

THE CEMENT LIFE RAFT

I

In May 1998, First Lady Hillary Clinton was the star attraction at a Boston fund-raiser for candidates who supported women's issues. The lineup was impressive: she stood shoulder to shoulder with a half dozen congresswomen, including Nancy Pelosi and Sheila Jackson Lee, arguably among the most powerful female politicians in America at the time. Mrs. Clinton was in her element, vibrant and hard-hitting in front of an almost all-woman audience that applauded her every sentence. Her speech was part policy (federal subsidies for day care and access to health insurance) and part pep rally (help send more Democrats to Congress). She swept out of the ballroom as the crowd jumped to its feet to cheer her on.

I (Elizabeth) stood waiting in the darkened hallway in a service entrance. I had been invited to meet with Mrs. Clinton, and there I stood, not knowing a single person either in the ballroom or among the entourage that trailed along with her. I listened as young women—presumably Mrs. Clinton's aides—chatted quietly about who were the “major players” in the room and whether that neon-red jacket made one of the congresswomen look too pasty. Behind me, two beefy men in overcoats stood silently, continuously scanning in all directions.

Mrs. Clinton thrust her hand forward. “You must be Professor Warren. I read your op-ed in the *New York Times* about women and bankruptcy, and I want to talk with you.” A few weeks earlier I had written a column that sharply criticized a bill making its way through Congress that proposed to undercut bankruptcy protections for middle-class families in financial trouble.¹ Before I could respond, Mrs. Clinton snapped her head sharply to the side and called to no one in particular, “Where's lunch? I'm hungry.”

We were ushered to a small office with cracked leatherette chairs, carefully set out with lunch for the First Lady—half a hamburger, French fries, Diet Coke—and an iced tea for me. The small army of aides and security agents were left behind in the hallway; there were just the two of us in the tiny room.

Before she had taken a single bite of her hamburger, Mrs. Clinton tore into the business at hand: “I have two questions for you: How are women affected by the bankruptcy laws, and how did a woman get to be a chaired professor at Harvard Law School?”

¹ Elizabeth Warren, “Bankrupt? Pay Your Child Support First,” *New York Times*, April 27, 1998. See also Elizabeth Warren, “In Serious Jeopardy; Lies vs. Unadulterated Statistics Muddle Bankruptcy Reform,” *Chicago Tribune*, March 19, 1998.

For the next twenty-five minutes, I pounded Mrs. Clinton with graphs, charts, and projections. She ate fast and asked questions even faster. I have taught bankruptcy law to thousands of students—some of them among the brightest in the country—but I never saw one like Mrs. Clinton. Impatient, lightning-quick, and interested in all the nuances. In just half an hour, she went from knowing almost nothing about the bankruptcy system to grasping the counterintuitive twist that single mothers were *helped* when their ex-husbands filed bankruptcy because these men could discharge credit card debts and use the money to catch up on their child support. I explained to Mrs. Clinton how the pending bankruptcy bill would effectively dismantle bankruptcy protections for families, forcing single mothers to compete with legions of credit card bill collectors for an ex-husband's income and making it more difficult for families to hold on to their homes.

At the end of our discussion, Mrs. Clinton stood up and said, "Well, I'm convinced. It is our job to stop *that awful bill*. You help me, and I'll help you." We talked university politics for a bit, then walked outside. As we stepped through the door, she grabbed me by the shoulder, turned me around for the obligatory photograph, shook my hand again, and headed off with her people.

Mrs. Clinton's newfound opposition to the bankruptcy bill surprised me. Given her legal training and her devotion to women's causes, I had certainly expected her to grasp the importance of the issue. But President Clinton's staff had been quietly supporting the bankruptcy bill for several months. Bill Clinton wanted to show that he and other "New Democrats" could play ball with business interests, and the major banks were lobbying hard for changes in the bankruptcy laws. I had expected that it would take a lot more than 30 minutes to convince Hillary Clinton to depart from the position widely rumored to be supported by her husband.

But Mrs. Clinton stayed firm in her fight against "that awful bill." She was convinced that the bill was "unfair to women and children," and she intended to stand by her principles, even if it cost some Democratic party candidates campaign contributions.² Over the ensuing months, she was true to her word. With her strong support, the Democrats slowed the bill's passage through Congress.³ When Congress finally passed the bill in October 2000, President Clinton vetoed it. The following summer, an aide explained to me the abrupt about-face: "A couple of days after Mrs. Clinton met with you, we changed sides [on the bankruptcy bill] so fast that you could see skid marks in the hallways of the White House." Thanks to Mrs. Clinton, families still had one financial refuge left—at least for the moment.

² Katharine Q. Seelye, "First Lady in a Messy Fight on the Eve of Her Campaign," *New York Times*, June 27, 1999.

³ According to Seelye, "[Mrs. Clinton] wrote dozens of personal notes to lawmakers last year as the [bankruptcy] bills made their tortuous way through the Congressional process. And she, along with Senator Edward M. Kennedy, Democrat of Massachusetts, played what the bill's opponents say was a decisive role in helping to kill the legislation last year." Seelye, "First Lady in a Messy Fight."

But the story doesn't end there. The banking lobbyists were persistent. President Clinton was on his way out, and credit card giant MBNA emerged as the single biggest contributors to President Bush's campaign.⁴ In the spring of 2001, the bankruptcy bill was reintroduced in the Senate, essentially unchanged from the version President Clinton had vetoed the previous year.

This time freshman Senator Hillary Clinton voted in favor of the bill.

Had the bill been transformed to get rid of all those awful provisions that had so concerned First Lady Hillary Clinton? No.⁵ The bill was essentially the same, but Hillary Rodham Clinton was not. As First Lady, Mrs. Clinton had been persuaded that the bill was bad for families, and she was willing to fight for her beliefs. Her husband was a lame duck at the time he vetoed the bill; he could afford to forgo future campaign contributions. As New York's newest Senator, however, it seems that Hillary Clinton could not afford such a principled position. Campaigns cost money, and that money wasn't coming from families in financial trouble. Senator Clinton received \$140,000 in campaign contributions from banking industry executives in a single year, making her one of the top two recipients in the Senate.⁶ Big banks were now part of Senator Clinton's constituency. She wanted their support, and they wanted hers—including a vote in favor of "that awful bill."

The Brave New (Unregulated) World

There is one final chapter in the story of how millions of seemingly ordinary, middle-class families found themselves falling off a financial cliff. Just at the time when parents got caught in a vicious bidding war for middle-class housing, just as the cost of college tuition and health insurance shot into the stratosphere, just as layoffs increased and the divorce rate jumped, a new player appeared on the scene. A newly deregulated lending industry emerged, eager to lend a few bucks whenever the family came up short.

⁴ Corporations do not contribute directly, but their employees make coordinated contributions. The *Philadelphia Inquirer* reported: "By orchestrating mass contributions from its employees, the Wilmington-based company has become Bush's single largest source of campaign money. MBNA employees have given more than \$250,000 to the Republican's presidential bid, an *Inquirer* analysis found." Robert Zausner and Josh Goldstein, "Bush's Largest Funding Source: Employees of Credit Card Firm," *Philadelphia Inquirer*, July 28, 2000, p. A1.

⁵ Senator Clinton claimed in her press release that she supported passage of the bankruptcy bill because "I have worked with a number of people over the past three years to make improvements." She then cited a provision that moved women's child support claims higher in the distributional pecking order in bankruptcy, by permitting them to stand first in line for distributions from the liquidation of an ex-husband's assets. Office of Senator Hillary Rodham Clinton, "Senator Hillary Rodham Clinton Statement for the Record," news release, March 15, 2001. While this amendment may have provided some political cover, it offers virtually no financial help to single mothers, since the overwhelming majority of ex-husbands don't pay anything in distributions during bankruptcy. Of far more importance was the fact that the bill would permit credit card companies to compete with women *after* bankruptcy for their ex-husband's limited income, and this provision remained unchanged in the 1998 and 2001 versions of the bill. Senator Clinton claimed that the bill improved circumstances for single mothers, but her view was not shared by any women's groups or consumer groups.

⁶ Alexander Bolton, "Bankruptcy Bill Is Conflict for Daschle," *The Hill*, March 14, 2001.

Pick up almost any newspaper, and there will be a story about America's most widespread addiction: the insatiable hunger for debt. Every year for the past decade, mortgage debt has set a new record.⁷ Home equity loans grew even faster, increasing by over 150 percent in just four years.⁸ And no one would dare leave home without a fistful of those little plastic cards.

The news media rarely give any explanation for *why* all that debt piled up, leaving the reader to infer that the debt explosion is some sort of inevitable by-product of today's moral and economic climate. But Americans didn't wake up one morning and decide en masse that they needed stuff so much that they'd be delighted to take on a big fat second mortgage and that they'd be thrilled to skip a credit card payment or two, as the headlines might imply. Nor was there a sudden "national conspiracy of people who buy credit cards and then max them out," as one professor of finance claimed.⁹ Those mountains of debt were made possible by one very important change that largely went unnoticed in all the discussions about Americans and debt—a seemingly small modification in the laws of consumer finance, a tiny change that transformed centuries of family economics in an instant.

⁷ Consumer nonrevolving debt grew from \$500 billion in 1993 to \$1 trillion in 2002 (not adjusted for inflation). Federal Reserve, *Consumer Credit Historical Data*, Federal Reserve Statistical Release G.19 (January 8, 2003), Table, Consumer Credit Outstanding, Nonrevolving. Available at <http://www.federalreserve.gov/releases/g19/hist/> [1/28/2003]. Mortgage debt as a share of disposable personal income grew from 39.6 percent in 1973 to 73.2 percent in 2001. Lawrence Mishel, Jared Bernstein, and Heather Boushey (Economic Policy Institute), *The State of Working America: 2002–2003* (New York: Columbia University Press, ILR Press, 2002), p. 296, Table 4.14, Household Debt, by Type, 1949–2001.

⁸ By 1997, the outstanding home equity debt of American homeowners had reached one-third the size of total nonmortgage consumer debt. Glenn B. Canner, Thomas A. Durkin, and Charles A. Luckett, "Recent Developments in Home Equity Lending," *Federal Reserve Bulletin* 74 (April 1998), pp. 242, 248.

⁹ Eric Gillin, "Events Conspire Against Bankruptcy Reform," in *The Street.com*, January 10, 2002. Available at <http://www.thestreet.com/markets/ericgillin/> 10006456.html [3/2/2003].

Just a generation ago, the average family simply couldn't get into the kind of financial hole that has become so familiar today. The reason was straightforward: A middle-class family couldn't borrow very much money. High-limit, all-purpose credit cards did not exist for those with average means. There were no mortgages available for 125 percent of the home's value and no offers in the daily mail for second and third home equity loans. There were no "payday lenders," no "live checks," no "instant money," and certainly no offers to "consolidate" all that debt by moving it from one credit card to another. A generation ago, a family that wanted to borrow money had only a handful of options. Instead of running up debt anonymously, a prospective borrower was forced to meet a stern-looking banker, face-to-face. Families were asked to produce past tax returns and pay stubs, credit references, and projected budgets that showed how they planned to repay the money. If they wanted to take out a mortgage for a new home, they were typically required to come up with a 20 percent down payment from their own savings.¹⁰ If they wanted money for any other purpose, they were required to give a detailed account of their spending plans, and the banker had a fairly narrow set of answers he wanted to hear: building an extra bedroom on the house, buying a new car, sending the twins off to college. Some retailers offered credit to move their merchandise, but cash loans and lines of credit for "making ends meet until John finds a new job" or "putting groceries on the table until the child support checks begin" were not in the lending lexicon.

The reason for the lenders' cautious approach was not that the bankers of yesteryear were thriftier or that Americans hadn't yet developed a taste for "unbridled consumption."¹¹ The reason was a far more powerful one, and it affected every lender and every borrower in the country: The law was different. In those days, the banking industry was highly regulated, and usury laws created ironclad limits on how much interest a bank could charge on a loan. As a result, banks' profit margins were modest, and families that wanted to borrow money had to prove they had a very high likelihood of repaying it.¹² The judgment was not moralistic; it was supported by stubborn financial reality. Unlike today, bank vaults were firmly closed to families already in financial trouble.

¹⁰ Among first-time home buyers a generation ago, 70.9 percent reported that their down payments came entirely from savings, and 20.4 percent said they also had help from relatives. U.S. Bureau of the Census, Data User Services Division, *Statistical Abstract of the United States 1982-83*, 103rd ed. National Data Book and Guide to Sources, compiled by Glenn W. King under the direction of Paul T. Zeisset (Washington, DC, 1982), p. 762, Table 1367, Recent Home Buyers—General Characteristics and Downpayments, 1976 to 1981.

¹¹ Chris Pummer, "GOP in Danger of Misreading Election 'Mandate'," in *CBSMarketwatch.com*, November 6, 2002.

¹² See, e.g., Kathleen C. Engel and Patricia A. McCoy, "A Tale of Three Markets: The Law and Economics of Predatory Lending," *Texas Law Review* 80 (May 2002): 1255, 1271-1279, in which the authors describe the mortgage market of the 1970s as a limited steady business, not aimed toward attracting high-risk borrowers.

From the founding of the Republic through the late 1970s, interest rates had been a matter for states to determine, and the states had imposed limits on the amount of interest that could be charged on consumer loans.¹³ The logic behind the laws was straightforward: State governments wanted to protect their citizens from back-alley loan sharks and aggressive lenders who would cost families their homes.

But the states' authority to regulate lending within their borders was wiped out by an obscure federal regulation. In 1978, a Supreme Court opinion interpreting some ambiguous language in a little-known federal statute opened the door for banks to "export" interest rates from one state to another.¹⁴ This meant that a bank with lending operations in South Dakota—where the interest ceiling was 24 percent, at a time when the rates in most states were capped at 12–18 percent—would have a distinct advantage. A South Dakota bank could now issue loans at 24 percent interest to a family living in New York (where rates on most loans were capped at 12 percent), without worrying about the corporate officers ending up in a New York prison next to loan sharks who collected by breaking people's fingers until they paid. Under the new law of the land, South Dakota banks could collect their profits from New York families, and there wasn't a thing the New York legal system could do about it.¹⁵

The race was soon on. Local politicians across the country quickly figured out that all they had to do was raise the interest rate ceiling, and lending institutions would flock to their states. Suddenly there was a new way for states to attract clean, white-collar jobs, and even grab a share of corporate taxes in the process. Sure, there might be some hardship for families that stumbled into high-interest loans they really couldn't afford. But most of the hardship would be exported to the residents of other states, while the benefits—jobs and tax revenues—would stay local. By way of analogy, consider America's drug laws. Suppose that South Dakota passed a law (and the federal government permitted it) that made it legal to grow marijuana inside the state and to sell it anywhere in the country. South Dakota would bear only a tiny fraction of the total social costs of marijuana use, while reaping 100 percent of the profits for sales elsewhere. Suddenly the downside of marijuana use that once made legalization unthinkable—drug addiction, health problems, traffic accidents, and so forth—might start to look pretty insignificant next to all those dollars the state could rake in.

¹³ Diane Ellis, "The Effect of Consumer Interest Rate Deregulation on Credit Card Volumes, Charge-Offs, and the Personal Bankruptcy Rate," *Bank Trends*, no. 98-05 (March 1998). Available at http://www.fdic.gov/bank/analytical/bank/bt_9805.html [3/3/2003]. See also Christopher C. DeMuth, "The Case Against Credit Card Interest Rate Regulation," *Yale Journal on Regulation* (Spring 1986): 200–244.

¹⁴ The Supreme Court ruling in *Marquette National Bank of Minneapolis v. First of Omaha Service Corporation* in 1978 allowed a Nebraska bank to export credit card rates to Minnesota. 439 U.S. 299 (1978). The federal government approved this reinterpretation of the McFadden Act in 1983. Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), U.S. Code, vol. 12, sec. 1831d (1994).

¹⁵ In the late 1970s, the usury cap in New York was 18 percent on the first \$500 and 12 percent for loans above that amount. Robert D. Manning, *Credit Card Nation: The Consequences of America's Addiction to Credit* (New York: Basic Books, 2000), p. 88. For a review of the calculations behind and evolution of New York's usury statute, see New York, *General Obligations Law, Compiled* (Bender 2002), sec. 5-501.

Lenders also began to see the possibilities opened up by the new laws. No longer would credit be a prized commodity, doled out parsimoniously. By the mid-1980s, credit had become a highly profitable consumer product, like running shoes or soft drinks, and the new game was to sell as much as possible.¹⁶ How to manage the risk that some customers might default on the debt? Simple: move the lending operations to South Dakota—or Delaware, which quickly followed South Dakota’s lead—and then raise the interest rates for customers across the country.¹⁷ Banks would “lose” money on some credit card customers, but, thanks to higher interest rates, those losses would be more than offset by the profits on the rest. Over the past decade, bad debt losses and loan write-offs have soared, but profits have risen even faster.¹⁸ In this new sky’s-the-limit world, the stern-faced banker and the long application forms have been replaced by chirpy advertisements and “preapproved” credit offers. Banks can now lend to anyone and everyone (including those in financial trouble) and still make a handsome profit.

The Debt Explosion

In the new world of unregulated lending, families are barraged with advertisements and offers for a new product: all the debt they could ever want, and more. Now, in a single year, more than five *billion* preapproved credit card offers—totaling over \$350,000 of credit *per family*—pour into mailboxes all across America.¹⁹ Magazine ads, telephone calls during dinner, and flyers at the bottom of grocery store bags barrage families with even more offers of credit, while roving bands of credit card marketers haunt college campuses and shopping malls. Credit card debt has increased accordingly: from less than \$10 billion in 1968 (inflation adjusted) to more than \$600 billion in 2000, an increase of more than *6,000 percent*.²⁰ It would seem that once Americans had gotten a first bite of the debt apple, they just couldn’t get enough.

¹⁶ Manning, *Credit Card Nation*, p. 94.

¹⁷ For example, Citibank moved its credit card headquarters from New York to South Dakota in 1981.

Manning, *Credit Card Nation*, p. 89.

¹⁸ Credit card delinquencies were at or below 3 percent for most of the early 1980s, compared with more than 4 percent in 2001 and 2002. “Delinquency Tumbles,” in *Cardweb.com*, September 30, 2002. Available at <http://www.cardweb.com/cardtrak/2002/september.html> [2/12/2003]. Even as delinquencies climbed, credit card lending has remained about twice as profitable as other forms of lending. *The Profitability of Credit Card Operations of Depository Institutions*, Annual Report submitted to Congress (2002). For longer-term profitability trends, see Lawrence M. Ausubel, “Credit Card Defaults, Credit Card Profits, and Bankruptcy,” *American Bankruptcy Law Journal* 71 (Spring 1997): 258–260.

¹⁹ Calculation based on the following data: Five billion direct-mail card offers were sent out in 2001. “In Brief: 5 Billion Direct-Mail Card Offers Last Year,” *American Banker*, April 19, 2002, p. 10. In 2002, direct-mail card offers grew by 300 million mailings over 2001. “Foggy 2003,” in *Cardweb.com*, January 3, 2003. Available at <http://www.cardweb.com/cardtrak/2003/january.html> [2/12/2003]. The average credit line per credit card was \$7,160 in 1999; for the purposes of this calculation, we have assumed that this figure remained unchanged in 2002. Leslie Beyer, “The Outer Limits,” *Credit Card Management*, November 1999, p. 28. There are 105 million households in the United States. U.S. Bureau of the Census, 2000 Summary File, Table DP-1, Profile of General Demographic Characteristics, 2000.

²⁰ Calculated from Thomas A. Durkin, “Credit Cards: Use and Consumer Attitudes, 1970–2000,” *Federal Reserve Bulletin* 76 (September 2000): 623.

But what are families spending all that money on? Did they blow it on “vacations and luxury items,” as one columnist claimed?²¹ This explanation might gratify the self-righteous bill-payers, but it doesn’t square with the facts. Undoubtedly, all that easy credit dangling under everyone’s noses enticed a few more Americans into buying things they could have lived without. As we showed in chapter 2, today’s families are spending more on some goods, such as computers, home electronics, and pet food, than they did a generation ago. But they are spending less on food, clothing, appliances, home furnishings, and tobacco—a lot less. There is no evidence of an increase in impulse buying or luxury acquisitions over the past thirty years—certainly nothing that could account for a 6,000 percent increase in credit card debt. Moreover, the expenditures that have shown the biggest increases—e.g., housing, health insurance, college tuition, preschool—are the purchases *least* likely to appear on a credit card bill.

If families aren’t buying more goods, then what are they using all that debt for? They get into debt trying to buy their way out of the Two-Income Trap. The bidding war has inflated the cost of middle-class life to the point that once they have paid the mortgage and other fixed expenses, families have little discretionary income left—and even less margin for error. What to do when something goes wrong, as it increasingly does? Since the two-income family does not have a stay-at-home mom to call on to help make ends meet when emergency strikes, the family turns to debt to make it through to the next payday.

No advertisements trumpet, “When your husband leaves you, there’s MasterCard.” Nor do we hear: “American Express: Don’t lose your job without it.” But those slogans would be closer to the truth about how credit is used today. When corporate layoffs loom, workers apply for as many credit cards as possible to see them through until they can find a new job.²² When health insurance lapses, the family hands a MasterCard to the doctor and prays for the best.²³ And when Dad walks out, that “E-Z check” stuffed in with the latest credit card bill looks like just the thing to tide Mom over until the child support checks arrive. Later, when the credit card payments become unmanageable, the family takes on a second mortgage to consolidate all that debt. No one would suspect it from looking at the ads, but for every family taking out a second mortgage to pay for a vacation, there are sixty-one more families taking on a second mortgage so they can pay down their credit card bills and medical debts.²⁴

²¹ See Gillin, “Events Conspire Against Bankruptcy Reform.”

²² Todd Mason, “Jobless Relying on Credit Cards, Home Equity,” *Philadelphia Inquirer*, April 17, 2003; Manning, *Credit Card Nation*, pp. 4, 131.

²³ Matt Olson, “Medical Debtors to the Poorhouse: Credit Card Companies Singing All the Way to the Bank,” *The Progressive* 5, no. 7 (July 1, 2001): 30.

²⁴ In 1997, 61 percent of homeowners who had taken a traditional home equity loan reported that they took the loan to repay other debts, compared with just 1 percent who took the loan to pay for a vacation. Among homeowners with a line of credit (a somewhat more affluent group than those with traditional home equity loans), 49 percent took a loan to repay debts, and 13 percent did so to take a vacation. Canner, Durkin, and Luckett, “Recent Developments in Home Equity Lending,” p. 248.

The bankruptcy court offers a peek at those in the most trouble with debt. The Myth of the Immoral Debtor would have us believe that these families consumed their way into bankruptcy, running up their credit cards to cover their “reckless spending.”²⁵ They are at least half right; families in bankruptcy are choking on credit card debt. Ninety-one percent of the families in bankruptcy were carrying balances on their cards by the time they filed. A third of homeowners were carrying second or even third mortgages or had refinanced their mortgages to get some cash.²⁶ The amount of debt was truly staggering. Nearly one-third of bankruptcy filers—more than 400,000 families—owed *an entire year’s salary* on their credit cards, a hole that was virtually impossible to dig a generation ago.²⁷

But the critics are off the mark on one point—the role played by over-consumption or its ubiquitous cousin, “trouble managing money.” By 2001, those two reasons combined to account for less than 6 percent of families in bankruptcy.²⁸ What about the rest? The overwhelming majority of bankrupt families faced far more serious problems. As we showed in chapter 4, nearly 90 percent had been felled by a job loss, a medical problem, or a family breakup, or by some combination of all three.

Potential Supreme Court nominee Judge Edith Jones asserts that “overspending and an unwillingness to live within one’s means ‘causes’ debt.”²⁹ She is probably right. These families certainly overspent, accepting medical care they could not afford and making child support payments that left them with too little to pay the rent. They also lived beyond their means, trying to hold on to their houses and cars even after they lost their jobs. But we are forced to wonder, what would Judge Jones suggest those families have done? Not gone to the emergency room when the chest pains started? Moved the kids into a shelter the day their father moved out? Paid MasterCard and Visa, even if it meant not feeding their children? It is doubtlessly satisfying to point the long finger of blame at personal irresponsibility and overspending. But only the willfully ignorant refuse to acknowledge the real reasons behind all that debt.

Mortgaging the Future

²⁵ “Lobbyists Battle Over Bankruptcy Bill,” in *MSNBC.com*, August 5, 2002. Available at <http://www.msnbc.com/news/790231.asp#BODY> [3/6/2003].

²⁶ Among all homeowners in bankruptcy, 34 percent had either taken out a second or third mortgage or refinanced to obtain cash. Among homeowners with minor children, the figure is essentially the same, 32.4 percent.

²⁷ Among families filing for bankruptcy, 49.7 percent reported credit card debts exceeding six months’ income. For this calculation, we excluded all families reporting no income, even though many of them were carrying large balances on their credit cards. As a result, we probably understate the magnitude of the problem facing these families.

²⁸ “Credit card debt” or “trouble managing money” was listed by 55 percent of all the households filing for bankruptcy, but only 5.7 percent of all families, and only 3.7 percent of families with children, listed either of those reasons without also listing a job loss, a medical problem, or a family breakup as a reason for filing.

²⁹ Judge Edith H. Jones and Todd J. Zywicki, “It’s Time for Means-Testing,” *Brigham Young University Law Review* (1999): 177–249.

Interest rate deregulation dovetailed neatly with a seemingly unrelated phenomenon: the bidding war for suburban housing. The mortgage industry shook off its interest rate regulations just a few years after the credit card industry.³⁰ In the new world of unfettered mortgage lending, no longer would the middle-class family be restricted to a conventional 80 percent mortgage. The floodgates were opened, and families could get all the mortgage money they ever dreamed of to bid on that precious home in the suburbs—even if the price tag was more than they could realistically afford.

Competition for houses in good neighborhoods has always been stiff, and overloading on mortgage debt to purchase a better home has long posed a temptation for young families. A generation ago, however, it simply wasn't possible to give in to that temptation; mortgage lenders didn't allow it. But today the game is different. It has become routine for lenders to issue unmanageable mortgages. The best evidence comes from the mortgage industry itself. Fannie Mae, the quasi-governmental agency that underwrites a huge fraction of home mortgage lending in the United States, advises families that “monthly housing expenses should not represent more than 25 to 28 percent of gross monthly income.”³¹ Accordingly, anyone whose housing costs exceed 40 percent of their earnings would be considered “house poor,” spending so much on housing that they jeopardize their overall financial security.³² But the label is misleading. Many of the “house poor” are not poor at all. They are middle-class families that overextended themselves in a desperate effort to find a home in the midst of a fearsome bidding war. Over the past generation, at the same time that millions of households sent a second earner into the workforce, the proportion of *middle-class families* that would be classified as house-poor or near-poor has doubled.³³

³⁰ In 1980, Congress passed the Depository Institutions and Monetary Control Act (DIDMCA), which phased out Regulation Q, thus allowing banks to pay higher interest to depositors. It also preempted state usury laws as they applied to depository institutions making loans secured by a first-lien home mortgage. After passage of the DIDMCA, the courts extended the usury law preemption to apply to non-purchase price first-lien home mortgages. Cathy Lesser Mansfield, “The Road to Subprime ‘HEL’ Was Paved with Good Congressional Intentions: Usury Deregulation and the Subprime Home Equity Market,” *South Carolina Law Review* 51 (Spring 2000): 473, 492–495, and 511–521.

³¹ Fannie Mae, *Becoming A Homeowner: How Much House Can You Afford?* In the “Homepath” section of FannieMae.com. Available at <http://www.fanniemae.com/homebuyers/findamortgage/becoming/started/houseafford.jhtml?p=Find+a+Mortgage&s=Becoming+a+Homeowner&t=Getting+Started&q=How+Much+House+Can+You+Afford?> [3/2/2003].

³² U.S. Bureau of the Census, *House-Poor/House-Rich*, Statistical Brief (August 1991).

³³ Calculated from U.S. Bureau of the Census, *Annual Housing Survey for the United States and Regions: 1975, Part C, Financial Characteristics of the Housing Inventory*, Annual Survey (1977). Available at <http://www.census.gov/prod/www/abs/h150.html> [3/10/2003]. Table A-1, Income of Families and Primary Individuals in Owner and Renter Occupied Housing Units, 1975. U.S. Bureau of the Census, *American Housing Survey for the United States: 2001*, Annual Survey (2001). Available at <http://www.census.gov/hhes/www/housing/ahs/ahs01/tab313/html> [3/4/2003]. Table 2-20, Income of Families and Primary Individuals by Selected Characteristics—Occupied Units. Note that because of the limitations of the standard survey reporting tables, for the 2001 survey we have defined middle class as earning between \$20,000 and \$100,000 a year. For the 1975 survey we have defined middle class as earning between \$7,000 and \$35,000 a year, or \$21,000 and \$108,000 in inflation-adjusted dollars. “House poor” includes all families spending more than 35 percent of their income on housing, which was the

The down payment—once a critical device for screening potential borrowers—has virtually disappeared. In the mid-1970s, first-time home buyers put down, on average, 18 percent of the purchase price in order to get a mortgage.³⁴ Today, that figure has shrunk to just 3 percent.³⁵ While a small down payment may sound appealing to those of us who remember scrimping and saving before we could purchase our first home, it has a more ominous side. The family that can't come up with a down payment pays higher points and fees, and many are forced by their lenders to purchase additional credit insurance. These families get mortgages they couldn't have gotten a generation ago, but they pay a lot more for them. More important, families that don't make a down payment are more likely to lose their homes, which is why traditional lenders required the 20 percent down payment in the first place. According to one study, families that make a down payment of less than 5 percent of the purchase price are fifteen to twenty times more likely to default than those who put down 20 percent or more.³⁶ The obvious solution would be to reimpose some standards in the mortgage market, but deregulation continues to reign supreme. Even as defaults are rising, President Bush argues that the federal government should work to reduce families' down payments even further—with no thought about how those low down payments may cost millions of families their chance at staying in their homes.³⁷

As regulatory control over interest rates collapsed, a new industry was born: the “subprime” mortgage lender. Subprime lenders specialize in issuing high-interest mortgages to families with spotty credit who are unlikely to qualify for traditional, low-cost “prime” mortgages. In the early days of deregulation, subprime mortgage lending was unheard of. But by the mid-1990s, banking giants such as Chase Manhattan and Citibank, fat with profits from credit card lending, were looking for new markets to tap.³⁸ They applied the same principles to home mortgage lending that had profited their credit card divisions so handsomely: Charge high interest rates and sell, sell, sell.

highest level the government even bothered to report in the 1970s. The proportion of these middle-class homeowners spending more than 35 percent of their income increased from 2.8 percent in 1975 to 13.5 percent in 2001.

³⁴ U.S. Bureau of the Census, Data User Services Division, *Statistical Abstract of the United States 1993*, 113th ed. *The National Data Book*, compiled by Glenn W. King under the direction of Marie Argana (1993), p. 734, Table 1247, Recent Home Buyers—General Characteristics, 1976 to 1992.

³⁵ U.S. Bureau of the Census, Data User Services Division, *Statistical Abstract of the United States 1993*, 113th ed. *The National Data Book*, compiled by Glenn W. King under the direction of Marie Argana (1993), p. 734, Table 1247, Recent Home Buyers—General Characteristics, 1976 to 1992.

³⁶ Calculated from Yongheng Deng, John M. Quigley, Robert Van Order, “Mortgage Default and Low Downpayment Loans: The Costs of Public Subsidy,” National Bureau of Economic Research, Working Paper No. 5184 (July 1995), p. 12.

³⁷ White House, Office of the Press Secretary, “President Hosts Conference on Minority Homeownership,” press release, October 15, 2002.

³⁸ There are several companies affiliated under the “Citigroup” logo. For ease of identification throughout the chapter, we refer to all of these companies under this organization’s best-known moniker—Citibank. Likewise, we use “Chase” as the moniker for J.P. Morgan Chase & Co. For a list of the largest subprime lenders active in the United States, see U.S. Department of Housing and Urban Development (HUD), *HUD Subprime and Manufactured Home Lender List*, data set (2001). Available at <http://www.huduser.org/datasets/manu.html> [2/1/2003].

To give a sense of just how expensive subprime mortgages are, consider this: In 2001, when standard mortgage loans were in the 6.5 percent range, Citibank's *average* mortgage rate (which included both subprime and traditional mortgages) was 15.6 percent.³⁹ To put that in perspective, a family buying a \$175,000 home with a subprime loan at 15.6 percent would pay *an extra \$420,000* during the 30-year life of the mortgage—that is, over and above the payments due on a prime mortgage. Had the family gotten a traditional mortgage instead, they would have been able to put two children through college, purchase half a dozen new cars, *and* put enough aside for a comfortable retirement.

Citibank and other subprime lenders typically defend their business practices by arguing that they are helping more families own their own homes.⁴⁰ But this is little more than public relations hot air. In the overwhelming majority of cases, subprime lenders prey on families that *already* own their own homes, rather than expanding access to new homeowners. Fully 80 percent of subprime mortgages involve refinancing loans for families that already own their homes.⁴¹ For these families, subprime lending does nothing more than increase the family's housing costs, taking resources away from other investments and increasing the chances that the family will lose its home if anything goes wrong.

Subprime lending has an even more pernicious effect. It ensnares people who, in a regulated market, would have had access to lower-cost mortgages. Lenders' own data show that many of the families that end up in the subprime market are middle-class families that would typically qualify for a traditional mortgage. At Citibank, for example, researchers have concluded that at least 40 percent of those who were sold ruinous subprime mortgages would have qualified for prime-rate loans.⁴² Nor is Citibank an isolated case: A study by the Department of Housing and Urban Development revealed that *one in nine* middle-income families (and one in fourteen upper-income families) who refinanced a home mortgage ended up with a high-fee, high-interest subprime mortgage.⁴³ For many of these families there is no trade-off between access to credit and the cost of credit. They had their pockets picked, plain and simple.

³⁹ Lew Sichelman, "Community Group Claims CitiFinancial Still Predatory," *Origination News*, January 2002 (reporting on new claims of CitiFinancial's predatory practices after settlements with state and federal regulators).

⁴⁰ Senate Banking, Housing, and Urban Affairs Committee, "Predatory Mortgage Lending," statement made by Jeffrey Zeltzer on behalf of the National Home Equity Mortgage Association (NHEMA), 107th Cong., 1st sess., July 26, 2001. See also National Home Equity Mortgage Association, "Join NHEMA," in NHEMA.org. Available at <http://www.nhema.org/Join/> [3/4/2003].

⁴¹ HUD, *Unequal Burden: Income and Racial Disparities in Subprime Lending in America*. Subprime Lending Report (April 2000). Available at <http://www.hud.gov/library/bookshelf18/pressrel/subprime.html> [2/1/2003].

⁴² See Sichelman, "Community Group Claims CitiFinancial Still Predatory."

⁴³ HUD, *Unequal Burden*. To be sure, subprime lenders have focused more of their efforts among poorer homeowners; 26 percent of low-income homeowners end up with predatory refinancing, more than twice the rate of moderate-income families.

Why would middle-class families take on high-interest mortgages if they could qualify for better deals? The answer, quite simply, is they didn't know they could do any better. Many unsuspecting families are steered to an overpriced mortgage by a broker or some other middleman who represents himself as acting in the borrower's best interests, but who is actually taking big fees and commissions from subprime lenders.⁴⁴ In some neighborhoods these brokers go door-to-door, acting as "bird dogs" for lenders, looking for unsuspecting homeowners who might be tempted by the promise of extra cash. Other families get broadsided by extra fees and hidden costs that don't show up until it is too late to go to another lender. One industry expert describes the phenomenon: "Mrs. Jones negotiates an 8 percent loan and the paperwork comes in at 10 percent. And the loan officer or the broker says, 'Don't worry, I'll take care of that, just sign here.'"⁴⁵

Every now and then a case comes to the forefront that is particularly egregious. Citibank was recently caught in one of those cases. In 2002, Citibank's subprime lending subsidiary was prosecuted for deceptive marketing practices, and the company paid \$240 million to settle the case (at the time, the largest settlement of its kind).⁴⁶ A former loan officer testified about how she marketed the mortgages: "If someone appeared uneducated, inarticulate, was a minority, or was particularly old or young, I would try to include all the [additional costs] CitiFinancial offered."⁴⁷ In other words, lending agents routinely steered families to higher-cost loans whenever they thought there was a chance they could get away with it.

Such steering hits minority homeowners with particular force. Several researchers have shown that minority families are far more likely than white families to get stuck with subprime mortgages, even when the data are controlled for income and credit rating.⁴⁸ According to one study, African-American borrowers are *450 percent* more likely than whites to end up with a subprime than a prime mortgage.⁴⁹ In fact, residents in high-income, predominantly black neighborhoods are actually *more* likely to get a subprime mortgage than residents in low-income white neighborhoods—more than twice as likely.⁵⁰

⁴⁴ See, e.g., Howell E. Jackson and Jeremy Berry, "Kickback or Compensation: The Case of Yield Spread Premiums," Working Paper, Harvard Law School (January 2002).

⁴⁵ Dennis Hevesi, "A Wider Loan Pool Draws More Sharks," *New York Times*, August 31, 2001.

⁴⁶ The charges alleged that Citibank's consumer finance unit employed deceptive practices to sell home loan insurance. To settle the case, Citibank agreed to pay \$240 million, the largest settlement to date of a Federal Trade Commission consumer protection case. "Citigroup \$240 Mln Lending Unit Settlement Approved," *Bloomberg News*, November 15, 2002.

⁴⁷ Paul Beckett, "Citigroup's 'Subprime' Reforms Questioned," *Wall Street Journal*, July 18, 2002.

⁴⁸ For a thorough discussion of discrimination in mortgage lending, see Stephen Ross and John Yinger, *The Color of Credit: Mortgage Discrimination, Research Methodology, and Fair-Lending Enforcement* (Cambridge, MA: MIT Press, 2002).

⁴⁹ Association of Community Organizations for Reform Now, *Separate and Unequal: Predatory Lending in America* (Washington, DC: ACORN, November 2002). Available at <http://www.acorn.org/acorn10/predatorylending/plreports/SU2002/index.php> [2/01/03]. See also Randall M. Scheessele, "1998 HMDA Highlights," Working Paper HF-009, HUD, Office of Policy and Research (September 1999). Available at <http://www.huduser.org/publications/hsgfin/workpapr9.html> [2/18/2003].

⁵⁰ HUD, *Unequal Burden*.

In many cases, these lenders don't just want families' money; they also want to take people's homes. Banks have been caught deliberately issuing mortgages to families that could not afford them, with the ultimate aim of foreclosing on these homes. This practice is so common it has its own name in the industry: "Loan to Own."⁵¹ These lenders have found that foreclosing can be more profitable than just simply collecting a mortgage payment every month, because the property can then be resold for more than the outstanding loan amount.⁵² So the lender rakes in fees at closing and high monthly payments for a few years, then waits for the family to fall behind and sweeps in to take the property. The lender wins every possible way—high profits if the family manages to make all its payments, and higher profits if the family does not.

The results are in. After two decades of mortgage deregulation, today's homeowners are *three and a half times* more likely to lose their homes to foreclosure than their counterparts a generation ago.⁵³ This defies the economists' expectations. Today's record low interest rates and rising home prices should have translated into a *falling* rate of home foreclosure, not a rising one. The only explanation is a lending industry run amok. The rise in "loan-to-own" lending, the disappearance of the down payment, and the explosion in high-interest, subprime refinances have taken their toll, as a growing number of families learn the painful consequences of getting trapped by a mortgage industry that has been allowed to make up its own rules.

⁵¹ Congress recently considered legislation specifically targeting "loan to own" practices as an amendment to the current Truth in Lending laws. See "Illinois Association of Mortgage Brokers Backs Important Consumer Protection Legislation," *PR Newswire*, April 17, 2000; Consumer Mortgage Protection Act of 2000, 106th Cong., 2nd sess., H.R. 4213.

⁵² Margot Saunders, director of the National Consumer Law Center, explained in testimony before Congress: "Based on equity, a lender is in an advantageous situation: either the borrower pays the loan back with high interest or foreclosure on the home permits a recovery from the property directly. In fact, when foreclosure occurs and the borrower's property is sold to the lender for less than fair market value (as it generally is), the lender can resell the property after foreclosure and realize the homeowner's equity. These anticipated windfalls encourage some lenders to make loans designed to result in foreclosure." National Consumer Law Center, "Testimony Regarding the Rewrite of Truth in Lending Act and Real Estate Settlement Procedures Act," Before the Subcommittees on Housing and Community Opportunity and Financial Institutions and Consumer Credit, House Committee on Banking, Financial Institutions and Consumer Credit, U.S. House of Representatives, 105th Cong., 2nd sess., September 16, 1998.

⁵³ Mortgage Bankers Association of America, *Foreclosure at End of Quarter, U.S. (Unadjusted %)*, unpublished data, December 2002. By comparison, foreclosures grew from 0.15 percent of all mortgages in the first quarter of 1979 to 0.37 percent in the first quarter of 2002, an increase of nearly 150 percent. We note that the number of homes in foreclosure grew faster than the number of foreclosures started. Little has changed in the legal procedures of foreclosure, so the difference in the proportion of homes in foreclosure is primarily attributed to the fact that today, once foreclosure proceedings have been started, a home is more likely to proceed through the foreclosure process than it was a generation ago. This suggests that families today are less likely than families were twenty-five years ago to come up with the money to pay the mortgage company or to sell that house rather than lose it in foreclosure.

And so it was that family spending was transformed in a single generation. In the late 1970s and early 1980s, consumer lending was deregulated, launching a complicated, potentially dangerous product on an unsuspecting public. The timing could not have been worse. Just as corporations were downsizing across America, just when a bidding war for decent family housing was heating up, and just when families lost the all-purpose safety net once provided by the stay-at-home mother, easy credit flooded in, looking just like a life raft to the family that was drowning.

Where the Money Is

“Why do you rob banks?” The question was put to Willie Sutton, famed bank robber of the 1940s. He replied, “Because that’s where the money is.” That’s how most businesses work: They make profits by dealing with customers who have money. And that is how the lending business used to work: Companies made loans to people who had the money (or soon would have the money) to repay them.

Much has been made about the changing nature of America’s debtors. Americans don’t have the same work ethic that they once did, people don’t work hard to pay their bills as they once did, and on and on. Even my (Elizabeth’s) elderly father agreed, telling me quiet stories of destitute families that labored for years to pay bills they had run up during the Great Depression. My father used to talk about Herring Hardware, a farm supply store that my grandfather had run in rural Oklahoma beginning back in 1904. When the Dust Bowl hit in the 1930s and families could no longer scratch a living out of their modest farms, many packed up and headed west, an exodus etched in the national memory by John Steinbeck’s *Grapes of Wrath*. Some of those families never forgot the debts they left behind. Twenty years later, my grandfather would still get an occasional envelope with a few twenty-dollar bills and a handwritten note: “Grant, we finally got ahead a little. Put this on my account, and let me know if I owe you more. Aileen sends her best to Ethel.” My father would lean back at the end of one of these stories and remark that these were “good people, good people who followed through on what they owed.” Then he would pause and draw his mouth into a hard line. “Folks just aren’t like that anymore.”

But my father—and everyone else who talks about changing values—overlooks one very important fact: Borrowers aren’t the only ones who changed. Lenders changed too, arguably far more than the people to whom they were lending. Most Americans guard their credit ratings jealously, living with a slightly prickly sensation that they could be cut off if they fell behind or forgot to pay a bill. What they don’t realize is that when a borrower makes a partial payment, when he misses a bill, and when his credit rating drops, he actually gets *more* offers for credit.⁵⁴ He is not just down on his luck, behind on his bills, and short on cash; he has now joined the ranks of an elite group—The Lending Industry’s Most Profitable Customers.

⁵⁴ Mary Kane, “Creditors Happy to Lend to Bankrupt Consumers, New Credit Lines Are Often Higher,” *New Orleans Times-Picayune*, July 20, 1997.

Consider the example set by Citibank, America's largest credit card issuer. In 1990, I (Elizabeth) was hired as a one-day consultant by Citibank to address a gathering of some forty senior lending executives. The task: use my research to suggest policies that would help Citibank cut its losses from cardholders in financial trouble. I arrived at Citibank's New York headquarters with dozens of graphs and charts tucked in my file folders. I was ushered into a large, brightly lit conference room where each chair was filled by someone outfitted in a starched shirt, silk tie, and dark suit. The executives stayed with me all day, eating lunch at the conference tables as we continued our discussions about the effects of unemployment on loan defaults and the rising number of bankruptcies among two-earner families. As the afternoon came to a close, I summarized my recommendations. The short version could be boiled down to a single, not very startling, idea: Stop lending money to families that are already in obvious financial trouble. This would have been quite easy to implement. Citibank had reams of data on most of its borrowers, particularly those who had black marks on their credit reports. I suggested that the policy could be put in place within a few short months, potentially cutting Citibank's bankruptcy-related losses by as much as 50 percent.⁵⁵

There were interested murmurs around the room, and several hands eagerly shot up. But before I could call on anyone, one slightly older man spoke up. He had been silent throughout the long day, leaning back in his chair and giving me a faintly bemused smile. "Professor Warren," he began. The room hushed immediately, and I suddenly realized that I had been oblivious to the corporate pecking order; this was the guy who outranked everyone else in the room. "We appreciate your presentation. We really do. But we have no interest in cutting back on our lending to these people. They are the ones who provide most of our profits."⁵⁶ With that, he got up, and the meeting was over. I was ushered out, and I never heard from Citibank again—except to get my monthly credit card bills.

⁵⁵ In the past few years, business consulting firms have given lenders essentially the same advice. For example, in 1997 Fair, Isaac & Co. released a bankruptcy predictor program that it claimed could eliminate 54 percent of bankruptcy losses by screening potential nonpayers from the bottom 10 percent of credit card holders. Available at www.fairisaac.com. "Credit Cards: Fight for Bankruptcy Law Reform Masks Truth," *American Banker* 162 (September 8, 1997): 30.

⁵⁶ A dozen years later, his view had clearly become part of the conventional wisdom among credit card insiders. Industry analysts routinely explain how hard it is "to differentiate between customers who are the most profitable from those most likely to file for bankruptcy. . . . These customers' accounts often look exactly the same." "Bankruptcy Losses on Cards," *Nilson Report* 779 (January 2003): 6.

Citibank understood the new economics of consumer credit. Credit card issuers make their profits from lending lots of money and charging hefty fees to families that are financially strapped. More than 75 percent of credit card profits come from people who make those low, minimum monthly payments.⁵⁷ And who makes minimum monthly payments at 26 percent interest? Who pays late fees, overbalance charges, and cash advance premiums? Families that can barely make ends meet, households precariously balanced between financial survival and complete collapse. These are the families that are singled out by the lending industry, barraged with special offers, personalized advertisements, and home phone calls, all with one objective in mind: *get them to borrow more money.*

After he suffered a heart attack, missed several months' work, and fell behind on his mortgage, Jamal Dupree (from chapter 4) got the hard sell from his mortgage lender. When Jamal missed a payment, the mortgage company sent him dozens of personalized letters with a single goal—to persuade him to take out yet another mortgage. “They’d send out a notice, saying ‘you need a vacation, take out this thousand dollars and pay it back in ninety days.’ If you didn’t pay it back in ninety days, they charged you 22 percent interest.” When he didn’t respond to the mailers, the mortgage company started calling Jamal at home, as often as four times a week. Again, the company wasn’t calling to collect the payments he had already missed; it was calling to sign him up for even more debt. Jamal resisted, but his mortgage lender didn’t let up. “When I turned them down, they called my wife [at work], trying to get her to talk me into it.”

The strategy used by today’s lenders exactly reverses the approach bankers used a generation ago when their main goal was to be repaid on time, not to string along the payments for as long as possible.⁵⁸ Herring Hardware may have collected most of its debts—even during the Great Depression—but its lending policies were radically different from those embraced by today’s major lenders. Unlike today’s megabanks, Herring Hardware *stopped* making loans when a family got in trouble. Grandfather Herring would never have dreamed of sending a flyer in the mail cheerfully suggesting, “Fred, you’re behind on your payments for the fertilizer. Can we lend you the money for a new cookstove?” Nor would the local bank have suggested a second mortgage to the family that had just missed a payment on its first mortgage.

⁵⁷ David S. Evans and Richard L. Schmalensee, *The Economics of the Payment Card Industry* (Cambridge, MA: National Economic Research Associates, 1993). Banks are “fighting back” against borrowers who pay off their loans early by charging these customers more money. Teresa Dixon Murray, “Being Good Can Be Bad in Borrowing: Banks Hit Early Payers,” *Plain Dealer*, May 6, 2001. Beneficial National Bank of Delaware canceled the MasterCards of 12,000 customers who paid their bills in full; they are expected to cancel another 30,000 customers soon. Other lenders, such as NationsBank and GE Rewards MasterCard, have imposed fees or canceled cards for customers who pay their bills in full. Bruce Mohl, “The Careful Debtor Loses Credit at BJ’s,” *Boston Globe*, September 25, 1997. A Federal Judge recently struck down a California law that required card issuers to warn cardholders how long it would take for them to pay off their debt if they only made their minimum payments. “Federal Judge Strikes Down California Card Law,” *CardLine*, December 27, 2002.

⁵⁸ For a discussion of consumer credit during the 1920s and 1930s, see Lendol Calder, *Financing the American Dream* (Princeton, NJ: Princeton University Press, 1999): 156–208, 262–290. Calder reports, “The 1930s were prosperous years for consumer credit agencies. They prospered not by lending to the

There is another important difference. When families arranged credit in my grandfather's store, he charged them a simple 1 percent per month. Neither he nor the bank had any penalty fees or shifting rates of interest. When someone missed a payment, the rate was still 1 percent a month. Today, that practice has disappeared. Like Jamal's mortgage lender, many banks routinely double or even triple the interest rate the moment someone is a few days late with a payment. Then there are the fees. This year credit card companies will charge more than \$7 billion in late fees (quadruple what they charged less than ten years ago)—a penalty unheard of in my grandfather's day.⁵⁹ Moreover, when my grandfather got a check in the mail, he applied it to the principal balance on the loan; he wouldn't have dreamed of telling those families that with compounded interest at the new rates and special overbalance fees and late-payment penalties, they now owed \$4,000 for their original \$800 purchase.

Repo Man in the Suburbs

In an era when lenders routinely target the almost-bankrupt for extra loans, how do they ensure that they will get their money back? Corporate lenders don't have "Jimmy the finger-breaker" on retainer, but they do have thousands of trained professionals who do nothing but hound families for money.⁶⁰ Most of the time, these agents make their living by calling families at home, reminding them that they are late on their bills and pressing them to make a payment. (Or, in the case of Jamal Dupree, urging them to take on a second loan to pay off the first.) But when a simple request isn't enough, they, too, use tougher tactics.

unemployed and destitute, but by expanding services to people who were fortunate enough to hold on to their jobs" (p. 292).

⁵⁹ Between 1996 and 2001, total late fee revenues generated to bank credit card issuers increased from \$1.7 billion to \$7.3 billion. "Late Fee Bug," in *Cardweb.com*, May 17, 2002. Available at <http://www.cardweb.com/cardtrak/news/2002/may/17a.html> [1/28/2003]. The average credit card late fee increased from \$11.60 in February 1994 to \$30.04 in November 2002. "Late Fees Slow," in *Cardweb.com*, December 11, 2002. Available at <http://www.cardweb.com/cardtrak/news/2002/december/11a.html> [1/28/2003].

⁶⁰ Revenues of the top 100 contingent collections agencies grew from \$1.7 billion in 1995 to \$4.2 billion in 2000. Mike Ginsberg, "State of the Collection Industry," Powerpoint presentation of the Kaulkin Ginsberg Company, March 19, 2001. Available at http://www.kaulkin.com/pptfiles/1-the_state_of_the_collection_industry.ppt [1/28/2003]. For additional industry statistics, see Association of Credit and Collection Professionals, "Collection Facts," in *AcaInternational.org*, November 15, 2002. Available at <http://www.acainternational.org/intcontent.aspx?via=pn&cid=1362&sid=1> [1/28/2003].

Sears, America's fourth-largest retail chain, got caught threatening to nab a battery from a Massachusetts family's car unless the family promised to send Sears some money—money that the family no longer owed.⁶¹ This was in clear violation of the law.⁶² The family had filed for bankruptcy protection, so Sears was legally barred from further collection efforts. Aside from that, it is reasonable to wonder: What could Sears possibly want with a used car battery? Or with the used dehumidifiers, mattresses, and Walkmans the company had threatened to take back from thousands of other families?⁶³ Sears was not in the business of selling used household goods. And it would have cost the company several hundred dollars to hire a repo man and send a truck to someone's door—far more than a used Walkman or car battery would be worth.⁶⁴ Sears almost certainly didn't want those goods; the company wanted the money people would pay to keep the Sears repo man away. The company probably hoped that some families were unaware of their legal rights, and that if they were frightened enough, they just might keep making payments on old bills, even after those bills had been discharged in bankruptcy. FBI Special Agent in Charge Barry Mawn described the Sears case as an example of "Corporate America blindly [pursuing] profitability over its obligation to treat the consuming public with fairness and honesty."⁶⁵

⁶¹ *In re Francis Michael Latanowich*, 207 B.R. 326 (Bankr. D. Mass. 1997).

⁶² Professor Jay Westbrook remarked, "Sears looked the bankruptcy laws straight in the eye and defied them"—to the tune of \$160 million. Barnaby J. Feder, "Bankrupt See Sears' Strong-Arm Side: Heavy-Handed Debt Collection," *Austin American-Statesman*, July 22, 1997. Sears conceded as much, agreeing to pay a \$60 million criminal fine and additional restitution pegged at \$600 million.

⁶³ United States Trustee's Response Regarding Reaffirmation Agreements Between Debtors and Sears, Roebuck & Company, *In re Francis Michael Latanowich*, 207 B.R. 326 (Bankr. D. Mass. 1997) (No. 95-18280-CJK).

⁶⁴ We spoke with Millard Land, president and CEO of Adjuster's Inc., a Texas-based repossession, collateral collection and investigations agency, and a member of the Board of Directors and Grievance Chairman for Time Finance Adjusters. He told us that his firm typically charges \$350–\$400 to repossess a small item such as a television set, and \$400–\$500 to repossess something larger, such as furniture. He also said that in his experience, it is virtually unheard of to repossess personal goods, such as clothing and car batteries. These costs would far exceed the amount Sears could recoup in selling many of these goods. For example, Sears sells brand-new Walkmans for \$29.99–\$49.99 and new car batteries for \$39.99–\$99.99. Sears, "Automotive: Batteries" and "Electronics: Personal Radios and Cassettes" at Sears.com (2003).

⁶⁵ Quoted by Susan Chandler, "Stuck in the Middle," *Chicago Tribune*, August 20, 2000, C1.

And Sears was not alone: AT&T, General Electric Credit, Federated Department Stores (owner of Macy's), J.C. Penney, Circuit City, Tandy (owner of Radio Shack), and General Motors also paid multimillion dollar fines for making collection threats against families whose debts had been forgiven in the bankruptcy courts.⁶⁶ But these companies were punished for pursuing families that were under the protection of the bankruptcy courts, not for aggressive collection tactics per se. Indeed, many aggressive collection tactics are perfectly legal. For example, Sears, unlike J.C. Penney, issues credit cards that add some special touches in the fine print. Whenever a customer purchases something on a Sears card, the goods become collateral against the loan. That means that Sears is within its legal rights to repossess (or to threaten to repossess) everything the family bought with the card if it falls behind on its bills. Even when those threats are patently absurd.

Consider, for example, a conversation we had with "Sally," a former Sears collection agent in the Boston area. Sally's job was to call families that had fallen behind and to pressure them to pay up. One incident particularly stood out in Sally's memory. When another Sears agent threatened to repossess a mattress from a woman who was delinquent on her payments, the customer in question stuck to her guns. "You will not. It isn't worth anything. Besides, you can't even sell a used mattress. It's not legal."⁶⁷ Sally's coworker was quick on her feet. "We'll come and get it because we can. And then, *we'll set it on fire and burn it up*. It won't give us anything, but you won't have it either." The woman caved in and sent Sears a check for \$50. According to Sally, the story was widely told and retold in her department and praised by the department manager as an example of "real initiative." Since we only have Sally's word, we can't confirm the facts of her account, but it is a matter of public record that Sears has threatened to repossess used mattresses from other families.⁶⁸

⁶⁶ Kate Griffin, "How Hard Is Too Hard?" *Credit Card Management* (December 1997), pp. 26–30 (discussing AT&T practices); "GE to Pay \$100 Million Settlement," *AP Online*, January 22, 1999; "Stores Chain Settles Cases on Bankruptcy Violations," *Fulton County Daily Report*, February 25, 1998 (reporting Federated Department Stores' \$11.3 million settlement covering twenty states); "May Stores Settles Suit over Collection Tactics, Will Pay \$22 Million," *Wall Street Journal*, November 3, 1998; "Card Notes: Another Retailer Settles Reaffirmation Suit," *Credit Card News*, December 1, 1998 (detailing a Circuit City subsidiary's agreement to pay \$6 million to an estimated 11,000 customers); Lynn Arditi, "Bankrupt Credit-Card Holders to Be Reimbursed by JCPenney," *Providence Journal-Bulletin*, December 10, 1998 (discussing the company's \$11.7 million settlement spanning forty-two states and covering 11,000 consumers). After this rapid-fire round of settlements, a few court opinions put an end to the reaffirmation suit frenzy, declaring that there was no private right of action available to debtors in these situations. See William L. Stern, "The End of 'Re-Aff' Class Actions," *Consumer Bankruptcy News*, March 6, 2001. Not all of these companies threatened to seize families' goods. Some sent bills, made collection calls, or threatened to take people to court—all in violation of federal law. See, e.g., Bruce Mohl, "Federated, 20 States in \$10m Settlement," *Boston Globe*, February 18, 1998.

⁶⁷ According to the Federal Trade Commission, in most states, used mattresses can be resold as long as they meet certain labeling and processing requirements. U.S. Federal Trade Commission, "Consumers Can 'Rest Easy' Following FTC Settlements with Two Used Mattress Resellers," news release, June 14, 2000. Available at <http://www.ftc.gov/opa/2000/06/mattress2.htm> [3/6/2003]. However, we have no evidence that Sears is in the used mattress processing business. So, even though the woman was incorrect about the law of mattress sales, it was certainly reasonable to be skeptical of Sears' intent to repossess.

⁶⁸ United States Trustee's Response Regarding Reaffirmation Agreements Between Debtors and Sears, Roebuck & Company, *In re Francis Michael Latanowich*, 207 B.R. 326 (Bankr. D. Mass. 1997) (No. 95-18280-CJK).

Sally's real expertise wasn't collecting from the living. She spent most of her days collecting from the dead—or at least the family members of the dead. When a person dies, only a cosigner on the account is liable for the bill. If no one has cosigned, the store can repossess the goods (if the original contract permitted this) or collect from the estate of the deceased, but they cannot hold other family members liable for the debt. The company is not, however, prohibited from *trying* to collect from the family. So Sally's job was to call the adult children or grieving widows of customers who had died leaving an outstanding bill. She typically started a call with something gentle and confidential. "Mabel was a longtime member of the Sears family, and we're sure she would have wanted her bills to be paid." Sally then read from a list of purchases Mabel had made on her Sears card, inserting some personal comments. "I see she bought eyeglasses. And some baby clothes—I love those sweet little sweaters and matching caps, don't you?" If the soft sell didn't work, Sally would turn up the heat, threatening to send a collection agent who would plow through the deceased's closets and drawers and "take back what belonged to Sears." If that wasn't enough, there was a final warning that must have sent many families running for the checkbook: She threatened to reclaim every gift ever purchased on the Sears card. Again, the claim seems ridiculous; how would a Sears agent ever figure out that Mabel had given the frilly dress to her grandniece in Detroit, while the had gone to a great-grandson in Denver? But these threats were put to grieving family members who had just lost a loved one, not to battle-hardened debt-dodgers who were primed to defend themselves. Not surprisingly, Sally said that most families paid.

We remind the reader that we have only Sally's word to go on. It is possible that she wasn't telling the whole truth or that she had an ax to grind. But a statement by former Sears CEO Arthur C. Martinez is certainly in keeping with Sally's story. He explained the company's aggressive debt collection practices this way: "We have an old-fashioned view. People should pay for what they take."⁶⁹ As he touted that "old-fashioned view" of debt, Mr. Martinez seemed oddly blind to the fact that Sears is no longer an "old-fashioned" merchant. At the time Mr. Martinez made his statement, Sears reportedly earned *more* money from the interest and late fees the company charged its credit cardholders than it earned from selling merchandise.⁷⁰ In other words, Sears kept all those stores open and sold all those Lady Kenmore washing machines and Craftsman tools in the hope that its customers would buy on credit and pay over time. Merchants like my grandfather used to offer credit as a way to increase store purchases. For stores like Sears, that formula has been turned upside-down: Store purchases have become a way to increase credit card debt. That's not "old-fashioned" at all; indeed, it is possible only in the new world of uncapped interest rates and deregulated lending.

⁶⁹ Barnaby J. Feder, "Spending It: The Harder Side of Sears," *New York Times*, July 20, 1997.

⁷⁰ David Snyder, "Is Sears a Bank Or a Retailer? It Must Come Clean on Credit," *Crain's Chicago Business*, November 3, 1997. Since that time, Sears has substantially expanded its credit card operations, launching a MasterCard that can be used outside the store. Today it is the third largest MasterCard issuer in the world. Joe Hallinan and Amy Merrick, "Credit Cards Swipe Sears Profits," *Wall Street Journal*, February 11, 2003.

A Problem That Can Be Solved

The problems posed by families deep in debt may seem intractable, or at least so deeply embedded that only a complex, expensive array of regulations and laws could turn things around. But this is one problem that isn't so hard to solve. The consumer-credit monster could be beaten back if Congress would enact a simple provision into law—a provision that wouldn't require the creation of vast new oversight committees or contentious battles in the Supreme Court. Congress could simply revive the usury laws that served this country since the American Revolution. Federal law could be amended to close the loopholes that let one state override the lending rules of another.⁷¹ Alternatively, Congress could impose a uniform rate to apply across the country. Such a provision would enable the states or the federal government to reimpose meaningful limits on interest rates.

Consumer lenders balk at the notion of reregulation, immediately claiming that tighter limits on interest rates would put America at risk for another banking disaster like the Savings and Loan (S&L) crisis of the late 1970s. Hemmed in by high inflation rates and low limits on interest rates, the Savings and Loans (which issued most home mortgages) found themselves hemorrhaging money.⁷² But the real problem was inflation, not usury rates per se, which had worked reasonably well for centuries. At the time, usury laws in most states were fixed at a specific number, and they hadn't been written with double-digit inflation in mind. But that would be an easy problem to solve. To avoid a repeat of the S&L crisis, all that is needed is to tie the limit on interest rates to the inflation rate or the prime rate (which changes with inflation) so that the two never get too far out of sync. (To keep a check on fees, points, and all the other hidden charges, these costs should be included in the interest calculations up front.) That way, mortgage and credit card interest rates would be higher when inflation is rampant, but they would come right back down when the inflation monster is tamed. The ceiling on interest rates would float up and down, but it would always be tethered to the lender's cost of funds. That way, lenders would always be able to lend profitably, *and* consumers would always be protected from unreasonable rates.

The beauty of this approach is that it would help families get out of debt *without costing taxpayers a dime*. How would it work? By harnessing the energy of the marketplace. Lenders themselves would transform mortgage and credit card practices just by acting in their own best interest. Since they would no longer be allowed to charge exorbitant interest rates to families with marginal credit records, it would become unprofitable for lenders to pursue families in financial trouble. Instead, banks would once again have a reason to screen potential borrowers carefully, making loans only to those who really can afford to repay.

⁷¹ Today many states have technical usury laws on the books, but in many cases the caps are so high that they provide little protection. Because out-of-state lenders can evade those laws, local lenders have pressed state legislatures to raise usury caps so that they are not put at a competitive disadvantage. Moreover, even if a state keeps its rates low, that provides little protection for its residents, since out-of-state lenders simply override local laws by incorporating in other states and marketing higher rate loans across state borders.

⁷² Jerry W. Markham, *A Financial History of the United States*, volume 3, *From the Age of Derivatives into the New Millennium (1970–2001)* (Armonk, NY: M. E. Sharpe, 2002), pp. 73–74.

We hear the antiregulation camp clear their throats, ready to explain why regulating the credit industry (or any other industry, for that matter) is a bad idea. On the surface, their logic sounds convincing. A deregulated market reduces costs and provides more choices for home buyers and credit card holders, so consumers should win out—eventually. Besides, as federal judge Edith Jones wrote, “Nobody is holding a gun to consumers’ heads and forcing them to send in credit card applications.”⁷³ People always have the option of walking away from an overpriced mortgage offer or an outrageous credit card offer.

But this argument rests on one very important supposition—a well-functioning market for credit. Any honest economist will explain that markets work efficiently only when there is a level playing field, when consumers have full information about the costs and risks associated with whatever they are purchasing. The evidence is strong that the lending playing field is anything but level. After all, if the market were working properly, how could Citibank sell 40 percent of its high-priced subprime mortgages to families with good credit who would have qualified for low-cost mortgages? How could the company’s loan officers get away with charging extra fees to anyone who “appeared uneducated”? And why would low-income whites get better terms on their mortgages than high-income African Americans? A perfect market free to operate without government interference certainly sounds good, but it is little more than a fantasy held up to distract policymakers while lenders rake in profits from those who never quite figure out the terms in fine print.

The argument for reregulation of consumer lending is a lot like the argument for regulating any other useful but potentially dangerous product. Consider the toaster. People buy toasters for home use. No one makes them buy toasters, and they could live without toasters. If they understood electrical engineering, they could evaluate the safety of each toaster under every possible scenario. But toasters are regulated. No toaster manufacturer may peddle toasters that have even a 1 percent chance of catching fire. Toaster makers (and conservative economists) could point out that riskier toasters could be made more cheaply, and that permitting their sale would expand the number of toaster owners in the country. Companies might put special disclaimers and instructions on their toasters, telling customers how to extinguish the fires themselves. But as a nation, we have collectively decided that the risks posed by an unregulated toaster industry are not acceptable.

The government regulates the sale of millions of products—everything from children’s pajamas to aspirin to automobiles—to protect consumers from the risks of substantial injury. For most of America’s history, loans to consumers fell squarely within that definition. Interest rates and other terms were carefully limited by state legislatures and patrolled, when necessary, by state attorneys general. Predatory loans may not set houses on fire the way a faulty toaster might, but they steal people’s homes all the same. America has had more than twenty years to observe the effects of a deregulated lending industry, and the evidence is overwhelming. It is time to call the experiment a failure.

⁷³ See Jones and Zywicki, “It’s Time for Means-Testing.”

Reregulation would help solve a litany of evils. The most important is worth its own headline: Limiting interest rates would halt the rapid rise in home foreclosures. With a lower ceiling on interest rates, lenders would lead the charge to reestablish an appropriate match between family income and mortgage size, which would have the effect of reducing the mass of families that are sucked into mortgages they have no hope of paying. Minority communities would no longer find themselves stripped of wealth by predatory subprime lenders. And homeowners would no longer be suckered into second and third mortgages that promise to lower their monthly bills but that actually rob them of the family home.

Interest rate regulation would also take the ammunition out of the middle-class bidding war, helping to save families from the Two-Income Trap. Competition for the best neighborhoods would continue, but if *no one* could get a mortgage that ate up 40 or 50 percent of the family's entire income, then home prices would begin to settle down to Earth. To many economists, this is a scandalous notion, involving a reduction in Americans' "net worth." But that net worth isn't worth anything unless a family plans to sell its home and live in a cave, because the next house the family buys would carry a similarly outrageous price tag. Some families with weaker credit histories or more modest incomes might find themselves limited to smaller houses, but they would also be far less likely to end up in a home that drove them into the bankruptcy courts. Moreover, as housing prices leveled off, more families would be able to afford a home *without* having to resort to a subprime mortgage. Reregulation of interest rates would bring relief to *all* families, not just those already in serious trouble.

Families would also be far less likely to get into trouble with their credit cards. With appropriate limits on interest rates, banks would still be able to issue credit cards profitably, and consumers would still have access to those convenient plastic cards. But banks would have far greater incentive to screen cardholders, offering only as much credit as each family could repay. Moreover, there would be no incentive to single out families in financial trouble, tempting them at the moment when they are most vulnerable with special offers of extra credit at exorbitant rates. Banks would have no reason to scour credit records looking for homeowners in trouble, offering to "solve" their credit problems by putting their homes at risk through second or third mortgages.

Limits on interest rates would reverse another disturbing trend—the transfer of wealth away from lower- and middle-income families. Since 1970, banking profits (inflation-adjusted) have more than tripled, growing by more than *\$50 billion*.⁷⁴ Those profits weren't the rewards for important innovations. Lenders didn't invent a faster computer, design a better car, or make a great new movie that everyone wanted to see. (Indeed, many would argue that the quality of banking service actually declined during this period.) No, they sold pretty much the same thing they always had—debt. The difference was that they sold more of it, and they charged higher prices.

⁷⁴ Federal Deposit Insurance Corporation (FDIC), Historical Statistics on Banking, Commercial Bank Reports, Table CB04, Net Income, FDIC-Insured Commercial Banks (Washington, DC, July 18, 2002). Available at <http://www2.fdic.gov/hsob/> [3/20/2003].

A modest example illustrates what is happening to American families. Credit card companies basically have three costs: marketing costs, collection costs, and the cost to borrow the money they will re-lend to consumers. The Federal Reserve lowered interest rates nine times in 2001, which meant that credit card companies' cost of borrowing fell considerably. Even so, they held steady the rates they charged most of their cardholders. The result? A \$10 billion dollar windfall for credit card companies.⁷⁵ Nothing had changed in the way these companies did business; their marketing costs stayed the same, their collection costs stayed the same, and their products stayed the same. The only difference was that their already-high profits jumped by an *additional* \$10 billion. That \$10 billion was paid by families across the country—\$10 billion that might have paid for medical bills or college tuition, school shoes or car repairs—or even paid down the balances on outstanding loans. In a single year, \$10 billion extra dollars disappeared from families' wallets and reappeared on the balance sheets of a handful of corporate lenders. Families got nothing in return; they paid out dollars that, if interest rates had been regulated, would have belonged to them.

Regulation would also eliminate the worst abuses of a lending industry run amok. Payday lenders would no longer target minority neighborhoods with short-term loans at interest rates of 100, 500, and even 1,000 percent—rates that would make any mobster drool.⁷⁶ The more subtle forms of loan sharking would also disappear, so that when families managed to get into trouble with credit card debt, lenders would no longer be able to prey on their desperation by doubling the interest rates and piling on the late fees that turn their debts into financial quicksand.

What about families' access to credit? Deregulation of the mortgage lending industry was not a right-wing conspiracy; it was actually supported by most Democrats, as well.⁷⁷ Many liberals got behind the move for traditionally liberal reasons: they wanted to defend lower-income families. They had been persuaded that the risks posed by overaggressive lenders might not be as dangerous as once was thought. A deregulated lending market could even prove to be a critical tool to help low-income and disadvantaged groups improve their lot. After all, working-class families needed credit to start businesses, to build homes, and to send their kids to college—things that upper-income families had long had plenty of opportunities to do.

⁷⁵ The nine interest rate cuts by the Federal Reserve in 2001 did not affect most fixed-rate cards and had only modest effects on variable-rate cards. Cecily Fraser, "A \$10 Billion Windfall: Credit Card Lenders Don't Pass on Full Interest-Rate Cuts," *CBS MarketWatch.com*, October 3, 2001. Available at <http://www.cbs.marketwatch.com> [2/2/2003].

⁷⁶ Interest on so-called payday loans can be in the 300–1,000 percent range. FDIC, *Payday Lending FYI: An Update on Emerging Issues in Bankruptcy* (January 29, 2003).

⁷⁷ Mansfield, "The Road to Subprime 'HEL'," pp. 492–495. The initial Depository Institutions and Monetary Control Act (DIDMCA), which allowed banks to pay higher interest to depositors and preempted state usury laws, passed the House on September 11, 1979, by a vote of 367 to 39, and passed the Senate on November 1, 1979, by a vote of 76 to 9. U.S. Library of Congress, *Bill Summary and Status for the 96th Congress: H.R. 4986*, Thomas Legislative Information on the Internet (1995). Available at <http://thomas.loc.gov> [3/3/2003].

Moreover, there was a growing body of evidence that even though it was illegal, overt discrimination and “redlining”—the practice by which mortgage lenders refused to lend in certain neighborhoods—was crippling housing markets in minority neighborhoods and denying low- and moderate-income families the chance to build wealth through home ownership. The new solution was to “democratize credit”—make credit available to anyone and everyone, no matter how poor.⁷⁸ The prediction was for a more perfect world in which home ownership rates would go up, a sluggish economy would begin to boom, and cities would blossom—all thanks to the free flow of credit.

Obviously, that perfect world didn’t come to pass. But politicians may still worry: If America turns back the clock on lending regulation, what will happen to the home-ownership rate? After all, every time anyone talks about putting restrictions on interest rates, the industry puts up one of those heart-warming advertisements that show a family with two kids and a dog moving into their first home. But the hard numbers belie those happy ads. Reregulation of interest rates would have very little effect on home-ownership rates.⁷⁹ Since the mortgage industry was deregulated in 1980, the proportion of families owning their own homes has increased by less than 3 percentage points.⁸⁰ Plenty of factors have contributed to these modest overall gains, such as a long-running economic boom, the aging of the population, and a falling inflation rate—and those factors won’t be affected by changes to mortgage regulations. Moreover, since most high-interest subprime mortgages are used for refinancing, not for families trying to buy their first homes, outlawing those mortgages should have little effect on the number of first-time home buyers. In fact, if fewer families were pushed out of their homes by creditors intent on raking in profits through loan-to-own scams and predatory practices, the overall number of homeowners in America might be higher.

⁷⁸ Progressive reformers actually made the first major campaign to “democratize credit” in the early twentieth century. Calder, *Financing the American Dream*, pp. 124–155.

⁷⁹ Even the most aggressive advocates of expanding home ownership rates in America are beginning to call for reregulation of the mortgage market, recognizing that the impact on the number of families buying homes is likely to be small. National Training and Information Center, *The Devil’s in the Details: An Analysis of Federal Housing Administration Default Concentration and Lender Performance in 20 U.S. Cities* (Chicago: NTIC, October 1997). See also National Training and Information Center, *Preying on Neighborhoods: Subprime Mortgage Lending and Chicagoland Foreclosures* (Chicago: NTIC, September 21, 1999).

⁸⁰ HUD, Office of Policy Development and Research, *U.S. Housing Market Conditions, Historical Data*, 3rd Quarter, 2002 (November 2002), Table 27, Homeownership Rates by Age of Householder, 1982–Present. Available at <http://www.huduser.org/periodicals/ushmc/fall02/histdat27.htm> [2/18/2003].

What about the “democratization of credit” for which activists fought so hard? If interest rates are regulated once again, will credit become undemocratic, available only to those with realistic prospects for repayment? To answer this, it is time to step back a moment. The original intent of the credit democratization movement was for credit to help more families become more financially independent. Credit was not supposed to be an end in itself. But it seems that the original intent has been forgotten. Consider, for example, the motto of one prominent advocacy group: “Access to credit and capital is a basic civil right.”⁸¹ Is it a civil right to pay interest on a credit card balance for the rest of a person’s natural life? A family that finances its home with a subprime mortgage can end up paying twice as much for that home as a family that gets the market rate. Is it really a basic civil right to pay double for a home? And foreclosure rates are skyrocketing. Is it a civil right to lose that home in a sheriff’s auction? The dream of democratization of credit was to use credit as a vehicle to expand home ownership, to launch businesses, and ultimately to help build wealth in neighborhoods that are short on it. The point was not to bombard families with more credit than they could possibly afford or to flood the market with complicated loans that only a CPA could understand.

But the mantra of expanding access to credit has been hard for consumer activists and politicians to abandon. As a result, reform efforts have fragmented into a patchwork of measures intended to curb “predatory” lending practices. The problem is that no one can agree on how to define “predatory” lending.⁸² As the *Economist* dryly observes: “As with pornography, consumer activists and legislators say they know predatory lending when they see it.”⁸³ The National Housing Institute defines predatory lending as “any unfair credit practice that harms the borrower or supports a credit system that promotes inequality and poverty.”⁸⁴ But what constitutes “unfair”? And who decides whether a system is promoting inequality or poverty?

⁸¹ National Community Reinvestment Corporation, “About Us,” in NCRC.org (2002). Available at <http://www.ncrc.org/about/aboutindex.html> [2/2/2003]. (The organization’s primary mission is “to increase the flow of private capital into traditionally underserved communities.”)

⁸² “Federal Regulators Drop Subprime Proposal,” *CardLine* 3, no. 2 (January 10, 2003): 1.

⁸³ *Economist*, “Hunting the Loan Sharks,” August 31, 2002.

⁸⁴ Jeanette Bradley and Peter Skillern, “Predatory Lending: Subprime Lenders Trick Homeowners into Expensive Loans,” in the National Housing Institute’s, *Shelter Force Online*, no. 109, January/February 2000.

Attempting to stamp out “predatory” and “unfair” practices is certainly better than ignoring them, but it puts legislators in the position of trying to uncover the latest shenanigans and redefine abuses, always two steps behind the lenders who keep changing their products to sidestep regulations.⁸⁵ It also gives far too much room for lenders to circumvent the intent of the law. For example, the New York State Banking Department recently banned “unaffordable loans,” except “under compelling circumstances.”⁸⁶ We suspect that any crafty loan marketer could dream up some “compelling circumstances” that would permit a lender to sell overpriced loans. The only way to stop predatory lending once and for all is to go directly to the heart of the loan—the interest rate. Limiting the amount of interest that creditors can charge avoids the hide-and-seek game over what is and what is not “predatory,” offering instead a simple, effective means of regulation.

In order to achieve the real dream of “credit democratization,” it is time to recognize, once and for all, that families are *not* better off getting credit at double, triple, or even ten times the market rate. If a family does not have the income to qualify for a loan at a reasonable rate, *then they should not get that loan*. It does no one any favors to impose a modern-day debtor’s prison on hard-working families. They would be better off renting an apartment and putting whatever extra money they have into savings accounts rather than paying double the market rate for a mortgage. If the private market cannot meet the needs of all communities, then it may be necessary for the government to step in to provide alternative sources of credit.⁸⁷ The point worth emphasizing is that overpriced credit is no solution. Getting robbed to buy a home or to get a cash advance is still getting robbed, and it should be illegal.

Deafening Silence

If America’s crippling addiction to debt could be shaken off with a simple regulatory change, what are the politicians doing about it? The answer, quite simply, is nothing.

⁸⁵ To be fair, efforts to regulate predation are better than nothing. After North Carolina enacted some limits on predatory lending, at least one subprime lender left the state’s markets entirely and headed for easier pickings in other states. See Noel C. Paul, “Homeownership Can Be Short-lived in Inner Cities,” *Christian Science Monitor*, May 1, 2001.

⁸⁶ See Hevesi, “A Wider Loan Pool.”

⁸⁷ There have been numerous private efforts to bring lower-cost capital to underserved communities. See, for example, Woodstock Institute, *Doing Well While Doing Good*, Reinvestment Alert Number 18 (Chicago: Woodstock Institute, September 2002). Available at <http://www.woodstockinst.org/alert18.pdf> [3/22/03].

As the number of mortgage foreclosures skyrockets, as credit card debt soars, as the lines at the bankruptcy courthouse stretch out into the street and around the block, all we hear from Washington is the sound of silence. There has been no serious progress on any proposal to rein in predatory lending: no measure to control credit card fees, no proposal to ban creditors from trying to collect from a dead person's brothers and sisters, and certainly no bill to bring back meaningful limits on interest rates. The national political parties have found time to take positions on the speed of the Internet, ergonomic standards in the workplace, and regional restrictions on dairy products, but they have claimed no position on the financial issues that profoundly affect millions of middle-class families.⁸⁸

There is, however, one notable exception to all that inaction. Congress has paid attention to one troubling statistic—the rapidly growing number of families filing for bankruptcy. High interest rates and aggressive marketing of complicated debt products echo through the bankruptcy statistics, as record numbers of families seek refuge in the bankruptcy courts after getting in over their heads with too much easy credit at exorbitant interest rates.⁸⁹ In 1994, Congress created a bipartisan commission to study the issue. The group's charter was relatively straightforward: to investigate why so many families were in trouble and to develop recommendations to improve the situation. I (Elizabeth) was named Senior Adviser to the Bankruptcy Commission.

Three years later, the commission delivered its report to Congress. The 1,100-page document detailed why so many families were in trouble (job losses, medical problems, and divorce) and identified certain lending practices that put families at particular risk. More important, it reaffirmed that the bankruptcy laws were, for the most part, working as Congress had originally intended: to offer families a fresh start in the wake of financial and personal disaster. It concluded with recommendations for modest legislative changes that were designed to curb abuses by both borrowers and lenders.⁹⁰

⁸⁸ Democratic National Committee, *The 2000 Democratic Party Platform: Prosperity, Progress, and Peace* (Washington, DC: DNC, 2000). Available at <http://www.democrats.org/about/2000platform.html> [2/2/2003]. Republican National Committee, *Republican Platform 2000: Renewing America's Purpose, Together* (Washington, DC: RNC, 2000). Available at <http://www.rnc.org/gopinfo.platform> [2/2/2003].

⁸⁹ See Ellis, "The Effect of Consumer Interest Rate Deregulation."

⁹⁰ National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years. Final Report* (Washington, DC, 1997): 77–95 (NBRC Report). For the reasons families file for bankruptcy, see p. ii. The Commission recommended, for example, that the practice of permitting credit card companies to pressure families to agree to repay debts discharged in bankruptcy should be outlawed. Recommendation 1.2.1. It also recommended that unlimited homestead exemptions should be capped at \$100,000, which would prevent wealthier families from shielding their assets in an expensive home. Recommendation 1.2.2.

But the Congressional Bankruptcy Commission was not to have the final word. While the commission was busy gathering facts, holding hearings, and analyzing current practices, another group also went to work, advancing a very different perspective. The “National Consumer Bankruptcy Coalition” (NCBC), the clever moniker of the banking industry lobby, was pushing its own agenda.⁹¹ The major banks had hit on a new strategy to reduce their bankruptcy losses. Rather than stop lending to families in financial trouble (as Elizabeth had counseled Citibank), they had a simpler and more profitable solution—restrict the rights of consumers to file for bankruptcy.

If fewer people could turn to bankruptcy for relief, more families would be subject to collection efforts from banks—and every other creditor—forever. Those families might never pay off their bills in full, but they would continue to rack up the interest and penalties, and at least a few would make some small payment every month, effectively becoming lifelong profit wells for their creditors. For the rest—those who simply could not come up with the money, no matter how hard they were squeezed—the lenders might eventually write off some of those loans voluntarily. (Although one wouldn’t guess it from all the fiery rhetoric, bankruptcy filings account for just a fraction of lending industry losses; in the large majority of cases, the bank simply gets tired of trying to collect.⁹²) But if a family were not permitted to file for bankruptcy, it would be the lender, not the family in trouble, that would decide when the collection calls should stop.⁹³

And so the credit lobby drafted a new bankruptcy law. To get all the lenders on board, the coalition added changes that would give better deals for car lenders, mortgage lenders, education loan servicers, landlords, credit unions—in short, better deals for everyone except families in trouble. The credit industry moved fast, persuading two friendly congressmen to introduce their bill in September 1997, a month before the official Bankruptcy Commission was scheduled to release its report.⁹⁴ From then on, all eyes were on what Hillary Clinton would eventually dub “that awful bill.”

⁹¹ For additional background on this organization, see, e.g., Steve Cocheo, “In Debt and Loving It,” *ABA Banking Journal*; “The Curtain Rises on the Latest Bankruptcy Drama,” *Credit Card News* (December 15, 1996).

⁹² Industry analysts estimate that about 31 percent of credit card chargeoffs are listed in bankruptcy, while the remaining 69 percent are simply written off as unpayable even if the family never files for bankruptcy. “Bankruptcy Losses on Cards,” *Nilson Report* 779 (January 2003): 6.

⁹³ The bankruptcy lobby group and the supporters of the current bankruptcy bill readily acknowledge that their goal is to reduce the number of families eligible to file for bankruptcy. See, for example, testimony of longtime credit industry lobbyist George J. Wallace, Subcommittee on Administrative and Commercial Law of the Committee on the Judiciary, House of Representatives (March 4, 2003). They do not, however, point out that this means that more families would end up mired in debt for the rest of their lives.

⁹⁴ “Bankruptcy Efforts ‘Worsen’ Chargeoffs,” *Card News* 12, no. 21 (October 27, 1997).

The “awful bill” was long and complex, couched in virtually unreadable prose.⁹⁵ But to a trained bankruptcy lawyer, the intent was unmistakable: to undercut virtually every protection in the bankruptcy laws. Under the proposed legislation, child support payments would no longer take precedence over all credit card debt. As a result, more single mothers would be forced to compete with professional collection agents when they needed money from their bankrupt ex-husbands. Homeowners who had fallen behind on their mortgages would be prevented from catching up on past-due house payments until they had also paid off their credit card debts, increasing the likelihood of foreclosure. Families would no longer be able to free themselves from certain unsecured debts, so they would be required to make payments (plus penalties, late fees, and interest) on some of those bills for the rest of their natural lives—even if those payments took up 100 percent of their paychecks.

To win over legislators, credit industry executives lobbied extensively and donated more than \$60 million in political contributions.⁹⁶ This was followed by a public relations strategy that would make any spin doctor proud. Instead of telling the public that the bankruptcy reform bill would improve profits for credit card companies and giant banks (not exactly the most sympathetic group), the NCBC and its supporters in Congress announced that the bill would help the American family. To quote Democratic Representative Rick Boucher: “The typical American family pays a hidden tax of \$550 each year because of . . . bankruptcies of mere convenience.”⁹⁷ The implied promise, repeated so often that it has become an article of faith, was that changing the laws would put \$550 a year in the pocket of every bill-paying American family.⁹⁸

⁹⁵ The bill morphed through multiple versions. To read it, it was necessary to hold a copy of the already lengthy bankruptcy code beside it and try to parse through the proposed changes. The final Engrossed Senate Amendment version was 222 pages long. *Bankruptcy Reform Act of 2001*, 107th Cong., 1st session, H.R. 333 (Engrossed Senate Amendment version, last updated on 7/18/2001).

⁹⁶ Common Cause, “Controversial Bankruptcy Bill Moves Forward: Creditor Interests Gave \$63 Million,” in CommonCause.org (September 19, 2002). Available at http://www.commoncause.org/moneyinpolitics/img/091902bankruptcy_study.pdf [2/12/2003].

⁹⁷ American Bankruptcy Institute, *Statements Made Upon the Introduction of the “Bankruptcy Reform Act of 1999”* (February 24, 1999). Available at <http://www.abiworld.org/legis/bills/statements2-24-99.html> [3/3/2003].

⁹⁸ For a detailed discussion of this aspect of the credit industry’s campaign to justify a change in the bankruptcy laws, including dissemination of the claim that bankruptcy costs average families, see Elizabeth Warren, “The Market for Data: The Changing Role of the Social Sciences in Changing the Law” (Fairchild Lecture), *Wisconsin Law Review* 2002 (2002): 1–43. Note that the figure was originally quoted as \$400 per family, but that later commentators inflated the figure, so that \$550 is now the figure most commonly cited. The new number has no more factual basis than the original.

Well that certainly *sounds* good; after all, who wouldn't want some extra cash? But there are a few serious problems with this claim. First, the figure is a gross exaggeration. According to the NCBC, the same banking lobby group that generated the \$550 promise, only 100,000 of the 1.5 million families who file for bankruptcy each year could afford to repay some of their debts. In other words, under the proposed bankruptcy bill, those 100,000 bankrupt families would be expected to generate \$550 for every household in America.⁹⁹ So we did the math. Suppose the laws were changed, and those 100,000 families could no longer seek protection from the bankruptcy courts, and they were forced to repay as much as they possibly could. In order to return an amount that added up to \$550 for every household in America, each one of those 100,000 bankrupt families would have to repay more than \$550,000 in a single year! In our sample of more than 2,000 bankrupt families, not one even *owed* \$550,000, let alone earned enough money to repay that amount. But even if a magic fairy somehow gave all the bankrupt families every dollar they needed to repay their debts in full, what makes anyone think the lending companies would pass that money on to consumers? Recall that the credit card industry got a \$10 billion windfall from falling interest rates in 2001 that they did not pass on to their customers. Why would this supposed \$550 per family be any different?

⁹⁹ The creditor coalition hired Ernst & Young (E&Y) to produce some numbers for their public relations campaign. E&Y initially estimated that 15 percent of the families in Chapter 7 might have the ability to pay something under the proposed legislation. Because the debtors in Chapter 13 were already paying, they were left out of the calculation. Nonetheless, the proposed bankruptcy bill would impose several new burdens on Chapter 13 filers as well. Under current legislation, for example, families are permitted to focus their available income on making up home mortgage arrearages; the proposed legislation required that credit card issuers and car lenders receive more repayments or the family would be denied access to Chapter 13 protection. A year later, E&Y lowered their estimate of potential payers to 10 percent of Chapter 7 filers. (For a review of these two studies, see U.S. Congressional Budget Office, *Personal Bankruptcy: A Literature Review*, CBO Papers [September 2000]. Available at <http://www.cbo.gov/showdoc.cfm?index=2421&sequence=0> [3/3/2003].) In 2002, 1,036,410 families filed for Chapter 7 bankruptcy. Multiplying that figure by the E&Y claim that 10 percent of them could pay something yields a total of about 103,600 families. Independent academics estimate that only 3.6 percent of those in Chapter 7 might be able to repay more under the new legislation. The lower estimate, of course, just makes the \$550 per family estimate more absurd, requiring those Chapter 7 filers to come up with over \$1.5 million apiece. Marianne B. Culhane and Michaela M. White, "Taking the New Consumer Bankruptcy Model for a Test Drive: Means Testing Real Chapter 7 Debtors," *American Bankruptcy Institute Law Review* 7 (Spring 1999): 27, 59.

Nevertheless, the combination of intense lobbying and a good cover story had its intended effect. Despite President Clinton's veto, the bankruptcy bill was reintroduced in the next session of Congress. This time, even Senator Hillary Clinton heard the Siren's song of campaign contributions. She had been in office two months when she had her chance to vote on what she had called that "awful bill." Sure, the official Bankruptcy Commission had better credentials than the banking lobby. Yes, her husband had actually appointed the Chairman of the Commission and two of the commissioners. And she clearly understood that families in trouble would be hit hardest by the proposed changes. But the Bankruptcy Commission did not make campaign contributions or have its own lobbyists, and neither do families in financial trouble. Senator Clinton had taken \$140,000 in campaign contributions from the banking industry, and she proved willing to overcome her "strong reservations about whether this bill is both balanced and responsible"¹⁰⁰ and voted in favor of "that awful bill."

Goliath Meets David

We could stop here. We could join the chorus of those who routinely bemoan the political clout of a few big businesses, and we could make the obligatory plea for effective campaign finance reform (which somehow never quite takes hold in a meaningful way, despite the clamor). But if we stopped now, we would be missing the best part of the story—the part that shows that although the banking industry may be powerful, it isn't the only voice that gets heard in Washington.

The cards were certainly stacked in favor of passing the banking industry's version of the bankruptcy bill in 2002. So who stopped the "awful bill" from becoming law? The answer may surprise the reader; it certainly surprised the credit industry and the congressional power brokers. An unlikely group of citizens organized without any help from big business, and they made sure Congress paid attention. Who were these citizens? Women.

The issue that prompted them to organize was not the financial issues in the pro-creditor bankruptcy bill, which were numerous. Nor was it concern over single mothers or women homeowners, who would have been hit particularly hard if the bill had become law. No, the issue that riled up the women's groups was abortion.

¹⁰⁰ Senator Hillary Rodham Clinton, Bankruptcy Floor Statement, July 12, 2001.

What does bankruptcy have to do with abortion? In Washington, a great deal. Over the past several years, pro-choice groups had scored significant court victories against a few prominent abortion clinic protesters by obtaining money judgments against them, only to see those victories turn to dust when the protesters declared bankruptcy and discharged their debts.¹⁰¹ In a strange twist of politics, the credit industry's version of the bankruptcy bill had been supported by Senator Charles Schumer, of New York, who had garnered strong support among women's groups for his pro-choice politics. Ever responsive to his constituents, Senator Schumer inserted a provision into the bankruptcy bill that would make it more difficult for abortion clinic protesters to discharge judgments entered against them if they were sued for their protest activities, much in the same way drunk drivers and embezzlers cannot use bankruptcy to discharge judgments against themselves. Eager to appeal to women voters, the Senate had accepted the amendment in 2001. But in 2002, when the bankruptcy bill went back to the House with the abortion amendment in it, a coalition of right-to-life representatives refused to go along. They brought the bill to a standstill.

Desperate to get the bill passed, the banking lobby went back to the Senate, pressuring Senator Schumer to remove the controversial abortion provision. The industry ran attack ads against him in his home state, demanding that he support the bankruptcy bill—and claiming that he was costing every American family \$550 a year.¹⁰² (The attack on Senator Schumer was particularly ironic, since he had received more campaign contributions from the credit industry than any other Senator, just nosing out fellow New Yorker Hillary Clinton.¹⁰³) But by this point, the pro-choice women's groups were also mobilized, and they held firm, supporting Senator Schumer and threatening to withhold support from any elected official who moved to take the provision out of the bankruptcy bill. In one of those rare defining moments, Senator Schumer had to choose between big business and pro-choice women, both of whom had supported his campaign. He chose women, and the amendment remained in the bill.

Ultimately, two strange bedfellows—a small group of socially conservative Republicans and a handful of progressive Democrats—gathered enough momentum to defeat the bankruptcy bill against the best-financed lobbying campaign of the 107th Congress.

Reclaiming the Politics of the Family

¹⁰¹ Phil Shenon, "Abortion Issue Holds up Bill on Bankruptcy," *New York Times*, April 30, 2002. Shenon writes: "The provision would bar abortion opponents from declaring bankruptcy to avoid paying court-imposed fines or damages that result from violent protests at abortion clinics. In recent years, a number of prominent abortion foes have used the bankruptcy laws for that purpose, among them Randall Terry, the founder of Operation Rescue. In declaring bankruptcy in 1998, Mr. Terry said he wanted to avoid paying debts, which then totaled more than \$1 million, 'to those who would use my money to promote the killing of the unborn.'"

¹⁰² Philip Shenon, "Lenders' Ads Urge Senator to Drop Item from Debt Bill," *New York Times*, May 21, 2002.

¹⁰³ See Bolton, "Bankruptcy Bill Is Conflict for Daschle."

The real victors on that strange day were the grassroots groups that successfully flexed their muscles against the most well-funded lobbying group in America, showing the world that even the credit industry can be defeated *if* key groups can be rallied against them. What was the key to action? It was not simply a matter of putting forth the facts. Congress had already impaneled a Bankruptcy Commission to write 1,100 pages of facts, which few even bothered to read. No, the real key was to match up the politics of financial distress with the interests of the rest of the country. The right-to-life organizations put a face on those who would be affected by the Schumer Amendment, showcasing stories of elderly grandmothers and churchgoing families who protest abortion as a matter of conscience. The pro-choice organizations put their own face on the issue, spotlighting violent abortion protesters who had found a loophole that let them get away with breaking the law.

There is a lesson here. To put sound economic policies on the political agenda, families also need to find a face. So long as they are “debtors” or “bankrupts,” their needs can be dismissed. Instead, they need to be seen as members of powerful constituencies, members of groups that command the respect—and the fear—of the political elite. Families in financial trouble must be depicted as they really are: “parents of young children,” “nonresident fathers paying child support,” “suburban homeowners,” “African-American middle-class families,” “single mothers,” “families sending a kid to college,” “multigenerational Hispanic families.” Most of all, the groups that defend these people need to organize against those who are picking their constituents’ pockets.

The case is not hard to make. Consider the circumstances of African Americans. For decades, the National Association for the Advancement of Colored People (NAACP) and other minority rights groups have lobbied to expand African-American home ownership, and they have been at least somewhat successful in their efforts. Now predatory and subprime lenders threaten to unravel those hard-won gains. Every year, more than 300,000 black and Hispanic homeowners file for bankruptcy in a desperate attempt to hold on to their homes. Hispanic homeowners are nearly three times more likely than white homeowners to file for bankruptcy, and black homeowners are more than *six times* more likely.¹⁰⁴ The same signs of distress are evident outside the bankruptcy courts. When we analyzed unpublished data from the Department of Housing and Urban Development, we found that among families who had purchased a home with an FHA-backed mortgage, African Americans were twice as likely as white homeowners to lose their home in foreclosure.¹⁰⁵ Payday lenders and subprime mortgage companies deliberately target minority neighborhoods, confident that they can get away with fleecing these families.¹⁰⁶ Billions of dollars are flowing out of the communities that can least afford it, directly into the pockets of giant lenders and their shareholders.

¹⁰⁴ The bankruptcy filing rates in 2001 were 39.9 per 1,000 for black homeowners, 14.4 for Hispanic homeowners, and 5.8 for white homeowners. National data on the number of homeowners by racial group

We are not the first to document these problems; minority rights groups are well aware of the dangers of the predatory lending industry. There is, however, an important question of how high economic issues should rank in their list of priorities. When Senator Trent Lott seemingly expressed his nostalgia for a segregated America, minority groups around the country barraged the talk shows and newspapers, and Lott was ultimately stripped of his powerful position as Majority Leader of the Senate. Similarly, when Texaco executives were accused of using racial slurs to refer to African Americans, the company was boycotted, sued for millions of dollars, and forced to adopt new practices to ensure that its black employees had better opportunities.¹⁰⁷ But when a Citibank official said in sworn affidavits that she regularly added extra fees to a home mortgage “[i]f someone . . . was a minority,” there was little response. Citibank quietly agreed to a cash settlement with the FTC, and there were no press releases from the NAACP, no interviews on the evening news, no calls for Citibank’s highly visible CEO Sandy Weill to resign.

Subprime lending, payday loans, and the host of predatory, high-interest loan products that target minority neighborhoods should be called by their true names: legally sanctioned corporate plans to steal from minorities. Many years ago, a host of community groups worked together to oppose discriminatory lending and to help pass the Community Reinvestment Act despite stiff opposition from the banking industry. It is time for these groups to come together again to eliminate the modern version of economic discrimination, which parades under different names but has the same devastating effects.

from U.S. Bureau of the Census, American Housing Survey for the United States: 2001, Annual Survey (2001). Available at <http://www.census.gov/hhes/www/housing/ahs/01adtchrt/tab3-1.html> [3/22/03].

¹⁰⁵ HUD, Federal Housing Authority Single Family Mortgage Insurance Foreclosures, Cumulative by Number and Percent, 1982–2002, unpublished data.

¹⁰⁶ In Chicago, 41 percent of the city’s subprime refinancing occurs in black neighborhoods, although only 10 percent of the overall refinancing takes place in these same neighborhoods. HUD, *Unequal Burden*. An Illinois study found that there are 37 percent more payday loans issued in minority neighborhoods than in white neighborhoods. Woodstock Institute, *Unregulated Payday Lending Pulls Vulnerable Consumers into Spiraling Debt*, Reinvestment Alert Number 14 (Chicago: Woodstock Institute, March 2000). Available at www.woodstockinst.org/alert.pdf [2/2/2003].

¹⁰⁷ In 1996, a Texaco employee revealed secret tape recordings he had made of Texaco executives disparaging African-American employees and discussing the shredding of documents pertaining to a discrimination case. After this release, civil rights leaders called for a boycott against the company, a number of customers cut up their Texaco credit cards, and some investors sold their Texaco stock. Within two weeks of the disclosure, Texaco agreed to pay \$140 million to settle the case. The outrage over these tapes prompted the company to adopt new policies to promote equality and erase discrimination within its organization. See, e.g., Adam Bryant, “How Much Has Texaco Changed?” *New York Times*, November 2, 1997; Tim Whitmire, “Tapes Don’t Stick in Court: Ex-Texaco Executives Walk,” *Chicago Sun-Times*, May 13, 1998.

A Woman's Issue: Minority groups should not be asked to bear the burden on their own. Women's groups also need to pick up the mantle of economic reform. Middle-class financial distress may sound like a gender-neutral issue, but it is not. In just two decades, the number of single-filing women declaring bankruptcy has grown by more than 600 percent. Women with children are more likely to lose their homes and more likely to be late on their bills. And single women with children are now *three times* more likely to go bankrupt than men without children.¹⁰⁸

The notion that women should fight for economic reform is hardly new. From the early days of the struggle for "Equal Pay for Equal Work," women's groups have protested for financial justice. But the issue of economic reform for middle-class women is often shunted aside by other priorities. For example, the NOW Legal Defense and Education Fund vigorously opposed the credit industry-backed bankruptcy bill, doing the painstaking legwork to convince nearly thirty other women's groups as disparate as Church Women United, Hadassah, and the YWCA to join the fight.¹⁰⁹ Yet NOW Legal Defense also offered its very public support to Senator Joseph Biden, featuring him as women's strongest ally in the Senate because he supported the Violence Against Women Act.¹¹⁰ Apparently, his support of this bill trumped any concerns the group might have had over the fact that Senator Biden is "the leading Democratic proponent" and "one of the . . . strongest supporters" of the very bankruptcy bill against which NOW Legal Defense had fought so hard.¹¹¹

¹⁰⁸ See chapter 1 for more information on these calculations.

¹⁰⁹ See Letter from American Association of University Women, Children NOW, Children's Defense Fund, Center for Law and Social Policy (CLASP), Feminist Majority Foundation, National Association of Commissions for Women (NACW), National Center for Youth Law, National Organization for Women, National Partnership for Women and Families, National Women's Conference, National Women's Law Center, National Youth Law Center, NOW Legal Defense and Education Fund, OWL, The Women Activist Fund, Inc., Wider Opportunities for Women, Women Employed, Women Work!, Women's Law Center of Maryland, Inc., YWCA of the USA, March 2, 2000 (on file with the authors). The leading organizations are the National Women's Law Center, the NOW Legal Defense and Education Fund and the National Partnership for Women and Families.

¹¹⁰ There was a glossy photograph of Senator Biden in the NOW Legal Defense annual report, which is sent to thousands of politically active women. No other politician rated a mention.

¹¹¹ Pamela Barnett, "Sources Say Addition of Biden Increased Its Size," *Congressional Daily*, June 23, 2001; Pamela Barnett, "Large Bankruptcy Conference Dismays Bill Supporters," *Congress Daily*, July 23, 2001.

Women's groups have too few dollars and too little (wo)man power to fight every injustice. But there is another lesson in the tale of the bankruptcy bill. Women's issues are not just about childbearing or domestic violence. If it were framed properly, middle-class economic reform just might become the issue that could galvanize millions of mainstream women to join the fight for women's issues. The numbers are certainly there. This year, more women will file bankruptcy papers than will receive college diplomas. More women with children will search for a bankruptcy lawyer than will seek subsidized day care. And in a statistic with special significance for Senator Biden, more women will be victimized by predatory lenders than will seek protection from an abusive husband or boyfriend.¹¹²

The point is not to discredit other worthy causes or to pit one disadvantaged group against another. Nor would we suggest that battered women deserve less help or that subsidized day care is unimportant. The point is simply that family economics should not be left to giant corporations and paid lobbyists, and senators like Joe Biden should not be allowed to sell out women in the morning and be heralded as their friend in the evening. Middle-class women need help, and right now no one is putting their economic interests first.

Political groups on the conservative end of the political spectrum should step up as well. Groups such as the Family Research Council and Focus on the Family organize their political and educational activities around the family. But economics are nestled at the core of family values. Any group that is serious about lowering divorce rates should focus on reducing the economic stress that strains a marriage. Any group that cares about children should be vitally interested in how home mortgages are marketed and how tens of thousands of kids are getting kicked out of their houses. And any group that thinks Mom ought to have the option to stay home with the kids should be powerfully concerned about the debt trap that chains millions of middle-class women to their offices.

¹¹² During the 2002–2003 academic year, 714,000 women will be awarded bachelor's degrees. National Center for Education Statistics, *Digest of Education Statistics*, 2001, 37th ed. Compilation of Statistical Information, by Valerie White Plisko (Washington, DC, 2001), Table 247, Earned Degrees Conferred by Degree-Granting Institutions, by Level of Degree and Sex of Student, 1869–70 to 2010–11. Available at <http://nces.ed.gov/pubs2002/digest2001/tables/dt247.asp> [2/6/2003]. In an average month in 1999, 1.8 million children received day care subsidized by the federal Child Care and Development Block Grant/Child Care and Development Fund, the primary federal program for subsidized day care. U.S. Department of Health and Human Services, Administration for Children and Families, *Child Care and Development Block Grant/Child Care and Development Fund*, news release December 6, 2000. Table, Children Served in Fiscal Year 1999 (average monthly). Many of these children will be in the same program for several years. By comparison, in a two-year period, approximately 3.1 million children will go through their parents' bankruptcies. Each year, approximately 1.5 million women in the United States are raped and/or physically assaulted by an intimate partner; about 375,000 of these women seek police protection. Patricia Tjaden and Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey* (Washington, DC: U.S. Department of Justice, National Institute of Justice, July 2000). Available at <http://ncjrs.org/txtfiles1/nij/181867.txt> [2/19/2003]. Callie Marie Rennison, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992–2000, Selected Findings* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, August 2002). Available at <http://www.ojp.usdoj.gov/bjs/abstract/rsarp00.htm> [2/19/2003].

A few religious leaders have involved themselves in family economics. In a recent letter to Congress, several faith-based organizations, including Catholics, Jews, and Unitarians, joined to argue that “[s]ocial justice for the socially and economically disadvantaged is part of the cherished moral tradition shared by all of our religions.”¹¹³ Citing a passage from the Bible about forgiveness of debts, the group called on Congress to abandon the proposed bankruptcy bill because the hardship it would impose on families was out of line with their religious beliefs. When they saw that the vitality of the family was at stake, these groups mobilized their moral authority against those who would rob families of their economic independence. Other faith-based organizations should heed the call and follow their lead.

Liberal or conservative, faith-based or secular, any group that sees its mission as *families* should have interest rate regulation and bankruptcy protection at the very top of its agenda. Predatory lending is a family issue. Usury is a family issue. Bankruptcy is a family issue. These laws affect families—people with children—more than anyone else. There is likely no other issue—divorce, welfare reform, child custody—that will directly touch more middle-class families than the mortgage and credit card interest rates that drain away their economic viability and sap the intimacy and joy from family life.

¹¹³ Open letter to Congress (February 28, 2001). Signers include American Friends Service Committee, McAuley Institute, MidAmerica Leadership Foundation, Unitarian Universalist Association of Congregations, Unitarian Universalist Service Committee, Washington Ethical Action Office/American Ethical Union, Religious Action Center of Reform Judaism, and NETWORK, A National Catholic Social Justice Lobby.