

LEGAL CULTURE AND BANKRUPTCY: A COMPARATIVE PERSPECTIVE

*Rafi Efrat**

ABSTRACT

Empirical studies on the United States bankruptcy system have pointed out sharp disparities between the formal law on the books and the laws in action, as well as dramatic variations in the implementation of the laws from one locale to another. These differences were observed despite the application of a uniform federal bankruptcy regime and the lack of variations in the economic circumstances of debtors in the different localities. Scholars have attributed the disparities to the effects of the internal and local legal culture. They have asserted that the variations in the bankruptcy practices are a product of the combined influence of attorneys, judges, and other government officials on the decisionmaking process of the bankruptcy petitioners.

This study attempts to extend the inquiry into the impact of legal culture on the functioning of the law in general, and on bankruptcy law in particular, by examining the influence of legal culture in Israel—a country with different social, historical, political, and economic roots and a completely different bankruptcy regime. The findings of this empirical study provide compelling evidence to further support the proposition that internal legal culture has a powerful impact on the actual implementation of legislative reform in general, and on bankruptcy laws in particular. Indeed, the values, attitudes, and beliefs shared by key government officials in

* Assistant Professor, California State University, Northridge. J.S.D., 2002, Stanford Law School; J.S.M., 1998, Stanford Law School; J.D., 1992, University of Southern California Law Center. The author would like to acknowledge the helpful comments made on earlier drafts of this article by Professor Elizabeth Warren from Harvard Law School, Professor Marcus Cole and Professor Lawrence M. Friedman from Stanford Law School, William Whitford from the University of Wisconsin Law School and Professor Jean Braucher from the University of Arizona School of Law.

the Israeli bankruptcy system seem to be playing the critical role in shaping practices in the Israeli personal bankruptcy system.

INTRODUCTION

Legislators pursue legal reform with the aim of achieving or furthering some identified public policy objective. Traditionally, legal scholars tried to assure that formal statutory provisions and rules of court produced the desired outcomes, and that deviations from such outcomes were mere errors. On the other hand, law and society scholars have asserted that this view ignores some fundamental explanations for the wide deviation between the law on the books and the law in action. These scholars point to numerous studies that indicate substantial gaps, and at times a total disparity, between the formal substantive rules on the books and the actual implementation of the rules on the ground. In addition to the disparity between the formal laws and the laws in action, these scholars note the important, and at times, dramatic variations in the implementation of the law from one locale to another, despite the similarity in formal rules.¹

Law and society scholars attribute some of the disparity between the formal laws and the laws in actions, as well as the substantial local variations in the implementation of the laws, to the influence of legal culture.² A legal culture is a set of “ideas, attitudes, beliefs, expectations, and opinions about law.”³ Scholars have distinguished between external legal culture and internal legal culture. External legal culture is based on the set of ideas, attitudes, values, and beliefs that people in the population at large hold about the legal system. Internal legal culture is based on the perceptions and expectations shared by lawyers, judges, and other officials about the legal system.⁴

¹ See, e.g., Lawrence M. Friedman, *Borders: On the Emerging Sociology of Transnational Law*, 32 STAN. J. INT'L L. 65, 67 (1996) (“Thus, it is never the case that the legal system of any country is uniform, unified, and able to cover the whole country like a smooth coat of paint. Within any given country, legal practices differ a good deal from region to region.”).

² See, e.g., LAWRENCE M. FRIEDMAN, *LAW & SOCIETY: AN INTRODUCTION* 168 (1977) (“The use of law depends on legal culture - on social attitudes toward law. This in turn, is inseparably linked with the traditions of society, with its social structure, with its history.”).

³ *Id.* at 7.

⁴ See *id.* at 76.

Researchers sometimes use legal culture to explain apparent disparities between formal laws and the actual implementation of the laws on the ground. For example, one recent study found ambivalent feelings among Taiwanese about the values of formal and distant legal institutions, as well as the Taiwanese people's well developed informal relationship-based financing arrangements have led to almost a complete ignorance of the formal laws in the area of commerce.⁵ In another study, the author examined the extent to which a reform in the Norwegian law aimed at improving the status of housemaids had any practical impact. The author found that no more than one tenth of the sampled relationships showed complete conformity to the demands of the new law. The author attributed some of the disparity between the law on the books and the law in action to the strong continued influence of embedded customs and norms that dictate the terms of employment of housemaids in Norway.⁶

Other empirical studies have suggested that legal institutions and legal culture may not only explain the disparities that exist between the laws on the books and the laws in action, but also explain the dramatic variances in the implementation of the laws between different locales. For example, one researcher compared the Netherlands with the German province of Nordrhein Westfalen, which lies just across the border and whose population is culturally similar to that of the Netherlands. The formal law of the two jurisdictions is also similar, but there are significant differences in the use of the law and the rate of litigation. The author attributed these differences primarily to Dutch institutional arrangements,

⁵ See Jane K. Winn, *Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan*, 28 LAW & SOC'Y REV. 193, 194-95 (1994).

⁶ See Vilhelm Aubert, *Some Social Functions of Legislation*, 10 ACTA SOCIOLOGICA 98, 99, 105 (1967) (concluding "that the law was, at least for some years, ineffective in the sense that actual working conditions were very far from the norms laid down, and also in the sense that even conformity to the legal norms was rarely due to influence from the law."); see also Kitty Calavita, *Worker Safety, Law and Social Change: The Italian Case*, 20 LAW & SOC'Y REV. 189 (1986) (finding that an Italian reform of industrial health and safety standards did not initially reduce the work related accident rate because workers were hesitant in reporting a violation since the new reform would have mandated the factory closure and inevitably lead to the employee's own job loss, and because employers were able to externalize dangerous work conditions to facilities where the conditions would not be reported); Kathryn Hendley, *Legal Development in Post-Soviet Russia*, 13 POST-SOVIET AFFAIRS 228, 246 (1997) (finding that legal corporate reform in Russia had little impact on the parties' behavior partly due to the absence of a credible threat of coercive action by the State and partly due to influential informal norms that are well understood by all but remain unwritten).

which provided free legal advice much more generously to people at the lower end of the economic scale, and to other cultural and institutional factors.⁷

The Israeli personal bankruptcy system also provides a fruitful area of inquiry in the field of legal culture. Financially troubled individuals who resort to bankruptcy in Israel must first submit an application for commencement of bankruptcy proceedings (commonly referred to as an application for a receiving order).⁸ Following the issuance of a receiving order the debtor is divested of control of his property and the court generally issues a stay order of the creditors' collection activities.⁹ Also, upon the issuance of a receiving order, the Official Receiver, a government agency charged with administering the bankruptcy system,¹⁰ commences an investigation of the debtor in order to ascertain the debtor's financial wherewithal, as well as the causes of the financial failure.¹¹ Six months after the issuance of a receiving order the court is expected to conduct a hearing determining whether the petitioner should be adjudicated as bankrupt. A court will generally declare the petitioner bankrupt unless it finds that the debtor acted in bad faith when he applied for bankruptcy protection or that the debtor

⁷ See Erhard Blankenburg, *The Infrastructure for Avoiding Civil Litigation: Comparing Cultures of Legal Behavior in the Netherlands and West Germany*, 28 LAW & SOC'Y REV. 789 (1994); see also THOMAS W. CHURCH, JR., JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS (1978); Thomas W. Church, Jr., *Examining Legal Local Culture*, 1985 AM. B. FOUND. RES. J. 449; Herbert M. Kritzer & Frances K. Zemans, *Local Legal Culture and the Control of Litigation*, 27 L. & SOC'Y REV. 535 (1993); Joseph Sanders & V. Lee Hamilton, *Legal Cultures and Punishment Repertoires in Japan, Russia and the United States*, 26 LAW & SOC'Y REV. 117 (1992).

⁸ See 1980 Bankruptcy Ordinance, amended by 1560 S.H. 14, 17(b) & 60 (1996) [hereinafter *The Bankruptcy Ordinance*].

⁹ See *id.* § 20(a).

¹⁰ While not identical in powers, the Official Receiver in Israel would be the rough equivalent of the United States Trustee's Office or the Office of the Superintendent of Bankruptcy in Canada. The institution of the Official Receiver in Israel is modeled after a similar institution in England. See Douglas G. Boshkoff, *Limited, Conditional, and Suspended Discharges in Anglo-American Bankruptcy Proceedings*, 131 U. PA. L. REV. 69, 79 (1982) (describing the functions of the Official Receiver's office in the bankruptcy system in England). The Official Receiver in Israel is an administrative agency of the Justice Department. Its central office is situated in Jerusalem. The Official Receiver has four regional offices spread around the four dominant geographical regions of the country: Jerusalem District, Central District (including Tel-Aviv), Southern District (including Be'er-Sheva and Nazareth), and Northern District (including Haifa). The head of the central office of the Official Receiver, as well as, the four regional leaders are appointed as part of the civil service system in Israel. The head of the Official Receiver is appointed by the Justice Minister.

¹¹ See *The Bankruptcy Ordinance*, *supra* note 8, §§ 140, 141.

can repay his debts.¹² As part of the adjudication order petitioners are generally ordered to liquidate their non-exempt assets and allocate a portion of their future earnings over a number of years to repay their creditors.¹³ Unlike the automatic discharge provision in the United States, the debtor's right to receive a discharge is a matter of judicial discretion in Israel.¹⁴

Traditionally, access to bankruptcy in Israel was foreclosed to individuals with low income and minimal assets, as those debtors were unable to demonstrate that the bankruptcy petition would benefit their creditors.¹⁵ Also, while debt-forgiveness was available on the books very few petitioners bothered applying for it and hence remained undischarged bankrupt indefinitely.¹⁶ Moreover, when the few bankruptcy petitioners did bother to apply for discharge, debt forgiveness was rarely granted partly due to the stringent set of prerequisites.¹⁷ Lastly, in the cases where debt-

¹² See *id.* §§ 18a(a), 18e(a).

¹³ See *id.* §§ 42, 85, 113.

¹⁴ Compare 11 U.S.C. § 727(a) with The Bankruptcy Ordinance, *supra* note 8, § 62.

¹⁵ See *Proposed Amendment of the Bankruptcy Ordinance: Hearings Before the Subcomm. on Bankruptcy Reform of the Judiciary Comm.*, 13th Knesset 7 (May 30, 1995) (statements of Davida Lachman-Messer, Deputy Attorney General and Yitzhak Zuriel, chief administrator of the Official Receiver) ("In twenty-five court decisions . . . , the court concluded that if a person has no assets, there is no benefit to creditors in a bankruptcy proceedings, and hence [the courts] did not permit people who were in need of its protection to access it [The proposed reform invalidates those rulings]."); Rafael Efrat, *The Evolution of the Fresh-Start Policy in Israeli Bankruptcy Law*, 32 VAND. J. TRANSNAT'L L. 49, 98 (1999) [hereinafter Efrat, *The Evolution*] ("As a result of the various legislative reforms that began in 1976, by the late 1980s financially troubled individuals with limited assets and low incomes were in practice barred from the bankruptcy process").

¹⁶ See *Proposed Amendment of the Bankruptcy Ordinance: Hearings Before the Subcomm. on Bankruptcy Reform of the Judiciary Comm.*, 13th Knesset 26 (Oct. 1, 1995) (statement of Davida Lachman-Messer, Deputy Attorney General) ("There are many cases, which the Official Receiver can tell us about, where an individual remained bankrupt for twenty-five years."); *Proposed Amendment of the Bankruptcy Ordinance: Hearings Before the Subcomm. on Bankruptcy Reform of the Judiciary Comm.*, 13th Knesset 37 (Sept. 13, 1995) (statement of Mr. Zuriel, chief administrator of the Official Receiver) (suggesting that individuals used to remain bankrupts for fifteen years); *Proposed Amendment of the Bankruptcy Ordinance, 1982: Hearings Before the Subcomm. on Bankruptcy Reform of the Judiciary Comm.*, 10th Knesset 6 (Jan. 21, 1982) (statement of Amram Blum, chief administrator of the Official Receiver) (referring to some bankruptcy cases that remained open for as long as twenty years during which time the debtor remained an undischarged bankrupt); Rafael Efrat, *The Fresh-Start Policy in Bankruptcy in Modern Day Israel*, 7 AM. BANKR. INST. L. REV. 555, 592 (1999) [hereinafter Efrat, *The Fresh-Start Policy*] ("Since many debtors [in Israel] never bothered applying [for discharge], many bankrupts remained in that status indefinitely.").

¹⁷ See Philip Shuchman, *Field Observations and Archival Data on Execution Process and Bankruptcy in Jerusalem*, 52 AM. BANKR. L.J. 341, 356 (1978) ("There seem to be very few

forgiveness was granted by the courts, most courts conditioned the discharge on the debtor making long-term payments to her creditors.¹⁸

In 1996, in a bold attempt to provide a financial fresh-start to more financially distressed individual petitioners, the Israeli legislators adopted a reform of the bankruptcy which the law's proponents have characterized as "revolutionary."¹⁹ The reform constituted an important departure from the traditionally restrictive approach to the fresh start policy in Israel. The new legislation clearly signaled a new vision for financially troubled individuals in Israel.²⁰ The goals of the reform were to enhance access to bankruptcy, provide an opportunity to obtain prompt and early discharge, and increase the rate of debt-forgiveness in bankruptcy.²¹ To accomplish these goals, the reform law lifted the severe access limitations such as the requirement that the debtor demonstrate that the bankruptcy process would generate a meaningful benefit to the creditors.²² Second, the reform law eliminated the need for certain debtors to formally apply for a discharge. Instead, at least six months after a bankruptcy petition was to be filed, a court on its own motion or upon a motion by the Official Receiver, would be able to consider whether to grant the petitioner an absolute or conditional discharge in cases where the petitioner had limited prospects of repayment.²³ Lastly, the standard by which a court

discharges. In our sample of some 80 cases examined in all, there were four compositions with creditors and only three discharges.").

¹⁸ See e.g., C.A. 542/76, *Shlayer v. Official Receiver*, 31(2) P.D. 838. The debtor, who allegedly was unable to find a job due to his bankruptcy status, was sixty-eight years old. The debtor's assets had already been liquidated and the creditors received a twelve and a half percent dividend. Nonetheless, the court of appeals denied the debtor's application for an unconditional discharge. Instead, the court conditioned the discharge on the debtor repaying the remaining balance. *Id.*

¹⁹ For a detailed account of the events and conditions that have led to this reform, see Efrat, *The Evolution*, *supra* note 15, at 102-13; Rafael Efrat, *The Transformation of the Israeli Bankruptcy System as a Reflection of Societal Changes*, 10 J. TRANSN'L L. & POL. 39, 46-70 (2000) [hereinafter Efrat, *The Transformation*].

²⁰ See Efrat, *The Transformation*, *supra* note 19, at 46.

²¹ See Efrat, *The Evolution*, *supra* note 15, at 106 n.287 (referring to the bankruptcy reform, the Deputy Attorney General generally described the objectives of the proposed reform to include broadly expanding the debt-forgiveness mechanism for the financially troubled individual who has acted in good faith in incurring his debts and who has no assets to distribute to his creditors); *id.* at 108-10 (describing the various ways the 1996 reform of the bankruptcy law aimed at broadening the opportunities for a fresh-start).

²² See *id.* at 108-09.

²³ See *id.* at 109.

would need to decide whether to grant a bankrupt individual a discharge was significantly liberalized.²⁴

While the goals of the “revolutionary” reform were noble, it is unclear whether in fact they have been achieved and whether they have been achieved in some parts of the country, but not in others. Further, it is unclear to what extent the ideas, attitudes, values and beliefs of key players in the Israeli bankruptcy system (i.e., internal legal culture) have affected the implementation of the formal law.

The goals of this study were three fold. First, to ascertain to what extent the reform of the personal bankruptcy laws in Israel has achieved its stated objectives of broadening the opportunity of fresh-start for individuals; second, to determine the extent to which the reformed bankruptcy laws have been implemented uniformly across the four judicial districts; and lastly, to explore what role, if any, the internal legal culture in Israel played in the implementation of the bankruptcy reform.

The hypothesis for this study is that the law in action roughly corresponds to the formal bankruptcy reform law and that there are not any significant disparities in the implementation of the reformed law among the four judicial districts across the country. Further, it is hypothesized that while legal culture influences the implementation of the bankruptcy laws in Israel, the Israeli legal culture largely corresponds to the reform provisions and hence helps implement the reformed bankruptcy law.

The dominant figure in the Israeli bankruptcy system is the Official Receiver. Since the Official Receiver has publicly voiced its support for the 1996 bankruptcy reform, one may surmise that this administrative body will work hard to implement the key provisions of the legislative reform.

The Official Receiver is the dominant force in the Israeli bankruptcy partly because there is no other repeat player in the bankruptcy system with the same degree of expertise, organization, or power, as does the Official Receiver. Since the vast majority of petitioners in Israel are filing pro se, most of them are ill informed and powerless.²⁵ Also, as there are no specialized bankruptcy courts

²⁴ See *id.* at 109-10.

²⁵ See Shuchman, *supra* note 17, at 355-56 (“Most bankrupts are not represented by counsel. Those who retained a lawyer to prepare and file the bankruptcy petition and schedules . . . for a considerable fee . . . are not thereafter represented in the proceedings that follow. Very few bankrupts are represented of record by counsel at any state in the

and hence no “bankruptcy judges,” the judiciary seemed to lack expertise in the field. Further, as in the United States and Canada, creditors in Israel seem to lack the desire to assume a central role in the bankruptcy process.²⁶ As a result, petitioners, judges, and creditors, who are the only other main actors in the Israeli bankruptcy system, rely heavily on the Official Receiver. Hence, their perceptions and beliefs about bankruptcy would not mount any serious competition to the views of the Official Receiver. In the absence of any serious competition for influence, the views and perceptions of the leaders of the Official Receiver shape, to a significant extent, the legal culture of Israeli bankruptcy law. While the former chief administrator of the Official Receiver in Israel was adamantly opposed to liberalization of the bankruptcy system,²⁷ the new agency chief, who joined the agency prior to the enactment of the bankruptcy reform, has publicly voiced his support for the adoption of the reform.²⁸

For a comparative perspective, this Article begins with a summary of empirical studies on the legal culture in the field of personal bankruptcy in the United States. Shifting focus to the

bankruptcy after the initial filing.”).

²⁶ See *infra* note 106 and accompanying text.

²⁷ See Letter from Amram Blum, chief administrator of the Official Receiver, to Dan Meridor, Justice Minister 1 (Nov. 22, 1991) (on file with author) (“[I]t is likely that public knowledge about the opening of the doors of bankruptcy will quickly spread, and the number of debtors that will take advantage of the situation in order to avoid their creditors may rise to a startling proportion.”). See Minutes of the Levin’s Commission on Bankruptcy Reform 4 (Dec. 17, 1991) (on file with author) (statement by Amram Blum, chief administrator of the Official Receiver) (dismissing liberalization efforts of the fresh start policy in Israeli bankruptcy laws due to the incompatible social norms presently in Israeli society). See Letter from Amram Blum, chief administrator of the Official Receiver, to Professor David Libayi, Justice Minister 2 (Nov. 15, 1992) (on file with author) (“The central problem that concerns us is whether making access to bankruptcy easier will encourage people to incur debts irresponsibly, in the hope that eventually, they would receive a discharge. There is no need to mention how injurious such a perception may be to the commercial life and the debt repayment morality in our country.”); Minutes of the Levin’s Commission on Bankruptcy Reform 4, *supra*, at 4 (statement by Amram Blum, chief administrator of the Official Receiver) (explaining the reason for an allegedly successful broad fresh-start policy in the U.S., Mr. Blum asserted that the social norms in the U.S. are different than the social norms in Israel, and, hence, a similar policy would not be successful in Israel).

²⁸ See, e.g., *Proposed Amendment of the Bankruptcy Ordinance: Hearings Before the Subcomm. on Bankruptcy Reform of the Judiciary Comm.*, 13th Knesset 8 (May 23, 1995) (statement by Shmuel Zur, chief administrator of the Official Receiver) (“The Justice Department came forward and said ‘let us consider the interests of the debtor and not only the interests of the creditors’ [W]hen I received this proposed reform I thought that the basic conception of the Justice Department was acceptable”

Israeli bankruptcy system, this Article then examines the extent to which the 1996 reform of the personal bankruptcy laws in Israel has achieved its stated objectives of broadening the opportunity of a fresh start for individuals. Next, this Article examines the extent to which the reformed bankruptcy laws have been implemented uniformly across the four judicial districts in Israel. Lastly, this Article explores the role, if any, of the local legal culture in Israel and the likely impact it has had on the implementation of the bankruptcy reform.

I. LEGAL CULTURE & PERSONAL BANKRUPTCY IN THE UNITED STATES

A number of studies have documented the pervasive and systematic influence of legal culture on the operation of the American personal bankruptcy system, particularly disparities among different locales.²⁹ One study has found that despite the uniform nature of bankruptcy law in the United States, personal bankruptcy filing rates vary significantly among the various judicial districts across the country. The study observed statistically significant variations in filing the rates of more than one hundred percent among districts within Texas, Florida, and Oklahoma.³⁰

The study also found substantial geographic variation in the rates by which individual petitioners choose bankruptcy pursuant to its chapter 7 liquidation option versus its chapter 13 repayment plan option. For example, the authors found that whereas only twenty-six percent of 1990 bankruptcy filings were in chapter 13 in the Southern District of Alabama, sixty-six percent of the filings were in chapter 13 in the adjacent Middle District of Alabama. In the Western District of Missouri, only sixteen percent of the filings were

²⁹ By "personal" bankruptcy, the article refers to the bankruptcy of natural persons. Some interesting empirical work on legal culture in business bankruptcies has been done, but this is not the focus of this Article. See, e.g., RICHARD B. SOBOL, *BENDING THE LAW: THE STORY OF THE DALKON SHIELD BANKRUPTCY* (1991) (describing the debtor's efforts to consolidate lawsuits in a favorable locale); Lynn M. LoPucki & William C. Whitford, *Venue Choice and Forum Shopping in the Bankruptcy Reorganization of Larger, Publicly Held Companies*, 1991 WIS. L. REV. 11 (showing that corporate debtors use various devices to file their bankruptcy cases in districts where the courts are thought to be favorable to those in control of the corporation).

³⁰ Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *The Persistence of Local Legal Culture: Twenty Years of Evidence from the Federal Bankruptcy Courts*, 17 HARV. J.L. & PUB. POL'Y 801, 822-27 (1994).

in chapter 13, compared to thirty-five percent in the Eastern District.³¹

The authors also observed district level variation in the rates by which chapter 7 debtors reaffirm their debts. For example, debtors filing chapter 7 petitions in the Northern District in Texas were more than three times more likely to reaffirm a debt than petitioners in the Eastern District in Texas.³²

The authors were also able to detect dramatic variations in chapter 13 practices among various districts. For example, debtors in the Western District of Texas were more than three times more likely to agree to repay one hundred percent of their debts than were their Southern District counterparts. The authors also identified similar variations when comparing debtors in the Western District of Pennsylvania versus petitioners in the Eastern District of Pennsylvania.³³

In yet another study, researchers have found a pervasive difference among districts in the rate of successful completion of chapter 13 repayment plans. The study identified a range of successful completions of chapter 13 repayment plans from the low of three percent in one district to the high of almost fifty percent.³⁴

The authors of these studies observed that these intrastate disparities in the bankruptcy filing rates, the choice of the type of bankruptcy pursued, the propensity to reaffirm the debts, the

³¹ See *id.* at 828-29; see also TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA* 247 (1989) [hereinafter *AS WE FORGIVE*] (finding enormous differences in chapter 13 bankruptcy filing rates within districts in Illinois, Texas, and Pennsylvania).

³² See Sullivan et al., *supra* note 30, at 831.

³³ See *id.* at 833. Another researcher made a similar observation. See Jean Braucher, *Lawyers, and Consumer Bankruptcy: One Code, Many Cultures*, 67 *AM. BANKR. L.J.* 501, 532 (1993) (finding dramatic disparities among districts in the percentage of repayment proposed in the debtor's chapter 13 repayment plans). Similarly, Norwegian researchers have also found that the length of bankruptcy repayment plans is subject to substantial local variation. For example, they have found that in 1994, the court in Oslo accepted a proposal for a payment plan limited to five years eighty-three percent of the time. In contrast, the court in Bergen accepted a five year plan eighteen percent of the time. Furthermore, courts in Oslo denied discharge in eight percent of the cases, whereas courts in Bergen denied discharge in forty percent of the cases. See Hans Petter Graver, *Consumer Bankruptcy: A Right or a Privilege? The Role of the Courts in Establishing Moral Standards of Economic Conduct*, 20 *J. CONSUMER POL'Y* 161, 169 (1997).

³⁴ This unpublished study was conducted by the National Association of Chapter 13 Trustees. Some of its findings, however, were subsequently published in William C. Whitford, *The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer Protection, and Consumer Protection in Consumer Bankruptcy*, 68 *AM. BANKR. L.J.* 397, 410-11 (1994).

proposed repayment percentage amount in chapter 13 cases, and the successful completion rate of chapter 13 repayment plans, could not be explained by differences in the formal laws of bankruptcy or by variations in the economic circumstances of debtors in the different localities.³⁵ Instead, the authors concluded that the pervasive and systematic disparities must be a product of the local legal culture in bankruptcy.³⁶

The local legal culture in personal bankruptcy in the United States takes the form of firm attitudes and perceptions held by a number of key repeat players in the personal bankruptcy system. Since the vast majority of petitioners in the United States are represented by counsel,³⁷ attorneys play a key role in influencing the decisions of their mostly ill-informed clients.³⁸ The attorney's own financial interests as well as their moral convictions clearly affect the way by which he or she influences his clients' decisionmaking process in bankruptcy.³⁹ However, as discussed below, the attorneys'

³⁵ See Sullivan et al., *supra* note 30, at 833, 837.

³⁶ *Id.* at 806 ("In this Article, we suggest that local legal culture exercises a pervasive, systematic influence on the operation of the federal bankruptcy system in ways unanticipated by lawmakers or academic researchers."); Whitford, *supra* note 34, at 406-07 ("The inference is overwhelming that it is differences in what has been called 'local legal culture'... that accounts for this tremendous variation in chapter 13 filing rates.").

³⁷ See Susan Block-Lieb, *A Comparison of Pro Bono Representation Programs for Consumer Debtors*, 2 AM. BANKR. INST. L. REV. 37, 41 (1994) (finding that less than fifteen percent of bankruptcy petitioners were not represented by an attorney); John M. Barron, & Michael E. Staten, *Personal Bankruptcy: A Report on Petitioner's Ability-to-Pay 15* (1997) (unpublished manuscript, on file with author) (finding that eighty-eight percent of chapter 7 petitioners and ninety-three percent of chapter 13 petitioners hired an attorney to assist them with the bankruptcy petition); National Consumer Law Center, *Learning Financial Literacy in Bankruptcy: Consumer Bankruptcy Education Project*, 4 (2001) (unpublished manuscript) (on file with author) (finding that 93.8% of chapter 7 petitioners were represented by an attorney).

³⁸ Several studies have documented petitioners' almost total reliance on the attorney in making decisions relating to bankruptcy. See AS WE FORGIVE., *supra* note 31, at 248-52 (concluding that lawyers influence debtor decisions concerning chapter choice); Gary Neustadter, *When Lawyer and Client Meet: Observations of Interviewing and Counseling Behavior in the Consumer Bankruptcy Law Office*, 35 BUFF. L. REV. 177, 257-58 (1986) (reporting on how lawyers steer clients into chapter 13). The petitioners' reliance on the attorneys is due to the complex nature of bankruptcy requiring great expertise as well as the limited amount of information available to the petitioners. See Sullivan et al., *supra* note 30, at 840 ("A debtor's choice of chapter and the decisions to repay clearly are influenced by the attorney. The bankruptcy process is complex, requiring great expertise, and debtors rarely have independent information that would allow them to challenge the advice of their attorneys."); Whitford, *supra* note 34, at 403 ("Consumers typically lack much information about [the various options in and outside of bankruptcy] at the time they contemplate bankruptcy.").

³⁹ See Braucher, *supra* note 33, at 546-47, 550-51 (noting that chapter 13 practice is

own financial interests and moral convictions are shaped, to a large extent, by other dominant forces that make up the local legal culture.⁴⁰

Judges, the United States Trustees, Chapter 13 Standing Trustees, Chapter 7 Trustees, and the local bar also play pivotal roles in the process. They affect the way attorneys influence their clients. Judges with strong views about the appropriate utilization of bankruptcy by individuals reportedly employ various techniques to influence the decisionmaking of attorneys, and thus indirectly of debtors. Among other strategies, judges have reportedly set attorneys' fees that provide financial incentive for the attorneys to induce their clients to file under one chapter as opposed to the other.⁴¹ Also, to encourage attorneys to conform to the judges' perception of appropriate use of personal bankruptcy, some judges have expedited the process for attorneys who conform and, reportedly, publicly embarrassed attorneys who substantially deviate from approved practices.⁴²

Similarly, the attitudes and perceptions held by the United States Trustee and the Chapter 13 Trustees have also shaped how attorneys advise their clients in bankruptcy and have helped to form

generally more profitable than chapter 7); Sullivan et al., *supra* note 30, at 852 ("Beyond all of these factors, however, the most important single element may be the professional convictions of the lawyers who are the primary "operators" of the bankruptcy system. Based on our interviews, it appears that many attorneys . . . have developed strong, principled stands about what constitutes the best form of bankruptcy for consumers."); William C. Whitford, *Has the Time Come to Repeal Chapter 13?*, 65 IND. L.J. 85, 91 (1989) (stating that it is in attorney's financial self-interest to 'steer' clients into one chapter because doing so promotes standardization of practice, which, in turn, leads to greater efficiency and profits.). Similarly, a study in Canada found that the ill-informed bankruptcy petitioners' decisionmaking process is influenced primarily by the dominant trustees' own financial incentives. See Iain Ramsay, *Market Imperatives, Professional Discretion and the Role of Intermediaries in Consumer Bankruptcy: A Comparative Study of the Canadian Trustee in Bankruptcy*, 74 AM. BANKR. L.J. 399, 438, 453 (2000) ("The professional dominance of the trustee over a debtor who generally lacks knowledge of the bankruptcy process and is in a vulnerable position permits the trustee to control the terms of the relationship and increases her power to define and propose solutions to a debtor.").

⁴⁰ See Sullivan et al., *supra* note 30, at 841.

⁴¹ See Braucher, *supra* note 33, at 546-47, 550-51. The author found that attorneys fees in chapter 13 were set substantially higher than chapter 7 fees in the Texas cities that she studied. The author concluded that one reason for this fee disparity is that the bankruptcy judges wanted to provide attorneys an economic incentive to steer clients into chapter 13. *Id.*

⁴² See AS WE FORGIVE, *supra* note 31, at 248-49 (describing various formal and informal devices used by judges in some districts in the U.S. to influence debtors and their attorneys to resort to chapter 13 bankruptcy filing in lieu of a chapter 7 filing); Sullivan et al., *supra* note 30, at 843-45.

the local legal culture.⁴³ The Chapter 13 Trustees' influence rivals that of the bankruptcy judges as in some cases bankruptcy judges have focused their attention on business bankruptcies, leaving the Chapter 13 Trustees to become de facto practice setters in the local district.⁴⁴ Some Chapter 13 Trustees have created informal requirements relating to the minimum debt repayment percentage they expect debtors to make as part of their repayment plan under a chapter 13 petition. For example, in Dayton, Ohio, and Austin, Texas, low percentage plans were regularly accepted, but in Cincinnati, Ohio, and San Antonio, Texas, Chapter 13 Trustees strongly encouraged petitioners to submit repayment plans with a high percentage of debt repayment.⁴⁵ To minimize costly interruption to their routinized bankruptcy practice, attorneys inevitably steer their clients' repayment plan proposal and other bankruptcy decisions toward conformity with the preferences of the Chapter 13 Trustees.⁴⁶ An attorney's non-conformity with the Chapter 13 Trustees' preferred practices may result in the judges and Chapter 13 Trustees delaying the client's plan confirmation and examining the attorney's fee application with a high degree of scrutiny.⁴⁷ As a result, as one researcher found, most lawyers in each city only proposed plans that satisfy the Chapter 13 Trustees' preferred practices.⁴⁸

Lastly, the local bankruptcy bar, as a group, plays a role in local legal culture. The small size of the local bankruptcy bar and the high degree of interdependency among the few number of bankruptcy specialists make the collective norms of a local

⁴³ See Sullivan et al., *supra* note 30, at 854 ("The presence of a strong Chapter 13 trustee (or group of like-minded trustees) or of an influential U.S. Trustee can undoubtedly affect local practice.").

⁴⁴ See Braucher, *supra* note 33, at 556 ("[The longevity of the Chapter 13 standing trustees] sometimes means that they are in a position to teach bankruptcy judges about consumer bankruptcy. Judges put most of their time into business cases, and leave the chapter 13 standing trustees as the only local full time consumer bankruptcy officials.").

⁴⁵ *Id.* at 532-34 (noting 'floor' percentage was 100% in San Antonio, 25% to 33% in Austin, 70% in Cincinnati, and 10% in Dayton).

⁴⁶ See Whitford, *supra* note 34, at 406.

⁴⁷ See Braucher, *supra* note 33, at 557-59 (discussing how Chapter 13 Trustees in San Antonio, Texas, and Dayton, Ohio influence Chapter 13 proceedings); Jean Braucher, *Counseling Debtors to Make their Own Informed Choices: A Question of Professional Responsibility*, 5 AM. BANKR. INST. L. REV. 165, 175 (1997).

⁴⁸ See Braucher, *supra* note 33, at 532.

bankruptcy bar powerful in influencing bankruptcy attorneys' behavior.⁴⁹

II. RESEARCH METHODOLOGY

To collect empirical data for this study on the Israeli personal bankruptcy system, and of the influence of legal culture in this setting, a sample of 213 bankruptcy files of individuals was selected, analyzed and coded.⁵⁰ The schedules found in the bankruptcy files included extensive information on the debtors' financial condition.⁵¹ Also in the bankruptcy files, copies of the Official

⁴⁹ See AS WE FORGIVE, *supra* note 31, at 248 ("In one district, attorneys who were not bringing in a share of the Chapter 13s' were not 'team players' and were not accorded high respect."); Whitford, *supra* note 34, at 409-10 ("Reputational considerations may also induce consumer bankruptcy specialists to conform to local legal culture [R]eferrals from other attorneys in the local bar remains an important source of clients. Many attorneys may believe that referrals are less likely if they steer their clients towards unconventional bankruptcy options that force their clients to appear in court to defend the bankruptcy choices that are made."); Sullivan et al., *supra* note 30, at 848-49.

⁵⁰ The data-collection technique of analyzing bankruptcy files was used primarily because of the wealth of information and the accuracy this data collection method provides. The bankruptcy files, as maintained by the Official Receiver, include a debtor's bankruptcy petition, detailed investigatory reports, notes and analysis authored by officers from the Official Receiver's office, internal memoranda of the Official Receiver, transcripts of various court hearings, minutes of creditors' meetings, correspondence with the debtor and other interested parties, transcripts of periodic questioning of the debtor by the Official Receiver, and inspection reports of the debtor's assets completed by the Official Receiver. Such detailed and comprehensive information relating to the debtor's affairs could not have been obtained merely through informal interviews with the debtors. Furthermore, this form of data-gathering not only provided significant amounts of information, but it also maximized accuracy, as the information was provided by the debtor under penalty of perjury and closely scrutinized by the Official Receiver. For similar conclusions in the American bankruptcy context on the benefits of court files rather than interviews as the preferred method of data-collection, see AS WE FORGIVE, *supra* note 31, at 18 ("We decided to focus on the bankruptcy forms because more information is available in these forms than most people could explain in a half-hour interview. Moreover, the accuracy of the information is likely to be higher than it would be when people are trying to recall complex information and give immediate answers."); Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *Bankruptcy and the Family*, 21 *Marriage & FAM. & REV.* 193, 195-96 (1995).

⁵¹ The data from the debtor's bankruptcy schedules included debtor's gender; debtor's date of birth; debtor's current and former address; debtor's place of work; names of creditors; type of creditor; amount of each debt; reason for each debt; number and amount of outstanding debtor's guarantees; number of creditors; number and status of pending collection activities against the debtor; number of prior bankruptcy filings by debtor; name and employment status of debtor's spouse; age and marital status of debtor's children; debtor's monthly expenses; a list of outstanding judgments against and in favor of the debtor; gross and net monthly income of the debtor, the debtor's spouse, and the debtor's children; occupation of the debtor and the debtor's spouse; unearned income of the debtor and the

Receiver's detailed investigatory reports and related documents provided valuable insight of the bankruptcy process.⁵²

The sample is composed exclusively of individuals⁵³ who voluntarily filed for bankruptcy between September 1996 and July 1998.⁵⁴ The files were randomly collected⁵⁵ from all four judicial districts in Israel⁵⁶ in rough proportion to each district's percentage

debtor's spouse (including rent, social security benefits, dividends, etc); a list of real estate owned by the debtor and the amount of any related liens; debtor's stocks and negotiable instruments; debtor's business inventory; debtor's automobiles; debtor's household goods; debtor's bank accounts; list of debtor's credit cards; and insurance policies held by debtor.

⁵² The information in the investigatory reports of the Official Receiver was not uniform, but it included some of the following data about the formal bankruptcy proceedings including the debtor's applications for a stay order, a receiving order, an adjudication order and a discharge order, if any; the Official Receiver's response to the debtor's applications, if any; and transcripts of court hearings and rulings on these applications, if any. Lastly, the files also included minutes of the creditors' meeting.

⁵³ All filings were non-joint filings as the judicial system considers the bankruptcy petition of the debtor and her spouse as two separate bankruptcy filings. Thus, both spouses have to file separate petitions, pay separate filing fees, and go through a parallel process. At times, courts consolidate the hearings on the two separate bankruptcy petitions. The sample in this study contains thirty-eight bankruptcy petitions that were filed separately by petitioners and their spouses.

⁵⁴ The start date of the sample was selected to be September 1996 to coincide with the significant reform of personal bankruptcy in Israel that took effect at that time. The data were collected in July 1998, while all of the cases were still active. Less than 8% had been active for less than six months at the time of data collection (N=16). Just under 30% of the cases had been active between six months and a year at the time of data collection (N=63). Sixty percent of the petitions were active more than one year but less than two years at the time of data collection (N=129). Only two percent of the cases were active for more than two years at the time of data collection (N=5).

⁵⁵ The bankruptcy files were randomly hand picked from the shelves at the four regional Official Receiver's offices in Israel. The Official Receiver generally maintains in chronological order all active personal bankruptcy files in its storage shelves. Since most of the bankruptcy files generally remain active for years, at the time of data collection the shelves at the Official Receiver's offices contained almost all the bankruptcy files of cases filed after September 1996. On any given data gathering day, a number of active files may have been used by the staff at the regional Official Receiver's office, and hence would not have been selected for the sample of this study. However, as the number of such files was small, the impact, if any, on the representativeness of the sample was not significant. Also, due to limited access to the Official Receiver's office in Tel-Aviv, additional bankruptcy files were retrieved from the central courthouse in Tel-Aviv, where similar data collection methodology was used. However, while the files at the courthouse included data similar to data found in the Official Receiver's files, some informal investigatory reports of the Official Receiver were generally not part of the court files.

⁵⁶ The four judicial districts are: Jerusalem District, Central District (including Tel-Aviv), Southern District (including Be'er-Sheva and Nazareth) and Northern District (including Haifa).

of total individual filings over that time period.⁵⁷ The sample of 213 files constitutes twenty percent of the total number of bankruptcy filings during the sample period.⁵⁸ From each of these 213 files, approximately 179 quantitative pieces of information were coded to build the database for this study.⁵⁹

III. THE DISPARITIES BETWEEN THE ISRAELI BANKRUPTCY REFORM LAW AND THE PRACTICES ON THE GROUND

While some objectives of the 1996 “revolutionary” reform of the bankruptcy laws in Israel were clearly met, it seems that most reform provisions have been largely ignored in practice. As stated earlier, the 1996 bankruptcy reform in Israel had three main goals. The first goal was to enhance access to bankruptcy. To do so, the reform law lifted the severe access limitations to bankruptcy—such as the requirement that the debtors demonstrate that the bankruptcy process would generate meaningful benefit to creditors. This reform law seems to be the only one that was in fact successful in

⁵⁷ The average distribution of the actual number of petitions filed by individuals during 1996 and 1997 was: Jerusalem District: 10%; Central District: 59%; Northern District: 19%; Southern District: 12%. The distribution of the sample files collected in this study was: Jerusalem District: 19% (N=42); Central District: 51% (N=108); Northern District: 11% (N=23); Southern District: 19% (N=40). These distributions also roughly approximate the overall population distribution in Israel: Jerusalem District: 12%; Central District: 42%; Northern District: 30%; Southern District: 14%. See ISRAEL CENTRAL BUREAU OF STATISTICS, STATISTICAL ABSTRACT OF ISRAEL 1997, 3, 57 (1998); Computerized Printouts from the Official Receiver of the Central, Jerusalem and Southern districts (July-Sept. 1998) (on file with author).

⁵⁸ According to data supplied by the Official Receiver’s office, the total number of bankruptcy petitions by individuals was as follows: 1996: 450; 1997: 587; 1998: 650 (estimated annualized). See Computerized Printouts from the Official Receiver of the Central, Jerusalem and Southern districts (July-Sept. 1998) (on file with author).

⁵⁹ In drawing comparisons with other personal bankruptcy systems, references are made to various empirical studies in other countries. The various empirical studies used distinct methodologies to gather data and hence some of the differences in the findings between the various studies may be attributed to methodology variations. For a description of the methodologies used by the works compared with this study, see AS WE FORGIVE, *supra* note 31, at 17-20; TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 263-87 (2000); VISA U.S.A. INC., BANKRUPTCY PETITION STUDY: VISA CONSUMER BANKRUPTCY REPORTS 9-10 (1997); Iain D.C. Ramsay, *Individual Bankruptcy: Preliminary Findings of a Socio-Legal Analysis*, 37 OSGOODE HALL L.J. 15, 18-19 (1999); Saul Schwartz, *The Empirical Dimensions of Consumer Bankruptcy: Results from a Survey of Canadian Bankrupts*, 37 OSGOODE HALL L.J. 83, 88-90 (1999); Philip Shuchman & Thomas L. Rhorer, *Personal Bankruptcy Data for Opt-Out Hearings and Other Purposes*, 56 AM. BANKR. L.J. 1, 26-27 (1982).

practice. Prior to the enactment of this reform, a significant number of petitioners with limited income and asset holdings were routinely turned away from bankruptcy.⁶⁰ Under the new law, however, courts have begun granting the vast majority of applications for commencement of bankruptcy protection. In almost ninety-seven percent of such applications in this study, the court authorized the debtor to proceed with bankruptcy protection subject to the debtor making monthly payments pending bankruptcy adjudication that would follow.⁶¹ Similarly, based on aggregate bankruptcy data compiled by the Official Receiver, following the 1996 reform, courts have begun to issue orders granting the debtor's application for commencing bankruptcy at a much higher rate than just before the reform took hold. In 1995, the courts issued an order allowing the commencement of the bankruptcy petition in only thirty-six percent of the petitions.⁶² In contrast, in 1997, the rate jumped to seventy-two percent and continued to grow during the following year to eighty-six percent.⁶³

The second goal of the reform was to increase the opportunity for debtors to obtain a prompt discharge in bankruptcy. In the past, a discharge hearing was conducted primarily upon the formal request of the debtor.⁶⁴ Since most debtors never bothered applying, many bankrupts remained as undischarged bankrupts for a long period of time.⁶⁵ To facilitate debt-forgiveness to individuals with limited prospects of repayment potential, in 1996 the legislators eliminated the need for such debtors to apply formally for a discharge. Instead, at least six months after a bankruptcy

⁶⁰ See *supra* note 7 and accompanying text.

⁶¹ The courts granted debtor's application for a receiving order in 96.9% of the cases. In all cases where the debtor's application for bankruptcy protection was granted, the court required the debtor to make monthly payments pending her subsequent formal adjudication as bankrupt.

⁶² In 1995, there were 277 bankruptcy petitions filed. However, in that year, courts issued only 100 receiving orders, granting the debtor's application for commencing bankruptcy protection. See Computerized Printouts from the Official Receiver of the Central, Jerusalem, and Southern districts (July-Sept. 1998) (on file with author).

⁶³ In 1997, there were 587 bankruptcy petitions filed. In that year, courts issued 427 receiving orders. Similarly, during the first five and a half months in 1998, 325 bankruptcy petitions were filed. During that same period of time, 280 receiving orders were issued. See Computerized Printouts from the Official Receiver of the Central, Jerusalem, and Southern districts (July-Sept. 1998) (on file with author).

⁶⁴ See Efrat, *The Fresh-Start Policy*, *supra* note 16, at 592 n.214.

⁶⁵ See Shuchman, *supra* note 17, at 356, 364.

petition was to be filed, a court, on its own motion, or upon a motion by the Official Receiver, would consider whether to grant such a petitioner an absolute or conditional discharge. The hope was that this provision, by allowing the judges and the Official Receivers to bring up the issue of debt-forgiveness, would increase the chances of having a court address the prospects of the debtor's discharge early on in the process. However, the legislators left the Official Receiver and the judges with the absolute discretion whether to initiate such discharge hearing requests at all.⁶⁶

The findings from this study suggest that this goal of early discharge was largely ignored in practice. Admittedly, legislators hoped to foster the early discharge concept only to petitioners who had little prospects for meaningful repayment to creditors, however, the bankruptcy population in Israel is, by and large, exactly that. The data reported in this study paint a stark picture of the acute financial crisis facing the average debtor in Israeli bankruptcy, suggesting that the vast majority would be unable to repay more than a deminimis portion of their debts. In general, debtors can repay their debts either by selling assets or by committing a portion of their future income for repayment.⁶⁷ As suggested elsewhere, the average Israeli debtor's net worth is extremely small; paying debts by selling assets is not a viable option in the vast majority of cases.⁶⁸ Ninety-two percent of the petitioners in the Israeli bankruptcy sample had a negative net worth at the time of filing.⁶⁹ Moreover, even if all of the sampled petitioner's exempt and non-exempt assets were liquidated as part of the bankruptcy process, if this were the sole form of repayment to creditors, half of the creditors would collect six percent or less of the debts owed.⁷⁰

While the net worth analysis suggests little, if any, repayment capacity by the debtors, the income analysis provides an even

⁶⁶ See Efrat, *The Evolution*, *supra* note 15, at 109.

⁶⁷ See AS WE FORGIVE, *supra* note 31, at 201 ("Debtors might repay by selling their assets and giving the cash to their creditors, or they might repay by committing a portion of their future income to repayment.")

⁶⁸ The mean net worth of the Israeli bankruptcy sample was a negative \$192,531, with a median of \$128,554. In stark contrast, the average net worth of Israelis generally in 1998 was a positive \$99,215, a difference of more than \$290,000. See Rafael Efrat, *The Rise & Fall of Entrepreneurs: An Empirical Study of Individual Bankruptcy Petitioners in Israel*, 7 STAN. J.L. BUS. & FIN. 163, 187 (2002).

⁶⁹ See *id.*

⁷⁰ See *id.* at 187-88.

grimmer picture. The average total gross income of the individual debtor in Israel is only a little over half that of the general population.⁷¹ At the mean, a petitioner's family owed debts greater than fifteen years' worth of income. In contrast, the average debt to income ratio in the general population was less than one.⁷²

While not everyone in the bankruptcy population would have been a candidate for the early discharge reform provision, a substantial number of the petitioners have clearly met that standard. Nonetheless, despite the dire financial condition of many of the debtors, the data from this study suggest that in less than four percent of the cases either the Official Receiver or the judge took the initiative to schedule a discharge hearing for the debtor.⁷³

The third main goal of the reform was to increase debt forgiveness in bankruptcy. The legislators did so by significantly liberalizing the standard which a court was to rely on in deciding whether to grant a bankrupt a discharge. For example, while prior to the reform a judge was prevented from issuing an unconditional discharge order where the petitioner engaged in prohibited type of conduct,⁷⁴ under the revised law such conduct would not necessarily prevent a judge from denying an unconditional discharge, but was something the judge might consider in his discretion. Also, the new law eliminated a rather onerous traditional requirement for discharge of repaying at least fifty percent of the debtor's obligations.⁷⁵

⁷¹ See *id.* at 175.

⁷² See *id.* at 188. The high debt to income ratio and the low net worth figures could be attributed to the substantial percentage of petitioners in the sample who were former entrepreneurs whose business had collapsed. *Id.* at 190 (indicating that almost two thirds of the petitioners were former entrepreneurs).

⁷³ While the reform law enabled the Official Receiver or the judge to raise the issue of discharge as early as six months after the petition has been filed, among the total number of petitions in the sample, a discharge hearing was conducted in only 5.2% of the cases (N=11) (92.5% of the cases in this sample were active for more than six months at the time of documentation (N=197)). The debtor initiated 27.3% of those cases (N=3), the Official Receiver initiated 45.5% of those cases (N=5) and the court initiated 27.3% of those cases (N=3).

⁷⁴ Some of the prohibited type of debtor's conduct include: failing to provide reasonable justifications for loss of assets or her inability to repay debts; failing to maintain proper records of her business; contributing to her adjudication by engaging in hazardous transactions, extravagant lifestyle, gambling or reckless abandonment of her business affairs. See Efrat, *The Evolution*, *supra* note 15, at 109-10; Efrat, *The Fresh-Start Policy*, *supra* note 16, at 584-85.

⁷⁵ See Efrat, *The Evolution*, *supra* note 15, at 109-10.

Again, the findings from this study suggest that the legislative goal of increasing the rate of debt-forgiveness in Israeli bankruptcy was largely ignored in practice. In the early 1970s, slightly less than four percent of sampled bankruptcy petitions in Israel obtained a discharge order.⁷⁶ This study of bankruptcy cases filed following the dramatic reform of 1996 suggests that the rate of discharge in Israeli bankruptcy has not changed at all. While courts seem to have granted most of the discharge applications in the bankruptcy sample, since there were very few applications for discharge, the rate of debt-forgiveness in the bankruptcy sample remained at just under four percent.⁷⁷

In sum, while one important bankruptcy legislative reform provision (i.e., increase access to bankruptcy protection) was fully carried out, all other key reform provisions of the 1996 bankruptcy legislations were largely disregarded.

IV. THE VARIABILITY IN BANKRUPTCY PRACTICES AMONG THE JUDICIAL DISTRICTS IN ISRAEL

As in the United States,⁷⁸ there is substantial variance in bankruptcy practices among the four judicial districts in Israel. While none of the four districts employ exactly the same practices, there seems to be a major divide between two camps. The dominant creditor-oriented camp is characterized by practices that are primarily aimed at furthering the interests of the creditors in bankruptcy. The central, southern and northern judicial districts all belong to the creditor-oriented camp. In contrast, the emerging debtor-oriented camp is distinguished by the various practices that are predominantly aimed at enhancing the debtor's fresh-start opportunities. The only judicial district that belongs to this camp is the Jerusalem District. This study identifies four fundamental disparities between the two camps in their approaches to the debtor's debt relief. These disparities not only lead to dramatically different fresh-start opportunities in the two different camps, but

⁷⁶ See Shuchman, *supra* note 17, at 356 ("There seem to be very few discharges. In our sample of some 80 cases examined in all [of bankruptcy petitions filed in Israel in the early 1970s], there were four compositions with creditors and only three discharges.").

⁷⁷ In 75% of the cases where the court conducted a discharge hearing, a discharge order was granted (N=6). Since only 5.2% of the sampled cases had a discharge order, the calculated discharge rate for the sample was 3.9%.

⁷⁸ See *supra* notes 26-32 and accompanying text.

also call into question the extent to which the recent legislative reform has achieved its goals.

A. *Repayment Orders*

A sharp difference between the creditor-camp and the debtor-camp in Israel is the method by which courts arrive at debtors' repayment orders. In Israeli bankruptcy most benefits awarded to the debtors, such as a receiving order, a stay order, an adjudication order, or even a discharge order, are conditioned on the debtors making some kind of monthly repayments to their creditors. Interestingly, even though the household earnings reported by petitioners in the three creditor-camp districts are lower than in the Jerusalem district, all districts issue orders with similar repayment amounts. The gross monthly household income of petitioners in the debtor-oriented district was more than a third higher than in the creditor-oriented districts.⁷⁹ Also, the net monthly household income was more than three times higher in the debtor-oriented district.⁸⁰ Nonetheless, the amount of monthly repayment, which is

⁷⁹ The average gross monthly household income was calculated by adding up each petitioner and his spouse's earnings, government subsidy, rental and other income and then computing the overall average. In the Jerusalem District it was 7,755 NIS, or \$2,215 (N=42, with a median of 7,408 NIS and a standard deviation of 4357). The average gross monthly household income of petitioners in the Central District was 5,973 NIS, or \$1,706 (N=107, with a median of 5,224 NIS, and a standard deviation of 4523). The average gross monthly household income of petitioners in the Southern District was 4,911 NIS, or \$1,403 (N=40, with a median of 4,810 NIS, and a standard deviation of 2200). The average gross monthly household income of petitioners in the Northern District was 6,084 NIS, or \$1,738 (N=23, with a median of 4,630 NIS and a standard deviation of 4098). The weighted average of gross monthly household income in the creditor-oriented districts (i.e., central, southern, and northern) was 5,738 NIS, or \$1,639 (N=170).

⁸⁰ The average net monthly household income of petitioners was calculated by subtracting monthly expenses from gross monthly income for each individual file and then computing the overall average. In the Jerusalem District it was 1,354 NIS, or \$386 (N=40, with a median of 1,357 NIS, and a standard deviation of 2876). The average net monthly household income of petitioners in the Central District was 503 NIS, or \$143 (N=100, with a median of 255 NIS, and a standard deviation of 3857). The average net monthly household income of petitioners in the Southern District was 840 NIS, or \$240 (N=37, with a median of 730 NIS, and a standard deviation of 1741). The average net monthly household income of petitioners in the Northern District was -727 NIS, or -\$207 (N=22, with a median of -655 NIS, and a standard deviation of 3013). The weighted average of net monthly household income in the creditor-oriented districts (i.e., central, southern, and northern) was 397 NIS, or \$113 (N=159).

generally a condition of a receiving order or an adjudication order in bankruptcy, was approximately the same in the all districts.⁸¹

Similarly, the repayment burden on the debtor, calculated by dividing the repayment amount by total household income, is much lower in the Jerusalem district than in the other districts. For example, relative to total household income, the average repayment amount required as part of a bankruptcy adjudication order in the creditor-oriented districts was more than one-and-a-half times higher than in the Jerusalem district.⁸²

These differences apparently are the product of diametrically opposed approaches to calculating the amount the debtor should pay as a condition of commencing bankruptcy protection or as a condition of being adjudicated as bankrupt. In the debtor-oriented

⁸¹ The average monthly repayment amount that was attached as a condition to a receiving order in the Jerusalem District was 739 NIS, or \$211 (N=33, with a median of 650 NIS and a standard deviation of 390). The average monthly repayment amount that was attached as a condition to a receiving order in the Central District was 704 NIS, or \$201 (N=89, with a median of 500, and a standard deviation of 638). The average monthly repayment amount that was attached as a condition to a receiving order in the Southern District was 600 NIS, or \$171 (N=37, with a median of 500 and a standard deviation of 400). The average monthly repayment amount that was attached as a condition to a receiving order in the Northern District was 976 NIS, or \$278 (N=21, with a median of 1,000 NIS and a standard deviation of 476). The weighted average of monthly repayment amount that was attached as a condition to a receiving order in the creditor-oriented districts was 717 NIS, or \$205 (N=147). The average monthly repayment amount that was attached as a condition to an adjudication order in the Jerusalem District was 545 NIS, or \$155 (N=10, with a median of 500 NIS, and a standard deviation of 149). The average monthly repayment amount that was attached as a condition to an adjudication order in the Central District was 425 NIS, or \$121 (N=4, with a median of 500 NIS and a standard deviation of 236). The average monthly repayment amount that was attached as a condition to an adjudication order in the Southern District was 522 NIS, or \$149 (N=30, with a median of 500 NIS and a standard deviation of 320). Lastly, the average monthly repayment amount that was attached as a condition to an adjudication order in the Northern District was 1,578 NIS, or \$450 (N=7, with a median of 2,000 NIS, and a standard deviation of 807). The weighted average of monthly repayment amount that was attached as a condition to an adjudication order in the creditor-oriented was 693 NIS, or \$198 (N=41). Except for the differences between the Northern District and all other districts with respect to the average amount of repayment as part of an adjudication order, none of these differences are statistically significant.

⁸² As part of the adjudication order, the monthly repayment amount to total monthly household income ratio was 0.0923 in the Jerusalem District, 0.0833 in the Central District, 0.1139 in the Southern District, and 0.2890 in the Northern District. The weighted average of the payment to income ratio in the creditor-oriented camp was 0.140. Except for the difference between the Jerusalem District and the Northern District, none of the differences are statistically significant. The repayment burden ratio was calculated by dividing the monthly repayment amount for each petitioner in the sample by the total monthly household income for each petitioner in the sample and then calculating the average ratio for all the petitioners in the sample.

district, the amount of debtor's monthly repayment was principally based on the debtor's ability to pay. In contrast, in the other, credit-oriented districts, the amount of repayment was primarily based on the amount of the debtor's debts. As a result, the inferior earnings of the petitioners in credit-oriented districts does not seem to have played an important role in effecting the amount the debtors were ordered to pay to creditors.⁸³

These diverging approaches not only explain the disparity in debt-repayment burden between the two types of districts, but they also explain why some petitioners in the debtor-oriented district were adjudicated as bankrupt with no monthly repayment requirement, whereas no petitioner in the creditor-oriented district has been adjudicated bankrupt without having to make monthly payments.⁸⁴ In fact, in some cases in the creditor-oriented districts, despite the debtors' dire financial condition, the debtor was told that bankruptcy relief would not be forthcoming unless the debtor would agree to continue making what were deemed to be adequate monthly payments relative to the debt level she had incurred.⁸⁵ Similarly, the courts in the creditor-oriented districts routinely denied petitioners' requests to reduce monthly payments, primarily because that would jeopardize the repayment return to creditors.⁸⁶

⁸³ See generally *infra* notes 84-86 and accompanying text.

⁸⁴ Among petitioners who were adjudicated as bankrupt in Jerusalem, fifteen percent were adjudicated without having to continue making monthly payments (N=3 out of 20). In contrast, all petitioners who were adjudicated as bankrupt in the other three districts were required to make monthly payment as a condition of such adjudication (N=0 out of 57).

⁸⁵ See, e.g., Official Receiver case number 1062/97 (Northern District) (holding that despite the debtor's reported monthly deficit and before taking into account debt repayments, the debtor was ordered to pay monthly payments of 1,000 NIS as a condition of commencing bankruptcy); Official Receiver case number 1043/97 (Northern District) (rejecting debtor's proposed monthly repayment of 300 NIS as a condition of issuing the receiving order despite the debtor's unemployment and lack of skills, reasoning that the amount proposed by the debtor would be too small relative to the debts owed by the debtor of 300,000 NIS); Official Receiver case number 132/96 (Northern District) (dismissing the debtor's bankruptcy petition since the unemployed debtor was unable to make monthly payments of 2,200 NIS during the bankruptcy process); Official Receiver case number 548/96 (Central District) (requiring the debtor to increase his monthly payments by seventy percent as a condition of getting adjudicated as bankrupt, reasoning that the revised figure would be the least that could be accepted in light of the debtor's debts which exceeded 900,000 NIS).

⁸⁶ See, e.g., Official Receiver case number 1592/96 (Southern District) (rejecting the debtor's application to reduce the monthly repayment amount reasoning that, even though the debtor's household expenses were greater than his total income from social security allowance, a reduction in the 300 NIS monthly payment would impair the creditors' interests in receiving repayment); Official Receiver case number 1559/96 (Southern District) (denying

B. Ease and Promptness of Bankruptcy Relief

When compared to petitioners in the debtor-oriented district, petitioners filing for bankruptcy protection in the creditor-oriented districts not only faced a higher debt repayment burden, but also a delayed and bureaucratic process. Under the bankruptcy laws in Israel, before the debtor could be officially declared bankrupt, a court must approve the debtor's petition by issuing a receiving order.⁸⁷ While the average time for a court in the debtor-oriented district to issue a receiving order was three weeks, the average time to accomplish the same in the creditor-oriented districts was six times longer.⁸⁸ The delay in issuing a receiving order in the creditor-oriented districts correspondingly postpones the debtor's adjudication hearing. It took anywhere between a month to four months longer for a petitioner in the creditor-oriented districts to have an adjudication hearing scheduled.⁸⁹

Not only does it take much longer to obtain a receiving order in the creditor-oriented districts, but it is also more cumbersome. For example, petitioners in the debtor-oriented district need not appear for a receiving order hearing. Instead, the court routinely issues such an order without the parties' presence.⁹⁰ In contrast,

the debtors' request to reduce monthly payments required to be made by the debtor as a condition of the receiving order reasoning that the amount the debtors was ordered to pay was minimal relative to the amount of their debts).

⁸⁷ See generally Efrat, *The Fresh-Start Policy*, *supra* note 16, at 578-80.

⁸⁸ On average, a court in Jerusalem issued a receiving order within three weeks from the time the debtor filed the petition. In contrast, a court in the Central District, on average, issued a receiving order within nineteen weeks from the time the debtor filed the petition. Similarly, courts in the Southern District generally issued a receiving order within twenty weeks from the petition date. However, in the Northern District, on average, it took six weeks for a court to issue a receiving order following the debtor's petition filing. The differences between Jerusalem, on the one hand and the Southern District and the Central District, on the other hand, are statistically significant. The weighted average length of time for issuing a receiving order in the creditor-oriented districts was eighteen weeks.

⁸⁹ On average, a court in Jerusalem conducted an adjudication hearing eight months after a petition was filed. In contrast, courts in the Central District and in the Southern Districts conducted an adjudication hearing approximately twelve months after a petition was filed. On average, a court in the Northern District held an adjudication hearing nine months after a petition was filed.

⁹⁰ See, e.g., Official Receiver case number 183/96 (Jerusalem District). In *Official Receiver case number 183/96*, the Official Receiver, upon submission of a completed application for bankruptcy relief together with the appropriate fees, promptly sent a notice to the court informing it of the new bankruptcy filing and suggested that the application be granted subject to monthly payments. Within a few days thereafter and without either party being present, the court issued the receiving order subject to the debtor making monthly payments.

petitioners in some of the creditor-oriented districts are required to attend and submit to questioning in a formal hearing for a receiving order.⁹¹ Also, since a stay of collection proceedings is not afforded to debtor until a receiving order is issued, debtors in the creditor-oriented districts generally must undertake the costs and burdens associated with a formal application for a stay pending the belated issuance of the receiving order. This additional hurdle is largely absent from the debtor-oriented jurisdiction since a receiving order is generally issued promptly upon filing.⁹² Finally, apparently in recognition of debtors' lack of professional representation, courts in the debtor-oriented jurisdiction have exhibited greater tolerance for a debtor's failure to strictly fulfill her statutory obligations.⁹³

C. Debt Forgiveness

The various districts in Israel sharply diverge in their approach to debt-forgiveness in bankruptcy. As mentioned earlier, the Israeli legislators reformed the bankruptcy laws in 1996 with the aim of providing an opportunity to obtain prompt and early discharge and increasing the rate of debt-forgiveness in bankruptcy.⁹⁴ The reform law eliminated the need for certain debtors to apply formally for a discharge. Instead, at least six months after the filing of a bankruptcy petition, a court on its own motion or upon a motion by the Official Receiver would be able to consider whether to grant the petitioner an absolute or conditional discharge in cases where the petitioner had limited prospects of repayment. Also, the standard

Id.; see also Official Receiver case number 125/97 (Jerusalem District) (issuing a receiving order without debtor or the Official Receiver appearing before it).

⁹¹ See, e.g., Official Receiver case number 5023/97 (Southern District) (questioning, by representative from the Official Receiver's office, the debtor during a receiving order hearing).

⁹² See, e.g., Official Receiver case number 222/97 (Central District) (requiring debtor to formally apply for a stay of collection proceedings against him pending the hearing on the receiving order that was scheduled for three months after the petition was filed); Official Receiver case number 608/96 (Central District) (granting the unemployed debtor's application for stay on the condition that the debtor make monthly payments of 200 NIS pending the receiving order hearing); Official Receiver case number 5023/97 (Southern District) (requiring debtor to file a motion for stay to suspend collection activities against him pending the issuance of the receiving order).

⁹³ See, e.g., Official Receiver case number 102/97 (Jerusalem District) (tolerating and accommodating debtor's failure to strictly comply with statutory mandates or judicial orders such as timeliness of payments and reports).

⁹⁴ See *supra* notes 11-13 and accompanying text.

by which a court would decide whether to grant a bankrupt a discharge was significantly liberalized.⁹⁵

While there is at least a good faith attempt to implement these reform provisions in the debtor-oriented district, the creditor-oriented districts have by and large ignored the reform legislation. The early discharge hearing for petitioners that was envisioned for petitioners with little income or asset holdings has been adhered to in principle by the debtor-oriented district, but it has had no discernable impact on the creditor-oriented districts. In an interview, the director of the Official Receiver in the debtor-oriented district affirmed its new policy of initiating the topic of debtor's debt-forgiveness at the adjudication hearing, which in Jerusalem is generally held within eight months after a petition is filed. According to the director of the Official Receiver in the Jerusalem District, the issue of the debtor's discharge would come up during the adjudication hearing as long as the debtor acted in good faith and had no significant assets or income.⁹⁶ Indeed, in the sample of this study discharge was addressed in almost twenty percent of the bankruptcy petitions filed in the debtor-oriented district. In contrast, in the creditor-oriented districts discharge was addressed in anywhere from zero to five percent of the bankruptcy petitions.⁹⁷ Even in the few cases where discharge was raised courts in the creditor-oriented districts have opted to deny all such applications. On the other hand, the courts in the debtor-oriented district have granted all the applications for discharge.⁹⁸

⁹⁵ *See id.*

⁹⁶ *See* Interview with Yoram Arbel, Director Jerusalem District's Official Receiver, in Jerusalem, Isr. (July 7, 1998); *see also* Official Receiver case number 156/97 (Jerusalem District) (granting the debtor an unconditional discharge six months after the petition was filed, reasoning that the debtor acted in good faith before and after bankruptcy and she had neither assets nor potential for meaningful income in the foreseeable future); Official Receiver case number 185/97 (Jerusalem District) (granting the debtor a conditional discharge during the adjudication hearing, reasoning that the debtor acted in good faith before and after bankruptcy; he cooperated with the Official Receiver; his creditors showed no interest in the proceedings; he had low income and was unskilled; and he was now living with his family in his brother's basement).

⁹⁷ Courts in the Jerusalem District have addressed the debtor's discharge in twenty percent of the bankruptcy petitions filed there (N=8 out of 40). In contrast, no court has addressed the debtor's discharge in the Central District (N=0 out of 108). Courts in the Northern District have addressed the debtor's discharge in 4.3% of the bankruptcy petitions filed there (N=1 out of 23) and 5% did the same in the Southern District (N=2 out of 40).

⁹⁸ Courts in Jerusalem granted all six discharge applications, including three unconditional discharge orders. In contrast, in districts outside of Jerusalem there were only

The practice in the creditor-oriented districts of barely conducting any discharge hearings and resisting any approval of early debt-forgiveness applications seems to be as entrenched now as it was during the 1970s in Israel, a time where bankruptcy was characterized by monthly payment obligations lasting for an indefinite period of time, with no debt forgiveness in sight.⁹⁹

V. THE ROLE OF LEGAL CULTURE IN THE IMPLEMENTATION OF THE ISRAELI BANKRUPTCY REFORM

Just as legal culture has had a dramatic influence on the implementation of the formal bankruptcy laws in the United States, it seems to have played an equally important role in the implementation of the Israeli bankruptcy laws. As discussed earlier, in the American personal bankruptcy system the local legal culture is a primarily a function of attitudes and perceptions held by the petitioners' attorneys since the vast majority of petitioners in the United States are represented by counsel. Indirectly shaping the attorneys' perceptions and attitudes, and hence legal culture in the American personal bankruptcy, are three key repeat players in the bankruptcy system: the judges, the trustees (United States Trustees, the Chapter 13 Trustees, and the Chapter 7 Trustees), and the local bar.¹⁰⁰

While in the United States the legal culture seems to have been shaped by a combination of a number of almost equally powerful forces, the legal culture in Israel seems to be the exclusive product of attitudes and perceptions held by the only dominant repeat player, the Official Receiver. The Official Receiver's almost total control in shaping the legal culture in personal bankruptcy in Israel is due to the lack of interest by creditors, the lack of sophistication and representation of the petitioners, and the unmatched deference given to the Official Receiver by judges.

Creditors are rarely involved in the Israeli bankruptcy process. The typical petitioner in the bankruptcy sample had seventeen

two files where information was available about a court's disposition of a discharge application. In both cases the court denied the application.

⁹⁹ See Shuchman, *supra* note 17, at 356 ("There seem to be very few discharges [in Israel]. In our sample of some 80 cases examined in all, there were four compositions with creditors and only three discharges. For most bankrupts the process is a few months to several years of monthly payments . . .").

¹⁰⁰ See *supra* notes 33-45 and accompanying text.

creditors, but on average only one attended the creditors' meeting arranged by the Official Receiver during the bankruptcy process.¹⁰¹ Creditors have opted not only to stay away from the creditors' meeting, but also the vast majority of creditors elected not to file a proof of claim. Only a few of them attended the important hearing on the debtor's bankruptcy adjudication. Only a handful of them ever voiced their views on the debtor's motion for reduction of monthly payments.¹⁰² In fact, the Official Receiver indirectly discourages creditors from getting too involved in the process as it does most of the work for them. To that end, the Official Receiver undertakes the formal investigation of the debtor's financial condition by, among other things, directing the creditors to turn over to it all relevant information they have about the debtor and his financial condition; conducting a one-on-one interview with the

¹⁰¹ The average petitioner has 17.14 creditors at the time of commencing bankruptcy protection. On average, 1.69 creditors attended the creditors' meeting, during which creditors are appraised of the Official Receiver's investigation of the debtor's financial affairs and likely repayment source and the creditors get to vote on the debtor's adjudication as bankrupt.

¹⁰² See, e.g., Official Receiver case number 5001/97 (Southern District). In *Official Receiver case number 5001/97* none of the debtor's ten creditors appeared at the creditors' meeting, only three creditors bothered to file a proof of claim, and no creditor showed up during the debtor's bankruptcy adjudication hearing. In Official Receiver case number 1597/96 (Southern District), only one creditor of the debtor's twenty creditors filed a proof of claim, and no creditors attended the creditors' meeting. Similarly, in Official Receiver case number 5037/97 (Southern District), among the debtor's twenty-one creditors, only five filed a proof of claim. Likewise, in Official Receiver case number 5027/97 (Southern District), of the debtor's six creditors, all of whom were financial institutions, none appeared at the creditors' meeting and only two filed a proof of claim. Nine months after the petition was filed, only one of seven creditors bothered to file a proof of claim in Official Receiver case number 5095/97 (Southern District). In Official Receiver case number 1574/96 (Southern District), out of the more than fifty creditors, no creditor attended any of the two scheduled creditors' meetings despite the Official Receiver's attempt to notify them by mail and by posting notices in various newspapers. While there were thirty-six collection actions against the debtor prior to the bankruptcy filing in Official Receiver case number 1559/96 (Southern District), not even one creditor attended any of the two creditors' meeting. Also, while the Official Receiver filed an opposition to the debtor's motion to reduce monthly payments, no creditor filed a concurring opposition or attended the hearing. In Official Receiver case number 1043/97 (Northern District), most debts were owed to sophisticated lending institutions, but the only creditor out of the twenty-three creditors to attend the creditors' meeting was a government representative from the tax authority. In Official Receiver case number 444/97 (Central District), with debts exceeding 760,000 NIS (or \$217,000), no creditor attended the creditors' meeting. Finally, in Official Receiver case number 1043/97 (Northern District), no creditor attended the debtor's adjudication hearing, where the court dismissed the case after the Official Receiver argued that the bankruptcy process was not likely to benefit the creditors.

debtor relating to her financial condition and reason for filing; carrying out a surprise inspection of the debtor's home and place of business; diligently searching for the debtor's assets through public records as well as private sources; and drafting a comprehensive report of the debtor's financial condition and reasons for commencing bankruptcy.¹⁰³ Interestingly, in the few cases where the creditors do decide to get involved in the process, they seem to have significant influence over the eventual outcome of the case.¹⁰⁴

Lack of active engagement in the bankruptcy process by the vast majority of creditors is not symptomatic only in Israel. Researchers have identified such tendencies particularly in England during the 1970s when the Official Receiver in bankruptcy was as pervasive as it is currently in Israel.¹⁰⁵ However, while the Official

¹⁰³ See, e.g., Official Receiver case number 5073/97 (Southern District). In *Official Receiver case number 5073/97*, prior to the creditors' meeting, the Official Receiver sent a letter to all creditors requesting that they forward to the Official Receiver any information they might have relating to the debtor's assets or financial condition for further investigation. In Official Receiver case number 1597/96 (Southern District), the Official Receiver invited the debtor to its offices to conduct a one-on-one questioning of the debtor relating to his financial condition and reasons for commencing bankruptcy. At the creditors' meeting the creditors voted against declaring the debtor bankrupt because they believed the Official Receiver had failed to fully investigate the debtor's financial affairs in Official Receiver case number 380/97 (Central District). In Official Receiver case number 420/96 (Central District), at the creditors' meeting the Official Receiver's staff investigator briefed the creditors attending about his investigative findings to date, including his findings relating to the debtor's lifestyle, such as place of residence and type of car. In Official Receiver case number 183/96 (Jerusalem District), the investigative division of the Official Receiver conducted an exhaustive inquiry into the debtor's financial affairs and the causes of insolvency in preparation for the adjudication hearing. Among other things, the assigned investigator summoned the debtor for questioning at the Official Receiver's office; conducted surprise inspection of the debtor's household effects; requested third parties, such as banks, to verify information provided by the debtor; and undertook an asset search. The information was then used to compile a comprehensive report that was submitted to the court at the debtor's adjudication hearing. The report included a list of debtor's assets, liabilities, income, household expenses, and articulation of the apparent reason for the financial failure). In Official Receiver case number 184/96 (Jerusalem District), the Official Receiver's report that was submitted to the court before the debtor's adjudication hearing detailed twenty-seven years of the debtor's various business ventures and the reason for the failure of each one.

¹⁰⁴ See, e.g., Interview with Ariel Hazak, Staff Attorney, Central District Official Receiver, in Tel-Aviv, Isr. (July 8, 1998) (reporting that to the extent creditors attend the creditors' meeting and vote on the issue, the Official Receiver in the Central District generally follows the creditors' vote on whether to adjudicate the debtor as bankrupt); Interview with Levana Bar-Oz, Director, Northern District Official Receiver, in Haifa, Isr. (July 9, 1998) (indicating that creditors' vote at the conclusion of the creditors' meeting on whether to adjudicate the debtor as bankrupt carries a significant weight in the Official Receiver's recommendation to the court on that matter).

¹⁰⁵ See Boshkoff, *supra* note 10, at 85 n.84 (reporting that although creditors may attend

Receiver's dominant role in the bankruptcy process is a plausible explanation for creditors' election not to become overly involved in the bankruptcy process; it seems that an equally viable explanation is the marginal, if any, anticipated recovery by creditors from the bankruptcy process. For example, in Canada and the United States the equivalents of the Official Receiver do not routinely get involved in investigating the debtor's financial affairs and collecting on the outstanding obligations on behalf of creditors. Instead, they limit their activities to facilitating the bankruptcy process.¹⁰⁶ Nonetheless, creditors still seem to have little interest in becoming involved in the process, possibly due to the dim prospects of monetary recovery.¹⁰⁷

Just as creditors are passive players in the Israeli bankruptcy system, so are the debtors. Debtors in Israel are not influential actors in the bankruptcy system as most of them are unsophisticated individuals who are not represented by counsel.¹⁰⁸ While many petitioners obtain the help of an attorney to assemble and turn in a completed application for bankruptcy relief, such assistance generally does not last beyond the initial stage of commencing bankruptcy.¹⁰⁹ Most petitioners do not hire attorneys for the entire

the debtor's discharge hearing in England, they rarely do).

¹⁰⁶ In Canada, the administrative body charged with the supervision of the bankruptcy petitions is the Office of the Superintendent of Bankruptcy. While the Office of the Superintendent of Bankruptcy has a general supervisory role over the administration of the bankruptcy estates, it does not take an active role in the investigation of the debtor's financial condition or in the collection process. See Ramsay, *supra* note 39, at 406. Similarly, the government agency charged with the administration of the bankruptcy system in the U.S. is the U.S. Trustee Office. It monitors the conduct of bankruptcy parties, oversees related administrative functions, and acts to ensure compliance with applicable laws and procedures. While it helps to investigate bankruptcy fraud, it does not routinely investigate the financial condition of the petitioners or the causes of filings. See UNITED STATES TRUSTEE PROGRAM MISSION STATEMENT, at <http://www.usdoj.gov/ust/mission.htm> (last visited Feb. 2, 2004; see also AS WE FORGIVE, *supra* note 31, at 26 (stating that the U.S. Trustee "has [a] variety of administrative and watchdog functions in bankruptcy but is seldom heavily involved in individual consumer bankruptcy cases.")).

¹⁰⁷ See Ramsay, *supra* note 39, at 446 ("It is clear from the formal record of bankruptcy files [in Canada] that creditors participate little in the ordinary consumer bankruptcy . . .").

¹⁰⁸ See Telephone Interview with the Director, Southern District Official Receiver, [] Isr. (July 7, 1998) (reporting that there are very few individual debtors that are represented by attorneys in Israel). Lack of representation was also a characteristic of the Israeli bankruptcy system during the early 1970s. See Shuchman, *supra* note 17, at 355 ("Most bankrupts are not represented by counsel.").

¹⁰⁹ See, e.g., Interview with Isaac Solomon, a bankruptcy petitioner, Central District, Tel-Aviv, Isr. (July 1, 1998) (reporting that he initially used an attorney to help him compile the paperwork required to be included in the debtor's application for commencement of the bankruptcy case, but he did not use the attorney after that). A similar observation was made

duration of the bankruptcy process primarily because of the prohibitive costs of representation, and because of the difficulties many unsophisticated debtors have faced when attempting to locate one of the very few attorneys that practice consumer bankruptcy law in a regulatory environment that until very recently barred attorneys' advertisements.¹¹⁰ As a result of lack of representation, bankruptcy petitioners in Israel are largely uninformed about their rights and hence debtors rarely assert them.¹¹¹ When those petitioners who are not represented become aware of some of these rights, such as the right of debt-forgiveness or of stay of collection activities, they typically fashion their plea for relief on emotional grounds as opposed to legal grounds,¹¹² and at times they face

as part of an empirical study of the Israeli bankruptcy system during the early 1970s. *See* Shuchman, *supra* note 17, at 356 ("Very few bankrupts are represented of record by counsel at any state in the bankruptcy after the initial filing.").

¹¹⁰ *See* Interview with Isaac Solomon, *supra* note 109 (asserting that representation by an attorney would have cost him between \$7,000 and \$8,000); Interview with Levana Bar-Oz, *supra* note 104 (reporting that the average cost of attorney's representation is between \$1,000 and \$5,000). The cost of hiring an attorney for consumer bankruptcy representation is steep and largely unaffordable partly because the cumbersome and prolonged bankruptcy process requires numerous in-court and out-of-court appearances by counsel. Also, since there are very few bankruptcy filings annually in Israel, there are very few attorneys that specialize or even offer bankruptcy representation. Further, until attorneys were first allowed to advertise their services in 2001, it had generally been difficult for debtors to locate those few attorneys who practice consumer bankruptcy. *See* Attorney Bar Ordinances, 2001, K.T. 6094, 629. Lastly, because of the relatively low annual bankruptcy filings in Israel, those attorneys who do undertake such representations every year cannot offer their clients the low cost generally associated with a routinized and voluminous bankruptcy practice.

¹¹¹ For example, while debtors have the right to have their debts forgiven, less than 1% of the bankruptcy petitioners in this study filed an application for discharge (N=3). *See, e.g.*, Official Receiver case number 185/97 (Jerusalem District) (showing that the debtor seems to have been unaware of the discharge provision in the bankruptcy law, until the Official Receiver raised it during the adjudication hearing); Interview with Isaac Solomon, *supra* note 109 (showing that the debtor was unaware at the time of the petition of the possibility of getting a discharge and that the debtor became aware of it during a creditors' meeting where a staff attorney at the Official Receiver mentioned it to him). Similarly, a study of bankruptcy petitioners in England and Wales during the 1970s, most of whom were non-represented, found that most of them failed to apply for discharge. *See* Boshkoff, *supra* note 10, at 87 ("Debtors in England and Wales must often struggle to obtain their discharges. Not surprisingly, therefore, many debtors simply fail to apply for discharge.").

¹¹² *See, e.g.*, Official Receiver case number 1552/96 (Southern District). In *Official Receiver case number 1552/96*, the pro se debtor seeking a favorable disposition, the pro se debtor mentioned in his application for a stay his immigrant status, his army service, and his participation in four wars. In Official Receiver case number 1574/96 (Southern District), the debtor, who was not represented by counsel, was seeking stay of collection activities against him. The debtor filed an application with the court raising no legal arguments, but instead relying exclusively on pleas for compassion from the judge. The debtor began by providing

retaliatory conduct by the Official Receiver for daring to assert these rights.¹¹³ Whereas studies in the United States have demonstrated a high degree of reliance by petitioners on their attorneys,¹¹⁴ Israeli petitioners seem to rely primarily on the Official Receiver for advice and direction throughout the bankruptcy process.¹¹⁵

Despite being repeat players in the bankruptcy process, judges do not seem to have significant influence over the legal culture in the Israeli bankruptcy system. In the United States, for example, judges' views and perceptions about the appropriate nature and extent of bankruptcy relief for individuals do serve as a strong force in shaping the bankruptcy legal culture.¹¹⁶ To some extent this is also true in Israel as there are a number of judges in Israel whose strong views toward the fresh start policy in bankruptcy tend to

the court with general background information about himself hoping to garner the court's sympathy. The debtor stated that he was a father of nine children and that he had served in the Israeli Army for twenty years, after which began a business that failed. The debtor then described the impact of his financial distress on his personal life: "Today, I find myself in a major life crisis. After thirty-one years of marriage, my wife has decided to divorce me and to divide a family unit of eleven members. Now that my wife has decided to abandon me, I ask you to be compassionate and help me overcome this difficult crisis. You are my only hope. . . . Please help me regain my strength back again and not reach the point of complete break down and suicide. I have been arrested several times and spent several nights at a prison due to my inability to pay my debts." *Id.*

¹¹³ See, e.g., Official Receiver case number 1559/96 (Southern District). In *Official Receiver case number 1559/96*, six weeks following their adjudication as bankrupts the petitioners filed on their own an application for discharge. Within a few days following the debtors' application the Official Receiver, who must have been dismayed by the debtors' daring request for debt forgiveness at this early stage in the bankruptcy process, wrote the debtors a letter informing them the following: "We are pleased to notify you that in accordance with rule 52 of the Bankruptcy Ordinance, 3,000 NIS have been deducted from your account at the Official Receiver to cover the Official Receiver's expenses related to your application for discharge." The Official Receiver obtained no court order to conduct this offset. Subsequently, the Official Receiver filed strongly worded, lengthy opposition to the debtors' application for discharge.

¹¹⁴ See *supra* note 34 and accompanying text.

¹¹⁵ For example, in a creditors' meeting held in the Official Receiver's office for the Central District on July 1, 1998 in the matter of Isaac Solomon, the petitioner, who was not represented by an attorney, was hesitant about being adjudicated as bankrupt. The staff attorney at the Official Receiver then informed the petitioner that without declaring him bankrupt, the debtor could not get a discharge in the future. The debtor then agreed to be adjudicated as bankrupt. See, e.g., Interview with Levana Bar-Oz, *supra* note 104 (reporting that when her staff believes that the debtor deserves debt-forgiveness, a representative from the Official Receiver's office contacts the petitioner and suggests to him or her to file an application for discharge).

¹¹⁶ See *supra* notes 37-38 and accompanying text.

shape local bankruptcy practices.¹¹⁷ However, judges in Israel typically do not hold strong views on bankruptcy matters, nor profess to have extensive background in the field. Unlike bankruptcy judges in the United States who deal exclusively with bankruptcy matters, there are no judges in Israel that specialize in bankruptcy matters. As a result, most judges in Israel seem to have limited expertise or interest in that obscure area of law. In contrast, the Official Receiver, the administrative agency whose legislative mandate is to administer bankruptcy cases, has a professional staff of attorneys, financial analysts, and investigative personnel, who have over time developed a degree of specialization in the field of bankruptcy. Also, whereas judges in Israel only have limited time to devote to each bankruptcy case, the Official Receiver's personnel tend to spend tremendous time and effort on each bankruptcy case.¹¹⁸ As a result, judges, who have only limited expertise, little interest, and limited time to devote to each case, tend to defer to a great extent to the Official Receiver's recommendations relating to debtors' bankruptcy petition.

For example, the judges in this study strictly followed the Official Receiver's recommendation on whether to grant the debtors' application for commencing bankruptcy protection.¹¹⁹

¹¹⁷ Compare Minutes of the Levins' Commission on Bankruptcy Reform, *supra* note 29, at 3 (noting Judge Vinograd from the Central District voiced his strong opposition to the proposed liberalization of the bankruptcy process); and *id.* at 4-5 (noting a leading member of the judiciary voiced his concerns that a liberalization of the bankruptcy laws would invite further abuse of the bankruptcy system), with C.A. 982/96, *Asraf v. Official Receiver* (unpublished opinion issued on Dec. 23, 1996 by Judge Procaccia) (granting the debtor's application for a rare unconditional discharge because of the debtor's poor health, good faith, lack of assets, and lack of interest by creditors).

¹¹⁸ See *infra* note 120; see also *infra* note 143 and accompanying text.

¹¹⁹ In 96.7% of the cases the Official Receiver recommended to the court that the debtor's bankruptcy application be granted and that a receiving order be issued (N=176). Similarly, in 96.9% of the cases, the court granted the debtor's bankruptcy application and issued a receiving order (N=185). See, e.g., Official Receiver case number 167/97 (Jerusalem District) (issuing the receiving order which corresponded to the terms in the recommendation letter from the Official Receiver); Official Receiver case number 1597/96 (Southern District) (following the course of action relating to the receiving order as recommended by the Official Receiver); Official Receiver case number 1072/96 (Northern District) (granting the debtor a receiving order conditioned on the debtor making monthly payments in the amount suggested by the Official Receiver); Official Receiver case number 548/96 (Central District) (siding with the Official Receiver's recommendation, the court granted the debtor's application for a receiving order requiring the debtor to make monthly payments in the amount suggested by the Official Receiver); Interview with Levana Bar-Oz, *supra* note 104 (contending that the judges in the Northern District almost always go along with the Official Receiver's recommendation for issuing a receiving order).

Also, judges in this study usually followed the Official Receiver's position relating to debtors' application for reduction in the amount of monthly payments due.¹²⁰ Similarly, the judges in this study adopted most of the Official Receiver's recommendations regarding debtors' adjudication as bankrupt.¹²¹ Lastly, the judges followed in most cases the Official Receiver's recommendation whether to grant the debtor a discharge of his debts.¹²²

Hence, the apathy of creditors, the powerlessness and ignorance of the petitioners, and the deference given by the judiciary have all helped the Official Receiver to become the dominant actor in the Israeli bankruptcy scene. As the only prominent player in the Israeli bankruptcy system, the Official Receiver has enjoyed almost exclusive power to influence and shape the legal culture of the Israeli bankruptcy system. Indeed, the attitudes, perceptions and views of the Official Receiver in Israel help to explain the marked disparity between the bankruptcy reform provisions adopted by the legislature in 1996 and the actual bankruptcy practices on the ground.¹²³

It was earlier hypothesized here that the recent appointment of a pro-debtor chief administrator of the dominant Official Receiver

¹²⁰ See, e.g., Official Receiver case number 5023/97 (Southern District) (following the Official Receiver's recommendation, the court denied the debtor's application to reduce monthly payments); Official Receiver case number 1559/96 (Southern District) (citing the Official Receiver's justification for opposing the debtor's application to reduce the amount of monthly payments, the court denied the application); Official Receiver case number 548/96 (Central District) (siding with the Official Receiver and denying the debtor's application for reduction in the amount of monthly payments).

¹²¹ In 63.9% of cases where an adjudication hearing took place, the Official Receiver recommended to the court that the debtor be adjudicated bankrupt conditioned on making monthly payments (N=53). Similarly, in 72.7% of the cases where an adjudication hearing took place, the court adjudicated the debtor bankrupt subject to monthly payments (N=56). See Interview with Levana Bar-Oz, *supra* note 104, (contending that the judges in the Northern District generally conform to the Official Receiver's recommendation for the conditions of adjudicating the debtor as bankrupt). However, at times the judges reject the Official Receiver's recommendation. See, e.g., Official Receiver case number 1559/96 (Southern District) (rejecting the Official Receiver's recommendation not to adjudicate the debtor as bankrupt citing the recent reform of the bankruptcy laws which the court characterized as urging the courts to recognize the debtor's interest to open a new chapter in his life).

¹²² In twenty percent of the cases where discharge hearing took place, the Official Receiver recommended to the court not to grant the debtor a discharge (N=2). Similarly, in twenty-five percent of the cases where discharge hearing took place, the court denied the debtor a discharge (N=2). A study that was conducted in England during the 1970s when discharge was discretionary found that the Official Receiver similarly had significant impact on the court's determination. See Boshkoff, *supra* note 10, at 86.

¹²³ See *supra* Part III.

would result in a legal culture that would largely reinforce the bankruptcy reform legislation. The results from this study, however, indicate that relatively autonomous directors of the regional divisions of the Official Receiver, coupled with the deeply rooted historical pro-creditor institutionalized sentiments in the regional offices of the Official Receiver, have contributed to the almost complete ignorance of the bankruptcy reform provisions in practice. Apparently, the leadership at the highest level of the Official Receiver in Israel has historically been exceedingly suspicious of the fresh-start policy in bankruptcy. Prior to its enactment in 1996, the former chief administrator of the Official Receiver had voiced, on numerous occasions, his grave reservations about the proposed revisions of the bankruptcy laws. He has strenuously argued that any liberalization attempt of the bankruptcy laws would likely result in an increase in the abuse of the system.¹²⁴ He also suggested that a liberalization of existing bankruptcy laws would simply be irreconcilable with existing social norms in Israeli society.¹²⁵ Furthermore, he contended that the proposed reform would lead to adverse consequences to the economy by encouraging irresponsible borrowing and discouraging commercial transactions.¹²⁶ Lastly, the chief administrator of the Official Receiver opposed the proposed reform on the grounds that the existing laws were already too debtor friendly.¹²⁷ Apparently, the former chief administrator's adverse predisposition towards a liberal interpretation of the fresh-start policy in bankruptcy continues to influence the attitude of at least some of the regional directors of

¹²⁴ See Letter from Amram Blum, *supra* note 28, at 1 (“[I]t is likely that public knowledge about the opening of the doors of bankruptcy will quickly spread, and the number of debtors that will take advantage of the situation in order to avoid their creditors may rise to a startling proportion.”).

¹²⁵ See Minutes of the Levin's Commission on Bankruptcy Reform, *supra* note 29, at 4 (statement by Amram Blum, Chief Administrator of the Official Receiver) (explaining the reason for an allegedly successful broad fresh-start policy in the U.S., Mr. Blum asserted that the social norms in the U.S. are different than the social norms in Israel, and, hence, a similar policy would not be successful in Israel).

¹²⁶ See Letter from Amram Blum to Professor David Libayi, *supra* note 30 at 2 (“The central problem that concerns us is whether making access to bankruptcy easier will encourage people to incur debts irresponsibly, in the hope that eventually, they will receive a discharge. There is no need to mention how injurious such a perception may be to the commercial life and the debt repayment morality in our country.”).

¹²⁷ See Minutes of the Levin's Commission on Bankruptcy Reform, *supra* note 29, at 5 (“The reality [in Israel] is that it is beneficial to file for bankruptcy. In the U.S., it is not a great pleasure to do so. We should import that practice to our country.”).

the Official Receiver.¹²⁸ The continued pro-creditor environment in a number of regional districts of the Official Receiver, despite the recent appointment of a pro-debtor chief administrator to the Official Receiver, was made possible by the de-centralized functioning of the Official Receiver.

Given the autonomy of the regional heads of Official Receiver in shaping the bankruptcy practices on their own, it is no surprise that the pervasive historical institutionalized anti-debtor sentiments of the Official Receiver, which remain potent in a number of districts, has contributed, to a large extent, to the wide ignorance of the bankruptcy reform provisions in practice.

The Official Receiver's attitudes, perceptions, and views about personal bankruptcy not only explain the reason for the lack of robust conformity between the laws on the books and the laws in action, but they also tend to explain the divergences that have developed in the Israeli bankruptcy system among districts. That is, the debtor-oriented Jerusalem District, and the creditor-oriented districts (the Southern District, the Northern District and the Central District) diverge because of differing views about the fresh-start policy embraced by the regional leaders of the Official Receiver in these various districts.

As described earlier, the Jerusalem District was the only district that has made a good faith effort to comply with most of legislative provisions that were part of the pro-debtor bankruptcy reform in 1996. The lack of similar conformance by the other districts has resulted in striking differences between what was referred to as the debtor-oriented district and the creditor-oriented districts.¹²⁹ To a large extent, these differences seem to be the product of different attitudes and perceptions held by the four regional leaders of the Official Receiver. For example, the pro-debtor orientation of the Jerusalem District seems to be a function of the favorable predisposition of the head of that regional district towards the fresh-start policy in bankruptcy.¹³⁰ Indeed, the regional head of the

¹²⁸ See Letter from Joseph Zilberg, Deputy Director of the Official Receiver's Central District, to Shmuel Zur, Chief Administrator of the Official Receiver 1 (Nov. 20, 1994) (on file with author) ("The idea of debt forgiveness may be a noble one, . . . but it is necessary to take into consideration the reality of life and needs of the economy. It is possible that discharge may create a situation wherein lenders will not extend credit or loans.").

¹²⁹ See *supra* Part IV.

¹³⁰ While the sentiment at the highest level of authority in the Official Receiver has traditionally been resistant toward a broad fresh-start policy, prior to the enactment of the

Official Receiver's Jerusalem District explained that consistent with the 1996 legislative reform of the bankruptcy law, his district has embarked on a policy of supporting the debtor's discharge during the bankruptcy adjudication hearing, as long as the debtor acted in good faith and had no prospects of making meaningful payments to creditors.¹³¹ The regional head's firm personal support for the early discharge provision of the bankruptcy reform was manifested in one of the cases in the sample of this study where he made a rare personal appearance before a judge to support the Official Receiver's application for an unconditional discharge of the debtor pursuant to the bankruptcy reform legislation.¹³²

In contrast, the pro-creditor orientation of the northern, southern and central districts seem to be a function of the firm personal views held by the three directors of those regional districts against an expansive fresh start policy in bankruptcy.¹³³

The diverging philosophies relating to the fresh-start policy among the regional offices of the Official Receiver manifest themselves in anti-debtor practices adopted in the creditor-oriented districts and pro-debtor practices in the debtor-oriented district. These practices have generally been adopted through a directive from the director of the regional Official Receiver office. For example, whereas the Official Receiver in the Jerusalem District initiated the majority of the discharge hearings in its districts, none

bankruptcy reform in 1996, a more debtor friendly chief administrator has replaced the veteran pro-creditor chief administrator. See Efrat, *The Evolution*, *supra* note 15, at 106 n.284. This important shift in philosophy resulting from the chief's replacement may have encouraged the head of the Jerusalem District's Official Receiver to feel more comfortable directing his staff to pursue a debtor-friendly course despite persisting resistance in all other districts. See Interview with Yoram Arbel, *supra* note 96 (reporting that the Jerusalem District's approach toward the fresh-start policy is viewed as revolutionary and extreme by all other regional leaders of the Official Receiver).

¹³¹ See Interview with Yoram Arbel, *supra* note 97.

¹³² See Official Receiver case number 156/97 (Jerusalem District) (urging by the director of the Jerusalem District's Official Receiver during the debtor's bankruptcy adjudication hearing for the court to grant the debtor an unconditional discharge, as the debtor incurred her business related debts in good faith, but now has only minimal steady monthly income as a wage earner).

¹³³ A letter written by one of the regional directors of the Official Receiver provides some insight to his personal distaste toward the 1996 bankruptcy liberalization legislation. See Letter from Joseph Zilberg to Shmuel Zur, *supra* note 129, at 1 ("The idea of debt forgiveness may be a noble one, . . . but it is necessary to take into consideration the reality of life and needs of the economy. It is possible that discharge may create a situation wherein lenders will not extend credit or loans.").

of the other regional offices of the Official Receiver initiated such an action in support of the debtor's fresh-start.¹³⁴ In fact, the regional directors of the Official Receiver in the creditor-oriented districts have all instituted a practice of never bringing up the issue of discharge during the early phases of the bankruptcy process.¹³⁵ Also, whereas the Official Receiver in the Jerusalem District has supported the discharge applications in all cases where such applications were made, the other regional offices of the Official Receiver have not supported even a single discharge application.¹³⁶

Underlying the suspicion, and at times resentment, held by the three regional directors of the Official Receiver in the creditor-oriented districts towards the liberalized fresh-start policy is a firm belief that bankruptcy should primarily serve the interests of creditors. While some regional directors of the Official Receiver boldly assert that their primary mission is to represent the interests of creditors,¹³⁷ the directors adopted practices in the Northern, Southern, and Central Districts also manifest the regional heads' favorable predisposition towards creditors. The regional directors of the Official Receiver in these three districts have pursued various practices that condition valuable bankruptcy-related debtor's relief on either the debtor furthering the creditors' interests or the debtor obtaining creditors' consent.

For example, the Official Receiver in these three districts have opposed, on many occasions, the debtor's request to reduce the monthly payments required to be made by the debtor, reasoning

¹³⁴ In the Jerusalem District, the Official Receiver initiated the discharge hearing in 62.5% of the cases, and the judges initiated the discharge hearing in 37.5% of the cases. There were a total of eight discharge hearings in the Jerusalem District sample. There were two discharge hearings in the Southern District sample and one discharge hearing in the Northern District sample, but the debtor initiated them all. In the Central District sample of over 100 cases, there were no discharge hearings.

¹³⁵ See Interview with Levana Bar-Oz, *supra* note 104; Interview with Ariel Hazak, *supra* note 104 (suggesting that an unofficial practice of the Official Receiver in the Central District is to oppose any discharge hearing within the first two years of a bankruptcy case).

¹³⁶ In the Jerusalem District, the Official Receiver supported an unconditional discharge in twenty-five percent of the applications for discharge (N=2), and in seventy-five percent of the applications for discharge the Official Receiver supported a conditional discharge (N=6). In contrast, the Official Receiver in the Southern District opposed all the applications for discharge in that district (N=0 out of 2). In fact, this practice of opposing a debtor's unconditional discharge was confirmed during an interview with the director of the regional Official Receiver office in the Southern District. See Telephone Interview with the Director, Southern District Official Receiver, *supra* note 108.

¹³⁷ See Interview with Levana Bar-Oz, *supra* note 104.

that such relief would impair the creditors' interests in obtaining meaningful repayment.¹³⁸ Also, the Official Receiver in the Central District generally withheld its support for adjudicating the bankrupt, unless the creditors consented.¹³⁹ Similarly, the Official Receiver in the Southern District and the Northern District have withheld their support for such adjudication when they were convinced that the debtor has failed to exert maximum efforts to repay his creditors prior to and during bankruptcy.¹⁴⁰ Lastly, the Official Receiver in the Northern District has an unofficial policy of opposing the debtor's discharge unless he has made payments for a number of

¹³⁸ See, e.g., Official Receiver case number 1592/96 (Southern District). In *Official Receiver case number 1592/96* a sixty-five year old debtor, diagnosed with high blood pressure, was unemployed and lived on a monthly allowance of 2,287 NIS from the social security agency, with reported monthly expenses of 3,199 NIS. The debtor filed an application requesting a reduction in his monthly repayment amount. The Official Receiver opposed the debtor's request, reasoning that the request would impair the creditors' interests in receiving adequate repayment. In Official Receiver case number 456/97 (Central District), on account of the debtor's 1.6 million NIS debts, the debtor made a settlement offer of repaying 90,000 NIS in a lump sum, plus continuous monthly payments of 650 NIS. Without consulting the creditors, the Official Receiver summarily rejected the debtor's offer, reasoning that the proposal was inadequate in light of the amount of debt outstanding. In Official Receiver case number 1043/97 (Northern District), the unskilled and unemployed debtors requested that the court order them to pay 300 NIS per month as a condition of the receiving order. The Official Receiver objected and insisted on 900 NIS per month arguing that the amount proposed by the debtors would be inadequate in light of the 300,000 NIS debts outstanding.

¹³⁹ See Interview with Ariel Hazak, *supra* note 104 (suggesting that the Official Receiver generally follows the creditors' wishes, as manifested in the creditors' meeting, on whether to adjudicate the debtor as bankrupt). In Official Receiver case number 420/96 (Central District), the Official Receiver recommended that the court adjudicate the debtor as bankrupt, or having the creditors consent to doing so.

¹⁴⁰ See, e.g., Official Receiver case number 5040/97 (Southern District). In *Official Receiver case number 5040/97*, the Official Receiver was initially inclined to oppose the debtor's bankruptcy adjudication as the debtor was deemed to have made inadequate efforts to maximize his earnings. The debtor was a singer who performed at weddings and other celebrations mostly at night. The Official Receiver believed that the debtor should have made more efforts to repay his debts to creditors by working during the day. In Official Receiver case number 559/96 (Southern District), the Official Receiver objected to the debtors' discharge application and asserted that the debtors have made inadequate efforts to repay their creditors. The Official Receiver reasoned that by moving back to the Kibbutz, the debtors have sought to shelter themselves from their creditors. In Official Receiver case number 5095/97 (Southern District), the debtors were both unemployed and living on a government monthly subsidy in public housing. The debtors asked the court to reduce the amount of monthly payments they were ordered to make as a condition of an order of stay. The Official Receiver opposed the motion contending that the debtor's wife could make more efforts to locate a job.

years that have reduced the principal balance owed to creditors by at least half.¹⁴¹

Also, underlying the distrust, and at times bitterness, held by these three regional heads of the Official Receiver towards the liberalized fresh-start policy is an unyielding belief that most petitioners are abusing the system and that only a small number of deserving debtors should be entitled to bankruptcy relief.¹⁴² To be regarded as a deserving petitioner, the Official Receiver generally must be convinced that the petitioner's current life style and standard of living are modest. To that extent, the Official Receiver's investigative unit routinely conducts surprise visits to a petitioner's home to ascertain whether his standard of living is sufficiently low as to justify the petitioner's adjudication as bankrupt or the petitioner's application for a reduction in monthly payments.¹⁴³

Likewise, to be regarded as a deserving petitioner, the petitioner must not have engaged in what the Official Receiver deems an extravagant lifestyle before filing for bankruptcy. Extravagant lifestyle is apparently presumed where the petitioner has incurred substantial consumer debt prior to his bankruptcy

¹⁴¹ See Interview with Levana Bar-Oz, *supra* note 104.

¹⁴² See *id.* (asserting that while there are a few honest and unfortunate petitioners, most petitioners are crooks). A study in the United States also found that debtor's abuse was a prevailing sentiment among many officials in the U.S. Trustee's office. See AMERICAN BANKRUPTCY INSTITUTE, *supra* note __, at 32 (reporting that half of the United States Trustee respondents believed that there was a great deal of abuse in the bankruptcy system). [note not previously cited]

¹⁴³ See, e.g., Official Receiver case number 1062/97 (Northern District). In *Official Receiver case number 106/97* the impressions of the Official Receiver's investigator during his surprise visit to the debtor's house were subsequently used by the Official Receiver in deciding whether to support the debtor's adjudication as bankrupt. In Official Receiver case number 1073/96 (Northern District), the Official Receiver objected to the debtor's bankruptcy adjudication following the inspection of the debtor's house partly because the debtor was deemed to have been living with an above-average standard. In his report, the investigator of the Official Receiver mentioned that the debtor owned and lived with his wife in a single family dwelling with a well-equipped kitchen, and the couple owned two cars. To bolster his contention that the debtor lived at a relatively high standard of living, the investigator also mentioned that the debtor incurred high telephone bills and was subscribing to a newspaper. In Official Receiver case number 420/96 (Central District), the Official Receiver's investigator detailed his impression regarding the debtor's lifestyle, including the location of the debtor's residence and the maker of his car, before voting in the creditors' meeting on whether to adjudicate the debtor as bankrupt. Apparently, discretionary discharge systems invite judgments about the debtor's lifestyle. See Boshkoff, *supra* note 10, at 125 ("Our knowledge of the English system and some experience with the conditional discharge of educational debts in our country suggests that the bankruptcy judge will be given almost unlimited power to determine the lifestyle of a debtor who seeks a discharge.").

filing. While many may view business failure as a legitimate reason to file for bankruptcy, incurring substantial consumer debt is generally perceived as bad faith filing.¹⁴⁴

Lastly, the debtor must not have engaged in what the Official Receiver deems to be irresponsible conduct to be regarded as a deserving petitioner. In one case, the Official Receiver opposed the debtor's discharge application partly because the debtor "irresponsibly" invested in the stock market.¹⁴⁵ In another case, the Official Receiver opposed the debtor's bankruptcy adjudication because the debtor acted "irresponsibly" when he became involved in a number of business ventures that failed or were poorly managed.¹⁴⁶

CONCLUSION

This study provides compelling evidence to support the proposition that internal legal culture has a powerful impact on the actual implementation of legislative reform. Indeed, the values, attitudes, and beliefs shared by key government officials from the Official Receiver's agency seem to be playing a critical role in shaping practices in the Israeli personal bankruptcy system. Since

¹⁴⁴ See, e.g., Official Receiver case number 5008/97 (Southern District). In *Official Receiver case number 5008/97*, the Official Receiver was initially opposed to debtor's bankruptcy adjudication mainly because the debtor was deemed to have incurred his debts in bad faith as most debts were personal in nature and not business-related. The Official Receiver believed that the debtor was not a "deserving" debtor because he lived beyond his means when he incurred debt to finance his wedding, to buy gifts for his baby, and to sponsor his stepson's bar-mitzvah celebration. In Official Receiver case number 1559/96 (Southern District), the Official Receiver opposed the debtor's bankruptcy adjudication partly on the ground that some of the debtor's debts stemmed from matters relating to personal consumption.

¹⁴⁵ See, e.g., Official Receiver with a missing case number (Northern District) (opposing the debtor's adjudication as bankrupt, the Official Receiver asserted that the petitioner has acted irresponsibly when he invested his money in the stock market, thereby contributing to his financial problems).

¹⁴⁶ See, e.g., Official Receiver case number 132/96 (Northern District). In *Official Receiver case number 132/96*, the Official Receiver opposed the debtor's adjudication as bankrupt, arguing, in part, that the debtor had acted carelessly prior to his bankruptcy filing when he got involved in a number of business ventures in a short period of time. In Official Receiver case number 1072/96 (Northern District), the Official Receiver opposed the debtor's bankruptcy adjudication, basing its decision, in part, on the debtor's "recklessness" when he failed to insure his business property which was subsequently lost due to fire. In Official Receiver case number 1039/97 (Northern District), the Official Receiver opposed the debtor's bankruptcy adjudication because he allegedly acted recklessly when he signed blank checks on his business account enabling his brother to embezzle money and drive the business into the ground.

the Official Receiver institution has emerged as the single most powerful force in the Israeli bankruptcy system, it has faced no serious challenges to its view on how the bankruptcy laws should be implemented. While the chief administrator of the Official Receiver had previously expressed a favorable disposition towards the recent bankruptcy reform,¹⁴⁷ he has not taken steps to ensure that the regional divisions of the Official Receiver follow the legislative reform. Instead, the leaders of the various regional divisions of the Official Receiver have relative autonomy in implementing the 1996 bankruptcy reform. This regional autonomy, coupled with a legal environment that poses no serious challenges to the Official Receiver, has resulted in a de facto bankruptcy regime that is mostly a function of the views, attitudes, and beliefs of the various regional leaders of the Official Receiver. The directors of the regional divisions of the Official Receiver, by and large, have exhibited deep cynicism and suspicion toward an expansive fresh-start policy in bankruptcy.¹⁴⁸ This perception, which apparently has continued almost uniformly even after the 1996 bankruptcy reform, has inevitably contributed to the non-implementation of most of the key provisions of the reform legislation.¹⁴⁹

Furthermore, the relatively autonomous nature of the regional divisions of the Official Receiver, the challenge-free legal environment facing the Official Receiver, and the disparate views towards the fresh-start policy among the various regional directors of the Official Receiver help to explain the lack of uniformity in the implementation of personal bankruptcy laws in Israel. Most of the regional leaders of the Official Receiver, who still perceive bankruptcy largely as a creditors' remedy mechanism, have opted to ignore key provisions of the 1996 bankruptcy reform. However, in one judicial district, which is led by a debtor-oriented regional director, practices are different than they are in the rest of the country.¹⁵⁰

In addition to demonstrating the dramatic impact of the Official Receiver institution on the legal culture in the Israeli bankruptcy system, this study calls into question the present role of the Official Receiver in the bankruptcy regime. As stated earlier,

¹⁴⁷ See *supra* note 22 and accompanying text.

¹⁴⁸ See *supra* notes 123-27 and accompanying text.

¹⁴⁹ See *supra* note 132 and accompanying text; see also *supra* Part II.

¹⁵⁰ See *supra* Part III.

similar to its counterpart in the United States and Canada, the Official Receiver in Israel takes on a facilitative role to the bankruptcy process.¹⁵¹ It serves as a depository of bankruptcy documents and as a liaison between the debtor, the creditors, and the court. However, in stark contrast to its counterpart in the United States and Canada, the Official Receiver in Israel has assumed an investigatory role in the bankruptcy process. In that capacity, the Official Receiver routinely conducts an exhaustive investigation of the debtor's financial condition and the causes of his or her bankruptcy. The investigation process culminates in a detailed report submitted to the court during the debtor's adjudication hearing. The report summarizes the Official Receiver's investigatory undertaking, which includes a comprehensive search and valuation of the debtor's assets, a one-on-one questioning of the debtor, inspections of the debtor's residence and, if any, place of work, interviews of third parties to ascertain the debtor's good faith in becoming insolvent, a thorough inquiry into the causes of the debtor's bankruptcy, and a review of the debtor's historical financial performance.¹⁵²

¹⁵¹ See *supra* note 105 and accompanying text.

¹⁵² See *supra* note 102; see also Official Receiver case number 130/97 (Jerusalem District), when approximately two months after the petition was filed, the Official Receiver's investigator conducted a one-on-one questioning session with the debtor at the Official Receiver's administrative offices. In Official Receiver case number 128/97 (Jerusalem District), the Official Receiver's investigator, who conducted a search of the debtor's household goods, generated a detailed list of content. Similarly, in Official Receiver case number 156/97 (Jerusalem District), the Official Receiver's report submitted to the court a month before the adjudication hearing included the following, among other things: debtor's demographic data such as age, gender and profession; summary of the debtor's assets, liabilities, income, and expenses; and a detailed narrative description of the Official Receiver's findings relating to the cause of bankruptcy. As part of its investigative work in Official Receiver case number 1563/96 (Southern District), the Official Receiver sent letters to various financial institutions inquiring whether they had any information about the debtor. Following its exhaustive investigative work, the Official Receiver in Official Receiver case number 1574/96 (Southern District) prepared and submitted to the court a five page, single spaced, detailed and well-organized report relating to its findings. Additionally, the Official Receiver questioned the debtor in court during the receiving order hearing and the adjudication order hearing. Finally, the Official Receiver questioned the debtor during private one-on-one questioning sessions, at the creditors' meeting and during the inspection visit. In Official Receiver case number 1559/96 (Southern District), the Official Receiver's questioned the debtor regarding the reasons for the financial collapse during the one-on-one questioning session. Since the debtors had a history of three business ventures, the inquiry was quite extensive and detailed. This line of questioning, coupled with an independent verification of the debtor's assets and debts, demanded significant time and resources. Apparently, this extensive Official Receiver's involvement in the bankruptcy investigatory and

These painstaking efforts by the Official Receiver not only unduly infringe on the debtor's privacy but also are inefficient and only marginally effective. The Official Receiver's sweeping investigatory efforts unduly infringe on the debtor's privacy because they are highly intrusive. Admittedly, most of the Official Receiver's investigatory efforts are aimed at promoting the creditors' legitimate collection interests. Nonetheless, having a government agency engage in such activities on behalf of the creditors inevitably results in inappropriate governmental encroachment into a highly intimate zone of privacy. Invasion of privacy inevitably results when a government agent from the Official Receiver conducts surprise inspections of a debtor's home to ascertain whether the debtor possesses any consumer goods that are deemed luxuries, such as brand name appliances, a personal home computer, or a relatively new automobile.¹⁵³ Infringement of the debtor's privacy also results when an Official Receiver's agent suggests to the court that a debtor's request for bankruptcy relief should be denied because the

collection efforts was also documented in the early 1970s in Israel. See Shuchman, *supra* note 10, at 364 ("To collect that sum, to cover the costs and for distribution to creditors, the Official Receiver made five or six, often as many as nine or ten court appearances; he conducted an inspection of the bankrupt's home; he generated some 100 separate papers in the file, not including copies. . . ."); *id.* at 362 ("The Official Receiver's office acts as a state subsidized collection agency for private creditors."). The phenomenon of the government assuming the role of a private debt-collector is also pervasive outside of bankruptcy in Israel. See Ron Harris, *From Imprisonment to Discharge: Setting an Agenda for Reform in Debtor-Creditor Law*, 23 TEL-AVIV U. L. REV. 641, 675-76 (2000) (criticizing the practice of governmental assumption of the debt-collection costs in the Israeli judgment execution system).

¹⁵³ See, e.g., Official Receiver case number 128/97 (Jerusalem District). In *Official Receiver case number 128/97*, the Official Receiver's investigator, who conducted a search of the debtor's household goods, generated a detailed list of content. The list included such things as the brand name of the petitioner's stereo and refrigerator, the number of bookcases he owns, a description of the type of microwave he has in the kitchen, and the size of the rugs and their estimated value. The report also included a description of the observed marital conflict between the petitioner and his spouse. In Official Receiver case number 120/98 (Jerusalem District), the investigator detailed a list of all items that were observed during his visit, including the estimated age of each item following the Official Receiver's inspection of the debtor's residence. While almost all of the items were old, the investigator emphasized that the petitioner's personal computer and printer were relatively new. In Official Receiver case number 5087/97 (Southern District), following the Official Receiver's investigator inspection of the petitioner's residence, he remarked the following: "The petitioner's house is simple. One bedroom and a living room. Five people reside in it. The kitchen is small and basic. One video machine. One television. Non-sophisticated computer, old washing machine, a refrigerator with two doors; the balcony is small and is used as a storage space; the toilet is in a poor condition and has many leaks. All the kids sleep in the same room on old beds. This is an old and tiny apartment." *Id.*

debtor has incurred certain “unnecessary expenses,” such as television cable fees or newspaper subscription fees.¹⁵⁴ Unnecessary meddling into the debtor’s privacy also results when the Official Receiver objects to the debtor’s bankruptcy adjudication on the grounds that the debtor’s spouse should go to work and earn money rather than stay home and raise her child.¹⁵⁵ Lastly, inappropriate intrusion into a petitioner’s zone of privacy results when the Official Receiver’s investigator inquires into the petitioner’s citizenship, immigrant, and veteran status.¹⁵⁶

Beyond privacy concerns, the current role of the Official Receiver raises some efficiency concerns. Since creditors are arguably the more efficient risk bearers in a credit transaction,¹⁵⁷ it behooves legislators to provide creditors with incentives to engage

¹⁵⁴ See, e.g., Official Receiver case number 1073/96 (Northern District). In *Official Receiver case number 1073/96*, the Official Receiver objected to the debtor’s bankruptcy adjudication partly because the debtor was deemed to have been living at an above average standard of living as manifested by the debtor’s high telephone bill and newspaper subscription fee. In Official Receiver case number 5001/97 (Southern District), the Official Receiver suggested that the debtor should reduce her expenses by cutting her monthly television cable charge and phone bill in response to the debtor’s application for a reduction of monthly payments.

¹⁵⁵ See, e.g., Official Receiver case number 5095/97 (Southern District). In *Official Receiver case number 5095/97*, the Official Receiver opposed the debtor’s motion to reduce monthly payments contending that the debtor’s wife could make more efforts to locate a job. In Official Receiver case number 135/97 (Jerusalem District), the Official Receiver questioned the debtor’s spouse, who was a homemaker, on why she was not working or looking for a job in lieu of taking care of her young children.

¹⁵⁶ See, e.g., Official Receiver case number 1559/96 (Southern District) (during the one-on-one questioning session, the Official Receiver’s investigator asked the debtors demographic type of questions including matters relating to their citizenship, birth place, year of immigration and experience in the army).

¹⁵⁷ See Steven L. Harris, *A Reply to Theodore Eisenberg’s Bankruptcy Law in Perspective*, 30 UCLA L. REV. 327, 362 (1982) (arguing that creditors are the superior risk bearers because they can more efficiently evaluate the risk of bankruptcy since they make such inquiries more often than debtors and since they can objectively evaluate the risks); *id.* at 362-63 (“Many creditors are able to procure insurance against bad debt losses at reasonable cost. Other may self-insure by diversifying their risks, either by extending credit to a pool of debtors and spreading the risk among them or by engaging in diversified lending activities . . .”); Margaret Howard, *A Theory of Discharge in Consumer Bankruptcy*, 48 OHIO ST. L.J. 1047, 1063-64 (1987) (contending that creditors are the superior risk bearers because they can predict more accurately, based on their prior experience, the likelihood of future default and because they are more aware of the need for insurance and can acquire it for less); Thomas H. Jackson, *The Fresh-Start Policy in Bankruptcy Law*, 98 HARV. L. REV. 1393, 1399 (1985) (suggesting that creditors are the superior risk bearers because the experience they have allows them to do a better job monitoring the borrower’s debt consumption and because the creditors can more efficiently insure against the risk of loss by diversifying).

in due diligence when extending credit. However, when a government assures creditors that it would undertake and finance investigation and collection activities for the creditors' bad debt, it provides little incentive for creditors to engage in the necessary level of due diligence. By handling and paying for all the collection costs in bankruptcy, the government in Israel has reduced the costs of bad loans to creditors, and thereby made the need for creditors' due diligence less apparent. Further, by agreeing to finance investigative costs in bankruptcy, the government has assumed a role that presumably can be handled just as effectively but with more efficiency by creditors, who are in the business of lending and collecting money. The efficiency argument against a government role in investigating insolvencies is particularly compelling in the Israeli bankruptcy system as relatively sophisticated creditors, in the form of financial institutions, are by far the largest creditors in the pool of bankruptcy creditors.¹⁵⁸ In addition, the substantial investigatory expense undertaken by the government, reportedly in an attempt to protect the creditors' interests, is puzzling as creditors have generally exhibited indifference toward the bankruptcy proceedings.¹⁵⁹ Lastly, from an overall public policy consideration, it seems unnecessary and unwise to use scarce public resources to subsidize the enormous investigation and collection efforts relating to bad credit extended largely by sophisticated, private creditors.

Finally, the current role of the Official Receiver in Israel is not cost effective. While no exact figures are available, the expanded role of the Official Receiver in the Israeli bankruptcy system is costly.¹⁶⁰ The fixed, as well as, the marginal costs associated with retaining a staff of investigators, financial analysts, attorneys, and administrators who are expected to vigorously lead the investigative efforts relating to each bankruptcy petition must be significant. The

¹⁵⁸ More than fifty percent of the debtors' average total debts are owed to relatively sophisticated financial institutions. The average debt owed by the bankrupt population to financial institutions was 562,642 NIS. The average total debt owed by the bankrupt population was 1,120,942 NIS. A similar finding was reported in a Canadian bankruptcy sample. See Ramsay, *supra* note 59, at 53-54 ("Debts owed to financial institutions represent over two-thirds of total debt outstanding.").

¹⁵⁹ See *supra* notes ___-___ and accompanying text.

¹⁶⁰ See Alona Shaharabani-Bomgertan et al., *The Reform in Bankruptcy Law*, 7 HAGLIMA 14, 14 (1996) (referring to the personal bankruptcy regime in Israel as an expensive proceeding funded by public funds and alluding to the recent hiring of some twenty professionals, including certified public accountants and economists, charged with thoroughly investigating the debtors' financial affairs).

costs seem to be especially unjustifiable in light of the small potential returns to creditors in most cases.¹⁶¹ While no published data is available on the actual bankruptcy repayment rate, the repayment rate in the parallel system of civil judgment execution, where the government is equally involved in the collection process, is a dismal five percent of total debts.¹⁶² Similar concerns about the cost effectiveness of an expansive government role in the bankruptcy system were voiced in England in the early 1980s, before it abandoned the discretionary discharge regime.¹⁶³ Scholars in the United States have also expressed uneasiness about the cost effectiveness of a proposed legislation that would have entailed a larger governmental role in personal bankruptcy.¹⁶⁴

¹⁶¹ See *supra* notes __-__ and accompanying text. The actual debtor's repayment rate to creditors in Israeli bankruptcy is in fact lower. A highly troubling practice in Israel is the de facto transfer of a petitioner's welfare funds to private creditors. This practice constitutes a public subsidy of private creditors' bad debts. See, e.g., Official Receiver case number 5037/97 (Southern District). In *Official Receiver case number 5037/97*, the court issued a stay order to the debtor, who was unemployed with five dependents and a disabled wife. The debtor's monthly household income was 3,000 NIS coming solely from disability and unemployment benefits. The court, however, conditioned the stay order on the debtor making monthly payments of 800 NIS, apparently out of the disability and unemployment benefits. In Official Receiver case number 1516/96 (Southern District), both the debtor and his spouse were unemployed, received unemployment benefits and monthly child allowance in the aggregate amount of 5,780 NIS. As a condition of bankruptcy adjudication, the court ordered them to pay 600 NIS per month out of their monthly public subsidy. A similar observation was made about the Israeli bankruptcy system almost thirty years ago. See Shuchman, *supra* note 17, at 357 ("[T]he generous welfare programs of the State are subverted by the operation of the bankruptcy law . . . It is evident that part of the welfare payments intended for the benefit of mothers and their minor children are taken and these small sums are used to pay private creditors."). In contrast, in the U.S., most welfare benefits are exempt from seizure by creditors. See 42 U.S.C.A. § 407 (1983) (exempting social security's retirement, disability, or survivor's benefits); 42 U.S.C.A. § 605 (1983) (exempting Aid to Families with Dependent Children benefits); 38 U.S.C.A. § 3101 (1979 & Supp. 1991) (exempting veterans' benefits).

¹⁶² See Harris, *supra* note 152, at 641 (quoting a newspaper article that reported that only five percent of debts submitted for collection in the Israeli judgment execution system are collected despite the substantial public resources expended on the collection undertaking).

¹⁶³ See Boshkoff, *supra* note 10, at 102 ("[t]he suspended and conditional discharge system [in England] is expensive to operate. Each case demands more attention than discharge of an American debtor because the process must respond to the facts of the individual case.").

¹⁶⁴ See Elizabeth Warren, *The Bankruptcy Crisis*, 73 IND. L.J. 1079, 1090-91 (1998) ("It is interesting to speculate whether this return would outweigh the administrative costs to the creditors of maintaining an open, interest-free account for five years. In order to produce that return for creditors, the taxpayers would be charged with building an elaborate bureaucratic structure to review the debtors' files and with providing hearings for debtors who dispute their creditors claims that they could repay. Whether the increase in administrative costs . . . would outweigh any increase in creditor collection is beyond the scope of the credit

A re-conceptualization of the Official Receiver's role in the Israeli bankruptcy system should eliminate the burden and costs of investigation from the governmental agency of the Official Receiver. Such a move would prompt creditors to extend credit more efficiently, and properly assume themselves the role and costs of bad-debt investigation. This shift would eliminate unnecessary public expenditure and result in creditors' bearing the collection costs arising out of defaults. This outcome would result in placing the burden of default on the party able to absorb the costs most efficiently and probably with similar repayment success rate.

Next, this study has demonstrated the peril associated with a personal bankruptcy regime that affords the judiciary a high degree of discretionary powers when fashioning financial relief to petitioners. On the one hand, the discretionary powers have enabled some judges to craft financial relief orders that are closely tailored to the financial plight of the petitioners. For example, in one petition the court granted a former entrepreneur discharge after taking into consideration the debtor's disability, old age, lack of assets, and unemployment status.¹⁶⁵ On the other hand, by virtue of the judiciary's broad discretionary powers, the bankruptcy system is fraught with inconsistency and arbitrariness.¹⁶⁶

Inconsistency has resulted when petitioners have been afforded early discharge in the Jerusalem District, while similarly situated petitioners in other judicial districts have been denied discharge for an indefinite period of time.¹⁶⁷ Inconsistency has also resulted when courts deny a debtors' bankruptcy adjudication using disparate standards to determine what amounts to fault on the part of the debtor. For example, while most courts view business failure as a justifiable cause of bankruptcy, some courts have deemed a debtor to be at fault and ineligible for bankruptcy adjudication because she "irresponsibly" got involved in an excessive number of business ventures during a short period of time.¹⁶⁸ Also, while some courts have accepted consumer debt as a legitimate cause of filing for

industry study.").

¹⁶⁵ See Official Receiver case number 165/97 (Jerusalem District).

¹⁶⁶ A recent study of the discretionary discharge in the Norwegian consumer bankruptcy reached a similar conclusion. See Graver, *supra* note 33 (finding that Norwegian law gives discretion to the court in consumer bankruptcy proceedings and as a result cases are treated differently in different parts of the country).

¹⁶⁷ See *supra* note __ and accompanying text.

¹⁶⁸ See *supra* note 145 and accompanying text.

bankruptcy, other courts have considered the debtor to be at “fault” and ineligible for bankruptcy adjudication if she “irresponsibly” took on too much consumer debt.¹⁶⁹

Inconsistency has also resulted when courts have arrived at inconsistent outcomes, when considering debtors’ bankruptcy adjudication or discharge application, because of subjective evaluations of what amounts to be an acceptable lifestyle and/or acceptable repayment efforts by debtors. For example, as a condition of issuing a bankruptcy adjudication order or a discharge order, many judges require a demonstration that the petitioner’s current lifestyle is modest and that he and his spouse are exerting their best efforts to maximize earnings. These issues are inherently subjective and as a consequence lead to inconsistent outcomes.¹⁷⁰ Lastly, inconsistency has resulted because of the discretionary power vested in the judiciary with regard to repayment orders. While some judges determine the repayment amount by focusing on the debtor’s outstanding debt level, other courts focus on the debtor’s ability to make monthly payments.¹⁷¹

These inconsistencies in the Israeli bankruptcy system could be alleviated to some extent by reducing the discretionary powers of judges and adopting instead bright line rules regarding debt relief, or in the alternative, by adopting steps to alter the current institutionalized anti-debtor sentiments in some parts of the Official Receiver.

In addition to reducing the government’s role in bankruptcy and limiting the judiciary’s discretion, there is an urgent need to give debtors more power. As suggested earlier, bankruptcy petitioners in Israel are largely uninformed about their rights and hence they rarely assert them due to lack of representation. Instead, they tend to rely on the Official Receiver for advice. Since the Official Receiver does not generally view itself as an advocate for debtors, their reliance on the Official Receiver is largely misplaced.¹⁷²

Debtor empowerment in Israeli bankruptcy practice could be achieved, to an extent, by making it possible for more debtors to be represented by attorneys. This could result in better access to

¹⁶⁹ See *supra* note 143 and accompanying text.

¹⁷⁰ See *supra* notes 139, 142 and accompanying text.

¹⁷¹ See *supra* notes 82-85 and accompanying text.

¹⁷² See *supra* note 114 and accompanying text.

available debt relief because attorneys would zealously assert those rights (i.e., discharge) on behalf of the debtors and would presumably serve as a watchdog against overreaching on the part of government and creditors. Recent elimination of prohibitions against advertising by attorneys¹⁷³ should, in the foreseeable future, enhance competition for legal services, reduce the costs of legal representation, and lead to increased affordability and hence to a higher rate of represented and empowered debtors in the Israeli bankruptcy system.¹⁷⁴

¹⁷³ See Attorney Bar ordinances, 2001, K.T. 6094, 629.

¹⁷⁴ Empirical studies in the U.S. suggest that increased advertising by attorneys reduces the price of legal representation in the long run. See generally FTC STAFF, IMPROVING CONSUMER ACCESS TO LEGAL SERVICES: THE CASE FOR REMOVING RESTRICTIONS ON TRUTHFUL ADVERTISING (Nov. 1984) (concluding that prices for basic legal services, including consumer bankruptcies, were more expensive in cities with moderate and restrictive state rules on attorney advertising as compared to cities with liberal rules).