protection. Of course, some people file with a lesser burden, and some with a greater burden never file, but the figures in both countries over two decades suggest that there is a level of indebtedness that bears a significant relationship to the decision to file.

It would be interesting to do an analysis to compare the apparent “tipping points” in the two countries. There are insufficient data in the present articles to permit a detailed analysis, but we can compare debt-to-income ratios as found by Ramsay in 1994 cases in Canada, and by ourselves in 1991 cases in the United States. Debt-to-income ratios are the most important means available to measure individual indebtedness, because either debt level or income level by itself is meaningless when

studies had been completed: see M.B. Culhane & M.M. White, “Taking the New Consumer Bankruptcy Model For a Test Drive: Means-Testing Real Chapter 7 Debtors” (1999) 7 Am. Bankr. Inst. L. Rev. 27.

⁴ See Schwartz, *supra* note 2 at 88; and Ramsay, *supra* note 2 at 36.

⁵ See J.W. Brighton & J.A. Connidis, *Consumer Bankrupts in Canada* (Ottawa: Consumer and Corporate Affairs Canada, 1982).

⁶ See Schwartz, *supra* note 2 at 103.

⁷ See T.A. Sullivan, E. Warren & J.L. Westbrook, “Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981-1991” (1994) 68 Am. Bankr. L.J. 121 at 136-38 [hereinafter “Consumer Debtors Ten Years Later”]. The figures in that preliminary report are revised and developed in *Fragile Middle Class*, *supra* note 3. Our first study was reported in T.A. Sullivan, E. Warren & J.L. Westbrook, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* (New York: Oxford University Press, 1989) [hereinafter *As We Forgive Our Debtors*].

the question is ability to satisfy one's creditors.⁸ The debt-to-income ratio shows the actual burden of debt.

Ramsay, like us, reports two ratios: total debt-to-income and debt minus mortgages-to-income. The first is the overall reality, while the second gives more of a picture of immediate, pressing obligations. Ramsay reports a median total debt-to-income ratio of 2.14,⁹ which means that the debtor owes more than two years of income in debt. Our median figure from our second study in the United States is 1.8.¹⁰ For non-mortgage debt, Ramsay reports a median ratio of 1.22,¹¹ about thirteen-and-one-half-months' income. We find a median non-mortgage ratio of 1.06, just over one year's income worth of debt.¹² (All figures ignore the continually accruing interest at the usual substantial consumer rates.) Thus, Americans filing for bankruptcy seem to be less burdened than those in Canada, although all of them are far more debt-burdened than the great majority of their fellow citizens. The list of consequent questions is endless. Is the difference significant, statistically or substantively? If so, why is it there? Is it because Canadian bankruptcy is less attractive? Is it because Canadians are more God-fearing and debt-paying? The exploration of these and similar questions might teach us a good deal.¹³

The second important point emerging from the comparison of our findings with those of Schwartz and Ramsay is that the "tipping point" has not greatly changed over time. Schwartz's confirmation that in Canada, as in the United States, debt burdens found in bankruptcy have stayed about the same over time, demonstrates that the great increases in bankruptcy filings in the two countries do not reflect an increased willingness to file by those with lesser burdens of debt. That is, it is not true that, between 1977 and 1981, people in the two countries resisted filing until they reached some great level of indebtedness, while their filings more recently have been triggered by much more easily borne debts. Indeed, given the very high ratios of debt-to-income demonstrated in both countries throughout the period, there is little

⁸ Schwartz and Ramsay provide additional proof, if any were needed, that assets are essentially irrelevant to debt payment in the great majority of consumer cases: see Schwartz, *supra* note 2 at 102-03; and Ramsay, *supra* note 2 at 46, Tables 7, 9.

⁹ See Ramsay, *supra* note 2 at 36.

¹⁰ See "Consumer Debtors Ten Years Later," *supra* note 7 at 136, Table 2.

¹¹ See Ramsay, *supra* note 2 at 36.

¹² See "Consumer Debtors Ten Years Later," *supra* note 7 at 138, Table 3.

¹³ I could say "heuristic," but I promised Mom I would not.

basis for the oft-made claim that bankruptcy has been made “too easy.” The great majority of bankrupts in both countries are filing with very large debts in relation to their incomes.

B. *Reasons for Filing*

These studies, like our second consumer study, asked about the reasons or causes of the debtors' bankruptcies, although each of the three studies employed a different methodology. Schwartz gives a table accompanied by brief commentary, while Ramsay devotes more attention to this point. Nonetheless, the top (or tied for the top) reason cited as a cause of bankruptcy in both Canadian studies, like our second study, is job loss or other employment adversity. Ramsay reports that 24 per cent of the overall sample, and 28 per cent of “pure consumer” debtors, cite “adverse employment change” as the reason for their bankruptcies.¹⁴ In our American study, in which the debtors were permitted to list multiple causes, job-related causes were named by almost half of the debtors, and were the only reasons given by more than a quarter—results very similar to Ramsay's,¹⁵ although somewhat higher than those reported by Schwartz.¹⁶ For us, this point is closely related to the importance of focusing on volatility—that is, the change in the debtors' circumstances rather than their status at the moment of filing.

Another similarity in the Canadian and American studies is the focus on small-business failures as a leading cause of “consumer” bankruptcy. Schwartz concludes that the increased number of small-business start-ups in Canada may be an important reason for increasing bankruptcies.¹⁷ As I read it, Ramsay's data indicates that 24 per cent of his sample overall give reasons relating to business failure as the cause of their bankruptcies.¹⁸ Even when he looks only at a “pure” consumer

¹⁴ See Ramsay, *supra* note 2 at 61.

¹⁵ See *ibid.* at 61, Table 14; and *Fragile Middle Class*, *supra* note 3, c. 2. Ramsay reports an unemployment rate in Ontario of near 10 per cent in 1994: see Ramsay, *supra* note 2 at 36. At the time of our second study, the unemployment rate in the United States was just below 7 per cent: see *Fragile Middle Class*, *supra* note 3, c. 3.

¹⁶ See Schwartz, *supra* note 2 at 92, Table 2. Because Schwartz does not provide much information about how these questions were posed and tabulated, it is difficult to speculate why his figures differ substantially from Ramsay's.

¹⁷ See *ibid.* at 107-08.

¹⁸ I arrived at that figure by adding together the categories “business failure,” “guarantor,” and “real estate investment failure” in the data: see Ramsay, *supra* note 2 at 61, Table 14. Ramsay indicates that collapsing these categories is justified: see *ibid.* at 62. It would be helpful if he would

sample, it includes 10 per cent citing essentially business reasons. Furthermore, Schwartz's data seem to indicate, as our data clearly do, that debts in the average business bankruptcy case are much larger than in the typical consumer case. Thus, business debts constitute a much larger percentage of overall "consumer" indebtedness than the percentage of business cases would suggest.¹⁹

It is important for policymakers to understand that much of "consumer" bankruptcy is really small-business bankruptcy. It is important because the causes and "cures" of business and consumer bankruptcy are not the same. Furthermore, social attitudes about the two are very different: popularly, consumer bankruptcy is the refuge of ne'er do wells and cheats, while business bankruptcy is just an intersection collision on the highway of capitalism. Finally, the effects—personal and economic—of various "remedies" will be understood, correctly, to be very different when applied to business people or to ordinary consumers.

There are a number of other striking similarities in reported findings between Canada and the United States. For example, the sharp increase in the number of women filing alone, found by Schwartz and Ramsay in Canada, is comparable to the finding of our second study in the United States.²⁰ But there are also some important apparent differences, to which I will now turn.

III. DIFFERENCES

A. Home-ownership

The most striking, and difficult to explain, difference in the Canadian and American findings is the percentage of home-owners. Schwartz and Ramsay each found around 25 per cent or fewer of their samples were home-owners at the time of filing bankruptcy, while in the United States we found about one-half of our two samples, a decade

give a clearer explanation of how he dealt with multiple-cause responses, and how he distinguished "pure consumer" bankruptcies.

¹⁹ In our first study, we found only 10 per cent of the debtors were self-employed at the time of filing, but another 10 per cent were formerly self-employed with much business debt in their filings. This entrepreneurial 20 per cent accounted for almost half the total debt in the sample: see *As We Forgive Our Debtors*, *supra* note 7 at 118.

²⁰ See Schwartz, *supra* note 2 at 93; Ramsay, *supra* note 2 at 31; and *Fragile Middle Class*, *supra* note 3, c. 2. The percentage rose from 17 per cent in our study of American cases first filed in 1981, to 30 per cent of those first filed in 1991.

apart, consisted of debtors who owned their homes when they filed for bankruptcy.²¹ Yet the home-owner proportion in the two countries is virtually identical at 64 per cent.²² Why the difference?

One answer might be age. If the bankrupts in Canada were younger, then it would not be surprising that they included fewer home-owners. The Canadian studies are somewhat inconsistent. Our second study's sample was slightly older than the average age of the United States population.²³ Ramsay reports that the median age for Canadian bankrupts was 37,²⁴ just a year younger than the median age we found in the American bankruptcy sample; his sample was disproportionately middle-aged, just like ours.²⁵ Schwartz suggests his sample is younger than the Canadian population, but his report is not entirely clear, and no precise figure is stated.²⁶ Thus, the jury remains out for now about age comparisons.

B. *Home Surrender*

There is another striking difference that must bear some relationship to the home-owner question. Ramsay looks at former home-owners—an excellent example of the importance of looking at change in debtors' lives as the key to understanding the bankruptcy phenomenon—and finds another 20 per cent who lost their homes before bankruptcy.²⁷ Adding them to current home-owners would get the total close to the percentage of home-owners that we found in the United States. To the extent that that result narrows the differences in findings, however, it raises another compelling difference: far more Canadians are apparently unable or unwilling to use bankruptcy to keep their homes. Although it is not clear how many lost their homes by

²¹ See Schwartz, *supra* note 2 at 106, Table 6 (assuming I am right to figure home-owners and mortgage owners as roughly co-incident in bankruptcy); Ramsay, *supra* note 2 at 42; *Fragile Middle Class*, *supra* note 3, c. 7; and *As We Forgive Our Debtors*, *supra* note 7 at 129. The smaller sample in our second study had a lower home-ownership rate, but we have strong reason to believe it was understated.

²² See Ramsay, *supra* note 2 at 42; and *As We Forgive Our Debtors*, *supra* note 7 at 129.

²³ See *Fragile Middle Class*, *supra* note 3, c. 2.

²⁴ Ramsay, *supra* note 2 at 30.

²⁵ See *Fragile Middle Class*, *supra* note 3, c. 2.

²⁶ See Schwartz, *supra* note 2 at 93-94.

²⁷ Ramsay, *supra* note 2 at 43.

forced sale,²⁸ Ramsay finds that a number had sold their houses to pay their debts or living expenses, a phenomenon that did not loom large in our data in the United States, although we did not search for it systematically.²⁹ We also did not see large numbers of debtors in bankruptcy who had lost their homes in forced sales, something our first study would have caught.³⁰

Understanding this apparent difference—much lower home-ownership rates in bankruptcy caused to some extent by frequent pre-bankruptcy liquidations of homes to pay debt—might tell us a great deal. Is it important that Ontario, where Ramsay's sample was drawn, has very low exemptions, so that he might have found a different pattern in, say, Alberta?³¹ Might the higher exemptions in most states help to explain a home-ownership difference between Canadian and American debtors?³² Is it important that Canadian mortgages are typically for five years? American observers would have thought that a twenty- to thirty-year home mortgage is a law of nature. Might that difference in "mortgage culture" help explain the lower percentage of home-owning Canadian bankrupts and the higher incidence of former home-owners?³³

C. Debtor's Socio-Economic Position

A third possible difference in findings is the class position of debtors. One of the most startling conclusions of our first study in the United States was that debtors were close to being a cross-section of the

²⁸ An analysis of the 20 per cent of former home-owners might be instructive in this regard.

²⁹ Based on our extensive examination of the files and questionnaires in the two studies, I think it is highly unlikely that a widespread practice of selling homes to pay debts prior to bankruptcy would be found in the United States. There is also no indication of that practice in other studies, nor any anecdotal evidence to that effect.

³⁰ See *As We Forgive Our Debtors*, *supra* note 7 at 140-41.

³¹ Although Schwartz sampled nationally and found only 22 per cent home-ownership, it is not clear whether he looked at former home-owners.

³² Within the United States, however, we found that differing exemption laws had very little impact on debtor behaviour or characteristics: see *As We Forgive Our Debtors*, *supra* note 7 at 242-43.

³³ Do Canadian banks just adjust the interest rate and roll those mortgages, or do they do a new credit check? If the latter, then one could understand how Canadians who had lost their jobs and run up large bills might sell their houses in the face of the likely non-renewal of their mortgages. But if mortgages are not renewed, and the houses are not sold by the debtors, then the banks get the houses. In the United States, the last thing the bank wants is the house. Is it different in Canada? The dynamics of that relationship must have something to do with the question explored in the text.

general population. We used occupational prestige scores to show that American debtors were just below the median in occupational prestige.³⁴ Our second study has confirmed those results.³⁵ By contrast, Schwartz concludes that Canadian debtors represent a somewhat lower slice of Canadian society.³⁶ Ramsay, on the other hand, gets results much closer to our results, although somewhat more skewed toward the lower part of the middle class.³⁷

Schwartz and Ramsay use similar methods to compare bankrupts with the general population; nevertheless they seem to have substantial differences in their samples.³⁸ Those differences could result from a national versus an Ontario sample, so it would be interesting for Schwartz to run an Ontario query on this point.

As to the differences between the Canadian and American results on occupational prestige—slight in Ramsay's study, substantial in Schwartz's—one reason for the difference might be the difference in home-ownership: home-owners, I thought, would have more prestigious occupations. The problem with that explanation is that I ran our second-study prestige scores controlling for home-ownership within the American sample and, to my surprise, found no statistically significant difference in prestige scores between owners and non-owners—a classic example of a "beautiful theory murdered by a gang of brutal facts."

Another explanation for the difference might be the methods used. The two Canadian articles use an occupational category framework to compare percentages of each category between the bankrupts and the general population, while we used standardized prestige scores to make numerical comparisons between bankrupts and the general population, occupation by occupation.³⁹

³⁴ See *As We Forgive Our Debtors*, *supra* note 7 at 88-91.

³⁵ See *Fragile Middle Class*, *supra* note 3, c. 2.

³⁶ See Schwartz, *supra* note 2 at 102.

³⁷ See Ramsay, *supra* note 2 at 39-40.

³⁸ For example, they both report 7.8 per cent of the Canadian population as "unskilled clerical/sales/service," but Schwartz reports 14.2 per cent of his sample in this category, while Ramsay reports only 6.4 per cent: see Schwartz, *supra* note 2 at 100, Table 4; and Ramsay, *supra* note 2 at 39, Table 6. The difference is likely to be significant.

³⁹ See *Fragile Middle Class*, *supra* note 3, c. 2; and *As We Forgive Our Debtors*, *supra* note 7 at 89-90. The over-representation of various lower prestige occupations, especially in the Schwartz sample, may arise from a skewing of the sample by a severe under-representation of professionals. Of course, the absence of professionals may represent the reality, but it seems unlikely to me that so few professionals would seek legal assistance because of financial distress. Could they be in "proposal" proceedings? But see Ramsay, *supra* note 2 at 40 (few cases of professionals' commercial proposals). Might they refuse to cooperate in the questionnaire process?

Finally, to some extent the difference is one of judgement. To oversimplify, Ramsay is impressed that the Canadian bankrupts look like most of the population, except for the small percentage at the top. Similarly, we are impressed that our bankrupts had prestige scores just south of the United States median. On the other hand, Schwartz is struck by the relatively low number of high-ranked managers and professionals in the bankrupt population.

It is important to emphasize, however, that all three of us agree that bankruptcy is not dominated by the poor labouring classes or long-term economic failures. For the most part, in both countries, bankrupts come from the middle- and working-class portion of the occupational spectrum.

IV. LESSONS FOR AMERICAN INVESTIGATORS

There are many things American investigators can learn from these studies. One of the most interesting is the focus on governmental assistance. Both Schwartz and Ramsay find that Canadian debtors have been the recipients of substantial public money prior to bankruptcy. That is not something that has been found in the United States, but for the most part it is also not something for which American investigators have looked. Given the important relationship between bankruptcy and other elements in the social safety net, the extent of participation of bankrupts in public programs should be fully explored. One of the problems our European friends have faced is that strict bankruptcy laws, without discharge, coupled with generous social services, amounted to taxpayer assumption of debt repayment for those in economic distress. Thus, the role of public expenditures prior to bankruptcy should be added to research agendas in the United States, ideally coupled with data from the post-bankruptcy lives of the debtors as well.

Among the other especially valuable findings in these studies are the analyses of the types of debts incurred by the debtors.⁴⁰ We did that sort of analysis in our first study,⁴¹ but not in our second. The detailed analysis here, especially in the Ramsay article, is very helpful to understanding the emerging patterns of consumer credit, and the coincident and conflicting interests of various sorts of creditors.

⁴⁰ See Schwartz, *supra* note 2 at 106, Table 6; and Ramsay, *supra* note 2 at 53, Table 11.

⁴¹ See *As We Forgive Our Debtors*, *supra* note 7, c. 14-17.

V. SUGGESTIONS FOR CANADIAN INVESTIGATORS

If one were to suggest approaches for the additional studies these excellent articles will surely provoke, the first from me would be more focus on volatility: on changes in the debtors' circumstances. The great financial revolution of recent years was the discovery of the importance of the delta in the markets—the change, the rate of change, and the change in the rate of change—rather than their state at any given time. The same thing holds true for debts. The key point is not debt, or even the debt-to-income ratio, at any given moment (for example, the moment of bankruptcy), but the change from an earlier time, before the layoff, or before the big debts were incurred.

Bankruptcy is caused by debt. No debt, no bankruptcy. On the other hand, bankruptcy arises most often because of a change in the relationship between debt and the ability to pay debt. For the overwhelming majority, the ability to pay relates to income rather than to liquidation of assets. It must be very rare that bankruptcy occurs when there has been a long-standing stability in the relationship between debt and income in the life of a debtor. Thus, changes in debt-to-income ratios are key. Also important are methods of learning about job and income changes, along with marital disruptions, sickness and injury, and other events likely to affect debts, income, and the ratio between them. Our second study, using questionnaires to ask about possible disruptions, has found that disrupted lives—jobs, marriages, health, and more—constitute the central characteristic of debtors.⁴² A next-stage Canadian investigation with more focus on these sorts of recent changes would be very useful.

I would also suggest more focus on “local legal culture.” Our work in the United States suggests the importance of the attitudes and customs of the repeat players in the bankruptcy system.⁴³ This legal culture is sometimes more important than the provisions of the statute. It would be interesting, for example, to see what results Schwartz would get from certain variables if he compared his Ontario data alone with Ramsay's.⁴⁴

⁴² See *Fragile Middle Class*, *supra* note 3.

⁴³ See T.A. Sullivan, E. Warren & J.L. Westbrook, “The Persistence of Local Legal Culture: Twenty Years of Evidence From the Federal Bankruptcy Courts” (1994) 17 *Harv. J. L. & Pub. Pol'y* 801.

⁴⁴ In general, it would be helpful if Schwartz could give a more detailed breakdown of the source of questionnaires as among the various provinces, which types of trustees (“core” versus “non-core”) provided what percentages of responses, and so forth. Indeed, some breakdowns by

Because variations in local legal culture are sometimes more important than variations in local laws, it would be very helpful to follow the work of Jean Braucher and Gary Neustadter to learn more about how trustees in Canada and bankruptcy lawyers in the United States compare and contrast.⁴⁵ Ramsay makes an interesting start on this point,⁴⁶ and one would love to see more.

In addition, although formal law matters less than people might suppose, it still matters; it would be interesting to compare the effects, if any, of key legal differences across the border. For example, Ramsay states that objections to discharge are rarely made by creditors in Canada because of the free-rider problem—one creditor gets little benefit from a successful objection that benefits all creditors.⁴⁷ In the United States, in contrast, a creditor can achieve a terrific result through a successful “section 523” objection: its debt is not discharged, the rest are, and it has the ideal one-debt debtor.

The two points—local law and local legal culture—come together in joint filing by spouses. Ramsay indicates that Canadian law now permits it, but Canadian incentives for trustees virtually preclude it.⁴⁸ The lack of joint filing may or may not explain some of the other differences in the characteristics of debtors in the United States, where joint filings make up around one-half of all filings.⁴⁹

Finally, these Canadian researchers need to do comparisons between themselves. They should take advantage of the good fortune of two such important studies done within a short period of time. All of us who do empirical work are guilty of collaborating too little. These two authors could criticize and compare their articles far better than I ever could—and the results would be most valuable.

provinces or types of trustees as to certain variables might reveal interesting patterns.

⁴⁵ See J. Braucher, “Lawyers and Consumer Bankruptcy: One Code, Many Cultures” (1993) 67 Am. Bankr. L.J. 501; and G. Neustadter, “When Lawyer and Client Meet: Observations of Interviewing and Counseling Behavior in the Consumer Bankruptcy Law Office” (1986) 35 Buff. L. Rev. 177 at 239.

⁴⁶ See Ramsay, *supra* note 2 at 67-68.

⁴⁷ *Ibid.* at 70.

⁴⁸ *Ibid.* at 64.

⁴⁹ See *As We Forgive Our Debtors*, *supra* note 7 at 154, Table 8.2.

VI. CONCLUSION

Schwartz suggests that increased credit granted to certain sub-groups might partially explain the increase in consumer bankruptcies in Canada. His suggestion strikes me as plausible for the United States as well. Focusing on some key sub-groups to see if they have become a more important part of the credit market—and therefore of the bankruptcy picture—may be a fruitful direction for future research.⁵⁰

Ramsay is generally interested in looking beyond the immediate policy questions to develop an understanding of the roles of the various actors in the bankruptcy system, and to see that system generally in the larger context of social systems. As my earlier remarks indicate, I think he is exactly right.

Nonetheless, an appropriate closing note is that both of these Canadian investigators have found policy-relevant facts very similar to those we have reached in the Consumer Bankruptcy Project in the United States. On the whole, the two bankruptcy systems are serving people labouring with very serious, often unpayable debt, just as they are supposed to do. If we have a bankruptcy problem in either country, it is a function of over-indebtedness (one possible cause: greed), or injury to capacity to pay indebtedness (one possible cause: downsizing), rather than some technical fault in the legal system. No doubt we should keep our eyes on the hospitals, but our central concern should be the increase in disease. Making it harder to get into the hospital will not give us a healthy population.

⁵⁰ I am more sceptical about his dismissal of increased consumer credit as a contributing cause: see Schwartz, *supra* note 2 at 86-87. A few years ago, I suggested that there is a close relationship between increased consumer credit and increased bankruptcy, using a rough graphic comparison to make my point: see “Comparative Agenda,” *supra* note 1 at 36, Chart 2. Diane Ellis of the Federal Deposit Insurance Corporation has made the same point with a far more rigorous technical analysis: see D. Ellis, “The Effect of Consumer Interest Rate Deregulation on Credit Card Volumes, Charge-offs, and the Personal Bankruptcy Rate” *Bank Trends: Analysis of Emerging Risks in Banking* (March 1998) 1. I would need to know much more about the numbers in Canada to engage Schwartz on his Figure 1 and its implications, but I will note that residential mortgage debt is consumer debt, so a predominance of mortgage debt does not mean increased “consumer” debt is not a cause of increased bankruptcy.