THE DAMAGE OF DEBT

Katherine Porter

*Wealth is evidently not the good we are seeking; for it is merely useful and for the sake of something else.*


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I. Introduction

The debt burdens of Americans have grown tremendously in recent decades. For most Americans, income in real dollars has stagnated since the 1970s but both unsecured and secured debt has marched sharply upward.¹ With inflation-adjusted borrowing at a level more than ten times greater than fifty years ago,² debt permeates the lives of American families. A significant proportion of households struggle to manage their debts. About fifteen percent of families spend more than 40% of their after-tax income on debt payments.³ In the last decade, on average, more than one million consumer bankruptcy cases were filed annually.⁴ To put that number in context, one million bankruptcy

¹ Robert Braucher Visiting Professor, Harvard Law; Professor, University of Iowa College of Law. This essay benefited from presentations at the University of Notre Dame Law School; Indiana University Maurer School of Law; University of Arizona James E. Rogers College of Law; University of California, Irvine School of Law; Seton Hall Law School; and University of California, Davis School of Law. For helpful comments or discussions, I thank Jim Hawkins, Nathalie Martin, John Pottow, Deborah Thorne, and in particular, Jean Braucher and Jason Kilborn.

² KEVIN LEICHT, POSTINDUSTRIAL PEASANTS: THE ILLUSION OF MIDDLE-CLASS PROSPERITY 48 fig. 3.1, 59 fig. 3.6 (2007).


cases means that in 2010 more women will go bankrupt than will divorce, and the annual number of freshly-minted bankruptcy debtors will exceed the number of new college graduates.\(^5\) And the bankrupt are only a small subset of those struggling with debts.\(^6\) In 2006, one in seven families was contacted by a debt collector.\(^7\) The foreclosure crisis and the recession have only expanded the number of people struggling with debts. Today, more than one in eight Americans is behind in their mortgage payments or in foreclosure.\(^8\) The exploding debt loads of American families have increased the phenomenon of unmanageable debt.

Most efforts to study the financial distress of debt burdens focus on the bankrupt population.\(^9\) People who file bankruptcy admit financial collapse, making a public declaration that they cannot pay their debts and that they need relief. Researchers and policymakers have decried the balance sheets of these bankrupt households. In 2007, the median bankrupt household owed nearly $34,000 in unsecured debt,\(^10\) an amount equal to nearly 15 months of its income.\(^11\) Although debts have increased in the last two decades, an enduring characteristic of bankrupt families is debts that dwarf their income and assets.\(^12\) Policy debates about consumer credit have seized on these debt burdens as evidence of the problematic nature of America’s high debt burdens.

The debt metric pervades bankruptcy lawmaking. The means test adopted in 2005 calculates whether a household could repay a certain fraction of its debts to determine whether a household deserves a chapter 7 bankruptcy discharge.\(^13\) The cost of bankruptcy to creditors is measured by dollars of debt discharged.\(^14\) Bankruptcy’s success or failure is measured by the fraction of debtors that achieve

filings because of the anticipation and aftermath of new consumer bankruptcy legislation, the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act.


\(^9\) Although many who struggle with debts will not file bankruptcy, bankruptcy cases are particularly useful to researchers for several reasons. Borrowing is a private act, and debt is infrequently measured in surveys, particularly compared with the ubiquity of income. Bankruptcy filings are public, permitting one to identify a population of those with excessive debts. See Mann & Porter, supra note 6, at 296 (noting the difficulty of identifying debt-distressed households).

\(^10\) Robert M. Lawless et al., *Did Bankruptcy Reform Fail?: An Empirical Study of Consumer Debtors*, 82 Am. Bankr. L.J. 349, app. III (2008). I am a co-author of this paper and an investigator in the Consumer Bankruptcy Project. More information on the other team members, methodology, and findings of the Consumer Bankruptcy Project is available in the prefatory footnote to the above-article and in Appendix I: Detailed Methodology. *Id.* at 349 n. *, app. I at 387–98.

\(^11\) *Id.* at 373.

\(^12\) *Id.* at 365.

\(^13\) See 11 U.S.C. § 707(b)(2)(A)(i)(I) (stating that court will presume abuse if debtor’s current monthly income, after reduced by certain calculations and multiplied by 60, “is not less than the lesser of . . . 25 percent of the debtor’s nonpriority unsecured claims in the case”).

\(^14\) See 151 Cong. Rec. S10647-01 (2006) (statement of Sen. Grassley) (calculating bankruptcy losses saved through the 2005 bankruptcy reform by multiplying an average figure of $41,000 debt discharged by number of filings in 2005 versus 2006). Such calculations frequently fail to consider what portion of the debt would be uncollectible even in the absence of bankruptcy and thus overstate the harm to creditors from bankruptcy relief.
a discharge of debt, and generosity of the system is quantified by the types of debt deemed ineligible for discharge. In the bankruptcy and consumer-protection context, the conceptual space of financial distress has been defined along a single dimension: debt, or its kissing cousin, wealth. The problem of overindebtedness occurs when consumers’ debts exceed certain financial benchmarks. Negative net worth, high debt-to-income ratios, or heavy debt service burdens all capture when debts overwhelms assets or when debt is unlikely to be serviceable on current and expected income. While these measures are more likely to capture situations when debt is imposing harms than counting absolute dollars of debt, all financial metrics are limited in their usefulness to measure the cognate harms of overindebtedness. Put another way, financial metrics may be unilluminating lampposts for the non-financial harms of overindebtedness.

The singular focus on dollars of debt has obscured the full purpose of legal intervention in consumer credit markets. For example, the point of bankruptcy is not to erase debt for the sake of the act itself. Debt is merely a proxy for the harms of financial distress, just as income and assets are proxies of financial success. Similarly, when the law regulates credit on consumer protection grounds, the intent is not to prevent borrowing itself but from rather to reduce or eliminate the harms that can result from unmanageable debt. The problem to be solved is not overindebtedness but rather the serious and real harms that accompany overindebtedness. But what are the harms of excessive debt? How are they manifested? How severe or enduring are they? How can those harms be measured?

This essay is a first step in the larger endeavor of answering those questions. I articulate two challenges to the current research on excessive debt. The first critique accepts debt as an appropriate measure of welfare but highlights the lack of empirical work on the consequences of excessive debt on individuals and society. The principal shortcoming is a failure to assess the actual problem to be solved—the externalities and costs of debt. Both legal and other social science scholarship has paid little attention to this issue, even as the debt burdens of Americans have ballooned. The second critique posits that debt itself is an impoverished measure of diminished well-being. Drawing on poverty economics and its concern with human capabilities, I make a parallel between the limitations of income to measure poverty and the limitations of debt to measure financial distress. I identify ways in which debt may alter individuals’ endowments and preferences and how society may condition opportunity for those mired in debt. I incorporate these elements into a multidimensional framework for studying debt that is concerned with understanding how debt may affect elements of welfare such as education, health, work, housing, and the ability to participate in social life. These harms of overindebtedness, which can limit what individuals can do and be, are obscured when researchers solely measure the problem of debt using a dollar metric. I conclude the essay with examples of how empirical study might assess how overindebtedness might limit people’s capabilities to achieve and sustain well-being.

Before turning to these two concerns with the existing work on overindebtedness, I pause to articulate how documenting the harms of debt could inform theory and policy in the consumer credit area. The initial goal is to describe the damage of unmanageable debt, either measured as externalities

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of debt itself or within a multidimensional space of well-being. These empirical findings would have implications for both ex-ante and ex-post policies on consumer credit, including bankruptcy. Regardless of their orientation, all existing theories of bankruptcy that attempt to justify a discharge of debt for individuals rest to some degree on eliminating the harms of financial distress.\footnote{See Heidi M. Hurd & Ralph Brubaker, A New Theory of the Bankruptcy Discharge, (unpublished paper, on file with author) (collecting and critiquing existing theories of bankruptcy). Hurd and Brubaker develop a new theory for discharge based on aretaic duties. Even in this paradigm, however, the aretaic duty arises because it is not virtuous to extract suffering from those who are in a “thoroughly miserable and pitiful state.” Such a determination requires empirical knowledge of whether excessive debt brings about such harms. Id. at 72.} For example, utilitarian theories justify a discharge on the basis that debt-burdened individuals are discouraged from socially productive activity such as maximizing earnings. Yet, there is no evidence that excessive debt actually produces such effects. Similarly, the rehabilitationist view posits that the purpose of debt relief is to rectify the harms to individuals from excessive debt. Yet, without knowing the nature of the damage of debt, such theories lack imperative.

Understanding of the harms of excessive debt is also necessary to assess whether existing systems for debt relief are adequate. A robust definition of the problem the law seeks to solve is a precursor to evaluating the efficacy of legal solutions. Shifting the definitional space from the narrow financial measure of dollars of debt to a multidimensional space for debt that embodies an expansive definition of well-being may reveal limitations of a bankruptcy discharge as a remedy for excessive debt. For example, I hypothesize that an episode of severe debt-induced financial distress, such as experienced by bankrupt households, may make it difficult for an individual to seek new employment or may result in lasting health consequences. These harms to productivity and well-being continue after the individual discharges their debts in bankruptcy. When the harm is measured as too many dollars of debt, the discharge is a resounding success. When the harm is measured along multiple dimensions, the discharge may be an incomplete or inadequate solution. Moreover, it is difficult to make accurate calculi about the costs and benefits of credit regulation without understanding the individual and collective harms of unmanageable debt. To be sure, the harms of credit restrictions may outweigh the harms of excessive debt. Such determinations, however, should be informed by evidence and not conjecture or anecdote. By developing a theoretical frame on how to measure the harms of overindebtedness, I hope to guide empirical research that is sensitive to the economic and social consequences of unmanageable debt.

II. Traditional Constructs of Debt Problems

Since the enactment of the Bankruptcy Code in 1978, bankruptcy policy has been racked with allegations that consumer bankruptcy relief was too generous. Such concerns could well have motivated study of the harms of excessive debt. As I posit above, it is difficult to assess whether bankruptcy is an adequate solution to unmanageable debt without a grasp on the problems that may accompany unmanageable debt. Yet, there is scant research, particularly on American families, that assesses the consequences of overindebtedness. The debates on bankruptcy, often ferocious in the years leading up to the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act, took a very different approach. Rather than gauging the generosity of debt relief against the harms of debt, the debate focused on fears of abuse. This drove researchers toward debating the causes of bankruptcy and trying to assess whether people who filed bankruptcy had the means to repay their debts. For example, the groundbreaking empirical work of Teresa Sullivan, Jay Westbrook, and Elizabeth Warren identified job problems, medical
problems, and family break-up as the principal causes of bankruptcy. They documented the high debts and low incomes of bankrupt people and the fact that the financial profiles of bankrupt households were more dismal with successive iterations of their research, despite conjectures of a declining stigmatization of bankruptcy. Advocates of constricting bankruptcy relief countered with anecdotes of high-income debtors, concerns about the moral hazards of debt relief, and narrower approaches to determining the causality of bankruptcy.

Both sides of the debate largely ignored the consequences of financial distress in favor of contesting causality. Imbedded in arguments about the deservingness of people for debt relief was an assumption that financial metrics adequately captured the problem of financial distress. In this view, the central question became whether households had enough dollars of income to pay off their dollars of debt. Such a calculation might screen particular people for relief but it cannot itself justify debt relief for even those with the gravest inability to repay their debts. The need to relieve overindebtedness must be motivated by the harms attendant to the debt, not merely by the fact that that debt exceeds a dollar benchmark.

In the last few decades, there have been virtually no empirical studies of the consequences of excessive debt. Given the changes in family structure, labor markets, and access to credit since the 1970s, the conclusions of older studies may not describe the current environment. When harms of debt have been recognized, the scholarly treatment of them has been limited. Even accepting debt as an appropriate measure for the harm of financial distress, scholars have barely begun to measure the costs of debt. Conjectures that debt could create externalities have not translated to momentum for empirical study. I describe the existing research largely to glean areas for future empirical investigation rather than to document any meaningful state of prior knowledge.

To at least some degree, scholars who have addressed the purpose of consumer bankruptcy have had to confront the consequences of financial distress. Several authors have hypothesized that financial distress from debt imposes social losses and posited that bankruptcy relief may curb those

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22 This confrontation results in efforts to justify a discharge of debt as a crucial element of bankruptcy. A consumer bankruptcy system has other purposes, including to maximize recovery to creditors, to reduce inefficiencies in individual collection activity, and to ensure a particular order of distribution to creditors. These purposes may be justified on bases other than individual or social harms of debt.
externalities. Writing thirty years ago, John Weistart noted there could be an economic justification for liberalized access to bankruptcy discharge:

The point to be investigated is whether excessive debt, with its attendant pressure on family and emotional stability and job security, does not so inhibit productivity that there would be a net social gain from terminating costly collection actions, excusing the debts, and giving the poorer-but-wiser debtor a second chance.

Thomas Jackson echoed this utilitarian approach, hypothesizing that debtors who cannot pay off their debts from their anticipated income would revert to leisure rather than work. The externality arises because the social cost of lost productivity exceeds the debtor's personal loss in shifting to leisure. This is perhaps the most commonly theorized harm of debt, often expressed as a problem of human capital. The normative goal of a bankruptcy discharge is to “redeploy” such capital by changing a debtor’s incentives to work. Put more colorfully, “society as a whole loses when moping bankrupt debtors are distracted from working at their highest and best-use level of productivity because they are instead coping with financial ruin.” These scholars may be correct that excessive debt alters a debtor’s productivity and labor efforts but they have not calculated such harm. I am disposed to agree with the utilitarian insight that debt probably alters economic incentives and creates social loss. Indeed, the hypothesis of this essay is that such damage occurs. But to date, there is little evidence of how overindebtedness may affect labor processes and productivity.

Perhaps more importantly, theories framed on utilitarian terms such as “redeployment of human capital” and “externalities” may mask the complex harms of financial distress. I discern two problems. First, defining debt as the agent of harm does not illuminate the causal pathway of debt’s negative effects. Debt may operate on incentives, but it is the incentives themselves that alter an individual’s behavior. Anthony Kronman perhaps has come closest to recognizing such effects, stating:

One reason for giving the debtor a fresh start is to counteract the self-hatred he may feel, having mortgaged his entire future in a series of past decision that he now regrets. Whatever its macroeconomic function, the bankruptcy discharge has a moral purpose as well – to restore to the debtor some measure of confidence in his capacity to arrange his future as he wishes, free from the dead hand of the past. Without such confidence, the debtor may lose even that minimum of

28 One example of such work is Jinhee Kim & E. Thomas Garman, Financial Stress and Absenteeism: An Empirically Derived Model, 14 FIN. COUNSELING AND PLANNING 31 (2003) (finding that financial stress, which included concerns about worrying about money owed, was positively associated with absenteeism from work).
self-respect that is a condition for his taking an interest in himself and his own life.\(^{29}\)

Similarly, Teresa Sullivan, Elizabeth Warren, and Jay Westbrook have noted that bankrupt people experience “self-loathing and humiliation in recognition of what their spending habits have brought them to.”\(^{30}\) Although couched in rehabilitationist terms, there is a behavioralist-utilitarian perspective in the observations: excessive debt could alter a debtor’s decision-making in ways that lower utility. For example, debtors could assess financial risk differently in the aftermath of overindebtedness. Such perceptions could lead to enduring changes in a debtor’s labor market participation and allocation of their human capital. The bankruptcy literature focused on debt as the operative harm obscures such effects because the immediacy of discharge as a legal remedy leads to a conclusion that debt relief produces instant improvement in productivity. Excessive debt may create more complex harms that do not abate in direct proportion to a reduction in debt.

The second shortcoming of the utilitarian lens is that it may impose unduly narrow and abstract limitations on the type of harms it “sees.” The rational actor is also a person with a psyche, a spouse and a parent, and a social actor. Focusing on the amount of an individual’s debt seems to have reinforced an atomistic view that identifies a single person as the locus of harm. The harms of debt may reverberate from the indebted individual to that person’s family, workplace, and larger community. An individualistic approach focused on dollars of debt makes it difficult to discern the full range of social loss to human welfare that may be associated with excessive debt, including harms suffered by those who do not have any debt themselves. Scholars have noted more intimate externalities could arise from financial distress, as when family members or friends depend on the debtor for support.\(^{31}\) Implicit here is the idea that financial distress alters a debtor’s willingness or ability to support such dependents, harming these dependents’ “financial or psychological well-being.”\(^{32}\) Ronald Mann has written that “children and spouses suffer substantially in the event of financial distress of a wage-earning spouse.”\(^{33}\) Yet, the work he cites to support that statement is quite thin.\(^{34}\) Professors Sullivan, Warren, and Westbrook hypothesized that economic difficulties—in particular the uncertainty and reversal that can accompany unmanageable debt—may lead to marital strain and divorce.\(^{35}\) Ten years and several studies of bankrupt families have elapsed but the causal pathway between divorce and debt remains murky.\(^{36}\)

The sociology literature offers a modest amount of empirical research on families who struggle to make ends meet. These studies often concern with financial distress, broadly defined, and not primarily with debt. Instead, this research is usually anchored in the traditional sociological construct of class. Although class may have a powerful connection to debt, the existing literature does not explore


\(^{30}\) *FRAGILE MIDDLE CLASS*, supra note 18, at 139.

\(^{31}\) Jackson, supra note 25, at 1419.

\(^{32}\) *Id.*; Pottow, supra note 27, at 411 (“The debtor’s family and others in her circle of intimates suffer too, experiencing the very tangible psychological and monetizable costs when a debtor endures general default.”).

\(^{33}\) MANN, supra note 26.

\(^{34}\) *Id.* at 49–50 n.18 (citing theoretical work by Richard Hynes and Thomas Jackson, cited previously in notes 25–26).

\(^{35}\) *FRAGILE MIDDLE CLASS*, supra note 18, at 195.

such relationships. Thus, the social science literature is primarily useful to prompt consideration of whether the harms of excessive debt may mimic or diverge from the harms of poverty, working-class membership, or downward socioeconomic mobility. While many people accumulate debts after an income or job loss, the experience of debt carries with it a set of experiences that are distinct from the financial distress of poverty. For example, debt collectors and garnishment are uniquely a function of debt. They have no direct association with income poverty or working-class status. Borrowing, even for necessary consumption like food, has a voluntary aspect to it. This may result in different stigmatization or internalized blame of debt-induced financial distress compared to poverty. Similarly, what I have termed the “off-label” use of credit scores for employment and rental housing may lead to lasting labor market and educational constraints (via public school access tied to housing) from excessive debt. Such harms originate differently than the consequences of low income or a loss of socio-economic status and may be of different magnitude and duration.

Notwithstanding this uncertainty about the similarity of different types of financial hardship, the externalities of debt almost certainly have at least some parallels to poverty, downward mobility and low socioeconomic status. The social science work on those problems points to an array of harms that extends beyond the productivity and familial harms mentioned in the legal literature. The most pointed work on the negative consequences of debt is a chapter in David Caplovitz’s study of debtors sued for delinquent consumer debts in 1967. He finds that many debtors report experiencing job loss, health problems, or marital strain because of their “debt troubles.” This research provides support for the idea that debt may lead to a variety of harms, although both the legal landscape and structure of the credit markets have changed dramatically since 1967. Additionally, the sample of defendants in debt-collection lawsuits may not be representative of those with unmanageable debts. Creditors ostensibly chose to sue debtors who they believe have income or assets and do not sue those who are judgment proof. But most of those who file bankruptcy—a group overwhelmingly mired in debt—have not been sued, garnished, or had property taken. The population of people with excessive debt is likely both different and much larger than debt-collection defendants.

Caplovitz extended his work on financial distress in a comprehensive study, Making Ends Meet: How Families Cope with Inflation and Recession. Using interview data from four urban areas, he offers a detailed portrait of how households were affected by and responded to inflation and recession in the late 1970s. The study examined a cross-section of households, including those who reported few, if any, actual negative effects. Nonetheless, his insights on how households respond to a generalized economic downturn are intriguing and suggest consequences that might accompany debt-induced financial

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37 A few scholars have focused on wealth, see Lisa A. Keister, Wealth in America: Trends in Wealth Inequality 259–62 (2000) and Dalton Conley, Being Black, Living in the Red: Race, Wealth, and Social Policy in America 43–44, 53 (1999), but this work has primarily been concerned with asset accumulation and not debt.
38 I use the term “poverty” here to refer to a sustained condition of financial hardship resulting from low or non-existent income.
39 In fact, some types of debt collection are relatively uncommon experiences for the lowest-income households because of asset and income exemptions from coercive collection.
42 See Mann & Porter, supra note 6, at 308-10.
distress. In particular, his identified association between financial well-being and mental health could be replicated in the context on studying the harms of debt.

Other researchers have used the traditional sociological lens of class to study financial hardship. Lillian Rubin’s interview-based studies examine working-class families, defined by occupation. She focuses on how the low incomes and other outcomes (such as limited control of one’s job prospects) that accompany working class occupations strain the happiness and stability of family life.44 She describes how financial pressures harm parenting and spousal relationships, for example, by damaging ideas of self-worth. In a later work, she emphasized the goal of documenting the “economic and social realities that make family life so difficult today and that so often destroy it.”45 A decade later, Katherine Newman made a similar exploration of the middle class. Her ethnography, Falling from Grace, documented the reactions of middle-class Americans who were experiencing downward economic mobility.46 Newman focuses four types of middle-class households that experience income loss, including unemployed managers and executives and divorced mothers. She studies their dislocation to identifying the cultural frames that people use to understand their economic dislocation.47 Her work offers rich description of how individuals understand financial distress, but it does not attempt a measurement of the harms of such distress beyond individuals’ own struggles to make sense of their economic situations. As a result, her work largely fails to articulate any normative or consequentialist explanation of why society should mitigate or prevent financial distress.

The existing work provides little knowledge about the contemporary harms of excessive debt. Sociologists have largely overlooked debt as a peculiar source of harm, eschewing it in favor of income- or class-based approaches. The legal scholarship on bankruptcy examines debt but largely focuses debating the causes of overindebtedness. It not made an intense or sustained effort to explore the consequences of debt, or even to explore how the consequences of overindebtedness may vary depending on the causality of the debt problems. As John Pottow has recently observed, “To be sure, the case for negative bankruptcy externalities is more intuitive than empirical at this juncture.”

45 LILLIAN B. RUBIN, FAMILIES ON THE FAULT LINE 234 (1994).
47 Id. at 11 (“The absence of socially validated pathways for dealing with economic decline has important consequences for the downwardly mobile. They often mourn in isolation and fail to reach any sense of closure in their quest for a new identity. Their disorientation suggests how critical culture is in ‘explaining’ to individuals the meaning of their fate.”).
48 Stephen Lubben helpfully pointed out to me that the effects of unmanageable debt may vary depending on whether the debt is incurred following an exogenous financial shock, such as an unanticipated job lay-off, or is incurred as part of a pattern of compulsive overconsumption. I agree with this perspective but keep the focus of this essay firmly on the consequences of unmanageable debt, rather than its causes, to advance the theoretical framework for examining the impact of overindebtedness on human welfare. The causation literature on bankruptcy is rich, and future empirical work on the harms of debt should certainly engage it. I do note, however, that American bankruptcy law does not require debtors to have a “good cause” for their debt problems to qualify for a bankruptcy discharge. Indeed, the bankruptcy paperwork does not inquire at all into the reasons for the consumers’ borrowing. This supports my assertion that much of the normative justification for bankruptcy and credit regulation is to reduce the harms of overindebtedness to all debtors, not to selectively relieve the deserving debtors of those harms.
49 Pottow, supra note 27, at 412. From the context of the article, which articulates an argument for a tort of reckless lending, I take Professor Pottow to mean externalities incurred in the period of debt-induced financial distress that typically precedes bankruptcy rather externalities that result from the bankruptcy filing itself.
Because we have only a shallow understanding of the harms of excessive debt (and how they may be converge or diverge with other forms of financial hardship), it is difficult to develop a crisp plan for empirical investigation. 50 The existing legal and sociological literature offers a starting point for identifying possible harms of overindebtedness.

III. The Multidimensional Space of Poverty

The prior section noted the lack of empirical work on the harms of having unmanageable debt burdens. In so doing, it did not challenge measuring the problem of overindebtedness using dollar metrics, such as debt-to-income ratios, absolute dollars of debt, or negative wealth. That is, it accepted that, at least when the debt burdens crosses a threshold into being unmanageable, that debt is inversely proportional to individuals’ welfare and that the magnitude of overindebtedness is roughly proximate to the degree of harms from overindebtedness.

In this section, I critique the validity of using financial metrics as the exclusive proxy to measure the problems of overindebtedness. I draw a parallel between using the singular measure of income to assess the harms of poverty and using the singular measure of debt to assess the harms of overindebtedness, arguing that such approaches are plagued with similar weaknesses. I describe the alternative multidimensional framework for measuring poverty harms that assesses people’s capabilities to achieve aspects of welfare such as health and access to markets. In subsequent sections, I analyze how such a multidimensional measure of welfare might be applied to study the harms of debt-induced financial distress.

Traditional measures of poverty focused on income. 51 Aggregate economic indicators such as GDP were used to compare the problem of poverty between countries. Another measurement technique was counting all people whose incomes were below a determined income threshold. 52 These approaches have been criticized on several grounds, fundamentally, as Martha Nussbaum has expressed, for being “obtuse in human terms.” 53 I see two propositions in the critiques of income/wealth measures of poverty: first, that aggregate measures fail to recognize individual-level effects; 54 and second, that income and wealth are only instruments to human welfare, not ends themselves.

50 Professor Pottow has compared the legal scholarship on the harms of debt and smoking and concluded as much. “The sophistication of Hanson and Logue’s analysis (and that of the studies they critique) demonstrates that their field is light years ahead of bankruptcy scholarship with respect to the depth of its empirical research into the scope and costs of externalities in one product market.” Pottow, supra, note 27, at 412 n.33 (referring to analysis in Jon D. Hanson & Kyle D. Logue, The Costs of Cigarettes: The Economic Case for Expost Incentive-Based Regulation, 107 YALE L.J. 1163 (1998)).

51 See Amartya Sen, Conceptualizing and Measuring Poverty, in POVERTY AND INEQUALITY 30, 32 (David B. Grusky & Ravi Kanbur eds., 2006) (“The ‘space’ of incomes has been the principal—often the unique—focus of attention of those who have to examine the trend of inequality and poverty in the world.”); Amartya Sen, Issues in the Measurement of Poverty, SCANDINAVIAN J. OF ECON. 285, 293–96 (1979).

52 Francois Bourguignon, From Income to Endowments: The Difficult Task of Expanding the Income Poverty Paradigm, in POVERTY AND INEQUALITY, supra note 49, at 76 (describing the “income poverty paradigm” that dominates the economic literature).

53 Martha C. Nussbaum, Poverty and Human Functioning: Capabilities as Fundamental Entitlements, in POVERTY AND INEQUALITY, supra note 49, at 47.

54 A parallel critique might apply to sociologists who have relied on a few big categories, such as social class or occupational prestige codes, to measure social stratification. See David B. Grusky & Kim A. Weeden, Does the
David Grusky and Ravi Kanbur conclude there is a “consensus” among both sociologists and economists that poverty has negative individual-level effects on “health, political participation, and a host of other life conditions.” Concern with individual-level effects can derive from normative or consequentialist perspectives. Poverty may offend because it denies people fundamental human rights. Alternatively, we may wish to reduce poverty to halt its negative externalities. Poverty may produce harms that extend beyond the individual or even the individual’s household to include collective effects. Within the space of income, it can be difficult to identify such harms. Counting the number of poor, for example, only indirectly incorporates the distributional harms of poverty because the distribution may be relevant in determining the income threshold for “poor.” Yet the effects of inequality (relative deprivation) may be different from poverty of income (absolute deprivation,) and equally troubling for those concerned with human welfare and economic development.

Amartya Sen, Martha Nussbaum, and others have exposed the conceptual shortcoming of relying principally on income to measure human welfare. In numerous works, Sen has questioned “whether the space of incomes, despite its relevance, can really be the appropriate informational basis for assessing equity and social justice in general, and if it is inadequate, why it is so?” In his view, income is merely a means to achieving quality of life. He has argued that a rich appreciation of the problem of poverty requires looking directly at potential and achieved welfare. In his words, “If life consists of various things that people are able to do and be (such as being able to live long, to be in good health, to be able to read and write, and so on), then it is the capability to function that has to be put at the center state of assessment.” This “capabilities approach” permits comparisons between individuals along several dimensions of human functioning. While there is disagreement about the key capabilities, most scholars identify the following elements: bodily health, adequate shelter, education, the right to employment, social bases of self-respect that permit social participation, and the right to be free from anxiety and fear. In this multidimensional framework, a lack of income may correlate with poverty but is not poverty per se. Rather, the problem of poverty is the way in which it constrains individuals from pursuing or achieving fundamental capabilities. This different conception of human welfare recognizes income as an instrument of good living, not as a good life itself. Financial metrics may powerfully correlate with capability achievement, particularly in some societies, but they are conceptually incomplete to assess people’s well-being.

A multidimensional approach, that incorporates financial measures as one element of welfare assessment, is gaining acceptance in research and public policy. The United Nations has recognized the

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*Sociological Approach to Studying Social Mobility Have a Future?, in MOBILITY AND INEQUALITY: FRONTIERS OF RESEARCH IN SOCIOLOGY AND ECONOMICS 85, 100–03 (Stephen L. Morgan, David B. Grusky & Gary S. Fields eds., 2006).
*54 Grusky & Kanbur, supra note 53, at 1.
*55 The failure to take inequality of distribution into account is a principal critique of the space of incomes for poverty studies. Amartya Sen, Poverty: An Ordinal Approach to Measurement, 44 ECONOMETRICA 219, 219–22; see also Sen, Conceptualizing and Measuring Poverty, supra note 49, at 36–37. The classic example of this problem is South Africa, which fares well under a GNP per capita approach because of its relatively high GNP, despite harboring some of the sharpest inequalities between rich and poor (along racial lines) in the world.
*56 Sen, supra note 49, at 34.
*57 Id.
*59 See id. at 287–88.
benefits of a multidimensional approach, cautioning that the pursuit of financial wealth has often obscured the “simple but powerful truth” that the “real wealth of a nation is its people.”62 Science magazine featured research this year on the negative correlation in the United States between average wages and reports of subjective well-being and concluded that science is well-developed enough to support using broad measures of quality of life in place of income to measure the well-being of a population.63 In September 2009, French President Nicolas Sarkozy announced his commitment to having France develop and use alternate measures to assess prosperity instead of GDP, average income, or poverty counts.64 While some condemned the maneuver as a political tactic to deflect criticism about France’s lagging economic growth,65 Sarkozy created a commission that included five Nobel laureates to make recommendations for measuring the nation’s welfare, including a component part for individual citizens’ welfare.66 The commission struggled to produce tractable metrics but suggested indicators such as educational attainment, opportunity for leisure, personal freedom, health, and inequality indices.67 Notably, the commission did not articulate how to weight these components in assessing individual welfare or how to aggregate individual-level measures with societal-level measures of well-being.

Indeed, the major challenge to a multidimensional approach to welfare may be practical rather than conceptual. It is difficult to elaborate the relevant dimensions, and perhaps even more difficult to design adequate measures for those dimensions.68 Francois Bourguignon has attempted to impose some order on the multidimensional approach by delineating three broad categories of concern. He sees welfare as the result of the interaction of an individual’s endowments, an individual’s preferences, and a set of parameters that condition an individual’s choices and are imposed on the individual by society.69 The first element, endowments, includes measures of an individual’s assets at a given moment, such as health and education. The second element, preferences, refers to an individual’s choices and desires to achieve welfare. The third element, conditions, are limitations on the deployment of an individual’s endowments such as the price of goods, access to credit and labor markets, and public goods, such as the social institutions available to an individual. Harms to welfare occur in the form of unequal endowments, societal constraints to individual achievements, and the prevalence of maladaptive preferences.

Even within the constructs of endowments, conditions, and preferences, challenges abound for theorists and empiricists alike. A multidimensional approach to welfare arguably gives weight (although almost certainly not equal weight) to each of these elements, and so each element must be assessed in some replicable and ostensibly quantifiable way. Some dimensions, such as level of education, are susceptible to concrete measure with well-worn metrics. In general, many endowments have existing measures, whereas conditions and parameters are much harder to observe. An illustrative example is the constraints on access to labor markets. One perhaps cannot accurately rely on a count people who got jobs to measure how many people did not get jobs. Indeed, the only way to estimate rationing in at least some markets may well be survey research, which is both expensive and raises its own set of measurement concerns.

63 Richard Layard, Measuring Subjective Well-Being, 327 SCIENCE 534 (2010).
67 Id.; Gauthier-Villars, supra note 61.
68 Bourguignon, supra note 50, at 89-93.
69 Id. at 80-93 (describing different approaches to comparing individuals in multidimensional model).
Preferences pose particular challenges for a capabilities approach over a multidimensional space of bare outcomes. Accepting the validity of individuals’ preferences transforms the goal from the production of a certain level of well-being to equalization of endowments and constraints. For example, if we respect an individual’s greater preference for leisure, then we should not condemn that person’s failure to achieve a particular outcome (such as working full time to earn a high income) as a failure. The goal then is to ensure that all people are capable of achievement; it is not to produce identical outcomes. On the other hand, many sociologists accept the idea of maladaptive preferences; they reject the idea that preferences as fixed and unaffected by changes in personal circumstances. To the extent that people’s preferences are malleable, and may be altered by societal conditions or lack of endowments constraints that society imposes on them or by a lack of endowments, measuring preferences are another dimension to see reductions in well-being. Lack of income or overindebtedness may change people’s preferences for risk, lengthen or shorten their time horizons, or develop different self-control habits.

While scholars still wrestle with how to apply a multidimensional space of poverty and inequality to empirical research, the framework has expanded poverty and inequality research in new directions. The development of a multidimensional space for poverty has continued to erode the primacy of income as a sufficient measure of well-being and inspired debate about whether the move from income to social class merely replicates the disadvantages of a unitary measure. It has pushed utilitarian theorists to examine whether the assumption of a rational-actor model is wholly accurate for understanding the effects of poverty and how preferences may be altered by financial hardship. The thrust of these arguments is that either class or income can be excessively abstract and insensitive to human welfare. As Martha Nussbaum has written, the capabilities approach supplies “a moral and humanly rich set of goals for development ‘in place of the wealth and poverty of the economists,’ as Marx so nicely put it.”

IV. An Expanded Framework for Understanding the Harms of Overindebtedness

I now turn to the task of developing a multidimensional space for excessive debt, building on the poverty framework described above. In so doing, I consider places where the multidimensional approach articulated for studying poverty and inequality may be an imperfect fit for assessing the connection between overindebtedness and welfare. My primary goal is to articulate dimensions for empirical investigation and identify some of the obstacles to such work.

At the outset, I acknowledge that amount of debt, especially as measured against available assets and income, is surely one appropriate basis for assessing the harms experienced by bankrupt families. Indeed, in many ways, it must be so. Unmanageable debt is the unique feature of the type of financial distress that characterizes bankrupt households, and the elimination of debt can free up income and return families to positive wealth. And, as Sen has conceded in the context of thinking about income deprivation as a measure of poverty, wealth is clearly a powerful general tool for ensuring a household’s well being and preventing deprivation. Debt and income are both useful proxies of a household’s welfare. And because these financial characteristics are relatively easy to measure and

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70 Grusky & Kanbur, supra note 53, at 9–10.
71 See id. at 2 (arguing that “conceptual ground-clearing” is necessary to make progress with poverty).
72 Nussbaum, supra note 51, at 52.
73 Sen, supra note 49, at 33.
incorporate into models, they should remain useful tolls for assessing quality of life. This essay does not seek to displace financial metrics, but instead point out their limitations in revealing the actual effects of debt-induced financial distress—how overindebted individuals live, work, parent, plan, learn, participate in society, etc. To understand the myriad ways that overindebtedness may result in reduced welfare, we need more than a diagnostic tool that a problem exists. We need instruments to measure the symptoms of the problem. It is in this way that the capabilities approach used in poverty and inequality research may expand our understanding of overindebtedness.

The problem of excessive debt is not that it reduces wealth per se but that it harms people’s capacity for well-being. To observe the harms of debt on welfare in a multidimensional space, I build off the three components in Bourguignon’s model for welfare: individual’s endowments or assets, an individual’s ability to use those endowments through social or economic conditions triggered by her debts, and an individual’s preferences to use his or her endowments.\textsuperscript{74} The relevant dimensions are sometimes at the individual level, such as endowments or preferences, and sometimes societal, such as parameters that inhibit individual’s capacities to achieve well-being. Drawing on the small body of prior research, I identify specific endowments, conditions, and preferences that seem promising areas for investigations of the harms of overindebtedness.

Endowments are qualities of an individual that are available to improve one’s welfare. The classic example, of course, is wealth (or income). The capabilities frame recognizes wealth as only one measure of welfare. It takes wealth largely to be a \textit{means} of good living, and conversely then, negative wealth, which necessarily occurs because of debt) as a reduction in the \textit{means} of good living. Wealth is a better endowment measure than consumption, particularly in a nation like America, where consumption is often financed by debt. Because consumption will rise in tandem with debt but may have opposite effects of well-being, it is an unreliable marker of well-being for indebted individuals.\textsuperscript{75} Wealth nets out such effects, taking into account the debt burdens that accompany consumption or asset accumulation.

Debt can cause people to diminish their wealth, either voluntarily, by selling assets to pay debts, or involuntarily, when the creditor resorts to coercive process for collection of delinquent obligations. Although this relationship is straightforward, the empirical research on the connection between debt and asset accumulation is incomplete. Research suggests that American debtors are relatively infrequently subject to coercive processes and perhaps that such processes have not grown in proportion to the rising debt loads of American households.\textsuperscript{76} Longitudinal research on households in debt could monitor how asset levels vary with debt burdens, but no appropriate data set currently

\textsuperscript{74} Bourguignon, \textit{supra} note 50, at 83-84. Bourguignon excludes preferences from his later model, saying that because these determinants are in the control of an individual, they should not be ingredients in measuring poverty. I disagree. I take at least some subset of preferences to be malleable and responsive to the experience of poverty or debt, and thus I believe that measurement of preferences is an important component to assessing how poverty or debt shapes welfare.

\textsuperscript{75} A similar problem with consumption arises with smoking. In a consumption model, spending on cigarettes counts as an increase in well-being, although it is clearly counter to good health. See Grusky & Kanbur, \textit{supra} note 53, at 9.

\textsuperscript{76} \textsc{Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook}, \textit{As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America} 331–33 (1989) [hereinafter \textit{As We Forgive Our Debtors}]; Richard Hynes, \textit{Credit Markets, Exemptions, and Households with Nothing to Exempt}, \textit{7 Theoretical Inquiries L.} 493, 495 (2006).
exists.\textsuperscript{77} We know very little about how debt burdens alter asset accumulation or, alternatively, affect individuals’ earnings trajectories.\textsuperscript{78} Even for assets, the dimension that most closely related to debt, the consequences of excessive debt are not extensively documented.

Other important endowments that may be altered as a result of overindebtedness are education, job training, and health. In the context of studying intra-generational mobility of adults, I would add family resources as an important endowment. An individual with extended family resources or a spouse/partner may ask those people to make financial contributions or enter the labor market to cope with overindebtedness. In examining the harms of overindebtedness in an individual’s lifetime, these endowments may vary. While a middle-aged adult may have a fixed endowment of education (given the small likelihood under any circumstance that he or she would return to school), the health status of an adult may fluctuate in the future. For younger adults, education and job training may be immediately subject to the effects of debt, such as when an individual drops out of college or is denied a promotion at work because of his poor credit.

The most extensive research on the relationship of overindebtedness to an endowment explores whether there is a negative relationship between health and overindebtedness. While not nearly as sizeable as the empirical work establishing that poverty has health-damaging consequences,\textsuperscript{79} the research suggests several pathways of association between unmanageable debt and health harms.\textsuperscript{80} Excessive debt may be associated with underutilization of medical treatment.\textsuperscript{81} In the extended period

\textsuperscript{77} The Federal Reserve Board’s Survey of Consumer Finances, and the 2007 Consumer Bankruptcy Project, a collaboration of academic researchers (including me), collect data from about 2,000 households. The difficulty is that the Survey of Consumer Finance, designed to be representative of the U.S. population, has in absolute numbers only a relatively small number of individuals who have unmanageable debt, for example as measured along criteria such as credit denials, late payments, or bankruptcy filings. The Consumer Bankruptcy Project is by design only a sample of people in bankruptcy and is not representative of all households such as those with relatively modest debt burdens. Neither survey is longitudinal, although the Consumer Bankruptcy Project has had a modest panel component in the past. Brian Bucks, \textit{Out of Balance: Financial Distress in American Households, in Broke: How Debt Undermines the Middle Class} (Katherine Porter ed.) (unpublished manuscript, on file with author) (discussing measurement and comparison problems between Survey of Consumer Finance and Consumer Bankruptcy Project). The Federal Reserve Board has conducted a supplemental panel study in late 2009 with its respondent households from the 2007 Survey. Press Release, Fed. Reserve Bd., Federal Reserve Will Soon Begin a Statistical Study of Household Finances to Update Date Collected at the Outset of the Economic Downturn that Began in Late 2007 (July 27, 2009), available at http://www.federalreserve.gov/newsevents/press/other/20090727a.htm.


\textsuperscript{79} Peggy McDonough et al., \textit{Time on My Side? Life Course Trajectories of Poverty and Health?} 61 SOCIAL SCIENCE & MEDICINE 1795, 1797 (2005) (collecting prior research on poverty and health dynamics). McDonough et al. conclude that while permanently nonpoor respondents generally always had better health, exiting poverty did not always improve health because the poverty experience created a residual poverty-health gap. Id. at 1806.


\textsuperscript{81} Note that the path to this underutilization may be somewhat different than for those who simply cannot pay for health care at all due to a lack of income. The excessive debt may result in collection pressure, guilt, or fear of property loss that could lead an individual to forgo health care in favor of using income to meet other obligations. That is, as paying off debt becomes more of a necessity in an individual’s mind, health care retreats as such a
of financial distress before bankruptcy, one’s health may be worsened, say by the amputation of a limb from inadequate treatment of diabetes. This is a permanent change to an individual’s health endowment that clearly harms her welfare in human terms, as well as economic terms of inhibiting labor opportunity. A dollar metric to assess the harms of debt fails to measure how debt may condition one’s access to health care or may itself worsen health by creating or aggravating mental or physical conditions. For example, a study of Germans found an increased probably of obesity among overindebted individuals, even when controlling for other socio-economic factors, and concluded this relationship may reflect ways in which debt limits leisure activities, participation in social life, or constrains the purchase of health food. Other research has suggested correlations between mental illness and overindebtedness. While reducing debt via a bankruptcy discharge can free up income from debt service that can be used to pay for health care, the pathway between debt and health may be much more complex. The discharge of debt may be an instantaneous remedy for balance sheets but not for human health. The stress and emotional harms of struggling with debt, for example, may be replaced after bankruptcy, by shame and guilt at having sought bankruptcy relief.

Conditions are socially-imposed limits on an individual’s use of her endowments and preferences. They are not individual qualities, although each individual will be subject to a particular set of conditions. In the American economy, access to markets is a crucial set of conditions. In the last thirty years, the development of credit scores has dramatically lowered the cost of decisions about imposing conditions. A wide-range of jobs, including those at the middle- to lower-end of the occupational spectrum, requires applicants to pass a credit check. This constraint is a serious, and largely unexamined, consequence of debt. Many households will cope with a job loss by borrowing. If the period of unemployment is sustained and the debt accumulates to the point that it becomes unmanageable, the individual will face barriers to reemployment because of a low credit score. Debt, and default on debt, may thus directly bear on labor market processes. Conceptualizing the problem as debt itself does not highlight this attenuated harm. It is perhaps unsurprising, then, that bankruptcy law does nothing to address this problem.

necessity, leading to different spending decisions. In the model, this is an altered preference for how to use the endowment of income. Yet the damage of debt to human welfare is a reduced endowment of health on a going-forward basis.

82 Link between Over-indebtedness and Obesity Identified, MEDICAL NEWS TODAY, [Aug. 12, 2009].
83 See, e.g., H. Ruger et al., Mental Illness, Social Networks, and Financial Strain in Over-indebted Persons, 60 PSYCHOTHERAPY, PSYCHOSOMATICS, MED. PSYCH., 250 (2009).
84 In 2004, about 43% of U.S. employers checked the credit reports of job applicants; that number has trended sharply upward in the last decade. Thomas Frank, Job Credit Checks Called Unfair, USA TODAY, Feb. 13, 2009, at 1A. Credit checks are used in many industries outside of financial services, including education and data entry. See Jonathan D. Glater, Another Hurdle for the Jobless: Credit Inquiries, N.Y. TIMES, Aug. 7, 2009, at A1 (reporting on person who was denied data-entry job); Christina Rexrode, Job Hunting? Check Your Credit, CHARLOTTE OBSERVER, Aug. 30, 2009, available at http://www.charlotteobserver.com/business/story/917283.html (reporting that Charlotte-Mecklenburg school district backed down on plans to run credit checks after teacher protest).
85 The only study of this kind uses 2001 Consumer Bankruptcy Project data. See Thorne, supra note 39, at 35-37 (reporting that among people who tried to find new employment after bankruptcy, 45 percent of respondents claimed that their bankruptcy was a reason for the denial of employment).
86 Section 525 of the Bankruptcy Code prohibits private employers from terminating the employment of, or discriminating with respect to employment against, a bankruptcy debtor. 11 U.S.C. § 525(b) (1984). A vast majority of bankruptcy courts interpret this provision to apply only to existing employment relationships. It appears legal for an employer refuse to hire a person because the person has filed bankruptcy. See Fiorani v. CACI, 192 B.R. 401, 405-06 (E.D. Va. 1996); Pastore v. Medford Sav. Bank, 186 B.R. 553, 554-55 (D. Mass. 1995); In re Hopkins, 81 B.R. 491, 494 (Bankr. W.D. Ark. 1987); Burnett v. Stewart Title, Inc., No. 06-34312-H4-13, 2008 WL 4609983 (Bankr. S.D.
Conditions on future borrowing are an important concern in the context of understanding the experience of excessive debt. Here, as I have noted in prior research, there is little consensus about what amount of borrowing opportunity is optimal for individuals who have or had excessive debt.87 Consumer advocates lament continued lending to those already mired in debt.88 After bankruptcy, however, return to the credit economy may be a crucial element to maximizing a debtor’s productivity. For example, losses result if individuals’ prior debt problems inhibit credit extensions for sound ideas for new businesses. Similarly, a person who cannot borrow to purchase a new vehicle after repossession may be unable to work or attend school without access to transportation. Two very recent studies have largely confirmed the findings of my research on the widespread availability of postbankruptcy credit and debtor’s reluctance to use such credit.89 A multidimensional space for understanding excessive debt sharpens the theoretical implications of this work, situating it alongside other market constraints or rationing activity.

Another important market that is conditioned on debt is the housing market, both for homeownership (perhaps better examined under credit access) and for rental housing.90 This is a question of great importance for the well-being of American families because as Douglas Massey has noted, “housing markets distribute education, insurance rates, wealth, safety, peer groups, and employment.”91 The multidimensional approach helps us recognize that foreclosure from unmanageable mortgage debt imposes harms beyond a loss of wealth. Forthcoming work by Marianne Culhane examines what happens to families who lose their homes in bankruptcy, including documenting their next place of residence after foreclosure and their attitudes about homeownership.92 Understanding how failed homeownership from a foreclosure or surrender of property will affect future housing outcomes is an urgent policy issue for responding to the ongoing foreclosure crisis.93


87 See Katherine Porter, Bankrupt Profits: The Credit Industry’s Business Model for Postbankruptcy Lending, 93 IOWA L. REV. 1369, 1416 (2008) (discussing the differences between secured and unsecured credit opportunities for post-bankruptcy debtors).

88 Brad Stone, Banks Mine Data and Woo Troubled Borrowers, N.Y. TIMES, Oct. 21, 2008, at B1, available at http://www.nytimes.com/2008/10/22/business/22target.html?pagewanted=all (describing practice of lenders culling credit agency information to market to particular demographics, including those who have fallen deeply into debt). Jim Campen, the executive director of the Americans for Fairness in Lending, stated “[lenders] get people who they know are in trouble, they know are desperate, and they aggressively market a product to them which is not in their best interest.” Id.


90 Thorne, supra note 39, at 33-34, Tbl. 1 (reporting findings on credit-score discrimination in rental housing from survey of bankruptcy debtors).


92 Marianne B. Culhane, No Forwarding Address: Losing Homes in Bankruptcy, in BROKE, supra note 76.

93 I have been unable to locate research on how foreclosure affects the odds and success of future homeownership. One study of duration of homeownership status was conducted by the Department of Housing and Urban Development using panel data ending in 2000, predating the current crisis. See Donald R. Haurin & Stuart S. Rosenthal, U.S. Dep’t of Hous. & Urban Dev., The Sustainability of Homeownership: Factors Affecting the
Social exclusion may also be a consequence of overindebtedness. This can be characterized as a condition on an individual’s choices. The bankruptcy literature has engaged this concept in terms of debates about whether the stigma of bankruptcy has increased or decreased. But a focus on stigma as a check to the moral hazard of bankruptcy is distinct from understanding stigma as a consequence of debt. If participation in social institutions is conditioned on unmanageable debt, this is a real harm that limits human welfare. The poverty literature has explored the connection between income and social participation, noting that that each society defines a set of commodities needed to take part in the life of the community. A lack of goods may prohibit meaningful social interaction. Social exclusion dynamics may operate in another way, which is by stigmatizing those who seek or receive assistance. In this regard, Frances Bourguignon has noted that “[t]o some extent, income transfers may even worsen the situation as they may stigmatize their beneficiaries.”

Debt burdens also may inhibit social participation, and the act of bankruptcy to relieve debt may worsen such an outcome. Debt burdens may lower one’s self-esteem or inhibit the consumption that is often a required component of taking part in everyday social activities. Allison Pugh has coined the term “economy of dignity” to capture the way in which goods and experiences shape self-esteem and a sense of belonging to social life. This economy of dignity can be seen not only as a process for self-evaluation but also as a market for commodifying others. A provocative example in this regard is the recent arrival of agencies that do credit checks on prospective spouses. Public advertisements for such services transmit the message that social exclusion from marriage is an appropriate reaction to debt problems. Other social constraints from debt could be more even direct. For example, European countries may prohibit bankrupt individuals from holding elected political office or serving as directors of public companies. Although America has few such laws, social stigmatization may operate to impose such barriers, even when formal law does not. The conditions imposed on overindebted people may also change over time; as overindebtedness becomes more common, society may develop a greater understanding of the consequences for the individual and the community.

DURATION OF HOMEOWNERSHIP AND RENTAL SPELLS 37–48 (2004). The models developed in that study did not measure the association between debt burdens and homeownership duration or examine the future housing patterns of people who lost homes to foreclosure. Id.

94 Compare Less Stigma, supra note 19, with Jones & Zywicki, supra note 20, at 215–21.
95 Sen, supra note 49, at 37.
96 Bourguignon, supra note 50, at 77.
97 See, e.g., Telephone Interview with Respondent W2_0627C, 2007 Consumer Bankruptcy Project, Question CHLD07 (“It caused anger because they were unable to do athletics and school activities like their friends.”). Nearly three-fourths (73%) of parents said their children did without clothes or shoes that they needed because they could not afford them. 2007 Consumer Bankruptcy Project, Telephone Interview Question PRV02, n=1032. The question allowed parents to define “need,” which they almost certainly constructed in absolute, as well as relative terms, based on norms of social acceptance.
tolerance of those with debt problems. Of course, the converse is also possible. As default rates escalate, sanctions against those with debt problems may increase as a means of deterring borrowing to the point of excess.

Preferences are the final element of a multidimensional framework for assessing the influence of debt on well-being. The capabilities approach explicitly acknowledges that individuals will make choices that affect their welfare, focusing on capability rather than outcome as its central goal. Preferences reflect individuals’ different desires. In the economic framework that dominates the consumer credit and bankruptcy literature, the standard assumption is that such preferences are rational and fixed. Behavioral work has exposed how cognitive biases may undermine rational decision making. In the poverty literature, the idea of an underclass, while contested, has facilitated recognition of the malleability of preferences and how some adaptive preferences may harm individual’s well-being. These adaptive preferences are shaped over time in response to life experiences and then color individuals’ assessments of their well-being.

Preferences may also change during one’s lifetime based on the experience of indebtedness. Most obviously, people may be fearful of credit and seek to avoid it, even when a rational-choice framework would show a benefit to borrowing. My research on the financial habits of families in the aftermath of bankruptcy suggests distaste for credit, and for credit cards in particular. Years of anxiety about the possibility of garnishment or levy may also lead bankrupt families to eschew traditional banking and to fail to disclose assets. Alternatively, some families may chose a strict cash economy for


104 William Julius Wilson, *Social Theory and the Concept “Underclass”, in Poverty and Inequality*, *supra* note 49, at 103.

105 This is another justification for the capabilities approach rather than a strict utilitarian lens. If maladaptation can occur, people’s own assessments of their well-being reflect the status quo, rather than their genuine desires. Nussbaum explains that because “deprived people frequently exhibit ‘adaptive preferences,’ preferences that have adjusted to their second-class status” that “the utilitarian framework, which asks people what they currently prefer and how satisfied they are, proves inadequate to confront some pressing issues of justice.” Nussbaum, *supra* note 50, at 48.

106 Katherine Porter, *Life After Debt: Understanding the Credit Restraint of Bankruptcy Debtors* 18 AM. BANKR. INST. L. REV. 1, 9 (2010) (finding that only one in four chapter 7 debtors report any new credit one year after bankruptcy.) The constraint in borrowing is not a result of strict credit rationing. Households who discharge debts in bankruptcy get offers for both secured and unsecured credit within the first months after bankruptcy. See Porter, *supra* note 81, at 1373.
their household as a budgeting device to prevent entanglement with debt through mechanisms such as overdraft fees or lines of credit. Michael Barr and others have illustrated the costs of being unbanked.\textsuperscript{107} These preferences to avoid mainstream financial institutions impose direct financial costs on individuals, who pay higher fees to use fringe banking services, and generate externalities, such as difficulty in ensuring taxation of all income.

The experience of financial distress caused by debt may also change people’s appetite for risk. The hardships of debt may change people’s risk preferences, leading to myopic miscalculations. As a hypothesis, people who have suffered from debt may then save excessively in the future to avoid another bout of distress. If this savings leads to underinvestment in themselves or their children, then this preference will produce social loss. In 1968, Caplovitz hypothesized a similar effect of debt on occupational preferences. He posited that debt-burdened individuals might avoid entrepreneurial employment, preferring the stability of less lucrative, wage-earning positions.\textsuperscript{108}

A panel study of Dutch households provides a useful model of how one could study the association between debt and preferences.\textsuperscript{109} Paul Webley and Ellen Nyhus incorporated measures for attitudes to debt, time preferences, and self-control into a telephone survey of debt burdens. Their focus is primarily on predicting debt, but they also consider the inverse effect—that short time horizons and a lack of self-control are a consequence of debt, and that accepting attitudes toward debt may be an adaptive preference of having been in debt.\textsuperscript{110} In their words, “getting into debt makes debt seem not quite so bad.”\textsuperscript{111} Relying on cross-time correlation measures, they report that the association between debt burdens in time period 1 and psychological variables in time period 2 is stronger than the converse association of psychological variables in time period 1 and debt burdens in time period 2. This suggests that indebtedness changes preferences such as time horizons for satisfaction and self-control.\textsuperscript{112} Replication of this approach with panel data on bankrupt households would help identify whether excessive debt alters preferences of American consumers.

In identifying those appropriate dimensions, one conceptual difficulty lies in the possible temporal differences in poverty and indebtedness. Social scientists have documented as a general matter the intractability of poverty in an individual’s lifetime,\textsuperscript{113} but have focused most of their energies on inter-generational mobility, rather than intra-generational mobility.\textsuperscript{114} The paucity of research leads to a certain amount of conjecture on the trajectories of indebtedness, most of it building off a theory of

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\textsuperscript{110} Id. at 442.
\textsuperscript{111} Id. (internal citation omitted).
\textsuperscript{112} Id. at 439-40 & tbl.6.
\textsuperscript{113} Conclusions about the duration of poverty vary, in part because of different approaches to measuring time in poverty. For a discussion of the prior literature and estimates from a complex model that accounts for repeated episodes of poverty, see Ann Huff Stevens, *Climbing Out of Poverty, Falling Back In: Measuring the Persistence of Poverty over Multiple Spells*, 34 J. Human Resources 557, 558–62 (1999). Stevens concludes that time in poverty varies substantially with demographic characteristics but that on average a family in poverty will spend over four of the next ten years in poverty. Id. at 583.
\end{flushright}
debt as a consumption-smoothing model over the life cycle. Although we know very little about the duration of excessive debt as a phenomenon,\textsuperscript{115} scholars in the last thirty years have firmly pinned down the demographic characteristics of bankrupt households.\textsuperscript{116} One of the most enduring findings of this research is that bankrupt households have multiple indicia of middle-class status, excepting income. Families have very low incomes when they file bankruptcy. The median debtor has an income just above the poverty line; even the top income quintile of bankrupt households earns less than the median income of the general U.S. population.\textsuperscript{117} The disparity between income and other class indicia suggest that bankrupt households have experienced substantial income loss in the period preceding their bankruptcy. This suggests that overindebtedness, at least for families who seek bankruptcy relief, may be a transitional experience of downward mobility, rather than as a persistent state.

On the other hand, I have reported that that more than two-thirds of bankrupt households say that they seriously struggled for more than one year before filing bankruptcy.\textsuperscript{118} The modal response, selected by more than forty percent of bankruptcy debtors, was a serious struggle of more than two years before bankruptcy.\textsuperscript{119} And findings from my earlier research suggest that the fresh start of a bankruptcy discharge does not usually translate to a higher future income.\textsuperscript{120} This leads me to suggest that we should think about excessive debt as being a sustained, if not chronic, experience. In this regard, excessive debt is perhaps more similar to poverty. Because the temporal nature of overindebtedness, even among the limited population of those whose debts drive them to bankruptcy, is unclear, any initial study might begin with the hypothesis that unmanageable debt has relatively enduring effects. This uncertainty about the duration of overindebtedness, and the degree to which it may vary among households whose debt problems have different primary causes, leads me to err towards inclusion in suggesting dimensions worthy of empirical investigation.

V. Dimensions for Future Empirical Research

A multidimensional framework is unwieldy in practical application, and perhaps can never achieve the precision of unitary financial metrics for welfare like income or debt. However, applying the theoretical frame to concrete data helps expose its strengths and weaknesses, both in conception and in practical application. I conclude this essay by exploring directions for future empirical studies on the consequences of overindebtedness.

\textsuperscript{115} Webley & Nyhus, supra note 101, at 424–25 (noting the paucity of empirical evidence and developing a taxonomy of debtors’ “careers.”).
\textsuperscript{116} See AS WE FORGIVE OUR DEBTORS, supra note 73; FRAGILE MIDDLE CLASS, supra note 18, at 41 fig.2.1, 46 fig.2.2, 53 fig.2.3, (graphing age, racial–ethnic composition, and education (respectively) of bankrupt debtors); Teresa A. Sullivan, Deborah Thorne & Elizabeth Warren, Young, Old, and In Between: Who Files for Bankruptcy?, 9 NORTON BANKR. L. ADVISER, Sept. 2001, at 1; Elizabeth Warren, supra note 5, at 24–30; Elizabeth Warren, Financial Collapse and Class Status, 41 Osgoode Hall L.J. 115, 129–42.
\textsuperscript{117} Deborah Thorne & Elizabeth Warren, A Vulnerable Middle Class: Bankruptcy and Class Status, in Broke, supra note 74 (manuscript at 2, on file with author) (reporting consistent findings in 1991, 2001, and 2007 surveys of bankrupt households’ occupational prestige, homeownership, and educational attainment).
\textsuperscript{118} Mann & Porter, supra note 6, at 313-14.
\textsuperscript{119} This was the first time such a question had been posed to bankrupt households, and the responses suggest that the question design may have censored the top range of respondents’ true experiences. We simply cannot discern how much beyond two years the 40% of respondents may have struggled.
\textsuperscript{120} Porter & Thorne, supra note 75, at 94 fig.6 (depicting changes in income correlated to families’ self-reported financial situation).
In the prior section, I identified some specific dimensions in which in unmanageable debt may create harms to welfare. Empirical research within the multidimensional frame could begin by gathering data on the association between a single dimension and debt. Such measures of the interaction between increasing debt burdens and single capabilities can then be used as building blocks in a multidimensional assessment of the welfare harms of overindebtedness. For example, a labor economist could add measures of debt burdens to a panel study of occupational choices and wages. This would allow an estimation of the interaction between indebtedness, occupational rigidity, and labor market barriers. Such research tests a single dimension of the model, rather than the usefulness of a multidimensional approach itself. Nonetheless, it would help separate out whether income poverty and debt-induced financial distress have different consequences. This piece-wise approach also permits comparison of different scales or constructs for capturing the harms of overindebtedness, helping to determine whether existing models, such as mobility on socioeconomic prestige scales, capture the harms of overindebtedness or whether they are manifest in other ways, such as wage stagnation.

To take another example, the key effect of debt problems on health could either be physical or mental, perhaps with the latter effects then feeding back into physical outcomes. Separate projects on debt and health could test whether well-worn measures such as the five-point self-assessment of overall health are useful to capture the effects of debt. If not, then researchers can debate whether such effects are of minimal magnitude or require alternate measures. For example, if its sample size were expanded to include a sufficient sample of heavily indebted households, the Panel Study of Income Dynamics could add a set of health measures permitting analysis of whether the relationship between debt and psychological health that has been identified in British households is also present in American households.

The 2007 Consumer Bankruptcy Project is the most comprehensive available data set on heavily debt-burdened households. It has a sizeable sample, consisting of over 2000 households that filed consumer bankruptcy in the first quarter of 2007. In addition to written surveys at the time of bankruptcy and the financial data drawn from each debtor’s court records, the project conducted in-depth telephone interviews of more than one hour with over 1000 debtors. The interviews included a number of inquiries on the consequences of struggling with debt and bankruptcy. Several of these inquiries can be organized into the three elements of the multidimensional framework, permitting at least a partial application of that framework to the situations of real families.

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121 The National Health Interview Survey uses such a measure, which has been found to be a powerful predictor of mortality and to correlate with other measures such as hospitalization episodes. See Anne Case, Darren Lubotsky & Christina Paxson, Economic Status and Health in Childhood: The Origins of the Gradient, 92 AM. ECON. REV. 1308, 1310 (2002) (studying the relationship between household income and children’s health).


123 Because the vast majority of people who file bankruptcy have very heavy debt burdens, the bankrupt population is of fairly limited utility for attempts to gauge how the harms of debt may vary with debt burdens and to identify the breakpoints at which debt produces reductions in endowments, alters preferences, or subjects people to limiting conditions.

124 For more information regarding the methodology of the 2007 Consumer Bankruptcy Project, see Lawless et al., supra note 10, at App. I.
Measures in the 2007 Consumer Bankruptcy Project that could be used to assess the effects of high debt burdens on endowments are questions about mental and physical health, deprivations of health care, educational decisions, such as stopping an adult’s education or changing schools for children, and how individuals drew down on assets such as retirement accounts or savings, or terminated such asset-building strategies. The conditions measures included a number of indirect inquiries about labor market effects of debt. For example, debtors were asked if they missed work or were distracted at work because of their debts. Inquiries that might fit the criterion for preference measures include questions about savings habits, willingness to start a business, willingness to file a future bankruptcy.

The 2007 Consumer Bankruptcy Project also collected data that could be used to assess effects of debt beyond harms to individuals. Such effects could be construed as externalities of debt or folded into the multidimensional approach to welfare as societal harms that then impact individual capabilities. For example, the 2007 Consumer Bankruptcy Project asked a series of questions about how struggles with debt affected marital relations and marital status. Other inquiries could be used to probe intergenerational harms of debt, such as questions about whether children suffered privations from debt and how parental behaviors changed during the indebted period. The open-ended inquiries and debtors’ spontaneous comments during the interviews also provide insights on the interpersonal consequences of debt and the exclusion effects of debt-induced financial distress. Several debtors did describe family relationships that were damaged by their difficulties in managing their debts. Other parents talked about their children being unable to participate in school activities or athletics because of their financial distress. These findings, invisible in a metric of dollars, reveal how social exclusion and stigmatization may result from debt.

Taken together, the 2007 Consumer Bankruptcy Project data are a starting point to examine how debt may reduce well-being along multiple dimensions, including inhibiting productivity and constraining other basic capabilities, such as good health and stable social relationships. The data are concededly preliminary and limited on these points. Future studies of bankrupt households should consider adding additional dimensions and improved measures of existing dimensions to document the consequences of overindebtedness. The framework developed in this essay could usefully be applied to households with different types of debt burdens, including households that seek debt counseling or debt management but who have not filed bankruptcy. In particular, one wishes for longitudinal data

125 See, e.g., Telephone Interview with Respondent W4_0905R, 2007 Consumer Bankruptcy Project, Question EMP10 (“I only missed a few days for lawyers and court hearings but I missed a lot of work because of the depression that was caused by the financial troubles and the bankruptcy.”).

126 See, e.g., Telephone Interview with Respondent W5_0891B, 2007 Consumer Bankruptcy Project, Question SR09 (“We didn’t separate before the bankruptcy, but we did after we filed. It had really damaged our relationship and it could never be the same. I felt I had to move out and take my young son because it was affecting him so much too.”).

127 See, e.g., Telephone Interview with Respondent W3_0795B, 2007 Consumer Bankruptcy Project, Question ERD22 (“My son just discarded me. He won’t communicate with me.”); Respondent W2_0835C, supra (“My kids lost total faith in me.”); Respondent W5_0891B, supra (“People close to me didn’t know what to do to help and I lashed out at them from frustration and that was damaging.”).

128 See e.g., Telephone Interview with Respondent W2_0627C, 2007 Consumer Bankruptcy Project, Question CHLD07 (“It [the debt] caused anger because they were unable to do athletics and school activities like their friends.”); Telephone Interview with Respondent W2_0970L, 2007 Consumer Bankruptcy Project, Question PRV03 (reporting that children went without “things for school like band uniforms” because she could not afford them); Respondent W5_0891B, supra (reporting that children went without “educational activities and arts and sports.”).
that could illuminate how the harms of unmanageable debt vary with changes in debt loads and how the consequences of overindebtedness may differ when an individual suffers an isolated bout of unmanageable debt versus a chronic situation, and when an individual rebounds from debt problems without intervention versus after intervention from bankruptcy or other formal processes.

VI. Conclusion

This essay’s first goal was to highlight the paucity of empirical work measuring the costs of debt. Given the heavy debt burdens of Americans, and the ferocity of policy debates about bankruptcy and credit regulation, the essay tries to motivate studies to assess whether the conjectured externalities of debt exist and to quantify those costs. This criticism accepts debt as a valid measure of welfare but notes the lack of recent or sophisticated efforts to measure the costs of debt. The essay’s second goal was to expose the limitations of using financial measures as the space for assessing how overindebtedness harms well-being. Examining debt in a multidimensional space based on a capabilities approach to welfare is a superior approach to measuring the consequences of debt. This theoretical frame would incorporate elements that examined how debt reduces an individual’s endowments, produces undesirable preferences, and subjects individual’s to societal conditions on achievement.

Understanding the consequences of unmanageable debt would provide meaningful contributions to both theory and policy on bankruptcy and credit regulation. Better knowledge of the harms from overindebtedness may suggest that the means test in bankruptcy law that conditions access to bankruptcy on financial metrics is a poor instrument for evaluating one’s need to discharge debt. Quantifying the externalities of excessive debt would provide input on the costs of borrowing that could be incorporated into cost-benefit calculations about restrictions on credit. More fundamentally, when the association between debt and individual welfare is recast beyond a debt metric and instead encompasses human capabilities such as good health, adequate shelter, access to education, the right to seek employment on an equal basis with others, and a life free from undue anxiety and fear, the connection between well-being and consumer credit policy comes into sharper focus. This may encourage a richer conversation about the risks of fueling the American economy with debt-funded consumption.