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THE PERSISTENCE OF LOCAL LEGAL CULTURE: TWENTY YEARS OF EVIDENCE FROM THE FEDERAL BANKRUPTCY COURTS

TERESA A. SULLIVAN*
ELIZABETH WARREN**
JAY LAWRENCE WESTBROOK***

I. INTRODUCTION: LOCAL LEGAL CULTURE

Both scholars and practitioners are concerned with legal change. Developing new laws to implement stated goals and changing old laws to effectuate identified objectives are the grist of law reviews and legislatures, as authors propose sometimes simple, sometimes complex schemes to improve the legal system. Legal theorists, with a more universal view, endlessly debate the proper approach to all such problems, urging different theories to guide reform efforts[1]

* Professor of Sociology, Vice-Provost and Associate Dean of Graduate Studies, The University of Texas at Austin.

** William A. Schnader Professor of Commercial Law, University of Pennsylvania.

*** Benno C. Schmidt Chair of Business Law, The University of Texas School of Law.

Our names are listed alphabetically in accordance with scientific custom to indicate equal contribution to the work.

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1. *See, e.g.*, KARL N. LLEWELLYN, THE COMMON LAW TRADITION: DECIDING APPEALS (1960) (arguing that legal scholarship must concentrate on outcomes and the reasons that underlie these outcomes rather than classical case analysis); Paul Brest, *The Fundamental Rights Controversy: The Essential Contradictions of Normative Constitutional Scholarship*, 90 YALE L.J. 1063, 1109 (1981) (contending that the goal of legal scholarship should be genuine reconstitution of society in which freedom includes citizen participation); Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113 (1981) (claiming that Law and Economics is the most promising method for useful analysis of law); Mark V. Tushnet, *Legal Scholarship: Its Causes and Cure*, 90 YALE L.J. 1205 (1981) (making the Critical Legal Studies critique of traditional approaches to legal scholarship).

or, in some cases, suggesting that all such efforts are for naught.[2]

An unstated assumption that often underlies these debates is that variations in outcomes result from one of two sources: one, variations in formal, legal rules; or two, variations in individual responses to these rules. Throughout the Nineteenth and early Twentieth Centuries, legal classicists identified formal statutory rules and rules of courts as the sources of law capable of producing predictable outcomes. Instances of nonconformance with those rules were "errors."[3] Beginning in the 1930s, the Legal Realists developed a new approach based on two observations: The formal legal rules explained too few of the actual outcomes, and individual actors—particularly judges—were an important source of variation in outcomes in the legal system.[4]

Subsequent debates incorporated the legal realist insights, adding important new implications. Law and Economics theorists argued that a rational-actor model could predict the responses of individuals to formal, legal rules.[5] They supported adoption of formal rules that would anticipate and manipulate reactions to accomplish intended goals.[6]

Critical Legal Studies scholars, on the other hand, argued that much variation could not be predicted by rational-actor models, and thus, formal rules mattered less than the Law and Economics proponents assumed.[7] Critical Legal scholars suggested that the

2. *See, e.g.*, Roberto M. Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561 (1983).

3. *See, e.g.*, LAURA KALMAN, LEGAL REALISM AT YALE, 1927-1960, at 10-12 (1986) (describing the classical approach to legal scholarship that set the stage for the Legal Realism movement).

4. *See, e.g.*, JEROME N. FRANK, LAW AND THE MODERN MIND 108-26 (Peter Smith ed. 1970) (1930); KARL N. LLEWELLYN, THE BRAMBLE BUSH 81-82 (Oceana ed. 1981) (1930).

5. *See* Jack Hirshleifer, *The Expanding Domain of Economics*, 75 AM. ECON. REV. 53 (1985) (providing a concise description of the model and its limitations).

6. *See, e.g.*, RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW (3d ed. 1986); Richard A. Posner, *The Economic Approach to Law*, 53 TEX. L. REV. 757 (1975).

7. *See, e.g.*, Morton J. Horwitz, *Law and Economics: Science or Politics?*, 8 HOFSTRA L. REV. 905 (1980); Mark G. Kelman, *Trashing*, 36 STAN. L. REV. 293, 306-18 (1984); Duncan M. Kennedy & Frank I. Michelman, *Are Property and Contract Efficient?*, 8 HOFSTRA L. REV. 711, 713-14 (1980) (refuting argument that people are rational maximizers of satisfactions). The Law and Economics movement has also been sharply criticized by other scholars who do not adopt a Critical Legal Studies perspective. *See, e.g.*, GARY S. BECKER, THE ECONOMIC APPROACH TO HUMAN BEHAVIOR (1976) (identifying unproven assumptions about human cognition and behavior that pervade the rational-actor model); Arthur Leff, *Economic Analysis of Law: Some Realism about Nominalism*, 60 VA. L. REV. 451 (1974) (arguing that the assumption of rationality overstates human cognitive capacities and is ultimately an unprovable hypothesis). For a thoughtful summary of the current state of economic analysis in the legal academic community, see Robert C. Ellickson, *Bringing Culture and Human*

behavior of individual actors might better be understood as a function of both widespread class attitudes and the actor's own political, racial, and gender biases. They argue that judges could use infinitely flexible, formal rules to implement personal, political preferences.[8] With this approach, social class and political dominance are the crucial variables.[9]

No single point of view dominates either lawmaking or legal scholarship,[10] but the formalist view, in either its classical or its economic garb, seems to continue to claim the largest number of adherents. Year after year, in the law reviews and in the legislatures, most proposals for law reform rest on the premise that a change in formal rules will be sufficient to produce a change in actual practices, through coercion or through a system of incentives and disincentives.

For a number of years, a small, persistent group of scholars has alluded to a source of variation in legal systems that is located neither in the formal rules nor in the responses of individual actors. These scholars suggest that a "local legal culture" may introduce important variations into the implementation of formal rules.[11] The bundle of shared, local perceptions and expectations in the operation of a legal system is described as a "culture"

Frailty to Rational Actors: A Critique of Classical Law and Economics, 65 CHI.-KENT L. REV. 23 (1989).

8. *See, e.g.*, Duncan M. Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976). Another group of very interesting, but eclectic scholars are participants in the Law and Society movement. This movement does not have an articulated, all-embracing theory; indeed, among its fellow travelers are sprinklings of critical legal scholars and economists, along with legal historians, sociologists, anthropologists, psychologists, and philosophically undifferentiated legal scholars. What unites this group is its interest in using tools developed in other disciplines to better define and explore legal issues and, for many, an interest in developing an empirical foundation to test a variety of proposed legal theories. Notwithstanding the loose qualifications for membership, the number of proponents remains small. *See* Lawrence M. Friedman, *The Law and Society Movement*, 38 STAN. L. REV. 763 (1986).

9. *See, e.g.*, Gary Peller, *The Metaphysics of American Law*, 73 CAL. L. REV. 1151 (1985). *See generally* Mark V. Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515 (1991).

10. *See, e.g.*, Robert Scott, *Chaos Theory and the Justice Paradox*, 35 WM. & MARY L. REV. 329 (1993).

11. THOMAS W. CHURCH, JR., JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS (1978); Thomas W. Church, Jr., *Examining Local Culture*, 1985 AM. B. FOUND. RES. J. 449 [hereinafter *Examining Local Culture*]; Thomas W. Church, Jr., *Who Sets the Pace of Litigation in the Urban Trial Courts?*, 65 JUDICATURE 76 (1981); Herbert M. Kritzer & Frances K. Zemans, *Local Legal Culture and the Control of Litigation*, 27 L. & SOC. REV. 535 (1993) [hereinafter *Rule 11 Study*]. For a discussion of national legal cultures, see Joseph Sanders & V. Lee Hamilton, *Legal Cultures and Punishment Repertoires in Japan, Russia, and the United States*, 26 L. & SOC. REV. 117 (1992).

by analogy to the anthropological use of the term.[12] Local variation, by this account, may be caused in part by an embedded local culture in which judges, lawyers, and other repeat actors influence the application of law in that locality. Outcomes may vary significantly from one locale to another despite the similarity of both formal rules and individual actors. While particular individuals also may cause local variation,[13] a local legal culture transcends the influence of individual participants.[14] Therefore, the variation produced by a local legal culture persists over a long period of time, instead of changing as individual judges and lawyers assume and abdicate positions of power in a particular locality.

Oddly enough, the term "local legal culture" has been used in the Law and Society literature without a clearly articulated definition. We use it here to refer to systematic and persistent variations in local legal practices as a consequence of a complex of perceptions and expectations shared by many practitioners and officials in a particular locality, and differing in identifiable ways from the practices, perceptions, and expectations existing in other localities subject to the same or a similar formal legal regime.[15]

The significance of local legal culture is obvious. To the extent that legal reformers intend that certain consequences flow from their pronouncements, failure to account for the influence of local legal culture may frustrate their objectives. Moreover, by ignoring the potential influence of local legal cultures, reformers

12. *Cf.* Sally E. Merry, *The Culture of Judging*, 90 COLUM. L. REV. 2311 (1990) (reviewing LAWRENCE ROSEN, THE ANTHROPOLOGY OF JUSTICE: LAW AS CULTURE IN ISLAMIC SOCIETY (1989)).

13. *See, e.g.*, Kenneth White & R. Thomas Stone, *A Study of Alimony and Child Support Rulings With Some Recommendations*, 10 FAM. L.Q. 75 (1976) (showing variations among judges in applying highly discretionary standards for alimony awards) [hereinafter *Alimony*].

14. It goes without saying that culture is the product of individual human beings and therefore ultimately, all culture reflects the effect of individuals. But the concept of culture suggests a social product that extends beyond the immediate impact of a particular person and outlasts the direct influence of any one person. *See* SIGMUND FREUD, CIVILIZATION AND ITS DISCONTENTS (1955); CLIFFORD J. GEERTZ, JR., LOCAL KNOWLEDGE (1983); CLIFFORD J. GEERTZ, JR., THE INTERPRETATION OF CULTURES (1973); CLYDE K.M. KLUCKHOHN, CULTURE AND BEHAVIOR (1962).

15. Church states a much narrower and specific definition, but the one offered in the text is consistent with his concept. *See Examining Local Culture*, *supra* note 11, at 451. Kritzer and Zemans speak of local culture in a way quite consistent with our definition, but they do not discuss persistence. *See Rule 11 Study*, *supra* note 11, at 538-39. Professor Braucher's definition is less elaborate, but is also consistent with the one we offer. *See* Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L.J. 501, 503 (1993) [hereinafter *Many Cultures*].

overstate the anticipated impact of formal rules and, simultaneously, legal critics are given new material from which to posit the ineffectiveness of such formal rules. If a local legal culture is at work, legal reforms are potentially undercut, and neither the impact of formal rules nor the influence of individual actors can be identified with any accuracy.

The study of local legal cultures may yield important results. If local legal cultures can be documented and examined with some particularity, such studies may reveal the circumstances under which local legal cultures are most likely to have an impact on the implementation of certain rules, the anticipated parameters of the impact, and the ways in which the power of the culture can be modified or harnessed to enhance the likelihood of producing certain outcomes. It may be possible to develop principles about dealing with local cultures that can be generalized from one circumstance to another, so that adjustments for local legal cultures may become a part of the more sophisticated modeling of legal change. Even if each local culture is unique in its circumstances, recognition of the existence of such cultures and efforts to learn more about their operation may guide reformers both in articulating perceived problems and proposing solutions. In either case, for those interested in effectuating certain policy goals, acknowledgment of the role of local legal cultures may facilitate more effective implementation of legal change.

Local legal cultures may have a more significant impact on the legal system than merely as identified impediments—or in some circumstances, as facilitators—of legal change. Ultimately, their presence raises questions about whether local legal cultures are indigenous to the implementation of laws in a diverse society. Do such cultures inhere in any effort to implement uniform legal rules, or are they more likely to arise only when certain conditions are present? Do they ultimately function to democratize the legal system at yet another juncture, or do they permit local elites to exercise hidden power that is resistant to articulated policy goals? The anonymity of local legal cultures in scholarly discourse has insulated them from the scrutiny to which both formal rules and the reactions of individual actors have been subjected over the past several decades.

Despite frequent use of the concept among Law and Society scholars, there has been relatively little empirical work identifying and analyzing local legal culture. One of the obstacles to

such studies is the difficulty of separating the effects of a local culture from the idiosyncratic, short-to-medium term effects of particular local actors. Among the ways such a distinction can be attempted are by attitudinal surveys[16] and by identifying local variations that persist in stable directions over substantial periods of time.

The structure of the bankruptcy laws and the possibility for variance in debtor choices make the bankruptcy system, specifically its consumer branch,[17] a fruitful area for study to examine how uniform laws are shaped and reinterpreted through different local forces.[18] Furthermore, information concerning debtor choices is available. The Administrative Office of the Courts systematically collects some data. These public data are enhanced by our own data, which we have produced as part of the Consumer Bankruptcy Project, an ongoing empirical study of debtors in bankruptcy.

In this Article, we suggest that local legal culture exercises a pervasive, systematic influence on the operation of the federal bankruptcy system in ways unanticipated by lawmakers or academic researchers.[19] First, we identify key choices that consumer debtors must make in bankruptcy. Next, we assemble data that documents persistent variations in these debtor choices among judicial districts throughout the country over a twenty-year period. We argue that all of this local variation cannot be explained by the impact of federal and state laws, by the behavior of particular individuals or by other, nonlegal factors. We then combine the data with our own research to develop three different models

16. *See, e.g., Examining Local Culture, supra* note 11.

17. By "consumer" bankruptcy we mean the bankruptcy of natural persons. Business bankruptcy, although governed by the same laws, operates in very different ways. *See infra* note 19. Some very interesting empirical work has been done with respect to business bankruptcy, but that is not, for the most part, the focus of this Article.

18. It is noteworthy that one of the seminal works in the development of the idea of local legal culture was a study of the procedures in debtor-creditor law. *See* HERBERT JACOB, DEBTORS IN COURT (1969); *Examining Local Culture, supra* note 11, at 450 n.6.

19. Business bankruptcies provide another important clue about the impact of local legal culture. A recent study has shown that corporate debtors use various devices to file their bankruptcy cases in districts where the courts are thought to be favorable to those in control of the corporation. *See* Lynn M. LoPucki & William C. Whitford, *Venue Choice and Forum Shopping in the Bankruptcy Reorganization of Large, Publicly Held Companies*, 1991 WIS. L. REV. 11. *See also* RICHARD B. SOBOL, BENDING THE LAW: THE STORY OF THE DALKON SHIELD BANKRUPTCY (1991)(describing A.H. Robins' efforts to consolidate lawsuits in a favorable locale). Individuals are less able to shop for a venue because they must have resided at least six months in the district in which they file. 28 U.S.C. § 1408(1) (1988). Corporations are subject to the same provision, but they often reside or have subsidiaries in a number of districts and can select a venue from among several choices.

of a local legal culture: (1) a judge-dominated model; (2) a lawyer-dominated model; and (3) a model involving other repeat actors. We argue that the bankruptcy system couples extreme complexity with multiple opportunities for individual debtor decisionmaking in a way that encourages the intervention of the local legal culture and, paradoxically, that undermines the autonomy of individual debtors' decisionmaking. Finally, we venture some preliminary thoughts about how the role of local legal culture might affect our theories of law and the strategies chosen for law reform.

This Article uses data from the consumer bankruptcy system to document the influence of local legal cultures. We recognize that what occurs there may not be repeated elsewhere in the legal system. The bankruptcy system is civil rather than criminal, federal rather than state, and multiparty rather than two-party. Cases are more frequently administered than formally litigated. Parties are a cross-section of America,[20] while both attorneys and judges are specialists with a high degree of technical information. Some of these factors, or other factors we have not identified, may make the operation of a local legal culture in bankruptcy different from the operation of such a culture in other areas of law.[21] Nonetheless, we believe that consumer bankruptcy offers an important and instructive example. We hope our findings will resonate with experts in the other fields where similar phenomena may be observed, and that this work will become part of a continuing exploration of legal cultures of every shape and type.

II. BANKRUPTCY: A CASE STUDY IN VARIATION

A. *Background—The Formal Laws Governing Bankruptcy*[22]

The U.S. Constitution gives Congress the power to establish a uniform law of bankruptcy.[23] Throughout the Nineteenth Cen-

20. TERESA A. SULLIVAN, ELIZABETH WARREN, & JAY L. WESTBROOK, AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA 102 (1989) [hereinafter AS WE FORGIVE OUR DEBTORS].

21. A recent article about consumer bankruptcy counseling by lawyers also found that local legal culture has a pervasive influence on consumer bankruptcy. *See Many Cultures*, *supra* note 15. An influential local legal culture might not exist in all legal contexts, however. *See Rule 11 Study*, *supra* note 11, at 549-50 (finding no local legal culture in the general civil litigation context).

22. For a brief, nontechnical introduction to consumer bankruptcy procedures, see AS WE FORGIVE OUR DEBTORS, *supra* note 20, at 20.

23. The Constitution grants Congress the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States." U.S. CONST. art. I, § 8.

tury, however, bankruptcy laws were short-lived affairs, typically surviving only a few months or years in the aftermath of a financial panic. The first bankruptcy law to become a more permanent feature of the economic landscape was the Bankruptcy Act of 1898.[24] That law was significantly amended in the 1930s, and it was finally replaced by the 1978 Bankruptcy Reform Act,[25] which is the current federal bankruptcy law.

The bankruptcy system is largely controlled by federal statute. The primary benefits of bankruptcy—discharge of debt,[26] insulation from creditor collection,[27] and limited protection from post-bankruptcy discrimination[28]—are uniformly provided to all debtors in bankruptcy, throughout the United States. Similarly, the basic structure of the system is controlled by uniform national laws. The creation of an estate,[29] nationwide service of process,[30] the appointment of a trustee,[31] rules for confirmation of a reorganization plan,[32] and other features of consumer bankruptcy may be interpreted differently by various federal courts, but they all derive from a single federal statute, and ultimately they are all subject to a uniform interpretation within the federal court system.[33]

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24. *See generally* Teresa A. Sullivan, Elizabeth Warren & Jay L. Westbrook, *Limiting Access to Bankruptcy Discharge: An Analysis of the Creditors' Data*, 1983 WIS. L. REV. 1091, 1098-1101 [hereinafter *Access*].

25. The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2682 (1978) (codified in 11 U.S.C.).

26. 11 U.S.C. § 727(a),(b) (1988) (Chapter 7); *id.* § 1328 (Chapter 13).

27. 11 U.S.C. § 362 (1988); *id.* § 1301 (Chapter 13).

28. 11 U.S.C. § 525 (1988).

29. 11 U.S.C. § 541 (1988); *id.* § 1302 (Chapter 13).

30. FED. R. BANKR. P. 7004(d) (1993).

31. 11 U.S.C. § 701 (1988) (appointment of interim trustee under Chapter 7); *id.* § 702 (election of trustee under Chapter 7); *id.* § 1302 (appointment of trustee under Chapter 13).

32. 11 U.S.C. § 1325 (1988). This only applies to Chapter 13.

33. We limit the assertion that bankruptcy law is uniform to its statutory component. Obviously, circuits and districts may vary in their local rules, quasi-statutory enactments that may influence outcomes. In addition, case law varies from circuit to circuit, district to district, and judge to judge, depending upon a variety of factors, notably (1) how far a particular issue has been appealed; and (2) to what extent the statute or appellate decisions have commended the resolution of an issue to the discretion of the trial court—here, the bankruptcy court. *See, e.g.*, *Alimony*, *supra* note 13 (discussing variation among judges given discretion in alimony decisions). More profoundly, "law" as a social and cultural phenomenon reflects considerably more influences than law-on-the-books. Indeed, that truth is a central premise of this Article. At the margins, it is not even easy to distinguish formal law from these other factors. There is a smooth, nearly seamless progression, for example, from a judge's consistent inclinations, to the judge's practices, to the judge's written opinions "enacting" those practices.

Similarly, we would be the first to concede that it is hard to distinguish at the margins between the informal elements of local legal culture and local practices that are embod-

Bankruptcy laws permit individual debtors to retain some property when they file for bankruptcy relief and discharge their debts. Property is labeled "exempt" if the debtor can shield it from the creditors even if the debtor does not have sufficient assets to pay those debts.[34] By permitting a debtor to retain exempt property, the law prohibits creditors from stripping a debtor bare. Such property exemptions are frequently justified on the grounds that the debtor needs a fresh start to begin a new economic life and that the cost to debtors to replace small but essential items would greatly exceed the value to be gained by their creditors in leaving the debtor without any assets.[35] The appropriate level of property exemptions has been hotly debated. Many recent commentators, following a Law and Economics model to its logical conclusion, have shifted the debate away from considerations of debtors' needs. They instead test such statutes by asking whether they provide appropriate incentive structures to promote certain debtor behavior.[36]

If a debtor has not filed for bankruptcy, creditors can proceed under state law to collect any unpaid debts.[37] State laws also permit debtors to keep some property exempt from creditor attachment. This means that even the debtor who does not declare bankruptcy will be permitted to keep some minimum level of property safe from creditor attachment. Most states provide exemptions for some combination of personal property and a homestead, if the debtor is a homeowner.

State laws vary widely. For example, debtors in Texas are able to protect a homestead of unlimited value and up to $60,000 in personalty.[38] Kansas debtors can keep unlimited amounts in homesteads, annuities, and life insurance investment plans.[39] By

ied in local case law or rules, which are part of formal "law." It would be interesting and instructive to explore to what extent local culture and practices are so formalized and we suggest such studies as part of a research agenda. *See infra* Part VI.C. But for the purposes of this Article, our concern is the contrast between uniform national and state laws and persistent local variations.

34. 11 U.S.C. § 522 (1988).

35. ELIZABETH WARREN & JAY L. WESTBROOK, THE LAW OF DEBTORS AND CREDITORS 121 (2d ed. 1991) [hereinafter DEBTORS AND CREDITORS].

36. Exemplary articles of this sort have been critiqued in our earlier work. *See* AS WE FORGIVE OUR DEBTORS, *supra* note 20, at 230; Teresa A. Sullivan, Elizabeth Warren, & Jay L. Westbrook, *Laws, Models, and Real People: Choice of Chapter in Personal Bankruptcy*, 13 L. & SOC. INQ. 661, 667-71, 678-680 (1988) [hereinafter *Real People*].

37. *E.g.*, U.C.C. §§ 9-501 to 9-507. "State law" is used here to encompass all non-bankruptcy collection laws, most of which are state laws.

38. TEX. PROP. CODE ANN. ch. 41-42 (Vernon 1993).

39. KAN. STAT. ANN. §§ 40-414, 60-2301, 2308, 2313, 74-4923 (1991).

contrast, Pennsylvania state law permits debtors to protect only $300 in personalty, and it provides homestead protection only for married couples and then only when the creditor is owed money by just one spouse.[40] Federal bankruptcy law provides debtors with a federal exemption scheme. Debtors in bankruptcy can retain a modest number of possessions, including up to $4,000 in household goods, up to $7,500 in a homestead, and up to $1,200 in a car.[41]

The 1978 Bankruptcy Code perpetuates a controversial feature of the Bankruptcy Act of 1898: States are permitted to establish their own property exemption levels for their residents declaring bankruptcy.[42] Federal bankruptcy laws provide that the debtor declaring bankruptcy may choose either applicable state or federal exemptions, but the bankruptcy laws also permit legislatures to opt out of the federal exemptions. When a state opts out, the citizens of that state who declare bankruptcy may use only the state exemptions, not the exemptions provided in the federal bankruptcy law.[43] To date, thirty-six states have opted out of the federal exemptions, so that currently debtors in only fourteen states have a federal-state choice.[44]

Thus, bankruptcy for individuals is a federalist system. The structure and key features of the law are determined at the national level. But one key provision—how much property debtors can keep from their creditors—may derive from either the federal or the state laws. Variation among the States for property exemptions is routine. In addition, federal bankruptcy laws operate against a varying background of state substantive law and collection law.[45]

B. *Local Variations in the Implementation of Bankruptcy Laws*

The notion of local variation of legal practice is not a new one. For example, the idea of a distinctive local bar was the basis for

40. 42 PA. CONS. STAT. ANN. §§ 8122-8125 (Supp. 1990); Patterson v. Hopkins, 371 A.2d 1378 (Pa. 1977) (establishing tenancy by the entirety for married homeowners).

41. 11 U.S.C. § 522(d) (1988).

42. 11 U.S.C. § 522(b)(2)(A) (1988).

43. 11 U.S.C. § 522(b)(1) (1988).

44. *See* 3 COLLIER ON BANKRUPTCY ¶ 522.02 (15th ed. 1992).

45. For example, the Brookings Study in the 1960s found that wage garnishments were an important precipitating factor in bankruptcy. DAVID STANLEY & MARJORIE GIRTH, BANKRUPTCY: PROBLEM, PROCESS, REFORM 30-31 (1971). We found much less garnishment in our study in the 1980s. *See* AS WE FORGIVE OUR DEBTORS, *supra* note 20, at 269 n.37. *See also infra* note 144.

Heinz and Laumann's path-breaking study of the Chicago bar, and the later Powell study of the New York bar.[46] In this analysis we focus on one subsection of legal practice, and compare the practices among different communities. As we narrow the subject matter to bankruptcy, we expand the range of actors to include practicing attorneys, judges, clerks, and other repeat players. We examine evidence to suggest the existence of a local legal culture, and we explore possible sources of variation in local cultures and what impact they may have on the implementation of the bankruptcy system.

We must rely on inferential evidence to support the claim that distinctive local legal cultures exist in bankruptcy. We do so by measuring variance in implementation of uniform laws that are not explained by alternative theories. We recognize that variation in implementation can be difficult to measure in many parts of the legal system. In bankruptcy, however, the debtors make a number of key choices, and their choices produce the opportunity for variation in the system. Three of these variations are relatively easy to measure.

The key variations in debtor choices on which we focus are: (1) whether to file for bankruptcy;[47] (2) if filing, whether to choose a Chapter 7 liquidation[48] or a Chapter 13 payout plan;[49] and (3) how much, if any, money to pay to creditors post-bankruptcy.[50] The variation in the first category can be measured by the number of individual bankruptcy cases filed per capita in each locality—the "Bankruptcy Rates." The second category of variation can be measured by the relative proportion of the two available procedures chosen by debtors in various localities—the "Chapter Choices." These indicators of variation can be calculated from time-series data available from government agencies. The third category can be estimated from the variation in each locality of the relative amounts of repayment debtors promise to

46. *See* JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982); MICHAEL J. POWELL, FROM PATRICIAN TO PROFESSIONAL ELITE: THE TRANSFORMATION OF THE NEW YORK CITY BAR ASSOCIATION (1988). Specific groups of lawyers in local bars have also been studied. *See, e.g.*, GERALDINE R. SEGAL, BLACKS IN THE LAW: PHILADELPHIA AND THE NATION (1983).

47. 11 U.S.C. § 301 (1988).

48. 11 U.S.C. §§ 701-766 (1988).

49. 11 U.S.C. §§ 1301-1330 (1988).

50. 11 U.S.C. § 524(c) (1988) (providing for reaffirmation of debts under Chapters 7, 11, 12, and 13); *id.* § 1322 (providing for repayment under Chapter 13); *id.* § 1325(b) (requiring application of all disposable income to payment).

make in or after bankruptcy—the "Repayment Promises." Those data are available from our empirical study.

If these factors vary by state, that fact would be consistent with the assumption that they are a function of formal legal rules, because state debtor-creditor laws vary greatly and have an important effect even within bankruptcy proceedings. If, however, the factors vary locally, at the level of the judicial district, then factors other than formal laws are implicated, because those laws do not vary within each state. While we recognize that federal judicial districts may encompass large areas with multiple courts, judges, and legal communities, districts give us some glimpse into substate variation and suggest greater variation at a local, rather than state, level. Slightly more than half of the states have just one judicial district that includes the whole state. Because a district is the smallest reporting unit, we obviously cannot examine substate, local variation in those states. But if there is substantial intrastate variation in the twenty-four states with more than one judicial district, we can properly infer the existence of important local influences. We identify such differences below and argue that they probably result from differences in local legal culture.

III. Measurable Variations in Debtor Choices

A. *Possible Outcome Variations*

1. *Bankruptcy Rates*

Consumer bankruptcy is effectively a matter of debtor choice.[51] Although the Bankruptcy Code provides that creditors may file involuntary bankruptcy petitions against their debtors if

51. In 1984, Congress for the first time established a threshold constraint on the choice of Chapter 7. 11 U.S.C. § 707(b) (1988). Section 707(b) permits the court, *sua sponte* or on motion by the U.S. trustee, but not by any other party in interest, to dismiss a Chapter 7 petition if it finds the case to be a "substantial abuse" of the provisions of Chapter 7. In some parts of the country, this change may impose important limits on the choice of Chapter 7. *See, e.g., In re* Walton, 866 F.2d 981 (8th Cir. 1989) (holding that Chapter 7 petition should be dismissed if the debtor can pay some portion of the outstanding debt in Chapter 13). On the other hand, a study by the American Bankruptcy Institute in 1986 indicated that access to Chapter 7 was relatively unaffected by this statutory change in most parts of the country. American Bankruptcy Institute, Perception and Reality: American Bankruptcy Institute Survey On Selected Provisions of the 1984 Amendments to the Bankruptcy Code 102 (1987). A more recent survey suggests that many U.S. trustees are screening cases for "substantial abuse," but that the application of the provision varies from active to minimal around the country. Wayne R. Wells et al., *The Implementation of Bankruptcy Code Section 707(b): The Law and the Reality*, 39 Clev. St. L. Rev. 15 (1991). Of course, those data also tend to support the hypothesis that local legal culture has a significant impact on outcomes.

their debtors are not paying bills as they come due,[52] virtually no creditors make such filings. For individuals, bankruptcy generally provides more rights than the debtor would have at state law, including the right to an automatic stay against creditor collection,[53] the right to keep as much or more property than the debtor could keep at state law,[54] the right to discharge unpaid debt,[55] and so on. Moreover, the creditor who files an involuntary bankruptcy petition must prove the debtor's insolvency,[56] and the creditor who is unable to provide adequate proof faces substantial penalties.[57] This structure drives up the information costs and litigation risks for creditors to file, making bankruptcy effectively a debtor-controlled decision.[58] In 1992, for example, only 15 of every 10,000 filings were involuntary.[59]

The decision to file for bankruptcy, rather than to deal with unpaid debts in some other manner, is significant. Debtors who choose bankruptcy have the opportunity to erase their outstanding debt obligations.[60] They are protected from creditor collection efforts, dunning calls, and wage garnishments.[61] They have some legal protection against future discrimination.[62] At the same time, these benefits have significant costs. Their filing becomes a matter of public record, and their creditors can carry the fact of bankruptcy on their credit records for ten years.[63] Future creditors can refuse credit on the sole grounds that the debtor has been through a bankruptcy proceeding.[64] Debtors are nearly always barred from a second discharge in Chapter 7 bankruptcy for six years.[65] The decision to file is one of the most

52. 11 U.S.C. § 303 (1988).
53. 11 U.S.C. § 362 (1988).
54. 11 U.S.C. § 522(b) (1988).
55. 11 U.S.C. § 727 (1988)(Chapter 7); *id.* § 1328 (1988)(Chapter 13).
56. 11 U.S.C. § 303(h) (1988).
57. 11 U.S.C. § 303(i) (1988).
58. *See* Susan Block-Lieb, *Why Creditors File So Few Involuntary Petitions and Why the Number is Not Too Small*, 57 BROOK. L. REV. 803 (1991).
59. There were 971,047 voluntary filings and 1,443 involuntary filings. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 541, tbl. 865 (113th ed. 1993). Because consumer bankruptcy often adds to the rights of a beleaguered debtor, creditors are extremely unlikely to file an involuntary petition in a consumer bankruptcy case. It seems highly likely that most involuntary cases are business cases.
60. 11 U.S.C. § 727(a),(b) (1988)(Chapter 7); *id.* § 1328 (1988)(Chapter 13).
61. 11 U.S.C. § 362 (1988).
62. 11 U.S.C. § 525 (1988).
63. 15 U.S.C. § 1681c(a)(1) (1993).
64. Decisions to extend future loans are not covered by Section 525. 11 U.S.C. § 525 (1988).
65. 11 U.S.C. § 727(a)(9) (1988).

profound economic—and social—decisions a person will make in a lifetime. It is not a decision taken lightly by most debtors.[66]

The decision to file for bankruptcy or to struggle along without it is made by thousands of debtors in each locality each year. The number of filings in each district divided by the number of inhabitants of that district creates an annual Bankruptcy Filing Rate, which we can use to detect systematic differences in the decisions made by debtors in different localities. We express the Bankruptcy Filing Rate in number of filings per 100,000 population.

2. *Chapter Choices*

Debtors filing for bankruptcy can choose either Chapter 7 or Chapter 13.[67] While creditors are permitted to file an involuntary bankruptcy against a consumer debtor, the creditor can insist only on a Chapter 7 liquidation.[68] Only the debtors themselves can make the election to file Chapter 13—and the right to that election is absolute.[69] No creditor can force a debtor to file in Chapter 13 nor stop a debtor who chooses to file in Chapter 13.

Debtors who choose Chapter 7, a liquidation bankruptcy, offer all their property in excess of applicable exemption levels to the court.[70] A court-appointed trustee administers the estate created by the filing, sells the property, and distributes the proceeds on a *pro rata* basis to the creditors.[71] The court discharges the remaining debt.[72]

Debtors who choose to file Chapter 13, a reorganization bankruptcy, make a different legal bargain. These debtors keep all their property in return for an agreement to pay to their trustees all their income above their court-approved budgets.[73] The trustees distribute the money *pro rata* to the creditors, and at the end of three to five years[74] the remaining debts are discharged.[75]

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66. *See Access, supra* note 24, at 1137.
67. 11 U.S.C. §§ 109, 301 (1988). Individuals also may choose to file in Chapter 11. 11 U.S.C. § 109 (1988).
68. 11 U.S.C. § 303(a)(1988).
69. As mentioned, a Chapter 7 petition may be dismissed for substantial abuse. *See supra* note 51. The threat of such dismissal may encourage debtors to file in Chapter 13, but neither a creditor nor the court can force that result.
70. 11 U.S.C. § 541 (1988).
71. 11 U.S.C. § 726 (1988).
72. 11 U.S.C. § 727(a),(b) (1988).
73. 11 U.S.C. § 1325(b) (1988).
74. 11 U.S.C. § 1322(c) (1988).
75. 11 U.S.C. § 1328 (1988).

The choice between Chapter 7 and Chapter 13 is important for consumer debtors. A Chapter 7 case is typically completed in less than six months. Because most debtors own little property, a Chapter 7 filing will usually involve the loss of little or no property, so long as the debtor agrees to continue to pay the debts secured by collateral, such as a car loan or a home mortgage.[76] The Chapter 13 choice, by contrast, requires debtors to live on a strict budget for three to five years while making regular payments for the benefit of their creditors.

The proportion of Chapter 7 cases to Chapter 13 cases filed reflects consumer debtors' choices. The variations in these Chapter Choices may reflect the existence of a local legal culture that favors one procedure or the other.

3. *Repayment Promises*

The decision to file in Chapter 7 or in Chapter 13 does not terminate the bankruptcy case; a number of events that affect the final resolution of the case may occur after the filing. Variations in post-bankruptcy repayment, for example, may result from the promises the debtor makes during the course of the bankruptcy.[77] As we indicated earlier, the structure of repayment promises differs depending on whether the debtor is in Chapter 7 or Chapter 13. For debtors in Chapter 7, the debtor's personal obligation will be discharged unless the debtor formally agrees in court to repay the debt, a process called "reaffirmation."[78] Ab-

76. U.S. GENERAL ACCOUNTING OFFICE, REPORT TO THE CHAIRMAN, COMM. ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, BANKRUPTCY REFORM ACT OF 1978: A BEFORE AND AFTER LOOK 56-57 (1983) (reporting that 97% of Chapter 7 cases had no assets for distribution to creditors); Michael J. Herbert & Domenic E. Pacitti, *Down and Out in Richmond, Virginia: The Distribution of Assets in Chapter 7 Bankruptcy Proceedings Closed During 1984-1987*, 22 U. RICH. L. REV. 303 (1988).

77. In theory, there may be some variation in repayment depending on whether the debtor has sufficient assets above the exemption levels, that is, some assets to be liquidated and distributed to the creditors. In fact, there is relatively little variation at this level, with the overwhelming proportion of debtors paying nothing from the liquidation of their non-exempt property. *See supra* note 76. More importantly for our purposes, this is not a debtor choice in the sense that we have used this word. A debtor filing for Chapter 7 must give up all property in excess of the applicable exemption levels. The debtor's desire to avoid liquidation may influence the decision to file under Chapter 7, but once the debtor is in Chapter 7, there is no choice about whether nonexempt property must be sold and distributed to the creditors.

78. 11 U.S.C. § 524(c) (1988). A debtor may file papers with the bankruptcy court reaffirming one or more of the outstanding debts. The reaffirmation must be voluntary, although many creditors will ask the debtor to reaffirm. Creditors with security interests in property in the debtor's possession will often negotiate to leave the property with the debtor if a reaffirmation agreement is signed. We should note one change in the laws since the time we collected the data reported here. Before 1984, the debtor could file for

sent such agreement, a creditor or the trustee may object in court to the debtor's discharge.[79] While Chapter 7 is often represented as giving debtors a "fresh start" relieved of all debt, this idealized notion is frequently inaccurate. To the extent that debtors either agree to repay certain debts or are denied discharge, their post-bankruptcy position is something other than the clean slate generally presumed to follow a Chapter 7 filing. Outcomes may vary greatly, with some debtors emerging from Chapter 7 with no debt, while at the other extreme a debtor might discharge no debt at all in a Chapter 7. Between the two sources of post-petition debt, nondischarge or reaffirmation, the available evidence indicates that reaffirmation is by far the more prevalent.[80] A limited amount of data concerning promised payments via reaffirmation is available from our empirical study.[81]

Variation inheres in Chapter 13 cases also. To confirm a Chapter 13 plan, the debtor must file a repayment proposal.[82] The debtor may offer to repay any fraction of the outstanding debt, but confirmation of the payment plan will depend on court approval. The repayment plan may be influenced by a number of variables, including both the debtor's ability to repay and the debtor's desire to pay certain creditors. The plan's details may be affected by the same actors who influence a Chapter 7 debtor. Creditors may object to how their claim has been treated under the plan, or the trustee may object to confirmation.[83] In some cases, there is much negotiation between the debtor and creditors over the details of a plan, while in other cases, creditors take whatever the debtor proposes without discussion. Once again, the court will resolve disputes and ultimately decide whether to

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a reaffirmation and the bankruptcy court could disallow the agreement. In 1984, the Code was amended to take bankruptcy judges out of this review process. The change in the law may have made some difference in overall reaffirmation rates, but the laws were uniform nationally. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (1984).

79. As we noted earlier, creditors may intervene in the bankruptcy process and request that the court deny the debtor's discharge. There are a number of different grounds on which a debtor might be denied a discharge, such as incomplete record-keeping or false statements in the bankruptcy petition, as well as a number of particular debts that may not be discharged, such as student loans and taxes. 11 U.S.C. §§ 523(a), 727(a) (1988).

80. Among the systematic sample of 1,529 cases we examined for the Consumer Bankruptcy Project, only one creditor filed the appropriate papers to request from the court a denial of the debtor's discharge. This suggests that very few creditors use the denial of discharge provisions in the bankruptcy system to extract higher repayment from their debtors.

81. *See* As We Forgive Our Debtors, *supra* note 20, at 319.

82. 11 U.S.C. § 1321 (1988).

83. 11 U.S.C. § 1325(b) (1988).

confirm a plan that, if completed, will win the debtor a discharge.

The implicit assumption that debtors in Chapter 13 are repaying their debts is naive. How much the debtors repay is subject to wide variation. From the start, debtors vary greatly in how much they promise to pay, and courts vary in what levels of promised repayment they will approve. At times, one hundred percent payment is promised, and at other times, unsecured creditors are promised no payment at all.[84] Every level in between can be found. Furthermore, the actual repayments vary greatly, because a promise to pay, even in a confirmed plan, is far from an actual payment.

We cannot compare actual payments under Chapter 13 plans from one locality to another because those data are not available. However, the level of promised repayments in Chapter 13 is available, for certain districts from our empirical study. These data reflect the three- to five-year payout commitments made by debtors in 1981. If the debtors failed to make those payments, they would be forced to get court approval for lower payments[85] or to see their cases dismissed.[86]

The levels of promised repayment, as reflected in reaffirmation agreements in Chapter 7 and promised plan payments in Chapter 13, produce a Repayment Promises variable that may vary from district to district. Any variation observed may result from differences in local legal cultures.

We have identified three variations in outcomes for debtors in financial trouble in different localities: Bankruptcy Rates, Chapter Choices, and Repayment Promises. Each of these variations gives us an opportunity to study whether there are observable differences in how debtors exercise these choices in different judicial districts.

B. *Local Variations*

1. *Bankruptcy Rates*

The crucial decision to file for bankruptcy is made in nearly all cases by the individual debtors.[87] That decision is made by dra-

84. Typically, such plans promise some payment to secured creditors, but have nothing left for unsecured creditors.

85. 11 U.S.C. § 1329 (1988).

86. 11 U.S.C. § 1307(b),(c) (1988).

87. *See supra* note 59.

matically different proportions of debtors in different states. Table 1 shows the rate of nonbusiness bankruptcy filings per 100,000 population filing for bankruptcy in 1970, 1980 and 1990.[88]

TABLE 1
BANKRUPTCY FILINGS (CHAPTERS 7 & 13) PER 100,000 POPULATION (BY STATE AND DISTRICT, 1970 - 1990).

	1970	1980	1990
National Total	**94.78**	**128.21**	**266.09**
Alabama	**280.82**	**242.23**	**584.59**
Northern	316.44	283.95	692.12
Middle	213.75	219.62	487.10
Southern	253.01	137.06	360.63
Alaska	**61.22**	**58.23**	**186.53**
Arizona	**167.05**	**119.71**	**420.08**
Arkansas	**58.29**	**101.25**	**273.83**
Eastern	76.30	124.72	295.49
Western	29.30	65.99	239.77
California	**172.36**	**168.99**	**324.63**
Northern	166.70	202.41	257.51
Eastern	186.96	175.65	313.31
Central	171.79	151.14	347.98
Southern	164.35	167.15	382.27
Colorado	**182.13**	**176.37**	**443.48**
Connecticut	**42.87**	**59.98**	**121.57**
Delaware	**21.16**	**74.70**	**124.89**
District of Columbia	**13.20**	**86.48**	**150.60**
Florida	**22.81**	**51.18**	**216.17**
Northern	11.64	36.63	155.92
Middle	29.86	63.28	282.84
Southern	16.61	38.79	140.84
Georgia	**156.75**	**180.26**	**568.30**
Northern	161.58	188.60	602.35
Middle	164.53	184.77	478.85
Southern	132.37	150.43	583.28
Hawaii	**48.19**	**63.65**	**72.46**

88. All rates reported here are reported per 100,000 population, with the decennial census enumeration for each judicial district or state used as the measure of population. To clarify the text, the rates are cited without repeating the base; thus, we may report a rate of forty, rather than forty per 100,000. For clarity, the numbers in the text have been rounded to the nearest unit (that is, the nearest one per 100,000); the numbers in the tables are reported with up to five significant digits. The facts that districts differ in population size and that population size changed between 1970 and 1990 are irrelevant here because bankruptcy filings are expressed relative to population size, and changes in size are included by using denominators from the decennial census.

Idaho	**151.89**	**189.00**	**376.26**
Illinois	**117.12**	**216.66**	**296.13**
Northern	113.72	231.03	301.13
Central	56.39	229.49	314.12
Southern	247.81	103.97	232.55
Indiana	**143.12**	**218.57**	**381.86**
Northern	108.29	204.07	316.54
Southern	168.18	228.85	428.63
Iowa	**92.71**	**99.87**	**163.86**
Northern	91.53	76.82	130.80
Southern	93.82	120.90	192.18
Kansas	**217.29**	**160.30**	**306.59**
Kentucky	**163.54**	**196.11**	**341.17**
Eastern	102.71	120.53	319.84
Western	216.57	268.19	361.83
Louisiana	**160.94**	**100.43**	**277.40**
Eastern	159.95	112.55	289.92
Middle	N/A	77.95	246.85
Western	161.94	97.19	276.77
Maine	**179.24**	**68.91**	**100.66**
Maryland	**11.96**	**84.44**	**175.47**
Massachusetts	**24.91**	**46.14**	**99.71**
Michigan	**75.27**	**139.01**	**186.14**
Eastern	75.94	142.00	196.22
Western	73.61	132.32	165.11
Minnesota	**72.27**	**96.44**	**288.43**
Mississippi	**57.38**	**175.04**	**400.12**
Northern	38.47	101.71	341.28
Southern	70.04	220.94	435.73
Missouri	**121.58**	**130.62**	**239.77**
Eastern	105.19	110.27	254.81
Western	141.10	153.18	223.65
Montana	**130.04**	**107.92**	**199.11**
Nebraska	**95.70**	**154.60**	**216.11**
Nevada	**252.69**	**233.86**	**483.59**
New Hampshire	**68.73**	**61.70**	**133.06**
New Jersey	**19.63**	**63.67**	**149.03**
New Mexico	**150.59**	**98.55**	**241.18**
New York	**31.65**	**104.49**	**145.68**
Northern	70.99	129.35	170.12
Eastern	11.09	88.77	126.18
Southern	14.05	67.25	116.08
Western	73.36	172.00	213.96
North Carolina	**15.29**	**117.21**	**147.80**
Eastern	8.69	122.11	130.02
Middle	29.64	145.19	166.33
Western	7.16	82.50	151.47
North Dakota	**43.38**	**56.53**	**132.44**
Ohio	**160.53**	**222.95**	**323.95**
Northern	140.42	214.66	281.08
Southern	186.28	232.98	372.68
Oklahoma	**133.63**	**138.80**	**408.76**
Northern	204.02	175.74	433.63
Eastern	37.86	56.86	219.37
Western	136.37	152.69	468.88
Oregon	**217.94**	**157.53**	**376.73**

Pennsylvania	**12.63**	**54.44**	**120.89**
Eastern	12.50	61.36	141.26
Middle	10.47	48.01	106.33
Western	14.03	50.23	104.33
Rhode Island	**47.91**	**86.15**	**147.99**
South Carolina	**7.99**	**31.07**	**128.40**
South Dakota	**27.77**	**59.93**	**150.43**
Tennessee	**225.32**	**262.88**	**693.47**
Eastern	195.02	197.09	510.92
Middle	239.52	258.63	662.94
Western	253.29	363.42	994.12
Texas	**13.88**	**44.52**	**215.00**
Northern	19.00	37.05	264.23
Eastern	6.16	13.37	109.84
Southern	8.36	40.81	183.95
Western	18.10	76.59	253.86
Utah	**128.58**	**139.83**	**432.60**
Vermont	**68.58**	**34.61**	**58.64**
Virginia	**120.25**	**150.65**	**274.35**
Eastern	109.68	154.76	288.85
Western	141.20	142.57	240.82
Washington	**135.99**	**154.47**	**312.86**
Eastern	120.17	166.08	324.18
Western	141.15	150.65	309.60
West Virginia	**96.89**	**73.86**	**172.79**
Northern	81.98	66.22	123.09
Southern	108.87	80.02	210.20
Wisconsin	**80.85**	**91.87**	**182.98**
Eastern	83.71	91.07	209.62
Western	76.06	93.10	142.27
Wyoming	**181.10**	**85.19**	**294.54**

Source: Administrative Office of the Courts, Annual Reports and unpublished data.

The rate at which people choose bankruptcy as a solution to their perceived financial problems varies dramatically, both over time and by geographic region. The data show that bankruptcy filing rates nearly tripled over the past two decades, from a national average of about ninety-five in 1970 to 266 in 1990. With only two exceptions (Vermont and the Southern District of Illinois), all districts showed an increase in filing rates between 1970 and 1990, with most districts also showing interim increases in the filing rates between 1970 and 1980, and between 1980 and 1990. In the largest sense, these data confirm that bankruptcy is a national phenomenon and that debtors have come to the system with increasing frequency.

Yet Table 1 also shows great variations in filing rates, both among the states[89] and among the districts within those states. In 1990, for example, we observe variations in filing rates of more than one hundred percent among districts within Texas, Florida, and Oklahoma. Of the twenty-four states that have more than one district, nine had variations of more than sixty percent and thirteen had variations of more than thirty percent.[90] Furthermore, as illustrated by correlation coefficients, the differences among districts were persistent. A Pearson correlation coefficient of one would mean a perfect correlation for a district between filing rates at Time 1 and at Time 2.[91] The Pearson correlation coefficient for the district filing rates between 1970 and 1980 was

89. Vermont's rate in 1990 was only 59, while neighboring New Hampshire's rate was 225% of Vermont's, at 133. Michigan's rate in 1990 was 186, and Wisconsin was similar at 183. But their Great Lakes neighbors Minnesota, Illinois, and Ohio recorded 288, 296, and 324, respectively. Indiana was even higher at 381. South Dakota recorded 150, North Dakota 132. Virginia and West Virginia were nearly identical, with Virginia at 274 and its neighbor at 273. One state farther west, Tennessee, led the nation with 663 filings per 100,000. State variation is clear, a result that is consistent with theories relying on the importance of state law in influencing debtors' decisions to file for bankruptcy, although the specific explanations of how state law affects bankruptcy decisions have so far been unpersuasive. *See* As We Forgive Our Debtors, *supra* note 20, at 230-70.

Moreover, despite the large interdecadal increases in filing rates, the states tended to retain their relative positions. The Pearson correlation coefficient between state level filing rates in 1970 and 1980 was 0.68; between 1980 and 1990, the correlation was 0.83. The correlation between 1970 and 1990 was 0.70. These correlations are significant at the 0.01 level. This means that there is less than one chance in one hundred that a correlation this high occurred by chance. The Pearson correlation coefficient takes on values from -1.00 (indicating a state's level of filing at Time 1 is completely unlike its level at Time 2) to 1.00 (meaning that given the rise (or decrease) in filings, a state has exactly the same relative level at Times 1 and 2). The square of the correlation coefficient is the estimate of the proportion of the variance that is explained by the correlation. Despite the differences in economic conditions that occurred during the intervening two decades, by knowing the states' levels of bankruptcy filings in 1970, one could predict nearly half of the variance in filings in 1990 (49.5%). A different measure, the Spearman rank-order correlation coefficient ("Spearman's *rho*"), compares the rankings of the states; its value between 1970 and 1980 is 0.71 and between 1980 and 1990 was 0.82. The correlation between 1970 and 1990 was 0.73. This means that a state's rank in 1970 was highly correlated with its rank in 1980, and its 1980 rank was highly correlated with its 1990 rank. The z-scores for the Spearman rank-order correlation coefficients all exceed 3, meaning that there is less than one chance in 100 that these results occurred by chance. The Pearson and Spearman correlation coefficients are defined, with their calculating formulas and interpretations, in a number of basic statistics texts. *See, e.g.*, Herman J. Loether & Donald G. McTavish, Descriptive and Inferential Statistics: An Introduction 239-41 (2d ed. 1980) (explaining Spearman's *rho*); *id.* at 250-54 (explaining Pearson's product-moment correlation coefficient); *id.* at 270-71 (summary of formulas).

90. The differences were, if anything, even more pronounced in 1970, when the rate in the highest New York district was more than six times the rate in the lowest district. In 1970, there was at least a 100% variation in filing rates in eight of the 24 states with multiple districts, with a variation of 60% or more in 10 states and a variation of at least 30% in 15 states.

91. For an explanation of the Pearson coefficient, see Loether & McTavish, *supra* note 89, at 250-54. The Spearman coefficient is not applied to the comparisons of district-

0.73, and the correlation for the 1980-1990 period was 0.80. Both coefficients are significant at $p < 0.01$.[92] In sum, the data show that powerful variation in the decision to file for bankruptcy takes place locally, a phenomenon unexplained by variations in formal debtor-creditor laws.

2. *Chapter Choices*

At the second stage in the bankruptcy process, the debtor must choose between filing a Chapter 7 liquidation and a Chapter 13 payment plan. In this section, we use data regarding this choice in two ways. First, we reexamine the filing rates per 100,000 of the population, this time separating the debtors by chapter to produce filing rates for Chapter 7 and filing rates for Chapter 13, as shown in Table 2. Second, we look at the relative proportions of filings within a district that are filed in Chapter 7 or Chapter 13. Although consumers occasionally file in other chapters, we have eliminated these chapters from our table, so that the sum of the proportions is 1.00. Table 3 presents the proportion of filings that are in Chapter 7 and in Chapter 13.

TABLE 2
BANKRUPTCY FILING RATES PER 100,000 POPULATION
(BY CHAPTER, STATE, AND DISTRICT, 1970 - 1990).

	1970 Chapter 7	1970 Chapter 13	1980 Chapter 7[a]	1980 Chapter 13	1990 Chapter 7[a]	1990 Chapter 13
National Total	**79.68**	**15.10**	**95.09**	**33.12**	**187.45**	**78.65**
Alabama	**76.22**	**204.61**	**78.76**	**163.46**	**247.19**	**337.40**
Northern	89.69	226.76	92.98	190.97	265.88	426.25
Middle	59.92	153.84	53.35	166.28	168.09	319.01
Southern	54.23	198.78	65.84	71.22	289.86	70.77
Alaska	**59.90**	**1.32**	**46.29**	**11.94**	**159.99**	**26.54**
Arizona	**159.21**	**7.84**	**112.57**	**7.14**	**322.87**	**97.21**
Arkansas	**27.71**	**30.57**	**27.77**	**73.48**	**152.38**	**121.45**
Eastern	30.52	45.78	27.54	97.19	136.40	159.09
Western	23.20	6.10	28.12	37.86	177.50	62.27

level data over time because the number of districts changed, affecting the rank orders. *See id.* at 239-41.

92. But as the numbers of bankruptcies rose, the percentage differences shrunk. For example, while Oklahoma showed the second highest level of variation in both 1970 and 1990, the percentage difference between the lowest and highest of the three districts of Oklahoma declined from 437% to 114%, while the lowest and highest filing rates rose from 38 and 204 to 219 and 469, respectively.

California	**149.54**	**22.83**	**133.03**	**35.96**	**248.89**	**75.74**
Northern	131.12	35.59	139.06	63.35	180.85	76.66
Eastern	156.77	30.19	132.07	43.58	250.44	62.87
Central	159.28	12.51	133.97	17.17	279.15	68.84
Southern	128.04	36.30	111.77	55.37	241.86	140.41
Colorado	**165.23**	**16.90**	**93.53**	**82.84**	**320.73**	**122.75**
Connecticut	**42.38**	**0.49**	**54.77**	**5.21**	**106.02**	**15.55**
Delaware	**21.16**	**0.00**	**67.47**	**7.23**	**96.67**	**28.22**
District of Columbia	**12.81**	**0.40**	**86.48**	**0.00**	**79.58**	**71.02**
Florida	**22.40**	**0.41**	**48.33**	**2.85**	**191.88**	**24.29**
Northern	11.39	0.25	32.54	4.09	145.60	10.31
Middle	29.37	0.49	60.36	2.93	248.72	34.12
Southern	16.25	0.36	36.40	2.40	126.41	14.43
Georgia	**100.68**	**56.06**	**116.11**	**64.16**	**249.33**	**318.98**
Northern	126.13	35.44	131.56	57.04	271.03	331.32
Middle	88.49	76.04	121.06	63.71	239.74	239.12
Southern	53.19	79.18	65.79	84.64	193.39	389.88
Hawaii	**41.82**	**6.36**	**28.20**	**35.45**	**64.07**	**8.39**
Idaho	**122.86**	**29.03**	**124.06**	**64.94**	**249.32**	**126.94**
Illinois	**106.01**	**11.11**	**154.19**	**62.47**	**224.74**	**71.40**
Northern	104.73	8.99	149.12	81.91	215.30	85.83
Central	51.57	4.82	208.26	21.24	280.33	33.80
Southern	211.89	35.92	88.16	15.81	189.06	43.48
Indiana	**141.87**	**1.25**	**208.33**	**10.24**	**346.26**	**35.61**
Northern	108.20	0.09	189.88	14.19	276.95	39.59
Southern	166.10	2.09	221.41	7.44	395.89	32.75
Iowa	**85.59**	**7.11**	**89.40**	**10.47**	**148.70**	**15.16**
Northern	88.92	2.61	63.73	13.09	124.09	6.71
Southern	82.42	11.40	112.83	8.07	169.78	22.40
Kansas	**151.40**	**65.89**	**114.91**	**45.40**	**247.50**	**59.09**
Kentucky	**127.82**	**35.72**	**157.62**	**38.49**	**264.81**	**76.36**
Eastern	77.24	25.48	97.42	23.11	245.08	74.76
Western	171.92	44.65	215.03	53.16	283.93	77.90
Louisiana	**134.09**	**6.34**	**81.22**	**19.21**	**199.24**	**78.15**
Eastern	145.19	14.75	94.92	17.63	222.93	66.99
Middle	N/A	N/A	71.19	6.76	177.45	69.41
Western	160.69	1.25	72.98	24.21	186.71	90.06
Maine	**95.61**	**83.63**	**40.01**	**28.90**	**74.76**	**25.90**
Maryland	**11.91**	**0.05**	**79.75**	**4.70**	**114.61**	**60.86**
Massachusetts	**23.68**	**1.23**	**37.16**	**8.98**	**80.08**	**19.63**
Michigan	**66.62**	**8.64**	**105.68**	**33.33**	**140.12**	**46.01**
Eastern	64.58	11.36	123.24	18.76	153.04	43.18
Western	71.63	1.98	66.39	65.93	113.18	51.93
Minnesota	**62.63**	**9.65**	**80.72**	**15.73**	**203.40**	**85.03**
Mississippi	**56.79**	**0.59**	**116.20**	**58.83**	**251.86**	**148.26**
Northern	38.47	0.00	97.28	4.43	223.36	117.92
Southern	69.06	0.98	128.05	92.89	269.11	166.62
Missouri	**116.37**	**5.22**	**115.85**	**14.77**	**176.47**	**63.30**
Eastern	105.03	0.16	102.77	7.50	165.09	89.72
Western	129.86	11.24	130.36	22.82	188.67	34.98
Montana	**129.32**	**0.72**	**105.63**	**2.29**	**179.84**	**19.27**

Nebraska	**90.44**	**5.26**	**121.29**	**33.32**	**145.78**	**70.33**
Nevada	**247.99**	**4.71**	**220.24**	**13.62**	**344.31**	**139.29**
New Hampshire	**68.32**	**0.41**	**60.39**	**1.30**	**117.20**	**15.87**
New Jersey	**18.57**	**1.06**	**47.28**	**16.39**	**105.34**	**43.69**
New Mexico	**131.10**	**19.49**	**91.64**	**6.91**	**216.43**	**24.75**
New York	**31.31**	**0.34**	**84.51**	**19.99**	**116.78**	**28.90**
Northern	70.85	0.14	119.84	9.51	141.17	28.95
Eastern	11.05	0.04	64.49	24.28	102.24	23.93
Southern	13.99	0.06	58.64	8.60	102.90	13.18
Western	71.60	1.76	133.43	38.57	147.24	66.72
North Carolina	**7.08**	**8.21**	**33.99**	**83.22**	**53.12**	**94.68**
Eastern	7.86	0.83	45.64	76.47	71.47	58.55
Middle	6.27	23.37	26.34	118.85	33.71	132.61
Western	7.02	0.14	27.43	55.07	49.60	101.87
North Dakota	**41.76**	**1.62**	**54.54**	**1.99**	**124.92**	**7.51**
Ohio	**143.55**	**16.98**	**163.14**	**59.81**	**245.07**	**78.88**
Northern	132.09	8.33	159.18	55.48	223.57	57.52
Southern	158.22	28.06	167.93	65.05	269.51	103.16
Oklahoma	**130.00**	**3.63**	**133.67**	**5.12**	**369.31**	**39.45**
Northern	196.38	7.64	168.06	7.68	406.63	27.00
Eastern	37.86	0.00	56.06	0.79	203.25	16.12
Western	133.26	3.11	147.14	5.56	414.19	54.69
Oregon	**210.29**	**7.65**	**136.08**	**21.46**	**270.62**	**106.11**
Pennsylvania	**12.57**	**0.07**	**41.97**	**12.47**	**81.46**	**39.43**
Eastern	12.38	0.12	34.45	26.91	72.87	68.39
Middle	10.43	0.04	46.49	1.52	87.85	18.48
Western	14.00	0.02	48.09	2.14	88.27	16.06
Rhode Island	**47.70**	**0.21**	**66.41**	**19.74**	**136.73**	**11.26**
South Carolina	**7.84**	**0.15**	**23.06**	**8.01**	**66.31**	**62.09**
South Dakota	**27.77**	**0.00**	**50.96**	**8.98**	**137.07**	**13.36**
Tennessee	**148.26**	**77.06**	**141.97**	**120.91**	**268.88**	**424.59**
Eastern	137.36	57.66	111.90	85.19	264.00	246.92
Middle	203.18	36.35	191.22	67.41	280.17	382.77
Western	112.65	140.64	135.75	227.67	263.50	730.61
Texas	**12.89**	**0.99**	**25.66**	**18.86**	**131.40**	**83.60**
Northern	18.67	0.33	28.25	8.80	152.56	111.67
Eastern	6.16	0.00	11.62	1.74	77.85	31.99
Southern	8.36	0.00	22.14	18.67	119.06	64.89
Western	14.38	3.73	35.13	41.47	151.21	102.65
Utah	**125.94**	**2.64**	**125.53**	**14.30**	**298.98**	**133.62**
Vermont	**68.58**	**0.00**	**33.83**	**0.78**	**46.20**	**12.44**
Virginia	**102.29**	**17.96**	**126.47**	**24.18**	**214.78**	**59.57**
Eastern	108.16	1.52	138.62	16.14	220.81	68.04
Western	90.67	50.53	102.57	40.00	200.83	39.99
Washington	**113.40**	**22.59**	**106.00**	**48.47**	**242.34**	**70.52**
Eastern	110.28	9.90	131.08	34.99	262.15	62.03
Western	114.42	26.73	97.74	52.91	236.63	72.97
West Virginia	**94.31**	**2.58**	**70.06**	**3.80**	**157.01**	**15.78**
Northern	81.59	0.39	63.92	2.30	111.54	11.56
Southern	104.53	4.34	75.02	5.00	191.24	18.96
Wisconsin	**69.58**	**11.27**	**73.65**	**18.21**	**156.16**	**26.82**
Eastern	69.94	13.76	77.34	13.72	181.82	27.80
Western	68.97	7.09	67.96	25.14	116.95	25.32
Wyoming	**178.39**	**2.71**	**75.60**	**9.58**	**266.32**	**28.22**

Source: Administrative Office of the Courts, Annual Reports and unpublished data.
Note: [a]Nonbusiness cases.

TABLE 3
PROPORTION OF BANKRUPTCY FILINGS THAT ARE CHAPTER 7 AND CHAPTER 13 (BY STATE AND DISTRICT, 1970 - 1990).

	1970	1970	1980	1980	1990	1990
	Chapter 7	Chapter 13	Chapter 7[a]	Chapter 13	Chapter 7[a]	Chapter 13
National Total	**0.841**	**0.159**	**0.742**	**0.258**	**0.704**	**0.296**
Alabama	**0.271**	**0.729**	**0.325**	**0.675**	**0.423**	**0.577**
Northern	0.283	0.717	0.327	0.673	0.384	0.616
Middle	0.280	0.720	0.243	0.757	0.345	0.655
Southern	0.214	0.786	0.480	0.520	0.804	0.196
Alaska	**0.978**	**0.022**	**0.795**	**0.205**	**0.858**	**0.142**
Arizona	**0.953**	**0.047**	**0.940**	**0.060**	**0.769**	**0.231**
Arkansas	**0.475**	**0.525**	**0.274**	**0.726**	**0.556**	**0.444**
Eastern	0.400	0.600	0.221	0.779	0.462	0.538
Western	0.792	0.208	0.426	0.574	0.740	0.260
California	**0.868**	**0.132**	**0.787**	**0.213**	**0.767**	**0.233**
Northern	0.787	0.213	0.687	0.313	0.702	0.298
Eastern	0.839	0.161	0.752	0.248	0.799	0.201
Central	0.927	0.073	0.886	0.114	0.802	0.198
Southern	0.779	0.221	0.669	0.331	0.633	0.367
Colorado	**0.907**	**0.093**	**0.530**	**0.470**	**0.723**	**0.277**
Connecticut	**0.988**	**0.012**	**0.913**	**0.087**	**0.872**	**0.128**
Delaware	**1.000**	**0.000**	**0.903**	**0.097**	**0.774**	**0.226**
District of Columbia	**0.970**	**0.030**	**1.000**	**0.000**	**0.528**	**0.472**
Florida	**0.982**	**0.018**	**0.944**	**0.056**	**0.888**	**0.112**
Northern	0.979	0.021	0.888	0.112	0.934	0.066
Middle	0.984	0.016	0.954	0.046	0.879	0.121
Southern	0.978	0.022	0.938	0.062	0.898	0.102
Georgia	**0.642**	**0.358**	**0.644**	**0.356**	**0.439**	**0.561**
Northern	0.781	0.219	0.698	0.302	0.450	0.550
Middle	0.538	0.462	0.655	0.345	0.501	0.499
Southern	0.402	0.598	0.437	0.563	0.332	0.668
Hawaii	**0.868**	**0.132**	**0.443**	**0.557**	**0.884**	**0.116**
Idaho	**0.809**	**0.191**	**0.656**	**0.344**	**0.663**	**0.337**
Illinois	**0.905**	**0.095**	**0.712**	**0.288**	**0.759**	**0.241**
Northern	0.921	0.079	0.645	0.355	0.715	0.285
Central	0.915	0.085	0.907	0.093	0.892	0.108
Southern	0.855	0.145	0.848	0.152	0.813	0.187
Indiana	**0.991**	**0.009**	**0.953**	**0.047**	**0.907**	**0.093**
Northern	0.999	0.001	0.930	0.070	0.875	0.125
Southern	0.988	0.012	0.968	0.032	0.924	0.076
Iowa	**0.923**	**0.077**	**0.895**	**0.105**	**0.907**	**0.093**
Northern	0.971	0.029	0.830	0.170	0.949	0.051
Southern	0.878	0.122	0.933	0.067	0.883	0.117
Kansas	**0.697**	**0.303**	**0.717**	**0.283**	**0.807**	**0.193**
Kentucky	**0.782**	**0.218**	**0.804**	**0.196**	**0.776**	**0.224**
Eastern	0.752	0.248	0.808	0.192	0.766	0.234
Western	0.794	0.206	0.802	0.198	0.785	0.215

Louisiana	**0.955**	**0.045**	**0.809**	**0.191**	**0.718**	**0.282**
Eastern	0.908	0.092	0.843	0.157	0.769	0.231
Middle	N/A	N/A	0.913	0.087	0.719	0.281
Western	0.992	0.008	0.751	0.249	0.675	0.325
Maine	**0.533**	**0.467**	**0.581**	**0.419**	**0.743**	**0.257**
Maryland	**0.996**	**0.004**	**0.944**	**0.056**	**0.653**	**0.347**
Massachusetts	**0.951**	**0.049**	**0.805**	**0.195**	**0.803**	**0.197**
Michigan	**0.885**	**0.115**	**0.760**	**0.240**	**0.753**	**0.247**
Eastern	0.850	0.150	0.868	0.132	0.780	0.220
Western	0.973	0.027	0.502	0.498	0.686	0.314
Minnesota	**0.867**	**0.133**	**0.837**	**0.163**	**0.705**	**0.295**
Mississippi	**0.990**	**0.010**	**0.664**	**0.336**	**0.629**	**0.371**
Northern	1.000	0.000	0.956	0.044	0.654	0.346
Southern	0.986	0.014	0.580	0.420	0.618	0.382
Missouri	**0.957**	**0.043**	**0.887**	**0.113**	**0.736**	**0.264**
Eastern	0.999	0.001	0.932	0.068	0.648	0.352
Western	0.920	0.080	0.851	0.149	0.844	0.156
Montana	**0.994**	**0.006**	**0.979**	**0.021**	**0.903**	**0.097**
Nebraska	**0.945**	**0.055**	**0.785**	**0.215**	**0.675**	**0.325**
Nevada	**0.981**	**0.019**	**0.942**	**0.058**	**0.712**	**0.288**
New Hampshire	**0.994**	**0.006**	**0.979**	**0.021**	**0.881**	**0.119**
New Jersey	**0.946**	**0.054**	**0.743**	**0.257**	**0.707**	**0.293**
New Mexico	**0.871**	**0.129**	**0.930**	**0.070**	**0.897**	**0.103**
New York	**0.989**	**0.011**	**0.809**	**0.191**	**0.802**	**0.198**
Northern	0.998	0.002	0.927	0.073	0.830	0.170
Eastern	0.996	0.004	0.726	0.274	0.810	0.190
Southern	0.996	0.004	0.872	0.128	0.886	0.114
Western	0.976	0.024	0.776	0.224	0.688	0.312
North Carolina	**0.463**	**0.537**	**0.290**	**0.710**	**0.359**	**0.641**
Eastern	0.904	0.096	0.374	0.626	0.550	0.450
Middle	0.211	0.789	0.181	0.819	0.203	0.797
Western	0.981	0.019	0.332	0.668	0.327	0.673
North Dakota	**0.963**	**0.037**	**0.965**	**0.035**	**0.943**	**0.057**
Ohio	**0.894**	**0.106**	**0.732**	**0.268**	**0.757**	**0.243**
Northern	0.941	0.059	0.742	0.258	0.795	0.205
Southern	0.849	0.151	0.721	0.279	0.723	0.277
Oklahoma	**0.973**	**0.027**	**0.963**	**0.037**	**0.903**	**0.097**
Northern	0.963	0.037	0.956	0.044	0.938	0.062
Eastern	1.000	0.000	0.986	0.014	0.927	0.073
Western	0.977	0.023	0.964	0.036	0.883	0.117
Oregon	**0.965**	**0.035**	**0.864**	**0.136**	**0.718**	**0.282**
Pennsylvania	**0.995**	**0.005**	**0.771**	**0.229**	**0.674**	**0.326**
Eastern	0.991	0.009	0.561	0.439	0.516	0.484
Middle	0.996	0.004	0.968	0.032	0.826	0.174
Western	0.998	0.002	0.957	0.043	0.846	0.154
Rhode Island	**0.996**	**0.004**	**0.771**	**0.229**	**0.924**	**0.076**
South Carolina	**0.981**	**0.019**	**0.742**	**0.258**	**0.516**	**0.484**
South Dakota	**1.000**	**0.000**	**0.850**	**0.150**	**0.911**	**0.089**
Tennessee	**0.658**	**0.342**	**0.540**	**0.460**	**0.388**	**0.612**
Eastern	0.704	0.296	0.568	0.432	0.517	0.483
Middle	0.848	0.152	0.739	0.261	0.423	0.577
Western	0.445	0.555	0.374	0.626	0.265	0.735
Texas	**0.929**	**0.071**	**0.576**	**0.424**	**0.611**	**0.389**
Northern	0.983	0.017	0.762	0.238	0.577	0.423
Eastern	1.000	0.000	0.870	0.130	0.709	0.291
Southern	1.000	0.000	0.543	0.457	0.647	0.353
Western	0.794	0.206	0.459	0.541	0.596	0.404

Utah	**0.979**	**0.021**	**0.898**	**0.102**	**0.691**	**0.309**
Vermont	**1.000**	**0.000**	**0.977**	**0.023**	**0.788**	**0.212**
Virginia	**0.851**	**0.149**	**0.839**	**0.161**	**0.783**	**0.217**
Eastern	0.986	0.014	0.896	0.104	0.764	0.236
Western	0.642	0.358	0.719	0.281	0.834	0.166
Washington	**0.834**	**0.166**	**0.686**	**0.314**	**0.775**	**0.225**
Eastern	0.918	0.082	0.789	0.211	0.809	0.191
Western	0.811	0.189	0.649	0.351	0.764	0.236
West Virginia	**0.973**	**0.027**	**0.949**	**0.051**	**0.909**	**0.091**
Northern	0.995	0.005	0.965	0.035	0.906	0.094
Southern	0.960	0.040	0.938	0.062	0.910	0.090
Wisconsin	**0.861**	**0.139**	**0.802**	**0.198**	**0.853**	**0.147**
Eastern	0.836	0.164	0.849	0.151	0.867	0.133
Western	0.907	0.903	0.730	0.270	0.822	0.178
Wyoming	**0.985**	**0.015**	**0.888**	**0.112**	**0.904**	**0.096**

Source: Administrative Office of the Courts, Annual Reports and unpublished data.
Note: [a]Nonbusiness cases.

a. *National Changes*

Once again, the data demonstrate a national trend: since 1970, Chapter 13 has become an increasingly important part of the bankruptcy picture. In 1970, the national Chapter 7 filing rate was eighty, and eighty-four percent of all filings were in Chapter 7. By 1990, the Chapter 7 filing rate had more than doubled to 187, but the proportion of Chapter 7 filings had shrunk to seventy percent. For Chapter 13, the filing rates more than quintupled from fifteen in 1970 to seventy-nine in 1990; the proportions nearly doubled from about sixteen percent to about thirty percent of all filings. The major increase in the proportion of debtors filing in Chapter 13 occurred between 1970 and 1980, when the proportions rose from sixteen percent to twenty-six percent, with a more modest gain to thirty percent in 1990. Large increases in Chapter 13 filings occurred during the late 1970s and early 1980s, shortly after the adoption of the 1978 Bankruptcy Code.[93] The proportion of Chapter 13 filings seems

93. Variations in reporting the proportion of Chapter 13s filed result from differences in the possible denominators—all filings, all nonbusiness filings, or all voluntary filings. Table 3 presents 1980 and 1990 data for Chapter 13s (business and nonbusiness) as a proportion of nonbusiness bankruptcies. The business-nonbusiness distinction was not available in 1970, so the 1970 data are reported as proportions of all voluntary filings. In addition, data for a particular year are typically fiscal rather than calendar years. The Federal courts' filing data are reported on a July 1-June 30 fiscal year (FY) basis rather than on a calendar year basis. Published 1980 data represent a "short" fiscal year of nine months. The 1980 data in Tables 1, 2, and 3 come from unpublished data provided by the Administrative Office of the Courts.

The proportion of *all* bankruptcies filed in Chapter XIII or Chapter 13 increased from 1970-1971 to 1990-91 as follows: FY-1970—15.7%, Administrative Office of the United States Courts, *Annual Report of the Director*, unpaginated, tbl. F2 (1970); FY 1971—15.3%,

to have reached a rough equilibrium, with about one in four bankrupt debtors now filing in Chapter 13.[94]

b. *Local Variation*

Despite a clear national trend to more Chapter 13 filings, the data show great variation in chapter choice among the districts and among the states.[95] Local Chapter 13 filing rates in 1990 varied by a factor of one hundred, from seven in the Northern District of Iowa to 731 in the Eastern District of Tennessee. Six districts had rates over 300, and ten districts were below fifteen. Chapter 13 filings as a proportion of all bankrupcty filings in 1990 ranged from a high of eighty percent in the Middle District of North Carolina to a low of five percent in the Northern District of Iowa.[96]

Once again, the key point for present purposes is that the variation *within* states was quite pronounced. For example, in the Southern District of Alabama, only twenty percent of 1990 filings were in Chapter 13, versus sixty-six percent in the adjacent Middle District of Alabama. In the Western District of Missouri, the proportion of Chapter 13 filings was sixteen percent; it was over twice as high in the Eastern District, with thirty-five percent. In

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Administrative Office of the United States Courts, *Annual Report of the Director of the Administrative Office of the United States Courts, 1971* at 384, tbl. (1972); FY 1981—24.0%, Administrative Office of the United States Courts, *Annual Report of the Director of the Administrative Office of the United States Courts, 1981*, at 544, tbl. Table 2FA (1981); FY-1990—27.4%, Administrative Office of the United States Courts, *Annual Report of the Director of the Administrative Office of the United States Courts, 1990* at 240, tbl. F-2 (1990); FY 1991—27.7%, Administrative Office of the United States Courts, *Annual Report of the Director of the Administrative Office of the United States Courts, 1991* at 296, tbl. F-2 (1991).

94. Of all bankruptcies filed in 1991, 27.7% were filed in Chapter 13. U.S. GENERAL ACCOUNTING OFFICE, BANKRUPTCY ADMINISTRATION: JUSTIFICATION LACKING FOR CONTINUING TWO PARALLEL PROGRAMS 3, fig. 1 (1992). If the Chapter 11 reorganizations are excluded from the total, the proportion of Chapter 13 filings rises to 28.4%.

95. Variations among the states were substantial. Actual 1990 Chapter 13 filing rates varied from about 8 per 100,000 in North Dakota to a high of 425 per 100,000 in Tennessee. Because percentages must add to 100, the variation found in the proportions is not quite so dramatic, but the proportions still vary substantially. The highest proportions in 1990 by state were 64% of filings in Chapter 13 in North Carolina, 61% in Tennessee, 58% in Alabama, and 56% of Georgia filings in Chapter 13. The adjacent state of Florida, however, had only 11% of its filings in Chapter 13. Only 9% of Indiana filings, 10% of Montana and New Mexico filings, and 12% of New Hampshire and Hawaii filings were in Chapter 13.

96. As great as the variations among the states and districts were in 1990, the variation had been even greater in the earlier years. In Alabama, for example, the proportions filing in Chapter 13 have always been well above the national average, but they have dropped from 73% in 1970 to 68% in 1980 and to 58% in 1990. In seven districts, there were *no* calculable Chapter 13 filing proportions in 1970. In the same districts in 1990, the proportion of Chapter 13 filings ranged from 7% in the Eastern District of Oklahoma to 35% in the Southern District of Texas.

New York, the proportions ranged from eleven percent in the Southern District to thirty-one percent in the Western District. In the Western District of Pennsylvania, fifteen percent of bankruptcies were in Chapter 13, versus almost half of bankruptcies in the Eastern District of Pennsylvania. In six of twenty-four multidistrict states, the percentage of Chapter 13 cases varied between districts by more than one hundred percent. These intrastate variations cannot be explained by variations in formal laws, as the laws were the same in Manhattan and Buffalo, in Philadelphia and Pittsburgh.

As with Bankruptcy Rates, these differences among districts have persisted over decades. The phenomenon of relatively high Chapter 13 district filing rates from year to year can be summarized in three ways: by correlations among rates, by correlations among proportions, and by correlations of rank-order. All three methods confirm that a district that was high in Chapter 13 filings in one year tended to be high in later years. The Pearson correlation between 1970 and 1980 Chapter 13 rates was 0.74; the correlation for the next decade, 1980-1990, rose to 0.81.[97] The correlation between 1970 and 1990 Chapter 13 rates was 0.64, so that the 1970 Chapter 13 filing rate explained about forty percent of the variance in the rates twenty years later. When we compare the proportions of debtors filing for Chapter 13 in different districts, a similar pattern emerges. The proportions filing in Chapter 13 in 1970 and in 1980 are correlated at 0.71; the correlation between 1980 and 1990 is also 0.71. The correlation between 1970 and 1990 is 0.56.[98] Knowing the 1970 proportion filing in Chapter 13 explains thirty-one percent of the variance in 1990 proportions.[99]

97. The Pearson correlations were similarly high for Chapter 7 rates: the 1970-1980 correlation was 0.74; the correlation for 1980-1990 was 0.76; and the correlation for 1970-1990 was 0.74. Each of these coefficients is significant at $p < 0.01$.

98. These coefficients are significant at $p < 0.01$.

99. Note that the explanation of variance is obtained by squaring the correlation. *See supra* note 89. One possible reason for the persistence might be that Chapter 13 and Chapter 7 rates are highly correlated *with each other*, because common economic stimuli lead people to file bankruptcy. If this were the case, then districts that had relatively high rates for one type of bankruptcy would also have high rates for the other type. The data do not support this hypothesis. Suppose the only employer in a city closes its doors, and all former employees file for bankruptcy. Some file in Chapter 7, and others file in Chapter 13. Rises in filing rates by chapter will be correlated with each other, but the reason is that a common economic problem has stimulated both sets of filings. The Pearson correlation between Chapter 7 and Chapter 13 filing rates in 1970 was only 0.13; in 1970 it dropped to 0.11; and in 1990 it rose to 0.29. Only the 1990 correlation is significant, at $p < 0.01$. The other two correlations are not significant. The rank-order findings fluctuated.

The data concerning Chapter Choices reinforces the inferences drawn from the Bankruptcy Rates. While there are national trends regarding consumer debtors' choices in bankruptcy, there is a great deal of persistent local variation. That variation suggests that something other than national and state laws may affect the proportion of debtors who try to resolve their debt problems with liquidation in Chapter 7 and those who may attempt a repayment in Chapter 13. Indeed, districts and states tend to replicate predictable patterns in their relative balance of Chapter 7 versus Chapter 13 filings; that is, their preferences as between the two procedures persist over time.

3. *Repayment Promises*

The third variation we examine is the amount of debt that debtors have agreed to pay following bankruptcy. Unfortunately, the data on this point are considerably sketchier because the Administrative Office of the Courts does not report promised debt repayments. The only large, available sample of debt repayment data is from the Consumer Bankruptcy Project, and those data are limited to a single reporting year (1981) and to a limited number of judicial districts (ten). These data do, however, give some indication that debtor repayment varies by district.[100] We begin our discussion with reaffirmations in Chapter 7 and then move to promised levels of repayment in Chapter 13 plans.

To examine variation in repayment promises made by debtors in Chapter 7, we collected data on the number of debtors who made reaffirmation agreements and the number of agreements they made. We divided debtors into those who made no reaffir-

In 1970, there was a Spearman rank-order correlation coefficient of 0.56 between Chapter 7 and Chapter 13 rates; the coefficient dropped to 0.30 in 1980, and then it rose to 0.55 in 1990. The 1970 and 1990 correlations are significant at $p < 0.01$; the 1980 correlation is significant at $p < 0.05$.

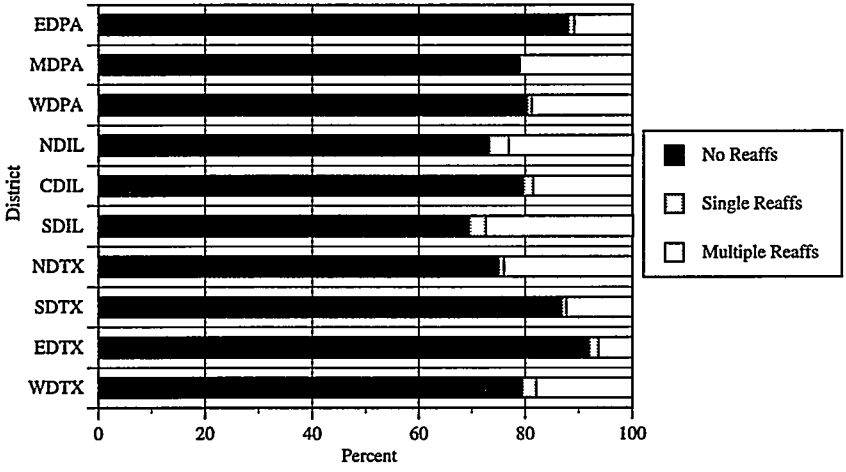
Furthermore, this finding of persistence is reinforced by the rank-order data for states. Using the Spearman rank-order correlation coefficients, the rank of a state in Chapter 13 filing rates in 1970 correlates at 0.71 with its rank in 1980 and 0.50 with its rank in 1990. So, for example, although the national proportion of filings in Chapter 13 rose, Tennessee's relatively high ranking persisted because its proportions rose even higher, from 34% to 46% to 61% of all filings. West Virginia was low in all three years, with Chapter 13 proportions of 3%, 5% and 9%. We do not do the Spearman test for district-level data. *See supra* note 91.

100. For a full accounting of the data used in this study, see As We Forgive Our Debtors, *supra* note 20, at 342-54. A systematic sample of cases filed in Chapter 7 and Chapter 13 was drawn from each of ten judicial districts from among the filings by natural persons during 1981. The data reported in Figures 4 and 5 are previously unpublished data from that study.

mation agreements, those who made a single reaffirmation agreement, and those debtors who agreed to multiple reaffirmations. These data are reported in Figure 4.

FIGURE 4

Chapter 7 Outcomes by District



The data illustrate that most debtors go through Chapter 7 and make no reaffirmation agreements. On average, about eighty percent of the debtors in Chapter 7 emerged without any personal liability for their debts. There is, however, some variation from that mean among the three states we studied. In Pennsylvania, eighty-two percent of Chapter 7 debtors discharged all their debts, similar to the eighty-four percent in Texas; but in Illinois, the proportion dropped to seventy-four percent.

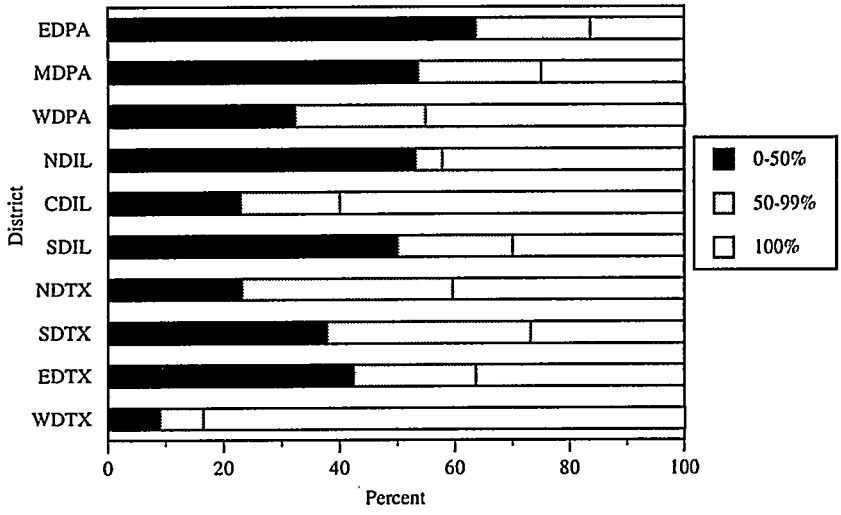
Much greater variation is evident when the data are considered at the district level. Debtors within Texas, for example, were more than three times more likely to reaffirm a debt if they filed in the Northern District than in the Eastern District. Debtors in the Eastern District of Pennsylvania were about half as likely to file a reaffirmation as were debtors in the Western District. Even in Illinois, reaffirmation rates ranged from twenty percent in the Central District to nearly forty percent in the neighboring Southern District. We infer from these data that there were important local variations in the proportion of Chapter 7 debtors who formally reaffirmed a debt in bankruptcy. These local variations again seem much more important than the differences at the

state level, where a difference in legal rules might affect outcomes.

For debtors in Chapter 13, the opportunity for variation in repayment is also great. We collected data from the Chapter 13 debtors' proposed repayment plans and divided the Chapter 13 debtors into three groups, based on the kinds of plans they proposed. Debtors proposing to pay from zero to fifty percent of their debts are in the first group, debtors promising to pay more than half, but less than all, their debts are in the second group, while debtors promising to pay one hundred percent of their outstanding debts are in the final group. For analysis, the debtors might be regrouped into those promising to pay more than half their debts and those promising to pay less than half, simply by adding the second and third groups together.[101] The data are reported in Figure 5.

FIGURE 5

CHAPTER 13 OUTCOMES BY DISTRICT



101. Even if the Chapter 13 data are divided into just two repayment categories, those proposing to pay less than 50% of their debts and those proposing to pay more than 50%, there is a significant association between the filing district and repayment categories ($X^2 = 59.0$, 9 degrees of freedom, significant at $p < 0.01$). The debtors proposing to pay more than half of their debts are not evenly distributed across the ten districts, but they cluster disproportionately within a few districts.

Once again, Pennsylvania and Texas look more similar to each other than either does to Illinois,[102] but here again, the intrastate variation is much greater than the variation among states. About eighty-four percent of the Chapter 13 debtors in the Western District of Texas, for example, promised to repay all of their debts. This figure is more than three times higher than the twenty-seven percent in the neighboring Southern District of Texas. Conversely, while only a few Chapter 13 plans in the Western District promised less than fifty cents on the dollar, forty-two percent of the plans in the Eastern District were low-payment proposals. While Texas districts reveal the greatest variations, debtors in the Western District of Pennsylvania were three times more likely to agree to repay one hundred percent of their debts than were their Eastern District counterparts, and repayments of less than fifty cents on the dollar are twice as likely in the Northern District of Illinois than in the Southern District. Something other than variations in formal laws must explain these large differences in repayment promises between San Antonio and Houston, between Philadelphia and Pittsburgh, and between Chicago and East Saint Louis.

The data reported here demonstrate enormous local variation at all three decision points for debtors in bankruptcy. Local variation will almost inevitably produce variation among states as well, but the intrastate data make it clear that the most powerful variation in the three key bankruptcy choices is at the local level and is a product of local differences.

IV. Explanations for Variation

The presence of local variation alone, of course, does not prove the existence or the influence of local legal cultures. There are three plausible explanations: one, there are systematic variations among the economic circumstances of debtors in different localities; two, there are influential people with differing convictions in each locality; or three, there are different cultures in each locality. The last explanation can in turn be divided into differences in the legal[103] or the nonlegal cultures.

102. In Illinois, for example, only 26% of cases are one hundred percent plans, compared with 45% in Pennsylvania and 47% in Texas.

103. As defined in this Article, local legal cultures are systematic and persistent variation in local legal practices as a consequence of a complex of perceptions and expectations shared by many practitioners and officials. *See supra* text accompanying note 15.

The first explanation is that debtors themselves might differ from area to area, so that differences among debtors—for example, how indebted they are—account for the observed local variations in the data.[104] Ideally, for each of the variations discussed we would like to compare the debtors who file for bankruptcy and those who do not, using a number of criteria to determine whether the filing debtors differ in a way that could produce the observed differences in the local data. Unfortunately, there are no systematic data about debtors that would permit comparisons of those who file for bankruptcy with those who do not. Nor are there any long-term studies about the relative financial picture of debtors in bankruptcy that would reveal whether the bankruptcy filing decision is changing for some groups but not for others. These lacunae mean that we cannot confidently determine whether debtor pools differ from district to district in a way that would explain the local variations in the reported data.

We are not, however, completely bereft of information about the debtors. Data from the Consumer Bankruptcy Project permit comparisons of the relative financial positions of bankrupt debtors from ten districts[105] in 1981. While these data do not tell us about nonfiling debtors, comparisons among the debtors who file can give some insight into the likelihood that debtor differences are producing local variations.

Earlier, we observed wide variations in bankruptcy filing rates among the districts and states over time.[106] The ten districts studied by the Consumer Bankruptcy Project had similar variations in filing rates.[107] In Table 6, we examine whether the economic characteristics of the debtors who chose bankruptcy in those sample districts differed from each other in significant ways. Table 6 lists the average assets, income, and debt of the debtors who filed for bankruptcy in these districts. In addition to listing these absolute measures, Table 6 has two ratios: debt to income, and nonmortgage debt to income. A ratio of debt to income is a better measure of a debtor's ability to repay debts than are debt or income individually, because it reflects neither absolute earning

104. These would have to be long-term variations. Short-term variations, such as business cycles, cannot explain the persistence of differences in bankruptcy data among districts over twenty years.

105. The districts covered by the Consumer Bankruptcy Project are: all three in Illinois, all three in Pennsylvania, and all four in Texas.

106. *See supra* Part III.B.1.

107. *See supra* Tbl. 1.

nor spending, but the relationship between obligations and incomes to assess the economic health of the debtors in bankruptcy.[108] These data permit us to construct a financial profile to determine whether the debtors who chose bankruptcy in one state differed importantly from those who chose bankruptcy in another, or if there were significant differences among debtors in districts within a state.

TABLE 6
MEAN ASSETS, HOUSEHOLD INCOME, TOTAL DEBT, AND TOTAL AND NON-MORTGAGE DEBT-INCOME RATIOS
BANKRUPTCY PETITIONERS IN TEXAS, ILLINOIS, AND PENNSYLVANIA
(BY DISTRICT, 1981).

	Assets	Income	Total Debt	TDIR[a]	TNMDIR[b]
Texas	**$34,506**	**$17,573**	**$42,121**	**3.04**	**2.26**
Western	27,722	14,759	34,875	3.65	3.01
Eastern	31,926	16,375	48,068	2.28	1.57
Southern	39,742	20,134	38,971	1.99	0.99
Northern	37,129	18,472	47,284	4.32	3.64
Illinois	**21,736**	**14,582**	**34,314**	**3.49**	**1.71**
Northern	22,109	14,010	38,063	5.49	2.17
Central	21,163	15,074	28,754	2.41	1.48
Southern	21,905	14,666	35,814	2.63	1.46
Pennsylvania	**29,700**	**14,542**	**37,879**	**3.09**	**1.91**
Western	30,276	16,183	41,469	3.31	1.51
Middle	30,058	12,902	39,084	3.32	2.17
Eastern	28,742	14,355	34,026	2.69	1.27
F-Values[c]					
1) By State	13.45**	15.57**	2.69	0.23	1.01
2) By District	3.98**	7.40**	1.67	1.33	1.65
**F significant at p <0.01					
Significant Differences					
1) By State	Tx&Il>Pa	Tx>Il&Pa	None	None	None
2) By District	S.Tx>C.Il	S.Tx> W.Tx S.Il N.Il C.Il M.Pa E.Pa also N.Tx>M.Pa	None	None	None

Source Consumer Bankruptcy Project.
Notes [a] Total debt-income ratio
[b] Total non-mortgage debt-income ratio
[c] One-way analysis of variance using Scheffe range test.

108. *See* AS WE FORGIVE OUR DEBTORS, *supra* note 20, at 73-76.

Table 6 shows some variation both by state and by district in the amount of reported assets and income for debtors filing for bankruptcy. Debtors in Texas, for example, reported mean assets worth $34,506, compared with $29,700 for Pennsylvania debtors and $21,736 for Illinois debtors. The Illinois asset levels were significantly lower than those for the other two states. Incomes were significantly higher in Texas at $17,573, while Illinois and Pennsylvania were statistically indistinguishable at $14,582 and $14,542 respectively. Texas was also the highest in terms of total debt, but the variance in debt was so large that the differences among the three states were not significant.

The key point is that in debt-income ratios—the ability to repay—the debtors in all three states were statistically indistinguishable.

At the more crucial intrastate level, Table 7 illustrates even less variation among debtors in ability to pay. Once again there is no statistically significant variation in debt-income ratios among any of the districts studied. Asset levels varied, but even those differences did not demonstrate intrastate variations that would explain local differences. The asset levels of debtors in the Southern District of Texas differed significantly from those of debtors in the Central District of Illinois, for example, but the only interdistrict variation within a state that is statistically significant is the variation in income between the Southern District of Texas and the Western District of Texas. Otherwise, districts within a state are statistically indistinguishable on *all* measured criteria.

Although districts vary greatly in filing rates and in proportions of debtors in Chapter 13, the individual circumstances of the debtors show much less variation. In Texas, for example, a debtor living in the Western District was eight times more likely to file for bankruptcy than a neighbor in the Eastern District. But among the debtors who filed in the Western District and the Eastern District of Texas, there were *no* statistically significant differences on *any* financial variable. While the intrastate variations were not as extreme among other districts in the three states we studied, the pattern is the same: District level variations cannot be explained by financial differences among the debtors who filed for bankruptcy in the districts.[109]

109. It is possible, of course, that the differences in filing rates depend on some noneconomic factor affecting individual debtors that varies by district. While we were able

TABLE 7
ASSETS, HOUSEHOLD INCOME, TOTAL DEBT, AND TOTAL AND NON-MORTGAGE DEBT-INCOME RATIOS FOR BANKRUPTCY PETITIONERS IN DISTRICTS WITH HIGH OR LOW PROPORTIONS IN CHAPTER 13, 1981.

	Assets	Income	Total Debt	TDIR[a]	TNMDIR[b]
High 13[c]					
Mean	$31,526	$16,585	$38,284	3.01	2.02
Median	17,555	15,000	20,881	1.27	0.68
N	768	673	772	651	650
Missing	7	102	3	124	125
Low 13					
Mean	$27,046	$14,899	$38,935	3.01	1.78
Median	10,925	14,112	21,095	1.55	0.82
N	722	616	724	590	588
Missing	5	111	3	137	139
F-value	4.672*	9.968**	0.053	0.475	0.347

Source Consumer Bankruptcy Project.
*F significant at $p<0.05$
**F significant at $p<0.01$
Notes [a] Total debt-income ratio
[b] Total non-mortgage debt-income ratio
[c] Districts with 35% or more of non-business filings in Chapter 13. The national average in 1981 was 26.2%.

While we cannot discover differences among the debtors who filed for bankruptcy, these data do not eliminate the possibility that there were simply more debtors in serious financial trouble in particular districts. Unfortunately, we have no data to examine this proposition directly. We have, however, examined financial data available about the general population in the three states during the relevant time period, and again we discern no pattern that explains the district variations evident in Table 1. Illinois had a bankruptcy filing rate about four times that of Pennsylvania, but Illinois filers as a group had higher personal income than Pennsylvanians.[110] Similarly, unemployment rates for Illi-

to collect only a limited amount of social and demographic information about each of the debtors sampled in the Consumer Bankruptcy Project, we have some information to help us test whether the debtor differences are likely to cause differences among districts. There were, for example, significantly more homeowners among debtors who filed for bankruptcy in the Eastern District of Pennsylvania. Petitioners in the Northern District of Illinois were significantly less likely to be married. Residents of large metropolitan districts, however, had higher incomes, were more likely to consult specialist attorneys, and were more likely to file in Chapter 13. No observable pattern was consistent with the district variations in filing rates. *See* AS WE FORGIVE OUR DEBTORS, *supra* note 20, at 258, 268-269 nn.31-32.

110. Consumer Bankruptcy Project income data generally refer to 1980, because bankruptcy petitions asked for income in the preceding year. Thus, we make national compari-

nois and Pennsylvania were 8.5% and 8.4%. The Texas unemployment rate was 5.3%, but Texans were filing bankruptcy at somewhat higher rates than Pennsylvanians.[111] While these data do not eliminate the possibility of other or more localized differences that cause different filing rates, we believe that their similarity in those gross measures of economic status make it implausible that the differences in filing rates among states and districts can be explained by differing economic conditions.[112]

These conclusions are reinforced when we direct our attention back to payout levels. Figures 4 and 5 illustrated great differences in how much Chapter 7 debtors and Chapter 13 debtors in different districts promised to repay following their bankruptcy filings. Yet our data have shown that the debtors' ability to repay does not vary greatly by district. Debtors with similar abilities to repay were making very different promises about how much they would try to repay. The considerable differences in their promises do not lend themselves to an easy explanation, but they seem *prima facie* to have more to do with extra-financial factors than with capacity to fulfill a promise to pay.

If there are crucial variations in legal outcomes between localities governed by the same formal law and governing substantially similar debtors, the variations either must reflect cultural differences, or must be the product of strong individual influences. Particular individual actors—rather than cultural influences—are unlikely to produce the differences documented here because of the persistence in local variations over time. Many of

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sons to the preceding year's income. In 1980, personal income per capita was $9,798 for Texas, $9,891 for Pennsylvania, and $10,837 for Illinois. Interestingly, the relative ranking of bankruptcy filing rates in these states was reversed: Illinois citizens had higher incomes, on average, but had the highest bankruptcy filing rates. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 433, tbl. 701 (109th ed. 1989).

111. *See* AS WE FORGIVE OUR DEBTORS, *supra* note 20, at 86.

112. Tables 2 and 3 showed variations not only in filing rates, but also in the proportions of debtors who filed in Chapter 13. To test whether variations among debtor groups in bankruptcy could account for the differences in Chapter 13 filings, we reexamined the data in Table 6. Table 7 presented data on the financial variables (assets, income, debt, and debt-income ratios) for debtors in the districts covered by the Consumer Bankruptcy Project with the five highest filing rates (the Northern District of Illinois, the Eastern District of Pennsylvania, and the Northern, Southern, and Western Districts of Texas) and for those with the five lowest filing rates (the Central and Southern Districts of Illinois, the Middle and Western Districts of Pennsylvania, and the Eastern District of Texas).

In the five districts with the lowest filing rates, the average income and assets both were significantly lower than in the five districts with the highest rates. But, more critically, once again there is no statistically significant difference among the debt levels or the debt-income ratios for the debtors of the districts. These economic variables do not explain the differences in the filing rates.

these data show differences that continue over a twenty-year time span. There have been enormous changes in the size and membership of both bench and bar in bankruptcy over the last two decades. There are many more bankruptcy judges than there were bankruptcy "referees" in 1970[113] and far more bankruptcy lawyers than in that year. Furthermore, much of the expansion and turnover took place in the early 1980s after the adoption of the Code greatly expanded the bankruptcy bar, and the Supreme Court's decision in *Marathon*[114] caused substantial turnover on the bench.[115] We conclude that local cultures are the more likely causes of these variations.

Cultural differences could be either legal or nonlegal. We cannot demonstrate that nonlegal cultural differences are unimportant, but we are inclined to discount them. They would have to vary dramatically within a state to produce the effects we have observed. For example, Philadelphia and Pittsburgh, Dallas and Houston, Chicago and East St. Louis, would have to have significantly different nonlegal cultures that affect bankruptcy decisions. Furthermore, these cultural differences would have to cut across many other cultural lines in regions and major metropolitan areas that have a host of different ethnic and religious groupings. Until there is some evidence supporting the influence of nonlegal cultures on bankruptcy decisions, we believe the best explanation of the data reported here is the existence of local legal cultures.

V. Models of Local Legal Culture

In collecting bankruptcy data for the Consumer Bankruptcy Project, we interviewed many of the bankruptcy judges, court clerks, and trustees in each district we studied. We also interviewed local practitioners, although limitations on time and availability meant that frequently we spoke with only a few members of each local bar. These interviews were loosely structured, con-

113. For the increase in judges from 1980, see Ed Flynn, *Predictors of Bankruptcy* at 15 (Administrative Office of the Courts, unpublished, undated) (copy on file with the authors) [hereinafter "Predictors"].

114. Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) (Brennan, J., plurality opinion) (concluding that the Bankruptcy Reform Act's broad grant of jurisdiction violated Article III of the U.S. Constitution).

115. *See* Predictors, *supra* note 113, at 15.

sisted of open-ended questions about consumer bankruptcy practices, and often led to two- or three-hour discussions.[116]

We had no preconceived idea that we would encounter evidence of differing local legal cultures. Indeed, it was long after our interviews were complete that we first used the term to describe the differences we saw among districts. Nonetheless, we would be remiss in our description of our own empirical work if we did not note that the idea of local practice—and evolving local legal cultures—came as much from interviews as it did from statistical data.

Local judges, clerks, trustees, and practitioners related important aspects of practice that varied among different districts and offered plausible explanations of how different parties were able to perpetuate, encourage, or change the perceptions and practices of a local group. In this section, we use some of the accounts we heard in our interviews to create idealized models of local legal culture. We recognize the basic difficulty in trying to separate out cultural influences from other factors in a particular area. Moreover, in every district there will be considerable interaction among the influences and the actors, so that any resultant local culture necessarily will be an amalgam of the models discussed here. Nonetheless, the idealized models provide a perspective from which to begin analysis, and they may serve to identify characteristic factors of districts more influenced by one set of actors than another.

The basic structure for influencing outcomes in bankruptcy cases that we explore is the ability to influence debtors' decisions at critical junctures. We presume that lawyers are the primary actors who have the power to influence their clients' decisions. Debtors are relatively autonomous in the initial decision to consult a bankruptcy attorney, but attorney advertising and practice structures that keep fees low obviously affect the debtors' filing decisions. A debtor's choice of chapter and the decisions to repay clearly are influenced by the attorney. The bankruptcy process is complex, requiring great expertise, and debtors rarely have independent information that would allow them to challenge the advice of their attorneys.[117] In only a few circum-

116. *See* AS WE FORGIVE OUR DEBTORS, *supra* note 20, at 351-53.

117. *See* Gary Neustadter, *When Lawyer and Client Meet: Observations of Interviewing and Counseling Behavior in the Consumer Bankruptcy Law Office*, 35 BUFF. L. REV. 177, 239 (1986) (observing that attorneys are not likely to advise clients of alternative solutions to credit problems).

stances, such as consumer credit counseling services, is anyone else likely to have direct access to troubled debtors. Attorneys may exercise most of the power in debtor decisionmaking, but *how* they exercise that power, we speculate, is a function of the local legal culture. The local culture may be dominated by judges, by attorneys, or by other actors. In any case, the local legal culture will have a powerful influence over the decisions that are nominally within the exclusive domain of the individual debtors.

We construct three models of local culture: the judge-dominated model, the lawyer-dominated model, and the model of a culture influenced by extralegal actors. The influences of each actor can either perpetuate or alter an existing local culture. In practice, it appears that a powerfully conservative bias is at work. For example, lawyers are trained by older lawyers already socialized to "the way we do things around here." In the immortal words of Sam Rayburn, "those who go along, get along." Similarly, judges most often come out of the local bar socialized to conform by the small, specialized group of local lawyers and courthouse officials with whom they interact.[118] Finally, nonlegal actors—creditors, credit counselors, and others—are powerfully influenced by legal actors who are much closer to the center of the process. Thus, while each group can influence change or perpetuate the status quo, the persistent patterns in the data suggest that resistance to change is probably the dominant tendency.

A. *The Judge Model*

Perhaps because we spent so much of our time in courthouses, we heard a number of stories about how judges affect local practices. The most frequent topics were how judges influenced the Chapter 7-Chapter 13 split within their districts, and how they required higher or lower repayments among the debtors.

The judge-dominated model presupposes a concentration of influence, either as a single-judge district or as a district in which the judges share similar views on key issues affecting consumer debtors. Normally, judges with conflicting views and relatively equal power would fail to create or sustain a local culture. A judge's power to influence in a multi-judge district, however,

118. A recent study of Rule 11 sanctions suggests that a small specialized group of legal actors may be the key to the creation of a local legal culture. *See Rule 11 Study*, *supra* note 11, at 550-52.

could be affected by a number of technical factors, including case assignment procedures[119] and subdivision of districts.[120]

The judge-dominated model also requires a judge or judges with relatively strong feelings about the bankruptcy process. We assume that strong feelings produce responses that are consistent over time and that a number of different kinds of actions tend to reinforce the same perspective. Judges who are indifferent to consumer bankruptcy cases, judges who act on a number of competing principles, or judges who vacillate in their attitudes would not likely have a demonstrable influence on a local legal culture.

In some sense, the development of Chapter 13 is the success story of a judge-centered local legal culture. The original development of court-supervised debtor repayment plans began in the Northern District of Alabama (Birmingham) in 1933.[121] The Birmingham experience led to the addition of a Chapter XIII Wage-Earner proceeding (the forerunner to today's Chapter 13) to the bankruptcy laws when the Chandler Act was adopted in 1938.[122] Debtors in most parts of the country, however, did not actually use the new statutory procedures. In most districts, virtually all debtors filed a "straight bankruptcy" (today's Chapter 7), liquidating their assets and receiving discharges within a few months. Most courts had no provisions for a debtor who wanted to declare Chapter XIII, but judges in a few districts decided that the new provisions were best for both debtors and creditors. These judges instituted procedures and educated both practitioners and other judges about how to use the new laws. Not surprisingly, these courts had substantial proportions of Chapter XIII filings when virtually all other debtors in other courts were filing in the equivalent of Chapter 7.[123] Eventually, the procedures developed

119. For a time, the Central District of California, for example, had over a dozen judges, but only one judge heard all the Chapter 13 cases. In that case, the power of the Chapter 13 judge to have some impact on consumer bankruptcies was considerable.

120. In some areas, there are multiple judges for a district, but only one judge sits per district division. In the Eastern District of Pennsylvania, for example, two judges sit in Philadelphia with random assignment of cases, but only one judge sits in Reading and hears all the cases filed in certain counties.

121. *See* Henry H. Haden, *Chapter XIII Wage Earner Plans—Forgotten Man Bankruptcy*, 55 Ky. L.J. 564 (1966).

122. Chandler Act, Pub. L. No. 75-696, 52 Stat. 883 (1938), *repealed by* Pub. L. No. 95-598, 92 Stat. 2645 (1978).

123. *See* Haden, *supra* note 121. By 1970, just nine districts accounted for 51% of the Chapter XIII filings. The nine districts were: the Northern, Middle, and Southern Districts of Alabama, the Northern and Central Districts of California, the Middle District of Georgia, Kansas, the Southern District of Ohio, and the Western District of Tennessee. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR (un-

in those courts became the models for the current statutory scheme.[124] Even today, the courts that pioneered Chapter XIII maintain high Chapter 13 filing rates.[125] The history of the development of Chapter 13 makes it clear that bankruptcy judges played important roles as innovators and facilitators of this legal device, making it an integral part of the local practice and assisting its spread throughout the bankruptcy system.

Some judges may prefer Chapter 13, while others prefer Chapter 7. Although judges never meet bankrupt debtors until after they have already filed in one chapter or the other, they may influence debtors' choice of chapter in accordance with their preferences by making Chapter 7 or Chapter 13 relatively more attractive to the attorneys, who, in turn, can influence debtor choices.[126]

We observed a number of techniques by which judges influenced debtors' choice of chapter. Some methods were quite subtle. Because virtually all consumer bankruptcy cases are fixed-fee cases and consumer debtors are frequently unable to pay more than modest fees, even small differences in procedures that permit one kind of case to operate more smoothly and with less attorney involvement may make the difference between profitability and disaster in a large consumer practice, and thus influence the attorneys' recommendation. In some areas, for example, all Chapter 7 cases were heard before Chapter 13 cases, so attorneys could count on less delay if they filed in the preferred chapter. Some courthouses had long delays in scheduling the required Section 341 meetings[127] for Chapter 13 debtors, but not for Chapter 7 debtors. In still other areas, filing procedures, the detail required in the forms, or the assistance given by the clerk made Chapter 13 more difficult than Chapter 7. In these districts, attorneys described Chapter 13 systems as "unworkable," "too difficult to use," or "too expensive." By contrast, judges in other areas supported Chapter 13 and worked hard to make the

paginated), tbl. F2 (1970). In 1990, these nine districts accounted for 25% of the Chapter 13 filings. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, 1990, at 240-41, tbl. F-2 (1990).

124. *See* 11 U.S.C. §§ 1301-1330 (1988).

125. *See supra* note 123.

126. *See, e.g.*, Haden, *supra* note 121, at 589 (characterizing judges' power to set reasonable attorneys' fees); *id.* at 590-592 (explaining the influence of bankruptcy judges over attorneys' filing decisions).

127. 11 U.S.C. § 341 (1988).

procedures work well. Attorneys there frequently described Chapter 13 as a "workable alternative" that they encouraged their clients to use.

One of the most obvious ways a judge can influence the attorneys' incentives to file a certain chapter is through setting attorneys' fees at levels that change the relative profitability of Chapter 7 or Chapter 13. Judges approve attorneys' fees in all bankruptcy cases.[128] Many courts have "recommended fees." If the attorney charges no more than that level, the court tacitly agrees to approve the fees without further inquiry. Because Chapter 13 is widely perceived as requiring more attorney time, attorneys' fees granted in that chapter are routinely higher than in Chapter 7.[129] The higher attorneys' fees for Chapter 13 can affect the proportion of filings in each chapter. As one judge put it, "If I don't see enough Chapter 13s, I can just raise the allowable fees in 13, while I hold Chapter 7 fees steady. The Chapter 13 filings will go up."

Some judges were overt in their efforts to influence the choice of chapter in their districts. One judge bluntly explained how he had managed to produce such a high proportion of Chapter 13s in a district that had traditionally seen a low proportion of Chapter 13 filings:

> Well, I watch the lawyers that come in. One comes in with a Chapter 7, that's OK. Even two or three. But it gets to be about four or so, and I ask counsel, nicely now, "Did you inform your client about the Chapter 13 alternative?" Sometimes I'll spend a minute or two talking about how Chapter 13 might have worked out pretty well. Lawyer doesn't look too great in front of his client like that. Then, if he comes back another time or two still in Chapter 7, I ask the lawyer to swear in the client. Then I start asking the client questions. "Your lawyer explain the Chapter 13 alternative? . . . " I usually conclude there hasn't been full explanation, so the client isn't making an informed decision. I recommend that the attorney go back, talk with the client and come back again later. All the while, the

128. 11 U.S.C. § 503(b)(4) (1988).

129. AMERICAN BANKRUPTCY INSTITUTE, NATIONAL REPORT ON PROFESSIONAL COMPENSATION IN BANKRUPTCY CASES 172 (1991) (reporting mean Chapter 7 fees of $637 and mean Chapter 13 fees of $820 based on 1991 national sample); AS WE FORGIVE OUR DEBTORS, *supra* note 20, at 250 (showing $459 for mean attorneys' fees in Chapter 7 and $535 for mean attorneys' fees in Chapter 13 in 1981).

> clock is running. It doesn't take too long before the attorney will at least try some Chapter 13s.[130]

One judge was frustrated that local practitioners were slow to use Chapter 13 and was determined to bring a Chapter 13 practice to one of the big cities in the district where he sat. The judge encouraged the proprietor of a bankruptcy clinic, which had a flourishing Chapter 13 practice in another part of the judge's district, to consider expanding his practice to that city. As the attorney said, "It's pretty good to go into an area with the judge's blessing." The judge thought the newcomer would "shake up the local practice," and, judging from the subsequent rise in reproportion of Chapter 13 filings in the district, he was right.

Judges who are unwilling to affect debtors' decisions directly can nonetheless influence attorneys' views of Chapter 7 and Chapter 13. Bankruptcy attorneys know that cooperating with a judge's known preferences is likely to be a good practice over the long run, given that they rely on this judge to approve attorneys' fees, to agree to drive into court from home on the weekend to hear emergency matters, and to grant extensions or reschedule hearings when the attorney experiences scheduling problems. Whether the attorney or the judge is aware of it, the chances that an attorney could escape the influence of a judge with strong views about Chapter 7 or Chapter 13 are exceedingly slim.

Even judges who maintain stalwart neutrality in the face of the competing views about the advisability of Chapter 7 and Chapter 13 may significantly influence the local legal system. One judge repeatedly asserted that he was completely indifferent to whether debtors filed Chapter 7 or Chapter 13, citing elements of the scholarly debate over the efficacy and the normative reasonableness of each chapter. He explained that he knew that Chapter 13 could work, however, and he proudly pointed to a high success rate among the Chapter 13s in his district. The judge explained that it took a very special debtor to succeed in Chapter 13, and he approved a Chapter 13 plan only after scheduling time to swear in the debtor and to go over the elements of the proposed plan line by line. He indicated that he was willing to spend

130. *See* As We Forgive Our Debtors, *supra* note 20, at 249. The statute was later amended to require clerks to certify that debtors were informed of the alternatives available to them. 11 U.S.C. § 342(b) (1988). However, we think it will have no effect unless some judge wants to use it as described—and any judge who wanted to do that could do so without the statute. As it is, we probably just have more paper shuffled around that drives up costs slightly and has little real impact.

"about an hour on each Chapter 13, just to make sure they were right." Considering that the judge's Chapter 7s were completed in a matter of minutes, attorneys would not have to work very hard to figure out that in fixed-fee cases (as virtually all these cases are), it would be much more cost-effective to encourage most clients to enter Chapter 7. Not surprisingly, this district with the "scrupulously neutral" judge had one of the lowest Chapter 13 rates in the country.

Some judges influence local practices in other ways. They are frequent speakers at local continuing legal education programs, and they often address the local bar. Some use this opportunity to instruct attorneys on how to perform certain functions in their courts effectively and efficiently. There are judges who are nationally known for their support of Chapter 13, and they write and speak about its virtues.[131]

Judges do not have an overpowering influence in all districts. Some judges have no discernibly strong feelings about choice of chapter, and we did not observe their following any practices that would obviously influence attorneys. Moreover, in districts with several judges and random assignment of cases, the importance of the views of any one judge would necessarily be diluted. In one district, a judge who was clearly hostile to Chapter 13s was paired with a Chapter 13 supporter, and case assignments were random.[132] The role of judges varies from district to district, based both on the strength of the judges' views and on the opportunities the judges have to make their views felt.

Although the evidence we collected from the stories centered on choice of chapter, many of the same tools also enable an interested judge to affect repayment rates in Chapter 7 and Chapter 13. A judge who routinely approves high-repayment Chapter 13 plans, while scrutinizing all low-repayment plans, may affect both the number of people who attempt Chapter 13 and the promised repayment rates in Chapter 13 generally.[133] Further, a

131. *See, e.g.*, Ralph Kelly, *Good Faith and Chapter 13*, 36 PERS. FIN. L. Q. REP. 8, 12 n.1 (1982).

132. We often speculated that finding out which judge was assigned to a case in such a district must feel a little like choosing a door that would have the lady or the tiger behind it.

133. The judges had a concomitant power to affect Chapter 7 payouts by their approval or disapproval of reaffirmation agreements. From 1979 through 1984, all agreements by debtors and creditors for the payment of debt after the case was dismissed had to be approved by judges who, not surprisingly, had very different views about the standards for approval. *See* AS WE FORGIVE OUR DEBTORS, *supra* note 20, at 352-53. In 1984, in response

judge who works to develop an efficient, effective bankruptcy practice may also indirectly affect the proportion of filings in the local district. If participating attorneys view the bankruptcy system as an effective solution for debtors in financial trouble, they may encourage more clients with debt problems to file for bankruptcy rather than seek some other solution, such as an out-of-court workout or resistance to creditor-collection actions at state law. A low-cost, high-volume practice that attracts many troubled debtors to bankruptcy through advertising may also develop. Ironically, as the judges try to create a smoothly-functioning bankruptcy system, the number of debtors steered into bankruptcy may rise.

These narratives illustrate a number of ways in which judges can shape local practice and, ultimately, shared attitudes of those who work in the consumer bankruptcy area. In some cases it may be clear that the judge intends to create a certain legal environment. In other cases, those working in the system may simply see it as one that works well in certain circumstances, without any indication of why one form of practice works well or whether the views about that practice are shared by the local judge. These interviews provide a view of how a judge-dominated local legal culture may shape the implementation of formal legal rules.

B. *The Attorney Model*

It is unlikely that a local bar can dominate a local legal culture in opposition to the influences of a local judiciary with concentrated power and strong feelings about important parts of the consumer bankruptcy process. But absent such strong judicial influence, a bankruptcy bar may dominate the local legal culture.[134]

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to creditors' complaints about judges who did not approve reaffirmations, Congress removed the judges from their formal role in approving reaffirmations in all cases in which the debtor had counsel. 11 U.S.C. § 524(c) (1988); AS WE FORGIVE OUR DEBTORS, *supra* note 20, at 286. Notwithstanding this change in the statute, stories continue to circulate about judges' involvement in reaffirmation practice in their districts. In one case, a judge explained that he "does not permit" reaffirmation of unsecured debt in his court. When one of the authors of this Article pointed out that he had no statutory ability to stop it, he simply replied, "It is wrong for these people to reaffirm in these circumstances and I won't put up with it." In another case, local attorneys explained that they have low reaffirmation rates in their district because the two local judges "don't like it," regardless of the judges' limited formal power to do anything.

134. We note parenthetically the particularly incestuous relationship between bar-domination and judge-domination. Most judges are appointed from the local bar, often with the tacit endorsement of many local bankruptcy practitioners. A judge who has been elevated from the local bar will have been imbued with its traditions and may not perceive

In a recent study, Professor Jean Braucher interviewed consumer bankruptcy lawyers in the Western District of Texas and the Southern District of Ohio. Braucher concluded that "While some debtors surely make their choices with some degree of autonomy, a substantial proportion of them end up in one chapter or another because of the views of their lawyers."[135] One of the factors that seem to influence lawyers in their advice to consumer debtors is local legal culture.[136] In general, the results of our interviews were consistent with Professor Braucher's findings.

A number of factors contribute to the success of bankruptcy lawyers in developing and dominating a local legal culture. First, because bankruptcy law is highly technical relative to many areas of law, much of the practice is done by a small subset of attorneys who specialize in bankruptcy.[137] Second, because bankruptcy lawyers tend to be few in number, they are more likely to know nearly all of the other practitioners. Third, because bankruptcy courts are often separated from other federal courts and are always separated from state courts, bankruptcy lawyers routinely encounter the same adversaries in disputed cases and settlement negotiations and many rarely encounter practitioners in other areas of law.[138] These are ideal circumstances for members of a bankruptcy bar to communicate any special group norms it develops to each other and to newcomers.

The bankruptcy bar is not only physically close, it is also economically interdependent. Because a bankruptcy case is func-

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any great need for change beyond perfecting local procedures in various ways. Even an outsider judge will get many rewards—including the friendship and respect of the local bar—and avoid many penalties—including time-consuming and enervating disputes—by continuing to do things "the way we do them here." Furthermore, the limited terms granted to bankruptcy judges mean that some may be returning to the ranks of the local bar, which may make antagonizing reform even less attractive. A practitioner who has come to accept "how we do it" in the local bar and who then moves to the bench only to continue to facilitate the local attitudes and practices might be described as following an attorney-dominated model or a judge-dominated model. Once again, we cannot pinpoint origins of cultural aspects. We can only identify prime movers in changing or maintaining a local culture.

135. *Many Cultures, supra* note 15, at 581.

136. *See id.* at 556-61.

137. *See Rule 11 Study, supra* note 11, at 550-52. That study found little evidence of local legal culture in Rule 11 cases in federal district courts. The authors speculated that the reason may be that the federal bar as a whole is large and diverse, unlike the specialized criminal bar where the phenomenon was first identified, or, we would add, the bankruptcy bar.

138. In one study, about 45% of the lawyers who do bankruptcy work reported spending 70% or more of their time in bankruptcy work. Lynn M. LoPucki, *The Demographics of Bankruptcy Practice*, 63 AM. BANKR. L.J. 289, 308, tbl. 11 (1989). A lawyer was included if more that 20% of the lawyer's practice was bankruptcy.

tionally a multi-party lawsuit, attorneys often have conflicts of interest in the representation of clients. An attorney who represents a bank in one case may not be able to represent a debtor in another case if the debtor owes money to the same bank. Referrals within the bankruptcy bar are common and essential to its continued functioning. Many attorneys, especially those beginning to practice, rely on referrals to maintain an economically viable practice. This economic interdependence provides the incentive to develop norms that permit the practitioners to survive comfortably.

The bankruptcy bar also depends on cooperation among attorneys. While court rules spell out the general operation of the system, attorneys need to schedule client meetings, two-party negotiations, and court hearings in ways that maximize their ability to handle their client load. Because debtors' attorneys nearly always work on fixed fees and creditors' attorneys nearly always work for relatively small sums per case, it is imperative that attorney time—and hence any significant deviation from established patterns—be kept to a minimum. The need for cooperation provides additional incentive to develop and enforce shared views of practice.[139]

We learned of a number of ways in which attorneys could influence debtor choices and how they could also develop and transmit a local legal culture. Attorney advertising was a keen interest to the lawyers we interviewed. The Supreme Court ruled in the late 1970s that attorneys could advertise,[140] and by the mid-1980s, advertising was beginning in earnest in many of the districts we studied.[141] Often, attorneys placed big advertisements either in

139. In every district we studied, a number of people could identify a local elite of bankruptcy practice. The local elite enjoyed a great deal of prestige among most bankruptcy practitioners. Often, these attorneys were thought to have some influence over the local judge. They were looked to as moderating influences in times of change or when disputes arose. They often dominated the local bar and continuing legal education programs, which gave them the opportunity to spread their views with the added imprimatur of the associations they serve. Local elites often had many years of experience in bankruptcy practice. They were typically financially successful and widely regarded as technically competent. These attributes gave them the opportunity to shape and disseminate a local culture of bankruptcy.

140. Bates v. State Bar of Arizona, 433 U.S. 350 (1977) (holding that the First and Fourth Amendents protect attorneys' right to disseminate and public's right to receive information about costs and availability of legal services).

141. We note that when bankruptcy filings rose dramatically in the late 1970s and early 1980s, commentators were sure that the newly adopted Bankruptcy Code was too liberal and that the precipitous climb in filings was due solely to those rational maximizers who decided that bankruptcy was now a great deal. *See, e.g., Bankruptcy Reform Act of 1978: Hearings Before the Subcomm. on Courts of the Senate Comm. on the Judiciary*, 97th Cong., 1st

the Sunday television supplement to the local newspaper or in late-night television advertisements directed toward insomniac debtors. The attorneys saw advertising as making consumers aware of bankruptcy as a possible solution to their debt problems, which in turn may influence whether debtors file for bankruptcy.

Attorney advertising has had a powerful impact on the structure of bankruptcy practice. Many attorneys and judges told us about how low-cost, high-volume practices developed in their areas. They explained that with advertising, attorneys could attract enough clients to create a high-volume practice, and that the clients attracted were sufficiently similar in needs that the practice could be streamlined to reduce costs. Our respondents described bankruptcy "mills" where consumers could go to receive prepackaged, routine services. The change in the structure of consumer bankruptcy practice undoubtedly affected the number of debtors who consulted attorneys to discuss bankruptcy and who ultimately filed for bankruptcy.[142]

The change in the structure of consumer bankruptcy practice also had some effect on the debtors' choice of chapter. Some areas had "Chapter 13 mills," where virtually all debtors who came in were advised to file in that chapter. Sometimes the alleged impetus for having the debtors file in Chapter 13 was that attorneys' fees could be paid out over time in Chapter 13 and not in Chapter 7; thus, the choice of chapter made bankruptcy more accessible to people without much money.[143] Other times, the high-volume practitioner wanted to reflect the wishes of the local judge. In still other cases, the reason for filing all the cases in one chapter seemed as arbitrary as "these are the papers we're set up with, and all the paralegals have learned them, and it seems to work out okay."

Sess. 154 (1981) (statement of Norman Grant, credit industry consultant) (stating that the new act made bankruptcy more attractive). Ironically, virtually all the analysts overlooked the Supreme Court decision that permitted attorney advertising at nearly the same time, *see supra* note 140, and the rush of advertisements in the bankruptcy area. We can never know which change—advertising or law reform—had the more powerful impact on the decision to file, but those of us who have not seen many debtors poring over the *Congressional Record* suspect that advertising the availability of debt relief had something to do with the early surge in bankruptcy filings.

142. *See* DEBTORS AND CREDITORS, *supra* note 35, at 390-91 (reproducing examples of lawyer advertising).

143. *See, e.g., In re* San Miguel, 40 B.R. 481 (Bankr. D. Colo. 1984) (involving Chapter 13s filed solely to permit installment payments to attorneys).

When a high-volume practice was established in an area, other practitioners in town felt that they had to become competitive or face extinction. Many attorneys said that they advertised because the others did, and that they used the same chapter as others for the same reason (or lack thereof) as their competitors. Not once in our interviews did anyone mention the importance of establishing a practice that offered clearly different services—for example, a Chapter 7 clinic to compete with a Chapter 13 clinic. Most practitioners assumed that consumer debtors were not likely to be well-informed decisionmakers, and, as a result, differentiation in product was not likely to produce any increased profits. Instead, the key issues about which we heard were advertisement for name recognition, location and accessibility of the clinic offices, and price differentiation. This is not to say that everyone imitated the high-volume practitioner. Instead, the presence of a high-volume practitioner, particularly one who seemed to push clients in one direction, seemed to cause local attorneys to reevaluate their bankruptcy practices in ways that affected the local practice.

We also learned about the influence of attorneys on local practice through their contacts with creditors. Attorneys can advise creditors to be aggressive in exercising their state law collection rights, which might lead more debtors to file for bankruptcy relief.[144] Attorneys can also advise creditors about tactics to use once the bankruptcy has been filed. The attorney, on the creditor's behalf, can be obstructive in the bankruptcy process, making either Chapter 7 or Chapter 13 more difficult. Moreover, creditors' attorneys can ask for repayments and negotiate the terms of those repayments in either Chapter 7 or Chapter 13.

Perhaps the most striking illustrations of the importance of local attorneys came from the stories we heard about national creditors with different local collection practices. In a number of districts we heard about the policies of Sears, Montgomery Ward,

144. Previously unpublished data from the Consumer Bankruptcy Project show that bankrupt debtors are significantly more likely to be facing other lawsuits in Pennsylvania than they are in Illinois or in Texas. This may indicate that attorneys may seek state judgments more readily in Pennsylvania than they do elsewhere, even though the state law is no more favorable to creditors in Pennsylvania than it is in, say, Illinois. Indeed, Illinois permits creditors to garnish debtors' wages, *see* ILL. ANN. STAT. ch. 735, § 5/12-802 (Smith-Hurd 1993)—an option that most analysts believe is more attractive to the creditor community than any other kind of general creditor action—while Texas and Pennsylvania do not. Creditor lawsuit rates may vary by local custom as much as by the legal devices available.

Ford Motor Credit, and a number of other creditors who followed very different practices from one district to another. In one case, for example, the creditor's attorney routinely asked each debtor in Chapter 7 to sign a reaffirmation agreement. The same creditor, using different local counsel, made no such request in the neighboring district. This was confirmed by our data, which showed that the creditor had a large number of reaffirmations in the first district in our sample and none in the second district. Similarly, we learned of a creditor who always objected to the treatment of its secured claim under a Chapter 13 plan in one district, while it never objected—using different counsel—in another district.

Often the parties we interviewed discussed the "aggressiveness" of creditors. The attorneys and judges told us about how aggressive one or two creditors were in their districts—asking for reaffirmations, moving to lift the stay in pending bankruptcies, and so on. When we asked about the same creditors in another district, even the neighboring district, they often were described as passive creditors. When we pointed out the dissimilarity between the creditors' behavior in one district and another, the consistent explanation was "Well, over here they use [name of the local attorney] and that works here. Over in [another district] they use someone else."

Beyond all these factors, however, the most important single element may be the professional convictions of the lawyers who are the primary "operators" of the bankruptcy system. Based on our interviews, it appears that many attorneys, like many of the judges, have developed strong, principled stands about what constitutes the best form of bankruptcy for consumers. For some, it is always Chapter 7, and anyone who wants a Chapter 13 could work out something outside the court. For some, Chapter 13 is the responsible way to try to rehabilitate the debtor. For still others, stoic neutrality is the only acceptable normative position. These lawyers may be influenced by self interest, including their perceptions of the most profitable alternatives, but they are also professionals who have developed a keen sense of what they think is best for their clients.

While attorneys may be required to counsel clients about their bankruptcy alternatives, their best and most honest legal advice to their clients is to follow the attorney's recommendations. Judges also try to make systems work beneficially for the debtors

who must use them. There is nothing sinister about this system, and we do not propose that somehow it would be better if the actors within the bankruptcy system were automatons who made no judgments and had no objectives as they worked to establish a functioning bankruptcy system. The only point we make here is that in a polity of people and ideas, it is not surprising that different views about the best practices emerge. The narratives suggest and the data support the conclusion that the differences may coalesce into a force that has a measurable impact on debtor decisionmaking.

Like judges, attorneys have a number of opportunities to share their views and test their ideas with others. Continuing legal education has become an important part of the bankruptcy practice. During our interviews, we often heard references to presentations that had recently been made. The CLE programs were typically developed by local counsel who found speakers that shared their own viewpoints and who passed those views on to others in the community. These programs provide a formal mechanism to educate newcomers in a local culture.

This description of the bankruptcy bar illustrates both how attorneys can develop a moderately uniform method of practice and how that practice is reinforced by the interdependence of the practitioners. In the absence of strong pressure from the bench to adopt contrary procedures, it is in the interest of the local bar to develop a shared view of bankruptcy practice and to maintain cooperation among practitioners. Innovation is possible, although it can be temporarily expensive to the group or to a number of individuals. The point, once again, is that it is likely that the group will develop a shared position of appropriate practices to be followed in bankruptcy. This shared view will indirectly become an important influence on the local implementation of bankruptcy laws.

C. *Other Players*

Sometimes parties who neither judge the cases nor represent the litigants play a central role in the bankruptcy. Often influential is the trustee who manages the case. In a Chapter 7 case, the trustee is a private person appointed by the U.S. Trustee[145] (an

145. 11 U.S.C. § 701 (1988) (concerning appointment of interim trustee); *id.* § 702 (concerning election of trustee).

employee of the Department of Justice) who sits in every case to oversee the proceedings and to act on behalf of all the creditors. In a Chapter 13 case, the trustee is usually a "standing" trustee who administers hundreds of Chapter 13 cases per year. The Chapter 13 trustee counsels the debtor regarding the plan, makes a recommendation to the court regarding confirmation, and supervises the debtor's payments under the plan until it is paid or the case is dismissed.[146] Trustees are frequently attorneys, although there is no formal requirement that they be licensed to practice law.

The presence of a strong Chapter 13 trustee (or group of like-minded trustees) or of an influential U.S. Trustee can undoubtedly affect local practice. Chapter 13 trustees have the obligation to recommend confirmation or rejection of debtors' plans, and Chapter 13 may be more or less attractive to debtors and their lawyers, depending on the standards adopted by the local trustee. For example, Chapter 13 trustees may run extensive education programs for lawyers, debtors, and creditors that inform the local bar about the benefits of Chapter 13. The U.S. Trustee's office in each district also can influence the process in a number of ways. It can influence the lawyers, for example, by exercising its statutory obligation to object to excessive attorney's fees.[147]

Not all trustees have strong views and the opportunity to affect the dominant culture. Nonetheless, stories were frequently repeated about particular trustees and how they had affected some aspect of local practice, or how they had made local practice "work better." These accounts suggest that the trustees can be important players in the development of local legal culture.[148]

Other important parties who emerged in some stories about the bankruptcy process were the local agencies that counsel debtors in financial trouble. Consumer credit counseling agencies exist in most large cities and some medium-sized cities, although their structure and operation differ sharply among areas. These agencies are often funded through omnibus charity organizations such as the United Way. In many localities, the local credit community also pays fees to support the agency. Clients are

146. 11 U.S.C. § 1302 (1988).

147. 28 U.S.C. § 586(a)(3)(A) (1988).

148. The U.S. Trustee system is relatively over and in many districts a permanent trustee has been in place for only a short period of time. These trustees may become more actively involved in trying to shape local practices as they develop more coherent approaches to their work.

charged according to sliding scale fee plans. Counselors help families learn to budget and to deal realistically with their outstanding debts. Some counselors also call creditors to work out repayment plans. In some locales creditors will suspend interest accrual or even forgive some of the debt if a debtor is working to repay through a reputable counseling agency. On the other hand, there are also reports that many agencies have heavy caseloads and are unable to accept all the debtors referred to them for help.

The presence of an active counselling agency would likely have some effect on debtors' initial filing decisions and might serve as a source of information for choice of chapter and repayment in bankruptcy if the debtor files. The operation of the consumer credit agencies varies by locale. Most attorneys and judges described their local credit counseling agencies as working to educate and rehabilitate debtors. Some said the services provided often resembled a private Chapter 13. Other credit counseling services were little more than creditor collection agencies that squeezed money out of the troubled debtors on behalf of the creditors who supported the agency.

Some interviewees speculated that credit counselors reduced the need for bankruptcy in their area by working out informal ways for debtors to deal with debt. In some areas agencies sorted the debtors into those who had a chance of repaying from those who had no chance, recommending a Chapter 7 filing for the latter and concentrating their efforts on private repayment plans for the former. This practice would reduce the Chapter 13 filings for that district.

Some localities have groups that resemble credit counseling agencies, but do not necessarily operate in the debtors' interests. In one of the districts we studied, a self-styled "debt clinic" was advising debtors to file their own *pro se* bankruptcies. This clinic accounted for most of the *pro se* bankruptcies that appeared in our sample. Although this "debt clinic" charged debtors for their services, they seemed to have no counselling function other than to assist in *pro se* filings. Most of the petitions examined from this clinic had errors of varying severity that could have disadvantaged the debtors; this suggested to us that the debtors were not receiving high quality advice. The local judge expressed great concern over the operation of this group in his district, although practitioners evidently did not perceive it as a serious threat. The

state bar association eventually petitioned to close the clinic for practicing law without a license. For some time, however, it was clear that they had an impact on troubled debtors—and debtor filings—in their locality.

We also learned of "typing services"[149] that operated in parts of the country we did not study. According to our interviews, these services advertise low-cost help with debts without mentioning the possibility of bankruptcy. The typing service, which serves low-income and often non-English-speaking clients, frequently completing *pro se* petitions only to obtain the automatic stay for temporary relief from debt collection. When the service received its payment from the debtor, it gave no more help. In many cases the petitioners did not even realize that they had entered bankruptcy, and their cases were dismissed (sometimes with prejudice) because the debtor never knew about further procedural steps that were required.[150]

In some districts, the volume and characteristics of bankruptcy filings may be seriously affected by the existence of different kinds of debt counseling services. For example, agencies that help people through times of crisis without bankruptcy, by helping them improve their money management techniques or by arranging informal bankruptcies, may reduce total filings. Those that recommend Chapter 7 petitions for debtors in hopeless trouble may affect both filing rates and choice of chapter. Those that assist in informal Chapter 13s may also affect the debtors' choice of chapter by driving down the number of formal Chapter 13s. Other services that advertise heavily and help clients file their own bankruptcies or refer them to attorneys for bankruptcy relief may drive up the proportion of initial filings in a locality, although the number of dismissals without a discharge may rise simultaneously.

Creditors might have a similar impact. For example, some creditors who regularly find themselves in consumer bankruptcy cases might hire one lawyer to object to all Chapter 13 plans that offered repayment of less than 50% of the outstanding debt. Some creditors have developed computer programs as a low cost way to identify the cases where objections to plan repayments

149. Typing services also might be an unauthorized practice of law. *See* Florida v. Brumbaugh, 355 So. 2d 1186 (Fla. 1978) (holding the preparation of various types of legal forms, including bankruptcy forms, to be the unauthorized practice of law).

150. *ABC Evening News* (ABC television broadcast, Feb. 27, 1992).

would be likely to succeed. Creditors also might use advertising to shape debtors' views of bankruptcy. A national campaign instituted by a creditor association warned in posters on buses and billboards: "Bankruptcy: The Ten Year Mistake." On the incentive side, creditors could encourage Chapter 13 filings by agreeing to treat high-percentage plans differently from low-percentage plans or to treat the effects of filing in Chapter 13 differently from Chapter 7 filings for future credit purposes.[151]

There are yet other actors who may have an influence on the bankruptcy system in a particular locality. A law professor who heard about our work explained that there were long-standing differences between the proportion of Chapter 7 and Chapter 13 filings in the district in which he lived and the neighboring district. The two districts seemed relatively homogeneous in most respects (large, rural, somewhat isolated, in the same state), but he noted what he believed was the key difference: There was one law school in each district, and each of the professors who taught bankruptcy law had been in their respective schools for more than twenty years. Both schools had a large local following, so the practitioners in one district often had attended law school in that district. The professor told us that his colleague in the neighboring district was an avid supporter of Chapter 13 and that her work on Chapter 13 was nationally known. His own view of Chapter 13 was far more skeptical, and he was known to criticize attorneys who recommended Chapter 13 too readily. The professor speculated that the professors' differing attitudes were clear in class, and that as their bankruptcy students became bankruptcy practitioners and judges, a local legal culture emerged.

VI. Conclusion: The Implications of a Local Legal Culture

It is not very startling to conclude that uniform laws are, in fact, implemented in different ways in different locales. The stories have long circulated that variation is widespread, with the occasional vivid story about a district attorney here who prosecutes one kind of case more aggressively than anyone else in the

151. We have not observed this sort of creditor conduct, nor did we hear about it in our interviews. However, there was a well-publicized campaign orchestrated by the VISA organization to increase objections to discharge and otherwise "crack down" on consumer debtors. *See New Visa Program on Bankruptcy*, 9 ABI Newsletter, May-June 1990, at 1. There are conflicting reports concerning its success or failure.

country, and a judge there who permits defendants wider leeway than usual. What makes the case study of bankruptcy more interesting is that the differences suggested by the data are large enough and persistent enough to suggest systematic, community differences that survive the tenure of a single actor or group of actors. These data do not suggest random differences generated by a mixture of diverse actors scattered through the system. The point is more startling here because, unlike many aspects of the criminal and civil law systems that generate newsworthy anecdotes, bankruptcy is a national system that is widely debated and evaluated as if it were uniform throughout the country.

A number of significant implications would arise from a conclusion that local legal culture has an important influence on the operation of major portions of the American legal system. Among other things, both scholars and lawmakers would have to re-think approaches to the implementation of legal reform. The strong influence of a local legal culture might warrant consideration of alternative ways to induce compliance, and of the appropriate role of education in "selling" legal changes to local communities. The risk that the statutory change would be ignored or subverted by local cultures would become a salient concern for most legal reform, not limited to cases when highly controversial changes have been enacted. Scholars and lawmakers might also find themselves far more skeptical about theoretical approaches that ignore the possible impact of local legal cultures, especially if they are based on aggregated data at the state or federal level.

More generally, an appreciation of the important role of local legal culture might cause us to understand social problems themselves in different ways. Evaluating legal change through the lens of local legal culture offers some larger sense of the fundamental anomalies in the process of governing through laws. In particular, the data on local cultures might suggest that highly complex legislation designed to maximize individual choice and adaptation to individual circumstance might have an entirely unanticipated consequence: It may simply be a mechanism for delivering those unfamiliar with the system into the hands of experts who will have an almost unconstrained power to determine final outcomes. Legislation that may be intended to place power in the hands of inexperienced individuals may place that power in the hands of an elite class of experts. We might also appreciate the

role local resistance and adaptation of national laws play in permitting a large, diverse society to be governed from a central position.

A. *Many Ways to Influence a Legal System*

The bankruptcy data suggest that if Congress wishes to see its reforms succeed, it should be attentive to the attitudes and incentives of the professionals involved. Perhaps educational seminars to promote change should become a more standard feature of legal reform. The presence of a local culture also makes it unlikely that a reform will succeed if it greatly increases the burdens on repeat players or seems contrary to values they hold dear.

These data also suggest that both scholars and law makers who hope to influence legal outcomes may be overlooking fertile alternatives that would be more effective in accomplishing desired ends. To assume that statutory amendment is the only tool available to reform a legal system is to constrain sharply the policymaker's options. The bankruptcy example demonstrates that alternatives to changes in the formal laws may be very effective.

For twenty years, a large number of legislators and policy commentators have urged that the consumer bankruptcy system would be a fairer, more effective system if more consumer debtors resolved their economic difficulties in Chapter 13 rather than simply discharging their debts in Chapter 7. The methods proposed and debated centered on changes in uniform, formal rules.[152] While these techniques have been successful in increasing the proportion of Chapter 13 filings, they have also encountered substantial and effective resistance. Despite continuing pushes from Congress, Chapter 13 filings are no longer on the rise, and there are a number of districts where the proportion of Chapter 13s remains low.[153]

If one conceptualizes the system as importantly influenced by local legal culture, however, these data suggest an obvious inquiry: what is happening in the districts with high proportions of Chapter 13s that is different from what is happening in the low Chapter 13 districts? Congress might find that money used to

152. *See, e.g.*, William T. Vukowich, *Reforming the Bankruptcy Reform Act of 1978: An Alternative Approach*, 71 GEO. L.J. 1129 (1983) (proposing various amendments to the bankruptcy code to encourage more Chapter 13 filings and reduce Chapter 7 filings).

153. As Table 2 shows, even in 1990, the proportion of cases filed in Chapter 13 remained below 10% in 10 districts.

study this question would be well spent. It is possible that there are factors that have influenced high-Chapter 13 districts that might be developed to influence the local culture in other areas. Our data suggest, for example, that judges play a powerful role in the development of local practice. A question worth exploring is whether the kind of influence the judge attempts to wield is sharply affected by his or her access to a support staff that makes Chapter 13 workable. If it were, lawmakers might find that efficient computer programs and extra administrative personnel could have an influence on Chapter 13 practices that is more effective than formal changes in the laws.[154] The presence of high and low Chapter 13 districts provides a natural environment for studying the causes of such differences. They could turn out to be the fertile breeding ground for innovative ideas that make formal laws work.[155]

We are not endorsing any particular proposals. For one thing, we are not convinced that simply increasing Chapter 13 filings is a good idea unless it is strongly linked to other reforms, including implementation of procedures that discourage such filings for debtors who have little reasonable chance of repayment. But these proposals illustrate the sort of change in focus that Congress might want to make in recognition of the importance of local administration in the application of the bankruptcy laws.

154. The historical data suggest that in areas where both the judges and local practitioners have greater familiarity with Chapter 13, Chapter 13 use rises. It may be that state or federally sponsored programs to increase familiarity with the practice of Chapter 13s and additional administrative support for Chapter 13s for an initiation period might cause the proportion of Chapter 13s to rise in districts with low filings. This might be a more effective, lower-cost method of increasing Chapter 13 filings than the formal changes in the rules that have some impact on system operations throughout the country. Similarly, such studies might suggest changes, perhaps as simple as government-funded software systems for Chapter 13, that would have a much greater effect on filings than the kinds of statutory changes currently under consideration.

155. The role of the Federal Judicial Center has been overlooked in virtually all analyses of the bankruptcy system. The Center is a federal agency charged with the continuing education of federal judges, including bankruptcy judges. A committee appointed by the Chief Justice of the United States Supreme Court plans various educational programs that are attended by nearly all judges who are eligible. The Center's programs bring together judges from different districts and often center on local practices that might be usefully adopted elsewhere. The Center has the potential to spread new information and to create a more uniform culture of judges. In addition, the Center has been active in identifying what judges need in order to perform their tasks more effectively. For example, bringing the courts into the computer age has been a key goal of the Center, and one that may be relevant here. The impact of the Federal Judicial Center on the behavior of judges would be an interesting subject for study.

B. *Do We Know What We Think We Know?*

One important implication of these findings lies in what the data say about most of the current analyses of the bankruptcy system. In the dominant debates over bankruptcy policy, either a classical analysis (changing the formal rules to change the outcome) or an economic analysis (changing the formal rules according to the parties' economic incentives) prevails. Both of these approaches largely ignore the possibility of other significant influences on the bankruptcy system. The data presented here suggest that one of those important influences, the effect of persistent legal cultures at the local level, may trump the intentions and predictions of both doctrinal and economic analysts.

While data are scarce in most areas of legal policymaking, there has been a recent trend toward statistical studies of the bankruptcy system. The data presented here about local legal cultures, however, suggest that some caution about certain empirically-based analyses of the bankruptcy system is appropriate. Many statistical analyses of bankruptcy use aggregated data to support their assertions.[156] Aggregated studies do not account for local differences that might yield very different pictures about the operation of the bankruptcy system. The usefulness of such data analyses is problematic. If local legal culture plays as strong a role in the bankruptcy process and its outcomes as these data suggest, then models that do not include indicators of local effects are incomplete. Unfortunately, some local effects are difficult to quantify for statistical models. Researchers might use case studies and other qualitative data to supplement statistical modeling in some cases. Without some accounting for local variation, even those who are willing to do empirical research may miss the underlying reality.

C. *Redefining the Problem*

A recognition of the power of local legal cultures would necessarily have an impact on how the problems are conceived. When the only remedies considered are those based on changes in the

156. For examples of studies that use aggregate data, see U.S. GENERAL ACCOUNTING OFFICE, BANKRUPTCY REFORM ACT OF 1978—A BEFORE AND AFTER LOOK, 90-96 (1983); Vincent P. Apilado et al., *Personal Bankruptcies*, 7 J. LEG. STUD. 371 (1978); Ramona K.Z. Heck, *An Econometric Analysis of Interstate Differences in Nonbusiness Bankruptcy and Chapter Thirteen Rates*, 15 J. CONSUMER AFF. 13 (1981); Lawrence Shepard, *Personal Failures and the Bankruptcy Reform Act of 1978*, 27 J.L. & ECON. 419 (1984).

formal rules, inquiry into the precise nature of the problem may proceed with little empirical evidence. Formal laws, it is assumed, will produce the desired outcomes. But when the implementation of laws varies, solutions must account for empirical variations. The consequence of this reframing of the solution may be to introduce new information that redefines the problem.

To return to the Chapter 7-Chapter 13 example, a researcher might observe differences in the rates of Chapter 13 filings in different states. Presumably, most advocates of Chapter 13 desire that debtors make every repayment effort possible, both to demonstrate the debtors' good faith and to enhance the repayment available to creditors. In districts with a low proportion of Chapter 13s, it might be presumed that debtors are not making a good effort and that their creditors are big losers. But a close investigation into the local cultures in these low Chapter 13 districts might reveal a very different picture. In some districts, creditors and bankruptcy attorneys might get together, either informally or through credit counseling, and make payment plans outside bankruptcy. For debtors who have some steady income, they may be willing to work out a repayment schedule to repay the debts, at least in part, and avoid bankruptcy altogether. In such a case, the debtors who actually file for bankruptcy would likely be a group that had virtually no hope of repayment. In such a case, a low Chapter 13 rate would be predicted. If the goal is defined as encouraging debtor repayment rather than simply increasing the proportion of Chapter 13 filings, it would seem that this low-Chapter 13 district should be identified as a strong success rather than a disappointing or recalcitrant failure.[157]

The findings might work the other way as well: Districts with high proportions of initial filings in Chapter 13 might have a low proportion of their debtors actually completing successful Chapter 13 repayment efforts.[158] Just as filing rates differ, the amount of money the debtors repay and the number of debtors who successfully complete their plans can vary sharply. An inquiry into local practices might show that in adjacent districts, one district

157. *See Real People, supra* note 36, at 696-97.

158. The Administrative Office of the Courts reports only the initial filing, but debtors may convert to Chapter 7 later in the process without court approval and without paying a new fee. 11 U.S.C. § 1307(a) (1988); Fed. R. Bankr. P. 1019. *See* As We Forgive Our Debtors, *supra* note 20, at 215-17 (reporting that only one-third of Chapter 13 plans were still paying at the time of data collection, the remainder having been dismissed or converted to Chapter 7).

might have a 40% Chapter 13 filing rate while another had a 20% rate. But if three-quarters of the debtors in the first district never completed their repayment plans, while only a quarter of the debtors in the second district dropped out of Chapter 13, the actual proportion of successful Chapter 13s would be higher in the second district. Moreover, if the successful debtors in the first district proposed only nominal repayments, while the debtors in the second district repaid substantial portions of their outstanding debt, a comparison of Chapter 13 data of filings alone would be meaningless.[159]

An inquiry into the local implementation of formal laws necessarily involves a close empirical analysis of the system. Ultimately, such an empirically-based approach is likely to re-shape the framing of the problem. This may lead to entirely different—and better informed—views of appropriate modifications to the legal system.

D. *Pseudo-Autonomy*

We noted as we began this Article that the bankruptcy system permitted us unusual opportunities to measure variations in outcome. Because there are so many clear-cut choices available, it is possible to track differences in choices among localities over time. We return to that observation here to draw a somewhat different inference: The influence of local legal culture may be strongest in circumstances that combine repeat players, highly specialized information, and significant decision-making authority in the hands of the uninformed.

The bankruptcy system is designed to give great autonomy to the debtors. Debtors retain the options of whether to file at all, whether to file under Chapter 7 or Chapter 13, and whether to make repayment. To the extent that their problems involve a wide range of different circumstances, a system that permits a number of different options ideally provides better solutions for the individuals to be served.

These data suggest that giving debtors the autonomy to make their own choices is not very realistic. The bankruptcy system is complex and difficult to maneuver within. Debtors have enormous decision-making power, but without sufficient information they have little effective power to make these decisions. As our

159. *See* Figure 5, *supra.*

anecdotal data showed, once the debtors are identified to the bankruptcy system, repeat players—the judges, lawyers, and other specialists—are likely to have enormous influence over their choices. While the debtor remains the nominal decisionmaker, we believe that most debtors do what the local system tells them to do. The degree of actual autonomy, especially after the initial decision to consult a bankruptcy specialist, may, in fact, be quite small.[160] This may or may not be in the best interests of the debtors. This observation raises questions about the actual impact of any system that purports to leave great autonomy with the non-specialist individual. In light of the bankruptcy data, it is fair to ask how effective such approaches may be in a number of different settings.

E. *Local Variation and Democracy*

The 1978 Bankruptcy Reform Act was the first major revision of the bankruptcy laws in fifty years. It had been debated for nearly a decade when it was finally passed. The abrupt changes from the earlier system fueled the passions of both ardent supporters and aggressive detractors. As the system was implemented in the 1980s, and as a larger segment of the population began to feel the effects of the bankruptcy laws, intensity of feelings rose even higher. Congress revisited the bankruptcy laws with significant changes in 1984, 1986, 1988, 1990, 1991, and 1992,[161] and gives no indications of stopping.

160. *See* As We Forgive Our Debtors, *supra* note 20, at 250-52; *Many Cultures, supra* note 15; Neustadter, *supra* note 117. Similarly, their creditors are free to interact as they deem most beneficial to themselves. Creditors could leave the debtor alone if they see few prospects of repayment or pursue the debtor more aggressively if certain assets or opportunities are present. But the creditors are in a situation analogous to that of debtors: They must rely on attorney advice. One-time creditors have little opportunity or incentive to master the system sufficiently to make decisions that are not heavily influenced by the local culture.

161. The Bankruptcy Reform Act of 1978 has been amended 21 times. The following is a list of the public law changes and dates. Some of these amendments, however, were more technical than substantive. Pub. L. No. 96-56, 93 Stat. 389 (1979); Pub. L. No. 96-448, 94 Stat. 1931 (1980); Pub. L. No. 97-35, 95 Stat. 863 (1981); Pub. L. No. 97-222, 96 Stat. 241 (1982); Pub. L. No. 97-258, 96 Stat. 1062 (1982); Pub. L. No. 97-320, 96 Stat. 1539 (1982); Pub. L. No. 97-449, 96 Stat. 2441 (1983); Pub. L. No. 98-353, 98 Stat. 353 (1984); Pub. L. No. 99-509, 100 Stat. 1949 (1986); Pub. L. No. 99-554, 100 Stat. 3115 (1986); Pub. L. No. 100-334, 102 Stat. 610 (1988); Pub. L. No. 100-506, 102 Stat. 2538 (1988); Pub. L. No. 100-597, 102 Stat. 3028 (1988); Pub. L. No. 101-311, 104 Stat. 267 (1990); Pub. L. No. 101-508, 104 Stat. 1388 (1990); Pub. L. No. 101-581, 104 Stat. 2865 (1990); Pub. L. No. 101-647, 104 Stat. 4865 (1990); Pub. L. No. 101-650, 104 Stat. 5113 (1990); Pub. L. No. 102-198, 105 Stat. 1623 (1991); Pub. L. No. 102-365, 106 Stat. 982 (1992); Pub. L. No. 102-486, 106 Stat. 2944 (1992).

In light of such strongly held feelings, it is interesting to speculate whether the ability to accommodate uniform federal laws through local reinterpretation is a strength or a weakness of a system that strives for uniformity across a large, diverse country. Local legal culture may provide the legal diversity necessary in a large and complex democracy. Often a state legislature, or the Congress, believes that a certain rule, practice, or outcome should be universal. It may be that certain kinds of national uniformity are only bearable because they can be ameliorated—or even subverted—at the local level. Formal compliance with national uniformity might be possible only because different communities have had the opportunity to reinterpret and adjust the laws to suit their own needs. On the other hand, we note that while tolerance for such variation may be high in an area such as bankruptcy, it may be far less tolerable in other areas, such as the implementation or enforcement of antidiscrimination laws or health and safety standards. There is little reason to assume that the variation in implementation only occurs in relatively low-key subjects such as bankruptcy. There is equally little reason to assume that the impact of such variation is entirely benign.

Local legal culture is not just dust in the national legal machine. In fact, it may be a significant element of the legal landscape. Failure to account for it causes policy debates as well as legal reforms to fall wide of their marks. It is surely time to accelerate our study of such cultures and to begin to piece together a systematic view of their influence on the legal system.