

# REACTIONS TO EMPIRICAL STUDIES<sup>©</sup>

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## I. INTRODUCTION

One particularly attractive feature of being asked to comment on the empirical studies by Saul Schwartz and Leigh Anderson,<sup>1</sup> and by Iain Ramsay,<sup>2</sup> as a member of a panel, is that I do not have to give a comprehensive assessment of their research. My approach has been to focus on those features of their research that I found particularly interesting.

## II. SOME KEY FINDINGS

As far as I was concerned, one of the most interesting findings in the two reports was Ramsay's demonstration that there was remarkably little use of formal debt enforcement procedures by creditors prior to bankruptcy.<sup>3</sup> I had not been aware of Teresa Sullivan, Elizabeth Warren, and Jay Westbrook's finding (in their 1989 study of filings under Chapters 7 and 13 of the United States Bankruptcy Code<sup>4</sup>) that in two-thirds of the cases they examined, no collection suit had been filed against consumers before they declared bankruptcy.<sup>5</sup> However, like Ramsay, I had assumed that bankruptcy would be seen as the end of the

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<sup>1</sup> 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: 11 June 1999). The findings of this study are summarized in this Symposium: see S. Schwartz, "The Empirical Dimensions of Consumer Bankruptcy: Results From a Survey of Canadian Bankrupts" (1999) 37 Osgoode Hall L.J. 83.

<sup>2</sup> See I.D.C. Ramsay, "Individual Bankruptcy: Preliminary Findings of a Socio-Legal Analysis" (1999) 37 Osgoode Hall L.J. 15.

<sup>3</sup> See Ramsay, *supra* note 2 at 66-67.

<sup>4</sup> 11 U.S.C., ch. 7, 13 (1998).

<sup>5</sup> See 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) at 305.

debt collection process; individuals who have had collection action taken against them eventually become overwhelmed and declare bankruptcy.<sup>6</sup> This view, I must admit, had been shaped by findings, such as Schwartz and Anderson's, that "the economic situation of those seeking bankruptcy was far worse than the economic situation of those seeking credit counselling."<sup>7</sup>

Ramsay's finding clearly calls for some explanation. It may well be the case that, as some of the trustees reported to him, consumers choose to make themselves bankrupt to escape harassment from creditors and collection agencies, and their possible use of formal remedies. However, it does not follow from this that, in other respects, consumer debtors who file for bankruptcy are no different from those who are subject to formal debt enforcement procedures. The empirical evidence indicates that this is not the case.

In the United Kingdom, a large, benchmark national survey of credit and debt carried out in 1989<sup>8</sup> confirmed what numerous small-scale studies had already indicated, namely, that debt is associated with low incomes and, particularly, with the presence of children in the household. Those with debts were frequently either dependent on social security or employed in the low-wage, secondary labour market. Most were clearly unable to pay in the short-term, and probably in the mid- and long-term as well.

Faced with default, creditors typically first attempt to recover debts administratively. If and when that fails, they may sell the debt to a debt-collecting agency, or raise an action in court and take legal steps to enforce the debt. However, when it becomes clear that the debtor is insolvent and unable to pay, most creditors will write off the debt. Although some creditors go to considerable lengths to pressure debtors into payment, and some people probably do seek to avoid this by going bankrupt, it still came as a surprise to me that few of those who made themselves bankrupt had been on the receiving end of legal debt enforcement procedures.

A significant difference between the sample of bankrupts studied by Ramsay and the general (Ontario) population is the proportion who are self-employed. Ramsay reports that 28 per cent of his sample described themselves as self-employed, and 24 per cent indicated that

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<sup>6</sup> See Ramsay, *supra* note 2 at 67.

<sup>7</sup> Schwartz & Anderson, *supra* note 1 at 80.

<sup>8</sup> See R. Berthoud & E. Kempson, *Credit and Debt: The PSI Study* (London: Policy Studies Institute, 1992).

they had been in business during the five years previous to their bankruptcy.<sup>9</sup> Whether or not the two groups are mutually exclusive is unclear but, as he points out, the percentage who are self-employed is clearly higher (he might have said “much higher”) than the percentage of the Ontario workforce who are self-employed and, I would guess, much higher also than the percentage of those subject to debt enforcement procedures who are self-employed.

Schwartz and Anderson explore this phenomenon more systematically, citing the growth of self-employment as one reason for the increase in the number of personal bankruptcies. As they point out, the number of workers classified as self-employed in Canada rose by almost 1 million between 1977 (when the total was 1.3 million) and 1996.<sup>10</sup> Moreover, roughly one in four of the bankrupts in their sample (251 out of 1,018) was either self-employed at the time of their survey or reported that they had been self-employed within the last five years, and these self-employed bankrupts had much higher “debt-to-income ratios” than other bankrupts. Although the percentage of bankrupts in the sample who were self-employed is considerably higher than the percentage of self-employed persons in the Canadian population, the fact that the self-employed only accounted for about 25 per cent of the sample of bankrupts suggests that the increase in self-employment is, at best, a very partial explanation for the increase in the number of personal bankruptcies. However, the increase in self-employment is, in my view, almost certainly more important than the two other social trends investigated by Schwartz and Anderson, namely, the number of single women and the number of young people in the population. Although some single women and young people go bankrupt, their numbers are not especially important influences on the bankruptcy rate.

Schwartz and Anderson’s first conclusion that those seeking bankruptcy protection are neither a homogeneous group, nor a representative sample of the population,<sup>11</sup> is undoubtedly correct. Their second conclusion, that no single aggregate measure of economic performance (*e.g.*, gross national product, unemployment rates, the amount of outstanding consumer credit, and the ratio of personal debt to personal disposable income) can explain the growth in the number of personal bankruptcies<sup>12</sup> is somewhat premature. Although they have

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<sup>9</sup> See Ramsay, *supra* note 2 at 37.

<sup>10</sup> See Schwartz & Anderson, *supra* note 1 at 39; and Schwartz, *supra* note 1 at 108.

<sup>11</sup> See Schwartz & Anderson, *supra* note 1 at 66.

<sup>12</sup> *Ibid.*

shown that none of the measures they examined can, on their own, be used to predict the rate of personal bankruptcy, they have not investigated, in statistical terms or by any other method, whether a combination of measures can be used to predict the personal bankruptcy rate. What is required, in addition to the bivariate analyses that Schwartz and Anderson have carried out, is a multivariate analysis, not restricted to the four variables they used, but (as Jay Westbrook suggested<sup>13</sup>) including aggregate measures of debt, and employing a range of statistical tests. That said, I do support their hunch that finer, less general, explanations are almost certainly required. According to Ramsay,

[a]n initial analysis might be attempted by adopting a broad-brush classification of contemporary societies as consisting of four main classes: (1) a professional-business class; (2) a class of small-scale independent business people; (3) a working class with white- and blue-collar segments; and (4) an underclass. Using this classification, I would conclude that individual bankrupts are drawn primarily from the working class and, to a lesser degree, from the category of small-scale independent business people.<sup>14</sup>

Maybe, but supposing we were to use a somewhat more sophisticated classification of the occupational structure of contemporary societies, what then? Both studies use the Pineo-Porter-McRoberts Occupational Prestige Scale,<sup>15</sup> but I would like to look at three more theoretically-based approaches.

### III. MEASURES OF SOCIAL CLASS

Robert Erikson and John Goldthorpe's study is arguably the best known and, at least among European sociologists, the most widely used classificatory scheme.<sup>16</sup> Erikson and Goldthorpe start out from a basic, three-fold division of class positions as follows: (1) employers: *i.e.*, those who buy the labour of others, and thus assume some degree of authority and control over them; (2) self-employed workers without employees: those who neither buy the labour of others, nor sell their own; and (3) employees: those who sell their labour to others, and thus place themselves to some degree under their authority and control.

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<sup>13</sup> See J.L. Westbrook, "Comparative Empiricism" (1999) 37 Osgoode Hall L.J. 143 at 152-53.

<sup>14</sup> Ramsay, *supra* note 2 at 41.

<sup>15</sup> See P.C. Pineo, J. Porter & H.A. McRoberts, "The 1971 Census and the Socioeconomic Classification of Occupations" (1977) 14 Can. Rev. Soc. & Anth. 91.

<sup>16</sup> See R. Erikson & J.H. Goldthorpe, *The Constant Flux: A Study of Class Mobility in Industrial Societies* (Oxford: Clarendon Press, 1992).

This is then modified to take account of two closely-related developments within the twentieth-century industrial world: (a) the transformation of property into corporate forms, which has resulted in most major employers being organizations rather than individuals; and (b) the growth of employees as a proportion of the total active population, accompanied by greater differentiation of the forms of employer-employee relations. This produces a detailed class schema which is set out in Table 1, below—the class position of a family being determined by reference to either the husband or the wife, whoever may be regarded as dominant in the labour market. The connection between the basic three-fold classification and this detailed schema is set out in Figure 1.<sup>17</sup>

**TABLE 1**  
**THE CATEGORIES OF THE ERIKSON AND**  
**GOLDTHORPE CLASS SCHEMA**

- I. Higher grade professionals, administrators and managers; large proprietors
- II. Professionals, administrators and managers; higher grade technicians; supervisors of non-manual employees
- IIIa. Routine non-manual employees; higher grade
- IIIb. Routine non-manual employees; lower grade
- IVa. Small proprietors, artisans, etc., with employees
- IVb. Small proprietors, artisans, etc., without employees
- IVc. Farmers and smallholders; other self-employed workers in primary production
- V. Lower grade technicians; supervisors of manual workers
- VI. Skilled manual workers
- VIIa. Semi- and unskilled manual workers (not in agriculture, etc.)
- VIIb. Agricultural and other workers in primary production

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<sup>17</sup> See Appendix, below.

Erik Wright adopts a somewhat different approach in his recent study.<sup>18</sup> He first distinguishes owners from employees in terms of their relations to the means of production. He then distinguishes owners, in terms of the number of people they employ, and employees, in terms both of their relations to authority and their relations to scarce skills. This generates a twelve-fold classification of individuals which is set out in Table 2, below—men and women being classified separately. The relations between the classes are set out in Figure 2.<sup>19</sup>

**TABLE 2**  
**THE CATEGORIES OF THE WRIGHT**  
**CLASS DISTRIBUTION**

1. Capitalists
2. Small employers
3. Petty bourgeoisie
4. Expert managers
5. Skilled managers
6. Nonskilled managers
7. Expert supervisors
8. Skilled supervisors
9. Nonskilled supervisors
10. Experts
11. Skilled workers
12. Nonskilled workers

By contrast, Will Hutton, instead of basing a system of classification on relations to the means of production, identifies groups in terms of risk and insecurity.<sup>20</sup> He argues that there are three main groups in Britain: the bottom 30 per cent of unemployed and economically inactive persons are marginalized; the middle 30 per cent are in employment, but in structurally insecure jobs; while only the top 40 per cent are in tenured jobs with reasonably secure job prospects. The resulting “30/30/40 society” is a proxy for the growth of insecurity that is now all-pervasive.

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<sup>18</sup> See E.O. Wright, *Class Counts: Comparative Studies in Class Analysis* (Cambridge: Cambridge University Press, 1997).

<sup>19</sup> See Appendix, below.

<sup>20</sup> See W. Hutton, “Risk Strategy” *The [Manchester] Guardian* (30 October 1995) 2-2.

One major advantage of Hutton's classificatory scheme over the other two is that it gives a clear place to those who are unemployed or otherwise economically inactive. The three broad strata, which Hutton calls "the advantaged," "the newly insecure," and "the disadvantaged," comprise ten groups, which are set out in Table 3, below.

**TABLE 3**  
**THE SOCIAL GROUPS COMPRISING HUTTON'S**  
**30/30/40 SOCIETY**

1. Full-time employment for two years or more (minus those below 50 per cent of median earnings)
2. Full-time, self-employed for two years or more
3. Part-time employment for five years or more  
Total Advantaged (40 per cent)
4. Full-time employment for less than two years (plus those below 50 per cent of median earnings)
5. Full-time, self-employed for less than two years (plus part-time self-employment)
6. Part-time employment for less than five years
7. Temporary employment  
Total Newly Insecure (30 per cent)
8. Unemployed
9. Inactive
10. Training programs (plus unpaid family workers)  
Total Disadvantaged (30 per cent)

#### IV. WHERE DO WE GO FROM HERE?

My suggestions for further research are as follows:

(1) to use any or all of the schema outlined above (and I have a hunch that some classification based on Hutton's schema might be particularly useful) to characterize the class composition of bankrupts;

(2) to compare this with the class composition of society and, using data from other studies, with debtors who are subject to statutory debt enforcement procedures; and

(3) to identify those groups that are most prone to bankruptcy and, having done so, to carry out a multivariate analysis (using a wide range of appropriate variables) of the changing numbers in these groups and changing pressures on them.

My answer to Ramsay's rhetorical question—"Does the relationship between bankruptcy and social class matter?"—is, like his, that it does matter very much, both because it enables us to understand the phenomenon better, and because a better understanding is an essential precondition for any rational discussion of proposals for reform.

## APPENDIX

**FIGURE 1**  
**THE DERIVATION OF THE ERIKSON AND GOLDTHORPE**  
**CLASS SCHEMA**

**FIGURE 2**  
**WRIGHT'S ELABORATED CLASS TYPOLOGY**