An examination of consumer bankruptcy as a deterrent to small business formation

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ABSTRACT

This paper examines attitudes toward consumer bankruptcy as a deterrent to starting, restarting, or lending to small and micro-business ventures. Cultures and religions have struggled with the moral implications of declaring consumer bankruptcy throughout history, as have civil societies. Stigma and stronger prohibitions have been used historically to discourage consumer bankruptcy; however, the researchers find no evidence of similar prohibitions or attached stigmas to corporate bankruptcy. This paper proposes that filing a consumer bankruptcy as a personal financial strategy continues to carry a stigma and has significant consequences, and as such leaves many small and micro-business founders without a stigma-free financial safety corridor in the event of a business model failure that is available to owners of corporations. Business students in a regional university were surveyed to determine if their sentiment toward bankruptcy parallels that found in the literature; the researchers posit that students would carry any negative bias into their business careers and that this bias could influence their decision to assist an entrepreneur who had declared a consumer bankruptcy or to attempt a small or micro-business formation.

Key Words: Bankruptcy, finance, entrepreneurship, strategy, small business

INTRODUCTION

This research explores one facet of the decision to create or lend to a small or micro-business. The researchers examine the bias that surrounds consumer bankruptcy historically and more specifically they survey undergraduate business students to identify bias, positive or negative that they hold toward consumer bankruptcy. This paper posits that this bias, if negative, could influence students to not assume entrepreneurial risk. The researchers further posit that these students could carry this bias into careers as bankers and be reluctant to give entrepreneurs who had experienced consumer bankruptcy a fresh start. This research contributes to the extant body of knowledge because our literature review exposed a gap in the existing research.

LITERATURE REVIEW

Throughout history, the individual who could not repay debt has faced stigma, a word used in the past to reference a mark burned into the skin to indicate disgrace. Many times the consequences were much harsher than a mere stigma. Were we to doubt the strength of the negative consequences attached to not paying a debt, a short journey back in time and through different cultures would remove any such doubt. Efrat (2006) notes that society's perception of bankruptcy as a moral failure can be seen in the punishments that societies doled out to those among them who were defined as bankrupts. Punishments ran the gamut from death to enslavement of self or family. In fact, the last British citizen hanged for the crime of bankruptcy met his end at the gallows in 1813 (Kadens, 2010). Within that continuum were imprisonment, forfeiture of property, public shaming, and even relinquishment of spousal consortium. Authorities within societies ensured that the bankrupt would continue to receive degrading treatment by the use of words which reinforced the contempt with which the bankrupt was perceived; bankrupts were referred to as "deceivers, offenders, cheaters, and squanderers" (Efrat, 2006, p.366). Sgard (2006) made an extensive study of bankruptcy laws' origins in Europe and found two driving forces in the development of bankruptcy law: (1) creditors' rights were protected and (2) laws were developed in the context of societal trends and the development of capitalism.

Bankruptcy law as a legal and historical entity had two purposes irrespective of time and place of enactment, according to Levinthal (1918). He said the two purposes of bankruptcy laws were: (1) to obtain an equitable division of the bankrupt's property and (2) to prevent the debtor from any actions that would be detrimental to the creditors. He further said that protection of the debtor (he uses the term "honest debtor") from the creditors is not an original feature of bankruptcy law. We should note that the body of bankruptcy law Levinthal was discussing was formed in 1898 as the Bankruptcy Act. However, Evans (2010) says that a clear purpose of the United States bankruptcy law was to provide a fresh start to the debtor. One can surmise from Levinthal's statements that bankruptcy has never been about the protection of the debtor but has been a societal means of protecting creditors from each other and creditors from the debtor. Evans says that United States bankruptcy law does show some humanity in that it theoretically provides a fresh start for the bankrupt. The concept of a fresh start is also supported in the work of Levin & Rogers (2007).

Bankruptcy is a condition of relatively modern societies. Ancient societies worked on the assumption of Graeca fides (Greek trust - No trust), and in most situations, payment upon delivery of the goods or services in question was the order of the day (Levinthal, 1918). This caused credit transactions to be infrequent in the ancient world. Elizabeth Anderson (2004) says that the ability to obtain credit transformed the lives of everyday people and that credit availability enabled people to obtain credit and not have to demean themselves or to give up their independence to the creditor. During the 17th and 18th centuries, the development of capitalism in Britain, Europe, and the American colonies required the development of credit markets in order to fuel the developing economies. Concurrent with this development was the development of new relationships between creditor and debtor; this relationship developed through the interplay of cultural norms and economic realities (Anderson, 2004). Christians, aristocrats, and capitalists each had a unique view of credit. The Christian interpretation of credit with interest has a negative connotation with origins in the early Catholic Church (Deut. 23:19, King James Bible). The Church used this passage as a justification for prohibiting Christians charging Christians interest for many years. However, Anderson (2004) also notes that the continuing and increasing demand for credit in growing economies led to Jewish communities being given the role of lenders. This accommodation was acceptable to the Church and was continued for years. Jewish beliefs hold the debtor responsible for the debts until creditor is satisfied. The Jewish religion also attaches a moral shame to bankruptcy other than instances where it is clearly the result of a natural disaster (Tamari, 1990). The aristocracy needed credit in many cases to maintain the affluent lifestyle they enjoyed; however, the aristocracy also used credit to bind lower classes through the use of debt. The development of stronger capitalistic societies insured the death of debt as a moral failing.

Efrat (2006) notes that an increase in consumer bankruptcy is generally accompanied by exclamations of horror relative to a decrease in societal morals and shame associated with the declaration of bankruptcy. Society has never befriended the bankrupt individual and has always attributed resultant bankruptcy to behavioral and lifestyle problems (Efrat, 2006). Evans (2010) says that the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was enacted to move United States law away from the position of a debtor-friendly approach. Compounding the level of societal disapproval has been the concurrent association of the bankrupt with illegal or fraudulent behavior. It has become more common in the United States for corporations to use Chapter XI of the United States Bankruptcy Code to avoid contractual obligations and other debts. Many Chapter XI filings are not based on an imminent financial collapse (Salem & Martin, 1994). The criminalization of bankruptcy enabled society to use extreme methods to ensure that people were terrified of bankruptcy. Community excommunication for the life of the bankruptcy and even dismemberment (in situations where there were multiple creditors) were not uncommon (Efrat, 2006). The fledgling United States was not immune to the harsh treatment of the bankrupt. Individuals filing bankruptcy would have their hair shorn, their palms (unspecified as to hand) would be branded with a "T" (thief), and they were required to have an ear nailed to a pillory for two hours and then the ear was to be cut off (Efrat, 2006). It is no wonder that society associated personal bankruptcy with a criminal act. Although the United States has progressed beyond such barbaric acts, one can still find ample evidence that consumer bankruptcy remains as something to be ashamed of. According to Efrat (2006, pp. 378-379):

"However, perhaps the most profound manifestations of bankruptcy stigma were the reported instances in which a bankrupt petitioned the court to have his name changed or to have the bankruptcy petition dismissed altogether to avoid the perceived stigma."

The power of the bankruptcy stigma at the consumer level is such that the unfortunate bankrupt desires to avoid any association with the petition. Some go to the extreme of a name change and abdication of a past. A question and answer session in Bankrate.com indicates the power of stigma relative to behavior and bankruptcy. The questioner makes the statement that he had filed a Chapter 7 bankruptcy in 2006 but now has a lot of credit card debt among some other things that they should not have done. One can see evidence of the behavioral stigma associated with consumer bankruptcy through an examination of the response of the advisor who states that he is sorry the debtor did not learn from his first mistake (Harlik, 2016). Some in society believe that the negative stigma provides a strong barrier against the widespread use of bankruptcy by consumers who find themselves in financial trouble. Bermant (2003) notes that much of bankruptcy law at the consumer level is targeting the enforcement of morality as the executors and interpreters of bankruptcy law view it. He cites three articles that attempt to show a correlation between increased consumer filings of bankruptcy and a decrease of shame and stigma relative to consumer bankruptcy. Bermant (2003) identifies some problems with proxies for shame and leaves the reader to decide the validity of the cited papers and their findings.

Bermant (2003) illustrates the societal concern about a decline in stigma and shame experienced by individuals in consumer bankruptcy in the discussion of Memphis, Tennessee. He notes that two writers use Memphis as an iconic example of a lack of shame; the two writers in question note that Memphis has lost all shame as demonstrated by its having a high bankruptcy rate. They decry the supposed breakdown of stigma and shame and worry for the future of commerce in Memphis.

Nathalie Martin (2005) poses a question about culture shaping law or law shaping culture in her article on culture and bankruptcy. Efrat (2006) addresses much the same question in research conducted in The New York Times. His research team examined newspaper articles published from 1864 to 2002; the articles were examined relative to content about personal bankruptcy filings. The researchers felt that they could uncover public perception about bankruptcy through an examination of sentiments expressed in the articles. Efrat's work indicates that there was a significant shift in sentiment about personal bankruptcy, as expressed in the articles during the 1960s. Before the 1960s, bankrupt individuals were portrayed in The New York Times as manipulators and fraud promoters. Bankruptcy was a clear indication that society was in decline. Various articles examined by his research team referred to bankrupts as cheaters, doers of evil, perjurers, and fools; a fairly damning summation of those unfortunate enough to have petitioned for bankruptcy. However, during the 1960s, the research team noted a shift in attitude from the writers. The bankrupt moved from the company of criminals and ne'er-do-wells to a more refined status of being irresponsible or unethical and lacking personal discipline. The articles began to refer to the debtors in more humane terms, such as hard-working, poor, struggling, and needy; the researchers also noted that photos that accompanied such articles depicted struggling families, babies, and unsophisticated blue-collar workers. The research team described a shift in the locus of control, and the bankrupt were now victims rather than victimizing. Even with this shift, those who file personal bankruptcy still fall very much in the "other" category or the "not us" category. Martin (2005) notes in her study of bankruptcy that even though bankruptcy numbers continue to rise in the United States, those who must declare bankruptcy still feel the pain of public failure and the subsequent shame. Shame is defined as a consciousness of pain due to the subject's awareness of a dishonorable or improper act committed by oneself or some other person. Fisher (2000) discusses consumer bankruptcy as an example of positive law ascending to an accepted ethical standard; he says that people filing consumer bankruptcies feel they are being ethical and doing what the law requires and allows. Martin (2005) goes on to indicate that some level of consumer bankruptcy in the United States is inevitable due to a dynamic capitalist market and a weak social safety net.

Mayr (2010) says that the public attitude toward bankruptcy needs improvement and that the current attitude discourages entrepreneurs who have filed bankruptcy from starting anew. The mass media seems to stigmatize bankrupt entrepreneurs in two cases: (1) during periods when there has been a bankruptcy that captures public attention and (2) during periods of high rates of bankruptcy (Wakkee, Dorrestein, & Englis, 2015). Armour & Cumming (2008) conducted research on the relationship between bankruptcy laws and entrepreneurship. They found that "forgiving" bankruptcy laws correlate with increased rates of self-employment and entrepreneurial activity. Lee et al., (2011) also found that entrepreneur friendly bankruptcy laws resulted in greater entrepreneurial activity. Kaufmann, Herrmann, & Auken (2007) investigated entrepreneurial curiosity and fore knowledge of bankruptcy laws and found that entrepreneurs are generally unaware of an exemption to the bankruptcy laws for small business and do not take them into account when deciding to start a business. The unawareness hypothesis is somewhat contraindicated by Palk (2013) who found that entrepreneurs were more likely to seek limited liability then to depend on exemptions within existing bankruptcy laws.

In summary, the extant literature points to a societal dismissal of the individual who files consumer bankruptcy. This societal dismissal is supported by a less forgiving trend in United States bankruptcy laws relative to consumer bankruptcy. An entrepreneur who is attempting a fresh start will face stigmatization from bankers based on a past bankruptcy (Cusin & Maymo, 2016). Given that many bankers begin their careers in business as business students in university we suggest that the bias's held by business students relative to consumer bankruptcy could persist into their professional careers and influence their behavior toward nascent entrepreneurs who have experienced a consumer bankruptcy in the past. This same bias and fear of stigma could also influence the students relative to becoming an entrepreneur given the perception of risk that many have toward entrepreneurship. Most entrepreneurial bankruptcies are filed by business that were structured as sole proprietorships or partnerships (Carter & Howard, 2006) which is consistent with a limited access to start-up capital. These business legal structures do not provide the entrepreneur with any protection relative to their business debt.

METHODOLOGY

The authors investigated the perception of consumer bankruptcy by third and 4th-year undergraduate business students. Do students think a consumer bankrupt has earned stigma through unethical, immoral or even criminal actions or do they perceive the bankrupt as an individual who through no fault of his own and is a victim of a capitalistic economy? The researchers also examine how these same business students viewed corporate bankruptcy. Was their perception one of careless and incompetent management or even criminal negligence on the part of management, or did the students perceive managers as using bankruptcy laws as a strategy if a company or investment was going bad?

An experiment was designed by the authors to uncover and codify the sampled students' perceptions of bankruptcy filed by an individual or a corporation. The first step in the development of this study was the question construction. The authors decided that questions used in the survey should be sorted into four primary categories: (1) General, (2) Personal, (3) Corporate, and (4) Consequences. The category classifications represent broad definitions of questions as follow: (1) General-These questions were asked of the students with the hope of obtaining a broad and general view of their attitude toward bankruptcy in general. (2) Personal-A set of questions developed to isolate the students' attitude to individual bankruptcy. (3) Corporate- This set of questions hoped to define the students' sense of whether corporate bankruptcy was on a shame level, if any, equal to individual bankruptcy. (4) Consequences- Questions with the intent of uncovering a bias, if it exists, between corporate and personal bankruptcy.

The questions sorted by category follow:

General:

Bankruptcy is a failure.

It is too easy to file for bankruptcy.

It is appropriate for an individual to use credit for large purchases (such as a car, home, appliance). *

It is acceptable to have an unpaid balance on credit cards. *

Bankruptcy is an acceptable fresh start. *

Personal:

People declaring bankruptcy are irresponsible.

There are acceptable reasons for individual bankruptcy. *

Individuals should be allowed to file bankruptcy more than once. *

Individuals who file bankruptcy affect only themselves. *

Personal bankruptcy should be accompanied by personal shame.

Corporate:

Bankruptcy is a viable business strategy. *

Businesses that declare bankruptcy should not remain open.

The corporate bankruptcy should be recorded on the executives' credit record.

Corporate bankruptcies affect more than just themselves and other corporations.

Corporate bankruptcies reflect poor financial decisions.

Consequences:

Individuals that have filed bankruptcy have learned their lesson. *

Credit should not be extended to bankrupt individuals for a minimum of seven years.

Doing business with a corporation that has declared bankruptcy is acceptable. *

Management mobility is not affected by corporate bankruptcy. *

Personal bankruptcy should not affect your employability.

* These items are reverse scored.

The questions used in the survey were developed using the following method: (1) Researchers develop the four broad categories of interest. (2) Researchers decided to use Likert Scale and develop initial questions accordingly. (3) Researchers meet and edit initial questions. (4) Questions are given to random students with instructions to review questions for ease of readability, clarity, and understanding of intent. (5) Researchers used student feedback to fine-tune questions. The described process developed questions that were easily understandable and were Likert Scale friendly. The questions were deployed to junior and senior students taking courses in Finance and Management using Baseline software; this provided the researchers a means to deploy the questionnaire so that students could participate anonymously and at their convenience. The questionnaire remained deployed for two weeks. The results of the questionnaire were subjected to paired sample t-tests. The researchers developed a null hypothesis for each of the paired samples with H0: = 0.

RESULTS

The researchers received 48 responses after the two-week deployment of the questionnaire. The students exhibit these characteristics: (1) twenty-three males and twenty-four females responding; one of the respondents chose not to reveal gender (2) the average age of respondents was 25 with an age range of 20-48 (3) twenty-six of the respondents were single, 8 were married, 4 divorced, and 1 chose not to answer. The researchers opine that the sample offered a good cross-section of College of Business students. During analysis, the following two results were especially impressive. The question "There are acceptable reasons for individual bankruptcy" found in the personal set of questions had a mean of 3.917, leaning heavily to Agree, which was 4 out of a Likert scale of 5. The question "Corporate bankruptcies affect more than just themselves, and other corporations" found in the corporate set of questions had a mean of 4.208, again leaning heavily to Agree.

The following results were obtained from the statistical analysis. Pair 1 examines differences in attitudes about personal bankruptcies vs. corporate bankruptcies in the sample population. The response to "People declaring bankruptcy are irresponsible" is significantly different from the response to "Bankruptcy is a viable business strategy" (reversed coded) in a negative relationship. The result of the first paired t-test indicate a significant difference in the scores for irresponsible vs. strategy under conditions; $t(47)= -4.850$, $p <.001$. This result indicates that students believe that bankruptcy is a viable business strategy while believing that individuals filing for bankruptcy are irresponsible.

Pair 2 examines differences in attitude toward "There are acceptable reasons for individual bankruptcy" (reverse coded) vs. "Business that declare bankruptcy should not remain open. The result of the second paired t-test indicates a significant difference in the scores for acceptable vs. not remain open under conditions; $t(47)=-4.555$, $p<.001$. This result indicates that surveyed students viewed business bankruptcy less negatively than personal bankruptcy.

Pair 3 seeks to examine the attitude subjects hold toward individuals who file for bankruptcy as opposed to executives who lead a company into bankruptcy. The paired questions are, "Individuals should be allowed to file for bankruptcy more than once" (reverse coded) and "The corporate bankruptcy should be recorded on the executives' credit record." The third paired t-test indicates a significant difference in the scores for multiple bankruptcies vs. credit record under conditions; $t\ (47) = 1.785$, $p<.10$. This result indicates that surveyed students believe personal bankruptcy is viewed more negatively than business bankruptcy.

Pair 4 examines the subjects' attitude relative to the impact of bankruptcy outside the sphere of influence of the filers. The paired questions are, "Individuals who file for bankruptcy affect only themselves (reverse coded) and "Corporate bankruptcies affect more than just themselves and other corporations." The fourth paired t-test did not indicate a significant difference in the impact on others between personal and corporate bankruptcies under conditions; $t\ (47) = .596$, $p>.1$. The researchers interpret this result as an indication that subjects did not perceive a difference of impact on others between personal and corporate bankruptcies.

"Individual bankruptcy should be accompanied by personal shame" vs. "Corporate bankruptcies reflect poor financial decisions" indicated a significant difference, in a negative direction, under conditions; $t\ (47) = -8.212$, $p<.001$. This result indicates that the subjects view personal bankruptcy more negatively than they do corporate bankruptcy. Table 1 (Appendix) presents the paired samples test results, and Table 2 (Appendix) presents the paired sample correlations.

DISCUSSION

The researchers found that the undergraduate business students who responded to the survey do differentiate between corporate bankruptcy and personal bankruptcy. The survey results indicate that the subjects of this study believe that an individual bankrupting is a moral failing, whereas the corporation that bankrupts has pursued a sound business strategy. The stigma of bankruptcy at the personal level is alive and well in the group of students surveyed.

There are some implications for entrepreneurship in general and entrepreneurial finance specifically. The availability of equity and debt funding is limited and difficult for many entrepreneurs to obtain; this leaves them the options of self-funding, bootstrapping, and borrowing from the proverbial friends and family. In most cases the entrepreneur seeking funding will be required to secure any loan from banks or other lender types and will be required to sign a personal guarantee of repayment, the personal guarantee nullifying any protection offered by a corporate or LLC type organization to the entrepreneur. These difficulties and requirements place the aspiring entrepreneur squarely in harm's way. There is no recourse or escape for the entrepreneurs whose business model does not capture sufficient value to assure sustainability. They lose their assets or declare bankruptcy and accept the stigma associated with the act. The researchers believe that many aspiring entrepreneurs never execute the business idea due to the fear of bankruptcy and the social stigma and shame they would experience were the business to fail.

The researchers attribute the students' responses to a shield effect; by shield effect, the researchers mean that corporations that are large enough or that are publicly traded offer management a shield of anonymity whereas the entrepreneur or small business owner is afforded no such protection. The shield of anonymity provides protection relative to public exposure or personal responsibility for the action of bankruptcy. When a corporation files for bankruptcy, we do not know whom to hold responsible; we offer our criticism to "management" but do not associate the pain and loss that bankruptcy can cause with a specific and named person. However, when an entrepreneur or small business owner takes the same action, we view it as a personal decision and a moral failure. Our research indicates that on four of five dimensions, individual bankruptcy was perceived as worse than corporate bankruptcy and this from respondents who are business literate and preparing for careers in business management. This paper's literature review adds to this topic, and the researchers feel that this research offers the beginning of a research stream that can answer some hard questions for entrepreneurs. To this end, the researchers envision a continuation of this work; the researchers want to replicate the original study but change the subjects to practicing managers of corporations and then again with entrepreneurs and small business owners.

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Appendix

Table 1. Paired Samples Test

		N	Correlation	Sig.
Pair 1	Pers1 & rc1	48	.141	.340
Pair 2	rp2 & Corp2	48	.004	.978
Pair 3	rp3 & Corp3	48	.154	.297
Pair 4	rp4 & Corp4	48	.483	.001
Pair 5	Pers5 & Corp5	48	.251	.085

Table 2: Paired Samples Correlation

		N	Correlation	Sig.
Pair 1	Pers1 & rc1	48	.141	.340
Pair 2	rp2 & Corp2	48	.004	.978
Pair 3	rp3 & Corp3	48	.154	.297
Pair 4	rp4 & Corp4	48	.483	.001
Pair 5	Pers5 & Corp5	48	.251	.085