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FINANCIAL LITERACY OR FINANCIAL CASTIGATION?

John A.E. Pottow*

This year, the Canadians — through their government-convened Task Force on Financial Literacy — have proudly produced, “Canadians and their Money: Building a Brighter Financial Future.”¹ Armed with 30 recommendations, its most dramatic innovation is to recommend the creation of a Financial Literacy Leader. I have been asked to provide an American perspective on this report specifically and the broader agenda of “financial literacy” more generally as a consumer welfare intervention.

Let me start by acknowledging the critiques of the Canadian Task Force. For example, my Canadian colleague, Saul Schwartz, has already drafted a compelling analysis of the political economy behind the report and presented a devastating juxtaposition of the testimony made available to the task force with the summary and syntheses in the report itself.² It is not flattering. I also recognize the dizzying array of Canadian government and community institutions already in existence, including the Financial Education Institute of Canada, the Financial Consumer Agency

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1. Task Force on Financial Literacy, *Canadians and their Money: Building a Brighter Financial Future* (Ottawa, 2010) (“Task Force Report”), available at <<http://www.financialliteracyincanada.com>>.
2. I will add to Saul’s analysis that the strong voice of the banks in disclaiming ultimate responsibility is present. See *id.*, at p. 20 (“Governments can help create the right financial environment through appropriate policies and regulations, but the burden of making financial decisions ultimately rests with individuals.”) (quotation from TD Bank Financial Group). This evasion of responsibility is in the face of the Report’s conclusion of the need for “shared responsibility.” See *id.* (“We believe that financial literacy is a matter of *shared responsibility* among many stakeholders, and have made it a key aspect of the National Strategy.”); see also Jacob Ziegel, “Consumer Insolvencies, Consumer Credit, and Responsible Lending,” in J. Sarra, ed., *Annual Review of Insolvency Law 2009* (Toronto, Carswell, 2010), p. 343 (noting need for shared responsibility); Iain Ramsay, “From Truth in Lending to Responsible Lending” (International Association of Consumer Law, Research Paper, 2008) (documenting developing socio-legal norm of responsible lending), online: <http://www.iaclaw.org/Research_papers/Truthinlendingtoresponsiblelending.pdf>; Jean Braucher, “Responsible Lending as an Emerging International Norm,” *Credit Slips*, online: <<http://www.creditslips.org/creditslips/2011/06/responsible-lending-as-an-emerging-international-norm.html>>. For an earlier discussion of responsible lending and its need for application in the United States, see John A.E. Pottow, “Private Liability for Reckless Consumer Lending,” 2007 U. Ill. L. Rev. 405.

of Canada, the Financial Planning Standards Council, the Investor Education Fund, and the National Advisory Council.³ That said, I come to praise the report, not to bury it. For it is only in contrast to the demoralizing state of affairs in the United States that one can appreciate just how far ahead the Canadians actually are.⁴ Thus, the comparative analysis is that the Canadians' glass is half-full. To be sure, there are still glaring deficiencies on both sides of the border that warrant further comment. I propose addressing those deficiencies in part through a call to arms for greater financial castigation rather than financial literacy education.

The United States has taken a heavy-handed approach to financial education in the 2005 BAPCPA legislation.⁵ In addition to mandatory pre-filing "credit counseling" (which in turn contains a considerable financial education component), there is a mandatory pre-discharge debtor education course.⁶ The apparent belief of the enacting Congress was that these educational interventions would reduce the number of bankruptcy filings, the stated aim of the legislation.⁷ So far, the results have been uninspiring. Even the

3. The United States has a Federal Financial Literacy and Education Commission. See "Financial Literacy and Education Commission" (2011), U.S. Department of the Treasury, online: <<http://www.treasury.gov/resource-center/financial-education/Pages/commission-index.aspx>>. This was presumably deemed insufficient to prevent the formation of the Consumer Financial Protection Bureau.

4. One striking difference is Schwartz's hostility to the proposed Financial Literacy Leader in Canada — as being a patsy of no real power — and the groundswell of opposition to the still-unconfirmed head of the Consumer Financial Protection Bureau in the United States — as an unstopple regulatory czar of unparalleled administrative powers. See Richard Shelby, "44 U.S. Sens. to Obama: No Accountability, No Confirmation" *Richard Shelby, United States Senator of Alabama* (May 5, 2011), online: <<http://shelby.senate.gov/public/index.cfm/2011/5/44-u-s-sens-to-obama-no-accountability-no-confirmation>>:

The Dodd-Frank Act grants the CFPB director unprecedented authority over financial institutions and main street businesses. The CFPB director will have vast rule-making, supervisory, investigative and enforcement powers and the authority to regulate any person or business that offers or sells a "financial product or service." This authority will extend to not just traditional financial institutions, but also potentially thousands of entrepreneurs and small businesses.

5. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005) (codified in scattered sections of 11 U.S.C.).

6. See 11 U.S.C. § 109(h) (2006) (pre-petition credit counseling requirement); 11 U.S.C. § 727(a)(11) (2006) (pre-discharge debtor education course).

7. See 151 Cong. Rec. S.1856 (daily ed., March 1, 2005) (statement of Sen. C. Grassley) ("So that I am crystal clear, people who do not have the ability to repay their debts can still use the bankruptcy system as they would have before. The bill clearly provides that people of limited income can still file under chapter 7 and get that fresh start . . . so their debts can be wiped away, as is done right now."); "George W. Bush: Remarks at the Signing of

U.S. government itself in its first report assessing these BAPCPA counseling and education requirements unenthusiastically proclaimed their efficacy “not clear.”⁸

Scholars have already questioned the wisdom of mandatory financial education courses.⁹ More broadly, others, under the lead of Lauren Willis, have launched a greater attack on financial education as a method of enhancing consumer welfare, arguing quite forcefully and persuasively that policymakers sublimate reformist impulses into a mantra of “more financial education” as a politically expedient alternative to substantive reform (such as, e.g., reconsideration of usury laws).¹⁰ This reflects at best Pollyanna-ism and at worst subterfuge. While Willis may be at times too uncharitable — other studies have found at least some behaviour modification successfully brought about through financial literacy programmes¹¹ — she is surely correct in her political assessment (not to mention her painstaking methodological critiques).¹²

The inefficacy to date of the financial education efforts spearheaded by BAPCPA is not surprising. What is more unusual is the depth of the denial that has taken stranglehold over U.S. policymakers. There are two principal revelations of this denial I offer for comparative reflection: first, the “regulatory mindset” to

Bankruptcy Abuse Prevention and Consumer Protection Act” in John T. Woolley and Gerhard Peters, *The American Presidency Project* (Santa Barbara, April 20, 2005), online: *The American Presidency Project* <<http://www.presidency.ucsb.edu/ws/index.php?pid=63247#axzz1RpMs8Bg6>> (“[T]oo many people have abused the bankruptcy laws. They’ve walked away from debts even when they had the ability to repay them. . . . Under the new law, Americans who have the ability to pay will be required to pay back at least a portion of their debts.”).

8. See United States Government Accountability Office, GAO-07-203, *Report to Congressional Requesters: Bankruptcy Reform: Value of Credit Counseling Requirement Is Not Clear* (Washington, D.C., Government Accountability Office, 2007).
9. One prominent skeptic is Lewis Mandell, designer of JumpStart. See, e.g., Lewis Mandell, “Financial Education in High School” in *Overcoming the Saving Slump: How to Increase the Effectiveness of Financial Education and Saving Programs*, Annamaria Lusardi, ed. (Chicago, University of Chicago Press, 2009).
10. See Lauren E. Willis, “Against Financial-Literacy Education” (2008), 94 *Iowa L. Rev.* 197, p. 265.
11. For example, see the studies discussed in Richard Wiener *et al.*, “Debtor Education, Financial Literacy, and Pending Bankruptcy Legislation” (2005), 23 *Behav. Sci. Law* 347, p. 364.
12. For a meticulous unpacking of the methodology of the studies touting the benefits of financial literacy education, see Lauren E. Willis, “Evidence and Ideology in Assessing the Effectiveness of Financial Literacy Education” (2009), 46 *San Diego L. Rev.* 415.

incentive-crafting legislation inherent in BAPCPA (in contrast to the Canadian Task Force Report); and second, the blithe ignorance of failure reflected in the most recent U.S. assessment of BAPCPA's financial education efforts.

Consider first what I have called the regulatory mindset. Susan Block-Lieb and Ted Janger published a wonderful analysis of the *homo economus* ambitions behind BAPCPA, coupled with compelling argument that not only are consumers irrational (or perhaps boundedly rational) participants in the credit markets, but that a stable equilibrium can be and has been reached with lenders exploiting those biases, even in highly competitive environments, as a form of regressive rent-seeking.¹³ BAPCPA was designed upon a full-throated belief that consumer debtor conduct could be crafted with an assortment of carrots and sticks (mostly sticks): by harshening the bankruptcy discharge, filings would be reduced through changes in consumer conduct.¹⁴ Subsequent empirical research has shown this assumption to be painfully misguided, and the ensuing collapse of financial markets both heightened attention to this market's shortcomings and fueled demand for greater government regulation.¹⁵

Contrast this wooden approach to the Canadians' insistence on taking heed of cautions flowing from the field of behavioural law and economics, "[T]he Task Force has taken a close look at 'behavioural economics', a field of study that looks at factors influencing financial behaviour to understand how people make decisions about their money."¹⁶ Hyperbolic discounting, to pick one popular application, is discussed in the task force report explicitly; not so in BAPCPA.¹⁷ Thus, at least from the American perspective, it seems that the Canadian approach is being more realistic in predicting the mechanisms of consumer conduct in suggesting financial reform.

To be sure, the picture is not so starkly pro-Canadian as I paint. For example, the recent Dodd-Frank Act's Consumer Financial

13. See Susan Block-Lieb and Edward J. Janger, "The Myth of the Rational Borrower: Rationality, Behavioralism, and the Misguided 'Reform' of Bankruptcy Law" (2006), 84 *Tex. L. Rev.* 1481.

14. See generally Robert M. Lawless *et al.*, "Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors" (2008), 82 *Am. Bankr. L.J.* 349.

15. See Block-Lieb and Janger, *supra*, footnote 13, at p. 1481; see also G. Ray Warner, "Bankruptcy Reform and Economic Recovery" (2010), 25 *J. Civ. Rts. & Econ. Dev.* 181.

16. See Task Force Report, *supra*, footnote 1, at p. 54.

17. See *id.* ("Choices that do not have immediate relevance (*e.g.*, saving for retirement) may be delayed to a future time, despite their importance.").

Protection Bureau is told in its enabling legislation to undertake considerations of behavioural law and economics.¹⁸ (This is surely Michael Barr and Elizabeth Warren's influence, and note that Cass Sunstein is head of the Office of Information and Regulatory Affairs).¹⁹ And the Canadians, while recognizing the need for greater simplicity,²⁰ have not yet come up with an implementing solution other than exhortation. Consider that since 2001, the Bank Act's regulations already required "clear and straightforward language" in consumer lending documents, policed by the Financial Consumer Agency of Canada.²¹ Yet few would argue loan documents since then have been clear. As such, it is uncertain further injunctions to "improve language and presentation"²² will have any greater effect. Cynically, one is reminded of the European Union's new Proposal on Mortgage Lending, which includes draft disclosure language in simple English for loan documents warning borrowers, "Your income may change."²³ Still, the deeper trend is surely prevalent: the Canadian Task Force's regulatory mindset is to recognize and embrace the imperfection of the consumer rather than remain in the thrall of long-discredited beliefs of rational consumer action.

The second revelation of U.S. denial is in the Justice Department's 2008 Report to Congress on the "Evaluation of Instructional Classes in Personal Financial Management for Consumer Bankruptcy Debtors."²⁴ It's a doozy. (Actually, I

18. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, § 1013(b)(1)(E) (2010) (directing the Consumer Financial Protection Bureau to conduct research on "consumer behavior with respect to consumer financial products or services"); Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 § 301 (2009) (changing certification requirements for financial literacy courses for young consumer to take account of the course's "proven track record in producing changed consumer behavior").

19. See Oren Bar-Gill and Elizabeth Warren, "Making Credit Safer" (2008), 157 U. Pa. L. Rev. 1; Michael S. Barr *et al.*, "The Case for Behaviorally Informed Regulation" in *The Behavioral Foundations of Policy*, Eldar Shafir, ed. (New York, Russell Sage Foundation Press and Princeton University, 2007); Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven, Yale University Press, 2008).

20. See Task Force Report, *supra*, footnote 1, at p. 56.

21. See *id.* at p. 72.

22. See *id.*

23. *Commission Proposal for a Directive of the European Parliament and of the Council on Credit Agreements Relating to Residential Property*, COM (2011) 142 final (March 31, 2011), p. 51.

24. U.S. Department of Justice, "Report to Congress: Evaluation of Instructional Classes in Personal Financial Management for Consumer Bankruptcy Debtors" (Washington, D.C., 2008) ("DOJ Report").

believe the proper colloquialism might be “boondoggle,” at least for Abt Associates, the consulting service firm to which the project was outsourced.)²⁵ The report’s conclusion proudly trumpets:

Almost all of the consumer bankruptcy debtors (97%) in the pilot study who took the course utilizing the financial management training curriculum and materials developed for the EOUST [Executive Office of the U.S. Trustee] expressed a high level of satisfaction with the curriculum. Further, almost half of the consumer bankruptcy debtors in the pilot study reported their intention to change at least one financial practice.²⁶

Yet the report then sheepishly tucks in what it suggests is the only less glowing finding: “The pilot study did not, however, find substantial improvement in knowledge and financial practices,” which it explains away as “likely due to pre-existing knowledge regarding the topics measured.”²⁷

The U.S. Report sounds like debtor education classes are mostly, perhaps unambiguously, a success. But that rosy spin requires further scrutiny. Three metrics of gauging success were used: self-report of student satisfaction; knowledge improvement on a “financial skills” questionnaire, and a two-part conduct review, based first on a statement of intentions regarding future financial behaviour and second on a follow-up review six months later.²⁸ Careful readers should initially question whether all three criteria should be weighted equally. While I am all for using triangulation of multiple datapoints in conducting empirical investigations, surely we should be more interested in whether a financial education course *actually affected* the debtor’s subsequent financial life than whether she was happy, as a matter of psychic utility, that she took the course? (Perhaps I reveal my own crabbed conception of the goals of financial education by unfairly shortchanging the “feel-good” payoff.) Indeed, were we to rank the metrics in ascending order of relevance, surely most would agree they track the order presented: Did you like being educated in financial literacy; did you learn anything; did you learn anything that is going to make you want to change your life after bankruptcy; and did you learn anything that is *actually going to make you change your life after bankruptcy*?

25. The DOJ Report itself is only six pages; the massive Exhibit 1 is the Abt Associates report, which is duly padded with plenty of graphics and subject headings, exhaustively cataloguing debtor experiences with the mandatory financial education courses.

26. *Id.* at p. 6.

27. *Id.*

28. *Id.* at p. 4.

Reframed thus, the results from the U.S. study are less encouraging than the consultants' conclusions portend. True, while 97% of debtor-students reported being satisfied,²⁹ only a smaller percentage (between zero — *zero!* — and 15% depending on estimates) improved their scores on the same test administered before and after the course.³⁰ (The test itself was an easy 10-question true/false one that resulted in a score of nine or ten out of ten for 36-47% of respondents — *pre-course*.) The report authors interpret the at-best modest improvement in scores after the financial education course as evidence that many debtors knew all this stuff already, not that the course added little value.

As for the most important criterion — did anything change as a result — the report's data do not inspire. Only 44% of respondents reported an intention to change *any* one of 10 "financial habits."³¹ In other words, more than half had no inclination to change at all. (Without getting too into the details — I refer the reader to the U.S. Report itself — it is far from clear that all these "financial habits" should be coded equally; because of the ordinal ranking, "compare prices before making purchases" earns the same treatment as "save money regularly" and "reduce impulse spending and cut unnecessary spending.")³² It gets worse — some of the debtors financially regressed, such that they on balance planned to worsen their financial conduct afterward, and so these "decelerations" (as the report calls them) would require reducing the 44% gross estimate above. Now the *coup de grâce*: only at best half of the "intenders" actually followed through and altered their conduct within six months, such that, as an upward bound, fewer than one-quarter of debtors actually had any material change to conduct as a result of the mandated course.³³ Seventy-five percent were unaffected in any meaningful way.

The simple explanation for the sunny tone of the report's conclusions is that Abt wanted to be the harbinger of good news. Everyone likes success. But surely the deeper reason is the attitude of denial that has taken hold in the United States — the near-unshakable belief that financial literacy and education is the low-cost panacea to consumer financial distress.³⁴ With this

29. *Id.* at p. 5.

30. *Id.*

31. *Id.* at p. 26.

32. *Id.* at p. 5.

33. *Id.* at pp. 41-42.

34. See Willis, *supra*, footnote 10, at p. 197.

preconception, it is unsurprising the report's authors found the glass one-tenth full rather than mostly empty.

If financial literacy education — especially for students forcibly conscripted through withholding of the bankruptcy discharge — is not the most efficacious policy intervention, what might be better? I have a modest proposal to sketch out in only the most barebones of form, linking together the works of psychologist Richard Weiner and law professor and advocate Nathalie Martin.³⁵ It can be summarized thus: it is time to capitalize on base, raw emotion. More specifically, I want to make the perhaps unpopular suggestion that we need to terrorize debtors more. Rather than financial *education*, we should have more financial *castigation*. This policy argument builds in two parts, and it rests on a seeming contradiction that I will try to resolve.

The first part of the argument is simply an acknowledgement of the powerful role of emotion in consumer spending and borrowing decisions. The works of Richard Wiener and his co-authors document extensively how some consumers self-medicate (“mood repair”) through consumption patterns. What is even more illuminating are their findings on not just the inefficacy — but the sometimes backfiring mood enhancements — of attempts at financial education and disclosure. For example, Wiener finds that enhanced disclosure warnings to consumers about to embark on a simulated shopping spree did have some effect at curbing intended spending (in contrast to garden-variety disclosures), but for the subset of consumers who admitted to shopping to end bad moods, the enhanced disclosures correlated with *more* credit card purchasing — what he calls a “boomerang effect”³⁶ — suggesting perhaps that the disclosure enraged, or perhaps merely stultified, these mood-dependent shoppers.³⁷ Moreover, as for “financial literacy” *simpliciter*, he finds a low correlation between financial literacy test scores and intended purchasing patterns. Thus, one important implication of Wiener's work is that financial education aimed at rationally educating debtors to

35. See Richard L. Wiener *et al.*, “Psychology and BAPCPA: Enhanced Disclosure and Emotion” (2006), 71 Mo. L. Rev. 1003; Nathalie Martin and Ocean Tama y Sweet, “Mind Games: Rethinking BAPCPA's Debtor Education Provisions” (2007), 31 S. Ill. U.L.J. 517.

36. See Wiener, *ibid.*, at p. 1031.

37. See *id.* at p. 1011. This study is complex, and I am picking only highlights. For instance, the suggestion above in the text that the mood mediation might be rage is too quick; Wiener finds an increase in both positive and negative emotions for “shopaholics” after reading the enhanced disclosures. *Id.* at p. 1031.

change their conduct upon seasoned reflection — the theoretical core of BAPCPA — may be a fool's errand.³⁸

The second part of the argument takes seriously the work of Nathalie Martin that details her experiences with and recommendations for consumer finance classes.³⁹ She has her own kindred call to arms for shock and awe in scaring consumers into fear of credit. In her own colourful words, "Given the physiological, psychological, and cultural factors influencing the use of consumer credit, as well as the industry's successful efforts to indoctrinate American thinking about what is desirable and affordable, in my view, nothing short of kamikaze tactics will do."⁴⁰ Indeed, Martin's findings are consistent with Willis' (and others')⁴¹ that many of the seemingly successful financial education courses studied to date may actually owe their success not due to the direct content of the information conveyed but due to their collateral consequences, such as individual counseling with an instructor, or pre-commitment techniques, such as cutting up credit cards. (Willis calls these the "noneducative components" of financial literacy education.)⁴² Accordingly, my recommendation upon synthesizing the multitude of studies best exemplified by Weiner and Martin is that rather than informing debtors with mind-numbing curricula on how to calculate interest rates, we should be scaring the pants off them about how quickly credit cards can spiral out of control and drive people into bankruptcy.⁴³

38. This conclusion should not be overstated. In other work, Wiener finds that financial literacy can be effective. See, e.g., Wiener, *supra*, footnote 11, at p. 347 (finding improved knowledge scores by "trained" debtors taking financial literacy course, but cautioning that those debtors did not show significant change in conduct, such as their credit card balances or number paying more than minimum balance).

39. See Martin, *supra*, footnote 35, at p. 517.

40. *Id.* at p. 541.

41. See, e.g., Jean Braucher, "An Empirical Study of Debtor Education in Bankruptcy: Impact on Chapter 13 Completion Not Shown" (2001), 9 Am. Bankr. Inst. L. Rev. 557.

42. See Willis, *supra*, footnote 10, at p. 206. Indeed, it could be that we are talking past each other in a debate on nomenclature. For example, is the success of just one community group I have studied recently — the Wisconsin Women's Business Initiative Corp. — in teaching financial education a result of the direct curriculum, or the hands-on, community-building ethos that is its "non-educative" aspect? See "Education & Workshops", Wisconsin Women's Business Initiative Corp., online: <<https://wwbic.com/?q=education-workshops>>. Building upon this, it is interesting that the Canadian Task Force recommendations include, e.g., such noneducative components as face-to-face pre-counseling requirements. See Task Force Report, *supra*, footnote 1, at p. 42.

43. See Martin, *supra*, footnote 35, at p. 540 ("[W]hy teach the wise use of credit,

“A little fear can be very helpful.”⁴⁴ (One doubts the industry will be an enthusiastic sponsor of this sort of intervention.)⁴⁵

Now the seeming tension: is there a disconnect between, on the one hand, bemoaning the inefficacy of financial education courses and, on the other, offering recommendations for a re-design of their curricula? If Willis is right that this is all a waste of time (other than, perhaps, math skills),⁴⁶ then why bother listening to Martin? The answer is on the just-discussed distinction between cognition and emotion. The revised purpose of the financial education courses would not be for their direct content, but for their indirect effect of engaging participants’ emotions, re-conditioning them to develop genuine fear of the consequences of overindebtedness. Think of all the gory car crash photographs presented in driver education courses — the visceral reaction is intended and likely effective. (Indeed, Canadians are well known for their use of frightening and flaccid cigarette label graphics.) Why not add stories of “people becoming terminally ill, homeless or even suicidal as a result of debt”?⁴⁷ Any tension that might seem to arise from this loosely formed proposal is thus more apparent than real. In sum, I agree with Martin, “My theory is that strong negative emotions are necessary to counteract the industry’s highly effective tactics to encourage harmful spending.”⁴⁸

instead of the danger of paying compound interest and the importance of saving?”).

44. See *id.*, at p. 544. Note that Wiener’s findings of “boomerang” reactions could suggest that the negative affect influence enhanced disclosures had on mood shoppers could lead to a backfire of my proposal. The easy response to this issue is to observe my curriculum would be terror-based and possibly invoke wholly different emotions than those measured on the Positive and Negative Affect Schedule (PANAS) metric used in his study. The harder response is to try to disentangle the different roles of positive and negative emotion in mediating and moderating consumption habits, a question Wiener himself wrestles with in his analysis.
45. I was disappointed to learn that this brilliant witticism had effectively been made already by Martin and Sweet. See *id.*, at p. 540, note 138 (“We suspect that the consumer credit industry lobbyists that supported BAPCPA would not want individual consumers to earn interest rather than pay interest.”).
46. Lauren E. Willis, “Financial Education: Lessons Not Learned & Lessons Learned” (Loyola-LA Legal Studies, Paper No. 2011-22), online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1869313###>.
47. See Martin and Sweet, *supra*, footnote 35, at p. 544.
48. See *id.*, at p. 543. A somewhat cognate inquiry involves norm-construction on thrift. Can emotional manufacturing generate increased thrift? The Canadian Task Force report touches on thrift. See, e.g., Task Force Report, *supra*, footnote 1, at p. 57 (discussing the need to reform a “culture that tends to encourage consumption and immediate gratification”); *id.*, at p. 64 (likening norm-construction to the 1970s’ ParticipACTION public service announcement campaign,

What about progressivity? For example, if the cause of financial distress is divorced from volitional conduct but is simply the unhappy consequence of being poor, then what good does it do to hector these unfortunates with fire-breathing sermons on the evils of credit? Martin worries about this herself,⁴⁹ explicitly distinguishing recommendations she has for middle class debtors from those for debtors in poverty.⁵⁰ Consider too that the Abt report finds 83% of debtors attributed an unexpected/unavoidable change in financial circumstance as a cause of bankruptcy, with a majority of that majority — 64% — citing the exogenous change as being the sole cause, *i.e.*, occurring in the absence of any problems with financial management.⁵¹ This may explain the non-correlation between cause of bankruptcy and financial literacy test score.⁵² Indeed, the Canadian Task Force report finds that many people's financial literacy "problems" involve nothing other than being poor. For example, one of the categories in its National Financial Literacy Index is "making ends meet," for which it finds as a demographic matter, I submit unsurprisingly, that "low-income and low-net-worth households" are scoring poorly.⁵³

While it seems senselessly cruel to beat up on the already downtrodden, I nonetheless want to double-down on my proposal (parting ways with my kindred spirit Martin) and insist that even the poor, too, should be subjected to some genuine terror on the risks of consumer credit. This impulse is driven by a couple factors.

with catchy slogans such as "0-10-300"). The United States even has a think tank dedicated to studying thrift. See John Templeton Center for Thrift and Generosity, online: NewThrift.org <<http://newthrift.org/about/>>; A. Mechele Dickerson, "Can Shame, Guilt, or Stigma Be Taught? Why Credit-Focused Debtor Education May Not Work" (1999), 32 *Loy. L.A. L. Rev.* 945. These important considerations — including macro-economic ramifications — are beyond the scope of this discussion.

49. See Martin, *supra*, footnote 35, at p. 544 ("Such [scare] tactics would likely be too harsh for bankruptcy debtors, who already have seen financial tragedy, but are useful for people who have not yet encountered bankruptcy.").
50. See *id.*, at p. 541.
51. See DOJ Report, *supra*, footnote 24, at p. 49.
52. See *id.* Only 10% of respondents listed poor financial management/decision-making on its own (not in combination with an exogenous shock) as the reason for bankruptcy. The report authors cautiously say this number might be too low because of self-serving responses, but their data seem in general accordance with other studies. See Lawless *et al.*, *supra*, footnote 14, at p. 387 (addressing in methodological appendix self-serving response bias concerns and concluding they are likely minimal in a context of court filings that are made under oath).
53. Task Force Report, *supra*, footnote 1, at p. 14. The U.S. report ranks "pay bills on time each month" as a financial skill. See DOJ Report, *supra*, footnote 24, at p. 41. It is unclear whether consumers who do not do so have failed in their financial educations or simply face unwanted liquidity constraints.

First, even low-income consumers need to be made aware of the risks of consumer credit products. My desire is not to drive people from credit cards into the open arms of loan sharks, but to make them recognize the similarities between credit cards and loan sharks — debiasing them from the imprimatur of helpfulness and solicitude that attach to the former's direct mailing brochures.⁵⁴ Second, as a rough justice cut at getting the word out and maybe even changing social consumption norms, I would rather sacrifice the heightened precision of “message discrimination” than engage in the costly sorting of who needs to hear the message from who does not. Is making a non-smoker look at revolting images of nicotine-laden lungs all that costly? Probably not. (This is speculation at best, of course, but that probably places me no worse off than the median legislator.) As such, while I take the concerns of progressivity seriously, I nevertheless counsel broad-sweeping attempts at incentive-shaping through stark, scary lessons on the perils of credit.

This brief commentary has discussed the U.S. enthusiasm toward financial education courses, outlining its fundamental embrace by BAPCPA and persistence in the face of even government-sponsored research showing dubious results at best. It contrasted the Canadian Task Force Report, which, for all its shortcomings, at least recognizes the need for taking heed of behavioural law and economics and human imperfection more generally. In considering these experiences, it also offered the modest proposal that, rather than further reforming financial literacy classes, more energy should be devoted to an emotional assault on consumer credit: terrifying consumers that credit cards are not their friends but their profit-seeking enemies. Of course, it has no hope of passage into official policy in the face of a well-heeled credit lobby, but the idea can get out there, working its way through a populist network of ground-up consumer outreach workshops.⁵⁵ Whether this is branded curricular reform or starting something entirely new is a

54. For the record, I would like to note my objection to the assumption of substitution effects. Many assume them, and some studies — not without controversy — have claimed to find them. Suffice it to say for this footnote on a topic beyond the scope of this article that much more work needs to be done before I am convinced. For a generic laying out of the argument, see, e.g., Todd J. Zywicki, “An Economic Analysis of the Consumer Bankruptcy Crisis” (2005), 99 N.W.U.L.R. 1463.

55. Consider that one of the recommendations of the Task Force's report is to give more funding to non-profit organizations to help debtor education on the community level. See Task Force Report, *supra*, footnote 1, at pp. 22-23.

tangential matter of semantics. The important point is that it is time to replace antiseptic education with castigation and terror.