CONSUMER CREDIT IN THE AFFLUENT SOCIETY*

DAVID CAPLOVITZ†

INTRODUCTION

A great deal has been written in the past decade or so about the affluence of American society, its increasingly high standard of living and the consumption-orientation of its citizens. One aspect of the affluent society, however, that has gone largely unnoticed by sociologists is the extent to which it rests upon the institution of consumer credit. It can truly be said that the affluent society is also a *credit* society. The attitudes of Americans toward debt have undergone a remarkable change within the lifetimes of many of us. Whereas not too long ago, debt was viewed as the mark of the imprudent or poverty-stricken man, today it is part of the American way of life.

Consumer credit takes a number of different forms. By far the largest category, and the one we are most accustomed to, is mortgage debt. Outstanding mortgage debt has grown tremendously in the last few decades as government-backed low-interest loans have made it possible for vast numbers of families to realize their great ambition of home ownership. From 1950 to the second quarter of 1968, nonfarm mortgage debt grew from $45 billion to $243.4 billion.[1] Whereas forty-four per cent of American homes were mortgaged in 1950, fifty-seven per cent were mortgaged in 1960, and the figure is undoubtedly much higher today.[2] In all accountings of consumer debt by economists and government, mortgage debt is sharply differentiated from other kinds, partly because it is long-term and partly because the purchase of a house is seen as an investment rather than as purely consumption. The other kinds of consumer credit are referred to as personal debt or, somewhat confusingly, as consumer debt, the term now referring to debt other than mortgages. In this more narrow sense, consumer credit covers short-term noninstallment debt and somewhat longer-term installment debt. Noninstallment debt includes charge accounts, debts for professional services, and that new institution, the credit card.

Of particular significance has been the rapid development of installment credit, the kind of credit for which the consumer pays a fee for the privilege of paying the

---

* An earlier version of this paper was presented at the Sixty-second Annual Meeting of the American Sociological Association, San Francisco, August 29, 1967.

† A.B. 1949, University of Connecticut; Ph.D. 1960, Columbia University. Director of Training, Bureau of Applied Social Research, and Adjunct Associate Professor of Sociology, Columbia University. Author, THE POOR PAY MORE: CONSUMER PRACTICES OF LOW INCOME FAMILIES (1963; paper ed. 1967).

I wish to thank the following colleagues for their helpful comments and suggestions in the preparation of this paper: Sally Hillsman, Allan Silver, Bernard Levenson, Fred Goldner, and Robert Fogelson.

[1] 54 FED. RESERVE BULL., No. 11, at A48 (1968).

[2] U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 711 (1968).

debt off over time. Installment credit far exceeds noninstallment credit in volume,[3] and the remainder of this paper will be concerned primarily with installment credit.

I

GROWTH OF THE CREDIT SOCIETY

Installment credit is by no means a new phenomenon. Expensive books, such as encyclopedias, were sold on the installment plan in the eighteenth century. The honor of inventing installment selling as we know it today belongs to the Singer Sewing Machine Company, which started selling its product in this fashion back in 1856.[4] For many years, installment credit was viewed as somewhat disreputable and was engaged in more by the working classes than by the well-to-do. With the advent of the automobile, installment credit achieved legitimacy, but it did not fully come into its own until after the Second World War. In 1945, outstanding installment debt was a negligible $2.5 billion. A decade later it climbed to $29 billion, and today installment debt stands at over $80 billion. By now the great majority of American families have used installment credit.[5] A national survey conducted in January 1967 showed that eighty-seven per cent of American households had made installment purchases at one time or another; seventy-five per cent had at some time obtained installment loans from banks or finance companies, and fully ninety-three per cent had used either one or the other form of installment credit. Currently, more than sixty per cent of America's families are making payments on installment debts.[6]

Much of what we knew about installment credit and what Americans think about it we owe to the research of George Katona and his associates at Michigan's Survey Research Center.[7] Katona's yearly surveys of consumer finances show that more and more Americans view installment buying favorably. In the early 1950s about half the population thought installment buying was a good idea; by the early 1960s this figure increased to sixty per cent. Nor is installment buying indulged in only by those who cannot afford cash. One of Katona's surprising findings is that about a third of the installment buyers have sufficient savings to pay cash and yet choose to buy on credit anyway.[8]

The growth of consumer credit has been so rapid and so pervasive that we might well ask what have been the conditions that have led to this transformation

---

[3] According to the Federal Reserve Board, installment credit outstanding in September 1968 came to $82.9 billion compared with $21.4 billion in noninstallment credit. 54 FED. RESERVE BULL., No. 11, at A52-53 (1968).

[4] *See* Plummer, *Installment Selling*, in 8 ENCYC. SOC. SCI. 74 (1932); *see also* H. BLACK, BUY NOW AND PAY LATER 108-10 (1961).

[5] U.S. BUREAU OF THE CENSUS, *supra* note 2, at 461.

[6] These data come from a survey conducted by the National Opinion Research Center of the University of Chicago, on behalf of the author.

[7] *See* G. KATONA, THE MASS CONSUMPTION SOCIETY (1964) [hereinafter cited as KATONA].

[8] *Id.* at 235.

to a credit society? Of primary significance, of course, has been the growth of the economy in general, the rising income of the population, and the expansion of its consumer aspirations. As Katona has noted, America is the first society in history in which a majority of the population has discretionary income, that is, income beyond that needed for subsistence. But the growth of consumer credit is not merely a reflection of economic expansion, for installment credit has grown at a much faster pace than has either gross national product or disposable personal income. Thus between 1950 and 1964 installment credit grew at an annual rate of 10.5 per cent, while GNP grew at a rate of 5.8 per cent and personal income at a rate of 5.5 per cent.[9]

The growth of consumer credit must also be understood in terms of the marked shifts in the occupational structure that have accompanied economic growth: the growth of the middle classes and more particularly the emergence of the new middle class of salaried employees and the decline of the old middle class of entrepreneurs. The status claims of the old entrepreneurial middle class rested upon the ownership of property. As entrepreneurs, its members operated in a world of risk, susceptible to the vicissitudes of the market place. Entrepreneurial success depended upon the judicious allocation of income to capital investment as well as to consumption. To the extent that its members acquired debts, it was for purposes of production rather than consumption. Only those who achieved considerable wealth could afford the luxury of conspicuous consumption.

In contrast, the new middle class, employed in large bureaucracies, has provided a ready market for consumer credit. This is so for two reasons. First, the members of this group, unable to rest their status claims on property, are under strong social pressures to acquire the consumer goods that symbolize the middle-class style of life, a pressure that is experienced even by those whose incomes are relatively low. Second, the new middle class is reasonably assured of job security and thus of a steady and even rising income. A steady income is essential to the development of a credit society, for buying on time means acquiring possessions with tomorrow's income. In the credit society, the traditional pattern of saving first and then spending is reversed; the purchase is made and then "saving" in the form of monthly payments occurs. For the credit transaction to take place, both the debtor and the creditor must be assured that the debtor's income is secure. Thus it may be hypothesized that the bureaucratization of the world of work is a structural prerequisite for the credit society. Unfortunately, there are no data relating occupation to credit usage, but Katona's annual surveys do show the connection between income and installment debt. Each year a majority of those in the middle income categories, especially those earning between $5,000 and $10,000, have installment debts. In contrast, only about a third of the very poor, those earning less than $3,000, and less

[9] *See* Shay, *Major Developments in the Market for Consumer Credit Since the End of World War II*, 21 J. FINANCE 369 (1966).

than a third of the rich, those earning more than $15,000, have installment debts.[10] We might infer from the income data that installment credit does get its chief support from the middle classes and the higher-paid working classes.

Also relevant to an understanding of the growth of installment credit is the disjunction between the family life cycle and the income cycle of the salaried employee and, to a lesser extent, the wage-earner as well. To insure loyalty and commitment, large-scale organizations must provide not only job security but promotions and salary increases as well. Salaries tend to be low at the start, but improve with time, reaching a peak when the employee is of middle age. But families are formed at a much earlier time, and consumer needs are particularly great when households are being established. Installment credit serves as a mechanism for bridging this gap. By mortgaging future income, the family is able to meet its current consumer wants. Thus installment credit is a device for leveling somewhat the income curve over the occupational career. This is particularly true of educational loans which allow the college student to pay for his education at a time when his income is substantially higher, but to some extent it is also true of loans that extend for only a year or two. The connection between the family life cycle and credit usage is shown by the findings of Katona's surveys. Young families, those with pre-school age children, are most likely to have installment debts. (Interestingly enough, Katona finds that older families use installment credit now more frequently than they used to, although still not as frequently as the younger families, a finding he interprets as due to the gradual dying off of those morally opposed to debt.[11])

The explosion in consumer credit is also intimately connected with the changing residency patterns of Americans, the development of suburbs, and the fantastic growth of home ownership reflected in the mortgage-debt data cited earlier. Between 1890 and 1940 the proportion of owner-occupied dwelling units remained fairly constant at around forty-six per cent. By 1950 this figure had shot up to fifty-seven per cent, and in 1960 it reached sixty-two per cent.[12] The basic desire of American consumers to own a home has contributed to their readiness to accept other kinds of consumer debts. The home owner has, of course, substantial consumer needs. He must not only fill his house with furniture and appliances, but, if he lives in the suburbs, he must have a car and the chances are his wife must have one as well.

Apart from the reasons why consumers may want installment credit, the growth of this institution also owes a great deal to the efforts of the business community to sell the idea of credit buying to the American public. When installment credit first came into being, it was a means for selling merchandise. But the business community has discovered that there is so much profit to be made in credit that now

[10] KATONA 232.

[11] *Id.*

[12] B. WATTENBERG & R. SCAMMON, THIS U.S.A.: AN UNEXPECTED FAMILY PORTRAIT OF 194,067,296 AMERICANS DRAWN FROM THE CENSUS 241 (1965).

the relationship is reversed; merchandise has become a device for selling credit. It is increasingly difficult to buy things for cash in the face of the merchant's propaganda to buy on credit instead. The onslaught of installment credit has recently overtaken two of the more staid institutions of the business community—the large department store and that bastion of conservative financial policy, the bank. Department stores have invented revolving credit accounts which they hope will supplant the charge account. Banks have even more recently come up with the invention of check credit. Whereas banks once had a vested interest in training their customers to balance their accounts and never to overdraw them, they are now doing just the opposite; they are offering their customers credit plans that permit them to write checks for more money than they have on deposit, the overdrawn amount being treated as an installment loan. The banks have also invaded the credit card market with their highly dubious practice of mailing unsolicited credit cards. Bank credit cards, which require payment of interest, represent one of the fastest growing sectors of the credit industry today.

II

SOME IMPLICATIONS OF THE CREDIT SOCIETY

Having examined some of the reasons for the development of the credit society, I should now like to review some of its consequences. The system of mortgaging future income to satisfy today's wants functions relatively smoothly in a society of rising income. Anathema to the credit society are downward trends in the economy. If the cash society could ill afford the recessions of the business cycle, this is even more true of the credit society. The vast number of users of consumer credit might be viewed as a new interest group pressing for governmental control of the economy to insure that recessions will not occur. Political polls have traditionally shown that voters tend to be more sensitive to economic issues than to social issues or foreign policy, and one of the reasons for this might well be the debt burdens that they have assumed.

While on the macroscopic level the credit society requires an expanding economy, so on the microscopic level the individual user of installment credit is increasingly dependent upon job security. Katona has noted that the growth of the American family's contractual obligations has made it less tolerant of risk-taking and more committed to job security.[13] Just as the growth of bureaucracy has facilitated the development of consumer credit, so consumer credit would appear to help socialize individuals to bureaucratic employment. Whether installment credit is contributing to the demise of entrepreneurial spirit is a matter for empirical research. Such research might also investigate the connection, if any, between consumer credit and job mobility. Does consumer debt make workers less willing to change jobs as well as less willing to strike out on their own?

[13] KATONA 180-81.

A. Installment Credit, Deferred Gratification, and the Family

One of the apparent victims of installment credit is that trait popularly assigned to the middle class known as deferred gratification. Social scientists have repeatedly pointed out that the middle classes, unlike the lower classes, are capable of deferring gratification. I suspect that in the credit society the distinction is no longer that sharp. With the availability of installment credit, there is less need to defer gratifications. Young couples need not delay marriage until they can afford to set up a household, nor are the young married confronted with the choice of either having children or acquiring material goods. Through installment credit they can have both. We are all familiar with the demographic data showing dramatic changes in family structure. For example, the age at which people get married has declined; the amount of time that elapses before the first child is born has declined (from 1.7 years a generation ago to 1.4 years today), and the elapsed time before the last child in the family appears has declined markedly. Today, childbearing ceases, on the average, only six years after marriage; and more and more married women, their childbearing completed, are entering the labor market.[14] The number of doubled-up households has declined markedly in the past generation. Thus in 1940, 6.8 per cent of married couples were living in other people's households, presumably their parents'; by 1962 this figure had shrunk to 2.1 per cent.[15] The greater independence of the younger generation, the more rapid separation of the generations, and the increasing fragmentation of the extended family suggested by these data may well be to some extent a consequence of consumer credit.

B. Installment Credit and Budgeting

Another function that has been attributed to installment credit is that it has reintroduced the idea of budgeting into family finances, or rather that it is a functional alternative to budgeting that permits the family to exercise more control over its income. Since the weekly or monthly paycheck is committed to a series of debt payments, the possibility of impulsive expenditures is supposedly reduced. Katona, in particular, is an advocate of this point of view, but it should be noted that others have attributed just the opposite outcome to credit. According to this second view, credit stimulates impulse buying and irrational expenditures by making it easier for families to make expensive purchases. The accusation of families living beyond their means is frequently heard in the credit society, and the suspicion is that such families are just as apt to be found in the middle class suburbs as in the ghetto. Obviously, research is needed on this point to find out the frequency of each outcome and the kinds of families that benefit from, or are hurt by, the ready availability of credit.

---

[14] WATTENBERG & SCAMMON, *supra* note 12, at 42.

[15] *Id.* at 37-39.

C. Installment Credit and the Poor

Until quite recently, it was rather fashionable for social scientists to point to the increasing homogeneity of American society, the blurring of class lines, as more and more people in all strata had access to the so-called standard consumer package of appliances and automobiles. The rediscovery of the poor and the war on poverty have served as a corrective to this picture of American society, reminding us that inequality is still very much with us. Nevertheless, it is still true that installment credit has provided the means by which even the poor can share some of the fruits of the affluent society, with the result that some symbols of status and class no longer serve as good indicators of social position.

This observation calls attention to the fact that the market for consumer credit is by no means limited to the new middle class. On the contrary, low-income persons, those near or even below the poverty line, also become consumers of such major durables as automobiles, television sets, phonographs, and washing machines through the institution of installment credit. My own study of low-income families living in public housing in New York City showed that fully ninety-five per cent owned a TV set,[16] and the comparable figure in a California study of even more impoverished families is eighty-nine per cent.[17]

Through the mass media, Americans in *all* walks of life are bombarded with messages to buy now and pay later. "Easy payments" and "no money down" are slogans luring even the poor into the market place, and in spite of the low credit status of the poor there are numerous merchants who are prepared to extend them credit. Nor is it very difficult to lure the poor into making costly purchases, for in some ways the ownership of goods takes on even more significance for low-income persons than for those in higher income brackets. Since the poor have little prospect of greatly improving their low social standing through occupational mobility, they are apt to turn to consumption as at least one sphere in which they can make some progress toward the American dream of success. If the upper strata observed by Veblen engaged in conspicuous consumption to demonstrate their social superiority, it might be said that today's poor are apt to engage in *compensatory* consumption. Appliances, automobiles, and the dream of a home of their own can become compensations for blocked social mobility.

In our low-income areas, a special kind of system of sales-and-credit has evolved to cater to the needs of the poor, one in which exploitation and fraud are more the norm than the exception. High-pressure tactics, "bait" ads and "switch sales," misrepresentation of price and quality, and the sale of used merchandise as new all flourish in the low-income market place. This deviant system rests in part upon the ignorance of low-income consumers and their vulnerability to fast-talking salesmen,

[16] D. CAPLOVITZ, THE POOR PAY MORE 37 (paper ed. 1967).

[17] R. STONE & F. SCHLAMP, FAMILY LIFE STYLES BELOW THE POVERTY LINE (Report to the California Social Welfare Board from the Institute for Social Science Research, San Francisco State College, 1966).

but in large part it also rests upon the absence of meaningful alternatives to current practices. The poor, lacking the normal requirements of credit, cannot shop in the major department stores. Under present marketing arrangements in our society, unethical practices may be an inevitable consequence of serving the wants of the poorest risks. Society now virtually presents the very poor risks with twin options: of foregoing major purchases or of being exploited.

Quite apart from their greater exposure to fraudulent practices, the poor must pay more for their credit purchases. As a Federal Trade Commission study has recently shown, the mark-up of the low-income retailer is substantially higher than that of the general market retailer, in part because of his less efficient business practices.[18] To an unknown extent, these added mark-ups must be apportioned among various possible causes: the possibly greater risks and other costs of doing business in low-income areas, the weakness of competition where consumers are less informed and less mobile and where the more reputable retailers are less likely to operate, and the lower ethical standards prevailing in the community generally. Again the price of serving the poorest members of the society appears high, but amelioration of these costs seems possible through legal reforms, consumer education, and other efforts to bring the benefits of retailer competition to low-income areas.

The role of installment credit in the life of the poor has drawn public attention to two major issues. First, by making the poor into consumers, it has forced government to include in its efforts to combat poverty ways of providing meaningful alternatives to the costly system of sales-and-credit. The discovery has gradually been made that improving the income of the poor is only one side of their economic plight. Equally important is the matter of how they spend what little income they have. If the poor must pay more for goods and services, the increments in their income may have little impact on their lives. Today the war on poverty includes numerous programs designed to cope with the consumer problems of the poor. Low-income credit unions have been set up in many areas, and food-buying clubs and other kinds of consumer cooperatives have been developed in ghetto communities.

Second, the access of the poor to installment credit has forced the legal profession to re-examine some traditional concepts. For example, the principle of freedom of contract has come into further question as it has become apparent that inequality in understanding and bargaining power can yield bargains that the courts cannot in good conscience enforce.[19] Even the venerable status of the so-called "holder in due course"—that is, one who takes a negotiable note innocently by endorsement and is freed of defenses that might be asserted against the payee—is also being threatened by the realization that unscrupulous merchants and

[18] *See* FTC, ECONOMIC REPORT ON INSTALLMENT CREDIT AND RETAIL SALES PRACTICES OF DISTRICT OF COLUMBIA RETAILERS (1968).

[19] *See* note 23 *infra* on the gradual emergence of a principle of "unconscionability."

cooperating finance companies are given an extraordinary legal advantage over the consumer.[20] Among other stimuli, the active efforts of dedicated lawyers in legal aid and OEO-sponsored neighborhood legal services programs have generated new attention to the abuses possible in consumer credit arrangements, and the recent efforts at reform, which are the subject of this symposium, must be viewed as at least partially motivated by a new awareness of the credit problems of the poor. Whether the federal Consumer Credit Protection Act of 1968 and the newly promulgated Uniform Consumer Credit Code place too much reliance on disclosure as a means of promoting consumer self-help remains to be seen; the low-income consumer may still find himself victimized to an extent the society should continue to deplore. Perhaps consumer education programs and cooperative efforts of the types noted above will be useful further remedies, but I suspect that, even more, we need stricter enforcement of the existing and proposed credit statutes. The enforcement machinery specified in the Uniform Consumer Credit Code holds out hope of more effective enforcement, but the dependence of the Code Administrator on legislative budgetary support reminds us that statutory power alone is not enough.[20a]

D. Credit Rating: A New Principle of Stratification

In the credit society, a new and increasingly important dimension of stratification has been introduced, one that is analytically independent of the older dimension of credit ranking. As our economy becomes more and more dependent upon credit, a man's credit rating becomes an increasingly important asset. A vast network of information exchange exists in the credit industry, and each city has a credit bureau in which information about consumers is assembled and collated. Automation has been introduced, and soon the credit rating system will be fully automated.

How one achieves or loses status in this ranking system is by no means obvious. Considerable controversy is now going on in the credit industry as to whether a person's past performance with credit or whether some kind of index score based on the person's social status should be the basis for assigning rank in this system. Presumably, the person who has a known record of missing payments or defaulting on payments is assigned a low rank, but it is also true that the cash buyer, the person who prides himself on his solvency, is also denied a high rank. Many people who apply for credit for the first time are rudely jolted to discover that they cannot obtain as much credit as they would like even though they may have a high-paying, respectable job, for the simple reason that they have not yet demonstrated their reliabilty in credit transactions. This turns out to be yet another pressure forcing

[20] *See, e.g.*, ANN. LAWS OF MASS. ch. 255, § 12B (1968), *noted in* 75 HARV. L. REV. 437 (1961). UNIFORM CONSUMER CREDIT CODE § 2.403 would require consumer paper to be nonnegotiable, and § 2.404 provides alternative clauses specifying either that an assignee is subject to all defenses or the limited circumstances under which he would not be so subject.

[20a] *See* Curran, *Administration and Enforcement Under the Uniform Consumer Credit Code*, in this symposium, p. 737.

consumers into the credit economy. A number of the people interviewed in the Katona surveys explicitly stated that they bought on time in order to establish their credit rating.[21]

The pressure toward a probabilistic social index for determining credit ratings comes from the fact that such a procedure is easier to administer and fits more neatly into the computer age. Yet it also permits injustices, as errors inevitably occur—for example, when a person's neighborhood is used to assign him a high or low rank.

That a person's credit rating is not merely a reflection of his socioeconomic status is indicated by the fact that some relatively high-paying and respectable occupations are assigned low credit ratings by the credit industry. For example, musicians and entertainers have considerable difficulty getting credit because their income tends to be irregular and their jobs require them to move about a good deal. Conversely, not all unskilled workers are automatically assigned low ratings. Should the unskilled worker be employed in the public rather than the private sector, creditors will be more inclined to extend him credit. Not only does such a person have more job security, but the public employer will more readily cooperate with the creditor on wage garnishments if they should prove necessary. It may be noted that although federal employees cannot be garnisheed, state and municipal employees ordinarily can be.

The notion of credit rating and the invisible industry of credit bureaus and information exchange systems soon to be fully automated pose a number of problems for the democratic society, problems that go beyond the issue of privacy that is now receiving much attention. As the system now operates, there is no institutionalized procedure whereby the consumer can find out his credit rating and check upon whatever derogatory information may appear in his credit folder. His dossier may contain erroneous or outdated information which severely damages his credit rating, and yet he does not have ready recourse for correcting the situation. The concept of due process does not exist in the credit rating system, although I suspect that, as the credit society becomes more fully institutionalized, something like it will have to develop.[22]

III

STRESSES AND STRAINS IN THE CREDIT SOCIETY

I should now like to turn to a consideration of some of the stresses and strains of the credit society. One undesirable consequence of the credit explosion has been a sharp rise in the amount of white-collar crime. Insofar as market transactions depended upon cash, sellers had less opportunity and incentive to employ deception

[21] KATONA 235.

[22] *See* Karst, *"The Files": Legal Controls Over the Accuracy and Accessibility of Stored Personal Data*, 31 LAW & CONTEMP. PROB. 342 (1966).

and fraud. The consumer who could afford to pay cash for an automobile or expensive appliance was probably more deliberate and sophisticated in his shopping behavior, and there was no point in trying to convince the person without cash to make an expensive purchase. All this changed with the advent of installment credit. Whether or not the consumer can afford the purchase is now a secondary consideration. Once the contract is signed, the seller has been able to count on the law to enforce his right to payment. Changes in contract law and the laws governing consumer credit have to this point lagged far behind the growth of our credit economy. The signed contract has for the most part continued to be treated as sacrosanct in courts of law, and the fraudulent techniques used to obtain the consumer's signature, so difficult to prove in court, have been largely ignored.[23] That the reform measures discussed in this symposium have been taken or are under consideration is to be noted with approval, although I am not now in a position to comment on the sufficiency of the legal steps themselves in meeting the problems I outline.

The recent report of the President's Crime Commission estimates that from $500 million to a billion dollars are lost annually to the victims of fraudulent home repair and improvement schemes.[24] Shady practices in the used-car field, in door-to-door selling of vacuum cleaners, deep freezers, and other expensive appliances, and in the self-improvement field covering such things as dance courses and health courses, account for additional billions of annual losses to consumers. As I have already noted, the poor are particularly vulnerable to these exploitative schemes.[25]

Another strain in the credit society is that an increasingly large number of consumers find themselves unable to cope with the debt burdens they have assumed. According to Katona, this group is only a tiny fraction of the consuming public,[26] but I am not so sure. Certainly they are present in substantial numbers in the working and lower classes. Katona's own data show that in the early 1960s about twelve per cent of all spending units had twenty per cent or more of their income committed to installment payments.[27] Two firm indicators of the increasing frequency of debt problems are the rising number of wage garnishments and per-

---

[23] This situation is slowly beginning to change. A few years back, a suit against a poor consumer in Washington, D.C., was dismissed on the grounds that the transaction stemmed from an "unconscionable contract." Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965). The doctrine of the "unconscionable contract," which has been embodied in UNIFORM COMMERCIAL CODE § 2-302, had never been applied to consumer credit until this case. *See* American Home Improvement, Inc. v. MacIver, 105 N.H. 435, 201 A.2d 886 (1964). UNIFORM CONSUMER CREDIT CODE § 5-108 contains a derivative provision which would explicitly apply to consumer credit transactions. *See* Hogan, *Integrating the UCCC and the UCC—Limitations on Creditors' Agreements and Practices*, in this symposium, p. 686, 701, for a discussion of this section.

[24] PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CRIME AND ITS IMPACT—AN ASSESSMENT 104 (1967).

[25] CAPLOVITZ, *supra* note 16, at 12-31.

[26] KATONA 242.

[27] *Id.* at 243.

sonal bankruptcies. There are no national statistics on garnishment, but in the cities where such records are kept, the pattern is clear. For example, in Chicago, wage garnishments increased from 59,000 in 1962 to 73,000 in 1966.[28] (I recently discovered that 10,000 persons employed by the City of New York had their wages garnisheed in 1966[29]—roughly one out of every thirty of the city's employees.) Personal bankruptcies in the country have risen at an alarming rate, from 16,000 in 1948 to approximately 191,000 in 1967.[30] A study now being conducted by The Brookings Institution shows that many of these bankruptcies resulted from efforts to garnishee wages.[31] Many workers who find that their incomes will be reduced through garnishment have no alternative but to declare bankruptcy.

It should be noted that many employers will not put up with the nuisance of garnishment and do not hesitate to fire their employees who present them with this problem. There are no statistics on the number of workers who lose their jobs each year because of garnishments, although the Department of Labor recently estimated on a very impressionistic basis that this must happen to at least a hundred thousand workers a year. Moreover, once a worker is discharged because of a garnishment, he finds it very difficult to find new employment. Many employers will not hire persons with garnishment records. A recent study of the hard-core unemployed by the Department of Labor showed that some in this group were unemployable because of garnishment records. Thus installment credit is not only an important stimulus to economic growth and the means by which those in all strata can share in the country's affluence, it is also responsible for driving some people into the poverty class. Against this background, it is possible to note with approval those provisions of the federal Consumer Credit Protection Act of 1968 which limit the amount of wages subject to the garnishment remedy and the right of employers to fire employees on grounds of a single wage garnishment.[32]

The prevalence of fraud in the consumer credit field is a reminder that not all consumers who become trapped in debt and are driven into poverty are irresponsible credit users. Many of them have been victimized by firms that misrepresent price and quality; yet they, too, have suffered from the hardships that result from being hounded by bill collectors and the harsh but legally sanctioned collection procedures such as garnishment and the attachment of real and personal property. The reform efforts discussion in this symposium attempt to strike new balances between creditors' rights and debtors' ability to resist payment of debts incurred

[28] Personal communication to the author from the Chief Clerk of the Cook County, Illinois, Municipal Court.

[29] Personal communication to the author from the Director of the Garnishee Division of the Bureau of Administration, New York City.

[30] 1967 DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS ANN. REP. 132, 136.

[31] D. STANLEY *et al.*, BANKRUPTCY IN THE UNITED STATES (forthcoming).

[32] §§ 303, 304, 82 Stat. 146. *See also* UNIFORM CONSUMER CREDIT CODE § 5.106, which, where enacted, would prohibit *all* discharges because of wage garnishments.

in fraudulent transactions. Optimization of this balance will be difficult to achieve, but it is encouraging to see the pendulum swinging back.

Loss of job is not the only severe consequence of debt entanglement. Debt problems also turn out to be a factor in marital instability and illness as well. In the same national survey conducted in January 1967 that I referred to earlier, the respondents were asked if they knew anyone whose marriage had suffered or broken up because of debt problems. Some twenty-three per cent answered in the affirmative. The respondents were also asked whether they knew anyone whose health had suffered because of a debt problem, and this time twenty-one per cent answered "yes."[33] (Perhaps installment contracts should contain a warning that says, "Signing your name to this document may be hazardous to your health.")

Apart from the strains on those entangled in debt is the question of the strains consumer credit places on the economy itself. Economists agree that an excessively high debt-income ratio would lead to a recession since consumers would be forced to curtail their consumption to pay off old debts. But there is little agreement among economists as to where the danger point lies. In the early 1960s the debt-income ratio averaged about fourteen per cent;[34] some economists thought that this was too high,[35] and the ratio has presumably risen since then with no ill effects.

CONCLUSION: FROM THE CREDIT SOCIETY TO THE CHECKLESS SOCIETY

That economists cannot agree on the dangers of consumer debt is, I suspect, due to the fact that the credit society is still a new phenomenon. The strains that I have outlined might well be more symptomatic of the transitional period. As the credit society becomes more fully institutionalized and new structural arrangements emerge, these strains may disappear. There are already signs of this. For example, as this symposium details, government is beginning to take action to reduce the abuses associated with installment credit. The main thrust of the Consumer Credit Protection Act is to require full disclosure of credit costs so that consumers will be able to shop for credit. The federal act's curtailment of garnishments should go far to remove the hardships stemming from use of that remedy that I have mentioned, and the act provides legal machinery for a federal attack on that most merciless of predators, the loan shark, whose activities spawn terror and crime in the communities in which he operates. There is also increasing pressure to establish strong enforcement machinery that would curtail consumer fraud and other abuses.

The recently promulgated Uniform Consumer Credit Code promises a more far-reaching remedy for existing credit abuses to be enacted at the state level. Among the Code's desirable reforms are extensive finance charge disclosure requirements (largely paralleling those of the federal act); the setting of realistic and enforceable ceilings

33 Survey, *supra* note 6.
34 KATONA 242.
35 *See, e.g.*, J.K. GALBRAITH, THE AFFLUENT SOCIETY 197-209 (1958).

on the amount of finance charges in the place of exception-ridden usury laws; a new standard of "unconscionability" specifically applicable to consumer credit transactions; the curtailment of remedies available to lenders, particularly new restrictions on garnishments beyond those in the federal act; new remedies for debtors to invoke against creditors when credit is extended in violation of the Code; and the creation of an adequately financed enforcement agency to supervise compliance. While these are useful steps, my approval of the UCCC is at best qualified. For example, I wish the Code had taken a less equivocal position on the holder-in-due-course doctrine by omitting the ninety-day notice option,[36] and I had hoped that it would abolish garnishment as some states have already done, even if this would mean an increase in the cost of credit. Most importantly, the Code's enforcement machinery leaves much to be desired. The Code makes no provision for class actions by consumers nor does it specify attorney fees for consumer plaintiffs. Without such incentives aggressive advocacy on behalf of consumers is not likely to occur.

Radical and significant changes will occur in the credit industry itself. Until recently, the structure of that industry has remained substantially the same in spite of the enormous growth of consumer credit. But it is now beginning to change, partly as a result of automation, but the pace of change would be dramatically increased by enactment of the Uniform Consumer Credit Code, which would eliminate most of the legal barriers that have prevented active competition among segments of the finance industry. With the elimination of the most restrictive licensing requirements and statutory provisions restricting particular types of lenders to particular types of business, competition for consumer credit business should produce more efficient operations, lower costs, and fewer abuses of the credit system. Given more alternatives and better disclosure to make alternatives meaningful, even low-income consumers should be able to obtain better service of their credit needs, and the consumer finance industry should assume a new shape.

Structural changes in the industry are likely to be produced by other forces as well. Because of automation, we shall eventually see what has been referred to as the "checkless society." This will be an elaborate, centralized system of transfer of payments in which both cash and checks become unnecessary. In this system, the bank or some comparable institution would serve as the intermediary between the consumer and his creditors. The system would require centralization of credit information. The bank would come to act as a financial adviser to the consumer since it would have the power to extend or withhold credit. Such a system would thus protect consumers from their own excesses, but it would also yield institutions of great size—needed for efficient operation—and power. Such a credit system is likely to require some added measure of governmental control to protect the public interest with respect to credit information and perhaps other matters as well.

[36] For a more detailed critique of the UCCC, *see* N.Y. CONSUMERS' ADVISORY COUNCIL, DEP'T OF CONSUMER AFFAIRS, REPORT ON THE UNIFORM CONSUMER CREDIT CODE (1969).

A pervasive theme in the social analysis of our time focuses on the consequences of an historic shift from the problems of production to those of consumption, from those of scarcity to those of surplus, from those in which choices are constricted to those characterized by discretionary choices. In the emerging shape of the credit society we can discern not only new problematics but new solutions that will alter fundamental structures of modern society. It is superfluous to add that these problems and these solutions call for careful research and thought.