

## THE DISADVANTAGED IN BANKRUPTCY

*by*  
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### ABSTRACT

This Article sheds light on the plight of people who are at the tail end of society: they not only are financially insolvent, but also members of the traditionally disadvantaged segments of society. It summarizes the findings of an empirical study of bankrupt individuals who are members of the traditionally underprivileged groups in Israeli society. It finds that some of the disenfranchised groups in Israeli society are overrepresented in Israeli bankruptcy plausibly as a product of their inherently fragile financial condition in society at large. In contrast, other traditionally disenfranchised groups in Israeli society are underrepresented in bankruptcy possibly partly due to limited access to credit. However, the overriding explanation for the overrepresentation of some subordinate groups and the underrepresentation of others in bankruptcy may be due to the propensity among particular group members to become entrepreneurs.

As anticipated, petitioners belonging to the weaker groups in Israeli society were financially more fragile in terms of earnings and asset holdings compared to bankrupts belonging to the dominant groups. Nonetheless, while the weaker groups had lower earnings and asset holdings, their overall financial condition was not necessarily inferior due to their substantially lower debt burden.

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## INTRODUCTION

Much has been written about the financial plight of minorities and other traditionally disadvantaged groups in society. The research has generally tended to suggest that, as a group, disenfranchised members of society such as women, elders, the disabled, as well as ethnic, religious, and racial minorities fare substantially worse than the traditionally dominant members of society in terms of overall financial well-being.<sup>1</sup>

However, with some limited exceptions, scholars have given little attention to the study of these marginal groups' financial well-being at the point of ultimate financial distress—bankruptcy.<sup>2</sup>

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<sup>1</sup> See generally REBECCA M. BLANK, *IT TAKES A NATION: A NEW AGENDA FOR FIGHTING POVERTY* (1997) (examining spells of poverty for individuals over a thirteen year period, the author found that 25% of whites were poor for at least one year, compared to almost two-thirds of blacks in America); CHRISTOPHER JENCKS, *RETHINKING SOCIAL POLICY: RACE, POVERTY & THE UNDERCLASS* (1992); TIMOTHY M. SMEEDING ET AL., *POVERTY, INEQUALITY & INCOME DISTRIBUTION IN COMPARATIVE PERSPECTIVE* (1990); Randy Albelda, *Women & Poverty: Beyond Earnings and Welfare*, 39 Q. REV. ECON. & FIN. 723, 724 (1999) (reporting on a study that found that poverty rates are higher for women than men in seven of the eight economically advanced countries included in the study); *id.* at 727 (reporting a poverty rate in 1997 of 11% for white Americans, compared to 26.5% among black Americans and 27.1% among Hispanics); Shari Brotman, *The Incidence of Poverty Among Seniors in Canada: Exploring the Impact of Gender, Ethnicity & Race*, 17 CAN. J. AGING 166 (1998); Joanna Kurczewska, *Contemporary Europe-Ethnicization of Poverty*, 125 POLISH SOC. REV. 73 (1999); Marta Tienda & Leif Jensen, *Poverty & Minorities: A Quarter Century Profile of Color and Socioeconomic Disadvantage*, in *DIVIDED OPPORTUNITIES: MINORITIES, POVERTY AND SOCIAL POLICY* (Gary D. Sandefur & Marta Tienda eds., 1988).

<sup>2</sup> Some of the studies on the plight of the traditionally disadvantaged in bankruptcy include: TERESA A. SULLIVAN, ELIZABETH WARREN & JAY L. WESTBROOK, *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (2000) (describing the plight of certain minority groups, women, and divorcees in U.S. bankruptcy) [hereinafter *THE FRAGILE MIDDLE CLASS*]; TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *AS WE FORGIVE OUR DEBTORS: BANKRUPTCY & CONSUMER CREDIT IN AMERICA* 147-65 (1989) (considering the experiences of women debtors in the U.S. bankruptcy system) [hereinafter *AS WE FORGIVE OUR DEBTORS*]; Kathy R. Davis, *Bankruptcy: A Moral Dilemma for Women Debtors*, 22 LAW & PSYCHOL. REV. 235 (1998) (examining the financial condition of women in U.S. bankruptcy); Sheila Driscoll, Note, *Consumer Bankruptcy and Gender*, 83 GEO. L.J. 525 (1994) (examining the profile of women petitioners in Washington D.C.); Karen Gross et al., *Ladies in Red: Learning from America's First Female Bankrupts*, 40 AM. J. LEGAL HIST. 1 (1996) (reporting on the first women debtors in the United States); Daniel L. Skoler, *The Elderly and Bankruptcy Relief: Problems, Protections, and Realities*, 6 BANKR. DEV. J. 121 (1989) (discussing the effects of bankruptcy on the American elderly); TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *FROM GOLDEN YEARS TO BANKRUPT YEARS*, NORTON BANKR. L. ADVISOR, July 1998, at 1 (reporting on the elderly in U.S. bankruptcy); Elizabeth Warren, *What is a Women's Issue? Bankruptcy*,

Studies examining traditionally disadvantaged groups in bankruptcy may shed some light on such fundamental questions as whether members of these groups tend to address their financial problems through the formal legal mechanism of bankruptcy to any greater extent than members of the traditionally dominant groups. Also, such studies would explore whether the reasons for resorting to bankruptcy are different for the traditionally disadvantaged groups when compared to the commanding groups in society. Further, such studies would enhance the understanding whether members of traditionally disenfranchised groups, who do resort to bankruptcy, are financially any different than the bankrupts from the powerful groups.

This Article attempts to shed some light on these questions by empirically examining a cross-section of bankruptcy petitions of individuals living in Israel. Aside from the author's fluency in the Hebrew language, Israel was selected because of its diverse population, which includes various dominant and subordinate groups distinguished on the basis of gender, ethnicity, religion, origin, age, and marital status. Also, Israel is an optimal country to study because of the wealth of information in the bankruptcy files, of the kind not generally available in other systems, including key demographic characteristics of petitioners such as gender, religious affiliation, immigrant status, ethnicity, age, and marital status.

The first hypothesis underlying this study relates to the representation of the traditionally disadvantaged groups in bankruptcy. One may reasonably expect to find that these disadvantaged groups would be overrepresented in the bankruptcy population corresponding to their overall weaker financial state in society.<sup>3</sup> Alternatively, one could hypothesize that these disadvantaged groups would be underrepresented in bankruptcy because individuals belonging to these groups simply are unaware that the complex bankruptcy regime is a legitimate option to deal with their financial plight. Also, the members in the disadvantaged

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*Commercial Law, & Other Gender Neutral Topics*, 25 HARV. WOMEN'S L.J. 19 (2002) (discussing likely impact of proposed bankruptcy legislation on women in the U.S.).

<sup>3</sup> The overrepresentation hypothesis was also articulated in *THE FRAGILE MIDDLE CLASS*, *supra* note 2, at 42 ("If minority group members find themselves disproportionately in precarious circumstances, then they may be forced into bankruptcy more often than majority whites. This is the overrepresentation hypothesis.").

groups may be underrepresented due to their limited access to credit. Further, the cost of filing for bankruptcy and the cost of hiring an attorney to represent them throughout the bankruptcy process may disproportionately discourage members of the disadvantaged groups from filing for bankruptcy. Lastly, members in some of these disadvantaged groups may be less inclined to resort to bankruptcy due to the stronger stigma that is associated with bankruptcy within their close knit and traditional community, such as Israeli Arabs and Israeli Jews who have immigrated to Israel from Moslem countries.<sup>4</sup>

The second hypothesis in this study asserts that the traditionally marginalized groups who file for bankruptcy would exhibit similar inferior financial conditions on key indicators of financial strength just as they generally tend to display in the Israeli society at large. One may reasonably expect to find members of these underprivileged groups to report in bankruptcy a lower income, higher welfare dependency, and higher poverty rates than the bankrupt members of the dominant groups. This inferior earning level in bankruptcy may be the product of the same circumstances leading to their lower earning performance in the general population, such as occupational segregation, weaker educational background, discrimination, higher household size, various traditional social norms in the relevant circles that impede on earning growth, and higher unemployment rates.<sup>5</sup>

Also, one might reasonably expect members of these disadvantaged groups to report in bankruptcy a lower level of assets than the level reported by bankrupt members of the dominant groups. Again, the lower asset value in bankruptcy expected to be reported by members of the disenfranchised groups would be a manifestation of their lower asset holdings in the general population. The disadvantaged groups in Israel have lower homeownership rates and lower home values.<sup>6</sup> Since home value tends to have dramatic impact on the overall value of one's asset

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<sup>4</sup> The underrepresentation hypothesis was also articulated in *THE FRAGILE MIDDLE CLASS*, *supra* note 2, at 42 ("As longtime outsiders to 'the system,' members of minority groups have had poorer access to legal assistance and limited information about how bankruptcy works. . . . [M]inority group members have [also] had less access to credit, lower levels of debt, and hence less need for bankruptcy.").

<sup>5</sup> See *infra* notes 38-40, 90, 99, 112, 115, 118, 120, 122, & 126-29.

<sup>6</sup> See *infra* note 133.

holdings in society,<sup>7</sup> one may hypothesize that the inferior position, in terms of asset holdings, of the disadvantaged groups in society may manifest itself in inferior asset holdings of these same marginal groups in bankruptcy.

Lastly, one may hypothesize that despite their lower earnings and asset holdings in bankruptcy, the marginalized groups would report in bankruptcy a better overall financial condition than bankrupt members of the dominant groups due to their lower debt burden. Since the traditionally disadvantaged groups in society generally have had difficulties accessing large amounts of credit,<sup>8</sup> their overall debt exposure would be expected to be substantially lower in bankruptcy than the debt level of members in the powerful groups. The lower debt burden should result in bankrupt members of disadvantaged groups reporting overall higher net-worth and lower debt-to-income ratio.

#### I. THE BANKRUPTCY SYSTEM AND THE BANKRUPTCY SAMPLE

Individuals commencing bankruptcy in Israel are expected to liquidate their assets and allocate a portion of their future earnings over a number of years to repay their creditors. While judges are vested with the discretionary power to forgive all or parts of a debtor's debts, discharge is granted infrequently.<sup>9</sup> To collect empirical data for this study on Israeli personal bankruptcy system, a sample of 213 bankruptcy files of individuals was selected, analyzed, and coded.<sup>10</sup> The schedules found in the

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<sup>7</sup> See *infra* note 134.

<sup>8</sup> See *infra* note 28.

<sup>9</sup> For a detailed discussion of the personal bankruptcy laws in Israel, see Rafael Efrat, *The Fresh-Start Policy in Bankruptcy in Modern Day Israel*, 7 AM. BANKR. INST. L. REV. 555, 575-76 (1999).

<sup>10</sup> 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 the debtor's bankruptcy petition; detailed investigatory reports; notes and analysis written 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

bankruptcy files included extensive information on the debtors' financial condition.<sup>11</sup> Also in the bankruptcy files, detailed investigatory reports and related documents prepared by the government agency charged with administering bankruptcy (the Official Receiver) provided valuable corroboration of the debtors' financial condition as well as other important financial and non-financial data about the debtors and the bankruptcy process.<sup>12</sup>

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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 OUR DEBTORS*, *supra* note 2, 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."); see also Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *Bankruptcy and the Family*, 21 MARRIAGE & FAM. REV. 193, 195-96 (1995).

<sup>11</sup> 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 creditors; 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 debtor's spouse (including rent, social security benefits, dividends); a list of real estate owned by the debtor and the amount of any related lien; 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.

<sup>12</sup> The information in the investigatory reports of the Official Receiver was not uniform, but it included some of the following data about the debtor and his family: place of birth; religion; reasons for the bankruptcy filing; any existing mental or physical disability of the debtor or her spouse; debtor's pre-petition efforts to repay the debts; creditors' pre-petition collection activities, including arrests, garnishments, and repossessions against the debtor; financial analysis of the debtor's failing business; description of the debtor's post-petition efforts to maximize repayment to creditors; and a detailed description of the debtor's household goods. The files also included a detailed record of 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.

The sample is composed exclusively of individuals<sup>13</sup> who voluntarily filed for bankruptcy between September 1996 and July 1998.<sup>14</sup> The files were randomly collected<sup>15</sup> from all four judicial districts in Israel<sup>16</sup> in rough proportion to each district's percentage of total individual filings over that time period.<sup>17</sup> The sample of 213 files constitutes approximately 20% of the actual number of bankruptcy

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<sup>13</sup> All filings were non-joint filings as the judicial system in practice encourages spouses to file separate petitions. See Rafael Efrat, *The Evolution of the Fresh-Start Policy in Israeli Bankruptcy Law*, 32 VAND. J. TRANSNAT'L L. 49, 102-13 (1999). Thus, in practice, 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. In this study, spouses filed thirty-eight bankruptcy petitions.

<sup>14</sup> 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 almost all of the cases were still active. More than 90% of the sampled cases had been active between six and twenty-four months at the time of data collection. Less than 8% had been active for less than six months at the time of data collection.

<sup>15</sup> 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 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 similar data 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.

<sup>16</sup> The four judicial districts are: Jerusalem District, Central District (including Tel-Aviv), Southern District (including Ber-Sheva) & Northern District (including Haifa and Nazareth).

<sup>17</sup> 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%; Central District: 51%; Northern District: 11%; Southern District: 19%. 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, at 3, 57 (1998); Computerized Printouts from the Official Receiver of the Central, Jerusalem, and Southern districts (July-Sept. 1998) (on file with author).

filings during the sample period.<sup>18</sup> From each of these 213 files, approximately 179 quantitative pieces of information were coded to build the database for this study.<sup>19</sup>

## II. WOMEN IN BANKRUPTCY

Women are underrepresented in the Israeli bankruptcy population. Women in Israel make up half of the population and almost half of the workforce,<sup>20</sup> nonetheless they make up less than a third of the individual bankruptcy filers in Israel.<sup>21</sup> In sharp contrast to the underrepresentation of women in Israeli bankruptcy, in the American, Australian and Canadian bankruptcy samples the gender distribution is split almost evenly.<sup>22</sup>

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<sup>18</sup> 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).

<sup>19</sup> 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 THE FRAGILE MIDDLE CLASS, *supra* note 2, at 263-87; AS WE FORGIVE OUR DEBTORS, *supra* note 2, at 17-20; 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).

<sup>20</sup> See Miri Lerner et al., *Israeli Women Entrepreneurs: An Examination of Factors Affecting Performance*, 12 J. BUS. VENTURING 315, 319 (1997) ("During the 1980s and 1990s, women joined the labor force in greater numbers, today comprising about 44% of the labor force."). However, Jewish married women are substantially more likely to participate in the labor force than Moslem and Christian married women. See Shoshana Grossbard-Shechtman & Shoshana Neuman, *The Extra Burden of Moslem Wives: Clues from Israeli Women's Labor Supply*, 46 ECON. DEVELOP. & CULTURAL CHANGE 491, 506 (1998); Yitchak Haberfeld & Yinon Cohen, *Earnings Gaps Between Israel's Native-Born Men and Women: 1982-1993*, 39 SEX ROLES 855, 855 (1998) ("Similar to trends in other developed countries, the labor force participation rate among Jewish women in Israel has been rising during the past three decades from approximately 30 percent in the mid-1960s, to almost 50 percent in the early 1990s.").

<sup>21</sup> Specifically, while filings by males constitute 69.5% of the Israeli bankruptcy sample, females' filings make up only 30.5% of the same.

<sup>22</sup> In the United States, women make up the majority of the bankruptcy



The gender imbalance in the Israeli bankruptcy sample may be attributed to the occupational makeup of bankrupts in Israel. A substantial majority of the bankruptcy petitioners seem to have been former entrepreneurs.<sup>23</sup> Since over 63% of the petitioners in sampled bankruptcy population were entrepreneurs prior to bankruptcy, the demographic characteristics in the Israeli bankruptcy sample, including gender, seem to reflect the demographic characteristics of entrepreneurs in Israeli society. Similar to other industrialized countries,<sup>24</sup> women in Israel generally tend to stay away from entrepreneurship.<sup>25</sup> Women make up

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petitioners. See THE FRAGILE MIDDLE CLASS, *supra* note 2, at 37 (“[Between 1981 and 1991], the proportion of all bankruptcy cases that had a woman petitioner—either as the single petitioner or as part of a joint filing remained virtually constant at 73-74 percent. . . . Meanwhile, the proportion of cases involving a male petitioner declined from 83 percent to 70 percent.”); Warren, *supra* note 2, at 28 (finding that in 2001, women filing alone were the largest group in bankruptcy, constituting 39% of those filing, compared to 32% of joint petitioners and 28.8% of men filing alone). In Canada, women constitute as much as 44.4% of the bankruptcy population. See Ramsay, *supra* note 19, at 31 (“There were 55.6 percent male and 44.4 percent female bankrupts, compared with 49.4 percent males and 50.6 percent females in the general population.”); see also Schwartz, *supra* note 19, at 93 (“Roughly 40 percent of the individuals seeking bankruptcy in our sample were women.”). In Australia male petitioners constitute 57% of the bankruptcy population. See Bankruptcy Regulation and Policy Branch of the Insolvency & Trustee Service Australia, Profiles of Debtors: Who Became Bankrupt or Entered into Debt Agreements in 1997, 3 (July 1998) (unpublished manuscript, on file with author).

<sup>23</sup> While 63% of the petitioners in the sample were self-employed at the time of filing bankruptcy, 76.7% reported business failure as a reason for the filing. Some non-entrepreneurs also identified business failure as the cause of their financial distress. These individuals were driven into bankruptcy due to failure of a business owned by someone whose debts they had guaranteed. In the alternative, the 14% difference may be due to a number of debtors who became employees immediately before the bankruptcy filing but were entrepreneurs beforehand.

<sup>24</sup> See generally DAVID BIRTH, WOMEN OWNED BUSINESSES: THE NEW ECONOMIC FORCE (1992); SARA CARTER & TOM CANNON, WOMEN AS ENTREPRENEURS: A STUDY OF FEMALE BUSINESS OWNERS, THEIR MOTIVATIONS, EXPERIENCES & STRATEGIES FOR SUCCESS (1992) (reporting that women now represent over a quarter of the total self-employed population in the United Kingdom); Robert D. Hisrich, *Women Entrepreneurs: Problems and Prescriptions for Success in the Future*, in WOMEN OWNED BUSINESSES 1, 9 (Oliver Hagan et al. eds., 1989) (reporting that the range of women owned businesses in the fifty states in the United States is between 15% and 27%); Karyn A. Loscocco & Joyce Robinson, *Barriers to Women's Small Business Success in the United States*, 5 GENDER & SOC. 511 (1991).

<sup>25</sup> See Lerner et al., *supra* note 20, at 319 (reporting that in 1993, 15.6% of the male population in Israel was self-employed; whereas, only 5.1% of the female population was self-employed).

approximately one-fifth of the Israeli entrepreneurship population,<sup>26</sup> a rate that roughly corresponds to their composition in the bankruptcy sample of 30%.<sup>27</sup>

The entrepreneurship rate among Israeli women is low due to both economic and social factors. Economic factors that steer women away from self-employment include the marginal success rates of small business enterprises, the limited access to much needed capital, and the limited work experience women generally have.<sup>28</sup> Social factors imposing barriers of entry to the entrepreneurial sector for the Israeli women include the traditional societal role of women in raising a family<sup>29</sup> and women's limited social networks.<sup>30</sup>

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<sup>26</sup> See Dalia Gordon & Ester Tolido, *The Small Business Enterprise-Self-Employed in the Social Security Administration*, 13 (Discussion Paper of the Research & Planning unit of the Social Security Administration, 1996) (reporting that 20% of the entrepreneurs in Israel registered with the Social Security Administration were women); see also Tammy Lerenthal & Noah Lewin-Epstein, *Ha'Hebet HaChevrati Shel Yazamut Nashim Be'Yisrael: Emdot VeArchei Avoda Shel Nashim* [*Gender and Business: Patterns of Work Values and Orientations*] 2 (Golda Meir Inst. for Soc. and Labor Research at Tel-Aviv Univ. ed., 1996) (reporting that women in Israel make up 20% of the self-employed population). However, women have increased their representation in the entrepreneurship sector during the last twenty years. See Yoram Ben-Porath, *Self-Employed and Wage Earners in Israel: Findings from the Census of Population 1972*, in 30 *STUDIES IN THE POPULATION OF ISRAEL* 245, 248 (Usiel O. Schmelz & Gad Nathan eds., 1986) ("Self-employment is quite rare among women. In 1972, 87.4% of the self employed were men . . ."). Similar to the relatively negligible female composition of the self-employed population in Israel (approximately one-fifth), females in Israeli bankruptcy make up a mere 16.2% of the self-employed whereas males make up 83.3% of the bankruptcy petitioners in the sample.

<sup>27</sup> See *supra* note 21.

<sup>28</sup> See Tammy Lerenthal, *Nashim Ve'Asakim: Defosei Histatfut Ve'Segregazia* [*Gender and Business: Patterns of Participation and Segregation*] 3 (February, 1995) (unpublished manuscript, on file with the David Horowitz Institute for the Research of Developing Countries 1995) (contending that the lower entrepreneurship participation rate among women in Israel is due in part to their difficulties in obtaining credit, their limited work experience, and their tendency to concentrate in small businesses with highly marginal success rates); Ben-Porath, *supra* note 26, at 248 (attributing in part the rarity of self employment among women in Israel to problems of access and control of capital).

<sup>29</sup> See Lerner et al., *supra* note 20, at 320 ("Israel is a family-centered society. . . . In selecting jobs, women attribute great importance to 'convenience'—namely, the extent to which the job can be accommodated to family life. Consequently, there is a general lack of support for women to be involved in management and administrative endeavors as well as self-employment.") (citations omitted); Lerenthal, *supra* note 28, at 12 ("Studies also demonstrate that limitations arising out of household and family obligations impact the rate of entrepreneurship.

Female petitioners' financial demise was less likely to be the result of business failure, as compared to male petitioners,<sup>31</sup> no doubt because there is a significantly lower representation of female entrepreneurs in the bankruptcy sample. In contrast to the Israeli male population in the bankruptcy sample, which consists predominantly of former entrepreneurs,<sup>32</sup> the majority of Israeli women in the bankruptcy sample were wage earners, unemployed, or homemakers.<sup>33</sup> The female bankruptcy petitioners attributed their bankruptcy filing to overwhelming debts arising out of personal guarantees signed in favor of their self-employed husbands.<sup>34</sup> Indeed, female bankruptcy petitioners were more likely than male petitioners to sign personal guarantees and were also

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Marriage reduces the likelihood of women becoming self-employed while it increases the likelihood of men becoming self-employed.”).

<sup>30</sup> See Lerner et al., *supra* note 20, at 320 (“In Israel, the influence of the military is prevalent in every area of public and private life. Women with military careers frequently have better access to networks, both business and government, than those who do not. Yet most women have limited access to government and business contacts, which limits women’s abilities to obtain information and resources necessary for business creation and growth.”) (citation omitted).

<sup>31</sup> Specifically, while 85.3% of male petitioners in the sample attributed their bankruptcy filing to a failing business, only 57% of female petitioners did the same.

<sup>32</sup> Specifically, 75.7% of the male bankruptcy petitioners were reportedly self-employed prior to the bankruptcy filing and 14.6% were wage earners.

<sup>33</sup> Specifically, 45.2% of the female bankruptcy petitioners in the sample were wage earners, 21% of the female bankruptcy petitioners in the sample were unemployed or homemakers, and 33.9% were former entrepreneurs.

<sup>34</sup> Approximately one-third of the female bankruptcy petitioners in the sample attributed their bankruptcy filing to overwhelming outstanding debts arising out of personal guarantees signed in favor of their self-employed husbands. Specifically, in 36.5% of the female bankruptcy cases the category of “other causes” was identified as the event leading to the bankruptcy filing. Most cases in that “other causes” category were related to personal guarantees signed by the woman in favor of her husband’s business. See, e.g., Official Receiver Case Number 96/1553 (Southern District) (involving petition filed by a woman in her mid-forties who got into financial trouble due to signing personal guarantees in favor of her husband’s now defunct business enterprise); Official Receiver Case Number 96/132 (Northern District) (involving wife who filed for bankruptcy protection due to the mounting debts arising out of personal guarantees she signed in favor of her husband’s small business enterprise); Official Receiver Case Number 97/513 (Central District) (involving wife, a homemaker, who filed for bankruptcy protection due to the obligations arising from the personal guarantees she signed in support of her husband’s now defunct business). In addition to the “other causes” and “business failure” categories, 6.3% of the female bankruptcy petitioners in this sample attributed their financial failure to excessive personal debts; 11.1% attributed it to adverse medical condition; 6.3% attributed it to family break down; and 3.2% attributed it to unemployment.

more likely to have signed a personal guaranty securing their spouse's business enterprise.<sup>35</sup>

Women in Israeli bankruptcy tend to be financially weaker than their male counterparts. As in other industrialized countries, women in Israel generally earn 20% to 30% less than their male counterparts.<sup>36</sup> Some have attributed this earning disparity to market discrimination against women.<sup>37</sup> Other researchers have explained the earnings gap by focusing on underlying norms in Israeli society that make women less likely to take advantage of certain high income career opportunities.<sup>38</sup> Lastly, some scholars have asserted that the wage inequality may be due to occupational segregation among the genders in Israel, whereby women tend to gravitate to certain lower paying occupations.<sup>39</sup>

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<sup>35</sup> While 78.9% of the female bankruptcy petitioners in this sample guaranteed debts, only 68.5% of the male bankruptcy petitioners did the same. Also, whereas 18.8% of male bankruptcy petitioners in this sample signed a personal guaranty in favor of a family member, 40.9% of female petitioners did the same. This difference is not statistically significant.

<sup>36</sup> See Dafna N. Izraeli, *Women & Work: From Collective to Career*, in CALLING THE EQUALITY BLUFF: WOMEN IN ISRAEL 165, 171 (Barbara Swirski & Marilyn P. Safir eds., 1991) ("In 1978, women's hourly earnings were approximately 78 percent those of men; by 1988, they had decreased to 71 percent those of men."); see also Moshe Semyonov & Vered Kraus, *Gender, Ethnicity, and Income Equality: The Israeli Experience*, in WOMEN IN ISRAEL: STUDIES OF ISRAELI SOCIETY 97, 102 (Yael Azmon & Dafna N. Izraeli eds., 1993) ("The income disadvantage of women amounts to 27% of the men's mean income . . ."); Haberfeld & Cohen, *supra* note 20, at 856 (indicating that between 1972 and 1983 "the women-to-men ratio of average hourly wage was stable at about 75-80 percent. . .").

<sup>37</sup> See Dafna N. Izraeli, *Outsiders in the Promised Land: Women Managers in Israel*, in COMPETITIVE FRONTIERS: WOMEN MANAGERS IN A GLOBAL ECONOMY 301, 315 (Nancy J. Adler & Dafna N. Izraeli eds., 1993) ("Researchers agree that a sizeable proportion of the difference between women's and men's earnings and opportunity is the result of discrimination."); Haberfeld & Cohen, *supra* note 20, at 856 ("Indeed, most empirical studies found that almost the entire 20-25 percent [of gender earnings] gap has remained 'unexplained' by productivity differentials between men and women. Consequently, the entire gap has been attributed to market discrimination against women.").

<sup>38</sup> See Izraeli, *supra* note 36, at 171 ("Social norms regarding women's responsibilities for care of the home and children, . . . operates to encourage women to forego potentially higher income jobs for those with shorter and more convenient working hours and locations close to home.").

<sup>39</sup> See *id.* at 169 ("As in almost all industrialized countries women are concentrated in a small number of large, female dominated occupations. In 1983, seventy-three percent of the women were concentrated in three of the ten aggregated occupation categories: semi-professional and technical workers, clerical workers, and service workers."); Yael Yishai, Mitus Ve'Mechiut Ha'shivyon Ben Haminim: Ma'amad Ha'isha Be'Yisrael [*Myths and Reality in Gender Equality: The*

While women as a group tend to earn between 70% to 80% of what men earn in Israeli society, women in bankruptcy on average earn 60% of what men in bankruptcy earn. The average male bankruptcy petitioner in the sample earned almost \$882 per month at the time of filing. In contrast, the average female bankruptcy petitioner in the sample earned \$510 per month.<sup>40</sup> This gender-based income disparity also persists among men and women entrepreneurs inside and outside of bankruptcy. While male entrepreneurs in Israeli society generally earn almost a third more than the average earnings in the general population, female entrepreneurs make merely two-thirds of the average earnings in society.<sup>41</sup> Similarly in this bankruptcy sample, male entrepreneurs averaged earnings of approximately 76% of the average earnings in the general population while female entrepreneurs earned 34% of the average earnings in the general population.<sup>42</sup>

While this income gap between male and female bankruptcy petitioners may similarly reflect existing market discrimination and

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*Status of Women in Israel*], in YISRAEL LIKRAT SHENOT HA-ALPAYIM: HEVRAH, POLITIKAH VE-TARBUT [ISRAEL TOWARDS THE YEAR 2000: SOCIETY, POLITICS & CULTURE] 103, 107 (Moshe Lissak & Baruch Knei-Paz eds., 1995) (reporting that in 1989, 72.4% of women were employed in three of the ten aggregated occupational categories: semi-professional and technical workers, clerical workers, and service workers); Lerner et al., *supra* note 20, at 319 ("However, occupational segregation still exists in several industry sectors. . . . Israeli women are overrepresented in service industries and in clerical occupations, and the average income in these occupations is considerably lower than in other occupations.").

<sup>40</sup> In this bankruptcy sample, men's monthly average earning was 3,342 NIS with a median of 3,200 NIS and a standard deviation of 2,901. In contrast, women's monthly average earning was 1,996 NIS with a median of 1,000 NIS and a standard deviation of 2,440. After outliers were removed, female petitioners earned on average 1,782 NIS while male petitioners earned on average 3,088 NIS. This difference is statistically significant at .002.

<sup>41</sup> See Gordon & Tolido, *supra* note 26, at 22 ("Average earnings of self-employed women approximates 60% of average salary in the market compared with average earnings of self-employed men of 133% of average salary in the market.").

<sup>42</sup> The gross monthly income reported by the female entrepreneurs in the bankruptcy sample was 1,519 NIS (or \$434), with a standard deviation of 2,232. In contrast, the gross monthly income reported by the male entrepreneurs in the bankruptcy sample was 3,377 NIS (or \$965), with a standard deviation of 2,918. This difference is statistically significant at .007. The average gross monthly income in the general population in 1997 was approximately 4,412 NIS. See STATE OF ISRAEL CENTRAL BUREAU OF STATISTICS, HOUSEHOLD EXPENDITURES SURVEY 1997, FIRST FINDINGS 15 (1999) (reporting the net monthly income per individual in Israel during 1997 was 3,384 NIS).

social norms,<sup>43</sup> post-petition employment status as well as gender-based occupational segregation in the bankruptcy sample seem to have played pivotal roles in the income disparity. First, the women's deflated earnings in bankruptcy may have resulted from the much higher unemployment rate among female petitioners. While 24% of the male petitioners were unemployed at the time of bankruptcy, almost 50% of the female petitioners were reportedly unemployed at that time.<sup>44</sup> The substantially lower female earnings in the bankruptcy sample may be due to the presence of non-earner female bankruptcy petitioners, who have resorted to bankruptcy protection due to financial trouble arising solely out of their husband's troubled business enterprise.<sup>45</sup> Lastly, in addition to the higher unemployment rate, the lower income levels may be a manifestation of the gender-based occupational segregation in Israel. Analogous to the phenomenon in Israeli society where women tend to gravitate to clerical and technical positions,<sup>46</sup> Israeli women in the bankruptcy sample are three times more likely to hold a clerical position and two times more likely to hold a technical job than their male counterparts.<sup>47</sup>

In addition to earning less, women in Israeli bankruptcy also appear to rely more heavily on government assistance<sup>48</sup> and tend to own less property.<sup>49</sup> However, Israeli women in bankruptcy owe

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<sup>43</sup> See *supra* notes 38-39 and accompanying text.

<sup>44</sup> Specifically, 23.8% of the male petitioners were reportedly unemployed at the time of bankruptcy, whereas 49.2% of female petitioners were reportedly unemployed at that time.

<sup>45</sup> See *supra* notes 34 & 35 and accompanying text.

<sup>46</sup> See *supra* note 22.

<sup>47</sup> Specifically, in the sampled bankruptcy population only 5.8% of men petitioners were reportedly clerical workers, whereas 18.5% of women petitioners were identified as such. Also, whereas only 10.1% of male petitioners were semi-professional or technical workers, 22.2% of female petitioners were in this category. This difference is statistically significant at .002.

<sup>48</sup> While 61.5% of the male petitioners in the bankruptcy sample relied on some kind of government assistance (such as disability benefits, child allowance, social security for the elderly, minimum income supplement, unemployment benefits, and veteran benefits), 73.8% of the female petitioners did the same. This difference is statistically significant, at .046.

<sup>49</sup> The average worth of assets reported by women and men petitioners in the bankruptcy sample was roughly the same. After outliers were removed, the average value of the total assets owned by men was 242,795 NIS (or \$69,370) as compared with the average value of the total assets owned by women of 240,617 NIS (or \$68,747). However, while the median reported asset value for men in the bankruptcy sample was 43,302 NIS, the median of the same for women in the

somewhat less than men in bankruptcy.<sup>50</sup> This higher indebtedness of the male petitioners in the bankruptcy sample was also reflected in their higher debt-to-income ratio<sup>51</sup> and in their lower net-worth.<sup>52</sup> Perhaps women's debt burden was lower due to their limited access to credit and/or due to the fact that fewer women attribute their financial demise to a failing business enterprise, and thus have relatively lower overall debt exposure.<sup>53</sup> Indeed, the data suggest that petitioners who have attributed their financial demise to business failure have significantly higher debts than wage earner petitioners.<sup>54</sup> Nonetheless, while dramatically fewer female petitioners are entrepreneurs in the sampled bankruptcy population, their debt burden is only modestly lower than the primarily entrepreneurial male petitioners. Again, this surprisingly minimal debt disparity may be due to the presence of a large number of non-entrepreneur female petitioners who have

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bankruptcy sample was 6,508 NIS. The standard deviation for the men petitioners was 417,974 and for the women petitioners it was 503,402. This difference is not statistically significant.

<sup>50</sup> After outliers were removed, male petitioners in the bankruptcy sample owed on average 1,016,465 NIS (or \$290,418), with a median of 767,837 NIS and a standard deviation of 1,247,726. After outliers were removed, female petitioners in the bankruptcy sample owed on average 868,368 NIS (or \$248,105), with a median of 535,815 NIS and a standard deviation of 1,062,388. Before outliers were removed, men in the sample owed on average 1,179,869 NIS (or \$337,105) and women owed on average 984,383 NIS (or \$281,252). This difference is not statistically significant.

<sup>51</sup> After outliers were removed, the debt-to-income ratio of male petitioners was 16.7 with a median of 12.54 and a standard deviation of 21.5. In contrast, after outliers were removed the debt-to-income ratio of female petitioners was 15.2, with a median of 10.2 and a standard deviation of 65.8. Before outliers were removed, the average debt-to-income ratio of male and female petitioners was 27.8 and 19.6, respectively.

<sup>52</sup> After outliers were removed, the average net-worth of male petitioners was -66,823 NIS (or -\$219,092) with a median of -568,000 NIS and a standard deviation of 1,215,969. In contrast, after outliers were removed, the average net-worth of female petitioners was -470,973 NIS (or -\$134,563), with a median of -312,766 and a standard deviation of 724,991. Before outliers were removed, the average net-worth of male and female petitioners was -928,838 NIS and -520,972 NIS, respectively.

<sup>53</sup> See *supra* notes 29, 32-33 and accompanying text.

<sup>54</sup> The average debt of petitioners, who have filed due to a business failure, was 1,296,470 NIS (or \$370,420) with a standard deviation of 104,134. In contrast, the average debt of petitioners, who have filed for reasons other than business failure, was 695,501 NIS (or \$198,714), with a standard deviation of 100,386. This difference is statistically significant at .005.

commenced bankruptcy with high debts as a result of assuming personal liability for the debts of their husbands' failed businesses.<sup>55</sup>

### III. RELIGION AND BANKRUPTCY

Israel is split religiously between Jews, Moslems, Christians and Druze.<sup>56</sup> In contrast to the Israeli Jews, the non-Jewish population in Israel (commonly referred to as Arab) is characterized by a more rural and traditional orientation, higher fertility rate, poorer educational achievements, lower occupational prestige, lesser income, and inferior standard of living.<sup>57</sup> The Arabs constituted 20% of the Israeli population in 1996.<sup>58</sup> However, in the Israeli bankruptcy sample, Arabs made up only 5% of the population.<sup>59</sup>

While the composition of Arabs in the Israeli bankruptcy sample was small, there seems to have been even fewer of them in bankruptcy twenty-five years earlier.<sup>60</sup> The increase in the Arab composition in the bankruptcy sample population over the last twenty-five years seems to parallel their recent growing participation in the entrepreneurial sector in Israel, which makes up the bulk of the population in the Israeli bankruptcy sample.<sup>61</sup> Traditionally, Arabs shied away from the entrepreneurial sector in Israel. Some have attributed the traditionally low entrepreneurial tendencies in the Arab sector to inferior economic infrastructure in the Arab villages; lower educational background among the Arab population;

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<sup>55</sup> See *supra* note 35 and accompanying text.

<sup>56</sup> See NOAH LEWIN-EPSTEIN & MOSHE SEMYONOV, THE ARAB MINORITY IN ISRAEL'S ECONOMY: PATTERNS OF ETHNIC INEQUALITY 14-15 (1993).

<sup>57</sup> *Id.* at 14-17.

<sup>58</sup> See ISRAEL CENTRAL BUREAU OF STATISTICS, STATISTICAL ABSTRACT OF ISRAEL 1997, 3 (1998) (reporting that in 1996, Jews made up 80.5% and Arabs made up 19.5% of the population in Israel). Approximately three-quarters of the non-Jewish population in Israel is made up of Moslems. See LEWIN-EPSTEIN & SEMYONOV, *supra* note 56, at 15. Christians constitute 13% and Druze make up almost 10% of the non-Jewish population in Israel. See *id.* This Article will collectively refer to Moslems, Christians and Druze living in Israel as Arabs.

<sup>59</sup> Specifically, 94.8% of the petitioners in the sample were Jews, 4.2% were Muslims and 1% were Druze.

<sup>60</sup> See Philip Shuchman, Field Observations and Archival Data on Execution Process and Bankruptcy in Jerusalem, 52 AM. BANKR. L.J. 341, 355 (1978) (describing the religious background of the Israeli bankruptcy sample from the 1970s, stating, "the remainder are unknown and a few Arabs; not enough for comment.").

<sup>61</sup> See *supra* note 23.



lack of professional and technological specialization in Arab communities; cultural norms preferring salaried employment as opposed to self-employment; lack of local public agencies encouraging entrepreneurial activity; lack of a developed local institutionalized financial sector; and the disadvantaged rural location of most Arabs villages, situated far from the center of economic life in Israel.<sup>62</sup>

However, beginning in the latter part of the 1980s, entrepreneurship activity in the Israeli Arab sector has been steadily increasing.<sup>63</sup> One reason for this trend is the increase in the standard of living in the Israeli Arab sector, leading many to become entrepreneurs to meet the increased demand of the local Israeli Arabs for construction projects and consumable goods. Additionally, an increase in the educational level and professional preparation of the Israeli Arab sector may have prompted many to become self-employed in the area of their professional specialization. Lastly, some attribute the recent increased level of entrepreneurship in the Israeli Arab sector to cultural changes in the Israeli Arab society - the adoption of a more urbanized culture of achievement and success, under which risk undertaking in business is deemed more acceptable than it had been traditionally.<sup>64</sup>

While Arab entrepreneurship level is still somewhat lagging behind that of the Jews living in Israel,<sup>65</sup> the recent participation growth in the Israeli Arab entrepreneurial sector has virtually closed that gap.<sup>66</sup> While Israeli Arabs have somewhat fewer entrepreneurs

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<sup>62</sup> See DAN CZAMANSKI & RASAM CHEMAESI, EDUD HA'YEZAMUT BE'YISHUVIM HA'ARVIYIM BE'YISRAEL [FOSTERING ENTREPRENEURSHIP IN ISRAELI ARAB VILLAGES] 22-23 (1993); see also Daniel Z. Czamanski & Michael B. Meyer-Brodnitz, *Industrialization in Arab Villages in Israel*, in RURAL INDUSTRIALIZATION IN ISRAEL 143, 165 (Raphael Bar-El ed., 1987) ("The Arab school systems seem relatively weak in providing skills needed for the business world. Most Arab university graduates' training is more suitable for public service than for entrepreneurship. Arab entrepreneurs seem to be at a disadvantage in acquiring information concerning markets and financial sources. This may be due to discriminatory operation of public and private bureaucracies. Distance—physical, cultural, and language—may create friction of the sort that raises the costs of doing business from the [Arab] villages.").

<sup>63</sup> See Czamanski & Chemaesi, *supra* note 62, at 23.

<sup>64</sup> See *id.*

<sup>65</sup> See *id.* at 9 (asserting that Israeli Arab entrepreneurship level is lagging behind the entrepreneurship rate among Jews living in Israel).

<sup>66</sup> The entrepreneurship rate among Jews living in Israel ranges between approximately 11.6% and 16.99%. See Miri Lerner & Yeoshua Hendeles, *New*

than the Israeli Jewish population, that marginal difference alone cannot fully explain the dramatic disparity in religious affiliation in the Israeli bankruptcy sample where Israeli Arabs constitute only 5% of the population.<sup>67</sup>

Under closer scrutiny, it seems that relatively few Israeli Arabs file bankruptcy because, as a group, the Israeli Arab entrepreneurial community tends to stay away from substantial outside debt financing, making them less financially vulnerable. The Israeli Arab entrepreneurs rely less on substantial outside debt financing because, as a group, they tend to be more self-reliant and risk averse than compared to the Israeli Jews.<sup>68</sup> Some studies have suggested that almost 60% of the Israeli Arab entrepreneurial business formation capital comes from private savings, primarily from the entrepreneur's personal savings,<sup>69</sup> and that almost 90% of the Israeli Arab entrepreneurs relied on personal savings to establish their business.<sup>70</sup> In contrast, less than one-fifth of all Israeli Arab

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*Entrepreneurs and Entrepreneurial Aspirations among Immigrants from the Former U.S.S.R. in Israel*, 36 J. BUS. RES. 59, 60 (1996); Eran Razin, *Relating Theories of Entrepreneurship among Ethnic Groups and Entrepreneurship in Space—The Case of the Jewish Population in Israel*, 71B GEOGRAFISKA ANNALER 167, 172 (1989) [hereinafter *Entrepreneurship in Space*] (reporting an average self-employment rate of 11.6 in Israel's Jewish urban population during 1983); Efraim Ya'ar, *Yazamut Pratit KeMaslol LeNiot Socio-Kalkalit: Hebeit Nosaf Al Harivod HaAdati Be'Yisrael [Private Entrepreneurship As a Socio-Economic Mobility Force: Another Look on Social Stratification in Israel]*, 29 MEGAMOT 393, 398 (1986) (reporting an aggregate self-employment rate in the Jewish population of 16.99%). In contrast, entrepreneurship rate among Arabs living in Israel ranges between approximately 10% and 12.6%. See NASEEM JERYIS, *SMALL-SCALE ENTERPRISES IN ARAB VILLAGES: A CASE STUDY FROM THE GALILEE REGION IN ISRAEL* 87 (1990) (“[O]ver 10% of the households in the Arab villages belong to the entrepreneur class.”); Eran Razin, *Spatial Variations in the Israeli Small-Business Sector: Implications for Regional Development Policies*, 24 REGIONAL STUD. 149, 160 (1990) [hereinafter *Israeli Small-Business Sector*] (reporting that 12.6% of Arabs living in urban localities were entrepreneurs).

<sup>67</sup> See Schuchman, *supra* note 59.

<sup>68</sup> See IZHAK SCHNELL ET AL., *ARAB INDUSTRIALIZATION IN ISRAEL: ETHNIC ENTREPRENEURSHIP IN THE PERIPHERY* 44 (1995) (“This closure rate is low in comparison to the survival rate of small factories in Jewish development towns. This can be explained by the fact that Arab entrepreneurs embed a strategy of risk aversion into their operation.”).

<sup>69</sup> See *id.* at 42; see also JERYIS, *supra* note 66, at 90 (“The household of the owner and other households account for 65% of the total supply of initial capital . . .”).

<sup>70</sup> See SCHNELL ET AL., *supra* note 68, at 94 (“Table 7.2 indicates that in the case of 86 percent of the entrepreneurs, one of the sources for the initial capital needed to establish the plant was personal savings. . . . [W]e find that in 70 percent . . . of the cases [in the Israeli Arab entrepreneurial sector] . . . personal savings . . . constituted virtually the only source (91 to 100 percent of the investment).”).

entrepreneurs relied on bank financing as a source of initial formation capital.<sup>71</sup> Moreover, Israeli Arab entrepreneurs rely even less upon banks as a source for working capital.<sup>72</sup>

The Israeli Arab entrepreneurs tend to rely less on substantial outside debt financing because of their particularly well-developed family networks. Pervasive intra-family labor and consulting support in the Israeli Arab entrepreneurial community reduce the need for financing some of the enterprise's labor costs.<sup>73</sup> Also, in lieu of outside financing, the close-knit families tend to fund a large portion of the financing needs of the Israeli Arab entrepreneurs. A study from the late 1980s and early 1990s found that 21% of Israeli Arab entrepreneurs obtained some of their initial capital from their extended families.<sup>74</sup> In almost half of the instances where brothers

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<sup>71</sup> See *id.* at 94-95 ("Banks, the primary source of capital for modern economic enterprises, provided loans for only some 14 percent of the Arab entrepreneurs. . . . These figures bear out the claim that the banks do not serve the primary source of capital for initial investments."). However, a recent study suggests that Israeli Arab entrepreneurs are beginning to rely more on financing from financial institutions. See Izhak Schnell, *Urban Restructuring in Israeli Arab Settlements*, 30 MIDDLE E. STUD. 330, 346 (1994) ("Evidence reveals that Arab entrepreneurs in 'the little triangle', were beginning to adopt a more favourable attitude towards accepting bank loans from extra-clan sources. . . . [I]n commerce and industry a new pattern has evolved with more than half the businessmen obtaining most of their investment capital from sources outside the patriarchal family.").

<sup>72</sup> See *id.* at 96 ("Analysis of the sources of capital investment for the further development of existing plants, presented in table 7.3, reveals that here too, the proportion of financing obtained from banks and private financial sources is small. The figures in table 7.3 reveal that banks participated in the financing of some 6 percent of the enterprises, and in about 81 percent of these their contribution represented less than 50 percent of the total investment.").

<sup>73</sup> See SCHNELL ET AL., *supra* note 68, at 88 ("[T]he family continues to play a major role both in lending support to the entrepreneur and in affecting his decision making."); *id.* at 150 ("The status deriving from membership in a certain family remains a primary factor in determining an individual's standing in [Israeli Arab] society, and, as a result, each person bears responsibility for the entire family. In addition, the family provides social and economic security and is the source of a variety of resources required to run a factory (which, in most cases, is under family management)."); LEWIN-EPSTEIN & SEMYONOV, *supra* note 56, at 34 ("While the structure of the extended family [in the Israeli Arab communities] appears to have weakened, it still exists in various complex forms, and association and commitment based on extended family ties are still strong. In some cases present-day extended families are structured around a family-owned business which is based primarily on economic considerations, rather than traditional patriarchy, but includes some elements of joint consumption and residence.").

<sup>74</sup> See SCHNELL ET AL., *supra* note 68, at 94.

contributed to the initial capital of a business, their contribution constituted almost the only source of capital.<sup>75</sup>

The Israeli Arab entrepreneur's limited reliance, and possibly limited access to, outside financing is reflected in the debt burden of the Israeli Arab bankruptcy petitioners. On average, the Israeli Arab petitioners, who were mostly entrepreneurs,<sup>76</sup> owed only 45% of the average total debts owed by the Jewish petitioners,<sup>77</sup> who were typically entrepreneurs as well.<sup>78</sup> Similarly, when compared to the Israeli Arabs in the bankruptcy sample, Jews in bankruptcy had two-and-a-half times more debts owed to financial institutions.<sup>79</sup> Lastly, Israeli Arabs in the bankruptcy sample had less than a quarter of the average credit card or overdraft debt as compared to that owed by the Jews in the bankruptcy sample.<sup>80</sup>

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<sup>75</sup> *See id.*

<sup>76</sup> Specifically, 63.63% of the Arab petitioners in the bankruptcy sample were formerly self-employed.

<sup>77</sup> After outliers were removed, the average amount of debts owed by the Jewish petitioners in the bankruptcy sample was 1,008,783 NIS (or \$288,237), with a median of 726,689 NIS, and a standard deviation of 1,215,52 (before outliers were removed, the average amount of total debts owed was 1,159,534 NIS). In contrast, the average amount of debts owed by the Israeli Arab petitioners was 453,616 NIS (or \$129,604), with a median of 321,898 NIS, and a standard deviation of 519,132 (before outliers were removed, the average amount of total debts owed was 490,871 NIS). This difference is not statistically significant. This higher debt burden among the Jewish petitioners when compared to the Arab counter parts could also be the product of a higher ratio among the Jewish petitioners who have attributed their bankruptcy filings to a business failure. Among the Jewish petitioners in the bankruptcy sample, 77.3% attributed their bankruptcy filing to a failing business. In contrast, only 72.7% of the Arab petitioners identified business failure as a primary cause for the bankruptcy filing. The association between religion and business failure as a cause of bankruptcy was found not to be statistically significant.

<sup>78</sup> Specifically, 63.4% of the Israeli Jewish petitioners in the bankruptcy sample were formerly entrepreneurs.

<sup>79</sup> After outliers were removed, the average amount of debts owed to financial institutions by Jewish petitioners in the bankruptcy sample was 450,772 NIS (or \$128,792), with a median of 327,316 NIS, and a standard deviation of 737,778 (before outliers were removed, the average amount of debts owed to financial institutions was 550,490 NIS). In contrast, after outliers were removed, the average amount of debts owed to financial institutions by Arab petitioners was 179,657 NIS (or \$51,330), with a median of 134,433 NIS, and a standard deviation of 366,051 (before outliers were removed, the average amount of debt owed to financial institutions was 220,113 NIS). This difference is not statistically significant.

<sup>80</sup> After outliers were removed, the average amount of credit card or overdraft debt owed by Jews in the bankruptcy sample was 61,094 NIS (or \$17,455), with a median of 40,139 NIS, and a standard deviation of 96,751 (before outliers were removed, the average amount of credit card or overdraft debt owed by Jews in the bankruptcy sample was 75,084 NIS). In contrast, the average amount of credit card

While the Israeli Arab bankruptcy petitioners have substantially lower debt burden when compared to their Jewish counterparts, they also have comparatively low earnings and asset holdings. Both Jewish and Arab households in the Israeli bankruptcy sample earned substantially less than the average earnings in society, placing them at the lowest twentieth percentile of households' earnings in Israel.<sup>81</sup> However, while both religious groups in bankruptcy earned considerably less than Israelis out of bankruptcy, the Arab households in the bankruptcy sample earned one-fifth less than the average Jewish household in the bankruptcy sample.<sup>82</sup> This income gap could be partly explained by the higher unemployment rate reported by Arab petitioners at the time of bankruptcy filing. Whereas less than a third of the Jewish petitioners were reportedly unemployed at the time of bankruptcy, almost half of the Arab petitioners were out of work at that time.<sup>83</sup> In addition, this income gap between the Arab and Jewish petitioners could simply reflect the overall earning disparity in Israeli society between Arabs and Jews of approximately 20%.<sup>84</sup>

This income disparity between Arab and Jews in bankruptcy has manifested itself in poverty rate differences as well. Arab households in bankruptcy are almost twice as likely to live below the

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or overdraft debt owed by Arab petitioners was 17,420 NIS (or \$4,977), with a median of 19,960 NIS, and a standard deviation of 14,023. This difference is not statistically significant.

<sup>81</sup> Jewish households in the bankruptcy sample earned a little over a half of the average earnings in society. In contrast, Arab households in the bankruptcy sample earned almost 40% of the average earnings in society. After outliers were removed, the average total monthly household earnings among Jews in the bankruptcy sample was 5,930 NIS (or \$1,694), with a median of 5,830 NIS, and a standard deviation of 4,242 (before outliers were removed, average monthly household income was 6,209 NIS). After outliers were removed, total monthly household earnings among the Arab in the bankruptcy sample was 4,796 NIS (or \$1,370), with a median of 4,000 NIS, and a standard deviation of 2,749 (before outliers were removed, average monthly household income was 5,096 NIS). This difference is not statistically significant. A total average monthly household earnings in the general population was 10,915 NIS in 1997. *See* STATE OF ISRAEL CENTRAL BUREAU OF STATISTICS, HOUSEHOLD EXPENDITURES SURVEY, 1997, FIRST FINDINGS 43 (1999).

<sup>82</sup> *See id.*

<sup>83</sup> Specifically, 30.8% of the Jewish petitioners in the sample were reportedly unemployed at the time of bankruptcy filing; whereas, 45.5% of the Arab petitioners were reportedly unemployed at the time of bankruptcy filing.

<sup>84</sup> *See* LEWIN-EPSTEIN & SEMYONOV, *supra* note 56, at 27 ("From the comparison of monthly income of the two groups in 1974, it is clear that Jews earned more than Arabs. On average, Arabs earned 84 percent of the monthly income of Jews.").

poverty rate as are Jewish households in bankruptcy.<sup>85</sup> Again, this poverty rate gap in bankruptcy corresponds to the poverty rate disparity in the general population, where considerably more Arab families find themselves below the poverty line.<sup>86</sup>

The Israeli Arab bankruptcy petitioners' bleak earnings record is even grimmer without the welfare benefits component. Among the Israeli Arab petitioners, welfare benefits constituted 44% of their total household earnings compared to only 23% among Israeli Jewish petitioners.<sup>87</sup> Thus, in the absence of this generous welfare package, the average Arab petitioner would have been placed at the lowest tenth percentile of household's earnings in Israel.<sup>88</sup>

The dramatically lower income level of the Israeli Arab bankruptcy petitioners is further exacerbated by the higher number of dependents among the Israeli Arab households as compared to their Jewish counterparts. Arab families in the bankruptcy sample had, on average, almost 4.5 dependents, whereas Jewish families in the bankruptcy sample had, on average, less than three

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<sup>85</sup> According to a study published by the National Insurance Institute of Israel, the household poverty line in 1999 for a family of four was 4,069 NIS. *See* Nat'l Ins. Inst. of Israel, *Income Support in Israel and in the World*, 58 J. WELFARE & SOC. SEC. STUD. 1, 6 (2000). In the bankruptcy sample, 36% of the Jewish households with similar household size had total earnings below that poverty line. However, 66.7% of the Arab households in the bankruptcy sample were below the poverty rate.

<sup>86</sup> *See* LEWIN-EPSTEIN & SEMYONOV, *supra* note 56, at 27-28 (reporting that in 1986-87, 37.5% of Arab families reported incomes (including welfare) that were below the poverty line, and 7.3% of all Jewish families reported the same).

<sup>87</sup> After removal of outliers, total average monthly household welfare benefits among Israeli Arabs in the bankruptcy sample was 2,110 NIS, with a median of 2,466 NIS, and a standard deviation of 1,266 (before outliers were removed, the total average monthly household welfare benefits was 2,069). After removal of outliers, the total average monthly earnings, including welfare benefits, among Israeli Arabs in the bankruptcy sample, was 4,796 NIS (before outliers were removed, the total monthly household income was 5,096 NIS). In contrast, welfare benefits amount to 23% of the total household income among Jewish petitioners. After outliers were removed, the average monthly welfare benefits received among the Jewish petitioners in the bankruptcy sample was 1,169 NIS, with a median of 975 NIS, and a standard deviation of 1,385. After removal of outliers, the total average monthly household earnings of the Jews in the sample was 5,930 NIS, with a median of 5,830 NIS, and a standard deviation of 4,242 (before outliers were removed, the average monthly household income was 6,209 NIS).

<sup>88</sup> After removing outliers, total monthly household earnings, excluding welfare benefits, among Arabs in the bankruptcy sample was 3,532 NIS with a median of 3,500 NIS. *See* STATE OF ISRAEL CENTRAL BUREAU OF STATISTICS, HOUSEHOLD EXPENDITURES SURVEY, 1997, FIRST FINDINGS 31 (1999). Total monthly household earnings, excluding welfare benefits, in the general population in Israel was 9,735 NIS in 1997. *See id.*

dependents.<sup>89</sup> This higher number of dependents among the Arab households in the bankruptcy sample is consistent with the higher overall household size in the Israeli Arab sector of the general population.<sup>90</sup>

Arabs were also financially weaker than the Jews in bankruptcy in terms of asset holdings. The average value of assets held by Jews in the bankruptcy sample was more than four times greater than the value held by the Arab counterparts.<sup>91</sup> This disparity seems to be due to the greater fair market value of the homes owned by the Jewish petitioners in the bankruptcy sample.<sup>92</sup>

Overall, while Arabs in the bankruptcy sample earn less and have substantially fewer assets than the Jewish petitioners, the Jewish petitioners are financially more fragile than their Arab counterparts. With more than twice as much debt as the Arab petitioners,<sup>93</sup> the

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<sup>89</sup> The total number of dependents among the Arab households in the bankruptcy sample was 4.3. In contrast, the total number of dependents among the Jewish households in the bankruptcy sample was 2.8. This difference is statistically significant at .009. Similar disparity in family size is also present in the general population. See STATE OF ISRAEL CENTRAL BUREAU OF STATISTICS, HOUSEHOLD EXPENDITURES SURVEY, 1997, FIRST FINDINGS 79 (1999) (reporting average family size of 3.1 in the Jewish population in Israel as compared to 5.3 in the non-Jewish population in Israel).

<sup>90</sup> See Rimon Jubran, *Efyunei Ha'uchlasia Ha'lo Yehudit Be'Yisrael* [Characteristics of the Non-Jewish Population in Israel], 9 ECON. & LAB. 213, 215 (1994) (reporting that in 1992, the average household size in the Israeli Arab sector was 5.5, whereas the average household size in the Jewish sector in Israel was 3.4).

<sup>91</sup> After removing outliers, the average value of assets owned by Jews in the bankruptcy sample was 252,454 NIS (or \$72,129), with a median of 292,209 NIS, and a standard deviation of 450,585 (before outliers were removed, the average value of assets owned was 307,237 NIS). In contrast, after outliers were removed, the average value of assets owned by Israeli Arab petitioners was 64,336 NIS (or \$18,381), with a median of 8,940 NIS, and a standard deviation of 112,448 (before outliers were removed, the average value of assets owned by Israeli Arabs was 72,136 NIS). This difference is not statistically significant.

<sup>92</sup> The average fair market value of homes owned by the Arab petitioners in the sample was 175,063 NIS (or \$50,018). In contrast, the average fair market value of homes owned by the Jewish petitioners in the sample was 657,748 NIS (or \$187,928). The homeownership rate among the Jewish and the Arab petitioners was very similar, 42.5% and 45.5% respectively.

<sup>93</sup> After removing outliers, the average total debt owed by Jews in the bankruptcy sample was 1,008,783 NIS (or \$288,223), with a median of 726,689 NIS, and a standard deviation of 1,215,529 (before outliers were removed, the average total debt owed by the Jewish petitioners was 1,159,532 NIS). In contrast, after outliers were removed, the average total debt owed by Israeli Arabs in the bankruptcy sample was 453,616 NIS (or \$129,604), with a median of 321,898 NIS, and a standard deviation of 519,132 (before outliers were removed, the average

Jewish petitioners' average and median debt-to-income ratio was almost twice as much as the Arab's debt-to-income ratio.<sup>94</sup> Also, the Jewish petitioners' average and median net-worth was considerably less than their Arab counterparts in the bankruptcy sample.<sup>95</sup>

#### IV. ETHNICITY AND BANKRUPTCY

Israel is a country of immigrants. Most of its Jewish population is made up of immigrants who arrived in waves of immigration.<sup>96</sup> The first wave of immigrants arrived from European countries, prior to the establishment of Israel. Subsequent immigration occurred shortly after statehood, with immigrants arriving primarily from Moslem countries of the Middle East and North Africa.<sup>97</sup> As a result of these two waves of immigration, Israeli Jewish society is ethnically divided between Jews who immigrated to Israel from Europe, North America, and Australia (Westerners) and those from Asia, North Africa, and the Middle East (Easterners).<sup>98</sup> The Easterners are characterized by a more traditional orientation, limited education, a lower standard of living, larger families, minimal economic resources, lower occupational prestige, and limited personal

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total debt owed by the Arab petitioners was 490,871 NIS). This difference is not statistically significant.

<sup>94</sup> After outliers were removed, the average debt-to-income ratio among the Arab Israeli petitioners in the bankruptcy sample was 9.3, with a median of 4.5, and a standard deviation of 11.3 (before outliers were removed, the average debt-to-income ratio was 10). In contrast, after outliers were removed, the average debt to income ratio among the Jewish petitioners in the bankruptcy sample was 16.5, with a median of 11.86 (before outliers were removed, the average debt-to-income ratio was 22.83). This difference is not statistically significant.

<sup>95</sup> After outliers were removed, the average net-worth among the Israeli Arab petitioners in the bankruptcy sample was -543,995 NIS (or -\$155,427), with a median of -325,543 NIS, and a standard deviation of 608,780 (before outliers were removed, the average net-worth was -561,439 NIS). In contrast, after outliers were removed, the average net-worth among the Jewish petitioners in the bankruptcy sample was -682,414 NIS (or \$194,975), with a median of -490,225 NIS, and a standard deviation of 1,125,206 (before outliers were removed, the average net-worth was -819,438 NIS). This difference is not statistically significant.

<sup>96</sup> See UZIEL O. SCHMELZ ET AL., *ETHNIC DIFFERENCES AMONG ISRAELI JEWS: A NEW LOOK* 3 (1991).

<sup>97</sup> See Moshe Semyonov et al., *The Material Possessions of Israeli Ethnic Groups*, 12 *EUR. SOC. REV.* 289, 291 (1996).

<sup>98</sup> See Yinon Cohen & Yitchak Haberfeld, *Second-Generation Jewish Immigrants in Israel: Have the Ethnic Gaps in Schooling and Earnings Declined?*, 21 *ETHNIC & RACIAL STUD.* 507, 507 (1998).



connections and presence in key political, economic and social institutions in Israel.<sup>99</sup>

Immigrants are underrepresented in bankruptcy. Two-thirds of adults in the Israeli Jewish population are immigrants.<sup>100</sup> In contrast, Jewish immigrants made up approximately 52% of the petitioners in the bankruptcy sample. While immigrants were underrepresented in the Israeli bankruptcy sample, first generation immigrants in the United States are the same proportion of the bankruptcy population as they are in the general population.<sup>101</sup> The immigrants' underrepresentation in the Israeli bankruptcy sample may be due to their limited access to legal assistance, limited information about the option of bankruptcy, and limited access to credit.<sup>102</sup> In addition, the immigrants' underrepresentation in the Israeli bankruptcy sample may be due to the predominance of entrepreneurs in the bankruptcy population. As indicated earlier, a substantial majority of the bankruptcy petitioners in Israel were former entrepreneurs.<sup>103</sup> However, new immigrants in Israel have a

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<sup>99</sup> See Shoshana Neuman, *Ethnic Occupational Segregation in Israel*, 5 RES. ON ECON. INEQUALITY 125, 129 (1994); Semyonov, *supra* note 97, at 291; Sammy Smooha & Yochanan Peres, *The Dynamics of Ethnic Inequalities: The Case of Israel*, in 1 STUDIES OF ISRAELI SOCIETY: MIGRATION & COMMUNITY 165, 168-72 (1981) ("To mention quickly the highlights of the current inequalities in Jewish population of Israel today: an average Ashkenazi [Westerner] family . . . maintains a standard of living twice as high [as Easterners. Westerners] are represented in higher white collar occupations twice as much as [Easterners], and have an average of three more years of schooling than [Easterners]. Their attendance rate in post-primary schools is 1.8 times high, and it is six to seven times as high in universities. [Westerners] also dominate all the national centers of power . . .").

<sup>100</sup> See Noah Lewin-Epstein et al., *Ethnic Inequality in Home Ownership and the Value of Housing: The Case of Immigrants in Israel*, 75 SOC. FORCES 1439, 1448 (1997) The 68% rate was derived by adding the weighted average of the average percentages of immigrants in the three ethnic groups sampled in that study. *Id.* Since minors do not file for bankruptcy protection, as they have limited access to credit, it was important to compare average percentages of foreign born in the bankruptcy population with the average percentages of foreign born in the adult population in Israel. The figure of the average percentage of the foreign-born in the general population described above excluded minors. *Id.* at 1446.

<sup>101</sup> See THE FRAGILE MIDDLE CLASS, *supra* note 2, at 51 ("In the 1990 census, about 8 percent of the population was foreign-born. In our five-state study, the proportion of primary filers who were foreign-born was only marginally higher: 9 percent.").

<sup>102</sup> A similar hypothesis was presented in discussing the composition of ethnic and racial minority groups in the U.S. bankruptcy population. *See id.* at 42.

<sup>103</sup> *See supra* note 23 (suggesting that in the Israeli bankruptcy sample at least 63% of the petitioners were former entrepreneurs).

lower rate of self-employment than those in the general Israeli population.<sup>104</sup> Since new immigrants are underrepresented in the entrepreneurial sector in Israel, that may have contributed in part to their underrepresentation in the sample bankruptcy population.

While immigrants were underrepresented in Israeli bankruptcy, Eastern immigrants were overrepresented in the bankruptcy population. In Israel, nearly 54% of the foreign-born adults are ethnically Westerners and only 45% are ethnically Easterners.<sup>105</sup> In contrast, in the bankruptcy sample, a majority of the foreign-born Jews were ethnically Easterners.<sup>106</sup> This ethnic overrepresentation in bankruptcy was also observed in the United States for African-Americans, but not for other minorities.<sup>107</sup>

One plausible explanation for overrepresentation of Eastern Jews in the Israeli bankruptcy sample is their fragile financial condition. Among Israeli Jews, Easterners have lower household incomes, lower asset holdings, lower savings, and less prestigious occupations when compared to their Western counterparts.<sup>108</sup> Since

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<sup>104</sup> See Entrepreneurship in Space, *supra* note 66, at 175 ("New immigrants in general had a lower rate of self-employment (7.0%) than the total Jewish population (11.6%), and new immigrants from the USSR in particular had a low rate of self-employment.").

<sup>105</sup> See Lewin-Epstein et al., *supra* note 100, at 1448. The figure of the average percentage of ethnic makeup in the general population described above excluded minors. See *id.*

<sup>106</sup> Specifically, 51% of Jews in the bankruptcy sample were Easterners and 42% were Westerners with the rest being from an unknown origin.

<sup>107</sup> See THE FRAGILE MIDDLE CLASS, *supra* note 2, at 46.

<sup>108</sup> See CALVIN GOLDSCHIEDER, ISRAEL'S CHANGING SOCIETY: POPULATION, ETHNICITY AND DEVELOPMENT 138-39 (1997) ("Occupational differences among ethnic origin remain significant through the 1990s. . . . About one-third of the Israelis of European origin can be classified in high level white-collar jobs. . . . In sharp contrast, only 13 percent of the Israelis of Asian and African origins are in these high-level type of jobs."); see also Smooha & Peres, *supra* note 99, at 168-172 (asserting that Westerner families earn 1.4 times more than an average Eastern family); see also Cohen & Haberfeld, *supra* note 98, at 509 ("Jewish Eastern immigrants, both those who arrived during the mass migration (1948-51) as well as in later waves, have failed so far, to close the socio-economic gaps between them and the other groups- Western immigrants and native Israelis."); Cohen & Haberfeld, *supra* note 98, at 522 ("The results presented in this article suggest that . . . the overall earning gaps between second-generation Eastern and Western Jewish immigrant men has increased between 1975 and 1992); Semyonov et al., *supra* note 97, at 291 ("European-American Jews are characterized by . . . higher levels of income. . . . European-American Jews also possess greater wealth than Jews who migrated from North Africa and the Near East. . . . The average household savings of European-Americans was almost double that of Asian-African Jews . . . and the average holdings in real estate (primarily family dwellings) [was

Easterners find themselves in disproportionately precarious financial circumstances, they may be forced into bankruptcy more often than the financially well-off Westerners.<sup>109</sup>

While the financial vulnerability of the Easterners may have partly contributed to their overrepresentation in the bankruptcy sample, it seems that this ethnic composition of the bankruptcy sample in Israel is largely due to the predominance of entrepreneurs in the bankruptcy population. As indicated earlier, a substantial majority of the bankruptcy petitioners in Israel were former entrepreneurs.<sup>110</sup> Since over 60% of the sampled petitioners in the bankruptcy sample were entrepreneurs prior to bankruptcy, the demographic characteristics in the Israeli bankruptcy sample, including ethnicity, may reflect the demographic characteristics of entrepreneurs in Israeli society.<sup>111</sup> Studies have documented that Israeli Jews of Eastern-origin—those who immigrated to Israel as children beginning in 1948—were more prone to become entrepreneurs than Westerners.<sup>112</sup> Indeed, the data from these

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more than double that of Asian-African Jews].”).

<sup>109</sup> A similar hypothesis was presented in discussing the composition of ethnic and racial minority groups in the U.S. bankruptcy population. See THE FRAGILE MIDDLE CLASS, *supra* note 2, at 42.

<sup>110</sup> See *supra* note 23 (suggesting that in the Israeli bankruptcy sample at least 63% of the petitioners were former entrepreneurs).

<sup>111</sup> For a detailed discussion of the reasons for the predominance of entrepreneurs in the Israeli bankruptcy sample, see Rafael Efrat, *The Rise & Fall of Entrepreneurs: An Empirical Study of Consumer Bankruptcy in Israel*, 7 STAN. J. L. BUS. & FIN. 163 (2002).

<sup>112</sup> See Eran Razin, *Social Networks, Local Opportunities and Entrepreneurship among Immigrants—The Israeli Experience in an International Perspective*, in IMMIGRATION & ABSORPTION: ISSUES IN A MULTICULTURAL PERSPECTIVE 155, 164-65 (Richard E. Isralowitz et al. eds., 1991) [hereinafter Razin, *Social Networks*] (“Among those immigrating as children, the Eastern-origin groups were more entrepreneurial than Europeans, with the exception of Yemenites. The declining propensity of European-origin groups to become self-employed is clearly evident in data for the first Israeli-born generation.”); *id.* at 178 (“[T]he separation into Eastern- and Western-origin groups is of major significance in predicting entrepreneurial behavior. Immigrants of Eastern origin initially had a lower propensity to become self-employed than those of Western origin. However, subsequent generations of Eastern origin increasingly turned to self-employment . . .”); see also Gustavo S. Mesch & Daniel Czamanski, *Occupational Closure and Immigrant Entrepreneurship: Russian Jews in Israel*, 26 J. SOCIO-ECON. 597, 600 (1997) (“Among immigrants who arrived between 1979 and 1983, Jews of western origin were over-represented in the professional, managerial and scientific occupations and under-represented in the self-employment category. Jews of Asian origin are more likely than any other group to become self-employed.”).

studies indicate that the self-employment rates of Eastern immigrants, who had migrated to Israel as children after 1948, are somewhat higher than their Western counterparts.<sup>113</sup> Thus, the overrepresentation of Easterners in the bankruptcy sample reflects their similar overrepresentation in the Israeli entrepreneurial sector.

Some have suggested that Easterners in Israel comprise a greater proportion of the entrepreneurial sector since they are attempting to overcome a deficit in educational achievement. Easterners apparently attempt to surmount their inferior socioeconomic status by entering the entrepreneurial sector, where occupational success could be attained without educational credentials.<sup>114</sup> Hence, some have suggested that ethnic entrepreneurship in Israel reflects to a large extent Easterners' attempt to integrate into the mainstream of society.<sup>115</sup>

As suggested earlier, Easterners' overrepresentation in the entrepreneurial sector in Israel partly explains their overrepresentation in the bankruptcy sample. However, certain peculiar characteristics of the Easterner entrepreneurs made them particularly vulnerable to business failure and bankruptcy as compared to their Westerner counterparts. Israeli entrepreneurs of Western origin have superior levels of formal education, including a higher graduation rate from vocational high-schools.<sup>116</sup> One study in Israel has correlated higher educational level among entrepreneurs with a higher entrepreneurial occupational status, a higher likelihood of business growth, and a higher likelihood of

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<sup>113</sup> See Rebeca Raijman & Moshe Semyonov, *Modes of Labor Market Incorporation and Occupational Cost among New Immigrants to Israel*, 24 INT'L MIGRATION REV. 375, 383 (1995) (reporting self-employment rate of 19.4% among new immigrants to Israel from Asia and Africa in contrast to the self-employment rate of 16.0% among new immigrants to Israel from western Europe and North America); *Israeli Small-Business Sector*, *supra* note 66, at 164 (identifying higher self-employment rate among selected Eastern ethnic population for immigrants migrating as children to Israel after 1948). *But see* YAACOV NAHON, SELF-EMPLOYED WORKERS—THE ETHNIC DIMENSION 49 (1989) (reporting that in 1983, the self-employment rate for both Easterners and Westerners was 17%).

<sup>114</sup> See Ephraim Yuchtman-Yaar, *Differences in Ethnic Patterns of Socioeconomic Achievements in Israel—A Neglected Aspect of Structured Inequality*, 15 INT'L REV. MOD. SOC. 99 (1985).

<sup>115</sup> See Mesch & Czamanski, *supra* note 112, at 600.

<sup>116</sup> See Razin, *Social Networks*, *supra* note 112, at 171 ("Entrepreneurs of Western origin had superior levels of education, including a higher percentage of vocational high-school graduates.").

increased profitability.<sup>117</sup> Also, Easterners tended to concentrate primarily in the generally less profitable blue-collar entrepreneurial ventures—ventures such as manufacturing, retail trades, car repair shops, construction and transportation. In contrast, Westerner entrepreneurs have gravitated primarily towards the more profitable professional, white-collar occupations.<sup>118</sup> This ethnic based occupational disparity is reflected in the occupational characteristics of the petitioners in the bankruptcy sample. Foreign-born Westerners were more than four times as likely to be classified in white-collar occupations than were foreign-born Easterners. Similarly, foreign-born Easterners were more likely to be classified in blue-collar occupations than foreign-born Westerners.<sup>119</sup>

Eastern entrepreneurs were also at a disadvantage compared to Western-origin entrepreneurs as the Easterners generally did not benefit from the wisdom associated with a family tradition of entrepreneurship. Therefore, Easterners lacked critical business oriented contacts that were generally enjoyed by their Westerner

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<sup>117</sup> See NAHON, *supra* note 113, at 49-50.

<sup>118</sup> See GOLDSCHIEDER, *supra* note 108, at 143 (“Asian-African origin Jewish males have higher self-employment levels than do European-American origin Jewish males in every job category that is blue-collar, and they have lower levels of self-employment in every high-level white-collar job category.”); Eran Razin, *Paths to Ownership of Small Businesses among Immigrants in Israeli Cities and Towns*, 22 REV. REGIONAL STUD. 277, 287 (1992) [hereinafter Razin, *Paths to Ownership*] (“Self-employed immigrants from developed countries gravitated particularly toward white-collar services, which accounted for as much as 70 percent of the self-employed in the case of North American immigrants. Immigrants from North Africa, Asia and particularly Iran were at the other extreme - underrepresented in professional services and overrepresented in retail.”); *id.* at 284 (“[T]he major trend among [Westerner immigrants] was to engage in professional white-collar services, rather than retail, blue-collar, and distribution activities . . . .”); Razin, *Social Norms*, *supra* note 112, at 165-66 (“Among the self-employed immigrants of Eastern origin, those arriving as children tended to be involved in retail trades less often than those immigrating as adults; instead, they engaged more in other blue-collar and distribution activities. . . . A clear trend of moving from retail to other blue collar activities, which mostly do not require high levels of formal education, has continued among the first Israeli-born generation.”).

<sup>119</sup> Forty-eight percent of foreign-born Westerners were classified in white-collar occupations, but only 11.7% of foreign-born Easterners were so classified. In contrast, an overwhelming 85.3% of foreign-born Easterners were classified in blue-collar occupations, but only 52% of the foreign-born Westerners were so classified. White-collar occupations included the following categories: academic professionals, associate professionals and technicians, and managers. Blue-collar occupations included: clerical workers, agents, sale and service workers, skilled agriculture workers, manufacturing, construction and other skilled workers, and unskilled Workers.

counterparts.<sup>120</sup> Lastly, the business success rate of Easterners had been negatively affected by their geographical location. Eastern-origin immigrants were directed in disproportionate numbers by the Israeli government to development towns on the periphery.<sup>121</sup> Small business owners of Eastern origin, who settled in those small development towns, likely experienced increased profitability challenges for such towns did not offer sufficient market growth potential.<sup>122</sup> Indeed, the geographical distribution of petitioners in the bankruptcy sample suggests that foreign-born Easterners were approximately six times more likely to have lived in or next to Israel's development town periphery.<sup>123</sup>

In sum, the fragile financial condition of foreign-born Easterners, overrepresentation of foreign-born Easterners in the entrepreneurial sector, the Easterners' inferior entrepreneurial characteristics, and the inferior location of their businesses contributed to the overrepresentation of Eastern-origin immigrants in the bankruptcy sample.

Foreign-born Easterners were not only overrepresented in bankruptcy, but their financial position, in terms of earnings and asset holdings, was also inferior to that of their Western

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<sup>120</sup> See Razin, *Paths to Ownership*, *supra* note 118, at 290 ("Entrepreneurs of Western origin tended to rely more on . . . experience gained from their parents and their family traditions."); Razin, *Social Networks*, *supra* note 112, at 178; *see also* Razin, *Social Networks*, *supra* note 112, at 171 ("A relatively high percentage of [Westerners] had self-employed parents, and thus they tended somewhat more than others to become self-employed by inheriting businesses.").

<sup>121</sup> See Lewin-Epstein et al., *supra* note 100, at 1449.

<sup>122</sup> See NAHON, *supra* note 113, at 50 (contending that by directing Eastern-origin immigrants to Israel's periphery, the government had reduced the growth potential of an entrepreneur's small business); Razin, *Social Networks*, *supra* note 112, at 178 ("The Eastern-origin entrepreneurs, particularly Moroccans, also suffered from a disadvantageous position with respect to local opportunities, since they have been more dispersed to non metropolitan development towns. The Eastern-origin immigrants who resided in these non-metropolitan towns had the least favorable determinants of entrepreneurship. In contrast, those possessing the most favorable determinants were Western origin business owners from the Tel-Aviv area who established their businesses in Holon's thriving industrial area as a result of conscious location choice."); Razin, *Paths to Ownership*, *supra* note 118, at 293 ("Hence, the combination of a population of Eastern origin and a non-metropolitan location created the most restricted paths to entrepreneurship.").

<sup>123</sup> Forty-four percent of the foreign-born Easterners lived in or around the southern region of the country, which is home for much of Israeli development town periphery. In contrast, only 7.1% of the foreign-born Westerner lived in that region.

counterparts. On average in the bankruptcy sample, the household income of a foreign-born Easterner was 20% lower than the household income of a foreign-born Western petitioner.<sup>124</sup> Moreover, Easterners had to spread their lower household income over a somewhat higher number of people per household.<sup>125</sup> There were similar gaps in the general population between the two ethnic groups. In the early 1990s, Easterners' annual earnings in the general population were 32% lower than annual earnings of Westerners.<sup>126</sup> Further, the average number of persons per Eastern household was more than one person higher than the average number per Western household.<sup>127</sup> Researchers have attributed the Easterners' lower earnings in Israeli society to the fact that, on average, Easterners have had less formal education than Westerners.<sup>128</sup> This lack of education has led to occupational disparity in the Israeli labor market, where few Easterners belong to the white-collar professional echelon.<sup>129</sup> As stated earlier, this

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<sup>124</sup> After removing outliers, the average total monthly household income of a Western petitioner in the bankruptcy sample was 7,003 NIS, with a median of 6,552 NIS and a standard deviation of 4,945 (before outliers were removed, the average was 7,203 NIS). In contrast, after removing outliers, the average total monthly household income of an Eastern petitioner in the bankruptcy sample was 5,764 NIS, with a median of 5,865 NIS and a standard deviation of 2,799 (before outliers were removed, the average was 5,907 NIS). This difference is not statistically significant.

<sup>125</sup> Foreign-born Easterners had an average household size of 3.72, but foreign-born Westerners had an average household size of 3.52.

<sup>126</sup> See Cohen & Haberfeld, *supra* note 98 at 515 ("The overall ratio in earnings between Easterners and Westerners decreased from .79 in 1975 to .7 in 1982 to .68 in 1992.").

<sup>127</sup> See Neuman, *supra* note 99, at 129 (reporting that in 1990, "[t]he average number of persons per household was 2.58 for a Western family and 3.80 for an Eastern family").

<sup>128</sup> See GOLDSCHIEDER, *supra* note 108, at 131 ("[J]ews from Western countries (Europe-America) have higher average levels of education than those from Asian and African countries. Among the foreign born, the difference averages 2.0 years . . ."); Yitchak Haberfeld & Yinon Cohen, *Earnings of Native-Born Jewish & Arab Men in Israel, 1987-1993*, 16 RES. IN SOC. STRATIFICATION & MOBILITY 69, 71 (1998) ("In summary, previous research considered differences in schooling to be the key reason for the persistence of the gaps in earnings between Western Jews and the two other groups: Eastern Jews and Arabs. Pay and hiring discrimination played a secondary role in explaining Arabs' earnings, and no role at all in explaining Easterners' earnings.").

<sup>129</sup> See GOLDSCHIEDER, *supra* note 108, at 138-39 ("Occupational differences among ethnic origin groups remain significant through the 1990s. . . . About one-third of the Israelis of European origin can be classified in high-level white-collar jobs . . . . In sharp contrast, only 13 percent of the Israelis of Asian and African

occupational disparity manifested itself in the occupational make-up of the bankrupts in Israel, where less than 12% of Easterners were former white-collar professionals, compared to nearly 50% of the Westerners.<sup>130</sup>

Also, as compared to foreign-born Westerners, the foreign-born Easterners had a lower value of total assets in the bankruptcy sample. On average in the bankruptcy sample, the foreign-born Easterners owned assets half as valuable as those owned by their foreign-born Westerner counterparts.<sup>131</sup>

The primary reason for the asset value disparity in the bankruptcy sample between the two ethnic groups may be the difference in homeownership rate. In the bankruptcy sample, 52% of the foreign-born Westerners reportedly owned a residence, but among the foreign-born Easterners only 38% owned their own home (this difference is notable even though it does not reach statistical significance).<sup>132</sup> A similar rate differential exists between the two ethnic groups in the general population.<sup>133</sup> Since the value of one's home tends to have a dramatic impact on the overall value of one's asset holdings,<sup>134</sup> the lower homeownership rate among the

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origins are in these high-level type of jobs.”).

<sup>130</sup> Among Easterners, 11.7% were part of the white-collar professionals, whereas 48% of the Westerners were so. This difference is statistically significant, at .031.

<sup>131</sup> After removing outliers, foreign-born Westerners had average total assets valued at 335,492 NIS (or \$95,854), with a median of 193,625 NIS, and a standard deviation of 501,731 (before outliers were removed, total assets were valued at 388,766 NIS). In contrast, after outliers were removed, foreign-born Easterners had average total assets valued at 181,314 NIS (or \$51,804), with a median of 9,250, and a standard deviation of 369,049 (before outliers were removed, total assets were valued at 226,640 NIS). This difference is not statistically significant.

<sup>132</sup> Among the foreign-born Easterners in the bankruptcy sample, 38.2% reportedly owned or co-owned a house at the time of petition. In contrast, among the foreign-born Westerners in the bankruptcy sample, 51.9% reportedly owned or co-owned a house at the time of petition.

<sup>133</sup> See Lewin-Epstein et al., *supra* note 100, at 1448 (reporting that in 1986-1987, Westerners had a homeownership rate of 80.8%, while the Easterners' weighted average home ownership rate was 70.46%).

<sup>134</sup> See Simor Spierlman, *Horashat Nechasim Kalkaliyim: Ba'a lot Dira [Asset Inheritance: Home Ownership]*, in HAKZAT MASHAVIM LE'SHIRUTIM CHEVRATIYIM 1996 [ALLOCATION OF RESOURCES FOR SOCIAL SERVICES 1996] 99, 105 (The Center Social Policy Research in Israel, 1997) (reporting that home value is the primary asset in the asset portfolio of most families in Israel).



foreign-born Easterners must have contributed to their lower value of total assets.<sup>135</sup>

In addition to a lower homeownership rate, the Easterners in bankruptcy had a lower asset value, which could be attributed to their ownership of homes with lower value. Foreign-born Easterners in the bankruptcy sample, who were homeowners at the time of petition, had an average home value approximately 20% lower than the value of homes owned by the foreign-born Westerners.<sup>136</sup> A similar disparity exists along ethnic lines in the general population. Available data about the general population suggests that the average Easterner's home is a quarter less valuable than that of a Westerner homeowner.<sup>137</sup>

While the foreign-born Easterners in the bankruptcy sample were financially weaker compared to their Westerner counterparts in terms of earnings and assets, overall the foreign-born Westerners were more financially distressed than the foreign-born Easterners. Foreign-born Easterners had almost a third less debt outstanding compared to the foreign-born Westerners in the bankruptcy sample.<sup>138</sup> Similarly, foreign-born Easterners in the bankruptcy

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<sup>135</sup> Indeed, the data in this study suggest that home ownership is closely associated with the value of one's asset holdings in bankruptcy. The variables of home ownership and value of assets holdings of a petitioner in the bankruptcy sample were found to be correlated. Correlation is .73 and is significant at beyond the 1% level.

<sup>136</sup> After removing outliers, foreign-born Westerners, who were homeowners at the time of petition, had an average home value of 654,431 NIS (or \$186,980), with a median of 480,000 NIS, and a standard deviation of 503,394 (before outliers were removed, the average was 679,110 NIS). In contrast, after removing outliers, foreign-born Easterners, who were homeowners at the time of petition, had an average home value of 538,330 NIS (or \$153,808), with a median of 522,500 NIS, and a standard deviation of 372,139 (before outliers were removed, the average was 549,922 NIS). This difference is not statistically significant.

<sup>137</sup> See Lewin-Epstein et al., *supra* note 100, at 1448 (reporting that in 1986-1987, the Westerners' average home value was 99,713 NIS, while the Easterners' weighted average home value was 76,181 NIS). The ethnic based disparity in home values has been attributed to the differences between the two ethnic groups in terms of timing of immigration and the location of the residence. See *id.* at 1456-57.

<sup>138</sup> After removing the outliers, the average total debt owed by the foreign-born Westerner in the bankruptcy sample was 1,023,658 NIS (or \$292,473), with a median of 664,566 NIS, and a standard deviation of 1,602,523 (before removing outliers, the average was 1,270,291 NIS). In contrast, the average total debt owed by foreign-born Easterners in the bankruptcy sample was 754,682 NIS (or \$215,623), with a median of 471,051 NIS, and a standard deviation of 1,081,825 (before removing outliers, the average was 907,745 NIS). This difference is not statistically significant. The Westerners seem to have higher debt burden plausibly

sample owed over 40% less to financial institutions than did foreign-born Westerners.<sup>139</sup> Furthermore, the debt-to-income ratio of the foreign-born Westerners was higher than the debt-to-income ratio of the foreign-born Easterners in the bankruptcy sample.<sup>140</sup> Lastly, the net-worth of the foreign-born Westerners was lower than the net-worth of the foreign-born Easterners in the bankruptcy sample.<sup>141</sup>

#### V. BANKRUPTCY AND THE ELDERLY

Apparently, older Israelis are at less risk of bankruptcy than their younger counterparts. In 1996, Israelis fifty-five years and older comprised 16% of the population, and Israelis aged sixty-five and older comprised 9% of the population.<sup>142</sup> In contrast, petitioners aged fifty-five and older made up 12% of the bankruptcy sample and petitioners older than sixty-five made up 4%.<sup>143</sup> The underrepresentation of elders in bankruptcy is even more dramatic in the United States, where individuals who were fifty years old or

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because more of them have reportedly filed for bankruptcy due to a business failure. Whereas 69.7% of Easterners in the bankruptcy sample filed due to a business failure, 88.9% of Westerners in the bankruptcy sample filed due to a business failure.

<sup>139</sup> The average debt owed by foreign-born Easterners in the bankruptcy sample to financial institutions was 300,631 NIS (or \$85,894), with a standard deviation of 60,174. In contrast, the average debt owed by foreign-born Westerners in the bankruptcy sample to financial institutions was 522,876 NIS (or \$149,393), with a standard deviation of 93,626. This difference is not statistically significant.

<sup>140</sup> After outliers were removed, the average debt-to-income ratio of the foreign-born Westerners was 14.6, with a median of 8.7, and a standard deviation of 46.25 (before outliers were removed, the average debt-to-income ratio was 23.19). In contrast, after outliers were removed, the average debt-to-income ratio of the foreign-born Easterners was 12.5, with a median of 8.8 and a standard deviation of 33 (before outliers were removed, the average debt-to-income ratio was 18.1). This difference is not statistically significant.

<sup>141</sup> After outliers were removed, the average net-worth of the foreign-born Westerners was -592,227 NIS (or -\$169,207), with a median of -506,364 NIS, and a standard deviation of 1,251,308 (before outliers were removed, the average net-worth was -801,777 NIS). In contrast, after outliers were removed, the average net-worth of the foreign-born Easterners was -498,863 NIS (or -\$142,538), with a median of -425,471 NIS, and a standard deviation of 538,898 (before outliers were removed, the average net-worth was -520,282 NIS). This difference is not statistically significant.

<sup>142</sup> See ISRAEL CENTRAL BUREAU OF STATISTICS, STATISTICAL ABSTRACT OF ISRAEL 1997, 62 (1998).

<sup>143</sup> In the sample of 213 files, there were twenty-six cases of individuals older than fifty-five, and nine cases of individuals older than sixty-five.

older made up almost 36% of the general population, but only 14% of the bankruptcy population.<sup>144</sup>

It is plausible that the lower bankruptcy filing rates among older Israelis is related to the much lower levels of (non-mortgage) consumer credit held by older Israelis compared to the younger population.<sup>145</sup> This hypothesis is reflected in the bankruptcy sample. The younger petitioners in the sample incurred, on average, an amount of (non-mortgage) consumer debt twice that of their older counterpart.<sup>146</sup> Also, while 10% of the younger petitioners reportedly identified overwhelming (non-mortgage) consumer debt as a primary cause of bankruptcy, none of the older petitioners in the sample pointed to it as a leading cause of their financial demise.<sup>147</sup>

Second, the lower bankruptcy filing rates of the elderly could also be due to the fewer number of older Israelis who have a mortgage. As individuals get older they generally tend to reduce or pay off the mortgages on their homes.<sup>148</sup> Again, the data from the bankruptcy sample reflects the lower propensity among the older individuals to be encumbered by a mortgage. While not found statistically significant, younger petitioners in the bankruptcy sample

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<sup>144</sup> See THE FRAGILE MIDDLE CLASS, *supra* note 2, at 2.

<sup>145</sup> While no public data classified by age is available on the non-mortgage consumer debt held by individuals in Israel, studies in the United States suggest that older Americans are less likely to hold credit card debt when compared to the younger Americans. See *id.* at 3.

<sup>146</sup> After outliers were removed, petitioners under the age of fifty-five owed credit card and/or overdraft debt in the amount of 66,196 NIS (or \$18,913), with a median of 42,009 NIS and a standard deviation of 101,381 (before outliers were removed, the average credit card and/or overdraft debt owed by petitioners under the age of 55 was 80,467 NIS). In contrast, after outliers were removed, petitioners aged fifty-five or older owed credit card and/or overdraft debt in the amount of 32,420 NIS (\$9,262), with a median of 23,000 NIS, and a standard deviation of 40,951 (before outliers were removed, the average credit card and/or overdraft debt owed by petitioners fifty-five years old or older was 37,001 NIS).

<sup>147</sup> Among petitioners that were younger than fifty-five years old, 10.5% of them identified excess non-mortgage consumer credit (such as credit card and overdraft debt) as a leading cause of their bankruptcy filing. Specifically, 18.6% of the wage earners, and 4.7% of the former entrepreneurs, in the younger cohort reported non-mortgage consumer debt as a primary factor in filing bankruptcy. In contrast, none of the petitioners aged fifty-five or older reported it as a leading cause of bankruptcy. This difference is not statistically significant.

<sup>148</sup> See Sullivan, Warren & Westbrook, *supra* note 2, at 2 ("Many [of the older Americans] have equity built up over decades in homes that are often fully paid off. . .").

were two and a half times more likely to be subject to a mortgage than older petitioners.<sup>149</sup>

The older Israeli petitioners were financially distinct from the younger group. Capitalizing on a long-term rise in the real-estate market in Israel,<sup>150</sup> the older petitioners reported higher home values.<sup>151</sup> However, since there were fewer older petitioners in the sample that were homeowners,<sup>152</sup> the older petitioners had an overall total asset value lower than their younger counterpart.<sup>153</sup> In addition, the older petitioners earned a quarter less than the younger petitioners.<sup>154</sup>

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<sup>149</sup> Among the petitioners that were younger than fifty-five at the time of petition, 38.3% owed a mortgage. In contrast, among the petitioners that were fifty-five years of age or older at the time of petition, only 15.4% owed a mortgage on their house. This difference is not statistically significant.

<sup>150</sup> See Moshe Bar-Nathan et al., *The Market for Housing in Israel*, 28 REGIONAL SCI. & URB. ECON. 21, 25 (1998) ("Real house prices [in Israel] (i.e., deflated by the CPI) have risen over time, especially in the 1960s and the 1990s.").

<sup>151</sup> After removing the outliers, the average value of a home owned by petitioners aged fifty-five years old or older was 780,422 NIS (or \$222,977), with a median of 796,725 NIS, and a standard deviation of 474,394 (before outliers were removed, the average was 785,067 NIS). In contrast, the average value of a home owned by petitioners younger than fifty-five years old was 584,308 NIS (or \$166,945), with a median of 572,000 NIS, and a standard deviation of 438,709 (before outliers were removed, the average was 618,461 NIS). This difference is not statistically significant.

<sup>152</sup> Thirty-four percent of the petitioners fifty-five years old or older were reportedly homeowners at the time of the petition. In contrast, 44% of the petitioners in the sample that were younger than fifty-five were homeowners at the time of the petition. The overall homeownership rate in Israel was 71% in 1997. See Yona Rubenstein, *Mechirei HaDiroi Be'Yisrael BeShanim 1974-1996: Bua Financit? [The Prices of Houses in Israel Between 1974-1996: A Financial Bubble?]*, 44 ECON. Q. 492 (1997) (suggesting that home ownership rate in Israel during 1992-1993 was higher than 70%); see also Doron Wisebrod et al., *BeMoked HaKalkala: Mashkantaot LeDiyur [In the Center of the Economy: Home Mortgages]*, 28 EXECUTIVE 67, 70 (1999). Elders in Israel have a similar homeownership rate to the general population. See Ira M. Sheskin et al., *A Comparative Profile of Jewish Elderly in South Florida and Israel*, 11 CONTEMP. JEWRY 93, 111 (1990) (reporting that 71.1% of Israeli Jews older than fifty-five are homeowners).

<sup>153</sup> After removing the outliers, the average total asset value held by petitioners aged fifty-five years old or older was 211,415 NIS (or \$60,404), with a median of 5,235 NIS, and a standard deviation of 471,303 (before outliers were removed, the average was 267,378 NIS). In contrast, the average total asset value held by petitioners younger than fifty-five years old was 246,541 NIS (or \$70,440), with a median of 36,410 NIS, and a standard deviation of 441,265 (before outliers were removed, the average was 301,784 NIS). This difference is not statistically significant.

<sup>154</sup> After removing the outliers, the average total monthly household income of petitioners aged fifty-five years old or older was 4,607 NIS (or \$1,316), with a

The older petitioners' weaker financial condition was also manifested in their higher dependency on government welfare benefits. While not statistically significant, the older petitioners received more than twice the median amount of welfare benefits as compared to those received by the younger petitioners.<sup>155</sup> Similarly, while welfare benefits made up only 21% of the total household income of the younger petitioners, it constituted over 37% of the elderly petitioners' total household income.<sup>156</sup>

The lower earnings and higher government dependency reported by the older petitioners in the sample may be due in part to the higher likelihood of older individuals' impaired mental or physical conditions, which may have diminished their ability to fully participate in the workforce. Indeed, the older petitioners were almost twice as likely to have reported a disability or other serious illness when compared to the younger petitioners in the sample.<sup>157</sup> Alternatively, the comparatively lower earnings of the older petitioners in the sample may reflect their limited level of education: more than two-thirds of Israelis over the age of fifty-five never completed high school.<sup>158</sup> Lastly, this earning gap may have

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median of 4,291 NIS, and a standard deviation of 3,447 (before outliers were removed, the average was 4,797 NIS). In contrast, the average total monthly household income of petitioners younger than fifty-five years old was 6,125 NIS (or \$1,750), with a median of 5,850 NIS, and a standard deviation of 4,267 (before outliers were removed, the average was 6,402 NIS). This difference is not statistically significant. Similar earnings disparity, but to a much smaller extent, has also been reported between the older and younger segments of general Israeli society. See Jack Habib, *Population Aging and Israeli Society*, 3 J. AGING & JUDAISM 7, 11 (1988) ("Adjusting for family size, the average family income of units headed by the elderly [defined as sixty-five years old or older] is about 95% of the population average.").

<sup>155</sup> The median amount of government benefits received by petitioners aged fifty-five and over in the sample was 2,000 NIS (with a mean of 1,782 NIS). In contrast, the median amount of government benefits received by petitioners that were younger than fifty-five was 734 NIS (with a mean of 1,353 NIS). This difference is not statistically significant.

<sup>156</sup> The ratios for both groups were calculated by dividing the average amount of welfare benefits received by the average household income. See *infra* note 164 and accompanying text.

<sup>157</sup> Almost 25% of the petitioners in the sample that were younger than fifty-five years old reported that they or their spouse suffer from a disability or other serious illness. In contrast, 46.2% of the petitioners aged fifty-five or older reported the same. This difference is statistically significant at .021.

<sup>158</sup> See Sheskin et al., *supra* note 152, at 107 ("In Israel, about 70 percent of the men, and 76 percent of the women, in the 55 and over age group have not completed high school . . .").

been the result of the much higher unemployment rate at the time of bankruptcy among the older bankruptcy petitioners as compared to the younger petitioners.<sup>159</sup>

The elders in the Israeli bankruptcy sample were not only weaker in terms of earnings and asset holdings, but they were saddled with higher debts. Compared to the younger petitioners, the elders have approximately 20% more debts.<sup>160</sup> The relatively higher debt burden of the elders could be attributed to the fact that more of the elders link their financial demise to a failing business enterprise and hence had relatively higher overall debt exposure.<sup>161</sup> Indeed, a number of studies have suggested that petitioners that have attributed their financial demise to business failure have debts significantly higher than those of wage earner petitioners.<sup>162</sup>

Seeing as the elders in the bankruptcy sample experienced higher debts, lower earnings, and lower asset values, it is not surprising that their debt-to-income ratio and net-worth was

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<sup>159</sup> Among the petitioners that were younger than fifty-five years old, the unemployment rate at the time of bankruptcy filing was 29.6%, whereas among the petitioners that were fifty-five years old or older the unemployment rate at the time of petition was 44%.

<sup>160</sup> After removing the outliers, the average total debts owed by petitioners aged fifty-five years old or older was 1,131,303 NIS (or \$375,229), with a median of 871,344 NIS, and a standard deviation of 885,477 (before outliers were removed, the average was 1,188,435 NIS). In contrast, after outliers were removed, the average debts owed by petitioners younger than fifty-five years old was 951,858 NIS (or \$271,959), with a median of 673,301 NIS, and a standard deviation of 1,251,979 (before outliers were removed, the average was 1,116,723). This difference is not statistically significant.

<sup>161</sup> Among the petitioners in the bankruptcy sample that were younger than fifty-five years old, 75.6% have attributed their bankruptcy filing to a failing business enterprise. In contrast, 84.6% of the petitioners that were fifty-five years old or older have attributed their bankruptcy filing to a business failure. This difference is not statistically significant.

<sup>162</sup> For example, an empirical study of personal bankruptcy in Canada found that the average liabilities of an individual business bankrupt were almost six times higher than the liabilities incurred by a consumer bankrupt. See Iain D.C. Ramsay, *Individual Bankruptcy: Preliminary Findings of the Socio-Legal Analysis*, 37 OSGOODE HALL L.J. 52 (1999); see also THE FRAGILE MIDDLE CLASS, *supra* note 2, at 116 ("The typical failed entrepreneur [in the U.S.] owed four times as much debt as his or her bankrupt wage-earning counterpart. . ."); Ed Flynn & Gordon Bermant, *Lifestyles of the Rich & Bankrupt*, 19 AM. BANKR. INST. J. (Sept. 2000) (finding that in a study of 4,000 no-asset Chapter 7 filings in 84 districts in the U.S., in 27 of 39 cases with the highest unsecured debt, the majority of the debt was business related.).

substantially worse than those reported by the younger petitioners in the sample.<sup>163</sup>

## VI. FAMILY AND BANKRUPTCY

Israel has a relatively low per capita rate of bankruptcy filing. Every year in Israel there is considerably less than one bankruptcy filing for every 1,000 people.<sup>164</sup> That bankruptcy filing rate is three times lower than the personal bankruptcy filing rate in England and Wales, four times lower than New Zealand,<sup>165</sup> at least seven times lower than the consumer bankruptcy filing rate in Australia,<sup>166</sup> nineteen times lower than the personal bankruptcy filing rate in Canada, and thirty-two times lower than the personal bankruptcy rate in the United States.<sup>167</sup> In other words, in 1997, Israel had one

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<sup>163</sup> After removing the outliers, the average debt-to-income ratio of the petitioners aged fifty-five years old or older was 23.6, with a median of 20.95, and a standard deviation of 48.1 (before outliers were removed, the average debt-to-income ratio was 32.07). In contrast, the average debt-to-income ratio of the petitioners younger than fifty-five years old was 14.7, with a median of 10.6, and a standard deviation of 38.65 (before outliers were removed, the average debt-to-income ratio was 20.33). In addition, after removing the outliers, the average net-worth of petitioners aged fifty-five years old or older was -841,231 NIS (or -\$240,351), with a median of -630,383 NIS, and a standard deviation of 619,814 (before outliers were removed, the average net-worth was -861,422 NIS). In contrast, after removing outliers the average net-worth of petitioners younger than fifty-five years old was -650,201 NIS (or \$185,771), with a median of -380,000 NIS, and a standard deviation of 1,172,029 (before outliers were removed, the average net-worth was -799,753).

<sup>164</sup> The personal bankruptcy rate in 1997 was 0.16 per 1,000 Israeli citizens. This figure was calculated by dividing the number of personal bankruptcy filings in Israel in 1997 by the total number of individuals residing in Israel in 1997 who were twenty years old or older. The number of personal bankruptcy filings in 1997 was 587. See Computerized Printouts from the Official Receiver of the Central, Jerusalem and Southern districts (July-Sept. 1998) (on file with author). The number of individuals that were twenty years old or older in 1997 was 3,617,000. See STATE OF ISRAEL CENTRAL BUREAU OF STATISTICS, STATISTICAL ABSTRACT OF ISRAEL 2000, FIGURE 2.19 (2000).

<sup>165</sup> See Paul Heath, *Consumer Bankruptcies: A New Zealand Perspective*, 37 OSGOODE HALL L.J. 427, 430 (1999) ("By 1997, [the annual number of personal bankruptcies in New Zealand] had reached 70 per 100,000 of population.").

<sup>166</sup> See Rosalind Mason & John Duns, *Developments in Consumer Bankruptcy in Australia 2* (July 6, 2001) (unpublished manuscript, on file with author) (reporting a national personal bankruptcy rate of 1.1 per 1,000 head of households).

<sup>167</sup> See THE FRAGILE MIDDLE CLASS, *supra* note 2, at 259 (reporting that in 1997 the personal bankruptcy filing rate per 1,000 citizens was .47 in England and Wales, 3.0 in Canada and 5.1 in the U.S.).

personal bankruptcy for every three English and Welsh, every four New Zealander, every seven Australian, every nineteen Canadian, and every thirty-two American personal bankruptcies. While the limited relief available in Israeli bankruptcy, the high costs of Israeli bankruptcy, the expansive welfare state available in Israel, and the high personal savings rate in Israel may have all contributed to the lower rate of bankruptcy filing in Israel,<sup>168</sup> Israel's low bankruptcy rate might also be attributed to strong familial and community support. Sociologists believe that a strong family system contributes to financial stability.<sup>169</sup>

Researchers have continuously pointed to Israeli's strong family unit.<sup>170</sup> Studies have ascertained the strength of the family unit in Israel by examining various objective demographic data such as: marriage rate, fertility rate, divorce rate, and births outside of marriage. Based on this data, scholars have consistently concluded that Israeli society places an exceedingly high value on the family unit.<sup>171</sup> The centrality of the family unit in Israeli society is a product

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<sup>168</sup> See Rafael Efrat, *Global Trends in Personal Bankruptcy*, 76 AM. BANKR. L.J. 81, 101-108 (2002).

<sup>169</sup> See Greg J. Duncan & Saul D. Hoffman, *A Reconsideration of the Economic Consequences of Marital Dissolution*, 22 DEMOGRAPHY 485, 489 (1985) (suggesting that other things being equal, married people report greater economic stability than divorced people). Cf. ANNEMETTE SORENSEN, ESTIMATING THE ECONOMIC CONSEQUENCES OF SEPARATION AND DIVORCE, IN ECONOMIC CONSEQUENCES OF DIVORCE: THE INTERNATIONAL PERSPECTIVE 263 (Leonore J. Weitzman & Mavis Maclean eds., 1992).

<sup>170</sup> See Dafna K. Izraeli, *Nashim, Avoda, Mishpacha Ve'Mediniut Ziburit [Women, Work, Family and Public Policy]*, in MASH'ABE ENOSH VE-YAHASE AVODA BE-YISRAEL: OFAKIM HADASHIM [HUMAN RESOURCES & INDUSTRIAL RELATIONS IN ISRAEL: NEW HORIZONS] 327, 328 (Arye Globerson et al. eds., 1990) ("There is a general agreement among researchers that Israel is a family-centered society."). Cf. Marilyn P. Safir, Religion, *Tradition and Public Policy Give Family First Priority*, in CALLING THE EQUALITY BLUFF—WOMEN IN ISRAEL 57 (Barbara Swirski & Marilyn P. Safir eds., 1991) (providing detailed examples of the centrality of family life in Israel); Yishai, *supra* note 39, at 121.

<sup>171</sup> See CALVIN GOLDSCHIEDER, FAMILY CHANGE AND VARIATION AMONG ISRAELI ETHNIC GROUPS, IN THE JEWISH FAMILY: MYTHS AND REALITY 131, 133 (Steven M. Cohen & Paula E. Hyman eds., 1987) ("While it is problematic to infer norms from behavior, these data seem to reflect the enormous value placed on marriage, the emphasis on family within Israeli/Jewish culture, and the centrality of the family unit socially, economically, and culturally."); Izraeli, *supra* note 170, at 328 (contending that various objective criteria, including high rate of marriage, high fertility rate and low divorce rate suggest that Israel is a family-centered society); Yishai, *supra* note 39, at 121 (summarizing previous research finding that Israeli society fares much better than all Western and Eastern European countries on at least two of the four key objective measurements of family cohesiveness: rate of



of various factors. The political instability and the continuous state of war facing the nation may have increased the need of people to search for a sense of security and support provided by intimate family relations.<sup>172</sup> Also, the traditional orientation of a substantial number of Israelis, who have immigrated into Israel largely from conservative Moslem countries, has injected into Israeli society a heightened importance of the family unit.<sup>173</sup> Next, some have attributed the strong family bond in Israeli society to the Jewish religion, which strongly emphasizes the value of the family unit in everyday Jewish life.<sup>174</sup> Lastly, some scholars have asserted that the centrality of family in Israeli society is a product of its traditional collectivist social orientation.<sup>175</sup>

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marriage, fertility rate, births outside of marriage, and divorce rate).

<sup>172</sup> See Akiba A. Cohen & Judith Dotan, *Communication in the Family as a Function of Stress During War and Peace*, 38 J. MARRIAGE & FAM. 141, 147 (1976) (finding that during times of war, there was a significant increase in the use of intra-family communication); Izraeli, *supra* note 170, at 328; Yishai, *supra* note 39, at 122 (suggesting that the traumatic events faced by the Jewish people in recent generations, including the Holocaust, contributed to the strengthening of the family unit cell).

<sup>173</sup> See RACHEL PASTERNAK, HAMISHPACHA HA'CHAD HORIT BE'YISRAEL [SINGLE PARENT FAMILY IN ISRAEL] 18 (1989) (suggesting that more than 55% of the Israeli Jews can be characterized as traditionalist by orientation, who emphasize the importance of the family unit); Moshe Shuked, *Chutam Ha'aliya Al Chayei Ha'Mishpacha Shel Yozei Morocco Be'Yisrael* [The Impact of Immigration on the Family Life of Jewish Immigrants from Morocco in Israel], 8 CHEVRA VE'REVACHA [SOCIETY & SOCIAL WELFARE] 3, 12 (1987-1988) (contending that Moroccan Jews, who have immigrated to Israel, have continuously demonstrated tendencies for strong family ties traced to the traditional values embedded in the Jewish community in Morocco relating to firm emotional bond and intra-family trust and responsibility); Yishai, *supra* note 39, at 122 (asserting that Israeli society is family-centered partly because of its demographics—a significant number of its population immigrated from countries with strong family traditions).

<sup>174</sup> See Pasternak, *supra* note 173, at 18; Yishai, *supra* note 39, at 122.

<sup>175</sup> See Izraeli, *supra* note 170, at 328 (suggesting that in Israeli society, collectivist tendencies encourages population growth in the majority Jewish population to counter any demographic threat posed by its minority Arab population); Yochanan Peres & Ruth Katz, *Stability and Centrality: The Nuclear Family in Modern Israel*, 59 SOC. FORCES 687, 698-700 (1981) ("In Israel the individual feels less anonymous than his counterpart in the modern West, not only because he lives in a tiny state, but also because the tradition of respect for privacy carries much less force, and values of mutual help and responsibility are somewhat more emphasized."); Yishai, *supra* note 39, at 122-23 (contending that the strong emphasis placed on the family unit in Israel is the result of a relative lack of individual anonymity and strong social control).

The centrality of family life in Israel manifests itself in numerous ingrained practices of inter-generational family support. One study has documented the pervasive practices of family support in Israeli Jewish families, finding that almost half of the elderly respondents reported aiding their adult children in one way or another, and more than half of the elderly respondents reported receiving aid from their children.<sup>176</sup> The family aid is provided in various forms, including parental assistance in purchasing the newly wed a first home,<sup>177</sup> help in establishing or operating a family run business,<sup>178</sup> or assistance in providing general financial support in a time of need.<sup>179</sup> Indeed, studies have suggested that individuals in Israel prefer to receive help from family or extended family members as opposed to resorting to professional or formal help.<sup>180</sup>

While there is no doubt that the safety net afforded by the strong family bond in Israel made it possible for some financially troubled individuals to avoid bankruptcy altogether, family support could not have completely eliminated the need for bankruptcy. Nonetheless, even among the petitioners in the Israeli bankruptcy sample, one can find ample evidence of strong family and community support. Indeed, in the vast majority of the bankruptcy

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<sup>176</sup> See Howard Litwin, *Support Network Type and Patterns of Help Giving and Receiving Among Older People*, 24 J. SOC. SERVICE RES. 83, 91-92 (1999).

<sup>177</sup> See Bar-Nathan, et al., *supra* note 150, at 25 ("The absence of a well-developed mortgage market [in Israel] implies that housing is largely financed out of own resources, and parents help their children in financing housing purchases."); Habib, *supra* note 154, at 14-15 ("[P]atterns of intergenerational resource transfer are very strong in Israel. . . . The major form of such dependency is in the finance of housing ownership for young married offspring. Support of this kind is very common in Israel. Ninety-three percent of young couples who owned an apartment in 1971 were found in a national survey to have received support from their parents for their home purchase. On the average, this assistance represented 56% of the cost of the apartment."). See Spierlman, *supra* note 134, at 103 (reporting that by the end of the 1980s, 64% of newly wed couples received financial assistance from parents or other family relatives in the purchase of a home).

<sup>178</sup> See Razin, *Social Networks*, *supra* note 112, at 174 (reporting that over 30% of Moroccan entrepreneurs depended on loans from family members to establish their businesses).

<sup>179</sup> See Habib, *supra* note 154, at 15 ("A recent survey . . . found that 25% of young male adults aged 24-26 (almost 70% of whom were married) continued to rely on their parents as the main source of support, as did 16% of the females.").

<sup>180</sup> See Yoel Yanun & Tuvia Melamed, *Hakesher Ben Tiv Ha'hityachsut El Hareshet Hachevratit Vebe Chipus Ezra Mesuchnei Ezra Shunim* [The Connection between Attitudes towards Social Network and the Search for help from Various Social Agents], 29 BITACHON SOCIALI [SOC. SEC.] 127, 139 (1986).

files, there was some indication that the petitioners had received some form of financial and/or non-financial assistance from their family members to help them cope with their economic turmoil.<sup>181</sup> Assistance began flowing to the debtors well ahead of bankruptcy. In one of every six bankruptcy cases in the sample, family members loaned the petitioners money well before filing. The money was used for a variety of purposes, as funds for a new or existing business, for repayment of old debts, or to meet living expenses.<sup>182</sup>

However, most of the assistance documented in the files took place post-petition. The post-petition assistance included monetary relief, such as supplementing the debtor's household income,<sup>183</sup> or guaranteeing the debtor's settlement offer in bankruptcy.<sup>184</sup> However, the post-petition assistance also included some important non-monetary relief, including shelter and food.<sup>185</sup> While family-

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<sup>181</sup> In dealing with their financial trouble, 93.6% of the petitioners reportedly sought financial and/or non-financial help from their family members.

<sup>182</sup> Among the petitioners in the bankruptcy sample, 13.9% reportedly owed money to family members.

<sup>183</sup> See, e.g., Official Receiver case number 135/97 (Central District) (where debtor's parents-in-law supplemented debtor's monthly income during bankruptcy); Official Receiver case number 109/97 (Central District) (involving homeowner debtor, in late thirties and father of five, who received significant post-filing financial assistance from his father and his grandmother); Official Receiver case number 191/96 (Central District) (involving mid-thirty year old debtor, married with five children, reportedly receiving financial support from his parents while in bankruptcy); Official Receiver case number 116/98 (Central District) (involving the debtor, a father of eight, who was reportedly receiving financial help from various family members and neighbors to supplement his post filing income); Official Receiver case number 154/96 (Southern District) (involving debtors, both in their fifties, who were receiving approximately \$285 per month from their two children who were in their early twenties as well as receiving \$140 per month from the husband's brother and a similar amount from the wife's sister); Official Receiver case number 1058/97 (Northern District) (where both debtors, in their early fifties, were unemployed and dependent on disability benefits, and to finance their living expenses, were heavily relying on help from their adult sons, one a butcher and the other an auto painter); Official Receiver case number 1078/96 (Northern District) (involving debtor whose mother-in-law was giving the petitioner \$115 per month to help pay monthly expenses).

<sup>184</sup> See, e.g., Official Receiver case number 1072/96 (Northern District) (involving debtor whose post-petition settlement offer to his creditors included a promise of monthly payments personally guaranteed by debtor's family relatives).

<sup>185</sup> See, e.g., Official Receiver case number 420/96 (Central District) (involving unemployed debtor relying on his retirement funds, government subsidy, community loans, and food from his parents and parents-in-law to finance post-petition living expenses); Official Receiver case number 548/96 (Central District) (involving debtor divorcing his wife (who obtained custody of their two young

based support was the pre-dominant type of assistance received by the debtors in the bankruptcy sample, some files have also documented financial and non-financial community-based support provided to the debtors, especially in religious communities.<sup>186</sup>

Paradoxically, while family support that was provided to many debtors enabled some of them to avoid bankruptcy altogether or to deal with bankruptcy more effectively, the strongly embedded culture of family support was the triggering event of bankruptcy for others. Accountability and a deep-rooted sense of responsibility to ones' own, prompted many debtors in the bankruptcy sample to guarantee debts of their family members.<sup>187</sup> The overwhelming, and at times unanticipated, financial burden associated with personal

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children) following the financial trouble following business failure and then moved to live with his parent.); Official Receiver case number 288/97 (Central District) (involving a fifty-year-old debtor, who was married and had a twenty year old child, moving to his parents' house following the debtor's house foreclosure and repossession of personal effects); Official Receiver case number 24/97 (Central District) (involving debtors who, after selling their house to pay off some of the creditors, and who were in the early forties, moved in with the husband's parents, along with the debtors' two young children); Official Receiver case number 154/97 (Jerusalem District) (involving a fifty-years-old petitioner who moved into his mother's house after the court awarded the petitioner's ex-wife their house); Official Receiver case number 190/96 (Jerusalem District) (involving single, thirty-three year old debtor who moved in with his parents reportedly to minimize his postpetition monthly rental income); Official Receiver case number missing (Northern District) (involving a divorced debtor, who was forty-nine years old and a father of four children, who moved into his brother's house to minimize postpetition living expenses).

<sup>186</sup> See, e.g., Official Receiver case number 420/96 (Central District) (involving an unemployed debtor who relied on his retirement funds, government subsidy, community loans, and food from his parents and parents-in-law to finance postpetition living expenses); Official Receiver (Jerusalem District) (involving petitioner, who was living in an Orthodox Jewish community in Jerusalem, and had been able to survive despite his monthly income deficit because he had been receiving a basket of food left outside of his apartment once every week from an unknown source; at times, the basket of food also included as much as \$150 in cash (his neighbors financed the attorneys' fees in the bankruptcy case); the petitioner also reported that on several occasions he received financial help to pay his electricity bill from the local office of the Institute for the Keeping of Sabbath). The practice of community-based support in religious communities in Israel was described in JOSEPH SHIHAV & MENACHEM FRIEDMAN, GROWTH AND SEGREGATION: THE ULTRA ORTHODOX COMMUNITY OF JERUSALEM 17 (1985) (detailing the community-based financial support organizations operating in one orthodox community in Israel).

<sup>187</sup> In the bankruptcy sample, 71.8% of the petitioners were reportedly guarantors. Among the petitioners that were guarantors, 26.6% of them, or 19.1% of the entire bankruptcy population, guaranteed debts to family members.

guarantees that became due once the primary obligor was unable to fulfill the underlying obligations, forced some guarantors to resort to bankruptcy.<sup>188</sup>

Interestingly, legislators, in formulating bankruptcy laws, and administrators, in enforcing the bankruptcy laws, have presumed that debtors in bankruptcy do indeed receive a certain level of family support, namely from their children. In calculating debtor's income for purposes of determining debtor's repayment ability, the Official Receiver and the courts add the earnings of the debtor's children, no matter how old they are, as long as they live with the debtor.<sup>189</sup> Underlying this regulation and practice is the expectation by the government that children should, and in fact will, assist their bankrupt parent by contributing their own income to repay their parents' debts. Initially it may appear that the government is acting on a genuine and sincere belief in the inherent interdependency of

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<sup>188</sup> See, e.g., Official Receiver case number 1597/96 (Southern District) (involving a debtor whose entire financial trouble arose out of signing eighteen personal guarantees benefiting his brother's now defunct business enterprise); Official Receiver case number 5037/97 (Southern District) (involving debtor, an unemployed unskilled laborer, filing for bankruptcy protection after signing several personal guarantees in favor of his former employer); Official Receiver case number 106/98 (Central District) (involving a fifty-one year-old clerk who filed for bankruptcy protection because the personal guarantees he signed on behalf of his son's business were now in default). Financial trouble arising out of personal guarantees was also reported in the United States. See DAVID CAPLOVITZ, CONSUMERS IN TROUBLE: A STUDY OF DEBTORS IN DEFAULT 53 (1974) (reporting that 8% of defaulting debtors cited "third party" reason, often their co-signing of a relative's credit instrument, for their financial trouble).

<sup>189</sup> See, e.g., Official Receiver case number 121/97 (Jerusalem District) (where, in determining the debtor's ability to make monthly payments, the court added up the debtor's earnings, welfare benefits, spouse's earnings, and the earnings of the debtor's adult daughter, who was living with the debtor); Official Receiver case number 706/97 (Central District) (involving a sixty-year-old unemployed and unskilled debtor who, during the hearing for a receiving order, contended that he would not be able to continue making monthly payments of \$30 to creditors as his household monthly expenses exceed his household income; responding, the Official Receiver argued that while the debtor himself may not be able to make those monthly payments, he can and should get financial help from his three adult children); Official Receiver case number 456/97 (Central District) (finding that the expectation for working adult children to assist their debtor-parent(s) is reflected in one of the questions appearing in the bankruptcy schedule relating to the earnings of adult children living with the petitioner). See generally YISRAEL ITSKOVITS, BE-HEZKAT ASHEM: HAKOL AL HA-MISHPAT VEHA-MISHPACH BE'YISRAEL, [PRESUMED GUILTY] 114 (1997) (reporting that a representative from the Israeli Official Receiver demanded that the petitioner's minor son work to increase the debtors' debt repayment).

the family unit in Israel. Yet in reality, the government's main objective is to maximize collection for purposes of distribution to creditors. Indeed, on several occasions the Official Receiver demanded that a stay-at-home mother go back to work in order to increase household earnings.<sup>190</sup>

Just as a cohesive family unit generally offers a certain degree of financial stability,<sup>191</sup> family turmoil may lead to financial distress.<sup>192</sup> Indeed, a number of studies in the United States have documented a close association between divorce and bankruptcy.<sup>193</sup> The close connection between bankruptcy and divorce may be the result of family problems leading to financial difficulties.<sup>194</sup> In the alternative, financial challenges may result in family instability.<sup>195</sup> This linkage between family instability and bankruptcy was also detected in the Israeli bankruptcy sample.<sup>196</sup> Indeed, almost 5% of the petitioners in the Israeli bankruptcy sample identified family break-up as a

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<sup>190</sup> See, e.g., Official Receiver case number 135/97 (Central District) (where Official Receiver questioned why the debtor's spouse, who was a stay home mother, was not working or at least looking for a job in lieu of taking care of the children).

<sup>191</sup> See *supra* note 175.

<sup>192</sup> See Duncan & Hoffman, *supra* note 169, at 489 (suggesting that other things being equal, married people report greater economic stability than divorced people); SORENSEN, *supra* note 169, at 263-82.

<sup>193</sup> See General Accounting Office, Bankruptcy Reform Act of 1978—A Before and After Look, GAO/GGD-83-54 (July 20, 1983); Ramona K.Z. Heck, An Econometric Analysis of Interstate Differences in Nonbusiness Bankruptcy and Chapter Thirteen Rates, 15 J. CONSUMER AFFAIRS 13, 22-23 (1981); Sullivan, Warren & Westbrook, *supra* note 10, at 209-13 (providing a comprehensive review of the relationship between family problems and bankruptcy).

<sup>194</sup> See Caplovitz, *supra* note 188, at 53 (reporting that 109 of the nearly 2000 families in default attributed their debt default to some sort of family problem); BARBARA D. WHITEHEAD, THE DIVORCE CULTURE 93 (1997) ("[T]he empirical evidence established that divorce was an important cause of economic disadvantage and not simply, as others had earlier argued, an effect.").

<sup>195</sup> See CAPLOVITZ, *supra* note 188, at 284 (reporting that 9% of debtors in default subsequently divorced or separated because of the debt problem and 34% identified increased marital tension following the debt problem).

<sup>196</sup> See, e.g., Official Receiver case number 5087/97 (Southern District) (involving debtor who reported that due to his financial distress arising out of a failing business, he and his wife separated and were in the process of divorce); Official Receiver case number 1574/96 (Southern District) (involving fifty-two-year-old debtor, a father of nine, who reported that following thirty-one years of marriage, his wife decided to divorce him due to his difficult financial condition); Official Receiver case number 548/96 (Central District) (where following his business failure, the debtor's marriage ended with his wife getting custody of their two children).

primary cause of their bankruptcy filing.<sup>197</sup> In contrast, more than 15% of petitioners in the United States have identified marital dissolution as a direct cause of their bankruptcy filing.<sup>198</sup> The primary reason for this three-fold disparity is the lower divorce rate in the Israeli general population. While the divorce rate in Israel has been increasing recently,<sup>199</sup> Israel still maintains a relatively low divorce rate<sup>200</sup> that is approximately four times lower than that recorded in the United States.<sup>201</sup>

Marital dissolution was not a major factor leading to bankruptcy in the Israeli sample, but nonetheless divorced or separated individuals are overrepresented in the Israeli bankruptcy sample. In 1996, roughly 15% of the Israeli bankruptcy sample was divorced or separated at the time of petition, compared with about 4% in the general population.<sup>202</sup> This data demonstrates that divorced or separated people are almost four times more likely to find themselves in bankruptcy than any other group.<sup>203</sup> Divorced or

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<sup>197</sup> Specifically, 4.4% of the petitioners in the sample attributed marital problems as a primary cause of their bankruptcy filing. Among the divorced or separated petitioners in the sample, 21.4% identified marital problem as a lead cause of their bankruptcy filing.

<sup>198</sup> See THE FRAGILE MIDDLE CLASS, *supra* note 2, at 182.

<sup>199</sup> See PASTERNAK, *supra* note 173, at 20 (asserting that up until the late 1970s, Israeli population was known for having one of the lowest divorce rates in Western Europe, but beginning in 1978 the divorce rate has grown by at least 25%).

<sup>200</sup> See GOLDSCHIEDER, *supra* note 108, at 142 (“Divorce rates have been remarkably stable and low over time in Israel. . . . Recent evidence suggests that in the period 1974 through 1978 there has been an increase in divorce levels which have characterized recently married couples. . . . Nevertheless, the overall level of divorce remains low.”); Peres & Katz, *supra* note 175, at 690 (“Israel’s marriage and divorce rates seem to resemble those of traditional and predominantly agrarian societies . . .”).

<sup>201</sup> Compare Ruth Katz & Yochanan Peres, *Magamot Hagirushim Be’ Yisrael Ve’ Hashlachothet letipul Mishpachti* [*Divorce Trends in Israel and their Implications on Family Care*], 16 CHEVRA VEREVACHA [SOC. & WELFARE] 483, 491 (1996) (reporting that in 1992, the divorce rate was 5.3 per 1,000 Jewish women fifteen years old or older and 4.2 per 1,000 for Arab women fifteen years old or older) with THE FRAGILE MIDDLE CLASS, *supra* note 2, at 340 n.24 (reporting that the divorce rate in the U.S. bounced between 20.5 and 21 per 1,000 married women since 1990).

<sup>202</sup> The percentage of divorced and/or separated petitioners in the bankruptcy sample was 14.6. The percentage of divorced petitioners in the general population was 4.03. See 50 ISRAEL CENTRAL BUREAU OF STATISTICS, STATISTICAL ABSTRACT OF ISRAEL 1999, tbl. 2.19 (1999) (the percent of divorced people in the general population was calculated by dividing the number of divorced individuals in 1996 (162,200) by the number of people that were fifteen years old or older (4,021,100)).

<sup>203</sup> Married people, for example, have proportionate representation in

separated people were also similarly overrepresented in the bankruptcy samples in the United States and Canada.<sup>204</sup>

The overrepresentation of divorced or separated individuals in bankruptcy could be the result of their overall weaker financial state in society. It is a challenge in and of itself for a team of two to address the diverse financial and non-financial needs of a household. But it is that much more difficult for one adult to confront these challenges alone, especially the financial commitments undertaken by two people who are now apart.<sup>205</sup> Indeed, studies suggest that marital dissolution results in a substantial decline in post-dissolution income, leading many to economic distress,<sup>206</sup> as well as psychological pressure.<sup>207</sup> The

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bankruptcy. Seventy-eight percent of both the sampled adults in the general population as well as the sampled bankruptcy petitioners in Israel were married. See Lewin-Epstein et al., *supra* note 100, at 1448 (reporting that the average percentage of married individuals in the adult population in Israel was derived by adding the weighted average of the average percentages of married couples in the three ethnic groups sampled in that study).

<sup>204</sup> See THE FRAGILE MIDDLE CLASS, *supra* note 2, at 183 (reporting that about 10% of the general population in the U.S. was divorced in 1991, compared to 30% in the bankruptcy sample who were either divorced or separated at the time of bankruptcy); Schwartz, *supra* note 19, at 93 (reporting that about 8% of the Canadian general population was divorced or widowed in 1996, compared to 30% in the Canadian bankruptcy sample).

<sup>205</sup> See THE FRAGILE MIDDLE CLASS, *supra* note 2, at 173.

<sup>206</sup> See Ruth Katz & Yochanan Peres, *The Sociology of the Family in Israel: An Outline of its Development from the 1950s to the 1980s*, 2 EUR. SOC. REV. 148, 155 (1986) (describing the post-divorce economic distress faced by divorced and single parent families in Israel due primarily to a sharp cut in income). Studies outside of Israel also report similar findings. See, e.g., Richard V. Burkhauser et al., *Wife or Frau, Women Do Worse: A Comparison of Men and Women in the United States and Germany after Marital Dissolution*, 28 DEMOGRAPHY 353, 355 (1991) (reporting a substantial post-divorce income drop for German and American divorcees); Duncan & Hoffman, *supra* note 169, at 489 (indicating that income drops for both spouses—7% for men and almost 20% for women—in the year following a divorce or separation); Pamela J. Smock, *The Economic Costs of Marital Disruption for Young Women over the Past Two Decades*, 30 DEMOGRAPHY 353, 358-59 (1993) (finding a 20% decline in post-divorce income for white women in the first year following divorce, but a modest gain for men).

<sup>207</sup> See REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, H.R. DOC. NO. 93-137, pt. I, at 53 (1973); (“[P]ersonal problems are intimately related in a great many personal bankruptcy cases.”); CAPLOVITZ, *supra* note 188, at 280-85; Martin Ryan, *Consumer Credit, Debt Poverty and Counseling: The Australian Experience*, 35 BRIT. J. SOC. WORK 217, 222 (1992) (“[P]hysical and emotional problems relating directly to financial problems were extensive with 42 percent feeling tense or anxious and 30 percent who had sleeping problems. At least one-quarter of respondents also reported headaches, loss of appetite and an



combined effect of the economic and the psychological stress inevitably results in a higher vulnerability to bankruptcy.

Just as divorcees in the general population, divorcees or separated people in bankruptcy are also in deep financial strain. While statistically insignificant, as a group, divorcees or separated petitioners own just over a quarter of the value of assets owned by married petitioners in the bankruptcy sample.<sup>208</sup> Further, divorcees or separated petitioners earn only two-thirds as much as married petitioners.<sup>209</sup> Lastly, while divorced or separated petitioners have statistically insignificant but somewhat lower debts than married insolvent couples,<sup>210</sup> the much lower income of the one-person head of household contributed to their dismal and much higher debt-to-income ratio of eighteen.<sup>211</sup>

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upset stomach as directly attributable to financial problems.”).

<sup>208</sup> After outliers were removed, divorced or separated petitioners in the bankruptcy sample owned on average 158,647 NIS (or \$45,327) worth of assets, with a median of 3,600 NIS and a standard deviation of 548,591. After outliers were removed, married petitioners in the bankruptcy sample owned on average 564,533 NIS (or \$161,295) worth of assets, with a median of 577,750 NIS and a standard deviation of 374,968. Before outliers were removed, divorced or separated petitioners in the sample owned on average 244,582 NIS (or \$69,880) worth of assets and married petitioners owned on average 597,600 NIS (or \$170,742) worth of assets.

<sup>209</sup> After outliers were removed, divorced or separated petitioners in the bankruptcy sample reportedly had on average household monthly earnings of 4,319 NIS per month (or \$1,234), with a median of 3,500 NIS and a standard deviation of 2,877. After outliers were removed, married petitioners in the bankruptcy sample had on average household monthly earnings of 7,531 NIS (or \$2,151), with a median of 6,100 NIS and a standard deviation of 4,464. Before outliers were removed, divorced or separated petitioners had on average household monthly earnings of 4,453 (or \$1,272) and married petitioners had on average household monthly earnings of 7,822 NIS (or \$2,234). This difference is statistically significant, at .004.

<sup>210</sup> Divorced or separated petitioners had lower debts than married petitioners because of the lower attribution of financial demise to a failing business enterprise among the divorced or separated petitioners in the sample. Among married petitioners, 77.6% identified entrepreneurial failure as a primary cause of bankruptcy, but only 73.3% of the divorced or separated petitioners did the same. After outliers were removed, divorced or separated petitioners in the bankruptcy sample owed on average 788,360 NIS (or \$225,245), with a median of 493,464 NIS and a standard deviation of 1,375,486. After outliers were removed, married petitioners in the bankruptcy sample owed on average 1,013,108 NIS (or \$289,459), with a median of 772,674 NIS and a standard deviation of 1,173,365. Before outliers were removed, divorced or separated petitioners owed on average 1,003,042 NIS (or \$286,583) and married petitioners owed on average 1,152,460 NIS (or \$329,274). This difference is not statistically significant.

<sup>211</sup> After outliers were removed, divorced or separated petitioners in the

## CONCLUSION

Both of the alternative hypotheses articulated in the introduction of this Article relating to the representation of disadvantaged groups in bankruptcy seem to have been validated to some extent in this study. The first hypothesis asserted that members of the disadvantaged groups may be overrepresented in bankruptcy because of their weaker financial position in society at large. Indeed, the divorced and the Easterners' overrepresentation in the bankruptcy sample may partly be the product of their fragile financial state in the general population.

However, weaker financial condition in society could not have explained the underrepresentation of the other disenfranchised groups examined in this study. Instead, the underrepresentation of the elders and the Arabs in the bankruptcy sample may be partly attributed to their lower access to credit and their cultural distaste for debt. Elders in the sample reported dramatically lower consumer and mortgage debt compared to that reported by the younger cohort in the study. This lower debt burden among the elders may be the result of their culturally embedded distrust of debt in general and/or the historical unavailability of mortgage debt in Israel. Similarly, the Arabs' strong traditional cultural norm of risk aversion, cohesive family unit (which reduced the need of debt undertaking), and possible limited access to credit in Israel have all contributed to the much lower debt exposure and susceptibility to bankruptcy.

However, the principal explanation for the overrepresentation of some disenfranchised groups and underrepresentation of others may be the differing propensity to become entrepreneurs among these groups. As the vast majority of petitioners in Israeli bankruptcy were former entrepreneurs, the underrepresentation of women, immigrants, elders and Arabs in the Israeli entrepreneurial sector has resulted in their similar underrepresentation in the

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bankruptcy sample reportedly had on average a debt-to-income ratio of 18.19, with a median debt-to-income ratio of 15.01 and a standard deviation of 74.8. After outliers were removed, married petitioners in the bankruptcy sample had on average a debt-to-income ratio of 14.94, with a median debt-to-income ratio of 10.48 and a standard deviation of 12.17. Before outliers were removed, divorced or separated petitioners had on average a debt-to-income ratio of 31.55 and married petitioners had on average a debt-to-income ratio of 15.93. This difference is highly statistically significant at beyond the .001 level.

bankruptcy population. Likewise, the overrepresentation in the Israeli entrepreneurial sector of Easterners as well as the Easterners' inferior entrepreneurial characteristics have both contributed to their overrepresentation in the Israeli bankruptcy sample.

As expected, petitioners belonging to the weaker groups in Israeli society had lower earnings when compared to petitioners from the dominant groups in society. The lower earnings reported by the bankruptcy petitioners belonging to the disadvantaged groups in Israeli society paralleled the earning disparity in society at large. Similar to some of the contributors to this earning disparity in society at-large, the earning differences in the bankruptcy sample could also be attributed to higher unemployment rates among the female, Arab, and elderly petitioners. Furthermore, occupational segregation present in the Israeli labor force was also detected among female, Arab, and Easterner petitioners. Lastly, the lower earnings reported by the elders in the bankruptcy sample could also be attributed to their more fragile state of health.

Also as anticipated, petitioners belonging to the weaker groups in Israeli society reported lower asset holdings when compared to petitioners from dominant groups in society. Just as the value of assets held by Arabs, Easterners, and the elderly in Israeli society is lower than the value of assets held by Jews, Westerners and the younger people, respectively, a similar disparity between these groups was also detected in the bankruptcy sample. Again, the same reasons for the value disparity in the general population seem to reappear in bankruptcy, namely lower homeownership rate and/or lower home value.

Nonetheless, while the weaker groups in bankruptcy had lower earnings and asset holdings, their overall financial condition was not necessarily inferior. When compared to some of the dominant groups in Israeli society, some disadvantaged groups, such as women, Arabs, and Easterners had a superior debt-to-income ratio and higher net-worth.

The reason for this counter-intuitive result of the weaker groups in society reporting better overall financial condition is that their debt burden seems to have been substantially lower than the debt burden carried by the dominant groups in the bankruptcy sample. While limited access to credit may have been part of the reason for the lower reported debt burden among some of the disadvantaged groups, it seems that the primary reason for their

lower debt burden was the difference in the attributed cause of bankruptcy between disadvantaged groups versus the non-disadvantaged groups. When compared to petitioners in the dominant groups in bankruptcy, women, Arabs, and Easterners in the bankruptcy sample reported a significantly lower rate of financial demise due to a business failure. Since entrepreneurs generally tend to incur substantially more debts than wage earners, women, Arabs and Easterners have all reported a lower debt burden and hence an overall better financial condition when compared to members of the dominant groups.

However, not all the disenfranchised groups in Israeli society examined in this study reported better overall financial condition. Older people, for example, not only reported lower earnings and lower asset holdings, but also reported higher debt-to-income ratio when compared to the younger cohorts in the bankruptcy sample. Again, the reason for the inferior overall financial condition among the weaker elderly petitioners is their higher debt burden, which was the product of the fact that a higher rate of older petitioners attributed their financial demise to business failure, compared to petitioners in the younger cohort.