

FINANCIAL COLLAPSE AND CLASS STATUS: WHO GOES BANKRUPT?[©]

BY ELIZABETH WARREN*

Every policy prescription, economic analysis, or news report about consumer bankruptcy rests on one or another unspoken image of the estimated 1.5 million families that will file in a single year. Data from the 2001 Consumer Bankruptcy Project permit a systematic analysis of the composition of those who file for personal bankruptcy, focusing on their education, occupation, and home ownership status. These attributes serve as a proxy for class identification. Based on these indicia, more than 90 per cent of the families in bankruptcy qualify as middle class. These data are a powerful reminder that whatever else might be said about those in bankruptcy, these people are not some

Chaque prescription de politique, analyse économique ou information de presse concernant les faillites de consommateurs repose sur une représentation indéfinie de quelque 1,5 million de familles qui déclarent faillite chaque année. Les informations provenant du 'Consumer Bankruptcy Project 2001' permettent d'analyser systématiquement la composition de ceux qui se déclarent en faillite personnelle, s'intéressant à leur niveau de scolarisation, à leur profession et à leur statut de propriétaire d'habitation. Ces attributs servent de principe à l'identification des classes. Selon ces indices, plus de 90% des familles en faillite se rangent dans la classe moyenne. Quoi qu'on dise des personnes en faillite,

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No project of this kind could be put together without the contribution of a number of people. Consumer Bankruptcy Project I in 1981 and Consumer Bankruptcy Project II in 1991 were the work of Professors Teresa A. Sullivan, Jay Lawrence Westbrook, and myself. All three of us have continued our work into Consumer Bankruptcy Project III. In addition, Professors David Himmelstein, Bruce Markell, John Pottow, Michael Schill, Deborah Thorne, Susan Wachter, and Steffie Woolhandler have shared in the design and development of the 2001 study. Professor John Pottow, Katherine Porter, and Professor Deborah Thorne served as Project Director at different times, participating in the design of the study and managing much of the data collection. Cathy Ellis and Ann de Ville provided extraordinary administrative support, and Alexander Warren designed and managed all the coding databases. The author is grateful for the contributions of each of these people in creating a database that permits analysis from so many different perspectives. More details about the project, including a copy of the questionnaire, are available in Elizabeth Warren, "Bankrupt Children" (2002) 86 Minn. L. Rev. 1003 at 1026-32.

subgroup of Americans safely distanced from the middle class, but instead are co-workers, neighbours, and families woven throughout the fabric of American society.

ces renseignements rappellent impérieusement qu'elles ne constituent pas un sous-groupe quelconque d'Américains à l'écart de la classe moyenne, mais qu'en fait il s'agit de collègues, voisins et familles au cœur du tissu social américain dans son ensemble.

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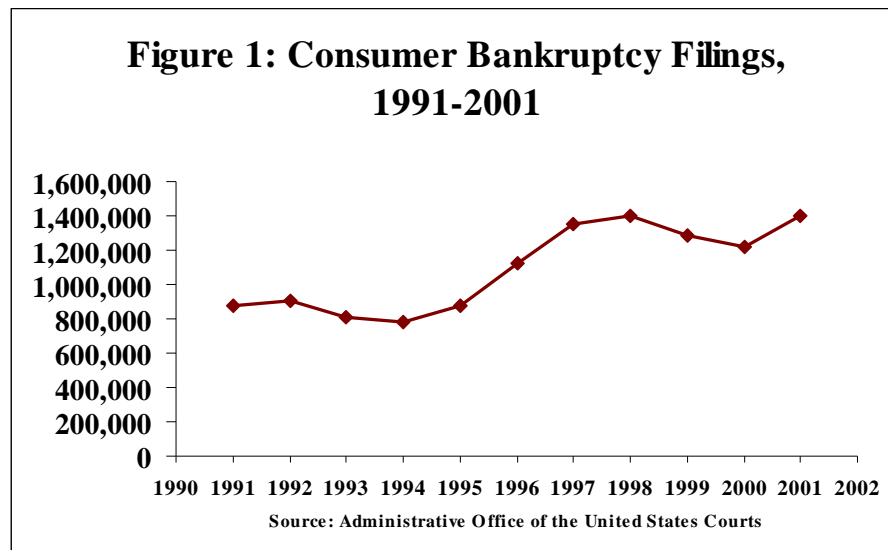
From 1991 to 2001, the number of households filing for bankruptcy in the United States rose by 66 per cent.¹ This jump was all the more remarkable because it occurred during a long-running economic boom that yielded record profits on Wall Street, low unemployment, and negligible inflation. With so many families in bankruptcy during a period of sustained prosperity, academics, lenders, and politicians have debated the reason for the increase.

The debate divides sharply. One side sees a precipitous decline in personal responsibility behind the increase, while the other blames an ever more ragged social safety net. One side claims strategic consumers are running up

¹ In 1991, there were 872,438 non-business bankruptcy filings; in 2001, there were 1,452,030 non-business filings. Of course, population increased during the decade as well. The increase in filings as adjusted for population can be expressed as a filing rate per 1,000. In 1991, the filing rate per 1000 adults was 6.34 people; in 2000 the rate was 9.25, an increase of 46.1 per cent. Administrative Office of the United States Courts, Tables F2 (total filings, total business filings, total business *Chapter 13* filings, total non-business filings), F2E (total joint business *Chapter 13* filings) and F2F (total joint non-business filings). U.S. Census Bureau, Population Division, Population Estimates Program, online: U.S. Census Bureau <<http://eire.census.gov/popest/archives/national/nation2/intfile2-1.txt>> (1991 to 1999 population data); <<http://www.census.gov/population/projections/nation/summary/np-t3-a.txt>> (2000 population data); <<http://www.census.gov/population/projections/nation/summary/np-t3-b.txt>> (2001 population data). The number of adults filing for bankruptcy was calculated by adding all individual filings to twice the number of joint filings. This number was divided by the population in thousands aged eighteen and over to get the filing rate per 1,000 adults.

debts they never intended to repay, while the other focuses on a credit industry that preys on unsophisticated consumers. One side sees the growing appetite of an underclass stoked by increased credit purchasing, while the other blames lenders that have deliberately shifted their marketing to target ever-poorer (and riskier) debtors in order to maximize profits.

Within each explanation are submerged dozens of unspoken assumptions about the debtors themselves. Who are these people filing for bankruptcy? Does the sharp rise in the number of filings suggest that the composition of debtors is changing? Could it be that the chronically poor are flooding the bankruptcy courthouse? Alternatively, does the rise in filings signal a deepening affliction within the middle class?



The composition question—Who files for bankruptcy?—has long been a matter of profound concern to lawmakers and academics alike, whether they begin their analyses with a moral attack or a statistical association. But the answer's implications echo far beyond the realm of the bankruptcy specialist, spilling over into broader policy debates as diverse as health care finance, child support enforcement, credit regulation, and mortgage foreclosure practices. Bankruptcy has been described as society's feedback loop, telling it what works and what does not.² Knowing who files for bankruptcy can signal information about successes and failures throughout the population, informing research, for example, on the economic progress of different social and racial sub-groups, the

² Douglas Cecil North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge Press, 1990).

heightened vulnerability of the elderly, or the economic risks facing divorced women or mothers of small children.

Interest in discovering who files for bankruptcy is not confined to specialists and policymakers. Since Victorian times, bankruptcy has tugged at the edge of public consciousness. When they come across the occasional news story about the rise in consumer bankruptcy filings or someone pushed into bankruptcy after a job layoff, many of our fellow citizens ask some variation on the central question: Could it be us? Are the families in bankruptcy some *others*: people who live lives very different from our own, people who have fewer opportunities than we have, people who are subject to very different risks from those that we face? Or are these debtors *us*: typical middle-class people who work hard, play by the rules, and somehow end up in financial collapse?

The importance of the answer cannot be overstated. If the people in bankruptcy are *others*, then ordinary, middle-class families are largely safe. Legislative initiatives might be carried out in a spirit of supportive generosity or punitive spitefulness, but, no matter what, such lawmaking would be carried out at a level of safe emotional detachment from the middle class. No middle-class family not already in deep trouble would need to think about what might be just around the corner—nor about what bankruptcy laws would be available just in case. A deeply held perception of *us* versus *them* has the power to shape both our collective attitudes toward personal economic failure and the legal systems designed to deal with such failure.

In this article, I focus on this underlying question: Who are the people who file for bankruptcy? Are these people concentrated among the chronically poor, held at a safe distance from families such as our own? Or are these people our friends and neighbours—middle-class families in financial collapse, moving anonymously among us?

The answer will come as a confirmation to some and a warning to others. When measured by their educational achievements, their occupational status, and their ability to buy homes, the families that file for bankruptcy are an overwhelmingly middle-class group, a cross-section of America that concentrates its numbers in the middle. In short, the families in bankruptcy are not the chronically poor relegated to some remote ghetto; they are our nearby neighbours.

II. BRIEF BACKGROUND

The question I pose is not new. When we published the results of our 1981 study of families in bankruptcy, Dr. Teresa Sullivan, Professor Jay Westbrook, and I addressed the question directly: “Who goes into bankruptcy? Are bankrupt debtors an underclass of Americans, economically and socially

marginal ... or a broad mix of the middle class?"³ Based on the data available in the bankruptcy court records, we concluded that "bankrupt debtors are our neighbors. They are not some distant and different 'others' from whom we can distance ourselves. Their financial circumstances separate them from most people, but by some critical social measures they look like everyone else."⁴

The information available in 1981 on which we based our conclusions was largely limited to employment status and home ownership. In 1991, we studied the debtors again, this time collecting information about their educational accomplishments, occupational prestige, and other social and demographic characteristics. When we published our 1991 data, we again addressed the question of who files for bankruptcy. With more points of comparison, we were able to document in greater detail that the debtors looked very much like a cross-section of middle America. Based on these data, we stated our conclusions firmly: "The answer is resoundingly clear [B]ankruptcy is a middle-class phenomenon."⁵

Having been to the well twice and finding the same water both times, it is reasonable to wonder why anyone would go back again. Is this some form of academic obsession? Perhaps, but there are reasons to ask whether the composition of the debtors in bankruptcy has shifted in recent years. After all, it has been a decade since the last data were collected and during that decade the bankruptcy filing rate has increased precipitously.

In the late 1990s, Professor David Moss and Mr. Gibbs Johnson gave us another reason to re-examine the composition of families in bankruptcy. Taking the long view, they observed that the number of consumer bankruptcies per dollar of outstanding consumer credit had remained remarkably steady from the 1920s through 1985, but that bankruptcy filings per dollar of outstanding consumer debt increased significantly in the late 1980s and 1990s.⁶ They assembled convincing statistical evidence that the increase in the number of filings is tied to a shift in creditor behaviour: more creditors lending ever more money to ever-poorer debtors.⁷

The structural lynchpin of Moss and Johnson's argument rests on the huge spread between the wholesale and the retail cost of funds that emerged in

³ Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* (New York: Oxford University Press, 1989) at 7.

⁴ *Ibid.* at 102.

⁵ Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *The Fragile Middle Class: Americans in Debt* (London: Yale University Press, 2000) at 27 [Sullivan, "Fragile Middle Class"].

⁶ David A. Moss & Gibbs A. Johnson, "The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both?" (1999) 73 *Am. Bank. L.J.* 311 at 322-23 [Moss & Johnson].

⁷ *Ibid.* at 332-35.

the past decade. They observe that as the difference grows between what a credit card issuer must pay for funds and what interest rate the issuer can charge its borrowers, creditors discover that they can make extraordinary profits by lending to increasingly marginal borrowers. Incentives to screen borrowers take a back seat to finding more borrowers who are willing to finance their purchases over time.⁸ This is not simply a matter of casting a wider net for new borrowers. It is a deliberate search for the borrower who cannot pay off a credit card bill in full each month: one who will make minimum monthly payments at high rates of interest and, best of all, who will miss an occasional payment, paying penalties and late fees and default rates of interest that can range as high as 36 per cent annually. A lender who can raise a billion dollars by paying bondholders 6 per cent and can lend that same money out to credit card users at 18 to 36 per cent stands to make a staggering profit—even after administrative fees, bad debts, and bankruptcy losses are deducted.⁹ This structure has permitted credit card lending to return net profits that double those of all other forms of lending even as bad debts and bankruptcies have risen.¹⁰ Moss and Johnson posit that the rise in consumer bankruptcy filings could be explained as the result of a shift in profit-maximizing strategies pursued by consumer lenders. The current record profits of credit card companies certainly add support to their claim.¹¹

In their discussion of shifting creditor practices, Moss and Johnson focus on increased borrowing by low-income debtors. They suggest that the rise in bankruptcy filings in the late 1980s and 1990s might be explained by increased credit marketing to people who had had little access to consumer

⁸ *Ibid.* at 335.

⁹ The basic analysis of credit card profitability and pricing was laid out in the seminal article by economist Dr. Lawrence M. Ausubel, “Credit Card Defaults, Credit Card Profits, and Bankruptcy” (1997) 71 *Am. Bank. L.J.* 249.

¹⁰ The Federal Reserve Board documented the high profitability of credit card lending, noting, for example, that in the third quarter of 1997 credit card banks showed a 3.14% return on assets, compared to a 1.81% return on assets reported by all commercial banks. “The Profitability of Credit Card Operations of Depository Institutions” (June 2001), online: Federal Reserve Board <<http://www.federalreserve.gov/boarddocs/rptcongress/creditcard/2001/ccprofit.pdf>>.

¹¹ An example of the profits to be made as the spread between the wholesale and retail cost of funds widens occurred in 2001. The Federal Reserve cut interest rates nine times, but only a fraction of that savings was passed on to consumers in the form of lower interest rates. As a result, total savings from the nine interest rate cuts created a \$10 billion windfall for credit card issuers, whose cost of funds declined sharply while the rates they charged their customers remained surprisingly sticky. Cecily Fraser, “A \$10 billion windfall: Credit card lenders don’t pass on full interest-rate cuts” *CBS MarketWatch* (3 October 2001), online: CBS MarketWatch.com <<http://www.cbs.marketwatch.com>>. The reason rates did not drop was attributed in part to the 25 per cent of cards that offer variable interest rates but that have a minimum, or so-called “floor”, to ensure that rates do not dip below a certain price.

credit earlier.¹² The composition question addressed here echoes their question: Are a growing proportion of the debtors in bankruptcy among the chronically poor, people who once were cut off from consumer credit but who now are sought after by the credit card companies?

An analysis of the 2001 filers offers evidence that the debtors remain middle class, even as their numbers have increased substantially. The data discussed below show that the incomes of bankrupt debtors in 2001 are indistinguishable from the incomes of their 1991 counterparts, suggesting a more complex explanation for the rise in consumer bankruptcy filings—and a continued focus on the collapse of middle-class families. The shift in creditor practices highlighted by Moss and Johnson may be an important factor in the rise in filings, but the difference may relate to creditors' increased willingness to lend to middle-class individuals already in financial trouble rather than to an expansion of credit to the chronically poor.

III. THE NEW DATA

My long-time co-authors, Dr. Teresa Sullivan and Professor Jay Westbrook, and I have developed three databases based on the court records of debtors who filed for bankruptcy in 1981, 1991, and 2001. In 1991 and 2001, we also developed questionnaire data that expands the information available about the debtors. Because these latter data are more detailed and because the rise in filings during the 1990s poses the difficult question of why filings would increase during both a recession and a boom, I focus here on a comparison of debtors who filed in 1991 with those who filed in 2001.

The 1991 sample is composed of 2,452 debtors from sixteen districts in five states (California, Illinois, Pennsylvania, Tennessee, and Texas).¹³ With an even larger team of co-investigators, we developed more extensive data from

¹² Moss & Johnson, *supra* note 6 at 337.

¹³ In 1991 we administered questionnaires to debtors who filed for bankruptcy in sixteen judicial districts: the Eastern District, Middle District, and Western District of Pennsylvania; the Northern District, Central District, and Southern District of Illinois; the Western District and Middle District of Tennessee; the Northern District, Western District, Eastern District, and Southern District of Texas; and the Northern District, Central District, Eastern District, and Southern District of California. We selected a random sample of the 59,000 people who responded to questionnaires administered at the meeting that debtors are required by statute to attend so that they may be questioned by their court-appointed trustee and by any of their creditors who wish to participate. This effort created a sample of approximately 150 debtors per district, or a total of 2,452 debtors. We then collected court records for debtors in five of the districts: the Eastern District of Pennsylvania, the Northern District of Illinois, the Western District of Texas, the Middle District of Tennessee, and the Central District of California. For a more detailed description of the 1991 sample, see Sullivan, "Fragile Middle Class", *supra* note 5 at 263-87.

those same five states for a sample of 1,250 individuals filing for bankruptcy in 2001.¹⁴ The data are drawn from the court records,¹⁵ questionnaires,¹⁶ and, whenever possible, telephone surveys.¹⁷ Altogether, more than three million bits of information about these debtors were collected and coded.¹⁸

IV. ONE MEASURE OF CLASS: INCOME

Class and social standing are uncomfortable concepts for Americans. We prefer to think of ourselves as a virtually classless society. When that

¹⁴The 2001 sample of debtors was drawn prior to the events of September 11, 2001, and the subsequent economic fallout. For this research, we refocused our resources somewhat. We visited the same five states as we did in 1991, but instead of collecting less data from each of the districts within the state, we collected more data from only one district. For the 2001 study, we collected data from the Eastern District of Pennsylvania (Philadelphia), the Northern District of Illinois (Chicago), the Middle District of Tennessee (Nashville), the Northern District of Texas (Dallas), and the Central District of California (Los Angeles). Four of the districts are the same as those for which we also had both court records and questionnaire data from 1991, with the Northern District of Texas substituted in 2001 for the Western District of Texas in 1991. We substituted the Northern District of Texas for the Western District so that we could include Dallas within the sample rather than San Antonio and West Texas, in part so that we could study the Dallas homeowners in more detail in order to compare them with homeowners in Chicago, Los Angeles, Nashville, and Philadelphia. In 2001, we collected longer questionnaires from a larger group—250 debtors per district—as well as court records for each debtor in the sample and information from one to two hour telephone surveys for each debtor we could reach. In order to explore particular research questions, we also collected data from an additional 521 homeowners in bankruptcy in those districts and an additional 48 rural debtors, for a total of 1,819 debtors in the five districts. Because these additional debtors were chosen specifically because they were homeowners or lived in a rural area, their selection may bias the core sample, so they are not used for analysis in this article. For more details on the 2001 study and the expanded database, see Elizabeth Warren, “Bankrupt Children” (2002) 86 Minn. L. Rev. 1003 at 1026-32 (reproducing a copy of the questionnaire used to collect data) [Warren, “Bankrupt Children”].

¹⁵We collected the court records for every debtor in the sample, copying the petition and schedules and coding about 150 pieces of information from each one.

¹⁶Each debtor is required to attend a meeting with the assigned bankruptcy trustee; creditors may attend as well to ask the debtor questions under oath. At these meetings, dubbed “341 meetings” in honour of the section of the bankruptcy code that requires them (11 U.S.C. 341), each debtor was handed a four-page questionnaire that captured basic demographic information (age, sex, marital status, race, number and age of dependents, occupation, etc.) as well as specific financial information (was the debtor currently employed, had the debtor lost a home for financial reasons, etc.). Debtors who returned the questionnaires were part of the sample.

¹⁷In the questionnaire, we asked each debtor for permission to call their home for an interview about the bankruptcy filing. Thanks to generous funding from the Ford Foundation and the Robert Wood Johnson Foundation, we were able to offer each family \$50 for completing a telephone interview. The response rate was high; we eventually completed interviews with 67.7 per cent of the debtors in the core sample. Interviews were conducted by trained interviewers under the direct supervision of Dr. Deborah Thorne, now of Ohio University Department of Sociology.

¹⁸More details about the study are available in Warren, “Bankrupt Children”, *supra* note 14 at 1026-32; Raisa Bahchieva *et al.*, “Home Ownership and Financial Distress: The Interplay of Tax, Real Estate and Bankruptcy Laws: A Report to the Ford Foundation” (2002) archived with Elizabeth Warren.

assumption is unsustainable, we substitute a nearly equivalent concept—widespread identification with a ubiquitous middle class. More than 90 per cent of all Americans see themselves as “working class” or “middle class.”¹⁹ But widespread formal identification with the working class or middle class does not mean that either class or class consciousness has disappeared from the American scene.

Philosophers, economists, sociologists, and historians have long wrestled with class identification. The most influential work on the subject has been Thorstein Veblen’s *Theory of the Leisure Class*, in which he argued that spending is the vehicle through which people establish social position.²⁰ Since then, an academic industry has developed to parse class issues. There is, for example, an extensive literature on cross-class perceptions of various phenomena, including the phenomenon of class.²¹

Social position may be the key to understanding class, as Veblen suggests, but the indicia of social position remain difficult to pin down. As a result, the boundaries of the middle class remain ill-defined. Class identification travels in groups, referring to some shared values and experiences across a broad spectrum of language, education, ambition, housing, family size, and composition. In the bankruptcy context, class identification is partly about *us* versus *them*, partly about whether families in bankruptcy are on their way down from some higher social perch or whether they have always been among the most economically distressed.

Because such a large portion of the United States identifies itself as middle class, researchers often employ objective criteria to differentiate among classes, rather than rely on self-identification of class membership.²² The most frequently used shorthand reference for determining the social standing of a person or household is income. Each day, sociologists, economists, and political

¹⁹ The General Social Survey reports that 91.6 per cent of Americans identified themselves as “working class” or “middle class,” a number that has held steady over the past two decades. General Social Survey, 1976-1996, Variable 185A CLASS <<http://ssdc.ucsd.edu>>. The problem of ubiquitous self-identification as “middle class” causes sociologists to use alternative classification criteria, such as education or occupational prestige. See Thomas J. Gorman, “Cross-Class Perceptions of Social Class” (2000) 20 Soc. Spectrum 93 at 100; David Halle, *America’s Working Man: Work, Home, and Politics among Blue-Collar Property Owners* (Chicago: University of Chicago Press, 1984); Annette Lareau, *Home Advantage: Social Class and Parental Intervention in Elementary Education* (London: Falmer Press, 1989).

²⁰ Thorstein Veblen, *Theory of the Leisure Class* (New York: Penguin, 1967).

²¹ See generally Gorman, *supra* note 19; Halle, *supra* note 19; Lareau, *supra* note 19.

²² Indeed, some researchers make a study of contrasting self-identification of class standing with objective criteria of class standing. See generally Eric Plutzer & John F. Zipp, “Class, Gender, and the Family Unit: A Dynamic Model of Stratification and Class Politics” (2001) 30 Soc. Sci. Res. 426; Janeen Baxter, “Is Husband’s Class Enough? Class Location and Class Identity in the United States, Sweden, Norway, and Australia” (1994) 59 Am. Soc. Rev. 220; Ye Luo & April Brayfield, “Women’s and Men’s Subjective Class Identification from the 1970s to the 1990s” (1996) 16 Soc. Spectrum 83.

scientists discuss various phenomena, dividing people and their responses by income groups: the number of people below the poverty level, the divergence of the lowest and highest income quintiles in the United States, political attitudes of people in different income groups, and so on. The Census Bureau publishes more than seventy-five tables slicing and dicing information about income in the latest Statistical Abstract, and it provides far more detailed income data on its website.²³ Income is a widely used reference to sort and categorize individuals, households, and families in academic research. While few researchers are explicit in their categorization, much of the income classification work rests on the unspoken premise that the top and bottom quintiles are the upper and lower classes, respectively, with the middle or working class concentrated in the middle 60 per cent. Thus income offers at least a starting place for class comparisons.

As measured by income, the bankrupt debtors are concentrated among the poorest families in the U.S. population. The bankrupt debtors' median income in 2001 was \$24,108, compared with a median household income in the United States of \$42,228.²⁴ Not only are the debtors making less than the median, the majority of debtors are concentrated in the lowest income groups when they file for bankruptcy. When U.S. households are divided into the fifths, from the top to the bottom, nearly all the debtors fit within the bottom two groups.²⁵

Fully 30.4 per cent of the bankrupt families had incomes in the lowest

²³ See U.S. Census Bureau, *Statistical Abstract of the United States: 2001* (Washington: Department of Commerce, 2001), online: U.S. Census Bureau <<http://www.census.gov/statab/www>>.

²⁴ See U.S. Census Bureau, *Median Household Income 2001*, online: U.S. Census Bureau <<http://www.census.gov/hhes/income/income01/inctab1.html>>.

²⁵ We use household income as the appropriate government standard because bankruptcy filers include one-person households and family income calculations for the Census Bureau eliminate all one-person households. If we compared the bankrupt debtors with U.S. data on family incomes, the numbers would be even more extreme. Fully 49.7 per cent of the bankrupt families had incomes in the lowest income quintile in the U.S. (under \$24,000). More than eight out of ten (83.5 per cent) had incomes in the bottom two quintiles (under \$41,127). U.S. Census Bureau, *Current Population Survey, March Supplement*, online: U.S. Census Bureau <http://ferret.bls.census.gov/macro/032002/faminc/new06_000.htm>.

The five income quintiles in the U.S. in 2001 were:

First quintile	\$24,000
Second quintile	\$41,127
Third quintile	\$62,500
Fourth quintile	\$94,150
Fifth quintile	> \$94,150

income quintile in the United States (under \$17,960).²⁶ More than seven out of

²⁶ Median household income by quintiles comes from the U.S. Census Bureau, *Current Population*

First quintile	\$17,960
Second quintile	\$33,312
Third quintile	\$53,000
Fourth quintile	\$83,500
Fifth quintile	> \$83,500

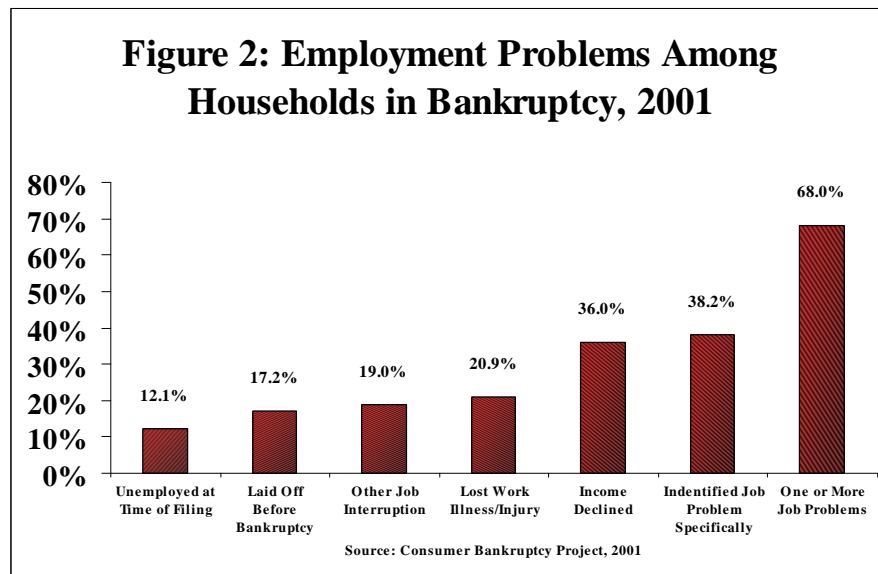
ten—72.5 per cent—had incomes in the bottom two quintiles (under \$33,312).²⁷ In short, the typical family filing for bankruptcy had an annual income that would place the family in poverty or near poverty at the time of filing.

It would be possible to use family incomes to identify the social class of families in bankruptcy, but the result would be quite misleading. The bankruptcy forms require debtors to report family income in both years preceding their filing. This current income, however, is tightly aligned with their current employment status. People often file for bankruptcy during or immediately after a loss of employment, the collapse of a small business, or a similar income problem. The questionnaire data show that more than two-thirds of the families filing for bankruptcy have had a significant employment problem in that same time period for which they report income. The filers' job difficulties are summarized in Figure 2.

Survey, March Supplement, and are reported at U.S. Census Bureau, *ibid.* The five income quintiles in the U.S. in 2001 were:

²⁷ *Ibid.* and data from Consumer Bankruptcy Project III, *supra* note 14.

The families in bankruptcy identify a variety of job-related problems. About one in eight cases (12.1 per cent) involves a debtor who is unemployed and looking for work at the time of filing. This compares with a national average unemployment rate in 2001 of 4.8 per cent.²⁸ In an even larger group of cases—17.2 per cent—petitioners report that they had suffered through a layoff of one or both workers in the household shortly before they filed, even if the person was back at work by the time of filing. In addition, in a large



number of cases—20.9 per cent—the family had lost income when one of the wage earners was out of work as the result of an illness or injury. A similar proportion of cases—19 per cent—identified another income interruption, such as a cutback in hours or a spouse's transfer to another location that left the trailing spouse without work. More than a third of the sample specifically identified that their incomes had fallen during the two years preceding their filings, and 38.2 per cent said that a job problem had pushed them into bankruptcy.

The combination of factors is overwhelming. More than two thirds of the entire sample—68 per cent—explain that they had substantial job problems before their bankruptcy filings. No single problem is more likely to be associated with a bankruptcy filing than an income interruption.

Income information collected during this time can be useful to

²⁸ See U.S. Census Bureau, *Statistical Abstract of the United States: 1999* (Washington: Department of Commerce, 1999), online: U.S. Census Bureau <<http://www.census.gov/statab/www/>> [*Statistical Abstract of the U.S. 1999*].

understand many things about the debtors, including the resources they have available to meet their debt loads. But it is not very helpful for understanding who these debtors are in any broader social sense. To understand whether these are families who are in sudden financial distress or families who never had any economic resources, to acknowledge class differences among the chronically poor and the solidly middle class, to infer differences in attitudes or opportunities, and to understand who has fueled the sharp rise in consumer bankruptcies requires more than an analysis of the debtors' family incomes near the time of filing.

V. BETTER MEASURES: EDUCATION, OCCUPATION, AND HOME OWNERSHIP

The advantages of using income information are many: it is easy to count, and, because it is employed for so many purposes, it can be used as the basis for a number of useful comparisons between the population in bankruptcy and the population at large. But looking at income data for the purposes of understanding who the debtors in bankruptcy are is akin to looking for a lost nickel under the lamppost because that is where the light is best—even if the nickel was dropped somewhere else.

To venture away from income to try to understand the composition of the families filing for bankruptcy is to head into rougher country, quantitatively speaking. There is no single, consistent, objective measure of class on which all researchers agree. In a quantitative study, the challenge is to find markers that bear some correlation with a general understanding of what it means to be middle class, even if a more searching inquiry of class status is unavailable.

Three objective criteria repeatedly appear in studies of class: education, occupation, and home ownership.²⁹ Some studies use only one criterion, while others use all three.³⁰ Occupation seems to be many researchers' preferred indicator, but education follows closely. Home ownership may be used less formally to indicate class, but a number of class studies are quick to point out home ownership status, presumably because the researchers believe it has some

²⁹ Tim Heaton, "Objective Status and Class Consciousness" (1987) 68 Soc. Sci. Quarterly 611, explains that the "objective" determinants of class status are education, occupation, and income. Home ownership appears less often in the sociological literature, but it nonetheless is reported from time to time in discussions of class status.

³⁰ Gorman, *supra* note 19 at 93, reports data on all three criteria, but classifies respondents based on occupation; Luo & Brayfield, *supra* note 22, use occupation and education to classify respondents; Heaton, *supra* note 29, identifies education, occupation, and income as objective measures, Plutzer & Zipp, *supra* note 22, use occupation and self-identification to determine class status.

probative value.³¹

While this bankruptcy work is not aimed at making fine distinctions between the working and managerial classes, these criteria are plausible candidates for separating those in chronic poverty from those who see themselves as safely within the middle class. Good educations, decent jobs, or home ownership offer tangible, external signs of membership within the middle class. In addition, these data enjoy the double benefit of being measurable among those who file for bankruptcy and comparable to well-developed census data.

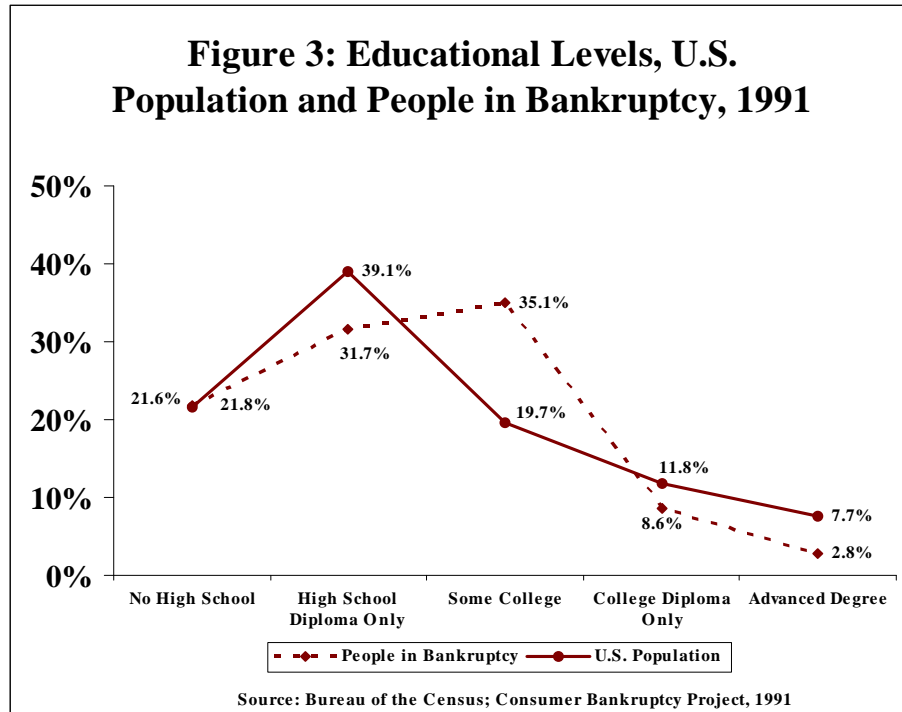
A. *Education*

The Bureau of the Census has tracked the rising levels of formal education in the United States for more than a century. For the families in bankruptcy, the glimpse is far more limited. We have collected data on educational levels for a sample of those who filed for bankruptcy, with data for both the husband and wife in joint petitions. We have such data for both 1991 and 2001, permitting us a snapshot at two points in time. The data permit us to see how the 1991 bankrupt debtors compared with their counterparts in the general population and to see that same comparison in 2001. The conclusion is that as Americans at large are becoming better educated, debtors filing for bankruptcy are not slipping into an underclass; indeed, their educational achievements seem to be keeping pace with those of Americans generally.

The solid line in Figure 3 shows the educational level of adults in the U.S. population in 1991. Superimposed across that line is the proportion of debtors in bankruptcy at each educational level, also in 1991.

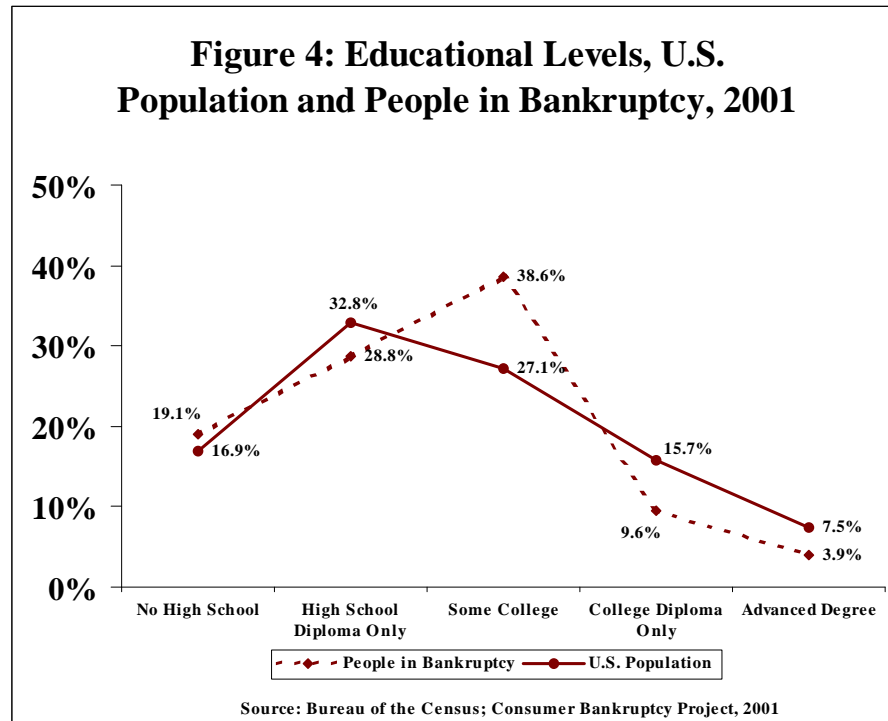
The most salient feature of these two curves is their similarity. Those who file for bankruptcy are not concentrated among the uneducated. Rather, the

³¹ Gorman, *supra* note 19 at 120, uses occupational prestige to differentiate working-class and middle-class respondents, but is quick to note both the education and home ownership status of both groups.



proportion of filers with no high school diploma is very close to that of the general population. There are fewer people in bankruptcy who have only a high school diploma, but that difference stems from the fact that a higher proportion of them have been to college. At the upper end of the educational spectrum, the proportion of bankrupt debtors falls off, with fewer who received their college diplomas or went on to graduate school. Even so, these data indicate that in 1991, the median educational level of the bankruptcy filers was somewhat higher than that of the general population.

Figure 4 illustrates the changes from 1991 to 2001. The first point to notice is that educational levels in the United States rose overall. Among the U.S. population, a smaller fraction quit school without a high school diploma, and more people made it to college.



The good news on the education front for the U.S. population generally was reflected in the bankruptcy courts. The people filing for bankruptcy were also more likely to go to college, to get a diploma, and to head off to graduate school than their counterparts a decade earlier. From 1991 to 2001, the overall educational level of the bankrupt debtors advanced, and the difference was statistically significant.³²

To be sure, there are important educational differences between the people who end up in bankruptcy and the general population. Those who file for bankruptcy are more likely to have gone to college—but less likely to have completed their degrees—than their cohorts in the general population. In both 1991 and 2001, the proportion of debtors who had earned a college degree was about a third lower than that of the general population in those years. Moreover, those who file for bankruptcy are about half as likely to have graduate or professional training as those in the population generally. These data are intriguing, opening up a basis for a number of different lines of inquiry. Perhaps the high rates of attending college suggest that bankrupt debtors are more likely to be ambitious or risk takers than the population generally, or perhaps the low

³² Difference significant at $p = .001$.

completion rates signal earlier financial troubles or people who cannot stick to a difficult task. Researchers who are looking for tangible evidence of the value of a college diploma might find useful data in the bankruptcy courts. Whatever findings subsequent studies might offer, however, the data confirm that the debtors are not concentrated among a poorly educated underclass.

While there are differences in educational achievement in 2001, the bankrupt debtors are not obviously different from their counterparts in the general population. These debtors are not concentrated among the uneducated or poorly educated, and, to the extent that education signals class identification, they are not concentrated among the lower class. Instead, in a very general way, the bankrupt debtors appear to be an educational cross-section of all adults in the United States.

Nor do the data support the conclusion that the composition of bankruptcy filers has shifted markedly over the past decade. There may be nearly twice as many households filing for bankruptcy, but changes in the educational levels of those households have certainly kept pace with educational changes in the general population. These two figures suggest that, in a general way, the debtors look like a cross-section of all Americans and that such similarity has persisted over time.

B. *Occupation*

Occupation is often a strong indicator of both income and social standing. Of the two, occupational identification is a more durable measure of class, routinely used by sociologists to differentiate among classes.³³ When income is sharply reduced following a layoff or other work interruption, occupational status remains as evidence of a person's social standing. A stockbroker whose job disappears in a corporate merger and a high school music teacher who is caught in district-wide cutbacks do not slip out of the middle class simply because they are left, presumably temporarily, with no income. Moreover, when occupation and income diverge, it is occupational status that may say more about a person's class identification than may actual dollar income. Americans have a fairly sharp sense of occupational prestige, rating clergymen and dental hygienists, for example, higher in status than mechanics and longshoremen, even if the latter earn considerably higher incomes.³⁴

³³ Gorman, *supra* note 19, relied exclusively on his respondents' occupations in order to segregate them by class standing. By comparison, Baxter, *supra* note 22, discusses class differences between husbands and wives, using self-identification, occupation, and education as independent measures of class.

³⁴ The occupational prestige score for clergymen is 69, for dental hygienists is 61, for heavy equipment mechanics is 33, and for longshoremen is 24. The National Opinion Research Center, *1980 Census Occupational Category* (Chicago: University of Chicago, 1998), online: Inter-university Consortium for

Sociologists have been studying occupation stratification since shortly after World War II, asking Americans to rate the prestige of various jobs.³⁵ The resulting scores have been standardized and used in numerous statistical comparisons. The 1991 and 2001 questionnaires from the Consumer Bankruptcy Project asked each debtor to list his or her occupation, with spaces provided for both husbands and wives on joint petitions.³⁶ Co-Principal Investigator Dr. Teresa Sullivan coded the occupational prestige scores for all of the respondents to both the 1991 and 2001 studies using the standardized codes developed by the National Opinion Research Council.³⁷ Because we can

Political and Social Research <<http://www.icpsr.umich.edu/GSS/rnd1998/appendix/occu1980.htm>>.

³⁵ For a more detailed description of occupational prestige scores and their use, see Robert W. Hodge, Paul M. Siegel & Peter M. Rossi, "Occupational Prestige in the United States, 1925-1963" (1964) 70 *American Journal of Sociology* 286. For those unfamiliar with occupational prestige scores, it is possible to glean some understanding by scanning through the long lists of codes developed by the National Organization for Research at the University of Chicago. Food-counter workers are near the bottom at 15, along with construction workers and peddlers at 17, maids at 18, and produce packers at 19. In the middle range, a retail sales clerk is 29, a cashier is 31, an air-traffic controller is 43, and a billing clerk is 45. Near the top of the ladder, architects and aeronautical engineers are up at 71, outstripped by lawyers at 76, college professors at 78, and physicians at 84.

³⁶ The debtors' answers were entered verbatim into the database, and then coded numerically using the 1970 U.S. Census codes and the corresponding prestige scores developed by the National Opinion Research Council. Thus, when debtors provided their occupations, they were assigned a three-digit occupation code and a two-digit prestige code.

The following additional occupational codes were developed: 990 = housewife, homemaker, at-home mom, and similar responses; 991=retired; 992=disabled or too ill to work; 993=unemployed; 994=not in the labor force, no further information; 995=student; 998=occupation specified but not otherwise classifiable. These codes permit the identification and analysis of specific groups of petitioners, such as the disabled or the retired. Each of these codes was assigned a prestige score of 0.

When two occupations were listed, the first was coded. Thus, the person who listed himself as "Self-employed ice cream retailer, riverboat captain," was coded 245 for "managers and administrators not elsewhere classified." "Service Customer Clown Company" was assigned 394, for "miscellaneous clerical workers." If the petitioner listed a status first, such as "disabled ironworker," the first-mentioned term (922=disabled) was coded. Further information concerning occupational coding is available from Dr. Teresa Sullivan.

A number of answers were provided in Spanish. Dr. Teresa Sullivan, who coded the occupations, sought assistance in translating them from Dr. Marta Tienda, Professor of Sociology at Princeton University. Several of these were best translated as "maid" or "housekeeper" – e.g., *limpieza* or *ama de casa* (both coded as 982, private household housekeepers). Others indicated status, such as *desepleado* (unemployed and coded as 993). "*En una Zapateria Manager de una tienda*" was coded as 245 (managers and administrators not elsewhere classified). "*Operado maquina*" was coded as 692 (machine operatives, not specified).

³⁷ The 1970 occupational codes have been used in all of the preceding Consumer Bankruptcy Projects. They are also still widely in use as the last "pure" occupational codes used by the Census Bureau. They have been used in major studies such as the General Social Survey. Since the 1970 Census, the Bureau has moved to sets of codes that incorporate industry as well as occupation, but there are several "walkovers" available that permit correspondence from one set of codes to another. The baseline codes used for this set of questionnaires are available at The National Opinion Research Center, *1970 Census Occupational Category* (Chicago: University of Chicago 1998), online:

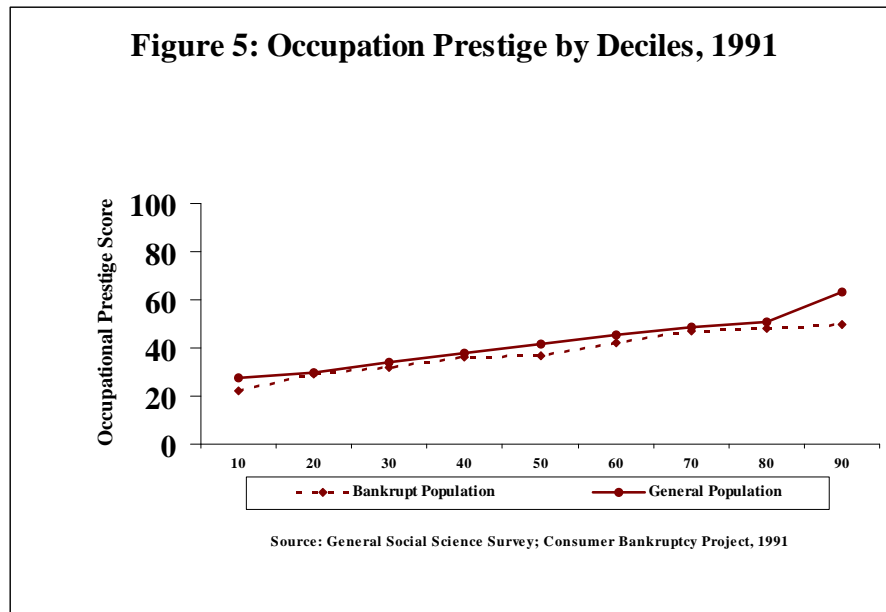
quantify the occupational prestige of workers in the general population and those in bankruptcy, we can once again make three comparisons—the workers in bankruptcy in 1991 compared with those in the general population in that year, the workers in bankruptcy in 2001 compared with workers generally in that year, and the workers in bankruptcy in 1991 compared with the workers in bankruptcy in 2001.

To compare the distribution of occupations among workers in the United States generally and the sample of workers in bankruptcy, it is instructive to look at the break points for occupational prestige scores for each decile of the population. In 1991, for example, 10 per cent of the U.S. population had occupational prestige scores of 27.5 or lower, while 20 per cent had occupational prestige scores of 30 or below, and so on. Among the people filing for bankruptcy, occupational prestige can be similarly rank-ordered. In 1991, 10 per cent of the bankrupt debtors had occupational prestige scores of 22 or lower, 20 per cent had occupational prestige scores of 29 or below, and so on.³⁸ The combination throughout all deciles for both the U.S. population and the individuals filing for bankruptcy in 1991 is in Figure 5.

<<http://www.icpsr.umich.edu/GSS/rnd1998/appendix/occu1970.htm>>. Project Director Dr. Deborah Thorne re-checked the 2001 codes for consistency and accuracy.

³⁸ The actual numbers for 1991 are:

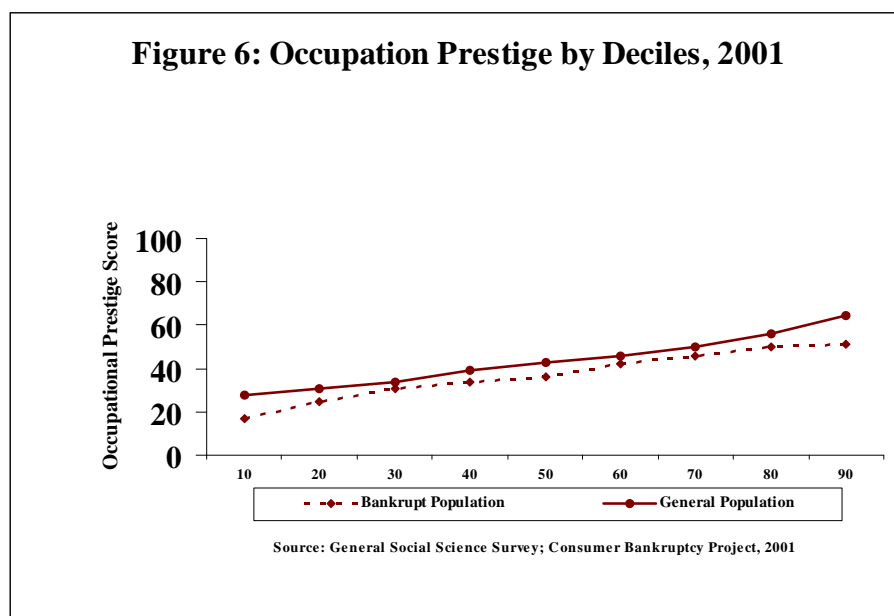
1991		
	General Population	Bankrupt Population
10	27.5	22
20	30	29
30	34	32
40	38	36
50	41.5	37
60	45.5	42
70	48.5	47
80	51	48
90	63.4	50



The two lines follow a similar pattern, with the bankruptcy numbers trailing the U.S. population by a few points at each interval. The largest diversions are at the two ends, with the bankrupt debtors more concentrated in the lowest prestige jobs and under-represented in the highest prestige jobs. The two lines come closest together in the middle. These distributions suggest that in 1991, as a group, the individuals in bankruptcy had somewhat less prestigious jobs than their counterparts in the general population but that the magnitude of the difference was modest at best. These data indicate that the individuals who filed for bankruptcy were generally working alongside other Americans.

As with their collective shift to greater educational achievement between 1991 and 2001, Americans migrated into slightly more prestigious jobs during that period. As the heavy line in Figure 6 demonstrates,

occupational prestige rose slightly for families across the spectrum from



1991 to 2001.³⁹

Whether the individuals filing for bankruptcy kept pace with occupational changes in the general population is less clear. A comparison of the prestige scores in 1991 with those in 2001 is inconclusive, with some tests showing a statistically significant decline between the two periods and other tests showing no statistically significant difference between the two.⁴⁰ A decile-

³⁹

	2001	
	General Population	Bankrupt Population
10	27.5	17
20	31	25
30	34	31
40	39	34
50	43	36
60	46	42
70	50	46
80	56	50
90	64.5	51

⁴⁰ Three different analyses of 1991-2001 occupational prestige scores resulted in different findings. A comparison of the occupational prestige scores of first petitioners in 1991 with first petitioners in 2001 shows a drop in prestige from 1991 to 2001 that is statistically significant ($p = .001$). But that analysis omits the second petitioner (nearly always the wife) in joint petitions from the calculation. When both petitioners are represented in the calculation, with their prestige scores averaged to create a single prestige score for the household, there is no statistically significant difference between the occupational prestige scores of the 1991 debtors and the 2001 debtors. When both petitioners are represented individually in the calculation with no

by-decile comparison shows that by 2001 the bankrupt individuals had narrowed part of the gap between themselves and Americans at large. The first decile of bankrupt debtors continued to have somewhat lower prestige scores, as in 1991, but the next three deciles match the general population, suggesting that the proportion of workers who are sales clerks and construction workers is about the same in bankruptcy as it is in the general population. At every subsequent interval, however, the prestige scores of those in bankruptcy lagged those of the general population. There remains more pronounced divergence at the very top, with doctors, lawyers, and aeronautical engineers markedly under-represented in bankruptcy. The overall patterns are similar between bankrupt debtors and Americans generally, suggesting generally proportional representation of the lower and middle classes and some under-representation of the most upper-class debtors—at least as measured by occupation.

These data also suggest that there has been no obvious shift in the composition of debtors from 1991 to 2001, at least as measured by their occupational distribution. Whether there are differences is inconclusive, but the data document that no substantial shift has occurred, suggesting that the bankrupt population has remained largely middle class.

C. *Home Ownership*

Home ownership, like education and occupation, carries both economic and social implications. Homeowners are widely regarded as the solid core of any community, the people who can be counted on to pay taxes, vote, pick up litter, and support the schools. Homeowners provide a stabilizing effect for neighbourhoods, increasing property values for everyone. Home ownership signals social standing, and most Americans aspire to own their own homes.⁴¹

Unlike renters, homeowners are purchasing an asset. For many, a home serves not only to provide shelter, but as the family's largest asset.⁴² Families' assets are six times more likely to be concentrated in a home than in any other

averaging per household, a statistically significant difference between the occupational prestige score of the 1991 debtors and the 2001 debtors re-emerges. For all three calculations, people who are not working for pay outside the home are not included.

⁴¹ Melvin L. Oliver & Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (New York: Routledge, 1995).

⁴² Primary residences account for 55 per cent of all non-financial assets held by families in the U.S.. Arthur B. Kennickell, Marth Starr-McCluer & Brian J. Surette, "Recent Changes in U.S. Family Finances: Results from the 1998 Survey of Consumer Finances" (2000) 86:1 Federal Reserve Bulletin 1 at 14 (reporting on data from 1998-99, the most recent available).

non-financial asset.⁴³

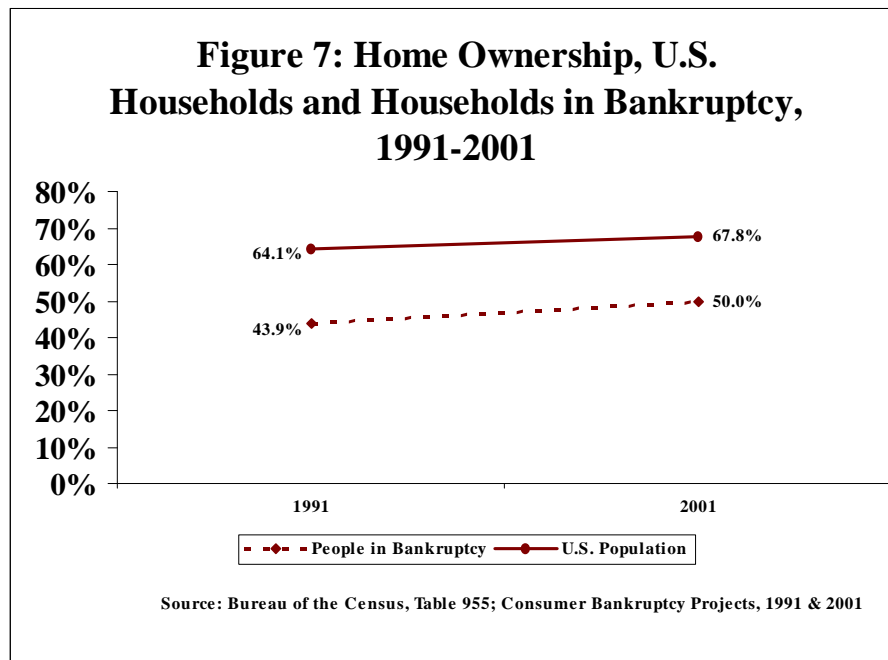
Not only is a homeowner someone who is evidently committed to sound financial planning, nearly all homeowners in the United States purchase with the assistance of a mortgage.⁴⁴ This means that to become a homeowner, most people must submit to searching financial scrutiny. Unlike credit cards, mortgages do not come pre-approved through the mail; a homeowner has likely survived the most aggressive credit screen that most consumers will ever encounter. Moreover, most homeowners must put together a down payment, which indicates both that they have income in excess of their regular living expenses and that they have some habit of thrift. Home ownership thus proves not only that owners had good jobs and substantial work histories, but also that they could manage credit and that the home mortgage commitment they were about to assume was within their grasp. More so than education or occupation, home ownership carries a form of economic certification—a tangible sign that someone at some time believed that the homeowner was creditworthy and dependable. Once again, we can look at the home ownership rate among bankrupt debtors compared with that of the general population in both 1991 and 2001 as well as the changing number of homeowners in bankruptcy between the two points in time. And, once again, the 2001 data show that the debtors are as likely—in fact, more likely—to be middle class, as measured by home ownership, than they were a decade ago.

In 1991, just under two-thirds of all people in the United States were homeowners. The bankruptcy court records also indicate whether the debtor owns a home. Using those records, it is possible to compare home ownership rates in the general population with the proportion of debtors who owned their homes at the time they filed for bankruptcy. The two reports are shown in Figure 7.

⁴³ *Ibid.* at 17, Table 8, Family holdings of non-financial assets, by selected characteristics of families and type of asset, and of any asset, by family characteristic, 1995 and 1998 surveys.

⁴⁴ U.S. Census Bureau, *Statistical Abstract of the United States: 1993* (Washington: Department of Commerce, 1993) at Table 1247, Recent Home Buyers—General Characteristics: 1976 to 1992.

The 1991 data show a substantial difference between the general population and



the families in bankruptcy: 64.1 per cent⁴⁵ versus 43.9 per cent.⁴⁶ The difference suggests that a homeowner was less likely to file for bankruptcy than someone who did not own a home. Given the extraordinary financial straits of families in bankruptcy, this difference may not be remarkable. Indeed, while the numerical distinction is important, some will read this figure and remark on the similarity: the families in bankruptcy were in economic collapse, but in 1991 more than four in ten were homeowners.

In 2001, the effects of a long-running economic boom echoed through the housing market. Home ownership rates rose throughout the 1990s, reaching 66.9 per cent in 2001⁴⁷— up nearly three percentage points from 1991. The bankruptcy data demonstrate an even faster climb. In 2001, more than half (52.5 per cent) of the sample of *Chapter 7* and *Chapter 13* debtors were homeowners at the time they filed for bankruptcy.⁴⁸ This suggests an increase of about eight percentage points in the home ownership rate during the same ten-year period. These data suggest that the bankrupt population is growing to look even more like the U.S. population generally, rather than concentrating among a poorer subset of Americans.

It is necessary, however, to add two important caveats to the comparison of 1991 and 2001 home ownership data. My co-authors and I have speculated on several previous occasions that the court records may understate the proportion of homeowners in bankruptcy. The 2001 data provide some confirming evidence of an under-reporting problem. The court records alone indicated that 50 per cent of the debtors were homeowners, but when we asked the debtors in confidential telephone interviews whether they owned their homes at the time of filing, the home ownership rate inched up to 52.5 per cent of the sample.⁴⁹ It is possible that if we had been able to interview the 1991

⁴⁵ U.S. Census Bureau, *Statistical Abstract of the United States: 1995* (Washington: Department of Commerce, 1995), online: U.S. Census Bureau<<http://www.census.gov/statab/www>> at Table 1229, Home ownership Rates, by State: 1984 to 1994 (1995).

⁴⁶ Calculated from data reported in Sullivan, "Fragile Middle Class", *supra* note 5 at 347, n. 23.

⁴⁷ U.S. Census Bureau, *Statistical Abstract of the U.S. 1999*, *supra* note 28.

⁴⁸ *Ibid.*

⁴⁹ The 1991 data regarding education and occupation came from the debtors' confidential reports on questionnaires which they filled out when they met with their creditors and trustee at the courthouse, but which were never part of the debtors' court records. By contrast, the data on home ownership were taken from the debtors' court records. The home ownership data were extracted from Schedule A (Real Property), Schedule C (Property Claimed as Exempt), and Schedule D (Creditors Holding Secured Claims), which require information about the debtors' real estate holdings, claimed exemptions, and outstanding mortgages. We had used the same sources when we collected data from debtors who had filed in 1981. But we presented our 1981 data on home ownership, noting that even when we could tell that the debtor seemed to own a home, there was no mortgage listed. We offered this caveat in interpreting the data:

debtors by telephone, more would have told us that they were homeowners as well.

The increase in home ownership rates among bankrupt debtors between 1991 and 2001 may not be as large as it seems in this report for a second reason. When we published the 1991 data, my co-authors and I explored evidence that home ownership rates among bankrupt debtors were depressed because the then-current law capped the amount of debt (including mortgage debt) that a debtor could owe and remain eligible for *Chapter 13* bankruptcy, the chapter most used by homeowners.⁵⁰ As a result, many homeowners with large mortgages may have been forced into *Chapter 11* and thus out of the reach of our sample. The laws were changed in 1994 to substantially reduce this problem.⁵¹

The data may suffer from yet another defect in depicting the financial

Debtors are required to list all their debts so that the court can notify all creditors of a debtor's bankruptcy. There are no exceptions, and a debtor who fails to comply risks possible perjury charges and denial of discharge. ... So why is there no mortgage listed [in many cases]? Attorneys and judges explained that some debtors do not want their mortgage companies to hear about the bankruptcy. These debtors are generally current on their payments, and they do not want any trouble. Although few mortgage lenders would foreclose a mortgage held by someone now in bankruptcy if all payments were current, debtors still worry. Both the attorneys and the courts are indulgent enough on the point that some debtors passed through bankruptcy with their files uncorrected. And even when the homeowners correctly report their home mortgages, sometimes the mortgage company's name and address are deleted from the files or from the mailing list for the notifications to creditors. After all, if the debtor will keep paying this particular debt, why stir up trouble?

Sullivan, Warren & Westbrook, *As We Forgive Our Debtors*, *supra* note 3 at 134-35 [footnotes omitted].

We continue to wrestle with the under-reporting hypothesis. But in 2001, the multiple data sources make it possible to explore home ownership among the families in bankruptcy in greater detail. The 2001 questionnaire included questions about whether the debtor owned a home at the time of the bankruptcy filing. The court records alone showed a 50 per cent home ownership rate, but another 0.9 per cent of the debtors admitted they were homeowners at the time of filing, even though their court records listed no home and no home mortgage. Because these questionnaire and phone survey data are available for the first time in 2001, it is not possible to compare under-reporting in 2001 with possible under-reporting in earlier years.

⁵⁰ In Sullivan, "Fragile Middle Class", *supra* note 5, my co-authors and I speculated that the reported proportion of homeowners in bankruptcy in 1991 was understated in part because the home ownership rate in one of our sample districts, the Central District of Los Angeles, was quite low, perhaps because high mortgages made the debtors ineligible for *Chapter 13* to try to work out a payment plan with their lenders. Such families, we speculated, might be in *Chapter 11* or out of the bankruptcy system altogether. For a more detailed explanation of the 1991 differences among districts, see Sullivan, "Fragile Middle Class", *supra* note 5 at 337-38, nn. 24-28. We estimated that actual home ownership rates in 1991 might have been closer to 50 per cent. *Ibid.* at 204-05.

⁵¹ It is possible that the home ownership rates have remained fairly stable over time. Using the court record data only, we reported an estimated home ownership rate of about 52 per cent for the families filing for bankruptcy in 1981. Sullivan, Warren & Westbrook, *As We Forgive Our Debtors*, *supra* note 3 at 129. This report is remarkably close to the 2001 home ownership rate of 52.5. These two points in time offer some additional suggestion that the 1991 data reports may be unusually low.

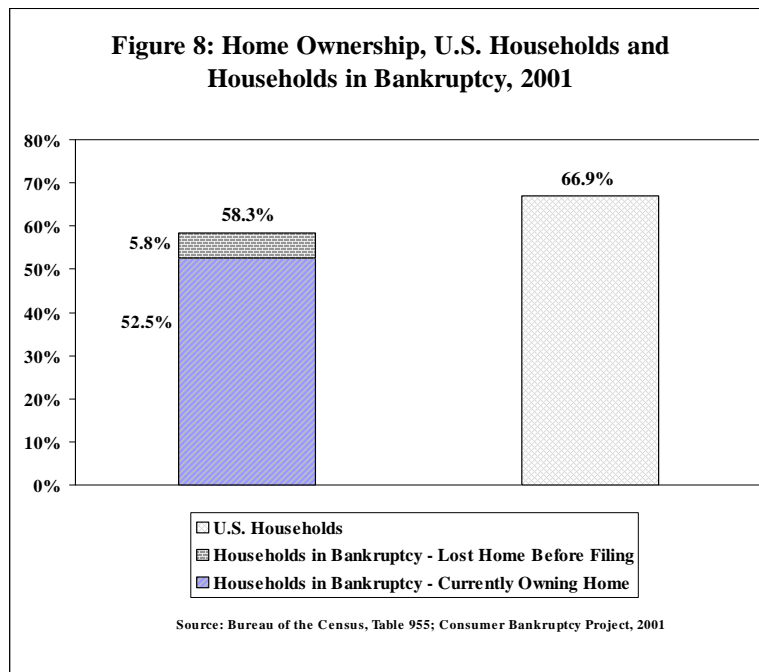
distress of American homeowners. In analyzing these data, it bears repeating that the bankrupt population is in severe financial distress. It is therefore possible that some former homeowners file for bankruptcy. After all, if these families have been struggling with job losses or medical bills long before filing, it is reasonable to hypothesize that some of them have already lost their homes before they seek help from a bankruptcy lawyer. If so, these former homeowners would represent a group of people who had taken the long steps to buy a home and passed through the same credit screens as current homeowners, acquiring whatever social status might accompany home ownership, even if they had lost their major asset by the time they filed for bankruptcy.

In trying to calculate the number of families in bankruptcy who had lost a home before bankruptcy it is essential to use a wide reach. Many people do not lose a home through a formal foreclosure process. When they have fallen behind on their payments, some troubled borrowers will deed the property back to the mortgage lenders to satisfy the outstanding mortgages. Others will sell their homes quickly to raise money, sometimes working with a broker who specializes in such distressed sales and sometimes selling it through ordinary channels but at a sharply reduced price. Looking only for debtors who lost their homes through formal legal proceedings would likely understate the number of families in bankruptcy that had given up their homes as part of their financial collapse.

Both the questionnaire and the telephone survey posed a broad question to the debtors: Within the past five years, have you owned a home that you lost or sold for financial reasons? This question identified people who, until fairly recently, had been homeowners and who had been squeezed out of their homes for financial reasons. One in every seventeen families in bankruptcy (5.8 per cent) indicated that they were no longer homeowners, but that they had lost their homes for financial reasons within the five years preceding their bankruptcies. Among the non-homeowners in the sample, the proportion is even higher. One in eight (12.2 per cent) of those who are not homeowners report that they were homeowners within the past five years, but that they lost the house for financial reasons.

When the current homeowners and the past homeowners are combined, the home ownership rate among the debtors in bankruptcy climbs to 58.3 per cent, as illustrated in Figure 8. This combination is not strictly comparable to the population generally because the proportion of non-bankrupt families who lost homes for financial reasons within the past five years is unknown. Even so, the high proportion of former homeowners in the bankruptcy sample raises the possibility that a larger number of families in bankruptcy may share—or may have once shared—more characteristics with homeowners in the general population.

The direct comparison of court records to court records suggests that the proportion of homeowners in bankruptcy rose substantially from 1991 to 2001, a difference that is statistically significant.⁵² But the differences in how the 1991 and 2001 data were collected and reported render this conclusion suspect. Based on the available data, it is not possible to know for certain whether the proportion of homeowners in bankruptcy has increased over time or has always been this high. At a minimum, however, it is possible to state with some confidence that the data do not support an inference that the composition of the



families in bankruptcy has shifted away from a significant representation of homeowners, even as the number of filings has risen.

The critical message from the 2001 data is that a substantial portion of the bankrupt population has accomplished one of the main goals of many middle-class families: home ownership. The financial reversals of these families mean that many have lost their homes, and even among those who are homeowners at the time of filing, many more may be headed back to renter status. But these people were once successful in taking an important step that signals solid middle-class values and accomplishments.

⁵² P = .001.

D. *The Combination: Education, Occupation, and Home Ownership*

The three indicia of membership in the middle class that I suggest here—education, occupation, and home ownership—are undoubtedly correlated.⁵³ People with better educations usually get better jobs; people with better jobs can afford to buy homes. Nonetheless, no one expects every member of the middle class to enjoy all three.⁵⁴ A banker who rents a high-rise apartment or a self-taught construction manager who builds their own business might be regarded as solidly middle class, even without purchasing a home or having a good education.

A sharp definition for middle-class status remains elusive, making it difficult to contrast the bankruptcy sample with the general population. The challenge in trying to separate the middle class from the chronically poor or the socially and economically elite confounds any effort to make a definitive quantitative assessment of the estimated number of middle-class people in bankruptcy. Nonetheless, there might be some benefit to looking at the three factors combined to see what proportion of the debtors in bankruptcy achieve at least one of these indicia of participation in the middle class.

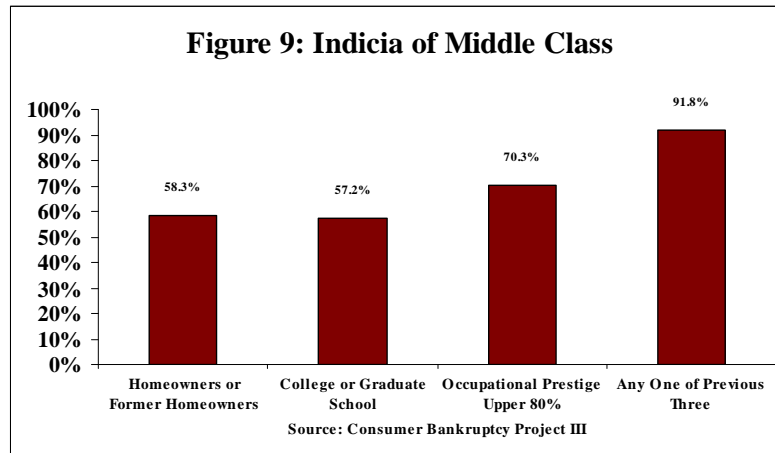
In order to accomplish this, it is necessary to create some dividing lines that would separate those who are more likely among the lower class—those living in chronic poverty with little immediate hope of relief—from those who more likely belong to the middle class. The divisions constructed here are arbitrary and without a clear referent in the general population; some readers might draw the boundaries differently. Moreover, the indicia of middle class undoubtedly overlap with the upper class, which means the sample might more accurately, but less felicitously, be referred to as the “not-lower-class.”

Without firm boundaries for class distinctions, the choice comes down to cursing the darkness or trying to light a single candle. I chose the candle, making some choices and constructing some variables that suggest the proportion of debtors who have accomplished at least middle-class status. The combination of factors is illustrated in Figure 9.

⁵³ “Education tends to be a good predictor of earning ability over the long term, and also of net worth.” Kennickell, Starr-McCluer & Surette, *supra* note 42 at 6.

⁵⁴ “Ownership [of homes from 1989-1999] grew strongly for families with incomes of \$100,000 or more . . .” *Ibid.* at 18.

As a rough estimate, I used “some college” as the educational cutoff, adding only those debtors to the middle-class mix who indicated they had some college, a college diploma, or some graduate work. This cutoff means that those who had only high school diplomas or no educational degrees at all were not included based on educational criteria. They might make it into the final grouping if their occupations or home ownership status qualified them, but they



were not counted among the middle class based on educational status alone.

I also used occupational prestige as a marker for participation in the middle class. As a rough estimate, I used a cutoff of the 20th percentile to suggest participation in the middle class. This means that I counted as middle class only those debtors who had occupations whose prestige scores would place them in the upper 80 per cent of all U.S. workers.⁵⁵ The consequence was that workers with occupations such as janitors (score = 16), farm foremen (score=19) and bartenders (score=20) were eliminated, along with forklift operators (score=29), retail sales clerks (score=29), and painters (score=30). This excludes some occupations with both good incomes and a fair claim to middle-class status, including many skilled construction workers, factory workers, and retail employees. Obviously, this is a very restricted estimate of participation in the middle class, perhaps at odds both with people’s self-identification and the estimates of their contemporaries.⁵⁶

⁵⁵ The cutoff for an occupational prestige score for the 20th percentile of the general population was 31; this means that only debtors with an occupational prestige score of 31 or higher qualified on occupational grounds for the combined “indicia of middle class.”

⁵⁶ If the 90th percentile in the U.S. population were used instead of the 80th percentile, the proportion of debtors qualifying would increase. An estimated 71.4 per cent of the debtors have jobs with an occupational prestige score of 31 or higher, placing them in the upper 80 per cent of occupational prestige scores among

Finally, I included all homeowners and former homeowners, treating these debtors as having made a significant long-term purchase and passed a credit screen at some time in the past.

Combining these criteria reveals an overwhelmingly middle-class group. According to this combination, 91.8 per cent of the bankruptcy sample is middle class.⁵⁷ Two-thirds of the cases (66.6 per cent) met two or more criteria, with nearly three in ten (27.4 per cent) meeting all three criteria. The data do not separate the middle class from an elite upper class, but they do suggest that the debtors are not concentrated among the chronically poor.

VI. CONCLUSION

The middle class in the United States remains loosely defined, with elusive borders that defy strict quantification. This modest effort to examine the families in bankruptcy to see how they compare with families across the United States suggests that the overwhelming majority of individuals filing for bankruptcy could stake a legitimate claim to middle-class status. While their current annual incomes might place them among the poor or barely at the margins of the middle class, other indicia of their social standing suggest otherwise. These families are overwhelmingly middle class.

These data reinforce the view that bankruptcy is a system that serves families on the way down. These individuals evidence substantial participation in activities that usually signal economic success—college, good jobs, and home ownership—but something has gone badly wrong that results in their financial collapse. The data on job difficulties suggest that layoffs, cutbacks, and business collapses constitute an important element of their collective failure; more than two-thirds of the debtors give one or more indications of a significant job problem before they file. Other reasons relating to medical debts, divorce, or their own inability to handle credit may also figure importantly in their financial demise.⁵⁸

Moss and Johnson offer compelling evidence suggesting that changes

Americans generally. An estimated 77.2 per cent of the debtors have jobs with an occupational prestige score of 27 or higher, placing them in the upper 90 per cent of occupational prestige scores of Americans generally. Using the 90th percentile on occupational prestige, the proportion of debtors having one or more of the three characteristics that suggest participation in the middle class would increase from 91.8 per cent to 93.3 per cent.

⁵⁷ The calculation is done by case, not individual by individual. For single filing individuals, of course, the case and the individual are the same unit of analysis. But for joint petitioners, the two are combined into a single household of unified status. So, for example, if the husband is a bank vice-president and the wife is employed as a day care assistant, this analysis treats the family unit as within the constructed variable for middle class based on the high prestige of his occupation even though her occupation would not qualify.

⁵⁸ These are other causes of bankruptcy we identified and discussed at length in Sullivan, "Fragile Middle Class", *supra* note 5.

in creditors' lending practices may have contributed to a rise in bankruptcy filings. The data presented here do not contradict their findings, but they suggest a possible modification to their causal explanation. Moss and Johnson's insight about the impact of changing creditor behaviour may be exactly right, but the focus may have been slightly off in terms of how those changes have affected the likelihood of a family filing for bankruptcy. Creditors have loosened lending standards and dived deeply into sub-prime debt, picking up two kinds of borrowers: those who are not creditworthy because they have low incomes and few resources, and those who are not creditworthy because, although they have (or had) decent incomes and some assets, they are already in deep financial trouble. Moss and Johnson posited that as creditors extended more sub-prime debt, they took on more debtors who had low incomes and who had previously been closed out of the credit market, and that such changes fueled the rise in bankruptcy. But these data suggest an alternative explanation. The rise in bankruptcy filings did not occur because lenders were seeking out the poorest segment of society, but because lenders were expanding credit to more troubled middle-class debtors.

The data presented here are consistent with a finding that the same people are going into bankruptcy as in 1991, at least as measured by income and social standing. Their numbers, however, have grown precipitously. In other words, the social composition of the group in bankruptcy has remained the same, even as the number of filers has nearly doubled. One possible explanation for this finding is that changes in lending standards, particularly the growth of sub-prime debt, have encouraged more middle-class families to take on excessive debt loads when they are already in some financial distress and to get further into economic trouble as they try to cope with financial reversals such as job losses or medical problems. A definitive analysis lies beyond the scope of these data, but these data frame the next logical question in the research: Are middle-class families taking on more sub-prime debt, with disastrous financial consequences?

These data make it clear that the sharp rise in bankruptcy filings cannot be attributed to a large number of chronically poor debtors—people with no skills and no prospects—who end up in financial collapse. The data presented here make it clear that, whatever their current economic circumstances, the families in bankruptcy share many of the same educational, occupational, and home buying experiences as other middle-class Americans. Their deep financial distress suggests a growing reason for concern about these families, who make up the heart of America.