ARTICLES

The Innovative German Approach to Consumer Debt Relief: Revolutionary Changes in German Law, and Surprising Lessons for the United States

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Who would have thought that consumer bankruptcy law could offer a solution to Germany’s thirty-year slow decline in population? Perhaps “solution” is overly optimistic, but the true story of “the first Frankfurt insolvency baby” is heartening if not prognostic. A young German couple visited a debt counselor in Frankfurt in early 2001. The pair were “very beaten down,” the debt counselor reported, as a huge debt hung over their

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1 Throughout this article, the words “bankruptcy,” “insolvency,” and “debt relief” are used interchangeably. Despite the technical distinctions among these words, the basic concept—using the law to assist consumers in debt over their heads—remains the same. U.S. law tends to use the word “consumer bankruptcy” more often, while German law uses the term “consumer insolvency.” See infra notes 148-49 and accompanying text for a discussion of why Europeans eschew the U.S. terminology.

heads. This debt plagued the young couple especially, as they wanted nothing more in this world than a baby, but they had decided not to start a family for fear of burdening their child with a life hounded by collection agents. Luckily, the debt counselor was able to recommend a new law that would offer the would-be parents and their future child relief from their debts. In 1999, for the first time in German history, a new law had gone into effect in Germany that offered overburdened consumer debtors hope for a new life without debt. The debt counselor explained that the young family could erase their unpaid debts by agreeing to give up a small portion of their income over several years. Indeed, the law would require them to give up substantially less than they had already been paying to creditors up to that point. The couple could hardly believe it! After a bit more conversation about the new law, they began for the first time to smile, then to laugh, and finally they smiled at each other and raced out of the office. Nine months later, a new baby arrived in Frankfurt. “Without this counseling session, this child would never have been born,” the debt counselor beamed. “She is thus really a true insolvency-baby!”

Whether or not the new law has the potential to reverse German population contraction, the Insolvency Act (Insolvenzordnung) offers an excellent opportunity for comparative legal analysis. U.S. consumer bankruptcy reformers have wrangled for years over provisions very similar to those implemented in the new German law. Most notably, intense debate has surrounded proposals in the United States to require multi-year payment plans for all debtors. As the young Frankfurt couple learned, German law requires multi-year payment terms as a prerequisite for consumer debt relief. Nonetheless, a significant gulf separates the theory of this law from the reality of the demands it places on German debtors and the benefits it offers creditors. Careful analysis of the German consumer debt relief system reveals much more nuanced, enlightening, and perhaps surprising

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results than simple comparison of the U.S. and German consumer debt relief laws. Given the similarity in social and economic conditions in Germany and the United States, a look at how the new German law has developed in practice offers significant insight into the potential benefits and pitfalls of implementing a similar system in the United States.

This Article seeks to achieve two goals as it describes the consumer provisions of the new German Insolvency Act. First, it reveals critical distinctions between the theory of consumer insolvency, as described in German law and legal literature, and the reality of consumer insolvency in practice, as it has developed in the four-and-a-half years since the law went into effect. From both theoretical and practical perspectives, the German experience both supports and challenges many of the notions underlying consumer bankruptcy reform debates in the United States. As it turns out, the German and U.S. consumer debt relief systems produce largely the same economic results. At the same time, however, the German system includes important elements lacking in the United States, and it focuses on achieving important societal goals that U.S. law neglects.

Second, this Article provides access to a wide variety of legislative material and legal commentary on the new German consumer insolvency law that has been neither translated nor discussed in English. I hope the dissemination of easily accessible internet-based sources describing the theory, history, structure, and practice of German consumer debt relief law, as well as commentary on these sources in English, will add another productive dimension to U.S. academic and legislative debate on consumer bankruptcy reform. U.S. legislators ignored European approaches to insolvency law when they revamped the U.S. bankruptcy law in the 1970s, because so little was known about how European laws worked in practice. Today, improved transatlantic communication and the internet open up a wealth of information on current European insolvency processes. Europeans have studied and learned from U.S. bankruptcy law. Now we in the United States can and should learn from the innovative, thoughtful, and modern European approaches to relieving financially troubled consumers.

Part II of this Article explores the circumstances leading to consumer debt relief reform in Germany. It first reports statistics on the sources and volume of rising consumer indebtedness in Germany in the 1980s and 1990s. Then it surveys the deficiencies among the various legal protections

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7 See generally Nick Huls, American Influences on European Consumer Bankruptcy Law, 15 J. Consumer Pol'y 125 (1992) [hereinafter Huls, American Influences]; see also infra note 70 (describing a special meeting initiated by the Law Committee of the Bundestag, or lower house of the German Parliament, with U.S. bankruptcy experts to discuss the shape of the future German insolvency law).
available to overburdened consumer debtors before the Insolvency Act went into force in 1999. Part III describes the German solution to the problem of rising consumer overindebtedness. It lays out the history and structure of the consumer-oriented provisions of the Insolvency Act, with special emphasis on the practical operation and reform of the new law over the first few years of its existence. Part III pays particular attention to the development of the multi-year payment obligation as a prerequisite for a discharge of unpaid debt. Part IV extracts three lessons for U.S. law reform based on the German experience. This Part focuses on the critical and perhaps surprising disconnect between theory and reality in the German law, as well as the implications of that disconnect for U.S. law reformers. Finally, Part V distills the German system to its essence, pointing out that the current U.S. and German systems of consumer debt relief are not very different in practice. Nonetheless, the fundamental distinction between the goals and effects of the two systems contains a final crucial lesson for the United States.

II. THE BLEAK SITUATION FOR GERMAN CONSUMER DEBTORS BEFORE 1999: RISING DEBT LOADS, INEFFECTIVE BANKRUPTCY LAWS, AND INSUFFICIENT PROPERTY PROTECTIONS

The number of Germans facing serious debt problems rose drastically in the 1980s and 1990s. The volume of consumer credit—as well as the percentage of households taking on consumer debt—grew in Germany at an explosive rate following World War II, especially from 1968 onward. A study commissioned to investigate the growing problem of excessive debt in Germany estimated that, in 1989, 1.2 million households—over 3% of the total number of households—suffered from excessive debt. While

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9 See Knut Holzscheck, Konsumentenkreditanfall und Verbraucherverschuldung in der Bundesrepublik Deutschland, in VERBRAUCHERKREDIT UND VERBRAUCHERINSOLVENZ: PERSPEKTIVEN FÜR DIE RECHTSPOLITIK AUS EUROPA UND USA 66 (1986). Total consumer credit volume grew from less than 10 billion DM in 1967 to nearly 160 billion DM in 1984. Id. at tbl. 1. To place this growth in context, the ratio of the total volume of consumer credit to the gross national product had risen from 0.2% in the late 1940s to 10% in 1984. Id.


11 See DIETER KORCZAK & GABRIELA PFEFFERKORN, ÜBERSCHULDUNGSSITUATION UND SCHULDNERBERATUNG IN DER BUNDESREpublik Deutschland XL (1992); see also id. at 23-112 for a general overview of the consumer credit situation in Germany in 1990. By May 1999, the number of over-indebted households had more than doubled to 2.8 million by
the median income grew only twelve-fold between 1950 and 1984, per-
capita indebtedness increased more than 800-fold during the same period.¹²

Credit card usage remained quite low,¹³ but Germans nonetheless
incurred substantial debts, primarily through installment loans from finance
companies and banks, as well as credit purchases from mail order
companies.¹⁴ Germans commonly took on debt to purchase furniture and
other household items, as well as automobiles.¹⁵ Most troubling, a very
large portion of consumer debt was incurred to pay off previous installment
debt, leading many consumers into a vicious cycle of “chain
indebtedness.”¹⁶ Credit deregulation in the 1980s further accelerated the
growth of consumer debt. Total consumer debt in Germany more than
doubled again between 1984 and 1994, from just under DM 160 billion in
1984 to almost DM 364 billion in 1994.¹⁷ Job loss and other unexpected
stress on income¹⁸ would throw the already sensitive economics of heavily

¹² DETLEF BONNEMANN & THOMAS RICKAL, EINFÜHRUNG IN DEN PROBLEMkreis VER-
ÜBERSCHULDUNG § 1 (1997), available at http://www.uni-esen.de/its/lehrangebot/
verschuldung/schulden.pdf (last visited Jul. 2, 2003). The total
number of households has grown to just under 39 million, see STATISTISCHE BUNDESAMT,
supra note 11 (which means that over 7% of households are overindebted in Germany
today).

¹³ Estimates suggested that only 7.1% of the German population used credit cards by
1990. See KORCZAK & PFEFFERKORN, supra note 11, at 78-82, 272 tbl. 38.

¹⁴ See id., at 52, 272 tbl. 38. Moderate-interest loans from banks are far more difficult for
consumers to obtain than loans from finance companies and other credit suppliers, which
leads a great many consumers to take on more expensive and riskier loans from finance
companies and “shadier” lenders. See, e.g., Holzcheck, supra note 10, at 74-75.

¹⁵ See Holzcheck, supra note 9, at 70; KORCZAK & PFEFFERKORN, supra note 11, at 106,
272-73. The usage and structure of German consumer credit at the end of the 1980s was in
many ways quite similar to consumer credit use in the United States in the early-
to mid-1980s. See LENDOL CALDER, FINANCING THE AMERICAN DREAM: A CULTURAL HISTORY OF
CONSUMER CREDIT 183-208 (1999).

¹⁶ See Holzcheck, supra note 9, at 71-73, 78-79; KORCZAK & PFEFFERKORN, supra note 11,
at 273.

¹⁷ See LARS RATH, ÜBERSCHULDUNG UND SCHULDNERBERATUNG IN DEUTSCHLAND UNTER
BESONDERER BERÜcksICHTIGUNG DER NEUEN INSOLVENZORDNUNG (INSO) § 2.2 (1996),
available at http://www.ifh-fulda.de/fb/sw/diplarb/rath/dipl_inso.html (last visited Jul. 7,
2003).

¹⁸ Unemployment grew significantly in Germany in the late 1970s and early 1980s, and
job loss is consistently cited among the most common reasons for consumer insolvency in
Germany. See, e.g., RATH, id. at §§ 2.5, 3.1; CURT WOLFGANG HERGENRÖDER, SCHULDEN
OHNE ENDE ODER ENDE OHNE SCHULDEN? §VII (2001), available at www.svf-mainz.de/
dateien/abhandlungen/antistartsvorlesung_hergenroeder.htm (last visited Jul. 9, 2003);
Holzcheck, supra note 9, at 76-77; EMPFEHLUNGEN DER AUSSCHÜSSE ZUM ENTWURF EINER
INSOLVENZORDNUNG (INSO), BR-DR. 1/1/92, at 55 (Feb. 4, 1992), available at http://
www.parlamentsspiegel.de/cgi-bin/hyperdoc/showdok.pl?k=BBD1/92 (last visited Jul. 18,
2003).
inebted consumers into a tailspin.

German insolvency laws were unable to meet the challenges of this rising tide of consumer debt. Unlike the bankruptcy regimes of many European countries, German bankruptcy law has historically drawn no distinctions between consumers and "merchants."\(^{19}\) Anyone could take advantage of the two German laws dealing with debt relief. Under the *Konkursordnung*,\(^ {20}\) the debtor's assets were liquidated to produce a distribution to creditors, while the *Vergleichsordnung*\(^ {21}\) sought to foster renegotiation of debtor-creditor relations by majority vote of creditors. Although both of these laws were technically available to consumers, neither generally offered consumers any benefit. These two laws were either practically unavailable or ineffectual for the overwhelming majority of consumer debtors for three reasons.

First, both laws allowed consumers to seek a court-imposed settlement agreement, possibly settling debts for less than full payment,\(^ {22}\) but only with the assent of large majorities of creditors and, in most cases, a minimum payout from the debtor. To force a settlement on recalcitrant creditors, the *Konkursordnung* required the assent of a majority of the total number of creditors, and of creditors holding at least 75% of total claims.\(^ {23}\) The *Vergleichsordnung* imposed even more stringent requirements. In addition


\(^{20}\) Translated literally as "Forced Auction Act," the *Konkursordnung* was enacted in 1877 and was promulgated in 1879, and it remained in force until the implementation of the new Insolvency Act in 1999. See, e.g., Dalhuisen, supra note 19, § 3.07[2]. The primary goal and effect of the law was liquidation of the debtor's estate and distribution of value to creditors—not reorganization or relief from debt. See, e.g., *European Bankruptcy Laws*, supra note 19, at 76.

\(^{21}\) The *Vergleichsordnung*, which translates literally as "Agreement Act," was enacted in 1935 to offer a preventative measure to avoid the strict requirements and value-destuctive effect of the forced liquidation under the *Konkursordnung*. See, e.g., *European Bankruptcy Laws*, supra note 19, at 76; Dalhuisen, supra note 19, § 3.07[2].


\(^{23}\) See, e.g., *Insolvency Handbook*, supra note 19, at 124; Manfred Balz, *Der Verbraucher im Insolvenzrecht: Rechtspolitische Überlegungen, in Verbraucher Кredit und Verbraucherinsolvenz: Perspektiven für die Rechtspolitik aus Europa und USA* 250, 253 (1986). The pre-1999 German bankruptcy law was thus quite similar to the several pre-1898 U.S. bankruptcy laws, which also required majority and sometimes supermajority creditor assent. See Bankruptcy Act of April 4, 1800, ch. 19, § 36, 2 Stat. 31 (repealed 1803); Bankruptcy Act of August 19, 1841, ch. 9, § 4, 5 Stat. 443-44 (repealed 1843); Bankruptcy Act of March 2, 1867, ch. 176, § 33, 14 Stat. 533 (repealed 1878).
to convincing a majority of creditors and those holding between 75% and 80% of total claims, the proposed settlement had to offer payment of at least 35% of all claims. Consumers in particular were unlikely to be able to clear either the majority creditor assent hurdle or the minimum payment hurdle. As a result, forced settlements under the Konkursordnung, and cases initiated under the Vergleichsordnung, represented only a minuscule percentage of all debt relief proceedings in Germany.

Second, a case could be opened under the Konkursordnung only if the debtor’s available assets could be expected to cover the significant costs of the proceedings (including administrator’s fees and court costs). Most debtors—both consumers and businesses—were thus doomed to failure immediately out of the gate. This minimum assets requirement led to the dismissal of over 75% of all cases under the Konkursordnung. One suspects that the vast majority of consumer cases fell within the doomed “insufficient assets” category.

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24 See, e.g., EUROPEAN INSOLVENCY LAWS, supra note 19, at 76-77; INSOLVENCY HANDBOOK, supra note 19, at 133-34; Balz, supra note 23, at 252.

25 See, e.g., EUROPEAN INSOLVENCY LAWS, supra note 19, at 76; INSOLVENCY HANDBOOK, supra note 19, at 127. In addition, the minimum dividend rose to 40% if the plan proposed a payout over longer than one year. See EUROPEAN INSOLVENCY LAWS, supra note 19, at 76.

26 See, e.g., Balz, supra note 23, at 253 (explaining that consumers might hope for a forced settlement only if third parties were willing to put up money to support the plan).

27 See, e.g., Balz, supra note 23, at 252-53 (pointing out that forced settlements under the Konkursordnung occurred in only 8% of all cases, and noting that the Vergleichsordnung had “lost more and more meaning since its entry into force,” and that in the mid-1980s, fewer than 1% of insolvency cases were initiated under the Vergleichsordnung, the majority of which led to no agreement); Klaus Kamlah, The New German Insolvency Act: Insolvenzordnung, 70 AM BANKR. L.J. 417, 419 (1996); BR-DR. 1/92, supra note 8, at 72; KOMMISSION FÜR INSOLVENZRECHT, ERSTER BERICHTE DER KOMMISSION FÜR INSOLVENZRECHT 461, App. II (1985) (showing percentage of cases under Vergleichsordnung as less than 2% of all insolvency cases after 1975, and less than 1% after 1980); DEUTSCHER BUNDESTAG, STENOGRAPHISCHER BERICHTE, 222. SITZUNG 19118 (Apr. 21, 1994), available at http://www.parlamentsspiegel.de/cgi-bin/ hyperdoc/show_dok.pl?k=BAP12/222 (last visited Jul. 7, 2003) (noting that fewer than 40 Vergleichsordnung proceedings were initiated per year by 1994).

28 See, e.g., INSOLVENCY HANDBOOK, supra note 19, at 113; EUROPEAN BANKRUPTCY LAWS, supra note 19, at 78; Balz, supra note 23, at 251.

29 See, e.g., Kamlah, supra note 27, at 419; KOMMISSION FÜR INSOLVENZRECHT, supra note 27, at 459, App. I (showing percentages of cases dismissed for lack of assets between 1900 and 1983); INSOLVENCY HANDBOOK, supra note 19, at 113; EUROPEAN BANKRUPTCY LAWS, supra note 19, at 75, 78; BR-DR. 1/92, supra note 8, at 72.

30 One member of the commission that was established to reform the German insolvency laws estimated that the number of true “consumer” proceedings under the old Konkursordnung amounted to only about 5% of all cases. See Balz, supra note 23, at 250-51. See also, infra note 129 and accompanying text (explaining that, before cost-deferral reform in 2001, 90% of consumer insolvency cases under the Insolvency Act were dismissed for lack of assets).
Finally, the most important deficiency of pre-1999 German bankruptcy law was that German law had never offered a forced discharge of unpaid debt at the conclusion of bankruptcy proceedings. The Konkursordnung focused on facilitating the enforcement of creditors’ claims, not on relieving the honest debtor of a heavy debt burden. Following insolvency proceedings, all creditors included on the debtor’s schedule of debts could receive a writ of execution, allowing them to seize the debtor’s future property and future income, at any time for up to thirty years. Thus, the German Konkursordnung relegated most consumer debtors to life-long indebtedness in the “modern debtor’s prison.” Consequently, many such

31 See, e.g., INSOLVENCY HANDBOOK, supra note 19, at 128; EUROPEAN BANKRUPTCY LAWS, supra note 19, at 79. In the former Länder of the German Democratic Republic (East Germany), a different law offered a sort of discharge. Under section 18, paragraph 2, clause 3 of the Gesamtvolkstreuungsschutzordnung (literally, the “Collective Enforcement Act”), or GesO, after a debtor had undergone an insolvency proceeding, creditors could enforce their claims against the debtor only to the extent that the debtor accumulated enough savings to acquire new property beyond a “normal lifestyle corresponding to his or her personal and professional situation.” This lifestyle had to be “neither poor nor overly costly.” See FRANK WENZEL, DIE “RESTSCHULDBEFREIUNG” IN DEN NEUEN BUNDESLÄNDERN §§ III(3)-(4), VII(1) (1994); BR-D. R. 1/92, supra note 8, at 104-05, 188. This approach destroyed any incentive for productive life beyond a minimal existence following insolvency proceedings, and so can hardly be compared to the “fresh start” discharge offered by U.S. law and the new German Insolvency Act. See id. at §§ VII(1), (2) and (4) (explaining that, because the GesO didn’t offer a real “discharge,” it failed to provide a way out of the “modern debtor’s prison” or to provide incentive to pay creditors, and therefore should not be adopted in Germany as a whole following reunification). Moreover, the GesO suffered from the same problem as the Konkursordnung, in that courts dismissed “the great majority” of cases under the Bankruptcy Act because consumer debtors possessed insufficient assets to cover the costs of the proceeding. See id. at §§ VII(5)(c), VII(1).

32 See, e.g., Walther Gerhardt, VON DER INSOLVENZRECHTREFORM ZUR INSOLVENZORDNUNG—ENTWICKLUNG UND ENDPRODUKT AUS DER PERSONLICHEN SICHT EINES KOMMISSIONSMITGLIEDS, IN FESTGABE ZIVILRECHTSLEHRER 1934/1935, at 121, 143 (Walther Hadding ed., 1999); KOMMISSION FÜR INSOLVENZRECHT, ZWEITER BERICHT DER KOMMISSION FÜR INSOLVENZRECHT 163 (1986).

33 See, e.g., KOMMISSION FÜR INSOLVENZRECHT, supra note 32, at 162; BR-D. R. 1/92, supra note 8, at 81, 187-88; INSOLVENCY HANDBOOK, supra note 19, at 123; EUROPEAN BANKRUPTCY LAWS, supra note 19, at 79. Indeed, enforcement proceedings undertaken at any point within the 30-year period reset the clock. See, e.g., RATH, supra note 17, at § 3.2; KORCZAK & PÆFFERKORN, supra note 11, at 133; BR-D. R. 1/92, supra note 8, at 81.

34 See, e.g., RATH, supra note 17, at § 1; KORCZAK & PÆFFERKORN, supra note 11, at 134; Balz, supra note 23, at 251; DEUTSCHER BUNDESAT, STENOGRAPHISCHER BERICHT, 639. SITZUNG 81 (Feb. 14, 1992), available at http://www.parlamentspiegel.de/cgi-bin/hyperdoc/show_dok.p?k=BBP639 (last visited Jul. 7, 2003) (lamenting the special problem of the “modern debtor’s prison,” from which many debtors cannot escape despite all efforts); DEUTSCHER BUNDESTAG, STENOGRAPHISCHER BERICHT, 94. SITZUNG 7770-71, 7775 (Jun. 3, 1992), available at http://www.parlamentspiegel.de/cgi-bin/hyperdoc/show_dok.p?k=BAP1294 (last visited Jul. 7, 2003) (explaining that simple debtors needed a new insolvency law “to come out of the debtor’s prison” and noting that 1.4 million households were trapped in the “modern debtor’s prison”); DEUTSCHER BUNDESTAG,
debtors resigned to life in the shadow economy and work on the black market. 35

Consumer debtors were thus consigned to “living in poverty” 36 under the meager protections of German law shielding certain property and income from seizure. 37 Even today, only a narrow range of consumer property remains outside the grasp of creditors seeking to execute judgments. German law exempts from seizure general personal and household items only “to the extent that they are required for the debtor’s modest lifestyle and domestic activity, appropriate to his or her occupational activity and indebtedness,” as well as items necessary for the debtor’s profession. 38 Indeed, if necessary items are overly “luxurious,” such as a color television as opposed to a black-and-white television, they can be seized and replaced by the creditor with less luxurious alternatives. 39 The German property exemptions take seriously the word “modest,” placing virtually anything of significant value within reach of creditors. 40

35 See, e.g., BR-DR. 1/92, supra note 8, at 81; WENZEL, supra note 31, at § VII(2).
36 A study conducted in the late 1980s used this phrase to describe life under the German wage and property exemptions. KORCZAK & PFEEFFERKORN, supra note 11, at 299.
37 See BR-DR. 1/92, supra note 8, at 188; RATH, supra note 17, at § 3 (noting the paucity of debt regulation options for consumers prior to 1999).
39 Only “clothing, underwear, bedding, [and] household and kitchen utensils” are specifically identified in this list, see id., but such items as refrigerators, washing machines, radios, black-and-white television sets, and furniture likely fall within the exemption, as well. See, e.g., Theo Rauh, Germany, Methods of Enforcement of Judgments in Europe 111, 116 (Peter Kaye ed., 1996); Bundesarbeitsgemeinschaft Schuldnerberatung E.V., Was Tun, Wenn Der Gerichtsvollzieher Kommt: Rechte Und Pflichten? 4 (2003), available at http://www.bmsfj.de/Kategorien/Publikationen/Publikationen,did=3032.html (last visited Feb. 11, 2004) [hereinafter Was Tun]; Bundesministerium für Familie, Senioren, Frauen und Jugend, Was Mach Ich Mit Meinen Schulden? 16 (9th ed. 2002), available at http://www.bmsfj.de/Kategorien/Publikationen/Publikationen,did=3032.htm (last visited Jul. 3, 2003) (on file with author) [hereinafter Was Mach Ich].
40 To guard against overreaching by creditors, less valuable items are specially protected. German law prohibits “in terrorem” seizures of items of personal value to the debtor but with low market value. “Normal household items” in use in the debtor’s home may not be seized if it is “patently obvious” that their sale would produce proceeds “completely disproportionate to their value.” See Zivilprozessordnung [Code of Civil Procedure] Art. 812 (2003); Was Mach Ich, supra note 38, at 16 (noting that such items as washing machines and video equipment will not likely fall to execution, as transportation and realization costs exceed their value).
Similarly, until recently, legal restrictions on seizure protected relatively little of German consumer debtors’ wages and salary. While most consumers in financial straits possess little if any valuable hard property for creditors to attach,\(^{41}\) seizure of future wages—better known as “garnishment”—often represents a significant source of potential value for creditors and a serious potential hardship for debtors. Indeed, unlike the law of the United States and many European countries, German law allows for the free contractual assignment of future wages as security for repayment of debt, even before financial trouble arises.\(^ {42}\) Such future wage assignments have been extremely common in Germany as a means of securing consumer credit.\(^ {43}\)

\(^{41}\) See, e.g., HERGENRÖDER, supra note 18, at § III(3)(c); Holzcheck, supra note 9, at 79-80 (noting that execution proceedings against consumer debtors result in even partial payment of the debt in only 10% of cases). One other fact suggests that many German debtors have no attachable assets. If the court official in charge of attaching property (the Gerichtsvollzieher) is unable to find attachable property, German creditors can demand (under penalty of up to 6 months imprisonment) that the debtor execute an affidavit, called an Eidesstattliche Versicherung, detailing his or her assets. If the debtor executes such a document, his or her name is listed in an official debtor list, which is circulated country-wide, for three years, during which time the debtor loses his or her ability to obtain credit. See WAS MACHE ICH, supra note 38, at 17; see also http://www.forum-schulderberatung.de/(last visited Feb. 11, 2004)(on file with author) (explaining the operation of the Eidesstattliche Versicherung, also called an Offenbarungseid). Hundreds of thousands of German debtors had executed such affidavits by the late 1980s attesting to their lack of attachable assets. See KORCZAK & PFEFFERKORN, supra note 11, at XXIII, XL (citing 630,000 such affidavits filed by 1989); BONNEMANN & RICKAL, supra note 12, at § 1 (citing 630,000 such affidavits filed by 1989). The number of Eidesstattliche Versicherung continues to rise. See, e.g., STATISTISCHE ZAHLEN ZU VERBRAUCHERINSOLVENZVERFAHREN IM JAHR 2000, available at http://www.ifodienst-schulderberatung.de/infos/insolvent2000/insolvent2000.html (last visited Jul. 21, 2003) (reporting that the number of affidavits filed annually suddenly doubled to 818,000 in the years preceding 1999).

\(^{42}\) See, e.g., KORCZAK & PFEFFERKORN, supra note 11, at 129 (explaining that clauses in credit contracts assigning future wages and salary are legal so long as the purpose and extent of the assignment and the circumstances leading to enforcement of the assignment are adequately and clearly described, and the assignment leads to a reasonable balance of the interests of the parties); Balz, supra note 23, at 268-69 (noting that future wage and salary assignments are extremely common in Germany, while they are heavily restricted in countries like the United States, the Netherlands, Austria, and Switzerland); cf. 49 Fed. Reg. 7740, 7755-61 (1984) (outlawing most forms of future wage assignments in the United States as unfair trade practices).

\(^{43}\) See, e.g., KORCZAK & PFEFFERKORN, supra note 11, at 129 (describing future wage and salary assignment as “a widespread credit security measure” commonly inserted into credit contracts); Holzcheck, supra note 9, at 80 (noting that wage assignments are the most common out-of-court enforcement mechanism in Germany); Balz, supra note 23, at 268-69 (noting that “by far the largest portion of consumer credit” is secured by future wage and salary assignments); BR-DR. 1/92, supra note 8, at 101 (expressing concern that future wages as a credit protection device should not be unduly limited); BESCHLUSSEMPFEHLUNGEN UND BERICHTE DES RECHTSAUSSCHUSSES (6. AUSSCHUSS) ZU DEM GESETZENTWURF DER BUNDESREGIERUNG—DRUCKSACHE 12/2443—ENTWURF EINER
German law exempts a certain amount of future wages from both garnishment\(^{44}\) and assignment,\(^{45}\) but the restrictions in place during the 1980s and 1990s left affected debtors with rather little exempt income. Applying a rough average historical conversion rate,\(^{46}\) the German wage exemptions applicable between April 1, 1984, and July 1, 1992,\(^{47}\) allowed childless couples, for example, to keep an absolute maximum of about $13,250 per year.\(^{48}\) After July 1, 1992, childless couples could keep an

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\(^{45}\) One of the requirements for a valid wage assignment is that the assigned wages must not be subject to an exemption. See Bürgerliches Gesetzbuch [Civil Code] Art. 400. Thus, wages that are exempt from attachment pursuant to Articles 850-850k of the Code of Civil Procedure are also not subject to assignment. This and other requirements for assignments of wages and other third-party claims are discussed in several very enlightening web pages by Professor Helmut Rüssmann, see http://rueßmann.jura.uni-sb.de/bvrr99/ Vorlesung/abtretung.htm (last visited Jul. 2, 2003); see also FAQ file on wage assignments, at http://www.forum-schuldnberatung.de/ (last visited Feb. 11, 2004) (on file with author).

\(^{46}\) These converted amounts use a very rough average exchange rate of two Deutschmarks per dollar in the 1980s and 1990s. I arrived at this rough average using the historical exchange rate tables for Deutschmarks to U.S. Dollars between 1980 and 2000 at http://www.oanda.com/convert/bin/history (last visited Jul. 3, 2003).

\(^{47}\) These are the effective dates of the fifth and sixth laws increasing the wage exemptions. See Gesetzesbeschluss des Deutschen Bundestages: Fünftes Gesetz zur Änderung der Pfändungsfreigrenzen, BR-Dr. 32/84, at 2 (Feb. 3, 1984), available at http://www.parlamentsspiegel.de/cgi-bin/hyperdoc/show_dok.pl?k=BBD32/84 (last visited Jul. 18, 2003); Gesetzesbeschluss des Deutschen Bundestages: Sechstes Gesetz zur Änderung der Pfändungsfreigrenzen, BR-Dr. 127/92, at 1 (Feb. 21, 1992), available at http://www.parlamentsspiegel.de/cgi-bin/hyperdoc/show_dok.pl?k=BBD127/92 (last visited Jul. 18, 2003).

\(^{48}\) The maximum exemption is calculated by taking a 100% exemption in the first $6500 per year, then adding 50% of wages between $6500 and $20,000. See BR-Dr. 32/84, supra note 47, at 1, Art. 1(4) (exempting 1092 DM base per month plus 50% up to 3302 DM per month maximum). I have multiplied the monthly exemptions by 12 for easier comprehension by U.S. readers more familiar with annual income comparisons. The somewhat complicated German wage exemption scheme proceeds in three steps: First, it allotted a base exemption in 100% of a certain amount of monthly wages, depending upon the number of people in the debtor’s household (or a former household to whom the debtor owed a support obligation). Second, the debtor is then granted an exemption in a sliding percentage of monthly wages beyond the base exemption amount, again depending upon the number of his or her dependent obligations (30% for single people, 50% for those with one support obligation, and 10% more for each additional obligation up to a maximum of 5). Finally, all debtors are subject to the same maximum monthly wage beyond which all wages are fully seizable. Thus, single debtors with no dependent obligations receive 100% of a minimum amount plus 30% of excess wages up to the maximum, those with one dependent obligation (married debtors, for example) receive a slightly higher minimum 100% exempt
absolute maximum of about $16,500 per year.\textsuperscript{49} All income above the maximum was available to creditors.\textsuperscript{50} A comparative analysis of the buying power of these sums in the United States and Germany in the 1980s and 1990s is beyond the scope of this paper, but suffice it to observe that a young couple would be hard-pressed to lead even a "modest" lifestyle on $16,500 per year in northern Europe.\textsuperscript{51}

III. DEVELOPMENT OF A NONCONSENSUAL DISCHARGE FOR CONSUMER DEBT

Consumers occupied a sort of no-man’s land in German debt relief law before 1999. Lawmakers were loath to interfere with the consequences of bargains struck between debtors and creditors. They resisted the notion of allowing consumers to escape their debts other than by re-negotiating their agreements with creditors. Powerful economic change ultimately produced enough political pressure to bring consumer protection to the fore, and reformers introduced a revolution in debtor-creditor relations—the discharge of unpaid debt. Such a potent legal remedy, though, had to be balanced by careful measures to avoid misuse. This Part describes the path from no discharge to a discharge in stages, subject to ostensibly heavy requirements. Part III.A describes the early stages of debt relief law reform in Germany, from resistance to acceptance of the notion of freeing debtors from unpaid debt. Part III.B describes in detail the series of stages through which a consumer debt relief case passes under the new Insolvency Act. This part examines the past, present, and likely future provisions of the new law. Finally, Part III.C looks to the future of German consumer debt relief.

\textsuperscript{49} This constitutes an increased base exemption of about $10,000 per year plus 50\% of wages between $10,000 and $23,000. See Gesetzentwurf der Bundesregierung: Entwurf eines Sechsten Gesetzes zur Änderung der Pfändungsgrenzen, BT-Dr. 12/1754, at 4, Art. 1(3) (Dec. 5, 1991) (exempting DM 1677 base per month plus 50\% up to DM 3796 per month maximum).

\textsuperscript{50} See supra, note 48 (explaining the three-step wage exemption scheme).

\textsuperscript{51} The threshold for poverty assistance for a single person with no dependents in Germany in December 1990, for example, was about $7000 per year (DM 1153 per month). See BT-Dr. 12/1754, supra note 49, at 16 (noting the change in the poverty level during the 1980s).
law with observations about growth and stability in the foreseeable future.

A. Early History and Resistance to the Concept of Discharge

The plight of overburdened consumers drew no attention in the earliest bankruptcy reform efforts in Germany. The oil crisis of 1973 and its widespread negative consequences for business originally sparked the movement for reform, when in 1978 the German Minister of Justice appointed a commission to study the bankruptcy laws and recommend much needed change. The Commission on Insolvency Law issued two reports, one in 1985 and the other in 1986. The first report contained no mention of any issue relating to consumer indebtedness, focusing instead on the desperate need for reform in big business insolvency proceedings and secured transactions law.

The second report dealt with an issue of central concern to consumers—the post-bankruptcy discharge of debt—but it concluded that "a discharge after the Anglo-American model is out of the question." The Commission adhered firmly and unanimously to the notion that debtors could escape their unpaid debts only by agreement with creditors. Bankruptcy law served in the first instance to facilitate creditor enforcement of the debtor's obligations, the Commission insisted, "it is in no way to function as a 'debt-divestiture proceeding' to help the debtor to rid himself of his obligations." The Commission recognized that some form of expanded protection against judgment enforcement might be appropriate for consumers, but it demurred as to such questions, as they fell within "a problem of consumer protection, especially in connection with consumer credit, which has no immediate relationship to insolvency law reform."

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52 See RATH, supra note 17, at § 5.1.
53 See BR-DR. 1/92, supra note 8, at 103; RATH, supra note 17, at § 5.1.
54 Id.
55 See KOMMISSION FÜR INSOLVENZRECHT, ERSTER BERICH TER DER KOMMISSION FÜR INSOLVENZRECHT (1985); Balz, supra note 23, at 261.
56 KOMMISSION FÜR INSOLVENZRECHT, ZWEITER BERICH TER DER KOMMISSION FÜR INSOLVENZRECHT § 6.3 (1986) [hereinafter, ZWEITER BERICH TER]; see also Gerhardt, supra note 32, at 142.
57 See ZWEITER BERICH TER, supra note 56, at § 6.3; Gerhardt, supra note 32, at 142.
58 ZWEITER BERICH TER, supra note 56, at § 6.3.
59 Id.; Gerhardt, supra note 32, at 143 (explaining that a provision dealing with the social and socio-political problems of post-bankruptcy indebtedness seemed inappropriate to connect with bankruptcy law). The Kohl Administration disagreed, explaining in its proposed bill that "insolvency law must also make a contribution" to overcoming the increasing problem of consumer overindebtedness. See BR-DR. 1/92, supra note 8, at 104. The push to move provisions for discharge out of the insolvency law and into an independent procedure found new life in the Bundesrat. See EMPFEHLUNGEN DER AUSSCHÜSSE ZUM ENTWURF EINE R INSOLVENZORDNUNG (INSO), BR-DR. 1/1/92, supra note 18, at 50-51 (Feb. 4, 1992); STEL LUNGNAHME DES BUNDES RATES ZUM ENTWURF EINE R INSOLVENZORDNUNG
Political change undermined the Commission’s views, and the discharge of debt following insolvency proceedings—especially for consumers—became an essential plank in the platform of insolvency law reform. In 1986, a national election brought to power a new Minister of Justice who prioritized the implementation of a discharge of personal liability following bankruptcy. In December 1988, the Ministry of Justice and the Ministry for Youth, Family, Women and Health commissioned a research group to investigate the growing problem of consumer overindebtedness in Germany. The commission’s 1989 report on the explosion of consumer debt and its dire consequences supported the introduction of new discharge provisions into the bill for a new insolvency law, which was finally introduced into the Bundesrat on January 3, 1992.

The first section of the proposed new law announced that the goals of insolvency proceedings would henceforth encompass not only equitable distribution of the debtor’s assets among creditors, but also the opportunity for “[t]he honest debtor…to free himself of his remaining debts.” The report accompanying the new bill explained that the meager economic gains

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50 See Rath, supra note 17, at § 5.1.
51 Korczak & Pfefferkorn, supra note 11, at XXXVI.
52 Id.
54 See BR-Dr. 1/92, supra note 8, at 3, 46-49 (§§ 235-252), 81-82, 84, 100-02, 187-94. The legislative process in Germany begins for most bills, like it did for the Insolvency Act, with introduction of the bill by the Administration into the Bundesrat, or upper house of Parliament. See, e.g., Nigel Foster, German Legal System & Laws § 2.1.1 (1993). The bill continues in the lower house of Parliament, the Bundestag, through three “readings,” or analyses and debates, beginning with referral to committee, which constitutes the most extensive and exacting stage of the legislative process. See id. The bill as passed by the Bundestag must be approved by the Bundesrat, sometimes after a conference committee hammers out remaining differences between the two chambers of Parliament. See id. This occurred for the Insolvency Act as well, but the conference committee essentially ignored the Bundesrat’s objections and re-proposed the bill to both houses in summer 1994 with only a minor modification; i.e., that the bill’s entry into force be delayed almost five years to January 1, 1999. See Charles E. Stewart, Insolvenzordnung, Einführungsgesetz zur Insolvenzordnung 10 (1997); Einigungsvorschlag des Vermittlungsausschusses: Insolvenzordnung (INSO), BR-Dr. 643-94 (June 24, 1994), available at http://www.parlamentspiegel.de/cgi-bin/hyperdoc/show_dok.pl?k=BBD643/94.
55 BR-Dr. 1/92, supra note 8, at 10.
to be expected from creditor enforcement action were far offset by the economic costs to debtors forced into life-long indebtedness and eking out a lean existence with exempt wages.\textsuperscript{66} The discharge was viewed as a social necessity. Because the former bankruptcy law lacked a discharge,\textsuperscript{67} and agreements with creditors were the rare exception,\textsuperscript{68} society in general suffered a detriment. Many debtors were forced into the shadow economy of the black market, if they were not pushed out of productive economic life entirely.\textsuperscript{69} The concept of a discharge of debt found support in a growing trend among other European nations.\textsuperscript{70} The German version would chart a middle path between the “debtor-friendly” Anglo-American law and the life-long liability of former German law.\textsuperscript{71} Reformers hoped that the possibility of a discharge would raise debtor morale and offer new hope for an economic new beginning,\textsuperscript{72} which would redound to the benefit of society by returning debtors to productive activity and tax-paying status.\textsuperscript{73}

B. Acceptance of Discharge Subject to “Strict Prerequisites”

Exuberance for the revolutionary new fresh start was accompanied by deep concern for avoiding abuse of the liberal new provision. Even the staunchest supporters of the discharge emphasized the need for “strict prerequisites” for debtors to demonstrate worthiness for such relief and to avoid abuse.\textsuperscript{74} Proponents were quick to point out that the new law would

\textsuperscript{66} Id., at 81, 188.
\textsuperscript{67} See supra notes 31-35 and accompanying text.
\textsuperscript{68} See supra notes 22-27 and accompanying text.
\textsuperscript{69} See BR-DR. 1/92, supra note 8, at 81.
\textsuperscript{70} The German law drew from experience under the laws of Austria, France, Belgium, the Netherlands, Switzerland, Italy, and the Scandinavian countries, for example. See BR-DR. 1/92, supra note 8, at 105-06. Reformers paid particular attention to the United States, which they viewed as having similar economic conditions. Id. at 104-05; BT-DR. 12/7302, supra note 43, at 150 (noting that the Law Committee of the Bundestag had met specially with a delegation of U.S. lawyers in November and December 1992 to discuss U.S. bankruptcy law).
\textsuperscript{71} BR-DR. 1/92, supra note 8, at 100.
\textsuperscript{72} See, e.g., DEUTSCHER BUNDESRAT, STENOGRAPHERISCHER BERICHT, 639. SITZUNG, supra note 34, at 50, 81-82 (remarks of Secretary of State Rainer Funke, the principal drafter of the new insolvency law); BT-DR. 12/7302, supra note 43, at 151; DEUTSCHER BUNDESTAG, STENOGRAPHERISCHER BERICHT, 222. SITZUNG, supra note 27, at 19116, 19120-21, 19124.
\textsuperscript{73} DEUTSCHER BUNDESRAT, STENOGRAPHERISCHER BERICHT, 639. SITZUNG, supra note 34, at 84 (remarks of Secretary of State Rainer Funke, the principal drafter of the new insolvency law); DEUTSCHER BUNDESTAG, STENOGRAPHERISCHER BERICHT, 222. SITZUNG, supra note 27, at 19120 (same, also mentioning the benefits of the debtor’s not needing social assistance); GESETZENTWURF DER BUNDESREGIERUNG: ENTWURF EINES GESETZES ZUR ÄNDERUNG DER INSOLVENZORDNUNG UND ANDERER GESETZE, BR-DR. 14/01, at 37-38 (Jan. 5, 2001), available at http://www.parlamentsspiegel.de/cgi-bin/hyperdoc/show_dok.pl?k=BBD14/01.
\textsuperscript{74} See, e.g., BR-DR. 1/92, supra note 8, at 3; DEUTSCHER BUNDESRAT,
“demand much more” than the “very debtor-friendly” U.S. model.\textsuperscript{75} Following significant reworking in committee,\textsuperscript{76} the new Insolvency Act places a complicated four-step obstacle course between overburdened consumer debtors and a new life after discharge. First, the debtor must attempt to conclude an out-of-court payment agreement with all creditors.\textsuperscript{77} Failing that, the debtor can file a petition to open an insolvency case, but then must make another attempt at a payment plan with creditors.\textsuperscript{78} This time, the court can impose the plan on a non-consenting minority of creditors if a majority in both number and total amount of claims is deemed to agree to the plan.\textsuperscript{79} Third, if a majority of creditors cannot be enticed or forced into a plan, simplified liquidation proceedings ensue, seeking to realize value from the debtor’s nonexempt assets.\textsuperscript{80} Finally, the debtor confronts the most significant hurdle, a six-year payment period, during which the debtor must exert her best efforts to obtain gainful employment and turn over all nonexempt income to a trustee for distribution to creditors.\textsuperscript{81}

This Part explores the development and application of these steps in greater detail. Part B.1 describes the long and seldom fruitful process of haggling over a debt arrangement plan, both in and out of court. Part B.2 very briefly describes the “simplified liquidation proceeding” used to extract value from the debtor’s current assets. Finally, Part B.3 examines the volatile history and implementation of the six-year payment period preceding the final discharge of remaining unpaid debt.

1. Out-of-Court and Court-Directed Debt Arrangement Plan Negotiations

The main goal in German consumer insolvency law is to encourage and facilitate the execution of fair out-of-court debt arrangement

\textsuperscript{75} BR-Dr. 1/92, supra note 8, at 188.

\textsuperscript{76} The special “consumer” insolvency provisions appeared for the first time after two years of review of the bill by Bundestag committees. See BT-Dr. 12/7302, supra note 43, at 2, 132-37, 153-54, 189; Gerhard Wagner, DIE ANFECHTUNG IM VERBRAUCHERINSOLVENZVERFAHREN, 20 ZEITSCHRIFT FÜR WIRTSCHAFTSRECHT 689, 690 (1999), available at http://www.parlamentsspiegel.de/rufprint/DAB12_7329_ON_o.pdf.

\textsuperscript{77} See InsO § 305(1)(1).

\textsuperscript{78} See id. at §§ 305-09.

\textsuperscript{79} See id. at § 309.

\textsuperscript{80} See id. at §§ 311-14.

\textsuperscript{81} See id. at §§ 286-303. The debtor must also turn over 50% of the value of any property acquired by inheritance. See id. at § 295.
agreements among debtors and creditors. To this end, the Insolvency Act requires debtors to make two attempts to forge a reasonable payment arrangement with creditors. A consumer insolvency case begins in Germany with the debtor’s attempt to reach a consensus with all creditors on an out-of-court renegotiation of claims. In negotiating this plan, the debtor must be supported by a “suitable person or office.”

The “suitable person or office” thus plays a crucial role in this first step, and the extraordinary demands on and insufficient numbers of such people have created serious bottlenecks in the system from the beginning. The Länder (individual German States) determine which “persons or agencies” are suitable, and the two most common such persons are lawyers and state-sponsored debt counselors. Because lawyers have resisted taking on high-work, low-pay consumer insolvency cases, the bulk of the burden in this first stage has fallen on the network of state-sponsored debt counseling centers (Schulderberatungsstelle) spread throughout Germany.

82 See Deutscher Bundestag, Stenographischer Bericht, 222. Sitzung, supra note 27, at 19116 (comments of Joachim Gres, one of the drafters of the Committee Report on the insolvency law as finally enacted). A pamphlet distributed by the Ministry of Family, Seniors, Women and Youth describes out-of-court debt arrangement as the “kings way” in debt regulation. See Was Mach Ich, supra note 38, at 37.

83 The law imposes this requirement in a pessimistic way, in that it requires a certificate attesting to failure of an out-of-court settlement attempt within the last six months to be filed along with the petition opening insolvency proceedings. See InstO § 305(1)(1).

84 See id. at § 305(1)(1).

85 Id.

86 See, e.g., BT-Dr. 12/7302, supra note 43, at 190.


88 Today, over 1100 of these public debt counseling centers are located throughout Germany. See, e.g., Was Mach Ich, supra note 38, at 27. The public debt counseling centers grew slowly between 1958 and 1984, and their numbers increased dramatically beginning in 1984, when public authorities reacted to the skyrocketing incidence and severity of over-indebtedness. See Korczak & Pfefferkorn, supra note 11, at 187-88. For a description of the operation of modern German debt counseling centers, see Was Mach Ich, supra note 38, at 27-36; Korczak & Pfefferkorn, supra note 11, at 171-263; see also
Due to poor financial support from the Länder, the debt counseling centers are unable to provide sufficient personnel to support the masses of debtors seeking entry into the insolvency relief process. In the early years after passage of the Insolvency Act, debtors at about half of these centers had to wait two to eight weeks for a first appointment, while waiting periods at the other centers stretched from three months to a year. Indeed, some debt counseling centers had to turn away those seeking help by mid-2000, as their waiting lists had simply grown too long. Far fewer cases were opened in the first two years under the Insolvency Act than had been expected, and these long waiting periods for support in the out-of-court first stage of the process represented a major cause of the dearth of cases.

Long waiting periods notwithstanding, statistics suggest that debt...
counseling centers in many Länder have been quite successful in brokering out-of-court debt arrangements. Between the entry into force of the Insolvency Act in 1999 and October 2001, for example, out-of-court plans had been established with creditors in between 11% and 54% of cases in the various Länder.\textsuperscript{95} The average rate of creditor agreements to out-of-court plans negotiated by debt counseling centers reached just over 30% federation-wide in 2001.\textsuperscript{96} In densely populated Berlin,\textsuperscript{97} the quota of agreed out-of-court arrangements hovered around 15% in 2000 and 2001.\textsuperscript{98} In the most populous and industrialized Land of North Rhine-Westphalia,\textsuperscript{99} where the capital Bonn is located, of 4,682 total attempted arrangements in which negotiations continued to completion,\textsuperscript{100} 2,084 agreements resulted—a success yield of over 44%.\textsuperscript{101} Such impressive success rates are due in some cases, however, to the support of regional organizations that offer loans and subsidies to help debtors to make one-time payments to creditors to entice them into accepting a plan.\textsuperscript{102} Moreover, successful development of payment plans does not necessarily lead to successful completion of such plans by debtors. I could find no statistics reporting on final completion of out-of-court plans, but experience in the United States suggests that the rate of successful completion is likely no more than one in three.\textsuperscript{103}

One dissenting creditor can destroy an out-of-court plan,\textsuperscript{104} so the

\textsuperscript{95} See Seethaler, supra note 89.
\textsuperscript{96} Id.
\textsuperscript{97} Berlin is considered its own Land, and it is the most densely populated Land, with 3800 inhabitants per square kilometer. See Statistisches Bundesamt, Bevölkerung: Fläche und Bevölkerung (Apr. 23, 2003), available at http://www.destatis.de/jahrbuch/jahrtab1.htm.
\textsuperscript{98} See Senatsverwaltung für Arbeit, Soziales und Frauen, supra note 91, at 16.
\textsuperscript{99} With over 18 million people, North Rhine-Westphalia has nearly twice as many inhabitants as the next most highly populous Land, Baden-Württemberg. See Statistisches Bundesamt, supra note 97.
\textsuperscript{100} A substantial portion of negotiations are broken off before any conclusion is reached. In North Rhine-Westphalia in 2001, for example, 1,891 negotiations broke off early with no result, while 4,682 continued to final success or failure. See Förderung von Schuldner-Insolvenzberatung in den Bundesländern 7 (2003), available at http://www.infodienst-schuldnberatung.de/themen/foerderungsblaender/foerderungsblaender.pdf.
\textsuperscript{101} See id.
\textsuperscript{102} See Seethaler, supra note 89 (reporting that such subsidies are offered in Baden-Württemberg); Litschke, supra note 87, at 53 (referring to such subsidy programs in the northernmost Land of Schleswig-Holstein).
\textsuperscript{103} See infra note 236, reporting on completion rates for Chapter 13 payment plans in the United States.
\textsuperscript{104} See Pape, supra note 87, at 2040; Hergenröder, supra note 18, at § (IV)(2)(b). The debt counseling center in the Land of Mecklenburg-Western Pomerania reported in 2001, for example, that many creditors caused the failure of debt arrangements despite their own interests. The debtors had offered, with the financial assistance of third parties, payments of
court-driven part of the insolvency process begins with another, in-court attempt to negotiate an agreed payment plan. This time, the court can force a dissenting minority of creditors into a plan if a majority of both total number of creditors and amount of claims either votes in favor of the plan or fails to vote within one month after service of the plan documents. In addition, two other conditions must be met. In order for the court to "cram down", a plan on dissenting minority creditors, the proposed plan must offer each creditor an appropriate share in relation to other creditors, and dissenting creditors may not be placed in a worse economic position than they would occupy were the case to continue through the liquidation and six-year payment period. The early yield of court-imposed payment plans was much lower—only about 1.5% of all consumer cases filed in 1999, for example, ended with a court-brokered plan. Once again, I was unable to locate any statistics reporting on successful completion of payments under such plans.

This second stage of in-court plan negotiation is destined for elimination and integration into the out-of-court process in the near future. Dedication to the court-driven plan process has been rapidly eroding from the outset. The federal-state (Bund-Länder) working group commissioned by the Ministry of Justice to study consumer insolvency in its early stages concluded that the in-court plan process often represented a "pure formality," and it pointed out a long string of commentaries criticizing the process. "In many proceedings," the group’s report revealed, "it is clear from the beginning that the necessary majority of creditors supporting the plan cannot be achieved," particularly when, as is often the case, the debtor has no nonexempt income to offer creditors in the plan, or one large creditor

...over 20% of creditor claims, while the creditors stood to collect nothing in insolvency proceedings from the debtors with no non-exempt income. See PETER SCHNEIDER, ZUR SITUATION ÜBERSCHULDETER PRIVATER HAUSHALTE IN MECKLENBURG-VORPOMMERN 78 (2002), available at http://www.bagschuldnerberatung.de/download/Schneider%20ZurSituation%20Überschuldeter%20Privater%20Haushalte%20in%20MecklenburgVorpommern%20Jahresbericht%202001.doc.

105 See InsO §§ 307(1), 308, 309.

106 This buzzword from U.S. bankruptcy law corresponds quite closely to what happens in the German system. See, e.g., MICHAEL J. HERBERT, UNDERSTANDING BANKRUPTCY § 17.15[D] (1995).

107 See InsO § 309(1). These two requirements appear to be equivalent to two of the central requirements for cram down of a plan under U.S. consumer bankruptcy law, the "equal treatment" and "best interests" tests in 11 U.S.C. §§ 1322(a)(3) and 1325(a)(4). See HERBERT, supra note 106, §§ 18.07[B], 18.08[A][1].

108 See BUND-LÄNDER-ARBEITSGRUPPE, supra note 87, at § (A)(4) (reporting approximately 20,000 consumer cases filed, but only 339 court-imposed agreements).

refuses to support the plan. The representative from Saxony considered the in-court process senseless and would have eliminated it immediately, but the working group, the Administration, and ultimately the German Parliament agreed to make the process optional—with the option to be exercised by the court. As it turned out, most courts opted out of the in-court plan process and hardly undertook any further in-court plan proceedings.

The latest reform proposal from the Administration, therefore, essentially throws in the towel on the “largely meaningless” in-court plan process. It reinforces the earlier out-of-court process, which now fails if even one creditor dissents, by integrating the court-imposed “cram-down” provisions into the out-of-court stage. The reform would allow the debtor to petition the court—before an insolvency case has been initiated—to deem an out-of-court plan accepted if the requisite majority of creditors approves the plan or fails to respond in a timely manner to the plan proposal. If a majority of creditors rejects the out-of-court plan, or if the debtor chooses not to seek “cram-down,” the debtor will be able to initiate an insolvency case and proceed immediately to simplified insolvency proceedings—the current second round of (in-court) plan review and voting will be disposed of. Given the Administration’s record of success in moving its consumer insolvency reform proposals through Parliament, one suspects that the in-court plan process will remain in place no more than

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110 BUNDESLÄNDER-ARBEITSGRUPPE, supra note 87, at §§ (B)(I)(3)(a)(aa), (C)(3); Pape, supra note 87, at 2040-42.
111 See id. at §§ (B)(I)(3)(a)(bb).
112 Id.
113 See BR-Dr. 14/01, supra note 73, at 9, 27-28, 65-68 (calling the in-court plan process a “naked formality” in many cases).
114 See BESCHUSSEMPFEHLUNG UND BERICHT DES RECHTSAUSSCHUSSES (6. AUSSCHLUSS), BT-Dr. 14/6468, at 10 (June 27, 2001), available at http://dip.bundestag.de/btd/14/064/1406468.pdf; GESETZESBESCHLUSS DES DEUTSCHEN BUNDESTAGES, BR-Dr. 689/01 (BESCHLUSS) (Sept. 27, 2001), available at http://www.parlamentspiegel.de/cgi-bin/hyperdoc/show_dok.pl?k=BBDS689/01.
115 See InsO § 306(1).
117 See id. at 16.
118 See id. at 1, 5-6, 15-17, 31-36.
119 Significantly, the proposal gives the debtor—not the court—the option of whether or not to attempt to force the plan on non-consenting creditors or to proceed immediately to insolvency proceedings. See id. at 31, 35. Court discretion is all but completely eliminated from the “plan” phase of the process.
120 See id. at 5-6
121 See id. at 16, 32.
one more year.\footnote{122} Unfortunately, this will exacerbate the strain on already overburdened debt counseling centers,\footnote{123} and waiting periods for access to counseling—and consequently for formal insolvency relief—will grow even longer.

2. Simplified liquidation proceedings

If creditors refuse a payment plan, the formal insolvency case begins with a “simplified liquidation proceeding,” in which a court-appointed trustee sells the debtor’s nonexempt assets to produce funds for distribution to creditors.\footnote{124} Just as in the United States,\footnote{125} this stage of the process has virtually no meaning in Germany. The great majority of consumer debtors have no hard assets that are subject to liquidation for distribution to creditors.\footnote{126} Like the old \textit{Konkursordnung},\footnote{127} the new Insolvency Act provides for dismissal of an insolvency petition if liquidation of the debtor’s


\footnote{123} \textit{See Diskussionentwurf zur Änderung der InsO: Aussergerichtlicher Einigungsversuch soll gestärkt werden (Apr. 28, 2003), available at http://www.forum-schulderberatung.de (on file with author); Stellungnahme des Arbeitskreises Insolvenzordnung (AK-InsO) der AG SBV vom 3.06.2003 (Jun. 3, 2003), supra note 122.}

\footnote{124} \textit{See InsO §§ 311-14.}

\footnote{125} In the United States, for as long as anyone can remember, the overwhelming majority of consumer bankruptcy cases have involved either little or no seizable property. \textit{See, e.g., Robert D. Martin, A Riposte to Klee, 71 AM. BANKR. L.J. 453, 456 n.14 (citing unpublished 1997 official statistics showing that “no-asset” cases constituted 95% of all Chapter 7 cases); Michelle J. White, Personal Bankruptcy Under the 1978 Bankruptcy Code: An Economic Analysis, 63 IND. L.J. 1, 38 (1988) (showing a return to unsecured creditors in only 3% of liquidation cases in the late 1970s and early 1980s); Mitchell S. Dvoret, Federal Legislation, 27 GEO. L.J. 194, 197 (1938-39) (noting that average distributions to general unsecured creditors during the decade preceding 1932 averaged between 5.1% and 7.7%).}

\footnote{126} \textit{See supra} notes 38-41 and accompanying text; \textit{see also} InsO § 36 (excluding exempt assets from the insolvency estate). In a consumer information pamphlet published by the Ministry of Justice, the hypothetical example of a consumer insolvency proceeding includes a debtor with no available assets, acknowledging that the no-asset case is the norm. \textit{See Bundesministerium für Justiz, Restschuldbefreiung—eine neue Chance für redliche Schuldner 37 (2001), available at http://www.bmj.bund.de/images/10074.pdf.}

\footnote{127} \textit{See supra} notes 28-30 and accompanying text.
assets obviously will not produce sufficient proceeds to cover court costs.\textsuperscript{128} Before the introduction in December 2001 of reforms reducing costs and allowing the debtor to defer payment of court costs,\textsuperscript{129} approximately 90\% of all consumer cases were dismissed under this provision "for lack of assets."\textsuperscript{130} A dismissed case meant then, and still means now, that there is no discharge and no relief for the debtor.

3. Development of and debate over the "Good Behavior Period"

A German consumer insolvency case concludes with the final, most hotly debated, and most burdensome "strict prerequisite" for relief—the so-called "good behavior period" (\textit{Wohlerhalteperiode}). In addition to giving up all nonexempt assets in the preceding stage, for six years beginning with the opening of the simplified insolvency proceedings, the debtor must assign to a trustee all nonexempt work-related income\textsuperscript{131} and turn over to the trustee half of the value of any property acquired by inheritance.\textsuperscript{132} Once each year, the trustee distributes ratably to creditors any income assigned during that year.\textsuperscript{133} If the debtor makes it through four

\textsuperscript{128} See InsO § 26.

\textsuperscript{129} See id. §§ 4a-4d, 26(1), 298. The history of the problem of "no-asset" cases, high court and trustee costs, and the implementation of the cost-deferral solution are covered at length in the literature. See \textit{generally} BUND-LÄNDER-ARBEITSGRUPPE, supra note 87, §§ (B)(1)(4), (C)(1); BR-Dr. 14/01, supra note 73, at 19-22, 28-29, 33-51, 55, 68 (among other things, reporting per-case costs of approximately $1500); Pape, supra note 87, at 2045-46 (collecting cases); Vallender, supra note 89, at 126-27; HERGENRÖDER, supra note 18, § IV(2)(a)(aa); RATH, supra note 17, §§ 6.3, 6.4.5; LITSCHKE, supra note 87, at 51, 59 (reporting that debtors in Schleswig-Holstein in 1999-2000 most often cited cost as the reason for failing to pursue insolvency relief); TEMEN UND AKTUELLES http://www.insolvenzrechtOnline.de/01.htm (last visited Jul. 14, 2003) (listing cases in which courts allowed or refused to allow "PKH," or \textit{Prozesskostenhilfe}, litigation cost assistance, to consumer debtors in insolvency cases); UHLENBRUCK, supra note 94, § II(1)(b) (noting that in 1999 photocopying and service costs for plan documents in cases with many creditors often exceeded $5000).

\textsuperscript{130} See BUND-LÄNDER-ARBEITSGRUPPE, supra note 87, § (A)(4) (reporting approximately 20,000 consumer cases filed, but only about 2000 consumer cases opened); BR-Dr. 14/01, supra note 73, at 19, 34.

\textsuperscript{131} See InsO § 287(2).

\textsuperscript{132} See id. § 295(1)(2); cf. 11 U.S.C. § 541(a)(5) (2003) (requiring property inherited within six months of the filing of a bankruptcy petition to be turned over to the trustee for distribution to creditors).

\textsuperscript{133} See InsO § 292(1). If the debtor has pledged or assigned nonexempt wages to a creditor before initiating insolvency proceedings, however, as is quite often the case in Germany, see supra notes 42-43 and accompanying text, that assignment is valid for the first two years of the six-year period. See InsO § 114. In contrast, non-contractual garnishment proceedings are halted one month after the filing of an insolvency petition. See InsO § 114(3). Therefore, the trustee will receive wages for distribution during the first two years of the six-year period only if the creditor-assignee is paid in full. See, e.g., RATH, supra note 17, § 6.4.3; BR-Dr. 1/92, supra note 8, at 101, 189. The drafters of the Insolvency Act
years of the six-year period, the trustee pays the debtor an incentive bonus of 10% of the debtor’s nonexempt wages assigned during the year; the debtor receives a bonus of 15% of nonexempt income for holding out for five years. At the end of the sixth year, the debtor is released from most remaining debts.

In a rather innovative step, the Insolvency Act enhances the possibility of payments to creditors by demanding the debtor’s best efforts to find and hold a job. Pursuant to “one of the central provisions” testing the debtor’s six years of “good behavior,” the debtor must hold—or actively seek and not refuse to accept—any suitable employment. If the debtor fails to seek and hold reasonable employment, creditors can petition the court for denial of discharge. If the debtor remains jobless despite her best efforts, she does not lose her discharge, but the debtor must exert more effort to find an acceptable job than simply relying on an employment agency. Indeed, the drafters emphasized that “reasonableness” in this context is subject to “intense demands.” The debtor must be ready to take on work outside her profession, even temporary work if need be. For example, a consumer information pamphlet published by the Ministry of Justice describes a hypothetical consumer insolvency case in which the debtor, Mr. Honest (Herr Redlich), loses his job as a printer and takes on a low-wage job as a janitor. The hypothetical story explains that Mr.

admitted that this represents a “considerable position of advantage” for creditors with wage assignments and pledges. See BR-Dr. 1/92, supra note 8, at 101; see also BR-Dr. 1/1/92, supra note 18, at 39.

134 See InsO § 292(1).

135 See id. at § 300. Some debts are not affected by discharge. See id. at § 302. German law accepts far fewer debts from discharge than U.S. law does, however. Only three types of debt are not affected by the discharge in Germany: intentional tort liability, monetary fines and penalties, and the obligation to pay insolvency court costs and fees deferred under InsO § 4a. See id. at § 302; cf. 11 U.S.C. § 523(a)(6) and (7) (2003) (excluding similar debts from discharge under U.S. bankruptcy law). Under U.S. law, in contrast, a wide variety of additional debts are not dischargeable, such as recent overdue taxes, past-due child support and alimony obligations, debts for money or property obtained by fraud, education loan debt, and liability for bodily injury or death resulting from drunk driving. See 11 U.S.C. § 523(a) (2003). Thus, although the German law demands more from the debtor, it also offers a broader discharge to the debtor.

136 See BR-Dr. 1/92, supra note 8, at 192; DEUTSCHER BUNDESRAT, STENOGRAPHISCHERBERICHT 639. SITZUNG, supra note 34, at 83.

137 See BR-Dr. 1/92, supra note 8, at 192.

138 See InsO § 295(1)(1).

139 See id. at § 296.

140 See BR-Dr. 1/92, supra note 8, at 192. BUNDESMINISTERIUM FÜR JUSTIZ, supra note 126, at 38.

141 See BR-Dr. 1/92, supra note 8, at 192.

142 See id.

143 See BUNDESMINISTERIUM FÜR JUSTIZ, supra note 126, at 30, 34, 38.
The Innovative German Approach to Consumer Debt Relief

Honest accepted the low-wage job "in order not to endanger his discharge." 144

a. Purpose and Theory of the "Good Behavior Period"

The drafters of the Insolvency Act joined other European nations in their desire to avoid the U.S. model of consumer insolvency relief, under which simply undergoing one-time liquidation proceedings leads to discharge in most cases. 145 The earliest European proposals for implementing consumer insolvency relief included multi-year payment periods to ensure that the debtor "exert[s] himself to the fullest to earn the premium, a discharge of the remainder of the debts." 146 These proposals suggested a maximum term of four years of payments, so as to avoid flagging debtor morale and failure of overly long plans. 147 Emerging European approaches to consumer bankruptcy generally eschew the "get-out-of-jail-free" approach of the U.S. system in favor of discharge conditioned on completion of a several-year payment period. 148 Indeed, it has been suggested that the "too lenient reputation of U.S. consumer bankruptcy law makes the word ['bankruptcy'] repugnant to some Europeans." 149

Consistent with the general European attitude, the first legislative proposal for the German Insolvency Act remarked emphatically that the "very debtor-friendly" model of Anglo-American law would not be adopted. 150 Instead, requiring the debtor to assign several years of nonexempt income and endeavor to obtain and hold suitable employment would serve a "warning function" to protect the courts from a flood of frivolous and abusive petitions, ensuring that discharge would be available only to those debtors ready and willing to give up their garnishable income and confront the deprivations of seven 151 lean years. 152 The discharge itself was designed in part to motivate the debtor "into honest and creditor-friendly behavior." 153 The drafters explicitly described the discharge as a "privilege" to be earned by the debtor's accepting any suitable employment

144 Id. at 37.
145 See, e.g., BR-Dr. 1/92, supra note 8, at 188.
147 Id. at 221, 228 (noting that four years "seems to be the maximum period for which consumers are willing and able to expose themselves to the limitations of a plan").
149 Id.
150 BR-Dr. 1/92, supra note 8, at 100, 188.
151 See infra notes 176-85 (regarding the later amendment of this period to six years).
152 BR-Dr. 1/92, supra note 8, at 188-89.
153 Id. at 188.
and sharing with creditors the burden of unpaid debts.\textsuperscript{154}

In addition, the drafters of the Insolvency Act were influenced by the writings and economic theories of Thomas Jackson.\textsuperscript{155} In his famous examination of the policies underlying the discharge of debt, for example, Professor Jackson questioned the economic soundness of ignoring the valuable property interest in the "human capital" of a consumer debtor's future earning capacity, as U.S. consumer bankruptcy law generally leaves only existing, tangible assets available to creditors.\textsuperscript{156} German commentators seized on this "inconsistency" in U.S. law, even using Jackson's terminology of "human capital."\textsuperscript{157} Because credit extensions to consumers are made not on the basis of present assets, but on the basis of future earning capacity, these commentators argued that the German insolvency regime should acknowledge and facilitate the role of future earnings in the consumer credit bargain and require "liquidation" of at least part of that "asset" for creditors.\textsuperscript{158} This analysis eventually made its way into the legislative grounding for the Insolvency Act. Lawmakers designed the requirement of an extended period of payment from future wages in part to keep pace with developments in the modern consumer credit economy, in which future wages play an integral role in the extension of consumer credit.\textsuperscript{159}

\textit{b. Debate about the Length of the Good Behavior Period}

The German Parliament never questioned the notion of a multi-year payment period, but it examined and fiercely debated the length of the period. When it introduced the bill for the new Insolvency Law, the Kohl Administration chose seven years as the appropriate length of time,\textsuperscript{160} although no one ever offered any explanation for this choice.\textsuperscript{161} The Bundesrat Law Committee immediately suggested that the seven-year period was "unequivocally too long," and proposed a reduction to four

\textsuperscript{154} Id. at 192.
\textsuperscript{155} See Kamlah, supra note 27, at 421.
\textsuperscript{157} See, e.g., Wenzel, supra note 31, at §§ VII(2)-(3); see also Balz, supra note 23, at 267-69.
\textsuperscript{158} See id.
\textsuperscript{159} See BR-Dr. 1/92, supra note 8, at 101.
\textsuperscript{160} See id., at 46, 100, 188.
\textsuperscript{161} See Rath, supra note 17, § 8.1 and note 226. One member of the original Commission for Insolvency Law immediately criticized the "arbitrarily seized upon seven-year period" as "unnecessarily long." See Gerhardt, supra note 32, at 143. He suggested that the only basis for the choice of seven years is the seventh-year remission of debts in Deuteronomy 15:1. See id.; see also Rath, supra note 17, § 8.1 note 226.
years. The Committee suggested that such long "re-socialization" periods were expected only of criminals. But a majority of the full Bundesrat rejected this proposal by voice vote without comment or explanation.

The Social Democrats continued the fight in the Bundestag, arguing for a term of as little as three years. In the first consideration of the bill, the Social Democrats attacked the seven-year period as "in most cases too long." They admitted that they themselves had proposed a seven-year period when the idea of a consumer discharge arrived on the legislative front in 1988, but they had backed away from the longer period based on reports from debt counseling centers. Consequently, the Social Democrats filed an alternative proposal based on their finding that "[t]he practice of the debt counseling centers shows that debt arrangement plans with terms of longer than four or five years are predestined to failure." Accordingly, the Social Democrats submitted that the good behavior period should last in normal cases five years, but it could be reduced to three or raised to seven based on the degree of the debtor's fault for finding herself in debt.

Rather than reducing the term of the good behavior period, the Bundestag accepted a committee proposal to boost the debtor's motivation to complete the seven-year period. The Bundestag Law Committee added so-called "motivation rebates" to be paid to the debtor from nonexempt income assigned to the trustee. At the end of the fourth, fifth, and sixth

162 See BR-Dr. 1/1/92, supra note 18, at 39, 54.
163 See id. at 55.
164 See Deutscher Bundestag, Stenographischer Bericht, 639. Sitzung, supra note 34, at 50-51 (rejecting committee proposals 29 and 44).
165 The Social Democrats generally represent the interests of the working class and trade unions. See, e.g., Library of Congress Country Studies: Germany, Social Democratic Party of Germany (1995), at http://lcweb2.loc.gov/frd/cs/detoc.html. As such, they generally support the consumer perspective most strongly. They "represent the social workers who understand the problems of poverty." Huls, American Influences, supra note 7, at 134.
166 See Deutscher Bundestag, Stenographischer Bericht, 94. Sitzung, supra note 334, at 7775.
167 See id.
169 Id. at 4.
170 See id. at 2, 4.
171 See BR-Dr. 14/01, supra note 73, at 51 (using this term, Motivationsrabatt); Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zur Änderung der Insolvenzordnung und anderer Gesetze, BT-Dr. 14/5680, at 41 (Mar. 28, 2001), available at http://dip.bundestag.de/btd/14/056/1405680.pdf.
years of the period, the debtor would receive “rebates” of 10%, 15%, and 20%, respectively, of her annual assigned nonexempt income.\textsuperscript{172} The full Bundestag adopted the Law Committee’s approach and rejected the Social Democrats’ proposal.\textsuperscript{173} Thus, the law began with a seven-year,\textsuperscript{174} “good behavior period,” with the debtor’s motivation buttressed by rebates of nonexempt income beginning after four years.

c. Reduction of Length and Payments Over the Good Behavior Period

Despite continuing harsh criticism and opposition, the lengthy good behavior period has stubbornly resisted meaningful reform. Demands for a reduction to five years have continued unheeded.\textsuperscript{175} Nevertheless, in December 2001, the German Parliament ultimately reformed the period in two less extensive—but still important—ways.

First, the term was finally reduced to six years. In its 2001 reform proposal, the Administration was unwilling to recommend a reduction in the seven-year term without further study of the effect of such a reform on distributions to creditors and on the availability of consumer credit.\textsuperscript{176} An angry reaction quickly ensued from consumer debtor representatives.\textsuperscript{177} They pointed out the lack of any apparent reasoning for the choice of seven years, and they noted that other European nations had implemented payment periods of only four years.\textsuperscript{178} The former Communists, now called the Democratic Socialists,\textsuperscript{179} had already taken up the fight in 2000, introducing a formal proposal to reduce the “good behavior period” to five years to avoid the “demotivation” of the debtor by such a long period.\textsuperscript{180}

\textsuperscript{172} See BT-Dr. 12/7302, supra note 43, at 125, 151, 153, 187-88.


\textsuperscript{174} As a transition measure, the period was shortened to five years for those debtors who were insolvent from January 1, 1997 forward. See BUNDESMINISTERIUM DER JUSTIZ, supra note 126, at 25.

\textsuperscript{175} See BR-Dr. 14/01, supra note 73, at 31-32.

\textsuperscript{176} See id., at 32.


\textsuperscript{178} See id. at 8.


\textsuperscript{180} See GESETZENTWURF DER ABGEORDNETEN DR. EVELYN KENZLER, ROLF KUTZMUTZ, DR. GREGOR GYSI UND DER FRaktion DER PDS, ENTWURF EINES GESETZES ZUR ÄNDERUNG DER INSOLVENZORDNUNG (INSOÖNDG), BT-Dr. 14/2496, at 1, 3-4 (Jan. 11, 2000), available at http://dip.bundestag.de/btd/14/024/1402496.pdf.
Indeed, the Democratic Socialists and others pointed out that the total period from the beginning of out-of-court negotiations to the end of the insolvency case could extend as long as nine to eleven years in some cases due to delays in the early stages of the process.  

A middle path once again emerged, as the Bundestag reduced the good behavior period to six years and tied the beginning of the period to the opening, rather than the conclusion, of the simplified insolvency proceedings. It was hoped that these two changes would lead to "a significant lightening of the burden on debtors," while studies of the Institute for Financial Services suggested only minimal ill effects for creditors and the general availability of consumer credit. Achieving even this minimal reduction in the good behavior period required great effort, and it was introduced into the bill the night before final committee debate.

The second easing of the burden of the good behavior period is easy to miss but potentially far more significant. At the same time that it slightly reduced the term of the good behavior period, the German Parliament significantly reduced the amount of income that creditors can seize from debtors, including during the six-year good behavior period. Beginning January 1, 2002, the minimum statutory wage exemption rose nearly 50% for single debtors and childless couples, which constitute the overwhelming majority of German households, and between 30% and 40% for debtors with children. Similarly, the maximum exempt amount for all debtors

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182 See BT-DR. 14/6468, supra note 114, at 1-2, 8, 16, 18. The effective period for prepetition pledges and assignments of wages, see supra note 133, was commensurately reduced from three to two years to preserve the amount paid to general creditors. See id. at 2, 7, 17. In addition, the 20% "rebate" of the debtor's nonexempt wages at the end of the sixth year was eliminated. See id. at 9, 18.

183 See BT-DR. 14/6468, supra note 114, at 18.

184 See DEUTSCHER BUNDESTAG, STENOGRAPHISCHER BERICHT, 179, SITZUNG, supra note 181, at 17684.

185 Note that the reduction in nonexempt income applies to all debtors, not only those seeking relief under the Insolvency Act.

186 Households with one or two members make up over 70% of all German households. See STATISTISCHE BUNDESAMT, BEVOELKERUNG, HAUSHALTSSTYPEN (Jun. 12, 2003), available at http://www.destatis.de/basis/d/bevoe/bevoetab11.htm.

rose nearly 50%. All of these exemption levels will now be reviewed every two years to keep pace with inflation. Now, applying current exchange rates, a childless couple can keep 100% of the first approximately $17,000 of income, and if they earn more, they can keep a maximum of about $27,500 per year. This is obviously no king’s ransom, but it is a much more solid foundation for a modest lifestyle. Consumer debtor advocates praised the resulting “perceptible financial relief” offered by the long-needed increase. Insolvency advisors and judges report that, after the increase in exemptions, very few consumer insolvency cases involve any distribution at all to creditors—either from the debtor’s current assets or from six years of future income.

C. The Future of German Consumer Insolvency Law

Long waiting periods for debt counseling and difficulties with financing court costs took their toll on the growth rate of consumer insolvency cases in the early years, but the numbers recently began to soar. Approximately 20,000 consumer and small business petitions were filed in 1999, the first year of the Insolvency Act. Word evidently spread about

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188 See supra note 48 for an explanation of the significance of this figure and an explanation of the three-part German wage exemption scheme.

189 See BT-Dr. 14/7478, supra note 187, at 5 (reporting an increase from 3796 DM to 5576 DM, or €2851 per month).

190 See id. In the past, exemption levels were revisited only about once a decade. See, e.g., id. (seventh law increasing exemptions in 2002); BR-Dr. 127/92, supra note 47 (sixth law increasing exemptions in 1992); BR-Dr. 32/84, supra note 47 (fifth law increasing exemptions in 1984).

191 The U.S. dollar exchange rate for the euro since its introduction on January 1, 2002, has risen steadily from just under a dollar per euro in 2002 to a little over a dollar per euro during 2003. For a historical comparison of the USD/EUR exchange rate, see http://www.oanda.com/convert/fxhistory (last visited Jul. 14, 2003).

192 See http://www.bmj.bund.de/images/11221.pdf (last visited Jul. 14, 2003) (showing a 100% exemption up to €1289 per month, and €785 attachable of a maximum of €2851 per month, leaving a maximum of €2065 per month). A single debtor can keep 100% of the first approximately $12,300 per year, and a percentage of the excess up to a maximum of almost $20,000 per year. See id. (showing a 100% exemption up to €939 per month, and €1344 attachable of a maximum of €2851 per month, leaving a maximum of €1507 per month).


194 See AUFRUF DEUTSCHER INSOLVENZRICHTER UND -RECHTSPFLEGER ZUR WIEDERHERSTELLUNG DER FUNKTIONSFAHIGKEIT DER INSOLVENZGERICHTE UND DER INSOLVENZORDNUNG (Oct. 2002), available at http://www.inso-rechtspfleger.de/inhalt/01_aktuelles/aufruf200202.htm; see also SCHNEIDER, supra note 104, at 76 (reporting that nearly 100% of the income of debtors in Mecklenburg-Western Pomerania is exempt from creditors).

the financial and procedural difficulties these debtors experienced, because the number of insolvency petitions filed by individuals fell 40% in 2000. Hope for impending reform spurred a 23% resurgence in petitions in 2001, then the consumer insolvency reform of December 2001 raised the roof. In 2002, consumer and small business insolvency petitions tripled to over 44,000 petitions. In the first half of 2003, petitions filed by consumers are up more than 70% over the same period a year ago.

Word of mouth about the potential of the new law will undoubtedly lead to greater interest. For example, one debtor wrote to an internet chat-group that his first year of the good behavior period was not as bad as he had expected, that he had no more fear of the next several years, and “[e]verything is going well for me for the first time in my life.” With estimates of nearly 2.8 million overindebted households in Germany, the well of potential consumer insolvency cases will not run dry for a very long time.

Reformers have implemented the most substantial changes in consumer insolvency law already, so they promise no more radical changes in the future. The Ministry of Justice, the primary mover of insolvency law reform up to this point, has made its position quite clear: “There will be no radical about-turn or paradigm shift in consumer insolvency proceedings or in the discharge.” The Justice Ministry has already rejected a string of

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196 For a discussion of these problems, see, e.g., BUND-LÄNDER-ARBEITSGRUPPE, supra note 87, and the sources collected in note 130.


202 See GP-FORSCHUNGSGRUPPE, supra note 11.

203 See GRUSSWORT DES PARLAMENTARISCHEN STAATSSKRETÄRS BEI DER BUNDESMINISTERIN DER JUSTIZ, ALFRED HARTENBACH, ANLÄSSLICH DER DAV-VERANSTALTUNG ZU VERFAHRENVEREINFACHUNGEN IN DEN INSOLVENZVERFAHREN NATÜRLICHER PERSONEN IN DER DEUTSCHEN ANWALTS AKADEMIE IN BERLIN AM 31. JANUAR 2003 (Jan. 31, 2003) [hereinafter BERLIN REDE], available at http://www.bmj.bund.de/get/service/reden_und_interviews/10000639/?sid=161948b7842b90dcaab87755a205f44.
alternative reform proposals\textsuperscript{204} as it recently launched its final foreseeable reform effort in the area of consumer insolvency.\textsuperscript{205} It hopes to reduce cost and alleviate stress on the formal judicial process by facilitating and enhancing out-of-court debt arrangements.\textsuperscript{206} Only time will tell what problems will arise in the future. Given the arguments and proposals presented over the past several years, legislators may be receptive to a further (and probably final) reduction of the good behavior period to five years,\textsuperscript{207} although the biennial increase in wage exemption levels may make such a change unnecessary.

One thing is sure: consumer insolvency relief in the form of a discharge of unpaid debt is here to stay in Germany. The Ministry of Justice has expressed its view quite explicitly that Germany needs a judicial procedure for relieving overindebted individuals.\textsuperscript{208} Overindebtedness is no longer viewed as a simple result of modern consumer behavior and a “buy now, pay later” mentality, but rather as a consequence of a complex of problems, including job-loss, divorce, and illness.\textsuperscript{209} The Justice Ministry is quite dedicated to the success of its new consumer debt relief law, whatever challenges the future reveals.


\textsuperscript{205} See supra notes 108-21 and accompanying text; see also Stephan, supra note 204, at 145-52.

\textsuperscript{206} See, e.g., \textit{REDE DES PARLAMENTARISCHEN STAATSSERKÄRS BII DER BUNDESMINISTERN DER JUSTIZ, ALFRED HARTENBACH, VOR DEM BERLIN-BRANDENBURGER-INSOLVENZARBEITSKREIS E.V. ZUM THEMA: “ZWEI JAHRE NEUES INSOLVENZRECHT: EINE BESTANDSAUFAHME” AM 26 JUNE 2003 IN POTSDAM § IV(5) (Jun. 26, 2003) [hereinafter POTS DAM REDE], available at} http://www.bmj.bund.de/get/service/reden_und_interviews/10000752/?oid=7ca2de1607209cc69733dcd496ad88; \textit{DEUTSCHER BUNDESTAG, STENOGRAPHISCHER BERICHT, 15. Wahlperiode, 39. Sitzung, supra, at 3191 (Apr. 9, 2003), available at} http://dip.bundestag.de/btp/15/15039.pdf (remarks of the Parliamentary representative of the Ministry of Justice noting the elimination of court-directed payment plan proceedings as the only planned change in consumer insolvency). The Justice Ministry also hopes to attain several other minor goals in consumer insolvency, such as 1) increasing the usage of the internet for notice publication, 2) increasing the usage of less costly and less time- and personnel-intensive written proceedings, and 3) reducing arbitrary judicial requirements not contained in the law, such as a requirement that the causes of insolvency be explained by the debtor in writing. See POTS DAM REDE, supra, at § IV(5); DEUTSCHER BUNDESTAG, STENOGRAPHISCHER BERICHT, 39. SITZUNG, supra, at 3192; BERLIN REDE, supra note 203, at § II(3)-(4).

\textsuperscript{207} See supra notes 170, 175, 180 (mentioning various calls for a five-year period).

\textsuperscript{208} See POTS DAM REDE, supra note 206, at § IV.

\textsuperscript{209} See id.
IV. POTENTIAL LESSONS FOR THE UNITED STATES

From this survey of German consumer insolvency law and practice, at least three important lessons emerge for the continuing U.S. debate about forcing all consumer debtors into a payment plan. Two lessons are obvious and superficial. The third is non-obvious, perhaps surprising, and probably more enlightening.

A. The Theory of Required Payment Plans: Universal Agreement on Requiring Years of Payments to Creditors

One obvious lesson lies on the surface of the legislative history: Everyone in the legislative process in Germany rejected the "get-out-of-jail-free" approach of U.S. law in favor of requiring several years of payments to creditors to earn the privilege of a discharge of unpaid debts. No one in the Administration or Parliament appears to have argued that any subset of debtors—even those living below the poverty line—should be able to avoid the multi-year good behavior period with its assignment of all nonexempt income to creditors.

Indeed, not even the most debtor-friendly and anti-capitalist, anti-creditor groups ever suggested that some debtors should receive an immediate discharge without turning over several years of nonexempt income. From the outset, the party most closely allied with social workers and trade unions, the Social Democrats, recommended a payment term of seven years.210 Even when reports from debt counselors later persuaded the Social Democrats to back away from this position, they still proposed a payment term of at least three years.211 Indeed, even the former Communists proposed a payment term of five years.212 No one could reasonably accuse the Communists of favoring the capitalist creditor lobby at the expense of overburdened consumers, yet even they recommended a multi-year term of required payments to creditors.

It can hardly be argued that a term of required payments in consumer insolvency cases is so odious as to not merit consideration in the United States if the ultra-debtor-friendly Social Democrats and former Communists advocated such plans. To be sure, economic, social, or political conditions in the United States may militate against imposing multi-year payment periods on consumer debtors, but the history of the German law suggests that it should not be considered pro-creditor and anti-debtor simply to consider such a proposal.

210 See supra note 167 and accompanying text.
211 See supra notes 167-70 and accompanying text.
212 See supra note 180 and accompanying text.
B. The Simple Carrot-and-Stick Approach to Incentivizing Debtors

The second lesson to be learned from a simple glance at the new German law is the simple but apparently effective solution to the problem of “incentivizing” debtors to produce income for distribution to creditors. U.S. lawmakers in 1978 did not require debtors to attempt to repay any portion of their debts over time because they feared that debtors would lack the incentive to complete a period of working “only for the benefit of their creditors.” The German Insolvency Act deftly addresses this problem with an enticingly simple “carrot-and-stick” solution. The stick threatens a loss of the privilege of discharge if the debtor fails to find and keep acceptable employment—even low-prestige, low-wage employment. On the other hand, the carrot promises freedom from debt after six years, as well as bonus “rebates” of nonexempt income to the debtor for successful completion of four and five years of the good behavior period.

German law does not revert to a system of “debt peonage,” as some have characterized proposals for mandatory payment terms in the United States. German commentators pointed out that the Insolvency Act does not force consumers to work to pay off debt, as debt peonage law would; rather, it allows debtors to obtain a benefit—the discharge of debt—in exchange for work or serious attempts to find work. As a check on this significant benefit, it allows creditors to petition for the refusal of financial relief if the debtor chooses not to work. If a debtor chooses not to initiate an insolvency case, creditors are left with the limited remedies of collections law—creditors cannot force debtors into servitude. This is a classic balance of benefits and burdens that should not strike reasonable observers as shocking or problematic, particularly if the requirements are reasonable, as those imposed by the German law appear to be. Indeed, creditors can coerce and receive at least the value of the debtor’s labor under a debt peonage system, while most creditors receive nothing at all under the German consumer insolvency system.

Incidentally, I have found no evidence of the frequency of creditor petitions for denial of discharge based on debtors’ failure to seek or hold adequate employment. Given that few creditors collect anything during the

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214 See supra notes 137-44 and accompanying text.
215 See supra notes 134-35 and accompanying text.
217 See, e.g., WENZEL, supra note 31, at § VII(3).
218 See infra Part IV.C.
good behavior period in any event, one suspects that few creditors would be willing to invest in monitoring debtors' employment-seeking activity over six years.

C. The Reality of Required Payment Plans: Creditors Do Not Receive Payments from Asset Liquidation or from Several Years of Nonexempt Income

A little digging into the implementation of the law reveals a surprising and probably more enlightening lesson. The notion of six or seven years of payments to creditors from nonexempt income is largely an illusion. The "equal distributions to creditors" theme applies in principal but not in practice. Virtually no consumer debtor pays anything to creditors during the good behavior period because the wage exemption now protects all of most debtors' income. The good behavior period in reality is reduced to a psychological device to impress upon the debtor the notion of shouldeing the burden of unpaid debts in order to earn the privilege of a discharge.

Indeed, legislators were prepared from the beginning for creditors to receive nothing or nearly nothing in most consumer cases. The German Parliament soundly rejected early proposals to require a minimum dividend to creditors in consumer cases. Just over a year before the new Insolvency Law went into effect, representatives of several of the German Länder introduced a proposal to amend the law to require a minimum dividend of 10% of creditors' claims, as the Austrian insolvency law does. These Länder argued that the discharge offered only a psychological benefit, but no economic solution, to debtors with no income or assets in excess of legally protected limits. Such debtors, it was argued, "generally have nothing to fear from their creditors." Proponents of a minimum dividend further argued that offering the benefits of discharge to such consumers ignored the "main goal" of the law—the best-possible distribution to creditors—and was "inconsistent with the 'strict prerequisites for the awarding of the discharge' set out by the legislature." The Länder

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219 See supra note 194.
220 See GESETZESANTRAG DER LANDE BAYERN, NIEDERSACHSEN, RHEINLAND-PFALZ, SAARLAND, SACHSEN, SCHLESWIG-HOLSTEIN: ENTWURF EINES GESETZES ZUR ANDERUNG DER INSOLVENZORDNUNG UND ANDERER GESETZE, BR-Dr. 783/97, at 3-4, 7-8, 10-17 (Oct. 13, 1997), available at http://www.parlamentsspiegel.de/cgi-bin/hyperdoc/show_dok.pl?k=BBD783/97.
221 See id. at 7-8. This argument, of course, ignores the fact that such debtors have no incentive to improve their economic situations, for fear that any improvement will pass immediately to creditors. This was the situation of debtors under the former East German Gesamtvollstreckungsordnung, described supra note 31, which was explicitly rejected as a model for consumer insolvency relief in the new unified Germany.
222 Id. at 8.
223 See id. at 11.
proposal died immediately. It was never even reported out of committee. Any requirement that consumers pay any portion of their debts through the good behavior period was soundly rejected in Parliament. In rejecting any requirement of minimum dividend to creditors, German law decisively followed early European consumer debt relief proposals, which also allowed for zero-payment plans so long as this represented the debtor’s “best efforts.”

The majority of courts also rejected early attempts to demand minimum payments from debtors in the court-directed debt arrangement plan stage. Debtors with no nonexempt income and no seizable assets have little incentive to offer creditors any payment, so many debtors in the in-court plan negotiation stage proposed plans paying little or nothing to creditors. After a short period in early 1999 in which several courts rejected such so-called “zero plans,” the majority of lower courts, and all appellate courts of the Länder that dealt with this issue, concluded that so-called “zero plans” should be allowed. It will soon be a moot issue whether “zero plans” are acceptable in the court-directed debt arrangement stage, as that stage is poised for elimination. But the jurisprudence further confirms that German consumer insolvency cases often involve no actual payments to creditors—and both the legislature and the courts accept this.

The prominence of zero-payment insolvency cases in Germany casts significant doubt on the possibility that U.S. creditors would receive any economic benefit from requiring payment plans in U.S. consumer bankruptcy law. A wide variety of statistics suggest that few U.S. consumer debtors would be able to pay anything to creditors over a term of several years.

Indeed, even less payment could be reasonably expected of U.S.

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224 Apparently, another “minimum dividend” proposal was intensively discussed and firmly rejected in 1998, although I have found no documentary record of this debate, only reference to such a discussion preceding a 1998 law amending portions of another bankruptcy-related law. See, e.g., Pape, supra note 87, at 2042-43 (arguing that, with this 1998 debate, “the last doubts were removed that lawmakers consciously did not introduce a minimum dividend”).


227 See supra notes 109-22 and accompanying text.

The Innovative German Approach to Consumer Debt Relief

debtors than is expected of German debtors given two major distinctions between U.S. and German law: state-sponsored social welfare benefits and wage exemption levels. Unlike U.S. debtors, German debtors need not use large portions of their income to cover health care and other common costs, as Germany provides relatively generous national health insurance, education, and other social welfare benefits.229 Furthermore, lower-income Germans can shield much more of their income from creditors than their U.S. counterparts. After the substantial increase in the German wage exemption level in 2002, available reports indicate that very little of the income of German debtors is subject to distribution to creditors.230 A childless couple in Germany enjoys a 100% exemption in approximately $17,000 per year,231 and that minimum 100% exemption grows if the couple has children.232 In contrast, a U.S. couple with no children or ten children is generally subject to the same minimum exemption of just over $8,000 per year.233 A U.S. debtor would have to make $22,667 to keep the same minimum $17,000 as her German counterpart.234 The U.S. wage exemption scheme is far more favorable to higher income levels than the German scheme,235 but low income is precisely the problem for most overindebted consumers. The plain fact is that consumer debtors do not pay because they cannot pay, not because they do not want to. The German experience further confirms this.

With relatively low wage exemptions and welfare benefits, U.S. consumers are generally more susceptible to economic volatility. Generous state welfare benefits and a relatively high wage exemption offer German debtors a substantial chance for successful completion of the six-year good behavior period. U.S. debtors are less likely than Germans to be able to complete such a multi-year payment term. This conclusion is borne out by

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229 See, e.g., U.S. LIBRARY OF CONGRESS, supra note 2, Social Welfare, Health Care, and Education.
230 See supra note 194.
231 See supra note 192.
232 See supra note 48 (describing the three-stage German wage exemption scheme).
233 In most states, the greater of 75% of weekly after-tax earnings or 30 times minimum wage is exempt. See 15 U.S.C. §§ 1672-73 (2000). Given that the minimum wage is currently $5.15 per hour, see 29 U.S.C. § 206(a)(1) (2003), this leaves a minimum annual exemption of $8034, regardless of how many dependent obligations the debtor might have. State law can offer greater protection, but few states do. See, e.g., SUMMARY OF COLLECTION LAWS, at http://summary.users1.50mcgs.com (last visited July 16, 2003) (listing garnishment protections in the various states).
234 U.S. law exempts 75% of income higher than minimum wage, and $17,000 is 75% of $22,667. See id.
235 The U.S. wage exemption law contains no maximum wage beyond which all income is seizable, as the German law does, and U.S. law exempts 75% of wages higher than the minimum, while German law protects only 30% of excess wages for individual debtors, and 50%-90% for debtors with between one and five dependents. See supra note 49.
the high failure rate of consumer payment plans under Chapter 13 of the U.S. Bankruptcy Code. \(^{236}\)

V. IF THEY CAN'T PAY, WHAT'S THE POINT? THE MOST IMPORTANT LESSON

The consumer provisions of the German Insolvency Act received the following hearty praise from Alfred Hartenbach, a Social Democratic member of the Bundestag who, incidentally, served as a judge presiding over bankruptcy cases between 1985 and 1994:

The people get something from it, as their feeling of self-worth rises. The children of these people get something from it, as it must be, I believe, one of the worst experiences when one must grow up in an overindebted household as a child in poverty. The cities and communities get something from it, because they have to pay fewer social welfare benefits. The Länder and the Federation also get something from it, because taxes will be collected again. Thus, we have created an all-around reasonable law here. \(^{237}\)

A benefit for creditors is conspicuously absent from this acclaim for the Insolvency Act. German lawmakers have created an impressive set of theoretical benefits and trade-offs, which demands a carefully balanced quid pro quo of debtors and creditors affected by consumer bankruptcy. But the real “quids” and the real “quos” prove a bit imbalanced upon closer inspection under the lens of actual practice.

At least theoretically, consumer debtors give up any valuable nonexempt property, as well as six years of nonexempt future income. Perhaps more importantly from a social-responsibility perspective, debtors sacrifice the uninhibited right to choose whether to work and what job to take on—they are forced to acknowledge that others depend on their responsible attitude toward producing income. Even if this income is insufficient to produce any return to creditors, the law impresses on debtors a strong sense of responsibility for dealing with their financial affairs. No one is forced to work, of course, but if debtors want the “quo” of the highly beneficial discharge of unpaid debt, they must offer the “quid” of at least a responsible attempt at creating income for settlement of debt.

Despite what appears to be a rather creditor-friendly consumer insolvency system, most creditors get the short end of the stick in Germany.

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\(^{236}\) See, e.g., Jean Brauch, Lawyers and Consumer Bankruptcy: One Code, Many Cultures, 67 AM. BANKR. L.J. 501, 535 (1993) (citing failures in between 35% and 80% of confirmed Chapter 13 plans); Theresa A. Sullivan et al., As We Forgive Our Debtors 217 (1989) (citing plan failure in 70% of Chapter 13 cases).

\(^{237}\) Deutscher Bundestag, Stenographischer Bericht, 179. Sitzung, supra note 181, at 17685.
The law offers the potential benefit of squeezing six years of payments out of debtors, but this benefit is largely illusory. Theoretically, without a system of consumer debt relief, creditors would receive nothing, as most property is exempt from creditors outside the insolvency system as well, and debtors with non-exempt income would simply go "underground," hiding their non-exempt income from creditors, or refusing to work at all. Therefore, creditors should benefit when the Insolvency Act goads debtors into working to turn over at least six years of nonexempt income. Of course, German legislators robbed from Peter to pay Paul, as they increased the wage exemption levels beyond the average debtor's total earnings. In the great majority of cases, the "quid" of requiring creditors to give up their unpaid debts after six years is not met with a "quo" of any payments of nonexempt income during that time. While the German model of requiring payment from every consumer debtor looks favorable to creditors on paper, the reality of the situation is that German creditors generally receive little more with required payment plans than U.S. creditors do without them.

The major practical distinction between German and U.S. consumer insolvency law appears to be the potential for inculcating financial responsibility in current and potential debtors. U.S. consumer bankruptcy law generally produces the same economic balance as the German law, as debtors give up nothing more than filing fees, and creditors receive no distribution in the great majority of bankruptcy cases. But the U.S. system appears to have very little interest in controlling debtors' future financial behavior. U.S. law currently does not require any sort of credit counseling, it does not require debtors to attempt to reach a compromise with creditors, and it generally does not place any burdens on debtors beyond the conclusion of a brief liquidation case. German law, in contrast, requires debtors to seek the advice of an identified "suitable person or agency," which generally turns out to be a state-sponsored debt counselor. Debtors will almost assuredly receive some sort of counseling here, at least in developing a manageable budget to serve as the basis of an offer in compromise to creditors. Then, German debtors must at least seek a compromise with creditors before initiating formal debt relief proceedings. Finally, German debtors are reminded of their duty to work to address their financial responsibilities for six years, even if the reality is that they are not required actually to pay much if anything toward their unpaid debts. Whether or not counseling and other efforts to impress financial responsibility upon consumer debtors are valuable or effective is certainly debatable, but the German legislature has concluded after serious

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consideration that these efforts are of some value—even if some minimal impact on the level of consumer debtors' financial responsibility is the only benefit offered to creditors and society.

On the other hand, the German experience with consumer bankruptcy suggests that creditors would receive very little direct benefit if more debtors were forced into Chapter 13 plans in the United States. Most consumers will be unable to offer anything to creditors, even over an extended period. U.S. lawmakers and courts, like their German counterparts, must be prepared for such an outcome.

But subjecting debtors to a reasonable regime of required attempts to find work and offer creditors any excess over sufficient protected wages over a limited period of time may produce some indirect benefits. In the United States, like in Germany, forcing debtors to undergo a "good behavior period" will likely amount to no more than a psychological exercise in inculcating some sense of financial responsibility. This may or may not be worth the effort, but proponents of forced payment plans should realize that the German system achieves little more than this. Proponents of forced payment plans in the United States must first acknowledge, however, that German law protects a minimal level of existence much better than does current U.S. law. Against the backdrop of legislation providing for social welfare and wage garnishment restrictions, the German system requiring six years of modest garnishment is decidedly not comparable to forcing debtors into a Chapter 13 plan in the United States. An increase in the amount of income exempt from creditor seizure is, in my view, an absolute necessity before the United States can consider an approach like that adopted in Germany.

The German word for the six-year payment period turns out to be quite telling. The notion of the Wohltverhaltenperiode, or "good behavior period," is much more concerned in reality with the debtor's "resocialization" and re-entry into the open credit economy than with ensuring any dividend to creditors. In economic terms, the German system is also "very debtor friendly." The German system simply makes more effort to force debtors to take responsibility, negotiate with creditors, and reflect at length on their financial duties.

One of the fairy tales of the Brothers Grimm describes the path to heaven. In response to a prince's question about how to get to heaven, a poor old man responds, "By poverty and humility... Put on my tattered clothes, wander about the world for seven years, and learn all about its misery.... This is how you'll find the way to heaven." The German

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239 Cf. Margaret Howard, A Theory of Discharge in Consumer Bankruptcy, 48 OHIO ST. L.J. 1047 (1987) ( theorizing that facilitating consumer debtors' re-entry into the open credit economy is a primary goal of the discharge in U.S. bankruptcy law).

240 See Jacob & Wilhelm Grimm, Poverty and Humility Lead to Heaven, in THE
Insolvency Act proposes a similar path to deliverance from debt. “Good behavior” will set one free, but it is not as important how one acts to benefit others as it is that one reflects and learns about oneself and about one’s responsibilities. Putting debtors back on the path of “righteous” financial behavior is potentially more valuable to society than offering a few creditors a narrow benefit at the expense of both the debtor and society. Getting debtors back on that path without overburdening them with unattainable economic demands is the trick. In my view, this is the most important lesson that German consumer insolvency law has to teach the United States.

Complete Fairy Tales of the Brothers Grimm 638 (Jack Zipes trans., 1987).