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# Reply to Elizabeth Warren


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# REPLY TO ELIZABETH WARREN

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Professor Warren's empirical work is always disarming.[1] It wrenches us from the moorings of comfortable suppositions, threatening what we have always believed about debt and what debtors are like.[2] Hers, like any empirical work, is unforgiving, exposing the stories and images that are the conceptual bases of our understanding of borrowing and borrowers as apocryphal. *Families Alone* chronicles a bizarre evolution in the "financing" of public education[3] and, in the process, paints a surprising portrait of the consumer debtor in bankruptcy. The resulting likeness bears little resemblance to familiar caricatures of irresponsible, credit-card-slinging hedonists obsessed with the trappings of opulence which they enjoy immediately on the strength of empty promises to pay later.[4] The latter profile still pervades the popular

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1. *See, e.g.*, TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA (1989). The book refutes to incredulity the assumptions from which many "armchair theories" of bankruptcy and proposals for reform derive. *Id.* at 335.

2. *See id.* at pt. I (describing a highly diverse and complex consumer bankruptcy debtor population in rebuttal of stereotypes).

3. "Now, instead of all Americans taxing themselves to provide a good education for all children, parents are left to opt-in to a decent school by paying for an expensive home — if they can." Elizabeth Warren, *Families Alone: The Changing Economics of Rearing Children*, 58 OKLA. L. REV. 551, 569 (2005).

I am struck by the perversity of funding public education indirectly through home mortgages — spending one's way into a better school district, as it were, rather than investing directly to improve the worse ones. This is the bizarre evolution to which I refer. Presumably, where the public school system fails to provide what is believed to be the right sort of educational opportunities, the burden falls to the family to find another way. *See id.* at 556-58. That other way, it would seem, is to move to good schools rather than to make worse schools better. *See id.* at 567-69. In light of the resultant staggering debt and annual bankruptcy filings, that burden is apparently more than the family can bear. *See id.* at 569. Yet there seems to be no end in sight, just interminable rounds of overborrowing, excessive debt levels, default, foreclosure, and bankruptcy.

4. For instance, family housing upgrades do not consist of extra leisure space, hot tubs, or fancy designer appliances. *Id.* at 562. Rather, they appear to consist of practical improvements. *Id.*; *see also* SULLIVAN, WARREN & WESTBROOK, *supra* note 1, at 188-89 (stating that credit card "junkies" represent a relatively small fraction of consumer bankruptcy debtors).

consciousness, and it is the story told by creditors who lobby to limit access to the safe harbor of bankruptcy.[5]

*Families Alone* tells a very different story of debtors in bankruptcy and the kind of borrowing that lands them there. These debtors consist in large measure of middle-class, backbone of America families desperate to educate their children from near cradle to early adulthood.[6] By popular consensus, it seems there can be no real success, no meaningful accomplishment, without a college degree,[7] and the sooner one begins preparing to get one the better.[8] "Sooner" means that an academic career begins before elementary school.[9] Once thought of as interludes in the day of children otherwise frittering their time away at home, kindergarten and preschool have become critical educational episodes, requisite steps along the path to a college education.[10] The costs at both ends have traditionally been borne by families, by the parents who decided to have children for whatever reasons.[11]

Then there are the years between preschool and college, the years spent in public school — in elementary school, and perhaps middle and high school. The cost of these important *in-between* years is nominally a public cost, borne alike by taxpayers with children and those without.[12] Alarming disparities in the quality[13] and even the safety[14] of public schools, Professor Warren points out, have driven families with children to shop for the best school districts.[15]

District-shopping necessarily entails living in the school district of choice, and so requires the purchase of a home in neighborhoods privileged with the

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5. *See* Geoff Giles, *The New Bankruptcy Reform Law: Bad News for Debtors, Worse News for Lawyers*, NEV. LAW., Sept. 2005, at 8, 9 ("It [the Bankruptcy Abuse Prevention and Consumer Protection Act] has been sponsored, promoted and lobbied by various creditor's groups, all of whom suppose that it will diminish the losses that they perceive have been directly related to the Bankruptcy Reform Act of 1978.").

6. *See* Warren, *supra* note 3, at 551-52.

7. *Id.* at 574 ("According to a recent survey, 97% of Americans agree that a college degree is 'absolutely necessary' or 'helpful,' compared with a scant 3% claiming that a degree is 'not that important.'").

8. *Id.* at 551 ("[W]hat constitutes a basic education has shifted as well. In a single generation, American families' view of a core education has expanded to include two years of preschool and four years of college. In effect, the years of basic formal education have grown from thirteen to nineteen . . . .").

9. *Id.* at 571.

10. *Id.* at 571-73.

11. *Id.* at 571.

12. *Id.* at 579 ("[F]or more than a century America has taxed *all* of her citizens — including the childless — to offer a free, basic education to every child.").

13. *Id.* at 555-58.

14. *Id.* at 558-60.

15. *Id.* at 556-58, 559-60.

best public schools.[16] Naturally, the supply of homes in public-school-advantaged districts is limited, while the demand is urgent and insatiable in keeping with what is at stake.[17] And, naturally, the cost to families of relocating in premier neighborhoods — premier because of the school districts which encompass them — reflects that supply and demand.[18] Again, at stake is the lifetime well-being of the child, the centerpiece of the family and its most precious commodity, so that the crushing weight of a massive mortgage will never be sufficiently daunting to deter the decision to buy one's way into the best school districts possible.

So, the cost of public education has been reallocated, with families with children to educate doing the heavy financial lifting.[19] But this is only the beginning: there are accessories and attachments that must be had in pursuit of the dream school. For instance, there is the second car to transport a second working spouse to the job,[20] working for the second income needed to qualify for a colossal mortgage.[21] Add inflation to the cost of other "basic categories,"[22] and the financial squeeze on the family electing to have children becomes frightening.[23] Default, foreclosure on first and second mortgages, and bankruptcy may be disturbing by their very nature but, under the aforementioned conditions, hardly remarkable.[24]

Professor Warren makes the case that excessive borrowing leading to financial collapse and bankruptcy is attributable in large part to massive home mortgages and associated debt incurred not to acquire extravagances, but to

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16. *Id.* at 561.
17. *Id.* at 564.
18. *Id.* at 564-65, 569.
19. *Id.* at 579 ("[O]ver the past generation, the family has traveled backwards — fast. Today's parents are asked to bear individually a much larger share of the cost of raising their children . . . .").
20. *Id.* at 571 ("With mom in the workforce and the family located ever further from the city's center, that second car became the only means for running errands, earning a second income, and getting by in the far-flung suburbs.").
21. *Id.* at 567-68.
22. *Id.* at 576 ("Over the past generation, families with children have increased their spending in five basic categories: homes, cars, daycare, tuition, and health insurance.").
23. *Id.*
24. *Id.* at 578 ("[B]y the time they make five basic payments — mortgage, car, daycare, tuition and health insurance — today's two-income family has less money than its one-income counterpart of a generation ago. Increases in those five expenses have eaten up the entire net take home pay of a working mother — and more. Any additional costs — time off from work to care for a sick child, increased expenses for work clothes for two adults — must be squeezed somewhere else in the budget. Given these high fixed expenses, the rise in home mortgage foreclosures, bankruptcies, credit card defaults, and other signs of financial distress are unsurprising.").

finance the education of children of middle-class families. Discourse on consumer bankruptcy generally proceeds from two conceptual categories defined by opposing prototypes. The credit drunk alluded to earlier — who borrows irresponsibly or worse, fraudulently — is the prototype of one conceptual category.[25] The other category is associated with the familiar phrase "honest-but-unfortunate debtor,"[26] a shorthand reference to the other prototype that is perhaps best represented by the debtor whose income is lost or diminished owing to injury, a long- or short-term debilitating medical condition, or loss of employment.[27]

The figures of the honest-but-unfortunate debtor and the irresponsible debtor are creatures of a *public assistance model* of bankruptcy.[28] Likening bankruptcy to public assistance requires a determination of the relief-worthiness of debtors to distinguish the deserving from the undeserving.[29] The two categories of debtors embody that distinction, and it is around those

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25. *See supra* text accompanying note 4.

26. This ubiquitous phrase is frequently traced to *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934), but can be found in earlier cases. Margaret Howard, *A Theory of Discharge in Consumer Bankruptcy*, 48 OHIO ST. L.J. 1047, 1047 n.1 (1987). The stereotype has been central in the conceptual shaping of the fresh start in bankruptcy. Lawrence Ponoroff & F. Stephen Knippenberg, *Debtors Who Convert Their Assets on the Eve of Bankruptcy: Villains or Victims of the Fresh Start?*, 70 N.Y.U. L. REV. 235, 243 n.42 (1995) [hereinafter Ponoroff & Knippenberg, *Debtors Who Convert*].

27. SULLIVAN, WARREN & WESTBROOK, *supra* note 1, at 8 ("Most people would be moved by the plight of a steelworker laid off after years of service, depleted of savings, unable to find a job, and worried to distraction about feeding a family."); *see* Adam Feibelman, *Defining the Social Insurance Function of Consumer Bankruptcy*, 13 AM. BANKR. INST. L. REV. 129, 134 (2005). *See generally* Charles G. Hallinan, *The "Fresh Start" Policy in Consumer Bankruptcy: A Historical Inventory and an Interpretive Theory*, 21 U. RICH. L. REV. 49 (1986) (discussing the importance of the honest-but-unfortunate image of debtors to the "fresh start" policy in consumer bankruptcy law).

28. The model has been expressed variously as public assistance, insurance, and a social safety net. *See, e.g.*, Barry Adler, Ben Polak & Alan Schwartz, *Regulating Consumer Bankruptcy: A Theoretical Inquiry*, 29 J. LEGAL STUD. 585, 587 (2000) (likening bankruptcy relief to wage insurance); Feibelman, *supra* note 27, at 132; Eric A. Posner, *Contract Law in the Welfare State: A Defense of the Unconscionability Doctrine, Usury Laws, and Related Limitations on the Freedom to Contract*, 24 J. LEGAL STUD. 283, 307 (1995) (referring to bankruptcy as "analogous to the welfare system" and to "social insurance for the nonpoor"). See Hallinan, *supra* note 27, for an extended discussion of the many models used to represent consumer bankruptcy.

29. *See* SULLIVAN, WARREN & WESTBROOK, *supra* note 1, at 8-9 (discussing the moral dimension of consumer bankruptcy). The essence of a public assistance model is distinguishing the worthy from the unworthy, and the essence of that distinction is finding, or not finding, fault. *Id.*; *see also* Ponoroff & Knippenberg, *Debtors Who Convert*, *supra* note 26, at 244 (explaining that the propriety of debtor's conversion of nonexempt assets to exempt assets on the eve of bankruptcy is tested based on debtor's intent).

conceptual categories that rules pertaining to granting or denying relief cluster.[30] For instance, rules pertaining to dismissal and global or partial denial of the discharge are, in general, calculated to withhold bankruptcy relief from debtors thought to belong to the irresponsible debtor category,[31] while rules granting relief, principally the discharge, exist for the honest-but-unfortunate debtor.

In its empirical revelations about debtors in bankruptcy, *Families Alone* counsels that many, perhaps most debtors in fact, fit squarely within *neither* debtor category. It strikes me as singular that bankruptcy policy and the rules that follow from it seem to be premised on prototype extremes, on conceptual categories only marginally representative of the factual circumstances of consumer debtors. What is more important in Professor Warren's revelations, in my view, is the latent indictment of the public assistance metaphor.[32]

The public assistance model is a landscape populated with the deserving, the undeserving, and the more or less deserving.[33] Irresponsible debtors, of course, are the cause of their own financial predicament, and should be denied relief or perhaps even access to the bankruptcy process. By contrast, the honest-but-unfortunate debtor's distress is not of his or her own making, and such debtors should have access to bankruptcy and the relief available there. In either case, debt causes bankruptcy, borrowing creates debt, and debtors do the borrowing; so debtors of both sorts are the cause of bankruptcy. On the public assistance account, it is simply a matter of distinguishing those worthy of assistance, in the form of bankruptcy relief, from the unworthy.

Doubtless, those debtors closely approximating the caricature of the irresponsible debtor prototype should not escape their obligations in bankruptcy, and those debtors squarely within the honest-but-unfortunate category should be granted relief. But as *Families Alone* demonstrates, we have seen that many real debtors in bankruptcy are not so easily categorized, and a model predicated on sorting the worthy from the unworthy flounders where the line between them is blurred. Either there must be much handwringing about how those debtors should be categorized, or it must be

30. *See generally* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23.

31. For instance, 11 U.S.C. § 523 (2000), *amended by* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, contains exceptions to the discharge of debts where credit was obtained by the debtor's fraud, and debtors who abuse the bankruptcy process may be denied a Chapter 7 discharge altogether under section 707.

32. *See* SULLIVAN, WARREN & WESTBROOK, *supra* note 1, at 9.

33. *Id.* at 8 ("The [bankruptcy] cases in our files suggest endless combinations of irresponsibility, misfortune, and fault.").

acknowledged that the public assistance metaphor is not equipped to inform their predicament.

To say the public assistance model has little to contribute to the discourse about the crisis outlined by Professor Warren is not to say the model is not useful; rather, it is only to concede that a conceptualization of bankruptcy exclusively within the public assistance model cannot illuminate every aspect of the concept of bankruptcy. I have referred to that conceptualization of bankruptcy as *metaphoric*. The following part offers a brief discussion of what is meant here by metaphoric reasoning and its significance to law transformation generally, and the public assistance metaphor in particular, in light of Professor Warren's work.

### *It's Just a Metaphor, After All*

A small but growing body of scholarly work has deployed insights from the cognitive sciences in aid of law and legal policy analysis.[34] Perhaps the most important of those insights is the identification of the central role of imaginative conceptual devices, principally metaphoric reasoning, in human conceptual systems.[35] Simply put, all but rudimentary human concepts are metaphoric.[36] Metaphoric reasoning takes ill-delineated *target concepts* lacking natural dimensions of their own and makes them meaningful by recourse to well-delineated and more fully understood *source concepts*.[37] For instance, an elaborate array of metaphors define the human concept time, which is understood variously as a moving object, a valuable resource, and a linear path along which we move from past toward the future.[38] Understanding the target concept, time, in terms of the well-delineated concept, valuable resource, enables meaning in our practical experience of time for some purposes.[39] For other aspects of the way in which we experience

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34. *See, e.g.*, STEVEN L. WINTER, A CLEARING IN THE FOREST: LAW, LIFE AND MIND (2001); Carl S. Bjerre, *Secured Transactions Inside Out: Negative Pledge Covenants, Property and Perfection*, 84 CORNELL L. REV 305 (1999); F. Stephen Knippenberg, *Future Nonadvance Obligations: Preferences Lost in Metaphor*, 72 WASH. U. L.Q. 1537 (1994); Ponoroff & Knippenberg, *Debtors Who Convert*, *supra* note 26; Lawrence Ponoroff & F. Stephen Knippenberg, *The Immovable Object Versus the Irresistible Force: Rethinking the Relationship Between Secured Credit and Bankruptcy Policy*, 95 MICH. L. REV. 2234 (1997) [hereinafter Ponoroff & Knippenberg, *The Immovable Object*].

35. GEORGE LAKOFF & MARK JOHNSON, METAPHORS WE LIVE BY 122-25 (1980).

36. *Id.* For an overview of metaphoric reasoning, see Knippenberg, *supra* note 34, at 1561-71.

37. LAKOFF & JOHNSON, *supra* note 35, at 115.

38. *See id.* at 7-9, 42-43, 145.

39. *See id.* at 9, 145.

time, alternative metaphors are deployed so that we might quantify and otherwise reason about time.[40]

The essence of metaphoric reasoning, then, is the understanding of one concept in terms of another, *different* concept.[41] It entails cognitive appreciation of shared dimensions among *source* and *target* concepts such that similarities between them are highlighted.[42] Reasoning about an ill-delineated target concept is possible because of *metaphoric mapping*, whereby epistemic consequences are carried from the source concept to the target concept.[43] For example, with the metaphoric concept, time-is-a-resource, epistemic consequences associated with the source concept, resources, are mapped onto the target concept, time. A culturally important aspect of the way we experience time is thus made meaningful. Such it is that time can *be saved*, *squandered*, *put to good use*, *wasted*, and so forth.[44]

Whereas metaphoric reasoning highlights shared dimensions among concepts, *differences* are hidden or conceptually subordinated in the glare of similarities.[45] Metaphoric *highlighting* and *hiding* follow necessarily from understanding one concept in terms of another, *different* concept.[46] The phenomenon of *hiding* is not a shortcoming or deficiency of metaphoric reasoning, just a necessary concomitant. But failing to acknowledge it, and so differences between concepts, limits analysis to the terms of the metaphor.[47]

Understanding bankruptcy in terms of *public assistance* makes sense. The metaphor highlights an important shared dimension between the concepts in aid of meaning, and so offers a basis for reasoning about bankruptcy policy to that extent. However, it is one thing to say consumer bankruptcy can usefully be *understood* in terms of public assistance for some purposes, but something else again to say consumer bankruptcy *is* public assistance. On conflation of the two concepts, distinctions are lost, with significant consequences for both law transformation and development of bankruptcy policy. In particular, a conceptualization of bankruptcy based on the concept of public assistance

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40. *See id.* at 46. Generally, the more important the concept, the more likely it will be highly developed. The concept *idea*, for example, is highly elaborated through at least ten ontological metaphors. *Id.* at 46-48.

41. *Id.* at 5.

42. *Id.* at 10.

43. That is to say, understanding one concept in terms of another generates entailments, or inferential consequences. An extended discussion of entailments is offered in MARK JOHNSON, THE BODY IN THE MIND: THE BODILY BASIS OF MEANING, IMAGINATION, AND REASON 130-38 (1987).

44. *See* LAKOFF & JOHNSON, *supra* note 35, at 9.

45. *Id.* at 10. Metaphoric reasoning highlights shared dimensions but eclipses asymmetries.

46. *Id.*

47. *See* Ponoroff & Knippenberg, *The Immovable Object*, *supra* note 34, at 2282-84.

confines analysis to discussion of debtors, deciding which are deserving of assistance and which are not.

Indeed, a public assistance model cannot address the financial crisis *Families Alone* reports on any but its own terms. It is calculated to do no more than grant or deny bankruptcy relief in the same manner any public benefit is awarded, based on some combination of need and desert. The debtors Professor Warren identifies are significantly representative of those seeking bankruptcy relief, yet they are not easily categorized with confidence. It is difficult to see how struggling to categorize those debtors as ethically worthy of relief — the exercise required under the public assistance model — could yield a productive response to the financial crisis Professor Warren brings to light.[48]

Thus far, there has been no mention of a vital agency at work in the crisis reported in *Families Alone*. By hypothesis, lending contributes to debt in precise dollar-for-dollar proportion to borrowing. The agency at work, then, is the lending community, without which there can be no borrowing, no debt, no default, and no bankruptcy. Neither could there be *excessive* borrowing without *excessive*, perhaps irresponsible, lending. Understanding consumer bankruptcy exclusively in terms of public assistance, however, conceptually precludes a role for lenders — there are no *debtees*,[49] only debtors.

Concepts of experiential importance and manifold utility are ordinarily understood in terms of multiple metaphors to offer a range of perspectives and thereby enrich meaning. Additional metaphors to compliment the public assistance metaphor would likewise clear the way for broader analysis of consumer bankruptcy. The proposal offered here is a complimentary metaphor that takes account of the role of *lenders*, which is lost under a public assistance model. Focusing on lenders mitigates the need for fastidious attention on motivations for overborrowing and making judgments about a borrower's choices. Consider the following dimensions of a concept found in another context, the imposition of liability on vendors of alcohol for injuries to third persons caused by their patrons while intoxicated.[50] Vendors and servers:

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48. *See* SULLIVAN, WARREN & WESTBROOK, *supra* note 1, at 9; *cf.* Ponoroff & Knippenberg, *Debtors Who Convert*, *supra* note 26, at 243-44 (proposing that the term "honest-but-unfortunate debtor" is too indeterminate to be of use in determining the legitimacy of prebankruptcy asset conversion).

49. I do not make this observation lightly. Consider the connotations ordinarily associated with the root, *credit*: one *earns credit*; we *give credit where credit is due*. One might be a *credit to her profession*, and we *earn credits* in the course of our education. On the other hand, consider the connotations associated with the root, *debt*. It suggests obligation and burden, and *in debt* is not a place many of us like to be.

50. *See* Cimino v. Milford Keg, Inc., 431 N.E.2d 920, 924 (Mass. 1982) (distinguishing vendors of alcohol from social hosts). These represent one statement of the policy bases for

- have financial incentive to encourage their patrons to drink
- are in a position to monitor their patrons' consumption
- are experienced in recognizing intoxication
- are in control of the alcohol they dispense, and may refuse service to patrons

The characteristics of commercial vendors of alcohol which help explain Dram Shop liability bear striking resemblance to salient features of consumer lenders. Taking those features bullet-by-bullet, consumer lenders:

- have financial incentive to encourage consumer borrowing
- are uniquely positioned to observe borrower credit habits, purchases, and the like
- are experienced in irresponsible borrowing and default
- are in complete control of the credit they dispense to consumer borrowers

The common dimensions of the two conceptual categories — vendors of alcohol and vendors of credit — are a provocative invitation to conceptualize the one, lenders, in terms of the other, vendors of alcohol.[51] The metaphor is natural, indicating the potential utility in understanding lenders dispensing consumer credit in terms of vendors dispensing alcohol to imbibing patrons. By virtue of its novel perspective on the concept of bankruptcy, the "Dram Shop metaphor" introduces analytic possibilities unavailable under the public assistance metaphor with its exclusive focus upon debtors. In particular, the

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Dram Shop liability. I do not offer an extended discussion of Dram Shop liability here, but, in a forthcoming article, Dean Lawrence Ponoroff and I propose that Dram Shop concepts might be usefully deployed as a basis for equitable subordination of claims in bankruptcy. A first-rate overview of Dram Shop acts can be found in Richard Smith, Note, *A Comparative Analysis of Dramshop Liability and a Proposal for Uniform Legislation*, 25 J. CORP L. 553 (2000). For an interesting treatment of Dram Shop liability from an economics perspective, complete with a survey of bar owners, see Frank A. Sloan, Lan Liang, Emily M. Stout & Kathryn Whetten-Goldstein, *Liability, Risk Perceptions, and Precautions at Bars*, 43 J.L. & ECON. 473 (2000).

51. Importing the concept of Dram Shop liability into the credit context is not so revolutionary as one might suppose. In an analogous situation, securities brokers have been held liable for client losses for failure to supervise in Dram Shop fashion. *See* Lewis D. Lowenfels & Alan R. Bromberg, *Beyond Precedent: Arbitral Extensions of Securities Law*, 57 BUS. LAW. 999, 1011-13 (2002). Dram Shop principles have also been introduced in the discussion of liability of media defendants where adolescent viewers have committed violent acts, *see* Amanda Harmon Cooley, *They Fought the Law and the Law (Rightfully) Won: The Unsuccessful Battle to Impose Tort Liability upon Media Defendants for Violent Acts of Mimicry Committed by Teenage Viewers*, 5 TEX. REV. ENT. & SPORTS L. 203, 225-26 (2004), as well as the discussion of the gambling industry's liability for game addiction, *see* John Warren Kindt, *"The Insiders" for Gambling Lawsuits: Are the Games "Fair" and Will Casinos and Gambling Facilities Be Easy Targets for Blueprints for RICO and Other Causes of Action?*, 55 MERCER L. REV. 529, 542-43, 555-56, 572-75 (2004).

Dram Shop metaphor turns attention upon creditors and opens the way to consideration of their role in the financial morass identified in *Families Alone*.

This is not to assert that the Dram Shop metaphor should be pressed into service where the public assistance metaphor will do, in the cases of the irresponsible debtor prototype on the one hand, and honest-but-unfortunate debtor prototype on the other. But *Families Alone* connotes that the public assistance metaphor is inadequate to explain or address a large number of debtors in bankruptcy who cannot readily be assigned to either debtor type. Any suggestion that the decision to have children and educate them in accordance with current trends aligns those debtors with the irresponsible debtor prototype is insipid.[52] These are not the credit drunks at whom we wag our fingers in righteous indignation. At the same time, even if it is laudable for such debtors to take enormous financial risk in the form of massive mortgages to maximize educational opportunities for their children, it does not seem to irrefutably qualify them for membership in the honest-but-unfortunate debtor category relative to the category prototype.

The nature of this reply does not permit the development of the Dram Shop metaphor proposed or elaboration of its implications, but it does allow for inauguration of the metaphor as a vehicle for discourse. One singular implication is immediately evident, however, and can be briefly stated: mapping the epistemic consequences associated with the Dram Shop concept onto bankruptcy and lender concepts points to the imposition of liability or, more properly, *responsibility*, for imprudent lending and debtor financial suicide on creditors. Again, there can be no risky borrowing without risky lending. The Dram Shop metaphor simply takes notice of lending and thereby enables dialogue about the lending community as a contributing cause of bankruptcy. Discourse on default and bankruptcy is no longer confined to assessment of debtor behavior and borrowing practices.

The solution to the economic crisis identified in *Families Alone* is illusive because current conceptual models at the basis of our understanding of the bankrupt debtor are inadequate. A critique that begins and ends with a public assistance mindset is inadequate because it is committed to judging the propriety of borrowing to ascertain whether a debtor is near enough to either the honest-but-unfortunate or irresponsible debtor category to warrant membership in one or the other. The endeavor is futile in the face of debtors who defy categorization, such as those identified in *Families Alone*, and that alone suggests the scope of analysis be expanded. A complementary model,

52. Nevertheless, as Professor Warren points out, it seems the suggestion has occasionally been made. *See* Warren, *supra* note 3, at 579-81 (citing ELINOR BURKETT, THE BABY BOON: HOW FAMILY FRIENDLY AMERICA CHEATS THE CHILDLESS 197 (2000)).

such as the Dram Shop metaphor, expands analysis in the quest for solutions. *Families Alone* is disquieting in its revelations about the nature of debtors and the reasons many borrow themselves into bankruptcy, but it is also a call to action, a call to reconsider the fundamental ways in which we think about bankrupt debtors and, at long last, creditors.