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*Who Uses Chapter 13?**

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I. INTRODUCTION

BANKRUPTCY IN THE United States is reserved by the constitution to federal courts, and Congress makes bankruptcy laws. An administered payment option in bankruptcy has been available officially for over 60 years, and is now called Chapter 13. This option did not originate with Congress, however; instead, the administered payment choice in bankruptcy developed through the extra-statutory actions of a bankruptcy judge (then called a referee) in Northern Alabama. In its history the administered payment plan has evolved from a judicial improvisation to the preferred policy of congressional legislators.

In the impoverished South of the early 20th century, indebtedness was the common lot of many ordinary folks.¹ ‘Straight’ bankruptcy, or a liquidation bankruptcy (now called Chapter 7), required giving up all non-exempt property to be sold and divided pro rata among creditors. Seeing that many debtors had no assets worth selling for the benefit of their creditors, but did have steady paychecks, a special bankruptcy referee in Birmingham, Alabama developed a technique whereby a fixed amount of the debtor’s paycheck would be paid to a trustee each month until creditors had received all or an acceptable part of their debts back.² This approach was informally called a wage-earner plan. Alternatively, debtors such as farmers, who did have assets, could not afford to sell their assets if they were to continue to have a livelihood, and so the

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¹ G Jaynes, *Branches Without Roots: Genesis of the Black Working Class in the American South, 1862–1882* (New York, Oxford University Press, 1986).

² See generally TW Dixon and DG Epstein, ‘Where Did Chapter 13 Come From and Where Should It Go?’ (2002) 10 *American Bankruptcy Institute Law Review* 741.

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wage-earner plan also provided them with a means of keeping their property while they repaid their debts. The new system spread to Tennessee, parts of Mississippi and Georgia, and North Carolina.³

The wage-earner approach became national when Congress recognised the wage-earner plan as Chapter XIII in the Bankruptcy Code of 1938. In succeeding legislation, the terminology was changed to Chapter 13. An important part of the history of bankruptcy reform legislation since that date has been tinkering with Chapter 13. In the course of this tinkering, Congress apparently became convinced that Chapter 13 was a more responsible way for consumers to handle their debt than a liquidation in Chapter 7, and each successive iteration of legislation appeared to be designed to encourage or coerce more debtors to enter the programme.

All forms of bankruptcy require the debtor to provide the court, under penalty of perjury, with detailed information concerning the debtors' income, assets and debts, together with a list of creditors and the answers to numerous questions (for example, 'Have any financial records been lost?'). In a Chapter 13 bankruptcy, a debtor must also present to the court a personal budget that lists all necessary expenses and monthly income, and a plan that specifies the amount of money that must be paid every month to a court-appointed trustee.⁴ This sum is supposed to equal the disposable income of the debtor, or that portion of income that is not required to meet basic necessities of food, shelter, clothing and job-related expenses. The trustee is entitled to a percentage of the monthly payment as compensation for administrative expenses. If the court approves ('confirms') the plan, the trustee receives the payment every month and makes repayments to the creditors as specified by the plan. If a debtor has paid the court-ordered sum for every month in the confirmed plan, then any remaining unsecured debt is discharged (that is, forgiven.)

Given its informal origin, the original wage-earner plan was subject to some potential abuses. The first was the length of the plan, a potential abuse of the debtor. The earliest wage-earner plans did not necessarily have a set term of

³ These states also had historically low levels of property exemptions, so that creditors in a Chapter 7 could take most of what a debtor owned. An interesting fact in the evolution of Chapter 13 was its widespread acceptance in states such as Texas, which have historically had generous exemptions. The fact that Chapter 13 flourishes in both low-exemption and high-exemption states suggests that exemption levels alone are not the most important determinant of the debtor's choice to use Chapter 13. There is also a private equivalent to Chapter 13 offered through consumer credit counselling agencies. Credit counsellors, with the voluntary consent of the creditors, help debtors devise repayment plans. The costs are usually borne by both the creditors and the debtors, and sometimes the local unified charitable campaign also contributes some of the costs of running the agency. We have not found credible information on trends in the use of consumer credit counselling or in the establishment of private repayment plans, nor do we know the success of these plans. That there is a high volume of work is evident in most cities; individual counsellors tell us that the agencies have been overworked for at least a decade. It is conceivable that the volume of these private Chapter 13s has grown to such an extent that the data in Table 1 are potentially misleading.

⁴ Chapter 13 is limited to natural persons. Because the Chapter 13 debtors might have been in business, some bankruptcy filings are classified as 'business 13s,' but this terminology does not imply that the debtor is a corporate entity.

1 months or years, and stories were circulated about debtors (usually African
2 American) who had been ‘on the trustee’ for many years. When Congress
3 reformed bankruptcy in 1978, Chapter 13 was limited to a period of 36 to 60
4 months, and the court specified the time period when it confirmed the plan.

5 A second potential abuse was the amount that had to be repaid, a potential
6 abuse of the creditors. According to the 1978 legislation, the amount repaid was
7 supposed to be more than the unsecured creditors would get from a liquidation
8 from the sale of assets (that is, a Chapter 7 bankruptcy). Because many debtors
9 have no assets worth selling, meeting the positive dividend requirement required
10 very little repayment. In our 1981 study we found a wide range of acceptable
11 repayment practices, from 100 cents repaid on every dollar of debt to only one
12 or two cents repaid on the dollar. Local judges and the local bar played a major
13 role in deciding how much repayment was enough. Congress moved to close this
14 loophole in 1984, when additional legislation specified that the amount to be
15 repaid every month must be the debtors’ disposable income—that is, the
16 amount of income left over after all necessary expenses have been met.⁵
17 Although this provision ensures that creditors will receive at least some repay-
18 ment on the dollars owed if the minimal budget permits it, it also means that the
19 debtor will have no income left over for savings, emergencies or any non-
20 essential purchase. Even with this provision, there are some zero-payment plans
21 for the unsecured creditors.

22 Besides closing loopholes, however, Congress has seemed intent on persuading
23 more debtors to enter Chapter 13. As early as 1978, Congress tried to make
24 Chapter 13 more attractive by broadening the discharge available in it. Some debts
25 that could not be discharged in Chapter 7 could be discharged in Chapter 13.⁶ By
26 1984, Congress had made the law still more insistent, and debtors’ attorneys were
27 required to explain to debtors the difference between Chapter 7 and Chapter 13.
28 Substantial abuse provisions were also added to Chapter 7,⁷ with the intent of
29 forcing some debtors either into Chapter 13 or out of bankruptcy altogether.

30 In the 1990s, there was an explosion in consumer bankruptcies, with the num-
31 ber of annual filings increasing from about 330,000 at the beginning of the
32 decade to 1.3 million by the end of the decade. Given the sustained economic
33 prosperity of the same period, many legislators and pundits concluded that
34 consumers must be abusing bankruptcy.⁸ The demand for new bankruptcy
35 regulations grew, fueled by a well-organised—and well-financed—campaign by
36 the creditor community. In 1994, Congress put off the credit community with
37 a few minor changes, including a provision to establish a blue-ribbon review
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39 ⁵ 11 USC §1325(b).

40 ⁶ 11 USC §1328 (a).

41 ⁷ 11 U.S.C. §707(b).

42 ⁸ But see T Sullivan, E Warren, and JL Westbrook, *Fragile Middle Class: Americans in Debt*
43 (Yale University Press, New Haven, CT, 2000) [Fragile Middle Class]; E Warren, ‘The Bankruptcy
44 Crisis’ (1998) 73 *Indiana Law Journal* 1079 (for the proposition that the increase in filings is not due
to abuse).

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commission for which the credit industry had lobbied. The industry sought a 'means test' that would screen debtors' access to Chapter 7, along with a host of smaller changes that would make access to the bankruptcy system more difficult. The National Bankruptcy Review Commission accepted the premise that debtors should be encouraged to file for Chapter 13 if they were able to repay, but it did not support the industry's demands since it also found that the vast majority of debtors could pay little and that there was scant evidence of system-wide abuse in Chapter 7 filings. The credit industry has carried its fight to Congress, where its proposals are still pending.⁹

Over the years, the congressional strategy has been to increase the relative proportion of filings in Chapter 13 while nevertheless making the Chapter 13 experience fairly unpleasant. At the present time, a debtor in Chapter 13 faces an austerity programme for up to five years, in which only necessary expenses are allowed and all additional income is paid to the Chapter 13 trustee.¹⁰

II. PREVIOUS RESEARCH

Two sets of findings dominate the previous research on Chapter 13. The first finding is that there remains a pronounced geographic skew in the use of Chapter 13.¹¹ Despite efforts by Congress over the past 23 years, the use of Chapter 13 remains concentrated in the southern states, where it began, and in a few districts elsewhere. This geographic concentration manifests a local legal culture, in that certain local judges and attorneys appear to favour the use of Chapter 13. Strong evidence that local legal culture influences chapter choice is that the use of Chapter 13 varies *within* states as much as it does *between* states. In Ohio, for example, the use of Chapter 13 is much more prevalent in the Southern District than in the Northern. With a single state, there is no variance in the formal law applicable to the case that could explain this variation. These patterns of geographic variation have persisted for at least 20 years.¹²

⁹ For a fuller discussion of the Commission and subsequent congressional debate, see MB Jacoby, 'Generosity *v* Accessibility: Bankruptcy, Consumer Credit, and Health Care Finance in the US' in this volume.

¹⁰ The extra-statutory aspects of Chapter 13 persist, however, in some additional local efforts at 'debtor rehabilitation.' In some districts, the debtor is required to attend adult education programmes on personal finance and budgeting. At least one judicial district has begun a formal programme to reintroduce debtors to the credit community at the successful completion of their Chapter 13 plan. For a fuller discussion, see J Braucher, 'Debtor Education in Bankruptcy: The Perspective of Interest Analysis' in this volume.

¹¹ See T Sullivan, E Warren and J L Westbrook, 'The Persistence of Local Legal Culture: Twenty Years of Evidence from the Federal Bankruptcy Courts' (1994) 17 *Harvard Journal of Law & Public Policy* 801 [Persistence of Local Legal Culture]; E Flynn and G Bermant, 'Measuring Projected Performance in Chapter 13: Comparisons Across the States' (2000) 6 *American Bankruptcy Journal* 22; E Flynn and G Bermant, 'Sources of Variability in Chapter 13 Performance' (2001) 3 *American Bankruptcy Institute Journal* 20.

¹² Persistence of Local Legal Culture, *ibid*; WC Whitford, 'Has the Time Come to Repeal Chapter 13?' (1989) 65 *Indiana Law Journal* 85.

1 The second finding is that the operation of Chapter 13 does not appear
 2 to work as Congress intended. The ideological marketing of Chapter 13 appears
 3 to be in sharp contrast with the practical realities facing the debtors. Several
 4 studies have shown that only one-third of debtors who initially file in Chapter
 5 13 eventually complete their plan and receive a discharge.¹³ Although there is
 6 substantial concurrence concerning the one-third success rate, there are dis-
 7 agreements about whether this fraction is high or low and whether it represents
 8 a high level of success or a dismal record of failure. The argument for success is
 9 that it was better for the debtor to have attempted the honourable act of repay-
 10 ment than not even to try, and the limited period of repayment may nevertheless
 11 have offered enough time to cure mortgage arrears and receive some respite
 12 from bill collectors through the automatic stay. The argument for failure is that
 13 the debtor expends too many resources for too little benefit.¹⁴ Further, many
 14 Chapter 13s were doomed from their initiation. Many plans were predictably
 15 unsuccessful because the budget presented to the court implicitly assumes both
 16 that income will not fall and that expenses will not rise, assumptions that are
 17 rarely correct.

18 During the 1990s, in particular, as much as one-fifth of the US labour market
 19 found itself in contingent employment. By 2000, one-fourth of all US workers
 20 had been with their current employers for less than 12 months.¹⁵ Numerous
 21 rounds of downsizing, ‘job shedding,’ industrial restructuring and plant clo-
 22 sures affected workers in firms of all size. Both white-collar and blue-collar
 23 workers were affected. As many as two-thirds of all bankrupt debtors report a
 24 job problem—layoff, cutback or unemployment—as a factor in the decision to
 25 file bankruptcy.¹⁶ The unpredictability of employment situations led inevitably
 26 to income fluctuations that could wreck any tight budget, but especially a
 27 Chapter 13 budget that does not leave so much as a dollar of flexibility.
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29 ¹³ See T Sullivan, E Warren and JL Westbrook, *As We Forgive Our Debtors: Bankruptcy and*
 30 *Consumer Credit in America* (New York, Oxford University Press, 1989) at 216 [As We Forgive Our
 31 Debtors]; J Wannamaker, ‘The Washington Beat’ (Oct. 1993) 6 *National Association of Chapter*
 32 *Thirteen Trustees Newsletter* 7; SF Norberg, ‘Consumer Bankruptcy’s New Clothes: An Empirical
 33 Study of Discharge and Debt Collection in Chapter 13 Cases’ (1999) 76 *American Bankruptcy*
 34 *Institute Law Review* 415 [Consumer Bankruptcy’s New Clothes]. But see ML Girth, ‘The Role of
 35 Empirical Data in Developing Bankruptcy Legislation for Individuals’ (1989) 65 *Indiana Law*
 36 *Journal* 17. Girth studied only post-confirmation cases. Our earlier study, *As We Forgive Our*
 37 *Debtors*, showed that about one-third of the cases failed before confirmation. If Girth studied a pop-
 38 ulation in which one-third of the initial filings had already been removed from the sample because
 39 they failed early, then her data falls right into line with all other studies. In addition to these stud-
 40 ies, two unpublished working papers by Bork and Turk address the geographic differences in filing
 41 rates and the termination states of Chapter 13 cases. See M Bork and SD Turk, *Bankruptcy*
 42 *Statistical Trends, Chapter 13 Dispositions* (unpublished working paper, on file with the
 43 Administrative Office of the US Courts in Washington).

44 ¹⁴ WC Whitford, ‘The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer
 Protection, and Consumer Protection in Consumer Bankruptcy’ 68 (1994) *American Bankruptcy*
Law Journal 397 [Ideal of Individualized Justice].

¹⁵ United States Bureau of Labor Statistics, United States Department of Labor 00–245,
 ‘Employee Tenure in 2000sd’ (News release of 29 August 2000).

¹⁶ *Fragile Middle Class*, above n 8.

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Moreover, the Chapter 13 budgets may not take into account contingencies such as increased expenditures. The normal ageing of a family, especially a family with small children, means that over a period of five years expenses are likely to increase. For a family of relatively low income—below \$36,800—annual expenditures for raising a child rise from \$6,080 annually for a toddler under the age of two to \$7,150 for a child aged 12–14.¹⁷ Bankruptcy judges find themselves trying to decide whether orthodontia or college tuition constitute necessary expenses. A Chapter 13 debtor who finds herself without medical insurance may discover that an automobile accident or an illness produces unanticipated medical expenses. Even if she has medical insurance, the time off from work may result in lower wages.¹⁸ In addition, one might suppose that debtors who find themselves in bankruptcy are probably not sophisticated in developing and using budgets, let alone austerity budgets.¹⁹ There is no reason to believe that problems such as employment instability, rising family costs, extended health care risks and financial naiveté have been solved simply because the debtor declared bankruptcy.

As a result of these difficulties of the debtors, the need to repay secured creditors, and the tightness of the budgets to begin with, the amount of money paid to unsecured creditors is relatively small.²⁰ The frequent charge that debtors abuse bankruptcy by filing again and again is partially explained by the fact that debtors who fail in Chapter 13 often file again in Chapter 7 still seeking relief from the same debts.²¹ They may have been better advised to file Chapter 7 initially. Others try Chapter 13 multiple times, dropping out when their incomes fall or their expenses jump, but re-filing when their finances seem steadier or their creditors have pressed them harder.

III. RESEARCH QUESTION AND HYPOTHESIS

The fraction of all non-business bankruptcy filings that are in Chapter 13 has changed relatively little since 1981, but the absolute numbers of Chapter 13 filings has risen nearly five-fold since 1981. Given the implicit Congressional policy directive to increase the use of Chapter 13, we want to know whether any part of this increase represents debtors who would have filed in Chapter 7 were it not for encouragement to use Chapter 13. One way to test for such a shift to

¹⁷ United States Bureau of the Census. *Statistical Abstract of the United States* 120th edn (Government Printing Office, Washington, 2000) at 462.

¹⁸ M Jacoby, T A Sullivan and E Warren, 'Rethinking the Debates Over Health Care Financing: Evidence from the Bankruptcy Courts' (2001) 76 *New York University Law Review* 375 [Rethinking the Debates].

¹⁹ To make matters worse, we have discovered in our studies that judges sometimes approve budgets that show more expenses than income, thus making it clear from the outset that the plan cannot be completed.

²⁰ Ideal of Individualized Justice, above n 14; Consumer Bankruptcy's New Clothes, above n 13.

²¹ As We Forgive Our Debtors, above n 13, at 191; SL DeJarnett, 'Once is Not Enough: Preserving Consumers' Rights to Bankruptcy Protection' (1999) 74 *Indiana Law Journal* 455.

Chapter 13 is to ask whether the characteristics of debtors choosing Chapter 13 have changed over time? Any effect of the encouragement to file in Chapter 13 is not likely to be distributed evenly across different demographic groups. A finding of substantial differences in Chapter 13 filing rates over time within particular demographic groups would suggest that the effort to encourage filing in Chapter 13 has had some effect. A finding of little demographic change in Chapter 13 filing rates would suggest that the considerations for choosing Chapter 13 have remained static over time. Those considerations will be discussed later and are hereinafter referred to as the 'legal' criteria or variables.

Table 1 shows the proportion of filings in Chapter 13 for 19 years. At the beginning of this time period, the 1978 reforms to encourage the use of Chapter 13 had just taken effect. By the end of this time period, the encouragement and threatened coercion to use Chapter 13 were in full bloom. The remarkable story of this table is simply its stability; in every year, the proportion of cases filed in Chapter 13 varies narrowly between 27 and 32 per cent. There is no evident trend. The fact that there were many more Chapter 13 cases in 1999 than there

Table 1 Chapter 13 Cases, Non-Business and Business, with Proportion of all Non-Business Cases that are Chapter 13, 1981–2001

Year	Non-business Chapter 13's	Business Chapter 13's	Total non-Business Cases	Non-business Chapter 13's as a % of all non-business cases
1981	81,913	4,865	312,914	26.2%
1982	92,689	6,016	311,443	29.8
1983	94,455	7,746	304,916	31.0
1984	84,535	6,823	282,105	30.0
1985	91,328	7,124	297,885	30.7
1986	112,772	7,954	401,575	28.1
1987	130,189	11,999	495,567	26.3
1988	148,338	7,607	549,612	27.0
1989	175,139	8,089	616,753	28.4
1990	208,666	8,802	718,107	29.1
1991	251,883	10,123	872,438	28.9
1992	254,138	11,439	900,874	28.2
1993	241,464	10,309	812,898	29.7
1994	240,639	9,238	780,455	30.8
1995	276,225	10,363	874,642	31.6
1996	344,092	11,031	1,125,006	30.6
1997	391,930	11,095	1,350,118	29.0
1998	389,398	8,221	1,398,182	27.9
1999	376,311	5,903	1,281,581	29.4
2000	378,400	5,903	1,217,927	31.1
2001	419,750	5,542	1,452,030	28.9

Source: Administrative Office of the US Courts, Annual Reports, 1981–2001

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had been in 1981 was a function of the overall increase in bankruptcies alone, and not an evident shift in debtor preferences.

The stability indicated in Table 1 provides initial evidence for the alternative hypothesis: the factors influencing the choice of chapter have changed little over time, and the demographic composition of Chapter 13 will therefore be stable. In this paper, we will go behind this basic data to examine in more detail the characteristics of bankrupt debtors choosing Chapter 13 in 1981, 1991 and 1999. We are looking for evidence of demographic change in the population of Chapter 13 filers.

IV. DATA AND METHODS

The data reported here come from three studies of consumer bankruptcy that we have conducted. Our original study, drawn from cases filed in 1981, consisted of systematic samples of debtors in the 10 federal judicial districts located in Illinois, Pennsylvania and Texas. The data were limited to variables that could be collected from the records filed with the court. The court asks for little demographic information, and so one limitation on the present paper is the availability of variables from 1981.²²

The 1991 study used questionnaires answered by bankrupt debtors at the time that they appeared at the bankruptcy court for the required meeting with creditors. The same districts in Illinois, Pennsylvania and Texas were used, but the states of California and Tennessee were added. For one district in each state, the questionnaire data were enriched with data from the court files.²³

The 1999 study was based solely on questionnaires that were collected at the time of the required meeting with creditors. One district in each of the previous states was used, and additional districts in Ohio, Kentucky and Wisconsin were added. The questionnaire itself was closely modelled on the 1991 questionnaire, with some additional questions concerning household composition and reason for bankruptcy.²⁴

The advantages of these three studies are that they represent the best available multi-district, multi-state repeated analyses of consumer bankruptcies. The re-use of a core group of five districts in each study helps provide a rough control for the operation of a local legal culture. We eliminated outliers in each sample by using the outlier characteristics identified in 1981 and then inflating them by the Consumer Price Index to eliminate cases with similar, extreme values in 1991 and 1999.²⁵

²² See T Sullivan, E Warren and J L Westbrook, 'Laws, Models, and Real People: Choice of Chapter in Personal Bankruptcy' (1989b) 13 *Law & Social Inquiry* 661 at 342ff (for details about this data set) [Laws, Models, and Real People].

²³ See *Fragile Middle Class*, above n 8 at 262ff, for details about this study.

²⁴ See *Rethinking the Debates*, above n 18, for a more detailed discussion about this study.

²⁵ See *Laws, Models, and Real People*, above n 22, at 77 (n 2) for details.

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1 if married and 0 otherwise. Although all joint filers are married, not all married people file jointly.²⁸ We would also expect married filers to be more likely to file in Chapter 13, even if they do not file jointly.

We expect that women filing alone will be more likely to file in Chapter 7, so that there will be a negative correlation with filing in Chapter 13. We base this expectation on the fact that women in bankruptcy are more likely to give family reasons for their bankruptcy than to give economic reasons, and thus their expectations for an economic recovery and repayment possibilities may be lower.

Lawyers have told us that their Hispanic clients prefer to file in Chapter 13 because they see it as the more honourable route in bankruptcy. Although our 1981 study did not support this hypothesis, we have not to date tested the hypothesis for 1991 and 1999.

We anticipate that total debt will make a debtor less likely to file in Chapter 13, because the likelihood of repayment is lower, and we also anticipate that owning a home will make a debtor more likely to enter Chapter 13 to try to keep that valuable asset.²⁹

Finally, because Texas debtors have a long history of disproportionately choosing Chapter 13, especially in the districts we have studied in 1991 and 1999, we have hypothesised that there will be a positive correlation between living in Texas and filing in Chapter 13.³⁰

VI. FINDINGS

Table 2 shows the zero-order Pearson correlation coefficients between filing in Chapter 13 and the preceding variables. In this table, a positive value indicates that the variable is associated with filing in Chapter 13, while a negative value indicates that the variable is associated with filing in Chapter 7. An initial evaluation of Table 2 suggests that our preceding expectations were correct and that demographic variables are useful in predicting chapter choice. As we will see below, however, this initial evaluation is fundamentally misleading and the data contain several hidden surprises.

In 1981, all of the variables are in the predicted direction and only total debt fails to achieve significance. (Joint filing is barely significant at $p = 0.054$.) By 1991, joint filing had changed direction so that it was negatively associated with filing in Chapter 13, and the coefficients for female and Hispanic had gained

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numbering?

²⁸ J Braucher, 'Lawyers and Consumer Bankruptcy: One Code, Many Cultures?' (1993) 67 *American Bankruptcy Law Journal* 501.

²⁹ Surprisingly, these two variables are not collinear, even though they might seem to be measuring the same concept; the zero-order correlations between being married and joint filing decline from .798 in 1981 to .756 in 1991 to .718 in 1999.

³⁰ Homeownership, although positively correlated with total debt ($r=0.34$ in 1981, $r=0.36$ in 1991, $r = 0.30$ in 1999) is nevertheless not collinear with total debt.

1 Table 2 Zero-order Correlation Coefficients between Chapter and Specified Variables
 2 1981, 1991 and 1999 (Dependent variable is Chapter choice, where Chapter 13 = 1)

3 Variable	1981	1991	1999
4 Joint	.050+	-.105**	.028
5 Married	.077**	.113**	.063*
6 Female	-.044+	-.131***	.002
7 Total debt	-.005	-.062	-.041
8 Owns home	.235***	.341***	.243***
9 Hispanic	.054*	.104**	.015
10 Texan	.097***	.180***	.200***

11 Source: Consumer Bankruptcy Projects. See text. Outliers removed.

12 Significance:

13 + = .05 < p ≤ .10

14 * = .01 < p ≤ .05

15 ** = .001 < p ≤ .01

16 *** = p ≤ .001

17
 18 greater significance. In general, however, the correlations for 1991 looked fairly
 19 similar to those of 1981.

20 The large changes came between 1991 and 1999. In particular, three of the
 21 four demographic variables had lost significance. By 1999, joint filing was again
 22 positive but no longer significant. The significance of married status had
 23 declined. Being female lost significance and had become positive. Being
 24 Hispanic lost significance.

25 In all three years, the legal variable total debt was negatively correlated but
 26 not significant, and homeownership was strongly significant and positive. The
 27 local legal culture variable was also positive and strongly significant. Table 2
 28 seems to suggest, then, that the demographic characteristics of the debtors
 29 might have broadened a bit but remained less important than the other
 30 variables.

31 Table 3 shows the standardised regression coefficients for ordinary least
 32 squares (OLS) regression equations in which the chapter of filing is the depen-
 33 dent variable. Because this dependent variable is not very skewed in our sam-
 34 ples, we have used OLS rather than logistic regression for clarity of exposition.
 35 The standardised coefficients may be compared with one another in magnitude
 36 for an indication of how strong the influence of each variable is once all the
 37 other variables in the equation have been taken into account. The positive coef-
 38 ficients indicate a tendency to file in Chapter 13, controlling for all the other
 39 variables, and a negative coefficient indicates a tendency to file in Chapter 7,
 40 controlling for all the other variables. The value of Table 3, compared with
 41 Table 2, is that Table 3 can isolate the effect of each variable while controlling
 42 for the effect of the others.

43 The F tests indicate that each of the models is significant, or to put it differ-
 44 ently, each model is a 'good fit' for the data analysed. The R-squared coefficient

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Table 3 Predicting Chapter Choice: Standardised Regression Coefficients for 1981, 1991 and 1999 (Dependent variable is Chapter choice, where Chapter 13 = 1)

Variable	1981	1991	1999
Joint	-.071+	.076	-.056
Married	.041	.054	.061
Female	-.043	-.065	.007
Total debt	-.137***	-.098**	-.101**
Owns home	.264***	.311***	.221***
Hispanic	.026	-.087*	-.016
Texan	.101***	.125**	.166***
R ²	.08	.15	.09
F	20.1***	16.67***	16.12**
N	1539	2452	1506

Source: Consumer Bankruptcy Projects. See text. Outliers removed.

Significance:

+ = .05 < p ≤ .10

* = .01 < p ≤ .05

** = .001 < p ≤ .01

*** = p ≤ .001

indicates that relatively little of the choice of chapter is explained by these seven variables—only 15 per cent in 1991, for example, is explained by these seven variables.

As we might have suspected from Table 2, the largest single effect is homeownership, which is strongly positive and very significant in every year. Regardless of other influences, homeowners choose Chapter 13, very likely because the home is an asset that they are eager to keep. The second greatest influence is being a Texan, our proxy for local legal culture. Even controlling for homeownership, Hispanic identity and so on, the Texas filers are significantly more likely to file in Chapter 13. The third strongest indicator is the remaining legal indicator, total debt, which is negatively associated with Chapter 13, although it loses some of its significance in 1991 and 1999 compared with 1981. On the other hand, considering that total debt is *never* significant in Table 2, it is surprising that it has now become the third strongest predictor of chapter of filing. In the case of this total debt, the predictive value is negative: a debtor is less likely to file in Chapter 13, and thus more likely to file in Chapter 7, the greater the total debt. Again, total debt is considered here once homeownership has already been taken into account.

Once we have controlled for all of the legal variables, the demographic variables lose their significance. Joint filing is only barely significant in 1981, and in the wrong direction from the hypothesis (that is, more likely to file in Chapter 7). Hispanic ethnicity attains significance only in 1991, and again not in the hypothesised direction. Once residence, homeownership and debt are controlled, Hispanics are more likely to file in Chapter 7. Demonstrating that mar-

1 ital status and joint filing are not the same thing, the two variables take on dif-
2 ferent directions in both 1981 and 1999, with joint filing negatively associated
3 and being married positively associated with Chapter 13, but marital status
4 never attains significance. Gender never attains significance either, although its
5 direction becomes weakly positive in 1999, indicating a somewhat greater (but
6 statistically insignificant) likelihood for women to file in Chapter 13 when all
7 other variables are taken into account.

8 So despite the fact that every demographic variable was significantly associ-
9 ated with the choice of Chapter 13 in Table 2, these effects are completely
10 washed out by the more legally significant variables of total debt, homeownership,
11 and residence (our proxy value for local legal culture).

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14 VII. DISCUSSION

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16 How did the demographic variables that were significant in Table 2 become
17 *insignificant* once the legal variables were controlled? One answer is that the
18 demographic variables are associated with the legal variables in some fairly pre-
19 dictable ways. Women have less total debt, they are less likely to own homes and
20 they are less represented in our Texas samples. Hispanics have less total debt
21 and are more likely to be homeowners. Married people have more total debt, are
22 more likely to own homes and are more likely to be in our Texas samples.

23 The legal variables are substantively more significant and better predictors of
24 the choice of bankruptcy, and this has been true consistently over time. From the
25 point of view of how the bankruptcy system works, this finding indicates that
26 attorneys are using reasonable criteria of saving assets (homes) and reasonable
27 repayment possibilities (total debt) in advising their clients to choose Chapter
28 13.³¹ There is little evidence of demographic profiling. The local legal culture
29 appears to be alive and well, with Chapter 13 more attractive in some jurisdic-
30 tions even when assets and debt have been controlled.

31 To go a bit further, however, the data could refute the speculation that the
32 recent increases in filings were due to abuse. The data indicate that the debtors
33 not choosing Chapter 13 are realistically less likely to be able to pay, and thus
34 they are not good candidates for Chapter 13. This conclusion comes from the
35 negative effect of total debt—those with greater debt are less likely to be able to
36 pay, and they are entering Chapter 7. Similarly, those with lower levels of debt
37 and therefore more capable of repayment are entering Chapter 13.³²

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40 ³¹ Texas residence was not collinear with Hispanic ethnicity; in fact, in 1991 there was a negative
41 correlation between filing in Texas and self-reporting Hispanic identity. In both 1981 and 1999, the
42 correlation between filing in Texas and being Hispanic was positive.

43 ³² There is good evidence that the debtors filing in Chapter 7 have little ability to repay. See M B
44 Culhane M White, 'Taking the New Consumer Bankruptcy Model for a Test Drive: Means-Testing
for Chapter 7 Debtors' (1999) 7 *American Bankruptcy Institute Law Review* 27.

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Realistically, if members of Congress want to increase the proportions of debtors filing voluntarily in Chapter 13, the number of options appears limited.

1. Require debtors who enter bankruptcy to file in Chapter 13 at lower levels of total debt than they do customarily. The effect of this effort might be to increase the fraction of Chapter 13 filings, but it would probably discourage the total number of bankruptcy filings.
2. Encourage more Americans to become homeowners, recognising that those who have a greater stake in the community are more likely to stay engaged, including the long-term engagement required to repay creditors.
3. Seek to spread the local legal culture that encourages Chapter 13.

It is not clear how one would best enact the third option. Perhaps the current chorus of exhortation and the threat of future coercion is designed to do just that. In the absence of such an effort, it appears that those who choose Chapter 13 will continue to do so on the basis of what we have called legally relevant variables.

Finally, it is worth asking whether the goal of placing an ever-increasing number of bankrupt debtors into Chapter 13 repayment plans is desirable. The two-thirds failure rate in Chapter 13 suggests that too many families with too many problems are already trying plans that have no hope of success. If the goal of the consumer bankruptcy system was restated to focus on successful sorting between those who can repay and those who cannot and sorting them in Chapter 13 repayment plans and Chapter 7 liquidations respectively, then the ideal proportion of Chapter 13 filings might be lower—not higher. At a minimum, these data suggest that a serious re-examination of the current efforts to press more debtors into Chapter 13 should be undertaken before consideration of the plan in the proposed legislation to spend significant court resources to try to drive even more debtors out of Chapter 7. In any case, these data confirm that in nearly 20 years of pressure from Washington, the mix of Chapter 13 debtors has not changed appreciably, suggesting that both the operation of the system and the influences that can be exercised from Washington are both poorly understood and ineffectively implemented.