Debt's Grip

Risk and Consumer Bankruptcy

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Debt's Grip: Risk and Consumer Bankruptcy

Chapter 1: Filing Bankruptcy and the Bankruptcy System

> *I am totally broke and then when you go to talk to the attorney you find that even though you are broke they need $4000 to file bankruptcy. So it's just a circle of hell. But I'm 69 1/2 and I don't want to leave my family to have to pay my debts if and when I die.*
>
> — Retired, divorced woman who filed chapter 13

This book is not about the bankruptcy system as such. Rather, it looks to the people who filed bankruptcy to illuminate what it means to live in financial precarity. Nonetheless, everyone in the book decided to file bankruptcy, a choice that brought legal and economic consequences even if sociological and psychological factors also played an important role in the decision. To put the data in context, this chapter explains those consequences.

Bankruptcy experts might cavil with the broad legal outline that follows. It is not a treatise on bankruptcy law. It is meant to provide the necessary background for nonexperts. That background includes data about how the system works in practice. Those who are experts in the field will learn from these data. First, we discuss how people find their bankruptcy attorneys. Throughout, we include details about the system, such as filing rates between chapters, pro se filing rates, and outcomes.

The United States Constitution empowers Congress to pass "uniform Laws on the subject of Bankruptcies."[1] Bankruptcy is thus federal law. Generally speaking, state law will determine what rights the filer brings to bankruptcy. For example, if the debtor owns land, state law will determine the debtor's rights in that land. Similarly, if the debtor claims to have a defense to a debt such as breach of warranty or fraud, state law will determine the validity of those defenses. Bankruptcy law distributes whatever the debtor might have to creditors using these state law outcomes.

A specialized set of federal courts hear bankruptcy cases, not surprisingly these are called "U.S. Bankruptcy Courts." Every federal judicial district has a U.S. Bankruptcy Court. This book uses data from the ninety-one judicial districts in the fifty states and the District of Columbia. Within most every judicial district, there are several locations in which the court sits and hears cases.

Bankruptcy courts hear the chapter 11 cases of the country's largest corporations and the much smaller cases of households in financial distress. Each year there are more bankruptcy cases than federal civil and criminal cases combined, meaning the bankruptcy court is the part of the federal court system that an everyday person is most likely to encounter. Debtors and creditors can appeal rulings of the bankruptcy court through the federal court system, all the way to the United States Supreme Court, which typically hears a few bankruptcy cases each year.

To explain the bankruptcy system, we will use a running example of a married couple, Chris and Jessica. This example will allow us to illustrate some important features of consumer bankruptcy law. It is important to keep in mind, however, that Chris and Jessica are also an atypical example. First, only forty-seven percent of all bankruptcy filers are married or have a domestic partner. Although married couples (and only married couples) can file bankruptcy together, in forty-two percent of cases with a married couple, one spouse files independently. Second, the median bankruptcy filer does not have any dependents. Women, and particularly Black women, are more likely to file by themselves and more likely to have dependents when they file. We explore the intersection of gender and race in Chapter 7.

Getting to the Lawyer

To be considering bankruptcy, Chris and Jessica will need to owe debt. That may seem an obvious point, but it is an important one. Bankruptcy does not generate income. It only eliminates past debts. If they are like most people who file bankruptcy, Chris and Jessica struggled to pay those debts for years before considering bankruptcy, possibly going without necessities, and trying various tactics to cope with their debts, as examined in the next chapter. This book documents financial precarity, but every person in the book at one time had the income and resources to incur debt. As desperate as many of the stories are, they omit an even more deeply distressed group of persons—those who have never had the financial resources and sufficient income to participate in the economic system as consumer borrowers.

For Chris and Jessica to be thinking about bankruptcy, they also will need to have concluded that the legal system can address their financial struggles. Everyone has problems: family problems, health problems, workplace problems. Chris and Jessica will have to put their financial struggles into a mental bucket called "legal problems." Even as it oversimplifies, the classic framework for when people bring their problems to the legal system is known as "naming, blaming, and claiming."[2] An essential part of that process is for the person to identify their debt issue as a legal one.[3] The same mental process applies to the decision to file bankruptcy. Chris and Jessica need to conceptualize their problem as one the legal system can help with as opposed to, for example, a financial one that could be solved by getting a second job. The pathways to bankruptcy are not well understood. Some filers are "brought to law" by creditors' collection attempts or legal actions.[4] Others may have talked to a friend, a family member, or a clergy member who suggested bankruptcy. A television advertisement or billboard could have planted the idea of using law to deal with mounting debts.

We will pick up Chris and Jessica's story after they have made the decision to file bankruptcy. In our data, seven percent of people file bankruptcy themselves, without any help whatsoever. Another four percent do so with the assistance of a bankruptcy petition preparer, a nonlawyer who will complete the forms based on the information Chris and Jessica provide, but who will not provide any legal advice or represent them in court. About half of these pro se cases are dismissed, as compared to about one in five of cases filed by an attorney. If the court dismisses a bankruptcy case, it is as if the case was never even filed, and creditors can continue to pursue the person for the money owed. The dismissal can create consequences if a person attempts to refile, and it can even prevent the refiling for some time.

Dismissal rates are also highly correlated with the bankruptcy chapter filed. In chapter 7, very few (2.3%) of attorney-filed cases end in dismissal as compared to about one in four pro se cases. In chapter 13, six out of ten attorney-filed cases are dismissed, which sounds high until one compares that to the eighty-eight percent dismissal rate for pro se cases.

Like ninety percent of filers, Chris and Jessica decide to use a lawyer. In 2020, we began asking people to identify all the ways they found an attorney, with the results detailed in Table 1.1. Most people do some acts that suggest some care toward hiring an attorney, such as asking for recommendations, meeting with more than one lawyer, and searching on the Internet.

Table 1.1. Methods Used to Find a Lawyer[5]	
Searched for lawyer on Google or Yelp	43%
Lawyer recommended by friend or relative	33%
Lawyer office was near home or work	31%
Did not shop around for a lawyer	29%
Saw an ad for lawyer on television, Internet, or billboard	28%
Compared how much different lawyers charged	23%
Met with more than one lawyer	14%
Had used or worked with lawyer in the past	13%
Lawyer was someone filer knew	10%
Lawyer provided by legal aid	3%

There is a fair chance that Chris and Jessica may not have devoted a lot of attention to the decision about who to hire. Serendipity may have played a surprising role despite the importance of the lawyer in shaping the result Chris and Jessica will get from bankruptcy. Almost a third of filers report using a lawyer who happened to have an office near their home or work, and more than a quarter report that an advertisement played a role. Twenty-nine percent of our respondents admit to not shopping around for a lawyer.

Once they settle on a lawyer, Chris and Jessica will have an intake session. Depending on the size of the law firm and how many bankruptcies it processes, a paralegal may perform the intake. The intake likely will involve completing a lengthy questionnaire about themselves, their employment, and their finances. The paralegal or attorney also will tell Chris and Jessica to provide six months of pay stubs and last year's tax return. Local practice may require providing even more pay stubs and tax returns. Chris and Jessica will need to produce other financial information, such as mortgage statements, car loan statements, and bank account statements. A nonfinancial cost of filing bankruptcy is the time and hassle of gathering all this information. Unless they are exceptionally well organized, Chris and Jessica will call and email back and forth with their attorney's office to put together the necessary information.

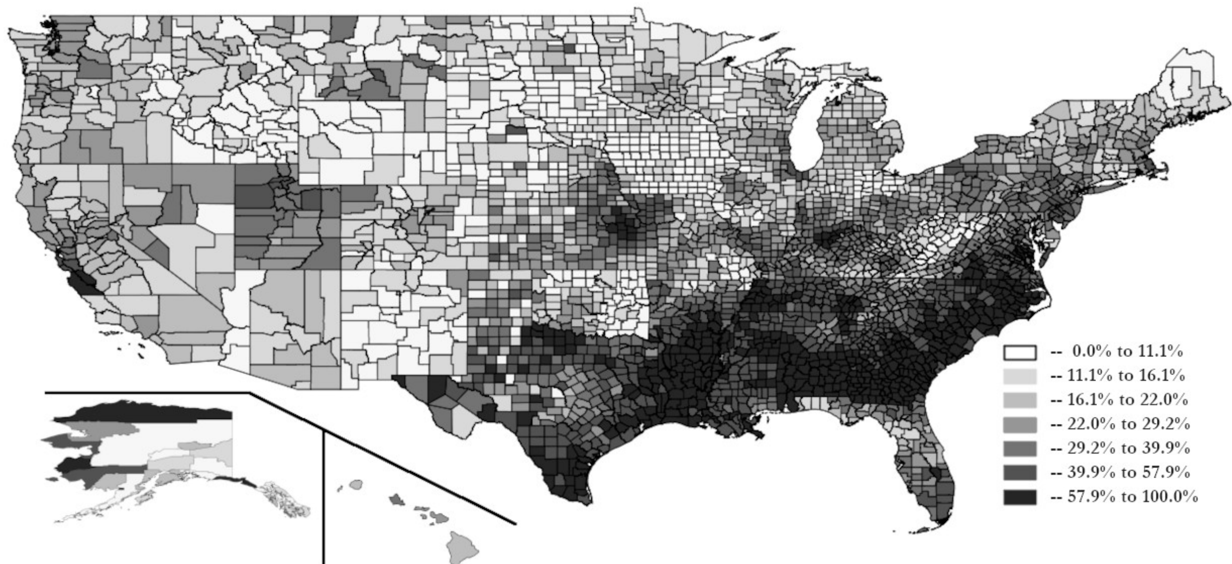
Chapter Choice

An important decision for Chris and Jessica will be which bankruptcy chapter to file. Most consumers have two choices: chapter 7 and chapter 13. For now, it is only important to understand their differences broadly. Chapter 7 is a liquidation in which the filer's assets are sold and the proceeds from the sales are paid to creditors, although only five percent of chapter 7 filers have any assets of value. Chapter 13 requires filers to make monthly payments to their creditors under a three- to five-year plan.

In theory, Chris and Jessica could file chapter 11, more famously known for large corporate reorganizations such as Enron, Chrysler, and more recently FTX. A chapter 11 is quite expensive, and it does not make sense for individuals to file this type of bankruptcy if they can file under another chapter. From 2013 to 2022 and according to data from the United States courts, only 0.3% of all chapter 11s were filed by natural persons and mainly by persons with large business or investment debts. Chapter 12 is available for family farmers, but Chris and Jessica are not family farmers. Less than 0.1% of bankruptcies are chapter 12s.[6]

Although the phrase "chapter choice" is used frequently, it is a misnomer. The most significant determinant for which chapter Chris and Jessica will "choose" is likely to be where they live. From 2013 to 2022, just over one-third of all people across the country filed chapter 13, but there is substantial variation in filing rates across the country, as illustrated in Figure 1.1. In the Great Plains states, only ten to fifteen percent of filings are chapter 13s. In contrast, in most parts of the Deep South consumers file chapter 13 more than half of the time, with some locales reporting more than seventy percent of their cases as chapter 13s.

Figure 1.1. Percentage of Individual Bankruptcy Filings Filed as a Chapter 13 by County (2013-2022)



Scholars have noted the disparity in bankruptcy chapter "choice" for decades, attributing it to "local legal culture."[7] That local norms develop within a professional community is to be expected. But it is not well understood what creates these norms, particularly in a way that causes them to diverge so dramatically across the country. Differences in state law contribute to the discrepancies. There is substantial variation within states in chapter choice, however, and these in-state differences that more than differences in formal state law must be at work. Regardless, the complexity of bankruptcy law means that Chris and Jessica's lawyer will have a considerable influence on which chapter they use. The local norms of where Chris and Jessica happen to live will have shaped their lawyer's advice.

Another factor that will contribute to their chapter choice decision is Chris's and Jessica's races. All things being equal, Black households are twice as likely to file chapter 13 than other households. Chapter 6 expands on the racial disparities in bankruptcy filings generally and chapter choice specifically.

The bankruptcy chapter Chris and Jessica choose also will determine how they pay for their lawyer, who will charge more for a chapter 13 because its greater complexity places more demands on the lawyer's time. Across the country, the median attorney's fee is $1,411 for a chapter 7 and $4,345 for a chapter 13.

Although chapter 7 will cost Chris and Jessica less, there is a wrinkle. If they do not pay for the bankruptcy in advance, any money Chris and Jessica owe their lawyer will be treated like any other

debt owing before the chapter 7 case is filed and therefore will be wiped out by bankruptcy's debt discharge. Although a few bankruptcy courts have adopted procedures allowing chapter 7 lawyers to defer their fees, those procedures are not widespread, and they face legal challenges. Therefore, Chris and Jessica's lawyer will ask for payment upfront before filing the chapter 7 case.

Many people who want to file chapter 7 need to save up to afford the bankruptcy. Almost two-thirds of our survey respondents report that they waited to file bankruptcy until they had saved money to pay for a lawyer. Filers often tap an income tax refund to pay for a lawyer, which is why bankruptcy filings spike in March and April every year.[8] From 2013 to 2022, March filings averaged over a twenty-five percent higher than filings in February. Chris and Jessica can avoid these up-front costs by filing chapter 13 because they can pay their lawyer over time through the repayment plan, essentially using chapter 13 to finance their bankruptcy case. Many chapter 13s are complete "no money down" cases, where the filer pays the entire attorney's fee through the case. Even after controlling for financial variables that capture ability to pay, the main determinants of whether someone will file chapter 13 with "no money down" are whether the filer is Black and the judicial district where the filer lives.[9] The same factors determine whether someone files chapter 13 with "near no money down." The finding suggests that local tolerance for whether people can use the bankruptcy process to pay for a chapter 13 helps to drive the differences in how often filers, and particularly Black debtors, end up in chapter 13.

Thus, there are three extralegal factors that strongly influence chapter choice—location, race, and ability to pay. That is not to suggest that the legal outcomes do not matter. If Chris and Jessica have been well counseled, these legal outcomes will determine whether to file bankruptcy and which chapter to use. The best way to understand those outcomes is to start with chapter 7 as a baseline and then consider how chapter 13 alters that baseline.

Chapter 7

Before Chris and Jessica get to the bankruptcy court, the law requires them to complete prebankruptcy credit counseling. The "credit counseling" will not be a serious attempt to help Chris and Jessica avoid bankruptcy or even to help them understand the basics of financial literacy. The session, which will be done online—perhaps in their lawyer's office—costs about $25 and lasts about an hour. In court opinions, judges have described the counseling as "perfunctory," "inane," and "absurd." Nonetheless, it is a legal requirement. The credit counseling is Chris and Jessica's ticket into bankruptcy, and if they fail to do it, the court has no choice but to dismiss their case.[10]

Chris and Jessica will begin their case by filing a bankruptcy petition with the U.S. Bankruptcy Court where they live. They will pay a filing fee of $338, which can be paid in four monthly installments. If they fail to fully pay the fee, the court will dismiss their case. According to data from the United States courts, ten percent of chapter 7 filers pay in installments.[11] Chris and Jessica can ask the court to waive the filing fee if their income is within one hundred and fifty percent of the federal poverty line. Nationally, under five percent of chapter 7 filers receive a fee waiver, although there is substantial variation around the country with more than fourteen percent and less than one percent receiving fee waivers in some judicial districts.

The filing of a petition initiates the case, although the word "petition" is something of a misnomer because the court does not need to "grant" the petition. Along with the petition, Chris and Jessica will file schedules prepared by their lawyer detailing all assets, liabilities, income, and expenses. Chris and Jessica also will file a statement of financial affairs, a questionnaire about their prebankruptcy economic life. They will swear to the truthfulness of these documents under penalty of perjury. The

information in this book uses these records to document the financial condition of the people who file bankruptcy.

Upon the filing of the petition, creditors must stop all debt collection activity against Chris and Jessica. Creditors can neither contact Chris and Jessica, nor can they start or continue lawsuits. The sheriff cannot sell their house, even if it is in the middle of foreclosure. The repo man cannot haul off the family car. Garnishment of wages ceases. This pause—known as the "automatic stay" because it happens without any order from the bankruptcy court—will provide important relief to Chris and Jessica. Overdue bill notices will no longer fill the mailbox, and the phone will not ring during dinner with a debt collector demanding payment. Importantly, Chris and Jessica now have time to negotiate with creditors about their most problematic debts.

The court clerk will assign Chris and Jessica's case to a bankruptcy judge. The case also will be assigned to a chapter 7 trustee. The trustee requires some explanation. Within the Department of Justice is an office known as the U.S. Trustee Program. Among its duties is oversight and selection of chapter 7 and chapter 13 trustees. The nomenclature is confusing. A U.S. Trustee is an employee of the Department of Justice. A chapter 7 or chapter 13 trustee is a private individual who works for a law firm or in a solo law practice. The U.S. Trustees select the chapter 7 and chapter 13 trustees—who are also known generically as "bankruptcy trustees." Chapter 13 trustees are assigned to all chapter 13 cases in a geographic locale and, for that reason, are also known as "standing trustees." There is usually a local panel of chapter 7 trustees who are assigned to individual chapter 7 cases in a rotation.

Chris and Jessica's judge will only hear about matters their trustee brings before the court. It would be very unusual for any creditors to be active in the case. The chapter 7 trustee may ask Chris and Jessica for further documentation, adding to the cost and hassle of filing. Thus, the chapter 7 trustee likely will play a bigger role in Chris and Jessica's case than the judge. The trustee will earn $60 for taking on Chris and Jessica's case, an amount that has not changed since 1994. The decision to become a trustee is not likely to have been motivated by the prospect of earning $60 per case. Instead, the trustee will be looking to earn the statutorily prescribed percentage of any recovery paid to creditors. Only about five percent of chapter 7 cases yield any payment to creditors. [12] Thus, the fee structure incentivizes Chris and Jessica's trustee to make their case part of that five percent by questioning valuations they have put on assets, by hunting for undisclosed assets, or sometimes by filing a lawsuit to recover money or property Chris and Jessica transferred away on the eve of bankruptcy.

Within three to seven weeks after filing, Chris and Jessica will attend the meeting of creditors, also known as the "341 meeting" after the section of the Bankruptcy Code that authorizes it. Their attorney also will attend, and their chapter 7 trustee will preside. Although any of Chris and Jessica's creditors can attend, it is extremely rare for them to do so. The trustee will ask Chris and Jessica more questions under oath about their financial affairs. The meeting will take place somewhere other than the courtroom. Chris and Jessica might need to take time off work or find childcare to attend the 341 meeting. During the pandemic, most trustees conducted their 341 meetings online. If their trustee has continued that practice, it will greatly ease the burden on Chris and Jessica. If the meeting is typical, it will last about ten or fifteen minutes. Afterwards, Chris and Jessica may feel like they have been to "court," but they have not. They have not appeared before a judge. Somewhat like a deposition in a lawsuit, they only have given sworn testimony to a private individual, the bankruptcy trustee, who will use that information to decide what steps the trustee wants to take in the case.

Most significantly, the trustee next will decide whether Chris and Jessica have anything of value the trustee can sell to raise money for creditors. The people who file bankruptcy come to court with little property of value. Also, bankruptcy law "exempts" some property from the process—for instance,

clothing and household furnishings, retirement savings, and the equity in a car or a house (up to certain dollar amounts). Even if there is property, the costs of sale might not make it worthwhile for the trustee to pursue a sale. As typical consumers, it is improbable Chris and Jessica's case will be in the five percent that produce any payment for creditors.

After the 341 meeting, Chris and Jessica's involvement with their chapter 7 case is likely to be minimal. They will not see the bankruptcy judge or even the inside of a courtroom. There is no requirement that they do so. After filing bankruptcy, Chris and Jessica must complete a financial management course similar to the credit counseling they received before filing and of the same dubious utility.

In about six months and assuming no hiccups, Chris and Jessica will receive a court notice saying their debts have been "discharged." This forgiveness of debts is the central relief for most bankruptcy filers. For example, Chris and Jessica no longer will have to pay outstanding credit card or medical bills, and bankruptcy law forever bars their creditors from taking any collections actions whatsoever, under penalty of contempt of court. Some debts are nondischargeable, most notably alimony, unpaid child support, tax debts, or fraud debts. Chris's and Jessica's student loans will not be discharged unless they can show that paying them will lead to "undue hardship," a demanding standard few filers are able to meet. If they have concealed information from the trustee or committed fraud in the bankruptcy case itself, the trustee might ask the court not to issue a discharge, but such very rarely happens in bankruptcy cases. With their discharge, Chris and Jessica will have the fresh start promised by bankruptcy. Of course, they will be responsible for their debts moving forward, but they will be free of their past burdens.

Secured and Unsecured Debts

Although bankruptcy will have discharged Chris and Jessica's personal liability on their loans, it does not eliminate any liens that might exist against their property. A debt with a lien is known as a "secured" debt. Classic examples are home and car loans. Some filers also might have liens that come from prebankruptcy collection activities or other prebankruptcy loans. Debts without liens are "unsecured." Examples of unsecured debts are credit cards and medical debts.

Bankruptcy does not change the promise that Chris and Jessica made on their secured debts. Most importantly, an unpaid mortgage or car loan allows the bank to foreclose on the house or repossess the car. If Chris and Jessica want to keep their house or car, they must continue to pay those loans after they receive the discharge and after the bankruptcy case concludes.

Their fresh start has provided some help for their mortgage or car loans. With their unsecured debts discharged, Chris and Jessica likely can devote more of their income to their mortgage or car payments without falling behind on their daily expenses. Because the discharge forgives their personal liability, Chris and Jessica are not liable for any deficiency on their home or car loan if they are "underwater," meaning the value of the home or car is less than the amount owed on the mortgage or car loan.

The breathing spell afforded by the automatic stay also gives Chris and Jessica time to deal with their problems on a mortgage or car loan. If they have not missed payments, they might just continue making payments and let the loan "ride through" the bankruptcy case. Many creditors are happy with a performing loan rather than insisting on whatever technical rights they might have because of the bankruptcy filing. That is, creditors are often better off if Chris and Jessica can continue to "perform" their promise on the loan by making payments. The creditor's alternative of foreclosure or repossession will be costly and likely result in a low recovery. More likely, Chris and Jessica will have missed payments, meaning they will need to look to other options they have in bankruptcy.

For an auto loan in a chapter 7, Chris and Jessica have the option of "redeeming" the car. They would pay the creditor the full value of the car which eliminates the lien. The creditor has no choice but to accept payment, although the creditor could contest the value of the car. The difficulties of raising the cash and possibly fighting the creditor over the car's value make redemption an unattractive option. A filer who has the financial wherewithal to raise cash equal to the value of a car likely will not need to file bankruptcy. Only an exceedingly small percentage of filers (one percent) propose this option.[13]

Another option for Chris and Jessica would be to "reaffirm" the car or home loan. A reaffirmation is an agreement between Chris and Jessica and a creditor to create a new, postbankruptcy debt. The new auto loan or mortgage will occur on whatever terms to which they and their creditor agree. The creditor benefits because the agreement promises a greater return than either a repossession or a foreclosure. Chris and Jessica benefit by being able to retain their car or home, especially when their bankruptcy filing makes the prospect of acquiring a new car loan or mortgage unlikely or very expensive. There is a catch. Because it is a new debt, the bankruptcy discharge does not protect Chris and Jessica from the reaffirmed debt. If the reaffirmed loan becomes underwater, Chris and Jessica will be responsible for the deficiency.

The court must approve any reaffirmation agreement. Chris and Jessica's attorney must certify to the court that the attorney discussed the consequences of the agreement with them and believes that it will not impose an "undue hardship" on them. Among bankruptcy professionals, reaffirmation agreements can be controversial. Practices regarding reaffirmation agreements and "undue hardship" certifications vary widely around the country.

The wisdom of reaffirmation agreements is especially controversial in regard to home mortgages. Even if Chris and Jessica are behind on their mortgage, the automatic stay will have stopped any foreclosure process their creditor might have started. Chris and Jessica will have rights under state or federal law to catch up on their missed mortgage payments, up to a limit, and they can use the breathing spell provided by the automatic stay to do so. Chris and Jessica can get relief without creating a new debt through a reaffirmation agreement. These tools are not available, however, for car loans. If their auto loan creditor insists on a reaffirmation agreement, they will need to sign one if they want to keep their car.

Chapter 13

If Chris and Jessica are typical filers, chapter 7 will bring less expensive, quicker, and broader relief. Above, we discussed some of the extralegal reasons why they might end up filing chapter 13. There can be legal reasons for some people to use chapter 13, and well-counseled filers will choose chapter 13 if they need to take advantage of one of these reasons.

Chapter 13 requires the filer to propose and the court to approve a repayment plan that lasts for three to five years. Through that plan, people can catch up on their mortgages, car loans, and other secured debts. Broadly speaking, whatever is left, after making those monthly payments to secured creditors and paying other household expenses, goes toward unsecured debts. Many filers have so little income that nothing goes to paying unsecured debts. The case ends upon completion of the plan. In exchange for binding oneself to the plan, people keep their property.

If Chris and Jessica make this bargain, they are taking a big risk. Unlike chapter 7, through which they would almost certainly receive a discharge, Chris and Jessica will receive their discharge only at the end of the plan and only if they make all the plan payments. Of persons who file chapter 7, ninety-five percent receive a discharge as compared to only thirty-six percent of those who file chapter 13.

Seven percent of chapter 13 cases are converted to chapter 7. These filers receive their discharge through chapter 7.

Bankruptcy law's requirements may account for the high plan failure rates, along with extralegal factors that influence people's chapter choice. Plans have little wiggle room for unexpected expenses, big life changes, or often even some expected expenses. Filers struggling with a chapter 13 plan may convert to a chapter 7 or may ask the court to modify the plan to lower payments, but it is expensive and time-consuming to do so, and these procedures often need to occur long into a case when the original attorney may no longer be in close communication with the filer. If Chris and Jessica's chapter 13 case is dismissed, it is as if they had not filed bankruptcy at all, and they are back at the mercy of their creditors. They may have paid for a while into a chapter 13 plan, with most or all of the payments going to pay the higher chapter 13 attorney's fee and have nothing to show for it. They will still owe the debts they brought to bankruptcy, plus any interest that has accrued and any associated attorney fees.

Bankruptcy law may require Chris and Jessica to file chapter 13. Congress changed bankruptcy law in 2005 to require a "means test" to force people into chapter 13 when they have a supposed ability to repay creditors. Generally speaking, the means test requires filers to use chapter 13 if they meet two conditions. First, their income must be above the state median for a household of the same size. Second, after deducting monthly mortgage payments, car payments, child support, and household expenses, they must have at least $250 per month left to pay unsecured creditors (a figure that is periodically adjusted for inflation). Even then, filers can argue they have "special circumstances" to allow a chapter 7 filing.

At the time Congress imposed the means test, experts said there was little evidence that "can pay" debtors were abusing the system by filing bankruptcy.[14] Our data bear that out. The means test forces exceedingly few people into chapter 13. Of the chapter 7 filers in our data, only eight percent had income above state median income, and only one percent also had $250 per month left to pay unsecured creditors. The court allowed all of them to proceed in chapter 7, likely because of the "special circumstances" rule. Of the chapter 13 filers in our data, twenty-three percent had an income above the state median. Many of those would not have $250 per month left to pay unsecured creditors, but the bankruptcy schedules do not allow us to compute an exact number. Chapter 13 filers tend to have more income than chapter 7 filers. If we conservatively assume that three times as many chapter 13 filers have $250 per month left to pay unsecured creditors—the same ratio as those above state median income—then the means test forces only about two percent of all bankruptcy filers into chapter 13.

For some persons, chapter 13 offers special benefits that make it a better option. The paradigmatic cases are people with valuable property they might lose in chapter 7, especially if they have fallen behind on their home mortgage. Chris and Jessica cannot alter the terms of their mortgage, but they can catch up on missed payments through their chapter 13 plan. They can "cure and reinstate" the mortgage by making up the missed payments, stretched over three to five years. The same rules apply to missed car loan payments. So long as they continue to make payments during the plan, they will be protected from creditor actions. If they make all the payments, the chapter 13 will have been a valuable tool, working exactly as designed to give Chris and Jessica a fresh start while minimizing harm to creditors. The more demands the chapter 13 plan makes on their income, however, the less likely they are to be part of the fortunate thirty-six percent of chapter 13 filers who make it all the way through the plan and receive a discharge. If Chris and Jessica are part of the larger group whose cases are dismissed, their mortgage and car lenders are likely to proceed with foreclosure and repossession.

Chapter 13 also has some provisions that address specific situations that can make it work well for a few filers. For example, chapter 13 discharges some debts that chapter 7 does not, most significantly civil fines such as parking tickets. If someone's car has been impounded for unpaid parking tickets, chapter 13 will allow them to get the car back without much hassle, catch up on any missed car loan payments, get rid of the parking tickets, and keep their car after their bankruptcy case ends. Another chapter 13 provision allows a filer to pay tax debts in full without paying the interest. In both instances, the person must successfully complete the chapter 13 plan.

If Chris and Jessica file chapter 13, they will need to start making payments under their proposed plan within thirty days of filing and even before the court has approved the plan. If they miss any of these payments, the court will dismiss their case. If the court has not approved the plan—"confirmed" in bankruptcy argot—they will receive a refund for any payments they made. Similar to chapter 7, a chapter 13 trustee will preside over a section 341 meeting and question Chris and Jessica about their financial affairs. Chris and Jessica will make their plan payments to the trustee, who will forward the payments onto creditors.

Chapter 13 trustees oversee all the cases in a geographic area, such as a city or a region of a state. They essentially run small businesses, with millions or even billions of dollars flowing through their offices and bank accounts each year. The expenses of this business, including an annual salary for the trustee and any employees, are funded by a percentage of the payments coming through the office. The U.S. Trustee Program sets the percentage for each trustee, which is capped at ten percent. The chapter 13 trustee will oversee all aspects of Chris and Jessica's case, including objecting to their plan if the trustee believes Chris and Jessica are not committing a sufficient portion of their income to the plan. Chris and Jessica, through their lawyer, can respond to the trustee's objections, and it is ultimately up to the court to decide. In some judicial districts, the chapter 13 trustee runs the financial management course Chris and Jessica must take before receiving a discharge. Some trustees take this obligation quite seriously and offer meaningful training to help persons navigate their financial lives during and after the bankruptcy case. Most filers are not lucky enough to live in a judicial district where this occurs.

Even more than chapter 7 trustees, a chapter 13 trustee plays a major role in the outcome a filer will experience. Bankruptcy judges heavily rely on the chapter 13 trustees assigned to their courts. One scholar characterized it as a "superdelegation" of the bankruptcy court's authority, describing one local practice she witnessed where a chapter 13 trustee presided over an "unofficial" court hearing before the real court hearing began.[15]

Chris and Jessica's decision to file chapter 13 will shape their view of the bankruptcy system likely more so than if they decide to file chapter 7, however they make that choice. If they are like most of the people who file bankruptcy, they first will face years of financial problems that lead them to struggle paying their debts. The next chapter draws from people's stories of living with financial precarity to detail people's prebankruptcy lives.

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[1] U.S. Constitution, art. 1, sec. 8, cl. 4.

[2] Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes, 644-47.

[3] Sandefur, "Access to Civil Justice," 341-43; Sandefur, "The Importance of Doing Nothing," 113-15.

[4] Foohey, Lawless, Porter, and Thorne, "Life in the Sweatbox," 249-54.

[5] Respondents (n = 524) could choose more than one method of finding a lawyer.

[6] These percentages come from our calculations using the Federal Judicial Center's (FJC) Integrated Bankruptcy Petition Database. The database contains every case filed in the United States bankruptcy courts and is publicly available on the FJC's web site at https://www.fjc.gov/research/idb.

[7] Stanley and Girth, *Bankruptcy, Process & Reform*, 74-76; Braucher, "Lawyers and Consumer Bankruptcy," 526-37; Sullivan, Warren, and Westbrook, "Persistence of Local Legal Culture," 839-57; Lawless and Littwin, "Local Legal Culture from R2D2 to Big Data," 1358-60.
[8] Mann and Porter, "Saving Up for Bankruptcy," 319-22.
[9] Foohey, Lawless, Porter, and Thorne, "'No Money Down' Bankruptcy," 1080-91.
[10] American Bankruptcy Institute, *Final Report*, § 3.06; Sousa, "Just Punch My Bankruptcy Ticket," 433, 451.
[11] These percentages are similarly calculated from the FJC's Integrated Petition Database at https://www.fjc.gov/research/idb.
[12] Jimenez, "Distribution of Assets in Consumer Chapter 7," 800-01
[13] Car redemptions are explored in more detail at Foohey, Lawless, and Thorne, "Driven to Bankruptcy," 313, fig. 1.
[14] Culhane and White, "New Consumer Bankruptcy Model"; Warren, "The Phantom $400."
[15] Jacoby, "Superdelegation and Gate-Keeping," 887-88.

Debt's Grip: Risk and Consumer Bankruptcy

Chapter 6: Blackness of Bankruptcy

> *In 2009 I got laid off of my job of 10 years. For the next two years I was unemployed. In 2011 I got a job making approx. 1/2 my salary at my job I lost in 2009. The house went into foreclosure. I applied for a modification I was refused. I liquidated my 401K in an attempt to save the house. The lawyers for Wells Fargo took thousands of dollars from me but continued with the foreclosure. I finally filed a chapter 13 to save the house.*
>
> — Black couple, jointly filing, with two children

Surviving as a Black person in the United States stands apart for its financial and societal difficulties. From slavery to Jim Crow laws to banking and credit policies that "redlined" them out of opportunity, Black persons have been repeatedly denied their civil and economic rights.[1] Research continues to find racial disparities in access to nearly every aspect of life, including education, employment, health care, housing, lending, and police interactions.[2]

In the realm of finance, Black persons pay more across credit products—for home loans, auto loans, credit cards, and education loans.[3] They have less access to mainstream banks and banking products, and thus are more likely to use high-cost alternatives, like check-cashing outfits and payday lenders.[4] Creditors also target Black persons more often than others for debt collection lawsuits.[5] Research links these disparities with historical and continued discrimination as well as structural and systemic racism.[6]

The uniqueness of the Black experience in the United States shows up in the bankruptcy system in three ways. First, Black households file bankruptcy at twice the rate of their incidence in the United States' population. Second, more Black households file chapter 13 rather than chapter 7 as compared to non-Black households. Third, Black households arrive to bankruptcy court with financial profiles and issues that evidence their broader financial and societal struggles.

To detail these disparities, this chapter compares the 563 bankruptcy cases in our dataset filed by Black households to other bankruptcy filers. The data suggest that discrimination can push Black households toward the bankruptcy system and that system both fails and succeeds in helping with their financial troubles. (We count a two-person household as Black if either person so identifies. Only two percent of our Black respondents report living in a household in which their spouse or partner is not Black.)

Black Households' Over-representation in Bankruptcy

Fourteen percent of the population identifies as Black, but Black households make up twenty-eight percent of the households that file bankruptcy. Their over-representation is offset by an under-representation of white persons in bankruptcy. Among the households that file bankruptcy, sixty-three percent are white. In comparison, seventy-six percent of the population identifies as white.[7]

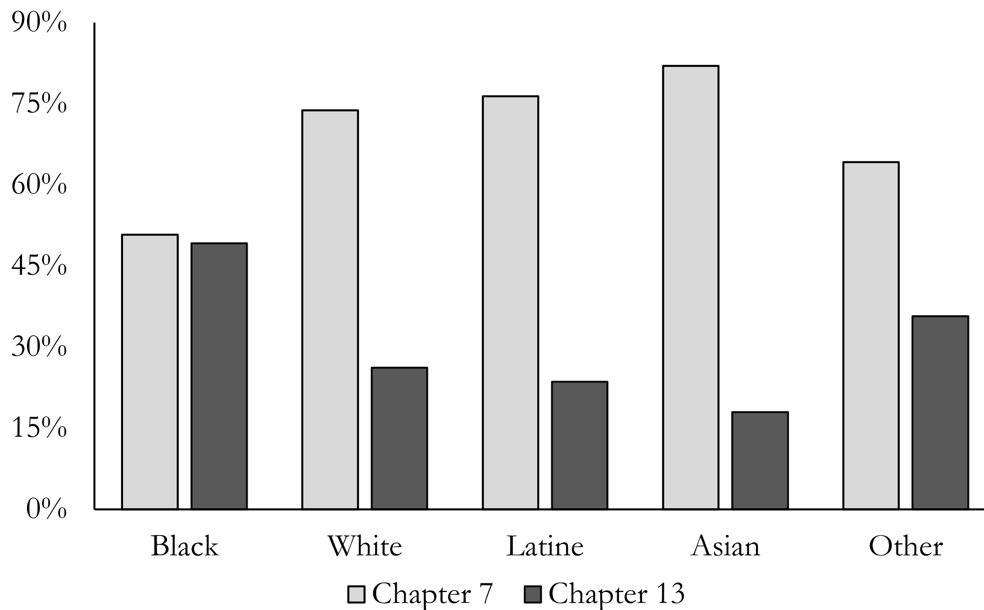
The over-representation of Black households in bankruptcy holds across the country and has persisted for decades.[8] In places where more Black people live, such as Alabama, in which twenty-seven percent of the population is Black, even more households that file bankruptcy are Black. Black households make up fifty-three percent of the households from Alabama that file bankruptcy. In places where fewer Black people live, such as Ohio and Illinois where the Black population is close to the national average of fourteen percent, still more households that file bankruptcy are Black—twenty-three and forty-two percent, respectively.[9]

Black households' higher than expected bankruptcy filing rate, detailed below, reflects the economic disparities they encounter in nearly every aspect of their lives. These disparities make it more likely that they will confront financial problems, and they make it harder to accumulate savings to weather those financial problems. As a result, Black households are more likely to struggle with debt, which in turn increases the possibility that they will consider filing bankruptcy. The breadth of racial disparities across institutions in the United States also suggests that when they turn to bankruptcy for assistance, Black persons may find a system that itself is infected with the structural racism that has persisted throughout the United States' history.

<u>Black Filers' Over-representation in Chapter 13</u>

Across all households that file bankruptcy, about two-thirds file chapter 7 and one-third file chapter 13.[10] The balance between chapter 7 and chapter 13 filings, however, differs significantly based on debtors' race, as illustrated in Figure 6.1. Seventy-four percent of white and seventy-six percent of Latine households file chapter 7. For white, Latine, Asian, and other households, filing chapter 13 can be thought of as somewhat atypical, a choice that should be motivated by specific financial or legal reasons. In contrast, for Black households, filing chapter 7 is relatively less likely and filing chapter 13 is typical. Fifty-one percent of Black households file chapter 7, the quicker and less expensive chapter, through which more than ninety-five percent of debtors receive a debt discharge. The other half of Black filers are in chapter 13, the slower and more expensive chapter, through which less than forty percent of debtors receive a debt discharge.[11]

Figure 6.1. Race of Bankruptcy Filers, by Chapter



Given the United States' history of racial discrimination, it is not particularly surprising to find racial differences in the bankruptcy system. That this chapter's analysis focuses on Black bankruptcy filers as compared to all other filers is not to discount that people of other ethnicities face bias or prejudice in the economy and society. For instance, studies have shown that Latine borrowers are targeted for high-cost home loans.[12] But the Black experience in the United States is unique, including how often they file bankruptcy and which bankruptcy chapter they file.

Searching for an Explanation for the Racial Disparity in Chapter Choice

As with their over-representation in the bankruptcy system, Black filers' over-representation in chapter 13 has endured for decades. Prior studies, including our own, have raised and ultimately rejected the possibility that financial, legal, demographic, and locality reasons explain why Black persons file chapter 13 more often than others—that is, reasons that would make choosing chapter 13 a logical choice or at least not based on race. These earlier studies relied on regression modeling, which controls for confounding variables—factors that might lead someone to file chapter 13 other than their race.[13]

We built a regression model that replicates the model that we and other scholars have used in prior research to study Black filers' over-representation in chapter 13, including relying on the same controls that might plausibly correlate with someone filing chapter 13.[14] The controls fall into four categories: legal and financial circumstances, attempts to renegotiate debt, demographic information, and local legal culture.

Chapter 13 provides particular legal and financial benefits. As a matter of bankruptcy law, filing chapter 13 may be beneficial for people who have previously filed bankruptcy, who owe priority and nondischargeable debt, such as child support and certain taxes, and who owe fines and fees, such as parking tickets. Foremost among the financial benefits is chapter 13's ability to protect valuable assets, such as homes. In addition, when people fall behind on debt payments, they report that they try to negotiate with their creditors. Given the barriers that Black persons find in lending markets, including the home mortgage market, they similarly may face difficulties in negotiating with mortgage and other lenders, which may lead Black households to file chapter 13 more frequently than others to keep homes.

Certain demographic characteristics, such as age, marital status, and educational attainment, may positively correlate with a households' financial means. For instance, a married couple may make more money. If a household has more financial means, they may be better able to pay the higher attorney fees that accompany chapter 13, which may correlate with filing chapter 13. The financial resources that may accompany these demographic characteristics alone also plausibly may correlate with filing chapter 13. Black filers may be more likely to have these characteristics, and thus their demographics may explain their higher chapter 13 filing rate.

Nationally, the rate at which people file chapter 13 versus chapter 7 in a given jurisdiction varies substantially, which has persisted at least since Brookings Institutions published a study in 1971 that first noted the variation.[15] Prior literature has linked the variation to local legal culture—the interactions among bankruptcy judges, trustees, and debtor attorneys that create shared expectations which lead to subtly guiding people's choices about which chapter to file.[16] Places with high chapter 13 rates are located in the South where over half of the Black population lives.[17]

Table 6.1 presents the regression model's results. Full results are in the appendix. To show the effects of each set of variables separately, we enter them separately, starting with the legal and financial circumstances that may lead a household to file chapter 13, then adding debt renegotiation attempts, then adding demographic characteristics, and finally adding local legal culture.

Table 6.1. Logistic Regression on Probability of Filing Chapter 13[18]

	(1)	(2)	(3)	(4)	(5)
Black household	2.83*	2.70*	2.58*	2.52*	1.71*
Controls for					
Legal & financial circumstances		yes	yes	yes	yes
Attempts to renegotiate debt			yes	yes	yes
Demographic information				yes	yes
Local legal culture					yes
Model statistics					
N	1,915	1,915	1,915	1,915	1,915
McFadden pseudo R^2	.04	.28	.28	.29	.33

Many of the controls are statistically significant, including income, prior bankruptcy filing, and the chapter 13 rate in a district. This is expected. Bankruptcy law provides particular benefits and has certain requirements; some filers should take advantage of those benefits and some should be funneled into chapter 13 by those requirements. For example, other work has found that some Black persons file chapter 13 to avoid suspension of their driver's licenses, which chapter 13's broader discharge of some fees and fines can help prevent.[19] Even in the presence of controls, the race of the filing household remains significant, as multiple prior studies also have found.[20] Across studies spanning nearly twenty years, the evidence is overwhelming that confounding factors cannot explain away the substantial difference in Black households' chapter 13 filing rate.

Scholars have returned to local legal culture's influence on people's chapter choice and looked specifically to attorneys' interactions with their clients to explain why Black households file chapter 13 more frequently than other households. Using a hypothetical vignette about a couple thinking about filing bankruptcy, one of this book's authors, Robert Lawless, along with legal scholar Jean Braucher and psychologist Dov Cohen, found that attorneys recommended that the couple with names and a church affiliation consistent with a Black couple file chapter 13 more often than the couple with names and a church affiliation consistent with a white couple. The couple's financial and legal situation made filing chapter 7 and 13 equally plausible; nothing else about the couple or their situation varied.[21]

Following that study, Lawless and Cohen, along with psychologist Faith Shin, surveyed bankruptcy attorneys and asked them for their assumptions about the rates at which Black persons file chapter 13 and chapter 7. These assumptions might prompt attorneys to suggest that the hypothetical Black couple file chapter 13. Attorneys reported thinking that Black households were twice as likely to file chapter 7 as white households, when, as shown in Figure 6.1, the opposite is true—they are twice as likely to file chapter 13.[22] Nonetheless, attorneys recommended chapter 13 to the hypothetical couple they perceived as Black more often than the hypothetical couple they perceived as white.

Around the same time as the survey of bankruptcy attorneys, we published research that focused on the amount and timing of fees that people pay their bankruptcy attorneys. Consistent with what we found then, Black households continue to disproportionately file chapter 13 on a "no money down" basis, under which a debtor pays nothing to their attorney prior to filing and the entire attorney's fee is paid through the chapter 13 plan. Again, even after controlling for confounding variables, race matters. Black filers were more likely to be in a "no money down" chapter 13, and this disparity widened in places with high chapter 13 rates. Stated differently, the particulars of payment to attorneys

accounts for at least some of the racial disparity in the use of chapters 7 and 13.[23] Money matters in the provision of bankruptcy services to Black filers, the same as it does in the sale of goods, services, and credit to Black persons.[24]

Why Race Matters in Chapter Choice

Linking local legal culture and attorneys to racial disparities in chapter 13 filings that remain partially unexplainable returns to the United States' history of policies and practices that have resulted in racial disparities across multiple settings. In the contexts of housing and lending, scholars have connected these disparities to steering and stereotyping. Stereotyping refers to expectations about how members of a group, such as Black persons, will behave or a group's preferences. It is a fixed part of life and happens daily, particularly in the categorization and processing of substantial amounts of information. Stereotyping intersects with implicit bias—automatic, ingrained views that people have about others.[25]

Bankruptcy law and the bankruptcy process, particularly chapter 13, are complex. Attorneys play a crucial role in helping people decide to file bankruptcy at all and which chapter to file. Subtle preconceptions—that is, implicit biases—about which chapter is the better choice for particular clients will guide recommendations and discussions. For some filers, those recommendations may amount to steering to chapter 13. For others, discussions may result in picking chapter 13. Consumer bankruptcy often is a volume practice. One firm may file more than a hundred cases in a year. Over hundreds of thousands of interactions, a skew in the demographics of who files which chapter will become detectable and will remain unable to be explained fully by financial, legal, and other factors. Such has remained true for the racial disparity in chapter 13 across the country for half a century—at least as research data before then are nonexistent. Even in judicial districts in which the vast majority of households file chapter 7, Black households are less likely to file chapter 7 than other households.

The racial disparity in chapter 13 matters. Attorneys charge almost $3,000 more at the median to assist with a chapter 13 case—$1,411 versus $4,345. If Black households filed chapters 7 and 13 at the rates of all households, over the ten years between 2013 and 2022, they cumulatively would have saved nearly a billion dollars in attorneys' fees.

Not only do Black households pay more for bankruptcy, they receive less. Even including those cases later converted to chapter 7, forty percent of chapter 13 cases result in a debt discharge, as compared to ninety-five percent of chapter 7 cases. Black filers' chapter 13 cases are even less likely to yield a discharge than other filers' chapter 13 cases. Among chapter 13 cases, the court dismisses forty percent of those filed by Black households, as compared to twenty-eight percent filed by white households.[26] A dismissal leaves the debtor with the same financial problems they started with and returns to them to the mercy of debt collectors and state court collection process. Blacks are thus more likely to pay for legal services and a proceeding and leave without its primary benefit.

For Black filers in particular, chapter 13 bankruptcy is "rent-to-own." In a rent-to-own transaction, a person commits to renting an item, such as a piece of furniture or an appliance, for a period of time and not actually owning the item until it is completely paid. With rent-to-own, people pay two to three times what they would pay if they had purchased the item outright. Those who do not complete the installment payments will never own the item they rent, even though they pay a significant portion of the item's outright value. Rent-to-own companies target lower-income customers, including Black customers, and have been criticized as unduly expensive and deceptive.[27]

In addition, dismissal should increase the likelihood that the debtor will need to turn to bankruptcy for help again. Black filers indeed are more likely than others to file bankruptcy again. Twenty-six percent of Black households list a prior bankruptcy, as compared to eleven percent of other

households. A second bankruptcy case adds even more expense, is stressful, and requires more time and energy. Bankruptcy consumes more of Black people's lives.

That Black persons are overrepresented in chapter 13 is not to say that every Black person in chapter 13 should have filed chapter 7. As explained in chapter 1 of the book, chapter 13 offers financial and legal benefits distinct from the debt discharge, such as potentially keeping a home. Similarly, using chapter 13 to finance a more expensive attorney's fee may be financially wise if the alternative is eviction from a rental unit or repossession of a car needed to get to work. Some Black filers also may make too much money relative to their expenses to legally qualify for chapter 7. Nonetheless, more Black households file chapter 13 than its financial and legal benefits suggest should.

Regardless of the exact mechanisms behind their over-representation in chapter 13, Black individuals and families face a racially skewed bankruptcy system. How the bankruptcy system operates is yet another instance of racial injustice in the United States. Black persons will find this injustice, even if it goes unperceived, when they turn to bankruptcy to deal with the fallout from a multitude of other racial injustices. The financial profiles of Black households in bankruptcy show both the economic problems that lead them to bankruptcy and the extent to which bankruptcy law, in its current form, can assist Black filers in the distinctive financial struggles that they face.

Racial Wealth Inequality and Black Households' Heightened Financial Precarity

The racial wealth gap stands out as the largest economic disparity between Black and white persons in the United States. It conveys the accumulation of more than a century and a half of explicit exclusion from capital and labor markets following emancipation and the later obstruction of equal opportunities to build and maintain wealth through disparities in access to housing, education, employment, and credit. As of 2019, the median white household held eight times more wealth than the median Black household. The median Black household owned $24,100— $165,000 less than the median white household. On average, Black households had fifteen percent as much wealth of white households, with an absolute dollar gap of $838,220.[28]

Wealth is an integral part of prosperity. It provides financial and emotional security. It cushions people from the vagaries of life and of the economy. It fuels professional and social growth, providing capital to start a business, relocate for a better job, or purchase a home in a desired location.

Immediately following emancipation, the racial wealth gap was nearly sixty to one. Between 1860 and 1970, it slowly closed. During those years, closure did not come nearly as quickly as it could have and should have. But then something happened. Since the 1980s, closure not only stalled, but also in recent decades, the gap widened.[29]

Housing policies, exclusion from mainstream consumer financial markets, income inequality, and education funding contribute to the perpetuation of the racial wealth gap.[30] Each make it difficult for Black persons to save money and build equity, cumulatively making it nearly impossible for the racial wealth gap to dissipate. Over recent decades, each exacted a toll on Black households' finances that has driven wealth for Black and white households further apart. Each also increases a Black household's likelihood of experiencing financial precarity, of facing problems with credit, and of looking to bankruptcy to deal with debts.

People bring the barriers they find with housing, consumer credit, income, education, and taking care of their families with them to the bankruptcy system. Each driver of the racial wealth gap is evident when comparing Black filers to other filers. Table 6.2 provides that comparison, emphasizing disparities in homes, retirement, student loans, and income. The table disaggregates chapter 7 and chapter 13 because Black filers are overrepresented in chapter 13 and chapter 13 filers differ from

chapter 7 filers regardless of race. A little under half of Black filers find themselves in chapter 7 and a little over half find themselves in chapter 13. The table reports homes values, home equity, and home loans only for filers with homes, retirement property only for filers with retirement property, and student loans only for filers with student loans. Table 6.3, below, focuses specifically on cars and car loans.

Table 6.2. Finances of U.S. Bankruptcy Filers, by Race and Chapter (medians)[31]

	Black Filers, Ch. 7	Other Filers, Ch. 7	Black Filers, Ch. 13	Other Filers, Ch. 13
Total assets	$19,331	$26,995	$33,246	$130,538
% homeowners	30%	35%	46%	64%
Home value	$135,656	$148,685	$125,405	$155,444
Home equity	$4,362	$14,072	$19,925	$18,881
% with retirement prop.	27%	33%	23%	36%
Retirement property	$7,074	$9,117	$3,464	$9,948
Total personal property	$13,292	$15,931	$16,283	$22,011
Total debts	$84,732	$94,707	$89,359	$158,476
Total home loans	$125,512	$124,164	$105,339	$126,029
% with student loans	42%	23%	29%	25%
Student loans	$39,570	$28,561	$46,868	$30,974
Total unsecured debt	$52,018	$50,615	$26,853	$37,197
Debt-to-asset	3.46	2.48	1.83	1.30
Annual income	$40,716	$41,082	$46,332	$60,462
Debt-to-income	2.21	2.29	2.12	2.38

Other filers' total asset value dwarfs Black filers' total asset value, which aligns with racial differences in accumulated wealth. The difference also is evident when comparing total personal property values and debt-to-asset ratios. Black filers have fewer assets to cover their debts. Perhaps most noticeable are the disparities in homeownership and how they contribute to asset values and debt-to-asset ratios.

Housing and Financial Insecurity

For most people, homeownership is the primary tool for building wealth. It also is a source of pride and roots people to a community. Higher homeownership rates are associated with more positive outcomes for communities as a whole and for the people who live in them.[32] Although owning a home will not work out for everyone, many people have followed the path of homeownership to achieve at least some financial stability. But housing discrimination—from purchase to mortgage extension, appraisal, and sale—has placed obstacles in the way of the Black community to achieve the same level of financial stability as others.

Keeping the Home

The federal government has explicitly promoted homeownership as a wealth-building tactic since the New Deal programs of the 1930s. These programs established federal agencies and regulators that

brought low-cost credit to facilitate the purchase of houses. This low-cost credit, however, went predominately to white families. Their purchases helped create segregated white suburbs and Black urban centers, with explicit redlining entrenching segregation and making it more difficult for Black persons to achieve their goal of homeownership even when they had the ability to make down payments. Houses in white neighborhoods became more valuable, and appreciated more rapidly, than houses in Black neighborhoods. Federal laws ultimately banned redlining and the Supreme Court struck down racially restrictive property covenants, but neighborhoods across the United States still remain largely segregated.[33]

As a result, the Black homeownership rate remains notably less than the white homeownership rate—as of 2023, forty-six percent as compared to seventy-four percent.[34] Houses in predominately Black neighborhoods also are undervalued, along with simply being worth less.[35] They are appraised at roughly twenty percent less than what their values would be if they were located in predominately white neighborhoods, amounting to a cumulative loss of equity of approximately $156 billion.[36] When people put their houses up for sale, appraisals in majority-Black locations are nearly twice as likely to come in at under the contract price as homes in majority-white locations.[37] This affects final sale prices, limiting wealth accumulation. For a Black homeowner struggling to pay the mortgage, it also makes selling the house less profitable, potentially leaving a deficiency to worry about.

The finances of the people who file bankruptcy show the monetary results of the Black community being steered to less desirable neighborhoods where housing values appreciate more slowly and being discriminated against in the appraisal process. As detailed in Table 6.2, the value of people's primary residences is low for all filers, but it is even lower for Black filers. When Black homeowners write about their bankruptcies, they describe how keeping those houses is at the top of their list of priorities and was a primary motivation for their filings.

A Black woman who filed chapter 13 alone listed her house as worth $65,000. "If you look at my bankruptcy file, you will see that I filed to retain my home. I lived in this house for 21 years and I am almost close to paying it off. To lose it was not an option." She owed her mortgage lender $22,000, and thus was somewhat close to "paying it off." She was among the thirty percent of chapter 13 filers who successfully complete their repayment plans. Five years and a month after she filed bankruptcy, she received a discharge. She paid the remainder due on the mortgage through the plan, and seemingly succeeded in retaining her home.

The house of a widowed Black man—a doublewide mobile home on a third of an acre of land—was worth a similar $69,000. Despite the home being underwater because he owed his mortgage lender $85,000, he wanted to keep it. "I was going to lose my house. Thank god for bankruptcy court and the people that helped me to get to bankruptcy court and my lawyer for his help. Thank god for helping me save my home." He likewise was one of the auspicious chapter 13 filers who complete their plans. After three years of payments, including over $23,000 to the mortgage lender, he received a discharge, and presumably remains living in his home.

Fighting the Mortgage Lender

The bankruptcies filed by these two Black homeowners are outliers in terms of the equity that they held in their homes. Although the median home equity among Black chapter 13 filers is higher than other chapter 13 filers, as shown in Table 6.2, Black chapter 7 filers have significantly less home equity as compared to other chapter 7 filers. Black chapter 7 filers' lower home equity reflects disparities that Black homeowners find in the mortgage market.

Although the 1968 Fair Housing Act and the 1974 Equal Credit Opportunity Act made it illegal for lenders to discriminate, and the Home Mortgage Disclosure Act (HMDA) requires lenders to disclose data about how they distribute credit, lenders still treat Black borrowers differently such that they pay more for mortgages. The Great Recession exemplifies this continued discrimination, which wiped out fifty-three percent of Black net worth.[38]

In *Homeownership and America's Financial Underclass*, legal scholar Mechele Dickerson details how homeownership became a flawed promise, particularly for the Black community. Through the 1990s and early 2000s, overall housing prices increased by more than fifty percent, making it difficult for families of all demographics to afford houses, and prompting the government to encourage lenders to diversify their loan products. Lenders began offering more expensive products—such as mortgages with high interest rates (subprime mortgages), with lower down payment requirements, with negative amortization, and with adjustable interest rates—ostensibly to people who would not have otherwise qualified for traditional mortgage loans.[39] Lenders used the opportunity to sell these more expensive products to target Black borrowers.[40]

During these housing boom years, fifty percent of mortgage loans issued to Black borrowers were subprime, as compared to twenty percent of loans issued to white borrowers. Studies have confirmed that mortgage brokers disproportionately steered Black borrowers to higher-cost loans. For example, whereas five percent of higher-income white borrowers received subprime mortgages, twenty-three percent of higher-income Black borrowers received subprime mortgages.[41] By 2006, half of all loans made to Black borrowers were high-cost compared to fewer than one-fifth of all loans made to white borrowers.[42] As a result, Black borrowers had higher mortgage debt and during the Great Recession, Black borrowers had a higher risk of defaulting on their mortgages and losing their homes.[43]

Discrimination in the mortgage market persists, with studies showing that lenders still charge otherwise equal Black borrowers higher interest rates, and that Black homeowners carry more expensive mortgages.[44] When Black homeowners file bankruptcy, this reality is reflected in the finances of chapter 7 filers: they hold little equity in their houses. At the mean, Black homeowners who file chapter 7 have a loan-to-value ratio of 0.94, meaning they hold six percent equity. In comparison, other homeowners who file chapter 7, at the mean, enter bankruptcy with a loan-to-value ratio of 0.85. They hold fifteen percent equity in their homes, almost three times as much as Black chapter 7 homeowners. The low equity increases Black chapter 7 filers' debt-to-asset ratios. They have less ability to pay their debts with what they own, part of which is attributable to expensive mortgages.

Additionally, Black homeowners are more likely to confront other problems from their higher-cost mortgages, such as falling behind on payments. Black filers write about their experience with mortgage lenders in their narratives. This chapter's opening quote about losing a job and years later filing chapter 13 after a failed home loan modification attempt specifically identified Wells Fargo. After the Great Recession, Wells Fargo's mortgage modification policies resulted in multiple lawsuits. In 2022, it agreed to a $3.7 billion settlement with the Consumer Financial Protection Bureau over consumer abuses, including abuses related to its mortgage modification practices.[45]

When she filed chapter 13, a separated Black woman with three dependents pointed to her mortgage and foreclosure as reasons for her filing, as well as medical issues and student loans. "Mortgage people changed hands several times and mismanagement came into play. I stopped the foreclosure on my house several times myself. The lenders wanted more, doubling the amount of money, making me fall behind in mortgage payments. Only way to save my home was to file bankruptcy." She indicated that prior to filing, she tried to work with her creditor and had obtained a loan modification. She ended her story with: "I also was sick and out of work for 2 months with surgery. So I still struggle paying a

high amount to the trustees, but it did save my home at least for now, out of sheriff sale." The court dismissed her case for failure to make plan payments seven months after the petition date.

The husband of a Black married couple, both in their early sixties, filed chapter 13 when they fell behind on multiple debts. "Deep in debt. Got behind on house payment. Went into foreclosure on home. Payday loans and other types began to pile up. Rather than lose the home, filed bankruptcy. House, car note, etc., were too much. Had to save my home." He too pointed to the mortgage and foreclose as reasons for the filing. Keeping the house, though, seemed to be of the utmost importance.

Car Loans and Other Debts

When he filed chapter 13, this same filer also owned one car, worth $7,000, on which he owed $14,000, meaning that he held negative equity in the car. That his car was underwater is consistent with the median Black chapter 13 filer entering bankruptcy owing more on all car loans than the collective value of all their cars. Regardless of chapter, at the median, Black filers hold no equity in their most valuable car.

Table 6.3 details cars and car loans among bankruptcy filers, by race and chapter. Across all households, filers owned, at the median, one car. Joint filers, at the median, owned two cars.

Table 6.3. U.S. Bankruptcy Filers with Cars, by Race and Chapter[46]

	Black Filers, Ch. 7	**Other Filers, Ch. 7**	**Black Filers, Ch. 13**	**Other Filers, Ch. 13**
% car owners	77%	86%	88%	92%
% car owners with house	28%	32%	40%	59%
Median Values for Car Owners				
Value, most valuable car	$6,859	$6,817	$10,096	$10,125
% cars with liens	66%	54%	79%	67%
Amt owed, most valuable car	$8,728	$2,905	$11,841	$9,721
Equity, most valuable car	$0	$1,268	($635)	$622
Value, 2nd most valuable car	$2,421	$2,822	$4,033	$4,088
% cars with liens	39%	35%	69%	51%
Amt owed, 2nd most valuable car	$0	$0	$3,604	$428
Equity, 2nd most valuable car	$1,204	$1,172	$99	$952
Total value, all cars	$8,083	$8,004	$11,627	$12,348
Amt owed, all cars	$10,659	$4,216	$13,005	$12,483
Equity, all cars	$0	$1,750	($557)	$1,030

Black filers are less likely to own cars than other filers, and they own cars at a lower rate than the general population's over ninety percent vehicle ownership rate.[47] They own cars worth, at the median, about the same as other filers. But they are more likely to take out car loans and owe significantly more on those loans, particularly on their most valuable car. That car likely is what they rely on to get them to work and to take care of their family, and the car that they enter bankruptcy hoping to keep.

The car and car loan markets are in some ways like the home and home loan markets, and they are subject to similar temptations and tendencies to discriminate. Historically, Black consumers have paid

more for cars and Black borrowers have paid more for car loans than other borrowers.[48] Black borrowers continue to pay more for car loans, are more likely to be sold subprime car loans, and experience higher rates of loan default.[49] A recent study found that, when controlling for creditworthiness, Black applicants' car loan approval rates are 1.5% lower, and that minorities pay interest rates that are seventy basis points higher.[50] These disparities mean that Black borrowers take out more expensive loans to finance the purchase of their cars. These more expensive car loans show up in the amount Black filers owe on car loans and the equity they hold in their cars.

Other debts also may accrue from car ownership. Unpaid parking tickets and other government-assessed fees and fines can lead to cars being booted or impounded, a practice for which Chicago made national news,[51] and to license suspension. Chapter 13's broader discharge gets rid of some fees and fines, such as parking tickets, which in turn helps with license suspensions. Police officers disproportionately give traffic tickets to Black motorists.[52] More parking tickets are issued in predominately Black neighborhoods.[53] Black drivers have higher rates of license suspension. In North Carolina, for instance, the rate is four times higher than that of white drivers.[54] These racial disparities appear in bankruptcy as Black car owners filing chapter 13.[55]

A single Black woman, who filed chapter 13, had three children, one of whom was old enough to drive, and owned three modest cars that were all five-to-nine years old. The most valuable car was worth less than $9,300, and all three were subject to liens. She had missed payments, meaning the loans were in default. She was underwater on all three cars by a combined amount of $18,000. If the cars were repossessed, she would still owe at least that much (and probably more given that repossessed cards usually sell for only a fraction of their value). She also owed $7,000 in parking tickets. "I filed bankruptcy mainly for parking tickets that my family member got. I drive a lot taking my adopted children back and forth to school. Also during errands during the day. Couldn't afford to have my license suspended, nor afford the debt that had accrued to pay." Her repayment plan contemplated keeping two cars and surrendering the third.

As demonstrated by the above narrative of the Black husband who filed to save the family home, getting behind on the home loan and car loan sometimes also can lead to taking on other types of debts, such as, in his situation, payday loans. Other Black filers also wrote about this cycle of debt. A single Black woman entered chapter 7 with $23,000 in unsecured debts. "A lot of pay day loans, credit cards and [finding] company that you can get money in one day with high payments and high interest rates."

Lenders target the Black community for high-cost products, like payday loans and auto title loans,[56] making Black households particularly susceptible to a debt spiral if they lose their job or face health problems or if life simply spins out of control. (The next chapter considers the intersection of bankruptcy and the even more specific marketing of payday loans to Black women.) These products are both more expensive and come with higher risks of default than credit cards. Still, studies have found that credit card lenders charge Black borrowers higher interest rates.[57] Taking out unsecured debt in general is more expensive for Black borrowers.

Nonetheless, Black persons must turn to unsecured debt to smooth breaks in income or if expenses increase, such as because of a medical issue, more often than white persons because they have less savings and less ability to accumulate savings. Their increased reliance on credit products contributes to their financial precarity and puts them at a higher risk of defaulting on at least one debt, which puts them on a path to turning to the bankruptcy system for a debt discharge. That they generally pay more across credit products only worsens their financial precarity.

Income and Education

Part of why the wealth gap persists relates to racial disparities in income, the employment market, higher education, and student loans. Black bankruptcy filers' finances reflect these inequalities. The next chapter compares these disparities along race and gender lines. The section below overviews how income and education contribute to the Black communities' financial precarity and increased use of bankruptcy.

Income and Employment

In 2019, the median Black worker made almost a quarter less per hour than the median white worker. Racial disparities in education, experience, and location only explain a portion of the difference, leaving an unexplained gap of fifteen percent.[58] The wage gap differs when comparing Black and white men, and Black and white women, with Black men and women making relatively less than their white counterparts.[59] The Black worker unemployment rate also historically is twice as high as the white worker unemployment rate.[60] In addition, Black employees are more likely to experience disruptions in their work schedules.[61]

These income and employment disparities make it harder to make ends meet and to save. For instance, a Black single woman who filed chapter 7 wrote:

> I filed bankruptcy due to my income decreasing. I was making almost $5000 a month until the spring of 2017. It changed and I couldn't afford to pay all of my bills anymore. I tried to figure things out to make them better, like finding a part-time job or another full-time paying what I was making, but nothing came through and I had to pay what was important. Kept getting calls from bill collectors. I also tried to work out plans to get me caught up, but I still couldn't afford it. . . . . It really sucks when your income changes and you don't know what to do.

When she filed, she was employed as a customer service representative and her gross annual income was $37,000, which roughly matches the median income of Black chapter 7 filers. Across the people who file bankruptcy, as shown in Table 6.2, Black filers had lower income than filers with other demographics, which is consistent with Black workers' lower incomes outside bankruptcy.

By the time they file bankruptcy, Black debtors are as likely as other debtors to be employed—sixty-eight versus sixty-five percent. But for people with budgets already stretched thin, unanticipated expenses or small declines in income can trigger financial problems. The wage gap means that more Black workers will be among such people. A recent study using banking data to model the effects of income volatility found that Black households are almost twice as sensitive to income shocks as white households, which the researchers attribute to the racial wealth gap.[62]

The story written by a divorced Black woman who filed chapter 7 illustrates the difficulties brought about by a lack of savings. "I've always been employed, salaried, which means my income stays the same no matter how many hours I work, so when an emergency arises, such as needing a vehicle or medical expenses, it throws me in a loophole. Where do I get the extra money to make a car payment?" She had worked for the same employer for nineteen years when she filed chapter 7. At the time, she made $36,000 per year, before taxes. Her primary asset was her car, worth $12,000, and on which she owed $33,000. She owed $31,000 on unsecured debts.

Like most of the people who file bankruptcy, she had no retirement savings, despite being forty-nine years old. Black filers are even less likely than other filers to enter bankruptcy with retirement savings, and if they have retirement savings, they have less than other filers with retirement savings, as detailed in Table 6.2. The relative lack of retirement savings likewise connects with the racial wealth gap. It is difficult to allocate income to retirement savings when income barely covers everyday expenses. Also,

like other people who file bankruptcy, some Black filers who did have retirement funds write about how they liquidated their accounts to pay debts before turning to the bankruptcy system for help.

Education and Student Loans

Student loans play a particularly pernicious role in the lives of the Black community. Black students are more likely to take out loans to finance higher education, are likely to pay higher interest on those loans, and are more likely to attend for-profit colleges, which cost more and have a significantly lower graduation rate than four-year colleges.

Based on data from 2016, eighty-five percent of Black students graduate college carrying loans, as compared to sixty-nine percent of white students. Black students owed, on average, $34,000, as compared to $30,100 owed by white students. Nearly half of Black students default on their loans; the default rate for white student is twenty-one percent. Two-thirds of Black students who take out loans to pay for education at for-profit colleges default on their student loans.[63]

Some of these students end up filing bankruptcy, such as this single Black twenty-seven year-old who filed chapter 13. "I'm currently a nursing student at [a for-profit college]. I am a black male, not a thug, not a gangsta. I am a nursing student. I lost my job. I've been without lights, gas and money. I filed bankruptcy not out of pity but because I had no other road to go down." He owed $43,000 on student loans, similar to the median amount that Black chapter 13 filers who carry student loans owe. He indicated that food was the single most important thing that he went without in the year before his filing, and wrote that he sold his clothes, shoes, and schoolbooks to make ends meet.

The racial disparities in the student loan market are discernable in the bankruptcy system. Black filers are more likely to enter bankruptcy with student loan debt, and those Black filers with student loans owe more on the loans than other filers, as detailed in Table 6.2. Black filers also have lower overall educational attainment than other filers because more have attended some college, meaning they graduated from a two-year institution, earning an associate's degree, or they dropped out of a four-year institution. This matches the racial gap in college completion. Seventy percent of white students complete a college degree within six years, as compared to forty-five percent of Black students.[64]

Consistent with more having attended some college, Black filers indicate more often than other filers that they went without education to make ends meet in the years leading up to their bankruptcies. Earning associate's degrees or dropping out of college often creates educational debt, but seldom yields the same income bump as earning a four-year college degree. Although there may not have been money or time to continue their education, over the long term, student loans often add pressure to a financial situation that reflects other discrimination and racial barriers. Indeed, Black filers are more likely than others to agree that unmanageable student loan payments contributed to their bankruptcies. As with home loans, auto loans, and unsecured debts, disparities and predation in the marketing and funding of higher education stymies savings and ultimately transfers wealth away from the Black community, contributing to the perpetuation of the racial wealth gap.[65]

<u>Taking Care of Family and Community</u>

That Black filers set aside their educational goals in times of financial stress connects with the handful of other characteristics that set them apart, which fall into the broad category of family and community dynamics. The next chapter considers these dynamics in detail on the basis of the intersection of gender and race. In summary, Black filers, and particularly Black women, are more likely to have dependents in their households. They are less likely to be married. They are more likely to indicate that helping others contributed to their bankruptcies. And they are more likely to look to friends and

family, government assistance, and charity for help. For example, the Black nursing student also wrote about how he approached his church for assistance before turning to the bankruptcy system.

Focusing on Black filers' pre-bankruptcy actions again reflects the racial wealth gap and speaks to the United States' lack of a social safety net, as well as the Black community's attempts to support each other. That Black households look to family and friends for help suggests a lack of resources and a lack of adequate support when they seek assistance from the government. The lack of support offered in times of need matches the current expectation that people will personally shoulder the costs associated with many of life's expenses and risks—owning homes and cars, dealing with fluctuations in the employment market and stagnant wages, paying for their educations, and recovering from health scares. Past and continued denial of civil and economic rights and opportunities leaves the Black community less able to shoulder these costs, which almost necessarily sets them up to struggle more financially. Because they have few, if any other places to turn, more Black households file bankruptcy than one would predict given their share of the population.

Bankruptcy Law's Limitations

For some Black households, the bankruptcy system, likely unintentionally, has become the leading solution to their financial problems. Once they decide to file, however, they will find a system that, like many institutions in the United States, is stacked against them. Some Black filers will end up in chapter 13 not for its financial or legal benefits and seemingly solely because of their race. They will pay more to file chapter 13, and they will receive fewer benefits.

More subtly, in both chapters 7 and 13, bankruptcy law can remedy fewer of Black filers' financial problems. As detailed by legal scholar Mechele Dickerson, bankruptcy law, while facially neutral, systemically favors people with certain asset and debt profiles. Bankruptcy law imagines a debtor with a home and some equity in that home, who is married, has a retirement account, is employed, provides financial support only to legal dependents, and has little if any student loan debt.[66] Black filers meet two of these assumptions, one of which they only meet sometimes: They are as likely to be employed as other filers, and those Black households that file chapter 13 owning a home have a similar amount of home equity, at the median, as other chapter 13 filers with homes. Other households are more likely to meet every other criterion.

Because bankruptcy law presupposes the finances and life situation of a non-Black household, other households, and specifically white households, experience more benefits. They can retain their home and home equity—among all people who file bankruptcy, white households are more likely to have both. They are more likely to be married, and as married couples, they can shield more property via exemptions. They can take advantage of exemptions to keep the retirement accounts they are more likely to have. They can take advantage of bankruptcy law provisions that allow them to craft repayment plans that include expenses for their legal dependents, who are likely to be all their dependents. Because they are less likely to owe student loan debt, or if they have student loan debt they owe less of it, they exit bankruptcy with a greater percentage of their unsecured debt discharged. They retain more property, and their fresh start is fresher.

In contrast, Black filers enter with less property, exit with less property, and discharge a lesser percentage of their unsecured debt. Their relative lack of property connects with the racial wealth gap. But what they receive from bankruptcy law is the debt discharge. If they owe loans on their homes and cars, their homes and cars are more likely to be underwater; if so, bankruptcy law generally does not allow them to discharge the unsecured portions of these loans. Their student loans are unlikely to be discharged. Bankruptcy law does not fully recognize their household structure and does not allow

them to include expenses in repayment plans for assistance they provide for other people they consider "family" worthy of helping, likely making it harder to fulfill plan payments and decreasing their chances of obtaining a discharge through chapter 13.

Black filers' fresh start is less fresh—tarnished and scuffed compared to other filers. Bankruptcy law, of course, cannot fix wealth and income inequalities. It does not provide a job. It does not put money in the bank. It does not buy a house. Rather, bankruptcy law provides tools to help people deal with their obligations to others. Although facially neutral, key portions of bankruptcy law do not work well for Black filers. It does not address the obligations Black filers are likely to have, and the tools it gives filers assume household resources Black filers are less likely to have. Sometimes it gives Black filers less access to the most effective tools. The accumulation of discrimination across the economy and society directs Black households toward the bankruptcy system, where they face more inequality.

Although filing bankruptcy will help some Black households, bankruptcy law, as currently enacted and practiced, exacerbates racial economic disparity. Although bankruptcy law cannot solve disparities in the broader economy and across society, it should not add to those disparities. In this book's conclusion, we propose discrete changes to bankruptcy law to make its provisions a more equitable lifeline of last resort.

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[1] Baradaran, "Jim Crow Credit," 888–916; "Segregation in America." In *The Color of Money*, Baradaran scrutinizes the false promise of Black banks for building the Black community's wealth and discusses how housing segregation, racism, and credit policies trapped the Black community in economic oppression.
[2] Bleich, et al., "Discrimination in the United States," 1399–1408; Lloyd, "The Black American Experience."
[3] Butler, Mayer, and Weston, "Racial Disparities in the Auto Loan Market," 1–5 (auto lending); Foohey and Martin, "Fintech's Role," 475−88 (discussing studies); Freeman, "Racism in the Credit Card Industry," 1095−1106 (credit cards).
[4] Kwok, "Black Households Have Less Access"; Baradaran, *How the Other Half Banks*, 110–118, 138–139.
[5] LaVoice and Vamossy, "Racial Disparities in Debt Collection"; Kiel and Waldman, "The Color of Debt."
[6] For instance, Dickerson, "Systemic Racism and Housing," focuses on racial disparities in housing.
[7] United States Census Bureau, "Quick Facts." (based on July 1, 2022, population estimates).
[8] Cohen, Lawless, and Shin, "The Opposite of Correct," 629.
[9] "Quick Facts."
[10] The exact percentages vary year-to-year.
[11] See Chapter 2.
[12] Steil, Albright, Rugh, and Massey, "The Social Structure of Mortgage Discrimination," 759.
[13] Foohey, Lawless, Porter, and Thorne, "'No Money Down' Bankruptcy," 1083 (discussing regression analysis).
[14] Cohen, Lawless, and Shin, "The Opposite of Correct," 631–633; Foohey, Lawless, Porter, and Thorne, "'No Money Down' Bankruptcy," 1085–1086; Braucher, Cohen, and Lawless, "Race, Attorney Influence, and Bankruptcy Chapter Choice," 398–400.
[15] Stanley and Girth, *Bankruptcy: Problem, Process, and Reform*, 74.
[16] Sullivan, Warren, and Westbrook, "The Persistence of Local Legal Culture," 804; Braucher, "Lawyers and Consumer Bankruptcy," 503.
[17] Moslimani, Tamir, Budiman, Noe-Bustamante, and Mora, "Facts About the U.S. Black Population."
[18] The table reports odds ratios. An asterisk denotes statistical significance at the 5% level. The word "yes" indicates whether a particular vector of control variables was in the equation, not necessarily whether they were statistically significant. Due to extreme outliers, the financial variables were Winsorized at 3.5 standard deviations. The complete results, with odds ratio, are in the Appendix.
[19] Morrison and Uettwiller, "Consumer Bankruptcy Pathologies"; Kiel and Fresques, "Data Analysis: Bankruptcy and Race in America."

[20] Cohen, Lawless, and Shin, "The Opposite of Correct," 633; Foohey, Lawless, Porter, and Thorne, "'No Money Down' Bankruptcy," 1086–1091; Braucher, Cohen, and Lawless, "Race, Attorney Influence, and Bankruptcy Chapter Choice," 400–405. Lawless and Littwin, "Local Legal Culture from R2D2 to Big Data," also use a regression model to find that race is a statistically significant predictor of filing chapter 13.
[21] Braucher, Cohen, and Lawless, "Race, Attorney Influence, and Bankruptcy Chapter Choice."
[22] Cohen, Lawless, and Shin, "The Opposite of Correct."
[23] Katherine Porter was a co-investigator on the CBP during this time. Foohey, Lawless, Porter, and Thorne, "'No Money Down' Bankruptcy," 1086–1091.
[24] Foohey, Lawless, Porter, and Thorne, "'No Money Down' Bankruptcy," 1100.
[25] Dickerson, "Racial Steering in Bankruptcy," 643–647.
[26] Greene, Patel, and Porter, "Cracking the Code," 1035–36, found, based on a regression using 2007 CBP data, that race predicted plan completion, with Black chapter 13 filers less likely to complete plans.
[27] Highsmith and Saunders, "The Rent-to-Own Racket," 5–8; Anderson and Jaggia, "Return, purchase, or skip?," 315.
[28] Weller and Roberts, "Eliminating the Black-White Wealth Gap."
[29] Derenoncourt, Kim, Kuhn, and Schularick, "Wealth of Two Nations."
[30] Schularick, Kim, Kuhn, and Derenoncourt, "Wealth of two nations" (gathering studies).
[31] Home value is market value of residential real property.
[32] Dietz and Haurin, "The social and private micro-level consequences," 401–450; McCabe, "Are Homeowners Better Citizens?," 929–954.
[33] Baradaran, "Jim Crow Credit," 888–894.
[34] United States Census Bureau, "Quarterly Residential Vacancies and Homeownership, First Quarter 2023."
[35] Howell and Korver-Glenn, "The Increasing Effect of Neighborhood Racial Composition," 1051–1071.
[36] Perry, Rothwell, and Harshbarger, "The Devaluation of Assets in Black Neighborhoods."
[37] Rothwell and Perry, "How racial bias in appraisals affects."
[38] Kochhar, Fry, and Taylor, "Wealth Gaps Rise to Record Highs."
[39] Dickerson, *Homeownership and America's Financial Underclass*, 9–10, 64–81.
[40] Sarra and Wade, *Predatory Lending and The Destruction of the African-American Dream*, 69–115.
[41] Dickerson, *Homeownership and America's Financial Underclass*, 164–172.
[42] Steil, Albright, Rugh, and Massey, "The Social Structure of Mortgage Discrimination," 761.
[43] Dickerson, *Homeownership and America's Financial Underclass*, 14–15.
[44] Bartlett, Morse, Stanton, and Wallace, "Consumer-Lending Discrimination in the FinTech Era."
[45] "CFPB Orders Wells Fargo to Pay $3.7 Billion," Consumer Financial Protection Bureau.
[46] The table reports medians for persons who own cars. Ns for Black chapter 7 filers' most valuable car is 216 and 2nd most valuable car is 65. Ns for Black chapter 13 filers' most valuable car is 230 and 2nd most valuable car is 78. Ns for other chapter 7 filers' most valuable car is 972 and 2nd most valuable car is 385. Ns for other chapter 13 filers' most valuable car is 343 and 2nd most valuable car is 176.
[47] Moody, Farr, Papagelis, and Keith, "The value of car ownership," 769.
[48] Cohen, "Imperfect Competition in Auto Lending," 31–33; Ayres and Siegelman, "Race and Gender Discrimination," 304–321.
[49] Foohey, Lawless, and Thorne, "Driven to Bankruptcy," 292–93.
[50] Butler, Mayer, and Weston, "Racial Disparities in the Auto Loan Market," 2–4.
[51] Racke, "Report: Chicago Has Seized and Sold."
[52] Dunn, "Measuring Racial Disparities In Traffic Ticketing," 537–56.
[53] Harden, "D.C. parking, traffic tickets snowball into financial hardships."
[54] North Carolina Equal Access to Justice Commission, "When Debt Takes the Wheel."
[55] In Foohey, Lawless, and Thorne, "Driven to Bankruptcy," we performed a cluster analysis that identified a group of people who file chapter 13 owning a car and little else; this cluster included the most Black filers.
[56] Hawkins and Penner, "Advertising Injustices," 1619–1657; Johnson, "The Magic of Groups Identity, 165–220.

[57] Freeman, Racism in the Credit Card Industry," 1095−1106.
[58] Wilson and Darity Jr., "Understanding black-white disparities in labor market outcomes."
[59] Daly, Hobijn, and Pedtke, "Disappointing Facts about the Black-White Wage Gap."
[60] Gould and Wilson, "Black workers face two of the most lethal preexisting conditions."
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[62] Ganong, Jones, Noel, Greig, Farrell, and Wheat, "Wealth, Race, and Consumption Smoothing."
[63] Foohey and Martin, "Fintech's Role," 480−82.
[64] Barshay, "College completion rates are up."
[65] Brown and Carbone, "Race, Property, and Citizenship," 136−43; Houle and Addo, "Racial Disparities in Student Debt," 562–577.
[66] Dickerson, "Race Matters in Bankruptcy," 1726.