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Book Review: Hansen, Mary Eschelbach, and Bradley A. Hansen, *Bankrupt in America: A History of Debtors, Their Creditors, and Law in the Twentieth Century*. Chicago: University of Chicago Press, 2020. 222 Pp.

Mary and Bradley Hansen have already produced some of the most important articles on bankruptcy in America. In this book, the Hansens take their past research, as well as new data on bankruptcy petitions, and create a surprising history of personal bankruptcy in the twentieth century.

There are a few key takeaways in this book. The first is that bankruptcy is not a product of “hard times.” In fact, bankruptcy tends to surge most during booms, such as during the 1920s, ‘50s, and ‘80s, when credit is easy and more people are borrowing. By contrast, bankruptcies were stable during the 1930s. The same truths hold when looking at economic conditions state-by-state.

These trends reinforce the argument the Hansens make throughout, namely, that the path to bankruptcy goes through many steps, all of which can be differentially affected by laws and economic conditions. To get to a bankruptcy filing, a debtor must first request a loan, which a creditor must accept. Then a debtor needs to default, and a creditor needs to attempt recovery, and then, finally, a debtor needs to file a bankruptcy petition. The final outcome, bankruptcy, depends on interactions between all of these stages and several outside factors. The Hansens use their extensive dataset on state laws and federal bankruptcy filings to tease out what factors are important.

The book shows that the premier determinant of bankruptcy is state law governing creditors’ rights. Most importantly, states with stronger “wage garnishment” laws tended to have much more bankruptcy, all else equal. Wherever states allowed creditors to capture large parts of worker wages, workers were more likely to find refuge in bankruptcy. This was true for every era they studied.

Most of the factors that mattered to bankruptcy filings, however, were time dependent. For instance, in the 1920s, the Russell Sage Foundation encouraged states to pass “small loan laws,” which allowed for higher interest rate small-dollar loans, outside of typical usury limits. The goal was to provide an alternative to the local loan shark. States with small loan laws had more access to credit, which more than doubled their bankruptcy rate relative to states without them. Yet, as the Hansens demonstrate, the connection between more small loans and more bankruptcies only occurred in states with laws encouraging wage garnishment.

Some of the interaction effects could be surprising. For instance, after the 1960s, increases in Medicaid enrollment often led to increases in bankruptcy. More access to health care led to more medical spending and more medical borrowing, and thus more defaults.

The book shows how federal legal changes tamped down some of the effects of state laws in the second half of the twentieth century. The 1968 Consumer Credit Protection Act set a national “floor” for exempting a portion of wages from garnishment. The US Supreme Court case of *Sniadach v. Family Finance Corporation* (1969) limited automatic garnishment without

## Book Reviews

going through a court process. The result of these pro-debtor changes was an overall decrease in bankruptcy, especially in states with previously pro-creditor laws.

By contrast, *Marquette National Bank v. First Omaha Service Corporation* (1978) allowed national banks to export the usury limit of their home state in making loans to borrowers in other states. This limited the power of states to control borrowing and the result was a massive increase in credit card lending and a concomitant increase in bankruptcy.

In addition to the empirical findings, this book takes a detailed, qualitative look at the political economy around personal bankruptcy laws. It thus supplements the work in David Skeel's fine book on bankruptcy law history, *Debt's Dominion*, which focused on business bankruptcy. The Hansens' book emphasizes how the first permanent bankruptcy law in American history, in 1898, came out of the desire of Republicans and large corporations to create a national and uniform bankruptcy process. Democrats and local merchants opposed the law precisely because they liked how the state laws favored local merchants.

The 1898 bankruptcy law was aimed almost entirely at business bankruptcy, and everyone was surprised when, by the 1920s, personal bankruptcies overtook business. Democrats came to see the advantages of workers "discharging," or erasing, all of their old debts, as was allowed in the original, and all subsequent, bankruptcy laws. For the next 80 years, bankruptcy law was almost bipartisan. Even the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act, led by creditor groups and the Republican Party, secured about half of the Democratic votes in Congress. (The book doesn't mention it, but then-Senator Joe Biden voted for the law, supposedly encouraged by financial firms in his home state of Delaware, earning him the lasting enmity of consumer debtor advocate Elizabeth Warren.)

On the whole, the book reads like a series of journal articles, since each chapter has an appendix where the authors explain their sources, their data, and their analysis. But such background is crucial for understanding the authors' arguments, and it demonstrates the careful analysis that went into them.

If I had one complaint about the book, it would be that it spends an immense amount of time explaining all the things that cause bankruptcy, but there is little discussion of the costs and benefits of bankruptcy itself. Obviously, all things equal, going bankrupt is bad. Yet, as the authors point out, bankruptcy itself is often a result of more abundant credit, and a bankruptcy filing allows people to escape their onerous debts. Should we view the surge in bankruptcy from 1980 to 2005, for instance, as largely a positive result of access, or a negative result of too-easy credit, or a result of other sorts of stresses on borrowers? It's hard to know, and this book doesn't try to argue the case one way or the other.

Yet such an analysis would take the book far beyond its topic. The laser-like focus on bankruptcy law and its effects on filings are what makes this slim book pack such a punch. This work, along with Skeel's, should be the first stop for anyone studying bankruptcy in America.

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### Works Cited

Skeel, David. *Debt's Dominion: A History of Bankruptcy Law in America*. Princeton: Princeton University Press, 2001.